IN THE COURT OF APPEAL
KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA
ON TUESDAY, THE 5TH DAY OF FEBRUARY, 2019

BEFORE THEIR LORDSHIPS

MASSOUD ABDULRAHMAN OREDOLA	JUSTICE, COURT OF APPEAL
IBRAHIM SHATA BDLIYA	JUSTICE, COURT OF APPEAL
OLUDOTUN ADEBOLA ADEFOPE-OKOJIE	JUSTICE, COURT OF APPEAL

CA/K/432/C/2018

BETWEEN:

IBRAHIM SHEHU SHEMA — **APPELLANT**

AND

FEDERAL REPUBLIC OF NIGERIA — **RESPONDENT**

JUDGMENT

(DELIVERED BY MASSOUD ABDULRAHMAN OREDOLA, JCA)

This is an interlocutory appeal against the ruling of the Federal High Court of Nigeria, sitting at Katsina, Coram: **HON. JUSTICE B. G. ASHIGAR, J.** (hereinafter referred to as the lower court and learned trial judge respectively). The said ruling was delivered on the 13th day of June, 2018.

BRIEF FACTS OF THE CASE

The defendant/appellant (hereinafter referred to as the appellant) was arraigned before the lower court on a 26 count charge contrary to the Money Laundering Act. Specifically, pursuant to Section 15 (2), (3) and (8) of the Money Laundering (Prohibition) Act,

2012 (as amended). The appellant was alleged to have indirectly committed sundry offences in breach/contravention and or violation of the Money Laundering Act and with regard to various sums of monies from the SURE – P Account of Katsina State. The appellant pleaded not guilty.

The appellant who had hitherto been minded and peeved, felt that the proceedings amounted among others to an abuse of court process. He thereby caused a motion on notice to be filed on the 18th day of April, 2018 wherein he prayed for the grant of the following reliefs:

> *"1. AN ORDER of this Honourable Court quashing the instant Charge No. FHC/KTH/26C/2018 between FRN VS. IBRAHIM SHEHU SHEMA as same amounts to a flagrant abuse of judicial process and a mockery of the administration of criminal justice.*
>
> *2. AN ORDER of this Honourable court quashing the instant Charge No. FHC/KTH/26C/2018 between FRN VS. IBRAHIM SHEHU SHEMA for non-disclosure of a prima facie case and owing to vagueness and lack of precision in respect of all 26 counts in the Charge Sheet.*

3. ***AN ORDER dispensing with the physical appearance and arraignment of the defendant/applicant in the instant Charge No. FHC/KTH/26C/2018 between FRN VS. IBRAHIM SHEHU SHEMA during and pending the determination of this Motion on Notice."***

The said application was supported by a 31 paragraph affidavit, five exhibits and a written address. In response, the complainant/respondent (hereinafter referred to as the respondent) filed a 9 paragraph affidavit deposed to by one Abubakar Mohammed Kabir, an exhibit and written address. In accordance with the rules of the lower court, the appellant filed a reply on point of law in reply to the counter affidavit and written address filed by the respondent.

On the 13th day of June, 2018 when the application came up for hearing, the learned senior counsel for the appellant informed the lower court, that he has abandoned the 3rd relief or prayer (earlier reproduced in this judgment). Thereafter, the parties identified and adopted their respective processes and duly advanced arguments in support of their respective standpoints. The learned trial judge after hearing the parties did not rule on the application, rather he deferred the ruling and stated that the said ruling would be delivered together with the final judgement. In his words, the learned trial judge stated thus:

"I have heard the learned senior counsel, especially Mr. Daudu (SAN) on the issue of whether the determination of this application should be isolated from the determination of substantive charge. Section 396 (2) of ACJA provides otherwise and on basis of that, this Court in its ruling dated 24th of April, 2018 decided that the plea of the defendant must be taken because all other interlocutory application made both before or after the plea has been taken must be deferred until during judgment and in that ruling the court specifically referred to the issue of jurisdiction.

Therefore, I am of the humble opinion that as contained in the said ruling all application made shall only be considered along with the substantive issue and a ruling thereon made at the time of delivery of judgment. That is the provision of Section 396 (2) of the ACJA as far as the innovation made under the Act is concerned.

For the above reason the matter should be adjourn for trial and the determination of this application is hereby deferred until during judgment of the substantive charge in accordance with Section 396 (2)."

(See pages 294 - 296 of the record of appeal.)

The appellant was thoroughly dissatisfied with the said decision of the lower court and has thereby appealed against the same through his notice of appeal dated the 23rd day of June, 2018 and filed on the 25th day of June, 2018. Appellant's dissatisfaction against the ruling in question was expressed and captured in his four grounds of appeal. The said grounds of appeal are reproduced below without their particulars as follows:

"1. *ERROR IN LAW*

The learned trial judge Hon. Ashigar J. of the Federal High Court, Katsina Judicial Division erred fundamentally in law when instead of resolving the Motion on Notice filed and argued before the Federal High Court, Katsina, which has raised the jurisdictional issue of abuse of court process it deferred the said ruling to the end of the proceedings i.e. during final judgment."

