

IN THE HIGH COURT OF JUSTICE  
EDO STATE OF NIGERIA  
IN THE BENIN JUDICIAL DIVISION  
HOLDEN AT BENIN CITY  
BEFORE HIS LORDSHIP HONOURABLE JUSTICE EFE IKPONMWONBA – JUDGE  
ON MONDAY THE 10<sup>TH</sup> DAY OF OCTOBER, 2022

BETWEEN:

CHARGE NO. B/CD/ICPC/1C/20:

The Federal Republic of Nigeria

...

Complainant

Vs.

1. Dr. Charles Aisagbonhi
2. Barr. Edward Ujadughele

---

Defendants

RULING

This application is dated 28/9/22. It is for the following Orders:-

1. An Order of Court granting leave for the prosecution to amend its information in charge No. B/CD/ICPC/1C/20 – Federal Republic of Niger vs. Dr. Charles Aisagbonhi and Barr. Edward Ujadughele.
2. An Order of this Honourable Court deeming properly filed and served the attached amended information in charge No: B.CD/ICPC/1C/2020 – Federal Republic of Nigeria vs. Dr. Charles Aisagbonhi and Barr. Edward Ujadughele.
3. And for further or other Order(s) that this Honourable Court may deem fit to make in the circumstances.

It is supported by a 10 paragraph affidavit and a written address.

Moving the application, Mrs. V. O. Iwoba adopted her written address. She referred the Court to Section 216(1) of the ACJ Act 2000 which she says

empowers the Court to grant the application and urged the Court to hold that the motion has merit in law and grant it.

Opposing the application, Learned Senior Advocate of Nigeria, Ighodalo Imadegbelo informed the Court that he did not file a Counter Affidavit but would reply on point of law and adopted his written address.

He submitted that the Applicant has failed to discharge the burden of providing essential evidential materials for the grant of amendment to enable the Court exercise its discretion. He relied on *Francis vs. FRN* (2021) 5 NWLR (Pt.1789) 398.

He submitted that the amendment of Counts 12 and 13 is affected by jurisdictional defect, not dependent on ascertainment of fact but incompetence arising ex-facie.

He insisted that any criminal offence to be charged directly must be within the contemplation of Section 10 of ICPC Act 2003. He urged the Court to dismiss the application.

I have listed to both Learned Counsel in this application. From her submission, Learned Counsel is praying for leave to amend the charge against the 1<sup>st</sup> Defendant in order to include two counts of forgery and perjury which allegedly emanated from his evidence in Court during his defence.

The reason it is coming at this point is that the prosecution had no knowledge of this defence at the time they adduced evidence.

Section 216(1) ACJA which is in parimaterial with Section 216(1) of ACJL of Edo State provides that "A Court may permit an alteration or amendment to a charge or framing of a new charge at any time before judgment is pronounced."

Clearly from the above, a Court may amend or alter a charge or some Counts in the charge in any criminal trial before it, any time before judgment is delivered.

It is also clear that the prosecution can proceed to amend a charge without asking for leave to do so. All it needs to do is to apply to Court to accept the amendment and the Court after the hearing the parties may or may not accept or allow the amendment. See Princent vs. The State (2002) LPELR -2925 (SC).

On 22/2/2022, 1<sup>st</sup> Defendant gave evidence and in the course of it tendered Exhibits F1 to F5 which are receipts from the hotel he stayed in Akure. Under cross examination, Learned Counsel asked questions on the exhibits which the Defendant answered, whether satisfactorily or not, will be within the purview of the Court to decide.

Learned Counsel for the prosecution contends that this information took them by surprise, but she did cross examine the Defendant on it.

It is my view that this additional count is an afterthought that cannot be added to the charge before the Court. This would mean that the prosecution will reopen their case and adduce evidence relating to that charge. It would prolong the hearing of this charge which is already at defence stage.

It is settled law that in the exercise of discretion there are no hard and fast rules as to the manner of the exercise of the discretion. See Suleiman vs. COP Plateau State.

After hearing both parties, it is my view that the prosecution can bring up the offences in another charge and should do so.

Accordingly, the application is refused.

  
EFE IKPONMWONBA  
JUDGE