

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON THURSDAY THE 11TH DAY OF FEBRUARY, 2020.

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CR/507/2019

MOTION NO: M/715/2019

INSPECTOR GENERAL OF POLICE ----- COMPLAINANT

AND

1. YUNUSA TANKO SALISU

2. PETER AMEH ----- DEFENDANTS

RULING

Learned counsel to the Defendants filed a Motion on Notice M/715/19 dated 5/11/19 brought pursuant to S. 396 of Administration of Criminal Justice Act 2015 and under the inherent jurisdiction of this Honourable Court. It is seeking an order of this court striking out the Respondents charge for failure to comply with a condition precedent and which failure has robbed this Honourable court of jurisdiction to entertain this charge. Defendant had been brought to court on a 9 count criminal charge but prior to arraignment of the two Defendant's, learned counsel to the Defendants had filed this motion on notice. The said motion on notice is accompanied by a 12 paragraphs affidavit deposed to by one Kehinde Edun, the head of chambers of the law firm representing the Defendant/Applicant. Also attached to the Motion on Notice are the following Exhibits; Exhibits P101, PI02, PI03 which are the Certified

True Copy of first information Respondent; Certified True Copy of court order in CR/19/2019 and Certified True Copy of record of proceeding, learned prosecutor filed a 14 paragraph affidavit deposed to by Okoye Victor, a legal practitioner in the service of the Police Force and attached is a written address while Applicants further filed a reply on point of law. The crux of the application is that Defendants had earlier been arraigned at a Magistrate Court of the FCT in respect of the same offences as contained in the present charge and upon the withdrawal of the FIR by the Prosecution; the trial magistrate had ordered the discharge of the Defendant/Applicant on the condition that the Defendant should not be arraigned for the same offences without first obtaining the leave of court. That the Respondent/Prosecutor did not appeal the order of the court nor sought and obtained the leave of court before attempting to arraign the Defendant before this court hence this motion on notice objecting to the said arraignment. Learned counsel to the Defendant/Applicant raised a sole issue for determination “whether the Complainant/Respondent has fulfilled the requisite condition for filing the instant charge, having regards to the order of the magistrate court contained in Certified True Copy of the records of proceedings, otherwise known as Exhibit:- PI02. Without much ado, the main arguments in the written addresses of both learned counsels is that the Defendant/Applicant were first arraigned at the magistrate court on charges as shown in Exhibit PI01. That upon discharging the Defendants the magistrate had ordered that the Defendants “Should not be arraigned on the same offences except with the leave of the court”. While the counsel to the Defendant/Applicant submitted that

prosecution failed to obtain the leave of the magistrate court which should be a condition precedent before charging Defendants before this court thus robbing this court of jurisdiction. Counsel submitted that failure to obtain leave of court where is required robs the court of jurisdiction to entertain this charge.

Prosecution/Respondent on the other hand argued and submitted in his written address, the plea of the Defendants ought to be taken before entertaining the motion on notice and that in the circumstances of this case there is no valid order the prosecution must comply with before arraigning the Defendants before this court and the charge before the magistrate court are not the same.

After reading written address of both learned counsel, I have equally taken into consideration the reply on point of law of Defendant/Applicant although I must note that the said reply is both on facts and on point of law; Nevertheless in my view, the issue for determination is “whether failure to first obtain leave of the magistrate court as ordered by the magistrate automatically robs this court of jurisdiction to arraign the Defendants and proceed with this charge?

S. 396 Administration of Criminal Justice Act states the procedure for arraignment of and taking of plea of a Defendant charged before a court of competent jurisdiction.

It is trite that criminal trial commences on arraignment and taking of plea; S. 396 (2) Administration of Criminal Justice Act states that the Defendant can only raise objection to the charge at anytime before judgment and such objection should be considered along with the substantive suit and ruling encapsulated in the final judgment. From

the above, if this court is to consider S. 396 Administration of Criminal Justice Act wherein learned counsel to the Applicant placed heavy reliance in this application then Defendants would have to go on trial and ruling on objection to arraignment as contained in this motion would have been delivered with the substantive judgment. However, this court would deviate from S. 396 of the Administration of Criminal Justice Act as objection borders on jurisdictional grounds and constitutional grounds of which there are plethora of case from the Apex court that objection based on jurisdiction must first be determined before going into the substantive suit.

First and foremost, it is trite that each case is determined according to its own peculiar circumstances. The lower court before whom an FIR had been filed in discharging the Defendants had ordered that leave of the court must be first sought and obtained before arraigning the Defendants”.

I do agree with learned counsel to the Defendant/Applicant that failure to obtain leave of the court where leave is required automatically robs the court of jurisdiction to entertain a claim but it should be added that such failure only borders on situation where the laws or statute have specifically “required” that leave must first be sought and obtained; consequently where the law or statute or rules of court provides that leave of court must first be sought and obtained before the performance of an act or the filing of a document then such leave of court becomes a condition precedent to the court assuming jurisdiction in such cases as failure to obtain leave of court in such situation robs the court of jurisdiction.

Hence the rules of court requires that leave of the court is required for service of writ of summons outside jurisdiction else such service without leave becomes a nullity See **NEPA VS ONAH (1997), NWLR (Pt. 484) 680 @ 689 Para G-H per Mohammed JSC.**

Likewise the law is settled that an appeal filed out of time without leave of court is incompetent See **CREEKVIEW PROPERTY DEVELOPMENT CO. LTD VS EBUN-OLU ONAGO RUWA (2011) 3 NWLR (Pt. 1234). Pg 239 @ 246 Para f per Sa uluwa JCA.** In the same vein, the Supreme Court held in the case of **EZE vs PDP (2018) LPELR-44907 (SC)** that failure to obtain leave of court where leave is required before filing an appeal automatically robs the court of jurisdiction. Consequently, where the statute or the law provides for the doing of an act as a condition precedent such act becomes mandatory and non performance robs the court of jurisdiction.

The magistrate before whom the Defendants were arraigned had given an order that the leave of court must first be obtained before arraigning the Defendants/Applicants. The question that arises is whether such order of the magistrate is a condition precedent which this court must ensure that same is fulfilled before the Defendant/Applicant can be arraigned before this court. First and foremost the order of magistrate court is not a law nor a statute neither is the said order tailored after a law or statute rather it remains an order and nothing more.

The next question that comes to fore is whether this court is bound to obey an order of the magistrate court? Without delving into academics, it is trite that a subordinate court is bound by the decision of a super ordinate court of record and not the other way round. This is the

essence of the principle of stare decisis which in lay mans parlance simply means that an inferior court must follow earlier judicial decisions of the higher and superior courts. S. 6(5) (g-h) of the 1999 constitution (as amended) lists the superior courts of record, in descending order starting from the Supreme Court down to the Customary Court of Appeal, hence decisions of a superior court are binding on lower courts and nowhere in the hierachy of our judiciary does it imply that the High Court is bound to follow the orders of a lower court as in this case the magistrate court, particularly when such order did not emanate from a judgment of the magistrate court nor from an interlocutory application.

In light of the above, motion on notice No. M/715/19 dated 4/11/19 is hereby struck out on lack of merits and defendants are hereby ordered to proceed to the dock for arraignment and taking of plea accordingly.

PARTIES: Defendants present.

APPEARANCE: Wisdom Madaki appearing with Victor Okoye for the Prosecution. P. I. Oyewole appearing with Kehinde Edun and Pridcilla Aisuebeogun for the Defendants.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
11TH FEBRUARY, 2020**