

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA.

BEFORE HON. JUSTICE J.ENOBIE OBANOR
ON MONDAY THE 14TH DAY OF FEBRUARY, 2022.

SUIT NO: FCT/HC/CR/1063/2020
MOTION NO: FCT /HC/M/2418/2021
MOTION NO: FCT/HC/M/3478/2021
MOTION NO: FCT/HC/M/060/2022

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT/RESPONDENT/
APPLICANT/RESPONDENT

AND

AREGBESOLA BABATUNDE
(AKA AREGBESOLA MORUF
MORUF ADEWUMI)DEFENDANT/APPLICANT/
RESPONDENT/APPLICANT

CONSOLIDATED RULING

By a Motion on Notice filed on 10th March 2021 and predicated on Sections 6(6)(A) and 36(1) of the 1999 Constitution(As Amended), the Defendant/Applicant seeks the following orders:-

- “1. AN ORDER directing the stay of further proceedings in Charge No CR/1063/2021 at the High Court of the FCT until the appeal, already filed at the Court of Appeal sitting at Abuja against the ruling of Hon. Justice delivered on the 22nd day of February 2021 rejecting the Defendant/Appellant’s

application to reject a number of documents as evidence in the trial.

2. AND FOR SUCH FURTHER or other Orders as this Honourable Court may deem fit to make in the circumstance.”

The application is supported by a 12-paragraph affidavit deposed to by Gerald Umunna Nwaneri Esq and his written Address as learned Defendant/Applicant’s Counsel.

In reaction to the application, the Complainant/Respondent on 16th June 2021 filed an 11-paragraph Counter Affidavit deposed to by Fatima Sani Umar along with Written Address by A.U. Ringim Esq.

On 18th November 2021 the Defendant/Applicant filed a further affidavit along with a reply on points of law in reaction to the Complainant/Respondent’s Counter affidavit and written address.

On the same 16th June 2021, the Complainant also filed a Notice of Preliminary Objection to above mentioned Defendant’s Motion seeking for the following orders:

1. An Order of this Honourable Court striking out the Motion for lack of jurisdiction on the part of the Court.
2. Such further Order(s) as the Court deems fit to make.

The application is predicated on three grounds as set therein. It is supported by a 10-paragraph affidavit deposed to by Fatima Sani Umar and Written Address of its learned Counsel. The Defendant/Respondent on 9th July 2021 filed a reply on point of law in reaction to the Notice of Preliminary Objection.

Thereafter, on 10th January 2022, the Defendant filed a Notice of Preliminary objection pursuant to Sections 6(6)(A), 174(1) of the 1999 Constitution(As Amended), Sections 1(1) and 3(2) of the Dishonoured Cheques (Offences) Act, 2004 and Sections 6(A),(B), 7(1)(A),(2),13(2), 14(2), 42 and 46 of the Economic and Financial Crimes Commission (Establishment Etc) Act 2004 raising an objection to the competence of the Economic and Financial Crimes Commission to arraign and prosecute him of offences under the Dishonoured Cheques (Offences) Act, 2004.

The Objection to the competence of this charge is predicated on the following grounds:

- i. The Defendant was charged and is under trial for an offence provided under the Dishonoured Cheques (Offences) Act, 2004;
- ii. The authority or person provided by the Dishonoured Cheques (Offences) Act 2004 to prosecute offences under that Act is the Attorney-General of the Federation;
- iii. The powers of prosecution vested in the Economic and Financial Crimes Commission are those offences as provided by or under the Economic and Financial Crimes Commission (Establishment, etc) Act, Cheques (Offences) Act, 2004;
- iv. The Economic and Financial Crimes Commission therefore lacks the power to prosecute the objector of any offence provided by or under the Dishonoured Cheques (Offences) Act, 2004;
- v. The charge, arraignment and proceedings as already constituted is an abuse of the process of this court.
- vi. For reasons stated above, this charge, arraignment and proceedings are incompetent and ought to be struck out.

The objection is supported by a written address filed on same 10th January 2022.

In reaction to the Objection, the Complainant/Respondent on 19th January 2022 through its learned counsel filed a reply address.

On 21st January, 2022 the Defendant/Applicant filed a reply on point of law in reaction to the Complainant/Respondent's reply address.

On 24th January, 2022, the Court in order to save time and resources, in the exercise of its discretion made an Order for consolidated hearing of all the applications.

At the hearing on 24th January 2022, Counsel for the parties adopted their Written Addresses as their oral submissions for and against their respective applications. Consolidated Ruling was then reserved for today 14th February, 2022.

