

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI**

**HON. JUDGE HIGH COURT NO. 12**

**COURT CLERKS: T. P. SALLAH & ORS**

**DATE: 16/09/2020**

**FCT/HC/ CR/193/2019**

**BETWEEN:-**

**COMMISSIONER OF POLICE-----**

**COMPLAINANT**

**And**

**1. ALHAJI MUSTAPHA SULEIMAN  
2. ALHAJI RABIU ADAMU IDRIS  
3. CALIPHATE GLOBAL INVESTMENT LTD**

**DEFENDANTS**

**RULING**

The three Defendants are standing trial before this Honourable Court on various offences bothering on Advance Fee Fraud and other Fraud related Offences Act 2006 and issuance of dud cheques pursuant to dishonoured cheques offences Act, LFN Cap D11 of 2004. The Defendants pleaded not guilty to the various count charge.

Then on 22<sup>nd</sup> January, 2020 the prosecution opened its case for trial by calling the nominal complainant who testified as PW1, he was the cross examined by the defence and subsequently discharged without objection. The matter was then adjourned to the 26<sup>th</sup> March 2020 for continuation of hearing. However, trial could not continue as scheduled by the order of this Court due to the covid-19 pandemic and the Courts including the FCT High Court, Abuja was temporarily shut except on urgent matters that were statutorily or constitutionally time bound or other related matters as directed by the Honourable Chief Justice of Nigeria and the Honourable Chief Judge of FCT High Court. The Federal Government of Nigeria and Indeed the Chief Justice of Nigeria

having relaxed the locked down due to the Covid- 19 Pandemic, Courts in the country including the FCT High Court Abuja resumed its statutory responsibilities of adjudication. Hence the instant matter was then slated for continuation of hearing on the 15<sup>th</sup> September, 2020. However, when the matter was called the learned prosecuting Counsel, ASP Peter Ejike appearing with Wisdom Nwachukwu on behalf of the state apply to withdraw the charge against the Defendants instead of calling his witnesses for continuation of hearing. According to the learned prosecuting Counsel, his application is hinged on section 108 of the Administration of Criminal Justice Act 2015 and he urged me to grant the application.

In response, the learned defence Counsel Anthony Agbolahor appearing with F.A Dike Esq opposed the application of the prosecution to withdraw the charge on the grounds that:-

- (1) A witness, the nominal complainant had already testified and the case adjourned for continuation of hearing,
- (2) That the prosecution before now had filed a charge in suit no CR/93/2020 on 10<sup>th</sup> July,2010 against the Defendants which has been adjourned to 23<sup>rd</sup> September, 2020 bothering on the same or similar offences and this amounts to an abuse of Court process,
- (3) That section 108 of the Administration of Criminal Justice Act, 2015 does not support the application made by the learned prosecution in that there is no evidence before the Court that the Honourable Attorney-General of the Federation has instructed such withdrawal and that the application cannot be made oral but by writing or notice.

Learned Counsel to the Defendants therefore urged me to refused the application. Alternatively learned Counsel submitted on behalf of the Defendants that if the Court is inclined to granting the application for withdrawal, then the order to be made by the Court should be an order of acquittal pursuant to section 355 of the Administration of Criminal Justice Act, 2015 and he further prayed the Court to evoke section 108 (4) of the Administration of Criminal Justice Act, 2015 and award cost against the prosecution in favour of the Defendants.

The learned prosecuting Counsel in his response submitted that section 108 of the Administration of Criminal Justice Act, 2015, empowers all Prosecutory Agencies including the police to withdraw charges against the Defendants at any stage before judgment. He submitted further that section 174 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) only empowers the Attorney- General of the Federation to exercise his powers of nolleprosequi by himself or through officers of his office and that section 108 of the Administration of Criminal Justice Act, 2015 is not in conflict with section 174 of the Constitution.

