

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON THURSDAY, 6TH DAY OF OCTOBER, 2022

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

SUIT NO. FCT/HC/M/5228/2021

BETWEEN

1. MR. JITENDRA MAMTORA
2. MR. SATYEN MAMTORA
3. TRANSFORMERS AND RECTIFIERS
[INDIA] LIMITED



APPLICANTS

AND

1. ISHAQ ANJUM
2. P.NEC NIGERIA LIMITED
3. HON. MUHAMMED S. O.
*[HON. JUDGE, GRADE 1 AREA COURT,
EI-DEI, ABUJA]*



RESPONDENTS

RULING&JUDGMENT

The brief facts that gave rise to this proceeding for judicial review are that on 24/6/2021, Abubakar Yahaya Ndakene Esq. filed a direct criminal complaint on behalf of the 1st& 2nd respondents [as complainants] against the applicants [as defendants] at the Area Court of the Federal Capital Territory [FCT] holden at Dei-Dei, Abuja [the lower court] in *Case No. CR/23/2021*. The offences alleged therein against the applicants are cheating and cheating

person whose interest offender is bound to protect contrary to sections 320, 322 and 323 of the Penal Code. On the same date [24/6/2021], the 3rd respondent [Hon. Muhammed Sulyman Ola], the Hon. Judge of the lower court, issued a summons to the applicants to appear before the court on 15/7/2021. The summons together with the direct criminal complaint are attached to applicants' processes as Exhibit A.

From the record of proceedings before the 3rd respondent [attached as Exhibit B to the applicants' processes], the matter came up on 15/7/2021. The applicants [as defendants] were absent but represented by I. M. Ugwuanyi Esq. The counsel for the defendants informed the court that:

"The defendants are not Nigerians, the process of this court was posted to them and they got it last week, ordinarily they cannot enter the country as of right, they need visa. It is because of the immense respect they have for this court that they approached us to appear in this matter to ask for an adjournment to enable them process their visa and appear personal [sic]. This is a criminal case, the defendants must be in court before we can continue. We apply for reasonable time to enable them process their visa."

In reaction, Yahaya Abubakar Ndakene Esq., counsel for the complainants, stated that from the proof of service in the case file, the 1st & 3rd defendants were served on 29/6/2021 while the 2nd defendant was served on 1/7/2021. After receiving the summons, the defendants did not only fail to attend the court but also failed to commence the process of obtaining their visa. He

urged the court to invoke the provision of section 131 of the Administration of Criminal Justice Act [ACJA], 2015 and issue a warrant of arrest or bench warrant for the arrest and production of the defendants.

The counsel for the defendants requested the court to give the defendants a reasonable time to process their visas. He urged the court to disregard the application for issuance of warrant of arrest or bench warrant and *“give the defendants an opportunity to come after which a bench warrant can be issued.”*

After considering the arguments on both sides, the 3rd respondent relied on section 131 of ACJA, 2015 and ordered as follows: *“I hereby order a bench warrant against the person of Mr. Jitendra Mamtora and Mr. Satyen Mamtora to compel their appearance before this court on 25/08/2021 for mention.”*

Based on the above facts, applicants filed a motion *ex parte* on 19/8/2021 under Order 44 rule 3 of the Rules of this Court, 2018 for leave to apply for orders of certiorari and prohibition in respect of the proceedings and orders of the Grade 1 Area Court Dei-Dei, Abuja presided over by the 3rd respondent in *Case No. CR/23/2021*. On 25/8/2021, the Court granted leave to the applicants as prayed. Pursuant to the said leave, the applicants filed a motion on notice on 27/8/2021 seeking the following prayers:

1. An order of certiorari quashing the proceedings and orders of the Grade 1 Area Court Dei-Dei, Abuja presided over by the 3rd respondent in *Case No.*

CR/23/2021 together with the Direct Criminal Complaint issued and pending before the Honourable Judge for want of jurisdiction.

2. An order of prohibition stopping the 3rd respondent, Grade 1 Area Court Dei-Dei, Abuja from further entertaining and/or hearing *Case No. CR/23/2021* between the 1st & 2nd respondents and the applicants for want of jurisdiction.
3. And for such further or other orders as the Honourable Court may deem fit to make in the circumstance.

The following processes were filed with the motion on notice: [i] statement setting out the names and descriptions of the applicants, the reliefs sought and the grounds upon which the reliefs are sought; [ii] 1st applicant's 17-paragraph affidavit verifying the facts relied on in support of the application and 2 exhibits attached therewith; [iii] the 2nd applicant's 17-paragraph affidavit verifying the facts relied on in support of the application and 2 exhibits attached therewith; [iv] 3rd applicant's 10-paragraph affidavit verifying the facts relied on in support of the application deposited to by the 2nd applicant; and [v] the written address of I. M. Ugwuanyi Esq.

In opposition to the application for judicial review, the 1st respondent filed a counter affidavit of 5 paragraphs on 24/9/2021 for himself and on behalf of the 2nd respondent; attached therewith are 13 exhibits. Abubakar Yahaya Ndakene Esq. filed a written address with the counter affidavit. On 30/11/2021, the 3rd applicant [through the 1st applicant] filed a further affidavit

of 17 paragraphs together with the reply on points of law of I. M. Ugwuanyi Esq.

On 1/3/2022, the 3rd respondent filed a preliminary objection to challenge the jurisdiction of the Court to entertain the suit against him. The grounds of the preliminary objection are:

1. The 3rd respondent/applicant is a Judicial Officer/Judge.
2. The 3rd respondent/applicant is joined in this suit for acts done by him or ordered to be done in the discharge of his judicial duty.
3. The 3rd respondent/applicant is not personal [*sic*] liable for acts done by him or ordered to be done in the discharge of his judicial duty.

Learned counsel for the 3rd respondent, I. G. Haruna Esq., filed a written address along with the preliminary objection. In opposition, learned counsel for the applicants, I. M. Ugwuanyi Esq., filed a written address on 29/3/2021.

