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IN THE COURT OF APPEAL
IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN
ON WEDNESDAY THE 23RD DAY OF MAY, 2018
BEFORE THEIR LORDSHIPS:

MONICA BOLNA'AN DONGBAN-MENSEM	**JUSTICE, COURT OF APPEAL**
HARUNA SIMON TSAMMANI	**JUSTICE, COURT OF APPEAL**
NONYEREM OKORONKWO	**JUSTICE, COURT OF APPEAL**

CA/IB/202C/2017

BETWEEN:

SENATOR ADESEYE OGUNLEWE .... APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT

JUDGMENT

(Delivered by HARUNA SIMON TSAMMANI, JCA)

This appeal is against the Ruling of the Ogun State High Court of Justice, delivered by O. O. Majekodunmi, J on the 9th day of February, 2017 in Charge No: AB/EFCC/03/2016.

The Appellant and two (2) others were arraigned before the trial High Court on an Information containing 18 counts alleging the offences of conspiracy, stealing and abuse of office. The Appellant was arraigned on Counts 1, 2, 3, 4, 5, 6, 7, 8, 12, 13, 14 and 15. Upon arraignment, the Appellant pleaded not guilty on all the charges against him. After his plea was taken, the Appellant filed a Motion on Notice dated and filed on the 22/01/2017 praying for:

1. An order extending the time within which the 1st Accused may apply to quash Counts 1, 2, 3, 4, 5, 6, 6, 7, 8, 12, 13, 14 and 15 of the Information herein dated and filed on October 7, 2016 as they relate to him.

2. An order quashing Counts 1, 2, 3, 4, 5, 6, 8, 12, 13, 14 and 15 of the Information herein dated and filed on October 7, 2016 as they relate to the 1st Accused.

3. An order discharging and acquitting the 1st Accused herein.

AND for such further order or other order or orders as this Honourable Court may deem fit to make in the circumstances.

The Grounds upon which the application was predicated were that:

(i) The charges herein are bad for misjoinder of offences, for misjoinder of offenders and for duplicity.

(ii) The Proof of Evidence produced by the complainant does not link the 1st Accused with the aforesaid counts nor does it disclose any case at all or any ***prima facie*** case against the 1st Accused to warrant his being arraigned or put on trial.

(iii) The aforesaid counts do not disclose a prima facie case against the 1st Accused person.

The Motion was supported by an Affidavit of 12 paragraphs deposed to by one Oludele Alao, a Law Clerk in the chambers of Messrs. Adesokan & Co. counsel for the Accused/Appellants. Accompanying the Application

was a Written Address. The Respondent opposed the Application by filing a Counter-Affidavit of 7 paragraphs deposed to by one Festus Ojo, a Legal Officer in the office of the Economic and Financial Crimes Commission; and accompanying the said Counter-Affidavit was a Written Address. The Respondents also filed a Further Counter-Affidavit and a Written Address in response to new issues raised by the Appellant's learned counsel in the course of arguing the Motion. The Appellant then filed a Reply on points of law. The Motion having been argued, in a Ruling delivered on the 9/2/2017, the learned trial Judge held that the Application to quash the charges offended Section 167 of the Criminal Procedure Law of Ogun State, 2006, same having been filed after the Appellant's plea had been taken. The learned trial Judge, however, in the abundance of caution (***ex abundanti cautela***) ruled on the other Grounds for the Application, and dismissed same as lacking in merit. Dissatisfied with the decision, the Appellant filed this appeal.

The Original Notice of Appeal which is at pages 793-797 of the Record of Appeal was dated and filed on the 23/2/2017. However, by order of this Court on the 19/10/2017, the Appellant was granted leave to amend the Notice of Appeal. The Amended Notice of Appeal consisting of ten (10) Grounds of Appeal was filed on the 06/10/17 but deemed filed on the 29/11/2017. The parties then filed and exchanged Briefs of Arguments.

The extant Appellant's Brief is the Amended Appellant's Brief of Arguments filed on the 11/1/2018. Seven (7) issues were distilled thereon for determination as follows:

1. Whether the singular fact that it was a Federal Law Officer that signed the charge sheet amounted to the consent of the Attorney-General of Ogun State required in Section 104 of the Criminal Code, Laws of Ogun State, 2006 under which Counts 12 – 15 were preferred against the Appellant.
[Ground 9].

2. Whether the Lower Court was right in its decision that the Information was not bad for a misjoinder of offenders.
[Ground 4].

3. Whether the Lower Court was right in its decision that Counts 5 – 8 and 12 – 15 of the Information were not bad for a misjoinder of offences.
[Ground 3].

4. Whether the Lower Court was right in its decision that the singular fact that Appellant as the Chairman of the Governing Council of the University, signed the minutes of the meeting of the Council held on 16-17/7/2014 in which approval was given for payment of some Welfare allowances to chambers of the Council amounted to a disclosure of prima facie case against the Appellant.
[Ground 5].

5. Whether the Lower Court was right in its decision that Appellant's arraignment was in accordance with the law.
[Ground 6].

6. Whether the appealed Ruling is a nullity on account of the fact that some Court's

proceedings which formed the basis of the said Ruling were unsigned by the Lower Court Judge.
[Ground 7].

