

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT NYANYA
ON TUESDAY 28TH JUNE, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE EDWARD OKPE

CHARGE NO.FCT/HC/CR/O59/2021
MOTIONS NOS: M/5329/2021 AND M/5328/2021

BETWEEN:

INSPECTOR-GENERAL OF POLICE----- COMPLAINANT/RESPONDENT
AND

- 1. MARIAM O.N. PATRICK ----- DEFENDANT/APPLICANT**
- 2. ONYEKWELU EDDYARMS ----- DEFENDANT/APPLICANT**
- 3. AKIN FALEYE ----- DEFENDANT**

RULING

Motion on Notice No: M/5329/2021 and M/5328/2021 was filed by the 1st Defendant and the 2nd Defendants on 25/8/2021. Pursuant to Section 106 of the Administration of Criminal Justice Act 2015 and under the Inherent Jurisdiction of the Honourable Court wherein the Applicants seeks from the court same reliefs reproduced asfollows:

- 1 AN ORDER** discharging the defendants and striking out the charge in this case for being fundamentally defective, incurably bad, incompetent and an abuse of court process same having been filed by a private legal practitioner without the authority/fiat of the Attorney General of the Federation and for want of competence and jurisdiction of the court to entertain the charge.
- 2. AND** for such further and other orders as the Honourable court may deem fit to make in the circumstances of this case.

On the face of the Motions are 3 grounds which are the basis upon which the applicants brought this application.

On 8/9/21 the two Motions were moved and in obedience to the law as encapsulated in Section 396(2) of ACJA interpreted by the Supreme Court in the case of **NYAME VS. FRN (2021) 6 NWLR PT.1772 289 AT 344**, the Court reserved ruling on the defendants Motions till the time of delivery of the Judgment. This is the ruling.

The Motion No M/5329/21 filed by the 1st Defendant/Applicant is supported by an affidavit of 8 paragraphs deposed to by the 1st Defendant/Applicant herself. Also filed alongside is a written Address which the counsel to the applicant adopted during the hearing in urging the court to grant their application as prayed.

The Motion No M/5328/21 filed by the 2nd Defendant/Applicant is supported by an affidavit of 8 paragraphs deposed to by the 2nd Defendant/Applicant himself. A written address was also filed which counsel to the applicant adopted at the hearing of the motion in urging the court to grant their application as prayed.

The Prosecution in opposition to the Motions, opted to orally reply on points of law rather than file a Counter Affidavit to the motions.

I have carefully read and digested the written addresses filed in support of the motions by the 1st and 2nd Defendants'/Applicants' counsel and all the processes filed in connection with these motions. I have also considered the oral reply by the prosecutor on points of law. Reference will be made to them as the need arises.

The issue for determination herein is:

"Whether the charge signed and filed by Usman Jibrin, a legal practitioner in this case is competent."

At the hearing, the 1st and 2nd Applicants counsels in their submissions to the court to grant their application as prayed, relied on the case of **CHUKWUJINDU V. AMCON (2019) LPELR - 71318 (CA)**.

The 3rd defendant's counsel aligned himself with the submissions of the counsel to the 1st and 2nd defendants.

The prosecution while making his submissions on points of law urged the court to discountenance the submissions of the defendants as the constitution is the

ground norm of the land and referred the court to the case of **FRN V. OSAHON (2006) 5 NWLR PT.973 361** citation provided.

The prosecutor also cited and relied on **MARTINS V. FRN CA/A/404C/2010 reported in 2012 NWLR PT.1320 287 AT 312-314 (CA)** wherein he submitted that the defendants counsel cannot rely on any other law that is inferior to the constitution and urged the court to discountenance the objection of the defendants.

However the big issue is whether Usman Jibrin legally qualified to practice law in all courts in the Federation by virtue of his having been called to Nigerian Bar under Legal Practitioners Act, can institute criminal proceedings without the fiat of the Attorney-General of the Federation. To answer this all important question, it is pertinent to refer to the relevant provisions of the Constitution of Federal Republic of Nigeria, 1999.

Section 174(1) of the Constitution provides:

"174(1) The Attorney-General of the Federation shall have power:

- (a) To institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under an Act of the National Assembly;**
- (b) To take over and continue any such criminal proceeding that may have been instituted by any other authority or person; and**
- (c) To discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person". (Emphasis supplied).**

The Constitution without any ambiguity, recognizes Section .174(1) (b) and (c) which provides thus:

"Any such criminal proceedings that may have been instituted by any other authority or person."

Kalgo, J.C.A. (as he then was correctly summed up the situation in **OLUSEM vs. COMMISSIONER OF POLICE(1998) 11 NWLR (Pt. 575) 547,558**, when he said:

"By these provisions the Attorney-General of the Federation and of the State as the case may be, are themselves empowered to institute and undertake any criminal proceedings in any court in Nigeria and if any other person or authority instituted or undertook any such criminal proceedings in any court in Nigeria, within their respective jurisdictions, they have the power to take it over, continue or discontinue at any stage of the proceedings;"

In **FRN vs OSAHON (SUPRA)** relied by both counsel, the Supreme Court held:

" The reason of course being that if the respondents through their learned counsel had averted to the provisions of paragraphs (b) and (c) of the same Section 174(1) of the 1999 Constitution, it would have dawned on them that the phrase *instituted by any other authority or person in paragraphs (b) and (c) of Section 174(1) of the Constitution*, are wide enough to accommodate the police. In other words, the powers of the Attorney-General of the Federation under Paragraph (a) of Section 174(1) of the Constitution to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court martial in respect of any offence created or under any Act of the National Assembly, are also clearly available to *any other authority or person* before the Honorable Attorney-General could exercise his powers of taking over and continuing such criminal proceedings or discontinuing them at any stage before judgment is delivered. On this interpretation therefore, I am of the view that the police as an authority of the Federal Republic of Nigeria or as a person, has power to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court-martial."

It is trite law that apart from the Attorney General of the Federation and of the State, the Police, Special Prosecutors and Fiated prosecutors, the law also reorganizes prosecution by private individuals. See **COMPTROLLER NIGERIA PRISON SERVICES & ORS VS. ADEKANYE (NO.1) (2002) 15 NWLR PT.790 318; EZEKIEL VS. A.G. FEDERATION (2017) LPELR - 41908 (SC); IFEACHO VS. BOARD OF CUSTOMS AND EXERCISE (1966) LPELR - 25284 (SC)**

Consequently, I hold that the charge signed and filed herein is competent before me having being signed and filed by a private legal practitioner, Usman Jibrin. Accordingly, the motions of the 1st and 2nd defendants are hereby dismissed for lacking in merit.

Appearances: Usman Jibrin for the Prosecution.

J.S. Okutepa SAN For the 1st Defendant holding brief of J. J. Usman
SAN and S.T. Ologunorisa SAN Lawrence Alabi & Abdulkadir Musa.

HON. JUSTICE EDWARD OKPE
(JUDGE)
28/6/22