

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

ON THURSDAY THE 25TH DAY OF FEBRUARY, 2016

BEFORE HIS LORDSHIP, HON. JUSTICE A. R. MOHAMMED

(JUDGE)

SUIT NO. FHC/ABJ/CS/898/2015

BETWEEN:-

IN THE MATTER OF ABDULRASHEED MAINA

AND

IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR CERTIORARI

BETWEEN

ABDULRASHEED MAINA APPLICANT

AND

THE ECONOMIC AND FINANCIAL CRIMES COMMISSION RESPONDENT

R U L I N G

This ruling is on the issue raised by the Court suo motu. The issue raised by the Court is as follows:-



“Whether having regard to the depositions in paragraphs 2 and 17 of the affidavit in support of the Motion Exparte dated and filed on 5/11/15, and paragraph B of the grounds contained in

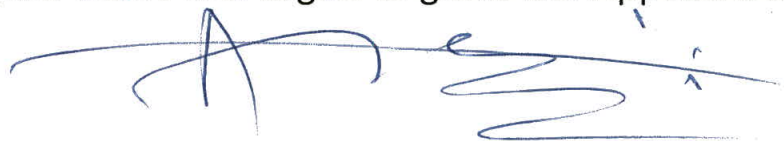
the statement, this matter was properly commenced or should be commenced by judicial review application”.

The Court then directed the Applicant’s counsel to file written address on the issue raised by the Court. In complying with the directive of the Court, learned Applicant’s counsel filed a written address dated 10/12/15 but filed on 11/12/15.

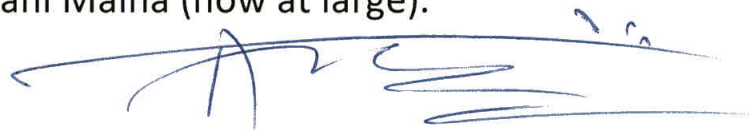


In the Applicant’s written address, reference was made to the provisions of Order 34 rule 1 (a) (b) (2) (a) of the Federal High Court Rules 2009 and Section 251 (1) (r) of the Constitution of the Federal Republic of Nigeria, 1999 and it was submitted that a community reading of the above Sections will clearly show that the procedure is adopted when an order of certiorari or mandamus is sought. It was also submitted that the constitutional provision clearly vested the Federal High Court with powers to adjudicate whenever executive decision is taken by the Agencies of Government is called to question. Learned Applicant’s counsel then stated that the paragraphs in the affidavit which the Court referred to are paragraphs that give the necessary background to the process that necessitated the application for leave. That exhibits B1 and B1 stated that EFCC has charged the Applicant to Court.

It was also stated that while the EFCC have a pending matter before a Judge of the Federal High Court, it went to a Magistrate Court to fraudulently obtain a warrant for the arrest of the Applicant. It was therefore contended that in judicial review, the Court is concerned with the legality and not the merits of the proceedings, decisions or acts of the affected government body. On this contention, the Court was referred to the case of **GOVERNOR OF OYO STATE VS. FOLAYAN.** That all an Applicant need to do is to obtain leave of Court *ex parte* by making available all relevant materials in the application to enable the Court exercise its discretion judicially. It was contended that the Applicant herein has placed before the Court material for its kind consideration in granting leave to apply for certiorari. Reference was made to the case of **FRANCIS TABAI VS. R.U.S.T. (1997) 11 NWLR PART 529, 377 at 379.** It was also submitted that at this stage, the Court is enjoined to consider only the application for leave without more. Again, reference was made to the case of **FRANCIS TABAI VS. R.U.S.T. supra**, to the effect that the Applicant need not make a clear case on the merit to deserve being granted the prayer. The Court was also referred to the case of **NDOMA-EGBA VS. GOVERNMENT OF CROSS RIVER STATE (1991) 4 NWLR PART 188, 773.** The Court was urged to grant the Applicant's prayer seeking leave.

