IN THE COURT OF APPEAL
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON MONDAY THE 21ST DAY OF MAY, 2018

BEFORE THEIR LORDSHIPS:

ABDU ABOKI	**JUSTICE, COURT OF APPEAL**
EMMANUEL AKOMAYE AGIM	**JUSTICE, COURT OF APPEAL**
TANI YUSUF HASSAN	**JUSTICE, COURT OF APPEAL**

APPEAL NO. CA/A/813C/2017

BETWEEN

DANIEL EDET } **APPELLANT**

AND

FEDERAL REPUBLIC OF NIGERIA } **RESPONDENT**

JUDGEMENT
DELIVERED BY EMMANUEL AKOMAYE AGIM, JCA

This appeal No. CA/A/813C/2017 was commenced on 6-11-2017 when the appellant herein filed a notice of appeal against the judgment of the High Court of Federal Capital Territory delivered on 30-3-2017 in charge No. FCT/HC/CR/160/12. The notice of appeal filed after this court on 26-10-2017 extended the time to appeal against the above mentioned judgment contains 8 grounds of appeal.

Both sides filed, exchanged and adopted their respective briefs as follows- appellant's brief, respondent's brief and appellant's reply brief.

The appellant's brief raised the following issues for determination-

1. **Issue 1: Whether the trial and conviction of the Appellant was a nullity when the Learned trial Judge failed to take fresh plea on the amended charge filed on 19/8/2014. (GROUND 1)**
2. **Issue 2: Whether the Economic and Finance Crimes Commission (EFCC) was competent to prosecute an offence under section 325 of the Penal Code and was the trial Court right in convicting the Appellant. (GROUNDS 2 and 3).**
3. **Issue 3: Did the Appellant issue a dud cheque to Global Royal International Concept Ltd in the circumstances of this case and was the trial Judge right in convicting the Appellant for issuing Exhibit 1C and 3 when the aforesaid cheques were issued by Daneve Engr. Co. Ltd.? (GROUNDS 6 and 7)**

The respondent's brief adopted the issues for determination raised in the appellant's brief.

I will determine this appeal on the basis of the issues raised for determination in the appellant's brief.

Let me start with issue No. 1.

The trial court in its judgment stated thusly- **"on the 19th of August, the prosecution filed an amended charge against the defendants. In the amended charge, the defendants were charged in the alternative with the offence of cheating under Section 325 of the Penal Code. Thus bringing the total number of counts against**

defendants to 3. The amended charge was read to the defendants. And they pleaded not guilty."

This holding or finding of the trial court that "the amended charge was read to the defendants and they pleaded not guilty" is not supported by any part of this record of appeal. There is no part of this record of appeal stating so.

The record of this appeal show as follows. The initial charge that commenced the criminal proceedings in the trial court was filed on 4-9-201 with two counts of offences as follows-

"CHARGE:

COUNT ONE

That you Daniel Edet and Daneve Engineering Ltd on or about the 8th of April 2010 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory with intent to defraud induced one Global Royal Int'l Concepts Ltd to deliver to Daneve Engineering Ltd goods worth ₦8,640,975 (Eight Million Six Hundred and Forty Thousand Nine Hundred and Seventy Five Naira) only under the false pretence that the goods would be paid for by the 30th of April 2010 which pretence you knew to be false and thereby committed an offence contrary to Section 1(1) b and punishable under Section (1) 3 of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14, 2006.

COUNT TWO

That you Daniel Edet and Daneve Engineering Ltd on or about the 4th of June 2010 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory with intent to defraud knowingly and fraudulently issued a Unity Bank Plc cheque no 00000003 dated the 4th of June 2010 for the sum of ₦9,505,072 (Nine Million Five Hundred and Five Thousand Seventy Two Naira Only) payable to Global Royal Int'l Concepts Ltd which cheque on presentation was dishonoured for insufficient funds in the account and thereby committed an offence contrary to and punishable under Section 1(1) of the Dishonoured Cheques Act, Cap D11, Laws of the Federation of Nigeria, 2004."

