IN THE COURT OF APPEAL OF NIGERIA
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU

ON FRIDAY THE 22ND DAY OF DECEMBER, 2017
BEFORE THEIR LORDSHIPS:

HON. JUSTICE I. I. AGUBE — **JUSTICE, COURT OF APPEAL**
HON. JUSTICE J.T. TUR — **JUSTICE, COURT OF APPEAL**
HON. JUSTICE R.N. PEMU — **JUSTICE, COURT OF APPEAL**

APPEAL NO. CA/E/54C/2016
SUIT NO: FHE/EN/CR/77/2014

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA - **APPELLANT**
AND
MR. PATRICK NELSON OKOLO - **RESPONDENT**

LEAD JUDGEMENT
DELIVERED BY IGNATIUS IGWE AGUBE, JCA.

In the Federal High Court of Nigeria, Enugu Division, the Respondent as an Accused was arraigned initially on an Eleven (11) Count charge which was Amended upon the Application of the Appellant (then complaint) granted by the Count below on the 23RD day of February, 2015, to Seven Counts of obtaining various sums of money in US Dollar denomination under false pretences and with intent to defraud Martin Alum Okwor under the guise that he (Respondent) would supply the said Martin Alum Okwor a Mercedes AMG 63 2013 Model Car thereby committing offences contrary to Section 1 (1 (6) of the Advance Fee Fraud and other Related Offences Act, 2006 and punishable under Section 1 (3) of the same Act.

The Offences were allegedly committed on diverse dates that is to say:

COUNT ONE:	the sum of $100, 000.00	-	2012.
COUNT TWO:	the sum of $65,000.00	-	30/10/2012
COUNT THREE:	the sum of $17,000.00	–	8/11/2012
COUNT FOUR:	the sum of $10,000.00	-	15/11/2012
COUNT FIVE:	the sum of $10,000.00	-	27/11/2012
COUNT SIX:	the sum of $7, 500.00	-	11/2/2013
COUNT SEVEN:	the sum of $7,600.00	-	9/3/2013

All the offences were said to have been committed within the jurisdiction of the Honourable Court although the exact place was not mentioned in any of the Counts. See pages 66-68 and 132 -133 of the Records.

It would be recalled that before the amendment of the charge the Learned Counsel C. Chuma Oguejiofor Esq. for the Accused in the Lower Court had in a Motion on Notice dated and filed on the 27th of January, 2015 prayed for the following Reliefs:

"*(1). An order of the Honourable Court directing the Respondent (then the complainant) whether acting by herself or through her officers, agents/privies to release to the Accused/Applicant forthwith, his Nigerian International Passport No.A03261481 and United States of America Passport N0.466614063 which she has seized for more than two weeks now.*

(2). An order of the Honourable Court quashing the indictments contained in Counts 1-11 on the charge sheet in this case since the evidence contained

in the Proof of Evidence rather than indict, exculpate the Accused/Applicant from all the counts of offence alleged against him and do not reveal any prima facie case upon which he should be called upon to make any answer or enter a plea at all.

(3). In consequence of paragraph 2 above, to discharge the Accused /Applicant in respect of all the counts of offence in the charge sheet.

And for such order or other orders that the Honourable Court may deem fit to make in the circumstances"

The motion which is rather a preliminary objection to the competence of the charge against the Accused (now Appellant) see pages 51 to 65 for the motion paper and the Written Argument in Support.

Following the Amendment of the charge on the 23rd February, 2015, the Respondent was called upon to take a fresh plea on same but Mr. Oguejiofor for the Accused/Applicant (now Respondent) intimated the Court that it was just that morning that the Amended charge was substituted for prior charge against the Accused/Applicant. On that ground the Court was minded to adjourn to 2/3/15 for hearing of the preliminary objection. However, before the adjourn date for the hearing of the objection the Learned Counsel for the Accused (Respondent herein) Oguejiofor, Esq. on the 23rd day of February, 2015 filed another Motion on Notice dated the 2oth of February, 2015 with a Sole prayer for: *"An Order of the Honourable Court dismissing the "Amended Charge" of the Complainant/Respondent dated 19/2/2015 for being an abuse of the process of the Court".*

The Grounds upon which the Application was predicted were stated as follows:

"1. There is pending before the Court already an application dated 27/1/2015 urging the Court to quash the indictments contained in the charge-sheet since no "prima facie" case had been made out on the face of the proof of evidence upon which the Accused/Applicant would be expected to make an answer or otherwise make a plea.

2. That the Complainant/Respondent has one duty to perform in the circumstance i.e. to make a reply to the Application and point to the evidence (if any) in the proof of evidence incriminating the Accused/Applicant in the Offence charged.

3. The Law does not allow the Respondent without making an answer to the pending application to start amending the existing charge just like that.

4. That the implication of not making an answer is that the Respondent has nothing to urge on the Court in opposition to the pending Application in which case the said Application should be deemed successful and the indictments quashed.

5. That the Respondent seems to misunderstand the pending application as one that queries the form of the charge, it is not so, rather it is contended that in the Application that no prima facie case has been made out in the charge for which the Applicant would be expected to make an answer.

6. That the "Amended Charge" was brought merely so as to over reach the Applicant, irritate and as it were, annoy him.

7. *That the Amended Charge was also presented in anticipation of an unfavourable ruling by this Court, Counsel must not anticipate the ruling or decision of a Court, that is a grave abuse of the process of the Court".*

In support of the Application the Accused/Applicant (as he then was) deposed to an Affidavit of Seven Paragraphs together with a Written Argument by the Learned Counsel Chuma Oguejiofor, Esq which was filed on the 23rd day of February, 2015. See (pages 134 -141 of the Records).

Yet undone, the Learned Counsel for the Accused person (now Respondent) filed another Motion dated 26th February, 2015 on the 27th of February, 2015 praying the Court for the following orders:

"*(1). An order of the Court striking out the charge for lack of jurisdiction in the Court to hear the case otherwise,*

(2). An order of the Honourable Court directing the Respondent whether acting by herself or through her officers, agents/ privies to release to the Accused/Applicant forthwith, his Nigerian International Passport N0. AO 3261481 and United States of America Passport N0.466614063 which she has seised for more than 2 weeks now.

(3). An order of the Honourable Court quashing the indictments contained in Counts 1-7 on the Amended charges in this case since the evidence contained in the proof of evidence rather than indict, exculpate the Accused/Applicant from all the Counts of Offence alleged against him and do not reveal any prima facie case upon which he should be called to make any answer or enter a plea at all.

(4). In the consequence of paragraph 3 above, to discharge the Accused/Applicant in respect of all the Counts of Offence in the charge sheet.

And for such order or other orders that the Honourable Court may deem fit to make in the circumstances".

The Application on Notice was predicated on Seven Grounds, namely:-

"1. The Court lacks the territorial jurisdiction to hear the case, none of the offences alleged against the Accused/Applicant had taken place in Enugu within the Courts jurisdiction and thus, this Court is Bereft of any jurisdiction to hear the case.

2. That from the proof of evidence none of the payments or any aspect of the offences charged, had been made or took place in Enugu.

3. In Counts 1-5 of the Amended Charge dated 19/2/2015, the Accused/Applicant has been charged with collecting various sums of money in the year of our Lord 2012 from the Complaint Mr. Martin Alum so as to enable him supply him a Mercedes Benz AM63, 2013 Counts 6 and 7 relate however to monies allegedly collected in February and march, 2013.

4. There is no valid or genuine case of obtaining money by false pretenses made out against the said Accused/Applicant since there is plenitude of evidence in the proof of evidence showing that for all those monies which he had allegedly collected from the complainant, between 2012 and

March, 2013 that he had actually utilized them to purchase and send the Car to the said Complainant.

5. *That there is no genuine case of Advance Fee Fraud made out in the proof of evidence for which the Accused/Applicant should be expected to make an answer or make a plea.*

6. *The Complaint had not only agreed to collecting the vehicle but had infact admitted selling for 100,000.00 US Dollars to one Innoson, the Complainant cannot after eating his cake turn back to have it again.*

7. *That going on with the "prosecution" of this matter constitutes in the main a wild goose chase and waste of tax-payers fund?*

The motion was also supported by an Affidavit of six(6) paragraphs deposed to by the Accused/Applicant (now Respondent) Chief Patrick Nelson Okolo, a Nigerian Christian, Businessman, indigene of Nike, Enugu East Local Government, Enugu State but, ordinarily resident in the United States of America and a Written Argument both filed on the 27th day of February, 2015.

For the avoidance of doubt paragraphs 1-6 of the said Affidavit in support aver as follows:

"1. *That I am the Accused/Applicant in this application, I am conversant with the facts and circumstances of this case.*

2. *That I have been served a copy of the Amended charge encapsulating the proof of evidence et al in this case.*

3. *That Counsel A.T. Nwaka Esq. in the Law Firm of Chuma Oguejiofor and Co. which handles the case for me informs me and I verily believe him that after going through the said proof evidence, that he has discovered that there is no "Prima facie" case made out therein upon which I should make a plea to the charges in the charge sheet, he also informs me and I verily believe him that this Court lacks the territorial jurisdiction to hear the case.*

4. *That even the "Complainant" in the case i.e. Mr. Martin Alum had acknowledge taking delivery of the Vehicle the subject matter of this charge which he has resold to one Chief Innocent Chukwuma for 100,000 US Dollars.*

5. *That there no basis for this charge and Counsel informs me and I still verily believe him that it is the interest of justice that this charge be struck out.*

6. *That I depose to this Oath in good faith believing the same to be true and in accordance with the Oath Act, 2004".*

The Motion on Notice, the supporting Affidavit and Written Address (Argument) can be found at pages 152 to 157 of the Records. Upon being served with the Motion paper and accompanying Affidavit and Written Argument, Mr. Modibo Shuaibu Umar an investigating Officer with the Economic and Financial Crime Commission EFCC who investigated the case deposed to and filed a Counter Affidavit of 9 Paragraphs on behalf of the Commission which he knew to be the Statutory body empowered to investigate and prosecute persons suspected of

having committed economic and financial crime. (See paragraph 1-4 of the counter-affidavit).

In paragraph 5 thereof he admitted having been served the motion of notice dated 26th day of February, 2015 together with the affidavit and reliefs sought as well as the written address but stated that the content of the affidavit was false. The deponent averred in paragraph 6 that the Respondent received a petition from one Martin Alum Okwor on the 2nd of December, 2013, alleging that the Accused/Applicant defrauded him to the tune of 205,000 U.S.D under the pretence of buying a Mercedes Benz newer version for the said petitioner. The Certified Copy of the Petition was annexed as Exhibit EFCC 1.

The Respondent was said to have carried out the investigation into the said petition and established a prima facie case which resulted in the charge then sought to be quashed as filed against the Accused/Applicant (now Respondent) and pursuant to the investigation aforesaid the Respondent wrote a Letter of Investigation Activities to Fidelity Bank Plc to avail her with the Account Statement of the A1 Trade Investment Ltd being operated by the petitioner Martins Alum Okwor the certified copy of the said Letter of investigation was annexed as Exhibit EFCC2.

Further to the above averment, according to the Deponent, the investigation revealed that various sums of money were transferred to the Accused person through his Account with particulars: Chase Bank Account Number 061092387 beneficiary Auto Union LLC, 2775 Campbelton Road, Atlanta Georgia, USA by the said petitioner. A certified true copy of the petitioner's Bank Account Statement showing the monies transferred to the Accused/Applicant

(now Respondent) was also annexed as Exhibit EFCC3.(See paragraphs 7-9 of the Counter-Affidavit).

In paragraphs 10 -12 the Investigation Officer further averred that in the course of investigating the Respondent invited the Accused/Applicant who was confronted with the petition against him and the Accused person/Applicant volunteered a Statement to the effect that he is the Chief Executive Officer of Auto Union LLC based in America. The Accused persons/Applicant was also said to have in that Statement alleged that the monies paid into his Account by the petitioner was seized by another Bank that had a Judgment against him. The Certified True Copy of the said Statement was also annexed as Exhibit EFCC4.

The Deponent further deposed in paragraph 13 of the Counter-Affidavit that Micheal Ani the prosecution Counsel handling the case informed him in their Legal Department Office on the 4th of March, 2015 at 9.00 am and he verily believed that:

"(a). ***The Applicant filed a Suit in the Federal High Court, Enugu in Suit NO. FHC/EN/145/2013 where he (the Accused person) stated that he received 100,000 USD from Martins Alum Okwor and paid same to his suppliers in U.S.A. A Certified True Copy of the said Suit is hereby attached as Exhibit EFC5.***

(b). That his suppliers in USA failed in their obligations to supply the said car to him and that he has undertaken to sell Ultra Modern Blocks of Flats at Nike to refund the petitioner the sum of 150,000 USD, he received from him, i.e (Martins Alum Okwor).

(c). That the Applicant equally filed another Suit at the High Court of the Enugu State in Suit N0. EN/44M/2014 where he stated that he received the sum of 225,000 USD from Martins Alum but could not deliver the Car as his suppliers at USA failed in their obligation to supply the car to him. A copy of the said Suit is hereby annexed as Exhibit EFCC6".

The Deponent in paragraphs 14,15,16 and 17 of the said Counter-Affidavit that contrary to paragraph 4 of the Applicant's Motion on Notice dated the 26th of February, 2015, the said N100,000 USD was paid into the Accused Person's Account for the purchase of Mercedes Benz AMG63 2013 otherwise referred to as Mercedes Benz latest Newer Version by the petitioner;

"15. *That investigation revealed that the Accused person further collected the sum of 65,000 USD, 10,000 USD, 10,000 USD, 7,500 USD and 7,000 USD from the petitioner.*

16. That further to paragraphs above, there is a preponderance of evidence linking the Applicant to the offence of obtaining money under false pretences.

17. That the Accused person was granted bail and he deposited hi United States passport which is part of the bail conditions granted him. A Certified True Copy of the Accused person's Statement with respect to his bail condition is hereby annexed as EFCC7".

Finally, the Deponent in paragraphs 18 and 19 deposed that it is in the interest of justice that Accused person's Notice of Preliminary Application be

dismissed and the case tried on the merit that he made the Counter-Affidavit in good faith and in accordance with the Oath Act of 2004. The Counter-Affidavit was supported by a Written Address in opposition to the Motion. See pages 159-227 of the Records. On the 24th day of March, 2015 the Motion was argued and the respective Learned Counsel adopted their written Arguments/Addresses and the Learned Trial Judge, Hon. Justice D.V Agishi adjourned the case to 12th May, 2015 for Ruling. However, it was not until the 10th day of December, 2015 that the Ruling was delivered and at page 8/248 of the Ruling/Record of Appeal, the Learned Trial Judge in his opinion held as follows in lines 1-20 that he was tempted to agree with the Defence Counsel that the amended charge and proof of evidence laid before the Court show that none of the offences allegedly committed by the Accused person/Respondent herein, took place in Enugu.

On the call on one of the Learned Counsel for the Respondent/Complainant's for the Court to transfer the case to the Chief Judge of the Federal High Courts for reassignment, the Learned Trial Judge held that it was impossible simply because the Complainant did not mention any specific known jurisdiction where the offence was allegedly committed. On the issue whether a prima facie case had been established against the Accused person to warrant calling upon him to take his plea, his opinion was negative for according to him: ***"This is because if this Court does not have the jurisdiction to hear this matter as stated, then the fact of a prima facie case being established against the Accused will be of no moment here.***

On the whole the defence preliminary objection on the issue of jurisdiction is upheld and the charge against the Accused person is struck out accordingly".

Notwithstanding the earlier stance of the Learned Trial Judge that the Court had no jurisdiction to hear the matter, he however ordered subsequently, that ***"the Accused/Applicant Nigerian International Passport No: A0326141 and United States of America Passport N0. 466614063 be forthwith released to him".***

Dissatisfied with the Ruling of the Honourable Trial Judge the complainant appealed on Four(4) Grounds by a Notice of Appeal dated and filed on the 18th of February, 2016. For purposes of emphasis, the Four Grounds of Appeal are reproduced here under without their respective particulars as follows:

"GROUNDS OF APPEAL

GROUND ONE:

The Learned Trial Judge erred in Law when he held that none of the elements of the offence as contained in Counts 1-7 occurred in Enugu and consequently struck out the charge.

GROUND TWO:

The Learned Trial Judge erred in law when he refused to transfer the case to the Chief Judge of the Federal High Court for re-assignment to the Court having held that none of the elements of the offence took place in Enugu.

GROUND THREE:

The Learned Trial Judge erred when he ordered that the International Passport N0. A03261481 and USA Passport N0. 46661463 passport of the Respondent be released to him forthwith.

