

**SUPREME COURT OF NIGERIA**  
5TH MARCH, 2010, SC. 136/2009  
**CORAM:- G. A. OGUNTADE, M. MOHAMMED,**  
**W. S. N. ONNOGHEN, M. S. MUNTAKA-COOMASSIE,**  
**O. O. ADEKEYE, JJSC**

JOLLY TEVORU NYAME ..... APPELLANT  
V.  
FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT

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WORDS & PHRASES - Criminal procedure - "*Prima-facie* case" -  
Meaning - It only means that there is ground for proceeding - It is  
not same as proof - Which comes when the court has to rule - On  
the guilt of accused (H1)

JURISDICTION - Vesting of - F.C.T. High Court - Crime - Some of  
the elements of offences charged - Must occur in Abuja - Before the  
F.C.T. High court can assume jurisdiction (H2)

CRIMINAL PROCEDURE - Venue of trial - How determined - It is  
by identifying offences charged and the elements thereof - With a  
view to ascertaining whether any element occurred - Where accused  
is being tried (H3)

JURISDICTION - F.C.T. High court - Crime - S. 257 of the Constitu-  
tion - Scope - It confers jurisdiction on the court - To hear and deter-  
mine criminal proceedings - At first instance and in appellate or su-  
pervisory capacity (H4)

CONSTITUTIONAL LAW - Constitution - Interpretation - Manner of  
- The general principle is that it should be given an interpretation -  
Which would serve the interest of the constitution - And carry out its  
object and purpose (H5)

CRIMINAL PROCEDURE - Charges - Before FCT - In the name of  
F.R.N. - Whether defective - Charges can only be initiated in the  
High Court of F.C.T. - In the name of the Federal Republic of Nigeria  
- So it is not defective (H6)

### **FACTS**

Following the investigation of a petition against appellant in his former capacity as Governor of Taraba State, the Economic and Financial Crimes Commission ("EFCC") brought an application to prefer criminal charges against appellant before the High Court of the Federal Capital Territory. The application was brought pursuant to section 185 (b) of the Criminal Procedure Code. The learned trial judge after consideration of the proof of evidence, attached to the application, granted the application. Subsequently, appellant was arraigned before the court and pleaded not guilty to all the forty-one counts in the charge. Thereafter, appellant filed a motion on notice praying the court for an order quashing all the forty-one counts for failure to disclose a *prima facie* case against appellant.

Appellant's application was predicated on sixteen grounds which included that the elements of the offences alleged occurred outside Abuja and so the trial court had no jurisdiction to try them under s. 257 of the 1999 Constitution. Appellant also contended that the fund allegedly misappropriated by him belonged to Taraba State and not to respondent and as such respondent had no *locus standi* to prosecute him for it. The trial court heard and dismissed appellant's application. Dissatisfied, appellant appealed to Court of Appeal which appeal was also dismissed. Still aggrieved, appellant has come on a further and final appeal to the Supreme Court.

### **ISSUES FOR DETERMINATION**

(1) Whether the lower court was right when it refused to consider the issue of whether a *prima facie* case was disclosed against the appellant from the proof of evidence attached to the charges which was one of the issues formulated by both parties as arising for determination in the appeal before the lower court on the ground that trial having not started and having considered issues 1 and 2 a consideration of this issue was premature and no longer necessary?

(2) Whether the two lower courts were right in affirming the decision of the trial court that the High Court of the Federal Capital Territory, Abuja had territorial jurisdiction over criminal proceedings and offences that actually emanated or originated from Taraba State and none within the Federal Capital Territory Abuja?

(3) Whether the lower court was right when it affirmed the

decision of the trial court that the respondent who is not the owner of the funds allegedly misappropriated by the appellant had the necessary locus standi to prosecute the case against the appellant by virtue of Section. 174 (1) of the 1999 Constitution even though the funds belong to Taraba State Government and not the Federal Government of Nigeria?

