

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE APPEAL DIVISION

HOLDEN AT COURT 6, MAITAMA, ABUJA

THIS FRIDAY THE 28TH DAY OF NOVEMBER, 2014

BEFORE THEIR LORDSHIPS:

HON. JUSTICE O.O GOODLUCK (PRESIDING JUDGE)

HON. JUSTICE Y. HALILU (HON. JUDGE)

APPEAL NO:.

SUIT NO: CR/67/13

BETWEEN

FIDELIS EFOBI ACCUSED/APPELLANT

AND

C.O.P COMPLAINANT/RESPONDENT

RULING

By a notice of appeal dated the 11th November, 2013 and filed on the 12th November, 2013, Accused/Appellant raised three grounds of appeal with particulars therein arising from the decision of Upper Area Court, FCT, Kwali Abuja, per Hon. Aminu Sa-adu delivered on the 30th October, 2013. In case No. CR/67/2013.

The said grounds of appeal are as follows:-

1. That the learned trial judge erred in law when it held that *“Traffic offences are criminal offences, and to this, any court that is conferred with criminal powers to impose punishment or penalty under any statute, then it has jurisdiction to entertain traffic matters, provided the court has the*

jurisdiction to impose punishment, subject to the limitation and restriction of that court.”

Ground 2.

The learned trial judge erred in law when he drew inference and read into the clear provisions of sections 4 and 13 (1), (2) of the criminal procedure code (CPC) which the act itself did not contemplate, when it held that *“therefore, with the combined effect of section 4 and 13(1) & (2) of the CPC, it could be inferred to mean that the Area Court has jurisdiction to entertain matter as per part vi of the Road Traffic Act as it relates to offences, and to this I hold.”*

And when the trial judge held further,

“I have therefore come to the conclusion that this court has the jurisdiction to entertain this case, and that the offence to which the accused person charged is a Road Traffic Offence, and for the fact that this court has jurisdiction to impose the penalty of four hundred thousand Naira or imprisonment of two years, I hereby hold.”

Ground 3.

The learned trial judge erred in law when he dismissed the Accused/Appellant’s preliminary objection challenging the jurisdiction of the Upper Area Court to try offences under the Road Traffic Act (RTA) being a non – penal code offence.

Learned counsel for the Accused/Appellant in arguing the grounds of appeal and the formulated issues for determination, urged the court to allow the appeal by dismissing the First Information Report (FIR) dated 25th July, 2013 and discharging the Accused/Appellant for lack of jurisdiction.

Learned counsel for the Accused/Appellant made heaving whether on the provisions of section 13 (2) of the CPC wherein it is provided that;

“An area court shall not try an offence under any other law unless jurisdiction to try the offence has been conferred on that area Court.”

It is therefore the contention of learned counsel for the appellant that from the FIR, the offence of Careless and Reckless Driving contrary to section 28 of Road Traffic Act could not have been tried by an Upper Area Court which did not have the jurisdiction to so do.

On the part of court, we have seen and abreast ourselves with the Appellant’s notice of appeal, record of proceedings and brief of argument respectively.

It is instructive to state at this juncture that Respondent refused and or neglected to file its brief despite evidence of receipt of Appellant’s Appeal processes.

The importance of jurisdiction is why the law insists that it can be raised at any stage of a case, be it at the trial or on appeal, a fortiori the court can raise it suo motu.

Indeed it is in the interest of justice to raise issue of jurisdiction so as to save time and cost and to avoid a trial in nullity.

From the record of proceedings of Upper Area Court, Kwali – Abuja in case No. CR/67/13, Accused/Appellants counsel challenged the jurisdiction of the said court to try the Accused/Appellant charged by police under section 28 of Road Traffic Act for Careless and Reckless Driving.

The said Appellant’s preliminary objection after consideration by the trial court was dismissed, thereby necessitating this interlocutory appeal by the Accused/Appellant.

