

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT APO, ABUJA**  
**ON TUESDAY, THE 20<sup>TH</sup> DAY OF SEPTEMBER, 2022**  
**BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/2734/2021**

**BETWEEN:**

- |   |                   |
|---|-------------------|
| <b>1. EL-DAVIDO PROPERTIES AND ENGINEERING SERVICES LIMITED</b> |                   |
| <b>2. CHIEF DAVID SABO KENTE</b>                                | <b>APPLICANTS</b> |

**AND**

- |   |                    |
|---|--------------------|
| <b>1. BRISCAT RESOURCES &amp; CONCEPT LTD</b> |                    |
| <b>2. FIGBUS N. BITRUS</b>                    | <b>RESPONDENTS</b> |

**JUDGMENT**

This Judgment is in respect of the application for judicial review which the Applicants brought seeking an Order of Certiorari setting aside the decision of the Magistrate Court sitting at Zone 6 Wuse, Abuja *coram* His Worship Aishatu Auta Ibrahim made on the 23<sup>rd</sup> September, 2021.

By an Originating Motion on Notice dated the 17<sup>th</sup> of December, 2021 and filed on the 21<sup>st</sup> of December, 2021, the Applicants brought this application seeking the following reliefs:-

- a. A Declaration that the Order Ex Parte made by the Magistrate Court Wuse Zone 6 presided over by His Worship Aishatu Auta Ibrahim in respect of the proceedings conducted on 22<sup>nd</sup> September, 2021 in Charge No. CR/WZ6/06/2020 between Briscat Resources & Concept Ltd v. EL Davido Properties & Engineering Ltd and Chief

David Sabo Kente is illegal same having been made without jurisdiction and in total violation of section 36 of the Constitution of the Federal Republic of Nigeria.

- b. A Declaration that the Respondents cannot prosecute the Applicants before the Magistrate Court by way of direct criminal summons in a civil matter bordering on ownership of land.
- c. An order of prohibition or certiorari restraining the Respondents from prosecuting the applicants on direct criminal complaint (CR/WZ6/06/2020) which bordered on purely civil matter.
- d. And for such further Orders as the Honourable Court may deem fit to make in the circumstances.

The application was founded on eight grounds which basically revolve around the lack of jurisdiction of the Magistrate Court *coram* His Worship Aishatu Auta Ibrahim to hear and determine the Direct Criminal Complaint which relates to a land matter. In support of the Motion on Notice is an 11-paragraph affidavit deposed to by one Peter Edoh who described himself as the Property Manager of the 1<sup>st</sup> Applicant. Two exhibits, marked **Exhibits A and B**, were attached to the affidavit. The exhibits are the Direct Criminal Complaint and the letter from the Magistrate Court to the Nigerian Police. A Written Address encapsulating the legal submissions of the Applicants was filed alongside too.

In the affidavit in support of the application, the deponent, who deposed to facts provided to him by the 2<sup>nd</sup> Applicant, averred that the Magistrate Court, *coram* His Worship Aishatu Ibrahim Auta had granted, on the 22<sup>nd</sup> of September, 2021, the application of the Respondents for the issuance of a Direct Criminal Complaint against the Applicants and further directed the Police to cause an investigation into the complaint. The deponent further swore that the direct criminal complaint contained five offences

which had nothing to do with the Applicants. He also asseverated that the Court should grant the reliefs sought as the Applicants' rights over the property the subject of the Direct Criminal Complaint were being abridged.

In the Written Address in support of the application, learned Counsel formulated a sole Issue for determination, to wit: "Whether having regard to the facts and circumstances of this case, this application for leave for a judicial review ought to be granted by this Honourable Court."

Arguing this sole issue, learned Counsel submitted, while referring to sections 36 and 272(2) of the Constitution of the Federal Republic of Nigeria 1999 empowers the Court to exercise supervisory jurisdiction over inferior Courts and tribunals particularly where the applicant's right to fair hearing have been breached and where the Court or tribunal lacks the jurisdiction to hear the suit.

Learned Counsel furthered contended that the application of the Applicants satisfies the requirements for applications of this nature, having been brought in compliance with the Rules of this Honourable Court. He therefore urged this Honourable Court to grant all the reliefs sought in the application.

