**IN THE HIGH COURT OF THE**
**FEDERAL CAPITAL TERRITORY**
**IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)**
**HOLDEN AT COURT 4, MAITAMA, ABUJA.**
**DATED 23RD JUNE, 2014.**

**BEFORE THEIR LORDSHIPS:-**

**HON. JUSTICE S.E. ALADETOYINBO (PRESIDING JUDGE)**
**HON. JUSTICE A. O. OTALUKA (HON. JUDGE)**

**APPEAL NO.:-CRA/48/13**
**CHARGE NO.:CR/29/2012**

**BETWEEN:**

**ODEY JOHN.:.....APPELLANT**

**AND**

**COMMISSIONER OF POLICE:.....RESPONDENT**

# JUDGMENT.

This is an appeal against the summary trial of Chief Magistrate (Mrs O.O. Oyewumi) as he then was of Wuse Chief Magistrate Court I, delivered on the 15th day of October, 2012.

## FACTS.

The appellant was arraigned on a First Information Report before the Chief Magistrate Court I, for the offences of personation, cheating and criminal intimidation, contrary to Sections 32A, 397 and 322 of the Penal Code Law, the appellant was alleged to have pleaded guilty to the offences of cheating and criminal intimidation and was sentenced by the learned Chief Magistrate as follows:

> *"Thus the convict is hereby sentenced to 6 months imprisonment for the offence of cheating and for the offences of criminal intimidation the convict is sentenced to one year imprisonment without any option of fine. Both*

*sentence are to run concurrentlly. Meanwhile for the offence of personation the prosecution should proceed by calling its witnesses in Court, case is adjourned to 6th November, 2012 for hearing."*

The appellant dissatisfied with the judgment of the learned Chief Magistrate, appealed to the High Court, Ibrahim Idaiye Esq. counsel to the appellant raised the following grounds of Appeal.

1) That the trial Magistrate erred in law by accepting the participation of a legal practitioner not properly briefed in the matter to represent the accused appellant.

2) That the trial Magistrate erred in law that accused has properly taken plea when he concluded thus

   "*upon reading the contents of the first information report to the accused person in English language to the satisfaction of the Court and he having confirmed to have understood same pleaded guilty".*

3) That the trial Magistrate erred in law when he concluded that the First Information Report was read to the accused and the accused confirmed to have understood same and pleaded guilty without the accused taking part in the proceedings, the trial Magistrate confirmed his guilt.

4) That the trial Magistrate erred in law when he asked from the accused

   "*How guilty are you accused person".*

That the casting of aspersions of guilty on the accused person is contrary to provisions of Section 135(2) Evidence Act and Section 36(5) of 1999 Constitution.

In arguing the 4 grounds together, Idaiye Esq. relied on section 156 Criminal Procedure Code and urged the Court to hold that the particulars of the offence for which accused is charged was not stated and accused having been tried on the charge, the trial is a nullity – **Wambai & anor v. Kano N.A. (1965) NMLR 15/17.**

That the trial Magistrate failed to record the actual reading of the charge and particulars of the charge by so doing, the principle of fair hearing is abandoned contrary to section 36(6)(a) of the 1999 Constitution and Section 156/157 Criminal procedure Code. Learned counsel argued that the accused was not properly arraigned having not given opportunity to take a proper plea – **Olabode v. Otile (2010) 12 WRN 31.**

Secondly, that the refusal of the Court to grant adjournment to the learned counsel when he said he was not properly briefed was a denial of his right to fair hearing Section 36 – **Udofia v. State (1988) NWLR (pt 84) 533.**

Furthermore, Idaiye Esq. submitted, that the accused was docked to prove his innocence and the motive for committing the purported offence – **Tule v. Bauchi N.A. (1965) NMLR 343, Okpara v. COP (1985) 6 NCLR 695.**

In conclusions learned counsel, urged the court to hold that there is want of fair hearing and therefore, the trial is vitiated or nullified. In the absence of filing a written respondent brief, Mr. Lough respondent counsel replied on point of law, relying on Section 156/157 Criminal Procedure Code and urged the Court to hold that the trial was a summary trial and therefore need not be in details.

Upon reading the records of proceedings, appellant brief including the oral submissions made by the counsel to the parties, the court raised the following issues for determination.

a) What is the effect of absence of respondent brief.

b) Whether the Magistrate ought to have granted adjournment to the counsel to the appellant who said he was not properly brief.

c) Whether there was valid arraignment of the appellant.

a. The respondent's counsel did not file any brief but was allowed to make an oral submission on point of law, the absence of respondent's brief does not relieve the court of its duties to consider the case on its merits based on appellant's brief – **Ikedigwe v. FRN (2011) 6 NCC 352.**

b. In the circumstance of where the counsel to the accused said during the arraignment that he was not properly brief, the Magistrate ought to have adjourned the arraignment to enable the accused appellant properly brief his counsel. The arraignment of the appellant was coming up on the 15th day of October, 2012 for the first time, when the counsel to the accused said he was not properly brief by the accused person, the learned counsel Chief Magistrate ought to adjourn the arraignment, the proceedings to which the appellant counsel did not participate because he was not properly briefed cannot be a fair proceeding because the appellant was not given adequate time to prepare for his defence. See **Oseni v. State (2011) 6 NWLR (pt 1242) pg 138,** where the Court held as follows:

