

**SUPREME COURT OF NIGERIA**  
29TH JANUARY, 2010. SC. 243/2008  
**CORAM:- G. A. OGUNTADE, F. F. TABAI,**  
**I. T. MUHAMMAD, J. A. FABIYI, O. O. ADEKEYE, JJSC**

NIGERIAN ARMY ..... APPELLANT  
AND  
BRIG. GEN. MAUDE AMINUN-KANO ..... RESPONDENT

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WORDS & PHRASES - Crime - Condonation - Meaning - It is a victim's express or implied forgiveness of an offence - By treating the offender as if there had been no offence (H1)

WORDS & PHRASES - Crime - Warning - Meaning - It connotes a mild punishment which paves way - Where occasion demands - To the avalanche of full wrath - Where the offence is repeated by the offender (H2)

LEGAL DRAFTING - Documents - Interpretation - Role of context - A passage is best interpreted by reference - To what precedes and what follows it - In order to read the mind of the maker (H1)

STATUTES - Rules of construction - Several statutes - On same subject - Such statutes are construed together - So that the intention of the legislature is discovered - From the whole set of enactments (H4)

WORDS & PHRASES - Nigerian Army service law - Commanding officer - Meaning - It is the officer commanding the unit - To which the person in question is attached - As was PW8 to the respondent when he signed Exhibit P45 (H5)

COURT MARTIAL - Condonation - Effect on subsequent prosecution - Once an offence has been condoned - A subsequent trial for the same offence - Will amount to double jeopardy (H6)

COURTS - Decisions - Lack of jurisdiction - Effect - Where a court lacks competence to try a person - Whatever decision it arrives at on such person - Is a nullity (H7)

### **FACTS**

The respondent, a Brigadier-General in the Nigerian Army, was arraigned before a general court martial convened on the order of the Commander of Army Headquarters Garrison, Abuja and set up pursuant to the provisions of the Armed Forces Act, Cap. A20, L.F.N. 2004. The arraignment was on a seven-count charge. The defence counsel objected to the arraignment on the ground that the charges were bad for duplicity and did not comply with the provisions of the law. The objection was overruled whereupon respondent took his plea, pleading not guilty to the charges. After prosecution closed its case, defence counsel objected to the jurisdiction of the court to try the offences alleged in that respondent was under the 81 Division of the Army and the alleged offences were purportedly committed in Lagos whereas the convening authority of the court was based in Abuja. Again, counsel was overruled.

Furthermore, counsel objected to jurisdiction in that on the basis of a document - Exhibit 45 - in which the charges against respondent were withdrawn and substituted with a "final warning letter", respondent could not be subjected to trial anymore as Exhibit P45 amounted to condonation barring subsequent trial under section 171 of the Act. Counsel was also overruled on this. Eventually, respondent made his defence and at the end of trial he was found guilty as charged and sentenced to various forms of imprisonment as well as a reduction in rank for each count. Subsequently, he was compulsorily retired from the Army. Aggrieved, respondent appealed to Court of Appeal against the judgment of the trial court as well as his compulsorily retirement. His appeal to Court of Appeal was allowed in its entirety as the court held that Exhibit P45 amounted to condonation barring trial. Dissatisfied, appellant has brought this appeal against the judgment of Court of Appeal.

### **ISSUES FOR DETERMINATION**

*I. "Whether having regard to the content of Exhibit P45 and the circumstances of the case, the Court of Appeal was right when it held that the said Exhibit constituted a condonation of the offence committed by the respondent thus precluding the Appellant to Court Martial him.*

*II. Whether the court below was right in holding that following the issuance of Exhibit P45, proceedings against the Respondent at*

*the Court-Martial amounted to double-jeopardy when that issue was never raised by any of the parties in the appeal before it.*

*III. Whether in view of the trial-by-jury nature of the proceedings of the trial court, the court below was correct when it set aside the conviction and sentences passed on the Respondent by the trial court on ground that the trial court did not adduce reasons or give proper findings in arriving at its decision and even if the court below was right in holding that the trial court should have adduced reasons and make findings, whether re-trial was not the proper order the court below ought to have made.*

*IV. Whether having regard to the evidence led at the trial court, the court of appeal was right in holding that the prosecution did not prove necessary ingredients of the offences with which the respondent was charged under counts 1, 2, 5 and 6 of the Charge Sheet. .*

*V. Whether the court below was right to have held that counts 3, 4 and 7 of the charge sheet were bad for duplicity. ”*

**HELD** (Unanimously dismissing the appeal per **MUHAMMAD JSC**)

**WORDS & PHRASES - Crime - Condonation - Meaning**

1. In the revised editions of 1999 and 2004 of the Blacks Law Dictionary, the authors brought to fore the definition of the word condonation as it relates to general application of the word where they defined it to mean a victim's express or, especially implied, forgiveness of an offence by treating the offender as if there had been no offence.(see 9<sup>th</sup> ed. of 2004 thereof). In a case almost similar to the present appeal, our brothers at the Court of Appeal, Ibadan Division, in the case of Asake v. Nigerian Army Council (2007) 1 NWLR (pt.1015) at page 427, took judicial notice of the definition given to the word 'condonation' as stated above. That of course tallies with the literal definition of the word which I readily adopt in considering this issue. (p. 305 E)

**WORDS & PHRASES - Crime - Warning - Meaning**

2. Blacks Law Dictionary defines "warning" to be "the pointing out of a danger, especially to one who would not otherwise be aware of it." In the realm of civil or public service, the word connotes a kind of mild punishment which paves way, where occasion demands, to the avalanche of the full wrath of the law where the same offence(s) is/

are repeated by the person warned.

I think this definition will fit in well within the general concepts of theory of punishment under the Criminal Law where for instance an accused person has been found guilty but due to the nature of the offence, the personalities involved and provisions made by the punitive section of that law, the accused can be sentenced to a warning. (p. 308 A)

***Documents - Interpretation - Role of context***

3. In view of the above therefore, could exhibit P45 be said to isolate any of the two sets of charges against the respondent for the purposes of handing down the warning? I must answer this question in the negative. Although exhibit P45 is not an Act of Parliament or a piece of any legislation, it is a document written with a particular purpose. In order to read the mind of the maker/author of that document it is necessary to subject such document to an appropriate rule of interpretation that a passage is best interpreted by reference to what precedes and what follows it. This makes it mandatory for one to read the whole passage or document and every part of it should be taken into account.

Thus, by taking a look at exh. P45, starting from the title of the document:

*“WITHDRAWAL OF CHARGES PREFERRED AGAINST COL. M AMINUNKANO (N/6422) AND SUBSTITUTION WITH A FINAL WARNING LETTER.”*

And traversing through the contents of the whole document which is made up of seven paragraphs, the last paragraph ended the document in the following words:

*“7. The foregoing is presented hopefully for ease in your change process. You are seriously warned.”*

Reference to the “foregoing” is reference to all the matters or issues discussed prior to this last paragraph. (pp. 308 D/F/309 B)

***H Rules of construction - Several statutes - On same subject***

4. It is the general practice of the courts to read statutes on the same subject matter together. Statutes are said to be of the same subject or matter where they relate to the same thing or person or they have a common purpose. Such statutes are read, construed or applied to-

gether so that the intention of the legislature is discovered from the whole set of enactments on the same subject matter. In R. V. Loxdale (1755) 1 Burr 445 at p.447, Lord Mansfield stated that where different statutes deal with the same subject matter even when made at different times, expired, or not referring to each other, they shall be taken and construed together, as one system and as explanatory to each other. B

It is my view that Exh. P45 has covered both sets of charges framed against the respondent. The warning handed over to the respondent must, for all intents and purposes, be construed to mean condonation as contemplated by section 171 of the Act. C  
(pp. 309 F/310 B)

***Nigerian Army service law - Commanding officer - Meaning***

5. A “commanding officer” in the Nigerian Army has been defined D to be, in relation to a person, “the officer commanding the unit to which the person belongs or is attached.” The respondent was a serving senior officer of the Nigerian Army and was subject to service law. He was posted as the Commandant of NASFA, Apapa, Lagos. In this regard, the trial court in its ruling on objection as to its jurisdiction to E try the respondent stated, inter alia:

*“NASFA which is currently situated in Lagos is not under 81 Division though cited in Lagos. It is an outfit that is under the direct Command of the Director of Army Finance and Account (DAFA). F The DAFA himself is under the direct Command of the Chief of Army Staff (COAS) as his staff officer and by extension is also under the administrative and daily control of the Garrison Commander who is here in Abuja.....The court therefore considers the posting of the officer a jurisdiction and that has been approved by the Army authority....”* G

The above goes to establish that PW8 at the time he wrote and signed exh. P45 qualified as Commanding Officer of the respondent within the meaning of section 171 (1) (c) of the Act. (p. 311 F)

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***Condonation - Effect on subsequent prosecution***

6. I agree with the learned SAN for the respondent in his submission that it is never in dispute that the court below found that the respondent had been condoned by his commanding officer for the offences

for which he was tried. The court below, applying section 171 of the Act and the case of Asaka v. Nigerian Army (supra) held that the condonation in law is a bar to subsequent prosecution. The court below then applied the provision of that law rightly, in my view, to hold that once an offence had been condoned, any subsequent trial  
B of the same offence(s) would amount to double jeopardy. (p. 313 E)

***COURTS - Decisions - Lack of jurisdiction - Effect***

7. It is my view that all other issues as formulated by the learned  
C counsel for the appellant appear to be an exercise in futility and an academic rigmarole as the issue of lack of jurisdiction of the trial court martial must ipso facto, affect all other issues considered by the lower court. I need not consider issues 3 - 5 of the appellants brief of argument. I think it is an established principle upon which our courts  
D operate in this country that where a court lacks competence to try a person or subject matter before it whatever decision it arrives at on such a person or subject matter is a nullity. (p. 318 G)

**REPRESENTATION**

E S. M. Rilwanu with him; M. Y. Amana for the Appellant  
A. B. Mahmud (SAN) with him; Adam Abdullahi and Aminu Sadauki for the Respondent

**CASES REFERRED TO**

F Olatunji v. Adisa (1995) 2 NWLR (Pt. 376) 167  
Calabar v. Ekpo (2008) 11 MJSC, P.104 at p. 123  
Obafemi v. Obafemi (1965) 1 NWLR 446 at p.448  
Adisa v. Oyinwola (2000) 10 NWLR (Pt. 674) 116  
G Abdusalam v. Salawu (2002) 13 NWLR (Pt.785) 505  
Barmo v. State (2000) 1 NWLR (Pt.641) 424 at p. 440-C  
Asaka v. Nigerian Army Council (2007) 1 NWLR (Pt.1015) 408  
Asake v. Nigerian Army Council (2007) 1 NWLR (pt. 1015) 408 at 429  
H Ishola v. UBN Ltd (2005) 6 NWLR (Pt. 922) 422 at pp. 434 - 436 and 444  
Tukur v. Government of Gongola State (1988) 1 NWLR (pt.68) 39 at 51 - 52  
Attorney-General v. Earnest Augustus (Prince) of Honover (1957)

AC 436 at p. 463

Onyeanus v. Miscellaneous Offences Tribunal (2002) 12 NWLR (Pt. 781) 227 at p.250

***STATUTES REFERRED TO***

Armed Forces Decree, 1993, ss. 56, 65 and 103

Armed Forces Act, Cap. A20, L.F.N. 2004, s. 171

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***LEAD JUDGMENT BY MUHAMMAD JSC***

Maude Aminun Kano, a Brigadier-General in the Nigerian Army, (the respondent, herein) was the Commander of the Nigerian Army School of Finance and Administration (NASFA). In September, 2005, a Convening Order for the purposes of setting up a General Court Martial to try the respondent was signed by one Major General N. N. Madza, Commander, Army Headquarters Garrison, Abuja. The Court Martial was accordingly set-up pursuant to the provisions of the Armed Forces Act, Cap. A20, Laws of the Federal Republic of Nigeria, 2004. The offences charged against the respondent as contained in the Convening Order for the General Court Martial and the Charge Sheet were in seven counts and read as follows:

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*“1st Charge: Making of false official document punishable under section 90 (a) of the Armed Forces Act Cap. A20 Laws of the Federation of Nigeria, 2004.*

*In that he at NASFA Lagos on or about 27 May, 2003 made and forward (sic) an Academic Transcript in respect of Col. (as he then was) PA Toun to University of Nigeria Nsukka, which transcript contained information relating to the grades obtained by Col. PA Toun during his Accountancy Programme at NASFA, which was to his knowledge false in material particular.*

F

G

*2<sup>nd</sup> Charge: Negligent Performance of Duty Punishable under section 62 (b) of the Armed Forces Act Cap. A20 Laws of the Federation of Nigeria, 2004.*

*In that he at NASFA Lagos on or about 25 Feb 03 as chairman of NASFA Academic Board failed to exercise due diligence by not cross-checking facts before nullifying the HND Certificates awarded by NASFA to Brig Gen PA Toun, Col NE Ekwale and 4 others.*

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*3<sup>rd</sup> Charge: Conduct to the prejudice of service discipline*

*punishable under section 103(1) AFA Cap A20 Laws of the Federation of Nigeria, 2004.*

*In that he at Lagos, on or about 17 Mar 04 as Commandant NASFA, communicated false information on the academic records of Brig Gen PA Toun to Association of National Accountants of Nigeria, an action which tarnished the image of the senior officer and the Nigerian Army at large.*

*4<sup>th</sup> Charge: Conduct to the Prejudice of service discipline punishable under section 103(1) AFA Cap A20 Laws of the Federation of Nigeria, 2004.*

*In that he at Lagos, on or about 17 Mar 04 as Commandant NASFA, communicated false information on the academic records of Col. NE Ekwale to Association of National Accountants of Nigeria, an action which tarnished the image of the senior officer and the Nigerian Army at large.*

*5<sup>th</sup> Charge: False accusation punishable under section 94(a) AFA Cap A20 Laws of the Federation of Nigeria, 2004.*

*In that he at NASFA Lagos on or about 2003 made an accusation against Col PA Toun (as he then) (sic) regarding his academic records at NASFA which accusation was false in material particular.*

*6<sup>th</sup> Charge: False Accusation Punishable Under, 1 Section 90 (a) AFA Cap A20 Laws of the Federation of Nigeria, 2004.*

*In that he at NASFA Lagos on or about March 2003 made an accusation against Col NE Ekwale regarding his academic records at NASFA, which accusation was false in material particular.*

*7<sup>th</sup> Charge: Conduct to the prejudice of service discipline punishable under section 103(1) AFA Cap A20 Laws of the Federation of Nigeria, 2004.*

*In that he at NASFA Lagos on or about 25 Feb 03 as Chairman of NASFA Academic Board de-certified Brig Gen PA Toun and 5 others without recourse to the Board of Governors of NASFA or DAFA."*

Learned defence counsel raised an objection to the arraignment of the respondent because the charges preferred against him were bad for duplicity and for non-compliance with the provisions of the law. The trial court, after entertaining arguments from counsel in the matter, overruled the objection and directed that the respondent be arraigned. During the arraignment, the respondent pleaded not



guilty to any of the charges preferred against him. Consequent upon that, trial commenced with the prosecution calling eight (8) witnesses. After the prosecution closed its case, the respondent raised an objection to the jurisdiction of the trial court to try him on ground that the Convening Authority lacked the competence to convene the trial court martial in that the respondent was under the 81 Division of the Nigerian Army and the offences for which he was being tried were committed in Lagos and the said Authority was based in Abuja. The objection was again overruled. B

The respondent made a plea in bar of trial on ground that by virtue of a document in which the charges against the respondent were withdrawn and substituted with a “final warning letter”, which was admitted by the trial court as Exh. P45, the respondent could not have been subjected to trial anymore as that letter, i.e. Exh. P45 amounted to condonation by respondent’s Commanding Officer, as provided by Section 171 of the Act. This plea was also dismissed by the trial court and the respondent was called upon to open his defence. A no case submission was made on behalf of the respondent by his counsel. The no case submission was overruled. C D

The respondent then opened his defence. He testified as Defence witness No. 1 (DW1) and three additional witnesses were called. At the close of the case learned counsel for the respective parties, each addressed the trial court. The trial Court Martial then invited the Judge Advocate to sum up the case and he did so. E

After considering the evidence before it, and the summing up, the trial court found the respondent guilty on all the charges. It convicted and sentenced him to various terms of imprisonment. The respondent was also sentenced to a reduction in rank for each count. The respondent was subsequently compulsorily retired by the Army Council. Dissatisfied, the respondent appealed against the conviction, sentence and confirmation as well as the compulsory retirement. His appeal to the Court of Appeal, Abuja Division, was allowed by that Court. The decision of the trial court martial was set aside. The conviction was quashed. The sentence and compulsory retirement were all set aside. F G H

Dissatisfied, the appellants appealed to this court on seven grounds of appeal.