For all his submissions, learned Counsel cited and relied on the following cases: ***Re: Lawal (2013) LPELR-19981 (SC); Otubanjo v. Kujore (1974) LPELR-2829 (SC); Obasanya v. Babafemi (2000) 23 WRN;*** and ***Co-operative & Commerce Bank Nig. Plc. V. A.G. Enugu State (1992) 7 NWLR (Pt. 261) 528.***

Responding to the Applicants' application, the Respondents filed a 14-paragraph Counter-Affidavit deposed to by one Helen Akpan, the

Company Secretary of the 1<sup>st</sup> Respondent. In the said Counter-Affidavit, the deponent averred that the Magistrate Court merely granted the Respondents' application for the issuance of a Direct Criminal Complaint against the Applicants for their alleged criminal acts perpetrated against the Respondents and further directed the Police to investigate the Complaint. The Respondents further claimed that the police investigation heavily indicted the Applicants.

The Respondents also contended that the allegations contained in the Direct Criminal Complaint did not relate to land but, rather, on the Applicants' unlawful resort to self-help. The deponent also noted that the Applicants had the legal right to defend the criminal charge against them, or, in the alternative to seek a civil remedy in an action for declaration of title to land instead of destroying the perimeter fence of the property in question. She concluded that the Magistrate Court had the power to issue a Direct Criminal Complaint and direct the Police to investigate same.

In the Written Address in support of the Counter-Affidavit, learned Counsel for the Respondents formulated two Issues for determination, *videlicet*: “(1) *In the light of the facts before this Court, whether the Applicant is entitled to a grant of this application; and (2) Whether this application is not a classic illustration of an abuse of the process of this Court brought in bad faith and meant to further frustrate the progress of this petition; and for which the Cross-Petitioner is entitled to damages?*” Apparently, Counsel for the Respondents must have copied slavishly the second Issue from a different process because I fail to see the nexus between this application with ‘petition’ and ‘cross-petitioner’ used in this application.

In his argument on the first issue, learned Counsel referred this Honourable Court to the provisions of sections 89, 90 and 111 of the

Administration of criminal Justice Act and section 143(d) and (e) of the Criminal Procedure Code which empower private persons to initiate criminal prosecution against alleged offenders of the penal provisions. He submitted that the Respondents were entitled in law to institute a criminal complaint against the Applicants who destroyed their perimeter fence. He further submitted that the present application is an attempt to frustrate the Magistrate Court from performing its judicial duties. He also urged the Court to find that the Applicants were not denying the facts contained in the Direct Criminal Complaint, but, rather, were challenging the jurisdiction of the Court to hear matters relating to declaration of title to land. Citing the cases of ***Oniyide v. Oniyide (2018) LCN/111/2017 and Achonu v. Okuwobi (2017) All FWLR (Pt. 1297) 1335***, learned Counsel urged this Court to resolve this Issue in favour of the Respondents.

Arguing the second Issue, learned Counsel submitted that the application of the Applicants constituted an abuse of Court process because the intention of the Applicants was to frustrate the trial of the Direct Criminal Complaint pending before the Magistrate Court. citing the case of ***Seven-Up Bottling Coy Ltd v. Abiola & Sons Bottling Co. Ltd (1996) 7 NWLR (Pt. 463) 714***, learned Counsel urged the Court to dismiss the application with substantive punitive cost against the Applicants.

The Applicants, on their part, filed a 17-paragraph Further Affidavit in opposition to the Respondents' Counter-Affidavit. In the Further Affidavit, which was deposed to by the same Peter Edoh who deposed to the affidavit in support of the Originating Motion on Notice, the Applicants denied ever being investigated by the Police and challenged the Respondents to produce the Police Report which they claimed heavily indicted them.

They further claimed that the perimeter fence alleged to have been broken belonged to the Applicants and that same was never destroyed. They also insisted that the Magistrate Court lacked the powers to issue a Direct Criminal Complaint on issues that bordered on ownership of land. According to the Applicants, the failure of the Magistrate Court to file a response to the application was an acknowledgement of the fact that it lacked the powers to issue the Direct Criminal Complaint.

It was the contention of the Applicants that the investigation which the Police carried out was in respect of the allocation of the land, adding that this could be seen from its letter to the Department of Parks and Recreation to release one Macham Grace, one of their members of staff to answer questions relating to the allocation of the land. He alleged that the Direct Criminal Complaint was a ploy by the Respondents to use the Police and the Magistrate Court to resolve a purely land dispute.

In the Reply on Points of Law, learned Counsel formulated one Issue for determination, namely: *“Whether having regard to the facts and circumstances of this case, the case of the Respondents is not that bordering on land which the Magistrate Court and the Nigerian Police lacks the powers to make Order or investigate same.”*

In his submissions on this issue, learned Counsel referred the Court to the facts of this application and the contents of the exhibits attached to the Further Affidavit and contended that the Nigerian Police Force was investigating ownership of Park No. 1198 B19 Katampe District Abuja and nothing more. Learned Counsel quoted extensively the dictum of the Court of Appeal in the case of ***Obinegbo & Ors v. I.G.P. & Ors (2020) LPELR-50980 (CA)*** and submitted that the facts in the affidavit disclosed a case of dispute over land which the Magistrate Court is incompetent to

determine and the Police is disqualified from investigating.

