

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT GARKI, ABUJA - FCT**

**CLERK: CHARITY ONUZULIKE  
COURT NO. 10**

**SUIT NO: FCT/HC/CV/927/20  
DATE: 15/5/2023**

**BETWEEN:**

**JONATHAN OGUBUIKE.....PLAINTIFF**

**AND:**

- |  |   |                    |
|--|---|--------------------|
| <ol style="list-style-type: none"><li>1. SALIHU IBRAHIM SALIHU</li><li>2. COMMISSIONER OF POLICE FCT</li></ol> | } | <b>RESPONDENTS</b> |
|--|---|--------------------|

**JUDGMENT**

**(DELIVERED BY HON. JUSTICE SULEIMAN B. BELGORE)**

The Applicant Ogbuiké Jonathan filed a Motion on Notice M/927/2020 pursuant to **Order 44 Rule 1 (1) (a) (2) and 5(1) of the High Court of FCT Abuja (civil procedure) Rules 2018, section 36 (ii) of the 1999 Constitution (as amended)** Federal Republic of Nigeria and under the inherent jurisdiction of the Honourable Court.

In support of the application is an affidavit of 32 paragraphs deposed to by the Applicant, Ogbuiké Jonathan. And attached in support are 5 exhibits. The Exhibits are:

**Exhibit 'A':** A copy of sale agreement

**Exhibit 'B':** A copy of Photograph showing Military sign post

**Exhibit ‘C’:** FIR

**Exhibit ‘D’:** A copy of Record of Proceeding before 1<sup>st</sup> Respondent

**Exhibit ‘E’:** A copy of Applicant’s No case submission

The facts leading to this suit runs thus:

Sometime in 2000, by a sale Agreement of land, Rev. Gambo Daudu of Mpape village transferred his possession and ownership of his parcel of land located at shinshinpe Mpape Village FCT Abuja to the Applicant. The Applicant developed the land for residential purpose, and sometime in 2006, the building was demolished in error by a private person – Nwora with intent to build an estate in the area. That after the demolition, the land was left fallow by the Applicant until sometime in April 2018.

The applicant continued to retain equitable possession and interest/title to the land until sometime in April 2018 when the Applicant discovered a military sign post erected on the land and it happened that one Aisha Peter was the one who erected the military sign post claiming ownership of the land having purchased same and in another breadth, she alleged that the land belongs to one major Gambo for whom she is his caretaker to the land in issue and proceeded to erect a military sign post on the land.

On the 22<sup>nd</sup> of April 2018 Aisha made a report at the Mpape Police Station against the Applicant for trespass while she is the actual trespasser. The Applicant was arrested and charged for criminal trespass to land as indicated in the FIR before Area Court grade I presided over by the 1<sup>st</sup> respondent.

At the trial, all the witnesses of the 2<sup>nd</sup> Respondent testified principally on ownership of the land in favour of Aisha Peter but no single title document of any sort was produced and tendered in evidence in support of the prosecution in order to establish whether equitable or legal title/interest to the land in issue. Yet, the said Aisha Peter trespassed into the land and erected a military personnel/officer.

What propelled the entire scenario of report and arrest over civil matter by the 2<sup>nd</sup> respondent and the unjustifiable trial for criminal trespass before the 1<sup>st</sup> Respondent was when the Applicant tried to inquire about the military sign post erected on the land from Aisha Peter, she was irked, triggered by the contention of the ownership of the land and the Applicant's demand for the removal of the sign post. The said trial for criminal trespass is patently orchestrated and programmed as carry van or conduit to jail the Applicant over a civil matter of ownership, title/interest to land and hand over the land to Aisha Peter as she openly boasted at the Mpape Police Station to the face of the Applicant.

The grievances of the Applicant is that the brag and open boast of Aisha is becoming a reality by the following events/complaints.

The 1<sup>st</sup> Respondent lacks criminal jurisdiction over criminal trespass to land. But he proceeded to assume jurisdiction not in error of law or facts but in obvious bias and partiality which can be gleaned/seen from his ruling on Applicant's no case submission versus his ruling in the rejection of Applicant's sale Agreement in respect of the land in issue produced and tendered in evidence by DW1 Zephaniah Gambo, a witness to the document and son of Rev. Gambo Daudu (Vendor).

The applicant is facing persecution over civil matter.

