

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 5TH OCTOBER, 2020.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.
SUIT NO.:-FCT/HC/CR/76/2013

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA:.....COMPLAINANT

AND

HON. FAROUK M. LAWAN.....DEFENDANT

Eyitayo Fatoyi with Olajide O. Kumuyi and Chiamaka Onwugba for the Prosecution.
Benson Igbanoi holding the brief of Chief Mike Ozekhome with Godwin Iyinbor for the Defendant.

RULING.

On the 22nd September, 2020, Defendant opened his case and called a witness. At the close of the evidence of that witness the Defence counsel requested for short adjournment to enable him serve subpoena on another witness which he was unable to serve.

The Prosecution objected to the adjournment but the Court overruled the Prosecution for the interest of justice and for the reason that the Defendant had open his case, that one more adjournment be allowed to enable him produce his witness. Case was adjourned to 5th October, 2020.

Today, the 5th October, 2020, instead of the Defence counsel continuing with his case as agreed on 22nd September, 2020 he resumed with the application for adjournment; based on these reasons:

- (1) That he is holding brief of the lead counsel, Mike Ozekhome (SAN).
 - (2) That the lead counsel who wants to handle the matter is bereaved.
 - (3) Thirdly that his lead counsel had sent a text to Chief Awomolo (SAN), the lead counsel in Prosecution. The prosecuting counsel opposed the application for adjournment raising three issues why further adjournment should not be granted.
1. That by reason of **YemiShylom v. Asern (supra)** that the Supreme Court had held clearly that when a counsel appears before a Court stating that he is holding brief of another counsel, that it is deemed to be fully seised of the matter having announced his appearance.
 2. That the present application is an invitation to the Court to overrule itself having regard to previous rulings and admonishment of the Court on the Defence.
 3. That there are no special circumstances that would warrant the adjournment since the Defendant's witness is present in Court.
 4. That he never received any instruction from Chief Awomolo (SAN) his principal with regards to any text message. That the witness of the Defendant is in Court and that the Court should refuse the application and order the Defendant to continue with defence.

Having summarised the proceedings of today. I would in a nutshell reiterate again the history of the several adjournments by the Defendant with same reasons.

On 29th June, 2016, the same Mr. Benson Igbanoithe defence counsel made a similar application that the lead counsel whom he was representing was in Ado Ekiti and could not be present in Court because he missed flight.

On 14th March, 2017, Nkemokoro, Esq, for the Defence counsel, cross examined the PW2 midway and asked for adjournment to enable the lead counsel, Chief Ozekhome (SAN) finish the cross examination.

On 15th March, 2017, another counsel for Defendant, Godwin Iyinbor asked for adjournment saying that he had consulted with the Chief Mike Ozekhome (SAN) who asked him to proceed but that the Defendant had refused their proceeding.

In these applications the request for adjournment was granted for the interest of justice for that of 29th June, 2016 but when the Court discovered that it has become amodus operandi on the part of the Defendant on several others application for adjournment for the same reasons that counsel is holding brief, the Court had ruled against the Defendants based on the notorious principle of stare decisis on issue of appearance of a counsel holding brief for another counsel. Thus in the case **YemiShylon v. Asern (supra)** as cited by the prosecution. The Supreme Court also in the case of **MFA v. Inongha (2014) NWLR (Pt 1397) 343** reproduced in the **Chevron Nig Ltd v. High Chief MasemebareLowaz&Ors (2017) LPELR 42813 (CA)** held;

“... when a counsel announces appearance, whether as holding brief for another counsel for or not he is presumed to have full briefing and authority to do the case and if he is not in a position to do so he should make a proper application for adjournment giving his valid reasons for his inability to proceed with the case.”

The counsel, Mr.Igbanoi is not a strange counsel in this matter but he is a counsel from the Chambers of Chief Mike Ozekhome (SAN) and had from inception of this case been

present in all the proceedings. So he is fully seised of the facts of this case.

Secondly, he opened the case of the Defendant on 22nd September, 2020 while still holding brief of his principal and lead counsel Chief Mike Ozekhome (SAN) and had personally requested the Court for a short adjournment to today to produce his subpoenaed witness.

The Defence counsel had not given any valid reason not to proceed with the evidence of his witness whom the prosecutor said is in Court and Defence counsel did not refute it.

I sincerely commiserate with the bereaved SAN, Chief Mike Ozekhome but that is not a valid reason for the inability of the Defence counsel, Mr. Igbanoi to continue with this matter. Further in **Dr. Omako Okoh v. Mare-Will Nig Ltd (2014) LPELR-23260 (CA).**

The Court of Appeal pointed out;

“The point to be stressed is that the fact a thing has been a practice, does not make it a law. Besides it is not Chief M.I. Ahamba (SAN) that handles all the cases in his Chambers, but his Chambers, meaning that ANY lawyer in his Chambers is competent to handle any brief the Chambers has been engaged or hired to handle. In Machi v. Okeke (1998) 5 NWLR (Pt 548) 159 @ 162, it was held the rule that holding the brief of another counsel is presumed to be properly briefed to go on with the matter and not to ask for adjournment on the basis alone applies equally to a junior counsel who attends Court to ask for adjournment only on the ground that his senior colleague in the Chamber is not

around and would want to do the matter himself.”Per Abba Aji (JCA). (as he then was).

The above case is on all fours with the instant case and it is a principle of law that applies to all judicial proceedings whether civil or criminal.

Therefore, the application for adjournment by Mr.Igbanoi (holding brief) based on the fact that the lead counsel Chief Mike Ozekhome (SAN) is absent and wants to handle the matter by himself is refused. Court orders the Defence counsel to continue with his defence.

HON. JUSTICE A. O. OTALUKA
5/10/2020.