

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

**HOLDEN AT HIGH COURT MAITAMA –ABUJA**

**BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE**

**COURT CLERKS: JAMILA OMEKE & ORS**

**COURT NUMBER: HIGH COURT NO. 24**

**CASE NUMBER: SUIT NO. FCT/HC/CV/1938/2021**

**MOTION NUMBER: FCT/HC//8802/2023**

**DATE: 12<sup>TH</sup> MARCH, 2024**

**BETWEEN:**

**FBN QUEST TRUSTEES LIMITED.....APPLICANT/RESPONDENT**

**AND**

- 1. ALHAJI HAMISU MUSTAPHA TURAKI..... RESPONDENT/OBJECTOR**
  - 2. ALI USMAN**
  - 3. MUSA USMAN**
  - 4. MALIKI USMAN**
  - 5. RASAKI USMAN**
  - 6. ALIYU USMAN**
  - 7. ABUBAKAR USMAN**
  - 8. TIJANI USMAN**
  - 9. FATAI USMAN**
  - 10. USMAN USMAN**
  - 11. NAZIR USMAN**
  - 12. AYISHETU USMAN**
  - 13. FALILAT USMAN**
  - 14. HUMU USMAN**
  - 15. NAFISAT USMAN**
  - 16. RAHAMAT USMAN**
- RESPONDENTS**

17. **YAKUTA USMAN**
18. **BILKISU USMAN**
19. **SA'ADATU USMAN**
20. **BARAKAT USMAN**
21. **KUDIRAT USMAN**
22. **MUSILI USMAN**
23. **IYABO USMAN**
24. **FATIMO USMAN**
25. **MARIAM USAM**
26. **TAIBAT USMAN**
27. **SIMBIAT USMAN**

**APPEARANCE:**

M. S.DanmusaEsq with K. B. Mohammed Esq for the Applicant.  
UyimeUmoiyaEsq for the 1<sup>st</sup> Respondent.  
M. E. IgwuruveEsq for the 2<sup>nd</sup> – 26 Respondents/Objectors

**RULING/JUDGMENT**

The Applicant has brought this Originating Motion on Notice with suit No. FCT/HC/CV/1938/2021 dated 10<sup>th</sup> day of August, 2021 and filed on the 11<sup>th</sup> day of August, 2021 seeking for inquiry as to whether the Applicant is subject to jurisdiction of Area Court. Brought pursuant to Section 35(1) and 257(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) , Section 11 and 12 of the Federal Capital Territory Abuja Courts (Repeal and Enactment) Act , 2010 order 2 Rule 6 of the High Court of the Federal Capital Territory, (Civil Procedure) Rules, 2018 and under the inherent jurisdiction of this Honourable.

However, in response to the Application for inquiry, the 1<sup>st</sup> Respondent filed a Notice of Preliminary Objection dated 26<sup>th</sup> day of April, 2023 and filed on the same date.

Now, considering the nature of a Preliminary Objection, it is pertinent that it be considered first. This is in line with the decision in the case of **AKERE VS GOVERNOR OF OYO STATE & ORS (2012) LPELR – 7806 PP 45 PARAS E PER PETER ODILI J.S.C** where the Court held thus:-

***"However vague or minute a Preliminary Objection is, it must be considered before the Court can go forth since as in this instance the competence of the process is questioned. It must be resolved so that the Court is not made to embark on a futile adventure into an Appeal or suit that it either has no power to do or the matter being already dead whatever one does changes nothing."***

By a Notice of Preliminary Objection dated 26<sup>th</sup> day of April, 2023 and filed on same day. The Objector/Respondent herein contents that this suit is incompetent same having been caught up by the doctrine of estoppel per rem judicata and therefore robs this Honourable Court of the jurisdiction to entertain same.

The Objector/Respondent prayed this Court for the following relief:-

- 1). An Order of this Honourable Court striking out this suit for being incompetent same having being caught up by the doctrine of estoppel per rem judicata.

The grounds upon which the Preliminary Objection is predicated are as follows:-

- i) On the 11<sup>th</sup> day of August, 2021 the Applicant herein filed this suit before this Honourable Court i.e suit No. CV/1038/2021 challenging in the main the following:
  - (a) The jurisdiction of upper Area Court, Kado Abuja to entertain Claims bordering on the assets of a limited liability company i.e Coral Crown Limited.
  - (b) For making positive orders affecting the company's assets which is in the custody of the Applicant, and
  - (c) For proceeding against Applicant in the face of pending Appeal and Application for stay pending Appeal filed in suit. Please see the grounds for the Application contained therein as well as the supporting Affidavit.
- ii). While this suit was/is still pending, the Applicant on the 27<sup>th</sup> day of August, 2021 a few days after filling this suit yet again filed another

suit i.e Suit No. FHC/HC/CV/1899/2021 before this Honourable Court challenging in the main:-

- a. The Jurisdiction of the Upper Area Court, Kado, Abuja to entertain Claims bordering on the assets of a limited liability Company, i.e, Coral Crown limited.
  - b. For making positive orders affecting the company's assets which is in the custody of the Applicant, and
  - c. For proceeding against Applicant in the face of a pending Appeal and Application for stay pending the Appeal filed in the suit. Please see the grounds of the Application contained therein as well as the supporting Affidavit.
- iii). On the 30<sup>th</sup> day of January, 2023 suit No. FHC/HC/CV/1899/2021 came up for hearing before this Honourable court presided over by the Honourable Justice Jude O. Onwuegbuzie sitting at Apo Resettlement, Abuja and thereafter the matter was adjourned to 7<sup>th</sup> day of March, 2023 for Judgment.
- iv). ON the 7<sup>th</sup> day of March, 2023 judgment in the suit was delivered wherein the reliefs sought by the Applicant were granted, laying to rest the subject matter for determination donated by the Applicant in the suit which subject matter are impari material with this suit.
- v). The subject matter donated for determination in this suit has been adjudicated upon and determined in Suit No. FCT/HC/CV/1899/2021.
- vi). A hearing of this suit will result in the re-adjudication of the subject matter which has been adjudicated upon in suit No. FHC/HC/CV/1899/2021
- vii). It is settled law that where an issue/subject matter in a suit has been litigated upon and determined, the party, his privies and the Court is prohibited from enquiring into the matter already adjudicated upon.
- viii). The Claim of the Applicant herein, which is the same with the Claim of the Applicant in suit No. FHC/HC/CV/1899/2021 has been litigated upon and already determined by this Honourable Court in suit No. FHC/CV/1899/2021.

Filed in support of the Application is 19 paragraphs Affidavit deposed to one Unyime Umoiyak, a Counsel in the law firm of Messrs Law fields, shields and spears, Abuja, Solicitors to the Objector/Respondent. Attached to the supporting Affidavit are annexures marked as Exhibits A, B, C, D, E, F, G and H respectively.

In compliance with the Rules of Court, the Objector filed a written address dated the 16<sup>th</sup> day of April 2023.

In the said written address, Learned Counsel to the Objector, formulated a sole issue for determination to wit:-

***"Whether from the facts and circumstances of this suit, same has been caught up by the doctrine of estoppel per rem judicata and therefore robs this Honourable Court of the Jurisdiction to entertain same."***

In arguing the issue, learned Counsel submitted and urged the Court to hold the answer to the lone issue raised above in the affirmative as estoppel per rem judicata or estoppel of record arises where an issue of fact has been judicially determined in a final manner between the parties or their privies by a Court or tribunal having jurisdiction in the same matter and the same issues comes directly in question in subsequent proceedings as it effectively precludes a party to an action, his agents or privies from disputing as against the other party in any subsequent suit, matters which had been adjudicated upon previously by a Court of competent jurisdiction between him and his adversary involving same issues. Counsel cited in support, the cases of **KEHINDE V. ENEH (2017) LPELR – 43155 (CA) PP 13 -14, PARA D; OSHOBOJA V. ANUDA (2009) VOL. 40, NSCQR, 651 At page 676 PARA G. and Section 173 of the evidence Act.**

In another submission, Counsel stated that a careful examination of the depositions contained in the supporting Affidavit together with the Exhibits attached thereto, particularly Exhibits 'C', D, and E, reveal clearly that the facts/subject matter which precipitated the Applicant into instituting this suit and suit No. FHC/HC/CV/1899/2021 are one and the same and the end result of the reliefs claimed in both suits are one and the same, as such in the circumstance of this suit, humbly urged this Court to find that the

subjectmatter in the present suit is the same as the subject matter in suit No. FHC/HC/CV/1899/2021.

Submitting further, Counsel stated that upon a finding that the subject matter which precipitated the Applicant into instituting the proceedings in both suits are the same. Learned counsel asked the question as to whether the judicial decision which now precipitated the 1<sup>st</sup> Respondent into raising the objection herein is a final decision of a Court of competent jurisdiction and urged the Court to hold that the judicial decision in 'E' upon which the objection herein is raised is final, same having decided with finality the subject matter for determination between the parties and their privies and in the circumstances of this case, urged the Court to hold that the decision in Exhibit "F" is final, same having been reached by a Court of competent jurisdiction.

Furthermore, Counsel urged the Court to hold that upon a careful perusal of the supporting Affidavit as well as the Exhibits attached thereto, the only conclusion and finding that may be reach in this suit is that the parties and privies are the same as in this suit as well as suit No. FHC/HC/CV/1899/2021 and the Applicant in the present suit as clearly described is FBN Quest Trustees limited as well as the Applicant in No. FHC/HC/CV/1899/2021 in which Exhibit "F" clearly described therein as FBN Quest Trustees Limited and urged the Court therefore to find that the Respondents in this suit and the Respondents in suit NO. FHC/HC/CV/1899/2021 and their privies are the same.

Consequently, Counsel submitted and urged the Court to hold that in the determination of whether this suit is caught by the doctrine of estoppel, the Court is required to painstakingly investigate the facts in both cases i.e the facts upon which the present suit is predicated and the reliefs sought, as well as the facts upon which suit No. FHC/HC/CV/1899/2021 is predicated and the reliefs sought therein and coupled with the supporting affidavit in this objection and humbly urged the Court to find that the present suit runs afoul of the doctrine of estoppel per rem judicata and therefore robs the Court of the jurisdiction to entertain this suit. In this respect, reliance was placed on the case of **KAMBAZA V. HAKIMI & ANOR (2019) LPELR – 48139 (CA) PP 15 PARAS D.**

Moreso, learned Counsel submitted that upon a finding that this suit indeed runs afoul of the doctrine of estoppel per rem judicata, the only finding that this Honourable Court may reach is that the Court lacks the jurisdiction to entertain the present suit and accordingly strike out same as a successful plea of res judicata operates not only against the parties that it affects, but also ousts the jurisdiction of the Court as between the parties and their privies. Counsel cited in support the cases of **DANIEL TAYAR TRANS ENT (NIG) CO LTD V. BUSARI & ANOR (2011) LPELR – 923 (SC) PP 22 -23, PARAS D; IGBEKE V. OKADIGBO & ORS (2023) LPELR – 20664 (SC); AYAUYA V. YONRIN (2011) 10 NWLR (PT. 1254) 135 at 160; UKAEGBU V. UGOJI (1991) 6 NWLR (PT. 196) 127 at 44; OMOKHAFE V. ESEKHOMO (1998) LPELR – 2649 (SC) At – PG 25.**

Finally, Counsel urged the Court to hold that this suit is caught up by the doctrine of res judicata seeing that the parties and privies in this suit and suit No FHC/HC/CV/1899/2021 are the same and the subject matter in this suit has been determined with finality in suit No. FHC/HC/CV/1899/2021 and accordingly strike out this suit for want of jurisdiction.

On the other hand, in opposing the Application, the Applicant/Respondent filed a Counter Affidavit of Twenty (20) paragraphs deposed to by one Augustine Akange a litigation secretary in the law firm of Ahmed Raji & Co. equally filed in support of the counter Affidavit is a written address dated the 22<sup>nd</sup> day of September, 2023.

In response to the Preliminary Objection, learned Counsel contended that their case is not caught up by res judicata and therefore the plea should be rejected as res judicata as a principle of law, is intended to prevent the same issue from being relitigated between the same parties or those in privity with them in subsequent legal proceedings as in this particular case, res judicata does not apply due to the following reasons as the current case involves different legal claims than the previous case. As res judicata only applies if the same cause of action is being re-litigated as the relief sought in this case is distinguishable from that of the previous case, the factual circumstances surrounding their current case have significantly changed since the determination of the Appeal by Mrs Agatha

EbeleElendu in Appeal No. CA/ABJ/B/1138/20 as new issues have come to light which support their current legal claims and necessitates a reassessment of the issues at hand as such it is crucial that their case be evaluated on its own merits, independent of any prior decisions. And that the previous case did not result in a final judgment on the merits as the Court's decision in the prior case which was not a final disposition of the Claims involved as it focuses on the consequential order it gave to the Applicant directing it to only give attention to the request or demand of the shareholders, directors, members of Coral Crown Limited or the legal representative of the deceased late Hajiya Aishatu Turaki and not of the 5<sup>th</sup> Respondent who has no locus standi to request a share of the estate as the Court has not determined whether the Upper Area Court has jurisdiction to adjudicate on issues of Corporate Governance and that the Honourable Court has not inquired in its Judgment whether the Applicant in that case is subject to the jurisdiction of the Upper Area Court since it is not a Muslim and has not consented to the exercise of jurisdiction of the Upper Shariah Court and therefore res judicata cannot be invoked as there was no final judgment that would trigger its application as it is pertinent to distinguish the cases for clarity purposes as the two cases are distinct, the parties, issues and subject matters are different.