At the hearing of the 3rd respondent's preliminary objection and the applicants' application on 7/7/2022, the counsel for the parties adopted their respective processes. The Court will first deliver its ruling on 3rd respondent's preliminary objection. Thereafter, it will deliver the judgment in the applicants' motion for orders of certiorari and prohibition.

RULING ON THE 3RD RESPONDENT'S PRELIMINARY OBJECTION

I have already stated the grounds of the preliminary objection and the processes filed for and against the grant of same.

Submissions of Learned Counsel for the 3rd Respondent:

Learned counsel for the 3rd respondent, I. G. Haruna Esq., formulated one issue for determination, which is whether the 3rd respondent is personally liable for act done or ordered to be done in the discharge of his judicial duty. He argued that the 3rd respondent is immune against any personal civil liability for acts done or ordered to be done in the discharge of his judicial duty as a court and/or judge. He referred to section 5 of the Federal Capital Territory Area Courts [Repeal and Enactment] Act, 2010 which provides:

“An Area Court Judge shall not be personally liable for any act done by him or ordered by him to be done in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he, at the time in good faith, believed himself to have jurisdiction to do or order to be done the act in question.”

Mr. I. G. Haruna cited the case of **Ikonne v. C.O.P. Nnanna Wachukwu [1986] NWLR [Pt. 36] 473** to support the view that a Judge enjoys immunity in the exercise of his judicial functions even if it is proved that he acted maliciously. At common law, persons exercising judicial functions in a court or tribunal are immune from civil liability for anything done. The remedy of the party aggrieved is to appeal to an appellate court or to apply for judicial

review or to take some steps to reverse the effect of the act or omission of such judicial officer. The case of **SBM Serv. [Nig.] Ltd. v. Okon [2004] NWLR [Pt. 879] 529 CA** was cited. He urged the Court to strike out the suit or strike out the name of the 3rd respondent from the suit.

Submissions of Learned Counsel for the 1st & 2nd Respondents:

Abubakar Yahaya Ndakene Esq., learned counsel for the 1st & 2nd respondents, in paragraphs 2.10 to 2.13 of his written address raised the issue of joinder of the 3rd respondent as one of the preliminary questions of law affecting the applicants' processes. His contention is that suing the presiding Judge of the Area Court Grade 1 Dei-Dei, Abuja in his personal name "*rather than in his official name and official capacity*" is contrary to the law. He also referred to section 5 of the FCT Abuja Area Courts [Repeal and Enactment] Act, 2010.

The 1st & 2nd respondents' counsel further argued that joining the learned Area Court Judge in his personal name rather than in his official capacity amounts to an abuse of court process and abuse of the esteemed personality of the Area Court Judge. He referred to Order 44 rule 5[2] of the Rules of the Court, 2018 which provides that where any objection to the conduct of the court is to be made, the process should be served on the court. He submitted that the Rules of the Court do not require that the Judge should be sued in his personal name.

Submissions of Learned Counsel for the Applicants:

Learned counsel for applicants, I. M. Ugwuanyi Esq., stated that the immunity enjoyed by the 3rd respondent as a judicial officer does not extend to judicial review of his proceedings and orders on ground of lack of jurisdiction. The applicants have filed an application to reverse the proceedings and orders made by the 3rd respondent in the exercise of his judicial duties. He relied on **Ndefo v. Obiesie [2000] 15 NWLR [Pt. 692] 820**. Mr. I. M. Ugwuanyi urged the Court to dismiss the application because: [i] the applicants are not seeking any personal damages from the 3rd respondent but a review of his decision in the exercise of his judicial duties; and [ii] the 3rd respondent was joined in his official capacity; not in his private capacity.

Decision of the Court:

In **Ndefo v. Obiesie [supra]; [2000] LPELR-6088 [CA]**, it was held that: *“No matter that the Judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness, he is not liable to an action. The remedy of the party aggrieved is to appeal to a Court of Appeal or to apply for habeas corpus, or a writ of error or certiorari, or take some steps to reverse his ruling”*. Section 5 of the FCT Abuja Area Courts [Repeal and Enactment] Act, 2010 provides that an Area Court Judge *“shall not be personally liable for any act done by him or ordered by him to be done in the discharge of his judicial duty ...”*.

As rightly argued by learned counsel for the applicants, there is no personal claim against the 3rd respondent. The purpose of the suit is to challenge the proceedings before the lower court presided over by the 3rd respondent on

ground of lack of jurisdiction. To show that the 3rd respondent was sued in his official capacity, he was described on the face of the process as the Hon. Judge Grade 1 Area Court Dei-Dei, Abuja. The Court holds the considered opinion that it was proper or necessary for the applicants to join the 3rd respondent in the suit so that the decision of the Court will bind the lower court.

The Court rejects the view of learned counsel for the 1st& 2nd respondents that joining the learned Area Court Judge in his personal name amounts to abuse of court process and abuse of the esteemed personality of the Area Court Judge. Clearly, the presiding Judge of the lower court was joined in his official capacity. Even if the Court upholds the views of both counsel for respondents, the result will be that the name of the 3rd respondent will be struck out and the case will still be competent against the 1st& 2nd respondents. In conclusion, I overrule the 3rd respondent's preliminary objection.

JUDGMENT IN THE APPLICANTS' MOTION FOR JUDICIAL REVIEW

The reliefs sought and the processes filed in respect of the application for judicial review have been set out earlier.

The grounds upon which the orders of certiorari and prohibition are sought are as follows:

- a) The 3rd respondent, Honourable Judge Grade 1 Area Court Dei-Dei, Abuja, acted without jurisdiction when he entertained the Direct Criminal Complaint *No. CR/23/2021* while the Complaint is criminal in nature.
- b) The 3rd respondent, Honourable Judge Grade 1 Area Court Dei-Dei Abuja, acted in excess of his jurisdiction and powers when he assumed jurisdiction over the applicants who are not Muslims and have not consented to the jurisdiction of the court.
- c) The 3rd respondent, Trial Judge Grade 1 Area Court acted in excess of his jurisdiction and powers when he assumed jurisdiction over the applicants that none of them live or do business in the Federal Capital Territory, Abuja.
- d) The 3rd respondent, Trial Judge, Grade 1 Area Court acted in excess of his jurisdiction when he assumed jurisdiction over an alleged offence that none of the ingredients took place in the Federal Capital Territory, Abuja.