GROUND FOUR:

The Learned Trial Judge when he made an order relating to the International passport N0. A03261481 and USA Passport N0. 46661463 Passport which are in custody of the Appellant".

Upon the entry of the Appeal following the transmission of the Records the Appellant's Brief dated 16th day of February, 2017 and filed on 21/2/2017 was deemed duly filed on the 15th of February, 2017 by Joshua Saidi, Esq. the Learned Counsel for the Appellant. In that Brief of Argument the following issues were distilled for determination.

"1. ***Whether the Learned Trial Judge was right when he held that from the Amended charge and proof of evidence laid before the Court show that none of the offences alleged against the Accused took place in Enugu and declined jurisdiction relying on the decision of this Court in Ibori v. FRN (2009) 3 NWLR (pt. 1128) 283 GROUND 1).***

2. ***Assuming without conceding that none of the elements of the offence took place in Enugu, whether the Learned Trial Judge was right in striking out the case rather than recruiting it back to the Chief Judge of the Federal High Court for further assignment to the appropriate Court that has the requisite jurisdiction to hear the case? (GROUND 2).***

3. ***whether the Learned Trial Judge had jurisdiction to have ordered the Appellant to release the International Passports of the Respondent having held that he has no jurisdiction to try and determine the charge against the Respondent and struck out the charge and also when the High Court***

of Enugu State had earlier made an order on the same Passports? (GROUNDS 3 and 4)"

On the other hand, in the Brief Argument dated 31st day of March, 2017 and filed on 6th of April, 2017 but deemed properly and duly filed and served on the 20th day of June, 2017 as settled by Ogochukwu Onyekwuluje, Esq; the following Three (3) Issues were also nominated for determination *inter alia:*

"1. Whether the Honourable Court was not right when it declined Jurisdiction and struck out the charge on the grounds that the charge did not disclose where the alleged offences or any part of the alleged offences were committed? (GROUND 1).

2. Whether the Honourable Court was right when it refused to transfer the charge to the Chief Judge of the Federal High Court but instead struck out the charge? (GROUND 2).

3. Whether having declined jurisdiction and struck out the charge, the Honourable Court was not right to have ordered the release of the Respondent's International Passports? (GROUNDS 3 and 4).

ARGUMENTS OF LEARNED COUNSEL FOR THE PARTIES

Upon the perusal of the Issues formulated and the arguments canvassed by the Learned Counsel for the parties, the Issues are basically the same except that they are differently warded. It is also noted that the respective Learned Counsel argued Issues Numbers 1 and 2 together. I shall therefore adopt the issues formulated by the Learned Counsel and subsume the Issues distilled by the

Learned Counsel for the Respondent within those of the Learned Counsel for the Appellant.

ARGUMENT OF ISSUES NUMBERS 1 AND 2:

"WHETHER THE LEARNED TRIAL JUDGE WAS RIGHT WHEN HE HELD THAT FROM THE AMENDED CHARGE AND PROOF OF EVIDENCE LAID BEFORE THE COURT NONE OF THE OFFENCES ALLEGED AGAINST THE ACCUSED TOOK PLACE IN ENUGU AND DECLINED JURISDICTION RELYING ON THE DECISION OF THIS COURT IN THE CASE OF IBORI V. FRN (2009) 3 NWLR (PT. 1128) 283".

AND

ASSUMING WITHOUT CONCEDING THAT NONE OF THE ELEMENTS OF THE OFFENCE TOOK PLACE IN ENUGU, WHETHER THE LEARNED TRIAL JUDGEWAS RIGHT IN STRIKING OUT THE CASE RATHER THAN REMITTING IT BACK TO THE CHIEF JUDGE OF THE FEDERAL HIGH COURT FOR FURTHER ASSIGNMENT TO THE APPROPRIATE COURT THAT HAS THE REQUISITE JURISDICTION TO HEAR THE CASE?"

Arguing these issues together the Learned Counsel for the Appellant referred us to pages 66-121 of the Record of Proceedings of the Lower Court which contain this Amended Charge and Proof of Evidence and pointed out the nature of the charge and the reliance placed by the Learned Trial Judge on the case of ***Ibori v. FRN (2009) 3 NWLR (pt. 1128) 283*** in striking out the charge for want of jurisdiction of Lower Court. the Learned Counsel also emphasized on the Sacrosanctity and importance of jurisdiction in the determination of a case and the factors/elements to be taken into consideration in determining the jurisdiction of a Court citing ***Madukolu v. Nkemdilim (1962) 2 SCNLR 341.***

He also highlighted the types of jurisdiction and the circumstances under which a Court can assume jurisdiction over an offence as decided in ***Ibori v. FRN (Supra) at 308-309.*** Arguing specifically on the jurisdiction of the Federal High Court he pointed out that the Court is a creation of the Constitution and by Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) it is vested with exclusive jurisdiction to entertain certain matters especially civil matters.

As for the criminal jurisdiction of the Federal High Court, he referred to the Federal High Court Act (Section 45 thereof) and the case of ***Patrick v. Jovens v. State (1973) 5 SC17,*** in submitting that the Court must be guided by Section 45 of the Federal High Court Act especially paragraph (d)(i) (ii) (iii) and (iv) to determine whether a Court can adjudicate on the charge or not brought against an Accused person. In the instant we were referred to the Count One of the charge and the Ruling of the Learned Trial Court on the non- disclosure of the venue of the commission of the offences as earlier reproduced in the introductory part of this Judgment. He conceded that on the face of the charge, the phrase ***"within the Enugu Judicial Division"*** was not stated but it was contended that that is not for the Court below to decline jurisdiction.

The above apart, it was further contended that the trial Court failed to consider the averments of the Respondent in his Application before the Court dated 16/8/13 as contained in pages 176- 198 specifically at page 181 of the Records the averments of Priscilla Ezebilo in paragraphs 2, 3 and 4 of her Affidavit in Support, which formed the basis of Count 1 of the Amended charge at page 68 of the Records. The Learned Counsel for the Appellant submitted that the above

issue was put on the front burner by him at pages 219-223 of the Records but the Lower Court still went ahead to decline jurisdiction.

In the light of the foregoing it was submitted again on the authority of ***Njovens v. The State (1973) 5SC17*** that for the Court to assume jurisdiction in a criminal matter such as this, either the whole or the initial elements of the offence must occur in the territorial jurisdiction and that in the above cited case the word ***"element"*** was defined by the Apex Court at pages 47-48 of the Report. He maintained that by the admission of the Respondent in paragraph 4 of the affidavit in support of his motion filed on 16/8/13 that the initial collection of the sum of $100,000 which forms the basis of Cont 1 in the charge, occurred in Enugu within jurisdiction of the Federal High Court Enugu; the Federal High Court therefore possessed the jurisdiction and requisite to hear and determine the case. For the above submissions the Learned Counsel for the Appellant cited and relied on ***Nyame v. FRN (2010) ALL FWLR (Pt. 527) 618***; on the issue of venue for the trial of an Accused person as decided by the Supreme Court and contended that for the trial Court to base its decision on the issue of venue on the charge without considering the proof of evidence attached to the charge was not enough for if the Court had considered the proof evidence and deposition of the Respondent that the collected $100,000 from the victim initially in Enugu, it would have come to different conclusion.

The Learned Counsel again alluded to the facts of the case in ***Ibori v. FRN (supra)*** relied upon by the Court below which necessitated this Court relying on Section 45 of the Federal High Court Act to hold that the Federal High Court Kaduna Division had no jurisdiction and subsequently ordered that the Federal

High Court Kaduna to re-unit the case to the Chief Judge of the Federal High Court for onward transfer to the appropriate Court with the requisite jurisdiction. The Court, he pointed out did not strikeout the charge merely on the ground that the charge was filed in a Court other than the appropriate Court.

It was contended again on the reason for refusal of the Court that it is not the law that elements of an offence must be stated on the face of the charge or that the phrase ***"in Enugu Judicial Division of the Federal High Court"*** cannot vest the Court with the jurisdiction if the Court does not possess same as the determinant factor remain the elements of the offence as can be gathered /ascertained only through the proof of Evidence attached to the case or where an Accused person expressly admits expressly that he collected money which forms the crux of the charge in a particular place as in this case.

The Learned Counsel still on the issue of Venue of Commission of Offence and trial, referred us to Section 93(1) (a) of Administration of Justice Act, 2015 and Section 99 thereof which empowers the Court to send the case and all the processes to the Head of Courts for re-assignment where a person is charged before a Court other than the Court in which he ordinarily ought to have been charged; if in the opinion of the Court, that offence ought to be conveniently inquired into or filed by another Court.

Finally on this Issues, it was submitted that there are saving provisions relating to filing of a charged where the elements of the alleged offence did not occur within the jurisdiction of the Court adding further that the Administration of Criminal Justice Act, 2015 did not provided that a charge should be struck out merely on the ground that none of the elements of offence occurred within the

jurisdiction of the Court in which the person is brought as held by the Lower Court in this case. We were therefore urged to set aside the decision of the Lower Court on these Issues and allow the Appeal.

ARGUMENT OF THE LEARNED COUNSEL FOR THE RESPONDENT ON THE ISSUES:

Reacting to the above submissions of the Learned Counsel for the Appellant, the Learned Counsel for the Respondent also referred us to Count 1 of the Charge as an example of all the Counts on these Issues that all the counts did not contain the necessary elements of the offence. He noted that from Count 1 to 7 (one to seven) the Appellant repeatedly used the words ***"within the jurisdiction of the Federal High Court of Nigeria with intent to defraud"*** without stating the particular jurisdiction of the Federal High Court of Nigeria where the alleged offences were committed but that the only thing certain in the charge is that the Respondent was charged with obtaining various sums of money under false pretense that he would supply the vehicle agreed upon.

The Learned Counsel agreed with the submissions of the Learned Counsel on the candid nature of jurisdiction in the adjudicatory system, the absence of which no matter how brilliantly a case is decided the proceedings remain a nullity. For this submission he relied on ***Diapialong v. Danye (2007) 8 NWLR (pt. 1036) 332, Ukwu v Bunge (1997) 8 NWLR 518 at 527; Lufthansa Airlines v. Odiese (2006) 7 NWLR (pt. 978) 39. A.G Lagos State v. Dosunmu (1989) 3 NWLR (pt.111) 552 and Madukolu v. Nkemdilim (1962)/ANL 587*** where the Supreme laid down the factors the court will take into consideration in deciding whether it has jurisdiction or not.

He reiterated that on the face of the charge all the counts or any part thereof the place of the of the commission of the offence was not stated so as to enable the Court below determine whether it has the jurisdiction to try the matter or not which by itself made the charge defective and liable to be struck out. ***Citing the case of Governor of Kwara State v. Gafar (1997) 7 NWLR (Pt. 511)*** on the position of the Law as submitted earlier by the Learned Counsel for the Appellant that the jurisdiction of the Courts in Nigeria to try offences is a creation of Statute which may be extended not by the Court but by the Statute only through the Legislature.

He agreed as submitted by the Appellant's Counsel that the jurisdiction of the Federal High Court is provided for in Section 45 of the Federal High Court Act, 2004 as well as Section 64 of the (PA) 2004 by which Sections the Federal High Court shall have jurisdiction to try an offence where the offence or any part of the offence was committed within the jurisdiction of the Court placing reliance on ***Patrick Njoven v. State (1973) 5 S.C. 17; Ibori v. FRN (2009) 3 NWLR (Pt. 1128) 283; Haruna v. The State (1972) 8-9 S.C. 173 and Okoro v. AG. Western Nigeria (1966) NWLR 13,*** it was submitted that in the instant unless the Court sees from the Counts of the Charge that the alleged offences or any part thereof were committed within jurisdiction, it will have no powers to try the offences.

On another score, the Learned Counsel for the Respondent argued that the Appellant admitted as much that the charge did not disclose that any part of the alleged offences were committed within jurisdiction of the Federal High Court as can be gleaned from paragraphs 4.15 and 4.16 of the Appellants Brief where the Ruling of the Trial Court was reproduced. He took the view that it is not within the

powers of the Court in the determination of its jurisdiction to search through the case file but that it is the particulars of in charge that will carve the way the Court would navigate in its quest to determine whether it has jurisdiction which are the intendments of Sections 45 of the Federal High Court Act and 64 of the CPA, 2004

According to Learned Counsel like in Civil Proceedings where jurisdiction where jurisdiction of a Court is determined by the Writ of Summons and Statement of Claim, in Criminal trials the jurisdiction of the Court is determined by the content of the charge which must contain all the contents of the offence for it to completed otherwise the change is liable to be struck out.

On the call by the Learned Counsel for the Appellant in paragraphs 4.17 to 4.20 of his Brief of Argument that the trial Court ought to have looked at the Affidavit filed by the Respondent through Priscilla Ezebuike, Litigation Clerk in the Law firm of Chuma Ogueiofor & Co., to determine the venue of the offences, it was submitted that this is not the law because it is the facts contained in the charge as contained in the proof of evidence that will guide the Court in the determination of whether any of the offences was committed within jurisdiction of the Court below as was decided in ***Nyame v. FRN (2010) ALL FWLR (pt. 4) 527 at 618 S.C.*** He then posed the question whether the Proof of Evidence contain particulars to show the venue of the Offence or any of the offences was committed which he answered in the negative and that the affidavit of Priscilla Ezebuilo was not part of the proof of evidence laid before the Court. We were therefore urged to hold that the trial Court was right when it held that if had no jurisdiction on the basis that the charge did not disclose that the offence was

committed within its territorial jurisdiction while relying on ***Ibori v. FRN (2009) NWLR (Pt. 1128) 283.***

The Learned Counsel reproduced the dictum of Kaduna Division of this Court in the above cited case as well as the rationale behind the lower Court coming to the conclusion that it had no jurisdiction to entertain the charge Learned Counsel on the foregoing bases the charge was incompetent for not disclosing the essential element of the charge one of which is the venue of commission of the offence.

On the prayer for the transfer of the charge the Court having held that it had no jurisdiction thereby striking out the charge on the ground that it was deficient, having not contained the essential element the Learned Counsel reproduced the holdings of the Learned Trial Judge at page 8/248 of the Ruling and Records. The Learned Counsel for the Respondent also posited that the Learned Trial Judge was right in so refusing to transfer the case to the Chief Judge for re-assignment because this is a criminal case where the prosecution was given the opportunity to put its house in order by amending the charge in the appropriate jurisdiction and refilling the charge where the alleged offence was committed for according to him, the door was not closed on the prosecution as the Trial Court merely gave the Appellant an opportunity to do the needful.....

According to the Learned Counsel, if the charge was transferred to the Chief Judge for re-assignment, the Chief Judge would still not know the appropriate division of the Federal High Court to re-assign same to and the same application will be made striking out the charge for want of jurisdiction. On the reliance

placed on the case of ***Ibori v. FRN (supra)*** by the Learned Counsel for the Appellant in support of his submission that the Learned Trial Judge ought to have transferred the charge on assumption that the Trial Court had no jurisdiction to entertain the charge, the Learned Counsel for the Respondent enumerated the grounds under which the Court of Appeal remitted the case to the Chief Judge of the Federal High Court for re-assignment to the appropriate Federal High Court with the requisite jurisdiction (see page 8 paragraph 3.17 of page 8 of the Respondent Brief of Argument to submit that it is wrong to argue that the principles in Ibori case applies.

Finally, the Learned Counsel to the Respondent in reaction to the reliance placed by the Learned Counsel for the Appellant on Section 93(1) (a) of the Administration of Criminal Justice Act, 2015, submitted that the Section of the law has not changed the position of the law for that to vest the Court with jurisdiction, the Court must on the face of the charge see that all essential elements of the charge are complete and that the offence was committed with the jurisdiction of the Court. The Learned Trial Judge, he maintained, rightly refused to transfer the charge on the ground that it was an exercise in futility to so do and so gave the prosecution opportunity to come back with a better framed charge.

In the light of the foregoing, we were urged to hold that the Honourable Court was right in refusing to transfer the case to the Chief Judge of the Federal High Court and resolve the issues against the Appellant but in favour of the Respondent.

