IN THE COURT OF APPEAL
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON TUESDAY, 20TH DAY OF MARCH, 2018

BEFORE THEIR LORDSHIPS

MOJEED ADEKUNLE OWOADE (PJ) — **JUSTICE, COURT OF APPEAL**
CHIDI NWAOMA UWA — **JUSTICE, COURT OF APPEAL**
HAMMA AKAWU BARKA — **JUSTICE, COURT OF APPEAL**

APPEAL NO. CA/A/717C/2017

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA (F.R.N.) ..... APPELLANT

AND

HONOURABLE FAROUK M. LAWAN .... RESPONDENT

JUDGMENT

(DELIVERED BY MOJEED ADEKUNLE OWOADE, JCA)

This is an Appeal against the decision of the Federal Capital Territory High Court presided over by Hon. Justice Y. Halilu, delivered on the 17th day of October, 2017.

The Appellant was the Prosecutor at the lower Court while the Respondent is the Defendant to the criminal charge.

The Respondent was at all material times a member of the House of Representatives where he allegedly corruptly demanded a sum of Three Million United States Dollars ($3,000,000) from a certain Mr. Femi Otedola as an inducement for doing an act in relation to his public duty as Chairman of the House of Representatives Adhoc Committee on Monitoring of Fuel Subsidy regime contrary to Section 17 of the Corrupt Practices and Other Related Offences Act, 2000.

He was also accused of corruptly receiving of the sum of Six Hundred Thousand United States Dollars ($600,000) as a reward or inducement for removing the name of Mr. Femi Otedola's company from the list of indicted companies in the report of the Respondent's Committee.

The Respondent was first arraigned before Hon. Justice Oniyangi in February, 2013. Upon the elevation of Hon. Justice Oniyangi, the Defendant was later arraigned before Hon. Justice Banjoko. The Respondent again wrote a petition to the Hon. Chief Judge of the Federal Capital Territory High Court accusing the Hon. Judge of bias. The Hon. Justice Banjoko recused himself from the

case and the case was then transferred to Hon. Justice A. O. Otaluka. Before Hon. Justice Otaluka, the Respondent took his plea again for the 3rd time.

The Appellant called four (4) out of the five (5) witnesses tendered all the documents and the Respondent's Counsel cross-examined the prosecution witnesses.

The Respondent again applied to the Honourable Chief Judge that the case be transferred to another Judge due to alleged bias of Hon. Justice A. O. Otaluka.

The Hon. Chief Judge of the Federal Capital Territory High Court acted on the Respondent's petition and transferred the case to Hon. Justice Y. Halilu.

The Appellant filed an Application before Hon. Justice Halilu praying that the case file be returned to the Chief Judge for completion of trial by Hon. Justice A. O. Otaluka.

The learned trial Judge dismissed the Application and directed that the case begun trial ***de novo***.

Dissatisfied with this Ruling, the Appellant filed a Notice of Appeal containing three Grounds of Appeal in this Court on 18th day of October, 2017.

The relevant Briefs of Argument for the Appeal are as follows:

I. **Appellant's Brief of Argument dated 19/10/2017 and filed on 20/10/2017. It is settled by Asiwaju Adegboyega Awomolo, SAN.**

II. **Respondent's Brief of Argument dated and filed on 19/01/2018 but deemed filed on 22/01/2018. It is settled by Godwin Iyinbor Esq.**

Learned Senior Counsel for the Appellant nominated two Issues for determination. They are:

1. **Whether the learned trial Judge was correct in the interpretation of Section 98 of the Administration of Criminal Justice Act.**
2. **Whether the transfer of the Appellant's case to the Hon. Justice Halilu should not be reversed by the Court of Appeal and trial concluded by the Hon. Justice A. O. Otaluka.**

Learned Counsel for the Respondent adopted the Issues as formulated by the Appellant with some slight alteration to Issue 2.

On Issue One, learned Senior Counsel for the Appellant submitted that the power of the Chief Judge of the Federal Capital Territory (FCT) with respect to allocation and re-allocation of case, whether civil or criminal is within the purview of the Administrative powers of the Chief Judge such decision is neither regulated nor guided by Statute. However, that the law makers in their wisdom in enacting the Administration of Criminal Justice Act 2015 specifically provided for such exercise of judicial powers.

Counsel reproduced the provision of Section 98 of the Administration of Criminal Justice Act, 2015 and submitted that the Hon. Chief Judge is bound by the provision of the National Assembly.

