

**IN THE HIGH COURT OF JUSTICE OF THE  
FEDERAL 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/1212/2017**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT**

**VS**

**1. WING COMMANDER ISHAKU YAKUBU**

**2. LT COMMANDER AKINBAMIDELE ODUNSI**

**3. MRS. ABIDEMI ADEREMI KOLADE**

**4. MRS. VIOLET OFOEBUNAM.....DEFENDANTS**

**RULING**

By a Motion on Notice dated 7/2/2022 and filed on 8/2/2022, with No M/1305/2022, and brought pursuant to the inherent jurisdiction of this court, the Applicant herein are seeking for the following reliefs;

- (1) An Order admitting a Certified True Copy of the Records of Proceedings in Charge No: CR/212/2017, Federal Republic of Nigeria Vs Commander Ishaku Yakubu & 3 Ors (which records of proceedings had already been served on the Prosecution/Respondent, 3<sup>rd</sup>/4<sup>th</sup> Defendant/Respondent as an Exhibit in this case.

- (2) What this Honourable Court adopts the earlier evidence of
- i. Achi Kelvin as PW1
  - ii. Danladi Yakubu as PW2.
  - iii. Etibens Joseph as PW3.
  - iv. Eseigbo Friday as PW4
  - v. Fadomo Stainless Yalekeme as PW5.

As their testimony in these proceedings;

- (3) Omnibus reliefs.

The grounds upon which this application is predicated are as follows.

- (i) That the Defendants were arraigned before this Honourable High Court of Justice of the Federal Capital Territory, Coram Senchi; J (as he then was) on the 3<sup>rd</sup> November, 2016, and it took up to 10<sup>th</sup> December, 2010 for the court to hear the evidence of the Complainant's witnesses PW1 to PW5.
- (ii) That the testimony of the Complainant's witness has been compiled and certified and served on the Prosecution and the Defendants/Respondents.
- (iii) That considerable time and expense will be saved and gained if the testimony of the said PW1 to PW5 as embodied in the said Certified True Copy of the Records of Proceedings are adopted and deemed to be the testimony of the said Prosecution Witnesses.

- (iv) That the Prosecution and the Defendants will not be prejudiced if the evidence of PW1 to PW5 as embodied in the Certified True Copy of the Records of Proceedings are adopted to be the evidence of PW1 to PW5 in these proceedings.

In support of the application is a 6 point affidavit, sworn to by one Ossai Ifeanyichukwu John. Also filed is a Written Address, which is adopted and urge the court to grant the relief sought.

The processes was served on the Prosecution, 3<sup>rd</sup> and 4<sup>th</sup> Defendants/Respondents and they all pronounced a No Objection to the application. It is trite that unchallenged and uncontroverted evidence ought to be accepted by the court as establishing the facts therein contained. See Okafor Vs Okafor & Ors (2014) LPELR – 23561 (CA).

In the written submission of Applicant Counsel, in summary is that, granted that it is the right that the court must hear the Prosecution witnesses, were the case is starting denovo, which right is to the benefit the Defendants, however, this right can be waived on application by Counsel on their behalf. Referred the court to the case of Ariori & Ors Vs Elemo & Ors (1983) 1. SCNLR 1. Fasade Vs Babalola (2003) 11 NWLR (PT. 830) 26 @ 48 – 49; State Vs Gwonto & Ors (1983) NSCC – 104 @ 110. And urged the court to grant.

The grant or otherwise of an application of this nature is a discretionary one, in line with the law and taking into consideration of the facts presented before it.

This case is a transferred criminal matter to this court, and by trite law, is to start denovo. Denovo, has been defined severally in Pletoral of judicial authorities, Denovo means a new, that is, to start all over again".... "evidence, decision or Ruling given as well as the Judge finding on both facts and issues of law at the first trial are completely discarded or got rid of". See *Obiweubi Vs CBN* (2011) LPELR – 2185 (SC). Also in the case of *NNPC Vs STB Consortium Ltd* (2008) LPELR – 4614 (CA) held that;

"On hearing a matter anew, the same as if no decision had been previously rendered. On hearing denovo, a court hears the matter as a court of original and not an appellate jurisdiction"

The import of all these, is that a matter starting denovo, starts anew. Worst still, this is a criminal matter where the Presiding Judge should have the privilege of listening to, seeing the witnesses, to access the deamour of the witnesses. Query? Where a court proceeds with a matter starting denovo, rightly be said to have had the privilege of observing the deamour of the witness, he never had the opportunity of seeing. I think not.

Granted that the Applicant may have right to a waiver, the Applicant Counsel relying on the Supreme Court cases, without attempting to raise issues or contend with the position of the Supreme Court, it is my view that the cited cases are not on all fours with this case, moreso a criminal case. Further, apart from these cases cited, which I have opined my view, Applicant Counsel did not cite any law that would assuage this court to do so; neither did the affidavit in any of the Paragraphs state clearly why the said witnesses cannot be called. At best to cure this lacuna, it calls for the

intervention of the legislature to thinker with the Administration of Criminal Justice Act, to give window for this kind of application.

In conclusion, and having carefully considered this instant application, the court finds that this application lacks merit and should be refused. I so hold.

**HON. JUSTICE O. C. AGBAZA**

Presiding Judge

24/2/2022

**APPEARANCE:**

P.E. EDIALE FOR THE 1<sup>ST</sup>/2<sup>ND</sup> DEFENDANT/APPLICANT

SIR STEVE ODIASE WITH C.G. CHUKUMDELU (MISS) FOR THE PROSECUTION

GBENGA A. ASHAOLU WITH CHRISTOPHER O. RICHARD, MANA PHAR; EMMANUEL I. OKWUEDY FOR THE 3<sup>RD</sup> DEFENDANT

ADEGBITE ISAAC ADENIYI WITH J.O. UZO FOR THE 4<sup>TH</sup> DEFENDANT