Furthermore, Counsel argued that it is trite for successful plea of res judicata, the law requires that it must be emphasized that the identities of the parties (or privies), the res, that is the subject matter of the litigation and Claim as well as the issues and parties in both the present and previous actions have to be the same otherwise the plea is not tenable, as a careful perusal of the instant suit reveals that the suit is against the purported legal heirs to the deceased person whereas as in suit FCT/HC/CV/1899/2021 the parties sued are the Upper Area Court, the Upper Area Court Judge Ado M. Ahmed, Alhaji Hamisu Turaki, Ali Usman and Agatha Ebele Elendu as the instant suit, the Originating Motion on Notice was brought pursuant to Section 36 (1) and 257 (2) of the Constitution and Section 11 and 12 of the FCT, Abuja Courts (Repeal and Enactment Act) 2010 and order 2 Rules 6 of the FCT High Court (Civil Procedure) Rules, 2018 which is seeking for an inquiry whether the Applicant who is not a



Muslim and has not consented to the jurisdiction of the Area Court is subject to the Jurisdiction of the Area Court.

Submitting further, Counsel argued that in suit FCT/HC/CV/1899/2021, the originating motion is brought pursuant to order 44 rules 5 (1) (2) and 9 of the high Court of the FCT (Civil Procedure) Rules 2018 and is primarily seeking for a judicial review and an order of certiorari and perpetual injunction restraining the Respondents whether by themselves servants, staffs and/or agents or any other person howsoever described from giving effect to the order made on 11<sup>th</sup> February or to take any steps to compel the attendance of the Applicants to appear in the proceedings.

Counsel contended that the sister Court only gave consequential order directing the Applicant to give attention to the request or demand of the shareholders, directors, members of Coral Crown Limited or the legal representative of the deceased late Hajiya Aishatu Turaki and not that of the 5<sup>th</sup> Respondent who has no locus standi to request a share of the estate as the Court has not determined in anyway whether the Upper Area Court has jurisdiction to adjudicate on issues of corporate governance and that Honourable Court has not also inquired in its judgment whether the Applicant in that case is subject to the jurisdiction of the Upper Shariah Court since its not a Muslim and has not consented to the exercise of the Jurisdiction of the Upper Shariah Court and the burden of proof of res judicata is based upon the rule that he who asserts must prove what he asserts and to succeed on a plea of res judicata, the party relying on it must prove that the parties, the issues and the subject matter in the previous actions is the same as in the action in which the plea is raised and to sustain the plea of res-judicata all the conditions must co-exist as a break in the link chain will render the plea unsustainable. In support, Counsel referred the Court to the cases of **A. I. B LTD V. PURIFICATION TECH LTD (2000) 10 NWLR (PT. 676) PG 522; LAWAL V. SALAMI (2002) 2 NWLR (PT. 752) 687 AND Section 11(1) of FCT, Abuja Area Courts (Repeal and Enactment) Act 2010.**

In conclusion, Counsel urged the Court to reject the plea for estoppel per rem judicata raised by the opposing party and hold that it's not applicable in the current circumstance.

I have carefully perused the notice of Preliminary Objection, the grounds upon which the Preliminary Objection was based, the reliefs sought, the supporting Affidavit, the annexures attached therewith and the written address in support of same. I have equally gone through the Counter Affidavit and the written address filed alongside the Counter Affidavit. Therefore, it is my humble view that the issue for determination is whether the Objector/Respondent has made out a case for the grant of this Application.

As can be gleaned from the Affidavit, written address and the Preliminary Objection challenging the jurisdiction of this Honourable Court, in this suit made by the 1<sup>st</sup> Respondent/Objector, the gravamen of this Application is that this suit is incompetent same having been caught up by the doctrine of estoppel per rem judicata and therefore robs this Honourable Court of the jurisdiction to entertain same.

The law is trite that in determining whether a Court has jurisdiction to hear and entertain a suit, recourse is to be made to the Claimant's Originating Process (i.e Writ of Summons and/or statement of Claim and facts deposed to in the Affidavit). This same stand point was reiterated and reaffirmed by the Supreme Court in the case of **PDP V. TIMIPRE SYLVA &ORS (2012) 13 NWLR (PT. 1316) 85 at 127 PER OLABODE RHODES VIVOUR**. Where it was held as follows:-

***"Jurisdiction of a Court to entertain a suit is resolved by scrupulous examination of the Writ of Summons, statement of Claim and the reliefs Claimed, no other document should be examined."***

However, it is important to note at this juncture that the main contention of the Objector/Respondent in the instant Application is that the Claim of the Applicant herein is the same with the Claim of the Applicant in the suit FCT/HC/CV/1899/2021 which has been litigated upon and already determined by justice Jude O. Onwuegbuzie wherein the reliefs sought by the applicant were granted, laying to rest the subject matter for determination which subject matter are impari material with this suit.

It is important to begin by considering what Estoppel per rem judicatameans.

The phrase Res Judicata is defined by the Black's Law Dictionary Ninth Edition at page 1425 to mean thus:-

***"An issue that has been definitively settled by judicial decision."***

Also, the Supreme Court described Res Judicata in the case of **OGAR V. IGBE (2019) 9 NWLR (PT. 1678) P 553 PARAS F – H PER EKO J.S.Ct**o mean thus:-

***"That where a competent Court has determined an issue and entered Judgment thereon, neither of the parties to the proceedings may re-litigate that issues by formulating a fresh Claim, since the matter would have become res Judicata."***

Moreso, the law is settled that for a plea of res judicatam to succeed, a party who sets up the defence of estoppel per rem judicata has a burden to establish the pre-conditions of the defence conclusively this position of law was more elaborated by the Apex Court in the case **UGO V. UGO (2017) 18 NWLR (PT. 1597) PP 238 – 239 PARAS F – C PER EKO J. S. C**, where it was held that:-

***"For a Plea of either issues estoppel or estoppel per judicatam to be sustained, five conditions must be met to wit:-***

- a. The parties and/or their privies must be the same.***
- b. Issue(s) in both the previous and the present cases must be the same.***
- c. The decision in the previous case must be valid, subsisting and final***
- d. The res or the subject matter in the two cases must be the same.***
- e. The Court that gave or rendered the previous decision must be competent."***

Similarly, it was held in the case of **LIYafa V. ZUBAIRU (2015) 9 NWLR (PT. 1465) PP 577 – 578, PARAS D-P PER AWOTOYE J.C.A** that:-

***"For a plea of res judicatum to succeed, a party relying on it must establish the following rights:-***

- a. That the parties or their privies involved in both the previous and the proceedings in which the plea is raised are the same.***
- b. That the Claim or issue in dispute in both proceedings are the same.***
- c. That the res or the subject matter of litigation in the two cases is the same.***
- d. That the decision relied upon to support the plea is valid subsisting and final.***
- e. That the Court that gave the previous decision relied upon to sustain the plea was a Court of competent jurisdiction."***

***The burden is on the party who sets up the defence of estoppel per rem judicatum to establish the above pre-conditions conclusively...."***

See also the case of **EKONG V. UDO (2002) (PT. 792)PP 29 – 30, PARAS H – B PER EDOZIE J. C. A** where it was held that:-

***"Where the plea of Estoppel per rem Judicatum has been raised, in determining whether issues, the subject matter of the two cases and the parties are the same, the Court is permitted to study the pleadings the proceedings and the judgment in the previous proceedings the Court may also examine the reasons for the judgment and other relevant facts to discern what was in issue in the previous case. Therefore, it is a question of fact whether the parties and their privies, the fact in issue and the subject matter of the Claim are the same in both previous and the present case."***

At this juncture it is worthy of note that the Objector/Respondent deposed to in the supporting Affidavit particularly at paragraphs 10, 11, 12, 13,

14,15, 16, 17 and 18 which for clarity and ease of reference I shall reproduce same hereunder:-

Paragraphs 10 read thus:-

***"10. That the Applicant later filed this suit challenging the actions and the orders made against her by the Upper Area Court. A copy of the Originating Motion initiating this suit is herein attached and marked Exhibit "D". Exhibit "D" is Exhibit "A" in the supporting Affidavit accompanying the Originating Motion initiating this suit.***

Paragraph 11 read thus:-

***"11. That a few days later, the Applicant again filed suit No. FHC/HC/CV/1899/2021 challenging the same actions and orders made against her by the Upper Area Court. A copy of the Originating Motion initiating the suit is herein attached and marked Exhibit "E" Exhibit "E" is Exhibit TLC3 in the supporting Affidavit accompanying the originating motion initiating suit No. FHC/HC/CV/1899/2021.***

Paragraph 12 read thus:-

***"12. That when the Applicant initiated suit. No. FCT/HC/CV/1899/2021, they secured an interim order of injunction restraining the Upper Area and the parties herein from taking any steps to compel the attendance of the Applicant's officers pending the hearing and determination of the Originating Motion. A copy of the said order is herein attached and marked Exhibit "F".***

Paragraph 13 read thus:-

***"13. That suit No. FCT/HC/CV/1899/2021 came up for hearing on the 30<sup>th</sup> day of January, 2021 before this present suit could be heard, even though this suit was***

***filed a few days earlier, and judgment was reserved for the 7<sup>th</sup> day of March, 2023."***

Paragraph 14 read thus:-

***"14. That on the said 7<sup>th</sup> day of March, 2023 Judgment in suit No. FHC/HC/CV/1899/2021 was delivered with the grant of the reliefs sought by the Applicant. A copy of the said Judgment is herein attached and marked Exhibit "G".***

Paragraph 15 read thus:-

***"15. That the subject matter of the Claim in this suit and the matter of the Claim in Exhibit "E" are the same, and the end result is the same.***

Paragraph 16 read thus:-

***"16. That the subject matter in this suit before this Honourable Court have been adjudicated upon and determined in suit No. FCT/HC/CV/1899/2021 by this Honourable Court presided over by another Judge."***

Paragraph 17 read thus:-

***"17. That the subject matter donated for hearing and determination of in this suit is now res judicata, same having already been adjudicated upon in suit No. FCT/HC/CV/1899/2021 by this Honourable Court."***

Paragraph 18 read thus:-

***"18. That the Appeal which the Applicant relied on in this suit and suit No. FCT/HC/CV/1899/2021 has been heard and determined by the Court of Appeal, and judgment therein delivered on the 8<sup>th</sup> day of April, 2022 with the Appeal dismissed. A copy of the judgment in the said Appeal is herein attached and marked Exhibit "H"***

On the other hand, the Applicant/Respondent equally deposed to in the Counter Affidavit in opposition to the Preliminary Objection particularly at paragraphs 11, 12, 13, 14, 15, 16 and 17 which for ease of reference. I shall reproduce same hereunder.

***"Contrary to paragraph 11 of the Supporting Affidavit, the action instituted at the sister Court has different parties, issues and prayers."***

Paragraph 12 read thus:-

***"12. Contrary to paragraph 13 of the Supporting Affidavit, the instant suit was instituted on the 11<sup>th</sup> day of August, 2021 several months apart from the other suit."***

Paragraph 13 read thus:-

***"Contrary to the paragraph 14 of the Affidavit, I know as a fact that the reliefs granted by the sister Court and the reliefs sought before this Honourable Court are distinct."***

Paragraph 14 read thus:-

***"Contrary to paragraph 15 of the Affidavit the parties, issues subject matter, laws and rules of Court relied on are distinct. And I verily believed that the outcome is different."***

Paragraph 15 read thus:-

***"Contrary to paragraph 16 of the Affidavit, I know as a fact the deposition in the Affidavit is untrue and misleading."***

Paragraph 16 read thus:

***"in response to paragraph 17 of the Affidavit, I was informed by Mohammed ShehuDanmusa of Counsel at our office located at No. 10 Santana Close Wuse II Abuja of the following facts which I verily believe to be true, as follows:-***

***a. The subject matter adjudicated and determined by this Court presided over by another Judge are distinct.***

- b. That while in the instant suit Plaintiff/Respondent is seeking an inquiry whether the Applicant is subject to the jurisdiction of this Honourable Court considering the Applicant is a limited liability Company incorporated under the companies and allied matters Act and not subject to any religion pursuant to Section 11 and 12 of the Federal Capital Territory, Abuja Area Courts (Repeal and Enactment) Act 2010.***
- c. In the suit adjudicated upon by this Court the party sought for a judicial review for an order of certiorari and perpetual injunction restraining the Respondents whether by themselves, servants staffs, and/or agents or any other persons howsoever described from giving effect to the order made on the 11<sup>th</sup> February, 2021 or to take any steps to compel the attendance of the Applicant's officers to appear in the proceedings."***

Paragraph 17 read thus:-

***"Contrary to paragraph 18 of the supporting Affidavit, the Plaintiff/Respondent did not rely on the appeal rather it drew the attention of this Honourable Court to the pendency of the Appeal. Moreso, it was not the appeal of the Respondent."***

In the light of the above, a careful study of the Affidavit evidence as well as the entire Exhibits attached particularly Exhibits D, E, and G will reveal that the Respondent/Applicant instituted the instant suit with suit No. CV/1938/2021 on the 11<sup>th</sup> day of August, 2021 after filing this instant suit, they went ahead again and filed suit No. CV/1899/2021 on the 27<sup>th</sup> day of August, 2021 before Justice Jude .O. Onweighbuzie sitting at High Court of the FCT in Apo Re-settlement.

