

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT MAITAMA – ABUJA**

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS:	JAMILA OMEKE & ORS
COURT NUMBER:	HIGH COURT NO. 24
CASE NUMBER:	SUIT NO. FCT/HC/CV/2906/2021
	MOTION NO. FCT/HC/M/9211/21
DATE:	5/42022

BETWEEN:

1. ROHI PROPERTIES LIMITED }
2. BARR. ISAAC ANUMUDU }APPLICANTS

AND

1. NASIRU M.T. LIMAN }
2. MANSUR M.T. LIMAN }
3. MUNTASIR M.T. LIMAN }RESOPONDENTS
4. IBRAHIM M.T. LIMAN }
5. ALHAJI BUKAR MOHAMMED }
6. HON. USMAN A. SHAIBU }
DISTRICT COURT 1 OF THE FEDERAL
CAPITAL TERRITORY, WUSE ZONE 2,
ABUJA.

APPEARANCES:

Isaac Anumudu Esq for the Plaintiff/Applicant with Martha Okpe Esq and C. J. Nnamdi Esq.

Jerry Musa Ombugadu Esq with Nafisat Akinsola Esq for the 1st – 5th Respondents.

JUDGMENT

Before this Honourable Court is a Summons on Notice dated 13th day of December, 2021 and filed on 14th day of December 2021 which was brought pursuant to Order 44 Rule 5 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018, Section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and under the inherent jurisdiction of this Honourable Court.

The Applicant herein prayed this Honourable Court for the following Orders:

- “(1). AN ORDER of Certiorari to bring into this Honourable Court for the purpose of being quashed the entire proceedings of and the hearing Notice of the Grade 1 District Court of the Federal Capital Territory, Abuja Holden at Wuse Zone 2, Abuja issued on the 2nd day of July, 2021 directing the Applicants Namely: ROHI PROPERTIES LIMITED AND BARRISTER ANUMUDU to appear on the 7th day of July, 2021 before the 6th Respondent to continue the trial of a matter in which the 6th Respondent has shown open and repeated bias, and after the same matter has been transferred from his District Court on the Directive of the Chief Judge as conveyed by the Chief Registrar of the High Court of the Federal Capital Territory Abuja, following series of petitions by the Applicants to the Chief Judge of the Federal Capital Territory, Abuja and Chairman of the FCT Judicial Service Committee.***
- (2). A DECLARATION that the entire proceedings and actions of the Grade 1 District Court, sitting at Wuse Zone 2 in the Federal Capital Territory, Abuja especially the issuance of the Hearing Notice dated 2nd July, 2021, are without jurisdiction by purporting to take cognizance of the 1st to 5th Respondent’s suit and continue the hearing of same even after he has been removed as a District Judge and appointed as Director, and after the matter has been duly***

transferred away from his Court and taken over by another District Judge.

- (3). A FURTHER DECLARATION that the entire proceedings and actions of the Grade 1 District Judge sitting at Wuse Zone 2 in the Federal Capital Territory, Abuja, especially the continuation of the proceedings as a purported tenancy matter in a District Court, was clearly ultra vires and without jurisdiction (or in excess of jurisdiction), particularly after admitting document as evidence of title (in the form of Irrevocable Power of Attorney) through the 5th Respondent, shown the Irrevocable title of the Applicants herein to the property in issue.**
- (4). AN ORDER of this Honourable Court setting aside the proceedings and Hearing Notice of the Grade 1 District Court of the Federal Capital Territory, Abuja Holden at Wuse Zone 2, Abuja issued on the 2nd day of July, 2021 directing the Applicants namely: ROHI PROPERTIES LIMITED AND BARRISTER ISAAC ANUMUDU to appear on the 7th day of July, 2021 before the 6th Respondent continue the trial of a matter in which the 6th Respondent has shown open and repeated bias, and after same matter has been transferred from his District Court on the directive of the Chief Judge conveyed through the Chief Registrar of the High Court of the Federal Capital Territory, Abuja, following series of petitions by the Applicants to the Chief Judge of the Federal Capital Territory, Abuja and Chairman of the FCT Judicial Service Committee.**
- (5). AN ORDER OF PROHIBITION prohibiting the Grade 1 District Court, Wuse sitting at Wuse Zone 2 in the Federal Capital Territory, Abuja from further proceeding with Suit No. CV/272/2015.**
- (6). AND FOR SUCH FURTHER ORDER OR ORDERS as this Honourable Court may deem fit to make in the circumstance and in the overall interest of justice.”**

Filed in support of the application is a 17 paragraphed affidavit deposed to by one Charles Jonah, an Associate Counsel in the law firm of Anumudu and Associates the Counsel to the Applicant herein. Attached to the supporting affidavit are annexures marked as Exhibit CSJ1 TO CSJ 10 respectively.