At this juncture, let me refer to the affidavit evidence of the parties.

Affidavit Evidence of the Applicants:

In the affidavit of the 1st applicant, he stated that:

1. He is a citizen of India. He lives and does business in the District of Ahmedabad Gujarat India. He is a Hindu by religion and has never been a Muslim. He was served a direct criminal complaint summoning him to appear before Grade 1 Area Court Dei-Dei, Abuja on 15/7/2021 through a courier service. A copy of the said complaint is Exhibit A.
2. He discovered that the direct criminal complaint relates to a civil transaction between the 3rd applicant and the 2nd respondent. The 2nd respondent has already taken the matter before the High Court of the FCT, Abuja, which has not been determined. The transaction between the 3rd applicant and 2nd respondent is devoid of any criminal element.
3. The direct criminal complaint contains allegations of crime against him in person. He is only the chairman of the 3rd applicant, a limited liability company [which is the 3rd defendant in the direct criminal complaint].
4. He cannot enter Nigeria as of right without a visa. Even though the trial court was made aware of the fact that he cannot enter Nigeria without a visa, it went ahead to issue bench warrant against him. A certified true copy of the 3rd respondent's proceeding in the matter is Exhibit B.
5. He was informed by I. M. Ugwuanyi Esq. that: [i] the 3rd respondent has the power to try only Muslims and non-Muslims that consent; [ii] the 3rd respondent neither sought nor obtained his consent to be tried; and [iii] his consent is required to confer power on the 3rd respondent to try him.

The 2nd applicant's affidavit contains the same facts stated by the 1st applicant in his affidavit except that he is the managing director of the 3rd applicant while the 1st applicant stated that he is the chairman of the 1st applicant.

In the affidavit of the 3rd applicant, the 2nd applicant stated as follows:

1. The 3rd applicant is a limited liability company registered in India and doing business of manufacturing power equipment in India. The 2nd respondent is a limited liability company registered in Nigeria though owned by the 1st respondent who is an Indian citizen.
2. Sometime in August 2018, the 1st respondent, acting as the manager of the 2nd respondent, informed the 3rd applicant that there is World Bank tender in Nigeria for the supply of transformers and other power related equipment.
3. The agency agreement, if any, was reached in India where the offer of agency from the 2nd respondent was received. The transaction between the 2nd respondent and the 3rd applicant as it concerns agency is governed by the laws of India.
4. The 2nd respondent has refused to submit the issue of its agency to a court in India for fear of being prosecuted for corrupt practices. The agency transaction between the 3rd applicant and the 2nd respondent is civil and took place outside the Federal Capital Territory, Abuja.

In the 3rd applicant's further affidavit, the 1st applicant stated that:

1. The relationship between the 3rd applicant and the 2nd respondent was to be governed by sales commission agreement which was never executed.
2. The agreement to go into sales commission agreement project by project basis was entered into in India before the applicants came to Nigeria. It is the alleged breach of the purported sales commission agreement that is before the 3rd respondent.

Affidavit Evidence of the 1st & 2nd Respondents:

In the joint counter affidavit of the 1st&2nd respondents, the 1st respondent stated the following facts:

1. Sometime in October 2018, in a bid to expand the businesses of the 3rd applicant in Nigeria, the 3rd applicant [represented by the 2nd applicant] engaged the 2nd respondent [represented by him] via a sales commission agreement to promote the product of the 3rd applicant in Nigeria. The 2nd respondent already had an extensive market network in Nigeria. The sales commission agreement dated 15/10/2018 is Exhibit A.
2. He informed the 1st applicant on 21/2/2019 via email [Exhibit C] of the advertorials of Transmission Company of Nigeria [TCN] for Contract No. ICB-NTP – TR4 LOT 1 and to know if they are interested. He and

the 1st applicant exchanged other emails [Exhibits D1-D4] about the said TCN Contract, which were copied to the 2nd applicant's email address.

3. The applicants indicated interest and told him to purchase the bidding documents and represent the 3rd applicant in all pre-tender processes to bid for the contract up to the award. In paragraph 4[e] & [f] of the counter affidavit, he narrated the roles which he and the 2nd respondent played for and on behalf of the 3rd applicant till the contract was awarded in favour of the 3rd applicant.
4. After the award of the contract, he and the 2nd respondent applied and paid [with their money] for visas for all the representatives of the 3rd applicant, including the 2nd applicant, to come to Nigeria for the signing of the Contract agreement with TCN. The representatives of 3rd applicant came to Nigeria from India.
5. After the arrival of the representatives of the 3rd applicant into Nigeria, he, R. Madhusudhan [i.e. another representative of the 2nd respondent] and the said representatives of 3rd applicant attended the pre-contract technical meeting between TCN and the 3rd applicant held on 23/1/2020 at No. 10 Kunene Close, off Bobo Street, off Gana Street, Maitama, Abuja.
6. The TCN contract agreement dated 31/1/2020 [Exhibit G] was signed in Nigeria by the 2nd applicant on behalf of the 3rd applicant. Clause GCC

9.1 of the Contract stated that the governing law shall be the laws of the Federal Republic of Nigeria.

7. After the contract was signed, applicants failed or neglected to disclose the status and commission of the 2nd respondent and himself as required under the Contract. The applicants also refused to pay the 2nd respondent and himself their commission in spite of all efforts. They had to seek redress from the court in both civil and criminal claims against the applicants.
8. The suit before the FCT High Court involves civil claims for monies due them while the case before the Area Court is a criminal case for the offences of cheating and cheating persons whose interest offender is bound to protect.
9. The 1st& 2nd applicants who are respectively the chairman and managing director of the 3rd applicant are fully involved in the TCN Contract as they have exchanged several emails with him in respect of the contract.
10. He is a citizen of Pakistan; the data page of his international passport is Exhibit J. The sales commission agreement was made in Nigeria. He signed the said agreement on behalf of the 2nd respondent in Nigeria and sent it via email to the applicants for their signature.

