

**IN THE HIGH COURT OF JUSTICE OF THE
CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA - ABUJA**

BEFORE: HON. JUSTICE O. C. AGBAZA

COURT CLERKS: UKONU KALU & GODSPOWER EBAHOR

COURT NO: 6

CR/239/2018

MOTION: M/1423/2022

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

VS

- 1. ABDULSALAM AFEEZ 'M'.....1ST DEFENDANT**
- 2. ABDULKARIM ALHERI 'M'**
- 3. AMAZONIA GUEST HOUSE.....2ND& 3RD DEFENDANTS/APPLICANTS**

RULING

By a Motion on Notice dated 10/2/2022 and filed same day, by the Applicants, and brought pursuant to Section 6 (6) (a) & (b), 36 (10 and 5 of the Constitution of the Federal Republic of Nigeria 1999, Section 1 of ACJA, 2018 and inherent jurisdiction of this court, seeking for the following relief:-

- (1) An Order dismissing the instant charge No. CR/239/2018 as it relates to the 2nd/3rd Defendants/Applicants for being an abuse of Court process.
- (2) Omnibus Relief.

The grounds relied on are as set stated as follows:

AND FOR SUCH FURTHER OR OTHER ORDERSas this Honourable Court may deem fit to make in the circumstances.

TAKE FURTHER NOTICEthat the grounds upon which his application is predicated include the following:

- (i) The Complainant/Respondent arrested and detained the 2nd Defendant/Applicant as well as sealed up the 3rd Defendant/Applicant's Guest House on grounds of alleged human trafficking related offences.
- (ii) The 2nd and 3rd Defendants/Applicants threatened to take out civil action to challenge the above arrest/detention and sealing up of the Guest House because they were reckless, unwarranted and completely unjustified.
- (iii) Aware of the impending civil actions, the Complainant/Respondent rushed to file the instant charge since **13th June, 2018** with the sole purpose of employing it as a shield against any civil suit.
- (iv) The Complainant/Respondent has abandoned the case in the docket of the court and has till date failed to commence this criminal case well over three years after filing same.
- (v) The Complainant/Respondent has nevertheless been brandishing the charge to contend that the allegations leading

to the arrest and sealing up of the Guest House can only be determined after the Judgment in the charge.

- (vi) The Complainant/Respondent knows that it has no case against the 2nd& 3rd Defendants/Applicants and will take no step towards the commencement of trial in the instant charge.
- (vii) This charge for which the Complainant is yet to arraign the Defendants well over three years was not filed with an intention of prosecuting an alleged crime, but to improperly use the instrumentality of a charge to frustrate an investigation into the conduct of the Complainant/Respondent.
- (viii) It is against the objective and spirit of the Criminal Justice System, and an abuse of Court process to file a charge in court and abandon it without showing any diligence in prosecuting it.

In support of the application is a 4 paragraph affidavit sworn to by Abdulfatai Raji. In compliance with the Rules, filed a Written Address adopts same in urging the court to grant the reliefs sought.

The process was served on the Respondent, but the Prosecution Counsel failed to react to the application. The implication is that this application remained unchallenged and it is trite that were any facts which has not been categorically countered or denied by a party, that fact is deemed admitted by the other party. See *Njoemana Vs Ugboma & Ors* (2014) LPELR-22494 (CA). The court however, has the duty to examine the credibility or otherwise of the facts so relied on.

In the Written Address of the Applicants settled by A.U.J. Udoh Esq, Applicant Counsel, only one (1) issue was formulated for determination which is;

“Whether it is in the interest of justice for this Hon. Court to grant this application in the entire circumstances”

And submit relying on the facts as contained in the supporting affidavit, that this charge against the Applicants is not intended in the spirit of Prosecution of offenders, rather to perperhiate a charge on the Applicants not based on any credible evidence, hence the failure ofthe prosecution to cause the arraignment of the Applicants. That the whole process in this instant charge is an abuse of court process, hence should be dismissed. In all, referred this court to several judicial authorities in assuaging this court to grant the relief sough.

I have carefully considered this instant application and filed that there I only one (1) issue that calls for determination, which is whether this application as presently constituted proper before the court for consideration.

In this instant application, the Applicants Counsel is praying this court to dismiss the charge brought against the Applicants on the grounds that it constitutes an abuse of court process.

Granted that a party is at liberty to bring an application to have a matter before the court be dismissed or struck out on grounds of abuse of court process, this application borders on a criminal charged. What this

application is tantamount to an objection to the validity of the charge. The Applicants herein have not been arraigned before the court to take their plea. Granted that the Prosecution, has failed to put their acts together to cause the arraignment of the Applicants as Defendants before the court, this does not take away the settled position of the law, as postulated in Section 396 (2) of ACJA, 2015, that it is after plea istaken that a Defendant may raise any objection and which Ruling shall be considered along with the substantive issues and made at the time of delivery of the Judgment.

The Applicants (Defendants) herein, having not been arraigned to take their plea, would not be proper to take this objection before plea. It is therefore, the firm view of the court, in line with the Provision of Section 396 (2) of ACJA, 2015 hold that this application is premature and cannot and should not be taking before plea. Accordingly, this application lacks merit and is hereby struck out.

Signed
HON. JUSTICE O. C. AGBAZA
Presiding Judge
19/5/2022

APPEARANCE:

A.U.J. UDOH WITH O.O. MAKINDE - FOR THE
2ND/3RD DEFENDANT/APPLICANT

NO APPEARANCE FOR THE PROSECUTION

