

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT GWAGWALADA  
ON MONDAY THE 16<sup>TH</sup> DAY OF OCTOBER, 2023**

**SUIT NO: FCT/HC/CR/150/2021  
MOTION NO: GAR/ M/495/2023**

**BEFORE HIS LORDSHIP: HON. JUSTICE A. I. AKOBI**

**BETWEEN**

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

**AND**

**UGOCHUKWU OKEKE.....DEFENDANT/RESPONDENT**

**RULING ON PRELIMINARY OBJECTION**

This is a Notice of Preliminary objection dated 24<sup>th</sup> March 2023 and filed the 27<sup>th</sup> March, 2023 moved by G.C. Ugwunweze Esq of counsel to the applicant on the 11/07/23. It is brought under the inherent jurisdiction of the Honourable Court. He seeks the following:

1. An Order of this Honourable Court striking out the charge against the defendant for want of jurisdiction.
2. And for such other order(s) as this Honourable Court may deem fit to make in the circumstances of this case.

The application is predicated on 6 grounds as set out on the face of the application. They also filed 25 pages of written submission in support of the application and is adopted by the learned counsel. Issues formulated for the determination of the court are:

- 1. Whether in the light of exhibits UM1 – UM4, DW1, viva voce evidence and the proof of evidence in support of the 11 (Eleven) counts amended charge before this court, the complainant through the Economic and Financial Crime Commission has the power to investigate and prosecute the defendant in this case.**
- 2. Whether in the light of interpretation of section 46 of Economic and Financial Crimes (Establishment) Act 2004 by the Supreme Court in the case of Dr. Joseph Nwobike SAN v. Federal Republic of Nigeria the offences against the defendant are not outside the provision of section 45 of the EFCC (Establishment) Act, 2004. If the answer is YES, whether the case against the defendant was initiated by the due process of law?**

Arguing the two issues together, the learned counsel to the applicant, G.C. Ugwunweze Esq, submitted that the alleged offences against the defendant are not Economic and Financial Crime nor fall within the interpretation given by the supreme court of Nigeria in respect to offences within the powers of EFCC to investigate or prosecute; Reference is made to the preamble to the

United Nations Convention against corruption which forms the basis for the enactment of the Economic and Financial Crimes (Establishment) Act 2004 with the purpose to curb corruption and international transfers of illicit acquired assets. To that end, that the EFCC can no longer hide under section 46 of the Act 2004 to prosecute all kind of cases whether emanating from a state or federal law.

The learned counsel also advanced argument on the essence of preliminary objection which touched on the jurisdiction of the court to determine matter and how it is given priority over other issues whenever it is raised. Cited **Onugha v. Ezigwe (2011)13 NWLR (PT.1263) 184 CA and Madukolu & Ors v. Nkemdilim (1962) LPELR-24023 (SC)**. The learned counsel captured vividly his argument when he contended that what prevents the court in the instant case from exercising jurisdiction is the lack of investigative and prosecutorial power of the prosecution to initiate the criminal charge against the defendant on the facts and proof of evidence before the court. He also reiterated the position of law that what determine the jurisdiction of the court is the originating process, in this case, the charge and the proof of evidence in support of the charge. He listed out in line with sections 6 and 7 of the EFCC Act, 2004 the functions and powers of the commission.

To determine whether the offence for which the defendant is charged before the court is founded or predicated on Economic

and Financial Crimes which the commission can investigate and prosecute under sections 6(b), 7(1)(a) and (2)(f) and 13(2) of the EFCC Act, the counsel considered it necessary to invite the court to look at the interpretation section of the Act under section 46 which defined what Economic and Financial Crime entails. Based on the said provision of section 46, it is submitted that the alleged offences against the defendant/applicant are not within the investigative and prosecutorial competence that enable the prosecution to initiate and continue with the prosecution of this case. It is the contention of the applicant that for proper understanding of the scope of economic crime, he commended the court to the reading of the United Nations Convention against Corruption to wit: Article 3, Article 15 etc. He also cited a Supreme Court case of **Dr. Joseph Nwobike, SAN v. Federal Republic of Nigeria (2021) LPELR-56670 (SC)**. Reference is further made to the Apex Court on it holding as to the interpretation of section 46 of the EFCC (Establishment) Act 2004. The Court in applying the **eiusdem generis rule** of interpretation held thus:

In Section 46 of the EFCC (Establishment) Act under consideration, the general words that call for interpretation are “any form of Corrupt malpractices” following the particular words “...embezzlement, bribery, looting”. An application of the *eiusdem generis* rule to the interpretation of the words “any form of corrupt malpractices” does not lend credence to the position

taken by the respondent. Indeed, the words, “any form of corrupt malpractices” must be construed within the context of the specific class which it follows, and must be confined to the particular class. In my humble view therefore, the legislature thought it proper and for right and good reasons, to place the general expression “any form of corrupt malpractices” ....embezzlement, bribery, looting” and same must be confined to such specific words and not to expand, extend or elongate it as to accommodate any corrupt malpractices at large”.

