

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT NYANYA ON THE 11TH DAY OF MAY, 2021 VIA ZOOM
BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE
SUIT NO.FCT/HC/NY/M/78/20

COURT CLERK: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

BARR. PATRICK C. OSUAGWU.....PLAINTIFF

AND

- | | | |
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| <ol style="list-style-type: none">1. MRS. OGAJI BOLA OMOWUNMI2. HON. ABUBAKAR S. UMAR
(DISTRICT JUDGE KARU ABUJA-FCT)3. MR LELE (REGISTRAR DISTRICT COURT KARU) | } | ...DEFENDANTS |
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JUDGMENT

The Applicants Motion on Notice dated 7/07/20 and filed the same date is for:

- (1) An Order of Writ of Mandamus compelling the 2nd and 3rd Respondents to issue Record of Proceedings and Record of Appeal in suit No. CV/70/2019 to the Applicant forthwith.

- (2) An order for a Writ of Certiorari quashing all the proceedings taken in Suit No. CV/70/2019 after Applicants application dated 6/08/19 and 15/11/2019 respectively particularly the proceedings of 28/11/19, 15/01/20, 27/01/20 and 13/02/20 etc for breach of applicants Fundamental Right to fair hearing and abuse of judicial powers.
- (3) And for such order or further orders as the Court may deem fit to make in the circumstance.

The grounds for the application as contained on the face of the motion paper are:

- a. The non-issuance of Record of Proceedings to the Applicant after consecutive applications and payment of statutory fees.
- b. The refusal of 2nd & 3rd Respondents to stay proceedings and issue CTC of the Ruling in respect of Applicant's Preliminary Objection and Record of Proceedings to enable him prosecute his appeal amount to bias.

c. That 2nd Respondent refused to remit Suit No. CV/70/19 for reassignment to another District Judge despite accusation of bias.

The Applicant rely on the Statement which contains the name and description of the Applicant, the reliefs sought and the grounds. Learned Counsel also rely on the 21 paragraph Verifying Affidavit. The 2nd Respondent Counter Affidavit deposed to by Aliyu Mohammed on 7/10/20 was relied upon by 2nd & 3rd Respondents Counsel. The 3rd Respondent's Counter Affidavit is also deposed to by Lele Akwau on 7/10/20.

I have also considered the Written Addresses of Counsel. The issue for determination in my view is whether the Applicant has put sufficient materials before this Court to enable the Court grant the reliefs sought. The Applicant prays for an order of Mandamus compelling the 2nd & 3rd Respondents to issue record of proceedings and a Writ of

Certiorari quashing proceedings taken after his application for records. The position of the law is that the Court has a discretion to grant or refuse an application for mandamus. The discretion however must be exercised judiciously and judicially. The Applicant must however satisfy the following conditions:

- (1) There must be an imperative public duty and not a discretionary power to act.
- (2) The Applicant must have requested for the performance of the duty.
- (3) That the duty must have been refused.
- (4) The Applicant must have a substantial personal interest in the performance of the duty concerned.
- (5) The Court to which the application for mandamus is made must itself have jurisdiction to grant it.

See *ATTA VS. COP (2003) 17 NWLR (PT. 849) 250 C.A.*

A mandamus is prerogative Writ to the aid of which the Applicant is entitled upon a proper case previously shown to the satisfaction of the Court. For a proper case to be shown an essential ingredients forming the background to the facts and circumstance imposing the public duty upon a person alleged to have failed to perform that duty must be supported by evidence. The Court will not order mandamus unless it is in the public interest.

Consequently a Court such as this may refuse an order for mandamus:

1. Unless it is shown that a distinct demand for performance of the duty has been made.
2. That the demand has deliberately not been complied with
3. Where the motive of the applicant is unreasonable

The Complaint of the Applicant is contained in paragraphs 9, 10, 11, 12, 13 & 14 of the Affidavit in support.

“9” The 2nd Respondent heard and refused my Preliminary Objection and I appealed against the Ruling. The Notice of Appeal is Exhibit A.

“10” That I applied for Record of Proceedings/Appeal... three consecutive times and paid administrative fees consecutively totaling N25,000.00 to 3rd Respondent to no avail. Moreover, the 3rd Respondent and one Aliyu Muhammed acknowledged service of the applications. The applications are Exhibit 5a, b and c respectively.

“11” That I needed the records principally for the purpose of compiling and transmitting Record of Appeal and to prepare for my defence but the 2nd and 3rd Respondents frustrated all my efforts in this regard but ‘proceeded’ with the hearing of the substantive suit despite his Notice of Objection challenging the jurisdiction of the Court.

“12” That he applied for stay of proceedings but the 2nd Respondent declared same impotent in a bench ruling.