He also referred to the preliminary parts of the Act that is Sections 1 and 2 which emphasized that the purpose of the Act is to ensure efficient management of criminal justice institutions, speedy dispensation of justice protection of the society from crime and protection of the right and interests of the suspect, the defendant and the victim.

He submitted that the powers of the Hon. Chief Judge which was hitherto derived from the High Court of the Federal Capital Territory Act, has been overtaken by the Administration of the Criminal Justice Act and that it is obvious from the provision of Section 2 of the Act that compliance to the provisions of the Act by Courts, persons and other authorities is mandatory.

He submitted that Section 98(1) and (2) of the Administration of Criminal Justice Act 2015 must be read together and the power provided in Sub-Section (1) has been subsumed in Sub-Section (2) and (3).

He submitted that the learned Trial Judge erred in law in the interpretation of the law when he held that the Hon. Chief Judge has unfettered powers to re-allocate any Criminal case whatever the stage of prosecution provided it appears to him to be fair and just.

That the Chief Judge on the undisputed facts of this case was wrong and acted without jurisdiction when he unilaterally transferred a part heard and nearly concluded criminal case without and in total disregard for the Act.

He submitted that Sub-Section 2 of the Administration of Criminal Justice Act mandatorily provides that the power of the Chief Judge shall not be exercised where the prosecution has called even one (1) witness not to talk of four (4) out of five (5) witnesses. The consequence of the exercise of power of the Chief Judge in face of mandatory prohibition is that the transfer of the Appellant's case, after four (4) witnesses, was illegal null and void.

He noted that in **OLANREWAJU VS. GOVERNOR OF OYO STATE (1992) 9 NWLR (PT 265) 335**, it was held that Generally, the word "shall" in an enactment just as used in Section 98 of the Administration of Criminal Justice Act 2015 is compulsory rather than a mere directive, compliance is therefore binding and not left to the discretion of the person to whom the enactment imposes the duty.

Furthermore, said Counsel, the word "shall" in **NDILI VS. SUMADE (2000) FWLR (PT 5) 750**, was held to mean that the provision is mandatory and does not permit any discretion, variation or circumvention of the clear procedure to be followed.

He submitted that the Hon. Trial Judge was wrong and erred in law, when he refused to return the case file in the light of the mandatory provision of the Administration of Criminal Justice Act 2015.

He added that when an act is void, it is all together a nullity and no Court has the power to countenance a null and void act.

Assuming without conceding that the Hon. Chief Judge could exercise any power, said Counsel, the provision of Sub-Section 3 provides for what must be done before such decision or exercise can become lawful.

> ***"The Chief Judge shall cause the petition to be investigated by an independent body of not less than three reputable legal practitioners within one week of the receipt of the petition"***

He submitted that the exercise of investigation is not one to be conducted in absolute secrecy.

It is not to be shrouded in secrecy or without knowledge of all the parties.

He submitted that the allegation affects the Hon. Judge, the prosecution (now Appellant before your Lordships) and the Defendant (now Respondent before this Court).

That such independent investigation must be in the open, involving all the parties and the composition of the committee must be truly independent and having no traces of partiality or undue influence.

He referred to the celebrated case of **GARBA & ORS. VS. UNIMAID (1986) 1 NWLR (PT 18) PAGE 550,** where the Supreme Court enumerated what fair hearing entails that the body investigating the charge against such person must not receive evidence behind his back.

This, he said is in the spirit of fair hearing under Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

He submitted that the Hon. Justice Halilu to whom the case was later assigned ought to have on the record the allegation or petition written by the Respondent the instrument setting up the

independent committee of reputable legal practitioners. The process must be made available to all the parties or everyone must have right of access to the processes.

It is not to be a subject of speculation and conjecture. The exercise of power by the Hon. Chief Judge violates Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

In this case, said Counsel, none of the processes was available on the record, none was made available to any of the parties and the trial Judge did not see or refer to any of the processes. He submitted that the Learned Trial Judge could not have invoked the presumption of regularity where the process or petition was not even before him. It was therefore an error in law for the Learned Trial Judge, to countenance or pronounce on the petition which was not filed in Court.

