

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

**BEFORE HIS LORDSHIPS: HON. JUSTICE B.KAWU (PRESIDING JUDGE)**

**HON. JUSTICE M.S IDRIS (JUDGE)**

**DATED:-27<sup>th</sup> JUNE/2022**

**APPEAL NO.CVA/842/2021**

**SUIT NO. MT/222/2019**

**BEWTEEN:**

**1. INCORPORATED TRUSTEES OF  
THE ASSEMBLIES OF GOD NIGERIA  
2. REV. BENSON ONUABUCHI  
AND**

**APPELLANTS**

**1. COMMISSIONER OF POLICE FCT  
2. DIVISIONAL POLICE OFFICER DUTSE  
POLICE DIVISION  
3. DIVISIONAL OFFICER ZUBA**

**RESPONDENTS**

## **JUDGMENT**

**(DELIVERED BY HON. JUSTICE M.S IDRIS )**

The Appellant instituted this appeal against the decision of the District Court II Kubwa, Federal Capital territory Abuja. In the Kubwa Judicial Division delivered on 8<sup>th</sup> July, 2021 by his Worship Wainat Folashade Oyekun in suit No. MT/222/2019.

The brief fact of the case is that the suit at the District Court was commenced vide an application filed by the Appellants on 18<sup>th</sup> October, 2019 wherefore the Appellants explored the legal

instrumentality of the Court to take possession of their church at Rugi Zuba behind Sokole Garden FO1 Dutse from the respondent, the police in the affidavit in support of the application it was disclosed that the churches were in the possession of the police because some excommunicate members of the church were continually interfering with the activities of the churches for no reason whatsoever and the police intervened and locked the church. That after the Respondent has locked the church and subsequently maintained peace, the Appellant here approached the Respondent and sought to recover the church but the Respondents refused to give up the churches. The said application filed on 18<sup>th</sup> October, 2019 was on notice and duly served on all the Defendant(Respondent) but the Respondent did not deem it fit to respond to same.

Accordingly the learned trial Court after a consideration of the application deemed it meritorious and granted same. The order of the trial Court dated 16<sup>th</sup> December, 2019 in respect of same is as shown in page 8 and 9 of the Records of Appeal. The Appellant acting on the order of the Court took control of the church and resumed running their activities. However after about 6 months one Rev. Benson Nicholas who was not a party to the suit that gave rise to the order of the trial Court dated 16<sup>th</sup> December, 2019 assumed the position of the Respondent herein retained his lawyer and filed a motion on notice dated 18<sup>th</sup> August, 2020 wherein he sought to put aside the order of the trial Court dated 16<sup>th</sup> December, 2019 and in his affidavit in support he claimed to have obtained the consent of the Respondent to act on their behalf. In the entire affidavit of the said Rev. Benson Nicholas

there is no assertion on how he obtained the consent, may be by attaching a contract letter or power of attorney. This goes to show that the Rev. Benson Nicholas is a meddlesome interloper in the suit. In the Applicants respond vide their counter affidavit

filed on 28<sup>th</sup> September, 2020 the Applicant clearly stated that the Respondent herein did not filed the motion on notice dated 18<sup>th</sup> August, 2020 that the said motion to set aside was filed by a non party to the suit and there is nothing on their affidavit to show that the Respondent herein gave him consent as he claimed in the affidavit in support of the motion to set aside see pages 93 and 95 of the Record of Appeal. The 3<sup>rd</sup> Respondent herein who stated in page 94 of the Record of Appeal that he does not know Rev. Benson Nicholas who claimed to have obtained his permission that since that order was made against them none of them has taken any steps about it. Rev. Benson Nicholas filed a further and better affidavit against the Applicants counter affidavit on 4<sup>th</sup> January, 2021purpportedly on behalf of the respondents herein paragraphs 7 and 12 of the counter affidavit of the Applicant in pages 93 to 95 of the Record of Appeal were not contradicted in paragraph 4,5 and 6 of the further and better affidavit. Rev. Benson Nicholas having seen our counter affidavit challenging that he is a non party to the suit generally, illegally and joined himself without an order of Court as the 4<sup>th</sup> Defendant/Applicant. This act should have made the further and better affidavit defective but the trial Court noted it in his ruling and still discountenanced it. The motion to set aside contains fact which could not have been relied on in the said case, because they were fundamentally defective and without same.

In the ruling of the trial Court the Court found for the Respondent who purportedly acted through a non party to the suit that they have satisfied the condition to set aside the order dated 16<sup>th</sup> December, 2019. The trial Court discontinued the case that the Rev. Benson Nicholas is a non party to the suit and that he did not obtain the consent of the parties to the suit to depose to an affidavit in support of the motion to set aside, the Court in its ruling stated this in the final analysis I hold that the Applicant herein successfully satisfied the condition for the setting aside proceedings, judgment order of Court dated 16<sup>th</sup> December, 2019. Order of Court dated 16<sup>th</sup> November, 2019 as well as the entire proceeding are hereby set aside for lack of jurisdiction”

The Applicant being dissatisfied with the ruling of the trial Court has filed a notice of appeal dated 29<sup>th</sup> July, 2021.