The appellant was arraigned on this charge on 26-11-2012 and pleaded not guilty to the two counts. The trial of the appellant on this charge commenced on 17-1-2013 and prosecution closed its evidence on 30-6-2014 after calling 4 witnesses (PW1, PW2, PW3 and PW4). The trial was adjourned to 6-10-2014 for defence. On 19-8-2014, an amended charge was filed with the following counts-

"AMENDED CHARGE

COUNT ONE

That you Daniel Edet and Daneve Engineering Ltd on or about the 8th of April 2010 in Abuja within jurisdiction of the High Court of the Federal Capital Territory with intent to defraud induced one Sunday Thomas of Global Royal Int'l Concepts Ltd to deliver to Daneve Engineering Ltd goods worth N8,640,975 (Eight Million Six Hundred and Forty Thousand Nine Hundred and Seventy Five

Naira) only under the false pretence that the goods would be paid for by the 30th of April 2010 which pretence you knew to be false and thereby committed an offence contrary to Section 1(2) and punishable under Section (1) 3 of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14, 2006.

ALTERNATIVELY

COUNT 2

That you Daniel Edet and Daneve Engineering Ltd on or about the 8th of April 2010 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory cheated one Sunday Thomas of Global Royal Int'l Concepts Ltd by dishonestly inducing him to deliver to you office furniture worth ₦8,640,975.00 (Eight Million Six Hundred and Forty Thousand Nine Hundred and Seventy Five Naira) property of the said Global Royal Int'l Concepts Ltd and you thereby committed an offence punishable under Section 325 of the Penal Code.

COUNT THREE

That you Daniel Edet and Daneve Engineering Ltd on or about the 4th of June 2010 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory with intent to defraud knowingly and fraudulently issued a Unity Bank Plc cheque no 00000003 dated the 4th of June 2010 for the sum of ₦9,505,072 (Nine Million Five Hundred and Five Thousand Seventy Two Naira only) payable to Global Royal Int'l Concepts Ltd which cheque on presentation was dishonoured for insufficient funds in the

account and thereby committed an offence contrary to and punishable under Section 1(1) of the Dishonoured Cheques Act, Cap D11, Laws of the Federation of Nigeria, 2004."

On 23-3-2015, the defence filed a written no case submission on the basis of the trial on the two counts charge. The prosecution fled its reply on 17-4-2015. On 26-5-2015, arguments were heard on the no case submission as both sides adopted their respective written addresses all based on trial on the two counts charge. The trial court rendered its ruling on 25-11-2015 dismissing the no case submission. Between 9-2-2016 and 10-3-2016, an objection by the defence to the jurisdiction of the trial court to entertain and determine the case was heard and dismissed by the trial court. The defence opened its evidence on 21-4-2016 and on 7-11-2016 closed evidence. Both sides filed their respective written addresses. The defendant's address considered the trial on the basis of the initial charge of two counts. The prosecution's address considered the trial on the basis of the amended charge. After the adoption of their written addresses, the trial court rendered final judgment in the case on 30-3-2017, discharged and acquitted the appellant on count 1 and convicted him on counts 2 and 3 of the amended charge and sentenced him thusly- **"In all therefore, in view of foregoing consideration, the convict is hereby sentenced to 2 years imprisonment on count 2 with a fine of 500,000.00 whereas the convict is sentenced to 2 years imprisonment on count 3.**

Further in accordance with section 321 of ACJA 2015, it is by order, by way of restitution that the convict shall pay the nominal complainant the sum of ₦8,505,072.00 only as restitution. The sentence shall run concurrently".

In this appeal, both sides in their respective briefs agree that after the filing of the amended charge, no fresh plea was taken from the appellant and the proceedings continued concluding with the judgment.

