IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 16TH DAY OF FEBRUARY, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE A. H. MUSA
JUDGE

SUIT NO.: FCT/HC/M/12271/2020

BETWEEN:

CHARLES AGWU IYANYA — **APPLICANT**

AND

1. **THE STATE**
2. **THE REGISTRAR, UPPER AREA COURT, GWAGWALADA, ABUJA**

— **RESPONDENTS**

JUDGMENT

On the 24th of November, 2020, the Applicant, Charles Agwu Iyanya, instituted this action for an application for judicial review *vide* a Motion on Notice praying this Honourable Court for the following orders:-

1. *A Declaration that the Ruling of the Upper Area Court Gwagwalada on 28th September, 2020 in respect of the Preliminary Objection raised by the Applicant in FIR/CR/177/2016 violates the provisions of sections 2 and 13 of the Federal Capital Territory Abuja Area Court (Repeal and Enactment) Act 2010 and thereby liable to be quashed.*

2. *A Declaration that the transaction leading to FIR/CR/177/2016 is purely civil and in relation to a supposed breach of contract in a sale of land and not such that can be entertained by the Upper Area Court.*
3. *A Declaration that the Upper Area Court Gwagwalada expanded its jurisdiction when it held that it has the jurisdiction to entertain criminal matter and thereby acted ultra vires the powers and jurisdiction conferred on it by the Federal Capital Territory Abuja Area Court (Repeal and Enactment) Act 2010.*
4. *A Declaration that the Upper Area Court Gwagwalada lacks the requisite jurisdiction to hear and determine criminal matters; particularly in respect to FIR/CR/177/2016.*
5. *A Declaration that the Upper Area Court Gwagwalada acted ultra vires its powers when it relied on facts and evidence not placed before him in making his Ruling on the Preliminary Objection.*
6. *An Order quashing the Ruling of the Upper Area Court Gwagwalada on 28th September 2020 in respect of the Preliminary Objection raised by the Defendant.*
7. *An Order bringing the entire proceedings of the Upper Area Court Gwagwalada in respect of FIR/CR/177/2016 before this Honourable*

Court for the purpose of quashing same having been instituted and entertained and entertained without requisite statutory jurisdiction.

8. *And for such further order(s) as this Honourable Court may deem fit to make in the circumstances of this case.*

In support of the Motion on Notice were an affidavit, five exhibits marked as **Exhibit A, Exhibit B, Exhibit C, Exhibit D** and **Exhibit E**, Statement filed in compliance with Order 44 Rule 6 (1) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, and the Written Address in support of the application for judicial review. In compliance with Order 44 Rule 3(1) (2) (a), (b) and (c) of the High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, the Applicant filed a Motion *Ex Parte* dated and filed on the 24th of November, 2020 seeking for the following reliefs:-

1. *An Order granting leave to the Applicant to bring an application for judicial review by way of Certiorari to bring up the FIR (that is, First Information Report) filed by the complainant on the 30th day of June, 2016, in Case No. FIR/CR/177/2016 before His Worship Hon. Sani M. Umar sitting in the Upper Area Court of the Federal Capital Territory (FCT) holden at Gwagwalada and the proceedings of the 24th February, 2020 to the FCT High Court for the purpose of quashing same as the*

transaction leading to the filing of the FIR is purely civil and not criminal in nature.

2. *An Order granting leave to the Applicant to bring an application for judicial review by way of certiorari to bring up the entire criminal proceedings of the Upper Area Court on the 24th day of February, 2020 in the charge filed by the complainant on the 30th day of June, 2016 in Case No. FIR/CR/177/2016 before His Worship Hon. Sani M. Umar of the Upper Area Court of the Federal Capital Territory (FCT) holden at Gwagwalada and particularly the testimony of Dr. Hamid Ozohu Suleiman in FIR/CR/177/2016 for being a clearly civil matter being entertained as a criminal matter and occasioning a grave miscarriage of justice.*
3. *An Order granting leave to the Applicant to bring an application for judicial review by way of certiorari to bring up the Ruling delivered on the 28th day of September, 2020 in the charge filed by the complainant on the 30th day of June, 2016 in Case No. FIR/CR/177/2016 before His Worship Hon. Sani M. Umar the Upper Area Court of the Federal Capital Territory (FCT) holden at Gwagwalada and particularly the order made in respect of the Preliminary Objection raised by the Applicant in FIR/CR/177/2016 for violating the provisions of sections 2 and 13 of the*

Federal Capital Territory Abuja Area Court (Repeal and Enactment) Act 2010 and thereby liable to be quashed as the Ruling expanded the jurisdiction of the Upper Area Court when it held that it has the jurisdiction to entertain criminal matters and thereby acted ultra vires the powers and jurisdiction conferred on it by the Federal Capital Territory Abuja Area Court (Repeal and Enactment) Act 2010.

4. *An Order granting leave to the Applicant to bring an application for judicial review by way of Certiorari to bring up the Ruling delivered on the 28th day of September, 2020 in the charge filed by the complainant on the 30th day of June, 2016 in Case No. FIR/CR/177/2016 before His Worship Hon. Sani M. Umar of the Upper Area Court of the Federal Capital Territory (FCT) holden at Gwagwalada and particularly the order made in respect of the Preliminary Objection raised by the Applicant in FIR/CR/177/2016 which violates the provisions of sections 2 and 13 of the Federal Capital Territory Area Court (Repeal and Enactment) Act 2010 and thereby liable to be quashed as being ultra vires its powers when he relied on facts and evidence not placed before him in arriving at his Ruling on the Preliminary Objection.*
5. *An Order granting leave to the Applicant to bring an application for judicial review by way of Certiorari to transfer the entire proceedings of*

the Upper Area Court in Case NO. FIR/CR/177/2016 before His Worship Hon. Sani M. Umar of the Upper Area Court of the Federal Capital Territory (FCT) Holden at Gwagwalada for the purpose of reviewing and quashing same being entertained without requisite jurisdiction.

