

**THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA**

THIS TUESDAY, THE 23RD DAY OF JUNE 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: FCT/HC/CR/310/18

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

MUHAMMAD DANGANA.....DEFENDANT

RULING

The complaint filed a 16 counts amended charge against Defendant dated 27th September, 2019.

The Defendant then filed a preliminary objection dated 11th March, 2022 seeking for the following reliefs:

- “ a. **An order that this Honourable Court lacks the requisite jurisdiction to arraign and try the Applicant for the offences alleged in the 16 count charge or any charge in respect thereof before this Honourable Court.**
- b. **An order that the Economic and Financial Crimes Commission has no powers to investigate and prosecute the Applicant over funds belonging to the Economic Community of West African States (ECOWAS) Commission.**
- c. **An order that the filling of this charge No: CR/310/18 against the Applicant before this Honourable Court is an abuse of court process.**

d. And for such further orders as this Honourable Court may deem it fit to make in the circumstances.

GROUNDINGS OF THIS PRELIMINARY OBJECTION:

- 1. That at all material time to the filing of these charges, the Applicant was a staff of the ECOWAS Commission.**
- 2. When acts constituting infractions under Article 70 of the ECOWAS Staff Regulation are brought to the attention of the President of the ECOWAS Commission(sic) shall set up a Disciplinary Advisory Board in accordance with the provisions of Article 67 of the ECOWAS Staff Regulation with the responsibility to investigate most serious cases in the event of embezzlement, theft, breach of trust prejudicial to the interests of the ECOWAS, fraud or corruption.**
- 3. In this instant case of the Applicant, the procedural steps laid down in Articles 67-71 of the ECOWAS Staff Regulation was not adhered to. No query was issued to the Applicant, he was not given opportunity to make written statements in respect thereof, no relevant committee or disciplinary board was set up to evaluate the allegations for the Applicant to respond before filing the charges before this Honourable Court.**
- 4. The law is trite that where a law or rule expressly provides for certain actions to be carried out as a precondition before reaching any conclusion or action in court, failure to adhere to such stipulated preconditions renders that act void and of no effect.**
- 5. Thus, the unilateral referral of the alleged infractions of the Applicant to the EFCC constitutes a gross violation of the extant rules and Regulations governing ECOWAS Staff.**
- 6. By paragraph 4 of Article 60 of the ECOWAS TREATY and the Preamble to the Protocol Relating to the General Convention on Privileges and Immunities of ECOWAS, the Applicant, as an official of the Community and in a Member State as at the time of the alleged offence, enjoins the privileges and immunities accorded to diplomatic persons at the**

Headquarters of the Community in the Member State. Thus, the actions carried out by the EFCC prior to and in bringing these charges against the Applicant are in clear violation of the ECOWAS Treaty and the Protocol Relating to the General Convention on Privileges and Immunities of ECOWAS as it affects the Applicant.

- 7. The funds allegedly constituting the offences stated in the charge No: CR/310/18 belongs to the ECOWAS Commission and not the Federal Government of Nigeria, therefore, the alleged infractions did not violate any existing legislation governing economic activities of the government and its administration or constitutes any form of corrupt malpractices to entitle the EFCC to investigate and prosecute the alleged offenders.**
- 8. The filing of this case in Charge No: CR/310/18 against the Applicant, which involves alleged diversion for personal use of the funds belonging to ECOWAS Commission, constitutes abuse of court process because of the earlier and subsisting case filed against the Applicant in Charge No: FHC/ABJ/CR/139/2018 which also involves alleged money laundry of the same funds belonging to ECOWAS which arose from the same facts and circumstances.”**

When the matter came up for arraignment, the issue of whether the objection should be taken before arraignment in view of the **specific relief** challenging the jurisdiction of the court to arraign Defendant in the first place became a contentious issue. The complainant contends that **Section 396(2) of ACJA 2015** has resolved the issue; that such objections can only be taken after plea has first been taken and that the objection will then be taken and considered along with the substantive issues and a ruling therein made at the time of the delivery of Judgment. On the other side of the aisle, the case made by Defendant is that **Section 396(2)** has no application to the extant objection, as they are not contesting the validity of the charge but that the court has no jurisdiction to arraign the Defendant in the first place and that without the requisite jurisdiction, the court cannot even take the plea and ultimately hear and determine the case.