RESOLUTION OF ISSUES NUMBERS ONE

(1) AND TWO (2) OF THE APPELLANT AND RESPONDENT:

In the resolution of these issues it is pertinent to note and it is also gratifying that parties are ad idem on the fundamental and threshold nature of jurisdiction in the adjudicatory process. As Tobi, JSC now of blessed memory severally put it for which *see A. G. Federation v. Abubakar (2008) 16 NWLR (pt.1112) 135 at 158, Okolo v. UBN Ltd (2004) 3 NWLR (Pt. 859) 87 at 108 paras. A-D Inakoju v. Adeleke (Ladoja's case) (2007) 4 NWLR (Pt. 1025) 423 at 588 paras. F-G; citing the locus classicus of Maduekolu v. Nkedilim (1962) 2 SCNLR 341, Onyeanucheya v. The Military Administration of Imo State (1997) 1 NWLR (pt.482) 429; Barsown v. Heinessy International (1999) 12 NWLR (Pt. 632) 516; Chief Utih v. Onoyiuwe (1991) 1 NWLR (Pt.166); "Jurisdiction is the Pillar of every adjudication and its cynosure which Courts of law must take first before the merits of the matter. Jurisdiction is a radical and crucial question of competence for if the court has no jurisdiction to hear case, the proceedings are and remain a nullity ab initio, however well conducted and brilliantly decided they might be, as a defect in competence is not intrinsic but rather extrinsic, to the entire adjudication. Jurisdiction is the nerve centre of adjudication; it is the blood that gives life to the survival of an action in a Court of law; in the same was blood gives life to the human being and the animal race".*

See also *Diapianlong v. Dariye (2007) NWLR (pt. 1036) 32, Ukwu v. Burge (1997) 8 NWLR 518; 527; Lufthansa Airlines v. Odoase (2006) 7 NWLR (pt. 978) 39. AG Lagos State v. Dosunmu (1989) 3 NWLR (Pt..111) 552;* ably cited and relied upon by the Learned Counsel for the Respondent.

Learned Counsel on both sides of the divide have also hit the nail on the head and have come to a consensus as to the elements that must be considered in determining whether Court is seised with the Jurisdiction to entertain a case be it Civil or Criminal matter which are that:

1. ***That the Court is properly constituted in terms of number and qualification of the Judges.***

2. ***That the subject matter is properly before the Court and***

3. ***That the case comes up before the Court by due process. Madukolu v. Nkemdilim (Supra) refers.***

As was rightly submitted on the authority of ***Ibori v. FRN (2009) 3 NWLR (Pt.1128) 283***, the jurisdiction of a Court can either be territorial or substantive and territorial jurisdiction means the geographical area in which matters brought before the Courts for adjudication arose and as far as criminal prosecution is concerned, where the ingredients of an offence occurs outside the territorial jurisdiction of a Court, that Court will not ordinarily assume jurisdiction over the offence.

Admittedly, just like any other Court, the Federal High Court is a creation of both the constitution and Statute by Section 251 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which vests the Court with exclusive jurisdiction to adjudicate mostly on civil matter. However, in respect of this particular case which is a criminal charge brought against the Respondent (the Accused person),Section 45 of the Federal High Court Act, 2004 which creates the Court and confers it criminal jurisdiction provides that

the Federal High Court shall have powers to try an offence where the offence or any part thereof was committed within the jurisdiction of the Court. See ***Njovens v. State (1993) 5 SC 17.***

As was rightly submitted by both Learned Counsel particularly the Learned Counsel for the Respondent citing ***Patrick Njoverns v. The State (Supra) Ibori v. FRN (supra). Haruna v. The State and Okoro v. A.G. Western Nigeria (1966) NMLR 13;*** the provisions of the Federal High Court Act, 2004 (Section 45 thereof) is akin to Section 64 of the Criminal procedure Act, 2004 which stipulates that:

"Where an offence against a Federal Law-

(a) Is begun in the State and completed in another State, or

(b) Is completed in the State after being begun in another State, the offender may be death with, tried and punished as if the offence had been actually or wholly committed in the State".

Section 93 of the Administration of Criminal Justice Act 2015 which is the recent Legislation on Criminal proceedings provides in respect of place of trial or territorial jurisdiction of Courts as follows:

"93(1). An Offence shall ordinarily be inquired into and tried by a Court within the Local limits of whose jurisdiction:

(a) The offence was wholly or in part committed or some act forming part of offence was done;

(b) The consequence of the offence has ensued;

(c) An offence was committed by reference to which the offence is denied; or

(d) A person against whom, or property in respect of which , the offence was committed is found having been transported there by the suspect or by a person knowing of the offence.

(2). A criminal charge shall be filed and tried in the division where the alleged offence was committed unless it can be shown that it is convenient to do otherwise for security reasons".

The bone of contention in this Appeal is the striking out of the seven count charge brought against the Accused (now Respondent) on the ground that none of the seven count charge disclosed that the offences or any part thereof with which the Accused/Respondent was charged, were committed within the territorial jurisdiction of the Federal High Court, Enugu so as to vest that Court or the Learned Trial Judge with jurisdiction to entertain the charge.

Now the Counts in the charge had been set out earlier but for purposes of emphasis it is necessary to reproduce once more the first count as done by the respective Learned Counsel in their Briefs of Argument which trend runs through the other six Counts as far as venue of the Commission of the offence is concerned:

"COUNT ONE:

That you Mr. Patrick Nelson Okolo sometimes (sic) in 2012 within the Jurisdiction of the Federal High Court of Nigeria with intent to defraud obtained the sum of $100, 000. From Martin Alum Okwor under the false pretence that you will supply a Mercedes AMG63 2013 Model to him, which pretence you

knew to be false and thereby commits an offence contrary to Section 1(1) (b) of the Advance Fee Fraud and other Related Offences Act, 2006 and punishable under Section 1 (3) of the same Act".

From the going Count and others there is no doubt and the Learned Counsel for the Appellant has conceded to the position taken by the Learned Trial Judge at pages 6/246 to 7/247 of the Ruling/Records that:

"The Seven (7) Count Charge filed before this Honourable Court did not actually disclose whether the offences alleged were committed within jurisdiction of this Honourable Court. all that the Counts of the charge stated is that "the accused person within the jurisdiction of the Federal High Court of Nigeria with intent to defraud....." None of the Counts stated that the accused person within the jurisdiction of the Federal High Court Enugu Division with intent to defraud.....?

Secondly none of the Counts stated that any of the sums of money obtained was done in Enugu State. In other words the 7 count charge did not disclose that the offence took place within the jurisdiction of the Honourable Court".

Thus the Learned Counsel has submitted in paragraph 4.16 of the Appellant's Brief that on the face of the charge, the phrase ***"within the Enugu Judicial Division"*** was not stated. However he has contended that this is not to warrant to quashing of the charge and for the count to decline jurisdiction. He has referred to pages 176-198 of the Records particularly page 181 thereof wherein one Pricilla Ezebilo Litigation Clerk in the Chambers of C. Chuma Oguejiofor & Co. deposed to the following facts in support of a motion on Notice

for the Enforcement of the Accused/Respondent's Fundamental Rights filed in the same Federal High Court, Enugu on the 17th of March, 2015 which Motion forms part of the Proof of evidence as can be found at pages 176-187 particularly at pages 180-181 thus:

"2. ***That the said Applicant is an International Businessman who is based both here in Nigeria and the United States of America, while in Nigeria, he resides ordinarily at one of his Houses located at NO. 5 Patrick Nelson's Drive, Amagwu, Umuene Iji Nike Enugu, I know this as a fact.***

3. ***That he informs me by phone today the 14th day of August, 2013 while I was at this law firm at No.8 Carter Street, Ogui, Enugu at 11.am and I believe him as follows:-***

4. ***That in the year of our Lord 2012, the 1st Respondent had given the Applicant the sum of 100,000 US Dollars to use the same to purchase a Mercedes Benz (G. wagon) for him, while the fund was collected by the Applicant in Enugu, the Vehicle was to be purchased in the United States of America.***

6. ***That in no time, the same 1st Respondent had approached Applicant again still as Enugu ad requested that he supplied another, Mercedes Benz (G. wagon AMG) Car to him, the consideration this time for that was 150,000 US Dollars because the AMG Model is more expensive than the normal or ordinary version of the car.***

7. ***The Applicant has never denied receiving money, sadly however, his auto suppliers in the United States of America had collected money for a***

Mercedes Benz (G. Wagon AMG) from him but supplied a Mercedes Benz (G. Wagon ordinary) to him which as earlier on stated above is a lot cheaper than the AMG model and does not also meet the contracted specification of the 1st Respondent.

8. *That upon the assurances of the dealers in the United States of America to remedy the situation soon, the Applicant had requested the 1st Respondent to give him time to deliver the correct vehicle to him".*

With the greatest respect to the Learned Counsel for the Respondent, although the charge does not state in any of the counts that the offence was committed at Enugu, the Learned Counsel cannot contend that it is not within the powers of a Court in the determination of jurisdiction to search the case file in order to determine whether it has jurisdiction or not although it is conceded that the particulars in the charge should carve out the way through which the Court would navigate its quest for the determination of whether it had jurisdiction which ordinarily are the intendments of Section 45 of the Federal High Court Act and Section 64 of the Criminal Procedure Act nay Section 93 (1) and (2) of Administration of Criminal Justice Act, 2015.

Although in Civil Proceedings, the jurisdiction of a Court is determined by the Writ of Summons and Statement of Claim perse, the position of the law is different in criminal matters particularly in the peculiar circumstances of this case and decided authorities. It is therefore not from the particulars of the Court can be determined. The authorities are Settled that the Process the essence of the Application filed by the Respondent/Applicant/Accused in the Lower Court was to quash or strike out the charge did for being inherently defective in the charge did

not State the venue of the commission of the offences. ***See Chief Lere Adebayo v. The State (2012) LPELR-9464 (CA) Page 21 Paras. D-F Per Kekere- Ekun, JCA (as he then was).***

Both Learned Counsel have cited ***Nyame v. FRN (2010) All FWLR (Pt.527) 618*** where the Supreme Court held that the most appropriate mode of determination of the venue of offence, hence the territorial Jurisdiction of a court or whether the charge is competent is to identify the offences charged and the elements of same as contained in the Proof of evidence.

Going by these authorities, the Affidavit of Pricilla Ezeilo where in she confirmed that some initial sums of money received by the Accused/Applicant (now Respondent) for the Purchase of the car now the Subject of the were maid of the Respondent at Enugu formed part of proof Besides, the Learned Counsel for the Respondent cannot appropriate and reprobate at the Same time having been informed and indeed he knew that the Respondent Ordinarily resides in Enugu with his Specific residential address clearly Stated in the Affidavit and having initiated Suit No. FH/EN/M/145/2013 in the same Court.

It is pertinent to note from the Statement of the Accused/Respondent to the EFCC at Page B1/18-190 of the Proof of Evidence/Records, the Accused/Respondent of No. 5 Patrick Nelson Drive Nike, Enugu did aver in unequivocal terms that he collected Part of the monies Paid by the Complainant Mr. Martin Alum at Enugu. Hear him:

" My name is Chief Patrick Nelson Okolo my address is No. 5 Patrick Nelson Drive Nike Enugu and also 2775 Campbellton Road, Atlanta Georgia 30311 in Nigeria and USA, respectively. I am the Chief Executive Officer of Auto

Union llc LTD; a registered Company that is into a car dealership. Today the 3/01/14 I was shown a copy of the Petition written against me by One Mr. Martins Alum Okwor and wish to State as follows:-

That the Complainant is my Second Cousin who approached me to Purchase a Guard for him. I obtained a loan from Mercedes Benz Finance Corporation in the Sum of 150,000 Us Dollars for the Purchase of the G Guard car since the Complainant was paying by installment After had paid a (sic) wial of 128,000 U.S Dollars, he sold it at the cost of 100,000 U.S Dollars and took a risk of 28,000 Dollars. When the Hundred Thousand was paid into my account, it was (sic) ceased by another Bank that had Judgment against me. The Complainant paid in the Hundred thousand (record) 100,000 US Dollars into Auto Union Bank Account domicile in chase Bank USA. I agree that I owe the complainant the sum of #150,000 US Dollars. I have placed my 3 storey building of 8 flats in the Market for sale to off-set the debt. I had also informed the complainant and asked him if he could find a buyer so that I can pay him from the proceeds. I was surprised to see the complainant with EFCC Officials that came and arrested me. All I did with complainant was pure business transaction of contract category. I HAVE ALSO INSTITUTED COURT ACTION AT THE FEDERAL HIGH COURT, ENUGU IN THE SUIT NO.FHC/EM/M/145/2013."

Pray, if the accused himself admitted that the complainant approached him here in Enugu where the initial sum of money for the purchase of the car that has generated this case was paid is it not the height of mischief for the learned Counsel to turn round to hood-winking the Court below into believing that it had no jurisdiction simply because the charge which disclosed that the offence took

place "within the jurisdiction of the federal High Court of Nigeria" did not include Enugu Judicial Division?

Again, was it not the same Learned Counsel who knew very well that the Federal High Court, Enugu; where the accused/Respondent was arraigned on the amended charge had the territorial jurisdiction to hear that charge that initiated the proceeding in suit No. FMC/EM/E/M/145/2013 in the same Court? Why should the Learned Counsel approbate and reprobate at the same time? I am of the view that both the Learned Counsel and the Learned Trial Judge for whatever reason or motive, were unnecessary technical. From the statement of the applicant/Respondent/Accused person earlier reproduced, he had proffered a defense and if the Learned Counsel had allowed the Respondent to take his plea and the trial commenced perhaps this case would have ended or the substantive judgment ought to be on appeal now.

It would appear that the Law makers in their wisdom were apprehensive of gimmicks of this nature by smart Legal Practitioners and indeed impatient and gullible trial Judges in matters like this, thus necessitating their enactment of section 70 of the Criminal Procedure Act which is the effect that notwithstanding the provisions of sections 64, 65, and 67, a Judge or Magistrate of a Division or District in which a person is apprehended who is charged with an offence, alleged to have been committed in another Division or District, may if he considers that the ends of Justice would be served by hearing the charge against such a person in the Division in which he had been apprehended and having regard to the accessibility and convenience of the witnesses, proceed to hear the charge and the person charged may be proceeded against, tried and punished in any Division

in which he was apprehended and is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging the offence, as if the offence had been committed in that Judicial Division.

In the text ***"The Criminal Procedure of the Southern States of Nigeria,"*** 2nd edition by Fidelis Nwadilo, SAN at page 95, the Learned Author (now of blessed memory) commenting on the provisions of section 70(1) of the Criminal Procedure Act as paraphrased above reasoned on the authorities of ***Ikara Ubok Usan v. The State (1978) 67SC 175;*** that:

> ***"The primary considerations required of the trial Judge by section 70(1) are, (1) that the ends of justice would be served by hearing the charge against the accused in the Division in which he is asked to assume jurisdiction,(11) that the accused was apprehended or in custody in that Division and (111) accessibility and convenience of the witnesses. An order for assumption of jurisdiction is thus proper where the accused and all witnesses are resident in Division."*** See also section 99 of ACJA, 2015, ably cited by Learned Counsel for Appellant.

In the instant case even if the Federal High Court Enugu Division had no jurisdiction in that the venue of the commission of the offence was not mentioned and the accused resided within jurisdiction, the accused was apprehended in Enugu and most of the witnesses are resident within jurisdiction; the Learned Trial Judge ought to invoke the above section 70(1) of the CPA 2004 in the interest of justice and assure jurisdiction.

Again, since like the proverbial Bird *"Eneke Nti Obạ"*, Lawyers have learnt to employ all sorts of subterfuges before gullible Judges, to frustrate trials of otherwise guilty persons, and in view of the extra- ordinary seasons of anomie we have witnessed in this Country in recent times, the administration of Criminal Justice Act, 2015 has provided in clear terms by section 221 thereof that:

> ***"221. Objections shall not be taken or entertained during proceeding or trial on the ground of the imperfect or erroneous charge"***

Although the above provision has been the subject scurrilous criticism in that what the provision seems to be saying is that even if where an error of whatever magnitude including jurisdiction as in this case (assuming the Respondent's Objection is tenable), is discovered, the trial Judge should allow the case to continue in order to have a speedy trial and avoid frivolous applications, the Act has also made saving provisions in sections 216 and 222 of the ACJA, 2015 in the following terms:

> ***"216 (1): A Court may permit an alteration or amendment to a charge or framing of a new charge at any time before judgment is pronounced.***
>
> ***(2) An alteration or amendment of a new charge shall be read and explained to the Defendant and his plea to the amended or new charge shall be taken.***
>
> ***(3) Where a defendant is arraigned for trial on an imperfect or erroneous charge, the Court may permit or direct the***

framing of a new charge, or an amendment to, or alteration of the original charge

(4) Where any Defendant is committed for trial without a charge or with an imperfect or erroneous charge, the Court may frame a charge or add to alter the charge as the case may be having regard to the provisions of this Act."

