IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 14TH DAY OF FEBRUARY, 2022
BEFORE HIS LORDSHIP:

HON. JUSTICE MOHAMMED MOHAMMED (JUDGE)

SUIT NO: SS/M.02/2022

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA-----COMPLAINANT/RESPONDENT

AND

SENATOR UMAR TAFIDA-----------------DEFENDANT/APPLICANT

Appearances:

Prof. Ibrahim Abdullahi SAN with Ummu Abdurrahman Esq. for the Applicant. The Applicant is before the court.

S.H. Sa'ad Esq. for the Complainant/Respondent.

Prof. Ibrahim Abdullahi SAN: The application is for hearing and we are ready.

S.H. Sa'ad Esq: We are not ready and we apologize for any inconvenience. We intend to file our response and we have filed our counter affidavit and a Motion for extension of time to have the counter affidavit properly before the court this morning. In the circumstances, we apply a stand down to 30 minutes from now.

Prof. Ibrahim Abdullahi SAN for the Applicant who is also before the court.

S.H. Sa'ad Esq. for the Respondent.

Prof. Ibrahim Abdullahi SAN: The application is for hearing and I have just been served with a counter affidavit of the Respondent and according to Section 2 (1) of the ACJL

2019 relating to speedy dispensation of Criminal cases, we apply that we be granted leave to reply orally in respect of the written address of the Respondent accompanying the counter affidavit.

S.H. Sa'ad Esq: No objection.

Court: Proceed.

Prof. Ibrahim Abdullahi SAN: The application was filed on the 5/1/2022 and brought pursuant to Section 6 (6) of the CFRN 1999 and prays this court as per the reliefs contained on the face of the motion. It has 6 grounds in support and further supported by a 31 paragraphs supporting affidavit with 2 annexures marked as **Exhibit 'A' and 'B'** respectively.

It has a written address representing the full argument of the Applicant. We adopt the said written address. On the receipt of the counter affidavit of the Respondent and a written address, we reply on points of law orally as follows:-

The counter affidavit of the Respondent and its annexed annexures, are all incompetent processes.

The annextures involved public document kept in Nigeria of private documents within the provision of Section 102 (b) of the Evidence Act, 2011 of which the annexures are photocopies that are not certified as required by law.

We submit that the only secondary evidence of public documents that is admissible in any application, is the certified true copy. We refer the court to Section 104 Evidence Act 2011.

We equally submit that the other accompanying documents which accompanied the said annexures are computer generated evidence which were not accompanied by a certifying document as required under Section 84 (4) (9), (b) and (c) of the Evidence Act 2011.

These exhibits are therefore inadmissible evidence which ought to be expunged. And if this court do so, it means paragraphs 9-27 of the counter affidavit equally ought to be expunged because these paragraphs introduced these documents.

Once a document is rendered inadmissible and expunged, the oral evidence is not better of as they go together.

Similarly, the counter affidavit did not deny specific depositions in the Applicant's supporting affidavit. The purported denials were general denial lumped together and which is not allowed in law.

- **Jukola Intl. Ltd V. Diamond Bank Plc (2016) 6 NWLR pt 1507 p 53 at 98.**

Where there is no specific denial, it amounts to an admission in law.

- **Ukarie V. EFCC (2018) 14 NWLR pt 1369 p 195 at 207.**
- **Lawu V. PDP (2018) 4 NWLR pt 1608 p 60 at 118.**

What the respondent succeeded in doing, is a mere general denial which the Supreme Court frowns at in the case of **UBN Plc V. Awmar Properties (2018) 10**

NWLR pt 126 p 64. We therefore we urge the court to call that there is no specific denial in the counter affidavit as they are only bunch of general denial.

On the written address of the Respondent, the cases cited by the Respondents, are cases of Court of Appeal which cannot override the decision of the Supreme in the case of **Dr. Joseph Nwobike SAN V. FRN decided in December, 2021.**

The few Supreme Court cases cited by the Respondent were decided before Nwobike's cases.

By the principles of stare decision, Nwobike's decision is not only binding on this court, but also binding on the Supreme Court unless it is set aside. Where there is conflicting decisions, the later prevails.

In reply to paragraph 2.0 of Respondent's written address reference was made to S. 221 of ACJA to show that objection cannot be raise during proceedings, ACJA 2015 is not applicable to this court as it has been domesticated and the applicable law is ACJL 2019.

The motion is not challenging the charge, but we are challenging the competence of the EFCC to prosecute.

In response to paragraph 4.1.0 of the written address o f the Respondent, we submitted that the case cited by the Respondent that is marine's was a case that originated in Nwobike's case, and we further submit in respect of paragraph 4.3.0 that there can never be possible where all the facts of 2 cases be the same. What the court looks at, are the principles developed in the case. In

Nwobike's case, the Supreme Court dealt with the powers of the EFCC to prosecute economic crimes which is the subject matter in this application. The decision is very in equivocal.

On the whole, we urge the court to grant this application because the Judgment will go a long away in ensuring that the EFCC do the needful.

S.H. Sa'ad Esq: We are opposing the grant of the application of Defendant/Applicant, admit doing so, we have filed a 33 paragraphs counter affidavit. We rely on all the averments contained therein. Attached to the said counter affidavits, are 12 exhibits marked as **Exhibit 1-12** respectively.