***HELD*** (Unanimously dismissing the appeal per **ADEKEYE JSC**)  
***Criminal procedure - "Prima-facie case" - Meaning***

1. I must express that the decisions of the two lower courts are borne out by the scenario before the court at the time of argument or the application before the Federal Capital Territory High Court and in the briefs of argument of the appellant before the lower court.

The term prima facie case was defined in the case of *Ajidagba v. Inspector-General of Police* (1958) SCNLR 60 following the Indian case of *Sler Singh v. Jitend-dranthen* (1931) ILR 59 Calc, 275.

It was stated as follows:-

*"The term, so far as we can find has not been defined either in the English or in Nigeria Courts. In an Indian case, however we find the following dicta:-*

*"What is meant by prima facie case? It only means that there is ground for proceeding. But a prima facie case is not same as proof which comes later when the court has to find whether the accused is guilty or not guilty and "the evidence discloses a prima facie case when it is such that if un-contradicted and if believed it will be sufficient to prove case against the accused". (pp. 1286 D / 1289 G)*

***JURISDICTION - F.C.T. High Court - Crime - Vesting***

2. The law which regulates the territorial jurisdiction of the trial court is Section 4 of the Penal Code Cap 532 Laws of the Federation 1990.

Under this Act two different categories of offences to be charged before the Federal Capital Territory High Court Abuja, are specified under Section 4 (2) (a) (b).

From the foregoing provisions of Section 4 of the Penal Code Act, some of the elements of the offences charged must occur in Abuja before the High Court in Abuja, can assume jurisdiction. This section 4 of the Penal Code is in pari materia with Section 12 (2) of the Criminal Code of Southern Nigeria and the cases decided on

those sections would also be applicable to the construction of Section 4 of the Penal Code Act. There is consensus that once one of the elements of the offence or offences happen in a particular State, the High Court of that State would be competent to assume jurisdiction. (ppp. 1293 H / 1294 G / 1295 A)

B

***CRIMINAL PROCEDURE - Venue of trial - How determined***

3. Whenever the issue, of the venue of the trial of an accused comes up for determination, the most appropriate way of resolving the issue is to identify the offences charged and the elements of same as contained in the proof of evidence with a view to determining whether any of the acts constituting the offence occurred in the particular place where the accused is being tried.

In the appeal in hand, the proof of evidence shows that part of the elements of the offence with which the appellant was charged took place within the Federal Capital Territory, Abuja. These elements are

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(1) The initiation and payment of cheques issued in the name of the Accountant of Taraba State Liaison Office, Abuja - one Abdulraham Mohammed for on ward transmission to the appellant.

E

(2) Lodgments in bank accounts of close associates of the appellant here in Abuja.

(3) Purchase of property worth N165,000,000 with part of the proceeds of the offences in Abuja. (pp. 1295 H / 1296 E)

F

***JURISDICTION - F.C.T. High court - S. 257 of Constitution***

4. The application of Section 257 (1) and (2) of the 1999 Constitution is confined within the statutory interpretation given to the relevant section.

G

It is my conclusion that the provisions can be construed as follows- Section 257 (1) confers jurisdiction on the High Court of Federal Capital Territory Abuja to hear and determine criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

H

Section 257 (2) defined civil and criminal proceedings referred to in Section 257 (1) to include proceedings which originate in the High Court of Federal Capital Territory Abuja or those that were brought to it in its appellate or supervisory jurisdiction. (p. 1297 B)

***Constitution - Interpretation - Manner of***

5. It is the general principle of law governing the interpretation of our Constitution that it should be given an interpretation which would serve the interest of the Constitution and carry out its object and purpose. Its relevant provisions must be read together and not disjointly (*sic disjointedly*) and where the words of any section are clear and unambiguous, they must be given their ordinary meaning unless this would lead to absurdity or be in conflict with other provisions of the Constitution. Effect should be given to every word. B