6. *And for such order(s) as this Honourable Court may deem fit to make in the circumstances of this case.*

The Motion *Ex Parte* was supported with an affidavit in support, three exhibits marked as **Exhibit A, Exhibit B** and **Exhibit C**, a statement in compliance with Order 44 Rule 3(2) (a) of the High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018, a verifying affidavit in compliance with Order 44 Rule 3(2) (b) of the same Rules and a Written Address in compliance with Order 44 Rule 3(2)(c) of the same Rules.

On the 9th of December, 2020, Counsel for the Applicant, Adewale Odeleye Esq. moved the Motion *Ex Parte* for leave of this Honourable Court to bring an application for judicial review. This Honourable Court heard the prayers and made an order granting leave to the Applicant to bring an application for judicial review. The case was then adjourned to the 21st of January, 2021 for hearing of the Motion on Notice.

Learned Counsel for the Applicant, in presenting his case, prayed the Honourable Court for the reliefs contained in the Motion on Notice. I have reproduced the reliefs earlier in this judgment and will not repeat them here. The summary of the Applicant's application as deduced from the affidavit in support of the Motion on Notice is as follows: the Applicant, who is the Managing Director of a real estate company known as Hospir International Nigeria Ltd apparently entered into a contract with one Dr. Hamid Suleiman Ozohu for the sale of a plot of land particularly known as Plot No. 357 situate at Gwagwalada Expansion Layout. The said plot of land was covered by a Certificate of Occupancy issued in favour of one Jibrin Usman. The purchase price which the parties agreed on was ₦5,000,000.00 (Five Million Naira) only. The said Dr. Ozohu apparently paid the sum of ₦3,000,000.00 (Three Million Naira) only to the Applicant, leaving the balance of ₦2,000,000.00 (Two Million Naira) only unpaid. Though Dr. Ozohu was yet to pay the balance of ₦2,000,000.00 which remained outstanding, he demanded that the Applicant execute a deed of conveyance in his favour covering the transaction.

Upon the Applicant's refusal to execute the deed of conveyance, Dr. Ozohu lodged a complaint of breach of contract to the Police against the Applicant. It was on the strength of the complaint that the Police filed a charge of

cheating against the Applicant at the Upper Area Court sitting in Gwagwalada. The said charge of cheating was contained in the First Information Report (FIR) with Case No. FIR/CR/177/2016.

On the 24th of February, 2020, the case commenced *de novo* before a new Judge of the Upper Area Court and on the 14th of July, 2020, Dr. Ozohu testified in Court as a witness for the Prosecution. On the same date, that is, the 14th day of July, 2020, the Applicant through his Counsel filed a Notice of Preliminary Objection challenging the jurisdiction of the Upper Area Court to try the criminal case. The objection was anchored on the ground that the Federal Capital Territory Abuja Area Courts (Repeal and Enactment) Act 2010 divests the Upper Area Court of the jurisdiction to hear criminal matters. The Notice of Preliminary Objection was argued on the 15th of August, 2020 and the ruling dismissing same delivered on the 28th of September, 2020. Aggrieved by the decision of the Upper Area Court, the Applicant, therefore, has approached this Honourable Court through this application for judicial review for an order of this Honourable Court setting aside the entire proceedings in FIR/CR/177/2016 and the Ruling on the Notice of Preliminary Objection.

In his written address which he adopted as his oral arguments in support of his application, learned Counsel for the Applicant prefaced his argument

with a rehash of the reliefs the Applicant was seeking from this Honourable Court and the grounds upon which the reliefs were sought. The grounds, seven in all, are as follows:-

1. *The Applicant is standing criminal trial before the Upper Area Court, Gwagwalada in FIR/CR/177/2016 over a purely civil transaction involving sale of land and supposed breach of contract as parties are in disagreement as to the actual price of the land;*
2. *The Applicant filed a Preliminary Objection on 14th July, 2020 challenging the jurisdiction of the Upper Area Court Gwagwalada to hear the said FIR/CR/177/2016;*
3. *The Upper Area Court Gwagwalada dismissed the Applicant's Preliminary Objection and wrongly assumed criminal jurisdiction to hear FIR/CR/177/2016.*
4. *The Upper Area Court acted ultra vires when it expanded its jurisdiction to criminal matters;*
5. *That the High Court is empowered under section 272(1) and (2) of the 1999 Constitution of Nigeria to act as supervisory court over inferior courts like the Upper Area Court while the inferior court is or has exercised its powers in contravention of the law;*

6. *That under the same section, the High Court has the power to quash any proceedings and Ruling of an inferior court which is being conducted in such manner which contravenes the law or used as a machinery of injustice.*
7. *That this action is a call on the High Court to act in its constitutional supervisory role to check the misuse of the machineries of the judiciary to perpetrate injustice, illegality and obvious intimidation.*

Thereafter, learned Counsel for the Applicant proceeded to formulated three issues for this Honourable Court to determine. The three issues as formulated by the Applicant are as follows:-

1. *Whether the Upper Area Court has the jurisdiction to hear criminal matters particularly that of FIR/CR/177/2016 to which this application relates?*
2. *Whether the Upper Area Court erred when it chose an older decision of the High Court over a later decision when faced with conflicting decisions of the High Court?*
3. *Whether going by the proof of evidence before the Upper Area Court Gwagwalada, vis-a-vis the nominal complainant's testimony of the 14th of July, 2020 whether the nature of the transaction between the*

Applicant and the nominal complainant can be entertained as a criminal matter before the Upper Area Court?

