IN THE APPELLATE 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 AND

HON. JUSTTICE C.N. OJI

DELIVERED ON WEDNESDAY, THE 13TH DAY OF MAY, 2015

APPEAL NO: CRA/09/12

BETWEEN:

JACOB WILLIAMS….....APPELLANT

AND

COMMISSIONER OF POLICE…….....RESPONDENT

Appearances:-
S.M. Essienekak appearing for the Appellant.
Respondent not in court.

JUDGMENT

This is an appeal against the Judgment of His Worship, Christopher Oba Esq., a Senior Magistrate sitting at Karu, FCT – Abuja, by the Appellant, Jacob Williams and which judgment was delivered on the 22nd of August, 2012 wherein the Presiding Magistrate summarily tried, convicted and sentenced the Accused (Appellant) to Five (5) years imprisonment.

The Appellant, Jacob Williams was arraigned before the Learned Magistrate by the Respondent, the Commissioner of Police for offences of

Rape and Causing Grievous Bodily Hurt contrary to Section 282 and 241 of the Penal Code Law, as the offences contained in the FIR with Charge No.CR/50/12. At the arraignment, the Appellant admitted the offences read to him by the Court below. The Presiding Magistrate convicted and sentenced the Appellant to Five (5) years imprisonment and directed him to be taken to the High Court for further trial for the offence of Rape. The Appellant was not represented by a Counsel at the Lower Court. Being aggrieved by this decision the appellant filed a notice of Appeal to the High Court on two grounds.

The Appeal was served on the Respondent and subsequently the hearing notices were duly served on them but they chose to remain silent, as such, we would not wait for them indefinitely, but rather, we ordered the Appellant to continue with his appeal. Therefore the Appellant, through his legal representative before us, S M Essienekak Esq., raised and distilled the following issues for determination in this appeal, namely:-

- ***Whether the Learned Trial Magistrate was right when he assumed jurisdiction to try the Appellant over the offence of Rape.***

- ***Whether the Learned Trial Magistrate was right when he failed to observe and consider the age of the Appellant in criminal trial before trying, convicting and sentencing him.***

Let me first start with issue 1 above for determination. On this issue, the Learned Counsel for the Appellant first examined the term "jurisdiction",

when he started his argument. He defined the word "Jurisdiction", citing Black's Law dictionary as ---

> *"The Power of the court to decide a matter in controversy and presupposes the existence of a duly Constituted Court with control over the subject matter and the parties . . . the power of court to inquire into facts, apply the law, make decision and declare judgment the legal right by which judges exercise their authority".*

The issue of jurisdiction in a criminal trial according to him is of paramount importance, because it can be raised at any time, whether in the court of first instance, such as Magistrate Court or on appeal for the first time by a defendant. The court also has powers to raise the issue of jurisdiction *suo motu* even if none of the parties raises it. See OLOBA V. AKEREJA.

The Learned Appellant Counsel contends that the Learned Presiding Magistrate took the plea of the Appellant standing trial before him on offences bordering on rape. He argued that the Magistrate does not have, neither has he been given the power to try rape cases. He felt that the Presiding Magistrate only gave himself the powers he had not; thus, the trial and subsequent conviction cannot stand, because it had no foundation *ab initio*. He submitted that the trial Magistrate did not order the FIR containing the offence of rape to be corrected.

He posited that the record of proceedings clearly shows that it was the entire content of the FIR that was read to the (Accused) Appellant and it was the same content that he pleaded and admitted. He reproduced the Appellant's confession from the record of proceedings, which led the trial Magistrate to act upon as follows:-

> ACCUSED PERSON: *"I was coming from the farm and the complainant was going to the toilet, I thought she was somebody that I know. I now wanted to sleep with her, showed her the knife and held it the knife cut her hand. I now slept with her."*

The Appellant Counsel postulates that by the above confession, the right thing for the trial Magistrate to have done was to hold that by such confession, the ingredients of rape were paramount, as such he ought to decline jurisdiction. Based on that, the Appellant Counsel contends that the Presiding Magistrate has no power to try offences bordering on rape. It is only the High Court of the FCT that has such powers. He urged us to so hold and to set aside the conviction of the Appellant.