We also rely on all the exhibits attached thereto. Attached to the counter affidavit is a written address and we humbly adopt the said written address as our oral legal argument in urging the court to dismiss the Applicant's application as lacking in merit.

By way of adumbration, the counter affidavit of the Respondent, at paragraph 47.0 the case of Nwobike SAN, stipulated the last for ascertaining if a Criminal conduct can be regarded as economic and finance is crimes and since no further affidavit, we urge the court to deem our counter affidavit as having been admitted.

- **APC V. INEC (2014) LPELR 24036 (SC).**

At paragraph 41.0 we submit that the court should look at the case mentioned in that paragraph.

We finally urge this court to hold that pursuant to the provisions of Section 6, 7, 38, 46 of the EFCC Establishment Act, 2004, and Sections 311 and 312 of the Penal Code of Northern Nig. Cap. 89, the EFCC has the power to investigate and prosecute the Defendant in Charge No. SS/34C/2021 and also to hold that paragraphs 11-22 of the counter affidavit having not been controverted, same are deemed as having been admitted. We urge the court to dismiss the application.

Court: This matter is hereby adjourned to 21/3/2022 for Ruling.

Signed

Hon. Justice Mohammed Mohammed
(Judge)
14/02/2022

<u>CERTIFY TRUE COPY</u>

FATIMA SAIDU ABUBAKAR
Ag. DIRECTOR LITIGATION,
HIGH COURT OF JUSTICE,
SOKOTO.

IN THE HIGH COURT OF JUSTICE OF SOKOTO STATE
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 21ST DAY OF MARCH, 2022
BEFORE HIS LORDSHIP:

HON. JUSTICE MOHAMMED MOHAMMED (JUDGE)

SUIT NO: SS/M.02/2022

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA-----COMPLAINANT/RESPONDENT

AND

SENATOR UMAR TAFIDA-----------------DEFENDANT/APPLICANT

Appearances:

Prof. Ibrahim Abdullahi SAN with Ladan Ibrahim Esq. for the Applicant who is before the court.

Anasolu Henry Onyeakachi Esq. for the Respondent.

RULING

Court: The Applicant by this Motion on Notice dated 5/1/2022 and filed on the same date, has approached this court praying for the following orders:-

1. An order of court striking out Suit No. SS/34C/2021 between Federal Republic of Nigeria V. Senator Umar Tafida for want of competence of the Economic and Financial Crimes Commission to prosecute the offence comprised in the said charge same not related to the Commission of Economic and Financial Crimes in view of the decision of the Supreme Court of Nigeria in the case of **Dr. Joseph Nwobike SAN Vs Federal Republic of Nigeria**

(Suit No. SC/CR/161/2020)** decided on the 20th of December, 2021.

2. Such further or other orders as this Honourable Court may deem fit to make in the circumstances.

The application was brought pursuant to the inherent powers of this Honourable Court as preserved under Section 6 (6) (a) of the CFRN 1999 as amended. It is supported by 6 paragraphs grounds upon which the application is brought. It is also supported by a 31 paragraphs supporting affidavit. Annexed to the supporting affidavit, are 2 annexures marked as **Exhibits 'A' and 'B'** respectively.

Exhibit 'A' is a memorandum of understanding between Hijrah Textiles Company Limited and Sokoto State Government.

Exhibit 'B' is a letter of complaint/request for investigation signed by one Mansur Isah Buhari and Muhammad Bashir Achida of the Department of Modern European Languages and Linguistics, Usmanu Danfodiyo University, Sokoto dated 4/9/2019 addressed to the Zonal Head, EFCC, Sokoto Zonal Office.

Accompanying the application is a written address which the Applicant's Counsel adopted as their oral legal submissions in urging the court to grant the application.

After the Respondent were served, the Respondent filed a 33 paragraphs counter affidavit on the 14/2/2022 which was deemed properly filed and served on 14/2/2022 vide Motion No. **SS/M.78/2022.** Annexed to the counter affidavit, are 12 annexures marked as **Exhibits 1 – 12** respectively.

Exhibit 1 is the memorandum of understanding between Hijrah Textiles Company Limited and Sokoto State Government.

Exhibit 2 is a reply letter dated 26/11/2020 from Access Bank Plc addressed to the Zonal Head, EFCC Sokoto Zonal Office in relation to statement of Account from 1st January, 2016 to 31st December, 2017 in connection with Account No. **0700669798** belonging to Secretary to State Government Sokoto.

Exhibit 3 is a reply letter dated 7/11/2019 from First Bank addressed to the Executive Chairman, EFCC Headquarters, Abuja forwarding Account opening documents/mandate form, statement of Account from 1st January, 2016 till date in respect of Account No. **2000578530** belonging to Hijrah Investment Nig Ltd, certificate of identification and the BVN page.

Exhibit 4 is a reply letter dated 30/12/2019 addressed to the EFCC Zonal Head, Sokoto Zonal Office forwarding Account opening packages, statement of Account from 1st January, 2016 till date of Account No. **0724586350** belonging to Hijrah Investment Nig. Limited and Certificate of Identification.

Exhibit 5 is a reply letter dated 18/10/2020 from Access Bank addressed to the EFCC Sokoto Zonal Head forwarding Account opening package, statement of Account from 1st January, 2017 to December, 2018 in respect of Account No. **0006820282** belonging to Sub-Saharan Ocean Services Ltd, BVN and Certificate of Identification.

