

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT JABI**  
**THIS 24<sup>th</sup> DAY OF JUNE, 2021**  
**BEFORE HIS LORDSHIP: THE HON. JUSTICE A.A**  
**FASHOLA**

**SUIT NO /M/2487/2021**

**BETWEEN:**

1. SHELL PETROLEUM DEVELOPMENT COMPANY LIMITED
2. CAPTAIN CALLIUM FINALAYSON
3. OSAGIE OKUNBOR
4. TOYIN OLAGUNJI
5. CHIBUEZEU UDUANOCHIE-----APPLICANTS
6. IGO WELI
7. BASHIR BELLO
8. SIMON RODDY

**AND**

1. HON. GAMBO GARBA  
(Judge, upper Area Court, Zuba,-----RESPONDENTS  
Federal Capital Territory)
2. INCORPORATED TRUSTEES OF AFRICAN INITIATIVE AGAINST  
ABUSE OF PUBLIC TRUST

## **RULING**

This is an application brought by a Motion on notice, dated the 11<sup>th</sup> day of March 2021 and filed on the same date. Brought pursuant to Order 44 Rules 5,6,7 and 9 Of the Federal Capital Territory (Civil Procedures) Rule 2018 and Section 36(6) of the 1999 Constitution (as Amended) and under the inherent Jurisdiction of this Honourable court .in the application the Applicants seek for the following:

- 1. AN ORDER** of certiorari quashing the Criminal complaint in Charge No. DC/CR/200/21 between **incorporated trustees of Africans initiative Against Abuse of public Trust vs. shell petroleum Development Company of Nigeria Limited** now pending before the 1<sup>st</sup> Respondent at the upper Area Court of the Federal Capital Territory Holden at Zuba and any other proceeding subsequent to the filing of The direct complaint aforesaid.
- 2.** Damages in The sum of **fifty million Naira** against the 2<sup>nd</sup> Respondent.
- 3.** Costs of this action on a full indemnity basis including but not limited to the Applicants' counsel' fees as may be taxed by the court .
- 4. AND FOR SUCH FURTHER ORDER OR ORDERS** as this Honourable court may deem fit make in the circumstances of this case.

The grounds upon which the Application is brought are as follows:

- (a) The court lacks the territorial jurisdiction to adjudicate over the suit.**
- (b) Non-submission to the jurisdiction of the court.**
- (c) Criminal jurisdiction of the upper Area Court.**
- (D) Complainant does not have locus standi**
- (E) Non juristic personality**
- (f) The monetary value of the crude Exceeds the jurisdiction of the Upper Area Court.**

Attached to the motion is a 15 (Fifteen) paragraphs affidavit sworn to by Emmanuel Gbahabo Esq Senior legal counsel to the 1<sup>st</sup> Applicant.

1. Exhibit 1 which is the direct Criminal complaint in charge No DC/CR/200/2021
2. Exhibit Shell 2- proceedings before the 1<sup>st</sup> respondent conducted on 3<sup>rd</sup>-03-2021
3. Exhibit Shell 3 is Sharia Court of Appeal FCT Abuja summons by the accused person.
4. Exhibit Shell 4 is the order of the Hon. Court made on 10<sup>th</sup> March 2021. For leave to bring this application.

There is a written address dated 11<sup>th</sup> March 2021 in support of the application. This court takes judicial notice of all the process filed including but not limited to the further affidavit filed on the 9<sup>th</sup>- 03-2021 and affidavit of urgency filed on the same date and sworn to by Emmanuel Gbahabo Esq.

Learned S.A.N in moving the application relied on all the paragraphs of the affidavit. Learned counsel urged the honourable court to grant the prayers of the applicant and grant the relief of certiorari as prayed. The applicant argued that on 26<sup>th</sup> February 2021, the applicant were inundated with calls from various sources citing publications online portals and social media of a pending criminal action brought by the 2<sup>nd</sup> Respondent against the applicants at upper area court zuba, presided over by the 1<sup>st</sup> Respondent. That one of such publication is contained in <http://thewillnigeria.com/news/alleged> Oil-theft-court-issues criminal summons against Shell- other 7 executives.