In his argument on Issue One, learned Counsel for the Applicant submitted that the question of jurisdiction was a fundamental question which could be raised at any stage of the proceeding and which the court must resolve one way or the other before proceeding with any matter before it. He further submitted that the jurisdiction of any court or tribunal in Nigeria is derived from the statute establishing it.

In the case of the Upper Area Court, Gwagwalada, learned Counsel insisted its jurisdiction was derived from the Federal Capital Territory Abuja Area Courts (Repeal and Enactment) Act 2010 which repealed the Area Courts Act CAP 477 Laws of the Federation of Nigeria 2006. The repealed Area Courts Act CAP 477 vested criminal jurisdiction on Area Courts in the Federal Capital Territory, Abuja by virtue of sections 18, 19(1) and 22(a). Those sections, learned Counsel contended, were expurgated from the Federal Capital Territory Abuja Area Courts (Repeal and Enactment) Act 2010 with the effect that the criminal jurisdiction of the Area Courts was accordingly ousted.

He submitted that the principle of *expressio unius exclusion alterius* (the expression of one thing is the exclusion of the other), one of the rules of statutory interpretation operated to emphasise the position that the intendment of section 13 of the Federal Capital Territory Abuja Area Courts (Repeal and Enactment) Act 2010 is the divesting of criminal jurisdiction from the Area Courts. He contended that not even the express mention of Area Courts as one of the courts where the Administration of Criminal Justice Act 2015 could be applied would operate to vest criminal jurisdiction on the Area Courts. In support of his argument on this issue, learned Counsel cited and relied on the cases of ***Ukwu v. Bunge (1997) 8 NWLR (Pt. 471) 146, GTB v. Toyed (Nig) Ltd & Anor (2016) LPELR -4181 (CA) per Ndukwu-Anyanwu, JCA, Dangana v. Usman (2012) All FWLR (Pt. 627) 612, Ikechukwu v. Federal Republic of Nigeria (2015) LPELR (24445) 1 at 16, Wasa Delmas Nig Ltd v. A & M Minerals Ltd & Ors LPELR-46544 per Ogakwu JCA, African Newspapers (Nig) Ltd v. F.R.N. (1985) 2 NWLR (Pt. 6) 137 at 159 – 160,*** *and* ***Gladys Chukwu v. Hon. Gambo Garba (FCT/HC/M/4499/19 at pg. 12).***

In his submissions on Issue Two, learned Counsel for the Applicant contended that the Upper Area Court Gwagwalada was wrong to have relied on an older decision of the High Court over a later decision when it

was confronted with conflicting decisions of the High Court. According to learned Counsel, the Upper Area Court should have followed the decision of the High Court of the Federal Capital Territory, Abuja in Bar. Anugom Ifeanyi Chukwu v. The Grand Kadi Sharia Court of Appeal & 2 Others (FCT/HC/CV/2107/14) which was later in time. He argued that the principle of the law when courts were confronted with situations like this was to follow the decision which was later in time as that would be the correct and current position of the law on the subject. The consequence, he surmised, was that the Upper Area Court had no choice in the question of which decision of the High Court to follow as the law had been settled beyond doubt that the decision that constituted the *res judicata* of the court on that subject was the latest in time. Learned Counsel relied on the cases of ***Ansa v. R.T.P.C.N. (2008) All FWLR (Pt. 405) 1681 at 1686; Mkpedem v. Udo (2000) 9 NWLR (Pt. 673) 63, Nwangwu v. Ukachukwu (2000) 6 NWLR (Pt. 662) 674, Oji & Anor v. Ndukwe & Ors (2019) LPELR-48226(CA), Osakue v. Federal College of Education (Technical) Asaba (2010) 5 SCM 185, Dr. Martins Babatunde FAbunmi v. University of Ibadan & Anor (2016) LPELR-41132(CA) and Fidelity Bank v. The M.T. Tabora & Ors (2018) LPELR-44504(SC)*** to reinforce his submissions on this Issue.

On Issue Three, which is, whether the Upper Area Court ought to have entertained the complaint contained in the First Information Report (FIR) which arose from the transaction between the Applicant and the nominal complainant, learned Counsel maintained that the Upper Area Court was in error when it assumed jurisdiction in FIR/CR/177/2016, a civil matter which was clothed in the garb of a criminal process. He insisted that the court ought to have looked at the material facts in the proof of evidence before arriving at the conclusion that the matter before it was criminal in nature. He invited this Honourable Court to examine the testimony of the nominal complainant which he gave before the Upper Area Court in the course of the proceedings of 14th of July, 2020 which evidence illuminated the civil nature of the transaction between the nominal complainant and the Applicant. He concluded that the transaction between the Applicant and the nominal complainant was civil in nature and should not have been heard as a criminal matter by the Upper Area Court. He therefore urged this Honourable Court to grant his application for judicial review.