7. Whether the learned trial Judge was right in refusing to extend the time within which the Appellant may apply to quash Counts 1 to 8 and 12 to 15 as they relate to the Appellant [Grounds 1 and 2].

The Respondent's Brief of Arguments was dated the 23/10/2017 and filed on the 01/11/2017 but deemed filed on the 17/4/2018. Five (5) issues were raised therein for determination as follows:

1. Whether from the totality of evidence, the Lower Court was right in the exercise of its discretion by refusing the Application for orders of the Lower Court quashing or striking out of the 1st Accused person/Applicant's (now Appellant) name from the afore-listed Counts of the Information dated 17/10/16; brought by the Appellant?.

2. Whether the objection to charge (as contained in his Application for quashing) by the 1st Accused/Applicant long after entering a plea of not guilty to each count of the Information was proper?.

3. Whether the signing of the Information by the Law Officer from the office of the Honourable Attorney General of the Federation was not sufficient to satisfy the requirement of Law under Section 104 of the Criminal Code, Laws of Ogun State?.

4. Whether the Lower Court was right in its decision that the Information is not bad for misjoinder of offenders and misjoinder of offences.

5. Whether the Lower Court was right in its decision that the Information is not bad for misjoinder of offences.

Having perused the issues formulated by the parties, this appeal shall be determined on the issues formulated by the Appellant. However, I shall determine the issues beginning with issues 6, 7, 1, 2, 3, 4 and 5 in that order.

Now, on issue 6, learned counsel for the Appellant contended that the proceeding of 12/11/16 wherein the Appellant was arraigned was not signed by the Lower Court. That the proceedings of 19/12/16; and that of 27/1/2017 wherein the Appellant's counsel moved the Application subject of this appeal were not signed, similarly that the proceedings of 9/2/2017 when the Respondent's counsel fully presented oral adumbration of his Written Address was not signed. Learned Counsel then cited the cases of **Wakilu v. Buba (2016) 13 NWLR (pt.1529) 323**; **Tsalibawa v. Habibu (1991) 22 NWLR (pt.174) 461** and **Adefarasin v. Dayakhi (2007) 11 NWLR (pt.1044) 88** to submit that the appropriate order should be that of setting aside the Ruling for being a nullity due to the non-signing of those proceedings which formed the basis of the Ruling.

Learned Counsel for the Respondent did not respond to this issue. It is not in doubt that an unsigned document is a nullity. I have however carefully perused the Record of the proceedings of the Court below. The

Record of the arraignment proceedings of the Appellant and the other Accused persons can be found at pages 757 – 761 of the Record of Appeal. The arraignment was conducted on the 25/11/2016 and duly signed by the learned trial Judge; O. O. Majekodunmi, J. I cannot find the Record of any proceedings of the trial Court conducted on the 12/11/16. Similarly, the proceedings of 19/12/16, 27/01/17 and 09/2/2017 were duly authenticated by the learned trial Judge. It is therefore obvious that Learned Senior Counsel for the Appellant grossly misconceived this issue and I may say that it was deliberately contrived to mislead the Court. This issue is therefore totally unfounded and is accordingly resolved against the Appellant.

On issue seven (7), learned counsel (silk) for the Appellant contended that, the learned trial Judge had the power to extend the time within which the Appellant could apply to quash the charges against him but refused to do so. That the objection of the Appellant amounted to a challenge to the jurisdiction of the trial Court to proceed to the trial of the Appellant on those charges. It was thus argued that, the learned trial Judge wrongfully held that the time to object to the charge was immediately after the charge was read without indicating that there are exceptions to that rule. That the Application having been brought pursuant to Sections 156 and 215 of the Criminal Procedure Law of Ogun State, and Sections 6 and 36 of the 1999 Constitution of the Federal Republic of Nigeria, had raised a jurisdictional issue. That unfortunately, the learned trial Judge held that, the Appellant did not provide any valid reasons to justify an extension of time within which to quash the charges against him.

Learned Counsel then submitted that, there are sufficient Affidavit evidence to justify extension of time to apply to quash the charges.

In response, learned counsel for the Respondent cited the case of **Ofulue v. F.R.N (2006) 2 EFCCLR 100 at 106** to submit that, this case, is one good case where this Court should shy away from interfering with the exercise of the discretion of the Lower Court. That, the Appellant and his co-accused were arraigned on the 25th day of November, 2016 but filed a Motion on Notice on the 25/1/2017 praying the Court to, ***inter alia***, quash or strike out his name from the Information. That the arraignment of the Appellant having been duly done as required by the law, it would have been against the ends of justice for the trial Court to rule otherwise than to refuse the belated objection. The cases of **Edibo v. State (2007) 13 NWLR (pt.1051) 306** and **Oyediran v. State (1967) 7 NWLR 122** were cited in support. That by Section 167 of the Criminal Procedure Law of Ogun State, 2006, an objection to a formal defect in a charge must be taken before plea; otherwise it may be treated as waived.

Learned Counsel for the Respondent went on to submit that, the objection of the Appellant came rather too late in the day, after his plea had been taken; and that the learned trial Judge rightly discountenanced same. The case of **Obakpolor v. State (1991) 1 NWLR (pt.165) 113 at 124** was cited in support. That, this is moreso when the Appellant himself being a lawyer was represented by Counsel. We were accordingly urged to resolve this issue against the Appellant.