That the 2<sup>nd</sup> Respondent instituted a Direct criminal complaint at the upper Area Court , Zuba Presided over by the 1<sup>st</sup> Respondent, praying the Court to commence criminal proceedings against the applicants alleging conspiracy, theft and cheating by the applicant of usage of an unapproved metering in the land by crude oil belonging to other oil company. That the 2<sup>nd</sup> respondent is neither the owner of the crude allegedly stolen neither was it appointed by the owners to maintain the instant actions. That the 2<sup>nd</sup> respondent not being the owner of the crude that forms the subject matter of the instant allegations against the applicants lacks the legal capacity under the ACJA to maintain the instant action against the applicants. That the jurisdiction of the area court is applicable to the states in Northern Nigeria and

FCT (Federal Capital Territory) alone. The alleged offence that forms the subject matter of this criminal complaint happened in Bonny, River State, outside the territorial jurisdiction of the upper Area Court Zuba. That the federal capital territory Abuja Area Courts (Repeal and Amendment) Act 2010 gives the area court jurisdiction over persons who are Muslims while persons who are not muslims must first consent to the jurisdiction of the court before the court can assume jurisdiction over a matter. That there is no provision in the Federal Capital Territory Abuja Area Courts (Repeal and Amendment) Act 2010 conferring criminal jurisdiction on the area court. That the 1<sup>st</sup> respondent lacks the requisite and territorial jurisdiction to entertain Charge No: DC/CR/200/2021 pending before him at the Upper Area Court Zuba. That the unfounded allegation of the 2<sup>nd</sup> Respondent that the 1<sup>st</sup> applicant stole 2 Million barrels of crude oil belonging to undisclosed oil companies runs into Millions of United State Dollars which the Area Court cannot try. Learned counsel (SAN) to the applicants filed a written address dated 11<sup>th</sup> Day of March 2021. Wherein the learned SAN raised an issue for determination to wit:

1. Whether having regard to the overall facts of this case, the applicants are not entitled to the reliefs sought in this application.

It is the submission of the learned SAN In the main that it is settled that a court is competent only when the court is

properly constituted as regards numbers and qualifications of the members of the Bench and no member is disqualified for one reason or the other, 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 the case comes before the court initiated by due process of law upon fulfillment of any conditions precedent to the exercise of jurisdiction. He further submits that all these requirements must co-exist conjunctively before jurisdiction can be exercised by the Court. That where a court has no jurisdiction to hear and determine a case but goes ahead to do so, it becomes an exercise in futility as the decision arrived at in such a case amounts in law to a nullity irrespective of how well the proceeding was conducted, learned SAN referred to the case of **MADUKOLU VS NKEMDILIM (1962) 1 ALL NLR 587. Also the case of BENIN RUBBERS PRODUCERS LTD Vs OJO (1997)9 NWLR (PT521)388**

Learned SAN contended that the lower court lacks subject matter jurisdiction that this honourable court must examine the statute that establish lower court, that is the Area Court Edicts of 1967 and the Federal Capital Territory Area Courts (Repeal and Enactment) Act 2010 ("the repeal act) are the statute this court must examine to determine the jurisdiction of the lower court. Learned SAN cited section 1 (2) and section 13 of the Repeal Act. That the jurisdiction of Courts in this country is derived from the constitution and statute. He refer to the case of JEV Vs IYORTYOM(2014)14 NWLR

(PT.14228)575 at 611 para B-D also the case of AG, LAGOS STATE Vs A .G., FED(2014)a NWLR(Pt 1412)at 275-276 para F-B 279,D-E That from the foregoing, it is clear that it is only civil jurisdiction that has been conferred on lower court (Area Court) and not criminal jurisdiction that the express mention of civil jurisdiction and absence of criminal jurisdiction being stated, clearly shows that it was not the intention of the drafters to confer the court with criminal jurisdiction. Learned SAN argued that the lower court cannot exercise criminal jurisdiction over the charge, he urge this Honourable Court to so hold.