Referring to section 272(2) of the Constitution of the Federal Republic of Nigeria 1999, he further submitted that this Honourable Court has the jurisdiction to hear and determine this application by virtue of its supervisory jurisdiction, adding that the facts of the Direct Criminal Complaint were well within the scope of this Court's supervisory role as to warrant the making of the Order of Certiorari. He referred this Court to ***In Re: Lawal (2013) LPELR-19981 (SC); Otunanjo v. Kujore (1974) LPELR-2829 (SC) and Co-operative & Commerce Bank Nig. Plc v. A.G. Enugu State (1992) 7 NWLR (Pt. 261) 528.*** He urged this Court, therefore, to grant the reliefs sought in the application.

I have taken my time to extricate the polar positions adopted by the parties in this application because of the peculiar nature of applications for judicial review. This suit came up for the first time on the 15<sup>th</sup> of December, 2021 when the learned Counsel for the Applicants moved the Motion *Ex Parte* for leave to bring the application for judicial review. The granted the application and adjourned the matter to the 1<sup>st</sup> of January, 2022 for hearing. On that date, the Court heard the Applicants' Counsel moved the application for substituted service of the process on the Respondents. Having satisfied itself that the Respondents have been served with the processes in this suit, the Court adjourned the application to the 7<sup>th</sup> of July, 2022 for hearing. The application was duly heard on that date and the Court accordingly adjourned to the 20<sup>th</sup> of September, 2022 for Judgment.

In determining this suit, therefore, I have formulated the following sole issue which, I believe properly addresses the gravamen of this action.  
***“Whether, upon a consideration of the facts and circumstances of***

***this case this Honourable Court should not make an Order of Certiorari quashing the decision of the Magistrate Court coram His Worship Aishatu Auta Ibrahim which was made on the 23<sup>rd</sup> of September, 2021 referring the Direct Criminal Complaint filed by the Respondents at the Magistrate Court to the Nigerian Police Force for investigation?”***

In resolving this Issue, it will be apposite to undertake a short voyage of illumination into the jurisprudential province of judicial review in order to understand its concept, its nature, and the circumstances under which the statutory, constitutional and inherent powers of the High Court could be invoked in this regard. The Black Law Dictionary (8<sup>th</sup> 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.”*** According to Halsbury’s Laws of England (Fifth Edition, Volume 61, 2010) pages 419, 420, paragraph 602, judicial review is 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. Section 257 of the Constitution of the Federal Republic of Nigeria 1999 recognises the supervisory powers of the High Court of the Federal Capital Territory, Abuja when it provides thus:

***(1) “Subject to the provisions of section 251 and any other provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law,***

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***the High Court of the Federal Capital Territory, Abuja shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to her and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability on respect of an offence committed by any person.***

***(2)The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of the Federal Capital Territory, Abuja and those which are brought before the High Court of the Federal Capital Territory, Abuja to be dealt with by the Court in the exercise of its appellate or supervisory jurisdiction.”***

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.”***

The Rules of this Court has made copious provisions for judicial review. These provisions can be found in Order 44 of the High Court of the

Federal Capital Territory, Abuja (Civil Procedure) Rules 2018. Rules 1 and 2 of the Order stipulate the circumstances under which this Court may exercise its supervisory powers over inferior Courts, tribunals, executive bodies and persons acting pursuant to their office. I have taken the liberty to reproduce the Rules below:-

**1. (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.**

**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.**

While it is not difficult to determine the circumstances under which other prerogative writs (as reliefs grantable by way of judicial review are known) may be made, the circumstances under which an Order of Certiorari may be made do not lend themselves to facile determination. This, no doubt, is attributable to the semblance of the effect of an Order of Certiorari on a decision brought to be quashed and the effect of an appellate decision

setting aside the decision of a lower Court or tribunal. In other words, a thin line separates an Order of Certiorari from an appellate decision. In acknowledging this conundrum and to provide a functional approach to resolving same, the learned authors of Halsbury Laws of England explain further:

***“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... 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.”***

The Supreme Court, in ***State v. Lawal (2013) 7 NWLR (Pt. 1354) 565 at 586, paras C – D***, held that ***“A serious error of law on the face of the record of an inferior court will justify the removal of the entire proceedings of the court to the High Court by certiorari order to be quashed by the High Court in the exercise of the supervisory powers***

