# IN THE COURT OF APPEAL KADUNA JUDICIAL DIVISION HOLDEN AT KADUNA ON MONDAY THE 30<sup>TH</sup> DAY OF APRIL, 2018 BEFORE THEIR LORDSHIPS

IBRAHIM SHATA BDLIYA
OBIETONBARA DANIEL-KALIO
OLUDOTUN ADEBOLA ADEFOPE-OKOJIE

JUSTICE, COURT OF APPEAL JUSTICE, COURT OF APPEAL JUSTICE, COURT OF APPEAL

CA/K/124/C/2016

**BETWEEN** 

IBRAHIM SAMINU TURAKI ----- APPELLANT AND

FEDERAL REPUBLIC OF NIGERIA ----- RESPONDENT

## JUDGMENT (DELIVERED BY IBRAHIM SHATA BDLIYA, JCA)

The appellant (while Governor of Jigawa) State was alleged to have corruptly enriched himself by converting Government funds to his own use. The **Economic and Financial Crime Commission (EFCC)** investigated the allegation, and consequent thereto, charge No. FHC/ABJ/CR/57/2007 was filed before the Federal High Court, Abuja Division (the lower Court) on the 13<sup>th</sup> of June, 2007. A warrant of arrest was issued by the Court for the arrest of the appellant; however, same could not be served on him as he could not be found or traced anywhere in the country. He was later arrested on the 16<sup>th</sup> of July 2007 and



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arraigned before the Court. He pleaded not guilty to the charge. He was admitted to bail, and the hearing of the case was adjourned to 16<sup>th</sup> of October, 2007. With the establishment of the Dutse Division of the Federal High Court in Jigawa State, the case was transferred thereto. The appellant was re-arraigned before the Dutse Division of the court. He was granted bail. Meanwhile **Yahuza J**, was posted to the Dutse Division, and the trial of the case had to begun *de novo*. The appellant neglected or refused to appear before the Court for the commencement of the trial. A Bench warrant was issued on the 22/9/11 for the arrest of the appellant by the Court. The appellant filed a motion on notice seeking for an order to set aside the Bench warrant. The learned Judge of the lower Court refused to grant the order sought, hence the appeal to this Court.

The appellant's brief of argument was filed on the 22<sup>nd</sup> of March 2017, out of time, which was deemed properly filed on the 30<sup>th</sup> of October, 2017. Two (2) issues have been distilled from the grounds of appeal on page 4 thereof, which are thus:

"1. Whether the trial Judge had the jurisdiction to issue a bench warrant against the 1<sup>st</sup> Accused/appellant when he has never being arraigned before the Court and his motion to quash the

charge for wants of jurisdiction is pending.

2. Whether the accused person must be physically present in Court before his motion to quash the charge against him can be heard".

The respondent filed brief of argument on the 18<sup>th</sup> of October, 2017, which was properly deemed filed on the 30<sup>th</sup> of October, 2017, containing a sole issue for determination on page 4 thereof, which is thus:

"Whether the learned trial Judge was not right to have refused to set aside the bench warrant issued against the appellant who neglected attending his criminal trial pending before the Court"?

The respondent filed a Notice of Preliminary Objection to the competency of the appeal on the 9<sup>th</sup> of October, 2017, thereof. The appellant filed a Reply brief on the 6<sup>th</sup> of November, 2017, and responded to the arguments canvassed on the preliminary objection on pages 3 to 9 thereof.

### THE PRELIMINARY OBJECTION:

The law is trite, where a notice of preliminary objection to the competency of an appeal has be filed by the respondent, it is to be taken and determined before proceeding to hear the appeal

itself. The notice of preliminary objection filed on the  $9^{th}$  of October, 2017, is as follows:

"NOTICE OF PRELIMINARY OBJECTION BROUGHT UNDER THE INHERENT JURISDICTION OF THE HONOURABLE COURT

TAKE NOTICE that before the hearing of the appellant's appeal respondent/applicant will raise a Preliminary Objection and pray the Court for the following relief to wit:

AN ORDER dismissing/striking out this appeal as same has become an academic exercise.

