

IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT COURT 56 GENERAL CIVIL
BEFORE HON.JUSTICE OLALEKAN A. ORESANYA (MR.)

TODAY, TUESDAY, THE 28TH DAY OF APRIL, 2026

SUIT NO.: LD/6625MJR/2025

BETWEEN

ADEMOLA ADETOKUNBO OWOLABI

APPLICANT

AND

ATTORNEY GENERAL OF LAGOS STATE

RESPONDENT

CERTIFIED TRUE COPY

JUDGMENT

This Judgment is in respect of an Originating Motion dated 16th December, 2025 filed by the Applicant praying the Court for the following reliefs:

1. A DECLARATION that the Legal Advices Nos.: BLJP/MISC/2023/226/13 dated 3/1/2024 and LJP/MISC/2023/226/23/27 dated 18/1/2024 issued by the Respondent constitute an abuse of the Prosecutorial Powers of the Respondent and same is vindictive, oppressive and injurious against the Applicant.
2. A DECLARATION the Legal Advices No.: BLJP/MISC/2023/226/13 dated 3/1/2024 and LJP/MISC/2023/226/23/27 dated 18/1/2024 issued by the Respondent in which the Respondent purported to have indicted the Applicant are unreasonable, baseless and did not flow from the investigation carried out by the Nigeria Police Force.

3. **A DECLARATION** that the Respondent is not an investigator and could only have relied on the investigation carried out by the Force Criminal Investigation Department of the Nigeria Police Force.
4. **AN ORDER OF THIS HONOURABLE COURT** setting aside the Legal Advices Nos.: **BLJP/MISC/2023/226/13** dated 3/1/2024 and **LJP/MISC/2023/226/23/27** dated 18/1/2024 issued by the Respondent as they are unreasonable, arbitrary, abusive and a violation of the prosecutorial power of the Respondent.
5. **AND FOR SUCH FURTHER OR OTHER ORDER(S)** as this Honorable Court may deem fit to make in the circumstances.

The Application is predicated on 9 grounds, along with a statement, facts in support of the application, 11 documents attached and marked as Exhibits **AA1-AA11** with a 4-paragraph verifying affidavit deposed to by the Applicant, Ademola Adetokunbo Owolabi and a written address of Counsel. The Applicant also filed a 26-paragraph further affidavit dated 27th January, 2026 deposed to by the Applicant and a reply on points of law. Learned Counsel for the Respondent, Dr. Babajide Martins (DPP) urged the Court to dismiss the Applicant's Originating Motion. Learned Counsel referred to Section 211 of the Constitution and the case of **STATE V ILORI**. The learned DPP submits that the office of the Attorney General is not bound by the investigation of the Police and that the office of the Directorate of Public Prosecution (DPP) is not an inferior tribunal bound by an order of certiorari.

Brief facts of the case:

The Applicant who is a legal practitioner was engaged as a Solicitor by Alex Ochonogor sometime in April 2015 to conduct due diligence on a property measuring 1139 square meters and known as block 133 Plot 10, Lekki Phase 1, Lagos. The Applicant stated that during his search at the Lands Registry

Ikeja, Lagos, he found that Major Hamza Al-Mustapha registered a Memorandum of Loss u=in respect of the property as 99/99/2471, he obtained a certified true copy of the said Memorandum of Loss and gave same to Mr. Alex Ochonogor. He further averred that Mr. Alex Ochonogor finally bought the property for **N85, 000, 000 (Eighty-Five Million Naira)** from Hamza Al-Mustapha through Barrister Adebayo Akeju in May 2015.

However, sometime in November 2015, Mr. Alex Ochonogor briefed the Applicant to defend him in suit no.: **LD/529LM/2015** filed by Obidigwe Eze who claimed that Major Hamza Al-Mustapha had earlier sold the same land to him and while the matter was already in Court, Obidigwe Eze who filed the process also filed a petition at the Force Criminal investigation Department, Alagbon of the Nigeria Police Force against Alex Ochonogor and Adebayo Akeju - the Police invited the Applicant as a witness and not as a suspect and did not confront him with any allegation of crime or misdemeanor.

