IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

14TH DAY OF NOVEMBER, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

CHARGE NO. FCT/HC/CR/216/2017
MOTION NO. M/6847/2023

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

INSPECTOR-GENERAL OF POLICE … PROSECUTION/RESPONDENT

AND

BENJAMIN JOSEPH ……. DEFENDANT/APPLICANT

RULING

The Defendant's application dated 24/03/2023 but filed on the 27th of March 2023 is brought pursuant to Section 256 of the Administration of Criminal Justice Act, 2015 and Section 6 (6) and Section 36 of the 1999 Constitution of Nigeria.

It prays the Court for the following:

(1) An Order of Court dismissing and or quashing (Charge No. FCT/HC/CR/216/2016) this Charge on the ground

that the Charge is oppressive, that it is not prosecution but persecution and same constitutes an abuse of criminal process.

(2) An Order discharging and acquitting the Defendant.

IN THE ALTERNATIVE

(3) An Order of Court directing the Prosecution and or Complainant herein to produce, furnish, make available and deliver to the Defendant pursuant to Section 36 (6) (b) of the 1999 Constitution (as amended) the documents listed in the face of the Motion paper.

(4) An Order granting leave to the Defendant to reopen his evidence in chief to continue his evidence in chief and to tender the documents listed in the schedule hereunder after the said documents are produced, furnished, made available and delivered to the Defendant as required by Section 36 (6) (b) of the 1999 Constitution (as amended).

The grounds upon which the application is brought as canvassed by Learned Senior Counsel are:

(1) That the Defendant was charged before this Court under Section 140 of the Penal Code on allegation of giving false information.

(2) That Defendant upon the case of the Prosecution started giving evidence on 26/02/2020 and concluded on 24/01/2023.

(3) That on 28/02/2023, Defendant briefed the Law Firm of J. S. Okutepa, SAN to take over and lead the prosecution of his defence.

(4) That there are relevant and vital documents in possession of the Prosecution which were not made available to the Defendant during his evidence in chief.

(5) That the Prosecution is under a constitutional obligation to make available to the Defendant the documents.

(6) That the Prosecution deliberately did not list the said documents.

(7) There is need for DW1 to reopen his case, tender these documents and give evidence on it before the Prosecution begins Cross-Examination.

Learned Senior Counsel relies on the 10-paragraph Affidavit filed in support deposed to by Godwin Ozorah of Plot 2202, Apo Resettlement, Apo, Abuja, FCT.

Amongst others, he deposed that it is the fundamental right of the Defendant to be afforded reasonable time and facilities to prepare for his defence in this proceeding.

That the Defendant is being maliciously prosecuted despite a letter and Order from the Commissioner of Police. See Exhibits JS04 and JS05.

That the Prosecution has refused to make available these documents. That it is in the interest of justice to grant the application.

The Prosecution reacted to the Motion by filing a Counter Affidavit of 38 paragraphs sworn to by Inspector Jonah Ati of the Nigeria Police Force.

He deposes essentially that Defendant was charged and arraigned on 4/07/2016 for giving false information. That Prosecution called four (4) witnesses and closed its case on 10/05/2018 and Defendant made a No-Case Submission which was dismissed on 11/04/2019.

That Defendant commenced defence on 26/02/2020 till 24/01/2023 when he concluded his testimony. That most of the documents the Defendant prayed the Court to direct the Complainant to furnish him have already been tendered by him in evidence.

The FCIID SEB Investigation Report dated 7/04/2015 is Exhibit V1 while CP Administration forwarding letter of SEB Investigation Report to DIG dated 9/03/2015 is Exhibit V5.

That Police Investigation Report dated 19/10/2020 is Exhibit V3. That it is not true that relevant documents which the Defendant intends to tender are in the possession of the Prosecution.

That the application is a ploy to further delay the conclusion of this case. That the Defendant has been given adequate time and facilities to defend the Charge. That it took Defendant three years to conclude his testimony.

That it will not be in the interest of justice to grant his application to reopen his evidence. That Exhibit IGP3 gave the Prosecution signal to continue with prosecution.