TAKE further notice that the grounds upon which this application is brought are as follows:

- 1. The bench warrant issued by the trial Court leading to this appeal.
- 2. That upon his re-arrest appellant has been arraigned before the Federal High Court, Abuja and has equally been granted bail.
- 3. The charge pending before the Federal High Court, Dutse has now been transferred to Abuja judicial division of the trial Court.
- 4. The subject matter of this appeal has been spent and there is no

- more any live issue before this honourable Court to determine.
- 5. The instant appeal has been overtaken by events and same has become an academic exercise".

The grounds upon which the Notice of Preliminary Objection is predicated are:

- "(i) The Notice of Appeal dated 19<sup>th</sup>

  June, 2015 contained in pages 757

  to 759 of the record of appeal is

  grossly incompetent
- (ii) The instant appeal is a criminal appeal wherein the law requires that the appellant signes by himself his Notice of Appeal.
- (iii) The Notice of Appeal contained in pages 757 to 759 of the record of appeal was not signed by the appellant.
- (iv) The appellant's notice of appeal contained in pages 757 to 759 of the record of appeal was signed by only the appellant's counsel.
- (v) The bench warrant issued by the trial Court leading to this appeal has been executed as the appellant has been re-arrested pursuant to the bench to the bench warrant.

- (vi) Upon his re-arrest, appellant has been arraigned before the Federal High Court, Abuja and has equally been granted bail.
- (vii) The charge pending before the Federal High Court, Dutse has now been transferred to Abuja Judicial Division of the trial Court.
- (viii)The subject matter of this appeal has been spent and there is no more any live issue before this honourable Court to determine.
- (ix) The instant appeal has been overtaken by events and same has become an academic exercise.
- (x) This honourable Court is robbed of jurisdiction to entertain the instant appeal".

Learned counsel to the respondent, JACOBS, SAN, argued the preliminary objection on 2 issues, which are:

- (i) Competency or validity of the Notice of appeal which is not signed by the appellant.
- (ii) Whether the appeal is not an academic exercise having been overtaken by events, i.e, the bench warrant having been executed by the arrest and arraignment of the appellant before the lower Court.

#### **COMPETENCY OF THE NOTICE OF APPEAL**

Jacobs, SAN, of learned counsel, did contend that a notice of appeal is the originating process of an appeal, and to be valid or competent, same is to be signed by the appellant personally; as provided by Order 17 rules (1) 4(1), 5 and 6 of the Rules of It has been further submitted that where a Notice of Court. appeal has not been signed by the appellant, same is null and void, and the appeal itself is incompetent in law. The principles of law enunciated in the cases of State v. Jammal (1996) 9 NWLR (Pt. 473) P. 384 @ 399; Mobil Oil (Nig) Plc v. Yusuf (2012) 9 NWLR (Pt. 1304) P. 47 @ 57; Lastma v. Ezezoobo (2012) 3 NWLR (Pt. 1286) P. 49 @ 54 were cited and relied on to buttress the submissions supra. Counsel referred to the Notice of appeal filed on the 19<sup>th</sup> of June, 2015, on pages 757 to 759 of the record of appeal and submitted that same has not been signed by the appellant. Counsel further contended that this Court has no jurisdiction to hear the appeal filed by the appellant because there is no valid appeal filed as regard by law.

**Abubakar Esq.**, of learned counsel to the appellant, did refer to the 2 notices of appeal filed by the appellant, one contained on pages 745-746 to 748 of the record of appeal, and the second notice of appeal on pages 1 to 3 of the supplementary

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record of appeal. It is learned counsel's contention that an appellant can file more than one notice of appeal as held in the cases of Tukur v. Government of Gongola State (1988) 1 SCNJ P. 54; Adebiyi v. Adesola (2014) All FWLR (Pt. 722) P. 1785 @ 1789; FAAN v. Nwoye (2012) 16 WRN P. 154 and Akeredolu v. Akinremi (1985) 2 NWLR (Pt. 10) P. 787. Counsel therefore did urge the Court to hold that the notice of appeal signed by the appellant is to be relied on in the appeal which is in accordance with the Rules of Court.