CERTIFIED TRUE COPY

The Applicant further averred that on 3rd January 2024, the Respondent issued a Legal Advice wherein Hamza Al-Mustapha, Adebayo Akeju, Alex Ochonogor and the Applicant were indicted and recommended for prosecution; on 18th January 2024, the Respondent issued another document, which according to the Applicant, was titled supplementary Legal Advice wherein only Adebayo Akeju, Alex Ochonogor and the Applicant were indicted and recommended for prosecution, while Major Hamza Al-Mustapha's name had been removed.

Learned Counsel for the Applicant formulated an issue for determination being:

"Whether considering the facts and circumstances of this matter, this Honorable Court ought not to quash the Respondent's Legal Advices dated 3/1/2024 and 18/1/2024 on the grounds set out by the Applicant".

Learned Counsel to the Applicant, Ademola Adetokunbo Owolabi, adopted the arguments in his written address as his submission in support of the Applicant's case, he submits that the application is meritorious and ought to be granted. The written address already forms parts of the records of this Court and deemed as properly incorporated to this Judgment.

The Respondent filed a 27-paragraph counter-affidavit dated 10th January 2026 deposed to by Folawiyo Bailey-Jakande, a State Counsel in the Lagos State Ministry of Justice, wherein the Respondent averred that there is nothing in the Applicant's affidavit and in the entire evidence available before this Honorable Court to show or suggest that the Respondent infringed, is infringing or likely to infringe on the fundamental rights to personal liberty, freedom of movement and fair hearing of the Applicant as being alleged in the instant suit as a result of filing an information/criminal charges against the Applicant. The Respondent further denied the allegation of abuse of power against the Applicant and contended that the Applicant is alleged to have committed the offence of conspiracy to commit felony to wit; forgery and malicious damage to property respectively.

The deponent further averred that the Respondent (Attorney -General of a State) under whose authority the Director of Public Prosecutions (DPP) exercised its powers, is empowered to institute, take over or discontinue any criminal proceedings by virtue of Section 211 of the 1999 Constitution of the Federal Republic of Nigeria (as amended); the prosecutorial powers as constitutionally vested in the Attorney-General cannot be challenged or reviewed by any authority including the Honorable Court; the Respondent's Counsel also filed a written address of 8 pages, wherein the Learned Counsel formulated a sole issue for determination as follows:

CERTIFIED TRUE COPY

"Whether or not in the circumstances of this Application, the Applicant is entitled to the grant of the reliefs being sought from this Honorable Court?"

The learned DPP-Dr. Babajide Martins adopted the argument in his written address as his submission in support of the Respondent's case, the written address of the Counsel already forms part of the records of this Court and is deemed as having been properly incorporated to this Judgment.

The Applicant filed a further affidavit wherein he averred that Obidigwe Eze never complained or petitioned the Police against the Applicant, that the Applicant as a legal practitioner, was able to obtain the petition dated 2/2/2023, which he got from the Respondent and that the petition did not mention the name of the Applicant, no allegation was laid against the Applicant.

I have examined carefully the affidavit filed by the Parties in support of their positions in respect of this application for judicial review and the documents attached as exhibits thereto; I have also given a calm and through consideration to the submissions of learned Counsel, all of which already form parts of the records of this court and are deemed properly incorporated to this Ruling. The issue for determination by this Court is *"Whether the Applicant is entitled to the Orders sought in this application?"*

This is an application for judicial review wherein the Applicant is seeking a declaration that the legal advice no.: **BLJP/MISC/2023/226/13** dated **3/1/2024** and **LJP/MISC/2023/226/23/27** dated **18/1/2024** issued by the Respondent constitute an abuse of the prosecutorial powers of the Respondent and same is vindictive, oppressive and injurious against the Applicant and an order setting aside the said legal advice.