The above provisions are not strange to our criminal procedure Law and with due respect to the Learned Author of practical approach to CRIMINAL LITIGATION in Nigeria (Third Edition)", J. A. Agaba Esq. at pages 514 to 515, the way and manner the Courts would exercise their powers are expressly stated in the provisions and decided authorities. Section 216 of ACJA, 2015 IS A REPLICA OF SECTION 163 OF CPA, 2004 which has been interpreted in a plethora of cases like ***Amakor v. The State (1995) 6 NWLR 11 (1995) LPELR 45), Eheazu v. Cop (1974) S.C 46. Rufus v. The State (2014) LPE LR- 22797; Bellow v. The State (2013) LPELR – 20626.*** The bottom line is that the can Permit the Prosecution to amend, alter or from a new charge any time before Pronouncement of Judgment. The Court *suo motu* can by virtue of Sub Section (3) thereof, the Court can also permit or direct *suo motu* the framing of a new charge, or an amendment or alteration of the original charge by the provisions subsections (4) of the Section the Court is also imbued with the extra-ordinary powers of framing *suo muto* a charge or even add or alter the charge as the case may be where a defendant is arraigned or committed for trial on an erroneous or imperfect charge or even without a charge. All that the law expects of the Court in the amendment or framing of the charge Process

where such imperfection or error exist in the course of arraignment , are as provided in subsection (2) of Section 216 and Sections 217 (1) and (2W) that an alteration or arraignment of a new charge or where a new charge is framed or altered, under the provisions of Section 216 of the Act, the court shall call on the Defendant to plead to the new or altered charge as it he had bee3n arraigned. It is only where plea is not taken to amended or altered charge that the breach of the Accused person's right to fair hearing can be said to have been occasioned. See Per Rhodes- Velour, JSC in ***Timothy v. The FRN (2012) LPELR-9346 (SC), NAF v. The James (2003) FWLR (pt. 143) 257. Princes v. The State (2003) FWLR (Pt. 141) 1878;***

In the instant case, the accused/Respondent was arraigned on the 23rd day of February,2015 and even though the ACJA had not come into force, the provisions of the CPA, 2004 ought to be invoked to order for the amendment of the charge to include the innocuous phrase in the Enugu Judicial Division as can be gathered from the proof of evidence that part/initial elements of the offences for which the Respondent was charged occurred in Enugu and indeed Enugu was where the consequence of the offence was to ensure or ensued as claimed by the Appellant.

As far as I am concerned, the call by the Learned Counsel for the transfer of the charge to another jurisdiction was uncalled for as in my humble opinion, the Learned Trail Judge ought to have invoked the provisions of either sections 163 and 70 of the CPA, sections 99 and sections 216 and 217 of the administration of Criminal Justice Act, 2015 to either allow the appellant to amend the charge or *suo muto* amend the charge in the interest of jurisdiction.

Issue numbers 1 and 2 of the Appellant and Respondent are hereby resolved in favour of the Appellant and against the Respondent.

ISSUES NUMBERS 3 OF THE APPELLANT AND RESPONDENT:

> ***"WHETHER THE LEARNED TRIAL JUDGE HAD JURISDICTION TO HAVE ORDERED THE APPELLANT TO RELEASE THE INTERNATIONAL PASSPORTS OF THE RESPONDENT HAVING HELD THAT HE HAS NO JURISDICTION TO TRY AND DETERMINE THE CHARGE AGAINST THE RESPONDENT AND STRUCK OUT THE CHARGE AND ALSO WHEN THE HIGH COURT OF ENUGU STATE HAD EARLIER MADE AN ORDER ON THE SAME PASSPORTS? (GROUNDS 3AND 4)"***
>
> ***AND***
>
> ***"WHETHER HAVING DECLINED JURISDICTION AND STRUCK OUT THE CHARGE THE HONOURABLE COURT WAS RIGHT TO HAVE ORDERED THE RELEASE OF THE RESPONDENTS' INTERNATIONAL PASSPORTS? (GROUNDS 3 AND 4).***

I am of the candid view that the above issue is moribund and of no moment now having resolved that the Court below had the jurisdiction to hearing the charge against the Respondent. For whatever it is worth, the Learned Counsel for the Appellant has referred us to the ruling of the Learned Trial Judge at pages 241-248 of the Records particularly at page 248 thereof ordering the release of the Respondents international passports which the Learned Counsel contends was belated after striking out the charge want of jurisdiction. It was further

contended the documents were seized by the appellant pursuant to the arrest of the Respondent and filing of the charge in Court.

The Learned Counsel for the Appellant maintained that having held that he lacked jurisdiction to entertain the charge, the Learned Trail Judge lacked the requisite jurisdiction to order for the release of the passports. For the above submission he relied on the ***State v. Osuzu (2009) 3NWLR (Pt. 1128) 247 at 266 E-F per Abdullahi, JCA*** (as he then was) to further submit that a Court that lacks jurisdiction to hear a substantive case also lacks the jurisdiction to hear and determine the ancillary reliefs in this case.

In addition to the above, the Learned Counsel for the Appellant pointed out, in the course of the pending charging at the trial Court on 2014, the Respondent bought a motion on notice dated 27/2/2015 filed a motion dated 27/2/2015 for the release of the international passports (page 132 to 147 refers. Pending the motion the Respondent again on 4/8/15 filed a similar motion before the High Court Enugu State asking for ..... Reliefs relating to passports on an order directing their release to the Respondent by the High Court. Pages 275-301 of the records refer.

The prayers in the motion in the High Court were said to be identical with the ones sought at the Federal High Court particularly prayer 2 thereof. The facts were said to be confirmed by the Respondent in the Further Affidavit in support of the Preliminary Objection filed on the 21st day of August, 2015 and the counter-affidavit filed on the 21st day of August, 2015 at Enugu State High Court in paragraphs 8 and 9 as reproduced. Learned Counsel also referred us to page 303-304 of the Records where the written address in supporting the Counter- Affidavit

dated 21/8/2015 in Paragraph 2 thereof which was reproduced in Paragraph 5.14 of the Appellant's Brief.

Based on the Notice of Discontinuance contained/highlighted above, that the High Court assumed Jurisdiction and heard the Application. The learned Counsel for the Appellant referred us to the considered Ruling delivered by the High Court in Pages 408-409 of the Records in which the High based on certain conditions but rather than comply with the conditions, the learned Counsel went back to the Federal High Court (a Court of coordinate Jurisdiction) which granted the said Prayer the Respondent had with-drawn from the High Court earlier.

Placing reliance on ***Ibori v. FRN (Supra) at 326 B-C***; he submitted that this court frowns at forum shopping especially that the Prayer for release of Passport had been discontinued by Respondent.

It was therefore submitted as at the time the Federal High Court made the order, the Prayer for release was not Properly before the court ass it had earlier been discontinued and the High Court had made an order relating to the said Pass-ports and in effect the Federal High Court lacked jurisdiction to have entertained a relief not Properly before it not being a father Christmas to grant what not Sought.

We were therefore urged in conclusion to allow the Appeal and set aside the entire decision of the lower Federal High Court.

Reacting to the above arguments of the Learned Counsel contended that by the striking out the charge, there was nothing remaining to warrant the continued detention a seizure of the Respondent's international Passports. Distinguishing

this case from Osuzu's case cited by the learned Counsel for the Appellant, he submitted that in the latter case, the case was alive awaiting plea to be taken, whereas in our present case the Lower Court had struck out the charge leaving nothing for any consideration.

According to the Learned Counsel for the Respondent, it would have been different, if the Court below had obliged the Appellant with the prayer of transfer to another Court and that the order of the Lower Court was akin to a trial Court or any Court ordering the release of exhibits after discharging the accused person of the charge bought against him, thus the Court was well within its rights when it ordered the release of the Passports.

Finally, the Learned Counsel submitted that the Appellants had in their paragraphs 5.9-5.20 of the Appellants brief argued issues that did not flow from the decision of the lower Court brought to confuse this Court.

In conclusion, we were urged to dismiss the Appeal for the reasons enumerated at page 11 of the Respondent's Brief and affirm the decision of the Lower Court.

RESOLUTION OF ISSUES NUMBERS 3 OF THE APPELLANT:

Without any waste of judicial time, there are authorities galore on the time-honoured principle of Law that a Court that has no jurisdiction to adjudicate and/pronounce on the substantive relief before it, has no power to adjudicate and pronounce on the ancillary claim. See per Igah, JSC in ***Egbuonu v. Bornu Radio Television Corporation (1997) ALL NLR 74. (1977) 12 NWLR (Pt. 531) 29 (1997) LPELR – 1040 SC; at 22 Paras. A-C SPDC v. Adeyemi - Bero & Anor. (2004)***

LPELR- 1393 (CA) per Salami, JCA (as he then was) citing with approval the locus classicus of *Tukur v. Govt. of Gongola State (1989) 1NWLR (Pt. 117) 517*; the Registered trustees of *Living Christ Mission v. Aduda (2000) 3 NWLR (Pt. 647) 14, Nabore Properties Ltd. v. Peace Cover Nigeria Ltd. & Ors (2014)* citing *Modashiru v. persons unknown (2004) LPELR-7412 (CA) and Eguamwense v. Amaghizenwen (1993) NWLR (Pt. 315) 1.*

The Supreme Court as recent as 2012 in a full complement pronounce on this principle in the case of *DR. Adewunmi- Bero v. Lagos State Development Property Corporation & Anor. (2012) LPELR-20615 (SC) at 26 – Paras. – C* Per Peter-Odili, JSC; That:

> *"A Court cannot adjudicate over ancillary claims it has no jurisdiction to entertain the main claim and if the ancillary claims inevitably involve a discussion of the main claims"*

Thus, as was held in the *State v. Osuzu (2009) 3 NWLR (Pt.1128) 247 at 266 paras. E-F* per Abdullahi, JCA ably cited by the Learned Counsel for the Appellant that:

> *"I am of the opinion that the ambiguous decision of the Court or unwillingness to adjudicate over the murder charge is one which not only remained on the fact of the proceedings, but also cuts deep into all the matters in the proceedings and therefore rendered him incompetent to release the accused on bail"*

This position of the Law is sacrosanct for as it is said in local parlance you cannot drive flies from food that you do not eat. If the Court below was actually right in declining jurisdiction, then it had no business releasing the Accused Persons Passport since these documents are ancillary to the prosecution of the Accused person.

To worsen the situation, apart from the series of Applications filed earlier on culminating in the subject of this Appeal filed on the 27/2/15 for the striking out of the charge, the Learned Counsel for the Accused/Applicant had filed a motion on the 4th day of August, 2015 at the High Court of Enugu State prayer three thereof which also was for declaration that the Respondent's international passport since 31/12/2014 thus making it impossible for the Applicant to exit from Nigeria for his routine United States of America treatment which he mandatorily undergoes every six months is without jurisdiction.

In prayer (4) of that motion, the Accused/Applicant also sought for an order compelling the Respondent to release the Applicant's aforementioned international Passports forthwith. There is also no doubt that the prayers in the before the state High Court were akin to the ones in the Federal High Court's motion at page259 of the Records for the striking out of the charge and for the dismissal of the charge. See also the further Affidavit in response to the Affidavit in support of the preliminary object filed on the 21st August, 2015 in paragraphs 8 and 9 where the Learned Counsel in paragraph 2 of his written Address in support of the Counter- Affidavit dated 21st August, 2015 submitted that;

"2. The truth of the matter is that when the Applicant was informed that the trial Court would be on his

annual judiciary vacation till September ending, he had made this Application to this Court which is the vacation Court and the circumstances discontinued his paragraph 2 in the Application in the Federal High Court which he prayed the Court of the same relief (underline mine) as in the present Applicant (copy of the said notice of discountenance herein attached to the further Affidavit and marked Exhibit "A" PAGES 303-304 of the Records refer".

The High Court upon the Notice of discountenance, assumed jurisdiction and determine the Application and in the process still discountenanced the prayer for the release of the international passports. The Respondent in a manner smacking of forum shopping still went back to the Federal High Court to re-litigate the issue at the Federal High Court on 10/12/15 whereby the latter made a contrary order culminating in this Appeal. Even then, while this Appeal was pending, the Accused/ Respondent brought a similar Application pursuant to order 8 Rule 8 of the Court of Appeal Rules, 2011 and I dare repeat what I said in my Ruling while refusing the Application that the crux of the Appeal now determined today hinges on whether the Learned Trial who had by implication held that he had no jurisdiction to entertain the substantive charge could make consequential orders, on the rights of the parties. In the course of my Ruling of which Learned brothers Yakubu and Tur, JJCA concurred, I alluded to some of the authorities earlier cited like ***Utih & Ors. v. J.U Unoyivwe & Ors. (1991) 1 NWLR (Pt. 166) 166; (1991) LPELR-3436, per Bello, C.J.N. at 69 paras. B-E. Adesola v. Abidoye & ANor (1999) 14 NWLR (Pt. 637) per Karibi Whyte, JSC at 28 paras. F-G Akinbola v. Plison***

Fisko Nig. Ltd. & Ors. (1991) LPELR-343 (S.C) at 21 paras. B-C and the most recent case of *Kawawu v. PDP (2017) 3 NWLR (pt.1553) 420 at 433 per Sanusi, JSC* which support our position that on the assumption that the Federal High Court to which the Respondent had ran to for the enforcement of his Fundamental Rights, had no jurisdiction to entertain the substantive charge against, the Respondent, then the same Court would have lacked the jurisdiction to content to the ancillary order of release of Respondent's passports.

Notwithstanding the grand standing by the Learned Counsel for the Respondent, the ***State v. Osuzu (supra)*** is applicable to the facts of this case and the arguments of the Learned Counsel for the Appellants in paragraphs 5.9 to 5.20 are very relevant and flow from the decision of the Federal High Court.

The matters are not extraneous and even if they are, it is our view that the essential elements of the offence of receiving under false pretences were disclosed not only in the Counts of the charge but in the proof of seven and the Court ought to invoke provisions of the Criminal procedure Act and the ACJA, 2015 the Learned trial Judge ought to have called for the amendment of the charge or to have amended same *suo muto* in the interest of Justice.

On the whole I am of the view that the Court below was seised of the requisite jurisdiction to entertain the charge particularly when some of the essential elements took place within its territorial jurisdiction which is Enugu that the said Court is situated.

This Appeal is therefore meritorious and is accordingly allowed. The charge shall be amended if necessary and the trial commenced denovo before any other

Judge of the Federal High Court as the Ruling of the Court per D.V. Agishi, J. delivered on the 10th day of December, 2015, is hereby set aside.

IGNATIUS IGWE AGUBE
JUSTICE COURT OF APPEAL

APPEARANCES:

MICHAEL ANI ESQ: **Snr. Legal Officer EFCC, Enugu Zonal Office of the EFCC for the Appellant.**

OGOCHUKWU ONYEKWULUJE, ESQ: **For the Respondent.**

OPINION:
JOSEPH TINE TUR, JCA

I had the privilege of reading an advance copy of the determination of this appeal by my learned brother, **IGNATIUS IGWE AGUBE, JCA**. I concur. I shall add the following opinion. **Section 294(2)-(3) of the Constitution of the Federal Republic of Nigeria, 1999** as altered reads as follows:

> ***"2. Each Justice of the Supreme Court or of the Court of Appeal shall express and deliver his opinion in writing, or may state in writing that he adopts the opinion of any other Justice who delivers a written opinion:***
> ***Provided that it shall not be necessary for all the Justices who heard a cause or matter to be present when judgment is to be delivered and the opinion of a Justice may be pronounced or read by any other Justice whether or not he was present at the hearing.***
> ***3. A decision of a Court consisting of more than one Judge shall be determined by the opinion of the majority of its members."***

I am entitled under Section 294(3) of the Constitution to render my opinion or to adopt that by any of my brother Justices that heard this appeal. Determination of the Supreme Court and the Court of Appeal Justices in Nigeria are to be headed ***"decision"*** or ***"opinion"*** by virtue of Section 294(2)-(3) of the Constitution. A ***"decision"*** is defined in Section 318(1) of the Constitution as follows:

> ***"318(1) In this Constitution, unless it is otherwise expressly provided or the context otherwise requires-***
> ***"Decision" means, in the relation to a Court, any determination of that Court and includes judgment; decree, order, conviction, sentence or recommendation".***

I shall refer to the amended seven count charge the State intended to prosecute the respondent for which the learned Counsel took objection on two principal grounds, namely, that the offences were not stated to be committed within the territorial jurisdiction of the Federal High Court, Enugu where the appellant had been arraigned to stand trial and secondly, the proofs of evidence did not disclose any prima facie evidence to warrant the arraignment.

