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IN THE COURT OF APPEAL
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN
ON WEDNESDAY THE 14TH DAY OF DECEMBER, 2016

BEFORE THEIR LORDSHIPS

MONICA B. DONGBAN-MENSEM — JUSTICE COURT OF APPEAL
CHINWE EUGENIA IYIZOBA — JUSTICE COURT OF APPEAL
HARUNA SIMON TSAMMANI — JUSTICE COURT OF APPEAL

CA/I/284/2015

BETWEEN

PROFESSOR BENJAMIN A. OGUNBODEDE ... APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT

JUDGMENT
DELIVERED BY CHINWE EUGENIA IYIZOBA(JCA)

On the 20th day of December, 2012, the Economic and Financial Crimes Commission (EFCC) received a petition from the Institute of Agricultural Research and Training, Obafemi Awolowo University, Ibadan, against the Appellant, the Executive Director of the Institute and 12 others alleging *inter alia* conversion of N177, 571, 609.50 (One Hundred and Seventy Seven

Million, Five Hundred and Seventy One Thousand, Six Hundred and Nine Naira, Fifty Kobo) meant for the hazard allowance of the staff of the institution. After investigation, EFCC on 27th June, 2014 filed 17 Count Charge in Charge No FHC/IB/55C/2014 against the Appellant in the Federal High Court, Ibadan. The Appellant after entering a plea of not guilty on all the counts raised a preliminary objection to the jurisdiction of the Federal High Court to entertain the suit. In his application, he sought the order of the court to quash and dismiss the charges on the ground that he had earlier been arraigned before the State High Court of Justice, Ibadan on 26th November, 2013 on 49 Count Charge by the same Respondent for offences bordering on criminal conspiracy and corrupt practices in Charge No: I/I ICPC/2013. He alleged that the Charge at the High Court was yet to be disposed of, withdrawn or terminated before the second arraignment at the Federal High Court, Ibadan Judicial Division. He contended that the second arraignment at the Federal High Court was an abuse of court process. In the Ruling delivered on the 28th day of September 2015, the Federal High Court Ibadan Division, coram Ayo-Emmanuel J. dismissed the application on the ground that there was no abuse of court process as the charge in the Federal High Court was different from the charge in the High court.

Dissatisfied with the Ruling, the Appellant appealed to this Court by Notice of Appeal dated and filed on 9/10/15. The parties filed and exchanged

briefs of argument. Out of the five grounds of appeal in the Notice of Appeal, the Appellant formulated a sole issue thus:

> **"Having regard to law, circumstances and facts of this case, whether the later Charge leading to this Appeal would not constitute an abuse of court process and consequently be quashed and dismissed against the Appellant".**

The Respondent also formulated a sole issue identical to the Appellant's sole issue but framed thus:

> **"Whether having regard to the facts and circumstances of this case as presently constituted, it can be said that the charge no: FHC/IB/55C/2014 is an abuse of court process so as to divest this honourable court with the requisite jurisdiction to hear and determine same."**

On 7/12/16 when the appeal came up for hearing, the appellant was represented but there was no representation for the Respondent. On being satisfied that hearing notice was served on the Respondent through his counsel on the 2nd of December 2016, the briefs of the parties were pursuant to Order 18 Rule 9(4) of the court of Appeal Rules 2011 treated as having been duly argued.

APPELLANT'S ARGUMENTS:

Learned counsel for the Appellant relying on the case of ***AMAEFULE VS. STATE (1988) 2 NWLR (PT. 75) 156*** submitted that since the Charge filed against the Appellant at the High Court of Justice, Ibadan, by the

same Respondent is yet to be determined, withdrawn or terminated, the later charge in the Federal High Court would amount to multiplicity of Charges against the Appellant and constitute an abuse of Court Process. Counsel citing a number of authorities submitted that an abuse of process means improper use of the legal process to obtain a result not lawfully warranted or a proceeding which is wanting in bonafide and is frivolous, vexatious or oppressive; or when a party deliberately and improperly uses, employs or initiates a court process or multiplicity of the judicial process to the frustration, irritation and annoyance of his opponent.

Learned counsel submitted that the Appellant was arraigned concurrently before the two courts on allegations of financial crimes and corrupt practices for his action or inaction between the period of December 2010 and July, 2011 within the same jurisdiction (Ibadan) as employee of the Institute of Agricultural Research and Training, Ibadan. He submitted that the latter action before the Federal High Court, Ibadan, is to harass, irritate and annoy the Appellant and interferes with the administration of justice. He urged us to resolve the issue in their favour and to set aside the ruling of the lower court.

