**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 14**

**CASE NUMBER : CHARGE NO: CR/9/2019**

**DATE: : THURSDAY 10TH FEBRUARY, 2022**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA** — **COMPLAINANT / APPLICANT**

**AND**

**1. JOSEPH IDAKWO**
**2. ZAMTRAC MANAGEMENT AND CITY INVESTMENT LTD.** — **DEFENDANTS/ RESPONDENTS**

# RULING

This Ruling is predicated upon a Motion on Notice dated the 8th day of November, 2021 and filed the same date wherein the 1st Defendant/Applicant is heard praying for the following reliefs:-

1. A Declaration that the Amended Charge in Charge No. CR/9/2019 Constitutes a gross abuse of process.

2. A Declaration that this Honourable Court lacks jurisdiction and competence to arraign and try the 1st Defendant/Applicant on the count and offences in the instant 2nd Amended Charge **No. CR/9/2019.**

3. A Declaration that the arraignment and trial of the 1st Defendant/Applicant on the charge

proffered against him by the Federal Republic of Nigeria through the Economic and Financial Crimes Commission is a breach of his Fundamental Right as enshrined in section 36(9) of the 1999 Constitution (as Amended).

4. An Order of this Honourable Court setting aside the purported arraignment and dismissing the instant amended charge in Charge **No.CR/9/2019** having been filed in breach of the 1st Defendant's Fundamental Right as enshrined in section 36(9) of the 1999 Constitution (as Amended) as well as section 238 and 277 of the Administration of Criminal Justice Act (ACJA) 2015.

5. An Order of perpetual injunction restraining the complainant either by themselves, agents,

servants, privies from further prosecuting and harassing the 1st Defendant/Applicant on the Criminal complaint related to the instant Charge **No. CR/9/2019** for which he was tried, discharged and acquitted in Charge No. **CR/10/2019** before His Worship, E.D Ebiwari (Magistrate 1) at the Magistrate Court, Wuse Zone 2, Abuja on the 21st February, 2020.

6. An Order compensating the 1st Defendant/Applicant for the breach of his Fundamental Right to the times of N100,000,000.00 (One Hundred Million Naira) only.

7. And for further Order(s) this Honourable Court may deem fit to make in the Circumstance of this Application.

A seven (7) paragraph affidavit in support of the Motion was filed and deposed to by one DamilolaOludare.

It is the deposition of the 1st Defendant/Applicant that;

That based on a "criminal complaint" written on behalf of a joint venture partner of the 2nd Defendant, on Hajiyya Halima Babangida by her Solicitors, A.M. Saleh& Co., Charge No. CR/9/19 was filed against him and the 2nd Defendant and he was arraigned before this Honourable Court on 25th October, 2019 for Criminal Breach of Trust and Forgery contrary to Section 312, 363, 364 and 366 of the Penal Code Law.

That the basis of the complaint by Hajiya Halima Babangida was a Development Agreement between

herself and the 2nd Defendant/Applicant made on 20th January, 2017.

That prior to his arraignment before this Honourable Court, he was arraigned on 3rd June, 2019, before the Magistrate Court, Wuse Zone 2, Abuja, presided by His Worship, E.D Ebiwari (Magistrate 1), in case No. CR/10/2019, based on a petition made by the same nominal complainant Hajiya Halima Babangida through her counsel, Adetokunbo& Co., upon which he was charged with Criminal Conspiracy, Criminal Breach of Trust and Forgery contrary to Section 97, 312 and 363 of the Penal Code Law. The Certified True Copies of First Information Report (FIR) filed 3rd March, 2019 at the Magistrate Court, Wuse Zone 2, Abuja and the Record of Proceedings of 22nd June, 2020, in this Court where the said nominal Complainant

HajiyaHalima Babangida recognized and admitted that the letter of 22nd February, 2019 was written by her counsel, are hereby attached and marked as Exhibits “JI 1” and “JI 2” respectively.

That the basis of the petition by Hajiya Halima Babangida was the same Development Agreement between herself and the 2nd Defendant/Applicant made on 20th January, 2017.

That he was being tried simultaneously before this Honourable Court and the Magistrate Court over the same alleged offences by the EFCC in this court and the Police at the Magistrate Court upon the same transaction based on the same complaint written by separate counsel on behalf of the same nominal complainant – Hajiya Halima Babangida.