Exhibit 6 is a reply letter dated 30/12/2019 from Access Bank addressed to the EFCC Sokoto Zonal Head forwarding Account opening packages, statement of Account from 1st January, 2016 till date in respect of Account No. **0724586350** belonging to Hijrah Investment Nig. Limited and Certificate of Identification.

Exhibit 7 is a reply letter dated 30/12/2019 from Access Bank addressed to the EFCC Sokoto Zonal Head forwarding Accounts opening packages, statement of Account from 1st January, 2016 till date in respect of Account No. **0724586350** belonging to Hijrah Investment Nig. Limited and Certificate of Identification.

Exhibit 8 is a reply letter dated 7/11/2019 from First Bank addressed to the Ag. Executive Chairman, EFCC Headquarters, Abuja forwarding Account opening documents/mandate form, statement of Account No. **2000578530** belonging to Hijrah Investment Nig. Limited and Certificate of Identification and BVN page.

Exhibit 9 is a reply letter dated 20/08/2020 from Polaris Bank addressed to the EFCC Sokoto Zonal Head forwarding certified true copies of Account opening documents, certified true copies of statement of Account and certificate of identification in respect of Account No. **3019027636** belonging to Sa'adu Nabunkari Binji.

Exhibit 10 is a reply letter dated 7/11/2019 from First Bank addressed to the Ag. Executive Chairman, EFCC Headquarters, Abuja forwarding Account opening documents/mandate form, statement of Account from 1st January, 2016 till date of Account No. **2000578530** belonging to Hijrah Investment Nig. Limited, Certificate of Identification and BVN Page.

Exhibit 11 series are 9 photocopies cheque leaves of Access Bank belonging to Sub-Saharan Ocean Services Limited Account and one (1) photocopy cheque leave belonging to Senator Umar A. Tafidan Argungu's Account.

Exhibit 12 are two (2) statements of Umar Tafida (who is the Defendant in the substantive suit) and Applicant in this application made on the 4/11/2019 and 6/11/2019 respectively at the EFCC Office.

Accompanying the counter affidavit is a written address which the Respondent's Counsel adopted as their oral legal argument in this application.

After the counter affidavit and the accompanying written address of the Respondent were deemed as having been properly filed and served, Applicant's Counsel sought leave of this court to make oral reply on points of law which was granted without objection.

After issues were joined, both counsel submitted that they relied on the averments contained in the supporting and counter affidavits and the attached exhibits there under in buttressing their respective positions and the matter was thereafter adjourned to today for Ruling.

The Applicant's Counsel in his adopted written address, formulated one (1) issue for determination and is hereby reproduced below as follows:-

> ***"Whether the Economic and Financial Crimes Commission can prosecute and or continue to prosecute the Defendant/Applicant for the offence of Criminal Breach of Trust contrary to Section 312 of the Penal Code Law decoded in Suit No. SS/34^{C}/2021 same not related commission of economic and financial crimes."***

On the other hand, the Respondent's Counsel also formulated one (1) issue for determination from their adopted written address and is hereby produced below as follows:-

> ***"Whether having regard to the facts of this case, the Defendant/Applicant have made out a case that would entitle him to the order being sought before this Honourable Court."***

For the purpose of this ruling, I have decided to hybride the issues formulated by counsel for simplicity and precision as follows:-

> ***"Whether the facts upon which the charge against the Applicant in the substantive Suit No. SS/34^{C}/2021 constitutes an economic and financial crime for which the EFCC can prosecute."***

From the processes filed before this court in the substantive Suit No. SS/34^{C}/2021 and in this application, the Applicant in this application, is the Defendant in Suit No. SS/34^{C}/2021 between **Federal Republic of Nigeria Vs Senator Umar Tafida** in which he was accused of committing ***Criminal Breach of Trust*** contrary to Section 311 of the Penal Code of Northern Nigeria Cap. 89 Laws of Northern Nigeria and punishable under Section 312 of the same Penal Code. The Applicant is also the Director/Chairman of Hijrah Textiles Company Limited situated at Kalambaina Road, Sokoto, Sokoto State. In its efforts to boost its capacity and extension, the Company approached Sokoto State Government to partner with the Company by taking same percentage of its share equity as an investor to improve the operations of the Company. After series of negotiations and all that need to be done, the Sokoto State Government agreed to purchase 40% share equity holding in the Company leaving 60% equity shares to the Company. Consequent upon their mutual understanding, a memorandum of understanding was drafted and signed by the parties on the 4/5/2017. In 2019 vide a petition captioned ***"letter of complaint and request for investigation"*** dated 4/9/2019 signed by one Mansur Isah Buhari and Muhammad Bashir Achida of the Department of Modern European Languages and Linguistics, Usman Danfodiyo University, Sokoto to addressed to the EFCC Sokoto Zonal Head, the said undersigned requested the EFCC to investigate the office of the Sokoto Commissioner of Commerce and Industries on allegation of misappropriation of public funds for purchasing 40% shares in two (2) companies which they named as Hijrah textiles and IML (Organic fertilizer) Company in 2017. Arguing the application, the learned SAN submitted that the grounds, upon which the application is brought, are as follows:-

a. The Economic and Financial Crimes Commission 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 not related to economic and financial crimes within the definition of section 146 of the EFCC (Establishment) Act, 2004 as interpreted by the Supreme Court of Nigeria in the case of **D. Joseph Nwobike SAN VS. 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) commonly 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 the 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 relates 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; and

f. Interest of justice.

