IN THE APPELLANT DIVISION OF THE HIGH COURT OF THE FCT
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA ABUJA
BEFORE THEIR LORDSHIPS: HON. JUSTICE M.M. DODO & HON. JUSTICE C.N. OJI

APPEAL NO: CRA/61/2014
DATE: 05/05/2016

BETWEEN:

DENIS UGANDEN……..APPELLANT

AND

COMMISSIONER OF POLICE……..RESPONDENT

Appearance:
S.G. Kekere Akpe appearing for the Applicant

JUDGMENT

On this appeal, the Appellant was arraigned before Chief Magistrate Court, Wuse, Zone 6, Abuja on the 6th of June 2012 for the offences of criminal conspiracy, criminal breach of trust, criminal intimidation and cheating contrary to SECTIONS 97 (1), 312, 397(1) AND 322 OF THE PENAL CODE ACT, CAP. 532, LAWS OF THE FEDERATION OF NIGERIA (ABUJA) 1990. He entered a composite, joint or general plea to all the allegations contained in the First Information Report (FIR), at the instance of the trial Court.

The prosecution opened its case and called 3 (three) witnesses and closed its case. The Learned trial Magistrate charged the Appellant for the same offences as mentioned earlier, on the 6th of December, 2013 and the Appellant also entered a composite, joint or general plea to all the charges/counts.

At the conclusion of the defence and addresses, the trial magistrate entered his Judgment on the 11th of July, 2014 against the Appellant for all the offences mentioned above and sentenced him to a fine of Twenty Fine Thousand (N25, 000. 00k) Naira only or Twelve Months (12) imprisonment for each offence/count charged against him. Sentences were to run concurrently.

Dissatisfied with the Judgment, the Appellant appealed to this Court and sets out (8) grounds of Appeal and formulated five (5) issues from the grounds for this Courts determination. The first issue for determination was formulated from grounds 2 and 3 of the Appellant's Notice of Appeal, which was dated and filed, the 4th of August, 2014 and it is _

> "Whether the trial Court could try the Appellant on a composite, joint or general plea of the Appellant to all the offences/allegations contained in the First Information Report (FIR) and also enters a composite, joint or general finding or conviction against the Appellant for all the offences or counts with which he is charged before the trial Court".

The second issue formulated by the Appellant for the determination of this Court is from ground 4 and it is _

> Whether the Respondent has proved the offences of criminal conspiracy contrary to SECTION 97 (1) OF THE PENAL CODE ACT, CAP 532 LAWS OF THE FEDERATION OF NIGERIA (ABUJA) 1990 against the Appellant beyond reasonable doubt.

The third issue for determination is from ground 5 and it is _

> Whether the Respondent has proved the offence of cheating contrary to SECTION 322 OF THE PENAL CODE ACT CAP 532 LAWS OF THE FEDERATION OF NIGERIA (ABUJA) 1990 against the Appellant beyond reasonable doubt.

The fourth issue is from ground 6 and it is _

> Whether the Respondent has proved the offence of criminal Breach of Trust contrary to SECTION 312 OF THE PANEL CODE ACT CAP 532 LAWS OF THE FEDERATION OF NIGERIA (ABUJA) 1990 against the Appellant beyond reasonable doubt.

The fifth issue is equally from ground 6 of the Notice of Appeal, and it is _

> Whether the Respondent has proved the offence of criminal intimidation contrary to SECTION 397(1) OF THE PENAL CODE ACT CAP 532 LAWS OF THE FEDERATION OF NIGERIA (ABUJA) 1990 against the Appellant beyond reasonable doubt.

Let me start with the 1st issue above for determination. On that issue, the learned Appellant Counsel submitted that for the trial magistrate to exercise his power to try the Appellant, he must strictly comply with the provisions of SECTION 156 OF THE CRIMINAL PROCEDURE ACT CAP 491 LAWS OF THE FEDERATION OF NIGERIA (ABUJA) 1990 and where he fails to comply with the said provisions, the trial, conviction and sentence of the Appellant would be set aside by the Appellant Court. See: ALHAJI MAISALIBU HALILU VS COMMISSIONER OF POLICE 1970 ALL NLR 491 RATIO 1 AND 2.