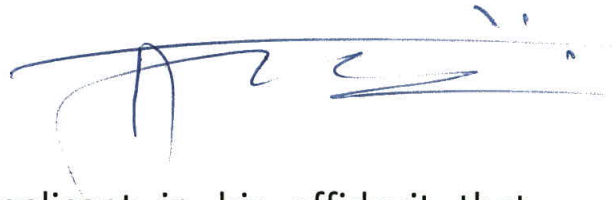


Having reviewed the submission of the Applicant's counsel, it is to be noted that leave to apply for order of certiorari is not granted as a matter of course. An Applicant for the leave must demonstrate in his affidavit that the application is not frivolous and deserve to be granted. See the case of **TABAI VS. THE V.C.R.S.U.S. & TECH** supra at **page 380 paragraphs A, B – F**. In the instant case, the Applicant has deposed in paragraph 2 of the supporting affidavit that sometimes in 2011, he was appointed by the President and Commander in-chief of the Federal Republic of Nigeria as the Chairman Pension Reform Task Team (otherwise referred to as PRTT). The Applicant also deposed in paragraph 17 of the affidavit in support that sometime in 2011/2013 the EFCC commenced investigation into the activities of the PRTT. In paragraphs 19 and 20 of the Applicant's affidavit in support, it was deposed that a charge has been filed in this Court with Charge No. FHC/ABJ/CR/297/2015 with three persons named as Accused persons. In paragraph 21 of the supporting affidavit, it was deposed that the Applicant was not charged but was described in the body of the charge as "Abdulrasheed Abdullahi Maina (now at large).



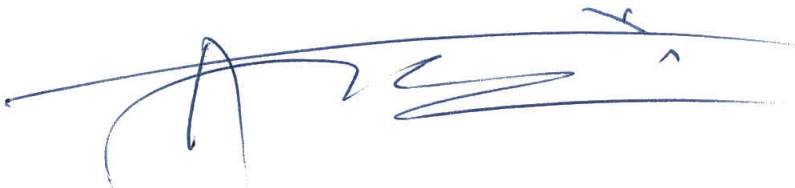
The Applicant's contention in this application is that he was never invited by the Respondents and was never charged by the Respondents at any time. However, from the relevant paragraphs of the Applicant's affidavit, it is clear that the Applicant is aware of the criminal investigation going on on the activities of the PRTT. Equally

aware of by the Applicant, is the fact that some persons have been charged to Court on the activities of PRTT. The Applicant is also aware that his name has appeared in the Charge No., FHC/ABJ/CR/297/15 as a person at large. In exhibit B1 attached the affidavit in support of the Motion Exparte that is, the Newspaper publication, it was clearly stated that the Applicant is nowhere to be found.



Now with the admission by the Applicant in his affidavit that investigations have been carried out and that a Charge No. FHC/ABJ/CR/297/15 with the name of the Applicant as a person at large, has the application discharged the burden of showing that his application in the peculiar circumstance not frivolous? I must at once answer this question in the negative. This is because if a charge is pending against certain persons on allegation of commission of criminal offences and an Applicant is mentioned in the said charge as a "person at large", would it not amount to interference with due administration of justice for that Applicant to approach the Court to seek to quash a decision declaring him wanted? If this Court were to grant leave to the Applicant herein to challenge the decision declaring him wanted, then the Court has interfered with the ongoing prosecution of the Charge No. FHC/ABJ/CR/297/15 in this Court. If the Applicant is aggrieved by the decision declaring him wanted, my view is that he should approach the Court before which

the Charge No. FHC/ABJ/CR/297/15 is pending and have the name of the Applicant removed from the body of the said charge so that the decision declaring him wanted would be to no avail. However, since the charge No. FHC/ABJ/CR/297/15 is still pending, this Court would not exercising it's discretion judicially if it grants leave to the Applicant to challenge the decision declaring him wanted. I am of the humble view that an exercise of discretion in a civil matter that would have the effect of stultifying or frustrating a criminal proceedings would not be a proper exercise of discretion. In this regard, the Court is of the view that the Applicant herein has not placed enough material before the Court in his Motion Exparte dated and filed on 5/11/15 to enable the Court exercise it's discretion judicially. In consequence of the above findings. The Motion Exparte is hereby struck out for being incompetent.



HON. JUSTICE A. R. MOHAMMED
JUDGE
25/2/16.

APPEARANCE:-

Esther Uzoma (Mrs.) for the Applicant.