It was his contention that by the provisions of Sections 6 and 7 of the EFCC (Establishment) Act, 2004, a threshold limit has been set on the powers or extent of powers of the EFCC to investigate, enforce and prosecute offenders, and is limited to Economic and Financial Crime provided in sections 14 – 18 and as define under Section 46 of the EFCC (Establishment) Act, 2004.

He submitted that by the **Exhibit 'B'** annexed to the Applicant's supporting affidavit, the petition written was against the Sokoto State Commissioner of commerce and Industries and not the Defendant.

It was the Applicant's counsel's submission that by **Exhibits 'A' and 'B'** annexed to the Applicant's supporting affidavit, it has become apparent that what the authors of the petition and the EFCC are seeking to do, is to dabble into an entire civil transaction that innures between the Applicant's Company and Sokoto State Government.

The learned silk further submitted that from the memorandum of understanding signed by the Sokoto State Government and Hijrah textiles Company Limited, the following becomes vivid:-

a. The money paid to Hijrah Textiles Company Limited is for the purchase of 40% equity shareholding in the Company which enabled Sokoto State Government to become a partner or a shareholder;

b. The monies paid has nothing to do directly with the purchase of machineries or any development work, but rather after the payment of the 40% equity shareholding in the Company, it becomes the share holders responsibilities to provide funds as may be required to commence operations as well as to provide working capital for the trading cycles in the ratio of the ownership structure as agreed by the parties to wit; Hijrah Textile Company Limited to contribute

60% and Sokoto State Government to contribute 40% on all the requirements of the Company for it to commence operations fully with the exception of initial cleaning of the factory and servicing of the machines which is to be borne by the original shareholders;

c. It states clearly the steps to be taken to address disagreement and or misunderstanding or any other issues that may arise between the parties and which include amongst others Alternative Dispute Resolution; and

d. None of the parties to the memorandum of understanding has taken any such steps and the memorandum of understandings still open and subsisting between the parties.

In his further submission, the learned silk argued that the entire transaction comprised on the memorandum of understanding which is the fulcrum of the case against the Applicant and to which Charge No: SS/34^{C}/2021 against the Applicant was filed before this court, is a purely civil transaction of which the EFCC cannot dabble into under the purported guise of performing their lawful duties.

- **Omuma Microfinance Bank Nig. Ltd V. Ojinnaka (2018) LPELR 43988.**

He contended that the statement of purpose of the United Nations convention against corruption which gave rise to the enactment of the EFCC (Establishment) Act, 2004, was aimed at curbing corruption and international transfers of illicit acquired assets, and so the EFCC cannot hide under Sections 12-18 and 46 of the EFCC (Establishment) Act 2004 to prosecute all kind of cases as its powers are now regulated.

- **Nwobike SAN V. FRN Suit No. SC/CR/161/2020**

He further argued that following from the above, the investigation and prosecution of the Applicant by the EFCC are not erected on any pedestal whatsoever as it did not come to this Honourable Court initiated by due process of law and this court lacks the requisite jurisdiction to continue to entertain same.

- **UBA PLC V. Ademola (2008) LPELR 5066 (CA).**
- **UTIH V. Onoyiwe (1991) LPELR 3436 (SC).**

In his response to the submissions of the Applicant's counsel, the Respondent's counsel submitted that the relief being sought by the Applicant in this application, is not available under the law and that by virtue of Sections 6 and 7 of the EFCC (Establishment) Act, 2004, the EFCC has the power to investigate and prosecute all financial crimes.

- **Fawehinmi V. IGP (2000) NWLR pt 665 p 481.**
- **Bamidele V. Commissioner for Local Government (1994) 1 NWLR pt 328 p 568 at 585.**

He submitted that a person suspected of committing an offence such as the Applicant, cannot be shielded from prosecution by a court as doing so will amount to interfering with the Constitutional power of investigation and prosecution of the prosecuting agency.

- **Hassan V. EFCC (2014) 1 NWLR pt 1389 p 631.**
- **AG Anambra State V. UBA (2005) 15 NWLR pt 947 p 44 at 67.**
- **Kalu V. FRN (2016) 9 NWLR pt 1516 p 1.**

The Respondent's counsel submitted that the Applicant having made several payments, transfers and withdrawals from the N419,744,612.30 to his personal companies, friends and family members, the instant application made by the Applicant, is an abuse of court process because there is no iota of law that support the Applicant's application.

- **Saraki V. Kotoye (1992) 9 NWLR pt 264 p 156 at 188.**

He argued that the case of **Dr. Nwobike SAN V. FRN** relied upon by the Applicant, is grossly misinterpreted, misconceived and misplaced as same did not categorically stop the Respondent from investigating or prosecuting the offence of ***Criminal Breach of Trust,*** and so the Applicant's application is premised on frivolity or recklessness.

- **Marine Management Association V. National Maritime Consultancy Ltd (2012) 3 NWLR pt 1333 p 506 at 538.**
- **Emeka V. Okadigbo (2012) 18 NWLR pt 1331 p 55.**

He submitted that legal principles established in decided authorities are not to be applied across the board without regard to the facts and issues framed in them, and since the case of **Nwobike SAN V. FRN (Supra)** are not the same with the Applicant's case, Nwobike SAN's case is in applicable.