Equally filed is a statement stating the name and description of the Applicant, the relief sought, the grounds upon which the application was predicated and the facts in support. Also filed is a Written Address in support of the application dated 13th day of December, 2021. In addition, the Applicants filed a Further and Better Affidavit of 12 paragraphs deposed to by one Martha Okpe a legal practitioner in the law firm of Anumudu & Associates, the Counsel to the Applicants.

While moving the application on 8th day of February, 2021 Counsel to the Applicants I. C. Anumudu Esq adopted their processes and urged the Court to grant the application as prayed.

In the said Written Address in support of Summons on Notice, Applicants' Counsel formulated two issues for determination to wit:

- “(1). Can a party as in this instant case, a Judge, whom has shown repeated bias be allowed to proceed to hear and determine the matter.***
- (2). Whether this Honourable Court can grant an application for judicial review.”***

In arguing the issue, Counsel submitted on issue one that bias in its ordinary meaning is opinion or feeling in favour of one side in a dispute or argument resulting in the likelihood that the Judge so influenced will be unable to hold an even scale. In this respect, Counsel cited the cases of ***KENON V TEKEN (2007) 7 SC (Pt.110) 49; ABIOLA V STATE (2019) LPELR-47462 (CA).***

In another submission, Counsel stated that an allegation of bias or likelihood of bias against a Judge is usually a very serious matter not to be taken with nonchalance. In support of this, reference was made to the case of ***INOMILOJU & ORS V OGISANYIN-AMBEIRE & ORS (2010) LPELR-***

3503 (SC); ADEBESIN V STATE (2014) LPELR-22694 (SC); METUH V F.R.N (2021) 6 NWLR (Pt. 1771) p. 85.

Consequently, Counsel submitted further that the proceedings after the directive that the case file be transferred and the continuous sitting over the matter is flawed for contravention of Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and as such vitiates the entire proceedings.

Finally, on issue one, it is the contention of the learned Counsel that the Court below which was presided over by Hon. Shuaibu in Suit No. CV/272/2015 appears to give more favour to the Respondents in the suit having made utterance, attention, actions (of which a more recent one, the 17th day of November 2021) where he presided over the matter shows sufficient inclination of his bias towards the Applicants.

To this end, Counsel submitted that justice itself is rooted in confidence and once confidence is eroded by genuine evidence of bias or real likelihood of bias no justice can result from such a trial. Reliance was placed on the cases of **UBN V FRN (2018) LPELR-46552 (CA), OME-EBO & ANOR V E. GBUNIKE & ANOR (2019) SC.**

On issue two which is whether this Honourable Court can grant an application for judicial review. Counsel submitted that following the series of event of continuous sitting and presiding over Suit No. CV/272/2015 especially after this Honourable Court gave her order that parties should stay proceedings pending the determination of the application for judicial review, this Honourable Court is called upon to quash the entire proceedings of the District Court in terms of an order of certiorari for judicial review. In this respect, Counsel cited the cases of **HADEJIA V LADAN & ORS (2018) LPELR-45638 (CA); AKINGBOLA V F.R.N (2018) 14 NWLR (Pt. 1640) Page 402.**

Moreso, learned Counsel stated that the Applicants are seeking for an Order of Prohibition, prohibiting the Grade 1 District Court Wuse sitting at Wuse Zone 2 in the Federal Capital Territory, Abuja, from further proceedings with Suit No. CV/272/2015. Counsel placed reliance on the case of **ADEBUYI & ANOR V SILVA & ORS (2020) LPELR-51422 (CA).**

Similarly, Counsel stated that the Applicants in this case are seeking for an Order of Certiorari to bring to this Honourable Court for the purpose of being quashed the entire proceedings of and the hearing notice of the Grade 1 District Court in the Federal Capital Territory Abuja holden at Wuse Zone 2, Abuja issued on the 2nd day of July, 2021 directing the Applicants namely: ROHI PROPERTIES LIMITED AND BARRISTER ISAAC ANUMUDU to appear on the 7th day of July 2021 before the 6th Respondent Counsel cited in support the cases of **ARINZE V JIBRIN & ORS (2017) LPELR-43389 (CA); JUDICIAL SERVICE COMMISSION OF CROSS RIVER STATE V YOUNG (2013) 11 NWLR (Pt. 1364).**

