IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY HOLDEN AT ABUJA

THIS THURSDAY, THE 6TH DAY OF OCTOBER, 2022

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI -- JUDGE

SUIT NO: CR/232/2016
MOTION NO: M/3435/2022

BETWEEN:

INSPECTOR GENERAL OF POLICE …COMPLAINANT/RESPONDENT

AND

LUKEMAN OBI……DEFENDANT/APPLICANT

RULING

By a Motion on Notice dated 18th May, 2022, the Defendant/Applicant prays for the following Reliefs:

1. An order of this Honourable Court granting leave to the Defendant to reopen it case for the purpose of bringing additional evidence in his defense to the charge brought against him before the Honourable Court.

2. An order of the Honourable Court allowing the Defendant to tender for admission the copies of ruling and certificate of Judgment in Suit **No: FCT/HC/BW/M/77/16 between MR OSMAND OBI & ANOR VS THE INSPECTOR GENERAL OF POLICE & ORS** being part of his defense to the charge brought against him before the Honourable Court.

3. An order for extension of time within which the Defendant may file his final written address to the charge brought against him before the Honourable Court.

4. An order of the Honourable Court deeming the final Written Address of the Defendant already filed and served in respect of the charge brought against him before the Honourable Court as good and proper in the circumstance.

5. And for such further or other orders as the Honourable Court may deem fit to make in the circumstance.

The application is supported by a 5 paragraphs affidavit with (2) annexures attached and marked as **Exhibits A1 and A2. Exhibit A1** is a decision delivered by Hon. Justice Bello Kawu on 30th September, 2016 in suit **FCT/HC/BW/M/77/16** while **Exhibit A2** is the certificate of judgment in the same action.

The application is supported by a very brief barely one page written address in which no issue was streamlined or raised but the point was made relying on **Section 36(6) of the 1999 Constitution and the affidavit** filed that the court is enjoined to give the Defendant every opportunity and facility to make or put in a defence in a criminal trial.

At the hearing, counsel to the Defendant/Applicant relied on the paragraphs of the affidavit and adopted the submissions in the written address in urging the court to grant the application.

In opposition, the Complainant/Respondent filed a 5 paragraphs counter-affidavit with a written address in which three (3) issues were raised as arising for determination to wit:

1. **Whether the institution of a civil case can stop the trial of a criminal case.**
2. **Can the court stop the police from investigating crime.**
3. **Is the document sought to be tendered relevant to the case.**

Submissions were made on all the above issues which form part of the Record of Court. Issue (2) raised above has no relevance in the context of reliefs sought by the extant motion; it will be discountenanced. I will briefly highlight the submissions in respect of issues 1 and 3 which will be taken together. The case

made out Relying on **Section 320(2) of ACJA** is that the institution of a civil action shall not be a bar to a criminal action. It was contended that the civil action for enforcement of Fundamental Human Rights vide **Exhibits A1 and A2** sought to be relied on by Applicant has nothing to do with the extant criminal action and is completely irrelevant. It was further submitted that the decision or Ruling was given as far back as **30th September, 2016** some few months after the Defendant was arraigned in 2016 and no steps was taken by Defendant to tender the document in nearly 7 years the case lasted in court until after final addresses was ordered. That the present application is simply another ploy by Defendant to further delay the conclusion of the trial and to benefit from his own wrong doing in refusing to tender available evidence which he considers germane to his defence.

At the hearing, counsel to the complainant/Respondent relied on the paragraphs of the counter-affidavit and adopted the submissions in the written address in urging the court to dismiss the application as completely lacking in merit and simply a ploy to further delay the conclusion of this case.

I have carefully considered the processes filed and the submissions made on both sides of the aisle and the narrow issue is whether the court should grant the application to reopen the case for the purpose of bringing additional evidence covered by Reliefs (1) and (2) on the motion paper. Reliefs (3) and (4) seeking extension of time to file the Defendant's final address and to deem same as properly filed and served was not really challenged by Respondent and should therefore ordinarily be granted but because the success or otherwise of Reliefs (1) and (2) will have an impact on Reliefs (3) and (4), the grant of the Reliefs will necessarily be affected by it and the final formulation of the terms of the grant.

Now to the crux of the application. An application to re-open a case and recall a witness particularly here where all parties have closed their cases and the matter adjourned for adoption of final addresses and indeed from the Records, the complainant/respondent had already filed and served their final address certainly cannot be granted as a matter of course or on whimsical or no grounds at all. Special circumstances must on the materials be disclosed by the applicant putting the court in a commanding height to exercise its undoubted discretion in Applicant's favour. This discretion it must be underscored, the court exercises with utmost circumspection, regard being had to the overall interest of justice and

providing a fair and even template for parties to present their grievances. No side should be given an undue advantage in any situation.