- **Abubakar V. Nasamu No. 2 (2012) 17 NWLR pt 1330 p 523.**
- **Mortune V. Bolanwu (2000) 5 NWLR pt 655 p 87.**

Respondent's counsel further contended that by the averments in the counter affidavit of the Respondent and **Exhibits 1-12** annexed there under, it is clear that the money paid by Sokoto State Government was illicitly misappropriated with the object of earning wealth which is Criminal and cannot be settled by any Civil arrangement or Alternative Dispute Resolution.

Respondent's counsel finally urge the court to hold that the facts and circumstances and issues for determination raised and adopted by the Supreme Court in Nwobike's case, are entirely different with the case before this court and dismiss the application for lacking in merit.

In his reply on points of law, the Learned Applicant's counsel submitted that the counter affidavit and the accompanying annexures are all incompetent processes. The exhibits being public documents, only certified there copies are admissible under Section 104 of the Evidence Act, 2011.

The exhibits being computer generated evidence were also not accompanied by a certifying document as required by Section 84 (4) (a) and (b) of the Evidence Act, 2011. The exhibits should therefore the expunged he said alongside the paragraphs 9-27 of the counter affidavit of the Respondent.

He submitted further that the counter affidavit did not deny the specific depositions in the Applicant's supporting affidavit as they are general denial lumped together which is not allowed by law.

- **Jukola Intl. Ltd V. Diamond Bank Plc (2016) 6 NWLR pt 1507 p 53 at 98.**
- **Ukarie V. EFCC (2018) 14 NWLR pt 1369 p 195 at 207.**
- **Lawu V. PDP (2018) 4 NWLR pt 1608 p 60 at 118.**
- **UBN Plc V. Awmar Properties Ltd (2018) 10 NWLR pt 126 p 64.**

He finally submitted that by the principles of stare decisis, Nwobike SAN's decision, is not only binding on this court, but also even the Supreme Court unless set aside and urge the court to grant the application.

By this application, the Applicant has raised objection to the jurisdiction of this court to proceed or continue with his trial on the ground that the EFCC lacks the locus standi to prosecute him for the offence alleged against him in the charge and urge this court to decline jurisdiction, strike out the charge and consequently discharge the Applicant.

The charge with which the Applicant is arraigned before this court is 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 the Sokoto Judicial Division of the High Court of Justice of Sokoto State, being instructed with the total sum of ₦419,744,612.30 (Four Hundred and Nineteen Million Seven Hundred and Forty Four Thousand, Six Hundred and Twelve Naira Thirty Kobo) paid by the Sokoto State Government representing 40% investment of shareholding in your Company to boost the economy of the 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."***

Jurisdiction as broadly defined, is the limit imposed on the power of a validly constituted court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject of the issues or to the persons between whom the issues are founded, or to the kind of relief being sought.

- **Goldmark (Nig) Ltd V. Ibafon Co. Ltd (2012) 10 NWLR p 291 (SC).**
- **Trade Bank Plc V. Beni Lux (Nig) Ltd (2003) 9 NWLR pt 825 p 416.**
- **Onuorah V. K.R.P.C Ltd (2005) 6 NWLR pt 921 p 393.**
- **PDP V. Okorocha (2012) 15 NWLR p 205 (SC).**

A trial court must have both jurisdiction and competence to be properly sized of a cause or matter before it. This is because if a court has no jurisdiction to determine a case, the proceedings remain a nullity ab initio no matter how well conducted and brilliantly decided.

- **NURTW V. R.T.E.A.N (2012) 10 NWLR p 170 (SC).**
- **Goldmark (Nig) Ltd V. Ibafon Co. Ltd (Supra).**
- **Gafar V. Government of Kwara State (2007) 4 NWLR pt 1024 p 375**

A court is competent to adjudicate on any matter brought before it only if the case or matter comes before it initiated by due process of law and upon fulfillment of any condition precedent to the exercise of the jurisdiction.

- **Madukolu V. Nkemdilim (1962) 1 SCNLR 342.**
- **Nyame V. FRN (2008) LPELR 8872.**
- **Ogwuche V. Mba (1994) 4 NWLR pt 336 p 75.**
- **Dr. Joseph Nwobike SAN V. FRN Suit No. SC/CR/161/2020.**

Counsel to the Applicant submitted that the EFCC has no power to prosecute the Applicant for the alleged offence of ***Criminal Breach of Trust*** arising from a Civil contract as it does not relate to economic and financial crimes within the definition of Section 46 of the EFCC (Establishment) Act, 2004 as interpreted by the Supreme Court in the case of **Dr. Joseph Nwobike SAN V. FRN** Suit No. SC/CR/161/2020.

He argued that by the provisions of Sections 6 and 7 of the EFCC (Establishment) Act, 2004, a threshold limit has been set out on the powers of the EFCC to investigate and prosecute offenders and the power has been limited to economic and financial crimes provided in Sections 14-18 of the Act as defined by Section 46 of the same Act.

