**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**
**IN THE ABUJA JUDICIAL DIVISION**
**HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE. H. MU'AZU**
**CHARGE NO: FCT/HC/CR/577/2023**
**MOTION NO: FCT/HC/M/1385/2024**
**DELIVERED ON THE 20/03/2025**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA.............COMPLAINANT/RESPONDENT**

**AND**

**GODWIN IFEANYI EMEFIELE............................DEFENDANT/APPLICANT**

# RULING

This Ruling is at the instant of the Defendant/Applicant who through Motion No. **M/1385/2024** dated and filed the 18/10/2024 brought pursuant to section 36(1), (2) (A) of the 1999 Constitution of the Federal Republic of Nigeria, paragraph 9 (1 & 3) of the National Policy on Prosecution, paragraph 7.2.1(A) (B) & (C) and paragraph 7.2.2 and 7.2.3 of the Code of Conduct & Prosecutorial Guidelines for Federal Prosecutors, 2016 and under the inherent jurisdiction of this Hon. Court.

The Defendant by the said Motion prayed the Court for the following reliefs:

*(1)* ***An Order*** *of this Hon. Court, striking out this charge, the prosecutions, additional proof of evidence/list of witnesses filed on the 15/10/2024, which contains the extra-judicial*

*statements of Tommy Odama John and Ifeanyi Omeke, made to the Economic and Financial Crimes Commission (EFCC) on the 6th, 7th and 8th August, 2024 in respect of this charge which was filed since 14/08/2023.*

*(2) **An Order** of this Hon. Court, expunging the testimony of Boss Mustapha (PW5) and Bamaiyi Haruna Mairiga (PW6) from the record of this Hon. Court for offending the provisions of section 36(2) (a) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).*

*(3) **An Order** of this Hon. Court dismissing charge No. **CR/577/2023** as it is a product of incomplete and/or on-going investigation and therefore speculative.*

*(4) And for such further Order(s) as this Hon. Court may deem fit to make in the circumstances of this case.*

The said Application is accompanied with grounds upon which it was brought and an affidavit of 6 paragraphs duly deposed to by one Gordon Apina, the Litigation Secretary in the Law firm of the Defendant/Applicant.

It is the deposition of the Defendant/Applicant that the charge before this Hon. Court was filed on the 14/08/2023 and the Defendant took his plea on the 16/11/2023 and was granted bail on the 22/11/2023.

That upon filing of the charge, the prosecution manifested that it had concluded investigation and a prima facie case established, in their opinion, against the Defendant.

The Defendant avers that on the 12/02/2024, the Prosecution filed an additional proof of evidence, wherein, the evidence of Mr. Boss Mustapha and Bamaiyi Haruna Mairiga were introduced into the charge for the first time. And again, the prosecution filed another proof of evidence on the 15/10/2024 and sought to introduce the fresh evidence of Tommy Odama John and Ifeanyi Omeke made to the EFCC on the 6th, 7th and 8th August, 2024 in respect of this charge.

That the Defendant was not confronted with these new evidences, which was obtained in August, 2024, a period of over 365 days, after the filing of the charge. And that the statement of Mr. Boss Mustapha, Bamaiyi Haruna Mairiga, Tommy Odama John and Ifeanyi Omeke were not shown to him before he volunteered his statement. That during the Defendant's arrest and interrogation, he was confronted with the entire proof of the evidence against him before he made his statement.

A written address was filed wherein, the issue **whether this Honourable Court ought not to grant this Application was formulated for determination.**

Learned Counsel submitted that by virtue of the Code of Conduct & Prosecutorial Guidelines for Federal Prosecutors, the prosecution has to complete its investigation before preferring a charge against

the Defendant and having done so, it cannot provide all these new evidences. The Court was therefore urged to grant this Application in the interest of justice.

Reacting to the Application, the prosecution filed a counter affidavit of 2 paragraphs deposed to by one Idi Musa, an operative of the Economic and Financial Crimes Commission, (EFCC).

It is the deposition of the prosecution that it is entitled by law to amend a charge and file additional proof of evidence at any time before Judgment.

That PW6 is a forensic expert who gave evidence in chief and was cross examined and similarly the evidence of PW5 was taken and he was subsequently cross-examined. And that the additional proof of evidence filed and served by the prosecution team are not evidence, but a mere demonstration of the prosecution's intention to use and rely on the information contained in the proof of evidence upon the determination of its admissibility by this court.