That on 24/11/2020 the Commissioner of Police X squad submitted a Final Investigation Report on the case and never indicted the suspects against whom the Defendant petitioned.

The Court held *inter alia* that the Prosecution has made out a *prima facie* case against the Defendant. It is not the duty of the Prosecution to help Defendant to defend his case. That the application is brought in bad faith to delay the conclusion of this case.

The Defendant's Further Affidavit is dated 20/06/2023. The Complainant also filed a Further Counter Affidavit dated 22/09/2023, which is a surplusage in my view.

Learned Senior Counsel to the Defendant canvasses that the Charge against the Applicant is not only oppressive but it is a continuation of oppression in the face of Exhibits JS04 and JS05.

That it is malicious, *mala fide* and a gross abuse of criminal process and a grave violation of the fundamental right of the Applicant.

That this Court has a duty to safeguard the rights and liberties of the Defendant in this case. That the Court must not and should not be led to aid oppressive proceedings.

That no citizen should be the subject of persecution by the State. That the proper Order to make in the circumstance of this case is a dismissal or in the alternative, the Court should grant the alternative prayers.

That the Defendant has made out a case for the grant of the alternative prayers. That this Court should exercise its discretion in favour of the Applicant.

He canvasses that at any state of criminal proceeding, a Court is empowered to allow the recall and re-examination of a witness who had earlier been examined where his evidence appears to the Court to be essential to the just determination of the case.

Learned Senior Counsel refers to Section 256 of the Administration of Criminal Justice Act (ACJA), 2015. A party who seeks to have a witness recalled has an enormous burden to discharge as the discretion ought to be exercised with great care and only in exceptional circumstances regard being had to the interest of justice.

It is the further submission of Learned Defence Counsel that the right of an accused person or a Defendant in a criminal trial to be furnished with the documents to enable him or her prepare for his defence or her defence is a constitutional right that cannot be treated lightly.

That the documents in the custody of the Complainant are materials relevant in the defence of the Defendant. That the grant of this application will not be prejudicial to the Complainant in the circumstance of this case. That justice and fairness requires that the reliefs be granted.

The Prosecution/Respondent's Written Address is dated 9/05/2023. Learned Senior Counsel to the Prosecution posited two (2) issues for determination:

(1) Whether the Defendant has satisfied the requirement of the law to enable the Court quash the Charge.

(2) Whether Defendant has placed sufficient materials before the Court for the grant of leave to recall DW1 in the circumstance of this case.

On Issue 1, Learned Counsel submits that the Defendant has failed to satisfy the legal requirement for a grant of an Order quashing the Charge.

Learned Counsel refers to **OHWOVORIOLE, SAN vs. F.R.N & ORS.** and **ORANGE vs. F.R.N.** That Defendant made a heavy weather in respect of Exhibits JS01 – JS05. That Exhibits JS01 and JS02 were procured by the Defendant to cover up a legal advice he earlier procured.

That Exhibit JS03, the purported legal advice said to be written by DPP is not on the letter headed paper of the DPP office and it is not addressed to anybody neither was it sent or received by anybody.

That Exhibits JS04 and JS05 are interim reports written without inviting any of the suspects.

That in the light of the facts in the Counter Affidavit and Exhibits IGP1 – IGP6, Defendant's argument that he is being persecuted are vain and the cases cited out of context.

Learned Senior Counsel further submits that there is no single fact before the Court to warrant the quashing of the Charge against the Defendant.

He submits that where an application to quash a Charge is argued in the course of trial, Ruling can only be delivered at the conclusion of the case along with final Judgment.

On Issue 2, Learned Counsel argues that the Defendant's Affidavit of 12 paragraphs did not show how further examination in chief of DW1 will be for the just determination of the case.

The Defendant has not placed sufficient materials to enable the Court exercise its discretion in his favour. That no exceptional circumstance is disclosed. That it will not be in the interest of justice to grant the application.

I have read the Motion, Affidavit, Exhibits and Further Affidavit. I have equally read the Counter Affidavit and exhibits attached thereto and considered the Written Addresses of Counsel summarised above.

