

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

(APPELLATE DIVISION)

HOLDEN AT HIGH COURT NO. 8, MAITAMA, ABUJA

ON FRIDAY, 8TH DECEMBER, 2023

BEFORE THEIR LORDSHIPS:

HON. JUSTICE OLUKAYODE A. ADENIYI: PRESIDING JUDGE

HON. JUSTICE BABANGIDA HASSAN:

HON. JUDGE

APPEAL NO: CVA/600/2020

BETWEEN:

DAVID YESEAONDOWASE... .. APPELLANT

AND

COMMISSIONER OF POLICE... .. RESPONDENT

JUDGMENT

This is an appeal arising from the ruling of **Honorable Sani Muhammed Umar** of the Area Court of the Federal Capital Territory, sitting at Karu, Abuja. The ruling was delivered

on the 28th day of August, 2020, in favour of the Respondent.

As gathered from the records, the Appellant was a Sales Representative of Daily Need Distributors Ltd, a Company carrying on the business of distribution of Pampers and Ariel detergent in Nnanya, Abuja F.C.T. The Appellant was alleged to have sold some goods to customers and thereafter converted the money to his personal use consequent upon which he was arraigned on 24/07/2018 on a First Information Report, before an Area Court sitting in Karu, Abuja, on the offence of criminal misappropriation contrary to **s. 307** of the **Penal Code**.

The matter went to trial. At the close of the prosecution's case (now Respondent), the Appellant filed a Notice of Preliminary Objection on 23/08/2019, challenging the "criminal" jurisdiction of the Area Court to entertain the trial on the ground that the **Federal Capital Territory Area Courts (Repeal and Enactment) Act, 2010**, being the extant law establishing Area Courts in the **FCT** clearly

abrogated and specifically repealed vital provisions such as **Ss. 18, 19 and 22 (a)** of the **Area Courts Act of 2006** which formerly granted criminal jurisdiction to the Area Courts in the Federal Capital Territory.

In its ruling delivered on 28/08/2020, the trial Area Court, relying and abiding strongly on one of the prior decisions of the Appeal Session of this Court, dismissed the objection and held that it had criminal jurisdiction to hear and determine case. Aggrieved by the ruling, the Appellant filed the instant appeal.

The Notice contain grounds of appeal filed by the Appellant on 31st August, 2020 and the Reliefs sought from this Honorable Court are as follows:

- (1) The learned Area Court Judge erred in law when it held that sitting as Area Court in FCT, it has jurisdiction to conduct criminal trial in the face of the decision of Appeal Division of the F.C.T. High Court delivered on the 5th Day of July, 2019.*

PARTICULARS:

- a. *The learned Honorable Court Judge misdirected himself in law having come to the conclusion that there were conflicting decisions of the High Court of the FCT Appeal Division on the issue of whether Area Courts of FCT has jurisdiction or not to conduct criminal trials and that he can pick and choose any of the decisions of the FCT High Court to follow.*
- b. *The learned Honorable Court Judge misdirected himself in law by wrongly relying on the belated decision of the FCT High Court made in 2015 instead of the current decision of the Appeal Division of the FCT High Court made in 2019 in case No: FCT/HC/CRA/38/18 as the High Court of FCT has inherent jurisdiction to overrule itself assuming it was conflicting decision.*
- (2) *The learned Area Court Judge erred in law when he relied on the decisions of the substantive Laws that are not applicable in determining the issue before the court to hold that Area Courts in FCT has jurisdiction to conduct criminal trials.*

PARTICULARS:

α. The learned Honorable Court Judge misdirected himself in law by wrongly relying on the definition section of ACJA 2015 that is not substantive provision to hold that it has jurisdiction to conduct criminal trial in the face of FCT Area Court (Repeal and Enactment) Act 2010.

(3) Additional grounds of appeal may be filed upon receipt of records of appeal.

The Appellant therefore claimed from this Court, the reliefs set out as follows:

1. An Order allowing the appeal.

*2. An Order setting aside the decision of the **Honorable Sani Muhammed Umar** of the Area Court of Federal Capital Territory sitting at Area Court Karu of FCT, Abuja, delivered on the 28th August, 2020.*

3. AN ORDER striking out the F.I.R. with case NO: CR/353/18 before the Area Court Karu F.C.T. Abuja

and discharging the Defendant for want of criminal jurisdiction of the Area Courts Karu in F.C.T- Abuja.

The Appellant filed his brief of argument on the 17th of December, 2021 wherein his learned counsel distilled two (2) issues from the grounds of appeal for the determination of this appeal to wit:

1. Whether the trial court being an Area Court in the F.C.T. has jurisdiction to conduct criminal trial against the Appellant in the face of concurrent recent decisions of F.C.T. High Court and the enabling Act.

2. Whether procedural law can confer jurisdiction to F.C.T. Area Courts to entertain criminal cases.

In turn, learned counsel for the Respondent filed brief of argument on the 17th of June, 2022 wherein two issues were also distilled for determination, namely:

1. Whether the lower court has the jurisdiction to the Appellant.

2. Whether after participating in the proceedings at the lower court, the Appellant can challenge its jurisdiction.

In determining this appeal, we opt to adopt the issues formulated by the Appellant and issue No.2 formulated by the Respondent.