The reply of Learned Senior Advocate for the Appellant was a challenge to the competence of issue two (2) raised by the Respondent. It

is the contention of learned Senior Counsel that the trial Court after refusing the Application to quash on the ground that it violated Sections 167 and 168 of the Criminal Procedure Law (C.P.L) of Ogun State, went on to consider the merit of the Application. That the Respondent having not Cross-Appealed against the alternative decision of the trial Court resulting in this Appeal, could not competently raise issue two (2). I am of the view that, Learned Senior Counsel for the Appellant has completely misconceived the point. It is trite law than a Respondent in an appeal has the right to formulate his own issues so long as those issues can be related to Grounds of Appeal filed by the Appellant. See **Ministry of Education, Anambra State v. Asikpo (2014) 14 NWLR (pt.1427) 351** and **Okechukwu v. I.N.E.C. (2014) 7 NWLR (pt.1436) 255**. Having related the issue two (2) formulated by the Appellant to the Notice of Appeal, it is apparent that the issue is materially covered by Ground two (2) of the Amended Notice of Appeal. In any case, the Respondent's issue two (2) is in response or answer to issue seven (7) raised by the Appellant.

Learned Senior Counsel for the Appellant in reply on points of law, also submitted that Sections 167 and 168 of the C.P.L relied upon by the Respondent are not sacrosanct. That non-compliance with Section 215 of the C.P.L concerns the failure of the trial Court to explain the charge to the Appellant, thereby raising the issue of the nullity of the arraignment, and goes to the jurisdiction of the Court. The cases of **Kajubo v. State (1998) 1 NWLR (pt.73) 721** and **Oyediran v. The Republic (1967) NMLR 122** were cited in support. That the issue of jurisdiction could not therefore be validly said to be belatedly raised, as jurisdiction is one issue

that can be raised at any stage of the proceedings, and even on appeal in the Supreme Court.

In the determination of this issue, the learned trial Judge had held at page 787 lines 1 – 13 of the Record of Appeal as follows:

> "The settled law is that the proper time to make objection to a plea is immediately after the charge is read to the accused. The Supreme Court held in **Obakpolor v. The State (1991) 1 NWLR (pt.165) 113** that an accused who pleads to a charge after it is read and explained to him, might not thereafter successfully raise an objection to a formal defect on the face of the charge. Hence any objection to a formal defect in a charge must be taken before the plea, otherwise the objection would be deemed to have been waived. See Section 167 C.P.L, Laws of Ogun State, 2006.... The provision of Section 167 is clear and unambiguous."

Now, Section 167 of the Criminal Procedure Law (C.P.L), Laws of Ogun State, 2006 stipulates that:

> "Any objection to a charge for any formal defect on the face thereof shall be taken immediately after the charge has been read over to the accused and not later."

It is my understanding that an objection to a defect which can be deemed waived must relate to a formal defect. "A formal defect" in my view, is one which relate to procedure or procedural rules and practice. It must therefore relate to matters of formality in the drafting of the charge. The defect must not be a fundamental defect in that it goes to the foundation of the charge so that it will be infringing on the Accused person's Constitutional Rights to proceed to a trial on such a defective

charge. Such a defect therefore should be one which will nullify the charge thereby depriving the Court of the jurisdiction to hear and determine upon such an irredeemably or fundamentally defective charge. Accordingly, where the defect in the charge is substantial or fundamental, an objection to it can be raised at any time in the course of the proceedings. It is therefore formal defects that are caught by Section 167 of the C.P.L. In other words, a formal defect may not lead to a nullification of the entire trial but where a defect is substantial or fundamental it may lead to a nullification of the entire proceedings premised on such a defective charge.

In the instant case, the application to quash the charge was premised on ***inter alia***, the ground that there was no proper arraignment of the Appellant as required by Section 215 of the C.P.L of Ogun State. As rightly submitted by learned counsel for the Appellant, the requirement of a valid arraignment is a fundamental pre-requisite to a valid criminal trial. It is also a Constitutional requirement as stipulated under Section 36(6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Issue of proper, or improper arraignment is therefore not one that is caught by Section 167 of the C.P.L. It is a Fundamental Statutory and Constitutional requirement which if found not to have been substantially observed, may lead to a nullification of the trial and conviction. See **Idemudia v. State (1999) LPELR – 1418 (SC)**; **Lufadeju & Anor v. Johnson (2007) 8 NWLR (pt.1037) 535**. Thus, in the case of **Ibrahim v. State (2014) 3 NWLR (pt.1394) 305**, **Aka'ahs, JSC** said:

> "The arraignment of an Accused person touches on the jurisdiction of the Court and any improper arraignment of the Accused is a breach of a

> Fundamental requirement in criminal proceedings which is capable of rendering the totality of the proceedings null and void..."

Being issue of jurisdiction therefore, it can be raised at any time in the course of the proceedings. On that note therefore, it is my view that the learned trial Judge was hasty in holding that the Appellant's Motion to quash the charges against the Appellant came too late. Since the issue of arraignment was also raised, the Motion could not be validly refused. Fortunately however, the learned trial Judge properly exercised his judicial discretion to determine on the Application, even though in the alternative. This issue, issue 7 is accordingly resolved in favour of the Appellant.