However, a close look at Exhibits D, E, and G annexed to the Preliminary Objection will show that the parties are similar but are not the same as well as the reliefs sought being different as in suit CV/1899/2021. The parties are FBN QUEST TRUSTEES LIMITED against Upper Area Court Garki, Kado District FCT. Abuja, Honourable Ado M. Ahmed, Alhaji Hamisu,



Mustapha Turaki, Ali Usman and AghathaEbeleElendu. While in CV/1938/2021 the parties are FBN QUEST Trustees Limited againstAlhajiHamisu Mustapha Turaki and 26 others. Also the reliefs sought in CV/1899/2021 are an order of this Honourable Court quashing that part of the proceedings in case NO. CV/14/2020 requiring the Applicant to pay over to the Sharia'h Court of Appeal Abuja Probate account all monies belonging to Coral Crown Ltd or HajiyaAishatuTuraki and to appear before the 1<sup>st</sup> Respondent for failure to obey the order, an order of this Court quashing the order of the 2<sup>nd</sup> Respondent, Honourable Ado .M. Ahmed (presiding judge) made on the 11<sup>th</sup> day of February, 2021 and all proceedings in case NO.CV/04 2022.AlhajiHamisu Mustapha Turaki VS Ali Usman&Orsin so far as they relate to the Applicant and an Order of perpetual injunction restraining the Respondents whether by themselves, servants, staffs and/or agents or any other person howsoever from giving effect to the said order of 11<sup>th</sup> February, 2021 or take any step to compel the attendance of the applicant's officers to appear in the proceedings. While in suit NO. CV/1938/2021 the reliefs sought are as follows:-

A Declaration of this honourable Court that the Applicant being a Company duly incorporated under the companies and allied matters act is not subject to the jurisdiction of the Upper Area Court on matters of Islamic personal law,

A Declaration of this Honourable Court that the order of FCT Upper Area Court sitting at Kado per Ado M. Ahmed granted on the 1<sup>st</sup> day of March, 2021 in suit CV/04/2020 is null and void as it relates to the Applicant herein on the ground of lack of jurisdiction,

A Declaration that in view of the exclusive jurisdiction of the Federal High Court on questions arising from the operation of CAMA, any other enactment replacing the act or regulating, the operation of companies incorporated under the companies and allied matters Acts, the Upper AreaCourt lacks the jurisdiction to make the order dated 1<sup>st</sup> day of March, 2021 Per Ado M. Ahmed, an order of this Honourable Court setting aside the order of the FCT Upper Area Court sitting at Kadomade on the 1<sup>st</sup> of March, 2021 in suit CV/04/2020 between AlhHamisu Mustapha Turaki V. ALI USMAN & 26 ORS as relates to the Applicant herein and An order of

this Honourable Court setting aside the bench warrant issued against the head of the Applicant's Abuja Office pending the determination of this Application, suspending the implementation or execution of the order and warrant sought to be set aside in prayer 1 and 2 above which it is my considered opinion did not satisfy the conditions for the operation of the doctrine of res judicata even though it is in respect of the same subject matter (the Estate of the deceased late Hajiya Aishatu Turaki) there is a valid, subsisting final decision and the Court that rendered the decision in CV/1899/2021 is competent. But, the parties, issues as well as reliefs sought are different and all the five conditions of res judicata must be conjunctive but in the instant case the conditions are in a disjunctive form. I so hold.

In the final analysis therefore, I without hesitation resolve the issue for determination in favour of the Respondent/Applicant against the Objector/Respondent and hold very strongly that this preliminary objection is not sustainable. Consequently, the Preliminary Objection lacks merit and same is hereby dismissed in its entirety.

The next to be considered is Originating Motion on Notice with suit NO. CV/1938/2021 dated the 10<sup>th</sup> day of August, 2021 and filed on 11<sup>th</sup> day of August, 2021. The Originating Motion on Notice is brought pursuant to Section 36(1) and 257 (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 11 and 12 of the Federal Capital Territory, Abuja Area Courts (Repeal and Enactment) Act, 2010 and order 2 Rule 6 of the High Court of the Federal Capital Territory (Civil Procedure Rules, 2018 and under the inherent jurisdiction of this Honourable Court.

The Respondent/Applicant herein prayed this Honourable Court for the following reliefs:-

- (1) A Declaration of this Honourable Court that the Applicant being a company duly incorporated under the companies and allied matters act is not subject to the jurisdiction of the Upper Area Court on matters of Islamic personal law.
- (2) A Declaration of this Honourable Court that the order of the F.C.T Upper Area Court sitting in Kado per Ado M. Ahmed granted on the 1<sup>st</sup> March, 2021 in suit NO. CV/04/2020 between ALH.

- Mustapha Turaki V. Usman & 26 ors. Is null and void as it relates to the Applicant herein on the ground of lack of jurisdiction.
- (3) A Declaration that in view of the exclusive jurisdiction of the Federal High Court on questions arising from the operation of the companies and allied matters act or any other enactment replacing the act or regulating the operation of companies incorporated under the companies and allied matters. Act, the Upper Area Court lacks jurisdiction to make the order dated 1<sup>st</sup> March, 2021 per Ado M. Ahmed.
  - (4) An order of this Honourable Court setting aside the order of the F.C.T Upper Area Court sitting in Kado made on 1<sup>st</sup> March, 2021 in suit No. CV/04/2021 between **ALHAJI HAMISU MUSTAPHA TURAKI VS ALI USMAN & 26 ORS** as it relates to the Applicant herein on the ground of the lack of jurisdiction.
  - (5) An Order of this Honourable Court setting aside the bench warrant issued against the head of the Applicant's Abuja office pending the determination of this Application, suspending the implementation or execution of the order and warrant sought to be set aside in prayer 1 and 2 above.
  - (6) And for such further order(s) as this Honourable Court may deem fit to make in the circumstances.

The Application is predicated upon the following grounds:-

1. That the Applicant is a company duly incorporated under the companies and allied matters Act and thus not subject to the jurisdiction of the Upper Area Court on matters of Islamic personal law.
2. That the Upper Area Court lacks jurisdiction to grant an order against Applicant in suit No. CV/04/2020 between **ALHAJI HAMISU MUSTAPHA TURAKI V. ALI USMAN & 26 ORS** for being a non-party to the suit.
3. That the order granted against the Applicant on the 1<sup>st</sup> of March, 2021 by the Upper Area Court in suit No. CV/04/2020 between **ALH.HAMISU MUSTAPHA TURAKI V. ALI USMAN & 26 ORS** is against the Applicant's right of fair hearing as enshrined in Section

36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

4. That the customer of the Applicant is Coral Crown Limited, a Company duly incorporated under the companies and allied matters Act and has a distinct and separate legal entity from its shareholders, promoters and directors.
5. That monies or properties of a limited liability company duly registered under the companies and allied matters act do not pass on to the heirs or its shareholders, promoters, or directors as the case may be upon their demise.

In support of the Application is 7 paragraphed Affidavit deposed to by one Khalifa Baba Mohammed, a legal practitioner in the law firm of Ahmed Raji & Co. attached to the Affidavit is an annexure marked as Exhibit A. also filed in support of the Originating Motion on Notice is a written address dated 10<sup>th</sup> day of August, 2021.

In the said written address, learned Counsel to the Respondent/Applicant formulated three issues for determination to wit:-

- "1. Whether the F.C.T Upper Area Court can exercise jurisdiction over non-natural persons.***
- 2. Whether the F.C.T Upper Area Court was right to have granted an order against a non party.***
- 3. Whether in view of Section 251(1) (e) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the Upper Area Court has jurisdiction over companies incorporated under companies and allied matters act."***

In arguing issue, Counsel submitted on issue one that the law is settled that jurisdiction is the authority a Court has to decide matters or take cognizance of matters presented in a formal way for its decision. Counsel cited the cases of **MOBIL PROD (NIG) LTD VS LASEPA (2002) 18 NWLR (PT. 798) (P 399 PARA C. A-G; FEDERATION VS ABUBAKAR (2008) 16 NWLR (PT. 1112) PG 135 at 158 paras A – B** and

**CUSTOMARY COURT OF APPEAL EDO STATE VS AGUELE (2018) 3 NWLR P 397 PARAS B.**

In another submission, Counsel submitted that the specific provision of the Federal Capital Territory Abuja Area Courts (Repeal and Enactment Act) 2010 which is the law Establishing the Upper Area Court and its jurisdiction stipulates that only parties who are of the Islamic faith are subject to the Jurisdiction of the Area Courts and a party who is not of the Islamic faith can only be subject to the jurisdiction of the Court if he consents to it and in the instant case, the Applicant is a juristic person who is not subject to any religion and thus its consent is needed before it can be made a party. Reliance was placed on Sections 10 and 11 of the Federal Capital Territory, Abuja Area Courts (Repeal and Enactment) Act 2010.

Submitting further, Counsel stated that the consent of the Applicant having not been sought, the F.C.T Upper Area Court cannot exercise jurisdiction over the Applicant in this matter of distribution of the deceased Estate under the Islamic personal law as in suit No. CV/04/2020 between **ALH HAMISU MUSTAPHA TURAKI VS ALI USMAN & 26 ORS** "in this respect, reliance was placed on the case of **OKOYE & ANOR VS MBAYA (2020) LPELR – 49161 (CA)**.

Finally on issue one, Counsel urged the Court to so hold.

On issue two, Counsel submitted that it is trite law that a Court of law has no power to make an order or give a judgment against a non-party to a suit as such an order is not only wrong but is also a nullity, this is because giving judgment or an order against a non-party to a suit is a breach of his fundamental Right to fair hearing. Counsel cited the cases of **ATTORNEY GENERAL OF LAGOS STATE VS ATTORNEY GENERAL OF THE FEDERATION (2003) 111 LRCN, 1867, 200-201; OYEYEMI V. OWOEYE (2017) 12 NWLR (PT. 1580) 364 at 402; ARARUME VS UBA (2021) 8 NWLR (PT. 1779) At pages 515 – 516.**

Submitted further, Counsel stated that natural justice demands that a party be heard before the case against him is determined and once there is an infringement of the principle of natural justice against him, then the trial is not fair and the principle of fair hearing is not a mere adjudication but

adocrtine that enjoins that once a party entitled to be heard before deciding a matter is denied opportunity of being heard, the order or decision given thereon will be vacated or set aside this is because the issue of fair hearing is constitutional and fundamental.

Finally on issue two, Counsel urged the Court to so hold.

On issue three, Counsel submitted that it is trite that the Federal High Court has exclusive jurisdiction arising from the operation of the companies and allied matters act or any other Enactment replacing the Act or regulating the operation of companies incorporated under the companies and allied matters act. In this respect, Counsel cited the case of **A.G. LAGOS STATE V. EKO HOTELS LTD (2016) 18 NWLR (PT. 1011) PAGE 398.**

In another submission, Counsel stated that it is clear from the provision of Section 251 (1) (e) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) that it is only the Federal High Court that can entertain matters regulating the operation of companies incorporated under the companies and allied matters act and jurisdiction of Upper Area court is limited to any person who is a Muslim or any other person in a cause or matters who consents to the exercise of the jurisdiction of the Area. Reference was made to Section 11 (1) (a) (b) of the Federal Capital Territory Abuja Area Courts (Repeal and Enactment) Act 2010.

Finally on issue three, Counsel submitted that the company is not a Muslim and has not in any way consent to the jurisdiction of Upper Area Court Kado and urge the Court to so hold.

In conclusion, counsel urged the Court to resolve all issues for determination in favour of the Applicant and grant all their reliefs.

On the other hand, in opposing the Application, the 1<sup>st</sup> Respondent filed a Counter Affidavit of five (5) paragraphs deposed to by one Gideon Yashim, a litigation Secretary in the **LAW FIRM of LAW FIELDS, SHIELD & SPEARS, SOLICITORS** to the 1<sup>st</sup> Respondent/Applicant. Attached to the Counter Affidavit is an annexure marked as Exhibit A. Equally filed in support of the Counter Affidavit is a written address dated the 14<sup>th</sup> day of November, 2022.

In the said written address, Learned Counsel to the 1<sup>st</sup> Respondent formulated a sole issue for determination to wit:-

***"Whether Applicant has placed before the Honourable Court the materials to warrant the Court's exercise of discretion in its favour."***

In arguing the issue, Counsel stated that the Applicant had failed woefully to furnish before the Court the materials for consideration by this Honourable Court for setting aside the orders made by the Upper Area Court Kado FCT Abuja.

In further opposing the Application, Counsel contended that the Upper Area Court Kado, FCT Abuja has jurisdiction to entertain an action on the issue of distribution or administration of Estate under Islamic Law in the case of a deceased Muslim reason being that the deceased whose Estate is the centre point is a Muslim, married a Muslim who still alive, died a Muslim and was buried according to Islamic law. Reliance was placed on Section 277 (1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 as amended, Sections 1 (3), (2) and 51 of the Federal Capital Territory Abuja Area Court's (Repeal and Enactment) Act 2010.

In another submission, Counsel stated the Applicant never stated in the entire process filed its interest and how same is being threatened by the order of the Upper Area Court Kado, FCT Abuja as such no basis for the setting aside the order made by Upper Area Court, FCT Abuja.

Furthermore, Counsel stated that the Applicant dwelt so much issues that borders more on company law and cited authorities that do not in any way relate to the facts and circumstances of this case just to support the fact that it is not bound by the jurisdiction of the Upper Area Court sitting in Kado.

Consequently, Learned Counsel urged the Court to dismiss the instant Application for want of jurisdiction and award substantial cost.

In further responding to the Application, the 2<sup>nd</sup> to 27<sup>th</sup> Respondents on the other hand, filed a 38 paragraphed Counter Affidavit deposed to by one Blessing Isaac, a litigation Secretary in the Law firm of Messrs

Saf&Sanderston, Solicitors to the 2<sup>nd</sup> to 27<sup>th</sup> Respondents. Also filed in support is a written address dated the 23<sup>rd</sup> day of September, 2021.

In the said written address, Counsel formulated two (2) issues for determination to wit:-

- "1. Whether the action of the Applicant by Originating Motion on Notice is time barred by virtue of the limitation laws applicable in the Federal Capital Territory, Abuja.**
- 2. Whether this Honourable Court has the jurisdiction to entertain this *suitas* it is presently constituted? And whether this suit is an abuse of Court process."**

In arguing issue one, Counsel submitted on issue one that the action of the Applicant is time barred by virtue of the limitation law applicable in Federal Capital Territory Abuja as the statutory authorities and case laws are settled on the issue. Counsel cited Section 2 of the Public officers protection Act, Chapter P41 laws of the Federation of Nigeria 2010 Applicable in FCT and order 44 rule 4 of the FCT High Court (Civil Procedure) Rules 2018.