11. There is nowhere in the TCN Contract agreement, sales commission agreement or any other correspondence that the laws of India will apply or courts of India will hear any dispute arising from the relationship of the applicants on one hand and he and the 2nd respondent on the other.

12. He was informed by Abubakar Yahaya Ndakene Esq. [their counsel] that: [i] consent is required for trials of non-Muslims only in civil causes or Islamic personal matters before an Area Court, but not in criminal trials; and [ii] the warrant establishing the Area Court Grade 1 Dei-Dei, Abuja confers criminal jurisdiction on it.

Preliminary Questions of Law Raised by the 1st & 2nd Respondents' Counsel:

From pages 11-17 of his written address, learned counsel for the 1st & 2nd respondents raised some preliminary questions of law on the applicants' processes. I have already resolved the first question of law, which is the propriety of joining the 3rd respondent in this suit. The other two issues raised are that: [i] the motion on notice was filed without a supporting affidavit; and [ii] the application was filed without complying with a condition precedent. These two questions will be considered in turn.

A. The motion on notice was filed without a supporting affidavit:

Learned counsel for 1st & 2nd respondents argued that the applicants' affidavits "*verifying the facts relied on in support of the application*" are not the

same as the affidavit in support of the motion. The applicants only filed three affidavits verifying facts relied upon and none to support the motion on notice. He relied on the case of **Jauro & Ors. v. Hon. Commissioner, Ministry of Land & Survey, Adamawa State [2013] LPELR-20849 [CA]** where it was held that under Order 43 rule 3[2] of the Gongola State High Court [Civil Procedure] Rules 1987, there must be affidavit in support of the *ex parte* motion as well as affidavit of verification of facts of the case. Also, in motion on notice, affidavit in support as well as affidavit to verify facts must be filed.

Mr. Abubakar Yahaya Ndakene relied on the case of **C.C.B. Plc. v. Master Piece Chemicals Ltd. [2001] FWLR [Pt. 39] 1413** to support the principle that any motion not supported by an affidavit is incurably incompetent. It was contended that from the processes filed, the applicants merely did what they have already done during the *ex parte* application for leave. There is no valid motion on notice as specified in Order 44 rule 5 of the Rules of the Court, 2018. He concluded that the Court cannot adjudicate on this matter as presently constituted because rules of the Court must be obeyed.

On the other hand, the applicants' counsel argued that it is not provided in Order 44 rule 3[2] of the Rules of the Court, 2018 that there should be a separate verifying affidavit and another affidavit in support of the motion. A verifying affidavit verifies the facts contained in the statement. The fact that the verifying affidavit contains additional facts in support of the application does not make it defective. The applicants captioned the supporting affidavits

in broad terms to accommodate the facts verifying the statement and also the facts supporting the motion on notice. He postulated that there is no “*iron cast provision*” that those facts must be in a separate affidavit.

Mr. I. M. Ugwuanyi relied on the decision of the Supreme Court in the case of **NCC v. Motophone Ltd. & Anor. [2019] LPELR-47401 [SC]** to support the view that in an application for judicial review, the name “*verifying*” and “*supporting*” affidavit is a matter of nomenclature and does not distort the substance and intent. He reasoned that what the Court needs to find out is whether there is enough fact in the relevant verifying or supporting affidavit.

Now, Order 44 rule 3[2] of the Rules of this Court, 2018 provides:

An application for leave shall be made ex parte to the court and shall be supported by:

- a) A statement setting out the name and description of the applicant, the reliefs and the grounds on which they are sought;*
- b) An affidavit verifying the facts relied on; and*
- c) A written address in support of application for leave.*

The provision of Order 44 rule 5[1] thereof reads:

“Where leave has been granted and the court directs, the application may be made by motion or by originating summons.”

It seems to me that the provisions of Order 44 rules 3[2] & 5[1] of the Rules of the Court, 2018 are clear. I was not privileged to read the provisions of Order 43 rule 3[2] of the Gongola State High Court [Civil Procedure] Rules, 1987 applied in the case of **Jauro & Ors. v. Hon. Commissioner, Ministry of Land & Survey, Adamawa State [supra]** as it was not reproduced or quoted in the Judgment. It is therefore not certain whether the said provisions are similar to Order 44 rules 3[2] & 5[1] of the Rules of the Court, 2018 for the decision in that case to apply to the instant case.

My humble view is that Order 44 rule 5[1] of the Rules of this Court did not stipulate that an applicant for judicial review shall file two affidavits i.e. an affidavit verifying the facts relied on and an affidavit in support of the motion on notice.

I also hold the considered view that the decision in **NCC v. Motophone Ltd. & Anor. [supra]** is applicable to this case. In that case, the apex Court referred to the provisions of Order 47 rule 3[1] & [2] of the Federal High Court [Civil Procedure] Rules, 2000, which are similar to Order 44 rule 3[1] & [2] of the Rules of this Court, 2018. It was held *at pages 14-16* of the Report that the proceeding under the said provisions:

“is a genre of proceeding that is fought on affidavit evidence and because verifying affidavit evidence is used, it cannot be said that there was fundamental defect in the process. The name verifying and supporting affidavit

is a matter of nomenclature and the adjectival use of "supporting" and "verifying" does not garble or distort its substance and intent. All that matters is that it is a proceeding fought by affidavit evidence.

... The verifying affidavit is the statutory and procedural document to be filed and attached to the Originating Motion and qualified as affidavit evidence and all other documents attached thereto cannot render it defective."

Based on the above decision of the Supreme Court, I hold that the filing of three affidavits by the applicants "*verifying the facts relied on in support of the application*" is proper and cannot render the application defective. No doubt, the affidavits contain facts to support the application. This question is hereby resolved against the 1st& 2nd respondents.