He referred to the decision of the Supreme Court in **REGISTERED TRUSTEES OF PCN VS ETIM (2017) 13 NWLR PART 1581 AT 1 PARTICULARLY AT 41** where the Supreme Court, held as follows:

"it is important to point out as well that if a document is meant for a court to take note and act thereon, rules of court have made provisions for formal filing of such a document or documents with the registry of the court for which a nominal fee is payable upon assessment by the registry staff, who authenticate the filing of that document and proceed to file same for the court's attention. It is only by formal filing when the court becomes seized of a document. All other ways or methods such as writing letters or petitions informing the Chief Judge/Chief Justice/Head of court and or Chief Registrar (including the subordinate registrars) are purely administrative and have no force of law. Thus, the said letter written by the respondent to the Registrar of the Trial court was purely administrative, and worse still, it was never brought to the attention of the learned trial judge for consideration"

He further submitted that an administrative and or Judicial Tribunal or decision is bound to observe the Rules of Natural Justice. This position said Counsel was firmly established by the

Supreme Court in the famous case of **ADIGUN VS. A.G. OYO STATE (1987) 1 NWLR (PT. 53) 678.**

After referring to dicta by ***Obaseki and Eso JJSC*** in the case of **ADIGUN VS. A.G. OYO STATE (Supra) AT PAGES 718, 719 and 721** and quoting from Page 196 of ***De Smith's Judicial Review of Administrative Action 4th Edition by J. M. Evans,*** Learned Senior Counsel for the Appellant submitted that an Administrative Tribunal as envisaged under the Provisions of Section 98(3) and (4) of the ACJA is bound to observe the Rules of Natural Justice. And that natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions, or proceedings be given adequate notice to prepare their own case and answer the case (if any) they have to meet.

He submitted that the only logical inference from the Ruling appealed against which discountenanced the Provision of Section 98 of the ACJA is that the Hon. Chief Judge did not countenance the mandatory act of the National Assembly.

The result, said Counsel, is that the transfer of the case from

Hon. Justice Otaluka who had taken four (4) of the prosecution witnesses to Hon. Justice Halilu was illegal, nullity and ought to be disregarded and nullified.

He urged us to hold that the Provision of Section 98 of the ACJA took away the administrative powers of the Chief Judge in withdrawing and allocation of case to another Judge and the learned Trial Judge was wrong in the interpretation of the law and thereby erred in law.

Learned Senior Counsel for the Appellant further urged us to hold that the decision of the Learned Trial Judge holding that the transfer of the case from the Court of Hon. Justice Otaluka to the Learned Trial Judge was regular was in total breach of Section 98 of the ACJA 2015.

Learned Counsel for the Respondent on the other hand submitted on Issue One that the Learned Trial Judge was correct in the interpretation given to Section 98 of the Administration of Criminal Justice Act (ACJA) 2015 and to have dismissed the Appellant's Application.

He further submitted that, considering the peculiar circumstances of this case and in the interest of manifest justice and fair hearing, he ought not to return the case file to the Chief Judge of the FCT High Court, for reassignment back to Honourable Justice A. O. Otaluka, for continued hearing and final determination, after the Respondent has petitioned against his Lordship.

He pointed out that the basis of the application by the Appellant, is the Petition said to have been written by the Respondent addressed to the Chief Judge of the FCT High Court, where he had alleged certain things against his Lordship, Honourable Justice A. O. Otaluka, who was presiding over the criminal charge alleged against him.

He submitted that the Honourable, the Chief Judge of the FCT High Court, to whom the Petition was addressed obviously persuaded by the content and allegations against Hon. Justice Otaluka, and in the overall interest of justice and in the discharge and exercise of his administrative responsibilities, reacted by transferring the case file to Honourable Justice

Yusuf Halilu for hearing and final determination.

He submitted that it is clear from the provisions of Section 98 of the ACJA 2015, heavily relied upon by the Appellant, that the transfer of cases from one court to another, is one of the general administrative functions of the Chief Judge, which functions he is to exercise pursuant to the provisions of Section 98 of the ACJA.

He submitted further that contrary to the submission contained in Paragraph 5.04 of the Brief, there is nowhere it is provided that the exercise by the Chief Judge of his powers under the Provisions of **Sub-Sections (3) and (4) of Section 98 of the ACJA**, is restricted to where no witnesses have been called in the case.

Learned Counsel for the Respondent also reproduced the Provision of Section 98 of the ACJA and submitted that subjecting the Provisions of Sub-Sections (3) and (4) of the ACJA to close scrutiny, there is absolutely no where it is provided that the Appellant must be consulted or carried along in the exercise by

the Chief Judge of this administrative functions, or that the Chief Judge must disclose to the Complainant the outcome of the investigation carried out by the independent body he had set up to investigate the Petition. It only provides that an independent body made up of reputable legal practitioners shall investigate the allegation contained in the said petition.