In its conclusion, the lower court declared that the learned trial court was right in not declining jurisdiction as the FCT High Court has jurisdiction to proceed with the hearing of the charges against the appellant. This court agrees with the lower court. (p. 1298 C / G) C

***Charges - In the name of F.R.N. - Whether defective*** D

6. Charges preferred at the High Court of Federal Capital Territory Abuja can only be initiated in the name of the Federal Republic of Nigeria. Since some of the elements of the offences were committed here in Abuja - any prosecution on them has to be initiated in the name of the Federal Republic of Nigeria and not Taraba State. The charge cannot be defective because it was initiated in the name of the Federal Republic of Nigeria who is the lawful complainant in the Federal Capital Territory Abuja. E

Generally speaking, power to prosecute for an offence is not determined by the ownership of the property allegedly stolen or misappropriated. The determining factors are namely - F

(a) Who can exercise prosecutorial power over the offence.

(b) The nature of the offence charged. G

(c) Where the offence is committed - the venue.

(p. 1300 H / 1301 G)

***REPRESENTATION***

Mr. Taiwo Abe with him, F. Adekome, N. Chukwuma, V. O. Onga for the Appellant. H

Mr. Rotimi Jacobs with him, Aliyu Bakani for the Respondent.

**CASES REFERRED TO**

- Ikomi v. State (1986) 3 NWLR pt. 28 pg. 340  
Njovens v. State (1973) NWLR 76 at page 80  
Ararume v. INEC (2007) 9 NWLR pt. 1038 pg. 122  
Gboko v. The State (2007) 17 NWLR pt 1063 pg. 272  
B Anyegwu v. Onuche (2009) 3 NWLR pt. 1129 pg. 659  
Al-Mustapha v. State (2001) 3 NWLR pt, 715 pg. 414 at 422  
Waziri v. The State (1997) 3 NWLR pt. 496 pg. 689 at pg. 715  
A-G Abia State v. A-G Federation (2006) 16 NWLR pt. 1005 pg.265  
C A-G Ondo State v. A-G Federation (2002) 9 NWLR pt. 772 pg. 222  
Ibori v. Federal Republic of Nigeria (2009) 3 NWLR pt. 1128 pg. 283  
Aqua Ltd. v. Ondo State Sports Council (1988) 4 NWLR pt. 91 pg. 633  
D Professor Yesufu v. Gov. of Edo State & Ors (2001) 13 NWLR pt.731 pg.511  
Owodunni v. Celestial Church of Christ (2000) 10 NWLR pt. 675 pg. 325  
The State (2001) SCNJ 1 and Ohwovoriole v. F.R.N (2003)2 NWLR  
E pt. 803 pg. 176  
A-G Adamawa State v. A-G Federation (2005) 18 NWLR pt. 958 pg. 581 at pg. 648

**STATUTES & RULES REFERRED TO**

- F Criminal Procedure Code, ss. 12 and 185  
Constitution of the Federal Republic of Nigeria, 1999, ss. 174, 211, 257, 272 & 299  
Penal Code Law, ss. 115, 119, 309 and 315  
G Supreme Court Act, s. 22  
Economic and Financial Crimes Commission Act, 2004, ss. 6 and 7  
Criminal Procedure Act, Cap 80, L.F.N., 1990, s. 64  
Criminal Procedure (application for Leave to prefer a charge in the High Court) Rules, 1970, s. 2  
H