In this court, the appeal was heard on the 29<sup>th</sup> day of October,

2009. Learned counsel for the appellant -adopted and relied on its amended brief of argument which was earlier filed on 10/12/08 but deemed filed on 29/10/09. The learned Senior Advocate for the respondent adopted and relied on the respondent's brief of argument.

Learned counsel for the appellant formulated the following  
B five issues for the determination of this court:

I. “ *Whether having regard to the content of Exhibit P45 and the circumstances of the case, the Court of Appeal was right when it held that the said Exhibit constituted a condonation of the offence committed by the respondent thus precluding the Appellant to Court Martial him. (Ground One).*”  
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II. *Whether the court below was right in holding that following the issuance of Exhibit P45, proceedings against the Respondent at the Court-Martial amounted to double-jeopardy when that issue was never raised by any of the parties in the appeal before it. (Ground 2)*  
D

III. *Whether in view of the trial-by-jury nature of the proceedings of the trial court, the court below was correct when it set aside the conviction and sentences passed on the Respondent by the trial court on ground that the trial court did not adduce reasons or give proper findings in arriving at its decision and even if the court below was right in holding that the trial court should have adduced reasons and make findings, whether re-trial was not the proper order the court below ought to have made. (Grounds 3, 4, and 5).*  
E

IV. *Whether having regard to the evidence led at the trial court, the court of appeal was right in holding that the prosecution did not prove necessary ingredients of the offences with which the respondent was charged under counts 1, 2, 5 and 6 of the Charge Sheet. (Ground 6).*  
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V. *Whether the court below was right to have held that counts 3, 4 and 7 of the charge sheet were bad for duplicity. (Ground 7).”*  
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The learned SAN for the respondent equally set out five issues in his brief of argument for our determination. They are as follows:

1. “*whether the Court of Appeal was right in finding that Exhibit P45 amounted to condonation of the alleged offences for which the Respondent was charged and thereby right in holding that the condonation precluded the appellant to Court Martial the respondent.*”  
H

2. *Whether the Court of Appeal was right in holding that in*

*view of the condonation of the allegations against the respondent by his commanding officer vide exhibit P45 the subsequent trial and conviction of the respondent amounted to double jeopardy.*

3. *Whether the Court of Appeal was right in holding that in the circumstance of the trial subject of this appeal the Court Martial has a duty to give reasons for reaching a particular finding and that failure to do so was fatal and whether the Court of Appeal was right in the circumstance of this case in not sending the case back to the Court Martial for re-trial.* B

4. *Whether the Court of Appeal was right in holding that the Prosecution in this case did not prove the necessary ingredients of the offences with which the respondent was charged under counts 1, 2, 5 and 6 of the charge sheet.* C

5. *Whether the Court of Appeal was right in holding that counts 3, 4 and 7 of the charge sheet were bad for duplicity.* D

The spring board from which learned counsel for the appellant started his argument on issue No. 1 is exhibit P45. He submitted that Exh. P45 was signed by the Director of Army Finance and Administration (DAFA), Brig-General S. A. Owuama (as he then was). The Brig-General testified as prosecution witness 8 (PW8) and Exh. P45 was tendered through him. Learned counsel for the appellant stated that the said Exhibit P45 was the letter the respondent claimed that contained condonation of his wrongful deeds, which respondent further claimed constituted a bar to prosecution under section 171(1) of the Armed Forces Act, Cap. A20, LFN, 2004. It is also the letter which the court below accepted as a condonation of the respondent's acts. Learned counsel set out section 171 of the Act in full. E F

It is learned counsel's submission that upon proper construction, Exhibit P45 does not contain any condonation of any of the charges preferred against the respondent. He drew this court's attention that there were two sets of facts each leading to several counts. He submitted that it is settled law that in the interpretation of the content of a document, the words therein must be accorded their plain, ordinarily, common and natural meaning. The case of *Ishola v. UBN Ltd* (2005) 6 NWLR (Pt.922) 422 at pp. 434 - 436 and 444 was referred to. He argued further that a look at the said Exhibit shows that the DAFA withdrew charges listed in paragraph 2 (a), (b) G H

and (c) of pages 1 and 2 of Exh. P45 and substituted therein with a final warning. Learned counsel stated that none of the charges withdrawn featured in the charge sheet for which respondent was finally tried. Learned counsel set out the seven counts as charged. He went further to say that the only reference to the episode of allegation of fake certificates involving Brig-General PA Toun and Col. N. E. Ekwale in Exh. P45 was only when PW8 was citing examples of how the respondent had been in the eye of the storm in the past and that was cited as one of the instances. He argued that at paragraph 4 of page 3 of the Exhibit, the writer of that Exhibit took beyond any doubt that the respondent's act of making false allegation of fake certificate against the officers involved, had not been condoned or forgiven and that disciplinary action instituted against the respondent on the issue were stalled due to "administrative hiccups." This, according to the learned counsel, was a clear demonstration that as soon as the administrative hiccups were cleared, the appellant would resume disciplinary action against the respondent. Learned counsel then went into the semantics and definitions of the word "condonation."

Learned counsel submitted that even if the writer of Exh. P45 qualified as "Commanding Officer" of the respondent within the meaning of section 171 (1) (c) of the Act, which was not conceded by learned counsel for the appellant, the writer of Exh. P45 had not in anyway, condoned the offences committed by the respondent which culminated in the trial of the respondent. He submitted that section 171 of the Act was inapplicable to bar prosecution of the respondent and afortiori, the court below was wrong to have construed Exh. P45 the way it did and to have treated the said Exh. as containing a condonation of the offences with which the respondent was charged in the trial court. He urged this court to resolve issue No. 1 in favour of the appellant.

While responding to issue No. 1 in his brief of argument, the learned Senior Counsel for the respondent submitted that the Court of Appeal was right in its finding that Exh. P45 condoned the alleged offences for which the respondent was charged and the court was right as well, in holding that the appellant was precluded from trying the respondent before the trial court martial. He stated that the facts as borne by the record are that the offences with which the respondent was charged were all in relation to signing exhibits P16 A & B.

He stated further that when the allegations were made against the respondent, his Commanding Officer, PW8, had condoned the offences vide Exh. P45. Further, the Court of Appeal was asked to interpret the provisions of section 171 of the Armed Forces Act, Cap. A20, LFN, as it relates to the circumstance of the case. The learned SAN set out section 171 of the Act with particular emphasis on sub-sections (1) (c) and (2) (c). The learned SAN argued that the operation of section 171 is dependent upon the existence of some features such as:-

- i. Allegation of offence(s)
- ii. Condonation of the offence(s) by the Commanding Officer of the respondent and
- iii. Knowledge of all the circumstances of the alleged offences by the Commanding Officer before the condonation.

The learned SAN quoted some excerpts from exhibit P45 to show that there was an allegation of all the offences at the time exhibit P45 was made. The author of exhibit P45, argued the SAN, had full knowledge of all the circumstances of the allegations before writing the letter (exh. P45). Further the Court Martial made a finding that the author of exh. P45 was at that material time the Commanding Officer of the respondent. The learned SAN argued that there was no appeal or cross-appeal by any of the parties to the Court of Appeal on that finding of the trial court martial. The learned SAN stated the position of the law that the ruling of the trial court in that circumstance was accepted by both parties and in the absence of appeal, the court below and indeed this court has no jurisdiction to disturb that finding. He cited and relied on the case of Calabar v. Ekpo (2008) 11 MJSC, P:104 at p.123.

What is in dispute before this court, submitted the learned SAN, is whether the Court of Appeal was right in holding that the content of exhibit P45 constitutes condonation of the offences for which the respondent was charged. He submitted further that in resolving the issue, this court needs only to interpret the content of that exhibit and the principle in such exercise is that the document itself is the best evidence and words in the document should be given their ordinary meaning and that reading exhibit P45 as a whole, the entire offences mentioned therein had been withdrawn and substituted with a warning as contained in the said exhibit. The learned SAN urged

this court to resolve issue one in favour of the respondent.