To this end, Counsel referred the Court to Exhibits CSJ 1 and CSJ 2 as well as Section 13(2)(a) of the District Courts Act, Cap 495 Laws of the Federation, 1990, Section 39(1)(a)(b) and 2 of the Land use Act and stated that the moment those Exhibits were brought to the attention of the learned senior District Judge in the course of the trial, he ought to have declined continuing with the trial. The continuation of which was now manifestly without competence and wholly devoid of jurisdiction. Reliance was placed on the cases of **AINIA FOWLER V ALFRED O. FOWLER (1964) A.N.L.R 50 AT 452-454; C.B.N V RAHAMANIYYA G.R. LTD (2020) 8 NWLR (Pt. 1726) 324.**

Finally, Counsel urged the Court to grant the prayers sought by the Applicants.

In opposing the application, the 1st – 5th Respondents filed Joint Counter Affidavit deposed to by one Tajudeen Ayeni, Litigation Secretary in the law firm of S. G. Kekere-Akpe & Co, the law firm representing the 1st to 5th Respondents in this suit. Attached to the Counter Affidavit is an annexure marked as Exhibit M.T. 1. Equally filed in support of the Counter Affidavit is a Written Address dated the 7th day of February, 2022.

Addressing the Court in response to the motion moved, learned Counsel to the 1st to 5th Respondents, Jerry Ombugedu Musa Esq, adopted their processes filed in opposition and urged the Court to dismiss the application with punitive cost.

In the said Written Address in support of the Counter Affidavit, Counsel formulated a lone issue for determination to wit:-

“Whether the Applicants are entitled to the grant of the reliefs sought.”

In arguing the issue, Counsel submitted that the Applicants have not met the threshold requirement for the grant of the judicial review reliefs of certiorari and prohibition and as such the application should be dismissed with punitive costs. In support of this, Counsel cited the cases of ***LAWAL V QUADRI (2004) 6 NWLR (Pt. 868) 1 (CA); EZENWA V BESTINAY ELECT. MFT. LTD (1999) 8 NWLR (Pt. 613) 61 (CA).***

On the principles guiding the grant of Order of Certiorari Counsel cited the cases of ***WEMABOD ESTATES LTD V JOYLAND LTD (2001) 18 NWLR (Pt. 744) 22; OKOYE V LAGOS STATE GOVT. (1990) 3 NWLR (Pt. 136) 115 (CA).***

Consequently, Counsel submitted that it is trite that an Order of prohibition can only be granted where the lower Court has acted beyond its jurisdiction and that Order of Prohibition is discretionary, like every discretionary power, it is to be exercised judicially and judiciously. Reference was made to the case of ***COMM. FOR LOCAL GOVT. V EZEMU OKWE (1991) 2 NWLR (Pt.181) 615 (CA).***

The learned Counsel referred the Court to the 1st – 5th Respondents’ Counter Affidavit and submitted that it is abundantly clear that there has been no form of bias exhibited by the 6th Respondent in the suit before the District Court.

Moreso, Counsel submitted that there has not been any violation of the Applicants’ right to fair hearing. That if the Applicants were not served with a hearing notice and proceedings went on in their absence that would have been a valid ground to cry foul of fair hearing. Counsel relied on the case of ***NWOKANMA V AZUOKWU (2000) 8 NWLR (Pt. 670) 767.***

In another submission, Counsel stated that complaint of bias alluded by the Applicants, having been shown to be without substance cannot ground the reliefs of certiorari and prohibition in favour of the Applicants. To this extent, Counsel urged the Court to so hold.

It was further submitted that by virtue of the District Court Act, the District Court of the Federal Capital Territory is conferred with jurisdiction to

entertain civil matters relating to landlord and tenant and that the lower Court had jurisdiction to entertain the matter, as the rent amount in issue was within its jurisdiction.

The learned Counsel referred the Court to paragraphs 2.2. to 2.4 of the Applicants Written Address and Exhibit CSJ 10 and submitted that it is trite that an Applicant for an Order of Certiorari has a duty not to suppress or misrepresent facts to the Court. Reliance was placed on the cases of **PASSCO INT'L LTD V UNITY BANK PLC (2021) 7 NWLR (Pt. 1775) 224;** **WEMABOD ESTATES LTD V JOYLAND LTD (2001) 18 NWLR (Pt. 744) 22.**

In that respect, Counsel submitted that this application of certiorari should be refused as the Applicants have misrepresented facts concerning the proceedings of 17th November, 2021 to this Honourable Court and urged the Court to so hold.