On issue one (1), learned counsel for the Appellant contended that the Appellant was also charged in Counts 12 – 15 for offences pertaining to abuse of office; and that by Section 104 of the Criminal Code Law of Ogun State, 2006, for a person to be charged with the offences alleged in Counts 12 – 15, the consent of the Attorney-General of Ogun State must be sought and obtained. That, from the Record of Appeal, no such consent was given. That in determination of the issue, the learned trial Judge equated the issue with the requirement of consent of the Attorney-General of the State to enable the EFCC initiate the proceedings; and that the authorities relied on by the learned trial Judge relate to the issue of fiat of the Attorney-General and not consent as required by Section 104 of the Criminal Code Law of Ogun State.

Learned Counsel for the Appellant then submitted that the requirement of Section 104 (supra) on consent is mandatory. That the requisite consent not having been exhibited in the proof of evidence, a vital

element of each of Counts 12 – 15; or a condition precedent to the initiation of Counts 12 – 15 was not fulfilled. That, where a statute provides for a condition precedent to the doing of an act, failure to meet the condition renders the act invalid. The case of **Achineku v. Ishagba (1988) 4 NWLR (pt.89) 411 at 420** was then cited to urge us to strike out Counts 12 – 15 of the charge for breach of Section 104 of the Criminal Code.

In response, learned counsel for the Respondent contended that the argument of the Appellant that the prosecution does not have the consent of the Attorney-General of Ogun State to prosecute, is a positive assertion; and therefore the Appellant has a duty to prove that assertion. The case of **George v. F.R.N. (2011) 10 NWLR 1 at 67** was then cited to submit that the Appellant did not discharge the onus of showing that the prosecution does not have the consent of the Attorney-General of Ogun State to prosecute Counts 12 – 15 of the Information. That Section 104 has two limbs; i.e; that:

(i) The prosecution is instituted by a law officer;

(ii) The prosecution is instituted with the consent of a law officer.

That, it is the first limb of the Section that is material to this issue in so far as the charge was signed by S. M. Galadanchi who is a Law Officer. It was therefore submitted that the signing of the charge by a Law Officer has satisfied the required of the consent of a Law Officer. That in any case, the Appellant having conceded that the Economic and Financial Crimes Commission has the fiat of the Attorney-General of Ogun State in

prosecuting the case, cannot in another breath argue that the prosecution was not with the consent of a Law Officer of Ogun State. The cases of **Amadi v. F.R.N. (2008) 18 NWLR (pt.1119)** and **Oluese v. F.R.N. (2013) LPELR – 22016 (CA)** were then cited to buttress the fact that the EFCC being an agency of both the Federal and State Governments in the fight against corruption has the same papers and privileges as the Attorney-General of a State. We were accordingly urged to hold that the required consent of a Law Officer was duly given to prosecute Counts 12 – 15.

Replying on points of law, learned counsel (silk) for the Appellant submitted that the contention of the Appellant has nothing to do with the issue of fiat. That the argument of the Appellant is that the Appellant could not be prosecuted on Counts 12 – 15 without the written consent attached to the Information, to prosecute Counts 12 – 15.

Now, Section 104 of the Criminal Code Law of Ogun State, 2006 stipulates ***inter alia***, as follows:

> "A prosecution for any offence under this or any of the last three preceding Sections shall not be instituted except by or with the consent of a Law Officer."

The offences to which the Section relate are stipulated in Sections 101, 102, 103 and 104 of the Criminal Code Law of Ogun State, 2006. They deal with offences committed by public officers in the abuse of their offices. The Law requires that the offences be instituted by or with the consent of a Law Officer. Section 1(1) of the Criminal Code Law (supra), defines a "Law Officer" in respect of Ogun State to mean:

> ".. the Attorney-General and the Solicitor of the State, and includes the Director of Public Prosecutions and such other qualified officers, by whatever names designated, to whom any of the powers of a Law Officer are delegated by law or necessary intendment."

By Section 211 of the 1999 Constitution of the Federal Republic of Nigeria, the powers of the Attorney-General of a State to institute and undertake criminal proceedings may be exercised by him in person or through officers of his department. It means therefore that, a person who is not a Law Officer in the Attorney-General's Office cannot validly exercise any powers to institute any criminal proceedings except where there has been a valid delegation of such powers by the Attorney-General. In other words, the powers of the Attorney-General to prosecute or institute criminal proceedings can be exercised either in person, through officers of his department or other qualified legal practitioners outside his department, i.e by way of a fiat. In the instant case, it has not been argued that the fiat of the Attorney-General of Ogun State was not given to the EFCC to institute the prosecution of the Appellant. With the issue of fiat having been settled, it would mean that consent of the Attorney-General of Ogun State to prosecute the Appellant is presumed by Section 168(1) of the Evidence Act, 2011. It is obvious, in my view, that there cannot be fiat of the Attorney-General without his consent to prosecute. It is not the law that the consent required must be in writing. Such consent can be presumed considering the circumstances of the case, and it would be for the person who alleges lack of consent to rebut such evidence of consent. See **George v. F.R.N. (2011) 10 NWLR (pt.1254) 1**. This

burden the Appellant failed to discharge. This issue is therefore resolved against the Appellant.