I consider it pertinent to begin my consideration of issue No. 1 from both the appellant's and respondent's respective briefs of argument from the perspective of Exhibit P45. What is this exhibit? This exhibit, from the record of appeal, pages 385 - 387 of Vol. 1 of the record, is a letter written and signed by PW8. It was tendered and admitted in evidence by the trial court martial as exhibit "P45". The trial court martial identified the letter as the document before it and titled as follows:

*"withdrawal of charges preferred against Col. M. Aminun Kano (N/6422) and substitution with a final warning letter, Reference number NA/FIN11/2/A/94 dated 23<sup>rd</sup> September, 2003 from the NAFC HQS Area 7 Garki, Abuja and signed by SA Owuama Brig-General DAFA. This document is hereby admitted in evidence before this GCM and is marked Exhibit P45."*

This exhibit is contained at pages 1321 to 1324 of second volume of the records of appeal. Although it is lengthy, I find it expedient to reproduce this exhibit verbatim and it reads as follows:

*"HEADQUARTERS:  
Nigerian Army Finance Corps,  
Proto Type Complex,  
Area 7,  
Garki - Abuja.*

*NA/FIN11/2/A/94*

*See Distribution*

*23 Sep. 03*

*WITHDRAWAL OF CHARGES PREFERRED AGAINST COL MAMINUNKANO (N/6422) AND SUBSTITUTION WITH A FINAL WARNING LETTER*

*References:*

*A. NASFA/6/A/311 dated 01 Aug 03*

*B. NA/FIN/11/2/A/VOL. 1/78 dated 8 Aug 03*

*C. NASFA/6/A dated 11 Aug 03*

*D. NASFA/6/A/415 dated 1 Sep 03*

*E. NA/FIN/11/2/A/VOL. 1/84 dated 3 Sep 03*

*F. NA/FIN/11/2/A/VOL. 1/84 dated 3 Sep 03*

*G. NA/218/A dated 9 Sep 03*

*1. References A-F above are antecedents to Reference G re-*

*questing the DAFA to stand down the disciplinary action against you on the grounds that you have already appeared for COA(A)'s interview. I have to register my utmost displeasure, for your misdemeanor and to hereby warn you seriously to desist forthwith in all forms, content and structure from acts already documented against you vide Reference F.*

B

2. You are seriously warned against the following:

a. Disobedience to particular orders punishable under section 65(1) of the AFD 1993 (as amended) for failing to comply with the directive to withdraw a letter you initiated directly to NACOL without clearance from HQ NAFC.

C

b. Conduct to the prejudice of service discipline punishable under section 103(1) of AFD 1993 (as amended), for disregarding proper channel of communication by corresponding directly with AHQ Dept of MS on your complaint about posting within the NAFC.

D

c. Disobedience to particular orders punishable under section 56(2) of the AFD 1993 (as amended) for failure to comply with a directive to withdraw the letter to AHQ Dept of MS.

3. For purpose of personnel records and service related matters, it is expedient to state that your misdemeanor is borne out of your ultimate ambition to head the NAFC as DAFA prematurely and without regard for the key ingredients of discipline and loyalty. You are neither disciplined nor loyal; neither do you pretend to be. The honour and dignity of the military profession is anchored on the bed-rock of discipline and loyalty - two attributes you very grossly lack. How then do you aspire to lead men?

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4. Given your progression in service, you have most times been in the eye of the storm. A few examples are being cited to buttress this assertion:

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a. As a Maj, you had criticized your posting as DDA Fin Washington in preference for London. You were to be posted subsequently to 32 FAB to teach you a lesson that your postings and deployments in the NA are not issues you can pick and choose but an integral part of a career plan.

H

b. In all appointments held in NAPPO, NAAI and presently as Ag. Comdt NASFA, you had conducted yourself in such unprofessional manner as to earn letters of warnings and in most cases outright letters of displeasure. Even then, you had throughout remained

*obstinate, defiant and strong headed.*

c. *Early this year, you were seriously indicted by the BOI set up by HQ NAFC which investigated your allegation of fake certificates against Col NE Ekwale and Col PA Toun. It is rather unfortunate that this allegation ever arose because it was stage-managed by you to ridicule and project the two senior officers as cheats. The report confirmed that there were persuasive, corroborative and convincing evidence to ascertain the genuineness of certificates issued to these officers in 1983. It was even that mischievous that in 2003, you had to forward a false transcript without reference to HQ NAFC in respect of Col PA Toun to UNN to counter a true and authentic one issued twenty years earlier in 1983. You have therefore, by your conduct brought NASFA to disrepute and smeared the image of the NA and maligned the person of Col Toun whom you perceive as a stumbling block for your quest to power. Disciplinary actions instituted against you on this issue were stalled due to administrative hiccups.*

5. *The crucial question is why must you remain perpetually impervious to correction? You may wish to recall that for over fifteen years of my personal contact with you, I have remained one of your closest confidants in the Finance Corps. I have always counseled and cautioned you each time your persistent acts of misconduct brought you into collusion course with a superior authority or your peers. At most times you had shown a great sense of remorse but only to come up later with some more despicable behaviours. You simply cannot change. Even the tone of your letter of apology vide reference D did not show a contrite heart but of one who was compelled to satisfy an administrative procedure for fear of being sanctioned.*

6. *All along you have not only tried in vain to undermine the authority of the past DAFAs; you have equally tried to malign the reputation of your peers and subordinates to confer undeserved advantage on your person. Your disdain for all perceived opposition to enable you have smooth sail to the appointment of DAFA is not in doubt. The irony, however, is that you are lacking in intellectual capacity, respect of followership, peers and subordinates. I have often pointed out this to you in my discussion with you. For instance, you cannot claim to have the respect and followership of at least the first ten most senior Colonels in the NAFC. You simply cannot boss over*



*them. It is curious to note that you have been getting off the disciplinary hooks in the past by playing to your advantage obvious primordial sentiments inherent in our socio-political system.*

*The foregoing is presented hopefully for ease in your change process. You are seriously warned.*

SA OWUAMA,  
Brig. Gen,  
DAFA.”

B

*(underlining supplied for emphasis)*

After setting out some excerpts from exhibit P45, the court below, in its judgment, held as follows:

C

*“From even the excerpts of some parts of P45 the same letter referred to above the Respondent had unwittingly agreed that the Appellant had already been seriously indicted in respect of the allegation of fake certificates against Col. NE Elewale and Col. PA Doun.....*

D

*By what the Respondent’s counsel had proffered it is clear that indictment of the Appellant and disciplinary actions against him had taken place and bringing him before a subsequent court martial comes within the realm of double jeopardy which our legal and judicial system abhor and cannot stand. I place reliance on Ashaka v. Nigerian Army Council (2007) 1 NWLR (Pt.1015) 408 which applied section 119 Nigerian Army Act, Cap 294 LFN 1990 which is in parimateria with section 171 of the Armed Forces Act.”*

E

It is the above holding that the appellant is challenging. He posited that upon “Proper Construction”, exhibit P45 does not contain any condonation of any of the charges preferred against the respondent. He went on to say that a look at the said exhibit shows that the DAFA withdrew charges listed in paragraph 2 (a), (b) and (c) of pages 1 and 2 of the exhibit and substituted them with a final warning and that none of the charges contained in paragraph 2 (a) (b) and (c) referred to above, featured in the charge sheet for which the respondent was finally tried.