The Respondent's counsel on the other hand, submitted that by the averments contained in the Respondent's counter affidavit and **Exhibits 1-12** annexed there under, the money paid by Sokoto State Government was illicitly misappropriated with the object of earning wealth which is Criminal. He maintained that by virtue of Sections 6 and 7 of the EFCC (Establishment) Act, 2004, the EFCC has the power to investigate and prosecute all financial crimes. He submitted that the case of **Dr. Joseph Nwobike SAN V. FRN (Supra)** relied upon by the Applicant, is misconceived as it did not stop the Respondent from investigating or prosecuting the offence of ***Criminal Breach of Trust*** and so the Applicant's application is premised on frivolity or recklessness.

From the wordings of Section 46 of the EFCC (Establishment) Act 2004, the test to be applied as to whether a particular act is an economic and financial crime, is whether the objective of the act which is alleged to be a crime, is geared towards earning wealth illegally.

- **Emmanuel Ahmed V. FRN (2009) 13 NWLR pt 1159 p 536.**
- **Bovao V. FRN (2017) LPELR 43006.**
- **Nyame V. FRN (2010) 7 NWLR pt 1193 p 344.**
- **Dr. Joseph Nwobike SAN V. FRN Suit No. SC/CR/ 161/2020.**

Section 46 of the EFCC (Establishment) Act, 2004 which defines economic and financial crimes, provides as follows:-

> ***"Economic and financial crimes means the non-violent Criminal and illicit activity committed with the objective of earning wealth either individually or in a group or organized manner thereby violating existing legislation governing economic activities of government and its administration and includes any form of fraud, narcotic drug, trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, foreign exchange, malpractice including counterfeiting of currency, theft of***

> ***intellectual property and privacy, open market abuse, dumping of toxic wastes and prohibited goods etc."***

The Supreme Court in the case of **Dr. Joseph Nwobike SAN V. FRN (Supra)** after considering the provisions of Section 46 of the EFCC (Establishment) Act, 2004 at page 25 of the Judgment, stated as follows:-

> ***"In this fine definition, the words that call for interpretation in the context of determining if the offence for which the Appellant was convicted is an economic and financial crime or not, is the words any form of corrupt malpractices...."***

His Lordship Per Tijjani Abubakar JSC then continued at page 27 of the Judgment as follows:-

> ***"It suffices therefore to say that the words 'corrupt malpractices' entail conduct that might affect the honest and impartial exercise of a duty; encompassing a vicious and fraudulent intention to evade the prohibitions of the law; something against or forbidden by law; moral turpitude or exactly opposite of honesty involving intentional disregard of law from purely improper motives."***

It therefore follows that for an act to be an economic and financial crime, such act must be a non-violent Criminal and illicit activity committed with the objective of earning wealth.

In discovering the intention of the legislature with respect to ascertaining the scope of the expression ***"any form of corrupt malpractices"*** used in Section 46 of the EFCC (Establishment) Act, 2004, literal meaning will not be adopted because if it is adopted, it means the powers of the EFCC will be at large and open ended and every Criminal and illicit activity committed, will fall within the scope of ***"corrupt malpractices"*** and consequently be regarded as an economic and financial crime which the

EFCC will be empowered to investigate and prosecute as doing so will make a pigging of other legislations and render them barren and sterile.

- **Pg 28 of the Judgment Nwobike SAN V. FRN (Supra)**

My Lord continued at pages 28-29 of the Judgment of Nwobike's case as follows:-

> ***"…If the definition of 'corrupt malpractice' is not properly defined and demarcated, the Economic and Financial Crimes Commission will assume supernatural strength as to render it all in all, thereby dwarfing other similar agencies vested with powers to investigate and prosecute Criminal offences, and bring the EFCC to assume the corresponding powers of the Chief Law Officer of the country. Such open ended powers if not defined, will escalate the status of the Agency to that of ruthless ungovernable monster. I am sure this is not the intention of the legislature necessitating the establishment of the EFCC and enacting the Act."***

From the processes filed, the fulcrum of the case against the Applicant and to which charge No. SS/34^{C}/2021 was filed before this court, is linked to the memorandum of understanding signed by the Applicant's Company and the Sokoto State Government on the 4/5/2017 and in respect of which a petition was lodged before the EFCC in September, 2019. The said memorandum of understanding was annexed to the Applicant supporting affidavit and marked as **Exhibit 'A',** while the respondent also annexed it to their counter affidavit and marked it as **Exhibit 1** respectively.

Although the respondent did not annexed the petition to the counter affidavit as an exhibit, the Applicant annexed the said petition to his supporting affidavit and marked it as **Exhibit 'B'.** Upon a careful perusal of the memorandum of understanding, one will apparently see that the monetary value of the assets of the Applicant's Company as at 4/5/2017 when the MOU was signed, stood at ₦1,049,361,530.75 (One Billion Forty Nine Million Three Hundred and Sixty One Thousand Five Hundred and Thirty Naira Seventy Five Kobo), and it is the 40% of that monetary value of the Company's assets that the Sokoto State Government purchased at the cost of ₦419,744,612.30 (Four Hundred and Nineteen Million Seven Hundred and Forty Four Thousand Six Hundred and Twelve Naira Thirty Kobo) to become a share holder of the Company.

