

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT BWARI, ABUJA -FCT.**

**CLERK: CHARITY ONUZULIKE
COURT NO. 11**

**SUIT NO: FCT/HC/CR/32/19
M/12291/20**

DATE: 6/7/21

BETWEEN:

COMMISSIONER OF POLICE..... PLAINTIFF

AND

IBRAHIM KHALID & 59 ORS.....DEFENDANTS

RULING

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

This Ruling concerns a Motion on Notice No. M/12291/20 dated 24/11/20 and filed same day. The Motion prayed essentially for amendment of the 9-counts charge to now read 15-counts charge. Meaning 6 new charges has been added to the original charges. The new counts are for alleged crimes of unlawful assembly, continuing in unlawful assembly, rioting, disturbances of public peace causing road obstruction and causing injury to public servants all are contrary and punishable under the provisions of the penal code.

This application made pursuant to the provision of **Section 216, 256 and 379 of ACJA** has a 12-paragraphs affidavit in support and a written address.

A few minutes ago, the learned Prosecuting Counsel – Simon Lough argued the application. He relied on the contents of the 12-paragraph affidavits and adopted his written address as his argument. In his written address, he cited the cases of **VINCENT VS. STATE (2003) 1MJSC 87, LONGJON VS. BLACKK (1998) 6 NWLR (PT. 525); CHARLES EKELONANYA VS. HON. CHIKE ANAONU (2003) 7 NWLR (PT. 819) 252.** Learned Prosecution finally urged me to grant the application.

The defence Counsel, B. I. Dakum Esq, objected to the grant of this application. He anchors his objection on 4-paragraphs affidavits and a written address. He relied on all the processes and urged me to reject the application as not doing so would overreach the Defendants in their defence. Learned Counsel cited and relied on the cases of **MAMUDA VS. STATE (2014) LPELR – 24598/CA; NIWA VS. SPDC NIG. LTD (2008) LPELR – 1963SC), SANI & ORS VS. COP (2018) LPELR – 45049 (CA).**

Mr. Dakum further submitted that in the light of the provisions of **Section 223 of ACJA** this application is unnecessary since the Court can convict the Defendants based on the evidence proffered though not charged initially.

This is in the apparent reply to the submission of the prosecution – Mr. S. Lough – that they do not intend to lead further evidence in this case but simply for the Defendant to take their plea to the new amended charge.

I have considered this application. I have at the back of my mind that this criminal trial commenced on 27/11/19. We are now in 2021, in the month of July. I equally note very powerfully, that a No case submission has been filed but not yet argued. I also adverted more importantly to the argument of the Prosecuting Counsel that what they intend to do is just to take the plea of the Defendants to new amended charges. No witness shall be called and no new evidence

taken. To me, if this is done, I do not see how it would over reach the Defendants. Although, some precious time shall be taken in doing this, it is very unlikely that it would over reach the defence or have any adverse bearing on the defence of the Defendants.

With due respect to Mr. Dakum, if I take and follow his argument as per Section 223 of ACJA, I would therefore be festering my discretion. This is because it would then mean that I too believe already that the evidence led so far as disclosed commission of some offences in line with the amendment sought. No. I should not do that.

Finally, therefore, I find merit in this application and it is therefore granted.

.....
S. B. Belgore
(Judge)6/7/21