The court then called on counsel to address me on whether the provision of **Section 396(2) of ACJA** has application to the extant objection challenging the jurisdiction of the court to arraign the Defendant.

Parties then filed their addresses on the issue. The address of the **Defendant** on the issue is dated 21st March, 2022 and filed same date at the Court's Registry. One issue was raised as arising for determination thus:

“Whether Section 396(2) of ACJA is applicable to the aspect of the Applicant’s Preliminary objection challenging the jurisdiction of the Honourable Court to arraign and try the Applicant and the powers of the EFCC to investigate and prosecute the Applicant over funds belonging to ECOWAS Commission.”

The submissions on the issue forms part of the Record of Court. The summary of the submissions which I earlier alluded to is simply to the effect that **Section 396(2) of ACJA** has no application to the aspect of the objection challenging the jurisdiction of the court to arraign the Applicant and the powers of EFCC to prosecute this case. That the provision of **Section 396(2)** specifically applies to a challenge to the validity of a charge or information which can be taken after plea and a ruling deferred until the final Judgments but that where the challenge is as to the jurisdiction, the jurisdictional challenge has to be taken first. A lot of cases were cited including **Maryam Sanda V. C.O.P (2020)LPELR-52132(CA)**, **Nante V. F.R.N (2018)LPELR-4457(CA)** and **Idakwo V. FRN & Anor (2021)LPELR-53439**

At the hearing, counsel to the Defendant adopted the submissions in the address in urging the court to hold that **Section (396)(2) of JCJA** does not apply to all situations including the extant objection challenging the jurisdiction of the court to arraign and try the Defendant and the power(s) of EFCC to investigate and prosecute the Applicant over funds belonging to the ECOWAS Commission.

The address of **complainant** is dated 31st March, 2022 and filed same date in the Court's Registry. One issue was also raised as arising for determination:

“Whether this court can dispense with the applicability of Section 396(2) of ACJA in relation to this case.”

The submissions on the issue equally forms part of the Record of Court and the summary of the submissions made as earlier alluded to is that **Section 396(2)** applies to the extant objection to the effect that it is only after the plea has been taken that the Defendant can take his objection to the validity of the charge and a Ruling delivered at the time of delivery of judgment. That the taking of the plea or arraignment is a mandatory initial step before the commencement of proceedings

where the plea of the Defendant to a charge is taken before the court. The cases of **Ikechukwu Nrene V. F.R.N (2016)LPELR-40948(CA)**; **Sopuruchi Obed V. The State (2014)LPELR -23123(CA)**; **Peter Iroh V State (2019)LPELR-48010(CA)** amongst others were cited.

At the hearing, counsel to the complainant adopted the submissions in the address and urged the court to apply the provision of **Section 396(2) of ACJA 2015** in resolving the issue.

I have carefully read and considered the addresses and submissions of counsel. The issues formulated and submissions made by parties traverse the same compass even if differently worded and deals with the ambit and application of the provision of **Section 396(2) of ACJA** to the extant objection.

Before dealing with the provision, it is important to make some brief prefatory remarks on what jurisdiction means and its relationship with judicial power. Jurisdiction is the authority which a court has to decide matters that are litigated before it, or to take cognisance of matters presented in a formal way for decision. See **Halburys Laws of England, Vol 10, 4th ed, para 715**. In **Ajomale V. Yaduat (no.1) (1991)5 SCNJ 172 AT 176**, the Apex Court per Karibi Whyte (of blessed memory) stated thus:

“Jurisdiction is the right in the court to hear and determine the dispute between the parties.”

