

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT GWAGWALADA- ABUJA**

**THIS MONDAY THE 26<sup>TH</sup> DAY OF JUNE, 2023**

**BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI**

**SUIT NO: FCT/HC/CR/89/2013**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA..... COMPLAINANT**

**AND**

- 1. MOHAMMED BELLO SAIDU**
- 2. DAMUNDE PROPERTIES LTD.....DEFENDANTS**

**RULING**

This ruling is on the application of the defence counsel to the defendant for an order of this court to discharge the defendant. The application is brought pursuant to section 351(1) of the Administration of Criminal Justice Act, 2015, the section provides thus;

**“Where a case is called, the defendant appears voluntarily in obedience to the summons or is brought before the court under a warrant and the complainant having, to the satisfaction of the court, had due notice of the time and place of hearing, does not appear in person or in the manner authorised by a written law the court may dismiss the complaint.**

By this provision it is the submission of the defence counsel to the defendant, that the complainant/the prosecutor has due notice as usual against today's hearing. That by the record of this court it is very clear in fact more than crystal clear that the complainant has chosen to abandon this case.

That as at the last date in court he sent a text to the prosecutor as an official reminder and hearing notice served on the prosecution for the 8<sup>th</sup> June 2023.that the court officials served the hearing notice personally on them,he went to state that the prosecution has been absent in the proceedings for more than 10 times from the time of arraignment. That it is the law that the court will not wait for a prosecutor. That if the defendant has not been diligent in coming to the court he will have been in Kuje prison by now. that it is wrong for the prosecution to be absent all the time without any latter of adjournment sent to the court and that at some instances he the defence counsel will be the person to text the complainant of the day of hearing.

In view of the foregoing, he urged this court to dismiss the complaint.

I have carefully listened to the defence counsel and gone through the section of the law cited by the defence which is reproduced in this ruling. But before I proceed I shall give a brief history from the date of arraignment till date.

This matter first came up for arraignment on the 28 June 2022,on this date both the defence counsel and the complainant i.e the prosecutor was in court. On this date the defendant was not present in court. Thus the prosecution informed the court that this matter was for arraignment but the defendants are not in court that they could not reach out to the defendant,consequent upon applied for another date. this matter was adjourned to 20<sup>th</sup> September 2022 for arraignment.

On this date been 20<sup>th</sup> September 2022 both parties were in court including the defendant.the plea of the defendant was taken and he was admitted to bail since the matter was to commence De-novo and the matter adjourned to 29<sup>th</sup> October and 1<sup>st</sup> November 2022 for hearing upon the application of the defence counsel for accelerated hearing and on the 24<sup>th</sup> October 2022,both the defendant and its counsel were in court,but no appearance from the prosecution. The defence counsel who applied to the court for the court to give another chance to the prosecution and the matter was been adjourned to 1<sup>st</sup> November 2022.

On the 1<sup>st</sup> November 2022.same appearance,still the prosecutor was absent. The matter was again adjourned to 24<sup>th</sup>November 2022.

On the 24/11/2022 when the matter came up for hearing the defendant and the counsel were in court yet still the prosecution was absent. the defence counsel who inform the court that he did communicate with the prosecuting counsel through WhatsAppreminding her of this matter coming up.

He went further to state that he had a respect for the court. That on the last adjourned date when this matter came up the prosecuting counsel was not in court but put a call to her where she told him that she was held up in traffic and

applied that the matter be stood down to enable her be in court for 30minutes,the court in its wisdom stood down this matter for 30minute still on that she did not show up.

That it was after the adjournment that she was going to town that the prosecutioncalled him asking about the next date in the matter,he told her that the matter will be coming up on the 24<sup>th</sup>/11/2022.

That last time when the case came up, the same EFCC whose counsel was not in court,arranged and came with the operatives of EFCC,who arrested the defendant at the premises for two days and detained him (defendant)only to discover that the subjectmatter for the arrest was purely a civil matter already before another court of FCT.

That they went further to discover the purported complainant in that case only lied against his client and today again the EFCC is not in court. He submitted that the operative of the EFCC are diligent in performing their duty. That he said all these to enable the court to know that the EFCC are not ready to prosecute this case but to persecute.