F

I earlier on reproduced the seven charge counts upon which the respondent was tried and convicted. I think there is need also, to reproduce, equally, the three charges covered by paragraph 2 (a) (b) and (c) of pages 1 and 2 of exhibit P45 which were said to have been withdrawn by the DAFA (PW8). They are as follows:

H

*"2. You are seriously warned against the following:*

*a) Disobedience to particular orders punishable under section 65(1) of the AFD 1993 (as amended) for failing to comply with the directive to withdraw a letter you initiated directly to NACOL without clearance from HQ NAFC.*

B *b) Conduct to the prejudice of service discipline punishable under section 103(1) of AFD 1993 (as amended), for disregarding proper channel of communication by corresponding directly with AHQ Dept. of NS on your complaint about posting within the NAFC.*

C *c) Disobedience to particular orders punishable under section 56(2) of the AFD 1993 (as amended) for failure to comply with a directive to withdraw the letter to AHQ Dept. of MS."*

D *The first charge of seven counts and the three counts charge as shown above, are what the learned counsel for the appellant, I think, referred to in his brief under issue 1 as "two set of facts, each leading to a set of three counts and another of seven counts".*

There is also need to quote the provisions of section 171 of the Armed Forces Act as contained in Cap. A20, Laws of the Federation of Nigeria, Vol. AL It provides as follows:

E *"171. Offences already disposed of not to be retried. 1) Where a person subject to service law under this Act-*

*a) Has been tried for an offence by a competent civil court or a court - martial under service law; or*

F *b) Has been charged with an offence under service law and has had the charge dismissed, or has been found guilty on the charge on summary trial under his act; or*

G *c) Has had an offence condoned by his commanding officer, he shall not be liable in respect of that offence to be tried by a court - martial or to have the case dealt with summarily under this Act."*

H The task before me now is the resolution of the thorny issues as contended by the parties in this appeal as raised in issue No 1 and that is: firstly, whether exhibit P45 amounts to condonation of the offences upon which the respondent was arraigned, tried and convicted by the trial court martial in view of the provisions of section 171 of the Act, or, secondly whether, the withdrawal of charges preferred against the respondent and which were substituted by "warning" contained in exhibit P45, were limited only to the contents of paragraph 2 of P45, as contended by the appellant.

I think we need to seek for the definition of the word “condoned” (v.t) of condone which, literally means, “to pardon”; “to overlook” (an offence); “to forgive or to act so as to imply forgiveness.” Thus, condonation is the act of condoning or pardoning a wrong act, the implied forgiving or pardon of an offence by overlooking it. (see: The Lexicon Webster Dictionary, Vol. 1, 1980 reprint, the Delan Publishing Coy; inc. USA, P211). B

In law, however, the word “condone” or “condonation” which has several variants such as condonment, condonance, strictly speaking, has to do with matrimonial causes specially and it connotes the conditional remission or forgiveness, by means of continuance or resumption of marital cohabitation, by one of the married parties of a known matrimonial offence e.g. adultery, committed by the other, that would constitute a cause of divorce the condition being that the offence shall not be repeated. See: Obafemi v. Obafemi (1965) 1 D NWLR 446 at p.448. If adultery is charged as a ground for divorce and condonation is proved, the forgiving spouse is barred from proof of that offence. (Blacks Law Dictionary Eighth Edition 2004 reprint by St. Paul, MINN, West Publishing Coy. P. 315). See also: Garner, B. A. (1995) A Dictionary of Modern Legal Usage 2<sup>nd</sup> ed., Oxford University Press, p197. E

***In the revised editions of 1999 and 2004 of the Blacks Law Dictionary, the authors brought to fore the definition of the word condonation as it relates to general application of the word where they defined it to mean a victim’s express or, especially implied, forgiveness of an offence by treating the offender as if there had been no offence. (see 9<sup>th</sup> ed. of 2004 thereof). In a case almost similar to the present appeal, our brothers at the Court of Appeal, Ibadan Division, in the case of Asake v. Nigerian Army Council (2007) 1 NWLR (pt.1015) at page 427, took judicial notice of the definition given to the word ‘condonation’ as stated above. That of course tallies with the literal definition of the word which I readily adopt in considering this issue.*** F G H

From the record, two sets of facts which led to the charges levied against the respondent emerged; the first set of facts were contained in the charge sheet as shown in the Amended Convening Order for the General Court Martial dated 12<sup>th</sup> Sept. 2005, signed by

Maj. Gen. NN Madza, Commander, Army Headquarters Garrison, Abuja. The charge sheet contained seven charges against the respondent which I reproduced at the beginning of this judgment. (This charge sheet was dated and signed by the said Maj. Gen. Madza on the 5<sup>th</sup> of Sept. 2005). The other set of charges were three in number and were drafted against the respondent. They read as follows:

1<sup>st</sup> Charge:

a) Statement of offence -

Disobedience to particular orders punishable under section 56(1) of AFC 1993

b) Particulars of offences in that he at:

APAPA LAGOS, failed to comply with the directive to withdraw a letter NASFA/8/G/238 dated 2<sup>nd</sup> July 03 initiated directly to NACOL having been specially instructed to do so vide NA/FIN/115/G/4/90 dated 15 July 03.

2<sup>nd</sup> Charge

a. Statement of offence:

Disobedience to particular orders punishable under section 56(2) of AFD 1993

b. Particulars of offence in that he at;

APAPA LAGOS, failed to comply with the directive vide NA/FIN/11/2/A/Vol.1/78 dated 8<sup>th</sup> Aug. 03 to withdraw a letter he initiated to AHQ Dept. of MS vide NASFA/6/A/311 dated 01 Aug. 03.

3<sup>rd</sup> Charge

a. Statement of offence:

Conduct to the prejudice of service discipline punishable under section 103(1) of AFD/993.

b. Particulars of offence in that he at;

APAPA LAGOS, disregarded proper channel of communication by corresponding directly with AHQ Dept. of MS on his complaint about posting within the NAFC vide NASFA/6/A/311 dated 01 Aug. 03

The three offences were reported by Brig. Gen. SA Owuama, DAFA HQ. NAFC.

It is to be noted that in the convening letter accompanying the charge sheet dated 3 Sept. 03, which was signed by one Col. Al Muraina, for the DAFA, the heading was in respect of discipline of "officer" Col. M. Aminun Kano (N/6422). The letter and the charge

sheet were circulated to, among others: AHQ Gar. Abuja; AHQ DOAA AHQ Dept of MS.

On the 09 Sept. 03, a letter from the Headquarters, Nigerian Army, Dept. of Administration, Ministry of Defence which was signed by Brig. Gen Hou Adoga, for COA (A) and circulated to among others, HQ NAFC and office of the COAS AHQ Dept of MS AHQ B Gar, disciplinary action was directed to be stood down against the respondent. However, a letter of displeasure be written against the senior officer (i.e. the respondent) and he be seriously warned, going by his antecedents. Some of such antecedents were high lighted in exhibit P45 which was written as a result of that letter of 9<sup>th</sup> Sept. C 2003. Ref NA/218/A.

In his warning letter to the respondent, Brig. Gen Owuama (DAFA) and Pw8 at the trial court after having particularized the three offences contained in the latter charges, went on to say that the respondent had, in most times, been in the eye of the storm. He cited instances where respondent criticized his posting as DDA Fin. Washington in preference to London. Conducting himself in such unprofessional manner which earned him letters of warnings and outright letters of displeasure; his indictment by Bol, set up by HQ. NAFC E which investigated allegation of fake certificates against Col. NE Ekwale and Col. TA Toun which, the General (PW8), said were stage - managed by the respondent to ridicule and project the two senior officers as cheats; forwarding of false transcript without reference to HQ. F NAFC in respect of Col. PA Toun to UNN to counter a true and authentic one issued twenty years earlier in 1983, thereby bringing NASFA to disrepute and smeared the image of the NA and maligned the person of Col. Toun whom respondent perceived as a stumbling block for his quest for power. Pw8 ended that paragraph in P45 G stating that disciplinary actions instituted against the respondent on that issue were stalled due to administrative hiccups.

It is after all these that PW8, the author of exhibit P45 ended by saying:-

*“The foregoing is presented hopefully for ease in ‘H your change process. You are seriously warned.”*

What is “warning”? In the Collins Learners Dictionary (Concise Edition 1996) the word “warning” is defined as something which is said or written to tell people of a possible danger, problem, or other un-

pleasant thing that might happen. It is an advance notice of something that will happen often something unpleasant or dangerous.

