

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT APO

THIS 23RD DAY OF JANUARY, 2025

BEFORE HIS LORDSHIP HON. JUSTICE JUDE.O.ONWUEGBUZIE

SUIT NO.: FCT/HC/CR/617/23

MOTION NO.:M/14503/24

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA-----COMPLAINANT/APPLICANT

AND

OLU AGUNLOYE.....DEFENDANT/RESPONDENT

RULING

INTRODUCTION

By a motion on notice dated the 24th day of October, 2024 and filed on the 30th day of October, 2024. The Complainant/Applicant prays the Court for the following reliefs:

1. AN ORDER granting leave to the Complainant/Applicant to amend the instant charge against the Defendant.
2. AN ORDER deeming the amended charge filed on the 25th day of June, 2024 against the Defendant as having been properly filed and served.
3. And such further order(s) as the Honourable Court may deem fit to make in the circumstance.

The Grounds of the Application are:

- a. That the Defendant is standing trial before this Honourable Court on a seven (7) count charge filed on the 7th day of September, 2023.
- b. That the Complainant/Applicant amended the instant charge by filing an amended charge on the 25th day of June, 2024.
- c. That on the 1st day of July, 2024, the Complainant/Applicant drew the attention of the Honourable Court to the amended charge and urged the Honourable to accept same and cause the Defendant to take a plea in respect thereof.
- d. The leaned defence counsel objected on the ground that leave of the Honourable Court must be formally sought and obtained before the Complainant/Applicant can amend its charge.
- e. The Complainant/Applicant relying on the provision of section 216 and 217 of the Administration of Criminal Justice Act, 2015, stated leave of court is not required for the Complainant/Applicant to amend its charge.
- f. The Honourable Court directed parties to furnish the Court with authorities in support of the arguments canvassed to which the Complainant/Applicant forwarded the Court of Appeal decision in *Bovoa v. FRN & anor* (2017) LPELR-43006 (CA) in support of its position.
- g. On the 21st day of October, 2024 the Complainant/Applicant relying on the strength of the authorities earlier availed the Court, again urged the Honourable to accept the said amended charge and cause the Defendant to take his plea to which the defence counsel again objected.
- h. The Honourable Court finally directed the Complainant/Applicant to come formally with an application for the amended charge, hence the instant application.

The application is supported with an affidavit of 5 paragraphs deposed to by one Umar Hussein Babangida. The affidavit is attached with Exhibit EFCC 1 and written address as its legal submission.

The Defendant/Respondent in his opposition to the application, on the 08/11/24 filled a Counter-Affidavit of 8 paragraphs deposed to by one Oluwafemi Popoola a litigation clerk in the law firm of counsel to the Defendant/Respondent. Attached to the counter-affidavit is exhibit A, B, C and D respectively. The Defendant also attached written address as his legal argument in opposition to the application.

Upon receipt of the Defendant/Respondent's counter-affidavit, the Complainant/Applicant on the 11/11/24 filed a Further and Better Affidavit, attached with exhibit EFCC, 1, 2, 3, 4, and 5 respectively, and a Reply on Points of Law, in response to the Defendant/Respondent's Counter-Affidavit.

The Defendant/Respondent on the 13/11/24 filed a Further ad Better Counter-Affidavit deposed to by one Oluwafemi Popoola a litigation clerk in the law firm of the Counsel to the Defendant/Respondent, in furtherance of his opposition to the application.

More so, the Complainant/Applicant on the 22/11/24 filed another Further and Better Affidavit (No .2) in response to the Defendant/Respondent's Further and Better Counter-Affidavit.

COURT'S ANALYS

I have taken my judicial time to study the application with its grounds and affidavit in support, the written addresses with all the authorities cited and the additional authorities supplied in the further and better affidavit No 1 & No 2 as well as all the exhibits attached.

I have equally carefully considered the Defendant/Respondent's Counter-Affidavit, Further and Better Counter-Affidavit, with all the Exhibits attached herein and the written addresses with all authorities relied upon.