Counsel further stated that there is no ambiguity in the above provisions and adopt the position of the Court of Appeal on how clear and unambiguous words of a statute are construed. And submit that there is no ambiguity in the provisions of Section 2 of the Public Officers protection Act, Chapter P41 LFAI 2010 applicable in Abuja and order 44 Rule 4 of the FCT High Court (Civil Procedure) Rule 2018. In this respect, reliance was placed on the cases of **FEDERAL REPUBLIC OF NIGERIA V. JAMES OMANEFE IBORT & ORS ELC (2014) 2248, PAGE 1 AND BERLIET NIGERIA LTD V. ALHAJI MUSTAPHA MACHALLA ELC (1995) 1467, PG 1.**

Moreso, Counsel contended that the supporting Affidavit is explicit that the order which is the subject of the instant suit was made by the Upper Area Court, Garki sitting in Kado, FCT pursuant to the discharge of its statutory function on the 11<sup>th</sup> February, 2021 and the period from 11<sup>th</sup> February, 2021 to 11<sup>th</sup> August, 2021 is outside the statutory periods provided for an



Application of such nature and as such the Application is brought outside the three month period permitted under the public officers protection Act and this being so, the action complained against by the Applicant is an official action of a public officer in the cause of discharge of her functions under the establishment Act.

In another submission Learned Counsel stated that it is trite that a cause of action is a fact or set of facts which gives a person right to judicial relief and it consists of every fact which it would be necessary for a Plaintiff to prove if traversed, in order to support his right to judgment and it is settled that for the purpose of limitation law time begins to run when there is in existence a person who can sue and another person who can be used as when all facts have happened which are material to be proved to entitle the Plaintiff to succeed. Counsel cited the cases of **THOMAS V. OLUFOSOYE (1996) 5 NWLR (PT. 18) 669; JALLCO LTD V. OWOMIBOYS TECHNICAL SERVICES LTD (1995) 4, NWLR (PT. 391) 534 and MRS. COMFORT OLUFUNMILAYO ASABORE & ANOR V. PAN OCEAN CORPORATION NIGERIA LIMITED& ANOR (2017) ELC, 2303 SC PG. 1.**

Consequently, learned Counsel contended that from the facts before this Honourable Court, there was in existence a person who can make an application for inquiry as to whether the Respondent/Applicant is subject to the jurisdiction of Area Courts from 11<sup>th</sup> February, 2021 to 11<sup>th</sup> May, 2021 (3 months if at all the Claims of the Applicant exist and there was a person who could be sued as the purpose of a limitation law removes the right of enforcement and the right of Judicial reliefs leaving the Plaintiff with a bare and empty cause of action which he cannot enforce if such a cause of action is found to be statute barred. Counsel referred the court to the case of **MILITARY ADMINISTRATOR (EKITI STATE) & OTHERS V. PRINCE BENJAMIN ADENIYI ALADEYELU & ORS (2007) 30 NSCQR, PAGE 928 ESP At 962.**

Counsel further stated that, the general principle of law is that where the law provides for the bringing of action within a prescribed period in respect of a cause of action accruing to a party, proceedings shall not be brought after the time prescribed by the statute had expired. As this means that an

action brought outside the prescribed period offends the provision of the statute and does not give rise to a cause of action, as such what order a court should make where it finds out that an action is statute barred and where a Defendant raises a defence that the Plaintiffs action is statute barred and the defence is sustained by the trial Court, the proper order for trial Court to make is an order of dismissal of the Plaintiffs action and not to merely strike out. Counsel referred the Court to the case of **MILITARY ADMINISTRATOR (EKITI STATE) VS PRINCE BENJAMIN ADENIYI ALADEYELU & ORS SUPRA.**

Finally on issue one, Counsel prayed the Court to dismiss the action of the Applicant for being time barred by virtue of the limitation.

On issue two, Counsel submitted that a Court is competent where it is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another, the subject matter of this case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction and the case before the Court initiated by the due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction. Counsel cited the case of **MADUKOLU VS NKEMDILIM (1962) 1 ALL NLR 587 (SC).**

In another submission, Counsel stated that jurisdiction is the cornerstone and bedrock of adjudication as it can neither be compromised nor conferred by consent of parties upon a Court and it is very constitutional as well as very fundamental that it can be raised at any stage of a proceeding both at the trial, on appeal and even for the first time in Supreme Court and where a Court lacks jurisdiction, any proceeding conducted is in breach and renders same a nullity. In this respect, reliance was placed on the cases of **CPC VS OMBUGADU (2013) 18 NWLR (PT. 1385) PG 66 At 144 – 145 and EMEKA VS OKADIGBO & ORS (2012) 7 SC (PT. 1)**

Submitting further, Counsel stated that in this case in hand, this Honourable Court has no jurisdiction to entertain an action on the issue of distribution or administration of Estate under Islamic law in the case of a deceased Muslim, hence the instant objection, the reason being that the deceased whose Estate is the centre point is a Muslim, married a Muslim

who is still alive, died a Muslim and was buried according to Islamic rites Counsel cited the Section 266(1) and (2) of the 1999 Constitution as amended, Sections 1(3), 2 (2) 51 of the Federal Capital Territory Abuja Area Courts (Repeal and Enactment) Act,2010 and the cases **of FEDERAL REPUBLIC OF NIGERIA VS JAMES IBORI & ORS ELC (2014) 2248 PG 1; BERLIET NIGERIA LTD VS ALHAJI MUSTAPHA KACHALLA ELC (1995) PG 1 AND DABAI VS KWAMA (2014) 14 NWLR (PT.1426) PG 96 AT 107 PARA G.**

Moresore, Learned Counsel submitted that in the instant case Section 277 (2) (c) applies to the case where it stated that gift, will and inheritance where the deceased or donor is a Muslim and the respondent/Applicant in an attempt to mislead this Court, referred to the deceased as Maryanne instead of Maryam as she had borne the same name until her death and the implication of the above constitutional provision is that the deceased person who is the centre point is a Muslim and as long as the deceased person is confirmed to be a Muslim the appropriate venue for determining any dispute concerning his or her Estate is the Shariah Court and not any other.

Consequently, Learned Counsel submitted that the document which the Court considers in coming to the conclusion that it has jurisdiction to entertain a suit is the Claim of the Plaintiff as it is crystal clear and this fact is admitted by the Respondent/Applicant that the Claim before the Upper Area Court was for the distribution of the Estate of the deceased Hajiya Maryam AishatuTuraki who lived, died and buried in accordance with Islamic law and the jurisdiction to entertain such a Claim is clearly vested in the Upper Area Court by the provisions of Section 2(2) of the Federal Capital Territory Area Court (Repeal and Enactment) Act 2010 and the Claim of the Applicant in this suit being one for the determination of the Islamic personal law of the deceased and the Applicant, this Court is amply vested with the jurisdiction to entertain same. Counsel cited the cases of **OBUWEBI VS CBN (2011) VOL. 45 PART 1 NSCQR 51 AT PG 109 PARA E AND GODWIN VS OKEY (2010) VOL. 43 NSQCR 101 AT 111 PARA G –A.**

Counsel further submitted that the present suit constitute an abuse of this Court process in line with Section 262 (2) (2) (c) of the Constitution of the Federal Republic of Nigeria (as amended) 1999 and Sections 1 (2), 2, 2(2) and 51 of the Federal Capital Territory Abuja Area Courts (Repeal and Enactment) Act 2010. Counsel cited the case of **UBA PLC VS DAMA MOTORS LTD (2018) LPELR – 44101 (CA)**.

Learned Counsel stated that it is trite that a Court of law should not decide a case on mere conjecture or speculation and that Courts of law are Courts of facts and law. Counsel referred the Court to the case of **AGIP NIG. LTD VS AGIP PETROL INT'L & ORS (2010) 5 NWLR (PT. 1187) PG 348 AT 413 PARAS B**.

In conclusion, Counsel urged the Court to dismiss the action of the Applicant by Originating Motion on Notice for being statute barred by virtue of limitation law, for lack of requisite jurisdiction to entertain the suit by the provision of Section 262 of Constitution of the Federal Republic of Nigeria as the Shariah Court of Appeal of the FCT is exclusively vested with Appellate and supervisory jurisdiction in civil proceedings involving question of Islamic personal law and the laws cited by the Respondent/Applicant are inferior to the provisions of the Constitution of the Federal Republic of Nigeria (as amended) 1999.

On the other hand, the Applicant filed a 23 paragraphed further Affidavit in opposition to the 1<sup>st</sup> Respondents Counter Affidavit against the Applicants Originating Motion on Notice the said further Affidavit was deposed to by Maryam Isiyaku, Counsel in the law firm of Ahmed Raji & Co. attached to the further Affidavit is an annexure marked as Exhibit A. also filed in support of the further Affidavit is a written address dated 12<sup>th</sup> day of December, 2022.

Learned Counsel raised Preliminary points of law in the written address before responding to the issues raised in the written address filed in support of the 1<sup>st</sup> Respondent's Counter Affidavit.

Learned Counsel raised the issue of non-compliance with the mandatory provisions of Sections 175, 179(2) and 180 of the companies and allied matters Act, 2020 and urged the Court to discountenance and strike out

the Counter Affidavit as the 1<sup>st</sup> Respondent has not complied with the mandatory provisions of the company and allied matters Act 2020. Particularly Sections 175, 179 (2) (5), 180 regarding the transfer of shares of a deceased person in which he has interest therein and as such, the 1<sup>st</sup> Respondent has failed to comply with the condition precedent for the transfer of shares of a deceased person.

Moreso, Learned Counsel submitted that the companies and allied matters act 2020, has spelt out clearly the laid down procedure to be followed in transfer of shares of a deceased person irrespective of the religion of the personal representative of the shareholder or beneficiary and in the circumstance, since trust is created in favour of a limited liability Company, the 1<sup>st</sup> Respondent ought to transfer the shares first as required by sections 175, 179(2), 179 (5) and 180 of the CAMA 2020 by giving notice of his or her interest in the shares, dividend or interest on them, by execution of interest of transfer and registering himself or any person of his choice as a member of the company and the law is trite where a statute prescribes a condition precedent to the assumption of jurisdiction by a Court , that condition precedent must be fulfilled before there is a jurisdiction. In support of this, Counsel cited the cases of **OBE AND ANOR VS PROSPER FUNDS LTD (2022) LPELR – 57488 (CA); AGUMA VS APC & ORS (2021) LPLER – 55927 (SC); DREXEL ENERGY & ORS VS NATURAL INTERNATIONAL BANK LTD & ORS (2008) LPELR – 962 (SC) AND CITY ENGINEERING (NIG) LTD VS NIGERIA AIRPORTS AUTHORITY (1999) LPELR – 867 (SC).**

In another submission, Learned Counsel submitted having failed to comply with the condition precedent required by for transferring shares of a deceased person, the Upper Area Court lacks the requisite jurisdiction to conduct further proceedings in this matter and make the order for the transfer of funds invested to the probate account of the Shariah Court of Appeal and kept in trust for the company by the Applicant. Counsel referred the Court to the cases of **GABRIEL MADUKOLU & ORS VS JOHNSON NKEMDILIM (1962) ALL NLR 587 At 595; ENIYADIKE VS OMEHIA (2010) 11 NWLR (PT. 1204) 92 @ 113 AND A.G. FEDERATION VS ABACHA (2010 17 NWLR (PT. 1221) PG 1 AT 28 – 29.**

Finally, Counsel urged the Court to hold that it has the requisite jurisdiction to conduct further proceedings and make the non-compliance with the mandatory provision of Section 175, 179(2), 179(5) and 180 of CAMA 2020 as fatal and goes to the jurisdiction of the entire proceedings in the case before the Upper Area Court Garki sitting in Kado.

In Responding to issue 1 raised by the Counsel to the 1<sup>st</sup> Respondent in his written address, Learned Counsel to the Applicant submitted on issue one that the Applicant has disclosed sufficient cause of action and locus to institute the instant action, because it was ordered by the lower Court to transfer the investment made and held in trust for Coral Crown Limited to the Shariah Court of Appeal Probate Account without being a party to the suit and without given its consent, without taking into consideration that it is not subject to any religion and without complying with the condition precedent for the transfer of shares of a deceased person as contained under Section 175, 179(2) (5) and 180 of the 2020 and it is trite that only parties to or in judicial proceedings of a Court of law in a case are subject to the jurisdiction of the court and are to be legally bound by any findings, orders or decisions reached therein and this position is rooted in the constitutional provision in Section 36(1) of the 1999 Constitution (as amended) on the Fundamental Right of a person to fair hearing in the determination of his civil rights and obligations by a Court of law or Tribunal established by the law which is also premised on the principle of natural justice of *audi alteram partem* (hear the other side). Counsel cited the case of **IN THE VESSEL MT-SEA TIGER & ANOR V. ACCORDSHIP MANAGEMENT (HK) LTD & ORS (2020) LPELR – 49498 (CA)**.

