

IN THE COURT OF APPEAL
SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO

ON FRIDAY THE 20TH DAY OF JANUARY, 2023

BEFORE THEIR LORDSHIP

MUHAMMED L. SHUAIBU
ABUBAKAR M. TALBA
MOHAMMED DANJUMA

JUSTICE COURT OF APPEAL
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APPEAL NO.:CA/S/114^C/2022

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA APPELLANT

AND

SENATOR UMAR TAFIDA RESPONDENT

JUDGMENT
(DELIVERED BY MUHAMMED L. SHUAIBU, JCA)

This is an appeal against the decision of the High Court of Sokoto State, Coram Mohammed Mohammed, J delivered on 21st March, 2022 striking out Suit No. SS/M. 02/2022 for want of competence.

The Respondent was arraigned on the 1st day of March, 2022 before the lower Court on one count charge of Criminal Breach of Trust contrary to and punishable under Section 311 and 312 of the Penal Code Law. CAP. 89, Laws of the Northern Nigeria. Trial in the case commenced with the Appellant calling two witnesses and tendering documentary exhibits. At the resume hearing of the case, the Respondent filed a motion on notice praying the lower Court to strike out the charge for want of competence of the Appellant to prosecute the offence on the following grounds:-

- (a). The Economic and Financial Commission (EFCC) does not have the powers to prosecute the Defendant for the alleged offence of Criminal Breach of Trust arising from a civil contract between the Defendant's Company and Sokoto State Government as it does relates to Economic and Financial Crimes within the definition of Section 46 of the EFCC (Establishment Act) 2004 as interpreted by the Supreme Court of Nigeria in the case of Dr. JOSEPH NWOBIKE, SAN V. FEDERAL REPUBLIC OF NIGERIA, Suit No. SC/CR/161/2020 decided on the 20th of December, 2021.**
- (b). The Economic and Financial Crimes Commission (EFCC) can only investigate and prosecute offences relating to Economic and Financial Crimes.**
- (c). The Economic and Financial Crimes Commission (EFCC) being a coordinating agency for the fight against corruption in Nigeria does not confer it unfettered**

powers to initiate prosecution in respect of all offences in Nigeria.

- (d). The offence alleged against the Defendant in the charge pending before this Honourable Court relates to that of Criminal Breach of Trust and does not relate to an offence falling within the powers of the Economic and Financial Crimes Commission (EFCC) under Section 46 of the EFCC establishment Act 2004.**
- (e). The powers of the Economic and Financial Crimes Commission (EFCC) under Section 46 of the EFCC Establishment Act 2004 is not at large and open ended.**

The above motion on notice was supported by an affidavit of 31 paragraphs with two annexures marked, Exhibits A and B as well as a written address.

In response, the complainant now Appellant filed a Counter affidavit with twelve (12) annexures, marked, Exhibits 1 – 12 respectively and also with accompanying written address.

After hearing the parties on their respective written address, Learned trial judge in a reserved but considered Ruling delivered on 21st March, 2022 found at pages 585 – 586 of the record of appeal as follows: -

"In consideration of all the facts and circumstances of the Applicant before this Court, it is the humble view of this Court that the case of Dr. Joseph Nwobike, SAN (supra) applies in this instant application, because the Supreme

Court in that case has succinctly and successfully set out parameters and indications that always guide any Courts in determining whether or not a particular conduct, act or crime is an economic and financial crime which the EFCC can investigate and prosecute within the contemplation of the combine effect of Sections 6 (b), 7 (1) (a) and (2) (f) 13 (2) and 46 of the EFCC (Establishment) Act 2004 as in this application.

In the context of economic and financial crime as it relates to this application and explained in the charge No. SS/34C/2021 against the Applicant, I am unable to accept the submission of the Respondent's Counsel that the fact and circumstances of the case of the Applicant constitute an economic and financial crime that metamorphose in the offence of criminal breach of trust against the Applicant which the EFCC is empowered to investigate and prosecute."

Dissatisfied with the above decision, the Appellant appealed to this Court through a notice of appeal filed on 23/6/2022 containing four grounds of appeal.

Having settled and exchanged briefs of argument in accordance with the rules of Court, each parties formulated its/his respective issues for the determination of this appeal. Below are the issues of the Appellant (pages 8 – 9 of its brief)

- 1. Whether the trial Court was right to have struck out and discharged the Respondent on a criminal charge of**

breach of trust by misappropriating total sum N419,744, 612.30 to his personal use, holding that same was not initiated by due process of law and thereby robbing the Court of jurisdiction to continue with the trial, relying on the case of Dr. Joseph Nwobika SAN v. Federal Republic of Nigeria.