Learned SAN further explained that lower court cannot exercise jurisdiction for the alleged offence committed outside the FCT. He argued further that Area Courts are established only for the FCT.- They cannot exercise jurisdiction to try offences that were allegedly committed in River State as that would be outside the territorial jurisdiction of the lower court. He cited the case of SULAIMAN Vs F.R.N (2020)18 NWLR (PT1755)180 at 200 Para 9.

In proffering argument on the issue of non submission to the jurisdiction of the court, learned SAN For the applicant said that subject to section 11 (1) of the Repeal Act, the applicant herein are not Muslims and they did not consent to the jurisdiction of the lower court. Learned counsel rely on the case of APAPA Vs INEC (2012)8 NWLR (PT 1303)409.to the effect that “when a statute provides a procedure for performing a duty that procedure alone must be adopted

otherwise the act will be a nullity” He submitted that the applicant are not subject to the jurisdiction of the lower court, he urged this honourable court to so hold. He further contended that the 2<sup>nd</sup> respondent lacks locus standi to make the complaint. He relied on the case of AJAYI Vs ADEBIYI (2012)11 NWLR (PT 1310)137 which held that where a plaintiff has no locus standi to bring a suit, the suit becomes incompetent and the court lacks the jurisdiction to entertain it.

In his response on points of law to the counter affidavit filed by the 2<sup>nd</sup> Respondent, learned counsel to the applicants. MR. Yusuf Ali SAN submitted that there are stronger and weightier legal authorities than the case of SANI IBRAHIM SULEMAN VS COP & 20 ORS. That the case is totally distinguishable from this case. A look at the 1<sup>st</sup> to the 6<sup>th</sup> reliefs would bring it out that it is totally distinguishable from case. The gravamen of that case in Justice Musale’s holden is that a contractual relationship should not have led to a criminal trial.

Learned counsel to the applicants further submitted that section 115 of the evidence Act makes it very clear things you can swear in an affidavit. He urged the court to strike out all the offending paragraphs of the Counter affidavit; and if struck out there would be nothing before the court. On a final note in his reply on points of law, learned silk contended that learned counsel on the other side misconstrue territorial jurisdiction.



That where a court has partial jurisdiction on a course of action, jurisdiction must go to the court with overall jurisdiction on the subject matter. The allegation is that's the defendant/applicants herein stole crude oil in Bonny River State, what concerns FCT with an offence that took place in Bonny River State? For all these reasons learned silk prayed the court to grant this application.

At this juncture, it is imperative to state that the 1<sup>st</sup> and 2<sup>nd</sup> respondent were duly served with the originating process of this court and hearing notices, the learned counsel to the 2<sup>nd</sup> respondent filed a 36 paragraphs counter-affidavit deposed to by one Queen Nduka a legal assistant in the law firm of Obed O Agu & co, counsel to the 2<sup>nd</sup> respondent herein. The 1<sup>st</sup> defendant in his wisdom elected not to file any process in opposition to this application. The second defendant/respondent averred that the "2<sup>nd</sup> Respondent" is a registered non-governmental organization with a legal personality to sue and be sued. That the 2<sup>nd</sup> respondent has as one of its major objectives fighting of corruption and abuse of public trust. That the 1<sup>st</sup> respondent is the operator of Bonny Terminal on behalf of NNPC/Shell/Total and Agip joint ventures and as such has an explanation to offer on the discrepancy between the figures it feeds NNPC and the figure being collated by the Regulator DPR. That the major source of revenue for the country is through crude oil exploration and any commission or omission that leads to the shortage of crude oil as a result of the oil theft or under declaration has ripple effect not only on the government

but on all citizens of this great country. That the crude oil allegedly stolen need not belong to the 2<sup>nd</sup> respondent before it could initiate a process of investigating same as rightly done in this case. That direct criminal complaint does not amount to a charge so as to say the court upon receipt of same and appearance of the defendants in obedience to the summons will still refer the matter to the police for investigation or to any relevant agency of the government for investigation. He averred that the 1<sup>st</sup> respondent has not taken any step that will warrant the instant application.