Again, Counsel referred the Court to the cases of **KOREA NAT. OIL CORP. V O.P.S (NIG) LTD (2018) 2 NWLR (Pt. 1604) 394 S.C.;** **NWAOBOSHI V MILAND DELTA STATE (2003) 11 NWLR (Pt. 831) 305 S.C** and submitted that from the record of proceedings of 17th November, 2021, no due cause has been disclosed and no error is apparent on the proceeding. Thus, the reliefs of certiorari and prohibition cannot lie.

In his further submission, Counsel stated that in an application seeking the relief of certiorari, the Applicant is mandated, as a condition precedent, to place before the superior Court the proceedings which were conducted in excess of jurisdiction and which sought to be quashed. Reliance was placed on the cases of **ONYEKWULUJE & ANOR V BENUE STATE GOVERNMENT & ORS (2005) 8 NWLR (Pt. 928) 514 at 640;** **LEKWOT V JUDICIAL TRIBUNAL (1997) 8 NWLR (Pt. 515) 22 at 36.**

Consequently, Counsel stated that the Applicants in the instant case have failed to attach a copy of the proceeding which they claim was in excess of jurisdiction and in contravention of the Court Order.

On the effect of failure to attach a copy of the proceeding sought to be quashed in an application for an Order of Certiorari, Counsel cited the case of **OGBORIEFON V OGBORIEFON & ANOR (2011) LPELR -3740 (CA)** and submitted that this Honourable Court cannot quash what is not before

it and cannot embark on a fruitless voyage of speculation. Therefore Counsel urged the Court to dismiss this application accordingly.

To this end, Counsel stated that, it is the contention of the Applicants that the tendering of an Irrevocable Power of Attorney cited title to the premises and ousted the jurisdiction of the District Court, Counsel submitted that an Irrevocable Power of Attorney does not pass title. Reference was made to the case of ***EZEIGWE V AWUDU (2008) 11 NWLR (Pt. 1097) 158 SC.***

Finally, Counsel urged the Court to dismiss this application with punitive costs and resolve the issue in favour of the 1st to 5th Respondents.

I have meticulously perused the Summons on Notice, the reliefs sought, the Affidavit in Support, the annexures attached therewith, the grounds upon which the application was predicated and the Written Address in support as well as the Further and Better Affidavit. I have equally perused carefully the 1st – 5th Respondents' Counter Affidavit in opposition to the application, the Exhibit attached thereto and the Written Address in support of the Counter Affidavit.

Therefore in my humble view the issue for determination is whether the Applicants herein have made out a case for the grant of this application.

Before I dwell on the issue, let me quickly say that I have considered the submission of the learned Applicants' Counsel that the entire paragraph 3 of the 1st – 5th Respondents' Counter Affidavit is offensive to Section 115 of the Evidence Act and urged the Court to strike them out.

In response to this submission, 1st – 5th Respondents' Counsel urged the Court to look at the said paragraph of their Counter Affidavit to ascertain whether they are offensive or not.

It is important to refer to Section 115(2) of the Evidence Act 2011 for clarity, it provides thus:-

“An Affidavit shall not contain extraneous matter by way of objection, prayer or legal argument or conclusion.”

Now, I have studied closely the entire paragraph 3(a) to (r) of the 1st – 5th Respondents' Counter Affidavit. I do not see where or how the said

paragraph offends provision of the Evidence Act, Section 115(2) (supra). I so hold. To that extent, the submission of the learned Applicants' Counsel in that regard is hereby discountenance.

Having said this, I will now proceed to consider the issue for determination.

In the instant case, the Applicants herein prayed the Court for an Order of certiorari for purpose of being quashed the entire proceedings of Grade 1 District Court of FCT Abuja and the Hearing Notice issued and directing the Applicants to appear before the said Court in which the 1st Respondent has shown open and repeated bias and after the same matter has been transferred from his District Court on the directive of the Chief Judge as conveyed by the Chief Registrar of the High Court of the Federal Capital Territory, Abuja.

It is germane to begin by saying that this application has again brought to fore the supervisory power of the Higher Court over the inferior Court or Tribunal which is usually exercised by an Order of Certiorari and/or prohibition.