- 2. Whether the trial Court was right when he did not place reliance on the counter affidavit along with the annexures marked as Exhibits EFCC 1 to EFCC 12 and the Written Address filed by the Appellant same having not being controverted by the Respondent.**
- 3. Whether the trial Court was right when he held that the transaction between the Respondent and Sokoto State Government leading to the charge No. SS/34C/2021 which deals with criminal breach of trust by misappropriating the total sum of N419, 744,612.30 to his personal use, is civil, thereby striking out the charge and discharging the Respondent.**

Respondent's sole issue is set out on page 4 of the brief of argument thus:-

Whether from the surrounding circumstances of the case at the Court below, the Court below was correct in law to have struck out Suit No. SS/34C/2021 for want of competence?

Appellant's issue No. 1 which is similar to the Respondent's sole issue is, in my view, adequate, enough in resolving this appeal.

Arguing the appeal, learned counsel S. H. Sa'ad referred copiously to Sections 6, 7 and 38 of the Economic and Financial Crimes Commission (Establishment) Act, 2004 to submit that the Appellant is a statutory body saddled with powers of investigating and prosecuting offences bordering on economic and financial crimes and the Court will not exercise its powers to restrain a statutory body from performing its statutory functions.

Counsel also submitted that legal principles established in decided authorities are not to be applied across board in all matters without regards to facts and issues framed for adjudication in a particular case. He referred to the case of **ABUBAKAR V. NASAMU NO. 2 (2012)** in contending that the facts and circumstances of the case of **Dr. Joseph Nwobike, SAN V. Federal Republic of Nigeria** relied upon by the trial Court are completely different from the charge against the Respondent in Charge No. SS/34C/2021 because the Supreme Court did not state that EFCC cannot prosecute offences of criminal breach of trust, but attempt to pervert the course of justice.

In further argument, Counsel submitted that while the Supreme Court held that the offence of perversion of course of justice is not defined by any law, criminal breach of trust, and misappropriation of funds has been defined by Sections 311 and 308 of the Penal Code Law.

In his response, learned counsel for the Respondent, Shamsu A. Dauda while acknowledging the powers of the Appellant under Sections 6 and 7 of the EFCC (Establishment Act) 2004, he however submitted that

such investigatory and prosecutory powers are only limited to economic crimes. Counsel contend that what the Appellant does as regards the trial of the Respondent was to dabble into a civil transaction between the Respondent's Company and Sokoto State Government, who never complained of any impropriety on the part of the Respondent. In aid, he referred to **OMUMA MICRO – FINANCE BANK (NIG) LTD V. OJINNAKA (2018) LPELR – 43988 (CA)** to the effect that police or any law Enforcement Agency including the EFCC are not allowed to dabble into enforcement of civil contracts or engaged in the recovery of debts.

It was further submitted that the EFCC does not have the powers to prosecute the Respondent for the alleged offence of criminal breach of trust from a civil contract between the Respondent and Sokoto State Government same not being an economic crime within the definition of Section 46 of the EFCC (Establishment Act) 2004. He referred to the case of **Dr. Joseph Nwobike, SAN V. Federal Republic of Nigeria (supra)** in contending that the Appellant cannot prosecute all kind of offences and that criminal breach of trust was not one of the offences listed as economic crimes.

The very intrinsic and extrinsic nature of the issue of jurisdiction in judicial proceedings of a Court of law and the fatal consequences on the part of a Court to entertain an action are held to be of considerable antiquity to be elementary in our judicial jurisprudence. Hence, it is never too late in the course of the proceedings of all Courts in a matter, at all stages of the judicial ladder, for any of the parties or Courts to raise the issue of jurisdiction in any form, and that once raised or it arises, it should

be decided first before further steps are taken on other issues in the matter in order to avoid an exercise in futility. See **SKYPOWER EXP. AIRWAYS LTD V. UBA PLC (2022) 6 NWLR (PT. 1826) 203 at 228.**

In the light of the fact that an issue of jurisdiction can be raised at all stages of the proceedings, the Respondent was justified in bringing the application that culminated into the present appeal. It is however pertinent to state at this juncture that the said application was not in the nature of a no case submission, in which the trial Court was called upon to quash the charge because it fails to disclose a prima facie case against the Respondent and or the charge is defective. As stated earlier, the thrust of the Respondent's case was the Supreme Court decision in **NWOBIKE V. FR.N. now reported in (2022) 6 NWLR (PT. 1826) 293** which according to the Respondent has brought about a paradigm shifts in the way and manner of investigation and prosecution of cases by the Economic and Financial Crimes Commission (EFCC). Put differently, that the EFCC's investigatory and prosecutorial powers are confined to and restricted to economic crimes in the strict sense of the word. And that the offence with which the Respondent was arraigned and made to stand trial before the lower Court is not an economic crime within the meaning of the law.