In further response, Counsel submitted that the consent of the Applicant has not been sought and obtained as the Applicant is not a Muslim, a company is not subject to any religion and the Applicant is a juristic person and not subject to any religion as such the Applicant can only be made a party to the suit if it consented to the jurisdiction of the Upper area Court or is a Muslim and the Applicant herein, being the FBN QUEST TRUSTEES LTD is by virtue of CAMA 2020, the law establishing it a creature of statute and thus a non-juristic person as well as a legal entity known to law and once a company is incorporated, it becomes a separate person from the individuals who are its members with the capacity to enjoy legal rights and

is subjected to legal duties but only as artificial person and this principle by extension applies to organs or bodies established by statute as the Applicant, not being a natural person, but a creation of statute, the question will not arise as to whether it is a Muslim or not, in determining whether the Upper Shariah Court can exercise jurisdiction over this person even through an artificial person, regard has to be heard to proceedings contained in the record of the trial Court so as to decipher whether this person gave its consent or voluntarily submitted itself to the jurisdiction of that Court. In this respect, Counsel cited the Section 11(1) (a) – (b) of the Federal Capital Territory Abuja Area Courts (Repeal and Enactment) Act 2010 cases of **SOLOMON VS SOLOMON & COY. LTD V. SHARIAH COURT ROCK T/WADA KADUNA & ORS (2019) LPELR – 48093 (CA) AND ODUWOLE VS FAMAKUWA (1999) 4 NWLR (PT. 143) P 241.**

In response to issue two, Counsel submitted that the Applicants Claim is justiciable in that it is managing the investment made by Coral Crown Limited in trust and without following the process as it was ordered to transfer to the Probate Account of the Shariah Court of Appeal investment held in trust for Coral Crown Ltd without being a party to the suit and it is trite that an order made or decision taken by a Court against a person who is not a party to a case is not binding on such a person and so made in vain since it cannot be enforced against him. Counsel cited the case of **UWAZURUIKE VS A. G. FEDERATION (2013) 10 NWLR (PT. 1361).**

In further response to the 1<sup>st</sup> Respondents contention, Counsel stated that the investment in the custody of the Applicant is held in trust for Coral Crown Limited not the deceased person as there is a procedure for transfer of shares of a deceased person and it is trite that a company's property is distinct from members property. In this respect, reliance was placed in the case of **NICON INSURANCE CO. LTD & ANOR VS BUREAU OF PUBLIC ENTERPRISES & ANOR (2020) LPELR – 51574 (CA).**

In another submission, Counsel stated that the Applicant has demonstrated sufficient cause of action to warrant the setting aside of the orders made by the Upper Area Court as it was able to show that it has not been accorded fair hearing before the order was made as it was ordered to

transfer moneys held in trust for Coral Crown Limited to the Probate Account of the Shariah Court of Appeal without being made a party to the suit and it is not subject to any religion because it is an artificial person. Counsel cited Section 277 (1) (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

In conclusion, learned Counsel urged the Court to grant all the reliefs sought by the Applicant.

The Applicant equally filed a 36 paragraphed further Affidavit in opposition to the 2<sup>nd</sup> – 27<sup>th</sup> Respondents Counter Affidavit. The said further Affidavit was deposed to by one Maryam UmmiIsiyaku, Legal practitioner in the law firm of Ahmed Raji& Co. attached to the further Affidavit is an annexure marked as Exhibit A. also filed in support of the further Affidavit is a reply to the 2<sup>nd</sup> – 27<sup>th</sup> Respondents written address dated 11<sup>th</sup> day of November, 2022.

Learned Counsel raised a Preliminary point of law that the Counter Affidavit of the 2<sup>nd</sup> – 27<sup>th</sup> Respondents is incompetent and unusable by this Court particularly paragraphs 4, 8, 10, 12, 15, 16, 19, 20, 21, 22, and 25 on the grounds that they contain extraneous matters by way of arguments, conclusions and laws as opposed to facts only. In this respect, Counsel cited Section 115 of the evidence act and the cases of **BAMAIYI VS STATE (2001) 8 NWLR (PT. 270) P 289 PARAS C, F – G; JOSIEN HOLDINGS LTD VS LORNAMEAD LTD (1995) 1 NWLR (PT. 371) P 254 AT P 265 AND AHMED VS CBN (2013) 2 NWLR (PT. 1339)5214.**

In responding to the issue raised by Counsel to the 2<sup>nd</sup> to 27<sup>th</sup> Respondents in their written address learned Counsel to the Applicant submitted on issue one that Section 2 of the Public officers protection Act applies to Public officers only and it is only intended for the use of Public officers for any Act done in pursuance or execution nor intended execution of any Act or law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such Act, law, duty or authority and that none of the Respondents is a public officer within the intendment of Section 2 of the Public officers Act. Counsel cited Section 2 of the Public



officers protection Act and the case of **OKADA AIRLINES VS F. A. A.N (2015) 1 NWLR (PT. 139) PP 13 – 14, PARAS H –A.**

In further response to the 2<sup>nd</sup> – 27<sup>th</sup> Respondents contention that the Applicant/Respondent is in breach of order 44 Rule 4 of FCT High Court(Civil procedure) Rules 2018, Counsel stated that Section 12 of the FCT Area Courts (Repeal and Enactment) Act 2020, Invoked for the instant application does not provide for any time frame within which to bring this Application and it is trite law that where there is a conflict between a statute and rules of Court, statute shall prevail. In this respect, Counsel referred the Court to Section 12 of the FCT Abuja Area Courts (Repeal and Enactment) Act 2010 and the case of **TUOTO NSA VS G. C. D. N.Z. S. P. A (2011) 4 NWLR (PT. 1235)**

In responding to issue two, whether Upper Area Court Kado can exercise jurisdiction over non-natural persons, Learned Counsel submitted that the answer is in the negative as the law is well settled that jurisdiction is the authority a Court has to decide matters or take cognizance of matters presented in a formal way for its decision. Counsel cited the cases of **MOBIL PROO (NIG) LTD VS LASEPA (2002) 18 NWLR (PT. 789) 1 TO P 399 PARA C, A – G; FEDERATION VS ABUBAKAR (2008) 16 NWLR (PT. 1112) PG 135 AT 158 PARAS A – G AND CUSTOMARY COURT OF APPEAL EDO STATE VS AGUELE (2018) 3 NWLR (P 397) PARAS B.**

Counsel further submitted that the FCT Abuja Area Courts (Repeal and Enactment) Act 2010 which is the law establishing the Upper Area Court and its jurisdiction stipulates that only parties who are of the Islamic faith are subject to the jurisdiction of the Area Courts and Shariah Court of Appeal and a party who is not of Islamic faith can only be subject to the jurisdiction of the Court if he consents to it as in this case, the Applicant is a juristic person who is not subject to any religion and thus its consent is needed before it can be made a party and the consent of the Applicant having not been sought, the FCT Upper Area Court cannot exercise jurisdiction over the Applicant in the matter of distribution of the deceased estate under Islamic personal law as in suit NO. CV/04/2020 between ALH.HAMISU MUSTAPHA TURAKI VS ALI USMAN & 26 ORS. In support of

this, reliance was placed on Section 266 (1) ©, Sections 10 (1) and 11 ((1) of the FCT Abuja Area Court (Repeal and Enactment) Act 2010. And the case of **OKOYE & ANOR VS MBAYA (2020) LPELR – 49161 (CA)**.

To this end, Counsel submitted that cause of action of the Applicant/Respondent is well placed within the jurisdiction of this Honourable Court. Counsel cited the cases of **EGBE VS ADEFARASIN (1987) 1 NWLR (PT. 47) P 271 PARAS E – F; AKILUVS FAWEHINMI (NO. 2) (1989) 2 NWLR (PT. 102) 122; FAROLY ESTABLISHMENT VS N.N.P.C (2011) 5 NWLR (PT. 1241) 457; DANTATA VS MOHAMMED (2000) 7 NWLR (PT. 664) 176.**

In conclusion, Counsel urged the Court to hold that the Applicant has shown sufficient cause of action to institute this action and also urged the Court to dismiss the Counter-Affidavit of the Respondents as same is misconceived.

I have carefully perused the Originating Motion on Notice, the reliefs sought, the supporting Affidavit, the annexure attached therewith and the written address in support. I have equally perused the Counter Affidavits of the 1<sup>st</sup> Respondent 2<sup>nd</sup> – 27<sup>th</sup> Respondents as well as their written address in support of their Counter Affidavits. In addition, I have studied the two further Affidavit and written addresses.

Therefore, it is my humble view that the issue for determination is whether the Applicant herein has made out a case for the grant of this Application. From a careful study of the originating motion on notice and the supporting Affidavit vis-à-vis the submission of the learned Counsel to the Applicant, it can be deduced that the crux of this Application is that the Applicant is seeking an inquiry by way of judicial review whether it is subjected to the jurisdiction of Upper Area Courts that the Applicant being a company duly incorporated under CAMA is not subject to the jurisdiction of Upper Area Court on Islamic personal law, that the order of the FCT Upper Area Court sitting in Kado per Ado M. Ahmed granted on the 1<sup>st</sup> March, 2021 in suit CV/04/2020 between ALHAJI HAMISU MUSTAPHA TURAKI VS ALI USMAN & 26 ORS is null and void on ground of lack of jurisdiction as it is against the Applicants right of fair hearing, setting aside the Order of FCT Upper Area Court made on 1<sup>st</sup> March, 2021, setting aside

the bench warrant issued against the Head of the Applicants Abuja Head Office pending the determination of this Application and that the customer of the Applicant is Coral Crown Limited being a Company duly incorporated under CAMA has a separate and distinct personality from its promoters, shareholders, directors as well as that the monies or properties of a limited liability company duly registered under CAMA do not pass to the heirs of its shareholders, promoters directors as the case may be upon their demise.

Before I dwell on the sole issue for determination distilled above I will first consider the Preliminary points raised by the Applicant in its written addresses filed in support of the further Affidavits in opposition of the Counter Affidavit of the 1<sup>st</sup> Respondent, and 2<sup>nd</sup> to 27<sup>th</sup> Respondents.

Let me begin with the Preliminary points in the Applicants further Affidavit in opposition to the 2<sup>nd</sup> – 27<sup>th</sup> Respondents Counter Affidavit. It is the argument of the learned Counsel to the Applicant inter alia that paragraphs 4, 8, 10, 11, 15, 16, 20, 21, 22 and 25 of the 2<sup>nd</sup> -27<sup>th</sup> Respondents Counter Affidavit are incompetent as they contain extraneous matters by way of arguments, conclusions and laws as opposed to facts only and in violation of Section 115 of the Evidence Act on content of an Affidavit and urged this Honourable Court to discountenance and struck out the above stated paragraphs.

I have taken a close look at the depositions in paragraphs 4, 8, 10, 11, 12, 15, 16, 20, 21, and 25 of the 2<sup>nd</sup> to 27<sup>th</sup> Respondents Counter Affidavit.

Therefore, the question that follows is whether the said paragraphs run foul of the provisions of Section 115 of the evidence Act.

The grouse of the Applicants Counsel is that the said paragraphs in issue run contrary to the provision of Section 115 of the Evidence Act as they contain extraneous matter by way of arguments, conclusions, and laws let me reproduced the said Section for ease of reference:-

***"Section 115(1) Every Affidavit used in the contain shall Court only statement of facts and circumstances to which the witness deposes, either of his own personal knowledge or from information which he believe to be."***

**"115(2) An Affidavit shall not contain extraneous matter by way of objection, prayers or legal argument".** It should be reiterated that for the above provision of the evidence act to avail the Applicant. It must provide that the said paragraphs contain extraneous matters by way of objection,prayers or legal argument. In this respect, I refer to the case of **JIMOH VS MINISTER OF FCT (2019) 5 NWLR (PT 1664) P 63 PARA B – H PER EKO JSC** where it was held that:-

***"By virtue of Section 115(1) of the Evidence Act 2011, a deponent to an Affidavit used in Court can depose to only statement of factsand circumstances either of his own personal knowledge or from information which he believes to be true."***

Similarly, it was held in the case of **OKPONIPERE VS STATE (2013) 10 NWLR (PT. 1362) P 22 PARAS G – H PER ARIWOOLA J.S.C** THAT:-

***"By virtue of the provisions of Section 86 and 87 (now Section 115 (1) and (2) of the Evidence Act, an Affidavit and Counter Affidavit shall contain only a statement of fact and circumstances derived from the personal knowledge of the deponent or information which he believe to be true and shall not contain extraneous matter by way of objection or prayer or legal argument or conclusion."***

In the light of the above, a careful look at the depositions in paragraphs 4, 8, 10, 11, 12, 15, 16, 19, 21, 22 and 25 of the 2<sup>nd</sup> to 27<sup>th</sup> Respondents Counter Affidavit will show that they are not in violation of the mandatory provision of Section 115 of the evidence Act. I so hold.

To this end, it is my humble view that the objection of the learned Counsel to the Applicant is misconceived and is hereby overruled.

Having cleared the air on the issue of Affidavit as argued by the Learned Counsel to the Applicant, I will now turn to consider the sole issue for determination.

However, on the Preliminary points raised by the Applicant in its written address filed to the 1<sup>st</sup> Respondent Counter Affidavit, I think will be more

appropriate to address it with the sole issue for determination as it captures the essence of this Application.

As I have earlier stated that the Applicant is seeking an inquiry by way of judicial review as to whether it is subject to the jurisdiction of Upper Area on the ground of it being a company duly incorporated under CAMA.

At this juncture, it is germane to begin by saying that this Application has again brought to fore the supervisory power of the High Court over the inferior Courts or tribunals legal findings by way of Judicial review.

It should be noted at the onset that judicial review is based on the basic principle that powers can only be validly exercised within their true limits. Thus, it is a mechanism for keeping public authorities within due bounds and for upholding the rule of law which in effect instead of substituting its decision for that of some other body as happens on Appeal, the Court on reviewing the decision is concerned only with the question whether the act or order being challenged should be allowed to stand or not in other words, the Court is concerned with the legality and not the merits of the decision or act of the public authority. See **KOREA NAT OIL CORP VS O. P. S (NIG) LTD (2018) 2 NWLR (PT. 1604) PP 454 – 456 PARAS E – D (SC)**.

Therefore, judicial review was defined by the Supreme Court in the case of **KOREA NAT OIL CORP VS O. P. S(NIG) LTD (2018) SUPRA PP 559 PARA S D – D 564 PARAS F – A TO MEAN THUS:-**

***"A judicial review is a Courts review of a lower Courts or an administrative body's factual or legal findings."***

In addition, on principles that will guide the Court in granting Application for judicial review it was clearly enumerated in the case of **BAMAIYI VS BAMAIYI (2005) 15 NWLR (PT. 948) PP 354 – 355 PARAS E – B PER KEKEKERE EKUN J.C.A** where it was held thus:-

***"The relevant principles to be considered in an Application for judicial review include inter alia.***

**(a) *Whether or not the order when issue does not only depend on whether the errors complained of are errors***

*of lower fact. The error must disclose excess of jurisdiction and the error of law must be one on the face of the record.*

- (b) *A person applying for certiorari must show that the body concerned has in one way or the other failed to act judiciously where it should.*
- (c) *That it is not all errors of jurisdiction that will justify the making of an order of certiorari, while all errors going to jurisdiction can provoke an order of certiorari, all errors within jurisdiction are only caught if they are errors on the face of the record.*
- (d) *That judicial review is not an appeal.*
- (e) *That the Court must not substitute its own judgment for that of the public body whose decision is being reviewed.*
- (f) *The correct focus is not on the decision but the manner in which it was reached.*
- (g) *That what matters is the legality and not the correctness of the decision.”*

See also the case of **GOV OYO STATE VS FOLAYAN (1995) 8 NWLR (PT. 413) PG 292 At 322 -323 paras H – B.**

It is important to note at this point that both Learned Counsels to the 1<sup>st</sup> Respondent and 2<sup>nd</sup> to 27<sup>th</sup> Respondents submitted that the orders of the Upper Area Court were not made in excess of jurisdiction as they were made within the jurisdiction of the Upper Area Court.