Nigeria is a ***"Federation"*** that is governed by the Constitution of the Federal Republic of Nigeria, 1999 as altered. See Section 3(1)-(6) of the Constitution. Section 318(1) of the Constitution defines the word ***"Federation"*** to mean ***"the Federal Republic of Nigeria".*** Section 249(1)-(2)(a)-(b) of the Constitution reads:

> ***"249(1) There shall be a Federal High Court.***
>
> ***(2) The Federal High Court shall consist of -***
>
> ***(a) A Chief Judge of the Federal High Court; and***
>
> ***(b) Such number of Judges of the Federal High Court as may be prescribed by the Act of the National Assembly."***

The Federal High Court is established under Section 249(1)-(2)(a) and (b) of the Constitution as ***"a Federal High Court."*** The Federal Republic of Nigeria is the territorial jurisdiction of the Federal High Court. The Federal High Court is not ***"a High Court of the Federal Capital Territory, Abuja"*** (Section 255(1)) nor a High Court that is created ***"for each State of the Federation"*** (See Section 270(1) of the Constitution. The jurisdiction of the Federal High Court is expansive; it covers the entire land scope of the Federal Republic of Nigeria. The fact that the Federal High Court sits in some State Capitals does not convert them into State High Courts. The legislature, for purposes of convenience, created judicial divisions to bring justice nearly home to the populace in the States where they are located. See **Ajibade vs. Theodora (1992) 6 SCNJ (Pt.1) 44** at 56.

Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999 as altered provides as follows:

"251(1) Notwithstanding anything to the contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters,.."

The Federal High Court exercises jurisdiction in criminal causes and matters under Section 251(2)-(3), 252-254 of the Constitution which reads as follows:

"(2) The Federal High Court shall have and exercise jurisdiction and powers in respect of treason, treasonable felony and allied offences.

(3) The Federal High Court shall also have and exercise jurisdiction and powers in respect of criminal causes and matters in respect of which jurisdiction is conferred by subsection (1) of this section.

252(1) For the purpose of exercising any jurisdiction conferred upon it by this Constitution or as may be conferred by an Act of the National Assembly, the Federal High Court shall have all the powers of the High Court of a state.

(2) Notwithstanding subsection (1) of this section, the National Assembly may by law make provisions conferring upon the Federal high Court powers additional to those conferred by this section as may appear necessary or desirable for enabling the Court more effectively to exercise its jurisdiction.

253. The Federal High Court shall be duly constituted if it consists of at least one Judge of that Court.

254. Subject to the provisions of any Act of the National Assembly, the Chief Judge of the Federal High Court may make rules for regulating the practice and procedure of the Federal High Court."

The Federal High Court exercises jurisdiction in criminal causes and matters firstly, under Section 251(2)-(3) and 252(1)-(2) of the Constitution and

secondly, ***"...as may be conferred by an Act of the National Assembly..."*** (See Section 252(1) of the Constitution) or, as ***"the National Assembly may by law make provisions conferring upon the Federal High Court powers additional to those conferred by this section as may appear necessary or desirable for enabling the Court more effectively to exercise its jurisdiction"*** – See Section 252(2) of the Constitution. Pursuant to the above provisions of the Constitution, the legislature promulgated the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 for the arraignment and prosecution of alleged fraudsters. Section 14 of the Act is couched as follows:

> ***"14. The Federal High Court or the High Court of the Federal Capital Territory and the High Court of the State shall have jurisdiction to try offences and impose penalties under this Act."***

Jurisdiction is conferred on the Federal High Court, the High Court of the Federal Capital Territory and the High Court of State ***"...to try offences and impose penalties under this Act."*** The Act automatically excludes or prohibits any other Court from trying offences and imposing penalties under this Act on any other Court created for the Federation of Nigeria or created by any of the States in Nigeria or Federal Capital Territory, Abuja. In **Udoh vs. Orthopedic Hospital Management Board (1993) 7 SCNJ (Pt.2) 436 Karibi-Whyte, JSC held at page 443** thus:

> ***"It is a well settled principle of construction of statutes that where a section names specific things among many other possible alternatives, the intention is that those not named are not intended. Expressio unius est exclusio alterius. See A-G. of Bendel State Vs Aideyan (1989) 4 NWLR. (Pt.118) 46. This is that the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have applied by implication, with regard to the same issue – see***

Ogbunyinya Vs Okudo (1979) 6 SC 32; Military Governor of Ondo State Vs Adewuunmi (1988) 3 NWLR (Pt. 82) 280."

I am of the candid opinion that the learned Federal Judge erred in law and in fact to have held at page 247 lines 8 to page 249 lines 1-26 of the printed record as follows:

> ***"The issue of jurisdiction is no doubt very important in the adjudication of cases. The law is trite that a court without jurisdiction to hear and determine a case cannot confer jurisdiction on itself. On this issue of jurisdiction as canvassed by the parties in relation to the facts of this suit, it is my opinion that Section 64 CPA and Section 45 of the Federal High Court are apposite here. Section 64 of CPA is very vast but of interest to us with respect to this care is S.64(a) and (c)(ii), (iii) and (iv). These sections are hereunder reproduced for clarity.***
>
> ***(a) "An offence shall be tried or inquired into by a court having jurisdiction in the division or district where the offence was committed.***
>
> ***xxxxxxxxxxxx***
>
> ***(c)(ii) When an offence is committed partly in one division or district and partly in another".***
>
> ***Similarly, Section 45(a) of the Federal High Court Act has stated the law exactly as provided in S.64(a) CPA. The question therefore is whether any part of the offence alleged was committed in this division of the Federal High Court in order to confer this court with the jurisdiction to try the Accused/Applicant. To get an effective answer to this question, reference must be made to the amended charge before this Honourable Court. The seven (7) counts change filed before this Honourable Court did not actually disclose whether the offences alleged were committed within the jurisdiction of this Honourable Court. All that the counts of the charge stated in that "the Accused person within the jurisdiction of the Federal High Court of Nigeria with intent to defraud..." None of the counts stated***

that the Accused person within the jurisdiction of the Federal High Court Enugu Division with intent to defraud..."

Secondly, none of the counts stated that any of the sums of money obtained was done in Enugu State. In other words, the 7 counts charge did not disclose that the offence took place within the jurisdiction of this Honourable Court.

The Complainant's counsel, Mr. Ani in his submission on this issue of jurisdiction contented that this Honourable Court has the jurisdiction to hear and determine this matter. He argued that both the Federal High Court Enugu and the Federal High Court Lagos have the jurisdiction to hear and determine this suit. Submitting the learned counsel referred to count 1 and stated that the Accused obtained the sum of 100,000 USD from Martin Alum Okwor through Dr. Innocent Chukwuma OFR Managing Director of Innoson Nigeria Ltd based in Enugu, the initial discussion on how to procure the said Mercedez Benz AMG 2013 Model and the initial payment for the car were made in Enugu.

There is however no reflection of the above facts in any of the counts filed before me. The name of Dr. Innocent Chukwuma OFR is no where to be seen in any of the courts as alleged and or claimed by the prosecuting counsel. It is therefore my opinion that the Complainant has not satisfactorily disclosed the jurisdiction competency of this court to handle this suit. They have not been able to prove that the alleged offence took place within the Enugu Division of this Court.

It is to be noted that jurisdiction is the life blood of any litigation before a court. When a court lacks jurisdiction, any action taken by that court in a suit will be a nullity notwithstanding the fact that the proceedings taken by the court was well conducted. It looked to me that no acts constituting the offence occurred in this jurisdiction of the court where the Accused is arraigned.

I am therefore tempted to agree with the defence counsel that the amended charge and the proof of evidence laid down before the court show that none of the offences alleged against the Accused person took place in Enugu. The case of Ibori Vs. FRN (2009) 3 NWLR (part 1128) 283, no doubt is applicable to the facts of this case.

This court is urged to transfer this suit to the Chief Judge for re-assignment if it feels it has no jurisdiction to try this matter. Looking at the circumstances and the facts of this case however, I am of the opinion that, that cannot be possibly done. This is simply because the Complainant did not mention any specific known jurisdiction where the offence was allegedly committed.

On the issue whether a prima facie has been established against the Accused person to warrant calling upon him to take plea, my opinion is in the negative. This is because if this court does not have the jurisdiction to hear this matter as earlier stated, then the fact of a prima facie case being established against the Accused will be of no moment here.

On the whole, the defence preliminary objection on the issue of jurisdiction is upheld and the charge against the Accused person is struck out accordingly.

D. V. Agishi
Judge
12-11-15

It is hereby ordered that the Accused/Applicant Nigerian International Passport No. A03261481 and United States of America Passport No. 466614063 be forthwith released to him.

D. V. Agishi
Judge
12-11-15".

Had the respondent shown any cogent reasons why **Agishi, F.J.,** ought to have declined jurisdiction, the Court would have lacked the powers to transfer the proceedings to any other Court since there is no provision to do so

under the Advance Fee Fraud and Other Fraud Related Offences Act, 2006. The power of a learned trial Judge to transfer proceedings to another ought to be governed by an Act of the National Assembly or a Law of the Federal Capital Territory or of a High Court of a State as the case may be. See **Okoli vs. Ezeoke (1958) 2 ERNLR 26; Balogun vs. Adesanya 19 NLR 19; Ajayi vs. Odunsi (1959) 4 FSC 189 and Nigerian Leather Works Ltd. vs. Voss (1977) NNLR 220 at 223 ; Ige vs. Obiwale (1968) NMLR 22.** A transfer of a suit from one Court to another occurs if a Statute or a Law permits it. See **MBA vs. Owoniboys Tech. Services (1994) 8 NWLR (Pt.365) 705; Egbo vs. Laguna (1988) 3 NWLR (Pt.80) 109 and Mokelu vs. Federal Commissioner For Works and Housing (1976) 1 NMLR 329.** Where a learned trial Judge does not have jurisdiction to try a substantive cause or matter, civil or criminal, the Court cannot make orders to bind the parties or their privies. Jurisdiction has to be vested in a Court of justice for the learned trial Judge to determine the rights of the parties. See **Kalu vs. Odili (1992) 6 SCNJ (Pt.1) 76 at 90; Nyarko vs. Akowuah 14 WACA 426 and Ede vs. Commissioner For Works & Housing (1980) 1 PLR 318 at 326.** Where a learned Judge has no jurisdiction on all the issues submitted for adjudication it is better to decline adjudication. See **Nwafia vs. Uluba (1968) All NLR 75; Attorney-General of Lagos State vs. Dosunmu (1989) 6 SC (Pt.2) 1** and **University Press Ltd. vs. I.K. Martins Ltd. (2000) F.W.L.R. (Pt.5) 722** at page 734 and page 736 paragraphs "A" "C"

The argument by the learned Counsel to the respondent in the Court below and in this Court that the learned Federal Judge should have declined adjudication for the failure of the State to indicate where the offences had been committed in Enugu State has no judicial foundation or support for the reasons I have given.

Learned Counsel should always tailor support their argument with reference to the Constitution, an Act of the National Assembly or a Law of a

State creating the Court in question. This may be further supported by judicial precedent if available. That will save the time and energy that it take to try, convict and sentence or acquitted offenders. When an offender contends that the jurisdiction of a Court is ousted because the cause or matter, criminal or civil did not arise within the territorial jurisdiction of that particular Court, I believe that the best guide is what **Lord Mansfield, C.J., said in Mostyn vs. Frabrigas (1775-1802) All. E.R. Rep. 266 at 269-270** to wit:

> ***"In every plea to the jurisdiction, you must state another jurisdiction. Therefore, if an action is brought here for a matter arising in Wales to bar the remedy sought in this Court, you must show the jurisdiction of the Court of Wales. In every case to repel the jurisdiction of the King's Court, you must show a more proper and more sufficient jurisdiction, for, if there is no other mode of trial, that alone will give the King's Courts a jurisdiction. In this case no other jurisdiction is shown, even so much as in argument. If the King's Courts of justice cannot hold plea in such case, no other Court can do it. For it is truly said that a governor is in the nature of a viceroy, and, therefore, locally during his government no civil or criminal action will lie against him. The reason is because on process he would be subject to imprisonment. But here the injury is said to have happened in the Arraval of St. Philip's, where without his leave no jurisdiction can exist. If that be so, there can be no remedy whatsoever if it is not in the King's Courts because when he is out of the government and is returned with his property into this country there are not even his effects left in the island to be attached.***
>
> ***Another very strong reason would alone be decisive, and it is that, though the charge brought against him is for a civil injury, yet it is likewise of a criminal nature, because it is in abuse of the authority delegated to him by the King's letters patent, under the Great Seal. If everything committed within a dominion is triable by the Courts***

within that dominion, yet the effect or extent of the King's letters patent, which gave the authority, can only be tried in the King's Courts, for no question concerning the seignory can be tried within the seignory itself. Therefore, where the question respecting the seignory arises in the proprietary governments, or between two provinces of America, or in the Isle of Man, it is cognizable by the King's Courts in England only. In the case of the Isle Man (4 Co. INST. 284) it was so decided in the time of Queen Elizabeth, by the Chief Justice and many of the judges. So that emphatically the governor must be tried in England to see whether he has exercised the authority delegated to him by the letters patent legally and properly or whether he has abused it in violation of the laws of England and the trust so reposed in him.

It does not follow that, let the cause of action arise where it may, a man is not entitled to make use of every justification his case will admit of, which ought to be a defence to him. If he has acted right according to the authority with which he is invested, he must lay it before the Court by way of plea, and the Court will exercise their judgment whether it is a sufficient justification or not. In this case, if the justification had been proved, the Court might have considered it as a sufficient answer, and, if the nature of the case would have allowed of it, might have adjudged that the raising a mutiny was a good ground for such a summary proceeding. I can conceive cases in time of war in which a governor would be justified, though he acted very arbitrarily, in which he could not be justified in time of peace. Suppose, during a siege or on an invasion of Minorca the governor should judge it proper to send a hundred of the inhabitants out of the island from motives of real and genuine expediency, or suppose on a general suspicion he should take people up as spies, on proper circumstances laid before the Court it would be very fit to see whether he had acted as the governor of a garrison ought according to the circumstances of

the case. But it is objected, supposing the defendant to have acted as the Spanish governor was empowered to do before, how is it to be known here that by the laws and constitution of Spain he was authorized so to act. The way of knowing foreign laws is by admitting them to be proved as facts, and the Court must assist the jury in ascertaining what the law is. For instance, if there is a French settlement the construction of which depends on the custom of Paris, witnesses must be received to explain what the custom is, as evidence is received of customs in respect of trade. There is a case of the kind I have just stated: Feaubert vs. Turst (1). So in the supreme resort before the King in Council, the Privy Council determines all cases that arise in the plantations, in Gibraltar, or Minorca, in Jersey, or Guernsey, and they inform themselves, by having the law stated to them."

In **Anthony Aburime vs. The Secretary, Assemblies of God Mission, Ewu Ishan & Anor. (1952) 14 WACA 185, Verity, C.J.**, held at pages 185-186 as follows:

"Now there are two things upon which the learned Judge should have been decided before he came to the conclusion that the jurisdiction of the Supreme Court was ousted. First, that the suit raised an issue as to title to land or to interest in land and secondly, that the land was within the jurisdiction of a Native Court. Both of these things require either admission or proof. There was no admission that title to land was raised by this suit for damages for trespass and there was no evidence of that fact. There was no admission that there was a Native Court having jurisdiction and there is no proof. Reference to the Laws of Nigeria may disclose that there is a Native Court in that area and by the Governor's warrant it may have jurisdiction in land cases. But the Court in rejecting jurisdiction cannot proceed on mere assumption. It is a very serious matter and the Court will not reject jurisdiction unless

it is satisfied by admission or by proof that jurisdiction has really by law been taken away from it.

In these circumstances I think that the learned Judge erred in coming to the conclusion that it had been demonstrated to him and established that the Court had no jurisdiction or that jurisdiction was ousted and that he should have proceeded to take evidence satisfying himself on the necessary points to enable him to come rightly to the conclusion that the jurisdiction was ousted. I would therefore allow the appeal and remit the case to the Court below for determination...

Order: The order of the learned trial Judge is set aside and the case is remitted back to his Court for determination. The appeal is allowed and we fix the costs at £31 5s. 6d."

The learned Federal Judge proceeded on assumption without an indebt examination of the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 as altered nor the provisions of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 which created the offences and prescribed the mode of trial and the penalties to be imposed on offenders found guilty under the Act but decline jurisdiction. Examining the relevant provisions of the Constitution and Section 14 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 might have avoided the undue delay in entertaining this interlocutory appeal leading to undue delay in the dispensation of justice. In **Timitimi vs. Amabebe, 14 WACA Coussey, J.A. held at page 378 to 377** as follows:

"The admissibility of these proceedings and this passage of the judgment of the Court below are attacked by the defendant-appellants in their appeal to this Court on the grounds of misdirection and error in law. We think it is unfortunate that the learned Judge did not grasp the nettle and hold that the Native Court was not properly constituted and its proceedings a nullity.