On issue two (2), learned counsel for the Appellant cited Section 155 of the Criminal Procedure Law of Ogun State, 2006 to submit that, it is the law that any person who is accused of an offence must be separately charged and tried. That the only exceptions as stipulated under Section 155 of the C.P.L (supra) are:

(a) When more persons than one are accused of jointly committing the same offence

(b) When persons are accused of committing different offences but in the course of the same transaction.

(c) When persons are accused of committing an offence are charged with persons accused of abetting or attempting to commit the same offence.

(d) When persons are accused of committing the same offence in the course of the same transaction.

(e) When persons are accused of committing offences that are related to each other.

(f) When persons are accused of committing offences during a fight or series of fights arising out of another fight and persons accused of abetting any of those offences.

Learned counsel (silk) then went on to contend that the learned trial Judge relied wholly on paragraph 5(d) of the Respondent's Counter-Affidavit to hold that the offences with which the 2nd Accused was charged, were committed under the directive, instructions and approval of the

Appellant. That, it is only the Counts in the Charge Sheet that one must look at for the requisite details in the bid to determine whether or not there was a link between the Appellant and the 2nd Accused; and that such information must be supplied in the statement and particulars of the offence. Learned Counsel for the Appellant then gave a wholistic appraisal of the 18 Counts in the Information Sheet, to submit that, it is from the particulars of each and every Count preferred against the Appellant and his co-accused that will determine whether or not it was proper to charge them jointly.

Learned Senior Counsel for the Appellant then submitted that, what should concern the Court is that a joint trial based on one charge sheet should not lead to a theater of the absurd. We were accordingly urged to quash the charges against the Appellant for being bad on Grounds of misjoinder of offenders.

The response of learned counsel for the Respondent is that the charges against the Appellant cannot be bad for misjoinder of offenders as each of the counts was distinctly crafted and relate to different acts of the criminal enterprise of the Appellant and his co-accused. Learned Counsel then considered the definition of a charge in Section 2(1) of the Criminal Procedure Act, and the cases of **Adegbite v. C.O.P. (1965) NMLR 432**, **Edun & Ors v. I.G.P. (1966) 1 All N.L.R. 17** to submit that by those definitions of the term "charge", the contention of the Appellant cannot be correct. Relying also on Section 155 of the C.P.L, of Ogun State, learned counsel for the Respondent submitted that, contrary to the argument of the Appellant, the charges against the Appellant are not bad for misjoinder

of offenders as those charges can be comfortably accommodated in the exceptions to the rule against misjoinder of offenders.

Learned Counsel for the Respondent went on to submit that, the Information pending before the Lower Court shows a chain of the same transaction to which the Appellant and his co-accused are the actors with each one of them playing roles as predetermined by the trio under the able watch and directive of the Appellant. That in the circumstances, it is proper that the Appellant and his co-accused be charged together in one charge sheet. The cases of **Okojie v. C.O.P (1961) W.R.N.L.R. 91** and **Haruna v. The State (1972) 1 All NLR (pt.2) 302** were cited in support. That, even if the Court finds against the Respondents, the defects, if any, were minor defects that should not vitiate the trial, as they could be remedied by amendment as enshrined in Section 162 of the C.P.L. (supra). We were accordingly urged to resolve this issue against the Appellant.

Determining on this issue, the learned trial Judge held at page 788 lines 14 – 22 of the Record of Appeal as follows:

> "Furthermore, one of the exceptions to the general rule relating to misjoinder of offenders is where one person is accused of committing an offence and another is accused of abetting or being an assessory to the offence. By virtue of paragraph 5(d) of the Counter-Affidavit of the Respondent, the offences alleged to have been committed by the 2nd accused person were allegedly committed under the directive, instructions and approval of the 1st Accused/Applicant and accordingly they fall within the ambit of the exception to the general rule for.

misjoinder of offenders. I find therefore that there has not been a misjoinder of offenders..."

In other words, the learned trial Judge found and held that the charges against the Appellant and his co-accused fall under the third leg of the exceptions to the rule that, a person accused of committing an offence must be separately charged. This is stipulated in Section 155 of the Criminal Procedure Law of Ogun State, 2006, wherein it is stipulated that:

> "when more persons than one are accused of the same offence or of different offences committed in the same transaction or when a person is accused of committing an offence and another of abetting or being accessory to or attempting to commit such offence or when a person is accused of any offence of theft, criminal misappropriation, criminal breach of trust and another for receiving or retaining or assisting in the disposal or concealment of the subject matter of such offence, they may be charged and tried together or separately as the Court thinks fit."

By Section 155 of the C.P.L. Law of Ogun State (which is in ***pari materia*** with Section 155 of the Criminal Procedure Act), joint trial of accused persons is permitted in the circumstances stipulated therein. The decision whether or not to allow joint trial of accused persons is at the discretion of the Court, to be determined on the nature and circumstances of each case. See **State v. Onyeukwu (2004) 14 NWLR (pt.893) 340**. In the instant case, the learned trial Judge considered that the offences alleged against the Appellant and his co-accused were allegedly committed in the course of the same transaction, and under the instructions, directives and approval of the Appellant. The Appellant was

the Pro-Chancellor of the Federal University of Agriculture, Abeokuta while the 2nd and 3rd accused persons were the Vice-Chancellor and Bursar respectively of the University. The transactions or series of transactions leading to the charges against them were carried out in the course of the execution or purported execution of their duties as Pro-Chancellor, Vice-Chancellor and Bursar of the University.