For the reason that Defendant/Applicant has challenged the authority or power of the Complainant/Respondent to prosecute him and that the charge, arraignment and proceedings of this court conducted so far is an abuse of court process, incompetent and ought to be struck out, this court is under a duty to resolve same first as same goes to the root of this case. Hence the Court shall proceed to consider the said Defendant's Notice of Preliminary objection and thereafter if necessary, consider the other Motions.

In the Written Address in support of the Notice of Preliminary Objection Gerald Umunna Nwaneri Esq of Counsel for the Defendant/Applicant formulated a sole issue for determination thus:-

“ Whether in view of Section 3(2) of the Dishonoured Cheques (Offences) Act, 2004, Section 174 of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) Sections 6,

13(2) and 46 of the Economic and Financial Crimes Commission(Establishment) Act, 2004, the Economic and Financial Crimes Commission is vested with the Powers to prosecute an Offence provided by or under the Dishonoured Cheques (Offences) Act, 2004.”

On the issue, G.U. Nwaneri Esq of counsel for the Defendant contended that by a combined reading of Sections 1(1)(a) and 3 of the Dishonoured Cheques (Offences) Act, 2004, Section 174 of the 1999 Constitution and Sections 6, 13(2) and 46 of the Economic and Financial Crimes Commission (Establishment) Act, 2004 the Commission does not possess the requisite powers to prosecute an offender charged with an offence provided under the Dishonoured Cheques (Offences) Act, 2004 and that the power to prosecute vests on the Attorney General of the Federation. He submitted that virtually all administrative powers are statutory and the nature and extent of any given power is found by seeking the intention of Parliament as expressed or implied in the relevant statute.

Learned Counsel pointed out that the principles that guide a court to discover the intention of Parliament as expressed or implied in these statutes are generalized rules of interpretation of Acts of Parliament and these principles are developed by the courts as effective rules for the control of statutory powers, as what is not permitted is forbidden by the strict doctrine of ultra vires. He referred the court to the case of *Bradbury v. Enfield LBC* (1967) 1 WLR 1311.

Counsel further submitted that by Section 6 of the Economic and Financial Crimes Commission (Establishment) Act, 2004, the Commission is charged with the functions of enforcement and administration of the provisions of the Act as well as investigation of all financial crimes as stated therein and by Section 13(2)

charged among other things with the responsibility of prosecuting offenders under the Act.

He argued further that from a combined reading of Sections 6, 13(2) and 46 of Economic and Financial Crimes Commission (Establishment) Act, 2004 the prosecution of offences under the Dishonoured Cheques (Offences) Act 2004 was not provided under the Economic and Financial Crimes Commission (Establishment) Act, any of the other Federal Legislations enumerated in the Act and the offences under the Dishonoured Cheques (Offences) Act, 2004 do not fall within those activities stated to constitute Economic and Financial Crimes by the EFFC Act.

In conclusion learned counsel for the Defendant maintained that the Complainant/Respondent lacks the requisite powers to prefer charges against the Defendant, call for his arraignment and prosecute him for offences provided by the Dishonoured Cheques (Offences) Act, 2004 as that power resides with the Attorney-General of the Federation by virtue of both Section 174 of the 1999 Constitution and Section 3(2) of the Dishonoured Cheques (Offences) Act, 2004.

Finally he prayed the court to strike out the Charge against the Defendant as the prosecuting authority is without the requisite powers to prefer charges against the Defendant, call for his arraignment and prosecute him for offences provided by the Dishonoured Cheques (Offences) Act, 2004.

In reply, the learned counsel for the Complainant/Respondent A.U. Ringim Esq raised a sole for determination thus:

“Whether the Economic and Financial Crimes Commission has powers to prosecute offences under the Dishonoured Cheques (Offences) Act, 2004.”

Treating the issue learned counsel submitted that the offence for which the Defendant is being charged bothers on Economic and Financial Crimes and the complainant/Respondent(EFCC) is competent to initiate and prosecute the Defendant/Applicant as the proof of evidence disclose the commission of known offence. He commended to the court the cases of NYAME V. FRN (2010) 7 NWLR (PT. 1193) 344 and AKINGBOLA V. FRN (2012) 9NWLR (PT 1306) CA. 511 AT 532. Counsel submitted further that the offence which the Defendant is charged is an economic crime which the EFCC can adequately prosecute under Sections 42(f) and 46 of the Economic and Financial Crimes (Establishment) Act, 2004. He referred the court to the cases of UT FINANCIAL SERVICES (NIG) LTD V. HACKIT MOVERS (NIG) LTD & ANOR (2019) LPELR-47477 (CA) and submitted that the power to institute and undertake criminal proceedings before any court in Nigeria is not exclusively vested on the Attorney General by Section 174(1) of the 1999 Constitution.