As a result, the applicant approached this Court asking for the following reliefs:

1. AN ORDER of Certiorari setting aside/quashing the first information report (FIR) dated 23<sup>rd</sup> of April, 2018, charge, proceedings, ruling(s) made, initiated, commenced and/or delivered in case No. CR/67/2018 pending before the Area Court Grade 1 Presided over by the 1<sup>st</sup> Respondent.
2. A DECLARATION that the 1<sup>st</sup> Respondent setting as Area Court grade 1 Mpape FCT Abuja lacks the powers and jurisdiction ab initio to hear or further hear case No. CR/67/2018 for criminal trespass to land.
3. AN ORDER directing the 1<sup>st</sup> Respondent to withdraw and/or disqualify himself from the hearing/trial or further hearing/trial of the Applicant in case No. CR/67/2018 pending before him forthwith.
4. AN ORDER directing the 1<sup>st</sup> Respondent to abate or discontinue the hearing/trial or further hearing/trial of the Applicant in case No: CR/67/2018 pending before him forthwith.
5. AN ORDER prohibiting the 2<sup>nd</sup> Respondent, his officers and men from arresting, further arresting, prosecuting or further prosecuting the Applicant in case No: CR/67/2018 pending before the 1<sup>st</sup> Respondent in respect of the and located at Mpape FCT Abuja.
6. AN ORDER directing the 1<sup>st</sup> Respondent to release and/or handover all document(s) tendered in defence of case No: CR/67/2018 to the Applicant forthwith.

## GROUNDNS FOR THE RELIEFS SOUGHT

- A. The claim for possession, ownership, title/interest to land is a civil matter.
- B. The land, subject matter of the criminal trespass in case No: CR/67/2018 is located in FCT Abuja.
- C. The possession ownership, title and control of lands in FCT Abuja are vested in the Federal Government.
- D. The Minister, FCT did not offer or grant title to the land to Aisha Peter (nominal complainant).
- E. The 1<sup>st</sup> Respondent sitting as Area Court Grade I lacks the powers and jurisdiction to hear or further hear case of criminal trespass to land in FCT.
- F. The 1<sup>st</sup> Respondent is bias and partial by and in the conduct of the criminal trial/hearing in the case for criminal trespass to land.
- G. The 1<sup>st</sup> Respondent occasioned breach of fair hearing/trial, perversion and miscarriage of justice against the Applicant in case No: CR/67/2018.
- H. The 1<sup>st</sup> Respondent knows and/or has reason to know that he lacks powers and jurisdiction to hear the case against the Applicant *ab initio* but assumed jurisdiction in bias and partiality. Compare his rulings in the no case submission and rejection of DW1's documents vis-à-vis evidence of prosecution witnesses on ownership of the land and content of the FIR.

- I. The criminal trial in case No: CR/67/2018 is orchestrated to wrongly jail the Applicant, seize his immovable property and wrongly transfer same to one Aisha Peter (nominal complainant) contrary to section 35(1) and 43 of the 1999 Constitution (as amended) FRN.
- J. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents lack the powers and jurisdiction to investigate and determine possession or ownership of land in dispute by criminal proceedings.
- K. The ownership of the land in dispute is what is in contention between the Applicant and one Aisha Peter not “CRIME” as whimsically framed or coloured by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent.
- L. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents are now set and ready to claim possession, ownership and title/interest to the land in dispute in favour of one Aisha Peter (nominal complainant) in the guise of criminal trespass to land against the Applicant if allowed by this Honourable Court.
- M. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have deliberately ignored, disdained, and contravened the 1999 Constitution (as amended) FRN, FCT Act, land Use Act, Police Act, Area Courts Act and other extant laws just to jail the Applicant and give the land to one Aisha Peter (nominal complainant)

The applicant’s Counsel, Prince N. Nwagbokwue argued the application in Court. He adopted his written argument as his submission and urged me to grant the application. The Respondents, who were served, did not file any process in rebuttal. Applicant’s Counsel submitted the following issues for determination:

1. ***Whether by the Police Act, the 2<sup>nd</sup> Respondent is entitled or empowered to investigate land disputes between parties for the purpose of determination of the claim relating to possession, ownership and title/interest to the land.***
2. ***Whether by the Police Act, the 2<sup>nd</sup> Respondent is entitled or empowered to enforce the claim of possession or ownership of land after investigation by an action in criminal trespass against a party to the land in dispute when it is clear that such a claim can be enforced by a civil suit.***
3. ***Whether the first information report (FRN), proceedings and case No: CR/67/2018 initiated, instituted or commenced by the 2<sup>nd</sup> respondent against the Applicant before the 1<sup>st</sup> Respondent sequel the purported investigation of the 2<sup>nd</sup> Respondent in the land dispute between parties i.e. the Applicant and one Aisha Peter are ultra vires, unconstitutional, incompetent and a nullity.***
4. ***Whether by section 1 (3) of the Federal Capital Territory Act Cap 503 and other relevant statutes which vests title, ownership and interest in lands in FCT on Federal Government, the purported investigation, FIR, proceedings and case No: CR/67/2018 for criminal trespass to land pending before the 1<sup>st</sup> Respondent initiated, instituted or commenced by the 2<sup>nd</sup> Respondent pursuant to the report/complaint made by one Aisha Peter against the Applicant are ultra vires, unconstitutional and a nullity.***
5. ***Whether by section 1(3) of the Federal Capital Act and other extant laws which vest all the title, ownership and interest in lands in FCT on the Federal Government, the 1<sup>st</sup> Respondent lacks the powers and jurisdiction to hear or continue the hearing/trial against the Applicant in case No: CR/67/2018 for criminal trespass***

**to land initiated and commenced pursuant to the report/complaint for trespass to land made by one Aisha Peter to the 2<sup>nd</sup> Respondent when it is clear that no offer or title to the land was made or granted to the said Aisha Peter by the Minister, FCT in respect to the land.**

- 6. Whether by section 17 (1), 18 (A) and First schedule, Part 1 of the Area Courts law applicable to FCT, the 1<sup>st</sup> Respondent sitting as Area Court Grade 1 lacks, the powers and jurisdiction to hear or continue the hearing/trial of the Applicant in case No: CR/67/2018 for criminal trespass to land under section 342 of the Penal code law.**
- 7. Whether by section 35 (1), 36 (1) and 43 of the 1999 Constitution (as amended) FRN, the Applicant is entitled to complain against the 1<sup>st</sup> Respondent for bias and partiality by and in the conduct of the proceedings and the 1<sup>st</sup> Respondent is entitled to be withdrawn or disqualify himself from the hearing or further hearing/trial of the Applicant in case No: CR/67/2018 in the interest of justice, confidence, honour and integrity of the judiciary.**
- 8. Whether the 1<sup>st</sup> Respondent is disqualified or can be disqualified on the grounds of bias and partiality in the conduct of the criminal trial against the applicant.**
- 9. Whether the 1<sup>st</sup> Respondent occasioned breach of fair hearing, perversion and miscarriage of justice against the applicant when the Court failed to resolve all the issues presented by the applicant for determination in the No case submission.**



## ISSUE ONE

1. Whether by the Police Act, the 2<sup>nd</sup> Respondent is entitled or empowered to investigate land disputes between parties for the purpose of determination of the claim relating to possession, ownership and title/interest to the land.

In the administration of criminal justice, the abuse of powers, law and procedure is an anathema and which is also fatal to the proceedings.

The life and liberty of a citizen cannot be allowed to be sacrificed on the altar of abuse of powers and laws, whims and caprice especially in a civilized/democratic society where the rule of law is paramount.

The Police Act defines the powers and duties of the 2<sup>nd</sup> Respondent, his officers and men. See section 4 of the Police Act. In **OYIRIOHA VS. IGP (2009) 3 NWLR PT. 1128 PG. 342 at 375 paras G-H** the Court of Appeal held:

***“A Nigerian citizen is entitled to his God’s given natural right free from incarceration save in accordance with all the fundamental laws of the land, that is the constitution of the Federal Republic of Nigeria and other relevant legislations which are not inconsistent with the former”***

By section 4 of the Police Act, the 2<sup>nd</sup> Respondent has criminal jurisdiction or empowered to discharge its duties under criminal jurisdiction simpliciter.

By section 4 of the Police Act the 2<sup>nd</sup> Respondent has the duty and functions to investigate, detect and prevent crimes. That

duty or power does not extend to or mean to investigate or detect claim(s) of possession or ownership or title to land. The 2<sup>nd</sup> Respondent has no duty under the Land Use Act in respect of determination of possession, ownership, title/interest to land or matters relating to offer, allocation or transactions on lands.