> *"By provision of Section 36(6)(a) and (b0 of the 1999 Constitution, every person charged with a criminal offence shall be entitled to:*
>
> *a) Be informed promptly in the language he understands and in details the nature of the offence.*
>
> *b) Be given adequate time and facilities of his defence."*

The trial of the appellant and the subsequent conviction cannot be fair in the impression of a reasonable man when the counsel representing him said he was not properly brief and yet the appellant was convicted, this is against the principle of fair trial, see **Ogunsanya v. State (2011) 12 NWLR (pt 126) p. 401,** where the court held as follows:

> "*And the true test of fair hearing is the impression of a reasonable person who was present in court of the trial, whether from his observation, justice was done in the case".*

Immediately the counsel to the appellant told the trial Magistrate that he was not properly briefed she should have halted the proceedings adjourn same to another date to enable the accused brief his counsel, the refusal of the Magistrate to adjourn the matter is a denial of fair hearing. See **Salu v. Egeibon (1994) 6 SCNJ at 233 – 234.**

Where the Court held as follows:

> "*Where refusal of an application for adjournment results in the defendant not being given any chance to present her defence which resulted in her being completely denied the opportunity of a fair hearing under Section 33(1) 1979 Constitution. (Section 36(1) 1999 Constitution) the whole proceeding becomes a nullity".*

c. There is nowhere in the record of proceeding where the actual reading of the First Information Report to the accused appellant was recorded. There is also nowhere in the record of proceeding where it was recorded that the accused appellant pleaded guilty. What was recorded as the plea of the accused appellant is as follows:

> *"**Court** – upon reading the content of the First Information Report to the accused person in English language to the satisfaction of the Court and he having confirmed to have understood same he pleaded guilty".*

In the case of **Tobby v. State (2001) 10 NWLR pt 720,** what was recorded as the plea of the accused by Akpabio J. Is as follows:

> "*Fresh plea taken and accused pleads not guilty".*

Ogwuegbu, J.S.C. at page 32 of the said law report held as follows:

> "*I agree with the learned appellant's counsel that there was non-compliance with the provisions of Sections 215 of the Criminal Procedure Law and 33(6)(a) of the 1979 Constitution, it vitiated the trial of the appellant and rendered the whole trial null and void and also the proceedings in the Court below based on that trial."*

By provisions of Section 157 Criminal Procedure Code a person to be tried on First Information Report shall be before the court unfettered and the charge read over and explained to him to the satisfaction of the court by the Registrar or Clerk of court. The accused shall be called upon instantly by the court to take plea. Where they are more than one charge as in the present case, the charge should be read to the accused in turn and plea specifically taken on each charge and recorded by the Magistrate. The admission of the accused person should be recorded as nearly as possible in the words used by him in his plea. By Section 161 Criminal Procedure Code, he should be asked whether he is guilty. The case of **Olowoyo v. State (2012) 17 NWLR (pt 1329) 3464** explained the essential requirement of a valid arraignment.

a) The accused must be placed before a Court unfettered unless the Court thinks otherwise.
b) The charge or information must be read over and explained to the accused to the satisfaction of the Court in the language the accused person understands.
c) The accused must be called upon to plead to the charge or information.
d) The accused must have legal representation of his choice.
e) The accused should be given all opportunity to defend himself by providing him with information or charge before arraignment and many more, this is to ensure fair hearing.

It is trite law that failure to give accused opportunity to make proper plea, the consequence is that the trial is a nullity not matter how ably conducted – **Osmud Onuola v. State (1998) 5 NWLR (pt 548) 118 r.** There cannot be any valid trial without a plea. That is the situation with the instant case where it is on record that the accused person did not take a plea but the Honourable Magistrate went ahead to inquire from him, "*how guilty are you accused person".* This amounts to drawing a conclusion on the guilt of the accused person. A proper arraignment is where an accused is docked and charge are read to him to the satisfaction of the court in accordance with the requirements of the law – **Kajubo v. State (1988)1 NWLR (pt 73)72** and **Effiong v. State (1995) 1 NWLR (pt 373) 507.** Trial without plea is a nullity of proceedings. It is unacceptable as a reason that Magistrate Courts are Courts of summary jurisdiction and therefore the essential ingredient of trial i.e. 'Plea taking' should be improperly taken. Wale, JSC, has held inter alia "*a trial of accused person commences when a plea is taken".*

It is our conclusion that each count must be read to the understanding of the accused person and plea taken accordingly and recorded in the exert words of the accused person.

The principle of plea taking is very fundamental and if not complied with goes to the root of the case. Having read the authorities cited by the appellant's counsel we totally agree that the appellant did not take a proper plea and therefore, the Magistrate erred in law to have assumed jurisdiction by arriving at the conclusion that the First Information Report was read to appellant and plea taken. The appeal succeeds and we hereby allow it, the conviction and sentenced of Appellant to 6 months and one year imprisonment by the trial Magistrate for the offences of cheating and criminal intimidation is hereby set aside.

We could have considered an order of retrial by another Magistrate but by now the Appellant must have served the full sentenced.

**……..**
**HON. JUSTICE S.E. ALADETOYINBO**
**23/6/2014.**

**……**
**HON. JUSTICE A. O. OTALUKA**
**23/6/2014.**