

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

**SUIT NO: FCT/HC/CR/398/2019**

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

**BETWEEN**

**INSPECTOR GENERAL OF POLICE.....COMPLAINANT**

**AND**

**GEORGE UBOH .....DEFENDANT**

**R U L I N G**

The defendant is standing trial for two counts charge of giving false information against and defamation of Mr. Godwin Emefiele who was the then governor of central bank of Nigeria. The matter was transferred to this court on the 8<sup>th</sup> February, 2023. Soon after the transfer of the matter to this court, I received a letter from the Chief Judge dated 4<sup>th</sup> April 2023, directing me to expedite the hearing of this matter. The directive of the Chief Judge was prompted by a letter from the defendant requesting for the transfer of the matter from this court to any other court within the metropolitan area for reason of proximity.

The matter came up for the first time before me for arraignment on the 18/04/23, the defendant and his counsel Idumodin Ogumu Esq

were in court but the prosecution was not. The defense counsel due to the absence of the prosecution urged the court to strike out the charge against the defendant. The application was refused and the matter further adjourned to 10/07/2023 for arraignment. On the return date of 10/07/2023, the defendant and his counsel were in court while the prosecution was not in court despite evidence of proof of service of hearing notice mobilized by the defendant. The counsel rekindled his application urging the court based on the provision of section 351(1) of the Administration of Criminal Justice Act 2015 to dismiss the charge.

After considering the application and the provision of the law referred to, I asked the defence to address the court on whether this court has the power to make an order dismissing a charge that the court has not taken cognizance of and the defendant yet to be arraigned under it. Based on the order of the court, the defense counsel filed and served the written address on the prosecution on the 06/10/23. The prosecution did not file any response nor appear in court; the defense counsel adopts and argued same. The counsel's argument and submission basically relying on section 351(1) of the Administration of Criminal Justice Act 2015, is that this court has the power to dismiss the charge even when the defendant has not been arraigned provided when the case is called, the defendant appears voluntarily but the prosecution did not despite having notice of the hearing.

It is the contention of the defendant that the court is bound by the above statutory provision of the law. Furthermore, the learned

counsel submitted that were a statute laid down a procedure to be followed, that procedure must be followed, in support of this principle of law the court is commended to the cases of **Dr. Arthur Agwuncha Nwankwo & Ors v. Alhaji Umaru Yar'adua & Ors (2010) LPELR 2109 (SC); Rt. Hon. Rotimi Chibuike Amaechi v. Independent National Electoral Commission & Ors (2008) LPELR-446(SC).**

The counsel further argued and firmly submitted too and without fear of being accused of repetition that section 351(1) of ACJA had laid down a procedure which is that when a case is called, the defendant appears voluntarily in court and the prosecution with due notice failed to appear the court is empowered to dismiss the complaint against the defendant. He added that this position of law is in accord with section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. Cited **Charles v. The State of Lagos (2023)13 NWLR (PT.1901)213 at 235.** Based on the aforesaid, the court is urged to invoke sections 351(1) and 353(1) of the Act to dismiss the charge.

By the provision of Section 4 of the Police Act 2020, LFN, the Police is authorized and empowered to investigate and prevent the commission of any offence, and to that end to arrest and detain in the cause of carrying out their duties any person reasonably suspected of having committed a criminal offence. Beside the investigative powers of the Police, Section 23 of the Police Act also confers on the Police the power to conduct prosecution of offenders before any Court in the land subject to the power of the Attorney General of the Federal and Attorney General of the States.

See **F.R.N. v. OSAHON (2006) 5 NWLR (Pt. 973) PAGE 361 at 423 (F-G)**. It is in exercise of that power that the police undoubtedly framed the charge of criminal act against this defendant. The power of the police to prosecute in my humble opinion do not include dragging a defendant to court with criminal allegation hanging on his neck and then turn round to abandoned the case in the court docket. In the instance case, the matter came up three consecutive times, today making it the fourth time without the appearance of the police in court while the defendant and his counsel have been consistent in attending the court for every adjourned date. In fact, the defendant to show his readiness to stand his trial had on couple of times mobilized for the service of hearing notice on the prosecution.

The prosecution by its conduct having abandoned his duty of prosecuting the defendant, the court cannot as a matter of law call on the defendant to prove his innocence as there is always a presumption of innocence in favour of the defendant. See section 36(5) of the constitution and the case of **Okoh v. State (2014) LPELR-22589 (SC)**. I cannot be tempted by the presence of the defendant always in court to call on him to prove his innocence no matter how heinous the allegation against him may be. To do that will be contrary to the presumption of his innocence and no court has the power to do that; and the court cannot also compel an unwilling prosecution to prosecute a defendant. It will also be unfair to compel the defendant to continue to appear in court with criminal charge on his neck when it appears the prosecuting agent have

lost interest in the case and has abandoned same in the court docket.

The defendant in making his application relied heavily on section 351(1) of ACJA Act. It provide thus:

**When the case is called, the defendant appears voluntarily in obedience to the summons or is brought before the court under a warrant, and the complainant having, to the satisfaction of the court, had due notice of the time and place of hearing, does not appear in person or in the manner authorized by a written law, the court may dismiss the complaint.**

The use of the word “may” in that section of the law gives the court discretion on the matter. However, considering the circumstances of the case especially that no plea has been taken I refused to dismiss the charge as prayed instead, in exercise of my discretion and for interest of justice, the charge against the defendant is hereby struck out, and the prosecution is at liberty to relist the matter or re- file the charge whenever they are ready to prosecute the matter upon given sufficient explanation why he was not diligent in the prosecution of the case.

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**HON. JUSTICE A. I. AKOBI**  
**16/11/2023**