Jurisdiction therefore is the power, competence or authority of a court to deal with matters in controversy submitted before it by parties from inception to delivery of a binding judgment.

It is also important to point out or underscore the point that **jurisdiction** and **judicial power** must not be confused. It must be however conceded that while the two terms are frequently used interchangeably in legal circles, they are distinct legal concepts and mutually exclusive. In **Ajomale V. Yaduat (no.1) (supra)**, the Apex Court stated instructively as follows:

“I think this is an error emanating from confusion of the exercise of power with the question of exercise of jurisdiction. Where a court has no jurisdiction, with respect to a matter before it the juridical basis for the exercise of any power with respect to such matter is also absent. This is because power can only be exercised where the court has the jurisdiction to do so. ...Jurisdiction is not to be equated with powers. Whereas jurisdiction is

the right in the court to hear and determine the dispute between the parties, the power in the court is the authority to make certain orders and decisions with respect to the matter before the court. This is clearly implied by the provisions of Section 6 of the Constitution 1979 which prescribed the powers of the courts and in chapter VII on the judicature, where the jurisdiction of the courts have been presented in Sections 212, 213, 219, 220, 230, 236,242,247,250 of the Constitution 1979.

In *Babalola V. Obaoku-ote* (2005)8 N.W.L.R (pt.927)386 at 403. The Court of Appeal per Adekeye J.C.A as (she then was) stated thus:

“Terms judicial power and jurisdiction are frequently used interchangeably-there is a clear distinction between the two. “Jurisdiction is...the power of the court to hear and determine the subject-matter in controversy between the parties. In other words-jurisdiction is the authority of the courts to exercise judicial powers which is the totality of powers a court exercises when it assumes jurisdiction to hear a case. You must first have jurisdiction before you can proceed to exercise power. Judicial power is a very wide expression.

Flowing from one above, the jurisdiction of a court is of such a fundamental and crucial nature in judicial proceedings that it is regarded as a threshold issue and that is why it is desirable that it is raised early and determined so as to save time, cost and to avoid a trial in nullity. If a court has no jurisdiction to determine a case, the proceedings remain a nullity *abinitio* no matter how well conducted and decided. This is so since defect in competence is not only intrinsic but extrinsic to the entire process of adjudication. See *N.U.R.T.W. V. R.T.E.A.N*(2012)10 N.W.L.R (pt.1307)170 (SC); *Oloba V. Akereja* (1988)3 N.W.L.R (pt.84)508.

Let us now take our bearing and situate the ambit and proper application of the provision of **Section 396(2)** which provides thus:

“After the plea has been taken, the Defendant may raise any objection to the validity of the charge or the information at any time before judgment provided that any such objection shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgment.”

The above provision is clear. In law, in the interpretation of the provisions of a statute, where the ordinary, plain meaning of words used in a statute are very clear and unambiguous, effect must be given to those words in their plain and ordinary

meaning. Therefore, the courts have no jurisdiction to interpret the clear and unambiguous words of a statute beyond their clear and unambiguous meaning or place onerous weight or burden on the otherwise clear and unambiguous provision. See **A.G. Lagos V. A.G Fed (2003)14 N.W.L.R (pt.833)1 at 186-187HB**. What the provision of **Section 396(2)** donates is that any objection to the validity of the charge or information may be raised at any time before judgment but after the plea has been taken provided that such objection shall only be considered along with the substantive issues and a ruling made at the time of delivery of judgment. The **provision** here clearly is hinged on an objection to the **validity of the charge or information**. No more. The implication here is that where the nature of the objection does not pertain or relate to a challenge on the validity of a charge, then the nature of the objection would now determine whether the objection be taken before or after the plea has been taken. It is correct or true that this provision is a proactive and salutary innovation to reduce the resort to dilatory tactics and delay by the defence which had hitherto plagued criminal trials, but the provision of Section 396(2) is specific and there will be no room to add or make interpolations to it or extend the provision beyond what it clearly provides for. See **Section 128 of the Evidence Act**. The duty of the court is to be circumspect and carefully situate the objection in relation to the provision of **Section 396(2)** above to see if the challenge is to the validity of the charge; if it is, then the provision of **Section 396(2)** must apply. If otherwise, then the provision will have no application. See the case of **Nanle V. F.R.N (supra)**, the cases of **Hon. Justice Hye-ladzira Ajiya Nganjiwa V. F.R.N (2017) CN 10474(CA)** and the recent Supreme Court decision in **Dr. Joseph Nwobike SAN V. FRN SC/CR/161/2020** which situates clearly that **Section 396(2) of ACJA** will not apply in every situation.