He submitted that where the Chief Judge is to exercise this administrative power of transfer, same is to be carried out with the provisions of subsection (1) of Section 98 of the ACJA, in mind, to the effect that the transfer of a case to another court, will promote the ends of justice or will be in the interests of the public peace.

He submitted further that it was in the overall interest of justice and to promote the ends of justice that the Chief Judge decided to transfer the case to Hon. Justice Halilu, his Lordship having satisfied himself that there was merit in the petition filed by the Petitioner. It suffices to say that the Chief Judge having so exercised his powers under the provisions of the ACJA, ministers in the temple of justice will do well to abide by same

and not to question the said decision of the Chief Judge and allude to same as illegal, null and void.

Learned Counsel for the Respondent distinguished the case of **GARBA & ORS VS. UNIMAID (1986) 1 NWLR (PT 18) P 550**, as well as others of the same ilk cited by the Learned Senior Counsel for the Appellant.

He referred to the Supreme Court's decision in **UDO VS. STATE (2016) LPELR-40721 (SC) (PP. 13-14)** as authority for the proposition that a case is authority for what it decides and there are no two cases that have the same facts.

He submitted further that there is a presumption of regularity in carrying out the administrative function of a Chief Judge who exercised his power to transfer a case based on petition.

He submitted relying on the Provision of Section 168(1) of the Evidence Act and the case of **SHITTA-BEY VS. A.G. FEDERATION AND ANOR (1998) LPELR – 3055 (SC) PP. 54 – 55** that in the absence of any proof from the Appellant to

the contrary, the Chief Judge of the Federal Capital Territory (FCT) High Court has substantially complied with the Provisions of ACJA as regards the transfer of the case file in the instant Appeal to another Judge of the Federal Capital Territory (FCT) High Court, following the petition of the Respondent.

He added that it has been held in a long line of cases, on the issue of the exercise of the administrative functions of the Chief Judge that same is not a judicial function ***per se*** that can be challenged through a judicial process.

He referred on the above to the cases of:

H.R.H. OBA FOLAGBADE AND ANOR VS. HIS EXCELLENCY, THE GOVERNOR OF ONDO STATE AND ORS. (2007) LPELR – 4227 (CA) PP. 25 -27;

ALHAJI ABDUL-RAUF TIJANI AND ORS. VS. FIRST BANK OF NIGERIA PLC (2014) LPELR – 24080 (CA) PP. 27 – 28;

SALEH UBA ZAKARI VS. THE STATE (2008) LPELR – 4925 (CA) PP. 12 – 13.

Respondent's Counsel submitted that it is essential as in the instant case that, where there is allegation of bias against a

Judge, the Judge should hands off the matter, as justice is rooted in confidence.

He referred to the case of **F.R.N. AND ORS. VS,. ABACHA AND ORS. (2014) LPELR – 22355 (CA) 105 – 106** and submitted further that the law is that no matter how impartial or unbiased a Judge could be, if right minded people would be of the opinion that in the circumstances of the case, there was a real likelihood of bias on the part of the Judge then he should not sit over the case.

He submitted that there are two separate distinct scenarios or circumstances from the Provisions of Section 98 of the ACJA in which the Chief Judge can exercise his power to transfer a case. The first, said Counsel, which is guided by the Provisions of Section 98 (1) and (2) of the ACJA, is where the Chief Judge decides to exercise ***suo motu***, without the prompting of any person or external factor. He submitted that the Chief Judge is forbidden by the Provisions of Sub-Section (2) of Section 98 of the ACJA, from ***suo motu*** exercising his powers of transfer, where the prosecution has already called witnesses. He

submitted that the second scenario which is regulated by the Provisions of Section 98(3) and (4) arises where the Chief Judge is to exercise the power of transfer based on a petition written by a person. That where this is so, the Chief Judge is expected to comply with the Provision of Sub-Section (3) and (4) of the ACJA. That is, he shall cause the petition to be investigated by an independent body of not more than three reputable Legal Practitioners within one week of receipt of such petition.

The investigating body shall then submit its report within two weeks of appointment except otherwise specified. Respondent's Counsel submitted that under this second limb, the Chief Judge can transfer a file to another Judge irrespective of whether witnesses have been called or not, in so far as he does not do so ***suo motu***, but subject the petition to the scrutiny and/or investigation by an independent body.