It should be noted at the onset that an Order of Certiorari is of common law origin and directs for the removal of a certified record of a particular case tried in an inferior Court or other person or body exercising judicial/quasi judicial functions for the purposes of being quashed.

Therefore, certiorari was defined by Black's Law Dictionary, Ninth Edition at page 258 to mean thus:

“An extraordinary writ issued by an appellate Court at its discretion, directing a lower Court to deliver the record in the case for review.”

Similarly, in the case of ***TRACTOR & EQUIPMENT NIGERIA LIMITED & ORS V INTEGRITY CONCEPTS LIMITED AND ANOR (2011) LPELR-5034 (CA) (PP: 16-17, Para C -C) per Galinje, J.C.A.*** where it was held thus:-

“A writ of common law origin issued by a superior to an inferior Court requiring the latter to produce a certified record of a particular case tried therein. The Writ is issued in order that the

Court issuing the Writ may inspect the proceedings and determine whether there have been irregularities....”

See also the case of ***MAJOR AMANI IKENNA OFORDUM V THE NIGERIA ARMY & ANOR (2014) LPELR-22098 (CA)***.

Furthermore, on the purpose of certiorari, the Court of Appeal held in the case of ***AGORUA & ORS V OBIORA & ORS (2013) LPELR-22056 at Page 25, paragraphs A – C*** that:-

“It is settled law that the certiorari lies to the High Court to quash the Orders or the proceedings of an inferior tribunal which has acted in excess of its jurisdiction and that although the remedy was in early times limited to Courts in the normal way, it has since extended to other authorities or bodies exercising judicial or quash judicial power.”

In addition, on conditions that Court will consider in granting an Order of Certiorari, it was clearly enumerated in the case of ***ALH. ALKASIM U. SULEIMAN & ANOR V UPPER SHARIA COURT NO. 1 G.R.A. ZARIA & ANOR (2014) LPELR-22905 (CA) (PP. 37 - 38, Paras A -A) per MBABA, J.C.A.*** Where it was held thus:-

“It is well settled law that the remedy by Certiorari proceedings will be granted when any of the following is present:

- (i). Lack or excess of jurisdiction***
- (ii). Error on the face of record of an inferior Court or Tribunal***
- (iii). Breach of observance of natural justice regarding fair hearing....”***

See also the cases of ***EKPO V CALABAR LOCAL GOVT. COUNCIL (1993) 3 NWLR (Pt.281) 324; EZENWA V BESTWAY ELECTRIC MFT. CO. LTD (1999) 18 NWLR (Pt. 603) 61 at 82; NAGPPE V PHARMACISTS COUNCIL OF NIG. & ORS (2013) LPELR-21834 (CA)***.

Now, coming back to the instant case, the crux of this application as can be glanced from the Affidavit and documentary evidence before the Court is that the 6th Respondent despite the matter before him was transferred to another Court by the Hon. Chief Judge, he continues to preside/or hears

the matter. For clarity and ease of reference, I shall reproduce here under paragraph 14(d), (e) and (f) of the Supporting Affidavit. It reads thus: -

Paragraph 14(d) “That despite the fact that Court proceedings had been adjourned to a further date at the instance of the Court of Idayat Akanni Olaide-another Chief District Court 1, to which the matter was transferred to, the Respondents, in collusion with the Court, has gone ahead to deny the Applicants his fundamental right to fair hearing by insisting that the matter be heard by Hon. Shuaibu, the same District Judge who the Applicants had requested that he recuse himself from the case. A certified true copy of the letter dated 25th October, 2020 communicating the transfer of the case to Hon. Idayat Akanni Olaide and requesting Hon. Usman Shuaibu to hand over the case file is also herewith exhibited as “EXHIBIT CSJ 7”.”

Paragraph 14(e) “That the 6th Respondent, Hon. Shuaibu, despite the fact that there was a letter from the Court’s Registrar, asking to retrieve the files of the case from his custody, has blatantly refused to release the case file to the Registrar for the case to be transferred, but rather proceeded to direct the issuance of the Hearing Notice in EXHIBIT CSJ 6” above.”

Paragraph 14(f) “That the Applicants on the 5th day of July 2021 following the series of events wherein the Honourable District Judge, Hon. Shuaibu refused to stop presiding over the case, filed an application for Judicial Review in terms of an Order of Certiorari to quash the proceedings of the District Court.”