I must state from the beginning that the jurisdiction of this Court to review the proceedings, decisions and act of inferior tribunals and act of government bodies is supervisory. In an application for Judicial Review, the Court is usually concerned with the legality and not the merit of the proceedings, decisions or acts of the inferior tribunal or government body - **KOREA NAT. OIL CORP. V OPS (NIG.) LTD. [2018] 2 NWLR Part 1604 Page 394 at 437 paras. A-C.**

It is not in dispute that the legal advice(s) sought to be set aside were issued by the Respondent in the exercise of its powers to issue the legal advice within the confines of the statutory power conferred on it by Section 211 (1) of the 1999 Constitution of the Federal Republic of Nigeria which grants the Attorney General of a State the power to institute, take over or discontinue criminal proceedings against any person before any Court of Law in Nigeria (except for Court martial) for offences created by the State.

The power of the Attorney General, whether of the Federation or of the State to institute criminal proceedings against any person is an absolute one; where two or more persons commit an offence or a series of offences, the Attorney General has the discretion as to who to prosecute in respect of what offence. This discretion is not fettered in any way; he has no obligation to give reasons for exercising his discretion in a particular way.

The apex Court in **AKPA V STATE [2008] ALL FLR Part 420 at 644**, held that the Attorney General has an unfettered discretion to prosecute persons in Court and because the discretion is unfettered, Courts of law do not have the power to question it; **Niki Tobi, JSC** held inter alia:

"The only jurisdiction of the Court is to try Persons presented before it for prosecution. The Prosecution is not under any regimental ----- or any duty to charge all possible accused persons."

Upon a careful evaluation of the totality of facts and materials placed before this Court by the parties, this Court is of a firm and well considered view that the instant application is not within the threshold of the principles upon which this Court may exercise its powers to set aside the legal advice issued by the Respondent. The Applicant by the instant application is challenging the correctness of the exercise of the power of the Respondent and not the legality of the Respondent's action, this to my mind, is outside the scope and confines of the powers of judicial review this Honorable Court can exercise.

From the facts placed before this Court by the parties as disclosed in the affidavits, there is a pending criminal case before this Court presided over by Honorable Justice S. I. Sonaike against the Applicant and others indicted in the Legal advice(s) sought to be set aside - this to my mind, provides the right forum and opportunity for the Applicant to challenge the correctness and validity of the legal advice which can only be challenged before the Court who has rightly assumed jurisdiction over the criminal matter. This Court lacks the jurisdiction to look into the correctness of the administrative action of the Respondent which it exercised legally within the scope of powers conferred on it by section 211 of the Constitution.

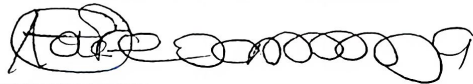
I must add that the legal advice sought to be set aside is the foundation and basis for the criminal action filed by the Respondent against the Applicant pending before another judge of this Honorable Court, if the argument of the Applicant is to accepted, there will be no legal basis for the pending criminal action against the Applicant - a Court of equal and co-ordinate jurisdiction cannot make a decision capable of overreaching, prejudicing or rendering nugatory the decision of another Court of equal jurisdiction. I reckon that this will be is an invitation to confusion and anarchy.

I should state clearly that the issues raised by the Applicant as to the propriety or otherwise of his indictment vide the legal advice(s) issued by the Respondent can only be resolved by credible evidence at a plenary trial before the Court. I must add that where an objection or challenge to an administrative or quasi-judicial action cannot be successfully raised without evidence being led by the objector in Court, such an objection or challenge becomes a defence to the substantive action.

On the whole and in the final analysis, based on the reasons adumbrated, I find no merit in this Originating Motion filed by the Applicant. The application is misconceived and bereft of fact and lacking in substance, it is liable to be dismissed and it is accordingly dismissed.

THIS IS THE JUDGMENT OF THE COURT.

HON JUSTICE
OLALEKAN A. ORESANYA
LAGOS STATE HIGH COURT



HON. JUSTICE OLALEKAN A. ORESANYA (MR.)

28TH APRIL, 2026

Appearance:

Franca Adaenyi for the Applicant.

Parties absent.

DUROSHIMI B.S.
Commissioner For Oaths
Fast Track
Lagos High Court

COURT OF LAGOS
STATE
HIGH
CASH OFFICE, TAPA
Sign _____ Date _____

Cash pls collect ₦1,600 for CR

CERTIFIED TRUE COPY