Respondent's Counsel concluded on Issue One that there is absolutely nowhere in Section 98 of the ACJA where it is provided that the Appellant or any other person must be informed of the outcome of the decision of the independent

body, before the Chief Judge exercises his administrative power of transfer.

He urged us to answer Issue One in favour of the Respondent.

In deciding Appellant's Issue One, it is important to give a background of the state of the criminal justice system in Nigeria before the enactment of the Administration of Criminal Justice Act 2015 (the ACJA).

Before now, the administration of criminal justice was in a chaotic state, and the problem of incessant delay topped the list of the overall malfeasance in the system. There was undue delay in the prosecution of even the most important cases and sometimes the most serious offences. There were long and sometime inexcusable periods of adjournments, unpreparedness or untardiness in the calling of witnesses, transfer of Prosecutors, Magistrates and Judges without effective plans for the cases they are handling and indeed poor working attitudes of the various stakeholders.

It was in the light of the above background that the Administration of Criminal Justice Act 2015 (the ACJA) was enacted with a grand purpose in its Section 1 (1):

> ***"----to ensure that system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy administration of justice, protection of the society from crime and protection of the right and interests of the suspect, the defendant and the victim"***

Its Section 2 enjoins the Courts, law enforcement agencies and other authorities or persons involved in criminal justice administration to ensure compliance with the Provisions of the Act and the realization of its purposes. And, generally, makes the Act applicable to criminal trials for offences established by an Act of the National Assembly and other offences punishable in the Federal Capital Territory (FCT) Abuja.

In relation to this Appeal, the Provision of Section 98 of the ACJA is significant. It reads:

1) **The Chief Judge of a High court may, where it appears to him that the transfer of a case will promote the ends of justice or will be in the interests of the public peace, transfer any case from one court to another:**

2) **<u>The power of the Chief Judge referred to in subsection (1) of this section shall not be exercised where the prosecution has called witnesses)</u>.**

3) **Where the Chief Judge is to exercise this power subsequent to a petition, the Chief Judge shall cause the petition to be investigated by an independent body of not more than three reputable legal practitioners within one week of receipt of such petition.**

4) **The investigative body shall submit this report within two weeks of appointment except otherwise specified.**

From a plain and literal construction of the above provision, the Chief Judge of a High Court may transfer a case from one Court to another in the interest of justice. Where the exercise of the power of the Chief Judge under Sub-Section (1) of Section 98 is subsequent to a petition, he shall cause the petition to be investigated and obtain a

report by virtue of Sub-Sections (3) and (4) of Section 98 before exercising the power of transfer under Sub-Section (1) of the provision.

However, by Sub-Section (2) which is not qualified by either Sub-Sections (3) or (4) of the provision the power of the Chief Judge under the provision "shall not be exercised where the prosecution has called witness(es)".

It is clear therefore that even where the power of transfer of the Chief Judge is subsequent on a petition, such power cannot be exercised where witness(es)" have been called.

To my mind, the provision of Sub-Section (2) of Section 98 of the ACJA is deliberate and it is indeed to assist the efficient and speedy administration of justice.

The question would naturally arise – suppose a petition alleging bias is written against a Judge in respect of a case he is handling after witnesses have been called. The simple answer which is perhaps the only one contemplated by the draftsman of the ACJA is that the case should continue and be concluded.

The Report under Sub-Section (4) of Section 98 may then become relevant either for the purpose of impeaching the judgment on appeal and/or for disciplinary action against an erring Judge as the case may be.

The implication of my above reasoning is that the provision of Sub-Section (2) of Section 98 of the ACJA is absolute and does not permit of the exercise of any discretion by the Chief Judge. This is because while Sub-Sections (3) and (4) are subjected to Sub-Section (1) of Section 98, Sub-Section (2) of Section 98 ACJA is not subjected to Sub-Section (1) of the Enactment.

My above reasoning has support in the Judgment of the Court of Appeal, Abuja Division in the case of **ALHAJI SULE LAMIDO AND 7 ORS. VS. FEDERAL REPUBLIC OF NIGERIA, APPEAL NO. CA/A/607^{C}/2017 (Unreported decision delivered on 06/12/2017).**

Elechi, JCA who wrote the lead Judgment in that case reasoned and held at Pages 45 – 47 of the unprinted Judgment as follows:-

"While Section 98(1) of the Administration of Criminal Justice Act which empowers the

Honourable Chief Judge of the Federal High Court to re-assign cases from one court to another is a general provision, subsection 2 which expressly precludes him from transferring a case where witnesses have been called is a particular provision. By the operation of the doctrine of ejusdem generis, the latter provision prevails over the former. In other words, the general powers of the Chief Judge of the Federal High Court to transfer cases provided for in section 98(1) is subservient to the specific provision of section 98 (2) which precludes him from doing so when witnesses have been called.