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***of the High Court.***” Speaking further on what would constitute a serious error of law on the face of the record of an inferior Court, the apex Court held further ***at pages 592 – 593, paras H – A*** that ***“There are four conditions on any one of which the order of certiorari may be granted and they are: (a) lack of jurisdiction; (b) breach of rules of natural justice; (c) error of law on the face of the records; and (d) decision obtained by fraud or collusion.”***

I have studied the processes filed in this application and have paid avid attention to the depositions of facts in all the affidavits filed in support of and in opposition to the application as well as to the legal arguments canvassed for and against the application. It is immediately obvious that the decision sought to be quashed was made in a criminal case. That decision is the directive, or Order of the Magistrate Court that the Direct Criminal Complaint of the Respondents be referred to the Nigerian Police Force for further investigation. The grounds which the Applicants adduced to inject virility to the reliefs sought are, *inter alia*, that the Direct Criminal Complaint arose from a dispute over the ownership of a parcel of real estate, properly described as Park No. 1193 Cadastral Zone B19 Katampe District, Abuja, within the jurisdiction of this Court. It is their contention that since the dispute is civil in nature, being a contestation over the ownership of the property in question, the use of Direct Criminal Complaint, which is a criminal process, is inappropriate, as the Magistrate Court exceeded its authority. See paragraphs 8 and 9 of the affidavit in support of the Originating Motion on Notice and paragraphs 8, 9, 11, 12, 13 and 14 of the Further Affidavit in opposition to the Respondents’ Counter-Affidavit.

On the other hand, it has been contended on behalf of the Respondents that the actions of the Respondent constituted criminal infractions, specifically, criminal conspiracy, criminal trespass, mischief, conduct likely

to cause breach of the peace and assault. See paragraphs 5, 6, 10, 11 and 12 of the Counter-Affidavit in opposition to the application for an Order of Certiorari. It has been contended further on behalf of the Respondents that the Applicants had the constitutional right to defend the criminal complaint against them instead of resorting to an application for judicial review in their desperate efforts to frustrate the prosecution of the criminal complaint against them.

I have carefully considered the exhibits attached to the affidavits before me, **Exhibit A** attached to the affidavit in support of the affidavit in support of the Originating Motion on Notice is the Direct Criminal Complaint which catalyzed the process leading to this application. Paragraphs 5, 6, 7, 8, 9 and 10 are reproduced below:

*5. That the complainants averred that they applied for and was (sic) allocated a plot of land known as Plot 1193 Cadastral Zone B13 (sic) Katampe Extension.*

*6. That the said plot of land was allocated to the complainants sometime (sic) in 2007.*

*7. That the complainants also applied for the building approval of the said land sometime (sic) in July 2021 which was granted.*

*8. That the complainants has (sic) also executed some acts of possession by fencing the said property having duly gotten approval of the Development Control.*

*9. That the complainants spent the sum of ₦3.8 Million Naira in fencing the said property.*

*10. That the said property is measuring about 2.5 Hectares.*

At the epicentre of this application is **Exhibit B** attached to the affidavit in support of the Originating Motion on Notice. This exhibit is the letter from the Magistrate Court to the Nigerian Police Force directing it to cause an investigation to be opened into the allegations contained in **Exhibit A**. The exhibit reads as follows:-

*“I am directed by His Worship Aishatu Auta Ibrahim Magistrate 1, Wuse Zone 6, Abuja, to write and inform you to cause an investigation in respect of the state (sic) above mentioned case and report back to his honourable court for Adjudication within two weeks from the date of the received letter.”*

*Attached is a copy of the Petition/Complaint for your kind perusal and necessary action please.*

*Accept his worship, (sic) assurance of highest esteem and warmest regards.”*

Following the directive in **Exhibit B**, the Police wrote to the Abuja Metropolitan Management Council under the purport of investigating the allegations contained in **Exhibit A**. the result is a flurry of administrative activities which culminated in **Exhibit D**. **Exhibit D** attached to the Further Affidavit in opposition to the Respondents’ Counter-Affidavit is a letter from Abuja Metropolitan Management Council to the Permanent Secretary, FCT and the Director, Human Resource Management dated the 11<sup>th</sup> of April, 2022. Paragraphs ii, iii, (2) and (3) are very relevant. At the risk of being prolix, I will reproduce the contents herein:-

*ii. That Park No. 1198, B19 Katampe District was officially allocated to Meena Nig. Ltd vide letter dated 5<sup>th</sup> July, 2007 and conveyed by the then Director of Park & Recreation, TPL Luka*