It should also be noted that count one (1) alleged conspiracy to steal, while counts 2 – 8 for which the Appellant and his alleged co-accused were charged, alleged the various acts or instances of stealing committed as a result of the conspiracy. Counts 12 – 15 allege various acts of abuse of office by the Appellant and his co-accused persons and which acts were said to have been committed under the instruction and/or directive of the Appellant. The offences having been alleged to have been committed in the same transaction or series of transactions, it is proper that the Appellant and his co-accused be jointly tried. It is therefore my view that since the offences were allegedly committed as a result of a conspiracy between the Appellant and his co-accused, they are offences undoubtedly committed in the same or series of transactions. It is therefore right and proper that they be jointly tried. To do that, will undoubtedly save time and resources that may be wasted if each of the accused persons is to be tried separately. In any case, the Appellant did not disclose any prejudice he will suffer as a result of a joint trial with his Co-accused. See **Wabara v. F.R.N. (2010) 2 FWLR (pt.520) 3101**. The learned trial Judge was therefore right in holding that the charges are not bad for misjoinder of offenders. This issue is therefore resolved against the Appellant.

On issue three (3), learned counsel for the Appellant submitted that, the general rule is that for every distinct offence, for which a person is accused, there shall be a separate charge contained in the same charge sheet. That the exceptions are stipulated in Sections 157 – 161 of the C.P.L. of Ogun State (supra). That it is clear at page 787 of the Record of Appeal that the trial Court resolved the issue on exception (b) created by Section 158 of the C.P.L. of Ogun State (supra) by holding that the offences alleged in those counts were committed in the course of the same transaction. Furthermore, that the trial Court resolved the issue relating to Counts 1 – 8 only without considering Counts 12 – 15. Learned Counsel (silk) for the Appellant then submitted that the Court should not resolve the issue by looking at the Counter-Affidavit of the Respondent, but must be confined to the particulars of the offences charged. That looking at Counts 5 – 8, it is clear that the word "joint" was not used in any one of those Counts. That since the word "joint" was not used after the word "defraud" in those counts, it would be interpreted that the Appellant was being accused of stealing the sum of money independently of the other accused.

Learned Counsel for the Appellant further submitted that, it would appear that there are two offences created in each and every one of Counts 5 – 8 and that since there were no particulars in each of the said counts to the effect that the 2nd accused person acted pursuant to the directive, instructions and approval of the Appellant, then none of the said counts 5 – 8 can be said to have fallen within the exception relied on by the trial Court. We were then urged to hold that counts 5 – 8 are bad for

misjoinder of offences. That the same applies to Counts 12 – 15 because each of the accused persons including the Appellant was charged for fraudulently depositing sums of money cited in each of the counts in some bank accounts. That like in Counts 5 – 8, the accused persons were not jointly accused in any one of the Counts 12 – 15. That since it is not apparent in any of Counts 12 – 15 that the 2nd and 3rd accused persons acted pursuant to the directive, instruction and approval of the Appellant, none of Counts 12 – 15 falls within the exception relied upon by the trial Court. We were accordingly urged to hold that Counts 5 – 8 and 12 – 15 are bad for misjoinder of offences.

In response, learned counsel for the Respondent adopted the definition of misjoinder of offences as posited by the Appellant. He then cited Section 156 of the C.P. Law (supra) to submit that, as a general rule, for every offence alleged, there must be a separate charge. That there are however some exceptions as stipulated in Sections 157 – 161 of the C.P. Law of Ogun State (supra). Learned Counsel then adopted his arguments on misjoinder of offenders to urge us to discountenance the arguments of the Appellant. We were accordingly urged to resolve this issue against the Appellant.

Now, Section 156 of the Criminal Procedure Law of Ogun State, 2006 stipulates that:

> "For every distinct offence with which any person is accused there shall be a separate charge and every such charge shall be tried separately except in the cases mentioned in Sections 157 to 161."

The general rule therefore is that for every distinct offence, with which an accused person is accused, there must be a separate and distinct charge sheet, and every such offence must be separately tried. This rule is however not absolute, as there may be situations were distinct offences may be charged and tried together. Some of such situations are provided in Sections 157 – 161 of the C.P.L. of Ogun State. The learned trial Judge determined this issue at page 788 lines 5 – 13 of the Record of Appeal as follows:

> "In the case at hand, the prosecution has deposed in paragraph 5(d) of the Counter-Affidavit that the offences alleged against the Applicant in the 12 counts against him were committed under the directive, instructions and approval of the 1st Accused/Applicant. It is my considered view that notwithstanding that the Prosecution has charged the Applicant for the offences of stealing in Counts 1 – 8 and has in the body of the particulars of the offence stated that he "fraudulently converted" various sums of money therein stated, each of the counts are specifically provided for under Section 390(5) of the Criminal Code, Laws of Ogun State. I therefore cannot uphold the objection of learned silk regarding a misjoinder of offences."