The word “criminally” in the FIR was whimsically inserted by the 2<sup>nd</sup> Respondent just to give a colour of crime to the transaction or dispute wrongly reported by the aid Aisha Peter.

It is the law that says what a crime is, and not the 2<sup>nd</sup> Respondent. What the 2<sup>nd</sup> Respondent is empowered to do is to find out by investigation whether that which the law says is a crime has actually been committed by a person. See section 4 of the Police Act.

Deleting the arbitrary word “criminally” in the FIR, the report or complaint of the said Aisha Peter will be that, the Applicant entered into her land. Such a claim required an action for trespass in civil jurisdiction. A comprehensive reading of the FIR will clearly show that possession and/or ownership is in dispute and for which the 2<sup>nd</sup> Respondent lacks the powers to investigate. I so hold.

It is very clear and lucid from the content of the FIR that what the 2<sup>nd</sup> Respondent investigated is the ownership of the land and that can be seen from the last three lines of the FIR, thus:

**..... “During Police investigation you claimed you purchased the land and push forward a Police extract you have thereby committed the above offence.”**

The danger of the 2<sup>nd</sup> Respondent investigating a claim of ownership of land is that the Police will end up relying on adverse claim or assertion to impute crime whereas there is none as in the instant case. From the above excerpt of the FIR, it will be seen that the 2<sup>nd</sup> Respondent whimsically arrived at a wrong conclusion of commission of crime when the Applicant claimed he “purchased the land and pushed forward a Police extract”. That was how the Applicant committed criminal trespass in the eyes of 2<sup>nd</sup> Respondent. But in the eyes of the law, by the applicant’s adverse claim/assertion, goes to buttress that possession or ownership of the land is in dispute which the 2<sup>nd</sup> Respondent/Police is not empowered to investigate. See section 4 of the Police Act and section 39(1) and 41 of the Land Use Act. We submit that under section 39(1) and 41 of the Land Use Act, the Courts do not require the investigation or detection of the Police in the dispute or declaration of title, possession/ownership to land.

It is therefore my firm view that the FIR made by the 2<sup>nd</sup> Respondent against the Applicant in respect of the ownership of the land in dispute by their investigation or as the outcome of their investigation is ultra vires, unconstitutional, incompetent and a nullity. I so hold.

## **ISSUE TWO**

2. Whether by the Police Act, the 2<sup>nd</sup> Respondent is entitled or empowered to enforce the claim of possession or ownership of land after investigation by an action in criminal trespass against a party to the land in dispute when it is clear that such a claim can be enforced by a civil suit.

There is no law whether under criminal or civil jurisprudence that empowers the Police or 2<sup>nd</sup> Respondent per se to enforce whether under criminal or civil proceeding the claim of ownership of land in dispute or to prosecute a citizen for adverse claim or assertion of ownership of land.

It is not an offence/crime for a citizen to assert adverse claim of ownership to land. A look at the last three lines of the FIR, one will see that what the 2<sup>nd</sup> Respondent referred to as “criminal trespass” is the adverse claim or assertion of the Applicant to the land during the so called investigation of the 2<sup>nd</sup> Respondent. For emphasis we repeat the last three lines thus:

*..... “during police investigation you claimed you purchased the land and push forward a police extract you have thereby committed the above offence.”*

By the above, it is therefore crystal clear that what the Applicant is being tried and sought to be punished for as an offence, is unknown to law. It is not an offence anywhere in any law for a citizen to assert that he purchased a land or push forward a police extract.

Particularly, in a situation or condition where such adverse assertion/claim is required or expected, that is, during police so called investigation for the ownership of land in dispute.

Therefore, the assertion or claim of purchase of land and pushing forward of police extract is an offence unknown to any written law and as such the Applicant cannot be tried or punished for such. See **Section 36(8) of the 1999 Constitution (as amended) Federal Republic of Nigeria.**

That brings me to my earlier view that it is not for the police or the 2<sup>nd</sup> Respondent to say what a crime is but it's the law. It goes to further strengthen my position that police has no business in the investigation or detection of possession or ownership of land. Apart from not being trained in that regard, it is not their duty or function/powers by their enabling statute.

It is unfortunate the 2<sup>nd</sup> Respondent is deliberately and wrongly seeking to enforce the claim of ownership to the land in dispute in favour of Aisha Peter.