Learned Counsel for the appellant has argued that though the trial court stated in his judgment that the amended charge was read to the appellant and nothing more, there is nowhere in the record of proceedings where the said amended charge was read or explained to the appellant, that the trial court was bound to direct the appellant to take fresh plea after the amendment of the charge, that its failure to do so is contrary to Ss. 216, 217, 218 and 219 of the Administration of Criminal Justice Act (ACJA) 2015, that compliance with these provisions is mandatory and a pre-requisite of a valid trial, that where a court proceeds to try the accused without strictly complying with these provisions, the trial would be rendered a nullity, that the statement of the trial court in its judgment that the amended charge was read to the defendants and they pleaded not guilty cannot translate into strict compliance with the above provisions of the ACJA, that this failure of the trial court to take a fresh plea on the amended charge also violates S.36(6) of the Constitution of the Federal Republic

of Nigeria 1999 (the 1999 Constitution), that the doubt as to whether a fresh plea was actually taken on the amended charge should be resolved in favour of the appellant. For these submissions, he relied on the judicial decisions in **Chukwu V. state (2005) 1 NWLR (Pt 908) 5 20 at 539 – 540, Eyorokoromo V. The State (1979) 6 – 9 SC 3, Josiah V. The State (1985) 1 SC 406 and Ema V. The State (1964) 1 ALL NLR 416.**

Learned Counsel for the respondent after stating that "we concede that it is trite law that where a trial court fails to take the plea of an accused person before he is tried, the entire proceedings are vitiated and liable to be declared a nullity as the accused person could not have been said to be properly arraigned and thus fatal to the prosecution case", proceeded to argue replicando that the initial charge filed on 4-9-2012 was not withdrawn, that the prosecution did not inform the court of the amended charge, that no life was given to the amended charge as same was not activated by the prosecution, that the amended charge that was filed is at best an abandoned process, that cases cited and relied on by the appellant relate to failure to take plea before commencement of trial which is not the situation here, that therefore those cases do not apply here, that count 2 of the initial charge is the same with count 3 of the amended charge and as such the court rightly convicted the appellant on that count as the appellant had pleaded to the count since 26-11-2012. Learned Counsel for the respondent then conceded that the appellant did not take his plea on count 2 of the amended charge, that this is fatal to the

prosecution's case on that count, that conviction on count 3 was valid, since the appellant had been arraigned on it and the initial charge was never withdrawn, and the appellant was not prejudiced by it. He then finally submitted that the charge upon which the appellant was tried being a valid charge, the conviction for the offence of issuing dud cheques is valid and cannot be quashed.

Let me now consider the merit of the above arguments of both sides.

The argument of Learned Counsel for the respondent that the amended charge was abandoned is not correct as that assertion is not supported by the record of this appeal. This is because the prosecution who filed the amended charge based its written final address in the trial court on the said amended charge before judgment. The opening paragraph of its final address filed on 10-2-2017 reads thusly- **"On the 4th of Sept. 2012 the Prosecution filed a charge dated same date against the Accused persons herein. The charge had 2 counts laid against the accused persons. While count one of the charge is brought under S.1 (3) of the Advance Fee Fraud and Other Related Offences Act, count two was brought pursuant to Section 1(1) of the Dishonoured Cheques Act. The plea of the defendants was taken on the 26th of Nov. 2012 and trial proper commenced on the 17th of January 2013 with the fielding of PW1 by the prosecution. The prosecution called a total of 4 witnesses and closed its case on the 30th of June 2014. On the 19th of August, the prosecution filed an amended charge against the defendants. In the amended charge, the defendants were**

charged in the alternative with the offence of cheating under Section 325 of the Penal Code. Thus bringing the total number of counts against the defendants to 3."

So its final address proceeded on its premise or acknowledgement that by virtue of the amended charge, the total number of counts of offences the defendant was charged with were 3. The address then proceeded to consider the state of the evidence in respect of each of the 3 counts seriatim, starting with count 1, then 2 and 3.