In view of the above, the applicant submitted that the powers of the EFCC are limited to the class of offences mentioned in section 46 of the Act 2004; and that any offence outside the Supreme Court's interpretation is not within the prosecutorial powers of the prosecution in this case.

In the light of the above, the court is invited to peruse the offence charged, the proof of evidence in support of the charge, the viva voce evidence vis-à-vis the documentary evidence tendered (Exhibits UM1, UM2, UM3 and DW1), it will found that the background facts that led to the charge did not fall in the category or class of embezzlement, bribery and looting and does not constitute an economic crime nor corruption and transfers of illicit acquired assets intended to be checked by the United Nations Convention against Corruption 2003 and the EFCC (Establishment) Act, 2004. In finality,

that the investigative and prosecutorial powers of the EFCC are not at large or open ended.

It is apt at this point to state that the Notice of Preliminary Objection was served on the complainant/respondent on 27/03/2023, evinced by proof of service, but they did not file any process in response to it despite being given opportunity by way of adjournment on their request to do so. The prosecuting counsel J. Saidi Esq opted to reply on point on law when an attempt by him to seek for another adjournment was opposed to by G.C. Ugwunweze Esq, of counsel to the applicant. In reply on point of law, Mr. J. Saidi quarried the submission of his learned friend who alleged that this case did not come within the purview of EFCC because it is civil in nature. His argument is that the applicant cannot go outside the grounds of his preliminary objection. To that extent, that the matter being civil is not one of the grounds, hence, that the decision in the case of **Dr. Joseph Nwobike, SAN v. FRN (Supra)** relied upon by the applicant cannot apply in this case. He contended that a matter may state as civil and then execution leads to criminality. I am referred to evidence of PW1- PW3 which he claimed led to the charge. He cited **Ahmed V. FRN (2009) LPELR-8895; Bello v. State (2022) LPELR – 57865 at 23-25** and section 46 of the EFCC Act. On jurisdiction, he referred the court to section 14 of the Act which confer jurisdiction on Federal High Court, FCT High Court and state High Court to hear matter investigated by EFCC provided the matter relates to financial crime. Cited the case of **Mustapha v. FRN (2017) LPELR – 43131,**

where the court reviews the power of EFCC to prosecute. It is therefore their submission and contention that the offences which the defendant is being tried on qualified as a financial crime. In that regard, the court is urged to be bound by the decision of **FRN v. Tafida**, which he says distinguished the decision of Nwabike and others. He concluded that this application is premature because the case of the prosecution is still ongoing. Finally, the court is urged to dismiss the preliminary objection and to allow the prosecution concludes his trial.

The fact of this case is that the Chairman of Economic and Financial Crimes Commission received a petition from one Mr. Usman Adamu Mohammed of No. 1 Goba Close, off Monrovia Street, Aminu Kano Crescent, Wuse 2 Abuja dated 01/07/2019, against the defendant for defrauding him of N10, 023,000 (Ten Million, Twenty Three Thousand Naira) collected in tranches in false pretense that the money will be used to produce desktop casein, customs clearance and freight. The crux of the matter according to the facts before me is that the Mr. Usman Adamu (Nominal complainant), a businessman with IT office at Wuse Zone 3 where he sales ICT equipment was approached sometime in July 2017 by the defendant (Ugochukwu Okeke) with a business proposal of importation of 1000 piece of desktop computers casein from china. The nominal complainant was informed by the defendant that he has concluded discussion with the Chinese company and for more assurance, that he has a brother one Onyedike Okeke who stays in

china; that he will ensure the safety of the transaction. It is also the case of the prosecution that the defendant was deceived into believing that the business is genuine and he was cunningly convinced by the defendant to be the financier of the purported importation and the said goods were never delivered.

On receipt of the petition from **View Concept Technology Limited**, Economic and Financial Crime Commission, investigated the matter and charged the defendant to court on 11 counts charge.

In order to resolve this preliminary objection I adopt the two issues formulated as captured above and will address them together. The power of Economic and Financial Crimes commission to investigate financial crimes is clearly spelt out in various provisions of the Financial Crimes Commission Act. Section 6 of the EFCC Act spelt out the responsibility of the commission which the applicant reproduced in his written address in support of the application. For ease of reference they include:

- (a) The enforcement and the due administration of the provisions of this Act;
- (b) The investigation of all financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, futures market fraud, fraudulent encashment of negotiable instruments, computer credit card fraud, contract scam.
- (c) .....