It is very imperative to note the following:

- (1) A Court may permit an alteration or amendment to a charge or framing of a new charge at any time before Judgment is pronounced.
- (2) An alteration or amendment of a new charge shall be read and explained to the defendant and his plea to the amended or new charge shall be taken.
- (3) Where a defendant is arraigned for trial on an imperfect or erroneous charge, the Court may permit or direct the framing of a new charge, or an amendment to, or the alteration of the original charge
- (4) Where any defendant is committed for trial without a charge or with an imperfect or erroneous charge, the Court may frame a charge or add or alter the charge as the case may be having regard to the provisions of the Administration of Criminal Justice Act 2015.

Subsections (1) and (2) to Section 216 are apt for the purpose of my discourse, especially taken against the backdrop that leave of (the Court) was required as a pre-condition to alter or amend an existing charge or count. This is what Section 216 (1) and 217 of the Act seeks to discard, in line with international best practices, which places prosecuting agencies as masters in the discharge of their duties, knowing best what is good for them. The intervention of the Court is therefore not necessary to fine tune those wishes through an application for leave of Court to alter or amend processes such as a charge or information before the

Court whereas the prosecuting agency or authority can on its own, amend the charge, if this is acceptable to the Court.

In the case of **Uguru v. The State (2002) 9 NWLR (Pt. 771) 90, 103** the apex Court had this to say on this point thus:

This Section empowers a Court to alter, amend or add to any charge in the case. It does not give any condition precedent to its application but ensures that the amended charge are read out and explained to the accused. This means that whenever the prosecution decides to amend the charge already before the Court, it can proceed to do so without asking for permission or leave to do so. It then applies to the Court to accept the amendment pursuant to the provisions of Section 163 (ibid) and the Court after hearing the parties, may or may not accept or allow the amendment. If it follows the amendment, the amended charge shall replace the original charge and shall be read and explained to the accused as the new charge. If it rejects the charge, the original charge remains. This is what obtains in criminal matters pertaining to amendment of charges generally.

All that is required of the Court after the amendment has been made, is to ensure that the amended charge is read over to the accused person and the plea taken.

I derive my authority from **PER HUSSAINI ,J.C.A in BOVOA V. FRN & ANOR (2017) LPELR-43006(CA) (PP. 27-30 PARAS. E).**

The case of **GAMME INTERGRATED RESOURCES SERVICES LTD V. FRN & ANOR (2017) LPELR-43012(CA) (PP. 27-30 PARAS. D)**, also supports the above principle of law.

It is a firmly established principle of law that when an amendment occurs, it applies retroactively to the original document. In other words, upon such an amendment, the amended charge is considered as the original charge before the

Court. This legal doctrine is commonly referred to as the doctrine of "*dating back*". I place reliance on **BANK PHB/KEYSTONE BANK V. FRN (PP. 27-29 PARAS. C)**,

The Supreme Court in **PML (SECURITIES) CO. LTD V FRN (2018) LPELR-47993** put it succinctly as follows:

...What cannot be lost out is the effect of amendment of the charge and fall out in relation to the Appellant and those other accused persons whose names are not reflected in the amended charge. The trial Judge held that where a charge is amended, the former ceases to govern the proceedings and remains a nullity and of no useful purpose. The Court of Appeal affirmed that decision stating that when the new charge albeit, the amended one is filed, the former charge is no longer in existence while the amended charge takes its life from the date of the disposed charge as the new takes the position of the extant charge it is deemed to have been filed in the same form and on the same date as the discarded one.

The following case support the above quoted position of the law; **ATTAH V. STATE (1993) 7 NWLR (PT.305) 257 AT 286**, and **FRN V ADEWUNMI (2007) 10 NWLR (PT 1042) 399**.

The supreme Court in **THE STATE v. MOSES ISIJOLA (2023) LPELR-59935(SC) (Pp. 28 paras. A)** also said:

...after the amendment of the charge, what stood before the trial Court, for the purpose of the trial of the Respondent and the other accused persons, was the amended charge as if it was and in place of the original charge.

The fundamental consideration governing the amendment to a charge, whether *suo motu* by the trial Court or upon an application of the Prosecution on address by counsel but prior to judgment, is that such amendment may be made without

prejudice to the Accused person. I call in aid the Supreme Court case of **AISHA MAHMUDA v. THE STATE (2023) LPELR-60697(SC)** and **DOMONIC PRINCENT VS. THE STATE (2002) LPELR - 2925 (SC)**.