The law is trite, for a notice of appeal to be valid and competent, same must be signed by the appellant. This preposition of the law has been settled in the case of **State v. Jammal (1996) 9 NWLR (Pt. 473) P. 384 @ 399**, wherein it was held that:

"It is my view, that this Court ought to take judicial notice of the fact and in law, that a notice of appeal in a criminal appeal filed in the lower Court which was signed by a former counsel instead of the appellant himself is defective by virtue of Order 4 Rule 4(1) of the Court of Appeal Rules 1981, which provides that: - 4(1) Every notice of appeal or notice of application for leave to appeal or notice for extension of time within which such notice shall be given shall

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## be signed by the appellant himself, except under the provision of paragraph (4) and (5) of this Rule".

There are 2 notices of appeal signed and filed, one by counsel to the appellant, the other by the appellant. See pages 745-748 of the record of appeal, and pages 1 – 3 of the supplementary record of appeal. It is not improper to file more than one notice of appeal by an appellant. See **Tukur v. Gongola State Government (1988) 1 SCNJ P. 54, Adebiyi v. Adesola (2014) All FWLR (Pt. 722) P. 1785 @ 1789,** wherein it was held that:

"There is no harm in filing more than one notice of appeal with grounds of appeal within the stipulated statutory period. Provided they are taken together by incorporating them together...."

In view of the notice of appeal contained on pages 1-3 of the supplementary record transmitted to this Court on 1/7/16, which has been signed by the appellant, the contention of learned counsel to the respondent that the appeal is incompetent for invalid notice of appeal cannot be correct. Rather, the appeal is competent having been commenced by a valid notice of appeal signed by the appellant as could be found on pages 1-3 of the supplementary record of appeal.

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## WHETHER THE APPEAL IS NOT AN ACADEMIC EXERCISE HAVING BEEN OVERTAKEN BY EVENTS

Jacobs, SAN, of learned Senior counsel, did submit that a Court of law should not waste its judicial time in adjudicating on matters that are of no utilitarian value for the parties even if judgment is given in favour of any of them. That where a judicial decision in a dispute is only an academic exercise or overtaken by events, rending the decision taken to be of no benefit to any of the parties, a Court of law has no jurisdiction to adjudicate. As to what is a judicial decision which is an academic exercise or overtaken by events rendering any further adjudication by a Court of law, the principles of law enunciated in the cases of Fidelity Bank Plc v. Ogiri (2013) 2 NWLR (Pt. 1337) P. 182 @ 200; Odedo v. INEC (2008) 17 NWLR 17 NWLR (Pt. 1117) P. 554 @ 600; Plateau State v. A. G. Federation (2006) 3 NWLR (Pt. 967) P. 346 @ 419; Uduaghan v. Ogboru (2012) 1 NWLR (Pt. 1282) P. 251 @ 542 and NDP v. INEC (2012) 14 NWLR (Pt. 1319) P. 176 @ 184, were cited and relied on to buttress the submissions supra.

It is learned Senior counsel's submission that hearing of the appeal and taking a decision thereon is a futile exercise because the Bench warrant sought to be vacated or set aside had been

executed when the appellant was arrested, arraigned before the Court, and granted bail. That to determine the appeal would be of no utilitarian benefit to the appellant, in that his arrest had been effected.