ISSUE ONE:

It is the argument of the Appellant's learned counsel both at the lower and in this Court that the provision of the **F.C.T. Area Courts (Repeal and Enactment) Act, 2010** being the extant law granting jurisdiction to Area Courts in the Federal Capital Territory clearly abrogated and specifically repealed vital provisions such as **Ss. 18, 19** and **22 (a)** of the **Area Courts Act of 2006** which hitherto granted criminal jurisdiction to the Area Courts in the Federal Capital Territory and expressly provided only for civil jurisdiction. For this reason, he submitted that the Karu Area Court lacked jurisdiction to continue proceedings in the case as it will amount to a nullity. To support his argument, counsel for the Appellant relied on the case of

Yusuf Muhammed vs Commissioner of Police delivered on the 5th July, 2019 by the Appeal Session of this Court in **Appeal No: FCT/HC/CRA/38/18**. He urged the Court to take cognizance of the decision and further referred the Court to **Part III, s. 13** of the **F.C.T. Area Courts (Repeal and Enactment) Act of 2010** which provides that:

“An area court shall have jurisdiction and power to the extent set out in civil jurisdiction 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 parties are subject to the jurisdiction of the Area Court.”

On the other hand, the Respondent’s learned counsel argued that **s.10 (1)** of the **Act** is encompassing; that the provision of the section includes the criminal jurisdiction of Area Courts and does not restrict it to only civil causes. The section in question reads:

“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.”

Learned Respondent's counsel places emphasis on "...**any cause or matter...**" as the basis for his submissions. According to learned counsel, the section did not provide what type of cause or matter can be instituted in an Area Court, leaving it wide, expansive and not restrictive; that because criminal cause is not specifically mentioned does not automatically mean the Area Court cannot entertain it. Learned counsel submitted that the provision of **s. 13** of the **Act** relied on by the Appellant's learned counsel did not oust the criminal jurisdiction of the Area Court.

Now, having critically and thoroughly examined the provisions of the **Federal Capital Territory Abuja Area Courts (Repeal and Enactment) Act, 2010** which is the extant law vesting and conferring jurisdiction on Area Courts in the FCT, it is our finding that the Area Court is indeed utterly bereft of criminal jurisdiction as the **Act** is not only silent on it, it patently expunged the Area Courts' powers to hear and determine criminal cases from its provisions. The implication of this is that the Area Court

lacked jurisdiction to have entertained the trial as the subject matter of the case was not within the jurisdiction of the Court. We so hold.

It is trite law that nothing shall be intended to be within the jurisdiction of an inferior Court but that which is so expressly conferred by statute; since Courts are creations of statutes their jurisdiction is confined and limited by such statutes. See Iwuagolu vs Azyka[2006]LPELR-11787 and Ogunmokun vs Mil. Ad. Osun State[1999] 3 NWLR (Pt.594) Pg. 261.

Furthermore, a Court is only competent to entertain an action where the subject matter of the case is within the Court's jurisdictional competence and there is no feature in the case which prevents the Court from exercising its jurisdiction. Where issue of jurisdiction is based on the Constitution or any statute, a Court cannot confer jurisdiction on itself by misconstruing a statute. Jurisdiction of Court is conferred by statute. See Lawal vs Oke[2001] 7 NWLR(Pt. 711) 88; African Newspaper of Nigeria vs

Federal Republic of Nigeria [1985] 2 NWLR(Pt. 6) 137; Ogunmokun vs Milad of Osun State [1999] 3 NWLR(Pt. 594) 261.

Thus, the submission of the Respondent's counsel that because criminal cause is not specifically mentioned in the Act, in our firm view is not only flawed, but grossly misconceived and misconstrued. It is trite that jurisdiction of Court is never left to speculation in the statute books. A statute expressly makes provision for the jurisdiction of a Court since it is what empowers it to hear and determine cases. The jurisdiction of a Court is not to be inferred or deduced from in between the lines so as to expand its scope. We so hold.

Learned Respondent's Counsel further referred to s. 8 (3) of the **Act** which provides that:

“An Area Court may authorize a police officer to perform all or any of the duties mentioned in subsection (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.”

This section cannot be read in isolation from the preceding subsections. It cannot also be mischievously quoted halfway to suite the Respondent’s purpose. It appears to us that the provision was taken out of context as the entire section of the provision deals with bailiffs and messenger of the court effecting and executing service of writs and other process. **S. 8** of the **Act** has nothing to do with the jurisdiction of Area Courts and cannot be implied to confer it with criminal jurisdiction. The same goes for **s. 51** which is the interpretation clause of the **Act**. It is the definition section of the statute. More so that the word “cause” is generic which requires it to be qualified with either the word civil or criminal. We so hold.

We had carefully perused the decision of the Appeal session in *Yusuf Muhammed vs Commissioner of Police* (*supra*) cited by the Appellant’s learned counsel and we

hold that we completely align ourselves with the decision. In addition, we hold that the removal and non-retention of the provisions of **Ss. 18, 19 and 22 (a)** of the **Area Courts Act, 2006** which hitherto granted criminal jurisdiction to the Area Courts in the FCT is a strong indication that the lawmakers intended to do away with it otherwise, it would have been retained.