The address on count 2 opened with the paragraph thusly- **"My Lord the second count of the charge is a charge in the alternative. Thus the second count will only be considered in the alternative, where the court finds the 1st count not to be apposite for the offence alleged against the defendants. It is only then that the Court can fall back to the alternative charge to see if the ingredients of same are established by the evidence."**

It is obvious that the alternative count referred to here is in the amended charge. The initial charge has no alternative count of offence. The address on count 3 opened with the sentence *"the third and final count of the charge is one of issuance of a dud cheque to the tune of ₦9,505,072"*. It is also obvious that only the amended charge has count 3. The initial charge has only two counts.

It is clear from the written final address of the prosecution that it did not abandon the amended charge it filed. It addressed on it and

invited the trial court to convict the appellant of the three counts of offences. A process of court or any part of it is said to be abandoned when the party that filed it ignores it or failed to invite the court to consider it or deal with it, while presenting his case or making his final address to the court before judgment. Some examples are where a party who filed a motion failed to move it or invite the court to deal with it and proceeds with his case or where an appellant failed to distil an issue for determination from a ground of appeal or failed to argue an issue raised for determination. In such situations, the motion on notice or ground of appeal or issue for determination as the case may be, would be deemed abandoned. See **Araka V. Ejeagwu (2000) 15 NWLR (Pt. 692) 684 at 699.** In our present case, the prosecution filed the amended charge, its address argued that the evidence adduced by it proves beyond reasonable doubt that the defendant committed the offence in the amended charge and urged the court to convict the appellant on those counts.

It is therefore not surprising that the trial court's judgment considered and determined if the prosecution's evidence proved beyond reasonable doubt that the defendant (appellant herein) committed the offences in counts 1, 2 and 3 of the amended charge.

The trial court proceeded in that determination on the basis of its holding that *"the amended charge was read to the defendants and they pleaded not guilty"*. But as I had held herein, this holding is not

supporting by the record of proceedings preceding the judgment and the parties herein agree that no such thing took place and that the appellant was not re-arraigned on the amended charge. So the above holding or finding of the trial court is obviously perverse and cannot stand. It is hereby set aside.

The next point that should be determined at this juncture is whether the prosecution was correct to have based its final address on the amended charge and whether the trial court rightly determined the case on the basis of the said amended charge.

The prosecution merely filed the charge headed amended charge. There is nothing in the record of this appeal that shows that the trial court permitted the amendment before the prosecution relied on the charge as amended in its written final address. Neither party to a criminal proceeding can on its own amend or alter a charge or any process in the proceedings without the leave or permission of the trial court. The exclusive discretionary power to grant or refuse permission to amend a charge before judgment rests on the court by virtue of S. 216(1) of the ACJA 2015 which provides that *"A court may permit an alteration or amendment of a charge or framing of a new charge at any time before judgment is pronounced. An amended charge filed as such without the leave or permission of the trial that such amendment be made, remains or amounts to a proposed amended charge".* In law it is not yet an amended charge until the court has permitted the

amendment. The amendment must be made before the pronouncement of judgment. Merely stating in the judgment that the charge was amended does not amount to such permission to amend. Such a statement or holding in the judgment is perverse as there is nothing in the record of appeal that shows that such amendment was made with leave of court.

The prosecution was therefore wrong to have based its written final address on a proposed and therefore legally ineffective amendment of the charge. The address ought to have been based on the initial charge that remained extant until it is amended with leave or permission of court, whereupon it would become superseded and eclipsed by the court permitted amended charge. The arguments therein that the prosecution proved beyond reasonable doubt that the defendant committed the offences in the three counts of the proposed amended charge and that the defendant be convicted for the commission of those offences is incompetent since the amended charge is a proposal and is legally ineffective as a charge. Equally, the trial court was wrong to have based its judgment on the proposed amended charge and convicted the appellant for committing the offences in a proposed and legally ineffective amended charge. The entire judgment is incompetent and a nullity.