***Blacks Law Dictionary defines “warning” to be “the pointing out of a danger, especially to one who would not otherwise be aware of it.” In the realm of civil or public service, the word***  
 B ***connotes a kind of mild punishment which paves way, where occasion demands, to the avalanche of the full wrath of the law where the same offence(s) is/are repeated by the person warned.***

C ***I think this definition will fit in well within the general concepts of theory of punishment under the Criminal Law where for instance an accused person has been found guilty but due to the nature of the offence, the personalities involved and provisions made by the punitive section of that law, the***  
 D ***accused can be sentenced to a warning.***

***In view of the above therefore, could exhibit P45 be said to isolate any of the two sets of charges against the respondent for the purposes of handing down the warning? I must answer this question in the negative.*** Even if the author of exhibit

E P45 unwittingly made comments on the issuance of false certificates, forwarding of false transcript and other matters related thereto which were “stage managed” by the respondent against Col. Toun and Col. Ekwale, that document containing the set of three charges shown in  
 F paragraph 2 thereof and some elements cited by the author of exhibit P45, extracted from the other charges cannot be fragmented or segmented. ***Although exhibit P45 is not an Act of Parliament or a piece of any legislation, it is a document written with a***

***particular purpose. In order to read the mind of the maker/***  
 G ***author of that document it is necessary to subject such document to an appropriate rule of interpretation that a passage is best interpreted by reference to what precedes and what follows it. This makes it mandatory for one to read the whole passage or document and every part of it should be taken into***

H ***account.*** Viscounts Simonds, in the case of Attorney-General v. Ernest Augustus (Prince) of Honover (1957) AC 436 at p.463, stated inter alia:

*“it must often be difficult to say that any terms are clear and unambiguous until they have been read in their context. That is not*

*to say that the warning is to be disregarded against creating or imagining an ambiguity.....it means only that the elementary rule must be observed that no one should profess to understand any part of a statute or of any other document before he has read the whole of it. Until he has done so he is not entitled to say that it or any part of it is clear or unambiguous."* B

This means that if a section of a legislation (in this appeal I take it to mean any part of any of the paragraphs contained in exh. P45) appears to be obscure its true meaning can only be ascertained by reference to what precedes it as well as what follows it. **Thus, by taking a look at exh. P45, starting from the title of the document:** C

***"WITHDRAWAL OF CHARGES PREFERRED AGAINST COL. M AMINUN KANO (N/6422) AND SUBSTITUTION WITH A FINAL WARNING LETTER."*** D

***And traversing through the contents of the whole document which is made up of seven paragraphs, the last paragraph ended the document in the following words:***

***"7. The foregoing is presented hopefully for ease in your change process. You are seriously warned."*** E

***Reference to the "foregoing" is reference to all the matters or issues discussed prior to this last paragraph.*** If the author of exh. P45 had wanted to isolate some of the charges preferred against the respondent, he would have limited his reference in paragraph 2 to those charges as express enactment shuts the door to further implication. ***It is the general practice of the courts to read statutes on the same subject matter together. Statutes are said to be of the same subject or matter where they relate to the same thing or person or they have a common purpose. Such statutes are read, construed or applied together so that the intention of the legislature is discovered from the whole set of enactments on the same subject matter. In R. V. Loxdale (1755) 1 Burr 445 at p.447, Lord Mansfield stated that where different statutes deal with the same subject matter even when made at different times, expired, or not referring to each other, they shall be taken and construed together, as one system and as explanatory to each other.*** I am therefore in respectful disagreement with the learned counsel for the appellant in his submis- F G H

sion that:

*“Giving that none of the charges preferred against the respondent at the trial court featured in paragraph 2 of pages 1 and 2 of exhibit P45, coupled with the clear statement that the disciplinary actions against the respondent on the false allegation of fake certificates in relation to Col. Toun (as he then was) and Col. Ekwale, were stalled by administrative hiccups, it cannot be said that the appellant had pardoned, overlooked or forgiven the respondent for those false allegations.”*

**It is my view that Exh. P45 has covered both sets of charges framed against the respondent. The warning handed over to the respondent must, for all intents and purposes, be construed to mean condonation as contemplated by section 171 of the Act.**

Now, for the avoidance of doubt, I find it pertinent to set out, hereinbelow, the provisions of section 171 of the Act which reads as follows:

*“171(1) where a person subject to service law under this Act -*

*[a] has been tried for an offence by a competent civil court or a court-martial under service law; or*

*[b] has been charged with an offence under service law and has had the charge dismissed, or has been found guilty on the charge on summary trial under this Act; or*

*[c] has had an offence condoned by his commanding officer; he shall not be liable in respect of that offence to be tried by a court-martial or to have the case dealt with summarily under this Act.*

*(2) For the purposes of this section: -*

*(a) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-martial that he is guilty of the offence or of a finding by a court-martial that he is not guilty of the offence by reason of insanity.*

*(b) a case shall be deemed to have been dealt with summarily notwithstanding that the finding of the officer who summarily tried the charge has been quashed or varied on review thereof;*

*[c] an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorised by him to act in relation to the alleged offence has, with knowledge of all cir-*



*cumstances, informed him that he will not be charged with the offence;*

*[d] a person ordered under section 100 of this Act to be imprisoned for an offence under that section shall be deemed to have been tried by a court-martial for the offence.*

*(3) where confirmation of a finding of guilty of an offence is withheld, the accused shall not be tried again by a court-martial for that offence unless the order convening the latter court-martial is issued not later than 28 days after the promulgation of the decision to withhold confirmation."*

*(underlining supplied for emphasis)*

This section, to my mind, is as clear as the sun light. No word would require any interpretation other than the plain and ordinary one. Every word is so clear and plain. In the case of Everard v. Poppleton (1884) 5 QB 181 at p.184, Lord Denham observed:

*"Nothing is more unfortunate than a disturbance of the plain language of the legislature, by the attempt to equivalent terms."*

Thus, no court will attempt to interpret or construe an Act of Parliament contrary to the express words of the Act.

Another point raised by the learned counsel for the appellant is that the writer of Exh. P45 did not qualify as "commanding officer" of the respondent within the meaning of section 171 (1) (c) of the Act and even if he is, which was not conceded by the appellant, he had not in any way condoned the offences committed by the respondent which culminated in his trial by the trial court. Section 171 was thus inapplicable to bar the prosecution of the respondent and the court below was wrong in its interpretation of exh. P45.

***A "commanding officer" in the Nigerian Army has been defined to be, in relation to a person, "the officer commanding the unit to which the person belongs or is attached." The respondent was a serving senior officer of the Nigerian Army and was subject to service law. He was posted as the Commandant of NASFA, Apapa, Lagos. In this regard, the trial court in its ruling on objection as to its jurisdiction to try the respondent stated, inter alia:***

***"NASFA which is currently situated in Lagos is not under 81 Division though cited in Lagos. It is an outfit that is under the direct Command of the Director of Army Finance***

**and Account (DAFA). The DAFA himself is under the direct Command of the Chief of Army Staff (COAS) as his staff officer and by extension is also under the administrative and daily control of the Garrison Commander who is here in Abuja.....The court therefore considers the posting of the officer a jurisdiction and that has been approved by the Army authority....”**

**The above goes to establish that PW8 at the time he wrote and signed exh. P45 qualified as Commanding Officer of the respondent within the meaning of section 171 (1) (c) of the Act.** This section, at the risk of repetition, provides:

“(1) where a person subject to service law under this Act -  
[c] has had an offence condoned by his Commanding Officer;  
He shall not be liable in respect of that offence to be tried by a  
court-martial or to have the case dealt with summarily under this Act.”

I am in complete agreement with the court below when it held:

“Furthermore, the position of the respondents counsel that General S. A. Owuama the author of the letter is not the Commanding Officer by the definition in the Act would not persuade me to go along with that thinking as the letter was clearly written by a superior of the appellant who can be referred to as Commanding Officer of the appellant which in oral evidence the General confirmed.....  
In the light of the foregoing I resolve this issue in favour of the appellant and agree with appellant that his trial and conviction after the earlier indictment and warning amounted to double jeopardy.”  
(underlining supplied for emphasis)

“Double Jeopardy” is the subject of issue No. 2 from the appellant’s brief of argument. Even in its ordinary usage, “double jeopardy” connotes the unlawful procedure of subjecting a person to a trial on two separate occasions for the same offence (see: The Lexicon Webster Dictionary, 1980 reprint, vol. 1 page 298). In law also, it connotes the act of being prosecuted or tried twice for substantially the same offence. (see: B. A. Garners Dictionary of Legal Usage, 2<sup>nd</sup> ed. 1995, page 292).