Therefore, the entire FIR, proceedings, case No: CR/67/2018 for criminal trespass against the Applicant pending before the 1<sup>st</sup> Respondent is ultra vires, unconstitutional, incompetent and a nullity. I so hold.

### **ISSUE THREE**

3. Whether the first information report (FIR), proceedings and case No: CR/67/2018 initiated, instituted or commenced by the 2<sup>nd</sup> respondent against the Applicant before the 1<sup>st</sup> Respondent sequel to the purported investigation of the 2<sup>nd</sup> Respondent in the land dispute between parties i.e. the Applicant and one Aisha Peter are ultra vires, unconstitutional, incompetent and a nullity.

The principle that “you cannot place something on nothing and expect it to stand” is apt in the instant case.

The 2<sup>nd</sup> respondent has acted ultra vires and unconstitutionally. It will be an anathema to allow the proceedings and case no: CR/67/2018 to stand.

Since the foundation of the proceedings and case No: CR/67/2018 is faulty the suit/trial is unsustainable.

#### **ISSUE FOUR**

4. Whether by section 1 (3) of the Federal Capital Territory Act Cap 503 and other relevant statutes which vests title, ownership and interest in lands in FCT on Federal Government, the purported investigation, FIR, proceedings and case No: CR/67/2018 for criminal trespass to land pending before the 1<sup>st</sup> Respondent initiated, instituted or commenced by the 2<sup>nd</sup> Respondent pursuant to the report/complaint made by one Aisha Peter against the Applicant are ultra vires, unconstitutional and a nullity.

It is trite that all lands in FCT belong to the Federal Government. See section 1(3) of the FCT Act. And pursuant to other relevant statutes, the power, authority to control and manage the lands are vested in the office of the Minister, FCT by delegation of the President. See section 302 of 1999 Constitution. And section 297(2) of the 1999 Constitution (as amended) FRN which provides:

***“The ownership of all lands comprised in the Federal Capital Territory, Abuja shall vest in the Government of the Federal Republic of Nigeria”.***

By the combined effect of sections 302 of the 1999 Constitution and section 5(1) (a) of the Land Use Act, only the Minister, FCT can validly offer, allocate or grant title or ownership of land in FCT to any citizen or person.

I have no evidence to support that the Minister FCT ever offered, allocated or granted title or ownership of the land to the said Aisha Peter (nominal complainant). At the Kangaroo trial, she testified as DW1, infact, the 2<sup>nd</sup> Respondent never tendered any document evidencing title or ownership to the land in the name of any person as allottee from the Minister, FCT.

The question now is upon what or which offer, title or grant did the 2<sup>nd</sup> Respondent rely on for their investigation in respect to the compliant of alleged criminal trespass of Aisha Peter?

By sections 1(3) of the FCT Act, 297 (2) and 302 of the 1999 Constitution, possession, control and management of all lands in FCT are vested in Minister, FCT. So the complaint or allegation of criminal trespass can only be made and enforced by any person who can clearly show and convincingly too, that the Minister, FCT granted him/her possession to the land. And to satisfy the above relevant condition, such a person must tender or produce the relevant condition, such a person must tender or produce the relevant title documents to the land as evidence of such grant. See section 9 (1) (a) (b) (c) of the Land Use Act.

It is baffling that the Nigeria Police and the 2<sup>nd</sup> respondent established under section 214 (1) and 215(1) (a) of the 1999 Constitution investigated the unfounded complaint of Aisha Peter over a land in FCT and more baffling is the criminal trial commenced thereupon.

Therefore, the question is, the criminal trial that is a sheer display of ignorance and disregard of the relevant statutes, is it for Aisha Peter or the state?

For emphasis and clarity sake, lands in FCT, not in other states of the Federation there cannot be deemed customary right of occupancy. A person cannot be in possession or ownership of land that is not available in all consideration and still expect the 2<sup>nd</sup> respondent to enforce such illusion. The 2<sup>nd</sup> respondent ought to have relied on the ample provisions of the law to detect the antics of that Aisha Peter but this they failed to do due to bad faith in the enforcement of the law.

Therefore, the said FIR, proceedings, criminal case No: CR/67/2018 pending before the 1<sup>st</sup> Respondent is ultra vires, unconstitutional, incompetent and a nullity. I so hold.