On the 2nd issue for determination, that is, whether the Learned trial Magistrate was right when he failed to observe and consider the age of the Appellant in criminal trial before trying, convicting and sentencing him, the Appellant Counsel submitted before us that the Appellant was a child or young person of 13 years of age at the time of his trial, conviction and sentencing.

He examined the FIR and submitted that, it is required that the Police authority in bringing the FIR must provide information on:-

- The name of the person arrested,
- Age of the person arrested,
- Occupation of the person arrested, and
- The address of the person.

He argued that the FIR, which the accused person now the Appellant was brought, did not contain the above particulars. According to him, the above particulars/informations are to ensure that where the accused is under age, the court would be mindful to know what to do in the circumstance. But the arresting authority, the respondent deliberately hid these vital information from the trial court and the trial Magistrate failed in his duty to *suo motu* request for the details to aid him to achieve the purpose of justice.

According to the Appellant Counsel, the reason why the Respondent hid these particulars/information was to foist upon the trial Magistrate a child and or a young person to be tried in a regular court as an adult. He postulates that the age of the Appellant then accused was so material that the court ought to have taken cognizance of the deliberate omission of the age, occupation and the address of the person standing trial before him. He submitted that the Child Rights Act, 2003 in Part XXIV defined a child as a person under the age of 18.

He contends that a person below the age of 18 by law cannot be tried in a regular court. This is because **Section 204 of the Child Right Act 2003** States that:-

"No child shall be subjected to a criminal justice process or criminal sanction . . . But a child alleged to have committed an act which would constitute a criminal offence if he were an adult shall be subjected to a child justice system and process set out in the Act".

Also, **Section 2** of the Act, provides that:

"The terms conviction and sentence shall not be used in relation to the child dealt with in the court and any reference in any enactment or other law to any person convicted or a sentence shall, in the case of a child be construed as including a reference to a person found guilty of an offence."

The Learned Appellant Counsel maintained that the whole process and the procedure adopted in the trial was a nullity as the Presiding Magistrate convicted and sentenced a child which he ought to have known. He urged us to uphold and allow this appeal, set aside the conviction, sentence and the entire judgment of the court below.

By this appeal, it is our humble and respectful view that the Applicant invited us to review the decision of the Lower Court to find whether on proper consideration of the facts and the applicable law before the Presiding

Magistrate, he arrived at a correct decision or not. That made us to take our time to carefully scrutinize all papers filed in order to arrive at a just conclusion.

Starting with the 1st issue above, that is, whether the trial Magistrate was right when he assumed jurisdiction to try the Appellant over the offence of rape.

The pertinent question for us to answer is whether the Lower Magistrate has the jurisdiction to try, convict and sentence the Appellant under Section 247 of the Penal Code, and subsequently order the Appellant to the High Court to be tried for the offence of rape.

With all due respect, I believe the trial Magistrate has no jurisdiction to have done such a trial, because he exceeded his boundaries. My reason is the case of **ABDUL MAJEED NASIRU VS. COMMISSIONER OF POLICE (1980) 1 – 2 S.C 61 at 69 – 70 ratios 40** In this case, OBASEKI JSC (as he then was) held in his wisdom that a Magistrate is not empowered to pick and choose the charges he has jurisdiction, to try from a number of charges the facts of which the case gave rise to and suppress the other charges which are outside his jurisdiction. His first duty, according to the Law Lord, after hearing the evidence is to frame the possible charges. The next duty is, if the charges are not within his jurisdiction to try to complete the procedure for enquiry into cases triable by the High Court down to the framing of the charge. If the charges are triable by the Magistrate, his duty is to try the case.

Failure to commit the accused for trial in the court having jurisdiction to try the case, and trying the accused whose acts or omissions constitute an offence outside the court's jurisdiction is a denial and a miscarriage of justice and the conviction in such circumstances cannot be allowed to stand.

