

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/M/8773/2019
DATE: 26TH FEBRUARY, 2020**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

OLAKUNDE BAMIDELE HERITAGE - DEFENDANT

Defendant in court.

O. Akponimisingha (Principal Legal Officer ICPC) for the prosecution.

V.O. Olugbami for the Defendant.

Prosecution's Counsel – The matter is for ruling and continuation of hearing. We are ready to take the ruling.

This is an application on notice dated 11/8/2019 brought pursuant to Sections 6(6) (A); 36(1) (4) of the Constitution of Federal Republic of Nigeria 1999 (as amended); Sections 337(1) and 341(1)(a) of ACJA and under the inherent jurisdiction of this Honourable Court.

The Defendant/Applicant seeks the following orders:

1. An Order of this Honourable Court restoring to the Defendant or such other person or persons as may be entitled to the properties recovered from his premises other than that used in the alleged commission of the offence which constitutes the proof of evidence annexed to the charge before this Honourable Court.
2. An Order of this Honourable Court directing the Prosecution/Respondent in this case to release and deliver to the Defendant or any other person entitled, such documents and other personal effects belonging to him, his wife and other members of his family which were recovered from his premises other than that used in the alleged commission of the offence and isolated as exhibits in the proof of evidence annexed to the charge sheet.
3. And for such further order or order(s) as this Honourable Court may deem fit to make in the circumstance.

In support of the application is a 13-point supporting affidavit dated 13/9/19 deposed to by the Defendant himself. Reliance is placed on all the said points of the affidavit.

Learned counsel to the Defendant/Applicant filed a written address wherein counsel submitted an issue for determination, thus:

“Whether the Applicant has made out a case for the grant of the reliefs sought in the application”

On this sole issue, it is the submission that this Honourable Court by the provision of Section 6(6) (A) of the Constitution of Federal Republic of Nigeria 1999 (as amended) has the power to grant

the reliefs sought in the instant application. See case of RE-ONAH (2018) LPELR – 45640 (CA); Section 341 ACJA.

It is submitted that the supporting affidavit details the entire circumstances upon which this application is predicated and court is urged to grant the application.

In opposition to this application, the prosecution did not file any counter affidavit. However, counsel for the prosecution elected to reply on points of law.

In his reply, counsel submitted that in the case of HASSAN v EFCC (2009) 1 NWLR (Pt 1389) 607 the court held that a court should not interfere with the investigation activities of EFCC and in this case, the ICPC. Court is referred to Section 3(1) ICPC Act.

It is further submitted that the ICPC has something to do with the documents the Defendant is asking the court to order ICPC to release to them. Court is urged to discountenance with the application filed by the Defendant as it has no merit.

In response to the submission of prosecution counsel, the Defendant/Applicant's counsel submitted that the case of HASSAN v EFCC (Supra) cited by the prosecution is not applicable to this matter on the premise that this application is not to stall the investigation of ICPC.

It is further submitted that this court has jurisdiction to entertain this application and grant same.

I have carefully considered the processes filed and submission of learned counsel on both sides. As rightly stated by the Defence Counsel, this court by the provision of Section 6(6) (A); 36(1) (4) of the Constitution of Federal Republic of Nigeria 1999 (as amended)

and Sections 337 (1) and 341(1) (a) of ACJA, 2015, this court has the powers to entertain an application of this nature.

For want of doubt, Section 341 ACJA 2015 is reproduced as follows:

“Where on the arrest of a Defendant charged with an offence, any property, other than that used in the commission of the offence, is taken from him, the court before which he is charged may order that the property or any part of it be: (a) Restored to the person who appears to the court to be entitled to it and, where he is the person charged, that it be restored either to him or such other person as he may direct”

I have carefully looked at the 13-points affidavit in support of this application where the items sought to be released are all stated. It is clear that the said items/documents have no nexus with this particular case, since the prosecutor has isolated those he considered relevant to this case.

It is also of note that the prosecution did not file any counter affidavit challenging the averment made by the Defendant/Applicant with regard to this application.

It is the contention of the prosecution's counsel that the ICPC has something to do with the documents the Defendant is asking the court to release to him. One wonders whether the prosecution counsel is after the doing of justice with respect to this application. As rightly averred in paragraph 2 of the supporting affidavit, the documents in issue were seized by the ICPC since the 26/7/2015

and till date the ICPC has not concluded on what to do with the said document?

It must be stated that this is a court of justice and it is justice for the State, justice for the Defendant and more importantly justice for the larger society.

In the light of all stated above, I am of the considered view that the Defendant/Applicant has placed before this court sufficient material to warrant this court grant this application.

Accordingly, the application is granted as follows:

1. The properties recovered from the Defendants/Applicant's premises by the ICPC other than that used in the alleged commission of the offence which constitutes the proof of evidence annexed to the charge before this court are hereby restored to the defendant or such other person or persons as may be entitled to the properties.
2. The Prosecution/Respondent in this case are hereby directed to release and deliver to the Defendant or any other person entitled, to such documents and other personal effects belonging to him, his wife and other members of his family which were recovered from his premises other than that used in the alleged commission of the offence and isolated as exhibits in the proof of evidence annexed to the Charge Sheet.

3. I order that the International passport of the Defendant be deposited with Registrar of this court pending the conclusion of his trial before the court.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
27/02/2020

(2ND RULING)

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COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CR/76/2015
DATE: 26TH FEBRUARY, 2020**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

OLAKUNDE BAMIDELE HERITAGE - DEFENDANT

On 12/12/2019 in the cause of PW4 evidence-in-chief, learned counsel for the prosecution asked the witness to tell the court the procedure of making document like Exhibit D².

The Defence counsel objected to the line of question put to the witness on the ground that the witness is not to make comment on Exhibit D² since he is not the maker of the document and the prosecution counsel has not establish the particular circumstances that will cloth the witness with competency to make pronouncement on the document that he does not produce. Court is referred to Section 83(1) (a) – (i) and (4) of the Evidence Act.

In opposition to the objection, the prosecution's counsel submitted that the position of learned Defence Counsel is strange to law as the document is already in evidence. The document is bearing where the PW4 works and was purported to be issued by his office, Court is referred to Section 128(3) of the Evidence Act.

It is further submitted that the witness can comment on Exhibit D2 and urged the court to allow the question put to the witness (PW4).

I have carefully considered the processes filed and submission of learned counsel on both sides, particularly Exhibit D2, it is observed that the said Exhibit is Survey Plan produced by the office of the witness as such the witness is competent to comment on same. See the Supreme Court case of RAUF AREGBOSOLA & 2 ORS v OLAGUNSOYE OYINLOLA & 2 ORS (2011) 9 NWLR (Pt 1253) 458 at 587 Para D where it was held thus:

“By virtue of Section 198(2) Evidence Act, a witness may give oral evidence of statement made by another person about the contents of a document if such documents are in themselves relevant facts” Per OGUNBIYI JCA (as she then was) at Page 587.

In the light of the above, I am of the considered view that the objection raised by the Defence Counsel lacks merit and it is hereby overruled.

Accordingly the question put to the witness by the prosecution counsel is allowed.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
26/02/2020

Prosecution's Counsel – We thank the court for the rulings. We seek to call the witness to conclude his evidence.

Defendant's Counsel – We thank the court for the rulings.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
26/02/2020