"2. *ERROR IN LAW*

The learned trial judge, the Hon Ashigar J erred further in law when in deferring ruling on a very serious jurisdictional point, which if upheld had the capacity of bringing the entire trumped-up trial to a pre-emptory end failed to decide the critical issue argued before him which is that the provisions of Section 396 (2) and 221 of ACJA were in breach of several provisions of the 1999 Constitution (as amended)."

"3. *ERROR IN LAW*

The learned trial judge failed to avert his mind to the well established principle of law that when issues of jurisdiction are raised same must be determined first before conducting any proceedings and that the only jurisdiction the court has at this stage is to determine whether it has the requisite jurisdiction to hear the criminal trial in the face of the abuse of process presented before it."

4. *ERROR IN LAW*

The learned trial judge Hon. Ashigar J of the Federal High Court Katsina Judicial Division erred fundamentally in law when he held that by virtue of

Section 396 (2) of the Administration of Criminal Justice Act all objections can only be ruled upon at the end of trial and during judgment."

(See pages 307 – 310 of the record of appeal.)

In prosecution of this appeal, the parties duly filed and exchanged their respective briefs of argument. The appellant's brief of argument was settled by **MR. J. B. DAUDU, SAN.** It was filed on the 10th day of September, 2018 and was deemed as properly filed and served, by order of this Court made on the 2nd day of October, 2018. On the other side of the coin, the respondent's brief of argument was settled by **S. T. OLOGUNORISA, SAN.** It was filed on the 5th day of October, 2018. In reply to the preliminary objection and new issues raised in the respondent's brief, the appellant filed a reply brief on the 19th day of October, 2018, but it was deemed as having been properly filed and served by the Order of this Court made on the 8th day of November, 2018. The said reply brief was prepared by **ADEDAYO ADEDEJI ESQ.**

The learned counsel for the appellant donated two issues for resolution in the course of determination of this appeal. The issues are:

"13. **WHETHER IT IS CORRECT THAT THE PROVISIONS OF SECTION 396 (2) AND 221 OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT REQUIRES THE TRIAL COURT TO DEFER ITS RULING ON**

THE APPELLANT'S APPLICATION FILED ON THE 18TH OF APRIL 2018 RAISING BONA FIDE OBJECTIONS TO THE JURISDICTION OF THE TRIAL COURT AS OPPOSED TO AN OBJECTION TO THE VALIDITY OF THE CHARGE MUST BE DEFERRED AND RULED UPON AT THE END OF TRIAL AND DURING JUDGMENT OF THE SUBSTANTIVE CASE? (ISSUE NO. 1) (GROUNDS 1 AND 4) OF THE NOTICE OF APPEAL).

14. IN SO FAR AS THE LOWER COURT HELD THAT SECTION 396 (2) AND 221 OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT LIMITS AND CONTROLS THE JUDICIAL POWERS OF THE COURT TO DELIVER RULINGS ON OBJECTIONS TO JURISDICTION AND/OR VALIDITY OF A CHARGE IN CRIMINAL TRIAL CONDUCTED UNDER ACJA, WHETHER THE SAID SECTIONS ARE NOT CLEARLY IN VIOLATION OF SECTIONS 6 AND 36 OF THE 1999 CONSTITUTION (AS AMENDED) AND AS SUCH CLEARLY UNCONSTITUTIONAL? (ISSUE NO. 2) (GROUNDS 2 AND 3 OF THE NOTICE OF APPEAL)."

On his own part, the learned counsel for the respondent also donated two issues for resolution in the determination of the appeal. The issues are reproduced below as follows:

"ISSUE 1

HAVING REGARD TO THE PROVISIONS OF SECTIONS 396 (2) AND 221 OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, WHETHER THE TRIAL COURT WAS NOT RIGHT WHEN IT DEFERRED ITS RULING ON THE APPELLANT'S APPLICATION FILED ON THE 18TH DAY OF APRIL, 2018 CHALLENGING THE VALIDITY OF THE CHARGE? (GROUNDS 1 AND 4 OF THE NOTICE OF APPEAL)?

ISSUE 2

HAVING REGARD TO THE CIRCUMSTANCES OF THIS CASE, WHETHER THE PROVISIONS OF SECTIONS 396 (2) AND 221 OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 VIOLATE THE PROVISIONS OF SECTIONS 6 AND 36 OF THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED) AND THUS UNCONSTITUTIONAL? (GROUND 2 AND 3 OF THE NOTICE OF APPEAL."

The two sets of issues formulated by learned counsel for the parties are identical and materially the same, save for slight variation in drafting styles. However, the set of issues donated by the learned

counsel for the respondents are more apt and the same are adopted by me for the determination of this appeal.