In determining the fairness and justice of this Application, it appears important to situate certain foundational facts. I will only highlight facts that are relevant in resolving the extant application as follows:

1. The Defendant was arraigned on 9th November, 2016 on a five counts charge and he pleaded not guilty. He was granted bail and the matter adjourned to 26th January, 2017 for hearing.

2. On 5th June, 2016, when the matter came up for hearing, defence counsel wrote praying for adjournment on grounds of ill-health. The application was granted.

3. Hearing commenced on 1st November, 2017 when the prosecution called PW1 and PW2. At the end of the evidence of PW2, defence counsel sought for adjournment on the ground that he was not feeling well and the court adjourned the matter until 11th December, 2017 for continuation of hearing.

4. On 11th December, 2017, the prosecution called its final witness, PW3 and closed its case and the Defendant prayed for a date to open his defence. The matter was then adjourned to 22nd February, 2018.

5. On 6th February, 2018, hearing could not commence because the Defendant said his counsel was bereaved. The matter was adjourned at the instance of Defendant to 3rd May, 2018 for defence.

6. On 3rd May, 2018, hearing could not commence because Defendant was said to be ill and hospitalized. The matter was then adjourned to 26th June, 2018. It is important to note that at this point, the Defendant has exhausted the five adjournments he enjoys statutorily as provided for under **Section 396(4) of ACJA 2015.**

7. On 20th June, 2018, the Defendant rather than open its defence, filed an application to recall the witnesses of the prosecution which was heard on 5th

July, 2018 and a Ruling delivered on 24th September, 2018 dismissing the application and the matter adjourned to 6th November, 2018 for defence.

8. On 6th November, 2018, hearing of defence could not commence. The Defendant who had applied for stay of proceedings withdrew the application and prayed for another date to call his witnesses.

9. The Defendant finally opened its defence on 19th February, 2019 when Defendant testified. At the end of his evidence the Defendant sought for an adjournment to call further witnesses.

10. On 13th June, 2019, the Defendant called his second witness, who testified as DW2. Again at the end of his evidence, the Defendant sought for an adjournment to call further witnesses.

11. On 10th October, 2019, when the matter came up, counsel for the Defendant recused himself from appearing for Defendant and the matter was adjourned to 28th November, 2019 to enable the Defendant get another lawyer/counsel.

12. When the matter came up on 10th February, 2020, the present counsel **A.G.** Bello now appeared for Defendant and said he wanted time to get the Records to prepare for the defence.

13. The matter was then affected by the Covid pandemic which affected court proceedings generally. The matter then came up on 21st January, 2021 and 6th July, 2022 and the Defendant was not in court or represented.

14. On 23rd September, 2021 when the matter came up, the defence counsel was not ready on the ground that lead counsel was engaged at the Court of Appeal. The matter was then adjourned to 11th November, 2021 when counsel for the Defendant informed court that they were not going to call any further witness and closed the case for the Defendant. The Court ordered for the filing of final addresses and adjourned to 7th February, 2022 for adoption.

15. On 7th February, 2022, the Defendant filed their final address out of time and sought for an adjournment to file a motion to regularize the address. The matter was then adjourned to 24th February, 2022 for adoption.

16. The Defendant then filed the extant application.

The above **lengthy background facts** provide us with factual basis to answer the key question of whether the application to reopen be granted. As stated earlier, it is not granted as a matter of course.

The point made by Applicant underlying the application is the **interest of justice**. Let us perhaps situate the reasons as situated in the affidavit in support thus:

3 That I was also informed by the Defendant (Lukeman Obi) in the company of A.G. Bello Esq of counsel on the 14th March, 2022 at about 2pm in our office as above as to the following facts which I verily believed to be true:

a. That A.G. Bello Esq of counsel took over the Defendant case after he had testified.

b. That in the course of reviewing the case of the Defendant from the record of proceeding procured from the court, he discovered the need to obtain documentary evidence of some of the fact put in evidence by the Defendant.

c. That the Defendant case was closed inadvertently before the receipt of some or these documentary evidence.

d. That this accounted for the late filing of the Defendant's final address as learned counsel was mooting the idea of applying to re-open the Defendant case.

e. That upon the receipt of prosecution written address, Defendant final address had to be filed too to avoid being seen as frustrating the course of justice.

f. **That the said documentary evidence had now being obtained and copies of same are annexed herein as Exhibits 'A1 and A2'.**

g. **That the documents forms part of the defense of the Defendant to all the charges against him before the honourable court.**

h. **That re-opening the Defendant case for the purpose of receiving this document in evidence will not affect the final address of all parties already filed and exchanged before the court.**