It is the submission of learned counsel for the appellant that since exhibit P45 did not cover any of the offences for which the respondent was charged at the trial court but contains a statement to

the effect that disciplinary actions against the respondent were stalled due to administrative hiccups, no disciplinary actions which under the Act connote trial by a court-martial had been taken against the respondent prior to his being charged before the trial court. There could not have been any situation of double jeopardy, contrary to the position taken by the court below. Learned counsel tried to draw distinction between indictment and trial by a competent civil court or court martial as envisaged in section 171 (1) (a) of the Act. There is no where in the provisions of section 171 where indictment would be said to constitute a bar to prosecution. Learned counsel submitted that the court below was wrong in holding that the trial of the respondent at the trial court amounted to double jeopardy following his indictment by the Board of Inquiry (BOI) as indicated in Exh. P45. He cited and relied on the case of Onyeanus v. Miscellaneous Offences Tribunal (2002) 12 NWLR (Pt. 781) 227 at p.250; Tukur v. Government of Gongola State (1988) 1 NWLR (pt.68) 39 at 51 - 52 G - B. Learned counsel finally submitted on this issue that double jeopardy was never canvassed by the respondent in the appellant's brief at the court below. As the court below failed to confine itself to the case presented, that failure occasioned a miscarriage of justice. Learned counsel cited a litany of cases including: Ekpenyong v. Nyong (1975) 2 SC 71; Olatunji v. Adisa (1995) 2 NWLR (Pt. 376) 167.

***I agree with the learned SAN for the respondent in his submission that it is never in dispute that the court below found that the respondent had been condoned by his commanding officer for the offences for which he was tried. The court below, applying section 171 of the Act and the case of Asaka v. Nigerian Army (supra) held that the condonation in law is a bar to subsequent prosecution. The court below then applied the provision of that law rightly, in my view, to hold that once an offence had been condoned, any subsequent trial of the same offence(s) would amount to double jeopardy.*** In the case of Asaka v. Nigerian Army Council (2007) 1 NWLR (Pt.1015) 408, the appellant at the Court of Appeal was alleged to have borrowed \$300.00 from one L. Cpl. Yau Suleman. He failed to pay back the money. L. Cpl. Suleman wrote a letter for redress of injustice. The Commanding Officer of the appellant investigated the matter and informed the appellant that,

*“There is no problem as far as he (the appellant) was going to pay the boy back, there will be no trouble.”*

The appellant was later charged with conduct prejudicial to service discipline contrary to section 71 of the NA Act 1960 (revised). The appellant was at the end of trial convicted. On appeal, the appellant  
B contended that the offence had been condoned by his Commanding Officer and thus, by virtue of section 119 Nigerian Army Act, Cap 294 LFN, 1990 (which is in *pari materia*) with section 171 of the Act. The appellant’s trial and conviction for the offence was held to be a nullity.  
C

The Court of Appeal in Asaka’s case (*supra*) after reviewing the entire evidence and the prevailing law on the matter, held, *inter alia*:

*“in my opinion, PW1 genuinely felt that he settled the  
D miniature allegation against the appellant and condoned the misdemeanor. Put succinctly, Pw1, the C. O. condoned the alleged act of the appellant. .... the misdemeanor (if indeed there was any) was condoned by Pw1 - the Commanding Officer.”*

The Court of Appeal consequently discharged and acquitted the appellant.  
E

The issue of interest which affords me an opportunity for comparison is that both Asake in the above case cited and the respondent in this appeal were members of the Armed Forces of Nigeria and each was subject to service law under the various Armed Forces Laws  
F prevailing at the time he was condoned and then (wrongly of course) put to trial. The provision of section 119 of Cap. 294 of the Army Act, LFN, 1990, is in *pari materia* with section 171 of the Act under which the respondent has been convicted and sentenced to various  
G forms of punishments including reduction in rank. In as much as I find the decision of the Court of Appeal in Asake’s case (*supra*) to be good law as of now, in the sense that this court did not have any opportunity to set aside that decision, I find myself inclined to re-state the position of the law that any serving person or officer of the Nigerian Armed Forces who is subject to service law especially the prevailing  
H law as is now contained in the Armed Forces Act, Cap A20 LFN, 2004; who has been alleged to have committed some crimes and has been condoned by his Commanding Officer, under the Act, cannot be subjected to double jeopardy by standing trial before a court

or tribunal of whatever nature and howsoever. To allow for that would tantamount to making mockery of that Act especially section 171 thereof. The provisions of any law made by the legislature are not made for mere fun of it or for the purposes of meeting the whims and caprices of the interpreter. They must be interpreted and applied to meet the circumstances, issues, conditions or situations for which they are made. B

Further, I find it uncomfortable for my favourable consideration the argument of learned counsel for the appellant that the learned Justices of the court below were wrong in holding that the trial of the respondent at the trial court amounted to double jeopardy following his indictment by the Board of Inquiry (BOI) as indicated in Exh. P45 and thereby, unwittingly reading into section 171 of the Act what the law maker did not provide as a bar to prosecution and the court below had no power to do that. I think I should remind the appellant, in this connection, that it was when complaints were heightened against the respondent and put across to the DAFA, that another BOI (Board of Inquiry) was set-up to investigate the respondent. The BOI's investigation report was compiled and signed by one Capt. KC Okoro (CO SI). The report made a number of recommendations, almost all of which formed the basis for the charges preferred against the respondent in seven counts charge contained in the first charge sheet. The BOI recommended, among others: C D E

*"As an alternative to the above mentioned charges other administrative measures could be taken against Brig. Gen. Aminun - Kano."* F

Series of documents were written and signed by or on behalf of the DAFA, addressed to the respondent and some of the formations/institutions/persons, severally warning the respondent with the last one which culminated in exhibit P45. One of such documents reads in part: G

*"Your letter reference C was received..... However, you were told to come and discuss the issue raised with me before further action could be taken. Surprisingly, you went ahead to write the letter and distributed to formations without my instructions. You used the wrong channel of communication. You wrote to external organisation without being directed. You wrote to COAS without being directed. Your action also amounts to circulating confidential information with-* H

out authority from me.

2. you were earlier warned vide references A and B to always clear policy matter with the DAFA. Before circulating, you have flouted this warning at least twice. This only shows that you are obstinate and arrogant, refusing to take instructions from your superiors. This is not acceptable to me. I am therefore expressing my strongest displeasure at your refusal to obey simple instructions.

3. This letter will be placed on record in your file in this Headquarters. A further misdemeanor will be reported to MS 'A' and will subsequently be reflected in your annual PER. Please note and take immediate action to correct yourself.

4. You are warned.

Signed.

VB Williams

D Maj. Gen.

DAFA."

In another document written and signed by Brig. Gen. Hou Adoga for COA (A), the respondent was alleged to have breached channel of communication in the N. A. Charges were forwarded to AHQ Gar for disciplinary action. The signatory of that document said that he was directed to request for a stand down of the disciplinary action as the respondent "realized his folly and wrote a letter of apology." However, going by the antecedents of the senior officer (i.e. respondent), he was to be written a letter of displeasure and seriously warned.

That, in my understanding was what gave rise to the letter quoted above. That letter signed by DAFA Maj. Gen. V. B. Williams was titled "Letter of Displeasure: Col. M Aminun - Kano (N/64/22). Paragraph 2 thereof was full of reprimand/displeasure etc.

