IN THE APPEAL SESSION OF HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT NO: FCT/HC/M /65/12
APPEAL NO: FCT/CVA/69/12

BETWEEN:

ALOZIE NMERENGWA - APPELLANT

AND

COMMISSIONER OF POLICE - RESPONDENT

JUDGMENT

In the course of the hearing of this appeal the Respondent had raised objection to the jurisdiction of this Appeal Court to hear and determine this appeal. It is trite that where an objection to the jurisdiction of a court to entertain a matter is raised, the objection must first be dealt with before the matter itself is determined. See: EMEKA v OKADIGBO & ORS (2012) LPELR-9338(SC), per Rhodes-Vivour, JSC; and AJAYI v ADEBIYI & ORS (2012) LPELR-7811(SC), per Peter-Odili, JSC at pages 83 – 84, paras E – A. In line with this trite position, we shall first consider and determine the preliminary objection on jurisdiction before considering the appeal itself.

The learned Counsel for the Respondent, Oluwasegun Owa Esq, had objected to the jurisdiction of this Court to hear this appeal on the following grounds:

(1) That the Records of Appeal transmitted is incomplete;

(2) That the Records of the Proceedings of the lower Court is not before this Court; and

(3) That the Warrant of Arrest has not been transmitted.

Learned Counsel had argued that the warrant of arrest is fundamental to thei appeal and that even the lower court refused the Appellant's application to quash the warrant because same was not exhibited by him. He submitted that since this vital document has not been transmitted this Court cannot proceed to hear the appeal on its merit.

In opposition to the Objection, the learned Counsel for the Appellant, O. A. Folawiyo Esq, pointed out that the whole grounds and argument of learned Counsel were based on the fact that the warrant of arrest sought to be set aside by the Appellant before the lower Court was not transmitted. He submitted that the argument that this Court lacks jurisdiction because of that is misconceived. He submitted in paragraphs 3, 4, and 5 of the supporting affidavit to the Appellant's application before the lower court it was averred that it was the trial magistrate himself that issued the warrant of arrest, a fact that was never challenged or controverted. He further argued that the crux of this appeal is that there was no need to annex the warrant of arrest before the lower court before it could set it aside because by virtue of Section 122 of the Evidence Act, 2011, the Court ought to have taken judicial notice of the warrant which it issued. He added that all that is legally required in the circumstance is the transmission of the record of what was before the lower court which had been done in this case.

The issue for determination is whether this Court can hear and determined this appeal as presently constituted. The central reason of the Respondent's objection was that the warrant of arrest which was sought to be quashed by the Appellant before the lower Court was not transmitted. But the learned Counsel for the Respondent had stated in his argument that it was because same was not attached before the lower court that the lower court refused the Appellant's application to set it aside, which ruling is the subject of this appeal. If the said warrant was not before the lower court and as such not in its record, we wonder from which record the learned Counsel wants the warrant of arrest to be transmitted. In fact, as rightly submitted by the learned Counsel for the Appellant, the crux of the Appellant's appeal itself was that the lower court was wrong to have refused to quash the warrant of arrest because same was not produced before it.

It is trite law that that a record of appeal is presumed to be correct and accurate, unless shown by affidavit to be otherwise. In other words, in the absence of any formal complaint, the appellate court and the parties are bound by the contents of the record of appeal as presented by the registrar of the court below. Consequently, any assertion, which purports to contradict the record of appeal, will be regarded as tendentious and will be discountenanced. See: AGBEOTU v BRISIBE (2005) 10 NWLR (Pt. 932) 1, per Augie, JCA at 19 & 36. It is also settled that an appeal court is bound by the record of appeal and it does not have jurisdiction to go outside the record of appeal to make findings or draw conclusions. See: OLUFEAGBA v ABDUR-RAHEEM (2010) ALL FWLR (Pt. 512) 1024; EGHAREVBA v OSAGIE (2010) ALL FWLR (Pt. 513) 255; FUBARA v MINIMAH (2003)

5 SCNJ 142; GARUBA v OMOKHODION (2011) 6 MJSC (PT. III) 122, per Akeju, JCA at page 16, paras. C – F.

In the instant case where it is clear that the warrant of arrest was never part of the record of what transpired before the lower court, we find as misconceived the objection of the learned Counsel for the Respondent that this Court has no jurisdiction because the warrant of arrest was not transmitted. We hold that the non transmission of the warrant does not oust the jurisdiction of this Court to entertain this appeal. The Objection of the Respondent therefore lacks merit. It is accordingly hereby dismissed.