The Respondents, as I have stated earlier in this judgment, did not file any process in response to or in opposition to the application. The Respondents neither entered appearance nor caused an appearance to be entered for them. This is in spite of the service on them of the originating processes,

the Order of this Honourable Court granting leave to the Applicant to bring an application for judicial review and the hearing notice depicting the date for the hearing of the application. The law is clear that the duty of the Court is to ensure that all processes required to bring the Defendant, or, in this case, the Respondent, to Court have been complied with; it is not for the Court to compel the Defendant or the Respondent as the case may be to attend Court. A party who fails to utilise the opportunity afforded him by the Court cannot be heard to complain that he has been shut out by the Court. In ***Segun Akinsuwa v. The State (2019) 13 NWLR (Pt. 1688) 161 at pp. 195-196 paras H-D, 2020, paras B-D*** Peter-Odili, JSC in his concurring judgment commented: ***"A trial conducted without fair hearing would be rendered null and void. However, when the opportunities are given to a party to make his case heard and fully and by his own making fails to utilise the opportunity, he cannot hold the other side or the court to ransom... The rules of court, like orders of court, are not made for fun. They are meant to be obeyed and/or complied with. A party who ignores or disobeys the rules or orders of court does so to his own detriment. He cannot therefore be heard afterwards that the court, insisting that the rules or orders are obeyed, had violated his right to fair hearing."*** In **Ayoade v. State (2020) 9 NWLR (Pt. 1730) 577 at 607**

paras F-G, the Supreme Court held per Abba Aji JSC that ***"a party cannot and should not complain of breach of his right to fair hearing where he refused to avail himself... of the opportunity provided under the law to present his case"*** This judgment is, therefore, based on the unchallenged affidavit evidence of the Applicant and the supporting annexures.

The position of the law is that the court must act on the unchallenged and uncontroverted facts as long as it is minimally credible. In ***Alhaji Abdullahi Baba v. Nigerian Civil Aviation Training Centre, Zaria & Another (1991) 7 SCNJ (Pt. 1) 1 at pages 5-6 and pages 22-23,*** Nnaemeka-Agu JSC said *inter alia* that

"... I believe it to be the law that facts on any issue in a civil case are assessed and evaluated by holding the evidence called by both sides to the conflict on the issue on either side of an imaginary balance and weighing them together. Whichever outweighs the other ought to be accepted. Based on this principle (i.e. the principle of unchallenged evidence), whenever on an issue evidence comes from one side and this is unchallenged and uncontradicted, it ought normally to be accepted on the principle that there is nothing to put on the other side of this unchallenged evidence and of the balance, unless of course, it

is of such a quality that no reasonable tribunal should have believed it. So, when evidence goes one way, the onus of proof is discharged on a minimal of proof... For, where credible evidence on a material point is unchallenged and or uncontradicted, it ought to be accepted as true whether it be given against the State, a corporate body or an individual."

Similarly, in the case of ***Akin Adejumo & 2 Others v. Ajani Yusuf Ayantegbe (1989) 6 S.C. 61 at page 89 or (1989) 3 NWLR (Pt. 110) 417 Ratio 19 at page 424 or 435***, the Supreme Court per Nnaemeka-Agu JSC held that ***"Any evidence not challenged or contradicted ought to be accepted as there is nothing on the other side of the balance."***

This principle applies to causes such as the instant case which are decided on the basis of affidavit evidence. Thus, where the averments in an affidavit are unchallenged, uncontroverted and uncontradicted, the Court must act on those facts so long as the affidavit or the averments therein are not tainted with any vitiating factor. In ***Ajomale v. Yaduat & Anor (1991) LPELR-306 (SC)*** the *locus classicus* on this subject, the Supreme Court per Nnaemeka-Agu JSC held that

"It is, of course trite law that when, in a situation such as this, facts are provable by affidavit and one of the parties deposes to certain facts, his adversary has a duty to swear to an affidavit to the contrary if he disputes the facts. When as in the instant case, such a party fails to swear to an affidavit to controvert such facts, these facts may be regarded as duly established."

Such uncontradicted affidavit evidence, however, must be cogent and compelling before the Court can act on it. In ***Ogoejeofo v. Ogoejeofo (2006) LPELR-2308 (SC)***, the apex Court held that ***"...It is also the law that the unchallenged and uncontroverted facts deemed admitted in the affidavit must be capable of proving and supporting the case of the appellant as the applicant. In other words, the evidence contained in the unchallenged affidavit must be cogent and strong enough to sustain the case of the applicant."*** In the case of ***Ramawa v. NACB Consultancy & Finance Co. Ltd. & Anor (2006) LPELR-7606(CA)*** the Court of Appeal per Kekere-Ekun JCA (as he then was) followed this principle when it laid down the conditions that must be fulfilled before the court can act on unchallenged affidavit evidence thus:-

"There is a plethora of authorities in support of the general position of the law that evidence or averments in an affidavit

that are not denied are deemed admitted and the court ought ordinarily to act on them. See: Ajomale v. Yaduat (No. 2) 1991 5 NWLR (PT. 191) 266; Honoka Sawmill (Nig.) Ltd v. Hoff (1994) 2 NWLR (Pt. 326) 252. There is however a proviso to this general rule. Unchallenged evidence, to be accepted and relied upon by the court, must be both credible and reliable. See Egbunike v. A.C.B. Ltd (1995) 2 SCNJ 58; (1995) 2 NWLR (Pt. 375) 34 at 55 E-F; Ifeanyi Chukwu Osondu Co. Ltd. v. Akhigbe (1999) 11 NWLR (Pt. 625) 1 at 19 F-G. In the case of: Neka B.B.B. Mfg. Co. Ltd. V. A.C.B. Ltd. (2004) 2 NWLR (Pt. 858) 521 at 550-551 E-A. His Lordship Pats-Acholonu, JSC (of blessed memory) had this to say: "An opposing party should not be expected to challenge evidence that is hollow, empty or bereft of any substance as that would to my mind amount to chasing a shadow. I am familiar with the case of Odulaja v. Haddad (1973) 1 ANLR 191 to the effect that an evidence not challenged by the party that had the opportunity to do so should ordinarily be believed and accorded credibility. I believe that such holding rests on the premise that such evidence is capable of being believed if not challenged. In