Moreso, Learned Counsel to the 2<sup>nd</sup> to 27<sup>th</sup> Respondents submitted that the instant Application is statute barred as same was filed outside the three months period provided by the public officers protection Act Chapter P47 laws of the Federation of Nigeria 2010 Applicable in FCT and order 44 Rule 4 of the FCT High Court (Civil Procedure) Rules 2018.

It is important to begin by knowing who is a Public officer.

The Court of Appeal in the case of **LAWAN VS F.R.N (2022) 7 NWLR (PT. 1829) PP 328 – 329 PARAS G – A PER DONGBAN – MEMSEM P.C.A TO** mean thus:-

***"Public officer means persons employed or engaged in any capacity in the public service of the Federation, state or local government, public corporations or private company wholly or jointly floated by any government or its agency, including the subsidiary of any such company whether located within or outside Nigeria and includes judicial officers serving in magistrates, Area or Customary Courts or tribunals."***

It is trite law that the purpose of public officers protection Act is to protect a public officer against any action done in execution of any duty. In this respect, see the case **NTUNG VS LONGKWANG (2021) 8 NWLR (PT. 1779) P 491, PARAS E – F PER ABIRU J.C.A THAT:-**

***"The purpose of Public officers (protection) Act is to protect a public officer against any action, prosecution, or other proceeding and for any act done in pursuance or execution or intended execution of any law, public duty or authority or for any alleged neglect or default in the execution of any law, duty or authority."***

Now the question that comes to mind is whether the 2<sup>nd</sup> – 27<sup>th</sup> Respondents are even public officers within the purview of the public officers protection Act because it is only a public officer who can rely on the provisions of the public officers protection Act in a suit for or against him for any act done to him or any neglect in pursuance or execution of any law or public duty.

At this juncture, it is instructive to state the categories of persons that enjoy protection under the public officers protection Act. This position was re-echoed by the Apex Court in the case of **ABACHA VS A.G. FEDERATION (2021) 10 NWLR (PT. 1783) P 156 PARAS B-E PER KEKEKERE EKUN J.S.C** where it was held that:-

***"There are at least three circumstances in which the provisions of section 2(a) of the public officers protection Act***

***will apply to foreclose a litigant's right of action against a public officer. A careful perusal of the Section will show that its provisions apply to an action being brought against a Public officer in relation to any act done by the public officer either:-***

- (a) In pursuance or execution or intended execution of any law or***
- (b) In pursuance or execution of any public duty or authority or***
- (c) In respect of any alleged default or neglect in the execution of any law, duty or authority."***

Similarly, it was held in the case of **NTUWA VS LONGKWANG (2021) 8 NWLR (PT. 1779) P 491 AND P 493 PARAS G – H AND PARAS E – H THAT:-**

***"The public officers (protection) Act does not protect persons who are not public officers and it is not for a non public officer to raise and canvass the protection under the act because that will make nonsense of the intention of the legislatures in enacting the public officers (Protection)Act and it will amount to the Court reading words in to the Act that are not there and extending it beyond the scope of the Act and that is not the function of the Court."***

In the light of the above, it is my humble view that the 2<sup>nd</sup> to 27<sup>th</sup> Respondents are not public officers within the contemplation of the law to be capable of enjoying the provision of the public officers (protection) Act I so hold.

On the issue of jurisdiction as argued by both counsels to the 1<sup>st</sup> Respondent as well 2<sup>nd</sup> to 27<sup>th</sup> Respondents that this Honourable Court has no jurisdiction to entertain this instant Application. It is trite law that in determining whether a Court has jurisdiction to entertain an action, it is the Claimant's Originating Processes i.e Writ of Summons and/or statement of claim as well as facts deposed to in Affidavit. This same position was re-echoed in the case of **ISAH VS INEC (2016) 18 NWLR (PT. 1544) PP**



**233 – 235 PARAS D- F PER MOHAMMED JSC where it was held that:-**

***"Inconsidering whether a Court has jurisdiction to entertain and determine a case, the Court is guided by the Claim before it in the Writ of Summons and the statement of Claim and the Affidavit and the Counter Affidavit in support of and in opposing, questions for determination and reliefs sought where the action is commenced by Originating Summons."***

A careful perusal of the Originating Motion on Notice, the depositions contained therein will reveal that this instant Application which borders on inquiry by way of judicial review as to whether the Applicant is subject to the jurisdiction of the Upper Area Court Garki sitting in kado on the ground of it being a Company duly incorporated under Companies and allied matters act as well as setting aside the order of 1<sup>st</sup> March, 2021 made by Ado M. Ahmed in suit CV/04/2020 between Alhaji Hamisu Mustapha Turakivs Ali Usman & 26 ors is a nullity on the ground of lack of jurisdiction as it is against the Applicants right to fair hearing. Is within the jurisdiction of this Honourable Court. I so hold.

In this respect, I refer to the case of **OKEAHIALAM VS NWAKARA (2003) 12 NWLR (PT. 835) P 597 PARAS D – H (SC)** where it was **held that:-**

***"The High Court has an inherent jurisdiction to control all inferior tribunal, not in an appellate capacity, but in a supervisory capacity. That capacity extends not only to seeing that the inferior tribunal keeps within its jurisdiction, but also seeing that it observes the law. The control is exercised by means of a power to quash determination by the tribunal which in the face of it, offends against the law Court does not substitute its own views for those of the tribunal as a Court of Appeal would do. It leaves it to the tribunal to hear the case again, and in proper case may command it to do so."***

Now coming back to the instant case, the crux of this Application as can be gleaned from the Affidavits evidence before the Court is that an order was made against the Applicant by the Upper Area Court Garki sitting in Kado on 1<sup>st</sup> day of March, 2021 per Ado M. Ahmed in suit NO. CV/04/2020 Between AlhajiHamisu Mustapha TurakiVs Ali Usman& 26 ors in respect of monies held by the Applicant in trust for Coral Crown Limited in which the Applicant was not made a party to the suit as well as being a natural person, the Applicant is not subjected to the jurisdiction of Upper Area Court Kado as it is not subjected to any religion, as such its consent must first be obtained for clarity and ease of reference I shall reproduce paragraphs 4(a), (b), (c), (d) 5 (a), (b), (c). of the supporting Affidavit. It read thus:-

Paragraph 4 (a)

***"That an order of the FCT Upper Area Court sitting in Kado per Ado M. Ahmed granted on the 1<sup>st</sup> day of March, 2021 is suit No. CV/04/2020 BetweenAlhHamisu Mustapha Turakivs Ali Usman& 26 Ors was made against the Applicant in respect of monies held by the Applicant in Trust for Coral Crown Limited.***

Paragraph 4 (b)

***"That the limited liability company i.e Coral Crown Limited is the Applicants customer and not the deceased HajiyaAishatuTuraki whom the Respondents are allegedly heirs."***

Paragraph 4 (c)

***"That consequent upon paragraph 4 (c) & (b) above the Applicant filed an Affidavit of facts deposed to by one Abdulkadir A. Abdulhamed, a legal practitioner representing the Applicant which was filed on the 10<sup>th</sup> of March, 2021 before the FCT Upper Area Court sitting in Kado per Ado M. Ahmed, granted on the 1<sup>st</sup> of March, 2021 in suit No. CV/04/2020 between AlhHamisu Mustapha Turakivs Ali Usman& 26 ors wherein the jurisdiction of this Court was***

***challenged reliance shall be placed on the said Affidavit of facts in the moving this Application.***

***Paragraph 4 (d) read thus:-***

***"That the Applicant never consented to being made a party to the suit in CV/04/2020 between Alh. Hamisu Mustapha Turakivs Ali Usman& 26 ors before the FCT Upper Area Court sitting in Kado per Ado M. Ahmed on matter relating to the distribution of the deceased HajiyaAishatuTuraki Estate."***

***Paragraph 5 (a)***

***"That not being a natural person, the Applicant is not subject to the jurisdiction of this Court."***

***Paragraph 5(b) read thus:-***

***"That not being a party to the suit, no order ought to have been made against the Applicant."***

***Paragraph 5(c) read thus:-***

***"That having not been heard, no order ought to have been made against the Applicant."***

***Paragraph (d) read thus:-***

***"That the Applicant is a company duly incorporated under the companies and allied matters Act."***

***Paragraph (e) read thus:***

***"That the Applicant cannot practice any religion and so cannot be governed by any religion faith."***

However, the 1<sup>st</sup> Respondent deposed in its Counter Affidavit particularly at paragraphs 3 (ii), (iii), (iv), (v), (vi), (vii), (viii),(ix), (x), (xi) it read thus:-

Paragraph 3 (ii) read thus:-

***"That the Applicant has not placed before this Honourable Court any special or exceptional circumstances that would warrant the grant of this Application."***

Paragraph (iii)

***"That the Applicant is neither a family member of the deceased HajiyaAishatuTuraki nor is see a shareholders directors or member of Coral Crown Limited."***

Paragraph (iv) read thus:-

***"That the late HajiyaAishatuTuraki was the sole director of Coral Crown Limited for several years prior to her demise, the other director, her only son having deceased many years ago."***

Paragraph (v) read thus:-

***"That HajiyaTuraki was the sole signatory to the Coral Crown Limited account held with the Applicant."***

Paragraph (vi) read thus:-

***"That HajiyaTuraki single handedly funded and incorporated Coral Crown Limited."***

Paragraph 3 (vii) read thus:-

***"That contrary to the deposition of the Applicant no Affidavit of facts deposed to by one Abdulkadir A. Abdulhamed was filed nor served on our office."***

Paragraph 3 (viii) read thus:-

***"That the 1<sup>st</sup> Respondent who is the husband of the deceased HajiyaTuraki together with Ali Usman and the 25 others Respondents are surviving relatives of the deceased who are the only ones entitled to inherit her under Islamic law."***

Paragraph 3 (ix) read thus:-

***"That the Applicant does not have any Appeal pending in any Court in respect of this suit."***

Paragraph 3(xi) read thus:-

***"That neither does the Applicant have any interest in the Estate being sought to be distributed nor in Coral Crown Limited hence don't have to consent before she is served with an order to transfer all funds in the Credit of Coral Crown limited into the Shariah Court of Appeal Account."***

Paragraph 3 (xi) read thus:-

***"That there is nothing constraining the Applicant from obeying the order of this Honourable Court."***

Moreso, the 2<sup>nd</sup> -27<sup>th</sup> Respondents deposed to in their Counter Affidavit particularly paragraphs 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 26, 27 and 28 it read thus:-

Paragraph 6 read thus:-

***"That I know as a fact that Alhaji Hamisu Mustapha Turaki sued as the 1<sup>st</sup> Respondent in this matter is the husband and one of the surviving heirs of late Hajiya Maryam Aishatu Turaki a deceased Muslim governed by the Islamic personal law."***

Paragraph 7 read thus:-

***"That I know as a fact that 2<sup>nd</sup> to the 27<sup>th</sup> Respondents in this matter are the brothers, sisters, and the surviving heirs of late Hajiya Maryam Ayishatu Turaki, a deceased Muslim whose Estate is governed by the Islamic personal law."***

Paragraph 9 read thus:-

***"That having read the Affidavit filed by the Applicant pursuant to Application deposed to by one Khalifa Baba Mohammed, save as herein admitted, all statements of facts therein contained are untrue and the Applicant is put to the strictest of same."***

Paragraph 10 read thus:-

***"That the Affidavit filed by the Applicant pursuant to this originating motion discloses no reasonable cause of action to"***

***warrant any inquiry by this Honourable Court as to whether the Applicant is subject to jurisdiction of Area Courts.***

Paragraph 11 read thus:-

***"That the Affidavit in support of the originating motion do not disclose whether the Applicant has any civil right or obligation which has been breached upon which any inquiry by this Honourable Court as to whether the Applicant is subject to jurisdiction of Area Courts.***

Paragraph 12 read thus:-

***"That the Affidavit and the grounds upon of the Application did not show what the Applicant had suffered by the grant of the order by Upper Area Court Garki, sitting in Kado FCT in this discharge of its statutory functions in the distribution of the Estate of a deceased Muslim Hajiya Maryam AyishatuTuraki held in the name of her Company name Coral Crown Limited and which is part of the heritage sought to be distributed in accordance with the Islamic law at the Upper Area Court.***

Paragraph 13 read thus:-

***"that I know as a fact that the Upper Area Court Garki, sitting in Kado FCT Abuja on the 11<sup>th</sup> day of February, 2021 made an Order in the discharge of its statutory functions and same was served on the Applicant in respect of themonies kept in the custody of the Applicant by a deceased Muslim, Hajiya Maryam AyishatuTuraki through her companyName Coral Crown Limited."***

Paragraph 14 read thus:-

***"That I know as a fact that the order of the Upper Area Court Garki, sitting in Kado FCT Abuja made on the 11<sup>th</sup> day of February, 2021 was directed to the United Bank for Africa Plc, First Bank of Nigeria limited and FBN Quest Trustees Limited (the Applicant herein) to transfer all monies***

***belonging to the late HajiyaAishatuTuraki and held in the name of her Company Coral Crown Limited to the Shariah Court of Appeal Probate Account.***