Abubakar Esq., of learned counsel to the appellant did content that the determination of the appeal cannot be an academic exercise in view of the pending applications of the appellant challenging the jurisdiction of the lower Court to adjudicate on the criminal charge against him. That in a criminal proceedings, where the jurisdiction of the Court has been questioned or challenged by an accused person, same ought to be determined before proceeding with the arraignment of the accused person. The cases of Abubakar v. Yar'adua (2008) All FWLR (Pt. 404) P. 1409 @ 1437; Amaechi v. INEC (2000)All FWLR (Pt. 497) P. 1 @ 15 and Plateau State v. A. G. Federation (2006) All FWLR (Pt. 305) P. 590, were cited to reinforce the submissions supra. Counsel therefore did submit that the adjudication and determination of the appeal cannot be an academic exercise in that there is still an issue to be determined which would be of beneficial to the appellant, if the appeal is determined in his favour, notwithstanding the execution

of the Bench warrant by his arrest and arraignment before the Court.

Is the hearing and determination of the appeal, No.CA/K/124/C/2016, an academic exercise which would be of no utilitarian benefit to any of the parties thereto? What is or when is the adjudicating of a matter before a Court of law an academic exercise? In **Abubakar v. Yar'adua (2008) All FWLR (Pt. 404) P. 1409** @ **1437**, the Apex Court defined what an academic exercise in the litigation process to be thus:

"An academic matter in a suit is one which is raised for the purpose of intellectual argument or reason which affect any way determination of the live issues in the It is merely to matter. satisfy intellectual prowess and intellect. It is a matter which is theoretical and not related to practical situation. In the context off the instant appeal, the practical situation is the application of the outcome of the appeal to the petition in the Court of Appeal. academic matter could be built on some hypotheses when they are based only on a suggestion that has not been proved or shown to be real because they are imaginary"

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In Ezerebo v. Ehindaro (2009) 10 NWLR (Pt. 1148) P. 166 @ 176 the Court held that, a suit is academic exercise where it is merely theoretical and of no particular utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic where it is not related to practical situations of human It is speculative if it is based on speculation, not supported by facts or very low on facts but high in guesses. A suit is hypothetical if it is imaginary, not based on real facts; looks like a mirage to deceive the defendant and the Court as to the reality of the cause of action, a semblance of the actuality of the cause of action or relief sought. (Plateau State v. A.G. Fed (2006) 3 NWLR (Pt. 967) 346 @ 419; Dike v. Okorie (1990) 5 NWLR (Pt. 151) 418; Olubode v. Salami (1985) 2 NWLR (Pt. 7) 282; Ojiegbe v. Ojiegbe v. Okwaranvia (1962) 2 SCNLR 358.

A Court will not consider any issue or issues raised in an action which would amount to a mere academic exercise and the outcome of which, if decided one way or the other, would neither confer benefit on or injure any of the parties but merely expose or expound the law.

In Uduaghan v. Ogboru (2012) 1 NWLR (Pt. 1282) P. 521 @ 542, the Apex Court enunciated that:

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"Indeed the res in this appeal has been extinguished and the cause of action abated as herein explained. Whichever angle it is viewed, adopting any of the possible outcomes of the 1st and 2nd respondents petition, this Court would undertaking a futile academic exercise. Courts do not deal with or determine academic or moot issues that will yield no benefit to a party even if judgment is given in that party's favour. See Plateau State v. Attorney General of the Federation (2006) 3 NWLR (Pt. 967) 346 at 419; Ajadi v. Ajibola (2004) 16 NWLR (Pt. 898) 91; Adewumi & Anor v. Attorney General, Ekiti State (2002) 2 NWLR (Pt. 751) 474 at 525; Olale v. Ekwelendu (1989) 4 NWLR (Pt. 115) 326; Kosile v. Folarin (1989) 3 NWLR (Pt. 107) 1 and the Supreme Court decision in SC. 219/2007 - Biyu v. Ibrahim (Unreported) delivered on the 28th day of April, 2008.