We further hold that the learned trial judge erred in law when it followed and abided by the decision in Suit No: FCT/HC/CV/2674/2015 delivered by **U.A. Musale, J** (as he then was). Not only was the case earlier in time which is against the doctrine of stare decisis, it is also apparent from the suit number, that the case was a civil suit which could not have been decided on the same legal principle. It is elementary law that where there are two or more conflicting decisions of a superior court, the court below is bound to follow the later decision which is presumed to have overruled the earlier one and constitute *res judicata*. See *Ikeni vs Efamo* [2001] 10 NWLR (Pt. 720)

P. 1 S.C, and Osakwe vs Federal College of Education
[2010] 10 NWLR (Pt.1201) 129.

We also hold that the Appellant's failure to furnish the lower court with a copy of the decision was no justification for relying on a case that was clearly inapplicable to the circumstances of the case at hand.

ISSUE TWO:

The lower court in arriving at its verdict, further relied on the provisions of **Ss. 4, 12 and 13** of the **Criminal Procedure Code Act** (sic) as the reason for deciding that it has jurisdiction to entertain the action. Now, it is interesting to note that both the **Criminal Procedure Code (Cap. C42 LFN 2004)** and its counterpart, the **Criminal Procedure Act (Cap. C41 LFN 2004)** were once upon a time, legislations for the administration of substantive criminal law that applied in the Northern and Southern States of the country respectively. However, with the enactment of the **Administration of Criminal Justice Act, 2015**, and by virtue of **s.493 of the Act**, the legislations were

repealed and abrogated. This means that besides the fact that the lower court relied on a procedural law as its basis for the decision taken, the said law was itself repealed.

The effect of a repealed law was succinctly captured in the case of Olafisoye vs FRN[2004]LPELR-2553 SC, where it was held that a repealed law no more has legal life, as it does not exist any longer; it cannot be cited as if it still exists. If it must be cited at all, it must be cited as a repealed law, which has no life to influence an argument. See also Legal Practitioners Ordinance vs Edewor[1968]LPELR-25438 SC, where the court held that:

“The general principle is that an enactment which is repealed is to be treated as if it never existed and not be looked upon for assistance for any further purpose. Learned counsel, in referring us to this paragraph, did not read further; for the same paragraph stated that this is subject to any savings made, express or implied, by the repealing enactment, and also to the general

statutory provisions now in force as to the effect of repeal.”

Again, as rightly submitted by Appellant’s learned counsel, jurisdiction is generally a creature of statute, Constitution or otherwise jurisdiction to conduct cases/appeals are donated or conferred by statutes or the Constitution. Failure to comply with any statutory or constitutional provisions or the requirement deprives the court with jurisdiction to adjudicate over the matter. See Osi vs Accord Party & Ors.[2016]LPELR-41388 SC cited by the Appellant and Ogunmokun vs Mil. Ad. Osun State (Supra).

ISSUE THREE:

It is the contention of the Respondent’s learned counsel that the Appellant having elected to submit to the jurisdiction of the lower court and having participated in the proceedings cannot be heard to complain of its jurisdiction; that the law is that one cannot approbate and reprobate at the same time and cited s. 11(1)(b) of the **Federal Capital Territory**

Abuja Area Courts (Repeal and Enactment) Act, 2010 which provides that:

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

(b) any person in a cause or matter who consents to the exercise of the jurisdiction of the Area Court.”

This submission with due respect to learned counsel for the Respondent is a no brainer as it is elementary principle that the issue of jurisdiction can be raised at any stage of the proceedings before judgment is delivered; sometimes, even on appeal. See *FHA vsKalejaiye [2010] 19 NWLR (Pt.1226) 149 at 164 para b*, where **Rhodes-Vivour, JSC**, held as follows:

“The issue of jurisdiction can be raised for the first time in any Court and at any stage of the proceedings and in the Supreme Court for the first time. Jurisdiction is a threshold issue and it is so fundamental in that where a Court has no jurisdiction to determine an issue, the entire proceedings and judgment will be an exercise in futility.

Once the issue of jurisdiction is raised, the Court is bound to examine whether it is spurious or genuine ground.”

As such, the fact that the Appellant participated in the proceedings at the lower Court cannot preclude him from raising the issue of jurisdiction before this Appeal panel for the first time.

In the final analysis, we resolve all the issues formulated and discussed in the foregoing in favour of the Appellant. We find merit in the appeal and the same is accordingly allowed. We hereby quash the ruling of the lower court for being obnoxious and set aside the proceedings thus far conducted; same having being done outside of the scope of jurisdiction conferred on Lower Area Court by the enabling statute. We make no orders as to costs.

HON. JUSTICE OLUKAYODE A. ADENIYI
(Presiding Judge)
08/12/2023

HON. JUSTICE BABANGIDA HASSAN
(Hon. Judge)
08/12/2023

Legal representation:

E. I. Nwude, Esq. (with O. E. Adeyemo (Miss))— for the Appellant

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