Again, entry into any land in FCT without the requisite offer, allocation or grant by the Minister, FCT is unlawful. Where the initial entry into a land is unlawful, the person becomes a trespasser. And it is trite that no trespasser to a land can maintain an action against anyone, whether be it criminal or civil.

The said Aisha Peter is a trespasser having not been offered, allocated or granted the land by the Minister, FCT unlawfully entered into same and erected a military sign post in deceit and impersonation of being a military personnel. Yet, 2<sup>nd</sup> Respondent is giving her a pat on the back for the unlawful and criminal tendencies by the trial of the Applicant. Uptill now the 2<sup>nd</sup> Respondent, his officers and men could not and have not being able by investigation to resolve the issue of who is major Gambo and where is major Gambo recorded in the FIR as the owner of the land. And in another breadth, at the trial, Aisha claimed to be the owner of the land speaking from both sides of her mouth, yet the 1<sup>st</sup> Respondent held that the Applicant has a case to answer and dismissed the no case submission when the



1<sup>st</sup> Respondent knows that he cannot pick and close from such material contradictions of Aisha Peter as DW1.

The above reveals that the FIR and the criminal proceedings/trial lacks legal foundation and support, and due to collapse at this stage that the respondents may be stopped from further persecution of the Applicant. I so hold.

## **ISSUE FIVE AND SIX**

5. Whether by section 1(3) of the Federal Capital Act and other extant laws which vest all the title, ownership and interest in lands in FCT on the Federal Government, the 1<sup>st</sup> Respondent lacks the powers and jurisdiction to hear or continue the hearing/trial against the Applicant in case No: CR/67/2018 for criminal trespass to land initiated and commenced pursuant to the report/complaint for trespass to land made by one Aisha Peter to the 2<sup>nd</sup> Respondent when it is clear that no offer or title to the land was made or granted to the said Aisha Peter by the Minister, FCT in respect to the land.
  
7. Whether by section 17 (1), 18 (A) and First schedule, Part 1 of the Area Courts law applicable to FCT, the 1<sup>st</sup> Respondent sitting as Area Court Grade 1 lacks, the powers and jurisdiction to hear or continue the hearing/trial of the Applicant in case No: CR/67/2018 for criminal trespass to land under section 342 of the Penal code law.

I had earlier shown in this judgment that the case lacks legal foundation and support, it is trite that 1<sup>st</sup> Respondent definitely lacks the power/jurisdiction to entertain or further hear the case. Allowing the 1<sup>st</sup> Respondent to continue in the hearing will

tantamount to encouraging disregard of our statutes. God forbid!

Again, and importantly too, is that, I have held before that the Applicant is being prosecuted over a civil matter and the said acclaimed offence is non-existent and unknown to our penal laws. See section 36(8) of the 1999 Constitution (as amended) FRN. The Applicant is being prosecuted for asserting to have purchased the land and pushing forward police extract. See the FIR. Therefore, the 1<sup>st</sup> Respondent lacks the powers and jurisdiction to hear the case.

It is no longer in issue that jurisdiction is fundamental in every adjudication. In **APGA VS. ANYANWU (2014) 7 NWLR PT. 1407 PG. 541 at 565 – 566 PARA H-C**, the Supreme Court held:

***“Issue of jurisdiction is so fundamental that it can be raised at any time, in any manner and at any stage of the proceedings. The importance of jurisdiction is the reason why it can be raised at any stage of a case, be it the trial, on appeal to the Court of Appeal or to the Supreme Court.*”**

***A fortiori, the Court can suomotu raise it. It is desirable that preliminary objection be raised early on issue of jurisdiction, but once it is apparent to any party that the Court may not have jurisdiction, it can be raised even viva voce. It is always in the interest of justice to raise the issue of jurisdiction so as to save time and cost and to avoid a trial in nullity.”***

At page 469 para B, the Supreme Court held:

***“where the Court lacks jurisdiction, parties cannot confer jurisdiction on the Court by consent or acquiescence”***

In **DARIYE VS. FRN (2015) 10 NWLR PT. 1467 page 325 AT 352 para A – C**, the Supreme Court held:

**“Jurisdiction is the power of the Court to decide a case or issue a decree. It is the authority the Court has to decide matters before it or to take cognizance of matter presented in a formal way for its decision. Territorial jurisdiction implies a geographic area within which the authority of the Court may be exercised and outside which the Court has no power to Act. Jurisdiction, whether territorial or otherwise, is statutory and is conferred on the Court by the law creating it”.**

The law is that jurisdiction can be raised at any stage of the proceedings and even for the first time on appeal. It can be raised by any of the parties or by the Court *suo motu*.