4. **That the respondent will not be prejudiced by the grant of the instant application being in the interest of justice.**

Now from the summary of the key facts of case streamlined above, the prosecution closed its case as far back as 11th December, 2017, a period of nearly 5 years. Now it is to be noted that the arraignment of Defendant was on 9th November, 2016. The documents, **Exhibits A1 and A2** sought to be relied on as the basis for the re-opening was delivered on 30th September, 2016 even before the arraignment. The case subject of the Judgment clearly was filed by the Defendant along with another person and is dated 31st May 2016 and it is a fundamental rights case. It is therefore difficult to accept that the Defendant did not or could not secure the Ruling to use until after the order for the filing of final addresses in November 2022. It is incomprehensible that if the Judgment was indeed relevant, the Defendant could not get it in six (6) years to use at the trial. The constitutional provision vide **Section 379 of the 1999 Constitution** situates at least 7 days for the release of such Judgment. I am in no doubt that if the Judgment was indeed important as sought to be made out now, the Defendant had more than ample time to get the Judgment and make use of same at trial. He never did.

The contention that **A.G Bello** of counsel came in to take over the defence after Defendant had testified is neither here nor there. Indeed it is of no relevance particularly in the context of the ample time he equally had to have gotten the judgment if indeed it was important to the case of Defendant.

From **10th February, 2020** when A.G. Bello came into the matter uptil **11th November, 2021** when counsel **closed the case of Defendant** at his own prompting or volition is a period of nearly two (2) years and counsel too did not

procure this judgment at anytime or inform court that he needs the judgment and is having difficulties getting it.

It is a matter of great concern that both Defendant and his counsel did not consider that this judgment is important at anytime in the nearly two years A.G. Bello of counsel came into the matter until after the order for final addresses to be filed and served and also after the receipt of the final address of complainant. The bottom line is that contrary to the position asserted by Applicant and his counsel, the contention that the Defendant has not been given ample time to present his defence completely lacks basis as I have demonstrated at some length above.

The Judgment sought to be used as a pretext for the reopening of the case of Defendant has always been in existence to the knowledge of Defendant. It is nothing new or novel. He filed the case and obtained Judgment. If the Defendant failed to get the document since 2016, then he has nobody but himself to blame. If counsel too could not get the judgment since 2020 when he came into the matter again he must accept responsibility.

The phrase **"air hearing"** is not a magical wand to be use as a panacea for all inexcusable lapses as in this case. Fair hearing is indeed important and every party must be given every opportunity to present his case and or for the dispute to be determined on the merit and fairly. The concept must not however be stretched beyond acceptable limits and be made a subject of mockery or parody. Fair hearing must not be allowed to run wild and willy nilly at the hands of anybody. A Defendant who has utilized nearly five (5) years to put in his defence cannot be heard to complain of lack of fair hearing. It is indeed a sad commentary on the process that a defendant who has had such sufficient time will even have the moral temerity to file an application of this nature. It is a big slap on the criminal justice system. The bottom line is that no party has till eternity to preset its defence. It will be doing great disservice to the criminal justice system to grant applications of this nature on such flimsy and whimsical ground(s). The application is wholly targeted at further delaying the conclusion of this criminal trial that has dragged interminably for nearly six years for no justifiable reason(s).

On the whole and as demonstrated above, the Applicant has not satisfied the court that there are substantial and cogent reasons to re-open his case to bring in additional evidence. Justice is not only for one party in a case but for all parties.

Any undue advantage granted to one party at the expense of the other party or adversary will amount to an injudicious exercise of discretion particularly in the absence of clear and sufficient materials as in this case to support the exercise of the discretion sought.

The only point to perhaps underscore as I round up is that in the exercise of the court's discretion, it is now trite principle that the court must act judicially and judiciously. This means that some materials of value must be placed before the court which will enable it decide whether the circumstances of the application justify the exercise of the court's equitable jurisdiction in the applicant's favour. Where such materials are absent, the application is inevitably compromised. See **Akpoku V. IIOMBU (1998)8 N.W.L.R (pt.561)283 at 291 F-G.**

In the final analysis Reliefs (1) and (2) on the motion paper fails and are dismissed. Reliefs (3) and (4) are granted with the caveat that if the final address of Defendant deals with any matter not subject of evidence led at trial, same will be discountenanced. I call on parties to now proceed to adopt their final addresses so that this Court can finally put an end to this criminal matter.

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Hon. Justice A.I Kutigi

Appearances:

1. **D.T. Abi, Esq., for the Complainant/Respondent**

2. **A.G. Bello, Esq., for the Defendant/Applicant**