Concluding learned counsel urged the court to uphold the position of the Complainant/ Respondent and dismiss Defendant/Applicant's Application.

In his Reply on points of law, learned counsel for the Defendant/Applicant submitted that a combine reading of Section 36(9) and (12) shows that an offence must have ingredients or element which the Legislator provides to be the conducts that are prohibited by law and the state of mind of the Defendant at the time he carries out or perform the prohibited activities and they are the facts that the prosecution must prove in order to secure conviction with respect to the alleged offence. He maintained that in the instant case, Section 46 of the EFCC Act did not provide the ingredients of the offence of economic and financial crimes but instead lumps together and condemn a number of undefined conducts to amount to economic and financial crimes. Counsel

submitted further that it is not the place of the court to add to or subtract from legislative enactment, words that were neither included or excluded from the written law and the courts role is simply one of interpretation and this is usually accomplished by giving ordinary or plain meaning to the words employed by the legislator. He commended to the court, the case of CHARLES UGWU & ANOR V. IFEANYI ARARUME (2007) 7MJSC 1 AT P. 26.

Learned counsel argued further that the argument of the Complainant that the term “Fraud” as used in the definition of Economic and Financial Crimes in the EFCC ACT includes a breach of the offence provisions of the Dishonoured Cheques (Offences) Act and therefore the Economic and Financial Crimes Commission can prosecute an offence committed under the Dishonoured Cheques (Offences) Act is misconceived. He submitted that fraud as a conduct is something that is difficult to define or delimit and in the absence of a contextual definition of the term ‘fraud’ it becomes inevitably vague as what amounts to all kinds of fraud in the context used in the Economic and Financial Crimes Commission (Establishment) Act was not defined or stated to include the conduct prescribed in Section 1(1)(a) of the Dishonoured Cheques (Offences) Act.

Concluding learned counsel maintained that the powers of the commission relates principally to the investigation, coordination of investigation and prosecution of offences of financial crimes as defined in Section 46 of the EFCC ACT contrary to the submission of the Complainant that the Commission has all the powers and privileges of the Police.

Finally, he prayed the court to discountenance the Complainant/Respondent’s submissions and strike out the charge on the grounds as contended in the notice of preliminary objection.

I have carefully read and digested the Written Addresses as disclosed in the records. I have also considered the submissions of counsel to the parties and the cardinal issue that calls for determination is whether or not the Defendant/Applicant has made out a case to justify a grant of the reliefs sought in the Notice of Preliminary Objection.

In this application, it is the contention of the learned counsel for the Defendant/Applicant that the authority and person provided by the Dishonoured Cheques (Offences) Act 2004 to prosecute Offences under the Act is the Attorney General of the Federation and therefore the Economic and Financial Crimes Commission lacks the power to prosecute the Defendant under the Dishonoured Cheques(Offences) Act. On the other hand Complainant/Respondent has contended otherwise and maintained that under the Economic and Financial Crimes Commission Act, it has the power and authority to prosecute the Defendant.

In this case the Defendant is being charged and prosecuted by the Economic and Financial Crimes Commission on a one count charge of offence of issuance of a dishonoured cheque under the Dishonoured Cheques (Offences) Act and nothing more. A consideration of the relevant provisions of the Dishonoured Cheques (Offences) Act as well as Economic and Financial Crimes Commission (Establishment) Act in this regard is very germane in resolving the above raised issue.

The offence of issuance of dishonoured Cheque is created in Section 1(1) of the Dishonoured Cheques (Offences) Act 2004 and it provides as follows:

“ (1) Any person who-

(a) obtains or induces the delivery of anything capable of being stolen either to himself or to any other person; or

(b) obtains credit for himself or any other person, by means of a cheque that, when presented for payment not later than three months after the date of the cheque, is dishonoured on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn, shall be guilty of an offence and on conviction shall- (i) in the case of an individual be sentenced to imprisonment for two years, without the option of a fine; and (ii) in the case of a body corporate, be sentenced to a fine of not less than N5,000.

The procedure for trial of offences under this Act is provided in Section 3 as follows:

“3. (1) Offences under this Act shall be triable summarily by the High Court of the State where the offence was committed and the procedure applicable in the case of summary trial of offences before such court shall apply to the same extent for the purposes of trials for offences under this Act.