At the risk of prolixity but for purposes of clarity, two key prayers of the objection includes:

- a. **An order that this Honourable Court lacks the requisite jurisdiction to arraign and try the Applicant for the offences alleged in the 16 count charge or any charge in respect thereof before this Honourable Court.**
- b. **An order that the Economic and Financial Crimes Commission has no powers to investigate and prosecute the Applicant over funds belonging to the Economic Community of West African States (ECOWAS) Commission.**

The prayer is here saying that the court lacks the jurisdiction or competence to “**arraign and try the applicant for the offences alleged in the 16 count charge**” and also questions the “**powers of the EFCC to investigate and prosecute Defendant over funds belonging to ECOWAS Commission.**”

The challenge or objection here goes to **the root** or put another way challenges the very competence of the court to deal with the matter commencing from the taking of the plea, *abinitio*. The complaint is therefore not about the exercise of **judicial powers** covered within the ambit of **Section 396(2)** but that of jurisdiction which is the authority of the court to exercise judicial powers over all aspects of the charge. As stated earlier, the Apex Court in **Ajomale V. Yaduct (no.1)supra** made it abundantly clear that where a court has no jurisdiction, with respect to a matter before it, the judicial basis for the exercise of any power with respect to such matter is absent. This is because power can only be exercised where the court has jurisdiction to do so. Whereas **jurisdiction** is the right in the court to hear and determine the dispute between the parties, the **power in the court is the authority** to make certain orders and decisions with respect to the matter before the court. See **Ajomale V. Yaduct (no.1) supra**.

To proceed on the basis of **Section 396(2)** as argued by the prosecution would mean that the court has “**peremptorily**” determined the objection to its jurisdiction because the court will obviously then be exercising judicial powers from the taking of the plea and exercising powers all through the proceedings to the final judgment.

To the clear extent that the **extant objection** challenges the jurisdiction or authority of the court to exercise judicial powers which is the totality of the powers a court exercises, when it assumes jurisdiction to hear a case, then the extant objection does not come within the purview of **Section 396(2)**. It is logical to hold that you must have jurisdiction before you can proceed to exercise powers that would necessarily follow from proceeding within the ambit or parameters of **Section 396(2) of ACJA 2015**

While every court is no doubt imbued with judicial powers, the exercise of those powers can only crystallize if the court is equipped with jurisdiction. The power of any court to exercise its undoubted judicial powers will become redundant in the absence of jurisdiction.

On the whole, as much as I have sought to be persuaded, I am not persuaded that the provisions of **Section 396(2) of ACJA** applies to the extant objection. It

appears to me that the extant objection falls within a class of its own and must be heard and determined first as a threshold jurisdictional issue before then proceeding with the substantive case depending on the outcome of the objection.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. Chibuike Nwodo, Esq., with Itie bong Usoro for the Complaint/Respondent**
- 2. Mohammed Ndayako SAN with Edwin Negudu, Esq., R. Usman, Esq., Ene Attah, M. Mohammed, Esq and A.Z Abdulsalan, Esq., for the Defendant/Applicant**