RESPONDENT'S ARGUMENTS:

Learned counsel for the Respondent in reply submitted that the grouse of the Appellant against this charge is akin to an Applicant who in the process

of vandalizing petroleum product pipeline contrary to Section 7 of the miscellaneous offences Act, (which offence is only triable before the Federal High Court) killed another person. Whilst he may be charged for murder in the High Court, the charge for vandalizing Petroleum Product Pipelines pursuant to Section 7 of the Miscellaneous Offences Act will be rightly charged at the Federal High Court. Counsel argued that under such a scenario it cannot by any stretch of imagination be argued that the charge in the Federal High Court is an abuse of the process of the court because of the proceedings in the High Court. Counsel submitted that no process has been abused by the prosecution by filing the present information. He also cited the case of ***AMAEFULE V THE STATE (SUPRA).***

Counsel submitted that there is no count of money laundering in the Amended Charge No: 1/1 ICPC/2013, at the High Court. He opined that the fact that the Appellant is facing two different charges before different Courts does not ipso facto constitute an abuse. Counsel argued that to show abuse, the Appellant must show that he is being tried over the same offence or same set of facts in different courts. He submitted that the Appellant woefully failed to show this and that his appeal deserves to be dismissed. Learned counsel urged us to dismiss the appeal and order accelerated hearing of the case.

RESOLUTION:

The scenario painted by the Respondent of a defendant who in the process of vandalizing petroleum product pipeline contrary to Section 7 of the miscellaneous offences Act, (which offence is only triable before the Federal High Court) killed a person to my mind is an excellent explanation of the circumstances of the present case. Whilst the defendant has to be charged for murder in the High Court, the charge for vandalizing Petroleum Product Pipelines pursuant to Section 7 of the Miscellaneous Offences Act must be brought at the Federal High Court. The Federal High Court has no jurisdiction over murder and the High court has no jurisdiction over offences under the Miscellaneous Offences Act. The two charges as in the present case must be preferred in the two different courts. In his contention that the charges in the Federal High Court were an abuse of court process in view of the proceedings in the High Court, learned counsel for the Appellant relied heavily on the case of ***AMAEFULE VS. STATE (SUPRA).*** But the case is quite inapposite. Learned counsel was wrong to say that it was on all fours with the instant case. There, charges were pending at the magistrate court and the accused persons had elected summary trial in that court; information was filed at the High Court without terminating the proceedings in the magistrate court but merely adjourning them sine die. Oputa JSC in concluding that there was no abuse of court process observed:

> *".... Can the Attorney-General in this case deprive the appellants of the right of election or nullify their exercise of that right in Charge No HOW/57C/85? If the Attorney-General deprives the appellants of that right by filing (simultaneously and along with the pending charge in the Magistrates' Court) fresh information; will that not be an abuse of process? Abuse of Process: Abuse of process of the Court is a term generally applied to a proceeding which is wanting in bona fide and is frivolous, vexatious or oppressive? Abuse of process can also mean abuse of legal procedure or improper use of legal process..... The answer to the above question will surely depend on whether abuse of process has in any event to contain the absence of bona fides as its fundamental elements. On very careful consideration, I am forced to the conclusion that to amount to an abuse of process, the proceeding or step in the proceeding complained of, will, in any event, be lacking in bona fide; it has to be an improper use or perversion of process after it had been issued. The term abuse of process has an element of malice in it. It thus has to be a malicious perversion of a regularly issued process, civil or criminal, for a purpose and to obtain a result not lawfully warranted or properly attainable thereby, these elements are completely lacking here".*

Of course it would have been tidier for the Attorney-General to terminate the proceedings in the magistrate court completely before proceeding with the information in the High court as provided by law and it was so held. But the Court made it clear that there was no abuse of process. The fact still remains, which fact distinguishes the instant case from ***AMAFULE*** that the

ingredients or elements of the offences in the Federal High Court are quite different from those of the High Court. It is only the Federal High Court that has jurisdiction and power to try offences under the Money Laundering Act 2011. The charge against the Appellant for money laundering could not therefore have been brought in the High Court. In his Ruling at page 621 of the Record, the learned trial judge observed:

> *"Learned counsel to the 1st Defendant/Applicant referred the court to the Supreme Court decision in Chief Victor Umeh & Anor. V. Prof. Maurice Iwu & 3 Ors (2008) 8 NWLR (Pt. 1089) at p. 225 where it was held that for the defence of abuse of court process to succeed, the following elements must co-exist:*
>
> *'i. Multiplicity of suits.*
> *ii. The suit is between the same opponents.*
> *iii. The suit is on the same issues*
>
> *In line with these laid down principles, I have considered Exhibit "BAO1" vis-a-vis the charge sheet before this Court and I found that even though the complainant is the same, the Defendants are not the same. It could therefore not be said that the parties standing trial before this Court are the same as the parties before the Oyo State High Court, Ibadan.*
>
> *I have also considered the issues or charges in the Court and those contained in Exhibit "BAO1" and I found them to be dissimilar. The 1st Defendant/Applicant is being arraigned in the Court for offences committed under the Money Laundering Act, 2011 and only the Federal High Court has jurisdiction to try same. The same is not the position in the Oyo State High Court. There is nothing stopping a Defendant from being tried under the two different legislations for different crimes or offences created*

> *therein. The two criminal proceedings pending against the 1st Defendant/Applicant are not based on the same facts and issues. They are distinguishable and I so hold. The 1st Defendant/ Applicant has therefore failed to convince me that the process of this court has been abused by the present suit."*