Before proceeding to considering the appeal, it is instructive to observe herein, that the learned senior counsel for the respondent raised points of preliminary objection against the hearing of this appeal, in the respondent's brief of argument. The preliminary objection is contained at paragraphs 3 – 5 of the respondent's brief of argument. The central point of the objection was that this appeal has by recent event been rendered academic. The event as narrated by the learned senior counsel was that, the learned trial judge who delivered the ruling currently being appealed against in this case, Hon. Justice B. G. Ashigar, J. has been transferred from the Katsina Division of the lower court to the Ilorin Division, and he has been replaced by a new judge, who is required to hear the case *de novo*. The learned senior counsel then submitted in essence, that "*the appellant's appeal has no life issues as the trial court Coram B. G. Ashigar J. has been seized of the jurisdiction to hear the charge and it is of no utilitarian value. Hence, it is no longer within the jurisdiction of this honourable court to entertain same.*" He supported his submission with the case of **OKE VS. MIMIKO (NO. 1) (2014) 1 NWLR (PT. 1388) 225 AT 264**.

In addition, the learned senior counsel for the respondent also submitted, that by reason of the transfer of the said learned trial judge, this case has been rendered purely theoretical and this Court has thereby been deprived of its requisite jurisdiction to continue to entertain this appeal. He called in aid the cases of

AMANECHUKWU VS. FEDERAL REPUBLIC OF NIGERIA (2009) 8 NWLR (PT. 1144) 475; SHETTTIMA VS. GONI (2011) 18 NWLR (PT. 1279) 413 and **JAMES VS. I. N. E. C. (2015) 12 NWLR (PT. 1474) 539)** among others.

In reply to the preliminary objection, the learned counsel for the appellant contended, that the decision/ruling that constitutes the subject matter of this appeal is a decision of Federal High Court (lower court) and not that of an individual judge *per se*. It was thus argued that the said ruling delivered by the learned trial judge is binding on all subsequent judges that would eventually emerge to take up the hearing of the case. He referred us to the case of **IDRIS VS. A.N.P.P. (2008) 8 NWLR (PT. 1088) 1 AT 120 – 121.** In addition, the learned counsel for the appellant argued, that failure to pursue and seek to set aside the said ruling will amount to it being regarded as a precedent for similar cases and consequently remain in perpetuity. Thus, he urged this Court to dismiss the preliminary objection and determine this appeal on its merit. He placed reliance on the case of **NATIONAL ASSEMBLY VS. ACCORD & 2 ORS.** Unreported Appeal No. CA/A/485/2018 delivered on the 1st day of August, 2018 and **THE CHAIRMAN AND MEMBERS OF THE CUSTOMARY COURT MBAWSI & ORS. VS. THE STATE (2014) LPELR – 22852.** Thus, he urged this Court to dismiss the respondent's preliminary objection in its entirety.

It is well settled that there is only one Federal High Court in Nigeria, but only divided into several divisions for administrative convenience. See Section 249 (1) of the Constitution of the Federal

Republic of Nigeria, 1999 (as amended) and the cases of **UWAZURIKE & ORS. VS. ATTORNEY-GENERAL OF THE FEDERATION (2013) LPERL – 20392 (SC)** and **KALU VS. FEDERAL REPUBLIC OF NIGERIA (2016) LPELR – 40108 (SC).** Thus, any decision delivered by the Federal High Court is deemed as the decision of the court itself, notwithstanding any change with regard to the presiding judge.

The law is also trite that courts of coordinate jurisdiction are bound by their previous decisions. Thus, where a judge has entertained a case or application (as the case may be) on a subject matter, and delivered or rendered his decision, a learned brother judge of coordinate jurisdiction who has subsequently been seized of the case (for one reason or the other) would be bound by the earlier decision/ruling on the case, except where the decision has been set aside on appeal. See the cases of **ADESIGBIN & ORS. VS. MILITARY GOVERNOR OF LAGOS STATE & ANOR. (2017 LPELR – 41666 (SC)** and **EMORDI & ORS. VS. KWENTOH & ORS. (1998) LPELR – 1135 (SC).**

Relating the principles of law espoused in the cases cited above to the facts of this case, the ruling of the lower court which is the subject matter of this appeal has not become academic, hypothetical, theoretical or lost its purpose, merely because the learned trial judge who was initially seized with the handling of the case at the lower court has been transferred out of the division where the case was previously being heard at the lower court and the case has been re-assigned and or taken over by a new judge. This is more so because,

the current presiding judge, would still be bound by the earlier decision of his learned brother, in the event the appellant seeks to raise the same objection before the lower court. Thus, this objection is adjudged by me to be unmeritorious and it is accordingly discountenanced.

LEGAL ARGUMENT ON ISSUES.