Having disposed of the preliminary objection, we now turn to the appeal proper. The appeal is against the ruling of His Worship Aliyu Yunusa Shafa, holden at Wuse, Zone 2, Abuja, delivered on the 17th April, 2012 in which he refused to quash a warrant of arrest issued against the Appellant and order that leave of court be first sought before the Appellant could be arrested based on the same facts.

In his Notice of Appeal filed on 9th May, 2012, the Appellant complained against the whole decision of the lower Court upon the following grounds:

1. **GROUNDS UPON WHICH THE APPEAL IS BROUGHT**
    1. **GROUND 1: ERROR IN LAW**

The Learned trial Magistrate erred in law when he held that there was no warrant of arrest attached to the application without commenting on the Applicants affidavits.

PARTICULARS OF ERROR:

a. The Applicant brought an Application to quash the warrant of arrest issued by the magistrate without lawful justification as there was nothing presented before the magistrate to justify his issuance of the said warrant.
b. The Learned trial Magistrate clearly turned a blind eye to the averments contained in the Applicants further affidavit and the exhibit annexed thereto.
c. The Learned trial Magistrate erred in law when he held that a warrant of arrest must be annexed to the application without considering the facts contained in the Applicants affidavit in support.

2. **GORUND 2: ERROR IN LAW**

The trial Court's ruling was against the weight of evidence before the Court.

PARTICULARS OF ERROR:

a. The Applicant's application was supported with an eighteen paragraphed affidavit and seven paragraphed further affidavit with two exhibits. There was no counter affidavit whatsoever by the Respondent to justify the ruling of the Court.

3. **RELIEF SOUGHT:**

a. That the Appeal be allowed.

b. That the ruling of the Senior Magistrate Court setting at Wuse Zone 2, Abuja delivered on the 17th day of April, 2012 by His Worship Aliyu Yunusa Shafa be upturned and the Appellant's application upheld.

In the his brief of argument dated 28th May, 2012 and filed on the 30th May, 2012, the Appellant raised two issues for determination, namely –

Whether the trial Magistrate was right to have held that there was no warrant of arrest annexed to the application Vis a Vis the averments in paragraphs 3, 4 and 5 of the Applicants further affidavit (GROUND1).

Whether the trial Magistrate's conclusion was in tandem with the evidence placed before him without any counter affidavit by the Respondents? (GROUND 2).

On his part, the Respondent did not file any brief of argument. On the day of hearing, the Respondent's Counsel only raised the preliminary objection to jurisdiction which had just been dismissed by this Court. For this reason, we shall proceed to decide the appeal on the two issues raised by the Appellant.

The central argument in the Appellant's first issue is that there was no counter affidavit to the Further Affidavit in support of the Appellant's motion before the lower court which clearly showed that the warrant of arrest was issued by the same Magistrate Aliu Sharfa before whom the Appellant applied to quash the warrant of arrest. Counsel had argued that by Section 122 of the Evidence Act,

2011 the authority of MANTEC W.T. (NIG) LTD v PTF (2008) 8 WRN 42 at 47, ratio 6, the learned Magistrate ought to have taken judicial notice of the process he issued.

It is settled law that where facts provable by affidavit evidence are duly deposed to in an affidavit by a party to a suit, his adversary has a duty to controvert those facts in a counter affidavit if he disputes them, otherwise such facts may be regarded as duly established. See: LONG-JOHN & ORS. v BLAKK & ORS (1998) LPELR-SC.261/1991, per Iguh, JSC at page 32, paras. C – D; OGUNLEYE v AINA (2012) LPELR-7877(CA), per Mbaba, JCA at page 37, paras. B – D; PROCTER & GAMBLE NIGERIA LIMITED v NWANNA TRADING STORES LTD (2011) LPELR-4880(CA), per Garba, JCA at pages 28-29, paras. A-C; and G. CAPPA PLC v NNAEGBUNA AND SONS LTD & ANOR (2009) LPELR-8349(CA), per Okoro, JCA at page 25, paras, B – D.