other words when the evidence is weak in content as not to assist the court, or manifestly unreasonable or is devoid of any substance as not to help to resolve the matter in issue, it will be safe to ignore it as it does not attain the standard of credibility... It is also trite to say that the court is not in all circumstances bound to accept as true testimony an evidence that is uncontradicted where it is wilfully or corruptly false, incredible, improbable or sharply falls below the standard expected in a particular case."

This principle has been enunciated in a number of cases such as ***COP v. Agholor (2014) LPELR-23212CA, Odiong v. Assistant Inspector-General of Police (2013) LPELR-20698(CA), Statmak v. COP & Anor (2018) LPELR-46324(CA) and JMG Ltd v. Israel & Ors (2020) LPELR-50585(CA)*** among others. In ***Odiong v. Assistant Inspector-General of Police, supra***, the court held that ***"Although the facts deposed to by an applicant are not challenged by a respondent, the Court still has a duty to consider and weigh the affidavit evidence before it in order to ensure that they can ground the Order sought by the applicant..."***

With this principle in mind, therefore, I return to the Motion on Notice of the Applicant along with its supporting processes and exhibits to determine if

the application as presently constituted is competent, if the Applicant has satisfied the conditions for the grant of any of the prerogative orders and if he has placed sufficient material facts before this Honourable Court as to be entitled to the reliefs sought in this application.

The Applicant formulated three issues for determination. I have reproduced those issues above but will reproduce them again for the purpose of clarity and immediacy. These issues are:-

1. ***Whether the Upper Area Court has the jurisdiction to hear criminal matters particularly that of FIR/CR/177/2016 to which this application relates?***
2. ***Whether the Upper Area Court erred when it chose an older decision of the High Court over a later decision when faced with conflicting decisions of the High Court?***
3. ***Whether going by the proof of evidence before the Upper Area Court Gwagwalada viz-a-viz the nominal complainant's testimony of the 14th of July, 2020 whether the nature of the transaction between the Applicant and the nominal complainant can be entertained as a criminal matter before the Upper Area Court?***

The above three issues revolve around the question of the jurisdiction of the Upper Area Court, particularly when viewed against the backdrop of the provisions of the Federal Capital Territory Abuja Area Courts (Repeal and Enactment) Act 2010. It is my considered view that these three issues can be collapsed into one issue for determination. I have therefore distilled the following as the issue which this Honourable Court must determine:-

> ***"Whether from an exhaustive examination of the Federal Capital Territory Abuja Area Courts (Repeal and Enactment) Act 2010, the totality of the facts deposed to in the affidavit in support of the application, the exhibits annexed thereto, the reliefs sought and the grounds upon which the reliefs are sought, the Area Courts have not been divested of criminal jurisdiction as to entitle the Applicant to an Order of Certiorari quashing the entire proceedings and Ruling of the Upper Area Court coram His Worship Hon. Sani M. Umar?"***

Jurisdiction was defined by the Supreme Court in ***Alade v. Alemuloke & Ors (1988) LPELR-398(SC)*** as ***"... the legal authority, the extent of the power which has been given to a court by the law or statute establishing the said Court..."*** In ***UTIH VS ONOYIVWE (1991) LPELR-3436 (SC) page 46***, the Supreme Court per Bello CJN (as he then was)

gave a graphic depiction of the nature of jurisdiction in these timeless words: ***"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."*** The Court of Appeal in ***Akintola v. Magbubeola & Ors (2011) LPELR-3731(CA)*** defined it as ***"...the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision..."***

The issue of jurisdiction is a threshold issue. What this means is that when the jurisdiction of a Court is questioned, the foremost duty of the Court at that point is to determine whether it has the requisite jurisdiction to hear and determine the matter before it. In ***Akintola v. Magbubeola & Ors Supra***, the Court of Appeal further held that ***"...The importance of jurisdiction or lack of it is such that there is need for the Court to assume jurisdiction to ascertain first and foremost whether it has jurisdiction over a matter before it. And once the Court reaches the conclusion that it has no jurisdiction, the matter is incompetent and ought to be terminated.*** See also ***Onyema v. Oputa (1987) 3 NWLR (Pt.60) 259 Madukolu v. Nkemdilim (1962) 2 SCNLR 341, Mobil***

Producing (Nig) Con Ltd. v. LASEPA (2002) 18 NWLR (Pt.798) 1 at 2 (SC) Katto v. CBN (1991) 9 NWLR (Pt,214) 126 at 149 SC Ndaeyo v. Ogunaya (1977) 1 SC 11.