In his evidence in chief, PW8 while recasting the episode, lamentably observed:

"I preferred the charges and submitted it (sic) to the Department of Administration for further necessary action Gen. Iliya called us because he was Chief of Administration by then and tried as the lawyers will say to adjudicate and make sure that things got on well, at the end he advised that he has reprimanded Gen. Aminun-Kano that he is going to be of good behaviour that I should withdraw the charges and give him another chance but that I should write a FINAL

*WARNING LETTER to him which I did and in that letter, there is nothing in that letter I didn't discuss with Gen. Basharu two or three years earlier, his leadership potential, his inability to manage relations with peers, persistent insubordination, acts of indiscipline and so on and so forth. I even emphasized that this is somebody so dear to me but what hurt (sic) me most is that he doesn't listen to my advice."* B  
(italics and underlinings, mine, for emphasis)

Thus, as per exh. P45, the charges preferred against the respondent were withdrawn administratively. PW8 stated the position categorically when he said:

"So, when Gen. Iliya, they put it in writing that I should withdraw the charges, I said fine, no problem, which I did." C

From the above therefore, one can see very clearly that all the charges and not some few selected as the appellant would want me to believe, were withdrawn by PW8, the then Commanding Officer D of the respondent. It is a surprise to see that same charges were brought back again against the respondent. But PW8, in his testimony in chief stated the reason for such a step-backward:

"Only two weeks later Gen. Iliya wrote that I should press on with the charges why? Because my officer has blackmailed him that he was settled by Finance that is why he was supporting them. And they insisted that I should press on with the charges..... so, I laughed and said to Gen. Iliya. He is in 81 Div. if you need him, you can call him." E

(underlining for emphasis). F

It is again clear that the resurgence of the charges laid before the trial court, with the aim of trying the respondent was in a bid to assuage the "Blackmail" alleged to have been made by the respondent against Gen. Iliya, who was the Chief of Administration. G

Thus, it can be seen that all efforts were exerted by many of the superior officers of the respondent to see that the "matter" died a natural death. This is again clear from the testimony of PW8 where he replied to a question put to him by the prosecution:

"We agreed like in Military Parlance that we will ground arms, as it were; let the sleeping dog lie because this (sic) certificates were authentic. I have been there so, forget about it. He said okay, we all shook hands, then Col. Toun was in the War College, it was himself and Ekwale and I asked them you go and sort out the remaining H

issues, make sure that this things dies a natural death because if it goes beyond this, gentlemen, it is like a wild fire somebody has said. You don't know whom it will consume and I told them, either way, it goes beyond this is a none issue, as far as I am concerned." (underlining for emphasis)

B Now, I think this is what the court below was stating that by subjecting the respondent to another series of punishments, convictions, sentences before another body, whether sitting as a panel, a tribunal, a court of law including the court martial, inspite of all the warnings, reprimands in strong terms, which were of course capable of portraying the respondent as an "irresponsible" senior officer of the Nigerian Army, would mean subjecting the respondent to double jeopardy. This would certainly be against the spirit of section 171 (1) (c) of the Act. It is also against the general principles of penal laws in this country including the Constitution of the Federal Republic of Nigeria, 1999 section 36(10) of the constitution provides:

*"No person who shows that he has been pardoned for a Criminal Offence shall again be tried for that offence."*

This lays down the principle of criminal law that where a person accused of committing a criminal offence(s) which are recognized by law and where he has shown that he has either been pardoned of that offence(s) by the appropriate authority or that he has been tried by a court of law or a tribunal set up by law, then he cannot be subjected to any further trial by any court or tribunal on that same offence(s). A bar to further prosecution has now been placed between him and those offences. See: North Carolina v. Pearee (1969) 395 US 711; Imade v. IGP (1993) 1 NWLR (Pt.271) 608; Barmo v. State (2000) 1 NWLR (Pt.641) 424 at p. 440-C

G The holding of the court below, in my view, has rightly been done in conformity with the prevailing law and I affirm it.

Consequent upon that, ***it is my view that all other issues as formulated by the learned counsel for the appellant appear to be an exercise in futility and an academic rigmarole as the issue of lack of jurisdiction of the trial court martial must ipso facto, affect all other issues considered by the lower court. I need not consider issues 3 - 5 of the appellants brief of argument. I think it is an established principle upon which our courts operate in this country that where a court lacks com-***



**petence to try person or subject matter before it whatever decision it arrives at on such a person or subject matter is a nullity.** See: *Abdusalam v. Salawu* (2002) 13 NWLR (Pt.785) 505; *Galadima v. Tambai* (2000) 11 NWLR (Pt. 677) 1; *Adisa v. Oyinwola* (2000) 10 NWLR (Pt. 674) 116; *Madukolu v. Nkemdilim* (1962) 2 SCNLR 342. Although the respondent raised a point of objection to the jurisdiction of the trial court, on a different ground i.e. jurisdiction relating to territory, it is not in dispute that section 171 of the Act divests any court or tribunal of competence to subject the respondent to any further trial after having been condoned by the appropriate authority. Thus, if any court or tribunal should proceed to make pronouncements on persons such as the respondent inspite of the condonation and damning the consequences of lack of competence, this court cannot close its eyes on such abnormality or illegality. Issues 3-5 are no more live issues before this court and are accordingly struck out.

This appeal is decided only on issues Nos 1 & 2 as formulated by the appellant. Accordingly, I hereby dismiss this appeal as lacking in any merit. I affirm the decision of the court below.

### OGUNTADE JSC

I have had the advantage of reading in draft a copy of the lead judgment by my leaned brother Muhammad JSC. I agree with his reasoning and conclusion. I only need say that whilst it is not to be expected that Military Court Martial President would write their judgment in the conventional manner used by the civil courts, it is still compulsory that their judgments should show the reasoning behind the conclusions arrived. The judgment should discuss the nature of the evidence called, which evidence is rejected or accepted and why. It is only in this way that the 1999 Constitution of Nigeria could be complied with. A judgment, whether in the military or civil courts which does not *ex facie* show the basis of a pronouncement of a guilty verdict on a citizen of Nigeria is in my view an infraction of the citizen's right to fair hearing. Being serving member of the armed forces does not exclude a citizen from protection of the fundamental

rights entrenched in the 1999 Constitution of Nigeria.

I would also dismiss this appeal as in the lead judgment.

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B

**TABAI JSC**

I was privileged to read, in draft, the lead judgment of my learned brother MUHAMMAD JSC. I agree entirely with the reasoning and conclusions therein that the appeal lacks merit. The result is that I also dismiss the appeal with costs as assessed in the lead judgment.

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D

**FABIYI JSC**

I have read before now the judgment just delivered by my learned brother, Muhammad, JSC. I completely agree with the reasons therein advanced to arrive at the conclusion that the appeal lacks merit and should be dismissed.

E

The real issue for resolution in this appeal is whether Exhibit P45 written by P.W.8, respondent's Commanding Officer, amounted to condonation as provided by section 171 of the Armed Forces Act, Cap. A20 Laws of the Federation of Nigeria, 2004.

F

Exhibit P. 45 has its title as:-

"WITHDRAWAL OF CHARGES PREFERRED AGAINST COL. M. AMINUN KANO (N/6422) AND SUBSTITUTION WITH A FINAL WARNING LETTER."

The stated vital exhibit concludes as follows :-

G

*"7. The foregoing is presented hopefully for ease in your change process. You are seriously warned."*

*Condonation as defined in Black's Law Dictionary, 6 Edition at page 295 means 'pardon of offence, voluntary overlooking, and implied forgiveness by treating offender as if offence had not been committed. Wilson v. Wilson 14 Ohio App. 2d 148.'*

H

It is apt to depict the provision of section 171 (1) (c) of the stated Act herebelow for ease of reference. It states as follows:-

"171 (1) Where a person subject to service law under this Act -

(c) *has had an offence condoned by his commanding officer, he shall not be liable in respect of that offence to be tried by a court-martial or to have the case dealt with summarily under this Act.*”

From the title of Exhibit P45, P.W.8 the commanding officer expressed withdrawal of charges against the respondent and substitution of same with a final warning letter. It concludes with serious warning dishd out to the respondent. I am of the considered view that P.W.8, the commanding officer condoned the alleged acts of the respondent. P.W.8 should not contest same as such may be likened to 'a person who puts his hands on the plough and tries to look back.' With due humility, I expressed a similar view in *Asake v. Nigerian Army Council* (2007) 1 NWLR (pt. 1015) 408 at 429, Herein, I wish to keep my peace.

Having shown that he has been pardoned, the respondent should not be tried for the same offence(s) to avoid double jeopardy. This is as provided in section 36(10) of the 1999 Constitution of the Federal Republic of Nigeria.

My learned brother has covered all the salient points. I fully support his reasoning and conclusion that the appeal lacks merit. It is hereby dismissed as the decision of the court below is affirmed.

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### **ADEKEYE JSC**

I had a preview of the judgment just delivered by my learned brother I. T. Muhammad, JSC. My Lord in his leading judgment had meticulously considered the two surviving issues raised for determination by the appellant in this appeal. It is an exhaustive judgment which in my thinking adding anything by way of contribution will only lead to unnecessary repetition of the facts and applicable principles of Law already thoroughly examined in the judgment. I also dismiss the appeal as lacking in merit and affirm the decision of the lower court.