**LEAD JUDGMENT BY ADEKEYE JSC**

This appeal is sequel to the judgment of the Court of Appeal, Abuja delivered on the 24<sup>th</sup> of February 2009. The Court of Appeal (henceforth to be referred to as the “lower court”) dismissed the

appellant's appeal against the ruling of the High Court of the Federal Capital Territory Abuja, in the Criminal Charge No. FCT/HC/CR/82/2009: Jolly Tevoru Nyame v. Federal Republic of Nigeria, delivered on 20<sup>th</sup> of November 2007. The background facts of this case were that the Economic and Financial Crime Commission (EFCC in short) received a petition against the appellant in this case in his former capacity as the former Executive Governor of Taraba State for diverse allegations amounting to economic and financial crimes under the Economic and Financial Crimes Commission Act 2004. This was followed by an investigation by the officials of the Commission which later confirmed the allegations. The investigation was followed by an application to prefer criminal charges against the appellant on the 13<sup>th</sup> of July 2007. The application for leave to prefer the criminal charge was brought pursuant to Section 185 (b) of the Criminal Procedure Code. The learned trial judge after consideration of the proof of evidence attached to the application, invoked Section 2 (1) (a) and (b) of the Criminal Procedure (application for leave to prefer a charge in the High Court) Rules 1970 to approve same. The appellant was thereafter arraigned before the court and he pleaded not guilty to all the forty-one counts in the charge. On the 10<sup>th</sup> of October 2007, the appellant filed a motion on notice in which he sought orders of the FCT High Court as follows:-

(1) An order quashing all the forty-one (41) count charges preferred against the accused person with leave of this court obtained on the 13<sup>th</sup> July 2007 for failure to disclose a prima facie case against the accused person for want of jurisdiction and competence by the court to adjudicate on this case as constituted.

(2) And for such further other orders as this court may deem fit and just to make in the circumstance of the case.

The application was premised on sixteen grounds which can be clearly summarized as follows:-

(1) That since none of the proceedings, offences or elements thereof originated at the Federal Capital territory Abuja then by the provisions of Section 257 (1) and (2) of the 1999 Constitution, the Federal Capital Territory High Court clearly has no jurisdiction to entertain the case.

(2) That following (1) above, only the Taraba State High Court sitting at Jalingo has the requisite jurisdiction to try the case as consti-

tuted against the accused person in accordance with Section 272 and 299 of the 1999 Constitution since all the offences and elements thereof originated in Taraba State.

(3) That the mere insertion of the words “at Abuja” in all the 41 count charges is a mere embellishment by the respondent. On the basis of the fact that you cannot place something on nothing and expect it to stand and in view of the overwhelming evidence in the proof of evidence, witnesses, statements and documentary exhibits, the insertion of the words “at Abuja” cannot itself clothe the High Court of the Federal Capital Territory with territorial jurisdiction.

(4) That in the foregoing premises, the mere entry or presence of the appellant into or within the Federal Capital Territory without more is not enough to confer jurisdiction on the trial court to hear and determine the case.

(5) That in respect of the offences of accepting gratification in respect of Official Act, obtaining a valuable thing without consideration as a public servant, misappropriation and criminal Breach of Trust contrary to Sections 115, 119, 309 and 315 respectively of the Penal Code law for which the appellant was being charged, (*sic Federal Republic of Nigeria*) has no locus standi to prosecute the charges thus depriving the trial court of jurisdiction to try the case.

(6) That in the consideration of the entire charges viz-a-viz the proof of evidence placed before the trial court on the 13<sup>th</sup> of July 2007, the jurisdiction of the trial court was not properly invoked when leave was granted on the same 13<sup>th</sup> July 2007. Vide page 338 of Volume 1 of the printed records.

The trial court dismissed the application in its considered ruling delivered on the 20<sup>th</sup> of November 2007 for lacking in merit. As the appellant was dissatisfied with the decision of the High Court, he filed an appeal to the Court of Appeal Abuja. The Court of Appeal heard the appeal on the three issues formulated for determination in the brief of argument of each party. On the 24<sup>th</sup> of February 2009, the Court of Appeal delivered a considered judgment dismissing the appeal. Being aggrieved by this decision, the appellant filed a further appeal against the decision of the court below. A notice of appeal with five grounds of appeal was filed on the 6<sup>th</sup> of March (vide pages 265 - 270 of the Record Volume 2). At the hearing of the appeal the appellant adopted his brief filed on 15/6/09 and relied on the three

issues distilled out of the five grounds of appeal to urge upon this court to allow his appeal. The three issues are as follows:-