### **ISSUES FOR DETERMINATION**

“Whether the learned trial Court was right when he held that the Respondent had successfully satisfied the condition for the setting aside of the proceedings judgment order of Court dated 16<sup>th</sup> December, 2019 and proceeded to set aside same despite the cogent facts deposed to in the counter affidavit of the Applicants against same”

The Applicant argued that wherefore an application before a Court is to be established by affidavit evidence it is the duty of the Court to restrict itself to the evidence deposed to in the affidavit and act on same. See ***MRS. TAYO OLUSOLA VS MR. TIRIMISIYU BELLO & ANOR (2014) LPELR 24417 CA. See OYEDIMA VS TOR- ABULU (2002)FWLR (PT131) 1869 at***

**1875.** The affidavit of the parties before the Court constitute evidence and all averments in them must be considered and evaluated before arriving at a resolution of the matter. See **MR. EBERECHUKWU & ANOR VS OLEWUCHUKWU NDULU (2017) LPELR 42459 CA.**

In the instant case the trial Court did not properly evaluate the counter affidavit of the Applicants before arriving at its conclusion. Where reliance is placed on the authority in the case of **MR. EBERECHUKWU (supra)** Rev. Benson Nicholas because in effect is a witness for the Respondents or at least a witness for the 3<sup>rd</sup> Respondent. In the ruling of the Court the trial Court observed the anomaly of the wrongful joinder of Rev. Benson Nicholas and still discountenanced same thus "with respect to the issue about joining the name of Rev. Benson Nicholas without order of Court for joinder. It is noted by the Court that the only process of Court is his name appeared on the Applicants further and better affidavit and the motion for extension of time to regularize process which was granted without objection from the Plaintiff/Respondent see pages 236 to 237. The issue to be resolved in this appeal is whether the Respondents can be heard and their application determined when they were not parties in suit No. **FHC/1B/CS/1/2013** see **FAMILUIR VS N.B.A (10.1) (1989)2 NWLR (pt105)**. Having reproduced substantially the brief facts of the case which is the subject matter of the appeal and the judicial authorities cited by the Applicant in this appeal it is pertinent to note that the Respondents in this matter have not filed their respective brief neither have they appeared in Court despite the fact that they were duly notified. This is in nutshell I

would now go into the crux of the matter. Essentially going by the brief of argument filed by the Appellant and the judicial authorities cited above by the same the main key element is the fact that the setting aside of the order made by the Presiding Magistrate in favour of the Appellant. On the ground that the Rev. Benson Nicholas who was not officially joined as a party whether he has the right to make that application without seeking the leave of the Court. In view of the combine judicial authorities cited by the Applicant Counsel I have agreed with the Applicant that such order should not have been granted because Rev. Benson Nicholas was just an interloper, leave of the Court is a condition precedent before one can be joined as a party in this circumstances I therefore so hold. On the other hand the ruling delivered by the trial Magistrate delivered on the 8<sup>th</sup> July, 2021 was not only based on the order granted in favour of Rev. Benson Nicholas but also the trial Magistrate based his ruling on the legal position of the law.

That same lacks jurisdiction. It must be stated in this judgment that we completely agreed with the trial Magistrate, issues of jurisdiction can be raised either by the parties appearing in the matter or the Court can raise such issues even at the Court of Appeal the Court can raise the issues of jurisdiction suo motu. What gives jurisdiction is the claim of the Claimant in most cases the issues for determination is not whether the inclusion of Rev. Benson Nicholas irregularly joined as a party but considering the subject matter is contrary to which the Trial Magistrate has jurisdiction to grant. jurisdiction is the authority which a Court has to decide matters that are litigated before or to take cognizance

of matter presented in a formal way for its decision *See AJOMADE VS YADUAT (NO1) 91991) 5SC NJ 172*. The limits of this authority are imposed by statutes, charter or commission by which the Court is constituted and may be extended or restricted by similar means. Jurisdiction is fundamental in any adjudication where a Court lacks jurisdiction whatever it does is a nullity this is because it is the jurisdiction that determines the competence of the Court to inquire into any case, be it civil or criminal A Court is said to be competent when the following grounds are present:-

1. If it is properly constituted as regards numbers and qualification of the members of the bench and or member is disqualified for one reason or the other.
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 came before the Court instituted by due process of law and
4. Upon fulfillment of any condition precedent to the examination of jurisdiction.

See *PETROLUM DEVLT COMPANY VS ISAH (2001) 11NWLR (pt 723) 168. MADUKOLA VS NKEMDILIM (1962) SC NLR 341.*

Any defect in the above is fatal as the defect is extrinsic to adjudication. In *EDET VS STATE (2009) ALL FWLR (pt463) 1430*. It was held jurisdiction is radically fundamental to any judicial proceedings. It must be clearly shown to exist at the

current or during the proceedings otherwise such proceedings no matter how well conducted and any judgment arising there from no matter how well considered or beautifully written will be a nullity and a waste of time. See ***ADEKOYE VS COMPTROLLER OF PRISON (2000) FWLR (pt8) 1258 GALADAMI VS TAMBARI (2000) FWLR (pt14) 2369 DANGOTE VS CIVIL SERVICE COMMISSION (2001).***

Consequently going by the judicial authorities the Trial Magistrate was right to have set aside its ruling on the grounds that the Court lacks jurisdiction It's so hold. It should be noted the irregularity demonstrated by allowing Rev. Benson Nicholas of joining himself as the 4<sup>th</sup> Respondent would not in any way change the position of this judgment reason being that jurisdiction is the threshold of every trial consequently the appeal is hereby dismissed based on the ground that same is lacking in merit

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**HON. JUSTICE M.S IDRIS**  
**(HON. JUDGE)**

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**HON. JUSTICE B.KAWU**  
**(PRESIDING JUDGE)**



Appearance.

I.C Ohanube:-Holding the brief of -----Olgun for the Applicant/Respondent