The learned senior counsel for the appellant, submitted that the appellant's application at the lower court centered on and raised bona fide jurisdictional issues and the lower court was bound by law to consider and rule on it promptly, and not defer it to the stage of delivery of judgment as it did. He referred us to the case of **COMMISSIONER FOR WORKS, BENUE STATE VS. DEVCOM LTD. (1988) 3 NWLR (PT. 83) 407 AT 419**. The learned senior counsel reproduced the provision of Sections 221 and 396 (2) of the Administration of Criminal Justice Act, 2015 and contended that the categories of objections in respect of which the ruling of the lower court can be deferred, are those that dwelt on the validity of a charge sheet (that is, imperfect or erroneous charge), but that the appellant's application was predicated on abuse of court process and non-disclosure of *prima facie* case. Thus, the two provisions of the Administration of Criminal Justice Act (ACJA) do not apply in the instant case, and the court was bound to consider and rule on the appellant's application in order to protect the appellant from the injustice of being made to go through the hurdles and or ordeal of an incompetent trial. He referred this Court to the cases of

ABACHA VS. THE STATE (2002) 11 NWLR (PT. 779) 437 and **UBEBUNU VS. THE STATE (2016) LPELR – 40942.**

Furthermore, the learned senior counsel for the appellant argued, that the "*effect of Section 221 of the Act is that (i) objections can be raised to the validity of a charge (ii) such objection cannot be entertained during proceedings. It is clear from the said section that the drafters of the act are clear as to the type of objections that can be raised. An example of such objection will be the issue of duplicity of charges which can conveniently be determined at the end of trial. While the effect of Section 396 (2) of the Act is that (i) objections to the validity of a charge can only be raised after plea (ii) such objections will be considered together with the substantive suit. We submit that the type of objections that falls under Section 396 (2) are same genre of objections described in Section 221 of the Act. We humbly submit that the appellant's application before the lower court cannot by any strength of legal imagination fall within the nature and scope of objections envisaged by Section 396 (2) of the Act.*"

The learned senior counsel for the appellant also argued, that "*the effect of the appellant's application touches on the judicial powers of this Honourable Court as provided under Section 6 (6) b of the 1999 Constitution (as amended). In exercising its judicial powers, the Court has the unfettered power to hear and determine the competence of an application disclosing an abuse of its process. By deferring the ruling to the end of trial clearly shows that the trial court has by its conduct condoned the abuse of its process which ultimately ridicules the judicial process itself. We submit that justice*

or the protection of the judicial process cannot by any stretch of legal imagination be sacrificed on the altar of speed. To do so will amount to undermining the judicial powers of the Court." The learned senior counsel for the appellant placed heavy reliance on the case of **NANLE VS. FEDERAL REPUBLIC OF NIGERIA & ORS. (2018) LPELR – 44457 (CA)** in support of his submission. He thereby urged this Court to resolve this issue in favour of the appellant.

In reply, the learned senior counsel for the respondent submitted, that the whole objective and or essence of Administration of Criminal Justice Act, 2015 (ACJA), "*was to ensure amongst others, speedy trial and quick disposal of criminal cases in the interest of both the suspect and the society at large.*" He stated that the above objective was comprehensively espoused in the case of **FEDERAL REPUBLIC OF NIGERIA VS. HON. FAROUK M. LAWAN (2018) LPELR – 43973 (CA)**. Thus, it was argued, that the provisions of ACJA are not to be interpreted in isolation but as a whole in order to express the purpose of the Act.

In addition, the learned senior counsel for the respondent argued, that "*the whole essence of the ACJA and the intention of the drafters of that legislation was to prevent unnecessary delays during criminal trials which was the case in the past, therefore, the only way to bring about an effective result is to interpret the legislation in tandem with the purpose it was drafted for in the first place. There are guiding principles to interpretation of statutes which should be adhered to. The Supreme Court placed emphasis on the need to*

interpret statutes in line with the whole purpose of the legislation and avoiding an interpretation or construction that would render the legislation a futility." Reliance was placed on the cases of **SAVANNAH BANK (NIG.) LTD. VS. AJILO (1989) 1 NWLR (PT. 97) 305** and **PEOPLES PROGRESSIVE ALLIANCE & ANOR. VS. DR. BUKOLA SARAKI & ORS. (2007) 17 NWLR (PT. 1064) 453**. The learned senior counsel further argued, that *"Section 221 of the ACJA which is a short, clear and straight forward provision could not have intended to limit the types of objections to charges that could be entertained or taken during proceedings. The wording of that section of the ACJA which is crystal clear is a general provision relating to objections on the ground of an invalid, imperfect or erroneous charge."* He called in aid the cases of **USMAN OKAI AUSTIN VS. FEDERAL REPUBLIC OF NIGERIA (2018) LPELR – 44552 (CA)** and **DESTRA INVESTMENT LTD. VS. FEDERAL REPUBLIC OF NIGERIA & ANOR. (2018) LPELR – 43883 (SC)**.