Attached to the counter-affidavit are Exhibits and a written address wherein the 2<sup>nd</sup> respondent raise a sole issue for determination to wit:

**1. Whether or not considering the facts, circumstances of this Application and evidence brought before this Honorable court, the application have made out any case for grant of this Application.**

Learned counsel to the 2<sup>nd</sup> respondent submitted that Area Courts in FCT have jurisdiction to entertain and try criminal matter under Penal Code Act and under the administration of Criminal Justice Act 2015. Learned counsel cited part 111 of FCT Area Court (Repeal and Enactment) Act, Section 10 (1) part 111 of FCT Area Court (Repeal and Enactment) Act, Section 51 of the Area Court Act 2010. That same received judicial affirmation in the case of SANI IBRAHIM SULEMAN VS COP & 20 ORS delivered on 31<sup>st</sup> October 2017. Learned counsel further submitted that it is inchoate at this stage to

determine where the offence was wholly committed. That the conspiracy to commit the offence of theft was committed on Abuja. He relied on the case of MORAH V. FRN (2018) LPELR 44054 to the effect that where an offence is partly committed in a state and concluded in another state either of the state can assume jurisdiction.

On the issue of no submission to jurisdiction of the court, learned counsel contended further that it is only when the court sit on civil matter and not on criminal matters that it is not by way of judicial review that the applicants can register their no submission to the jurisdiction of the lower court.

On abuse of court process, learned counsel argued that what the respondents did in the instant case is to file a complaint before the lower court. The practice direction in the criminal complaint makes it compulsory that upon receipt of direct criminal complaint and appearance of the defendant, the court shall report same to the police for evidence of the alleged offence and the 1<sup>st</sup> applicant has admitted to the tune of over 2 Million barrel of Crude oil and has undertaken to return same that there is no abuse of court process. Learned counsel concluded his submission by urging this Honourable Court to strike out this application for lacking in merit.

I have carefully listened to the submissions of the learned counsel to both the applicants and the respondent. I have

also read very carefully all the processes filed by both counsel with the written addresses attached.

In that vain, I will adopt the applicant's sole issue for determination. In doing that I shall also make references to the argument canvassed by the learned counsel to the respondent as I deem fit doing. the course of this judgment:-

### **ISSUES FOR DETERMINATION**

1. "Whether having regard to the overall facts of this case, the applicant are not entitled to the reliefs sought in this application."

It is the position of the law that jurisdiction of a court is of such fundamental and crucial nature in judicial proceedings that it is the threshold issue, it goes to the root of the matter adjudicated upon, hence where the court lacks jurisdiction to hear and determine a matter before it, all orders made in such a matter goes to no issue and it is null and void. The proper order for such a court to make is for an order striking out the action and dismissing same, See the case of OKOLO Vs UNION BANK OF NIGERIA(2004) 3 NWLR (PT 859) 87 at 110 Para 9.

It is also the position of the law that as a matter of law, lack of jurisdiction cannot be waived by one or both parties. See the case of OKOLO VS UNION BANK NIG LTD (Supra). The federal Capital Territory Area Court Act 2010 repealed the Area Court Act 2006.

Section 13 of part 3 of the Federal Capital Territory Area Court Act 2010 reads and I quote.

“An Area Court shall have jurisdiction and power to the extent set out in civil jurisdiction the warrant establishing it, and subject to the provisions of this Act and of the civil procedure code in all civil cause in which all the parties are subject to the jurisdiction of the Area court”.

Apart from the provision cited above, there is no where in the Act where criminal jurisdiction of the Area is mentioned. The Act only confers civil jurisdiction on the Area Court. It has been held in a plethora of cases by the Supreme Court that in interpretation of statutes, courts are enjoined to seek out the intention of the law makers.