(2) Authority to exercise the powers of the Attorney-General of the Federation under section 160 of the Constitution of the Federal Republic of Nigeria 1999 (which relates to the initiation and conduct of criminal proceedings for offences under an enactment) is hereby, in respect of any offence under this Act committed in a State, conferred on the Attorney-General of that State, but nothing in this subsection shall be construed as precluding the Attorney-General of the Federation from exercising any of the powers to which this subsection relates.”

On the other hand Section 6 of the Economic and Financial Crimes Commission (Establishment) Act provides for the functions of the commission which are for the enforcement and

administration of the provisions of the Act. Whereas under Section 7(b), the commission acts as the agency for the enforcement of the provisions of specific laws relating to economic and financial crimes. It provides as follows:

Section 7(2)

In addition to the powers conferred on the Commission by this Act, the Commission shall be the co-ordinating agency for the enforcement of the provisions of-(a) the Money Laundering Act, 2004; 2003 No. 7. 1995 No. 13;(b) the Advance Fee Fraud and Other Related Offences Act, 1995;(c) the Failed Banks (Recovery of Debt)and Financial Malpractices in Banks Act, as amended;(d) the Banks and Other Financial Institutions Act, 1991, as amended;(e)the Miscellaneous Offences Act; and(f) any other law or regulation relating to economic and financial crimes, including the Criminal Code and Penal Code.

“Economic and Financial Crimes” is defined in Section 46 as the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.;

The cardinal principle in the interpretation of statutes is that the meaning of the statutes or legislation must be derived from the plain and unambiguous expressions or words used therein rather than from any notions that may be entertained as to what is just

and expedient. The literal rule of interpretation is always preferable unless it would lead to absurdity and inconsistency with the provisions of the statute as a whole. See *MARWA vs NYAKO* (2012) 6 NWLR (PT 1296) 199.

Therefore the nature and extent of any given power is to be found by seeking the intention of the legislators as expressed in the relevant statute. It is settled that it is not the place of the courts to add to or subtract from a legislative enactment, words that were neither included or excluded from the written law. The Court's role is simply one of interpretation and this is by giving ordinary or plain meaning to the words employed by the legislator. See *CHARLES UGWU & ANOR V. IFEANYI ARARUME* (2007) 7MJSC 1 AT 26.

It is certainly not the duty of the Judge to interpret a statute to avoid its consequences. The consequences of a statute are those of the legislature not the judge. See *OHUKA V. THE STATE*(1988) 1NWLR (PT72) P.532 AT 556.

It is my humble view and I must state emphatically that the Dishonoured Cheques (Offences) Act, 2004 has no iota of ambiguity at all by its provisions particularly Section 3(2) is very clear and unambiguous as to who has the power or authority to prosecute offences committed under the Dishonoured Cheques (Offences) Act, 2004. It is the fact that Section 3(2) of the Act vests the powers to prosecute offence under the Act on the Attorney General of either the state or the Federation and there is nowhere in the Economic and Financial Crimes Commission (Establishment) Act that it is provided that the enforcement or prosecutorial power of offence under the Dishonoured Cheques(Offences)Act is excisable by the commission or that the prosecutorial powers have been divested from the Attorney General irrespective of any stretch of interpretation which the Respondent would want this court to adopt. Also the prosecution

of offences under the Dishonoured Cheques (Offences) Act 2004 was not provided under the Economic and Financial Crimes Commission (Establishment) Act or any of the other Federal Legislations enumerated in the Act hence the offences under the Dishonoured Cheques (Offences) Act, 2004 do not fall within those activities stated to constitute Economic and Financial Crimes by the Economic and Financial Crimes Commission(Establishment) Act.

It is not the duty of this court to make such assumption. The enactment of the provisions of the Dishonoured Cheques (Offences) Act is specifically to address the issue of issuance of dishonoured cheques and the charge in this present case against the Defendant being only a one count charge which borders on the Dishonoured Cheques (Offences) Act, the Defendant can only be arraigned and prosecuted in line with the provisions of the Dishonoured Cheques (Offences) Act.

By reasons of the foregoing findings, the Court has no option than to resolve the sole issue raised above in favour of the Defendant/Applicant and in consequence this application succeeds and the charge against the Defendant/Applicant with Charge No: FCT/HC/CR/1063/2020 is hereby struck out.

I make no order as to cost.

SIGNED
HON.JUDGE
14/2/2022.

LEGAL REPRESENTATIONS:

1. Gerald Umunna Nwaneri Esq for the Defendant/ Applicant
2. A.U. Ringim Esq for the Complainant/Respondent.