*Bulus Achi.*

*iii. That the letter of Intent to Develop, Manage and Operate the designated Park Site in the FCT was conveyed following due diligence and approval by the FCTA*

*2. We wish to point out that the letter requesting for the appearance of Ms. Grace Macham did not state the complainant against her alleged conspiracy, criminal conversion of land and abuse of office. However, in the course of several appearances in the FIB Area 10 Abuja, the Legal Officers attached from the office as directed, observed what seem to be calculated attempt to annex the said Park to another interested Park Operator. Suffice to say that till date, the complainant has not shown sufficient proof of legal allocation of same Park.*

*3. While further investigation is on-going, the Permanent Secretary is hereby intimated that the records at the disposal of the Department of Parks & Recreation and by implication, the FCTA, is to the effect that Plot No. 1193, B19, Katampe Recreation Park, measuring 2.5 Hectares was allocated to Messrs. Meena Nig. Ltd with effect from 5<sup>th</sup> July, 2007.*

Though the Respondents in paragraph 5 of their joint Counter-Affidavit averred that *“upon Police investigation which indicted the Applicants heavily; it was shown that the Applicant had no rights to assault the Respondents as they had no basis for the acts of assault, threats and destruction of the Respondent’s perimeter fencing on its property”* they did not exhibit the said indictment from the Police. The Evidence Act, 2011 is evident on how the Court should treat such depositions. Section 167 (d)

allows the Court to presume that ***“Evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.”***

There is no doubt in my mind, from the contents of the above exhibits, that the Direct Criminal Complaint was a shrewd attempt to throw the cloak of criminality over a subject that is purely a disputation over the ownership of Plot No. 1193, B19, Katampe Recreation Park, measuring 2.5 Hectares lying and situate at Katampe, Abuja. What is more? The Respondents, in paragraph 9 of their Counter-Affidavit, averred as follows: *“That if the Applicants believe that they have a right over our property better than us; it is the Court that is the appropriate place to seek redress and not the acts of destruction of our perimeter fence which we spent so much money to erects (sic); and then when we confronted them, they choose (sic) to threaten and assault us.”* Implicated in this deposition is the question of ownership of the disputed land, a question the Magistrate Court has no jurisdiction to try; and not merely a criminal trespass affecting the Respondents’ right of possession as the Respondents claimed in their Direct Criminal Complaint.

In other words, the Respondents, in a disingenuous attempt to circumvent the jurisdictional limitations of the Magistrate Court, criminalized their contentions with the Applicants over the ownership of the said plot of land. This Court agrees with the Applicants that the Magistrate Court, lacking the jurisdiction to hear suits pertaining to declaration of title to land, cannot competently try the Direct Criminal Complaint. Furthermore, it is impossible for the Magistrate Court to try the Applicants on the Direct Criminal Complaint without pronouncing on the ownership of the land in question. This is because the jurisdiction of a Court is donated to it by the Constitution or a statute; and, since that is the settled position of the law, a



Court cannot assume jurisdiction beyond its remit. See *Nigerian Army v. Abuo (2022) 12 NWLR (Pt. 1844) 349 at Pp. 365-366, paras. G-A* where the Supreme Court held that “***jurisdiction is the authority that 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 limits of that authority are imposed by the statute, charter, or commission under which the court is constituted and may be extended or restricted by similar means. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance or as to the area over which the jurisdiction extends.***”

In this case, the relevant statutes are the District Laws of Northern Nigeria applicable to Northern Nigeria and the Land Use Act CAP L5 Laws of the Federation of Nigeria 2004. Section 5(1) and (2) of the District Court Laws of Northern Nigeria applicable to the Federal Capital Territory, Abuja provides that “***Every District Court shall have such jurisdiction as is conferred upon it by law or any other written law. (2) No District Judge shall exercise any jurisdiction and powers in excess of those conferred upon him by his appointment.***” On the other hand, section 39 of the Land Use Act CAP L5 LFN 2004 specifically stipulates that “***(1) The High Court shall have exclusive original jurisdiction in respect of the following proceedings:- (a) proceedings in respect of any land the subject of a statutory right of occupancy granted by the Governor or deemed to be granted by him under this Act; and for the purposes of this paragraph proceedings includes proceedings for a declaration of title to a statutory right of occupancy; (b) proceedings to determine any question as to the persons entitled to compensation payable for improvements on land under this Act, (2) All laws,***

***including rules of court, regulating the practice and procedure of the High Court shall apply in respect of proceedings to which this section relates and the laws shall have effect with such modifications as would enable effect to be given to the provisions of this section.”***