B. Application was filed without complying with a condition precedent:

In paragraphs 2.14 to 2.23 of his written address, the 1st& 2nd respondents' counsel referred to sections 31 to 40 [i.e. Part VII] of the FCT Abuja Area Courts [Repeal and Enactment] Act, 2010, which provide for control of Area Courts. Section 33 provides for the appointment of Inspectors of Area Courts while section 36 provides for the supervisory powers of Inspectors. Section 36[1] of the said Act provides that: "*An inspector shall have power, at any stage of the proceedings before final judgment, either of his own motion or on the application of a party to a cause or matter before an Area Court, by order, to stay the hearing of the cause or matter on terms as the inspector may consider just.*"

Abubakar Yahaya Ndakene Esq. submitted that by filing this application without first applying to the Inspector of Area Court “to determine whether to stay proceedings and refer the case to the High Court if it finds that there is miscarriage of justice or a transfer to a Magistrate court or any other order the Inspector may deem fit to make”, the applicants did not fulfil the condition precedent for bringing the application before this Court. Counsel also referred to the powers of the Inspector of Area Courts under sections 36, 37 & 38 of the said Act and further submitted that:

“ ... it is the Inspector of Area Courts that refers cases bothering on lack of jurisdiction of Area Court in criminal matters to the High Court, being the court to which appeal will lie after judgment of the Area Courts in criminal cases.

The High Court may now make orders for quashing, reversal of orders, confirmation, setting aside decisions, rehearing and many other orders as it may deem fit.”

The 1st& 2nd respondents’ counsel cited the case of **Tsokwa Motors [Nig.] Ltd. v. UBA Plc. [2008] LPELR-3266 [SC]** to support the principle that a court can only be competent if all the conditions precedent to its jurisdiction were fulfilled. He submitted that it is only after exhausting this procedure under the said provisions of the FCT Abuja Area Courts [Repeal and Enactment] Act, 2010 and the Inspector of Area Courts returns the case back to the same Area Court that the applicants would have fulfilled the condition precedent for the presentation of this application for judicial review.

On the other hand, the submission of learned counsel for the applicants in his reply on points of law is that Order 44 of the Rules of the Court, 2018 did not make provision for any condition precedent for the application for judicial review.

It is correct that Inspectors have supervisory powers over Area Courts under Part VII of the said Act. However, I agree with the applicants' counsel that the said Act and Order 44 of the Rules of this Court, 2018 did not make provision for any condition precedent before the filing of an application for orders of certiorari and prohibition. In other words, there is no requirement for the applicants to make an application to the Inspector of Area Courts before filing the present application. I resolve this question against the 1st & 2nd respondents.

Issues for Determination in the Applicants' Application:

In his written address, learned counsel for the applicants formulated three issues for the Court's determination, to wit:

1. Whether the 3rd respondent, Grade 1 Area Court Dei-Dei, Abuja, has the jurisdiction to try the offences alleged against the applicants same being criminal in nature.
2. Whether the 3rd respondent, Grade 1 Area Court Dei-Dei, Abuja, has the jurisdiction to try the offences alleged against the applicants, the

applicants not being Muslims and having not consented to the exercise of the jurisdiction of the Grade 1 Area Court Dei-Dei, Abuja.

3. Whether the institution of the direct criminal complaint by the 1st and 2nd respondents at the Grade 1 Area Court Dei-Dei, Abuja against the applicants amounts to forum shopping in view of the facts that the alleged offences took place outside the Federal Capital Territory, Abuja and the applicants herein are Hindu by religion and resident in the District of Ahmedabad India.

Learned counsel for 1st& 2nd respondents posed one issue for determination, which is:

Whether the trial Area Court Grade 1 of Dei-Dei Abuja does not have criminal jurisdiction to try the applicants for the offences alleged, the applicants not being Muslims and given that the alleged offences are claimed by the applicants to have been committed outside the Federal Capital Territory Abuja, and the applicants being resident in the District of Ahmadabad in India.

From the reliefs sought, the grounds for the reliefs and the submissions of both learned counsel, the Court is of the considered view that there are four issues for resolution, which are:

1. Whether the Grade 1 Area Court De-Dei, Abuja presided over by the 3rd respondent has jurisdiction to entertain criminal cases.

2. Whether the fact that 1st& 2nd applicants are non-Muslims constitutes a ground for the grant of orders of certiorari and prohibition in respect of the direct criminal complaint with *Case No. CR/23/2021*.
3. Whether any of the elements of the offences alleged in the direct criminal complaint filed by the 1st& 2nd respondents at the Grade 1 Area Court De-Dei, Abuja presided over by the 3rd respondent occurred within the territorial limits or jurisdiction of the said court.
4. If the answer to Issue 3 above is not in the affirmative, whether the said Grade 1 Area Court has jurisdiction to entertain the said direct criminal complaint.

Issue 1

Whether the Grade 1 Area Court De-Dei, Abuja presided over by the 3rd respondent has jurisdiction to entertain criminal cases.

Submissions of Learned Counsel for the Applicants:

Learned counsel for the applicants, I. M. Ugwuanyi Esq., relied on the case of **N.I.D.B. v. Advance Beverages Industries Ltd. [2005] 19 NWLR [Pt. 959] 1** to support the principle that for inferior courts, nothing shall be intended to be within their jurisdiction but that which is expressly stated; while for superior courts of record, nothing shall be intended to be out of their

jurisdiction but that which specifically and clearly appears to be from the wording of the statutes creating them.

Mr. I. M. Ugwuanyi Esq. referred to the FCT Abuja Area Courts [Repeal and Enactment] Act, 2010 which created the Area Courts in the FCT, Abuja. He argued that the Area Court Act of 2006, which was repealed in 2010, provided for criminal jurisdiction of Area Courts by virtue of sections 18, 19 & 22 thereof. He submitted that unlike the repealed Area Court Act of 2006, the 2010 Act removed the criminal jurisdiction of the Area Courts as section 13 [similar to section 18 of the repealed Act] expunged all references to criminal causes.