In the instant case, the averments in the Further Affidavit which were not challenged or controverted by the Respondent ought to have been regarded as established by the lower Court. Paragraphs 3 and 4 of that further affidavit were to the effect that the warrant of arrest was issued by His Worship Aliu Sharfa, the same Magistrate before who made the ruling now appealed against. It is fairly well settled that a court will take judicial notice of its records, processes and proceedings. See: OSAFILE & ANOR v ODI & ANOR (1990) 2 NWLR (Pt.137) 130 or (1990) LPELR-2783(SC), per Nnaemeka-Agu JSC at pages 43 – 44, paras. F – B; and LAJIBAM AUTO & AGRIC CONCERNS LTD & ANOR v UBA PLC & ORS (2013) LPELR-20169(CA), per Ogbuinya, JCA at pages 18 – 19, paras. B - A).

In the instant case where the warrant of arrest against the Appellant was established by the uncontroverted evidence to have been issued by His Worship Aliu Sharfa, the same magistrate before whom the Appellant applied to have same set aside, the attachment of the warrant was not necessary before the learned Magistrate could set same aside since he can take judicial notice of same. Hence, having upheld in page 2 of his ruling that the uncontroverted facts in the affidavits of the Appellant is established, which included the fact that he issued the warrant of arrest, the learned Magistrate was wrong to have required an attachment of the said warrant in order to determine whether he issued it or not.

We therefore resolve issue one in favour of the Appellant and hold that the trial Magistrate was wrong to have held that there was no warrant of arrest annexed to the application in view of the uncontroverted averments in the Applicant's further affidavit which he found as established.

With regard to issue two the law is trite that averments contained in an affidavit constitute evidence. TUKUR v UBA & ORS. (2012) LPELR-9337(SC), per Ariwoola, JSC at pages 46 - 47, paras G – B; and SKYPOWER AIRWAYS LTD v OLIMA (2005) 18 NWLR (Pt. 957) 224 at 253. In the instant case where the learned trial magistrate had held in paragraph 3 on page 2 of his ruling taken as a fact the unchallenged and uncontroverted affidavit evidence of the Appellant to the effect he issued the warrant of arrest, his decision that he cannot grant the application of the Appellant because the warrant of arrest was not attached to show whether it was

issued by him is clearly against the weight of the affidavit evidence he had found as a fact.

Further it is clearly discernible from the now established facts in paragraphs 2 – 5 of the Appellant's affidavit that the warrant was issued by the learned trial magistrate without any accompanying affidavit. It is settled that a warrant of arrest can only be issued where there is a statement on oath or a complaint on oath filed before the court as required by law. See: IKONNE v COP & ANOR. (1986) 4 NWLR (Pt. 36) 473 at 475 (which was cited by the Appellant's counsel); and FAYOSE v THE STATE (2010) LPELR-8658(CA), per Abba Aji, JCA at page 25, paras. D – E.

From the established fact contained in paragraph 5 of the Appellant's Further Affidavit which was to the effect that the warrant of arrest was issued by him without any affidavit or statement on oath, the learned trial magistrate was wrong to have held in the last paragraph of page 2 of his ruling that it was not out of place for a magistrate to sign warrant of arrest upon written complaint by the police. Evidently, the warrant issued by the learned magistrate was in violation of the requirement of law since there was no statement or compliant on oath before it was issued.

For the reasons aforementioned, we hereby resolve the second issue in the negative and in favour of the Appellant. We hold that the ruling of the learned Trial Magistrate was against the weight of the evidence laid before him.

Having resolved the two issues in favour of the Appellant, we find merit in this appeal. The appeal is accordingly hereby allowed and the ruling delivered by the learned trial magistrate, His Worship Aliu Yunusa Shafa is hereby upturned. The Warrant of Arrest purportedly issued by the learned trial magistrate against the Appellant is hereby set aside.

A.A.I. BANJOKO
JUDGE

A.B. MOHAMMED
JUDGE