Above are the statutory prescriptions which demarcate the jurisdiction of the Magistrate Court. These provisions have been given judicial fortification in ***Azie v. Azie (2016) 5 NWLR (Pt. 1506) 593 at p. 610, paras. D-E*** where the Court of Appeal per Husaini, JCA held that “***Section 39 (1) of the land Use Act vest on the High Court of a State exclusive jurisdiction over proceedings in respect of land covered by statutory right of occupancy issued by the government and proceedings to determine any question of entitlement of persons to compensation under the Act. The jurisdiction of the State High Court under the land Use Act also extends to cover cases under section 41 of the land Use Act. In other words, the State High Court and the Area or Customary Courts both have concurrent jurisdiction over matters covered by Customary Certificate of Occupancy issued by Local Governments under section 41 of the land Use Act.”***

The Court can, therefore, only expound this jurisdiction; it can never be heard to expand same. In ***A.-G., Federation v. Abubakar (2008) 16 NWLR (Pt. 1112) 135 at p. 158, paras A – B per Niki Tobi, JSC***, the Supreme Court held that “***There is no jurisdiction in law in a court saying that it has jurisdiction in all disputes. A court of law has jurisdiction to expound the limits of its jurisdiction, but has no jurisdiction to expand it. This is because jurisdiction is a matter of hard and rigid law; and courts of law must comply strictly with***

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***their jurisdiction as spelt out in either the Constitution or a statute.”***

The Supreme Court made similar pronouncement in the case of ***Crestar Int. Nat. Res. Ltd. v. S.P.D.C.N. Ltd. (2021) 16 NWLR (Pt. 1800) 453 at p. 472, paras. A-B per Eko JSC*** where it held *inter alia* that ***“While the court can, legitimately, expound or expatiate on its jurisdiction, it cannot validly expand the frontiers of its jurisdiction to cover matters which the Constitution or the statute enabling its jurisdiction has not vested in it.”***

Similarly, the powers of the Nigerian Police Force do not extend to acting as arbiters in land disputations. The duties of the Police are provided for under the Police Act 2020. Section 4 of the Act enumerated the general duties of the Police. The section provides that

***“The Police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.”***

It may be argued, as did, indeed, the Respondents, that the Magistrate Court, in referring the complaint to the Police, merely exercised the statutory powers conferred upon it by the Administration of Criminal Justice Act, 2015 which provides, in section 89 (5), that ***“All complaints made to the Court directly under this section may first be referred to the police for investigation before any action is taken by the Court.”*** it must be noted, however, that the Act uses the word ‘may’ in that provision.

The use of 'may', the Courts have held in a plethora of decisions, presupposes the exercise of discretion by the adjudicating body before whom a matter is pending. See the cases of ***Mohammed v. State (2018) 5 NWLR (Pt. 1613) 540 at p. 561, para G; Atayi Farms Ltd. v. N.A.C.B. Ltd. (2003) 4 NWLR (Pt. 810) 427 at pp. 447-448, paras. G-B*** and ***Oluwabukola v. A.-G., Lagos State (2022) 2 NWLR (Pt. 1815) 499 at pp. 578-579, paras. F-D.***

In exercising its discretion, an adjudicating body is enjoined to exercise same judiciously and judicially while taking into consideration all the facts and circumstances of the case before it. In exercising its discretionary powers under section 89(5) of the Administration of Criminal Justice Act, the Magistrate Court, therefore, should have addressed its mind to the facts stated in the Direct Criminal Complaint and reached a decision one way or the other on whether the facts support the allegations contained therein. If the facts disclosed a *prima facie* case of the allegations contained therein, then, the Magistrate Court would be justified in either proceeding to trial immediately or, if it believes the ends of justice would be better served thereby, by referring the complaint to the Police for further investigation. Otherwise, the Magistrate Court would be in order to strike out the complaint. This is more so as section 195 of the Act stipulates that ***"The fact that a charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case."*** The purport of this legal presumption of a Charge is that where on the face of the Charge or, as in this case, Direct Criminal Complaint, the facts do not support the allegations therein, that is, where every legal condition required by law to constitute the offence has not been fulfilled, the Magistrate Court may not issue the criminal summons.