As stated earlier, there are exceptions to the rule that, for every distinct offence, there must be separate count or charge; and be separately tried. One of such exceptions as stipulated in Section 158 of the C.P.L. of Ogun State is where the separate offences are committed in the course of the same transaction or series of transactions. By this exception, there is no limit to the number of such offences which may be charged in the same Information nor is there a time frame stipulated within which the offences

could have been committed. What is of importance is to determine whether there was proximity of time, place or act or series of acts which constitute the various offences. Accordingly, where the acts are so connected as to form one or continuity of action, such separate offences may be charged in separate counts in the same Information and be tried together. I had earlier found that the acts which gave birth to the offences charged formed continuous acts committed in the same transaction or series of transactions. It was therefore proper to charge the separate or different offences allegedly committed in the course of the transaction together. The learned trial Judge rightly held that there is no misjoinder of offences.

I have careful read the submissions of counsel for the Appellant and the Respondent on issue four (4) formulated by learned counsel (silk) for the Appellant. The issue under consideration relate to the finding of the learned trial Judge at page 789 line 25 – 780 line 5, wherein the learned trial Judge stated that:

> "In this instance, without any attempt at pre-judging this case, I find that the 1st Accused/Applicant signed the Minutes of the Meetings of the Governing Council held on 16/07/2014 and 17/07/2014 filed on pages 49 – 51 of the Proof of Evidence. On page 186 of the Proofs of Evidence is the Statement of the 3rd Accused wherein he stated that certain "welfare provisions" for certain persons were approved by the Governing Council and signed by the 1st Accused/Applicant in his capacity as the Pro-Chancellor and Chairman of the Governing Council as well as by the University Registrar. It is noteworthy that the 1st Accused/Applicant in his

> own Statement on page 176 of the Proof of Evidence has denied the allegation of the 3rd Accused. In the circumstances of the foregoing, I am of the respected view that the 1st Accused/Applicant has explanation to make at the trial of this suit. In effect, there is ***prima facie*** evidence linking him to this trial."

Learned silk for the Appellant had argued that, the trial Court was not right in holding that the fact that the Appellant signed the meeting of the Governing Council amounted to a disclosure of ***prima facie*** case against him. It should be not that the learned trial Judge made the above finding in view of the submission of the Appellant that the Proof of Evidence did not disclose any ***prima facie*** case linking him with commission of the offences charged. Indeed, it is the 2nd Ground for making the Application to quash the charges. I think the above finding of the learned trial Judge is subject to prove by evidence at the trial. In other words, whether or not the signing of the minutes of the University Council held on 16-17/7/2014 by the Appellant amounts to such evidence linking the Appellant with the offences for which he was charged and arraigned will only be determined at the trial.

On issue five (5), learned counsel (silk) for the Appellant cited Section 215 of the Criminal Procedure Law of Ogun State to submit that, the conditions to be satisfied for a valid arraignment of an accused person are stipulated in the said Section 215. The cases of **Kajubo v. State (1988) 1 NWLR (pt.73) 721** and **Oyediran v. The Republic (1967) NMLR 122** were then cited to further submit that, the law is that the charge must not only be read to the accused in the language he

understands but the charge must also be explained to him. It was then contended that the arraignment ought to be held as invalid in that none of the counts was explained to the Appellant. That coupled with the issue of misjoinder of offenders and offences, it is possible that the Appellant might not have known whether it was he and the 2nd Accused person that were being jointly accused of stealing the various sums of money cited in counts 5 – 8 and 12 – 15, or whether it was one of the two of them that is being alleged to have each stolen the said sums of money separately. The case of **Edibo v. State (2007) 13 NWLR (pt.1051) 306** was then cited in urging us to hold that the failure to explain the charges to the Appellant amounted to lack of compliance with the mandatory provisions of Section 215 of the C.P.L of Ogun State.

Learned Counsel for the Respondent contended that at the time the Appellant and his co-accused were arraigned, he was represented by M.A. Ogunlewe; Esq of Counsel. That the Appellant, himself a lawyer and a former Minister of the Federal Republic of Nigeria pleaded not guilty to each Count of the Information after same was duly read and explained to him, to the satisfaction of the Court. The case of **Edibo v. State (2007) 3 NWLR (pt.1051) 306** was then cited to submit that, there was therefore due compliance with the requirements of law for a valid arraignment. The case of **Oyediran v. State (1967) NWLR 122** was also cited in support, and to also urge us to discountenance this objection.

Now, Section 215 of the Criminal Procedure Law of Ogun State, 2006 provide for the procedure for a valid arraignment. It therefore stipulates that:

"215. The person to be tried upon any charge or information shall be placed before the Court unfettered unless the Court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the Court by the registrar or other officer of the Court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information he objects to the want of such service and the Court finds that he has not been duly served therewith."