There are indeed two types of jurisdiction, procedural and substantive. Whilst a litigant can waive that of procedural law, he cannot waive that of substantive law. A litigant may submit to the procedural jurisdiction of Court. On above see *AKANIYENE & ORS VS ETIM (2012) LPELR 9792 (CA)*.

Jurisdiction has been defined as the limits 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 person between whom the issues are joined or the kind of relief sought.

Indeed because courts are creatures of statutes, it is the statute that creates the particular court that also confers on the court its jurisdiction. See *AG LAGOS STATE VS DOSUNMU (1989) 3*

NWLR (Pt. 111) 552, SC., DAPIALONG VS DARIYE (2007) 8 NWLR (Pt. 1036) 332.

Where there is no jurisdiction, it has been held that no court under any guise can confer one upon itself.

Per ***OGUNDARE, JSC (as he then was) in the case of ADESINA VS KOLA (1993) NWLR (Pt. 298) 182.***

Where therefore, there is no jurisdiction to hear and determine a case or matter, everything done in such want of jurisdiction is a nullity. See ***ADETOLA & ORS VS IGELE GENERAL ENTERPRISES LTD (2011) LPELR – 159 (SC), MUSTAPHA VS GOVERNOR LAGOS STATE (1987) NWLR (Pt. 58).***

For the purposes of clarity, we shall attempt to re – produce section 13 (1) of the CPC.

“An offence under a law other than the penal code may be tried by a court given jurisdiction in that behalf in that law or by any court with greater powers.”

Provided, “when no court is so mentioned the offence may be tried by the high court or a court constituted under this code.”

Provided that in trying an offence.

- a. A Chief Magistrate shall not try an offence punishable with imprisonment for a term which may exceed ten years or with a fine exceeding One Thousand Naira.

- b. A Magistrate of the first grade shall not try an offence punishable with imprisonment for a term which may exceed five years or with a fine exceeding Six Hundred Naira.
- c. A Magistrate of the second grade shall not try an offence punishable with imprisonment for a term which may exceed two years or with a fine exceeding Four Hundred Naira;
- d. A Magistrate of the third grade shall not try an offence punishable with imprisonment for a term which may exceed three months or with a fine exceeding Two Hundred Naira;
- e. An area court shall not try an offence under any law unless jurisdiction to try the offence has been conferred on that area court.

In construing the provision of a statute where the words are clear and unambiguous, it is the words used that prevail and not what the courts say the provision mean, unless where giving it literal interpretation, might lead to absurdity.

It is only when the literal meaning may result in ambiguity or injustice that the court seek internal aid within the body of the statute itself or external and from statute in pari material in order to resolve the ambiguity or avoid doing injustice.

On above, please see the case of ***NWAKA VS HEAD OF SERVICE EBONYI STATE (2008) ALL FWLR (Pt. 402) 1156 at 1167 – 1168 paragraphs G-B.***

Poser from the foregoing provisions of the CPC, could the Upper Area Court have had the competence to assume jurisdiction to try the offence of Road Traffic Act under section 28?

A juxtapose of the provision of section 13 of CPC visa – vis the offence contained in the Police FIR will show that Upper Area Court does not have the required jurisdictional competence to try such an offence, such jurisdiction having not been donated by the constitution or any statute for that matter.

You cannot put something on nothing and expect it to stand.

Arguing from the plethora of authorities cited in the preceding part of this ruling, the preliminary objection which was raised by appellant's counsel was indeed erroneously and mischievously dismissed by the trial judge in a desperate attempt to appropriate jurisdiction to itself, where non existed.

Learned counsel for the Appellant's argument is most swaying on the issue of incompetence of the trial court to have assumed jurisdiction to try a road traffic offence under section 28 Road Traffic Act.

Objection is hereby upheld, ruling of trial Magistrate dismissing the preliminary objection of Accused/Appellant delivered on the 30th October, 2013 is hereby set aside.

The said First Information Report is hereby set aside, we hereby order that the case file be taken by a Magistrate of a grade with jurisdiction.

Justice Y. Halilu
(Hon. Judge)
28 November, 2014

Justice O.O Goodluck
(Presiding Judge)
28 November, 2014