The learned senior counsel for the respondent argued that Sections 221 and 396 (1) of ACJA were put in place, to prevent the earlier trend of accused persons who tend to file various interlocutory applications and in the process stifling and or stultifying the progress of the trial. He further argued, that the Supreme Court has duly examined the provision of the said sections and also held that rulings on interlocutory objections should be deferred till the end of the whole trial, and delivered along with the substantive judgment. He referred us to the cases of **DESTRA INVESTMENT LTD. VS.**

FEDERAL REPUBLIC OF NIGERIA, SUPRA and **DR. DAYO OLAGUNJU VS. FEDERAL REPUBLIC OF NIGERIA (2018) LPELR – 43909.** Thus, the learned senior counsel for the respondent argued, that the ruling of the learned trial judge represents position of the law and current judicial thinking, which is in line with the purposive interpretation of the provisions of Section 396 (2) and 221 of ACJA. Thus, he urged this Court to resolve this issue in favour of the respondent.

In reply, the learned counsel for the appellant maintained, that "*while the purpose of enacting the Administration of Criminal Justice Act may be to ensure speedy dispensation of Criminal Trial. We respectfully submit that the right of a defendant to fair trial and the powers of the Court to avoid abuse of the judicial process cannot be sacrificed on the altar of speedy disposal of criminal trials. What the appellant is simply contending in the circumstance is that the provisions of Section 221 and 396 (2) of ACJA cannot by any stretch of legal imagination override the powers of the Court under Section 6 of the Constitution especially under the guise of ensuring speedy dispensation of criminal trial.*"

The learned counsel for the appellant argued, that contrary to the contention of the learned senior counsel for the respondent that the appellant's application was designed to delay the trial of the substantive case, "*the nature of the application filed by the appellant is simply urging the trial court to protect an abuse of the judicial process taking into consideration the charges filed against the appellant. The right of a defendant to file an interlocutory application*

during the course of trial is a constitutional right that cannot be taken away by Section 221 and 396 (2) of the Act." Once again the learned senior counsel urged us to resolve this issue in favour of the appellant.

Let me point it out at the onset that this appeal emanated from an interlocutory ruling of the lower court. Thus, I have warned myself to resist the temptation of making any pronouncement that will touch on the main application filed by the appellant. For clarity, the ruling being appealed against in this appeal, borders on the refusal of the lower court to render its ruling on the application filed by the appellant, but deferred the said ruling to judgment stage. The instant judgement is predicated on the refusal of the lower court to rule on the application, that is, the deferment of the ruling to judgment stage. No more. No less. Thus, every urge to dabble or delve on the merit or otherwise of the main application would be resisted by me.

It is pertinent to point out herein that the appellant's complaint with regard to this issue was that the learned trial judge misinterpreted the provision of Section 221 and 396(2) of Administration of Criminal Justice Act, 2015 (ACJA), when he held that the appellant's objection against his arraignment or criminal trial at the lower court was in the class of objection which the lower court was enjoined to defer ruling thereon, until the final stage of delivery of judgment. To fully appreciate all the arguments proferred by learned senior counsel for the parties on this issue and all the points that would be subsequently touched thereon, it is imperative to

reproduce the provisions in question and they are hereby reproduced below:

Section 221 of ACJA:

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

Section 396 (2) ACJA:

> ***"(2) After plea has been taken, the defendant may raise any objection to the validity of the charge or the information at any time before judgment provided that such objection shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgment."***

It is well settled, that the primary canon of interpretation is the literal rule. The canon clearly stipulates that where a judge or justice(s) (as the case may be) are invited by parties to interpret the words of a statute, and the language or words used in the statute are clear, unambiguous, and plain, the judge is required by law to give the words their ordinary, literal grammatical meaning and refrain from reading into the statute any meaning not expressed by the words used in the statute. See the cases of **SARAKI VS. FEDERAL REPUBLIC OF NIGERIA (2016) LPELR – 40013 (SC)** and **UGWU & ANOR VS. ARARUME & ANOR. (2007) LPELR – 24345 (SC)**, where the Supreme Court, per Niki Tobi JSC (of blessed memory) at 26 – 28 para E espoused as follows:

"The underlying principle in the interpretation of a statute is that the meaning of the statute or legislation must be collected from the plain and unambiguous expressions or words used therein rather than from any notions which may be entertained as to what is just and expedient. Se AHMED VS. KASSIM (1958) 3 FSC 51: (1958) SCNCR 28; LAWAL VS. G. B. OLIVANT (1972) 3 SC 124. The literal construction must be followed unless this would lead to absurdity and inconsistency with the provisions of the statute as a whole. See ONASHILE VS. IDOWU (1961) ALL NLR 313. This is because it is the duty of the judge to construe the words of a statute and give those words their appropriate meaning and effect. See ADEJUMO VS. THE MILITARY GOVERNOR OF LAGOS STATE (1972) 3 SC 45. It is certainly not the duty of a judge to interpret a statute to avoid its consequences. See AYA VS. HENSHAW (1972) 5 SC 87. The consequences of a statute are those of the Legislatures, not the Judge. A judge who regiments himself to the consequences of a statute is moving outside his domain of statutory interpretation. He has by that conduct engaged himself in morality which may be against the tenor of the statute and therefore not within his judicial power ... In the construction of a statute, the primary concern of a judge is the attainment of the intention of the Legislature. If the language used by the Legislature is clear and explicit, the Judge must give effect to it because in such a situation, the words of the statute speak the intention of the Legislature. See OJOKOLOBO VS. ALAMU (1987) 3 NWLR (PT. 61) 377. The words in a statute are primarily used in their ordinary grammatical meaning or common or popular sense and generally as used as they would have been ordinarily understood. See GARBA VS. FCSC (1988) 1 NWLR (PT. 71) 449."

As clearly stated by the above exposition of the erudite law lord, any deviation by the court in the course of interpreting a clear and unambiguous provision of a statute, from employing literal interpretation to any other canon(s) of interpretation is tantamount to judicial legislation, which is against the tenet of separation of powers, and thus unconstitutional. See also the decisions in the cases of **OLOWU & ORS. VS. ABOLORE & ANOR. (1993) LPELR – 2603 (SC); COTECNA INTERNATIONAL LTD. VS. IVORY MERCHANT BANK LTD. (2006) LPELR – 896 (SC)** and **OBI VS. INDEPENDENT NATIONAL ELECTORAL COMMISION & ORS. (2007) LPELR – 2166 (SC)** where the Apex Court, per Aderemi JSC at page 55 stated thus:

> ***"The next question that follows, is, what are these principles? Judges, in the exercise of their interpretative jurisdiction, must only interpret the words of a statute or constitutional provision, where they are as clear as crystal, according to their ordinary and grammatical meanings without any colouration. It is true that courts are always enjoined in the course of interpreting the provisions, to find out the intention of the legislature, but there is no magical wand in this counselling. The intention of the legislature, or put bluntly, the intention of National Assembly at the Federal level or the State House of Assembly at the State level, is not to be judged by what is in its mind but by its expression of that mind couched in the words of the statute. If at the end of the interpretative exercise carried out on the provisions of statute or Constitution, a judex's personal conviction as to where the justice and rightness of the matter lies is***

returned, that would make the judiciary lose its credibility, authority and its legitimacy. That will not be healthy for the development of law and its administration."

Back to the instant appeal matter, the provision of Sections 221 and 396 (2) of the ACJA under consideration are in my firm viewpoint explicit, plain and unambiguous. The provisions are clear and with clarity indicates and regulates the nature of objections channeled against a charge or information filed against an accused person, and not those founded on other grounds such as jurisdiction. The learned senior counsel for the respondent had invited us to employ purposive rule in interpreting the said provisions so as to include other kinds or categories of objection that can or might have been raised in a criminal trial. According to the learned senior counsel, employing this canon of interpretation would assist in achieving the overall objective of ACJA which is to ensure speedy trials of accused persons. I must confess that this submission is noble and ordinarily welcomed, however, I am still bound by the words used in the statute. Where such a noble intention has not been expressed in the statute, I cannot constitute myself to be an extension of the legislative arm of government and read such intention into the statute. Indeed, if the argument of the learned senior counsel for the respondent was that the intention of the legislature, has not been successfully expressed, it is their job to amend the statute and employ their best legislative acumen in expressing the targeted true intention.

Looking at the issue at hand from another angle, the question that comes to mind is that: if the objection raised by an accused person/defendant (as the case may be) was that he had earlier been tried on the same subject matter and was acquitted/convicted by a court of competent jurisdiction, would it still be justifiable and indeed constitutional for the learned trial judge to put the accused through the mill and rigour of a whole burdensome, lengthy and often tedious and expensive process of trial, only for the court; at the end of the day to then rule that the whole trial is unconstitutional, improper and/or abuse of power/court process? Certainly, the accused person in that regard and under such dispensation, would have suffered the wrong he intends to prevent before his constitutional right would have been duly considered. Thus, I do also agree with the learned senior counsel for the appellant, that deferring the ruling on the objections raised against a criminal proceedings which are predicated on constitutional ground(s) and other jurisdictional issues; (as done in this case) to the stage of conclusion of the trial and or time of delivery of judgment, is unconstitutional and a clear breach of the appellant's right of fair hearing.