Jurisdiction is a fundamental issue in every adjudication. Its fundamental nature is such that it can be raised for the first time on appeal. In ***Amusa & Anor v. Ogara & Ors (2019) LPELR-48253(CA)***, the Court of Appeal held that ***"Due to this its fundamental and radical nature, the issue of jurisdiction can be raised at any stage of the proceedings in the Court of first instance or in the appellate Courts and it can be raised by any of the parties or by the Court*** **suo motu** ***where from the record it has become clear that there is a want of jurisdiction or competence in the Court."*** Thus, jurisdiction is the soul of every proceeding before judicial and quasi-judicial bodies such that any decision arrived at without jurisdiction, no matter how beautifully conducted the proceedings were, and notwithstanding the erudition invested in the ruling or judgment of the Court, the proceedings and the decision arrived therefrom would amount to a nullity. See ***Odiase vs Agho (1972) 1 All NLR (PT.1) 170; Ijebu-Ode Local Government Area vs Adedeji (1991) 5 NWLR (PT. 242) 410.***

In the *locus classicus* of ***Madukolu v. Nkemdilim (1962) 2 SCNLR 341***, the Supreme Court per Bairamian FJ laid down the following time-honoured principle:

> ***"I shall make some observations on jurisdiction and the competence of a court. Put briefly, 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; and***
> 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 comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction***
>
> ***Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication"***

In view of the above, what agitates the mind of this Honourable Court is whether the assumption of jurisdiction by the Upper Area Court *coram* His

Worship Hon. Sani M. Umar in a criminal matter was proper in view of the provisions of the Federal Capital Territory Abuja Area Courts (Repeal and Enactment) Act 2010.

The jurisdiction of a Court is a function of the statute establishing it. It is that statute that determines the composition of the Court, the range and nature of subjects over which it can adjudicate, the parties over which it can exercise its powers and the rules of procedure guiding its proceedings. See ***Ikechukwu v. Federal Republic of Nigeria (2015) LPELR-24445 page 1 at page 16.***

The powers of the Area Courts under this Act are delineated in sections 2(2) and 13 of the Act. Section 2(2) provides that ***"An Area Court shall hear and determine all questions on Islamic Personal Law."*** Section 13, on the other hand, is more elaborate and encompasses or transcends the jurisdiction vested on the Area Courts by virtue of section 2(2). The said section 13 provides that ***"An Area Court shall have jurisdiction and power to the extent set out in the warrant establishing it, and subject to the provisions of this Act and of the Civil Procedure Code, in all civil causes in which all the parties are subject to the jurisdiction of the Area Court."***

This is in contradistinction to the repealed Area Courts Act CAP 477 Laws of the Federation of Nigeria 1990 which specifically made provisions for the criminal jurisdiction of the Area Courts. For instance, section 18 of the repealed Act provides that ***"An Area Court shall have jurisdiction and power to the extent set forth in the warrant establishing it, and subject to the provisions of this Act and of the Criminal Procedure Code Act, in all civil and criminal causes in which all the parties are subject to the jurisdiction of the Area Court."*** Similarly, section 19(1) of the repealed Act provided that ***"The place of trial of all criminal causes shall be determined in accordance with the provisions of the Criminal Procedure Code Act"*** while section 22 of the repealed Act stipulated that ***"In criminal causes, an Area Court shall administer the provisions of the Penal Code Act, the Criminal Procedure Code Act and any subsidiary legislation made thereunder."***

There are no corresponding provisions relating to criminal jurisdiction of the Area Court in the 2010 Act. I have gone through the Act carefully and cannot find any provision that specifically vests criminal jurisdiction on Area Courts. Indeed, one of the rules of statutory interpretation is *expressio unius est exclusio alterius* (that is, the expression of one thing is the exclusion of another). In ***Attorney-General of Kwara State & Anor v.***

Alhaji Ishola Lawal & Ors (2017) LPELR-42347(SC) the Supreme Court per Ejembi Eko JSC held that ***"Where Rules of Court are made for different or distinct purposes the rules made for one purpose should not be used or imported for another purpose. Thus, where the Court of law is exposed to two provisions: one specific and the other general, the Court will fall upon the specific provision, in the event of any apparent conflict. See ARAKA v. EGBUE (2003) 17 NWLR (pt.848) 1. It will not resort to the general provision to solve the issue for which specific provisions have been made."*** Thus, having specifically provided for the civil jurisdiction of the Area Courts without specifically providing for the criminal jurisdiction of same, it can be inferred that the intendment of the legislature is to exclude criminal jurisdiction from the sphere of operation of the 2010 Act and I so hold.

However, I am not oblivious to the fact that section 10(1) and (2) of the Act provides that ***"(1) Subject to the provisions of this Act and of any other written law, any person may institute and prosecute any cause or matter in an Area Court. (2) A person who institutes or prosecutes any cause or matter in an Area Court under sub-section (1) of this section shall, in that cause or matter be subject to the jurisdiction of that Area Court and of any other court exercising jurisdiction in that***

cause or matter." I am also not unmindful of the fact that section 51, the interpretation section of the Act defines "cause" to include ***"any action, suit or other original proceeding between a plaintiff and a defendant and also any criminal proceeding."*** While these sections may appear to vest criminal jurisdiction on Area Courts, they are not enough to vest criminal jurisdiction on Area Courts. At best, those sections may be construed to mean criminal proceedings in respect of matters relating to Islamic Personal Law and the civil jurisdiction of the Area Courts. In the case of the former, the Act in section 11(1) provides that a person who is a Muslim shall be subject to the jurisdiction of the Area Courts while in the case of the latter, the Act in section 11(2) provides that a person who is not a Muslim but who consents to the exercise of the jurisdiction of the Area Courts shall be subject to their jurisdiction. I do not see any evidence of the Applicant being a Muslim or, not being a Muslim, but consenting to the jurisdiction of the Upper Area Court whose proceedings and Ruling are the subject of this application for judicial review. In ***Ikechukwu v. Federal Republic of Nigeria (2015) LPELR-24445 page 1 at page 16*** the Court held that ***"It has to be borne in mind that jurisdiction of a court is not assumed, but must be based on the provisions of a statute. The***

jurisdiction of the Court does not derive from the sky or to put it in the Latinism, **in nubibus*****. It is statutory."***