Above is the position of the Supreme Court in respect of what I think exactly the trial instant Magistrate did in this case.

Since there was the issue of rape for which the trial Magistrate has no jurisdictions he ought not to have not chosen what he had jurisdiction to try and refer what he had not to the High Court. He would have completely surrendered the trial to the High Court for proper adjudication.

My Lord Nnamani, JSC, (when delivering the Leading Judgment) in the case of **ABDUL MAJEED NASIRU VS COMMISSIONER OF POLICE (supra),** heavily relied on the case of **OMALE OGWALE VS COMMISSIONER OF POLICE (1969) NMLR 125** and held that in Ogwale's case, the evidence before the Chief Magistrate revealed a *prima facie* case of rape (as in the instant case before us), contrary to Section 282 (1) (a) and 283 of the Penal Code Cap. 89 Laws of Northern Nigeria 1963, which the Chief Magistrate had no jurisdiction to try. The Chief Magistrate tried the, Appellant for offences under Sections 349 and 268 of the Penal Code and convicted him.

One question the Supreme Court (Per Nnamani, JSC) asked was whether it was proper for the Chief Magistrate to try the Appellant for a

lesser offence which he had jurisdiction to try when the evidence disclosed a more serious offence which he had no Power to try (as did the trial Magistrate in the instant case).

On Appeal to the High Court of the North Central State, Presided by Bello, Ag. C.J., (as he then was) and Wheeler, J., (as he then was), they held that the trial of the appellant had not only occasioned grave miscarriage of justice but was void by virtue of Section 380 (h) of the Criminal Procedure Code. The Supreme court agreed with the decision of the High Court below and accordingly, held that the proceedings in Nasiru's case in which the appellant was tried for theft under Section 289 of the Penal Code and other person ordered to be charged to the High Court for abetting the said offence was a nullity: and therefore void and of no effect.

Based on the above strong decision of the Supreme Court, we are of the humble view that the trial Magistrate in the present case before us exceeded his boundaries, as such the trial, conviction and sentence of the Appellant by the lower court of the offence of causing grievous hurt contrary to Section 247 of the Penal Code is a nullity and therefore null, void and of no effect. It should be set aside and is hereby set aside.

On the 2nd issue, whether the trial Magistrate was right when he failed to observe and consider the age of the Appellant in criminal trial before trying, convicting and sentencing the Accused/Appellant.

Careful scrutiny of the record and all papers filed put us in the same position as the Learned Appellant's Counsel. This is because we have carefully examined the F.I.R. of the Respondent but failed to capture where the age of the Accused/Applicant is indicated. We have then seen a copy of the statutory declaration of age of the Accused/Appellant which stated that he was born on the 28th of January, 1999. We equally examined a copy of Primary Six Leaving Testimonial of the Accused/Applicant issued on 29/7/2011 which stated his date of birth as 1/1/1999.

Come what may, the documents indicated that the Accused/Appellant was born in 1999, and from that date to the date of his conviction and sentence on the 2nd of August, 2012, he was 13 years old. The Presiding Magistrate ought to have taken into consideration the age of the Accused/Appellant even if it was not provided in the F.I.R. That would have given him the opportunity to give a fair trial. But since the Learned Magistrate did not advert his mind to one most important factor, which is the age of the Accused/Appellant, the whole procedure he adopted in the trial including the conviction and sentence amounted, in our humble view to exercise in futility, because there was a gross violation of the provisions of **Sections 2 and 204 of the Child Rights Act, 2003.**

In view of all the above, we have no hesitation to set aside the trial, conviction and sentence of the Appellant by the lower magistrate court for being a nullity and to allow this appeal. The appeal is therefore hereby allowed. The conviction, sentence and the entire judgment of the Court

below are hereby set aside. We hereby order the immediate release of the Appellant from the prison.

That is our Judgment

Counsel – We are very grateful for the Judgment.

HON. JUSTICE M.M. DODO
(Presiding Judge)

HON. JUSTICE C.N. OJI
(Hon. Judge)