Furthermore, the word "shall" as employed in the section 98(2) of the Administration of Criminal Justice Act, is not directory as erroneously contended by the Respondent. That word within that context is absolutely obligatory, mandatory and peremptory. It admits of no discretion. In ***ENGR. ABRAHAM ADEBISI GBADAMOSI VS. NIGERIAN RAILWAY CORPORATION (2006) LPELR-11668 (CA) P. 35, Paras. B-C,*** *for instance, this Honourable court held that:*

"It is as rightly submitted by the Appellant's Counsel that by the use of the word "shall" it

makes a provision mandatory, pre-emptory and the failure to comply would amount to a fundamental error in a proceeding. This has been pronounced in the plethora of authorities as cited in the Appellant's brief of Argument"

Similarly in CHUKKWUOGOR V. CHUKWUOGOR (2006) 7 NWLR (PT. 979) 302 at 31, PARAS D-E, the Court of Appeal held:

"The word is a word of absolute obligation. It is not merely directory, rather it is naturally imperative and admits of no discretion"

The holdings in the above cases, bear the imprimatur of the Apex Court in EMORDI V. IGEKE & ORS (2011) 9 NWLR 41, LPELR, PP 10-11, PARAS G-B, where the apex court per Fabiyi JSC held that;

"The employment of the word shall points to mandatory realm. It imbues the court below with ultimate and final jurisdiction"

Applying the decision in the above case to the present appeal, it is safe to conclude that the prohibition placed on the Chief Judge from transferring cases where witnesses have been called is absolute one. It is mandatory and

peremptory and admits of no discretion.

On the particular facts of the case of **ALHAJI SULE LAMIDO AND 7 ORS. VS. FEDERAL REPUBLIC OF NIGERIA (Supra)** the Court of Appeal further held at Page 48 of the unprinted Judgement thus:

> ***"No matter the noble intentions of the Honourable the Chief Judge in transferring the case of the Appellant from Honourable Justice A.F.A. Ademola before whom the matter was substantially heard, to Honourable Justice B.O. Quadri, even after the prosecution has taken about 18 witnesses who were also cross-examined, the Honourable the Chief Judge has breached Section 98(2) of the Administration of Criminal Justice Act 2015. Having so acted, the Honourable Chief Judge has acted in excess of his power and the said transfer is ultra vires and therefore a nullity. In the case of EKANEM & ORS VS. OBU (2010) LPELR-4084 (CA) NGWUTA JCA (as he then was) opined that "Ultra Vires" means beyond or above the power conferred. It is an act which is invalid since it has been done in excess of authority conferred by law***

in excess of powers".

The Court of Appeal in the **ALHAJI SULE LAMIDO AND 7 ORS. VS. FEDERAL REPUBLIC OF NIGERIA (Supra)** further supported itself on the interpretation of Section 98 of the ACJA with the recent decision of the Supreme Court per Eko, JSC in the case of **Federal Republic of Nigeria Vs. Francis Atuche - SC/865/2016 delivered on the 27th day of September, 2017.** In that case, the Apex Court while setting aside the decision of the Court of Appeal that validated the re-assignment by the Chief Judge of Lagos State of the trial of the Respondents from Okunnu J., before whom evidence had already been led and witnesses called, held the re-assignment to be against the interest of justice.

In the words of **Eko, JSC**

> ***"The case before Okunnu, J., as the records show has reached advanced stage.***
>
> ***...The order in the circumstance is perverse and it cannot stand. I allow the Appeal. The order, the subject matter of the Appeal is hereby set aside. In its place, it is hereby remitted to Okunnu, J., to be continued and concluded by him"***

In the instant Appeal, the suggestion of the learned Counsel for the Respondent either that there is a presumption of regularity in the action of the Chief Judge to transfer cases from one Court to another and/or that the administrative functions of a Chief Judge cannot be challenged through a judicial process are vestiges of the traditional role of the Chief Judge as regards power of transfer and are no longer relevant under the Administration of the Criminal Justice Act 2015.