(1) Whether the lower court was right when it refused to consider the issue of whether a prima facie case was disclosed against the appellant from the proof of evidence attached to the charges which was one of the issues formulated by both parties as arising for determination in the appeal before the lower court on the ground that trial having not started and having considered issues 1 and 2 a consideration of this issue was premature and no longer necessary? B

(2) Whether the two lower courts were right in affirming the decision of the trial court that the High Court of the Federal Capital Territory, Abuja had territorial jurisdiction over criminal proceedings and offences that actually emanated or originated from Taraba State and none within the Federal Capital Territory Abuja? C

(3) Whether the lower court was right when it affirmed the decision of the trial court that the respondent who is not the owner of the funds allegedly misappropriated by the appellant had the necessary locus standi to prosecute the case against the appellant by virtue of Section. 174 (1) of the 1999 Constitution even though the funds belong to Taraba State Government and not the Federal Government of Nigeria? D E

The respondent adopted the brief filed on 24/9/09 and relied on the three issues settled for determination therein to urge this court to dismiss the appeal.

The issues namely are: - F

(1) Whether the lower court was wrong in its finding that since the elements of the offences alleged against the appellant occurred within the Federal Capital Territory Abuja, the trial High Court had the territorial jurisdiction to entertain the charge preferred against the appellant. G

(2) Whether the lower court did not give sufficient thought to the complaint of the appellant as to whether a prima facie case was disclosed against him and (if the answer is in the affirmative) whether a miscarriage of justice has been occasioned thereby. H

(3) Whether the lower court was wrong in affirming the decision of the trial High Court that the respondent herein had the locus standi to prefer the charges against the appellant notwithstanding the contention that the Federal Republic of Nigeria was not the owner of

the sums of money allegedly misappropriated by the appellant.

The appellant argued and submitted that the issue of non-disclosure of a prima facie case against the appellant on the 41 Count charges preferred against him in the proofs of evidence was one of the crucial questions raised before the court below in the appeal.

B Both parties joined issues on it in their respective briefs and extensive arguments were canvassed by the parties - the lower court had a duty to consider the issue on its merit and deliver a considered decision on it, like the other issues like territorial jurisdiction and want of locus standi. The lower court in its leading judgment concluded that the appellant raised the issue prematurely. The stand of the lower court which was not in consonance with the earlier decisions of this court on this issue occasioned a miscarriage of justice. The appellant at this juncture made reference to the cases where this court ruled on the issue of non-disclosure of a prima facie case in the proof of evidence on their merits and in all these cases trial was yet to commence.

Ohwovoriolè v. Federal Republic of Nigeria (2003) 1 SCNJ pg. 484.

E Abacha v. The State (2001) 7 SCNJ pg. 1.  
Ikomi v. State (1986) 3 NWLR pt. 28 pg. 340.  
Ajidagba v. Inspector-General of Police (1958) 3 FSC pg. 5  
The appellant is urging this court to intervene and make proper findings that will accord with the law, by invoking its powers under Section 22 of the Supreme Court Act to consider this issue on its merit. Parties' argument and submission on the issue are on pages 91-107 for the appellant and pages 139- 149 for the respondent of volume 2 of the printed records. The appellant referred to (*sic some*) cases as precedent,

Anyegwu v. Onuche (2009) 3 NWLR pt. 1129 pg. 659.

Woluchem v. Gudi (1981) 5 FSC pg. 291.

Obi v. INEC (2007) 11 NWLR pt. 1046 pg. 565.

H The court is urged to resolve this issue in favour of the appellant.