It is further the averment of Applicant that at the close of the Prosecution's case in the Magistrate Court in Case **No. CR/10/2019**, his case made a No Case Submission which was upheld, and consequently he was discharged and acquitted after the said F.I.R was dismissed.

The Ruling was annexed as Exhibit "JI 3".

Applicant averred that the instant charge before this court was brought in bad faith as the Respondent knew of his discharge and acquittal at the Magistrate Court but is bent on prosecuting him.

In compliance with the rules of court, a written address was filed wherein 3 issues were raised for determination to wit:-

i. Whether or not there is inherent on the face of the Amended charge filed 16th day of July, 2021, an abuse of the process of law?

ii. Whether or not the instant Amended charge filed 16th day of July, 2021 amount to double jeopardy contrary to section 36 (9) of the 1999 Constitution (As Amended)?

iii. Whether or not the 1st Defendant/Applicant is entitled to compensation?

On issues 1 and 2, learned counsel argued that section 36(9) of 1999 Constitution of the Federal Republic of Nigeria (CFRN) forbids the trial of an accused person for an offence for which he has been previously tried and acquitted or convicted and the provision of section 277 of the Administration of Criminal Justice Act equally presents the accused

person with an opportunity to present his case to the court should this Fundamental Right as guaranteed by the Constitution against double jeopardy, be under threat as in this instant Amended charge. Section 36 (9) of the Constitution (As amended); sections 238 and 277 of the Administration of Criminal Justice Act (ACJA) 2015 were cited.

Counsel posits that Autrefois acquit is a plea in bar of arraignmenton the ground that the Defendant has been acquitted of the offence for which he is sought to tried for. ***P.M.L (NIG.) LTD VS FRN (2018) 7 NWLR (1619) was cited.***

On issue 3, Counsel contended that the 1st Defendant is entitled to compensation in the instant case, regard being had to the entire facts and circumstance of this case. The 1st Defendant having been arrested,

detained and charged to court on an offence for which he has previously been charged and acquitted for, must be compensated for the Breach of his Fundamental Rights as guaranteed by the Constitution. ***JIM – JAJA VS C.O.P RIVERS STATE (2013) 6 NWLR (Pt. 1350) 225 at Page 254 paragraph B – H.***

***HERITAGE BANK VS S & S WIRELESS LTD. (2018) LEPLR – 46571 (CA).***

***DASUKI VS DIRECTOR GENERAL, STATE SERVICES (2019) LPELR – 48113 (CA) were cited.***

On the whole, counsel urged the court to grant the instant application as prayed.

Upon service, Complainant/Respondent file a counter affidavit deposed to by one BabangidaYahaya.

It is the deposition of Complainant/Respondent that he has read the deposition contained in the affidavit filed by the 1st Defendant/Applicant in support of his Motion on Notice dated 8th November, 2021 but contends that paragraphs 5(a), (b), (c), (e), (g) and (h) 6(a), (c), (d), (e), (f), (g) and (h) are incorrect and misleading.

That the Complainant/Respondent received a criminal petition on 13th May, 2019 from Hajiya Halima Babangida and the petition was assigned to my team for detailed investigation.

That the nominal complainant having withdrawn her criminal complaint from the Nigeria Police force, the

nominal Complainant, was oblivious of further proceedings on the matter including the proceeding at the Magistrate Court referred to by the 1st Defendant/Applicant in Exhibit "JI" and did not attend the same.

That in the course of the trial before His Lordship, Hon. Justice Senchi, (now JCA), the 1st Defendant/Applicant brought a similar application seeking to quash the charge on the ground that he had previously been tried and acquitted by the Magistrate Court.Parties joined issues and in a well-considered ruling, the court dismissed the said application.

That the particulars and offences as constituted in Counts 1, 2, 3, 4, 5, and 6 relating to attempted Criminal Breach of Trust, Forgery of the signatures

of HajiyaBabangida, AhijaDasuki, use of the false documents and attempt to obtain money from Suleiman Chiroma were not before the Magistrate Court.

A written address was filed in line with procedure of the law wherein 2 issues were raised to determination;

a. ***Whether considering the facts and circumstances of this case, the continue trial of the 1st Defendant/Applicant in respect of the present charge amounts to double jeopardy and thereby robs the court of the requisite jurisdiction inview of the Ruling of the Magistrate Court in case No. CR/10/2019.***

***b. Whether the 1st Defendant/Applicant who is a Defendant facing a criminal charge is entitled***

***<u>to award of damages in his favour in this criminal charge.</u>***

On issue 1, learned counsel argued that as clumsy as the First Information Report (FIR) reads, the only offence which the FIR alleged is that of criminal conspiracy against the 1st Defendant/Applicant only. The 1st Defendant/Applicant was alleged to have "Criminally conspired" with persons at large.