The learned senior counsel for the respondent in arguing that the provision of Sections 221 and 396 (2) of ACJA covers all categories of objections and the Apex Court has interpreted and held in the cases of **DESTRA INVESTMENT LTD. VS. FEDERAL REPUBLIC OF NIGERIA, SUPRA** and **DR. DAYO OLAGUNJU VS. FEDERAL REPUBLIC OF NIGERIA SUPRA**, that all rulings

on interlocutory objections must be deferred till the stage or point of delivery of judgment. I have calmly and dispassionately perused the two cases, and I agree that they are not on all fours with the facts and circumstances of this case and thus inapplicable. In the former case, the objection against the jurisdiction of the trial court was raised after trial in the case had reached an advanced stage and on the verge of conclusion. Also, the Apex Court before making any comment on the provision of Section 221 & 396 (2) of ACJA opined that the appellant's objection was unmeritorious. Most importantly, the central point of that appeal was with regard to the ruling of this Court, whereby the Court without considering the substance of the appeal, held the appellant's appeal was incompetent; every other pronouncement in that appeal on other issues were mere *obita dicta* and not on the main appeal.

Also, in the case of **DR. DAYO OLAGUNJU VS. FEDERAL REPUBLIC OF NIGERIA**, the issue in contention therein was with regard to power of Economic and Financial Crimes Commission to prosecute offences predicated on the Public Procurement Act vis-à-vis that of the Attorney-General of the Federation. The comment made by the Apex Court on the provision of 396 (2) of ACJA, was made in passing and nothing more than that.

Judicial authorities are not applied willy nilly and/or in vacuum, they are applicable subject to the facts and circumstances of the case under consideration. The two cases referred to above, though good authorities for what they decided, but they could not be applied herein given the facts and or peculiar circumstances of this case. The

appellant in this case predicated his application and or objection on constitutional provision of fair hearing/trial and abuse of court process, and this objection is patently jurisdictional in nature and should be decided at the earliest opportunity, particularly when the objection was promptly raised by the appellant. The above position of mine has been previously considered by this Court in a very similar case and the same decision reached by my noble Lord and learned brother Yahaya, JCA in the case of **NANLE VS. FEDERAL REPUBLIC OF NIGERIA (2018) LPELR – 44457 (CA)** where he admirably held as follows:

> ***"By the Interpretation Rule, where a specific thing is mentioned, another is excluded. In this respect, Section 396 (2) of ACJA requires a Court, where objection to the charge is raised, to defer decision on it, until the end of the substantive case. But in criminal matters where the objection is not to the charge or information but to the jurisdiction of the Court in some other way, then the court has discretion when to decide it, but the prevailing view is that it should be at the earliest stage."***

In summary, I am of the firm viewpoint that Sections 221 & 396 (2) do not cover other grounds of objection(s) outside those predicated on the charge or information with which an accused was arraigned. Thus, where the objection is predicated on other grounds, outside that enclosure, particularly on the jurisdiction of the court (as in the instant case), the established position of the law is that such objection predicated on jurisdiction should be heard and determined

timeously and or at the earliest time, which is usually when it was raised. See the cases of **EDET VS. STATE (2008) 14 NWLR (PT. 1006) 52 AND ECONOMIC AND FINANCIAL CRIMES COMMISSION & ORS. VS. PHILIP ODIGIE (2012) LPELR – 15324; NTUKS VS. NIGERIAN PORT AUTHORITY (2007) LPELR – 2076 (SC)** and **FIRST BANK OF NIGERIA PLC. VS. T. S. A. INDUSTRIES LTD. (2010) LPELR – 1283 (SC).**

I am of the firm viewpoint, that where an applicant invariably contends, that a proceeding or action is discredited or tainted with colouration that impinges or touches on the jurisdiction of the court; then a jurisdictional issue or point has been duly raised. Put differently, when an applicant contends that there is an aspect or feature in a case which borders on and is capable of preventing the said court from exercising its vested jurisdiction, then a jurisdictional issue has been agitated or raised, and the court will have to determine one way or the other whether it has requisite jurisdiction to hear and determine the case or matter. See the decided cases of **MATARI VS. DANGALADIMA (1993) 3 NWLR (PT. 281) 266; GALADIMA VS. TAMBAI (2000) 11 NWLR (PT. 677) 1; PLATEAU STATE VS. ATTORNEY-GENERAL OF THE FEDERATION (2006) 3 NWLR (PT. 967) 346** among others. Guided by the authorities referred to above and based on all that have been said, this issue is hereby resolved positively in favour of the appellant.

Having resolved the Issue No.1 formulated for the determination of this appeal in the manner stated above, by positively resolving it in

favour of the appellant, the instant appeal matter is hereby found by me to have succeeded on the basis of the said Issue No. 1, and in the circumstance, the Issue No. 2 has been rendered academic. Thus, this appeal is found by me to be meritorious and it is accordingly allowed. In the premise, the ruling of the lower court wherein the court deferred its ruling on the appellant's application/preliminary objection with the intendment of it being taken together with judgment in the substantive case is hereby set aside by me. Thus, the case is hereby remitted to the lower court for prompt consideration and decision reached on the said appellant's application/ preliminary objection.

MASSOUD ABDULRAHMAN OREDOLA
JUSTICE, COURT OF APPEAL.