Moreso, **Exhibit CSJ 7** attached to the Supporting Affidavit is clear and unambiguous on the directive to the 6th Respondent. I shall equally take

the pains of reproducing some relevant portion of the said Exhibit here for clarity:

***“Sir, based on a Complaint/Petition dated 23rd day of August, 2020 addressed to the Hon. Chief Judge of the Federal Capital Territory High Court Maitama and the Directive from the office of the Chief Registrar, FCT High court, Maitama to His Worship Idayat Akanni Olaide to take over the said case file, for further adjudication of same.*”**

I have been directed by His Worship Idayat Akanni Olaide to write and notify you of this development and to accordingly retrieve the case file for further action. Attached to this letter is the said Complaint/Petition on which is endorsed the said Directive.”

From the foregoing, it is apparent that the 6th Respondent lacks jurisdiction to further or continue hearing the matter as doing same will amount to ultra-vire. This position was re-echoed by the Supreme Court in the case of ***CENTRAL BANK OF NIGERIA & ANOR V MRS. AGNES M. IGWILLO (2007) LPELR-835 (SC) (PP. 21, Paras F-F), per AKINTAN, J.S.C.*** that:

“Any action taken outside the powers conferred by the statute or regulations made thereof will be ultra-vire, null and void...”

Consequently, the proceedings as contained in Exhibit CSJ 10 attached to the Supporting Affidavit is null and void, having conducted same without jurisdiction. I so hold.

However, the 1st – 5th Respondents deposed in their Counter Affidavit particularly at paragraph 3(i) thus:

“Further to the 1st – 5th Respondents’ reply and consideration by the Chief Judge, Hon. Justice Usman Shaibu was directed to continue hearing the case, as the earlier decision made was one-sided (only on the bias of the Applicants’ petition).”

Nevertheless, the 1st – 5th Respondents apart from this deposition, did not take any step further to exhibit any document to counter Exhibit CSJ 7 to prove that 6th Respondent was directed to continue hearing the matter.

Having failed to do so, it is settled law that the Court cannot speculate but rely on the evidence placed before it. In this respect, I refer to the case of **ZABUSKY V ISRAIL AIRCRAFT IND. (2008) 2 NWLR (Pt. 1070) 133 at 137, Paras F – G** where it was held thus:-

“...Courts are not given to speculation, they act on evidence...”

Similarly, it was held in the case of **N.B.C.I. V. ALFIDR (NIG) LTD (1993) 4 NWLR (Pt. 187) at 346** that:

“It is settled law that a Court can only act on the basis of the evidence placed before it...”

In the light of the above and from the totality of all I have said so far, it is my considered opinion that the Applicants have made out a case for the grant of this application. I so hold.

However, the submission of the learned Applicants' Counsel that paragraph 3(h) of the Counter Affidavit raised the issue of title and urged the Court to grant same in their favour as an ancillary prayer, I refer to Order 44 Rule 6(1) of the Rules of this Court. I shall reproduce same hereunder. It provides thus: -

“Copies of the Statement in Support of an application for leave under Rule 3 shall be served with the Notice of Motion or Summons and subject to sub-rule 2, no grounds shall be relied upon or any relief sought at the hearing except the grounds and the reliefs set out in the Statement.”

From the wording of the rules quoted above vis-à-vis the Statement filed by the Applicants pursuant to Order 44 Rules 1 and 3 of the Rules of this Court, there is nowhere the Applicants stated that they are seeking relief of declaration of title. Therefore, having not stated the said relief by their Statement, they cannot claim same as ancillary prayer at the hearing of the application. I so hold.

Before I conclude, it is also worthy of note that the Applicants relief 3 which is a further declaration that the entire proceedings and actions of the Grade 1 District Judge sitting at Wuse Zone 2 in the Federal Capital Territory, Abuja, especially the continuation of the proceedings as a purported

Tenancy Matter in a District Court, was clearly ultra-vires and without jurisdiction (or in excess of jurisdiction), particularly after admitting document as evidence of title (in the form of Irrevocable Power of Attorney) through the 5th Respondent, showing the irrevocable title of the Applicants herein to the property in issue has failed because admitting Irrevocable Power of Attorney as an Exhibit does not change the nature of the case from tenancy matter. What determines the nature of a case is the claim before the Court not admitted exhibit. I so hold.

To this end and without further ado, I hereby resolve the issue for determination in favour of the Applicants against the Respondents and hold very strongly that this application is meritorious and is hereby granted as prayed save for relief 3 which is refuse in the interest of justice.

Signed:

***Hon. Justice S. U. Bature
5/4/2022.***