The Prosecution aver further that, the proposed witnesses listed in this additional proof of evidence are material witnesses whose evidence will assist the Court in determining the matter.

It is further the contention of the prosecution that the facts contained in the additional proof of evidence objected to by the defence existed before the charge was filed as the event occurred in 2023 and not in the course of the prosecution.

A written address was filed wherein an issue was formulated, to wit;

> **"whether in view of the facts and circumstances of this case, it can be said that the evidence offered by PW5 and PW6 and the additional proof filed on the 15/10/2024 offends the provision of any law and liable to be struck out by this court."**

Learned Counsel for the prosecution argued that PW5, PW6 as well as the proposed witnesses are competent witnesses pursuant to section 175(1) of the Evidence Act, 2011 and that the prosecution is not precluded from filing additional proof or even introducing evidence that was recovered or received during pendency of a criminal charge. Therefore, Court was urged to dismiss this Application in the interest of justice.

The Defendant filed a further affidavit wherein the deponent stated that the additional proof of evidence of the prosecution filed on the 15/10/2024 contained the extra-judicial statement made on 6th, 7th and 8th August, 2024 long after filing the charge. And same does not exist at the time of filing the charge. That the Defendant/Applicant did not raised the issue of competence and compellability of witnesses as erroneously argued by the prosecution.

Learned Counsel equally filed a written address wherein Court was urged to grant the Application in the interest of justice.

On the part of Court, I have gone through the averments of the Defendant/Applicant as contain in the affidavit of Gordon Apina

and the written address of Counsel in support of the motion on the one part, and the counter-affidavit of Idi Musa and the written address of prosecution Counsel on the other part. Equally, I have perused the further affidavit of Defendant/Applicant in response to the prosecution's counter affidavit. I shall be brief but succinct in addressing same.

The Three main reliefs sought in this Application are as set out in the beginning of this Ruling.

The Second relief seeks order of Court expunging the evidence of the PW5 and PW6 on the same argument supporting the grant of the first relief. I do not agree with the Applicant that evidence already taken and admitted can be expunged before the conclusion of Trial. The proper avenue to contest the evidence is in the Final Written Address. I shall exercise my discretion to refuse this prayer.

I also do not accede to the prayer and argument to dismiss the charge as prayed in relief three.

I shall now consider the 1st relief.

It must be borne in mind that this Application is brought pursuant to paragraph 7.2.1 (a & b) of the Code of Conduct & Prosecutorial guidelines for Federal Prosecutors. For clarity the said paragraph provides as thus;

**7.2.1 "No Prosecution should be undertaken where essential evidence of the basic elements of the offence are lacking. The main reasons for this are:**

**(a) It is not in the public interest to use public resources on the prosecution of a case, which has no reasonable prospect of success.**

**(b) It may amount to an abuse of legal process, where a prosecution is commenced against a person when there is insufficient evidence to ensure a realistic prospect of conviction.**

**7.2.2 "A Prosecution should not be instituted unless there is a prima facie case against the suspect. By this, it means that there is admissible substantial and reliable evidence that a criminal offence known to the law has been committed by the suspect. The evidence should be such that if uncontradicted, a Court could reasonably convict on it.**

**7.2.3 "in considering the strength of the evidence, the existence of a prima facie case is important. Once it is established that there is a prima facie case, it is then necessary to give consideration to the prospect of a conviction. The Prosecutor should not lay a charge where there is no reasonable prospect of securing a conviction before a Court."**

It is instructive to state here that the prosecution filed the instant charge on the 14/8/2023 and served the Defendant with the charge and proof of evidence against him. After the court took his plea to the charge, the Prosecution filed the 1st additional proof of evidences dated the 12th day of February, 2024, the 2nd Additional

Proof of Evidence dated and filed 21st June, 2024 and another one dated the15/10/2024.

It is the grouse of the Defendant that the fresh evidence is contrary to Code of Conduct and Prosecutorial Guidelines for Federal Prosecutors and Section 36 (2) of the 1999 Constitution of the Federal Republic of Nigeria as (amended).