According to the Appellant Counsel, since the Appellant was arraigned for more than one offence or count in the First Information Report (FIR), a separate plea must be taken on each of the offences or counts. Where the trial Court, however, takes a composite, joint or general plea of the Appellant for all the offences or counts, as in the instant appeal, the Appellate Court will not hesitate to set aside the trial, conviction and sentence.

The learned Counsel heavily relied on the cases of BAKO BAHAR VS YAURI N.A. POLICE 1970 ALL NLR 558 RATIO 1 AND 2; ISAH TELLA VS COMMISSIONER OF

POLICE 1962 U.I.L.R. (PART IV) 581 RATIO 1 – 3; WALLACE L. DUVAIL VS COMMISSIONER OF POLICE 1962 2 ALL NLR 831 and most importantly, he drew our attention to the Court of Appeal decision in the case of SOLOMON OMOTELOYE & 6 ORS VS THE STATE (2005)4 ACLR 478, RATIO 8, where the Apex Court held thus: -

> "SECTION 304 OF THE CRIMINAL PROCEDURE ACT requires that a separate plea be taken in respect of each offence in the information. The trial judge entered a general plea in respect of all the six appellants and to all the 21 counts of the information when not all the six appellants were involved in each of the twenty – one counts. Nevertheless, he did not consider it necessary to take the plea of such appellant in each of the counts with which he was charged. His omission to observe the mandatory provisions of the section renders the whole trial a nullity".

The learned Counsel thus, maintained that the trial of the appellant in the instant case before us, which is based on the invalid plea, is incompetent and should be set aside. He referred us to pages 1 & 20 of the record of appeal for the plea taken. He further referred us to SECTION 164 (2) OF THE CRIMINAL PROCEDURE CODE ACT CAP 491 LFN 1990, where it provided thus: -

> "If in any case under this chapter in which a charge has been framed the Courts find the accused guilty, it shall announce its findings…"

He postulates that the failure of the trial Court to make separate finding and conviction for each of the offence or counts is fatal and a breach of SECTION 269 (1) OF THE Criminal Procedure Code Act. He wants the trial, the conviction and the sentence of the Appellant by the trial magistrate to be set aside because it has led to a miscarriage of justice. See: ARTHUR ONYEJEKWE VS THE STATE (1992)4 SCNJ 1 AT 7 PARAGRAPHS 15 – 25.

In his brief of argument the learned Counsel for the Respondent distilled a sole issue for the determination of the Court thus:

"Whether the learned Trial Magistrate misdirected himself in fact and in law having regard to the total evidence before the Court to inter(sic) an unfair prejudice to the defence or to have occasioned a miscarriage of justice."

On the Appellants issue no 1, learned Counsel submitted that the learned trial Magistrate complied with sub section 156, 160 & 161 of the Criminal Procedure Code as the Accused/Appellant was

a. placed before the Court unfettered

b. the charge read over and explained to him to the satisfaction of the Court by the registrar of the Court.

3. He was then called upon to plead instantly to the charges.

He argued that in the absence of evidence to the contrary, when a charge is read to the accused person and he makes his plea, and the Court records his plea, and thereafter proceeds to trial, the presumption is that the Court is satisfied that the charge was explained to the accused to its satisfaction.

Thus it is only desirable and not mandatory to have satisfaction of the Court in record. See UDO VS THE STATE (2006). All FWLR (PART 332) 456; SOLOLA VS STATE (2005) ALL FWLR (PART 269) 1756; OKORO VS STATE (1998) 14 NWLR (PART 384) 192. He further submitted that the conviction and sentence of the Accused/Appellant by the lower Court were in compliance with the provisions 2 sections 268(1) & 269(1) CPC (See page 27 – 36 of record).