In the case of EGUAMWENSE VS EMGHIZEMWEN(1993) a NWNLR(PT315)Pg1@ 31para H : where it was held by the supreme court that courts cannot read into a section of a statute a meaning which cannot be described as the intention of the legislator. Hence where the intention of the main object and intention of the Federal Capital Territory Act 2010 Particularly Section 13 of part 3 as cited above is clear and unambiguous, it is not only unprofessional but unethical for brothers in the temple of justice to reduce the legislation to futility by construing the clear intent of the law in a different light. Although the former Area Court Act, CAP 477 2006 was repealed and has now been replaced with Area court Act 2010 provided for criminal jurisdiction by Area Court, the criminal jurisdiction was clearly expunged in

2010 Area Court Act. For the sake of clarity, I will reproduce the section of the repealed law which confere criminal jurisdiction on the Federal Capital Territory Area Court and similarly reproduce the section which abrogated from their jurisdiction.

Section 18, 19 (1) and 22 of the Area Courts Act, 2006 CAP 477 Laws of The Federal Capital Territory provides as follows:-

Section 18 “ 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 criminal procedure code Act. In all civil and criminal causes in which all the parties are subject to the jurisdiction of the Area Court.”

Section 19 (1) “the place of trial of all criminal causes shall be determined in accordance with the provisions of the Criminal procedure code Act”

Section 22 “In Criminal cause an Area court shall administer the provision”

- (a) The penal code Act, the criminal code Act and any subsidiary legislation made there under (emphasis mine)

Section 13 of the FCT Area Court (Repeal and enactment) Act 2010(which is im pari material with section 18 of the 2006 Act) provides;

“An Area Court shall have jurisdiction and power to the extent set out in civil jurisdiction the warrant establishing it, and subject to the provisions of this Act and of the civil procedure code in all civil cause in which all the parties are subject to the jurisdiction of the Area court”.

From the above provision of Section 13 of the FCT Area Court Act 2010 it is very clear that the criminal jurisdiction of the Area Courts have been expunged from the provision of the Area Court Act 2010 it has also been ousted in a very clear and unambiguous language. There is no mention of criminal jurisdiction in section 13 or any other section in the Act.

It is my humble legal opinion that the position of Area Court Act 2010 is clear and sacrosanct I have no hesitation in stating that the Area court of the Federal Capital Territory has no Criminal jurisdiction by virtue of the Federal Capital Territory Act 2010 and therefor incompetent to entertain the direct complaint with charge N0: Dc/Cr/2001/21 between the incorporated Trustees of African Initiative Against Abuse of Public Trust Vs Shell Petroleum Development Company of Nigeria Limited, I so Hold.

From the above, it would be an academic exercise in futility to consider the other issues argued before in this suit as this ruling has over taken the said issues. The application of the applicant is not only meritorious but high in substance and I hereby grant same as follows:-

1. **AN ORDER** of certiorari is hereby issued quashing the Proceedings and orders emanating from Direct Criminal complaint in Charge No. DC/CR/200/21 between **incorporated trustees of Africans initiative Against Abuse of public Trust vs. shell petroleum Development Company of Nigeria Limited**. Presided over by the 1<sup>st</sup> Respondent Honourable Gambo Garba & 1 Or for lack of jurisdiction.
2. On the second order for damages in the sum of Fifty Million Naira against the 2<sup>nd</sup> Respondent. It is trite law a claim for damages could arise if there is a breach of any legal duties to the claimant. Damages are compensation in money. They are sum of money given to a successful plaintiff as a compensation for loss or harm of any kind See the case of AWO OMAMMA Vs NWOKORO (2012) 14 NWLR (PT 1321) P 488 (C.A). The trial court has discretion to award damages. The power to award damages is exercised in circumstances of a judicious estimation of the loss to the victim once a breach of legal duty occurred or has been established. See the case of AHAMED Vs C.B.N (2013)2 NWLR (PT 1339) P 524. In the instant case, the applicants failed to place before this Honourable Court evidence in proof of damages I so hold. I hereby award cost of N500,000,00 against the 2<sup>nd</sup> respondent. This is the Judgment of this Honourable Court.



Appearances:

Parties absent.

1<sup>st</sup> applicant represented by Mr Kingley Osuh ,

Alex Akoja for the applicant appeared with Munachiso Michael, Safinat L . Jimoh and Mohammed Suleiman.

No appearance for the Respondents.

Signed  
Hon. Presiding Judge  
24<sup>th</sup>/06/2021