The fundamental consideration governing the amendment to a charge, whether ***suomotu*** by the trial Court or upon an Application, is that such amendment may be made without prejudice to the accused person. However, once the charge is amended, a host of right inure to the accused. These rights it seems to me, are in-built safeguards with a view to ensuring that no injustice is occasioned to him and that the constitutional right to fair hearing pursuant to the provisions of the Constitution is fully preserved. See **MAHMUDA VS. STATE 2023 LPELR 60697 (SC).**
Indeed, the process of investigation involves an inquiry so as to gather evidence in relation to a set of facts. Generally, sufficient evidence must have been gathered by way of a thorough investigation before a suspect should be prosecuted. Also, investigation is carried out based on the strength of the information available at the disposal of the investigator. See **OYINBO VS. IGP (2019) LPELR 47788 (CA).**

The complaint of the Defendant/Applicant is predicated on section 36(6) (b) of the Constitution of Nigeria 1999 as amended which provides that every person who is charged with a criminal offence shall be entitled to (b) be given adequate time and facilities for the

preparation of his defence. Over the years the practice based on this provision is that proof of evidence is attached to the charge and served on the accused person before trial commences; interpreted as facilities for the accused to prepare for his defence. This is quite logical because though the constitution itself did not explain what adequate facilities are, it is taken to be the summary of evidence gathered in the course of investigation of the offence by the prosecuting authority. However, what is adequate with regards to the proof of evidence will depend on the circumstances of each case. See **EPHRAIM VS. STATE (2022) LPELR 57806 (CA).**

The Defendant/Applicant in this Application asserted that the extra judicial statements of PW5 (Bamaiyi Haruna Mairiga and Boss Mustapha (PW6) be expunge from the record and additional proof of evidence of witnesses filed on the 15/10/2024 which contain the extra judicial statements of Tommy Adama John and Ifeanyi Omeke made to EFCC on the 6th, 7th& 8th August, 2024 be struck out.

It is the contention of Defendant/Applicant that those extra-judicial statements were not part of the proof of evidence before the Court and were made during the hearing of this case. Indeed, it needs to be stated that the Defendant was served with proof of evidence before he took his plea long before the extra judicial statement of PW5, PW6 and the Statement of Tommy Odama John and Ifeanyi Omeke which are clearly made one year after the trial has commenced. In other words, the Defendant complain is that the proof of evidence served on him before his trial does not include these extra-judicial statements he wants this Court to expunge and or strike out.

The prosecution, on its part submitted that the evidence offered by PW5, PW6 and the additional proof of evidence filed by the prosecution was filed in accordance with the law as the prosecution is not precluded from filing additional proof or even introducing evidence that was recovered or received during the pendency of a criminal charge. The prosecution cited and relied on the case of **AJUDUA VS. FRN (2018) LPELR 43923 (CA)** to drive home its argument.

The prosecution further argued that PW8 and PW6 are competent and compellable witnesses who are deemed to be so in accordance with section 175(1) of the Evidence Act. In arguing further, the prosecution also relied on the provisions of section 379(2) of Administration of Criminal Justice Act 2018 to contend that the prosecution can file and serve an additional proof of evidence at any time before Judgment.

It must be reiterated here that contrary to the submission of the prosecution Counsel, the liberty to file additional proof of evidence is not a blank provision neither does it operate in a vacuum or according to the whims of a party who may choose to introduce additional proof of evidence at any time of his chosen.

It is the law that the prosecuting agencies must investigate at least to ascertain some form of prima facie evidence before proceeding to arrest a suspect for any offence, if there is evidence of the commission of an offence, unless the suspect was caught in action in the alleged commission of the crime. See **NGEME VS.**

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Indeed, it is unlawful to arrest until there is sufficient evidence upon which to charge and prosecute the suspect. The implication of the above is to the effect that even arrest should not be carried out without full and complete investigation. If the law forbids arrest without full investigation, it follows that you cannot file a charge based on incomplete investigation and start fishing for evidence by conducting further investigation after the filing or during the pendency of the charge. See **NGEME VS. INSPECTOR GENERAL OF POLICE & ORS. (2022) LCN 17204 (CA) Supra, FAWEHINMI VS. INSPECTOR GENERAL OF POLICE (2002) ALL. NLR 357 (SC).**

I must state here that the purpose of section 379(2) of the Administration of Criminal Justice Act is to guide the Court to do substantial justice in determining cases before it without undue regard to technicalities. However, I must observe that same cannot be done *malafide* or adopted by the Court against the interest of the Defendant. Justice is not a one-way traffic. See **JOSIAH VS. THE STATE (1985) 1 NWLR (PT. 1) 125 AT 141 PARA G.**

I have seen the additional proof of evidence dated 11/10/2024 and filed on 15/10/2024. The Extra-Judicial Statement of the witnesses were taken on the 6th, 7th and 8th August, 2024, a period of over 365 days after the filing of this charge.

