

**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/363/2021

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

VS

OLAIYA OLAYINKA SAMUEL.....DEFENDANT

RULING

This court is invited to Rule on whether or not the challenge to jurisdiction of this court in the present charge CR/363/2021 in F. R. N. Vs Olayia Olayinka Samuel, should be taken first, without first taken the plea of the Defendant.

The gravamen of the Defendant Counsel application is that the Defendant is already facing a similar charge on the same subject and parties pending before the Lagos High Court, that to allow this case to run in this court, will amount to an abuse of court process. Defendant Counsel relying on the Provision of Section 36(9) and Section 1 of the Constitution of the Federal Republic of Nigeria 1999, contend that the Provisions of Section 396 (2) of ACJA is Inconsistent to the Provision of the Constitution of the Federal Republic of Nigeria 1999 cited and based on the is urge the court to allow them an adjournment to react to the counter-affidavit of the Prosecutor in

react to their Motion on Notice. Further that in any event, it is the hearing of their Motion on Notice that should come first before, arraignment of the Defendant. And urge the court to so hold.

Prosecution Counsel other hand, while not opposed to the application for adjournment, Defendant Counsel to respond to their counter-affidavit, but opposed to the application that the Motion on Notice of the Defendant challenged jurisdiction be taking first before arrangement. Prosecution Counsel hinge his response to the Provisions of Section 396 (2) of ACJA.

I have carefully considered the submission of both Counsel and find that the issue for consideration is whether this court can proceed first to the Hearing the Motion on Notice sought to challenged the jurisdiction of the court without first the Defendant be arraigned to take his plea.

Granted that the Provisions of the Constitution of the Federal Republic of Nigeria 1999 cited by the Defendant Counsel is proper as it relates to inconsistency with the Constitution, in this instance, the Provisions of Section 396(1) (2) of ACJA is clear that is Criminal Acts, a Defendant to be tried on information or charge shall be arraigned in accordance with the Provision of the Act....396 (1); and that it is after the plea, taken that the Defendant may raise any objection as to validity of the charge or information and the Ruling on the said objection considered along with the substantive issues and Ruling thereon – Section 396 (2), this position has been given judicial approval in the case of NVENE Vs FRN (2016) LPELR – 40948 (CA); where the court stated thus;

“Arraignment is a mandatory initial step before the commencement of court proceedings where the plea of an accused to a charge is

taken before the court. The plea of an accused is so fundamental to the jurisdiction of the court that when the accused person has not pleaded to the charge, the court cannot assume jurisdiction over the matter. The issue of arraignment in criminal proceedings goes to the root of that proceeding. Its importance is such that none. Compliance with the Rules of arraignment render such trial a nullity”

Consequent upon this judicial authority cited above, it is the Holden of this court that while, allowing the application for adjournment to react to the counter – affidavit by the Defendant Counsel, the said motion of the Defendant shall be taken after arraignment of the Defendant for his plea be taken. I so hold.

HON. JUSTICE O. C. AGBAZA

Presiding Judge

13/4/2022

Z.S. NASS ESQ WITH N.J. ONWUKA ESQ FOR PROSECUTION

TAIWO AJAYI FOR THE DEFENDANT