On issue No's 2 – 5 raised by the appellant he further submitted that the case against the Accused/Appellant was proved beyond reasonable doubt upon a proper evaluation of the

evidence by the learned Trial Chief Magistrate and application of relevant law. He urged the Court to dismiss the appeal. Case law was cited unsupported.

We have considered the appeal before us and the briefs of argument of Learned Counsel on both sides.

It is apparent from the record of proceedings before us that on the 6/6/2012 the Accused/Appellant was arraigned before the learned Chief Magistrate sitting at Wuse Zone 6, Abuja, for the offences of criminal conspiracy, criminal breach of trust, criminal intimidation and cheating contrary to sections 97 ((1), 312, 397 (1) and 322 of the Penal Code respectively in a first Information Report, a certified true copy of which is part of the record of proceedings. The learned trial Chief Magistrate took cognizance of the offences and proceeded to try him. Subsequently he framed a charge for the same offences and thereafter found him guilty, convicted and sentenced him.

We think that before we can proceed to consider the grievances of the appellant in this appeal, we must consider a very vital issue of jurisdiction, precisely, whether the learned Chief Magistrate had the Jurisdiction to try the Accused/Appellant in the first place.

The law is trite that the jurisdiction is a fundamental pre-requisite in the adjudication of any matter. It is a threshold matter, the life line of all suits, indeed the spinal cord of a court of law. Where a Court does not have jurisdiction to entertain a matter, the proceedings however well conducted are a nullity as the defect or lack of jurisdiction is extrinsic to the adjudication. See MADUKOLU VS NKEMDILIM (2001) 46 WRN 1 AT 13 and FGN VS OSHIOMHOLE (2004) 3 NWLR (PART 860) 305 AT 319.

Section 380(h) of the Criminal Procedure Code Act Cap 491 LFN (Abuja) 1990 provides.

"If a Court or justice of the peace not being empowered by law in this behalf, does any of the following things, namely:

a.
b.
c.
d.
e.
f.
g.
h. tries an offender…
the proceedings shall be void"

The Accused/Appellant was tried by the learned Chief Magistrate for offences which include Criminal Conspiracy contrary to Section 97 (a)(sic) of the Penal Code S 97(A) is a totally irrelevant section. It is on unlawful society. The proper section is therefore section 97 (1) of the Penal Code Law.

In the charge 1 at page 19 of this Record of proceedings, the accused/appellant is alleged to have conspired with other person now at large to cheat, defraud and intimidate one, Tobias Chioke male of Cotonou line…

Sections 97 (1) and 2 of the Penal Code Act Cap 532 LFN (Abuja) provide.

" Whoever is a party to a Criminal Conspiracy to commit an offence punishable with death or imprisonment shall, where no express provision is made in this Penal Code for the punishment of such a conspiracy be punished in the same manner as if he had abetted that offence.

2. Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment for a term not exceeding six months or with fine or with both"

Under the Penal Code Act, the offences of Criminal Breach of Trust, criminal Intimidation and Cheating are offences all punishable with imprisonment. In Appendix A to the Criminal Procedure Code Act Cap 491 LFN (Abuja) 1990 the Court with the least Jurisdiction to try Criminal Conspiracy punishable under section 97(1) of the Penal Code is the High Court.

The Learned Chief Magistrate therefore had no jurisdiction to try the accused person. See also NASIRU VS C. OP. 1980 – 1- 2 SC 61, 1980 ALL NLR 27.

The trial of the accused/appellant therefore is a nullity. The appeal therefore succeeds. The accused is discharged. The conviction and sentence of the accused/appellant are set aside. The fine imposed of N100, 000. 00 having been paid by the appellant should be refunded to him forthwith.

This is our Judgment.

HON. JUSTICE M.M. DODO
(Presiding Judge)
5/5/2016

HON. JUSTICE C.N. OJI
(Hon. Judge)
5/5/2016