The provision of Section 215 of the Criminal Procedure Act (which is in ***pari materia***) with Section 215 of the Criminal Procedure Law, Laws of Ogun State, 2006 reproduced above, has been interpreted in several cases by the Supreme Court and this Court. See **Solola & Anor v. State (2005) 11 NWLR (pt.937) 460**; **Udo v. The State (2006) 15 NWLR (pt.1001) 179**; **Dibie v. The State (2007) 9 NWLR (pt.1038) 30**; **Blessing v. F.R.N. (2015) LPELR – 24689 (SC)** and **Oko v. State (2017) LPELR 42267(SC)**. The conditions or requirements of a valid arraignment are that:

(a) The accused must be placed before the Court unfettered unless the Court shall see cause otherwise to order,

(b) The charge or information shall be read over and explained to the accused to the satisfaction of the Court by the Registrar or other officer of the Court; and

(c) The accused shall then be called upon to plead instantly thereto unless there exist a valid reason to do otherwise...

The failure of the trial Court to comply with the above stated requirements for an arraignment as stipulated in Section 215 of the C.P.L of Ogun State will be a violation of Section 36(6) (a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Thus in **Kajubo v. The State (1988) NWLR (pt.73) 721**, the Supreme Court, per **Wali, JSC** said:

> "A strict compliance with a mandatory statutory requirement relating to the procedure in a criminal trial is a pre-requisite of a valid trial and where a trial Judge proceeded to try the accused without strictly complying with the provisions of Section 215 of the Criminal Procedure Law and Section 33(6) (a) of the 1979 Constitution (in ***pari materia*** with Section 36(6) (a) of the 1999 Constitution), the trial would be declared a nullity by the Appeal Court."

The reason for insisting on strict compliance with the statutory requirements for a valid arraignment are to ensure a fair trial of an accused person and also to safeguard the interest of the accused at the trial. That is why a failure to satisfy any of the essential elements of a valid arraignment, will render the whole trial incurably defective, null and void. See **Erekanure v. State (1993) 6 NWLR (pt.294) 385**; **Ogunye & Ors v. the State (1999) 5 NWLR (pt.604) 548**; **Rufai v. The State (2001) 13 NWLR (pt.731) 718** and **Dibie & Ors v. State (2007) 9 NWLR (pt.1038) 30**.

The complaint of the Appellant here is that, the charges against him were not explained to him. I am satisfied that the contention of the Appellant is not supported by the evidence on Record. On the 25th day of November, 2016 when the Appellant and his co-accused were arraigned, the Registrar, first of all ensured that the accused persons, including the Appellant, understood the English Language, which is the language of the Court, perfectly before the charges were read out to them. Before reading out each of the Counts to the accused persons, the learned trial Judge indicated his satisfaction that the Appellant and his co-accused understood the charges before taking their plea. The learned trial Judge therefore recorded, before the plea of the Appellant was taken on each Count, as follows:

> "Registrar reads out the charge in English language and each of all the Defendants professed to understand same perfectly."

At the time the charges were read to the Appellant and his plea thereto taken, the Appellant was duly represented by his own biological son, who is a legal practitioner, but did not object to his being so represented. The Appellant himself, a lawyer, did not complain that he did not understand the charges before he entered his plea. I am satisfied that the issue here is a red herring thrown into the waters by the Appellant, all in a bid to have the charges quashed. In any case, there is a presumption that the arraignment of the Appellant was correctly conducted; and the Appellant had the burden to establish that it was not. See Section 168(1) of the Evidence Act, 2011 and **Osidele & Ors v. Sokunbi (2012) 15 NWLR (pt.1324) 470**, **CITEC International Estate Ltd, & Ors v.**

Francis & Ors (2014) LPELR- 22314 (SC); **Ondo State University & Anor v. Folayan (1994) 7 NWLR (pt.354) 1** and **Akeem v. State (2017) LPELR – 42465 (SC)**. It is therefore my view that this issue raised herein has no substance. It is accordingly resolved against the Appellant.

It would be seen that apart from issue seven (7) (which has been resolved in favour of the Appellant), all the other issues have been resolved against the Appellant. In all therefore this Appeal has failed. It is accordingly dismissed. Consequently, the Ruling of the Ogun State High Court delivered on the 9th day of February, 2017 is hereby affirmed.

HARUNA SIMON TSAMMANI
JUSTICE, COURT OF APPEAL.

COUNSEL:

Wale Adesokan, SAN with **L. O. Olowojoba; Esq** for the Appellant.

Dr. Ben Ubi; Esq with **Festus Ojo; Esq** and **Sanusi Galadanchi; Esq** for the Respondent.

CA/IB/202^{c}/2017

M. B. DONGBAN-MENSEM, JCA

My Lord **Haruna Simon Tsammani JCA**, who prepared the lead Judgment, has adequately addressed the two main issues raised in this appeal. I have nothing useful to add other than to say this process has merely prolonged the ordeal of the trial the Appellant may eventually face.

I adopt the orders made by my learned brother in the lead Judgment.

MONICA B. DONGBAN-MENSEM
JUSTICE, COURT OF APPEAL

CA/IB/202C/2017

NONYEREM OKORONKWO, JCA.

I have had the opportunity of reading in draft the lead judgment in this appeal as written and delivered by my lord ***Haruna Simon Tsammani JCA.***

I completely agree with his reasoning and conclusion in affirming the Ruling of the lower court.

NONYEREM OKORONKWO,
JUSTICE, COURT OF APPEAL.