Now having put the records as they were, the crux of the matter in the instant case is simple- it bothers on the fact that whether the complainant, the Commissioner of Police can withdraw the instant charge against the Defendants pursuant to section 108 of the Administration of Criminal Justice Act, 2015 ? Section 108 (1) provides:-

*“In any trial or proceeding before a Court, a prosecutor may, or on the instruction of the Attorney –General of the Federation, in case of offence against an Act of the National Assembly, may, at any stage before judgment is pronounced, withdraw the charge against any Defendant either general or in respect of one or more of the offences with which the Defendant is charged”.*

The above provision of section 108(1) is crystal clear and devoid of any ambiguity. The language is plain and therefore it must be given its literal and grammatical meaning to mean that the prosecution, in the instant case, the Commissioner of Police has unfettered powers to withdraw a charge against any Defendant either generally or in respect of one or more of the offences with which the Defendant is charged.

The offences in which the police or any Prosecutory agency can withdraw against any Defendant is however subject to the provisions of section 107 of the Administration of Criminal Justice Act, 2015 and section 174 of the Constitution of the Federal Republic of Nigeria (as amended). For the purpose of clarity, section 107 of the Administration of Criminal Justice Act, 2015 provides:-

*"In any criminal proceeding for an offence created by an Act of the National Assembly, and at any stage of the proceeding before judgment, the Attorney-General of the Federation may discontinue the proceedings either by stating in Court or informing the Court in writing that the Attorney-General of the Federation intends that the proceeding shall not continue and based on the notice the suspect shall immediately be discharged in respect of the charge or information for which the discontinuance is entered."*

Section 107 of the Administration of Criminal Justice Act, 2015 is in tandem with section 174(1) (a)(b) and (c) of the Constitution (as amended) as to the power of the Attorney-General of the Federation to discontinue or withdraw a charge against any Defendant if the offence is created by the Act of the National Assembly.

In other words, what section 108 of the Administration of Criminal Justice Act, 2015 empowers the other Prosecutory Agencies to withdraw or discontinue a charge against any Defendant is in respect of offences not created by the Act of the National Assembly. If the offences are created by an Act of the National Assembly, then the consent of the Attorney - General of the Federation is required in writing.

In the instant case at hand, the offences as contained in the charge, are they offences created by an act of the National Assembly?

A close perusal of the offences especially Counts 1-18 against the Defendants bothers on Advance Fee fraud and other Fraud Related Offences Act, 2006, which offences are created by an Act of the National Assembly.

Secondly, Counts 19 and 20 bothers on offences of issuance of dud cheques contrary to Dishonoured Cheques Offences Act, LFN Cap D11 of 2004 which are offences also created by an act of the National Assembly.

Thus, the entire count charge sought to be withdrawn against the Defendants by the prosecution are clearly offences created by an Act of the National Assembly. In such a situation, for the prosecution or the Commissioner of Police to competently

withdraw such count charge against the Defendants, the instruction of the Attorney- General of the Federation in writing is required. In the instant case, there is no such instruction in writing given to the Commissioner of Police or his agents or any evidence to show that the Attorney- General of the Federation is aware of such application to withdraw the charge against the Defendants.

Accordingly therefore, the application to withdraw the charge against the Defendants by ASP Peter Ejike on behalf of the Commissioner of Police is hereby refused.

The hearing of the case to continue except if the Attorney-General of the Federation instructs in writing otherwise.

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**HON. JUSTICE D.Z. SENCHI**  
**(PRESIDING JUDGE)**  
**16/09/2020**

Defendants Present in Court.

ASP Peter Ejike:- With me is Wisdom Nwachukwu for the prosecution.

U. C. Ekeji:-Holding the brief of Anthony Agbolahor for the Defendants.

ASP Peter:- I apply for a date for continuation of hearing.

Court:- Case adjourned to the 7<sup>th</sup> October, 2020 for continuation of hearing. Bail of the Defendants to continue.

**Sign**  
**Judge**  
**16/09/2020**