In the same vein, the cases of:

SHITTA-BEY VS. A.G. FEDERATION AND ANOR (1998) LPELR – 3055 (SC) PP. 54 – 55;

H.R.H. OBA FOLAGBADE AND ANOR VS. HIS EXCELLENCY, THE GOVERNOR OF ONDO STATE AND ORS. (2007) LPELR – 4227 (CA) PP. 25 -27;

ALHAJI ABDUL-RAUF TIJANI AND ORS. VS. FIRST BANK OF NIGERIA PLC (2014) LPELR – 24080 (CA) PP. 27 – 28;

SALEH UBA ZAKARI VS. THE STATE (2008) LPELR – 4925 (CA) PP. 12 – 13.

amongst others are totally inapplicable and irrelevant to the

interpretation of the Provisions of Section 98 of the ACJA.

If I may digress a while to address the point raised by the learned Counsel to the Respondent that "there is absolutely nowhere in Section 98 of the ACJA where it is provided that the Appellant or any other person must be informed of the outcome of the decision of the Independent Investigative Body .... before the Chief Judge exercises his administrative power of transfer.".

I think the position taken on the above matter by the learned Counsel for the Respondent is somewhat simplistic.

I had said earlier on that the Provision of Sub-Section (1) of Section 98 of the ACJA is qualified only by Sub-Section (3) and (4) therefore the Provisions of Sub-Section (3) and (4) of Section 98 do not affect a situation as in the instant case, where witnesses have been called.

However, in relation to Sub-Section (1) the Independent Investigative Body envisaged in Sub-Section (3) and (4) of the ACJA is a statutory quasi-judicial body which in the minimum must oblige itself with the observance of the rules of natural justice.

Consequently, persons liable to be directly affected by the actions of such quasi-judicial body, decisions or proceedings must be given adequate notice to appear at a hearing or inquiry (if one is to be held) and/or to make representation and effectively prepare to answer the case they have to meet.

See:

De Smith's Judicial Review of Administrative Action 4th Edition by J. M. Evans, Page 96;

ADIGUN VS. A.G. OYO STATE (1987) 1 NWLR (PT. 53) 678;

GARBA & ORS VS. UNIMAID (1986) 1 NWLR (PT 18) PAGE 550

Similarly, the proceedings and report of such Independent Investigative Body must necessarily be made public in accordance with the Provision of Sections 36(1) and (3) of the Constitution of the Federal Republic of Nigeria 1999 (As amended).

In conclusion, I hold in favour of the Appellant on Issue One that the learned trial Judge was not correct in the

interpretation of Section 98 of the Administration of Criminal Justice Act (ACJA) 2015.

Issue One is resolved in favour of the Appellant.

On Issue Two, learned Senior Counsel for the Appellant submitted that if we find favour with their interpretation of Section 98(1) – (4) of the ACJA, what follows is whether the case ought to be returned to the Honourable Justice O. A. Otaluka who heard the four (4) out of five (5) of the prosecution witnesses.

He submitted that the processes leading to the transfer of the case to Honourable Justice Halilu was illegal, null and void being in violation of the mandatory provision of the ACJA and Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (As amended). Nothing lawful can be based upon it. No lawful and valid exercise of judicial power can be based upon it.

He submitted further that where the statute has expressly provided for the doing of an act or taking any step in the legal processes, any step or steps taken in disregard or outside the

stipulated statute are regarded as wasted and to be discarded.

He referred to the cases of:

SALEH VS. MONGUNO AND ORS. (2006) 7 SC (PT. 11) 97 AT 121 and

MACFOY VS. UAC LIMITED (1961) 3 WLR 1405 (PC) AT 1409

on the effect of an act that is null and void and reminded us that this Court has the power to reverse the irregular and null order of the Honourable Chief Judge.

He urged us to order that the trial of the Respondent continue in the Court where four (4) witnesses out of the five (5) listed had been taken and that the trial be given accelerated hearing until completion.

