

THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO

THIS TUESDAY THE 1<sup>st</sup> DAY OF MARCH, 2022

BEFORE: HON. JUSTICE JUDE O. ONWUEGBUZIE  
COURT 33 APO

CHARGE NO: FCT/HC/CR/090/2021

MOTION NO: FCT/HC/M/472/2022

**BETWEEN**

COMMISSIONER OF POLICE -----COMPLAINANT/ APPLICANT

**AND**

MAJE UMAR NAFIU-----DEFENDANT/ RESPONDENT

**RULING**

The Complainant/Applicant brought this application pursuant to **Sections 216(1) of the Administration of Criminal Justice Act 2015 and Under the Inherent Jurisdiction of this Honourable Court.**

The motion is dated the 17<sup>th</sup> day of January, 2022 and filed on the 19<sup>th</sup> day of January, 2022 praying this Honorable Court for:

1. An Order of this Honourable Court permitting the prosecution to amend the charge in this case by the addition of two new counts namely count 3 and 4 and additional one new Defendant in this case by name Unity Hills Garden Estate Limited as the 2<sup>nd</sup> Defendant respectively as clearly contained in the amended charge filed.

2. An Order deeming the proposed amended charge filed and served and served as having been properly filed and served.
3. And for such further Order or other Orders as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the motion is an affidavit of 13 paragraphs deposed to by one Anthony Ewa, a police officer attached to the Legal Section Force CIID Abuja, annexed with a copy of the proposed amended charge as Exhibit “A” The Prosecution equally filed a written address as his oral argument in support of the application.

At the hearing of this application the Counsel adopted his written address and urged this court to grant the application in the interest of justice.

In a way of opposition the Defendant/Respondent filed a 4 paragraphed Counter-Affidavit deposed to by one Evelyn Aroh a litigation secretary in the law firm of Profile Partners Counsel to the Defendant/Respondent in this case. Accompanying the Counter-Affidavit is a written address as the Defendant/Respondent’s oral argument in support of his case. Counsel to the Defendant/Respondent at the hearing of the application adopted the written address on behalf of the Defendant/Respondent and urged this court to strike out the original charge which the prosecution has conceded its incompetence *ab initio* and dismiss the motion.

The arguments in respect of issues formulated for and against this application are as contained in both parties respective written addresses, needless repeating them here as they form part of the record of the court.

I have carefully read through the averments in both affidavits, arguments in the written addresses it is important to note that application of this kind is purely at the

discretion of the Court which ought to be used judicially and judiciously. See the case of **MAINASARA v. LAWAL & ANOR (2013) LPELR 22328(CA)** The court held thus:

**Secondly, the lower Court refused the application of the Appellant in the exercise of its discretionary jurisdiction and it is the general law on exercise of judicial discretion that discretion is always that of the trial Court and not of an appellate Court, and therefore an appellate Court cannot substitute its own discretion for that of the trial Court. An appellate Court would interfere with exercise of such discretion in the most extra ordinary circumstances and the most obvious case is where the exercise of discretion by the trial Court tends to do injustice to one of the parties and this usually happens where the trial Court does not exercise the discretion judicially and judiciously - Shagari Vs Commissioner of Police (2007) 5 NWLR (Pt.1027) 272, Babatunde vs Pan Atlantic Shipping & Transport Agencies Ltd (2007) 13 NWLR (Pt 1050) 113." Per ABIRU ,J.C.A (Pp. 53-54 paras. F)**

In **MAMUDA v. KANO STATE (2014) LPELR 24598 (CA)** the court stated thus :

**The significant consideration in a matter of amendment of a charge whether upon an application by the prosecution or by the judge suo motu is that no injustice or prejudice is thereby occasioned to the accused person. See PRINCENT v. STATE (2002) 18 NWLR (Pt. 798) 49." Per AKEJU ,J.C.A (Pp. 27 paras. A)**

The Supreme Court held in **PML(SECURITIES) CO. LTD v. FRN (2018) LPELR-47993(SC)** that:

**...where a charge is amended, the former one ceases to govern the proceedings and remain a nullity and of no useful purpose. The Court of Appeal affirmed that decision stating that when the new charge albeit, the amended one is filed, the former charge is no longer in existence while the amended charge takes its life from the date of the disposed charge as the new takes the position of the extant charge. It is deemed to have been filed in the same form and on the same date as the discarded one. There is no question of two valid charges struggling for space.**

**The Supreme Court had variously cleared any doubts as to what the reality is when an amendment or substitution takes place. I would refer to a few of the authorities such as the case of Attah v State (1993) 7 NWLR (Pt. 305) 257 at 286 per Karibi-Whyte JSC stated thus: -**

**"Subsection (4) of Section 164 renders an amendment retrospective to the date of filing of the charge. Hence, it is always necessary to read to Subsection (1) and (4) of Section 164 together ... The amendments to the offences relates back to the date of filing of the documents containing them."**

**See also FRN v. Adewunmi (2007) 10 NWLR (Pt.1042) 399 where Ogbuagu JSC said at pages 422 of the report that;**

**"Now, a substitution is the same thing as an amendment and an amendment whenever made by the Court, relates back to the original date of the documents so amended." Per PETER-ODILI ,J.S.C (Pp. 60-61 paras. C)**

In the instant application the Prosecution sought to amend its former charge to include count 3 and 4 in the existing charge. The Defendant/Respondent opposed the amendment on the ground that no amended charge was filed as a separate process and courts of law have no jurisdiction to deem exhibits as “having been properly filed and served”

I have gone through my Court records there is a clean separate process of the Amended Charge separately filed contrary to the Defendant/Respondent’s averment in paragraph 2 (h) of the his Counter-Affidavit in opposition to the Application.

I found that the justice of this Motion tend towards granting this Application. This Court will exercise its discretion in favour of the Applicant in this case. Consequently, this application has merit and is hereby granted as prayed on the face of the motion paper.

-----  
**Hon. Justice Jude O. Onwuegbuzie**