The allegation which is contained in one sentence shows that the alleged crime for which the 1st Defendant/Applicant was accused of is qualified or limited to criminal conspiracy. The singularity of the offence of criminal conspiracy in this context is manifestly accentuated at the concluding part of the FIR, which reads "…and thereby committed an offence…"

Counsel argued further that on the contrary to the above argument, the charges before the court is different. In-fact there is not charge on conspiracy against the 1st Defendant/Applicant before the court. Conspiratorial offences are different from substantive offence.

Counsel argued that rather than amending a charge, the complainant can decide to bring fresh charge on those counts in a different case. By choosing to legitimately amend its charge, it is not for the 1st Defendant/Applicant to read bad notice into it. Even the general law on amendment allows a party to amend its process where objection has been raised by the adverse party to such process. There is no bar to the exercise of such powers either by legislation or judicial pronouncement. ***R – BENKAY NIGERIA***

***LTD VS. CADBURY NIGERIA LTD (2012) LPELR – 7820 (SC).***

***NWEKE VS FRN (2019) LPELR – SC 542/2016 were cited.***

Learned Counsel contended that amendment of charge is not done in bad faith,and that the court can suomotu order same, and that Defendant/Applicant is relying more on sentiments which do not command a place in judicial deliberations. ***KALU VS FRN (2016) 9 NWLR (Pt. 1516) Page 1 was cited.***

On issue 2, counsel avers that this is a criminal trial being prosecuted by the state and not a civil suit initiated by way of Fundamental Right Enforcement Procedure. There is no law which provides allows the state to pay compensation to the Defendant in a

criminal trial. The Defendant/Applicant cannot request for cost in a criminal trial ***ODUN LAMI VS NIGERIAN NAVY (2013) LPELR – 20701 (SC).***

Counsel concludes that the offences and parties as contained in the charge before the court are different from the contents of the FIR at the Magistrate Court. The lower court exceeded its jurisdiction when it acquitted the 1st Defendant/Applicant without a charge and before deciding whether there is a ground for a triable case. Counsel urge the court to dismiss this application as same lacks merit.

On points of law, learned counsel for the 1st Defendant/Applicant submits that the Ruling of Hon. Justice Senchireferred to by the Complainant/Respondent at paragraph 3.2 of its written address in support of the counter – affidavit

is, with the greatest respect, of no moment in the instant trial which has started de novo. A reference to it as an authority in this trial will breach the 1st Defendant/Applicant's enshrined rights to fair hearing and presumption of innocence as stipulated in section 36 (1) (a) (5) and (9) of the CFRN 1999 as amended. The law is now well – settled that the effect of a trial de novo is to extinguish all proceedings that had hither to ensue in the former proceedings. ***BAKULE VS TANEREWA (NIG.) LTD. (1995) 2 NWLR (Pt. 380) 728 at 738, Paragraph G.***

***ADEFULU VS OYESILE (1989) 5 NWLR (Pt. 122) 377 at 407.***

***EZEOGWUM VS COP (2020) LPELR – 50103 (CA) were cited.***

Counsel further argued on the issue of double jeopardy that contrary to the submission of the Complainant/Respondent, the essence of the rule against double jeopardy is that no person go through the rigour of trial by any means on the same set of facts or the same transaction.

***NIGERIA ARMYVS. AMINU KANO (2010) LPELR – 2013 (SC) Page 40, Paragraphs B – D.***

***GREEN VS UNITED STATES (1957) 355 US 144, 187 – 188 were cited.***

Learned counsel equally submitted that the two proceedings instituted by the agents of the Federal Government of Nigeria were happening at the same time, to the harassment and annoyance of the 1st Defendant/Applicant,which he said constitutes a clear case of abuse of court process. Counsel on the

whole urged the court to discountenance all the submission of the Complainant/Respondent and to grant the prayers sought in this application.

**COURT:-**

I have read carefully the arguments of respective counsel for the 1st Defendant in support of its objection, on the one hand, and that of the prosecution urging for the dismissal of the 1st Defendant's argument on the other hand.