Court state they "agree entirely and that his finding is theirs and is to be so regarded." We are unable to accept the submission of learned Counsel for the plaintiffs-respondents that Mr. Horne's taking part in the proceedings without authority may have rendered the proceedings irregular but not void. There is a distinction between an order or judgment which a Court is not competent to make and an order which, even if erroneous in law or in fact, is within the Court's competency. In re Padstow Total Loss and Collision Assurance Association (2) decides that where there is no jurisdiction the proceedings are void; but where a Court of competent jurisdiction makes an erroneous order, it is appealable..."

My decision is that the learned Federal Judge, **Agishi, F.J.**, had the requisite jurisdiction to adjudicate and try the respondent. Furthermore, where the issue is contested on affidavits is materially in conflict on crucial facts and seems irreconcilable, the answer lies in Section 116 of the Evidence Act, 2011 which provides as follows:

"116. When there are before a court affidavits that are irreconcilably in conflict on crucial facts, the Court shall for the purpose of resolving the conflict arising from the affidavit evidence, ask the parties to proffer oral evidence as to such facts, and shall hear any such oral evidence of the deponents of the affidavits and such other witnesses as may he called by the parties."

See **Eboh vs. Oki (1974) 1 SC 179 at 189-191; Falobi vs. Falobi (1976) 1 NMLR 169; Olu-Ibukun vs. Olu-Ibukun (1974) 2 SC 41 at 48; Government of Ashanti vs. Korkor 4 WACA 83 at 85 and Falola vs. UBN Plc (2005) 2 SCNJ 209.** Documents referred to in an affidavit form part of the motion. See **South Eastern States Newspapers Corporation & Ors. vs. Anwara (1975) 9-11 SC 55 at 64-65.** Documentary exhibits referred to in the affidavits may be resorted to in order to resolve a crucial issue or fact for determination. See

Banque De L'Afrique Occidental vs. Alhaji Baba Sharfadi & Ors. (1963) NRWLR 21; Gleeson vs. J. Wippel & Co. Ltd. (1977) 3 All E.R. 54 and Nwosu vs. Imo State Environmental Sanitation Authority & Ors. (1990) 4 SCNJ 97 at 115. But there will be no need for oral hearing if the issue involves points of law. See **Momah vs. UAB Petroleum Inc. (2000) 2 SC 142 and Sanusi Bros. (Nig.) Ltd. vs. Cotic Commersio Exportacao etc (2000) 6 SC (Pt.3) 43.**

The Advance Fee Fraud and Other Fraud Related Offences Act, 2006 is a special legislation. I shall draw attention to the ***"Advance Fee Fraud National Security & The Law"*** by **Farida Mzamber Waziri, Esq.**, Former Commissioner of Police in Charge of the Special Fraud Unit, Lagos and retired Assistant Inspector General of Police (1993-1999) who headed the Economic and Financial Crimes Commission in Nigeria (Book Builders Editions Africa) pages 5-7 and pages 10-14 as follows:

> ***"This book focuses on national economic security and the phenomenon of advance fee fraud in Nigeria with particular emphasis on its international dimension. It examines some disturbing aspects of advance fee fraud (AFF) and its implications for the nation's economy. The premium placed on national security has made the subject a rather controversial concept. Security can be viewed from a domestic or international perspective.***
>
> ***Whatever the case, AFF has created a very bad impression about Nigeria in the minds of anyone doing business in the country. Nigeria, an economically dependent nation, needs her international trading partners to survive. However, because of AFF, foreigners are reluctant to invest in Nigeria. The international community has overreacted by referring to every Nigerian as a fraudster and the country as the most corrupt in the world. As a result, Nigerians are subjected to all manner of maltreatment at immigration checkpoints.***

some 'victims' of AFF. Additional data were collected from published and unpublished materials from such institutions as the Interpol headquarrters in Lyons, France, Scotland Yard, UK, and the United States Service.

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Economic Background to Advance Fee Fraud:

New trends in advance fee fraud started with the introduction of the Structural Adjustment Programme (SAP) in 1986. Prior to the introduction of SAP, the naira was relatively stronger vis-à-vis the value of foreign currencies of the nation's trading partners. In 1980, the exchange rate of the naira was 62k to one US dollar, while N1.20 exchanged to one British pound sterling, With the introduction of SAP, the naira depreciated to N5.09 to US$1 in October, 1986. In simple language, an average Nigerian preferred the naira to the dollar before structural adjustment was imposed on the country's economy, By 1997, the official rate of the Central Bank of Nigeria (CBN) was $1 to N22.00, while the parallel/autonomous market rate was $1 to N84.00. The sudden appreciation of foreign currencies to the detriment of the naira brought about an unbridled craze for the pound sterling and the dollar or the 'hard currencies' as they are often referred to.

The End of the Oil Boom Era and Beginning of SAP:

During the oil boom era the federal government nationalized and invested in hundreds of private enterprises, (from paper to steel mills) such that by 1990 the Federal Government of Nigeria directly owned 600 public enterprises; another 900 parastatals were jointly owned by various state governments and the federal government. When the oil boom bubble burst in the early 80s, government discovered very rapidly that it was totally overextended and could no longer afford to run these enterprises, many of which were not making a profit.

Seeking assistance from the International Monetary Fund and the World Bank, resulted in a package of quick-fix loans in return for downsizing the government's role in public enterprises, as well as a gradual devaluation of the naira.

The adverse effects of the structural adjustment programme on the average Nigerian household cannot be imagined. SAP devalued the naira without raising the salaries of workers, and thereby ruined the standard of living of the Nigerian middle class – that is all public workers, school teachers, university lecturers, and the researchers and workers in more than one thousand government enterprises. At the same time, government cut back on all sorts of social services, particularly health and education. So while the buying power of the average Nigerian was sinking, he was now also forced to pay for services that were once free. The era of the 'tokunbo' emerged, everything from the automobile to shoes had a second-hand market. Factories closed down, no longer able to import raw materials; government retrenched workers, and the unemployment rate was high.

In such uncertain economic times, with so many unemployed graduates, conditions were ripe for fraudulent practices on a large scale. Nigeria slowly evolved from an era of few syndicated fraudsters of the early 1980s to a more organized crime system in the late 1980s, which culminated into a wide scale 'advance fee fraud industry' better known as 419.

Advances in the communication revolution that started in the West in the 1980s and in Nigeria in the late 80s and 90s, aided and abetted this phenomenon. As a result, business centres with high-tech communication devices, such as computers, cellular phones and fax machines became the hub for the initial phase of 419 letters.

Who Are These Fraudsters?

In general, they are educated men and women, many have university education; lawyers, accountants, doctors, and other professionals...

It is also necessary to highlight that these fraudsters use attractive titles and fake credentials in order to appear credible to their victims. Such titles include Prince, Honourable, Dr. Sir, Engineer, Chief, Alhaji, High Chief or a combination of such, but hardly 'Mr'. Examples of such, as demonstrated by various letter (1-5 reprinted below and in appendix II), leave no doubt that the so-called business proposals are illegal. No law-abiding individual will respond to such letters unless he or she is also interested in making money illegally. As Nigeria is well known for its oil wealth, gullible and dishonest people hoping to 'strike it rich' are eager to participate in these business propositions.

Internationalization of Advance Fee Fraud:

As stated earlier, advance fee fraud is a coinage from Section 419 of the Criminal Code Cap.42, Laws of the Federation of Nigeria. Dr. Ibrahim Coomassie, former Inspector General of Police, described advance fee fraud as a:

> *"...conspiracy between some dubious Nigerians and gullible foreigners to transfer illegally, abroad, non-existing funds."*

From the above, the question one may ask is whether the foreigners so affected are victims or collaborators? The CBN director of foreign operations, Alhaji R.A. Rasheed, shared the same opinion as the inspector general of police that the victims are would-be 'co-conspirator'. He emphasized this point when he stated:

> *"So far, there has been no case of an innocent victim who participated in the scam. The various 'business proposals' ab initio manifest fraudulent intentions, which should ordinarily put any respectable corporation or individual on enquiry."*

What started as local crimes under Section 419 of the Criminal Code metamorphosed into large-scale scams at the international level. The foreigners who felt that Nigeria was corrupt jumped at the opportunity to steal from her oil money. They responded to the dubious offers made by Nigerian AFF criminals, thereby escalating the menace of AFF. This went on in spite of CBN advertisements and warnings in international newspapers in order to check the scam..."

Offenders whose criminal misconducts dent or besmear the image of Nigerians in the eyes of the international community or domestically ought not to be treated with kid globes by judges that the Constitution and the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 has conferred powers of adjudication so as right the wrongs they afflict against innocent law abiding citizens or members of the international community. Section 1(a)-(c) of the Act provides as follows:

"1(1) Notwithstanding anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud;

(a) obtains, from any other person, in Nigeria or in any other country for himself or any other person;

(b) induces any other person, in Nigeria or in any other country, to deliver to any person; or

(c) obtains any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence, commits an offence under this Act."

The offence is committed by *"...any person who by any false pretence, and with intent to defraud (a) obtains, from any other person, in Nigeria or in any other country for himself or any other person; or (b) induces any other person, in Nigeria or in any other country, to deliver to any person; or (c) obtains any property, whether or not the property is obtained or its delivery is induced through the medium of a contract, induced by the*

false pretense, commits an offence under this Act." Section 1(2) and (3) of the Act also provides as follows:

> ***"(2) A person who by false pretence, and with the intent to defraud, induces any other person, in Nigeria or in any other country, to confer a benefit on him or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for commits an offence under this Act.***
>
> ***(3) A person who commits an offence under subsection (1) or (2) of this section is liable on conviction to imprisonment for a term of not more than 20 years and not less than seven years without the option of a fine."***

On arraignment of an alleged offender for trial the prosecution has the onus of establishing on the evidence the (i) *actus reus* and the (ii) *mens rea* to raise a prima facie case to secure conviction. But it may not be easy to determine at face value whether the evidence available has raised a prima facie case. There may be the *actus reus* but not the *mens rea*. At what stage may Counsel representing a suspect raise the issue that the proofs of evidence does not warrant the arraignment of the suspect for trial? The answer lies in Section 16 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 which provides thus:

> ***"16(1) Where at any stage of a trial, the High Court is satisfied that a prima facie case has been made out against a person, the High Court may by an order and for such time as it may direct or require:-***
>
> ***(a) prohibit any disposition of property, movable or immovable, by or on behalf of that person, whether or not the property is owned or held by that person or by any other person on his behalf, except to such extent and in such manner as may be specified in the order; addressed to the manager of the bank or to the head office of the bank where the person has an account or is believed to have account, direct the manager or the bank:-***

(i) to stop all outward payments, operations or transactions (including any bill of exchange) for the time being specified in the order;

(ii) to supply any information and produce books and documents, in respect of the account of that person; and

(b) where necessary or expedient, vest in the High Court or otherwise acquire the custody of, any property, movable or immovable, of the person, for the preservation of the property, pending the determination of the proceedings.

(2) An order under subsection (1) of this section shall have effect as specified therein, but the order may at any time thereafter be varied or annulled by the High Court.

(3) Failure to comply with the requirement of an order under this section shall be an offence punishable on conviction:-

(a) in the case of an individual, by imprisonment for a term of not less than two years or more than five years without the option of a fine;

(b) in the case of any group of persons not being a body corporate, by the like punishment of each of such persons as is prescribed in paragraph (a) of this subsection;

(c) in the case of a body corporate, by a fine of an amount equal to two times the estimated value of the property affected by the non-compliance or N500,000, whichever is higher."

The governing phraseology in Section 16(1) of the Act is ***"Where at any stage of a trial the High Court is satisfied that a prima facie case has been made out against a person..."*** meaning, from the time of arraignment to the time the High Court or a Federal High Court Judge is satisfied that a prima facie case has been made out against a person, before the final decision of the Court is rendered at the close of the case of the case of the prosecution or the defence. In other words, a High Court or a Federal Judge seised with proceedings under the Act is at liberty to examine the evidence by the

prosecution at any stage after the initiation of proceedings to determine whether a prima facie case has been made out against a person for holding or continuing with the trial. There can be no trial without initiation of proceedings against a person under the Advance Fee Fraud and Other Fraud Related Offences Act, 2006. For the purpose of this appeal, a ***"trial"*** is defined in **Osborn's Concise Law Dictionary, 9th edition page 385** as ***"examination of and decision on a matter of law or fact by a Court of law (1) civil trial..." or "(2)..."***

A ***"trial"*** is ***"A formal judicial examination of evidence and determination of legal claims in an adversary proceedings."*** See Black's Law Dictionary, 9th edition, page 1644. A ***"criminal proceeding" or "criminal trial"*** is ***"A proceeding instituted to determine a person's guilt or innocence or to set a convicted person's punishment; a criminal hearing or trial."*** See Black's Law Dictionary (ante) page 1324.

Occasions may arise when it becomes necessary to examine or hear evidence from the prosecution and the defence in order to determine whether there is a prima facie case which must show the *actus reus* and the *mens rea* to support an arraignment of the offender under Section 14 of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006. Sections 135 to 138 of the Evidence Act, 2011 further provides as follows:

> ***"235. A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with an offence under Section 191 of the Criminal Code and on conviction, shall be dealt with accordingly.***
>
> ***236. When a witness gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or***

near to the time or place at which such relevant fact occurred, if the court is of the opinion that such circumstances if proved, would render more probable the testimony of the witness as to the relevant fact which he testifies.

237. *Any former statement made by a witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved in order to show consistency in the testimony or the witness or to show that his testimony is not an afterthought.*

238. *Whenever any statement admissible under Sections 40 to 50 or this Act, is proved, all matters may be proved either in order to contradict or to confirm it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter, suggested."*

The general tone of the provisions of the Evidence Act, 2011 which I have alluded to, shows that the offender may at times have the onus of establishing that the evidence contained in the proofs of evidence did not establish the *actus reus* and the *mens rea* which must co-exist to establish a prima facie case to support the arraignment of the offender for trial.

The phrase ***"prima facie"*** means ***"...at first sight; on first appearance but subject to further evidence or information... sufficient to establish a fact or raise a presumption unless disproved or rebutted..."*** But there is a difference between the phrase ***"prima facie"*** simpliciter and ***"prima facie evidence"***, etc. Section 16(1) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 prefers the use of the phrase ***"...a prima facie case..."*** and not ***"prima facie evidence."*** A ***"prima facie case"*** means ***"1. The establishment of a legally required rebuttable presumption... 2. A party's production of enough evidence to allow the fact-tier to infer the fact at issue and rule in a party's favour."*** See Black's Law Dictionary, 9th

edition, page 1310. A ***"prima facie case"*** is also defined in **Osborn's Concise Law Dictionary, 9th edition, page 298** as:

> ***"(Of first appearance) A case in which there is evidence which will suffice to support the allegation made in it, and which will stand unless there is evidence to rebut the allegation. When a case is being heard in Court, the party on whom the burden of proof rests must make out a prima face case, otherwise the other party will be able to submit that there is no case to answer, and if he is successful, the case will be dismissed."***

But ***"prima facie evidence"*** means the prosecution has to put forward the witnesses in the witness box to testify and be subjected to cross-examination and re-examination. The learned Federal Judge would have asked the learned Counsel to address the Court on whether a prima facie case had been established against the offender to warrant his being called upon to adduce rebuttable evidence. If the learned Judge upon hearing learned Counsel and examining the oral and documentary evidence was unable to come to a conclusion that the prosecution has established a prima facie case, the offender ought to have been discharged on the merit which may amount to an acquittal.

There may be occasions when a learned trial Judge has to consider the evidence adduced by the defence to arrive at the decision whether a prima facie case has been established or not in which case the offender would be entitled to a discharge on the merit or equivalent as a discharge and an acquittal. To discredit the evidence of the prosecution to enable a learned trial Judge to be satisfied there is a prima facie case or not will involve the impeachment of the credit of the oral or documentary evidence or both as the witnesses testify in the witness box. See **Nwobodo vs. Onoh (1984) 1 SC 1 at pages 98-100.**

The word ***"impeach"*** and ***"impeachment"*** are defined in **Black's Law Dictionary (ante) page 820** as follows:

> ***"Impeach – 1. To charge with a crime misconduct; especially, to formally charge (a public official) with a violation of the public trust (President Nixon resigned from office to avoid being impeached). Impeaching a federal official, such as the President, the Vice President, or a judge, requires that a majority of the U.S. House of Representatives vote to return at least one article of impeachment to the U.S. Senate, itemizing the charges and explaining their factual grounds. Even if an official is impeached, removal from office does not occur unless two-thirds of the senates who are present vote for conviction. 2. To discredit the veracity of (a witness) (the lawyer hoped that her star witness wouldn't be impeached on cross-examination)... 3. To challenge the accuracy or authenticity of (a document) (the handwriting expert impeached the holographic will).***
>
> ***Impeachment – 1. The act (by a legislature) of calling for the removal from office of a public official, accomplished by presenting a written charge of the official's alleged misconduct; especially, the initiation of a proceeding in the U.S. House of Representatives against a federal official, such as the President or a Judge. – Also termed formal impeachment. Congress's authority to remove a federal official stems from Article II, Section 4 of the Constitution, which authorizes the removal of an official for "Treason, Bribery or other high Crimes and Misdemeanor." The grounds upon which an official can be removed do not, however, have to be criminal in nature. They usually involve some type of abuse of power or breach of the public trust. Articles of impeachment – which can be approved by a simple majority in the House - serve as the charging instrument for the later trial in the Senate. If the President is impeached, the Chief Justice of the Supreme Court presides over the Senate trial. The defendant can be removed from office by the***

vote of a two-thirds majority of the senators who are present. In the United Kingdom, impeachment is by the House of Commons and trial by the House of Lords. But no case has arisen there since 1801, and many British scholars consider impeachment obsolete...