At page 2 of the memorandum of understanding, it is provided as follows:-

> ***"The investor hereby agrees to purchase shares in the Company current value of ₦419,744,612.30 (Four Hundred and Nineteen Million Seven Hundred and Forty Four Thousand Six Hundred and Twelve Naira Thirty Kobo) only. These share represent 40% of the outstanding value the Company currently valued at ₦1,049,361,530.75 (One Billion and Forty Nine Million Three Hundred and Sixty One Thousand Five Hundred and Thirty Naira Seventy Five Kobo) only."***

With the foregoing mutual understanding between the Applicant's Company and Sokoto State Government, it means the ₦419,744,612.30 paid by the Sokoto State Government (represent the 40% monetary value of the Company's assets as at 4/5/2017 when the MOU was signed by the parties.

At page 4 of the MOU, the parties also agreed that after the Sokoto State Government paid for the 40% equity shares to the original shareholders of the Applicant's Company, it will be the joint responsibility of the Applicant's Company and the Sokoto State Government to jointly provide funds to commence operation's including the working capital in the ratio of the shareholding percentage which is 60% and 40% respectively.

At page 4 of the MOU, it is provided as follows:-

> ***"After the purchase of 40% equity, the joint responsibilities shall be:-***
>
> ***1. The share holders shall provide funds as may be required to commence operations as well as provide working capital for the first 2 (two) trading cycles in the ratio of the ownership structure. However the existing share holders shall bear the cost of cleaning up the factory, servicing of (machines as well as fixing the basic building structures."***

In law, a memorandum of understanding is a document which contains the mutual understanding of the parties based on the terms agreed by the parties intended to affect the legal relations between them and to be acted upon accordingly.

- **S.F. E.P Ltd V. NDLC (2012) 10 NWLR P. 522.**

It is also trite law that parties to an agreement retain the commercial freedom to determine their own terms and no other person not even the court can determine the terms between the parties thereto, because the only duty of the court, is to interpret the terms on the clear wordings.

- **Julius Berger Nig. Plc V. T.R.C.B Ltd (2019) 34 WRN 138 at 170 - 171 (Sc).**
- **Nica Fishing Ltd V. Lavina Corp. (2008) 38 WRN I (SC).**

Considering the analysis of the foregoing terms as contained in the memorandum of understanding, can one say or described the mutual understanding of the Applicant's Company and Sokoto State Government which led to the signing of the MOU and purchase of 40% share equity of the Applicant's Company at the cost of ₦419,744,612.30 a ***"non–violent criminal and illicit activity with the objective of earning wealth"*** or constitute ***"any form of corrupt malpractices"*** for the purpose of qualifying the process as an economic and financial crime from which the offence of ***Criminal Breach of Trust*** can be framed as contained in the charge No. SS/34^{C}/2021 against the Applicant for which the EFCC can investigate and prosecute. The Supreme Court in the case of **Dr. Joseph Nwobike SAN V. FRN (Supra)** gave an indicator in the following words at page 32 of the Judgment, thus:-

> ***"…The criminal offences contemplated by the convention (against corruption), must be offences fitting the statement of purpose of the convention, the criminal offences must not be at large as to include every conceivable criminal offences…"***

Explaining the intention of the legislature with regard to extent and scope of the powers of the EFCC to investigate and prosecute with respect to the provisions of Sections 6, 7 and 13 of the EFCC (Establishment) Act 2004 in Dr. Joseph Nwobike's case, the Supreme Court held:-

> ***"Indeed, the effect of the combined provisions of Sections 6(b); 7(1)(a) and (2)(f) and 13(2) of the EFCC (Establishment). Act 2004, leaves no doubt that the E FCC has the power to investigate enforce and prosecute offenders for any offence whether under the (Act or any other statute in so far as the offence relates to the commission of economic and financial crimes."***

- **Emmanuel Ahmad V. FRN (Supra)**
- **Nyame V. FRN (Supra).**

In answer to the question raised above in this ruling, what has became apparent from the contents of **Exhibits "A' and "B"** annexed to the Applicant's supporting affidavit and **Exhibit 1** annexed to the counter affidavit of the respondent is that the authors of **Exhibit "B"** which is the petition to EFCC, has succeeded in influencing the EFCC to dabble into an entire civil transaction that inures between the Applicant's Company and Sokoto State Government.

In a plethora of decided cases, it has been severally held that the EFCC has no business in dabbling into civil contracts and agreements. In the case of **Omuma Micro Finance Bank Nigeria Ltd V. Ojinaka (2018) LPELR 43988** the Court of Appeal stated the Law as follows:-

> ***"We have stated repeatedly that the police or any law enforcement Agency for that matter including the Economic and Financial Crimes Commission (EFCC), is not allowed to dabble into enforcement of civil contracts and agreements, or to engage in recovery of debts under the pretext of doing lawful duties."***

- **Abah V. UBN Plc (2015) LPELR 24758.**
- **Oceanic Securities International Ltd V. Balogun (2013) All FWLR Pt. 677 (p) 653.**
- **Ibiyeye V. Gold (2012) All FWLR Pt 659 P 1074.**

Cautioning the EFCC against metamorphosis civil cases into economic and financial crimes, the Supreme Court in the case of **Diamond Bank Plc V. Opara (2018) LPELR 43907** per Sidi Berger JSC held as follows:-