Learned Counsel for the Respondent adopted and repeated some of his arguments on Issue One in the treatment of Issue Two. He went into a fresh foray on the Issue of likelihood of bias and referred to cases such as:

R. VS. SUSSEX JUSTICES EX PARTE M$_c$CARTHY (1923) ALL E.R. 233, 234;

ABBEY VS. LAMPTEY (1947) 12 WACA 156;

METROPOLITAN PROPERTIES CO. VS. LENNON (1969) 1 Q.B. 577, 598;

IKEHI OLUE VS. ENENWALI (1976) 2 SC 23

AKOH VS. ABUH (1958) 3 NWLR (PT. 85) 696 AT 720;

F.R.N. AND ORS. VS. ABACHA AND ORS. (2014) LPELR – 22355 (CA) PP. 105 – 106

to come to the conclusion that "it is essential as in the instant case that where there is allegation of bias, that the Judge should hands off the matter, as justice is rooted in confidence".

He urged us to dismiss the Appeal as a further transfer of the case to Honourable Justice O. A. Otaluka for conclusion of trial will leave a reasonable thinking that justice has not been done in the circumstance.

I agree with the learned Senior Counsel for the Appellant

that the answer to Issue Two necessarily flows from the answer to Issue One.

The incessant reference to common law position on the idea of likelihood of bias and perhaps also to the traditional power of a Chief Judge on the transfer of cases from one Court to another by the learned Counsel to the Respondent is a failure to understand or appreciate the peculiar intervention of the ACJA in the resolution of problems of the administration of criminal justice in Nigeria.

The Honourable Chief Judge is no longer empowered to transfer criminal cases covered by the ACJA where witness(es) have been called.

The remedy of a Complainant alleging bias at the stage when witnesses have been called in accordance with the provision of Section 98 (2) lies in the possibility of impeaching such a concluded Judgment on Appeal and/or pursuing disciplinary measures against an erring judicial officer.

Issue Two is also resolved in favour of the Appellant.

Having resolved the two Issues in this Appeal in favour of the Appellant, the **Appeal succeeds and it is accordingly allowed.**

The Ruling of Hon. Justice Y. Halilu, the subject matter of this Appeal delivered in **Charge No. FCT/HC/CR/76/2013 is hereby set aside.**

In its place, **Charge No. FCT/HC/CR/76/2013 is hereby remitted to the Hon. Justice A. O. Otaluka of the Federal Capital Territory High Court** through the Hon. Chief Judge, Federal Capital Territory (FCT) to be continued with accelerated hearing and to be concluded by him.

MOJEED ADEKUNLE OWOADE
JUSTICE, COURT OF APPEAL

COUNSEL/APPEARANCES:

Asiwaju Adegboyega Awomolo, SAN with him
Akinyosoye Arosanyin, Esq.; } for the **Appellant**

U. K. Uwagboe, Esq. with him
Godwin Iyinbor, Esq } .... for the **Respondent**

CA/A/717C/2016

CHIDI NWAOMA UWA, JCA.

I was privileged to read in advance the judgment of my learned brother, **MOJEED ADEKUNLE OWOADE, JCA**. I agree with his reasoning and conclusion arrived at in the decision remitting the case back to the Chief Judge of the Federal Capital Territory (FCT) to be continued and concluded by A. O. Otaluka, J. of the same court. The Trial should be given accelerated hearing. The essence of the Administration of Criminal Justice Act, 2015 (ACJA) was to ensure amongst others, speedy trial and quick disposal of criminal cases in the interest and as of right of a suspect, the defendant, the victim and in fact the society at large. Section 98(2) of the ACJA was put there to ensure that part heard criminal matters do not suffer unnecessary transfers from one court to the other for whatever reason, where an unsatisfied party has the option of an appeal if not satisfied with the outcome of the trial. I would add the popular saying that, justice delayed is justice denied or no justice at all. In some cases some of the accused persons do not live to see the end of their trials for offences alleged to have been committed by them due to long and unending trials. To curb this trend is the essence of the ACJA.

For the fuller reasons given by my learned brother, I also allow the appeal and abide by the consequential orders in the leading Judgment.

CHIDI NWAOMA UWA,

JUSTICE, COURT OF APPEAL.

APPEAL NO. CA/A/717C/2017

HAMMA AKAWU BARKA, JCA

The decision of my learned brother **MOJEED ADEKUNLE OWOADE PJ/JCA** was made available to me in draft before now.

Having carefully studied the records and the arguments of learned counsel in their briefs of argument, I am satisfied that the two issues thrown up for resolution were adequately dealt with to the conclusion that the appeal succeeds and it is hereby allowed by me. In the event, the judgment of the lower court as delivered is hereby set aside. I agree that the case be remitted back to the trial Judge A. O. Otaluka J for speedy determination.

HAMMA AKAWU BARKA
JUSTICE, COURT OF APPEAL