The fact that there are no sections in the extant Act which make corresponding provisions to those of sections 18, 19(1) and 22 of the repealed Act is an indication that the National Assembly, in repealing the old Act and enacting the current Act, intended to divest Area Courts in the Federal Capital Territory Abuja of the jurisdiction to hear criminal matters. It is my considered view that the express expurgation from the extant 2010 Act of the provisions of sections 18, 19(1) and 22 of the repealed Area Court Act CAP 477 Laws of the Federation of Nigeria 1990 which specifically vested criminal jurisdiction on Area Courts is an express divestiture of the criminal jurisdiction of Area Courts in the Federal Capital Territory Abuja and I so hold.

It is necessary, at this juncture, to return to the *locus classicus* of ***Madukolu v. Nkemdilim, Supra*** and the conditions which must exist before a Court can be said to have jurisdiction to hear and determine any matter before it. These conditions must exist conjunctively and not disjunctively. The conditions as stated in that case are as follow:-

1. ***The Court must be properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified for one reason or another; and***
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 comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.***

The first question which arises from the above is: was the Upper Area Court *coram* His Worship Hon. Sani M. Umar duly constituted? I have no difficulty in answering this question in the affirmative. Section 2(1) of the Act stipulates that ***"An Area Court shall consist of an Area Court Judge sitting alone."*** The second question is: was the subject matter, to wit, the criminal charge FIR/CR/177/2016 within the jurisdiction of the Upper Area Court? I answer this question in the negative. A Court's jurisdiction is exercisable over the subject matter and the parties before it. Both must be within the scope of its judicial competency. Where the Court lacks the jurisdiction to exercise its judicial powers over either the subject matter or

the parties before it or over both the subject matter and the parties before it, the Court must decline jurisdiction. From the express and unequivocal provisions of sections 11(1), (2) and 13 of the Act, the Upper Area Court lacks the jurisdiction to hear and determine criminal matters. The last question is this: did the criminal case come before the Court through due process and upon fulfilment of the conditions precedent to the exercise of jurisdiction? I have no hesitation in answering this question in the negative. There is no doubt that the only condition precedent relating to the subject matter in dispute before the Upper Area Court can assume jurisdiction is that the subject matter must be a civil matter. Having invoked the powers of the Upper Area Court through a criminal process, FIR/CR/177/2016 cannot be said to have come before the Upper Area Court through due process and upon the fulfilment of the condition precedent to the exercise of jurisdiction. In view of these, therefore, I hereby find that the Upper Area Court lacks the jurisdiction to hear the matter which is the subject of FIR/CR/177/2016. I so hold.

The Applicant has approached this Honourable Court through the process of judicial review to set aside both the proceedings of the Upper Area Court and the Ruling thereof. It is incumbent on this Honourable Court to determine whether judicial review or an appeal is the appropriate

procedure to adopt in setting aside the proceedings and ruling of the Upper Area Court. The Black Law Dictionary (8th edition 2004) defines judicial review as follows: ***"(1) A Court's power to review the actions of other branches or levels of government, especially, the courts' power to invalidate legislative and executive actions as being unconstitutional. (2) The constitutional doctrine providing for this power. (3) A court's review of a lower court's or an administrative body's factual or legal findings."***

Halsbury's Laws of England (Fifth Edition, Volume 61, 2010) pages 419, 420, paragraph 602 defines judicial review as the process by which the High Court exercises its supervisory jurisdiction over the proceedings and decisions of inferior courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are charged with the performance of public acts and duties. It went on to state as follows:-

> ***"Judicial review is concerned with reviewing not the merits of the decision in respect of which the application for judicial review is made, but with ensuring that the bodies exercising public functions observe the substantive principles of public law and that the decision-making process itself is lawful. It is thus different from an ordinary appeal. The purpose of the***

remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected: it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. Unless that restriction on the power of the court is observed, the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power. That is so whether or not there is a right of appeal against the decision on the merits. The duty of the court is to confine itself to the question of legality. Its concern is with whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal could have reached or abused its powers."

In ***A.C.B. Plc v Nwaigwe & Ors (2011) LPELR-208(SC)***, the Supreme Court cited with approval the case of ***Oredoyin v. Arowolo (1989) 4 NWLR 172 at 211*** where it defined judicial review as ***"the supervisory jurisdiction of the High Court exercised in the review of the proceedings, decisions and acts of inferior Courts and Tribunals and***

acts of governmental bodies." The apex Court went on to explain that ***"the remedies available are for orders of mandamus, certiorari and prohibition and also the writ of habeas corpus."*** It concluded by stating that ***"In judicial review, the court is usually concerned with the legality and not with the merit of the proceedings, decisions or acts of the affected inferior court, tribunal or governmental body."***

In ***High Chief Emmanuel Ojo Fagbemi v. H.R.M. Oba Noah Adejumo Omonigbehin & Ors (2012) LPELR-15359(CA)***, the Court of Appeal explained that the rationale and purpose of judicial review is the determination by the High Court of the legality of the proceedings and decisions of inferior Courts, tribunals or administrative bodies rather than the merits of the proceedings, the decisions taken or the acts of the inferior Courts, tribunals or administrative bodies. It added that determining the merits of the decisions of the Court, tribunal or administrative bodies falls under the appellate jurisdiction of the High Court. It emphasised that judicial review is important for the purpose of quashing illegal acts or erroneous decisions, especially, those acts done, or those decisions arrived at without jurisdiction or in excess of jurisdiction.