It is clear from the reliefs contained on the face of the preliminary objection filed by 1st Defendant/Applicant's counsel that the jurisdiction of this court is what is being challenged. I shall deal with issue of the section 36(9) of the 1999 Constitution frontally first in view of its constitutional nature and importance.

For the records, the objection as captured in preceeding part of this ruling is on the fact that the amended charge before this court is same and one thing with the charge that existed before the Trial Magistrate Court which was dismissed, hence abuse of court processes and that 1st Defendant having been discharged and acquitted by the Trial Magistrate Court on the 21st February, 2020, the subsequent amendment of charge **CR/9/2019** before this court and arraignment of 1st Defendant amounts to double jeopardy contrary to section 36 (9) of the 1999 Constitution, and that this court is deprived of jurisdiction to hear this case.

Learned counsel for the Prosecution has raised the issue of double jeopardy and jurisdiction as issue for determination in their written address.

I am morethan satisfied that the ***issue whether the continuous trial of the 1st Defendant/Applicant in respect of the present charge amounts to double jeopardy and thereby prevents the court from exercising jurisdiction in view of the ruling of the Magistrate Court in case CR/10/2019,***ismorethan adequate enough, to resolve the present legal conundrum. I hereby adopt theafore formulated issue by Prosecution counsel as mine, for determination.

Let me place it on record that the ruling of the Trial Magistrate was predicated upon the arraignment of the 1st Defendant on the First Information Report, otherwise referred to as F.I.R.

Being the case, I shall take – off from the definition of F.I.R and how the procedure is conducted before the trial court.

F.I.R is simply referred to as First Information Report.

Now the record of proceedings (Exhibit "JI2") shows that the proceedings in **Case No. CR/9/2019** came before the Magistrate Court by way of an F.I.R (Exhibit "JI1").

It is instructive to mention at this juncture that section 112(7), (8), (9) and (10) of the Administration of Criminal Justice Act, 2015 (ACJA) provides for the procedure for a First Information Report (FIR). Under the provision, where a suspect is brought before a Magistrate Court on an FIR, the offence is read to the suspect and he is asked if he has any cause to show why he should not be tried by the Magistrate.

Where the suspect admits the commission of the offence in the First Information Report (FIR) or he shows no cause, he may be immediately convicted by the Magistrate without necessarily framing a formal charge.

Where the suspect denies the allegation in the FIR, the Magistrate shall proceed to hear the complainant and take evidence which may be produced in support of the Prosecution and the suspect may cross – examine the Prosecution witnesses if he so desires.

Where the Magistrate is satisfied, in the course of such proceedings, that there is ground that the suspect committed the offence in the FIR, the Magistrate shall frame a charge setting out the offence for which the suspect will be tried by the Magistrate Court. See subsections 7, 8, 9 and 10 of

section 112 (9) of the Administration of Criminal Justice Act, 2015 (ACJA).

These are the relevant statutory provisions relating to a F.I.R procedure.

It is in evidence that after hearing the 1st Defendant's reaction to the First Information Report (F.I.R) read to him, the Magistrate Court proceeded to hear evidence from the Prosecution witnesses who were cross – examined by the 1st Defendant's counsel.

This is quite in accordance with the provisions of section 112(9) of the Administration of Criminal Justice Act, 2015 (ACJA) on F.I.R Procedure.

It is also clear from the record of proceedings that no charge was at any time framed by the Magistrate Court against the 1st Defendant.

The entire proceedings before the Magistrate Court was therefore a mere preliminary examination into the matter of the First Information Report (FIR).

What the Magistrate Court was required to do by law during or at the end of such preliminary examination into the First Information Report (FIR) was to frame a formal charge, proceed to arraign and properly try the 1st Defendant where such a Magistrate is of the opinion that there is ground for believing the 1st Defendant committed the offence in the First Information Report (FIR). I agree with the Defendants' Counselin part, that the converse to this is that where a Magistrate does not believe a suspect committed the offence in the First Information Report (FIR), he is to terminate the First Information Report (FIR) proceedings, discharge the said Defendants without an order of acquittal.

As observed from the preceding part of this ruling, learned counsel for the 1st Defendant/Applicant made a No Case Submission after Prosecution witnesses gave evidence wherein the Trial Magistrate, upheld same, and proceeded to dismiss the F.I.R and also discharge and acquit the 1st Defendant.

