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IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF AWKA JUDICIAL DIVISION
HOLDEN AT AWKA

BEFORE HIS LORDSHIP, HON. JUSTICE PETER N.C. UIEADI
THE HONOURABLE CHIEF JUDGE
THIS THURSDAY 21st DAY OF JULY, 2016.

SUIT NO. A/1^C/2013.

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT
VS

1. DR OKECHUKWU ODUNZE	}DEFENDANTS
2. BARR. BENJAMIN PASSA		
3. HON. MOSES AKUHA TOR GANDE		

RULING

This is a motion on notice dated 15/4/2014 praying the Hon. Court for (1) an order quashing the charges contained in charge No. A/1^C/2013, labeled against the 1st 2nd defendants before this Hon. Court for lack of jurisdiction.

A.S. Aboje Esq. learned counsel for 1st & 2nd defendants submits that the motion is brought pursuant to S. 251 (1) (a) (p), (3) of the Constitution of Nigeria (1999) as amended. Section 7 (1) (2) (3) & 8 (1) Federal High Court Act. He refers to S. 3(5) of Federal Polytechnic Oko Act. Olabade George V FRN 2015 LPELR 218@955C: Section 272 Constitution of Nigeria 1999. He refers to S. 61(3) ICPC Act 2000; Elder O.O Okereke v Kalu James 2012 LPELR 9347 SC. He submits that S.215(a) of the Constitution

*Certification = 100
8 folios = 160
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of Nigeria 1999 has amended the issues which came up in the Savannah Bank case referred to by the respondent in their written address.

T.D. Pepe Esq, learned counsel for 3rd defendant is in agreement with learned counsel for 1st & 2nd defendants and refers to S.5 of Federal Polytheneic Act Cap. 129LFN; Section 287 Constitution of Nigeria 1999 and Section 5(2) ICPC Act 2000.

A.O. Mbamali SAN, **Learned Senior Counsel** for the Complainant is opposed to the application and filed an amended written address dated 26/5/16 which he adopts. He submits that an expansive approach should be taken of the case of Ontario Oil & Gas Nig. Ltd. That S. 61 (3) of the ICPC Act 2000 still stand. He refers to Ehindero v FRN (2014) 10 NWLR (pt1415) 251 CA; Chidiebere Udenyi v FRN 2001 ICPC LR Vol. 1 page p.808. He submits that the court has jurisdiction to handle the case but that in the alternative without conceding to lack of jurisdiction that public policy must come in as many cases would be affected if the application is granted. That the application is not on law alone and should have been supported by affidavit which is not so. He refers to OKereke v James (supra).

A.S. Aboje Esq. on reply on law submits that once a court is faced with contradicting judgments from an appellant court, it shall follow the one later in time. He refers to Dr. Daru & Ors v Barrister Ibrahim Aminu Umar (2013) LPELR 2109-05. That the issue of jurisdiction could be brought orally.

I have perused the notice of preliminary objection of the 1st & 2nd defendants/applicants dated 12/5/16 with a written address and list of

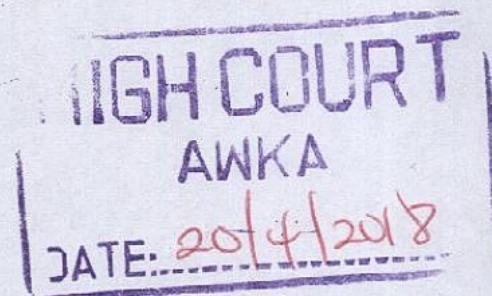
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legal authorities cited. I have perused the written address of the complainant/respondent in opposition to the 1st & 2nd defendants/applicant's preliminary objection with list of legal authorities cited. The grounds on which the preliminary objection is sought are (a) that all the alleged offences in charge No. A/1^C/2013 relate to the revenue of the Government of the Federation and it is connected to the administration or the management and control of an agency of the Federal Government (b) That section 251 (1) (a) (p) (3) of the Constitution of Nigeria 1999 (as amended) confers exclusive criminal jurisdiction on the Federal High Court where any criminal cause or matter relates to the revenue of the Government of the Federation and where it is connected to the administration or the management and control of the Federal Government or any of its agencies. (c) That the Constitution of Nigeria 1999 (as amended) is supreme and superior to the ICPC Act 2000.

I have studied the classic case of *Madukolu or Ors v Nkemdilim* (1962) LPELR – FSC 344/1960. Therein a poignant phrase is thrown up which is "absence of jurisdiction which is apparent on the face of the proceedings". See *West Minister Bank Ltd v Edwards* (1942) AC.529, Viscount Simon LC at page 533, quoted by John Idowu Corrad Taylor FJ in his dissenting judgment in *Madukalu & Ors v Nkemdilim* (supra). I think that where the 1st & 2nd defendants /applicants seek to truncate a criminal trial initiated by an anti-corruption agency of the Federal Government of Nigeria, reliance on lack of jurisdiction of the court to hear the charge ought to be a lack of jurisdiction which is apparent on the face of the records. This maxim is captured in the second observation on jurisdiction

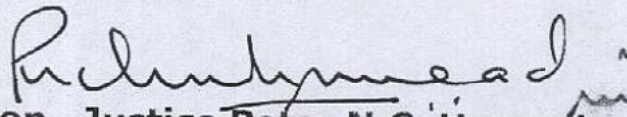


and competence of a court put forward by Vahe Bairamian FJ in his leading judgment in *Madukolu & Ors v Nkemdilim* (supra) as follows (2) That the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction. I agree with learned Senior Counsel for the complainant/respondent that the application for preliminary objection is predicated on law and facts. I hold that the issues of whether the charge relate to revenue of Government of Federation or related to the administration or the management and control of an agency of the Federal Government are all issues of facts. This being a preliminary objection the court ought to exercise strict caution not to begin to hear and construe issues of facts at this stage so as to determine whether or not the court has jurisdiction to hear them at all. Afortiori in a criminal trial. I hold that it is proper that the issues of whether the facts in this charge are related to the revenue of the Government of the Federation or the administration or the management and control of an agency of the Federal Government of Nigeria and further whether only the Federal High Court pursuant to S. 251(1)(a) (p) (3) Constitution of Nigeria 1999 (as amended) is the only proper court to adjudicate on those matters should wait until the court hears all the evidence in the substantive charge and would be in a better position to rule on this preliminary objection. I further hold that issues of law do not hang in the air. Lord Denning had been quoted as saying that facts are pegs on which to hang our coats of law. In effect law is invariably applied to a set of facts. Those facts even on submissions on points of law have to be scrutinized and determined and such is better done after hearing of the issues thrown up. It would be different



if the issue of jurisdiction canvassed are apparent on their face; in which case the court would be required to determine the issue of jurisdiction first before proceeding any further. That is not the situation here.

From the foregoing I hold that the preliminary objection lacks merit and is hereby struck out.


Hon. Justice Peter N.C. Umeadi
Chief Judge
21/7/16