That before the transfer of this case to this court, while with the former judge the EFCC have gone to sleep for more than 4 years before they transferred to this court.

He then applied to the court to give EFCC a last adjournment and this matter was adjourned to the 12/12/2022,

Same appearance from the side of the defendant. The prosecuting counsel was still absent, that he personally spoke with the prosecuting counsel who told him that he is scheduled with a matter at Maitama and will be sending her lawyer to stand in for her. That he was surprise that none appear before this court. This he applied for another adjournment on the 25/01/2023.

On the 25/01/2023 the defendant was not in court. That the defendant called him at about 8.05am that okada ran into their vehicle along life camp and was seriously injured. The counsel went further to inform this court that the prosecuting counsel called on him Yesterday and pleaded to him that she was on annual leave and her Junior in the office is also not available. On this he applied for another date and the matter was adjourned to 20-2-2023, the defendant not in court, but his counsel was in court on, this the defence counsel informed the court that the Defendant travelled to lesser hajj. But called to inform him that the flight scheduled has been cancelled due to bad weather, that he called the surety who told him that he had travelled for election.

That in fairness to the prosecuting counsel, she called to inform that she lost her grandmother and was not able to make it to court. Based on this, the matter was again adjourned to 21-3-2023.

On the 21-3-2023, both the defendant and his counsel were in court, but still the prosecuting counsel was not. That he would have applied under section 35 of the ACJA, 2015 urge that the court to take judicial notice of the attitude of the prosecution and lack of readiness of the prosecution to prosecute this case.

That since the matter was mentioned, before this court, the prosecution has never shown up nor sent any counsel as the said Maryam is not the only counsel with EFCC. That the EFCC is taking this court for granted. that in fairness to the prosecuting counsel, she is still mourning the death of her grandmother. On this the matter was again adjourned to 20-04-2023.

On the 20-04-2023, the Defendant was absent in court, but represented by the defence counsel. and one MORGAN Lekwa. The Defence who told the court that the Defendant is down, and he advised him to relate the message to one of his surety, the surety then called him that he was on his way. This case was again adjourned in the instant of the absentee prosecuting counsel to the 19-06-2023.

On the 19-06-2023, the Defendant and his counsel were in court, but the prosecution counsel was absent.

The Defence counsel who on this date made an application under section 351 of the ACJA 2015 and prayed the court to apply the full weight of section 351 (1) of the ACJA 2015, and discharge the Defendant.

I have carefully gone through the whole dates since the first date the Defendant was arraignment before this court and in fairness to the Defendant, the prosecuting counsel has not been fair nor diligent in prosecuting this matter to its logical conclusion. There must be an end to litigation.

Applying the provision of section 351 (1) of the ACJA 2015 i.e. section 108(3) which provides thus:

**“in any trial before a court in which the prosecutor withdraws in respect of the prosecution of an offence before the defendant is called upon to make his defence, the court may in it’s discretion/order the Defendant to be acquitted, if it is satisfied on the merits of the case, that the order is a proper one, and when an order of acquitted is made, the court shall endorse it’s reason for making the order on the record.**

On this I can say without any iota of doubt that the Defendants have shown diligence in their appearance with the aim of defending the charges against him.

From the record of this honourable court especially that of the Defendants in this case were arraignments before FCT, High Court 4 (years) ago before the transfer to this court. This matter was initially pending before His Lordship Hon. Justice O. O. Goodluck (now in the court of Appeal and since the arraignment of the defendant, they have been diligent coming to the court to stand for its trial. It is on the record of the court that nothing has been done by the prosecution to prosecute this case in the interest of fair hearing and justice.

It is on record that it indeed shows clearly that the prosecution is not ready or willing to prosecute this case at this moment.

Well, from all indication, I am convinced and satisfied from the record of the court as stated in this ruling that the Defendants are ready and willing to be prosecuted but the prosecution has failed to do so. In the same manner therefore, I agree with the section cited by counsel i.e. section 351(1) of the ACJA, 2015 and therefore Discharge the Defendants accordingly.

The prosecution is still free to re-call them upon good reasons filed before the court.

So I order.

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**HON. JUSTICE A. Y. SHAFU**

**APPEARANCE:**

1. S. K. Adeniran for the Defendant with Lekwa Morgan.
2. The prosecuting counsel not in court