- (d) .....
- (e) .....
- (f) .....
- (g) .....
- (h) The examination and investigation of all reported cases of Economic and financial crimes with a view to identifying individuals, corporate bodies or groups involved;
- (i) The determination of the extent of financial loss and such other losses by government, private individuals or organizations; etc.

The power of the commission is codified under section 7(1) of the Act which includes:

- (a) Cause investigations to be conducted as to whether any person, corporate body or organization has committed an offence under this Act or other law relating to economic and financial crimes;
- (b) .....

Subsection (2) In addition to the powers conferred on the Commission by this Act, the Commission shall be the co-coordinating agency for the enforcement of the provisions of-

- (a) The Money Laundering Act, 2004; 2003 No. 7 1995 N0.13;
- (b) The Advance Fee Fraud and Other Related Offences Act, 1995; etc.

Having been guided by the provision of section 6 and 7 of the Act as to the powers and responsibilities of EFCC and considering the argument of the defendant/applicant that the offences he is being charged for do not come within the definition of Economic and Financial Crimes, it will therefore not be out of place to know what Economic and Financial Crimes entails. In finding an answer to what Economic and Financial Crimes is, defendant/applicant cited section 46, an interpretation section of the Act. It states thus:

**Section 46:**

**“Economic and Financial Crimes”** means the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and **any form of corrupt malpractices**, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods etc.

In view of the definition of Economic and Financial Crimes given under section 46 reproduced above, the applicant claimed that the alleged offences against him are not within the investigative and prosecutorial competence of the commission. Further reference is made for the court's reading and consideration to the applicable Articles of the United Nations Convention against corruption made pursuant to its General Assembly Resolution 58/4 of October 2003. On the investigative and prosecutorial powers of the EFCC, the Supreme Court in the case of **Nwobike, SAN v. FRN (Supra)**, held that the investigative and prosecutorial powers of the EFCC are not at large or open ended. Considering the interpretation by the Supreme Court in the same case of "any form of corrupt malpractices" and applying it to the instant case, the applicant firmly believed and submitted that the powers of EFCC is limited to the class of offences mentioned in section 46 of the Act and that any offence outside the supreme court's interpretation is not within the prosecutorial powers of the prosecution; hence, that the continued prosecution of the defendant/applicant by the EFCC for an offence not situated under section 46 of the EFCC Act is deemed not to have been initiated by due process of the law and therefore affects the requisite jurisdiction of this Honourable Court. In view of the above, the court is invited to carefully peruse the charged and the proof of evidence in support of the charge which will give it a fair idea of admitting that the offences in the charge do not constitute an economic crime.

In as much as I agreed with the applicant that for the court to determine whether it has jurisdiction over a matter, it has to consider the originating processes; in the instant case, the charge and proof of evidence; in doing that, the court need to exercise some caution not to fall into the temptation of resolving substantive issues in interlocutory stage. See **Hart & Ors v. T.S.K.J (Nig) Ltd (1997) LPELR-5492 (CA)**.

I have carefully read all the 11 counts charge against the defendant, proof of evidence attached thereto, the exhibits vis-à-vis the oral evidence of the witnesses who had testified so far as well as the applicable laws; I agree with the submission of the defendant that the transaction between him and the nominal complainant is civil in nature. I however disagree with him to the extent that the transaction is not within the definition of financial crime for EFCC to prosecute. Section 46 of the EFCC Act defines Economic and Financial Crimes to **include any form of fraud**. I do not want to go into deciding whether or not there was fraud committed because to do that will amount to resolving the main issue at this stage which the law clearly frowns at. However, what is certain is that the defendant kept collecting money from the nominal complainant on the claim that the goods were being produced in china after which they will be ship down to Nigeria. It is in evidence of PW1 that the defendant deceived him that the goods had arrived Nigeria and requested for money which he was duly paid for clearance and that all were fake. Section 6(b) of the EFCC Act empowers the EFCC to

investigate financial crimes which include fraud and contract scam and section 13 of the Act empowers the commission to prosecute offenders.

In view of the aforementioned, I am not persuaded by the argument of the defendant that the offences which the defendant is being charged are not within the definition of Economic and Financial Crimes. I therefore resolved the issues in favour of the prosecution and held that the case against the defendant was properly initiated and the Economic and Financial Crimes Commission (EFCC) has the power to investigate and prosecute the defendant in this case. The preliminary objection is hereby overruled.

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**HON. JUSTICE A. I. AKOBI**  
**16/10/2023**