Assuming the amendment of the charge was made with the permission of the trial court, another question that is thrown up by

issue No 1 in the appellant's brief and the arguments there under is, whether the trial court was right to have proceeded to judgment without first reading and explaining the amended charge to the defendant, taking his plea to the amended charge and availing him the opportunity to exercise the other rights he is entitled to in the trial by virtue of the amendment of the charge against him.

The law and practice on amendment of a charge in a criminal trial, the rights of the defendant upon such amendment and the duty of the court in the processes relating to such amendment is prescribed in Ss. 216, 217, 218 and 219 of the ACJA which provide as follows-

"**216. (1) A court may permit an alteration or amendment to a charge or framing of a new charge at any time before judgment is pronounced.**

(2) An alteration or amendment of a new charge shall be read and explained to the defendant and his plea to the amended or new charge shall be taken.

(3) Where a defendant is arraigned for trial on an imperfect or erroneous charge, the court may permit or direct the framing of a new charge, or an amendment to, or the alteration of the original charge.

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

217.(1) Where a new charge is framed or alteration made to a charge under the provisions of section 216 of this Act, the court shall call on the defendant to plead to the new or altered charge as if he has been arraigned for the first time.

(2) The court shall proceed with the trial as if the new or altered charge had been the original charge.

218.(1) Where the charge as revised under section 216 or 217 of this Act is such that proceeding immediately with the trial is not likely in the opinion of the court, to prejudice the defendant in his defence or the prosecutor, as the case may be, in the conduct of the case, the court may in its discretion forthwith proceed with the trial as if the charge so revised had been the original charge.

(2) Where a charge is so amended, a note of the order for amendment shall be endorsed on the charge, and the charge shall be treated, for the purpose of all proceedings in connection therewith, as having been filed in the amended form.

219. Where a charge is altered, amended or substituted after the commencement of the trial, the prosecutor and the defendant shall be allowed to recall or re-summon and examine any witness who may have been examined and to call any further witness, provided that such examination shall be limited to the alteration, amendment or substitution made."

Compliance with the above provisions of the ACJA is mandatory. Any further proceeding in a criminal trial after the amendment of the charge without reading and explaining the amended charge to the defendant and his plea to the amended charge taken is contrary to the mandatory provisions of S.216(2) and S.217 of the ACJA.

The record of proceedings of the court must state expressly how the said provisions were complied with. There is no such record in the record of proceedings. The holding of the trial court in its judgment that *"the amended charge was read to the defendants and they pleaded not guilty"* is not supported by the record of the proceedings before the judgment.

Trying the appellant on the amended charge without reading and explaining it to him and taking his plea to the amended charge also violates his fundamental right to fair hearing given to him by S.36(a) and (b) of the 1999 constitution which provides thusly-

"(6) Every person who is charged with a criminal offence shall be entitled to-

(a) To be informed promptly in the language that he understands and in detail of the nature of the offence;

(b) To be given adequate time and facilities for the preparation of his defence."

(c) In Okegbu V. State (1979) 11 SC, the Supreme Court held- **"This court has in a long line of authorities enshrined the**

view that, whenever a charge is amended during a trial, a new charge is thus constituted, in which case, a fresh plea from the accused, is an indispensable requirements. Failure to obtain a new plea as laid down under Section 164(1) of the Criminal Procedure Law, would render the trial null and void.

(d) It is only when an accused pleads either guilty or not guilty to a charge as the case may be, that issues are joined in a criminal trial, and until this happen:, he is technically outside the pale of the court's jurisdiction. Indeed in a summary trial of an indictable offence in a magistrate's court, there is the additional requirement that the presiding magistrate should put the accused on his election in order to found jurisdiction. If, after the commencement of the trial of an indictable offence the chare undergoes an amendment, the law requires that the accused be again put on his election a fresh plea obtained from him. Failure to do so would vitiate the trial".