In paragraph 4.4 of his written address, I. M. Ugwuanyi Esq. relied on the unreported decisions of my Learned Brothers [i.e. *Hon. Justice Suleiman B. Belgore*, *Hon. Justice Chizoba N. Oji* and *Hon. Justice Modupe Osho-Adebiyi*] to support his contention that Area Courts in the FCT, Abuja have no criminal jurisdiction by virtue of the 2010 Act.

Submissions of Learned Counsel for the 1st & 2nd Respondents:

Learned counsel for the 1st & 2nd respondents posited that the position of the law is that provisions of legislations or statutes are construed holistically in order to garner or reach at the intention of the legislature. He referred to **Mobil Producing Nigeria Unlimited v. FIRS [2021] LPELR-53436 [CA]**, and other cases. Mr. Abubakar Yahaya Ndakene referred to several

provisions of the FCT Abuja Area Courts [Repeal and Enactment] Act, 2010 including sections 8[2] & [3], 10[1], 13, 38, 39 and 51 to support his position that the Area Courts in FCT, Abuja have jurisdiction to entertain criminal cases. At pages 32 & 33 of his written address, the 1st& 2nd respondents' counsel referred to decisions of my Learned Brothers [i.e. *Hon. Justice K. N. Ogbonnaya, Hon. Justice S. U. Bature and Hon. Justice Edward Okpe*] to support his submission.

Decision of the Court:

As rightly stated by Mr. Ndakene, one of the rules of interpretation of statutes is that the provisions of a legislation are to be construed holistically[or as a whole] in order to reach or arrive at the intention of the legislature. See **Oyeniya & Ors. v. Bukoye & Ors. [2013] LPELR-22087 [CA]** and **Mobil Producing Nigeria Unlimited v. FIRS [supra]**. I will consider or evaluate the provisions of the FCT Abuja Area Courts [Repeal and Enactment] Act, 2010 referred to by both learned counsel in order to resolve this rather vexed or thorny issue on which there is divergence of views.

Section 8[1], [2] & [3] of the Act:

Section 8[1] of the Act provides that such bailiffs or messengers as may be required shall be appointed to every Area Court. Section 8[2][a]-[d] provide for the functions of such bailiffs and messengers, which include to “*effect the*

service and execution of all writs and other process which he may receive from the Area Court to which he is attached”.

Section 8[3] thereof provides:

“An Area Court may authorize a police officer to perform all or any of the duties mentioned in sub-section [2] of this section in so far as they relate to the criminal jurisdiction of the court and any police officer who is in possession of any criminal process shall be presumed to be authorized to execute such process unless the contrary is proved.” [Underlining supplied for emphasis].

Learned counsel for the 1st& 2nd respondents asked why the Act would permit the police officer to perform duties in relation to criminal jurisdiction of the Area Court if the Act had removed criminal jurisdiction from the court and why the court would issue a criminal process if it does not have jurisdiction to try criminal cases. I agree with the reasoning of the counsel for the 1st& 2nd respondents. I hold that the provision of section 8[3] of the Act shows that the Area Courts have jurisdiction to hear criminal cases.

Sections 10[1] and 51 of the Act:

Section 10[1] of the Act provides:

“Subject to the provisions of this Act and of any other written law, any person may institute and prosecute any cause or matter in an Area Court.”

Section 51 thereof, which is the Interpretation Section, defines “*cause*” to include “*any action, suit or other original proceeding between a plaintiff and a defendant and also any criminal proceeding.*”

Learned counsel for the 1st& 2nd respondents submitted that: “*If the Act had not intended criminal jurisdiction for the Area Court, it would not have couched section 10 as it did and neither would it have interpreted “cause” to include criminal proceedings.*” I agree. As I said earlier, section 10[1] cannot be read in isolation; it must be read with other provisions in order to know the intention of the Legislature. I hold that by virtue of sections 10[1] and 51 of the FCT Abuja Area Courts [Repeal and Enactment] Act, 2010, the Area Courts in FCT, Abuja have jurisdiction to entertain criminal causes and matter.

Section 13 of the Act:

Section 13 of the Act reads:

An Area Court shall have jurisdiction and power to the extent set out in the warrant establishing it, and subject to the provisions of this Act and of the Civil Procedure Code, in all civil causes in which all the parties are subject to the jurisdiction of the Area Court.

As I said before, the view of the applicants’ counsel is that section 13 of the Act made provision for the civil jurisdiction of the Area Courts only but did not confer jurisdiction in criminal cases on the Area Courts.

The viewpoint of the counsel for the 1st& 2nd respondents is that section 13 of the Act has two legs. From the first leg of the section, the jurisdiction and power of the Area Court are primarily to be determined *“to the extent set out in the warrant establishing it”*. The use of the words *“in all civil causes”* in the said section applies to the second leg, which focused on how the civil jurisdiction of the Area Court is to be exercised.

Abubakar Yahaya Ndakene Esq. submitted that the warrant establishing the Area Court Dei-Dei, Abuja under the hand of the Chief Judge of FCT, Abuja gives criminal jurisdiction to the Area Courts. Counsel urged the Court to take judicial notice of the said warrant, pointing out that the warrant is capable of verification by the Court by calling for a copy from the Chief Registrar of the Court.

Now, from the clear words of section 13 of the Act, an Area Court *“shall have jurisdiction and power to the extent set out in the warrant establishing it”*. In the course of writing this judgment, I was privileged to see the warrant issued on 10/5/2001 by *His Lordship, Hon. Justice M. D. Saleh*, the Hon. Chief Judge of FCT at that time by which the Area Court Grade 1 Dei-Dei, Abuja was established with effect from 11/5/2001. By the said warrant, the court *“shall exercise its jurisdiction within the area and to extent herein specified ...”* The warrant then specified the jurisdiction of the Area Court De-Dei, Abuja thus:

“The Court shall exercise the jurisdiction conferred upon it by or under the Area Courts Edict, 1967 –

[a] within the area of BWARI AREA COUNCIL, FCT – ABUJA.