At the time the tribunal delivered its judgment on the 25th day of July, 2011 there was no longer any live issue in 1st and 2nd respondents' petition. questions in the said petition become academic. The tribunal. therefore, acted without jurisdiction as the petition was then liable to be struck out".

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A Court of law has no jurisdiction to delve in to an issue which has been settled or are no longer alive, having been rendered academic by subsequent events. This position of the law has been expressly enunciated by the Apex Court in the case of **NDP v. INEC** thus:

"I must caution that a Court of law has no duty to embark on academic exercise. The duty of the Court is to adjudicate on live issues. Where an appeal is of no practical utilitarian value to the appellant even if the appeal succeeds it is merely academic. Every suit must be related to practical situation of human nature with a live cause of action. When an issue in an appeal's defunct it becomes academic. This is the scenario in the present circumstances"

The grounds upon which the Preliminary Objection to the determination of the appeal has been predicated are thus:

- (1) The bench warrant issued by the trial Court leading to this appeal has been executed as the appellant has been re-arrested pursuant to the bench to the bench warrant.
- (2) Upon his re-arrest, appellant has been arraigned before the Federal High Court, Abuja and has equally been granted bail.

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- (3) The charge pending before the Federal High Court, Dutse has now been transferred to Abuja Judicial Division of the trial Court.
- (4)The subject matter of this appeal has been spent and there is no more any live issue before this honourable Court to determine.
- (5) The instant appeal has been overtaken by events and same has become an academic exercise.
- (6) This honourable Court is robbed of jurisdiction to entertain the instant appeal".

I entirely agree with the submissions of **Jacobs**, **SAN**, of learned Senior counsel on page 13 of the respondent's brief of argument when he adumbrated thus:

"It must be noted that the instant appeal was against the ruling of the Federal High Court, Dutse dated 8<sup>th</sup> June, 2015 wherein the appellant's application seeking to set aside the bench warrant issued against him on 23<sup>rd</sup> September, 2014 was refused by the Court. Thereafter, the appellant has been arrested pursuant to the said bench warrant and has been rearraigned and again granted bail. We submit that this honourable Court will

not do anything in vain. There is no any pending bench warrant against the appellant herein any longer. Court goes honourable ahead determine the instant appeal on its merit and even grants the relief sought by the appellant, that is, set aside the bench warrant which is no more in existence as it has been executed, for what purpose would the decision of this honourable Court serve? We submit with utmost respect that determining the instant appeal will serve no utilitarian value. The appeal has been overtaken by events and has become We therefore urge your academic. lordships to dismiss the appeal"

It is not the function of the court to embark on advisory opinion or abstract or academic exercise or on speculation. The Court has no jurisdiction to do that. The Courts are established to determine live issues. It follows therefore that anyone coming before a Court must show the existence of a dispute between him and the defendant in every action filed in Court and that he is not merely seeking for an answer to hypothetical questions or an opinion on a matter in which there is no dispute.

See Ezerebo v. Ehindaro (2009) 10 NWLR (Pt. 1148) P. 166 @ 178, Olaniyi v. Arosehun (1991) 5 NWLR (Pt. 194) P. 652; A.G. Fed. v. A. G. Abia State (No. 2)(2002) 6 NWLR

(Pt. 764) P. 522; Mamman v. Salaudeen (2005) 18 NWLR (Pt. 958) P. 478 and Olade v. Ekwelendu (1998) 4 NWLR (Pt. 115) P. 326.

An appellate Court is not interested in determining academic questions or issues because a resolution of the same in favour of either party to an appeal has no have effect on the decision of the trial Court. In the instant case, the events which are called to question by the appellant had become moot and the substance no longer existing. Therefore no useful purpose would be served in having the appeal determined since it would not affect the decision of the trial Court. See Plateau State v. Attorney General Federation (2006)3 NWLR (Pt. 967) 346; Dabo v. Abdullahi (2005) 7 NWLR (Pt. 923) 181; Julius Berger Ltd v. Femi (1993) 5 NWLR (Pt. 295) 612.