I do not agree with the depositions of the Defendant in his Counter affidavit especially paragraphs 4 a-c, 5a-t and the Learned Senior Advocate's argument at paragraph 2.0.2 to 2.0.6 of the Learned Counsel's written submission that the Prosecution's application for amendment is intended to overreach the Defendant and cause injustice to him, that the amendment sought cannot be accomplished in view of the Judgment of Honourable Justice I.E Ekwo, delivered on 23rd September 2024 between Leno Adesanya & Anor. V. EFCC & 2Ors (Suit No. FHC/ABJ/CS/267/2024, amongst other arguments.

The Prosecution on the proceedings of the 14th day of November, 2024 orally sought the leave of this Court to amend the Charge. Leave of the Court to amend is deemed to have been obtained by the Prosecution/Applicant the day the Courts attention was drawn by the Prosecution/Applicant that it intends to amend the Defendant's Charge, which ensued argument between the two learned counsels. It was the courts directive that the Prosecution should come formally by way of a motion. I have gone through the affidavit in support of the motion for amendment, it is convincing to the court to allow the amendment. I find and so hold.

Like I have stated above that whenever the prosecution decides to amend the charge already before the Court, it can proceed to do so without asking for permission or leave to do so, in so far as it is in line with the provisions of Section 216 and 217 of the Administration of Criminal Justice Act 2015.

I quite agree with the contention of the Prosecution in paragraph 1.4 (b) of the Prosecution's Reply on Points of Law attached to its Further and Better Affidavit that the Defendant is the one trying to overreach the Court by bringing such reasons or grounds to oppose the application for amendment.

The stage at which the Prosecution is amending the charge still gives the Defendant an opportunity to put up his defence. The matter is still at the stage of examination in chief of the Prosecutions witnesses. The matter is yet to get to the defence stage. So what is the fears of the Defendant over the amendment when he still has ample time to bring his defence. More so the Defendant relying on the

Judgment of Honourable Justice I.E Ekwo, delivered on 23rd September 2024 between Leno Adesanya & Anor. v. EFCC & 2Ors (Suit No. FHC/ABJ/CS/267/2024 to argue that the amendment would be accomplished to my mind is quite misplaced. The Judgment of the Federal High Court is not binding on this Court. It is Court of Coordinate Jurisdiction. However, this Court has not delivered her judgment of even gotten to the judgment stage. I hold that the argument of the Learned Senior Advocate in respect of this application for amendment is meant to waste the judicial time of this Court.

(I have read the Additional Authority filed by the Prosecution with regards to the judgment of Honourable Justice I.E Ekwo, delivered on 23rd September 2024 between Leno Adesanya & Anor. v. EFCC & 2Ors (Suit No. FHC/ABJ/CS/267/2024. I have also considered the Defendant's Reply to the Prosecution's Additional, filed on the 20th day of January 2025; two days to the day of the ruling. One thing the two counsels need to underscore here is, that this Court has concurrent jurisdiction with the Federal High Court, and cannot be analyzing the Judgment delivered by the Federal High Court which is not binding on this court. More so the said judgment of Honourable Justice I.E Ekwo, delivered on 23rd September 2024 between Leno Adesanya & Anor. V. EFCC & 2Ors (Suit No. FHC/ABJ/CS/267/2024 is still pending before the Court of Appeal. God will, we will hear and see the judgment of the Court of Appeal in the said judgment. Therefore, I discountenance the argument of both counsel with respect to the said judgment pending the judgment of the Court of Appeal.

It is my humble view that the amendment is not intended to overreach the Defendant and cause injustice to him. A Court may permit an alteration or amendment to a charge or framing of a new charge at any time before Judgment is pronounced. I so hold.

COURT'S DECISION.

In the final summation therefore and pursuant to the above authorities and principles of law, the arguments of the learned counsel to the Defendant/Respondent are hereby discountenanced and I therefore hold that the application is liable to succeed and is according succeeds. I so hold.

Consequently the application is hereby granted as prayed on the face of the motion paper and the Defendant is hereby ordered to take plea on the altered or amended charge.

This is the ruling of the Court.

Hon. Justice Jude O. Onwuegbuzie

Appearances:

1. Abba Mohammed SAN with GodsPower Ndeh Esq., and Jeniffer Semefene Esq., for the Complainant/Applicant.
2. Adeola Adedipe SAN with Jedidah Victor Esq., and Afolabi Lateef Esq., for the Defendant/Respondent.