In **DARIYE VS. FRN (Supra) at Page 356 para F**, the Supreme Court held: **“A trial conducted without jurisdiction is a nullity, irrespective of how well it is conducted”.**

The 1<sup>st</sup> Respondent sitting as Area Court grade 1 lacks jurisdiction to entertain the case *ab initio*.

By sections 17(1), 18(A) and first schedule of part 1 of the Area Court law which is the statute that created the Court, the 1<sup>st</sup> Respondent cannot try offence of criminal trespass. See the first schedule of part 1 to the Area Court law. The offence of criminal trespass under section 342 penal code is not one of the offences listed that the 1<sup>st</sup> Respondent can exercise jurisdiction. The law is expression *unios exclusion ulterious*.

I therefore hold that the 1<sup>st</sup> Respondent lacks jurisdiction to hear or further hear/try the case of criminal trespass pending against the Applicant, and strike out the suit/case. In

**IWUAGOLU VS. AYGKA (2007) 5 NWLR PT. 1028 page 613 at 619 r 3, the Court of Appeal held:**

***“Court are creatures of statutes; hence their jurisdiction is conferred and limited by such statutes. Thus, nothing is to be intended to be within the jurisdiction of an inferior Court but that which is so expressly alleged by statute. In the instant case, the senior district Court was right to have declined to entertain the suit because the subject matter of the case was not within the jurisdiction.***

## **ISSUES SEVEN AND EIGHT**

7. Whether by section 35 (1), 36 (1) and 43 of the 1999 Constitution (as amended) FRN, the Applicant is entitled to complain against the 1<sup>st</sup> Respondent for bias and partiality by and in the conduct of the proceedings and the 1<sup>st</sup> Respondent is entitled to be withdrawn or disqualify himself from the hearing or further hearing/trial of the Applicant in case No: CR/67/2018 in the interest of justice, confidence, honour and integrity of the judiciary.
8. Whether the 1<sup>st</sup> Respondent is disqualified or can be disqualified on the grounds of bias and partiality in the conduct of the criminal trial against the Applicant.

I have held that the 1<sup>st</sup> Respondent is bias and partial by and in the conduct of the trial. The way and manner he conducts the proceeding leaves indication that he has interest in the outcome of the case see our averments in paragraphs 19, 23, 24 and 30 of affidavit in support.

It is trite that justice must not only be done, but must be seen to be done. We contend that where a Court conducts a case in a bias and partial manner, the litigant is entitled to raise a complaint

In **AGBOGU VS. ADICHE (2003) 2 NWLR PT. 805 PG. 509 AT 513 – 514 r 3**, the Court of Appeal held:

***“The Latin maxim – nemo judex in causa sua which means no man should be a judge in his own case postulates that to ensure the impartiality of a judge in a matter before him, certain circumstances must exist to wit:***

- (a) There must be slightest inkling that the judge has an interest in the matter either financially or in kind, or emotionally or sentimentally. This is everything which might engender suspicious or distrust of his impartiality so as to promote the feeling of confidence which administration of justice is rooted.***
- (b) The judge must not be biased whatsoever in respect of the subject of the dispute.***
- (c) The judge must not be seen to unduly interfere with the course of the proceedings between the parties instead he should act as an umpire and allow the proceedings to run its course.***

***Where a judge has an interest in the subject matter in dispute he is automatically disqualified from adjudicating over same. Also, a serious allegation of the likelihood of bias would disqualify a judge from adjudicating over a dispute. Furthermore, a judge who is over bearing in his adjudicatory attitude and who unduly interferes with the course of proceedings as to usurp the function of counsel may unwittingly disqualify himself from continuing with his adjudicatory functions in a particular case”.***

From the conduct of the proceedings the 1<sup>st</sup> Respondent is bias and partial contrary to section 36(1) of the 1999 Constitution (as amended) FRN and he is interested in the outcome of the case. I respectfully refer to how the Applicant's no case submission was dismissed with a stroke of pen even when the prosecution made no contrary submission on the issues raised by the applicant. It is obvious from the conduct of the proceedings that the 1<sup>st</sup> Respondent is interested in the outcome of the case.