***Paragraph 15 read thus:-***

***"That I know as a fact that the United Bank for Africa Plc and First Bank of Nigeria Limited, being the law abiding and reputable corporate citizens of Nigeria are in full compliance of the order of the Upper Area Court, Garki, sitting in Kado FCT, Abuja.***

***Paragraph 16 read thus:-***

***"That I know as a fact that the said Order of the Upper Area Court Garki, sitting in Kado FCT, Abuja was served on the Applicant (FBN Quest Trustees Limited) and an invitation letter was sent from the Upper Area Court dated the 17<sup>th</sup> March, 2021 was also served on the Applicant/Respondent (FBN Quest Trustees Limited) which it failed, neglected and refused to honour and the Applicant had treated and is still treating the order of Court with disdain.***

***Paragraph 22 read thus:-***

***"That I vehemently believe that the Applicant if not restrained would not desist from holding unto part of the Estate of late HajiyaAishatuTuraki, unlawfully (who was their customer until her death).***

***Paragraph 23 read thus:-***

***"That I vehemently believe that the Applicant if not restrained would not desist from interfering with the Estate of a deceased Muslim with known survivors in total disregard to statutory provisions vesting jurisdiction on the ShariahCourt of Appeal supervisory jurisdiction on the Area Courts on all matters of Islamic personal law to determine.***

***Paragraph 24 read thus:-***

***"That the Applicant is neither a Trustee in respect of the shares of the company; nor a director and has not placed before this court any reason or exceptional circumstance that constituted it as a trustee to warrant the grant of this Application."***

***Paragraph 26 read thus:-***

***"That the late Hajiya Maryam AishatuTuraki was the sole Director and shareholder of Coral Crown limited for many years before her death and her company is part of her Estate (and all monies standing to its credit) sought to be distributed at the Upper Area court Garki, sitting at Kado Abuja."***

***Paragraph 27 read thus:-***

***"That in further response to paragraph 4 and 5 of the Applicant's supporting Affidavit, late Hajiya Maryam AishatuTuraki was the sole signatory to the Coral Crown Account held with the Applicant until her death."***

***Paragraph 28 read thus:-***

***"That the deceased Hajiya Maryam AishatuTuraki solely funded the Company Coral Crown Limited Account and the 1<sup>st</sup> to the 27<sup>th</sup> Respondents are her surviving and legitimate heirs."***

On the other hand, the Applicant deposed to in its further Affidavit in response to the 1<sup>st</sup> Respondents Counter Affidavit particularly at paragraphs 7, 8, 9, 12, 13, 14, 15, 16, 21 and it read thus:-

Paragraph 7 read thus:\_

***"Contrary to paragraph 3 (ii) of the Counter Affidavit, I verily believe the Applicant has placed before this Honourable Court special and exceptional circumstances to warrant the grant of this Application"***

***Paragraph 8 read thus:-***



***"Contrary to paragraph 3 (iii) of the Counter Affidavit, the Applicant is a Trustee of the investment made by Coral Crown Limited.***

Paragraph 9 read thus:-

***"Contrary to 3(iv), I know as a fact that there are 3 Directors in Coral Crown Limited. Now shown to me and marked as Exhibit 'A' is a status Report issued by the Corporate Affairs Commission showing the extant Directors of Coral Crown Limited.***

Paragraph 12 read thus:-

***"Contrary to the paragraph 3 (vii) of the Counter Affidavit, I know as a fact that the Applicant has filed, served and exhibited the Affidavit of facts before this Honourable Court."***

Paragraph 13 read thus:-

***"Contrary to paragraph 3(x) of the Counter Affidavit, I know as a fact that the Applicant is a trustee of the investment made by Coral Crown limited, she was ordered to transfer funds to the Shariah Court of Appeal Probate Account held in trust without being made a party to the suit in which the order was made., and I am also aware that the Respondent requires the consent of the Applicant as the Applicant is not subject to any religion."***

Paragraph 14 read thus:-

***"Contrary to paragraph 3 (ix) of the Counter Affidavit, the Applicant Application for the Upper Area Court to vacate its order granted against the Applicant for lack of jurisdiction was filed on the 28<sup>th</sup> July, 2021 but not given the audience to move same. A filed copy of the Application is hereby attached and marked Exhibit 'A'"***

Paragraph 15 read thus:-

***"Contrary to paragraph 3(xii) of the Counter Affidavit, I know as a fact the Applicant is seeking an inquiry whether the Applicant is subject to the jurisdiction of this Honourable Court considering the Applicant is a limited liability Company incorporated under the companies and allied matters Act and not subject to any religion."***

Paragraph 16 read thus:-

***"IN response to paragraph 3(xiv) of the Counter Affidavit, I was informed by Khalifa Baba Mohammed of Counsel, at our office located at NO. 10 Santana Close Wuse II Abuja, of the following facts which I verily believe to be true, as follows:-***

- (a) The Applicant has disclosed in the Affidavit in support of the suit a breach on its legal right and obligation.***
- (b) That the Applicant has demonstrated in the Affidavit in support of the instant suit a reasonable cause of action. That the Upper Area Court Garki, sitting in Kado, in suit CV/04/2020 BETWEEN ALHAJI HAMISU MUSTAPHA TURAKI V. ALI USMAN & 26 ORS wherein the Estate of late Hajiya Maryam AishatuTuraki were distributed, lacked the jurisdiction to delve into matters involving a limited liability company."***

Paragraph 21 read thus:-

***"I am also aware that under the Company and allied matters Act, 2020, any person that is entitled to a dividend and other advantages is required to register his or her interest."***

Furthermore, the Applicant deposed to in its further Affidavit in response to the 2<sup>nd</sup> – 26 Respondents Counter Affidavit particularly at paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 24, 25, and 26.

Paragraph 6 read thus:-

***"Contrary to paragraph 8 of the 2<sup>nd</sup> -27 Respondents' Counter Affidavit in opposition to the Originating Motion on Notice, I Know as a fact the Applicant is not frustrating the***

***surviving heirs of Late Hajiya Maryam AishatuTuraki, rather the Applicant is inquiring whether being an incorporated company and not subject to any religion its subject to the jurisdiction of Area Court.***

***"Paragraph 7 read thus contrary to 9 of the 2<sup>nd</sup> – 27<sup>th</sup> Respondents Counter Affidavit in opposition to the Originating Motion on Notice, I know as a fact that the Applicant depositions are true and correct."***

***Paragraph 8 read thus:-***

***"Contrary to paragraph 10 of the 2<sup>nd</sup> – 27<sup>th</sup> Respondents' Counter Affidavit in opposition to the Originating Motion on Notice, I know as a fact that the Applicant is a limited liability Company incorporated under the companies and allied matters Act, and is not a party to the suit at Upper Area Court Garki, and is also not a Muslim was ordered to pay to the Shariah Court of Appeal Probate Account Money head in Trust for Coral Crown Limited.***

***Paragraph 9 read thus:-***

***"Contrary to the paragraph11 of the Counter, Affidavit, I know as a fact that the Applicant who is not a party to the suit at Upper Area Court Garki sitting at Kado, and a limited liability companies incorporated under the companies and allied matters Act, and not subject to any religion was ordered to pay money held in trust for Coral Crown Limited."***

***Paragraph 10 read thus:-***

***"Contrary to paragraph 12 of the Counter-Affidavit, I know as a fact that the Applicant was ordered to pay monies held in trust for Coral Crown Limited to the Probate Account of the Shariah Court of Appeal, Abuja for distribution to surviving heirs of Hajiya Maryam AishatuTuraki despite not being a party to the suit."***

***Paragraph 11 read thus:-***

***"Contrary to paragraph 13 of the Counter-Affidavit, its true to the extent that an order was served on the Applicant on the 11<sup>th</sup> day of February, 2021, but the Applicant was ordered to pay the Probate Registry monies held in trust for Coral Crown limited.***

Paragraph 12 read thus:-

***"In response to paragraph 14, I know as a fact, the Applicant was ordered to pay monies held in trust for Coral Crown Limited to the Estate of HajiyaAishatuTuraki who is not a Customer of the Applicant."***

Paragraph 13 read thus:-

***"In response to paragraph 15, I know as a fact that the Applicant is not bound by the order, as it's not a party to the suit."***

Paragraph 24 read thus:\_s

***"Contrary to paragraph 24, I know as a fact the Applicant is a trustee of the investment made by Coral Crown Limited, which is the subject matter of the instant suit."***

Paragraph 25 read thus:-

***"I also know that by the virtue of Exhibit 'A', an investment was made by Coral Crown Limited to FBN Quest Trustee to the tune of ₦423,349,743.14 on the 30<sup>th</sup> October, 2019 which created the trust. Now shown to me and marked as Exhibit 'A' is a copy of the confirmation of investment."***

Paragraph 26 read thus:-

***"Contrary to paragraph 25, the Applicant is a trustee of the investment made by Coral Crown Limited and HajiyaAishatuTuraki is not a customer of the trustee."***

At this juncture, it is important to note that a company is an artificial person that works through its alter ego who are the directing minds of the Company. Upon incorporation a company enjoys the status of a legal

personality distinct from its members capable of sue and being sued in its own names. That is why it is always referred to as an artificial person. In other words, a company is a non-natural person. This position was more elaborated by the Apex Court in the case of **PASSO INT'L LTD VS UNITY BANK PLC (2021)7 NWLR (PT. 1775) P 264 PARAS A – G. PER OKORO J.S.C** where it was held that:-

***"A limited liability company is a juristic person which can sue and be sued in its name. albeit a company has no flesh and blood. Its existence is a mere legal abstraction. Therefore, a company must act through its directors and officials or any person who is considered to be the alter ego or directing mind of the company." Alter ego is an individual who is considered to be the second self of the Company."***

Similarly it was held in case of **NEW RES INT'L LTD VS ORANUS (2011) 2 NWLR (PT. 1230) PP 124 – 125 PARAS H-B, B – D PER OKORO J.C.A** that:-

***"Once a company is incorporated under the relevant laws. It becomes a separate person from the individual who are its members. It has capacity to enjoy legal rights and is subjected to legal duties which do not coincide with that of its members, such company is said to have legal personality and is always referred to as an artificial person. Consequently, it can sue and be sued in its own name. it may own property in its own rights and its assets, liabilities, rights and obligations are distinct from that of its members."***

See also the case of **DIKE VS KAYKAY CONSTRUCTION LTD (2017) NWLR PP 126 0132 PARAS D – E, F – E PER TUR JCA** that:-

***"A company having no mind or will of its own, the need for doctrine of alter ego arises because the Criminal law after requires mensrea as a constituent of the crime and the civil law intention or knowledge as ingredient of the cause of action. A corporation is an abstraction. It has no mind of its own any more than it has a body of its own. Its active or***

***directing will must consequently be sought in the person of somebody who for some purpose may be called an agents, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. The doctrine attributed to the company the mind and will of the natural person or persons who manage and control its action. Their minds are its minds, their intention its intentions, their knowledge its knowledge. These natural persons who by the memorandum and articles of association or as a result of action taken by the directors or by the company in general meeting pursuant to the articles are entrusted with the exercise of the power of the company.”***

In the instant case, the Applicant (FBN Quest Trustees Ltd) is a corporate personality, separate and distinct from its members which operate through its alter egos who are its directing minds.

Therefore, it is not a natural person that is subjected to any religion, it is an artificial person, in which case its consent must first be sought and obtained especially in matters of Islamic personal law before Shariah Court of Appeal and Area Court, for the Court to assume jurisdiction, a party who is not a Muslim must consent to the jurisdiction of the Court as it is a condition precedent to the exercise of jurisdiction as deposed to by the Applicant in paragraphs 5(a), (c), and (e) of its Affidavit in support of the Originating Motion which I quoted earlier.

In other words, the Applicant in this case being a juristic person who is not subjected to any religion must give its consent to be tried before Shariah Court in matters of Islamic personal law. It is my considered opinion that the Applicant (FBN Quest Trustee Ltd) is not subjected to the jurisdiction of Upper Area Court Garki sitting in Kado. I so hold.

To this extent, let me quote the provision of Section 11 of the Federal Capital Territory, Abuja Area Court (Repeal and Enactment) Act 2010 which provide thus:-

***"Subject to the provisions of this Act and any other written law, the following persons shall be subject to the jurisdiction of the Area Court (a) any person who is a Muslim (b) any other person in a course or matter who consents to the exercise of the jurisdiction of the Area Court."***

See also Section 262 (1) (a) and (2) (a), (b) and (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which for ease of reference I shall reproduce same hereunder:-

***"Section 262 (1) (a). The Shariah Court of Appeal in addition to such other jurisdiction as may be conferred upon it by an act of the National Assembly, exercise such Appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal Law."***

Section 262 provides thus:-

***"For the purpose of Sub-Section (1) of this Section, the Shariah Court of Appeal shall be competent to decide (a) any question of Islamic personal law regarding marriage concluded in accordance with that law, dissolution of such a marriage or a question that depends on such a marriage and relating to family relationship of the guardianship of an infant. (b)Where all parties to the proceedings are Muslim, any question of Islamic personal regarding a marriage including the validity or dissolution of that marriage or regarding family relationship of a finding of the guardianship of an infant. (c)Any Question of Islamic personal law regarding wakf, gift, will or succession where the endower, donor, testator or deceased is a Muslim."***

Having carefully analysed the submissions of Counsel on both sides, it is observed that another one borne of contention is that the Upper Area Court lacks the jurisdiction to make the order of 1<sup>st</sup> day of March, 2021 per Ado M. Ahmed in view of the exclusive jurisdiction of the Federal High Court on questions arising from the operation of the Companies and Allied matters act or any other enactment replacing the act or regulating the

operation of companies incorporated under CAMA as well as failure of the 1<sup>st</sup> Respondent to comply with the mandatory provisions of companies and allied matters Act particularly Sections 175, 179(2) (5) and 180 regarding the transfer of shares of a deceased person in which he has interest therein as it is a condition precedent required for transferring shares of a deceased which the Learned Counsel to the Applicant submitted that the Upper Area Court lacks requisite jurisdiction to conduct further proceedings in this matter and make order for the transfer of funds invested as the condition precedent has not been complied with.