“13” That the 3rd Respondent refused to transmit record for my appeal at..... or issue me with CTC of records to enable me do it myself.

“14” The 3rd Respondent says repeatedly in the open Court that lawyers are fond of not paying rent and that he (2nd Respondent) will make the landlord happy at the end of trial.

“15” That he has challenged the District Judge to disqualify himself from sitting on his matter due to his bias”.

The 2nd Respondent in his Counter Affidavit stated in paragraph 3 (i-n):

3(i) The 2nd Respondent did not at any time frustrate the applicant as each application submitted by the Applicant was approved by him. They are Exhibits C₁, C₂ & C₃ showing the endorsement of approval.

j. That it is not his duty to compile and transmit record of proceedings or handle the typing of a ruling he has

delivered. That he has done his own part by giving approval.

k.application for stay of proceeding was heard..... and ruling delivered. The application was refused as the conditions for the grant of stay was not fulfilled by the Applicant.

i.The Applicant has never made an application in writing for the matter to be reassigned to another Court based on his perceived bias.

m.The Applicant was never denied his right to ventilate his case neither was any of his application refused to be heard by the 2nd Respondent.

The 3rd Respondent deposed in paragraph 4 – 10 as follows:

***“4. I am not aware of the payment of the sum of N25,000 or any other amount for the record of proceedings either to me or any other person.*”**

5. That the Applicant did not pay the sum of N25,000 or any other amount to me in cash or transfer for the records of proceedings/transmission of record.

6. That Applicant approached me requesting for record of proceedings and transmission of same. I told Applicant to make payment to enable me get the record of proceedings hyped and compile the record as he requested but Applicant said he would get back to me.

7. The Applicant would not have expected me to use my money to process the record of proceedings and transmit record for him.

8. I did not even for once either in the open Court or any where else said lawyers are fond of not paying rents talkless of stating that the 2nd Respondent will make the landlord happy at the end of trial.

9. That Applicant did not mobilize for the processing of the record of proceedings and transmission of record”.

Order 50 Rules 3 & 4 of the High Court of the FCT (Civil Procedure) Rules 2018 states:

3(1) A Registrar of the lower Court shall within 3 months of decision appealed from, prepare as may certified copies of the proceedings required for the consideration of the appeal as there are parties on record

(2) Except where the fees for preparing the certified copies are remitted, a deposit decided on by the registrar as likely to cover the fees shall be made by the Appellant before the preparation of the copies”.

From the Affidavit evidence of parties reproduced above. It is clear that the Applicant deposed that he paid N25,000 for records and CTC of Proceedings but could not substantiate same. There is no evidence of payment by way of receipt or transfer of funds and to whom. No receipts of deposit of any amount whatsoever. No evidence that the prescribed fees were remitted.

I am inclined **therefore** to agree with the deposition of the 2nd& 3rd Respondents that indeed the applicant applied for the CTC of the Rulings and the Records of Proceedings which were approved by the 2nd Respondent but the Applicant failed to pay the requisite fees to enable 3rd Respondent issue the necessary records.

The Applicant failed to prove that its demands was deliberately not been complied with. His refusal to pay the fees was the reason why 3rd Respondent was not able to issue the records of proceedings/appeal. The Applicant can only be entitled to the record of proceedings/appeal after the remitting of the prescribed fees. He has not proved his entitlement to the satisfaction of the Court.

In the circumstance of this case, the Applicant is not entitled to the issuance of the said processes. The Applicant has woefully failed to place sufficient evidence to

enable the Court grant the order of mandamus in the circumstance of this case.

In *LAWAL VS. QUADRI (2004) 6 NWLR (PT. 868) 1*, the Court of Appeal held “the scope of an order of certiorari is limited because certiorari will not be used where there is equally a competent and effective remedy like the process of an appeal. Therefore in exercising the discretion, a judicial officer will be judicious and will not allow the prerogative order of certiorari to supplant the regular process of appeal to a higher Court. An aggrieved party may successfully seek an order of certiorari even though he has a right of appeal in some circumstances.

In the instant case, I find that the Applicant was not denied fair hearing. The lower Court has jurisdiction to hear the matter as the issue of service of statutory notices complained about by the Applicant are issues of evidence that will be led during trial as held by the 2nd Respondent. The Applicant failed to establish any bias as all the

applications made by the Applicant to the 3rd Respondent were duly and timely approved by him.

In totality, the Applicant failed to fulfil the conditions precedent to the grant of the reliefs sought. The lone issue raised is resolved in favour of the 2nd & 3rd Respondent against the Applicant. The application fails and it is accordingly dismissed.

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HON. JUSTICE U.P. KEKEMEKE
(HOH. JUDGE)

11/05/2021