It is equally on record that on the 12th day of February, 2024, the prosecution filed an additional proof of evidence wherein the evidence of Mr. Boss Mustapha and Bamaiyi Haruna Mairiga were introduced into the charge for the 1st time. The said Boss Mustapha and Bamaiyi Haruna Mairiga testified as PW5 and PW6 respectively. The proof of evidence annexed by the prosecution revealed that Boss Mustapha was only invited and interrogated by the EFCC and his statement was taken on the 23/1/2024 during the pendency of the charge.

The question is why the haphazard investigation?

The investigation of the offences alleged to have been committed by the Defendant cannot continue infinitum. There must be an end to litigation and not only must the Court not encourage prolongation of a dispute, it must also discourage prolongation of litigation. See **PRINCE YAYA ADIGUN & ORS. VS. SECRETARY, IWO LOCAL GOVERNMENT (1999) 8 NWLR (PT. 613) 305 (SC).**

In the case of **ABIDOYE VS. FRN (2014) NWLR (PT. 1399) 30 AT 64 PARA E – F AND P 65.** The Supreme Court per Ngwuta JSC lamented that the prosecution agencies in this country charge people to Court before looking for evidence to sustain the charge. He further stated that in some cases, the evidence to sustain the charge may never be available.

As stated in the preceding part of this ruling, the Defendant/Applicant who enjoys presumption of innocence by virtue of section 36(5) of the Constitution of the Federal Republic of

Nigeria 1999 (as amended) is equally entitled to adequate time and facilities for the preparation of his defence vide section 36(6)(b) of the Constitution (Supra).

The question is, does introducing additional proof of evidence that are not part of the original proof served on the Defendant served the course of justice?

By the provision of section 379(2) of the Administration of Criminal Justice Act, the Prosecution may apply to a trial Court in criminal proceedings for an amendment or alteration of any charge before a verdict or Judgment is given or returned in a criminal trial. The Court of trial to which the Application is made has the powers or discretion to allow the amendment(s) if the interest of justice justifies it. **OBI VS. STATE (2016) LPELR 40543 (CA).**

From the above, it is obvious that judicial discretion of the Judge is what is required on whether to grant the Application for additional evidence or not. Judicial discretion is a vital tool in the Administration of Justice. It is a sacred power which inures to a Judge. It is an armour which the Judge employs judicially and judiciously in order to arrive at a just decision. In matters of judicial discretion, since the facts of two cases are not always the same, Courts do not make it a practice to lay down rules and principles that would fetter the exercise of it discretion. **LADY CARE HAIR PRODUCTS CO. LTD VS. NWACHUKWU & ANOR (2021) LPELR 56043 (CA).**

Guided by sound reasoning, it is my Ruling that this Application ought to be granted in part, consequently relief one as contained in the face of the motion paper is hereby granted. Whereas relief 2 and 3 are hereby refused and dismissed.

For clarity, **An Order is hereby granted striking out** from this charge, the prosecution's additional proof of evidence/list of witnesses filed on the 15/10/2024, which contains the extra-judicial statements of Tommy Odama John and Ifeanyi Omeke, made to the Economic and Financial Crimes Commission (EFCC) on the 6$^{th}$, 7$^{th}$ and 8$^{th}$ August, 2024 in respect of this charge which was filed since 14/08/2023.

As in my earlier finding, Reliefs No. 2 and 3 as contained on the face of the motion paper are hereby refused and dismissed.

**SIGNED:**
**HON.JUDGE**
**20/03/2025.**

***Appearance:***

*A.O. Muhammed, Esq, with A.S. wara, Esq, and C. L. Asonta, Esq, for the Prosecution.*

*Matthew Burkaa, SAN,with Magaji Mato Ibrahim, SAN, A. Labi – Lawal, Esq, Olawale Fapohunda, Esq, Samuel Shagba, Esq, Eusebuis Abyanwu, Esq, R. Y. Moses, Esq and Emmanuel Agwungwu, Esq, for the Defendant.*