We urge the Court to resolve this issue in favour of the Applicant and disqualify the 1<sup>st</sup> Respondent from hearing or further hearing/trial of the case.

## **ISSUE NINE**

9. Whether the 1<sup>st</sup> Respondent occasioned breach of fair hearing, perversion and miscarriage of justice against the applicant when the Court failed to resolve all the issues presented by the applicant for determination in the No case submission.

The principle of fair hearing is not a mere technical proposition. It is so vital in every adjudication or inquiry to the extent that it is enshrined in the 1999 Constitution. See section 36(1) of the 1999 Constitution (as amended) FRN. It is trite that any proceeding devoid of fair hearing is a nullity.

**In DARMA VS. ECOBANK (NIG) LTD (2017) 9 NWLR PT. 1571 PAGE 480 AT 501 – 502 PARA F-A**, the Supreme Court held:

**“By section 36 of the constitution of the FRN 1999 (as amended), the constitution has enshrined the principle of fair hearing which gives the criteria of fair hearing which are as follows:**

- (a) The Court shall hear both sides to a case and also must consider the case of both parties.**
- (b) The Court must also hear all material issues before reaching its decision which may be prejudice to any party in the case.**
- (c) The Court must give equal treatment opportunity to all the parties;**
- (d) The proceedings must be held in public and all concerned must have access and be informed of such place of public hearing;**
- (e) In every material decision of the case, justice must be seen to have been manifestly done and not merely done”.**

I hold that apart from paragraph (d), the 1<sup>st</sup> Respondent failed to observe the conditions listed in the case law above in the proceedings. See our affidavit in support.

It is germane that in a criminal trial all material issues relied upon or raised by the defendant must be considered by the Court failure to so do, will amount to breach of fair hearing and fair trial.

The material issues raised by the Applicant in the no case submission were not considered at all by the 1<sup>st</sup> Respondent in arriving at its decision that the Applicant has a case to answer even when the prosecutor had nothing to say in the contrary. The Area Court overlooked and ignored the salient issues raised by the Defence. See the ruling and the written submission.

The 1<sup>st</sup> Respondent was completely influenced by bias, partiality and interest backed up by sentiment and emotion in delivering the perverse ruling against the Applicant.

Had the 1<sup>st</sup> Respondent considered or determined the issues raised by the Applicant in the no case, the ruling would have been in favour of the Applicant. And by that, the 1<sup>st</sup> Respondent occasioned breach of fair hearing/fair trial against the Applicant in the case.

In **RASAKI VS. AJIBOLA (NO. 1) (2018) 7 NWLR PT. 1617 PAGE 13 AT 18 r 7**, the Supreme Court held:

***“Every Court is duty bound to consider all the issues raised or presented before it by the parties for determination and not to gloss over them.***

***In the instant case, the attention of the Court of Appeal was drawn to the provision of order 20 Rule 5 of the Court of Appeal rules 2011 by the appellants but the Court of Appeal did not avert its attention to the rules cited or referred to it. Failure to consider the said rule rendered the Court of Appeal’s decision perverse”.***

In **UGUDA VS. EBIGAH (2009) 15 NWLR PT. 1163 PAGE 1 AT 4-5 r 2**, the Supreme Court held:

***“A Court’s failure to consider and determine the case of a party is a violation of the party’s right to fair hearing. And where there is a breach of a party’s constitutional right to fair hearing the proceedings are vitiated thereby requiring the intervention of an appellate Court on a complaint of the affected party”.***

Also, in **KENNEDY VS. INEC (2009) 1 NWLR PT. 1123 PG. 614 AT 621 r 6**. The Court of Appeal held:

***“Failure to observe the rules of fair hearing renders the proceeding null and void”.***



I therefore hold that the remedy to the breach of the rules of fair hearing in the instant case by the 1<sup>st</sup> Respondent is the nullification of the proceedings.

In **Tao & Sons Ind. Ltd Vs. Gov. Oyo State (2011) 6 NWLR PT. 1242 PG. 1 at 4 r 3**, the Court of Appeal held:

***“The remedy for the breach of the right to fair hearing is the nullification of the proceedings wherein the breach occurred”.***

I therefore resolve this issue in favour of the Applicant and nullify the entire proceedings and the ruling on no case delivered by the 1<sup>st</sup> Respondent and consequently grant the application.

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**S. B. Belgore**

(Judge)15/5/23