This is contained in Exhibit "JI3" i.ethe ruling of the said trial Magistrate, E.D Ebiwari delivered on the 21st January, 2020.For the records, the final pronouncement of the Trial Magistrate is herein reproduced, as follows:-

> "***Accordingly, the FIR filed against the Defendants is hereby dismissed..***
>
> ***Defendant is hereby dischargedand acquitted."***

It is the pronouncement of the Trial Magistrate that now gave his counsel Ojukwu, Esq., the platform to object to the amended charge before this court on the grounds that it amounts to double jeopardy which he argued in his objection was in frontalviolation of section 36(9) of the 1999 Constitution of FRN as amended.

Indeed, it is the law that once the decision of a Trial Magistrate has not been appealed against, this court cannot be properly clothed with any jurisdictional regalia to review the said decision and set same aside, regardless of the fact that it is a lower court.. I make haste to say on this score that the Prosecutioncounsel was wrong to have urged this court to review the decision of the Trial Magistrate Court when this court regardless of being superior to

the lower court, is not sitting in its Appellate jurisdiction.

I shall attempt to xray the argument of Ojukwu of counsel for the 1st Defendant on the incompetence of this court jurisdictionally speaking, to consider the legality of the acquittal of the 1st Defendant. I have stated the procedure, with the greatest respect, as it relates to First Information Report (F.I.R) and the provisions of the law that govern F.I.R proceedings.

Contrary to the argument of Ojukwu, of counsel for the 1st Defendant, that this court cannot also look into the constitutional legality of the order of acquittal, a position vehemently opposed to by Prosecution, which I am in agreement with, this court has the competence to consider whether the said acquittal of 1st Defendant was made with

jurisdiction in view of the fact that the Defence of double jeopardy as constitutionally provided under section 36 (9) of the 1999 Constitution of FRN as amended, emphasizes on the word, “competent”!

It follows therefore, that such a Defendant who intends to depend on such a defence shall prove that the said order of acquittal was made by a competent court of jurisdiction, as claimed and argued by learned counsel for the 1st Defendant/Applicant.

From what had transpired before the Trial Magistrate Court, as contained in Exhibit JI2, the Trial Magistrate dismissed the F.I.R (First Information Report) upon a No Case Submission made by 1st Defendant’s counsel, discharged and acquitted the 1st Defendant when no charge was framed against the said Defendants contrary to

procedure for an hearing under an FIR… whether at the time the Trial Magistrate acquitted the 1st Defendant, the Trial Magistrate was so competent jurisdictionally speaking to so do, is the reason this court shall enquire.

The enquiry becomes necessary because, the provision of section 36(9) of the Constitution is not just granted as a matter of course..any person who seeks shelter under the said provision shall establish that the court that made such pronouncement had fulfilled the following requirements:-

a. That it was properly constituted as regards number and qualification of the members of the bench and no member is disqualified for one reason or another;

b. The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction, and

c. The case comes before a court initiated by due process of the law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

See ***MADUKOLU & ORS VS NKEMDILIM (1962) LPELR 24023 (SC) Per Barramian, F.J.***

Let me also at this juncture observe that a No Case Submission can only be successfully made upon arraignmentof a Defendant before a court of law wherein such a Defendant would have pleaded to a charge or information pursuant to section 271 of Administration of Criminal Justice Act (ACJA),

after hearing Prosecution evidence pursuant to sections 302, 302 and 357 of Administration of Criminal Justice Act (ACJA) 2015.

It is therefore correct to state, and I hereby do state that unless a Trial Magistrate frames a charge against a Defendant upon hearing evidence, such a Trial Magistrate cannot be competent to discharge and acquit a Defendant upon a submission of No Case to Answeras done by the said Trial Magistrate in this situation.

It logically follows, therefore, that the said Magistrate Ebiwari who acquitted the 1st Defendant in this case did so, albeit, without jurisdiction.

Courts have in plethora of judicial decisions made pronouncements on the effect of such meddlesome and interloping ventures. The decision of the Trial

Magistrate acquitting the 1st Defendant was without jurisdiction and clearly made in caricature of procedure, hence a nullity.

How can this court give value to a decision made by an inferior court in excess of its jurisdiction when clearly it was so made without jurisdiction? this will be the end of the road in the administration of justice in our country.

In view of the evident procedural transgression as shown in the records of proceedings of the Trial Magistrate Court who proceeded to acquit the 1st Defendant without framing a charge and upon a No Case Submission made by Defence counsel, a procedure that I have already found most bizzare and unprecedented, same cannot stand in the eyes of the law and this court.