I agree with the views of the learned trial judge. The Charge in the Federal High Court is for offences under the Money Laundering Act 2011 in respect of which the Federal High Court has exclusive jurisdiction. The charge could not therefore be brought before the High Court where the charge pending was under the Corrupt Practices and Other Related Offences Act 2000 and Disobedience to lawful Order under the Criminal Code Act as the High Court had no jurisdiction to entertain the money laundering charge. The ingredients of the charges differ. There was no malice or deliberate intention to pervert the cause of justice. Nothing in the law prevents the prosecution from initiating a charge which has different ingredients from the earlier charge pending before the High Court. See ***SUNDAY OKOH V THE STATE (1984) 15 NSCC 705*** cited by Respondent's counsel, where the Court observed that "a person can be tried a second time for the same conduct where the offences charged are different from that at the earlier trial."

Learned counsel for the Respondent cited several authorities where after conviction or acquittal, a second charge was brought against the accused and his plea of *autrefois acquit or convict* failed. For example in ***EDU V. COP 14***

WACA 163, the Accused was charged with the offence of stealing a postal package and was discharged and acquitted at the end of trial. He was subsequently charged with the offence of negligently losing the same parcel. His counsel raised a preliminary objection to the second charge contending that having been tried and acquitted of stealing the postal package, he could not be tried again for negligently losing the same package and that the two offences ought to have been charged together at the trial court in accordance with section 161 of the Criminal Procedure Act. The Privy Council rejected the plea and held that the fact to be proved in support of the ingredients or elements of the two offences were not the same despite the fact that the offences arose out of the same facts. Although the case deals with charges after conviction or acquittal, I am of the view that same principle obtains in a case such as the present one where charges were brought in different courts. The ingredients or elements of the offences differ. More important is the fact that the first court did not have jurisdiction with regard to the charges preferred in the second court. See the case of ***SEBASTIN ADIGWE V FEDERAL REPUBLIC OF NIGERIA (2013) 1 BFLR (BANKING AND FINANCIAL LAW REPORTS) 326*** where charges preferred against the appellant were pending in the Federal High Court, the EFCC on discovering the commission of more crimes which could not be preferred in the Federal High Court due to lack of jurisdiction, filed the charges in the High Court of Lagos State. The new charges in the High

Court were held to be in order by the lower court which ruling was upheld by the Court of Appeal. In the case of ***NWOSU V FRN (2013) LPELR CA/L/601/11*** under similar circumstances, the Court of Appeal set aside the ruling of the High Court that it had jurisdiction. The judgment of the Court of Appeal has since been overruled by the Supreme Court in ***FEDERAL REPUBLIC OF NIGERIA V. OKEY NWOSU & 3 ORS SC. 74/2014; SC. 73/2014 AND SC. 75/2014*** delivered in January 2016. The Supreme Court judgment had consequently put the matter to rest. The sole issue is resolved in favour of the Respondent. This appeal is consequently lacking in merit. It is hereby dismissed.

CHINWE EUGENIA IYIZOBA
JUSTICE COURT OF APPEAL

REPRESENTATION:

BOLA ALABI ESQ., WITH HIM EMMANUEL OLAFUSI ESQ. FOR THE APPELLANT.

NO REPRESENTATION FOR THE RESPONDENT

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M. B. DONGBAN-MENSEM, JCA

I agree with the lead Judgment prepared by my learned brother **Chinwe Eugenie Iyizoba JCA** dismissing the appeal as wanting in merit.

This is an interlocutory appeal which seeks to quash charge **No. FHC/IB/55c/2014,** of seventeen counts of criminal charge against the Appellant. The reason is that the same Respondent had filed another charge of 49 counts against the Appellant in charge No. **1/11CPC/2013,** and submits that the second charge is an abuse of Court process.

As rightly stated in the lead Judgment, the set of charges require different jurisdictional competence. **Section 251 of the 1999 Constitution** clearly sets out the subjects matter for the FHC. The Respondent per **EFCC** must file every charge of money laundering before the FHC, which alone is vested with the jurisdiction to hear and determine such matters.

It was not the submission of the Appellant that either of the FHC or the State High Court has the dual jurisdiction to try all the counts of charges. The allegation of abuse of Court process is therefore misplaced.

No doubt it is cumbersome but such is the fate of the Appellant for now.

This appeal is without merit and is hereby dismissed.

M. B. DONGBAN-MENSEM
JUSTICE, COURT OF APPEAL

CA/IB/284/2015

HARUNA SIMON TSAMMANI, JCA

I read in advance the judgment delivered by my learned brother, **C. E. Iyizoba, JCA.**

It is obvious that the ingredients of the offences for which the Appellant was arraigned before the Federal High Court, and the Oyo State High Court respectively, are not the same. In that respect, no question of abuse of court process arises. Since the jurisdiction of the two courts in respect of the various offences are mutually exclusive, it will not be right to read in any malafides on the part of the Respondents.

It is my view that the Appellant was competently charged before the two courts for the various offences alleged against him. This appeal therefore lacks merit. It is hereby dismissed.

HARUNA SIMON TSAMMANI
JUSTCE, COURT OF APPEAL.