When confronted with a similar scenario as it is in the instant appeal, this Court, per Odili, JCA (as then he was) observed thus:

"Considering the reliefs sought in the originating summons at the Court below and putting them alongside these authoritative decisions of the Supreme Court and even by this Court it does not take much effort to see that what is asked of the Court below and also this

appellate one is nothing short of the academic, hypothetical and clear cut speculation in that the events which are called to question have already become moot and the substance no longer existing. Therefore, no useful purpose would be served in going through the whole hog of the appeal since it would not affect the decision of the lower Court and nothing would come out of whatever decision the appeal Court would reach either way. A complete of time in an academic waste hypothetical scenario which would be best handled and appreciated in the facilities of law and the universities which a Court of law is not".

The determination of the appeal will be of no utilitarian value to any of the parties because the Bench warrant issued by the lower Court has been executed, the appellant has been arrested, re-arraigned before the Court, and bail granted to him pending his trial. The preliminary objection to the determination of the appeal is hereby sustained. The appeal is hereby struck out for being an of no utilitarian value to the parties. It is merely academic in nature.

IBRAHIM SHATA BOLIYA
JUSTICE, COURT OF APPEAL.

## **COUNSEL**

Adamu Abubakar Esq ..... For Appellant. Rotimi Jacobs, SAN ..... For Respondent

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## CA/K/124/C/2016 JUDGMENT (DELIVERED BY OBIETONBARA DANIEL – KALIO, JCA)

I have read the draft judgment of my learned brother **IBRAHIM SHATA BDLIYA JCA.** I agree.

OBIETONBARA DANÎEL-KALIO JUSTICE, COURT OF APPEAL

DRIS MUSA
E.O. LITIGATIO

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#### CA/K/124/C/2016

## JUDGMENT (DELIVERED BY OLUDOTUN ADEBOLA ADEFOPE-OKOJIE, JCA)

I have read in draft the judgment of my learned brother, **Ibrahim Shata Bdliya JCA** where the facts leading to the appeal before this Court have been extensively set out.

In summary, this appeal is a complaint by the Appellant against the order of the lower Court refusing to set aside the Bench warrant issued for his arrest. In response, the Respondent's Counsel, Rotimi Jacobs (SAN) filed a Notice of Preliminary Objection challenging the competence of the appeal, one of the grounds being that the appeal is an academic exercise, as it has been overtaken by events, the Appellant having been arrested pursuant to the said warrant, re-arraigned and granted bail.

I do agree with the learned Silk that the Bench Warrant, having been executed, has been spent. Entertaining this appeal will be indulging in an academic exercise with no utilitarian value. It will be an academic exercise, which the Courts do not engage in.

As held in *Agbaje v. Independent National Electoral Commission* (INEC) (2016) 4 NWLR Part 1501 Page 151 at 168 Para A-B per *Ogunbiyi JSC* quoting from *Plateau State v. A/G Federation* (2006) 3 NWLR Part 967 Page 346 at 419 Para F-G, 'a suit is academic where it is merely theoretical, makes empty sounds and is of no practical utilitarian value to the Plaintiff even if judgment is given in his

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favour. A suit is academic if it is not related to practical solution (sic) of human nature and humanity".

No court wastes its precious time on causes, the determination of which, bear no consequence on the dispute between the parties, I hold.

Where the resolution of a conflict is not necessary, it becomes an academic question. The Court has established that it will not indulge itself in the luxury of an academic exercise. See *Awojugbagbe Light Industries Ltd v. Chinukwe (1995) 4 NWLR Part 390 Page 379 at 410 Para D, per Bello CJN; Bhojwani v Bhojwani (1996) 6 NWLR Part 457 Page 661 at 666 Para D per Belgore JSC (as he then was).* 

I also sustain the Preliminary Objection. I abide by the orders of my learned brother.

Oludotun Adebola Adefope-Okojie, Justice, Court of Appeal.