From the evidence and Written Addresses of Counsel, these issues are germane for the determination of this case:

(1) Whether or not the Defendant has placed sufficient materials before the Court to enable it dismiss or quash the Charge on the ground that it is oppressive and therefore a persecution.

(2) Whether or not in the circumstance of this case the Court can grant leave to the Defendant to reopen his evidence in chief and tender the documents listed in the schedule.

The Charge against the Defendant is a one-count Charge of giving false information to the DIG contrary to Section 140 of the Penal Code. The Charge is dated 01/06/2016.

The Defendant was arraigned on the 4th day of July 2016. The Prosecution opened its case on 15/10/2016 and called four (4) witnesses in proof thereof. The Prosecution closed its case on 10/05/2018 and the case adjourned for defence.

The Defendant made a No-Case Submission, which was overruled on 11/04/2019 with protracted applications in between.

The Defendant opened his defence and gave evidence as DW1 on the 26/02/2020. The DW1 ended his testimony on the 24/01/2023, which is about 3 years.

It is settled law that in an application such as this, there are certain factors which the Applicant must allege indicating some deficiencies in the charges against him, which may necessitate the Court quashing such charges.

In **UZOCHUKWU vs. STATE (2018) LPELR-44643** quoting **CHIEF LERE ADEBAYO vs. THE STATE (2012) LPELR-9464,** his Lordship Kekere-Ekun, JCA as he then was stated:

> *"The essence of an application to quash charges in an information is that the information is inherently defective for one reason or the other or that the Proofs of Evidence do not establish a prima facie case against the Appellant sufficient to warrant his being called upon to provide some explanation."*
> See also **ABAY vs. STATE (2016) LPELR-40127 (CA).**

In the instant case, more of the grounds upon which application to quash the information containing the charges against the Defendant is not anchored on any defect in the one-count Charge.

The Prosecution has concluded its case. The Defence has also opened. The DW1, the Defendant gave evidence for himself for three years. It is now for Cross-Examination.

The grounds upon which the prayer of quashing the Charge is based is that the Charge is oppressive. That it is not prosecution but that Defendant is being persecuted which constitutes abuse of criminal process.

I have earlier stated in this Ruling that after the Prosecution closed its case, the Defendant made a No-Case Submission, the Court ruled that the Prosecution has made out a *prima facie* case against the Defendant and he was called upon to enter his defence. That decision is not challenged.

The Defendant/Applicant has not made out a case of oppression and persecution.

I have read Exhibit JS0, JS01, JS02 and particularly JS04 and JS05. The Exhibits JS04 and JS05 are interim reports dated 27/02/2020 and 19th October 2020. The aim of the above exhibits are captured in the reports. See page 5, the last paragraph of Exhibit JS04 and page 5, last paragraph of Exhibit JS05.

The Petition prayed the Unit to conduct detailed investigation into the false petition charge levelled against him by the Police with the aim of quashing this Charge.

In essence, materials to quash this Charge was the reason for the exhibits. The one-count Charge was already pending, the Prosecution had concluded its evidence before Exhibits JS04 and JS05 were made.

They were made for the purpose of this proceeding. I have also read Exhibits IGP5 and IGP6 dated 12/01/2021 and 01/12/2020. They are endorsed by the IGP. They are also intrigues and fallout of Petition written during the pendence of this Charge.

Abuse of Court process, it has been held are of infinite varieties. It is instituting different actions in different or same Court on the same subject matter involving same parties.

It is my humble view that the Defendant has failed to prove persecution, abuse of criminal process or that the Charge is oppressive.

There is no evidence to suggest that the Defendant is facing different criminal charges in different Court on the same subject matter.

In the circumstance, it is my humble view that ground one must fail and it hereby fails.

On the second issue, whether this Court can grant leave to the Defendant to reopen his evidence in chief and tender the documents listed in the schedule. The grounds upon which the Defendant based his application are listed on the face of the Motion paper amongst which are:

That on the 28th day of February, 2023, the Defendant briefed the Law Firm of J. S. Okutepa (SAN) & Co. to take over and lead the Prosecution of his defence and after studying the Records of Proceedings and upon review of the Case File and the evidence in chief, they discovered that relevant and vital documents are in possession of the Prosecution, which are not made available to the Defendant.