The respondent's reply is embodied in its issue two. It was the contention of the respondent that you cannot divorce argument and submission on this issue from those canvassed on whether the FCT High Court is the appropriate venue to try the offence based on the

consideration of the offences charged, their elements and the places where the elements occurred. The lower court gave adequate consideration to the issue as to whether a prima facie case was disclosed against the appellant. The approach of the appellant to this issue before the High Court and the Lower Court called for the need by the court to exercise caution, this issue was handled as if trial had been concluded and the court was being called upon to determine the guilt of the appellant at that stage of the proceedings. (Vide pages 374 and 409 Vol. 1 of the Record). The learned trial judge put himself on guard when he pronounced that he would resist the temptation to delve into the evidence to analyse the viability, truth or otherwise of the various allegations which was premature at that stage. The lower court equally came to the conclusion that it was premature and inappropriate to approach the issue of a prima facie case in the manner being suggested by the appellant. What the lower court did was to avoid delving into the merit of the case while considering the issue of whether or not a prima facie case was disclosed against the appellant. The respondent emphasized that a prima facie case is not same as proof which comes later when the court has to find whether the accused was guilty or not. The respondent relied on cases to illustrate when a court can decide whether a prima facie case exist for an accused to answer based on the entire proof of evidence.

*Ikomi v. The State* (1986) 3 NWLR pt. 28 pg. 340.

*Abacha v. The State* (1992) 11 NWLR pt. 779 pg. 437 at 495.

*Ajidagba v. Inspector General of Police* (1988) SCNLR pg. 60.

The lower court was right in the prevailing circumstance to hold that based on the proof of evidence, there is a prima facie case against the appellant - and this court is to hold that the lower court gave sufficient thought to the issue of prima facie case. In the event of this court disagreeing with this submission, the court is urged to exercise its power under Section 22 of the Supreme Court Act to consider and determine the issue on merit.

#### Issue Two

Whether the lower court was right in affirming the decision of the trial court that the high court of the Federal Capital Territory Abuja had territorial jurisdiction over criminal proceedings and offences that actually emanated or originated from Taraba State and none within the Federal Capital Territory Abuja?

The contention of the appellant on this issue is that the lower court was wrong to have affirmed the trial court's decision that it had territorial jurisdiction to try the appellant for criminal proceedings and offences that actually emanated or originated from Taraba State and none within the Federal Capital Territory, Abuja. The appellant can-  
B vassed that by the provisions of Section 257 (1) and (2) of the 1999 Constitution, the territorial jurisdiction of the trial court is limited only to criminal proceedings/offences that originated within the Federal Capital Territory Abuja. The offences alleged against the appellant all  
C emanated or originated in Jalingo, Taraba State then the High Court of the Federal Capital Territory, Abuja has no territorial jurisdiction to try the offence/criminal proceedings pursuant to Section 257 (2) of the 1999 Constitution. Merely inserting the word "Abuja" into each head of the counts does not entrust the High Court Abuja with terri-  
D torial jurisdiction. Section 257 (2) of the 1999 Constitution limits the trial court's jurisdiction to hear only causes or matters that originated in the Federal Capital Territory. The appellant discredited the argu-  
E ment on the issue of territorial jurisdiction based on Section 4 of the Penal Code Act and Section 12 (2) of the Criminal Code which is in pari materia to Section 4 of the Penal Code. That the term "element" used in the Penal Code refers to the "act", "omission" or "event". That the essential elements of a number of offences referred to by the respondent occurred at the Federal Capital Territory. While Sec-  
F tion 257 (2) of the 1999 Constitution can be interpreted to include offences which may originate in any other State and completed or partly performed in the Federal Capital Territory. The appellant picked an instance of the offences supposed to have been committed at the  
G Federal Capital Territory as the initiation and payment of cheques from the Accountant of the Taraba State Liaison Office on which the lower court concluded that handing over of the proceeds of the cheque to the appellant occurred in Abuja whereas a closer scrutiny of the relevant cheques would have disclosed that they had no connection with the appellant. The appellant submitted that a court's  
H jurisdiction is limited by the Statute creating it, and the lower court is wrong to have interpreted the provision of Section 257(2) to include powers to try criminal proceedings from other states. The appellant cited cases to buttress the foregoing.