The failure to comply with the mandatory provisions of S.216(2) and S.217(1) and (2) of the ACJA render the further proceedings after the filing of the amended charge and the judgment invalid and a nullity. In **Adejobi & Anor V. The State (2011) LPELR – 97 (SC)** the Supreme Court also held that- **"...the court is required to read and explain the new charge to the accused and record a fresh plea for the accused. It is also trite law that where there is an amendment to a charge, there shall be a fresh plea. The trial court in this case apparently complied**

with this procedure when the charge was amended. Attah V. State (1993) 7 NWLR (Pt. 305) pg. 257. Vincent V. State (1997) 1 NWLR (Pt. 480) pg. 234. Per ADEKEYE, J.S.C. (P. 37, paras. E-G)

Section 164 of the criminal Procedure Act is mandatory in that once the charge is amended; the accused persons must be called upon to plead to the charge as amended. Failure to call on the accused persons to plead to the new charge renders the whole proceedings a nullity. See R. v. Eromini 1953 14 W.A.C.A pg. 137" Per RHODES-VIVOUR, J.S.C. (P. 40, paras. D-E)

In **Temitope V. The State (2010) LPELR 3752 (CA)** this court held that **it is settled law that where a charge of a single count is altered or amended, it is mandatory for the court to take a fresh plea of the accused and it is imperative on the accused to plead to the amended charge. This procedure is fundamental and failure to comply with it renders the conviction based on the amended count invalid. Emphasis supplied.** In **Bude V. State (2013) LPELR- 22 353 (CA)**, this court held thusly- **"Further, in Yusuf V. State (2011) 18 NWLR part 1279 page 853, the apex Court stated that during trial, if there is cause to amend the charge, the accused person must be called upon once again to enter a plea to the amended charge. Where the accused person did not plead to an amended charge, the trial is a nullity. It is, however, instructive to note the decision of the Supreme in Attah vs. The State (1993) 7 NWLR part 305 page 257 where it held that if a charge contains several counts and, after an amendment, the trial Court fails to call the accused to enter a fresh plea to the counts which have been altered, or to new counts which have been added to the charge, the**

conviction against the unamended counts may not necessarily be quashed. In such a situation the nullity decision will affect only the new and altered counts. The earlier plea entered to the counts which were not amended is still valid. The conviction against the unamended counts may however be nullified on appeal if the Court became satisfied that the evidence adduced in support of the amended counts, whose conviction had been quashed for non-compliance with Section 164 (1) Criminal Procedure Law, influenced the findings on the unamended counts." (underlining for emphasis).

See also ***Chukwu V. State (supra)*** **and** ***Josiah V. The State (supra) and*** **Gayus V. FRN (2017) LPELR 43023 (CA).**

I have considered if the nullity of the judgment or conviction should be restricted to count 3, the new count introduced by the amended charge, in view of the decision of the Supreme Court in Attah V. The State (1993) 9 SCNJ 80 that- **"It follows therefore that in a document where there is more than one statement of offence (as in this case) each and every one of the statements offence is easily a charge and any or all of them may be altered or amended. They may also be added to in such a situation it will be mandatory on the court to call upon the accused to plead to the altered or amended count or charge or the new count or charge. There will be no need for the appellant to plead again to any charge or count not affected by the alteration or amendment. This was the procedure followed in the cases of Eronini v. Queen (supra) and Youngman v. C.O.P. (supra). PER KUTIGI, J.S.C (Pp. 24-25, paras. F-B)**

It is settled that failure to comply strictly with the provisions of Section 164(1) of the Criminal Procedure Law is fatal, and renders any conviction in the proceedings invalid as regards the counts, the amendment of which is the occasion of the noncompliance. In other words, if a charge contains several counts and, after an amendment,, the trial court fails to permit the accused to enter a fresh plea to the counts which have been altered or to new counts which have been added to the charge, the conviction against the unamended counts may not necessarily be quashed. In such a situation the nullity decision will affect only the new and altered counts. The earlier plea entered to the counts which were not amended is still valid."