2. The act of discrediting a witness, as by catching the witness in a lie or by demonstrating that the witness has been convicted of a criminal offence... The act of challenging the accuracy or authenticity of evidence."

"Impeachment evidence" is defined as ***"Evidence used to undermine a witness's credibility..."*** See Black's Law Dictionary (supra) page 637. The Court has power to ask questions and to call for the production of documents.

I shall refer to **Rex vs. James Anuku (1940) 8 WACA 91** where the facts are as follows:

"The grounds of appeal relied upon at the hearing of this appeal were:-

1. ***The learned trial Judge misdirected himself as to the sufficiency of the evidence before the Court in support of the plea of insanity, and***
2. ***That the murder was committed when accused was suffering from insanity.***

In his summing up the Judge reviewed all the evidence relied on by Counsel in the Court below as to insanity. He then examined Section 26 of the Criminal Code and came to the conclusion that the evidence fell far short of the requirements of that section. He went on the say "I believe on the evidence and after observing prisoner in Court that he is not a mentally normal person, but the evidence as to his condition at the time is not nearly sufficiently explicit to establish the defence of insanity..."

We have been asked to hold that, on the evidence given at the trial, the Judge ought to have found the appellant guilty but insane."

That is the purport of the decision of the West African Court of Appeal in **Rex. vs. James Nunku (supra) where the Court held at pages 91 to 92** as follows:

> ***"In the case of Ronald True, 16 C.A.R. at page 167, the present Lord Chief Justice of England, delivered the judgment of the Court of Criminal Appeal, said:-***
>
> > ***"On behalf of the appellant, it is said, first, that the verdict which the jury gave was against the weight of the evidence; and in particular under that head of objection it is said that, as certain medical witnesses were called on the part of the defence to say that the appellant was not only insane after the commission of the act but was certifiably insane when he was said to have committed it, and as no medical evidence was called to contradict that view, therefore the jury were bound to accept it.***
> >
> > ***In the opinion of the Court that contention is not sound. The jury were entitled to say that the facts of the case, taken as a whole, apart from any question whether the prosecution called medical evidence upon the special point, satisfied them that at the date of the committing of the act the prisoner was not insane."***
>
> ***We are satisfied that there was nothing unsatisfactory in the summing up. The Judge was entitled to say that the facts of the case, taken as a whole, satisfied him that at the date of committing the act the prisoner was not insane. We are not prepared to reverse his finding of fact.***
>
> ***For these reasons the appeal is dismissed."***

Section 139 to 140 of the Evidence Act, 2011 provides as follows:

> ***"239(1) A witness may, while under examination, refresh his memory by referring to an) writing made by himself at the time of the transaction concerning which he is questioned, or so soon***

afterwards that the court considers it likely that the transaction was at that time fresh in his memory.

(2) The witness may also refer to any such writing made by any other person, and read by the witness within the time mentioned in subsection (1) of this section, if when he read it he knew it to be correct.

(3) An expert may refresh his memory by reference to professional treatises.

240. A witness may also testily to facts mentioned in any such document as is mentioned in Section 239 of this Act, although he has no specific recollection or the facts themselves, if he is sure that the facts were correctly recorded in the document."

Insanity is a defence to be negatived by evidence adduced by the defence during or after the prosecution has led evidence to the commission of a crime to establish the *actus reus*. The defence has the burden of proving the fact that the offender was suffering from insanity before or during the time the crime was committed hence a learned trial Judge has to hear and review all the evidence relied upon by the prosecution and the defence to arrive at a decision.

Sections 136 to 137 of the Evidence Act, 2011 reads:

"236. When a witness gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the court is of the opinion that such circumstances if proved, would render more probable the testimony of the witness as to the relevant fact which he testifies.

237. Any former statement made by a witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact may be proved in order to show consistency in the testimony or the witness or to show that his testimony is not an afterthought."

Where the burden of negativing the offence charged is cast on the defence the learned trial Judge ***"...was entitled to say that the facts of the case, taken as a whole, satisfied him that at the date of committing the act the prisoner was not insane. We are not prepared to reverse his finding of fact. For these reasons the appeal is dismissed."*** The situation in a civil cause or matter ought to be governed by the decision of the West African Court of Appeal in **Victoria Aduke & Anor. vs. Solomon Alyelabola (1942) 8 WACA 43** which involved a claim for declaration of title to the land in dispute. The plaintiffs laid claim to the land as the surviving direct issues of one Kadiri a deceased brother of the original owner Barikibu Oshun. At the close of the plaintiff case the learned trial Judge held that no case had been made out for defendant to answer and gave judgment to the defendant who had not yet testified nor call evidence – oral or documentary. The plaintiffs appealed to the West African Court of Appeal. The West African Court of Appeal held from pages 44 to 45 as follows:

> ***"The judgment reads as follows:-***
>
> > ***"In my opinion no case has been made out for defendant to answer. The plaintiff's case depends on her proving affirmatively that Barikisu and Kadiri were full brother and sister and the evidence to this effect is most unsatisfactory. Neither she nor any of her witnesses have been able to give me the names of these two people's parents and such information as they give is admittedly derived from Barikisu herself."***
>
> ***The grounds of appeal are:-***
>
> ***"1. The learned Judge was wrong in law in holding that no case had been made out for the defendant to answer. The evidence was sufficient to support the plaintiffs' claim.***
>
> ***2. The judgment is against the weight of evidence."***

In a number of recent cases the Court of Appeal in England has strongly depreciated the practice of Counsel for the defence submitting at the end of the plaintiff's case that there was no case to go to the jury – Serutton, L.J. in Halliwell vs. Venabbes (1930) 99 L.J. K.B. 353 said "There has been too much lately of this trying to run cases on no evidence to go to the jury. It is very much better for the parties, in the matter of expense, that the verdict of the jury should be taken in such a case coupled with the submission there is no evidence to go to the jury, because then you save the expense to the parties of a second trial." In that case the Court of Appeal enforced that view, as was done in McGowan vs. Stott (1930) 143 L.T. 219, by ordering that, in the event of the respondent succeeding in the new trial which was ordered, he should not have any costs of the first trial. The observations of the C.A. in its judgment in Alexander vs, Rayson (1936) 1 K.B. at p.178 and Lord Justice Goddard in Parry vs, Aluminum Corporation Ltd., 56 T.L.R. at p. 318 define the duty of a Judge where "no case to answer" has been submitted.

In the present case it does not appear from the record and it has not been suggested that the trial Judge held that "no case had been made out for defendant to answer" at the request of defendant's Counsel. We will bear this fact in mind in awarding costs.

There are cases in which a jury is entitled on the evidence to indicate to the Judge that they do not want to hear the defendant's case. In such a case Counsel for the plaintiff is entitled to address the jury and it is the duty of the Judge to sum up in all but straight forward cases.

In the judgment of the Court of Appeal in Alexander vs. Bargoine 56 T.L.R. p.153, it was stated "a Judge may, and not infrequently does, say to a jury in a case which, when it has been heard, appears to be perfectly clear 'Members of the jury do you think it will be of any

assistance to you if I sum up, or do you think you can give an opinion at once' Judges indeed have said that to juries in cases such as Mr. Justice Macnaghten instance: for example, in a case where a man is complaining of libel, and after his cross-examination has shown that he has no case at all, the Judge sometimes turns to the jury and says 'Have you heard enough of this case.' In such cases, of course the Judge should be careful to say that the plaintiff's Counsel has still the opportunity of addressing them if they wish." It cannot be open to doubt that where a plaintiff has himself shown that he has no case a Judge trying a case as Judge and jury is entitled to stop the case after plaintiff has closed his case and addressed the Court.

In the present case the plaintiffs did not establish that they had no case. On the contrary they established a prima face case on evidence which the trial Judge, for reasons he gave, considered most unsatisfactory". It not infrequently happens that although the plaintiffs' evidence discloses a very weak case yet when all the evidence is heard that case is converted into a very strong case, e.g. when the defendant and his witnesses go into the witness-box and are cross-examined.

Whilst we agree that the plaintiffs had to prove affirmatively that Barikisu and Kadiri were full brother and sister we are of the opinion that, plaintiffs having led evidence that such was the fact and so established a prima facie case, the trial Judge was not justified in stopping the case before all the evidence was before him merely because the evidence for the plaintiff was "most unsatisfactory."

We are aware that in rather a similar case to this, that of Fayemi, the Babalawa vs. The U.A.C. Ltd. (WAC. 1090) (not yet reported), this Court, differently constituted, being satisfied that the trial Judge concluded that the evidence of the plaintiff was "totally unreliable" dismissed the appeal. We are not aware of the exact

facts of that case, or whether the Court then considered the dicta and decisions in recent cases in England, so that it makes no difference to our decision in the present case.

The appeal is allowed, the judgment of the Court below, including the order as to costs, is set aside, and it is ordered that if any sum has been paid in pursuance of that judgment it shall be refunded. A new trial is ordered before a different Judge.

As to costs, since it was not on the submission of defendant's Counsel that the case was stopped in the Court below, each side will bear their own costs in this Court. The costs already incurred in the Court below will be in the discretion of the Judge at the new trial."

I am on very firm wicket to hold that the decision the learned Federal Judge took to decline jurisdiction at that stage is not supported by judicial precedent I have already held that the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 is a special legislation to take care of 419 fraudsters. The provisions require strict interpretation and application to counter the nefarious activities of fraudsters within and outside the Federal Republic of Nigeria. I shall once more draw attention to **Advance Fee Fraud National Security and The Law (ante) by Farida Mzamber Waziri, Esq.'s book at page 17-18:**

"Types of Advance Fee Fraud:

Advance fee fraud schemes are only limited by the imagination of the schemes. National and international events or mishaps are quickly used to develop amazing stories which serve as preludes to the scams. The deaths of Abacha, Mobutu, Doe, Abiola, Arafat; the Asian tsunami disaster, crises in Congo, Liberia, Sierra Leone, etc, are used as bases for complex and sophisticated schemes. For this reason, it would be a futile exercise to attempt to broadly categorize these various scams. It should also be noted that a victim could be subjected to two or more scams or even re-

victimized, depending on the given circumstances. Scams recorded in the past were observed to be fashioned after, but not limited to, the following:

Contracts Scams:

The victim is usually initially contacted by mail, in which he is informed that the Federal Government of Nigeria has approved the payment of millions of dollars (contract sum) to him for a contract purportedly executed in Nigeria. The whole transaction is usually classified as 'top secret'/ 'private and confidential'. The victim is instructed to provide an account number in which the money is to be transferred into within a few hours or days. There is usually a promise to split the entire sum among the parties involved. The scam letter usually bears the name, signature or even photograph of a notable serving government functionary. It is sent by regular post, fax, voice over the International protocol (VOIP), or e-mail. A response spells dooms as different stories are formed to explain the delay in transferring the money.

Many bogus official-looking documents and certificates are sent to their 'partner'. Various fees are collected in advance from the foreign co-conspirators. Most of the overseas partners never bother to report the crime to any authority, irrespective of their loss, because they are well aware that they were participating in an illegal activity from the onset. Advance fee payments made are often said to be for a tax clearance certificate from the Inland Revenue Services, or as value-added tax, contract award certificate, registration fee, attorneys' fee, certificate of incorporation, fund verification fee, etc..."

The grounds for the application to quash the proceedings in the Court below are at pages 134-135 of the printed record:

"(1) <u>This Court lacks the territorial jurisdiction to hear the case, none of the offences alleged against the Accused/Applicant</u>

had taken place in Enugu within the court's jurisdiction and thus this court is bereft of any jurisdiction to hear the case.

(2) That from the proof of evidence none of the payments or any aspect of the offences charged, had been made or took place in Enugu.

(3) In counts 1 – 5 of the Amended Charge dated 19-2-2015, the Accused/Applicant has been charged with collecting various sums of money in the year of our Lord 2012 from the Complainant Mr. Martin Alum so as to enable him supply him a Mercedes Benz AMG 63, 2013 Model, counts 6 and 7 relate however to monies allegedly collected in February and March 2013.

(4) There is no valid or genuine case of obtaining money by false pretences made out against the said Accused/Applicant since there is plenitude of evidence in the proof of evidence showing that for all those monies which he had allegedly collected from the Complainant between 2012 and March 2013, that he had actually utilized them to purchase and send the car to the said Complainant.

(5) That there is no genuine case of Advance Fee Fraud made out in the proof of evidence for which the Accused/Applicant should be expected to make an answer or make a plea.

(6) The Complainant had not only agreed to collecting the vehicle but had infact admitted selling it for 100,000 US Dollars to one Innoson, the Complainant cannot after eating his cake turn back to have it again.

(7) That going on with the "prosecution" of this matter constitutes in the main a wild goose chase and waste of tax payers fund.

And for such order or other orders that the Honourable Court may deem fit to make in the circumstances".

The contract between the respondent and the complainant revolved around *"a Mercedez Benz AMG 63, 2013"* the alleged *"monies having been*

collected by the respondent in February and March, 2013." See ground 3 of the ***"Grounds for the application"*** page134 of the printed record. But there is nothing to show that it is the very vehicle that the respondent delivered to Mr. Martin Alum the complainant and that it was worth the sums of money that had passed hand as the money consideration to actualize the contract.

Chief Patrick Nelson Okob – the respondent's extra-judicial statement to the prosecution at pages 22 to 23 of the printed record reads as follows:

> ***"I CHIEF PATRICK NELSON OKOLO having been duly cautioned in English language that I am not obliged to say anything unless I wish to do so, but whatever I say shall be taken down in writing and may be given in evidence. I freely elect to state as follows:-***
>
> ***I CHIEF PATRICK OKOLO AND PLAINTIFF MARTIN ALUM OKWOR HAVE AGREED TODAY 7/1/14 TO FIND A VALUER TO EVALUATE MY BUILDING AT NIKE TOWN HALL AND REPORT TO THE COMMISSION ON TUESDAY JANUARY 2014 WITH THE EVALUATION REPORT. THE VALUATION REPORT WILL BE SUBMITTED UNFAILINGLY ON TUESDAY JANUARY 2014. THE $35,000 IN QUESTION (WAS APPLIED) WHICH THE PLAINTIFF MR. MARTIN ALUM OKWOR SENT TO CHIEF NELSON OKOLO WAS USED TO BUY TWO TOYOTA CAMRY'S AND BALANCE APPLIED TOWARD FINANCING OF THE 2012 G. WAGON. THE TWO TOYOTA CAMRY, WERE BOUGHT AND SHIPPED THE PLAINTIFF MARTIN ALUM OKWOR. I HAVE TO LOOK AT MY RECORDS TO FIND OUT THE ACTUAL AMOUNT USED TO PURCHASE THE VEHICLES. ALSO, I HAVE TO LOOK AT MY RECORDS TO FIND OUT HOW MUCH THAT WAS APPLIED TOWARDS THE G. WAGON. I WILL PROVIDE THE BILL OF LADING THE SHIPMENT OF THE CAMRY MOREOVER; I WILL PROVIDE INVOICES FOR THE PURCHASE OF THE CAMRY'S. I WILL PROVIDE THESE INVOICES, AMOUNTS FOR THE PURCHASE OF THE CAMRY'S AND AMOUNT APPLIED TO***

THE G. WAGON. I WILL PROVIDE THE DOCUMENTS WHEN I RETURN TO THE U.S."

What the respondent supplied the complainant after collecting his dollars was not what the parties had negotiated and come to an agreement. The respondent volunteered an additional extra-judicial statement on 17th March, 2014 at pages 24 to 26 of the printed record to wit:

"You are not obliged to say anything unless you wish to do so but whatever you say shall be taken down in writing and may be given evidence.

