

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL  
TERRITORY  
HOLDEN AT MAITAMA ABUJA  
ON THE 6<sup>TH</sup> DAY OF DECEMBER, 2022.  
BEFORE HIS LORDSHIP; HON JUSTICE MARYANN E. ANENIH  
(PRESIDING JUDGE)**

**CHARGE NO:CR/249/2015**

**MOTION NO: M/2124/2022**

**BETWEEN**

**FEDERAL REPUBLIC OF NIGERIA ..... COMPLAINANT/  
RESPONDENT**

**AND**

**1. HENRY UDORAH**

**2. APPOBLE NIGERIA LIMITED**

**DEFENDANTS**

**APPLICANTS**

**RULING**

Before the Court is a Motion on Notice filed on the 1<sup>st</sup> of December, 2022 and brought pursuant to Sections 6(6)(a) and (b), 36 (4), (5),(6)(a)(b) and (d), 46 and 287(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended); Sections 1, 216, 217, 218, 219 and 221 of the Administration of Criminal Justice Act, 2015; Section 1 of the Practice Direction on the Implementation of Criminal Justice Act 2015 in the Court of the Federal Capital Territory and under the inherent Jurisdiction of this Honorable Court.

The Defendants\Applicants pray for the following Orders:

- 1. An order of the Honorable Court declining to order the Defendants to take their pleas with respect to amended charge*

*dated and filed on the 11<sup>th</sup> of October 2022 pending the hearing and determination of this application.*

- 2. An order of the Honorable Court declining to take cognizance and or granting leave to the Complainant to alter, add, amend or substitute the original charge with an amended charge dated and filed on the 11<sup>th</sup> of October 2022 in this case.*
- 3. An Order of the Honourable Court setting aside and or striking the amended charge dated and filed on the 11<sup>th</sup> of October 2022 in this case.*
- 4. And any Order or further orders as this Honorable Court may deem fit to make in the circumstance of this application.*

In support of the Application is an Affidavit of 7 paragraphs deposed to by Henry Udorah and accompanying written address

The Prosecution/Respondent responded orally to the application with leave of this Court.

The Defendants in the instant case were arraigned and pleaded not guilty to a two-count Charge dated 26<sup>th</sup> July 2015 (and filed on 1<sup>st</sup> July 2015) on allegations of the commission of the offences obtaining property by false pretence and issuing dud cheques contrary to Sections 1(1) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and the Dishonoured Cheque (Offences) Act 2007 respectively.

Records show that the Prosecution opened and closed its case by calling two witnesses who were cross-examined by the Defence. After the refusal of their no-case submission by this Court, the Defendants opened their defence with the 1<sup>st</sup> Defendant testifying as DW1. In the course of DW1's evidence in chief, the Prosecution filed and served an Amended Charge dated 11<sup>th</sup> October 2022. The Defendants have now filed the instant application seeking for this Court to decline taking the Defendants' plea to the Amended Charge and to strike same out.

The issue before this Court as distilled by the Defence Counsel in his written address for the determination of the instant application is;

“Whether upon a dispassionate consideration of the nature and character of the amendment sought in the amended charge vis-à-vis the original charge and the record of this Honourable Court, this application ought to be granted.”

Now by virtue of the provisions of **Section 216 of the Administration of Criminal Justice Act 2015**, an alteration or amendment of a charge (or even the framing of a new charge) may be permitted by the Court at any time before Judgment.

It is trite law that an amendment of charge would be allowed provided there is no injustice to the defendant. Injustice would usually not occur where the defendant is called upon to make his plea to the amended charge. The significant consideration in a matter of amendment of a charge therefore is that no injustice or prejudice is thereby occasioned to the defendant. – see

**JIBRIN V. STATE (2021) LPELR-56233(SC),**

**ONUBOGU V. STATE (2019) LPELR-49063(CA),**

**MAMUDA V. KANO STATE (2014) LPELR-24598(CA) P. 27 PARAS. A-B**

and

**USMAN V. STATE (2021) LPELR-55632(CA) P. 30 PARAS. A-F.**

I have carefully perused the original Charge and the Amended Charge. While in the first count in the original Charge, the false pretence alleged against the 1<sup>st</sup> Defendant was helping to get a plot of land, it was amended in the Amended Charge to read helping to recertify the document of said plot of land. Under Count two of the original Charge, the purpose of the dud cheques allegedly issued by the Defendants was stated as being for the settlement of obligation to

process a plot of land but this detail was omitted in the Amended Charge. Aside of these, the counts of the charge against the Defendants remained very much the same.

I have also carefully perused the record of the instant case. I must confess that I do not see how the Defendants would be overreached by the amendment or how the amendment will cause them injustice or prejudice.

The Defendants in this case merely stated in their Affidavit in support of the instant application that the amended charge will be prejudicial and cause miscarriage of justice if allowed as the substance of the amendment is some of the core issues being contested in the matter between them and the complainant. They however did not provide the relevant facts for these conclusions. It is trite law that legal arguments and conclusions have no place in affidavits being extraneous matters. See **Section 115(2) of the Evidence Act 2011** and the Supreme Court's decision in the case of **BAMAIYI V. STATE & ORS (2001) LPELR-731(SC) AT P. 22 PARAS. C-F & PP. 26 – 27 PARAS. D-C**.

The Defendants averred in their affidavit in support of the instant application that substituting the charge may likely delay the matter while their Counsel also posited in his address that the nature of amendment sought by the prosecution cannot be accommodated at this stage of the proceedings.

The position of the law however remains that alteration or amendment of a charge can be allowed at any stage of the proceedings before Judgment is pronounced. See **Section 216(1) of the Administration of Criminal Justice Act 2015**. In the instant case, the amendment can therefore be allowed at this stage considering judgment has not been pronounced.

In sum, the Defendants have not shown what prejudice or miscarriage of justice would be visited on them if the amendment made to the Charge in this case is allowed by this Court. The onus is on them in

the instant application and they have failed to discharge said onus. I must say that I do not see how the Defendants would be overreached by the amendment or how the amendment will cause them injustice.

It is my view that the Amendment made to the Charge can be allowed in the circumstances particularly as the Defendants shall have the opportunity to take their plea to same as it ` is their fundamental right. They also have the right to recall the Prosecution witnesses for cross-examination on the Amended Charge. – see **Section 219 of the Administration of Criminal Justice Act 2015**. See also cases referred to supra.

In view of all the foregoing, the sole issue for determination in this application is resolved against the Defendants\Applicants and in favour of the Complainant\Respondent.

The instant application is without merit and it is hereby accordingly dismissed.

.....  
Honorable justice M.E. Anenih

APPEARANCES

Victor Ukaegwu Esq for the Complainant/Respondent.

Osita Ibekute Esq for the Defendants/Applicants.