The amendment of the charge did not end with the introduction of count 3. Counts 1 and 2 of the initial charge were also amended to be alternative to each other instead of remaining as they were in the initial charge as independent and distinct counts of offences. In view of this amendment in the relationship between the said two counts, there was need for the alteration or amendment to be read and explained to the defendant and his plea taken thereto in keeping with S. 216 (1) and (2) and S. 217(1) and (2) of the ACJA. Therefore the nullity of the further proceedings and judgment extends to counts 1 and 2 of the amended charge.

In the light of the foregoing, I resolve issue No. 1 in favour of the appellant.

Having declared the proceedings and judgment a nullity, no useful purpose would be served considering the other issues for determination.

This appeal succeeds as it has merit. The entire proceedings of the High Court of the Federal Capital Territory Abuja in Charge no. FCT/HC/CR/160/12 including the judgment delivered on 30-3-2017 by A.S. Umar J is a nullity. Accordingly the conviction and sentence are hereby quashed.

No order as to costs.

EMMANUEL AKOMAYE AGIM
JUSTICE, COURT OF APPEAL

COUNSEL:

George E. Ukaegbu Esq., with Emmanuel N. U. Esq., Samuel Akanji Esq., for Appellant

Christopher Mshelia Esq, with Andrew Akoja Esq., for Respondent

CA/A/813^{C}/2017
ABDU ABOKI, PJCA

I have had the privilege of reading before now, the lead judgment just delivered by my Learned Brother **EMMANUEL AKOMAYE AGIM, JCA.** I adopt as mine, His Lordship's reasoning and the conclusions arrived therein.

The law on the procedure on alteration of a charge, as prescribed by **Section 164 of the Criminal Procedure Act** is set out under sub-sections (1), (2) (3) and (4) thereof.

The provisions of the Section are as follows:-

"(1) If a new charge is framed or alteration made to a charge under the provisions of Section 162 or Section 163 the court shall forthwith call upon the accused to plead thereto and to state whether he is ready to be tried on such charge or altered charge.

(2) If the accused declares that he is not ready the court shall consider the reasons he may give and if proceeding immediately with the trial is not likely in the opinion of the court to prejudice the accused in his defence or the prosecutor in his conduct of the case the court may proceed with the trial as if the new or altered charge had been the original charge.

(3) If the new or altered charge is such that proceeding immediately with the trial is likely, in the opinion of the court, to prejudice the accused or the prosecutor the court may either direct a new trial or adjourn the trial for such period as the court may consider necessary.

(4) Where a charge is so amended, a note of the order for amendment shall be endorsed on the charge, and the charge shall be treated for the purpose of all proceedings in connection therewith as having been filed in the amended form."

Compliance by the Court, with the provisions of Section 164 of the Criminal Procedure Act quoted above, is mandatory. Therefore, failure to request the accused to plead to the amended charge will result in the whole proceedings being declared null and void. See

OGUDU v. STATE (2011) LPELR 860 (SC);
SADIQ v. STATE (2013) LPELR 22842 (CA)

In the instant case, the failure of the Trial Court to strictly comply with these mandatory provisions of Section 164(1) of the Criminal Procedure Law has rendered the entire proceedings at the trial a nullity.

For this reason and for the more articulated reasons proffered by my Learned Brother **EMMANUEL AKOMAYE**

AGIM, JCA, I also find this appeal to be meritorious and it is hereby allowed.

I abide by the order as to costs.

ABDU ABOKI
JUSTICE, COURT OF APPEAL

APPEAL NO. CA/A/813^{C}/2017

TANI YUSUF HASSAN, (JCA)

I am in agreement with my learned brother, **Emmanuel Akomaye Agim, JCA,** that the appeal has merit and deserves to succeed.

I allow the appeal and make no order as to costs.

TANI YUSUF HASSAN
Justice, Court of Appeal