

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER : HIGH COURT NO. 14**

**CASE NUMBER : CHARGE NO: CR/9/2019**

**DATE: :MONDAY 11<sup>TH</sup> APRIL, 2022**

**BETWEEN**

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

**AND**

**1. JOSEPH IDAKWO**

**2. ZAMTRAC MANAGEMENT AND  
CITY INVESTMENT LIMITED**

**DEFENDANTS**

## **RULING**

This Ruling is at the instance of application on Notice with No. M/2098/2022 dated the 22<sup>nd</sup> February, 2022 filed by 1<sup>st</sup> Defendant's counsel, wherein the following Orders were prayed-for, as follows:-

1. An Order of this Court directing the Complainant/Respondent to serve the proof of evidence in respect of the 2<sup>nd</sup> amended charge in Charge No. CR/9/2019 on the 1<sup>st</sup> Defendant/Applicant to enable him adequately prepare for his Defence.
2. An Order of this Court directing the Complainant/Respondent to release to the 1<sup>st</sup> Defendant the following documents:

- a. The letter of complainant written by Hajiya Halima Babangida, the Nominal Complainant, and her Solicitor against the Economic and Financial Crimes Commission (EFCC) investigation in respect of her case.
- b. All letters written by the Complainant/Respondent Economic and Financial Crimes Commission (EFCC) to witnesses and persons interviewed in respect of this case.
- c. The investigative report(s) and memo(s) upon which approval was obtained to file Charge No. CR/9/2019 against the 1<sup>st</sup> Defendant.

- d. The CCTV recording of the Complainant/Respondent taking the statement of the 1<sup>st</sup> Defendant in the office of the Chairman of Economic and Financial Crimes Commission (EFCC) on two occasions.
- e. All written statements by various persons interviewed and not forming part of the proof of evidence.
- f. All Forensic Analysis reports.
- i. All evidence/documents extracted by the Economic and Financial Crimes Commission (EFCC) from the phones of persons interviewed in the course of investigation leading and culminating in

filing of Charge No. CR/9/2019 against the 1<sup>st</sup> Defendant.

3. And for such further Orders that this Court may deem fit to make in the circumstance of this application.

The application was founded on the following grounds:-

- i. That by virtue of Section 36(6)(b) of the Constitution of Federal Republic of Nigeria (as amended), the 1<sup>st</sup> Defendant is entitled to be given adequate facilities and time to prepare for his defence.
- ii. That 2<sup>nd</sup> amended Charge was filed without attaching proof of evidence which it intends to prove its case against the Defendant.

- iii. That the documents listed in the prayers above were not served on the 1<sup>st</sup> Defendant and that he needs them to cross-examine the witnesses which the Complainant/Respondents intends to call in this trial.
- iv. That it is in the interest of fair hearing pursuant to Section 36 of the Constitution of Federal Republic of Nigeria 1999 (as amended), that this application be granted.

Application which was supported by a 7 paragraph affidavit, equally had an address of five (5) pages encompassing legal argument in support of the application.

On their part, Prosecution filed a 10 paragraph counter affidavit and address honoring its legal argument.

Both Counsel similarly filed additional authorities in support of their respective arguments for and against.

It is the argument of learned counsel for the 1<sup>st</sup> Defendant/Applicant that the Prosecution is duly bound to prove its case beyond reasonable doubt in view of the Constitutional presumption of innocence captured under Section 36(5) of the Constitution, and that Section 36(6)(b) of the same Constitution donates the right to an Accused person to be given adequate time and facilities by the Court for the preparation of its defence.

Learned counsel relied on the case of ***IGWE VS. STATE (2021) LPELR – 55336 (SC)***.

It is further the argument of learned counsel for the 1<sup>st</sup> Defendant/Applicant, that failure to give facilities to an Accused person would amount to a breach of his right to fair hearing.

On the part of the Prosecution/Respondent, it is their argument that they have amended the said Charge, filed and served same on the Defendant and that 1<sup>st</sup> Defendant cannot now turn around and be asking for yet another proof of evidence.

It is the argument of learned Prosecution Counsel that the instant application is a ploy to delay the Prosecution of this case.

Learned counsel cited the case of ***STANLEY UGOALA VS. THE STATE OF LAGOS (2021)3***



*NWLR (Pt. 1763) Page 263* where the CA per Ogbunja, JCA, stated the law on such an argument touching on lack of proof of evidence.