That the Prosecution is under the constitutional obligation to make available the documents for his defence as they are facilities.

That it is the fundamental right of the Defendant to be afforded reasonable time and facilities to prepare for his defence. That the application is necessary in the interest of fair hearing as provided in the Constitution.

On the first ground, I wish to draw attention to the proceedings of this Court on 30/03/2023 when the Prosecuting Counsel objected to the appearance of the Defendant's Counsel on the ground that it is unethical for Senior Counsel to jump into a matter.

Learned Senior Counsel to the Defendant stated thus, "I object to the language that I jumped into this matter. On the 3rd of November 2022, he acknowledged that I was in the case, the Record of Proceedings bear us witness. My appearance is a constitutional right."

The above shows that Learned Defence Counsel has been in the matter all along. The assertion that the Law Firm of Defendant's Counsel was briefed on 28/02/2023 in respect of this case is not correct.

Learned Counsel said the record of the Court bears him witness. I shall therefore peruse the records.

On the 10th day of May, 2018, Bob James, a Senior Counsel in the Chambers of J. S. Okutepa appeared leading J. Mmuoka who had always appeared for the Defendant.

In the processes before this Court filed by the instant Defendant's Counsel, Bob James is the second Counsel on the list of lawyers in J. S. Okutepa, SAN & Co.

I also do not intend to overemphasise the fact that the Defendant testified as DW1 for three years. He ended his testimony on 24/01/2023 and the case adjourned for Cross-Examination. This Motion seeks for leave to reopen the evidence of DW1 who had testified for three years.

Section 36 (6) (b) of the 1999 Constitution states that every person who is charged with a criminal offence shall be entitled to be given adequate time and facilities for the preparation of his defence.

In my humble view, DW1 testifying for three years in defence of the one-count Charge is adequate time in the circumstance of this case.

In **IGWE vs. STATE (2021) LPELR-55336 (SC),** the Court interpreted the word "facilities" as contained in Section 36 (6) (b) of the 1999 Constitution thus:

> *"The facilities that must be afforded the accused person are the resources or anything which would aid the accused person in preparing his defence to the crimes for which he is charged.*
>
> *These, no doubt includes the Statement of witnesses interviewed by the Police in the course of their investigation, which might have absolved the accused of any blame or which may assist the accused to subpoene such favourable witnesses that the prosecuting Counsel may not want to put forward to testify."*

See also **C.O.P vs. OKOYE (2011) LPELR-3992 (CA).**

In the instant case, the Defendant has finished testifying. It is for Cross-Examination. The documents sought for are not Statements of witnesses who testified but official documents, mostly internal communication of the Police relating to the investigation.

The Prosecution's deposition on this issue is that most of the documents the Defendant prayed the Court to furnish him have already been tendered by him in evidence, e.g. Exhibits V1, V3, V5. That the Proof of Evidence in respect of the Charge and all Statements of witnesses are at the disposal of the Defendant. This Court will not force the Police to produce its official communications which they have denied having.

If the Defendant is minded, he can cause a subpoena to be served on the Police or call them as witnesses. This Court has afforded the Defendant all opportunities to defend himself.

The facilities afforded the Defendant are in my humble view adequate enough to enable him defend himself. The Defendant has not therefore made out a case to enable me exercise my discretion in his favour.

The application fails and it is accordingly dismissed.

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HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
14/11/2023

Defendant present.

Rebecca S. Tyogyer, Esq. holds the brief of Lough Simon, Esq.

Rebecca S. Tyogyer: I now withdraw my appearance.

J. S. Okutepa, SAN with Ojonim S. Apeh, Esq., Abdulkareem Musa, Esq., Naomi O. Aitomum, Esq., Angela O. Agbo, Esq. and Imoudu Oroh, Esq. for the Defendant/Applicant.

COURT: Ruling delivered.

(Signed)
HON. JUDGE
14/11/2023