Before embarking on the expedition of discovering whether the offence with which the Respondent was standing trial is an economic crime or not and also whether the case of **Nwobike V. F. R. N. (supra)** was on all fours with the present case, it is also pertinent to note that for the principle of stare decisis to hold, the facts of the case have to be the same or similar to the facts of the earlier decided case by a higher Court, for the

earlier decision to govern and determine the latter case and bind the lower Courts. Where the cases are not the same or similar, the principle is inapplicable. See **ADEGOKE MOTORS LTD V. ADESANYA (1989) 3 NWLR (PT. 109) 250, BAKARE V. NIGERIAN RAILWAY CORP. (2007) 17 NWLR (PT. 1064) 606 and ABUBAKAR V. NASAMU (NO2) (supra)**. Furthermore, a judgment should always be read in the light of the facts on which the case was delivered. Thus, the rules of stare decisis do not allow Courts to apply the ratio of a case across the board and with little regard to the facts of the case before them.

The question then is, what is an Economic and Financial Crime? A financial crime can be conceived as any unlawful activity intended to gain some financial benefits. On the other hand, an economic crime is a broader concept which may include illegal action that go beyond financial benefits to affecting the fabric of society.

Section 46 of the Economic and financial Crimes (EFCC Establishment) Act, 2004 describes the phrase "Economic and Financial Crimes" as follows:

"Economic and Financial Crimes means the non – violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drugs, trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt

malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices, including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods etc.”

The above definition in my view, does not presume to be comprehensive, nor is it able to cover all conduct that can be imaginably conceived as economic or financial crime. By and large, the key element in these concepts include the fact that both economic and financial crimes involve a sort of law breaking and thus such conduct must be criminalized by law, it is therefore a crime. The second element is the fact that the action in whole or in part is intended to gain some benefits. The third and perhaps, the final one is the fact that the act involves concealment or disguising the true origin, ownership, purpose and movement of the persons and instrumentalities involved in it.

Now having defined and x-rayed the various components of economic and financial crimes, let me consider the offence with which the Respondent was arraigned and subjected to trial at the lower Court. The relevant charge is on page 1 of the record and it read as follows:

"That you SENATOR UMAR TAFIDA while being the chairman of Hijrah Textiles Company Limited and Hijrah Investment limited sometimes between 2016 and 2017 at Sokoto within Sokoto Judicial Division of the High Court of Justice of Sokoto State being entrusted with the total sum of

N419,744,612.30 (Four hundred and Nineteen Million, Seven Hundred and forty Four Thousand, Six Hundred and Twelve Naira, Thirty Kobo) paid by the Sokoto State Government represented 40% investment at of shareholding in your company to boost the economy of Sokoto State, dishonestly misappropriated the money in violation of the mode in which such trust was to be discharged and thereby committed criminal Breach of Trust contrary to Section 311 of the Penal Code Law CAP. 89 Laws of Northern Nigeria and punishable under Section 312 of the same Law.”

Instructively, Criminal breach of trust and misappropriation connotes to dishonestly using or disposing of property in violation of any direction of law prescribing the mode in which such trust is to be discharged or any legal contract, express or implied, torching the discharge of such trust. The essential ingredients of criminal misappropriation are:

- (a). That the property in question is movable property;
- (b). That the accused converted or misappropriate. It for his own use, and
- (c). That he did so dishonestly.

See **F. R. N. V. YAHAYA (2019) 7 NWLR 9PT. 1670) 85.**

Furthermore, the elements of the offence of criminal breach of trust on the other hand are:

- (a). That the accused was entrusted with property or with dominion over it.
- (b). that he: (i) misappropriated it, or (ii) converted it to his own use, (iii) used it, or (v) Disposed of it,
- (c). That he did so in violation of (i) Any, direction of law, prescribing the mode in which the trust was to be discharged, or (ii) Any legal contract expressed or implied which he had made concerning the trust, or (iii) That he intentionally allowed some other person to do as above.
- (d). That he acted as in (b) dishonestly. See **ONUHA V. STATE (2706) SC.**

In **NWOBIKE V. F. R. N. (supra)** also following the earlier decisions in the cases of **NYAME V. F. R. N. (2010) 7 NWLR (PT. 1193) 344 and AHMED V. F. R. N. (2009) 13 NWLR (PT. 1159) 536**, the apex Court was emphatic that by virtue of the combined provision of Section 6, 7 (1) (b) and (2) (f) and 13 (2) of the Economic and Financial Crimes Commission (Establishment) Act, 2004, the Economic and Financial Crime Commission has power to investigate, enforce and prosecute offenders under the Act or any other Statute so far as the offence relates to commission of economic and financial crimes.