Counsel on the whole urged the Court to dismiss the application.

On its part, 1<sup>st</sup> Defendant's counsel argued that a decision is only authority for what it actually decided. He cited the case of *QUINN VS. LEATHEM (1901) AC 495*;

*ADENIYI VS. IFELODIN L.G & ORS (2018) LPELR – 44050 CA.*

In urging the Court to grant the instant application, in urging the Prosecution to serve the proof of evidence with respect to the instant Charge on the 1<sup>st</sup> Defendant.

## COURT:-

I have gone through the affidavit in support of the application, in view, and the written argument on the one hand, and the corresponding counter affidavit and written address on the other hand.

The gamut of 1<sup>st</sup> Defendant/Applicant's grouse as contained in the application, in view, is predicated upon the fact that Prosecution failed to serve 1<sup>st</sup> Defendant proof of evidence in the 2<sup>nd</sup> amended Charge No. **CR/9/2021**.

I am minded to therefore in due loyalty to the settled purpose of law, have a look at the 2<sup>nd</sup> amended Charge which was filed and served on the respective Defendants. Before that, I'll like to re-state the age long position of the law on the effect of amendment generally in both criminal and civil proceedings.

Amendment is a formal revision of an addition proposed, or made to a statute, constitution pleadings, order or other institute... It is a charge made by addition, deletion or correction.

See ***CBN VS. OKONKWO (2013) LPELR – 21235 (CA)***.

Once a charge is amended, it dates back to the day the earlier was filed. The two cannot compete for space. See ***PML (SECURITIES) CO. LTD. VS FRN (2018) LPELR – 47993 (SC)***;

***FRN VS ADEWUMI (2007) 10 NWLR (Pt. 1042)***.

See also Section 218(2) ACJA 2015.

Permit me to also state for a Charge to be valid in law, it shall have the following components:-

1. State the offence with which the Accused is charged and if the written law creating the offence gives it any specific name so much of the definition as to give the Accused notice of the matter with which he is charged.
2. If the written law which creates the offence does not give any specific name so much of the definition as to give the Accused notice of the matter with which he is charged.
3. The written law and section of the written law against which the offence is said to have been committed shall be set out in the charge.
4. For a charge to be valid, the necessary document must be annexed to the Charge. This is for the fact that the prosecution of an Accused person should not be a hide and seek game with the

prosecution springing up surprises in court by producing evidence that the veracity cannot be tested under cross-examination. Where however, the necessary documents are though not attached but the facts adequately disclosed does not leave the accused person in doubt on to the nature of the offence he has been alleged to have committed, the court has the discretion to decide to proceed.. What is important is whether the necessary facts have been disclosed. See *MUSA IBRAHIM VS. STATE (2017) LPELR – 42261 (SC)*.

I have seen the said Charge No. **CR/9/2019**.

It is my findings that pages 8 – 157 of the said charge has clearly been monopolized by documents prosecution frontloaded in obedience to extant

procedure. It is my understanding that any such documents, not frontloaded, may not be necessary in prove of the case of the Prosecution.

Whereas the constitution supports prosecution availing an Accused person all facilities and time to prepare for its defence, the said provision shall be read esjusedem documents Prosecution intends to use in prosecuting its case. It is not the place of a Judge to direct Prosecution to produce documents which it does not have.

1<sup>st</sup> Defendant's counsel clearly seem to be putting the cat before the horse.

1<sup>st</sup> Defendant/Applicant cannot therefore be allowed to harvest from the beneficent sanctuary of fair hearing when the proof of evidence is clearly provided in support of the Charge, which to my

mind, is enough notification of the Charge against 1<sup>st</sup> Defendant.

It is my ruling that all sentiments whipped by 1<sup>st</sup> Defendant's counsel, do not just pale into insignificance, but amount to waste of precious judicial time and efforts.

I have no choice than to agree with Prosecution counsel in dismissing the instant application.

Said application No. **M/2098/2022** is hereby dismissed.

*Justice Y. Halilu*  
*Hon. Judge*  
*11<sup>th</sup> April, 2022*

**APPEARANCES**

G. C Ofulue, Esq. - for the Complainant.

C.F Odiniru, Esq. – for the 1<sup>st</sup> Defendant.

2<sup>nd</sup> Defendant not represented.

P.S Askikaa, Esq. – for nominal complainant.