> ***"It is important for me to pause and say here that the powers conferred on the 3rd respondent i.e. the EFCC to receive complainants and prevent and/or fight the commission of financial crimes in Nigeria, pursuant to section 6(b) of the EFCC Act, does not extend to the investigation and / or resolution of disputes arising or resulting from simple contract or civil transactions... The EFCC has an inherent duty to scrutinize all complainants that it receive carefully no matter how carefully crafted by the complaining party, and be bold enough to counsel such complainants to seek appropriate/lawful means to resolve their disputes."***

Expressing his further lamentations, His Lordships continues in the following words:-

> ***"What is even more disturbing in recent times, is the way and manner the police and some other security rather than focus squarely on their statutory functions of investigation, preventing and prosecuting crimes, allow themselves to be used by overzealous and / or unscrupulous characters for the recovery of debts, loans or purely civil transactions."***

In fact even our Criminal Procedure Laws have frame at using Criminal process in civil transactions, civil wrong or breach of contract. Section 9(2) of the Sokoto State Administration of Criminal Justice Law No. 8 of 2019 which is equivalent to Section 8(2) of the Administration of Criminal Justice Act, 2015, provides as follows:-

> ***"A suspect shall not be arrested merely on a civil wrong or breach of contract."***

It is also trite law that a statutory body is under a legal obligation to operate within the dictate of the law setting it up, and where it acts outside the law setting it up or conferring power on it, such act irrespective of the objective, will amount to a nullity.

- **Knight Frank and Rutley Nig. Ltd V.AG Kano State (1998) 4SC 251 at 261-262.**
- **Nyame V.FRN (Eupra) at 403**.

The Applicant by paragraphs 7-20 of their supporting affidavit together with **Exhibits 'A' and 'B'** annexed there under supported by **Exhibit 1** annexed to the respondent's counter affidavit, have graphically placed material facts explaining the civil nature of the relationship between the Applicant's Company and Sokoto State Government as well as what the ₦419,744,612.30 paid by Sokoto State Government to the Applicant's Company were meant for and the circumstances leading to his arraignment before this court in charge No. SS/34^{c}/2021 an allegation of criminal breach of trust.

Substantially, paragraphs 7-12 and 23 of the respondent's counter affidavit and **Exhibit 1** annexed there under are in agreement with the facts averred by the Applicant in relation to the signed memorandum of understanding signed by the parties.

Furthermore, paragraphs 13-22 of the respondent's counter affidavit and the accompanying **Exhibit 11** series which comprised of the photocopies of cheque leaves, only shows various transfers and withdrawals of monies (linked to different accounts without explaining how the transfers and withdrawals constitute an economic and financial crimes, despite the fact that it is trite law that court of law do not speculate on issues nor embark on voyage of discovery.

- **Salik V. Idris (2014) 15 NWLR Pt. 1429 P 36**
- **Plateau State V. AGF (2006) 3 NWLR Pt. 967 P. 346**
- **Okotie Eboh V. Manager (2004) 18 NWLR Pt. 905 P. 242**

I have also observed that the **Exhibit 12** annexed to the respondent's counter affidavit and which are the statements of the Applicant made on the 4/11/2019 and 6/11/2019, only shows what the Applicant has planned to do and started doing with the monetary value of the sold 40% equity shares to Sokoto State Government.

In consideration of all the facts and circumstances of the case of the Applicant before this court, it is the humble view of this court that the case of **Dr. Joseph Nwobika SAN V. FRN (Supra)**, applies in this instant application, because the Supreme Court in that case has succinctly and successfully, set out parameters and indicators that will 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 effects 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/34^{C}/2021 against the Applicant, I am unable to accept the submission of the Respondent's Counsel that the facts 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.

Consequently, it follows therefore that the case of the respondent was not erected on any pedestal what so ever, because it did not came before the court initiated by due process of law. This court therefore lack the jurisdiction to continue with the trial of the Applicant in charge No. SS/34^{c}/2021 now pending before this court, as the law is well settled that where a court deals with a matter without jurisdiction, so doing amounts to embarking on a worthless exercise because no matter how brilliantly conducted it will be a complete nullity.

The law is also trite that where a person natural or artificial lacks the power to prosecute a matter, it also means that person lacks the locus standi to invoke the jurisdiction of the court which as a result there of lacks jurisdiction to entertain the suit filed before it.

A court of law can only be competent to adjudicate on any matter brought before it if the matter comes before it initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

- **Madukolu V. Nkemdilim (Supra)**
- **Ogwuche V. Mba (Supra)**
- **Nyame V. FRN (Supra)**
- **Goldmark (Nig) Ltd V. Ibafon (Supra)**
- **Dr. Joseph Nwobike SAN V. FRN (Supra)**

On the whole I resolve the sole issue in favour of the Applicant and against the respondent. This court having held that the charge No. SS/34^{c}/2021 against the Applicant did not come before the court initiated by due process of law thereby robbing the court of its jurisdiction to continue with the trial of the Applicant, charge No. SS/34^{c}/2021 is hereby struck out and the Applicant is hereby discharged. Accordingly, relief 1 of the Applicant's application is hereby granted.

Application granted.

Signed

Hon. Justice Mohammed Mohammed
(Judge)
21/03/2022

<u>**CERTIFIED TRUE COPY:**</u>

FATIMA SAIDU MOH'D
Ag. DIRECTOR LITIGATION
HIGH COURT OF JUSTICE,
SOKOTO.