At the risk of being prolix, I have taken the liberty to put the issues in this case in perspective. This is more so considering that the Respondents have contended, while arguing their second Issue, that the application of the Applicants constitutes an abuse of the process of the Court. what I have done, therefore, is to examine the legality of filing a Direct Criminal Complaint in the Magistrate Court and involving the Police in a matter that is obviously a land dispute. In ***Abdullahi v. Gov., Kano State (2014) 16 NWLR (Pt. 1433) 213***, the Court of Appeal per Abadua-Orji JCA cited with approval the Supreme Court case of ***Military Governor of Imo State v. Chief B. A. E. Nwauwa (1997) 2 NWLR (Pt.490) page 675*** where Ogundare, JSC stated the law at ***pp. 697-698 paras. A-A*** thus:

***“The role of the court in the matter such as this, is one of a review and not appellate. I once had the opportunity of restating the law in this respect. In the Governor of Oyo State and Ors v. Folayan (1995) 8 NWLR (Pt.413) 292, 322-323 I said:***

***‘As stated earlier in this judgment, the plaintiff’s case is for a judicial review of the Aboderin Commission, in relation to matters within a public body’s field of judgment the court conducts its review from the body’s stand point and must not intervene solely on the basis that it would itself have acted differently. The following principles are to be borne in mind by a reviewing court:***

***(a)judicial review is not an appeal; (b) the court must not substitute its judgment for that of the public body whose decision is being reviewed; (c) the correct focus is not upon the decision but the manner in which it was reached; (d)***

***what matters is legality and not correctness of the decision and (e) the reviewing court is not concerned with the merits of a target activity.***

***In a judicial review, the court must not stray into the realms of appellate jurisdiction for that would involve the court in a wrongful usurpation of power. See R. v. Secretary of State for the Home Department, Ex parte Brind (1991) 1 AC 696, 727/G. The power of the court as a reviewing tribunal is better clearly stated by Lord Green M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation (1948) 1 KB 223, 234 when the noble Master of the Rolls said:***

***‘The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by action in excess of the powers which parliament has confided in them.’***

***In exercise of his power of judicial review the court has no jurisdiction to substitute its own opinion for that of the public body whose decision is being reviewed for it is not part of the purpose of judicial review 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: Chief Constable of the North Wales Police v. Evans (1982) 1 WLR 1155, 160F per Lord Hailsham. What the court is concerned with is the manner by which the decision***

***being impugned was reached. It is its legality, not its wisdom, that the court has to look into. For the jurisdiction being exercised by the court is not an appellate jurisdiction but rather a supervisory one.” It appears the court below exceeded its jurisdiction in trying to substitute its own views for the views of the Panel. My answer to Question (2) is that the principle of severance applies in this case.”***

I must pause here to condemn the practice whereby persons who have an axe to grind with their fellows resort to filing tepid criminal charges against them with little or no evidence to sustain the charge instead of pursuing the remedies available to them under civil law. The practice of bringing people to Court on a criminal summon with little or no evidence only to have the Court to direct the Police to investigate the allegations on the criminal charge after the persons have been arraigned should be condemned in its entirety and it stands condemned. Such practice runs against the grain of section 36 of the Constitution of the Federal Republic of Nigeria 1999 which guarantees the right to fair hearing of all persons within Nigeria and section 195 of the Administration of Criminal Justice Act, 2015 which provides for legal presumption of a Charge. The Court should not lend its premium judicial time and resources to such litigious busybodies. I therefore find, and so hold, that there is a serious error of law on the face of both the Direct Criminal Complaint and the letter from the Magistrate Court *coram* His Worship Aishatu Auta Ibrahim referring the Direct Criminal Complaint to the Police for investigation as the facts contained in the complaint relate to ownership of land, a subject that is beyond the jurisdiction of the Court. Accordingly, this application satisfies the requirements that must exist before this Honourable Court can assume its supervisory jurisdiction over the Magistrate Court. See

***Nwaogwugwu v. President, F.R.N. (2007) 6 NWLR (Pt. 1030) 237 at Pp. 269, paras. B-C; 271, paras. A-B*** per Adekeye JCA (as he then was) and ***Abdullahi v. Gov., Kano State (2014) supra at p. 246 paras A - F.***

As I wind down this Judgment, I note with dismay and disapprobation the Respondents' intense desperation to ensure that the Applicants are tried on the Direct Criminal Complaint. This Honourable Court made an Order on the 15<sup>th</sup> day of December, 2021 granting the Applicants leave to apply for judicial review. On the 17<sup>th</sup> of December, 2021, this Order was served on the Deputy Inspector-General of Police, Force Investigation Bureau (FIB) to whom the Magistrate Court referred the Direct Criminal Complaint for investigation. See **Exhibit A** attached to the Further Affidavit in opposition to the Respondents' Counter-Affidavit. On the 22<sup>nd</sup> day of December, 2021, this Order was served on the Magistrate Court that referred the complaint to the Police. See **Exhibit B** attached to the Further Affidavit in opposition to the Respondents' Counter-Affidavit.