The decision is a nullity and I hereby so pronounce it as such.

The term "nullity" was described thus: "Nothing; no proceeding; an act or proceeding in a case which the opposite party may treat as though it has not taken place; or which has absolutely no legal force or effect "see Black Law Dictionary Special Deluxe 5th Edition, page 963.

In ***OKAFORVS. A.G ANAMBRA STATE (1991) 6 NWLR (Pt. 200) 659***, it was held that a nullity is in law, an act which is void andlacking of any legal effect or consequence whatsoever.

It is beyond remedy. ***In U.A.C. VS MCFOY (1961) 3 ALL ER 1169, DENNING, LJ,*** held that a nullity is in law a void act; an act which has no legal

consequence. The act is not only bad but is incurably bad.

Per ***NGWUTA, J.S.C (Pt. 15) paragraphs – C-F.***

The provision of section 36 (9) of the Constitution of the FRN 1999 as amended was enacted to serve as a safeguard against the concept of retrial for criminal offences.. this is comparable to what is known in American Jurisprudence as "double jeopardy", a doctrine which is derived from the 5th Amendment to the American Constitution and which providesthat no person shall be in jeopardy of life or limb twice for the same offence.

Professor Nnabueze, SAN, the renowned Professor of Constitutional Law, at page 445 of his book,

"The Constitution of Nigeria," 1982 edition, described the elements of jeopardy as the ***"hazards***

***of animal trial – the ordeal, anxiety, embarrassment and expense of Prosecution together with the fear of possible conviction."***

In ***GREEN VS UNITED STATES (1957) 355 US 184, 187 – 188,*** the doctrine of double jeopardy came for interpretation before the SC of United States in which the constraints imposed on the retrial of an accused person for the same offence were activated as follows:-

> "***The underlying idea is that the state with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offence, thereby subjecting him to embarrassment, expense and ordeal and compelling his to live in a continuing state of anxiety and insecurity, as***

***well as enhancing the possibility that even though innocent he may be found guilty."***

For an accused person to seek refuge under the defence of autrefoisacquit or convict pursuant to section 36 (9) of the 1999 Constitution as amended, such conviction or acquittal must have been done by a court of competent jurisdiction.

Above was stated in the case of ***CHIEF OF AIR STAFF VS. IYEN (2005) 6 NWLR (Pt. 922) 496.***

1st Defendant's counsel clearly from the position afore – stated cannot benefit from the said provision of section 36 (9) of the Constitution since the said decision was made by a court that never had the jurisdictional competence to so make the pronouncement.

You cannot put something on nothing and expect it to stand. ***MCFOY VS U.A.C. LTD. (1962) AC 150.***

Having failed to so establish the fact that the Trial Magistrate Court was competent to have made the acquittal Order in the absence of any valid trial, the defence of autrefois acquit i.e double jeopardy is not available to the 1st Defendant. I so hold.

On the other hand, since the acquittal was not done by a court of competent jurisdiction, hence invalid, the argument of whether offences as stated in the F.I.R before the Magistrate Court and those in the charge before this court being thesame, and or the amendments so made constituting an abuse of court process becomes most academic.

This so because the F.I.R before the Trial Magistrate was dismissed, whatever that means in law on the

12th February, 2020, whereas the 2nd amendment of the charge before the High Court was effected on the 16th July, 2021, which was morethan one year after.Where then does the argument of Ojukwu, Esq. stand!

The charge was competently amended.

I am of the firm view that this court has jurisdiction to determine the charge and the Prosecution reserves the right to amend the said Charge No. **CR/9/2019.**

I so hold.

In summation, I hereby resolve the issue for determination against the 1st Defendant.

The other reliefs sought on the motion paper of the 1st Defendant are all reliant on the success of the declaratory reliefs, and having failed to establish its

entitlement to the said reliefs, all other parasite reliefs, shall die with the principal reliefs.. They are all hereby pronounced death and buried.

On the whole, therefore, I shall consign the present preliminary objection to a forlon of judicial debris, for being most unmeritoriously made and argued.

This I shall do by dismissing the application.

Same is hereby dismissed.

***Justice Y. Halilu***
***Hon. Judge***
***10th February, 2022***

***APPEARANCE***

HadizaAfetebua, Esq. – for the Prosecution.

ChikaosoluOjukwu, Esq. with C.F Odiniru, Esq. – for the 1st Defendant.

2nd Defendant not in court and not represented.