In addition to the earlier statement made on the 16th of January 2014, I wish to state that I do not know the date my account was garnished. I think it was garnished on or around 2012. The account was Nelson, Auto Sales, INC. Auction Broadcasting Corporation – (APC) the judgment amount was 200, plus thousands of dollars. The Dollars payments were made in two money orders paid into NELSON'S AUTO SALES ACCOUNT. AUTO UNION ACCOUNT WERE USED TO OBTAIN MERCEDES BENZ LOAN THE FIFTY THOUSAND WAS SENT TO AUTO UNION ACCOUNT. THE FIFTY THOUSAND DOLLARS WAS...

I WITHDREW THE FIFTY THOUSAND AND PUT INTO NELSON'S AUTO SALES ACCOUNT. I found out it was garnished when I tried to withdraw money."

The petition by **Mr. Martins Alum Okwor** the complainant is at pages 6-9 of the printed record to wit:

PETITION OF FRAUD AGAINST MR. PATRICK NELSON OKOLO OF AUTO UNION 2775 CAMPBELLTON ROAD, ATLANTA GEORGIA, 30311, USA

I MR. MARTINS ALUM OKWOR Chief Executive Officer Al-Trade Investment Ltd. RC No. 305987, No 20, Park Lane, G.R.A. Apapa, Lagos, Nigeria.

1. *That MR. PATRICK NELSON OKOLO and I are of the same kindred.*
2. *That we are both from Umuenwene Iji Nike in Enugu East Local Government Area of Enugu State, Nigeria.*

3. That MR. PATRICK NELSON OKOLO claim to deals on Automobiles, and that his business name is Auto Union and that his address is 2775 Campbellton Road, Atlanta Georgia, 30311, USA and that is other address is 2039 Wells Dr. SW, Atlanta, GA 30311, and that his Tel is (404)349 3335 & the Email address is Nelsonzutosales @comcast. Net.

4. That in 2005 I paid him the sum of $35,000 USD to buy and ship from USA to Nigeria for me the following as agreed (i) FX35 Infinity Jeep (ii) 2 Units of 2000 Model Toyota Camry Saloon Cars.

These vehicles were neither bought nor shipped to me, his excuse being that he has a challenge which made him to convert the money for his personal use, thereby reneging on our contract. He however promised to pay back the money to in a short while, which he never did, this led me to severe business transactions with him since 2006.

In December 2009, he returned to Nigeria from the U.S.A and came home, I called a meeting of our family elders with his wife in attendance where I stated my case passionately, he was blamed and chastised by all and in their presence affirmed my story, he apologized to me and pleaded with me to give him a second chance by resuming business dealings with him to enable him raise money to offsets his debts. The elders also pleaded with me to temper justice with mercy which I obliged thereby agreeing to do business with him again.

In 2011 on the net I saw on display in an auto shop a Mercedes Benz G Wagon 2012 MODEL selling for $118000USD, I called him and he agreed that he will buy same for me at that price, we also agreed that I will pay him a commission of $2,000 USD for his service, so I paid him the sum of $120,000USD. It also agreed that the vehicle will be bought and shipped to Nigeria within Six weeks of payment as was the condition given by the said auto shop on the internet.

He neither bought nor delivered the vehicles, this continued till I saw yet again on the net a newer latest model of same G Wagon, I called him and told him to trade in that one for the latest, he said that the old one which I

sent him the sum of $120,000USD will now be sold for $90,000USD thereby losing the sum of $30,000USD even when there was no proof that he actually bought it as there was no evidence to that effect. Fortunately for me, I got a buyer here in Nigeria who offered me $100,000USD for the vehicle, this money was paid into Chase Bank account Number 061092387. Beneficiary, Auto Union 2775 Campbellton Road, Atlanta Georgia 30311. The bank a/c of MR. PATRICK NELSON OKOLO.

The said latest model was according to the advert I saw selling for $148,000USD with a promise of deliver on payment between 4-6 weeks that is, if it is the one on the show room, and that if I want my own specification with special features to deliver on payment in 8 weeks. He told me that since Mercedes Benz Lot is near his residence that he will buy and deliver it to me within 6 weeks.

Having received $100,000USD from the previous sale, I was to balance $48,000USD for the purchase to be made, instead he insisted that the prize is now $170,000USD which I agreed by paying him the sum of $70,000USD. After 6 weeks passed and nothing happened, I called him to ask why the cars have not been delivered as planned, only for him to tell me that 6 weeks is no longer feasible, that it will now take a period of 6 months to deliver, at this juncture, I became worried then I ask for proof of payment but there was none. This irked my fear that MR. PATRICK NELSON OKOLO may be a con man and a dupe after all, this made me to start making further inquiries about his person and business dealings, and to my greatest shock, I discovered that he has actually been collecting money from unsuspecting Nigerians in the pretext that he will buy cars at cheaper rate for them in the U.S. only for him to convert those monies for his personal use.

All efforts at making him to either deliver the vehicles or refund my money failed, he no longer pick my calls, he no longer communicates with me &, all I receive from him is threat to deal with me if I don't desist from disturbing him.

He is boasting that as a citizen of United States of America that I cannot do anything, that he can do and undo and get away with it and that my money in his possession is a "Chicken Feed" compared to other people's money in his kitty.

Sir, I am overwhelmed at this blatant breach of trust and his senseless uncompromising fraudulent and unrepentant stance as if he is above the law simply because he feels he is a citizen and lives in the United States of America.

Sir, I urge you most respectfully to kindly use your good office as a last resort to assist a helpless and unsuspecting victim of fraud to recover my money in the sum of USD 205,000 from Mr. Patrick Nelson Okolo of 2775 Campbellton Road, Atlanta Georgia, 30311, USA.

Please, attached also to this petition are a bank statement and a summary there on, as supporting documents for the above claim."

Mr. Martins Alum extra-judicial statement of 17th March, 2014 at pages 14-15 of the printed record reads:

"I, MR. MARTINS ALUM OKWOR cannot write so I gave BARR. OJUKWU CHUKWUEMEKA authority to write on my behalf while I dictate to him what to write.

I wish to explain how the $35,000USD which I mentioned in my petition came up. In 2006 I cleared some cars for MR. PATRICK NELSON OKOLO for N2,400,000.00 which is 20,000USD as at 2006. Then the same 2006 I gave cash of 10,000 USD to him at international Airport Lagos. Again in 2006 I sent him 5,000 USD to his Account NELSON AUTO SALES. The 35,000USD stated above was for him to purchase two Toyota Camry 2000 model and one suv INFINITY JEEP FX 35,2004 model, but he fails to supply the cars and refuse to return the money. The (120,000) 120,000 USD I sent him for the purchase of the Mercedes 550 2012 model are as follows on March 2012 I sent him 30,000USD through my Brand in JAKATA, INDONESIA, on 2nd May 2012 I sent 20,000USD to his account AUTO UNION, on 30th May 2012 I sent 20,000 USD to his

account Auto Union, on 27th August 2012, I also sent him 51,000USD to the same Account, Auto Union, and he did not supply the vehicle was not out I ask him to return it to Mercedes and he said that Mercedes will buy it for the sum of 90,000 USD, I refused and sold the car to INNOSON in Nigeria for 100,000USD and the money was paid to his account in October, 2013 and I sent a balance of 65,000 USD on the 30th of October, 2013."

The respondent first extra-judicial statement was made on 3rd January, 2014 at pages 18-20 of the printed record as follows:

"I Chief Patrick Nelson Okolo having been duly cautioned in English language that I am not obliged to say anything unless I wish to do so, but whatever I say shall be taken down in writing and may be given in evidence. I freely elect to state as follows:-

I Chief Patrick Nelson Okolo do hereby authorize my Lawyer to write down this statement for me as I dictate same through writing is as a result of absence of my eye glasses. The name of my Lawyer is Barr. F.C. Okeke. My name is Chief Patrick Nelson Okolo my address is No 5 Patrick Nelson Drive Nike Enugu and also 2775 Campbellton Road Atlanta Georgia 30311 in Nigeria and USA respectively. I am the Chief Executive Officer of Auto Union LLC Ltd. The said Auto Union is a registered company that is into a car dealership. Today the 03/01/14 I was shown a copy of the petition written against me by one Mr. Martins Alum Okoro and wish to state as follows:-

That the complainant is my second cousin whom approached me to purchase a G Guard for him. I obtained a loan from Mercedes Benz France Co-operation in the sum of 150,000US Dollars... the purchase of the G. Guard car since the complainant was paying by installment. After he had pay a total of 128,000 U.S. Dollars, he sold it at the cost of 100,000 U.S. Dollars and took a risk of 28,000 Dollars. The hundred thousand was paid into my account, it was ceased by another bank that led a judgment against me. The complainant paid in the (hundred thousand (record) 100,000U.S Dollars and later he

paid in another 48,000 U.S. Dollars paid into Auto Union Bank account domicile in Chase Bank U.S.A. As I agree that I owe the complainant the sum of (N) 150,000 U.S. Dollars, I have placed my 3 story building of 8 flats in the market for sale to offset the debt. I had also informed the complainant and asked him if he could find a buyer so that I can pay him from the proceeds. I was supposed to see the complainant with EFCC officials that came and arrested me. All I did with the complainant was pure business transaction of contract category. I have also instituted court action at the Federal High Court Enugu the suit No FHC/M/145/2013. I did not defraud the complainant and knows so. I further wish to state that any other allegation as it appears in the petition is frolow thief and I deny them as such. The 2000 U.S Dollars that made my indebtedness to 150,000 US Dollars was a balance of business we did previously, The name of the company that had a judgment against me is ABC Auto Auction, The reason for the judgment was as a result of suspected bad economy. The above statement took place sometimes in 2011."

Upon arrest and detention by the EFCC, Enugu, Enugu State and seizure of his passport pending investigation and subsequent arraignment in the Court below the respondent made the following statement on 16th January, 2014 at page 26 of the printed record:

"I chief Patrick Nelson Okolo having bee duly cautioned in English language that I am not obliged to say anything unless I wish to do so, but whatever I say shall be taken down in writing and may be given in evidence. I freely elect to state as follows:-

TODAY 16-01-2014 I BROUGHT MY NIGERIAN INTERNATIONAL PASSPORT #A03261481 ISSUED IN ATLANTA GEORGIA USA ON MARCH 26, 2012 AND EXRIRED ON MARCH 25, 2017 THE NAME ON THE PASSPORT IS PATRICK NELSON OKOLO BORN IN NIKE ENUGU. MOREOVER, I WOULD LIKE TO STATE THAT, I WILL BE TRAVELLING TO THE UNITED STATES OF AMERICA (USA) WHERE I RESIDE TO RUN MY

CAR DEALERSHIP. I WILL RETURN TO NIGERIA ON FEBRUARY 17, 2014 TO REPORT TO EFCC."

The prosecution's case is the totality of the extra-judicial statement of the complainant and his witnesses supported, if available, with documents taken along with the statements from the defence accompanied, for instance in this case with documents.

The accused's statement to the police is his reaction to the prosecution's inquiries upon his arrest based upon the information made available by the complainant but is not evidence of the truth of the facts stated therein. See **Rex vs. Storey (1968) 52 CR App. R. 334; Kasa vs. State (1994) 6 SCNJ (Pt.1) 1 at 14-15; Sanusi vs. State (1984) 10 SC 166 at 198; Adelumola vs. State (1988) 1 NWLR (Pt.73) 683 at 693 and Ozaki vs. State (1990) 1 NWLR (Pt.124) 92 at 113.**

Section 15(a)-(b) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 provides that:

> ***"15. In a trial for an offence under this Act, the fact that a person:-***
>
> ***(a) is in possession of pecuniary resources or property for which he cannot satisfactorily account and which is disproportionate to his known sources of income; or***
>
> ***(b) that he had at or about the time of the alleged offence obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken into consideration by the High Court as corroborating the testimony of a witness in the trial."***

The burden of negativing that possession of pecuniary resources or property for which an offender cannot satisfactorily account and which is disproportionate to his known sources of income (Section 15(a) of the Act) or that he had at or about the time of the alleged offence obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account,

may be proved and may be taken into consideration by the High Court as corroborating the testimony of a witness, example, a complainant(s) in the trial may, depending on the facts and circumstances of each case, cast the burden on the person charged with the onus of impeaching or discrediting the evidence of the prosecution for the learned trial Judge to arrive at the decision that the Court is not satisfied that a prima facie case has been made out against the person arraigned for trial for the offences alleged to have been committed.

My humble view is that once the offence in the charges is alleged to have been committed ***"...on or about the... within the jurisdiction of the Federal High Court with intent to defraud..."*** etc, that conferred jurisdiction on the Federal High Court to hear and determine the controversy in favour of the prosecution or the alleged offender. The need to state where the offence is alleged to have been occurred may arise if the offender was arraigned in a High Court of the Federal Capital Territory, Abuja or a High Court of a State in which case, the territorial jurisdiction of such a Court may found support in the argument of the learned Counsel to the respondent in the Court below and in this Court.

The phrase ***"territorial jurisdiction"*** is defined as ***"1. Jurisdiction over cases arising in or involving persons residing within a defined territory... 2. Territory over which a government, one of its Courts, or one of its sub divisions has jurisdiction."*** See Black's Law Dictionary, 9th edition, page 931. The phrase ***"jurisdictional limits"*** also means ***"The geographic boundaries or the constitutional or statutory limits within which a Court's authority may be exercised."*** See Black's Law Dictionary (ante) page 931.

I am also of the humble opinion that the learned Federal Judge, having erroneously declined jurisdiction to try the respondent, had no powers to order the state to release his passports to him. The order was made without jurisdiction and the appellant is entitled *ex debito justitiae* to have it set aside by

this Court. See **Bello vs. INEC (2010) 8 NWLR (Pt.1196) 342; Okoye vs. Nigeria Construction and Furniture Co. Ltd. (1991) 6 NWLR (Pt.199) 501 at 539 and Jiddun vs. Abuna (2000) FWLR (Pt.24) 1405 at 1413 paragraphs "A"-"B" per Wali, JSC.**

I also hold that the learned Federal Judge ought to have granted the prosecution the prayers to amend the charges or counts. An amendment of a charge or counts on which an offender is standing trial can serve many purposes. Generally speaking an ***"amendment"*** of a statement of claim in a civil proceeding or of the counts in a criminal trial may be ***"1. A formal revision or addition proposed or made to a statute, constitution, pleading, order, or other instrument; specific; a charge made by addition, deletion, or correction; especially, an alteration in wording... 2. The process of making such a revision."*** To ***"amend"*** is to ***"1. Make right; to correct or rectify... 2. To change the wording of; specific, to formally alter (...) by striking out, inserting, or substituting words (....)..."*** See Black's Law Dictionary (ante) page 94.

The respondent was arraigned in the Court below on what the prosecution headed as a ***"Charge"*** containing eleven counts. A charge simply means ***"a formal accusation of the offenses as a preliminary step to prosecution... Also termed criminal charge..."*** See Black's Law Dictionary, 9th edition, page 265. The ***"charge"*** may be equivalent to a ***"count"*** which is ***"1. The part of an indictment charging the suspect with a distinct offense..."*** See Black's Law Dictionary (ante) page 401. Once the charges or counts are amended what stood before the Court is gone and will no longer be the basis upon which the respondent would have been tried. If the respondent had taken a plea, the amended charges or counts would have been read to the respondent to take a fresh plea, else the trial would have been a nullity. See **Joseph Okosun vs. State (1979) 3-4 SC 36**. If the offence is theft or obtaining

by false pretenses as in this appeal it is sufficient for the original or amended charges or counts to set these out in the charges or counts. See **Saganuwa vs. Commissioner of Police (1978) 1 LRN 45 at 46.**

I have also arrived at the conclusion that there was no legal basis for the learned Counsel to raise argument against the desire by the prosecution to amend the charges or counts without showing how granting the application would prejudice the respondent. It is the respondent that stood to benefit form a quick trial to enable him to recover his passport and return to his residence abroad to continue with his business. I have arrived at the conclusion that it is in the interest of justice to remit this criminal proceedings to the learned Chief Judge of the Federal High Court for a hearing and determination, taking into consideration the forum convenience for the prosecution and defence witnesses.

The decision of the learned Federal Judge is quashed. The appeal is allowed. The prosecution and the defence ought to expedite the trial for time is of essence. This is my opinion.

JOSEPH TINE TUR
JUSTICE, COURT OF APPEAL

APPEAL NO. CA/E/54^{C}/2016
(RITA NOSAKHARE PEMU, JCA)

I had read in advance, the lead judgment just delivered by my brother – **IGNATIUS IGWE AGUBE, JCA.**

I agree with his reasoning and conclusions.

The Appeal succeeds and is allowed.

The Ruling of D. V. Agishi J. delivered on the 10th day of December 2015 is hereby set aside.

HON. JUSTICE RITA NOSAKHARE PEMU
JUSTICE, COURT OF APPEAL