The High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2018 stipulates the situations for which judicial review is most

apposite. Order 44 Rule 1(1)(a) and (b) provides that: ***"(1) An application for: (a) An order of mandamus, prohibition or certiorari; or (b) An injunction restraining a person from acting in any office in which he is not entitled to act shall be made by way of an application for judicial review in accordance with the provisions of this Order."*** Among the reliefs sought by the Applicant herein are declaratory reliefs. Though declaratory reliefs and damages are not among the cases covered under sub-rule (1) of Rule 1 of Order 44, sub-rule (2) grants the Court the discretionary powers to hear and determine through judicial review cases not envisaged under sub-rule (1). Sub-rule (2) provides as follows: ***"(2) An application for a declaration or an injunction (not being an injunction in rule (1)(b) of this Rule) may be made by way of an application for judicial review and the Court may grant the declaration or injunction if it deems it just and convenient, having regard to: (a) The nature of the matters which relief may be granted by way of an order of mandamus, prohibition or certiorari; (b) The nature of the person and bodies against whom relief may be granted by way of such an order; (c) All the circumstances of the case."***

Moreover, the declaratory reliefs sought herein are a corollary of the Order of Certiorari being sought. There is no doubt that the principal reliefs sought

in this application are Reliefs No. (6) and (7) the arrangement of the reliefs by the Applicant notwithstanding. Order 44 Rule 2 enables an Applicant in an action for judicial review to seek such other reliefs which are connected with the reliefs specifically mentioned in Rule 1 of the Order. Rule 2 provides that: ***"On an application for judicial review any relief mentioned in Rule 1 may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of, relates to or is connected with the same matter."*** In view of this, therefore, this application is competent and the reliefs are such that can be entertained through judicial review. I so hold.

In ***State v. Lawal (2013) 7 NWLR (pt. 1354) 565 at 592 – 593 H – A***, the Supreme Court per Ngwuta JSC held that:

> ***"De Smith, the learned author of "Judicial Review of Administrative Action" 4th edition at pages 396 – 407 thereof listed four conditions on anyone of which the order of certiorari may be granted. The four conditions are: (1) lack of jurisdiction; (2) breach of rules of natural justice; (3) error of law on the face of the records; and (4) decision obtained by fraud or collusion."***

No doubt, the gravamen of the Applicant's application is the alleged lack of jurisdiction of the Upper Area Court to hear and determine criminal matters. A challenge of the proceedings or decision of a Court conducted or arrived at respectively without jurisdiction is a veritable ground for the invocation of the supervisory jurisdiction of this Honourable Court to review the said proceedings or decision complained of in so far as the conditions precedent stipulated in the Rules of this Honourable Court have been complied with by the Applicant. In ***Orupabo & Ors v. Opuambe & Ors (2014) LPELR-22673(CA)***, The Court of Appeal held that ***"Judicial review by its nature requires that the rules of procedure governing its practice must be strictly obeyed and adhered to; otherwise, an application for judicial review will be incompetent ab initio."*** See ***Ohakim v. Agbaso (2010) 19 NWLR (Pt. 1226) 172***. The application of the Applicant therefore is proper before this Honourable Court, same having been brought in compliance with the provisions of Order 44 Rule 3.

Having found that the Upper Area Court lacks the requisite jurisdiction to hear and determine criminal matters, I therefore hold that the entire proceedings of the Upper Area Court *coram* His Worship Hon. Sani M. Umar were conducted without jurisdiction and the Ruling arrived at without jurisdiction. Since it is impossible to place something on nothing, the

proceedings and the Ruling of the Upper Area Court *coram* His Worship Hon. Sani M. Umar cannot stand. This Honourable Court therefore finds the Applicant's application meritorious. Accordingly, the reliefs sought by the Applicant are granted as follows:-

1. Relief (1) is granted as prayed.
2. Relief (2) is not granted. Granting Relief (2) will necessarily involve a determination of the case FIR/CR/177/2016 on its merit. That is not the remit of judicial review.
3. Reliefs (3) and (4) are granted as prayed.
4. Relief (5) is not granted for the same reason Relief (2) is not granted; that is, granting Relief (5) will also necessarily entail going into the merits of the case. That is beyond the scope of judicial review.
5. Relief (6) is hereby granted. Accordingly, an Order of Certiorari is hereby made quashing the Ruling of the Upper Area Court Gwagwalada delivered on the 28th of September, 2020 in respect of the Preliminary Objection raised by the Applicant as a Defendant before the Upper Area Court for want of jurisdiction.
6. Relief (7) is also granted. Accordingly, an Order of Certiorari is hereby made quashing the entire proceedings of the Upper Area

Court, Gwagwalada in respect of FIR/CR/177/2016 for want of jurisdiction.

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

HON. JUSTICE A. H. MUSA
JUDGE
16/02/2021

APPEARANCES:
FOR THE APPLICANT:

FOR THE 1ST RESPONDENT:
NO LEGAL REPRESENTATION

FOR THE 2ND RESPONDENT:
NO LEGAL REPRESENTATION