[b] in civil and criminal proceedings – [i] all civil matters including claims not exceeding N50,000.00;

[ii] C.P.C. Appendix ‘A’ Column 7”.

It seems to me that the said warrant settles the issue under focus. I agree with learned counsel for the 1st & 2nd respondents that Grade 1 Area Court, Dei-Dei, Abuja has jurisdiction to entertain criminal cases.

Sections 38 and 39 of the Act:

I have earlier referred to the provisions of Part VII of the Act in respect of appointment of Inspectors of Area Courts and their powers. Section 38[3] of the Act provides that the court to which an Inspector reports a case before an Area Court may, *inter alia*, set aside the judgment of the lower court and,

“when it considers it desirable, order the case to be reheard either by the same court or any other Area Court of competent jurisdiction or by any Magistrate Court, District Court or Customary Court, or if the case is one that appears proper to be heard by the High Court, report the case to the Sharia Court of Appeal.”

Section 39 of the Act provides:

“Where proceedings are quashed and an order for rehearing is made under the provisions of this Part, no plea of res judicata or autre fois convict shall be entertained in respect of the proceedings in any subsequent proceedings.”

Learned counsel for the 1st& 2nd respondents submitted that: *“It is elementary that the plea of res judicata is only applicable in a civil cause while that of autre fois convict can only arise in a criminal proceeding. If the Act truly took away criminal jurisdiction, there would be no basis for reference to and giving guidance on when the plea of autre fois convict would not apply in such proceedings before the Area Court.”*

I agree with the reasoning and submission of Abubakar Yahaya Ndakene Esq. and hold that reference to the plea of *autre fois convict* supports the view that the Area Courts in FCT have jurisdiction to entertain criminal cases.

Having considered and evaluated the provisions aforesaid, the decision of the Court is that the Grade 1 Area Court Dei-Dei presided over by the 3rd respondent has jurisdiction to entertain criminal cases.

Issue 2

Whether the fact that 1st& 2nd applicants are non-Muslims constitutes a ground for the grant of orders of certiorari and prohibition in respect of the direct criminal complaint with Case No. CR/23/2021.

Submissions of Learned Counsel for the Applicants:

The standpoint of learned counsel for the applicants is that assuming that Area Courts in the FCT, Abuja have criminal jurisdiction, the FCT Abuja Area Courts [Repeal and Enactment] Act, 2010 provided for both subject matter jurisdiction and party jurisdiction. He referred to section 11[1] of the Act, which provides:

“Subject to the provisions of this Act and of any other written law, the following persons shall be subject to the jurisdiction of Area Court –

[a] any person who is a Muslim;

[b] any other person in a cause or matter who consents to the exercise of the jurisdiction of the Area Court.”

Mr. I. M. Ugwuanyi argued that the Area Court will only have jurisdiction over non-Muslims who consent to the exercise of its jurisdiction. It was submitted that the applicants deposed that they are not Muslims and that their consent was not obtained by the Area Court. The record of proceedings of the lower court [Exhibit B] shows that the consent of the applicants was not sought or obtained before the court assumed jurisdiction in the case and made orders. Counsel concluded that the lower court acted in excess of its jurisdiction when it entertained the direct criminal complaint against the applicants.

Submissions of Learned Counsel for the 1st & 2nd Respondents:

For his part, the 1st& 2nd respondents' counsel posited that section 11 of the said Act stipulates that the section is "*subject to the provisions of this Act and of any other written law*". He argued that under the ACJA, 2015, which is one of such other written laws, religious status is not relevant to the exercise of criminal jurisdiction by the Area Court just like any other court with criminal jurisdiction in the country.

Decision of the Court:

Section 11[1] of the FCT Abuja Area Courts [Repeal and Enactment] Act 2010, which provides for persons who are subject to the jurisdiction of the Area Courts, is clear and unambiguous. The 1st&2nd applicants who are non-Muslims are required to consent to the exercise of the jurisdiction of the Area Court. However, it seems to me that the 1st& 2nd applicants can only give consent or decline to give consent to be tried by the lower court when they appear before the court. Since they did not appear before the lower court, I hold the view that the contention of the applicants' counsel in this regard is premature.

Assuming it is correct that the lower court has no jurisdiction to entertain the direct criminal complaint against the 1st& 2nd applicants because they did not consent to be tried by the said court, can this be a valid ground for the Court to grant the orders of certiorari and prohibition in respect of the direct criminal complaint with *Case No. CR/23/2021*? The provisions of section 12[1],

[2] & [3] of the FCT Abuja Area Courts [Repeal and Enactment] Act, 2010 are instructive in answering this question. They read:

[1] Where at any stage of the proceedings before final judgment in any cause or matter in an Area Court a person alleges that he is not subject to the jurisdiction of Area Court, the proceedings shall, on the application of that person to the High Court be transferred to the High Court, which shall inquire into and determine the truth of the person's allegation.

[2] Upon such determination as mentioned in subsection [1], the High Court shall make such order for the trial of the proceedings in the High Court, Magistrate Court, District Court, Area Court or Customary Court as the circumstances of the case may seem just.

[3] The applicant shall give notice to the Area Court of the application made by him under sub-section [1] of this section and the application shall operate as a stay of proceedings in the Area Court until the High Court has made an order under sub-section [2] of this section.

It is clear from the above provisions that the proper step to be taken by a person in any cause or matter before the Area Court who alleges that he is not subject to the jurisdiction of the court- like the applicants in this case- is to apply to the High Court for the transfer of the proceedings for determination of the truth of the person's allegation by the High Court. Upon a determination of that issue, the High Court shall make such order for the trial

of the proceedings in any of the courts mentioned in sub-section [2] of section 12 of the Act as the circumstances of the case may seem just.

In the light of the provisions of section 12[1], [2] & [3] of the FCT Abuja Area Courts [Repeal and Enactment] Act, 2010, I hold that the fact that the 1st& 2nd applicants are not Muslims does not constitute a valid ground for the Court to grant the orders of certiorari and prohibition in respect of the direct criminal complaint with *Case No. CR/23/2021*.