Learned Counsel to the 1<sup>st</sup> Respondent in paragraph 1.10 of his written address argued that the Applicant has no locus standi to maintain the instant action.

Furthermore, 2<sup>nd</sup> to 27<sup>th</sup> Respondents deposed to in paragraphs 24 and 25 of their Counter Affidavit which I have quoted earlier that this Applicant is neither a trustee in respect of the shares of the company and has no locus standi in this matter.

At this juncture, let me refer to the provision of Section 251 (1) (e) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which provide thus:-

***"Notwithstanding anything as contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an act of the national assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil cases and matters (e) arising from the operation of the companies and allied matters act or any other enactment replacing the act or relating the operation of companies incorporated under the companies and allied matters act."***

***SEE ALSO THE CASE OF A. G. LAGOS STATE V. EKO HOTELS LTD (2006) 18 NWLR (PT. 1011) P 460 PARAS A – B, D – E PER TOBI JSC where it was held thus:-***

***"By virtue of Section of 251(1) (e) of the 1999 Constitution, the Federal High Court has jurisdiction over matters arising***



***from the operation of the companies and allied matters Act or any other enactment replacing the act or regulating the operation of companies incorporated under the companies and allied matters act.....”***

In the light of the above, a careful study of the above quoted authorities coupled with the instant application will reveal that right from the onset at the Upper Area Court Garki sitting in Kado the bone of contention is that the 1<sup>st</sup> Respondent, 2<sup>nd</sup> – 27<sup>th</sup> Respondents filed an Application requesting the transfer of funds invested as shares with the Applicant in the instant suit by the deceased late Hajiya Aishatu Turaki, (in the name of her company Coral Crown Limited) for distribution to her legal heirs.

However, it is important to note that anything that has to do with shares invested with company incorporated under companies and allied matters act is within the exclusive jurisdiction of the Federal High Court. Therefore, it is my humble view that the order made on the 1<sup>st</sup> day of March, 2021 by Upper Area Court Garki sitting in Kado per Ado M. Ahmed requesting the transfer of funds invested in shares with the Applicant (FBN Quest Trustee Ltd) is made without jurisdiction. I so hold.

Now, the question that comes to mind is whether shares can be transferred to heirs of a deceased shareholders without a valid instrument of transfer in violation of the provisions of companies and allied matters Act as well as whether a suit can be instituted without due process of law?

In this respect I commend the provisions of Section 175 (1), (2), (3) & 179 (5) and 1890 of the Companies and allied matters act 2020 which for ease of reference and clarity I shall reproduce same hereunder:-

Section 175 (1) provides thus:-

***“The Transfer of a company’s shares shall be by instrument of transfer and except as expressly provided in the articles, transfer of shares shall without restrictions, and instruments of transfer shall include electronic instrument of transfer.”***

Section 175 (2) provide thus:-

***"Notwithstanding anything in the articles of a company, a company shall not register a transfer of shares in the company unless a proper instrument of transfer has been delivered to the Company. Provided that nothing in this Section shall prejudice any power of the company to register as shareholder, any person to whom the right to any share in the company has been transmitted by operation of law."***

Section 175(3) provide thus:-

***"The instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee, and the transferor is deemed to remain a holder of the share until the name of the transferee is entered in the register of the members in respect of the share."***

Section 179 (2) provide thus:-

***"Any person becoming entitled to a share in consequence of the death or bankruptcy of a member may upon such evidence being produced as may be required by the directors and subject to this Section, elect either to be registered himself as holder of the share or to have a person nominated by him registered as the transferee of the share, but the company shall in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or bankruptcy as the case may be."***

Section 179(5) provide thus:-

***"A person becoming entitled to a share by reason of the death or bankruptcy of the holder, is entitled to same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he is not, unless the articles otherwise provide, before being registered as a member in respect of the share,***

***entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company."***

***"Provided that the Directors may at any time give notice requiring such person to elect either to be registered himself or to transfer the share and if the notice is not complied with within 90 days, the Directors may thereafter withhold payment of all dividends, business or other money payable in respect of the share will the requirements of the notice have been complied with."***

Section 180 (1) provides thus:-

***"Any person claiming to be interested in any share, dividend or interest on them, may protect his interest by serving on the company concerned a notice of his interest."***

Section 180 (2) provides thus:-

***"The Company shall enter on the register of members, the fact that such notice has been served and shall not register any transfer or make payment or return in respect of the shares contrary to the terms of the notice until the expiration of 42 days' notice to the Claimant to the proposed transfer or payment."***

Section 180 (3) provide thus:-

***"In the event of any default bythe company in complying with this Section the company shall compensate any person injured bythe default."***

See the case of **INYANG VS EBONG (2002) 2 NWLR (PT. 751) PP 329 – 330 PARAS F – A, 331 PARA C PER EDOZIE J.C.A** where it was held thus:-

***"By virtue of Section 151 of the companies and allied matters Act 1990 as amended, the transfer of a Company share shall be by instrument of transfer and notwithstanding anything in the Company's articles of association, it shall not be lawful for the company to register a transfer of instrument***

***unless a proper instrument has been delivered to the company provided the instrument of transfer of any share shall be executed by or on behalf of the transferor and transferee and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the registrar of members in respect of the shares.***

Similarly, it was held in the case of ***JETHWANI V NIGERIA WIRE IND. PLC (1999) 5 NWLR (PT.602) P. 333 PARA C PER PATS-ACHOLONU J.C.A*** that:-

***"By virtue of Section 152(2) of the Companies and Allied Matters Act 1990, until the name of the transferee of shares is entered in the register of members in respect of the transferred shares, the transferor shall so far as it concerns the company be deemed to remain the holder of the shares. In other words, there is no transfer of shares until the name of the transferee is entered in the register of members in respect of the transferred shares."***

In the light of the above, a careful examination of the above statutory and judicial authorities reveal that it is crystal clear that for a transfer of shares to be valid, there must be an instrument of transfer delivered to the Company executed by or on behalf of the transferor and the transferee.

However, in the instant case, the 1<sup>st</sup> to 27<sup>th</sup> Respondents instituted an action in Upper Area Court Garki sitting in Kado where the Court per Ado M. Ahmed made an Order mandating the Applicant (FBN Quest Trustees Ltd) to transfer all the monies belonging to the deceased HajiyaAlshetuTuraki in the name of her Company Coral Crown Limited being shareholder of the Applicant. Wherein the Respondents did not deliver any valid instrument of transfer to the Applicant in order to enter the name of one of the legal heirs whom they ought to have nominated to represent them in the register of members in respect of the transferred shares. It is therefore, my considered opinion that the order made on 1<sup>st</sup> day of March, 2021 ordering the transfer of all the monies of the deceased in custody of the Applicant is set aside as well as declared null and void as it made without compliance with statutory prescribed procedure.

On this note, I refer to the case of ***OGIEVA VS IGBINEDION (2004) 14 NWLR (PT.894) P. 486 PARAS B-C PER MUNTAKA COOMASSIE J.C.A*** where it was held thus:-

***"Where a statutory requirement for exercise of a legal authority is laid down, it is expected that the public body invested with the authority would follow the requirement to the details. The non observance in the process of reaching its decision, renders the decision itself a nullity.***

On the second leg of the question as to whether a case can be instituted without due process. In this respect, let me refer to the case of ***KOREA NAT OIL CORP VS O.P.S (NIG) LTD (2018) 2 NWLR (PT.1604) PP. 446, PARAS A-E, 453 PARAS A – B 475 PARAS A-B, (SC)*** where it was held thus:-

***"A Court is competent to adjudicate in a cause or matter when***

- a). It is properly constituted as regards numbers and qualification of members of the bench and no member is disqualified for one reason or the other.***
- b). The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction and***
- c). The case comes before the Court initiated by due process of law and upon fulfilment of any condition precedent to the exercise of jurisdiction.***

***Any defect in competence of the court is fatal and the proceedings are a nullity as such defect is extrinsic to the adjudication."***

In the light of the foregoing, the case at the Upper Area Court Garki sitting at Kado was not initiated by due process of law and upon fulfilment of the condition precedent as the Respondents in the instant suit ought to have obtained an instrument of transfer and the subject matter (i.e transfer of

monies invested into shares by the deceased HajiyaAishetuTuraki in the name of her company Coral Crown Limited in the Applicant's company) is not within the jurisdiction of Upper Area Court Kado, which it is my considered opinion the Order made on the 1<sup>st</sup> day of March, 2021 is also a nullity. I so hold.

As I have earlier stated that the 1<sup>st</sup> Respondent as well as the 2<sup>nd</sup> – 27<sup>th</sup> Respondents argued that the Applicant has no locus standi to maintain the instant Applicant, let me clear the air on that.

It is trite law that in determining whether a party has locus standi or not what is important to consider is that a party must show that he has sufficient interest or legal right in the subject matter. This position was re-echoed by the Court of Appeal in the case of **ADEKUNLE V ADELUEGBA (2011) 6 NWLR (PT. 1272) PP. 171-172 PARAS G – B** where it was held that:

***"In order to achieve the statute of locus standi in a matter, the claim of the plain must reveal the following:***

- a. Sufficient or special interest adversely affected and***
- b. A justiciable cause of action, thus, a Plaintiff will have locus standi in a matter only if he has special interest or alternatively, if he can show that he has sufficient or special interest in the performance of the duty sought to be enforced or where the interest is adversely affected."***

Therefore, in the instant case, the Applicant states in the affidavit in support of the Originating Motion on Notice at paragraph 4(b), Paragraphs 13 and 14 of the Further Affidavit in respond to the 1<sup>st</sup> Respondent Counter Affidavit as well as paragraphs 24 and 25 of the Further Affidavit in response to the 2<sup>nd</sup> to 27<sup>th</sup> Respondents Counter Affidavit which I have quoted earlier that the Applicant is only acting as a trustee of the investment made by the deceased in the name of her company Coral Crown Investment which is the subject matter of the instant suit.

It is therefore, my considered opinion that the Applicant has shown sufficient interest in the subject matter in this suit to entitle it to institute this action as it is acting as a trustee of the deceased company Coral Crown Limited. I so hold.

On the issue of Order made against the Applicant on 1<sup>st</sup> March, 2021 without it being made a party or hearing the Applicant see the case of ***OLAYLOYE V OYELARAN 1 (2019) 4 NWLR (PT.1662) P. 372 PARAS E-H PER PETER ODILI JSC*** where it was held thus:-

***"The principle of fair hearing has its root in natural justice of a party being heard before a decision can be reached either for or against a party. And the way of saying the same thing is that Court is enjoined to hear both sides on all material issues in a case before reaching a decision which may be prejudicial to any party in the case and so the need for equal treatment, opportunity and consideration to all concerned. Another attribute of fair hearing is that the proceedings are held in a place where all concerned have access and have early information of such a hearing and so for any decision to stand it must be seen as manifestly and undoubtedly seem to have been done within the tenets of all the conditions of fair hearing. These include that the Court shall hear both sides not only in the case but also in all material issues in the case before reaching a decision which may be prejudicial to any party in the case."***

Similarly, it was held in the case of ***MAKARAFI VS POROYE (2017) 10 NWLR (PT.1574) P. 434 PARAS E –H PER MBABA JCA*** that:

***"Section 36(1) of the 1999 Constitution (as amended) forbids a Court to make order that affects the interest of a person without hearing him or giving him opportunity to be heard. The right of fair hearing forms the "salt" of any judicial decision/order of Court and where one has not been heard or given opportunity to be heard, the decision is a complete nullity and cannot be enforced, against the party having not been heard."***

In the instant case, the Applicant deposed to in paragraph 4(a) of the Affidavit in Support of its Originating Motion, paragraph 13 of its Further Affidavit in opposition to the 1<sup>st</sup> Respondent's Counter Affidavit, paragraphs 8, 10 and 13 of its Further Affidavit in opposition to 2<sup>nd</sup> to 27<sup>th</sup> Respondents Counter Affidavit which I have reproduced earlier that an Order was made against it on the 1<sup>st</sup> day of March 2021 by F.C.T Area Court Kado in respect of monies held by the Applicant in trust for Coral Crown Limited despite it not being a party to the suit.

While on the other hand the 1<sup>st</sup> Respondent deposed to in paragraph 3(x) of his Counter Affidavit which I reproduced earlier that the Applicant does not have any interest in the estate sought to be distributed nor in Coral Crown Limited hence don't have to consent before she is served with an order to transfer all funds in the credit of Coral Crown Limited.

The 2<sup>nd</sup> to 27<sup>th</sup> Respondents deposed to in paragraph 12 of their Counter Affidavit which I also reproduced earlier that the Upper Area Court made an Order on the 11<sup>th</sup> day of February, 2021 in the discharge of its statutory functions and same was served on the Applicant in respect of the monies kept in the custody of the Applicant by a deceased Muslim Hajiya Maryam AishetuTuraki through her company Coral Crown Limited.

In the light of the above, a careful study of the affidavit evidence will reveal that Applicant was not joined in the suit though clearly mentioned and targeted in the suit, the Applicant's interest was affected, whereas it was not heard when the order was made by the Upper Area Court Garkisitting in Kado ordering the Applicant to transfer the monies held in trust for the deceased, HajiyaAishetuTuraki through her company Coral Crown Limited which it is my considered opinion that the Applicant's fundamental right to fair hearing as cherishingly enshrined in Section 36(1) of the 1999 Constitution (as amended) completely and irredeemably renders the said order of 1<sup>st</sup> March, 2021 a nullity and liable to be set aside. I so hold.

In the light of the above and from the totality of all I have said, sofar, it is my considered opinion that the Applicant has made out a case for the grant of this application. I so hold.



To this end and without further ado, I hereby resolve the issue for determination in favour of the Applicant against the Respondents and held very strongly that this application is meritorious and is hereby granted as prayed in the interest of justice.

Signed

***HON. JUSTICE SAMIRAH UMAR BATURE  
12/03/2024***