Ibori v. Federal Republic of Nigeria (2009) 3 NWLR pt. 1128 pg. 283

Fawehinmi v. IGP (2002) 7 NWLR pt. 767 pg. 606.

Ararume v. INEC (2007) 9 NWLR pt. 1038 pg. 127.

Section 4 (2) (b) of the Penal Code and Section 6 (m) and 7 (2) of the Economic and Financial Crimes Commission Act relied upon as conferring jurisdiction on the trial court is inconsistent with the provision of Section 257 (2) of the Constitution. The yardstick for determining where an accused person is to be tried is either the place of commission of the offence or a place that is most proximate to the place of the commission of the offence which in this instance is Jalingo Taraba State. The EFCC can only prosecute the appellant with respect to territorial jurisdiction or venue of trial as laid down in accordance with Section 257 (2) of the 1999 Constitution. The appellant cited cases to round up the argument and submission.

Madukolu v. Nkemdilim (1962)1 SCNLR pg 342.

Njovens & Ors v. State (1973) ALL NLR pg. 371.

Waziri v. The State (1997) 3 NWLR pt. 496 pg. 689

The respondent by way of reply quoted from the relevant paragraph of the judgment of the lower court regarding the commission of some elements of the offences in Abuja particularly the initiation of cashing of relevant cheques and the allegation that the monies were made available to the accused/appellant in Abuja specifically in the Taraba State Government Lodge, Asokoro, Abuja. (Vide pages 241 - 242 of the Record.) The respondent thereafter submitted that the territorial jurisdiction of the High Court of the Federal Capital Territory in criminal matters, just like any other High court in the Northern States is not determined by the provision of Section 257 (2) of the 1999 Constitution but by Section 4 of the Penal Code Act applicable to Northern States. The appellant stated the provisions of Section 4 of the Penal Code Act Cap 532 Laws of the Federation.

From Section 4 of the Penal Code Act, it follows that some of the elements of the offences must occur in the Federal Capital Territory, Abuja before the High Court in Abuja can assume jurisdiction. As Section 12 (2) of the Criminal Code of Southern Nigeria and the cases decided on those sections would also be applicable to the construction of Section 4 of the Penal Code Act. There are authorities which are unanimous, that once one of the elements of an offence or offences happens in a particular State, the High Court of that State would be competent enough to assume jurisdiction. The respondent

referred to cases to buttress the foregoing submission.

Waziri v. The State (1997) 3 NWLR pt. 496 pg. 689 at pg. 715.

Okoro v. A-G Western Nigeria (1966) NMLR 13 at pgs. 15-16

Maigagi v. C. O. P. (1971) NNLR pg. 13.

B Haruna v. State (1972) NSCC pg. 550.

Adeniji v. State (2001) 13 NWLR pt. 375 pgs. 392-393.

The respondent defined the element of the offence under Section 4 (2) of the Penal Code Act as the “Act”, “Omission”, or “Event” by placing reliance on the case of Njovens v. The State (1973) NNLR pg. 76 at page 80.

The trial High Court considered the proof of evidence before coming to the conclusion that the acts, omissions or events which constituted the offences charged occurred within the Federal Capital Territory. Vide page 490 of the Record. The lower court affirmed the conclusion of the trial court and endorsed the decision of the court not to decline jurisdiction in the matter. The lower court relied on the case of Al-Mustapha v. State (2001) 3 NWLR pt. 715 pg. 414 at 422. In resolving the issue of venue of the trial of an offence, the court has to look at the offences charged, the elements of the offences as contained in the proof of evidence with a view to determine whether any acts constituting the offence occurred in that particular place where the accused is being tried. The respondent was charged before the trial court. By virtue of Section 3 (1) and 2 (1) of the 1999 Constitution, Taraba State is one of the 36 States in the Federation. Only the Attorney-General of the State has the locus standi to prosecute any offences committed against the laws of that state by virtue of Section 211 (a) of the 1999 Constitution. By virtue of Section 120 (1) of the 1999 Constitution, all revenue, funds or monies received by Taraba State belongs to the State as part of that State’s Consolidated Revenue Fund. Locus standi is a threshold issue which denotes legal capacity to institute any proceedings (civil or criminal) in any court.

