

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON WEDNESDAY THE 7TH DAY OF DECEMBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CR/012/2022

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ----- PROSECUTION

AND

MOHAMMED GARBA GOLOLO ----- DEFENDANT

BENCH RULING

This Court shall not hear the Motion filed by the Defendant Counsel in the absence of the Defendant. To refresh the mind of the Defendant Counsel, this is a criminal matter and the Defendant must be in Court for arraignment before the Court can hear any application challenging arraignment. The question of being arraigned is out of the question.

The Court had noted the Prosecution Counsel – the learned Counsel who told Court on record that the Prosecution is yet to serve the Defendant with the

charge as the Defendant is yet to be arrested by the security operatives.

The Court had noted the eagerness of the learned gentleman who announced appearance for the Defendant urging Court to allow them to move a Motion which they filed on behalf of the Defendant on the 25th day of May, 2022. Meanwhile, the Defendant is not in Court today. Again, the matter is for arraignment. Besides, this is the fourth time that the Court had scheduled this matter for arraignment. The Court had scheduled the matter for arraignment on 3 previous occasions which are:

1. 16th February, 2022
2. 16th March, 2022
3. 5th May, 2022.

There is no evidence to show that the Defendant has been served with a copy of the charge as required by law. Again, the Prosecution Counsel had told Court that they are yet to serve the Defendant and that he is yet to be arrested having been on the run. The Court had asked the Counsel who announced appearance for the Defendant if he has any copy of the charge served on them that empowered them to be in Court today. He said, going by his body language, that there is none such charge served on them. The Court asked that question because there is no Endorsement and Return

in the case file. Also the Court wonders the ground upon which the gentleman is standing, appearing for the Defendant and upon which the filing of the Motion was predicated. Besides, the Counsel noticed that in the list of the Counsel in the Motion there is no name among the 13 names listed in the Motion that has the resemblance of the name Afeez Matori, Rabiul Suleiman, Cyril Irorapo and A.A. Badmus. There is no one to corroborate the fact that these names are among the lawyers in the said Defendant's Counsel Chambers. Also, there is no Memorandum of Appearance, conditional or otherwise filed by the Counsel who announced appearance for the Defendant.

The Court had noted the submission of the Prosecution Counsel that they are yet to serve the Defendant. The Court had also observed that the Prosecution was served with the Motion filed by the people who claimed to be standing for the Defendant. The Court noticed the eagerness and enthusiasm with which the gentleman had wanted to be allowed to move his Motion which he claims was not challenged. But the question from all these is:

“Where is the Defendant?”

Should Court hear a Motion challenging Court's jurisdiction to hear a Suit – criminal action which is

scheduled for arraignment and in which the Defendant is not even in Court and no evidence that he has been served with a copy of the charge?

Since the Motion had been served on the Prosecution, should Court hear it when the Defendant is yet to be served with the Charge as he is yet to be arrested? Should doing so be in the interest of justice and its cousin, fair-hearing at this stage in this case?

If the Court hears the Motion in the absence of the Defendant, what happens to the arraignment as the Defendant is yet to be served a copy of the charge?

Under what ground is the gentleman appearing and challenging the Suit – arraignment since it had not even filed Memorandum of Appearance?

The Court had noted the submission of the learned silk in Court, Majiagbe SAN.

Without answering seriatim, it is well unethical and a judicial rascality for this Court to entertain anything in this Suit including hearing any Motion filed by any person claiming to be standing for the Defendant when the Defendant had not been served with the charge and is also absent, the Counsel claiming to stand for him not having filed a Memorandum of Appearance or shown any evidence of having a copy of the charge served on the Defendant with them and having not

even filed Memorandum of Appearance conditionally or unconditionally. Beside, the ACJA and its Practice Direction had provided that the presence of a Defendant can be dispersed with after the Defendant had been arraigned and absconded or where the Court had given Order to disperse with the presence of the Defendant going by the prevailing circumstance. There is no such Order in place. Besides, there is no prevailing circumstance.

As final reminder to all, the Defendant is yet to be served with a copy of the charge and the matter today is for his arraignment.

This Court cannot therefore hear any application challenging the Suit or any aspect of it in the absence of the Defendant. That is the law and this Court must abide by it.

Matter adjourned to the 27th day of March, 2023 for Arraignment.

This is the Bench Ruling of this Court.

Delivered today the ___ day of _____ 2022 by me.

K.N. OGBONNAYA
HON. JUDGE