By virtue of Order 44 Rule 3(6)(a) of the Rules of this Court, an Order for leave to bring an application for judicial review operates as a stay of any proceeding to which the Order relates. For the avoidance of doubt, the said provision states as follows:-

***“If the relief sought is an order of prohibition or certiorari and the court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the court otherwise orders.”***

That the Respondents through the Police have been in contempt of the Order of this Court made on the 15<sup>th</sup> of December, 2021 under the purport of carrying out investigation into the Direct Criminal Complaint is evident



from the exhibits attached to the affidavits before this Court. **Exhibit C** attached to the Further Affidavit in opposition to the Respondents' Counter-Affidavit is a letter of invitation from the Force Intelligence Bureau of the Nigerian Police Force inviting one Macham Grace of Parks and Recreation Department of the Abuja Metropolitan Management Agency to answer certain questions regarding its investigation into the criminal complaint. This letter of invitation is dated the 18<sup>th</sup> of January, 2022. This is one month and one day after the Police had been served with the Order of this Court. This letter was addressed to the Director, Parks and Recreation Department, Abuja Metropolitan Management Agency. This Agency, in turn, despatched **Exhibit D** to the Permanent Secretary, Federal Capital Territory Authority and the Director, Human Resource Management on the 11<sup>th</sup> of April, 2022. This is a dishonor to this Court that has ordered parties to maintain the *status quo ante* pursuant to the provisions of Order 44 Rule 3 (6)(a) of the Rules of this Court. It is unacceptable that parties would continue to take steps that undermine the powers and sanctions of the Court in matters pending before it. This Court will continue to protect, preserve and guard its integrity jealously.

In all, I find the application for judicial review meritorious. Accordingly, all the reliefs sought by the Applicants are hereby granted as follows:-

- 1. THAT the subject of the Direct Criminal Complaint with Charge Number CR/WZ6/06/2021 borders on declaration of title to land as same revolves around the ownership of the property known and described as Plot 1193 Cadastral Zone B19 Katampe Extension, Abuja measuring about 2.5 hectares and therefore outside the jurisdiction of the Magistrate Court.**
  - 2. THAT the directive of the Magistrate Court Zone 6 Wuse coram His Worship Aishatu Auta Ibrahim contained in Exhibit B**
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attached to the affidavit in support of the Originating Motion on Notice, that is, the letter from the Magistrate Court to the Assistant Inspector-General of Police, Police Force Investigation Bureau, dated the 23<sup>rd</sup> September, 2021 directing him to cause an investigation in respect of the Direct Criminal Complaint with Charge Number CR/WZ6/06/2021 instituted by Briscat Resources & Concept Ltd and Figbus N. Bitrus against El-Davido Properties & Engineering Ltd and David Sabo Kante is made without jurisdiction same having been made in violation of the Applicants' right to fair hearing enshrined in section 36 of the Constitution of the Federal Republic of Nigeria 1999.

3. THAT AN ORDER OF CERTIORARI is hereby made quashing the Direct Criminal Complaint with Charge Number CR/WZ6/06/2021 dated and filed on the 22<sup>nd</sup> of September, 2021 and attached as Exhibit A to the affidavit in support of the Originating Motion on Notice.
  4. THAT AN ORDER OF CERTIORARI is hereby made quashing the directive of the Magistrate Court Zone 6 Wuse *coram* His Worship Aishatu Auta Ibrahim contained in Exhibit B attached to the affidavit in support of the Originating Motion on Notice, that is, the letter from the Magistrate Court to the Assistant Inspector-General of Police, Police Force Investigation Bureau, dated the 23<sup>rd</sup> September, 2021 directing him to cause an investigation in respect of the Direct Criminal Complaint instituted by Briscat Resources & Concept Ltd and Figbus N. Bitrus against El-Davido Properties & Engineering Ltd and David Sabo Kante and the proceeding of 22<sup>nd</sup> of September, 2021 wherein the Magistrate Court *coram* His Worship Aishatu
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**Autal Ibrahim made the said directive.**

- 5. AN ORDER OF PROHIBITION IS HEREBY MADE restraining the Respondents from prosecuting the Applicants on the Direct Criminal Complaint with Charge Number CR/WZ6/06/2021 herein quashed.**

This is the Judgment of this Honourable Court delivered today the 20<sup>th</sup> day of September, 2022.

**HON. JUSTICE A. H. MUSA  
JUDGE  
20/09/2022**

**APPEARANCES:  
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**FOR THE DEFENDANTS**

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