APPEARANCES:

J. B. DAUDU, SAN WITH
E. Y. KURAH, SAN, UYI IGUNMA ESQ.,
M. I. ABUBAKAR ESQ. AND
N. IDENALA ESQ.
— **FOR THE APPELLANT**

S. T. OLOGUNORISA, SAN WITH
J. S. OKUTEPA, SAN, S. B. UMAR ESQ.,
ACTING D. P. P. MINISTRY OF JUSTICE,
KATSINA STATE AND
OJONIMI S. APEH ESQ.
— **FOR THE RESPONDENT**

CA/K/432/C/2018

JUDGMENT

(DELIVERED BY IBRAHIM SHATA BDLIYA, JCA)

The draft copy of the leading judgment was made available to me, before now. I have had the advantage of perusing same. I concur with the reasoning and decision arrived at in allowing the appeal. I have nothing useful to add to the erudite judgment of my lord, **MASSOUD ABDULRAHMAN OREDOLA, JCA.**

IBRAHIM SHATA BDLIYA
JUSTICE, COURT OF APPEAL

CA/K/432/C/2018

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

I have read, in draft, the judgment of my learned brother, **Massoud Abdulrahman Oredola JCA** where the facts and issues in contention have been very lucidly set out. I am in total agreement with My Lord's well-reasoned judgment. This appeal revolves around the interpretation of Sections 221 and 396(2) of the Administration of Criminal Justice Act 2015 (ACJA) and its ambit, with respect to applications which must be taken by the Court at the conclusion of the case in the course of writing its judgment and those which must of necessity be determined at the earliest stage.

The provisions in question are as set out below:

Section 221 of ACJA

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

Section 396 (2) ACJA

"After plea has been taken, the defendant may raise any objection to the validity of the charge or the information at any time before judgment provided that such objection shall only be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgment."

The cardinal principle of interpretation of statutes is that where the words used in a statute are clear and unambiguous the Courts should give them

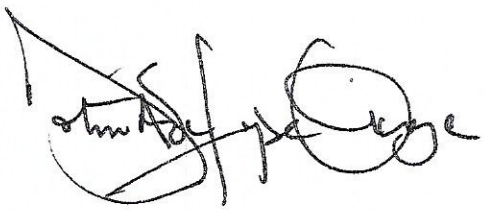
their ordinary natural and literal meaning in order to establish the intention of the law maker. It is only where the ordinary or literal meaning of the clear and unambiguous words fail to bring out the intention of the lawmaker or leads to an absurdity that resort is had to constructive interpretation. See ***Dickson v Sylva (2017) 8 NWLR Part 1567 Page 167 at 233 Para D*** *per* ***Kekere-Ekun JSC; Registered Trustees of the Airline Operators of Nigeria v Nigerian Airspace Management Agency (2014) 8 NWLR Part 1408 Page 1 at 41 Para B-C; (2015) All FWLR Part 762 Page 1786 at 1812 Para B-D*** *per* ***Okoro JSC.***

Where an interpretation will result in breaching the object of the statute, the Court will not lend its weight to such an interpretation - ***Dickson v Sylva (2017) 8 NWLR Part 1567 Page 167 at 233 Para E*** *per* ***Kekere-Ekun JSC.***

However, where there is a gap, duplicity or ambiguity, or where the words of an enactment are capable of two meanings, a contextual, rather than a literal approach should be preferred, as it is the duty of the Court to give a meaning that will resonate with sense, order and a workable system. In so doing, the provisions of a statute must not be read in isolation, but the whole, to ascertain the true meaning of the statutes. See ***Buhari v Obasanjo (2005) All FWLR Part 273 Page 1 at 189 Para C-D*** *per* ***Pats-Acholonu JSC; Braithwaite v GDM (1998) 7 NWLR Part 557 Page 307 at 325 Para C-D*** *per* ***Ayoola JCA (as he then was); Akpamgbo-Okadigbo v Chidi No. 1 (2015) 10 NWLR Part 1466 Page 171 at 199 Para A-B*** *per* ***M.D. Muhammad JSC.***

In the instant case, the provisions of Section 221 and 396(2)of ACJA are plain and unambiguous and regulate the nature of objections that can be channeled against charges or information filed against an accused person and not those founded on other grounds, such as jurisdiction. In so holding, one must be mindful of ploys by litigants to couch objections as being jurisdictional, to avoid the rigour of these statutes above. In a case like the present, where the objection is indeed jurisdictional and complains of abuse of court process, the same, I hold, is outside the ambit of these laws and should be decided at the earliest opportunity. To do otherwise and wait until the final determination of the case, would result in a breach of the party's right to fair hearing, by putting him through a trial that might have been entirely unjustified.

I am in entire agreement with the erudite reasoning of my learned brother and also allow the appeal. The ruling of the lower Court deferring its ruling on the Appellant's Preliminary Objection to the delivery of judgment is set aside. The case is remitted to the lower Court for consideration of the Appellant's application.



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