Issues 3 & 4 [determined together]

Whether any of the elements of the offences alleged in the direct criminal complaint filed by the 1st & 2nd respondents at the Grade 1 Area Court De-Dei, Abuja presided over by the 3rd respondent occurred within the territorial limits or jurisdiction of the said court; AND

If the answer to Issue 3 above is not in the affirmative, whether the said Grade 1 Area Court has jurisdiction to entertain the said direct criminal complaint.

Submissions of Learned Counsel for the Applicants:

The applicants' counsel referred to the direct criminal complaint and argued that from the complaint of the 1st & 2nd respondents: [i] the applicants were not physically present in Nigeria during the time the alleged sales commission agreement was entered into; [ii] the alleged sales commission

agreement is in connection with the supply of power equipment to Ojo Stores, Lagos; [iii] the breach of agreement regarding unloading as alleged was to be done in Lagos; and [iv] the alleged refusal by the applicants to pay commission to the 1st& 2nd respondents took place in India.

Mr. Ugwuanyi submitted that there is no element of the alleged offences that took place within the FCT, Abuja so as to confer jurisdiction on Grade 1 Area Court, Dei-Dei, Abuja. Counsel relied on the case of **Economic and Financial Crimes Commission & 3 Ors. v. Philip Odigie [2013] All FWLR [Pt. 692] 1797** to support the view that a court can only assume jurisdiction over a matter where the cause of action arose within its territorial jurisdiction. He concluded that the institution of the said complaint before the 3rd respondent amounts to “*forum shopping*”.

Submissions of Learned Counsel for the 1st& 2nd Respondents:

The 1st& 2nd respondents’ counsel posited that the transaction in which the applicants cheated the 1st& 2nd respondents is presently being carried out in Nigeria within the FCT by the applicants for TCN [Transmission Company of Nigeria] as the applicants are selling their transformers to the Government of the Federal Republic of Nigeria. The applicants physically came to Nigeria to perfect the offshoot of the TCN Contract agreement. A defendant cannot decide the forum for his trial and cannot allege lack of jurisdiction to warrant an

order of certiorari or prohibition without cogent reasons presented to the court.

Abubakar Yahaya Ndakene Esq. submitted that territorial jurisdiction of a court can be determined, *inter alia*, by the place where the contract is made or where the contract is to be performed. He referred to the case of **Arjay Ltd. & Ors. v. A.M.S. Ltd. [2003] LPELR-555 [SC]** in support. He stressed that TCN Contract was made in Nigeria, Nigeria is the place where the transformers will be delivered and installed, and the applicants are executing the contract in Nigeria till date. He further submitted that the applicants' place of residence does not bar their prosecution in Nigeria.

Decision of the Court:

I have earlier referred to the warrant which established the lower court, which specified the area or territorial limit within which it has jurisdiction i.e. *"within the area of Bwari AREA COUNCIL."* Therefore, I am of the humble opinion that for the lower court to have jurisdiction to entertain the said direct criminal complaint, it must be shown that any of the elements of the alleged offences occurred within the area of Bwari Area Council.

In the said direct criminal complaint attached to the applicants' processes as Exhibit A, the only mention of FCT, Abuja is in paragraph 8 where it was stated that Madhu R. Sudhan, a staff of the 2nd complainant [i.e. the 2nd respondent herein], attended the Bid opening for the TCN Contract on behalf

of the defendants [i.e. the applicants herein], which was held at No. 10 Kunene Close, off Bobo Street, off Gana Street, Maitama, Abuja.

Assuming the fact that the 2nd respondent's representative attended the Bid opening for the TCN Contract in Maitama, Abuja constitutes an element of the alleged offences, there is nothing in the direct criminal complaint - or in the 1st& 2nd respondents' counter affidavit - to show that any of the elements occurred within Bwari Area Council, being the area within which the lower court has territorial jurisdiction in both civil and criminal cases by virtue of the warrant that established it. Although it seems obvious, it must be noted for emphasis that Maitama is not within Bwari Area Council.

In the light of the foregoing, one wonders why the counsel for the 1st& 2nd respondents chose to file the direct criminal complaint in the Grade 1 Area Court Dei-Dei, Abuja. One also wonders the basis upon which the lower court assumed jurisdiction to entertain the direct criminal complaint when it issued the summons to the defendants [the applicants herein] on 24/6/2021 and made the order for bench warrant on 15/7/2021.

The decision of the Court on Issues 3 & 4 is that none of the elements of the offences alleged in the said direct criminal complaint occurred within the territorial limits or jurisdiction of the Grade 1 Area Court, Dei-Dei, Abuja. Therefore, the lower court presided over by the 3rd respondent did not have territorial jurisdiction to entertain the said direct criminal complaint.

Conclusion:

The decision of the Court is that since the Grade 1 Area Court, Dei-Dei, Abuja presided over by the 3rd respondent did not have territorial jurisdiction to entertain the direct criminal complaint with *Case No. CR/23/2021*, this is an appropriate case for this Court to issue the orders of certiorari and prohibition as prayed by the applicants. The suit has merit and I make these orders:

1. An order of certiorari quashing the proceedings and orders of the Grade 1 Area Court Dei-Dei, Abuja presided over by the 3rd respondent in *Case No. CR/23/2021* togetherwith the direct criminal complaint issued and pending before the said court for want of jurisdiction.
2. An order of prohibition stopping the Grade 1 Area Court Dei-Dei, Abuja presided over by the 3rd respondent from further entertaining and/or hearing *Case No. CR/23/2021* between 1st& 2nd respondents [as complainants] and the applicants [as defendants] for want of jurisdiction.

The parties shall bear their costs.

**HON. JUSTICE S. C. ORIJI
[JUDGE]**

Appearance of Counsel:

1. Joseph Ugwoke Esq. for the applicants; holding the brief of I. M. Ugwuanyi Esq.
2. Abubakar Yahaya Ndakene Esq. for the 1st& 2nd respondents; with Fatima M. Mohammad Esq.
3. D. V. Olajubu Esq. for the 3rd respondent.