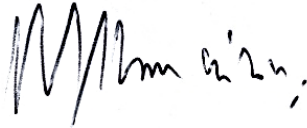
It is beyond any pre adventure that Criminal Breach of Trust is an offence under Section 311 of the Penal Code and thus criminalized by law. Also apparent is the fact that the criminal action is intended to gain some benefit. Similarly, the summary of evidence accompanying the charge

reveals some movement of instrumentalities (funds) involved in the act. It is thus my view that the offence which the Respondent was arraigned and made to stand trial is no doubt a specie of financial and economic crime within the meaning of Section 46 of the Economic and Financial crimes (Establishment) Act, 2004.

The next germane issue is the binding force of the Supreme Court decision of **NWOBIKE V. F. R. N. (supra)** to the instant case. By virtue of Section 36 (12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) a person cannot be convicted of a criminal offence unless that offence is defined and the penalty prescribed in written law. The Supreme Court in the case of **NWOBIKE V. F. R. N. (supra)** has reiterated the already settled legal principle that Section 97 (3) of the Criminal Law did not define the offence of perversion of course of justice for which the appellant in that case was charged, tried and convicted. Can that be said of the offence for which the Respondent in this case was arraigned before the lower Court? I do not think so, because Sections 311 and 312 of the Penal Code not only defined the offence of criminal breach of trust but specifically prescribes the penalty for its infractions. And having held the firm view that the offence of criminal breach of trust is a specie of financial and economic crimes, the facts and circumstances of the two cases are not mutually the same, or similar. Put differently, the facts in the decision of **NWOBIKE V. F. R. N. (supra)** are not on all fours with the facts in the present case. Therefore, the Learned trial judge was patently wrong in his reasoning that charge no. SS/34C/2021 against the Respondent was not an economic and financial crime and that the case of **Dr. Nwobike V. F. R. N.**

(supra) applies to the instant case. I therefore resolved the sole issue against the Respondent and in favour of the Appellant.

In the result, the appeal succeeds per force and it is hereby allowed. The decision of the lower Court delivered on 21/03/2022 is accordingly set aside, while the case is returned to the trial Court for continuation of trial of the Respondent on charge No. SS/34C/2021.



**MUHAMMED L. SHUAIBU
JUSTICE, COURT OF APPEAL**

APPEARANCES:

S. H. Sa'ad, Esq: APPELLANT

Shamsu A. Dauda, Esq: RESPONDENT

HON. JUSTICE A. M. TALBA JCA
CA/S/114^c/2022

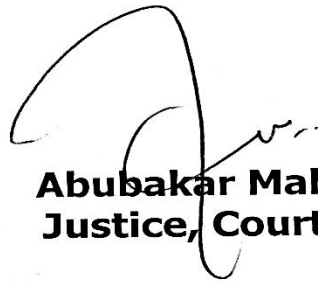
I had the privilege of reading in draft the leading judgement of my learned brother **M. L. SHUAIBU JCA**, just delivered. I agree with the reasoning and conclusion that the appeal is meritorious and it is allowed.

The Crux of this appeal is the decision of the Lower Court to Strike out the one count charge of criminal Breach of Trust preferred against the respondent for want of competence of the appellant to prosecute the alleged offence which arose from a Civil contract between the respondent company and Sokoto State Government. In other words the alleged offence does not fall within the ambit of section 46 of the EFCC (Establishment Act) 2004, as interpreted by the Supreme Court in the case of Dr Joseph Nwobike SAN VS F.R.N (2022) 6 NWLR (Pt 1826) 293.

Without much ado the Case of Dr Joseph Nwobike SAN (Supra) is quite distinguishable from the instant Case. In that Case, Dr Joseph Nwobike SAN was charged with the offence of perversion of course of justice, while in the instant Case the respondent was charged with the offence of criminal Breach of Trust by misappropriating a total sum of ₦419,744,612:30. It is not in doubt that the said offence is an Economic and Financial Crime within the definition of section 46 of EFCC (Establishment Act)

2004. What the learned trial judge did is like painting a dog with a white paint in order to give it the name of a Sheep. The learned trial judge is grossly misconceived. The appeal Succeeds and it is allowed.

I abide by the consequential order (s) in the lead judgement.



Abubakar Mahmud Talba
Justice, Court of Appeal.

APPEAL NO.: CA/S/114^c/2022
MOHAMMED DANJUMA, JCA

I have had the privilege of reading in draft, the lead judgment of my learned brother **M. L. SHUAIBU, JCA**. I agree with the reasoning and conclusion that this appeal succeeds and is hereby allowed. I abide by all the consequential orders in the lead judgment.



HON. JUSTICE MOHAMMED DANJUMA
JUSTICE, COURT OF APPEAL