In the circumstance the respondent must establish that—  
H (1) How his rights and obligations were breached or threatened by the misappropriation of funds belonging to a different entity with constitutional rights to institute criminal proceedings against anybody who unlawfully deprives the state of them.

(2) By virtue of Section 120 (3) and (4) and 121 (1) of the

1999 Constitution, the respondent must establish in its proof of evidence that the funds constituting the charges were illegally withdrawn and misappropriated by the appellant.

Section 174 of the 1999 Constitution confers prosecutorial powers on the Attorney-General to institute and undertake criminal proceedings in respect of offences created by the Act of the National Assembly. By the combined reading of Section 120 (1) - (4) and Section 211 (a) of the 1999 Constitution only the Attorney-General of Taraba State can prosecute the appellant. B

The Economic and Financial Crimes Commission which is prosecuting the appellant is not a department of the Attorney-General of the Federation and consequently the prosecutor cannot be an officer of his department. The lower court was therefore wrong to affirm the decision of the trial court that the respondent who was not the owner of the funds misappropriated has the required locus standi to prosecute the appellant relying on Section 6 (m) and 7 (2) of the EFCC Act 2004 and Sections 174 and 299 of the 1999 Constitution to hold that the respondent had the locus standi to initiate and prosecute charges against the appellant. C D

The appellant cited cases: - E

Owodunni v. Celestial Church of Christ (2000) 10 NWLR pt. 675 pg. 325.

Adenuga v. Odumeru (2002) 8 NWLR pt. 821 pg. 163.

A-G Adamawa State v. A-G Federation (2005) 18 NWLR pt. 958 pg. 581 at pg. 648. F

A-G Bendel State v. A-G Federation (1981) 12 NSCC pg. 314

Adefulu v. Oyesile (1989) 5 NWLR pt 1220 pg. 377.

The appellant on the basis of the foregoing submission urged this court to dismiss this appeal and grant the reliefs sought. G

The respondent reacted to this issue by quoting from the judgment of the trial court at pages 487- 488 of Volume 1 of the Record of Appeal, and that of the lower court at page 252 of Volume 2 of the Record. The respondent explained that Section 6 of the Constitution creates the High Court of each State including the Federal Capital Territory. Section 299 equates the Federal Capital Territory with the other States in the Federation. The power to prosecute for offences committed within the Federal Capital Territory Abuja by the H

National Assembly is exercisable by the Federal Republic of Nigeria through the Attorney-General or any other agency of the Federal Government vested with prosecutorial powers.

Section 6 (m) of the Economic and Financial Crimes Commission (Establishment) Act 2004 specifically vests the Commission with the power to prosecute for all offences connected with economic and financial crimes. Section 7 (2) (f) of the EFCC Act 2004 vest the Commission with prosecutorial power for offences relating to economic and financial crimes under the Penal Code and Criminal Code. Judgments of court have endorsed that officials of any rank or level can be prosecuted by the Federal Government in its bid to eradicate corruption. This can be effected through the Federal Government Agencies like Independent Corrupt Practices Commission and Economic and Financial Crimes Commission.

A-G Ondo State v. A-G Federation (2002) 9 NWLR pt. 772 pg. 222.

Olafisoye v. FRN (2004) 4 NWLR pt. 864 pg. 580.

A-G Abia State v. A-G Federation (2006) 16 NWLR pt. 1005 pg. 265.

The power to prosecute for an offence in the Federal Capital Territory is not determined by the ownership of the property alleged stolen or misappropriated or the subject-matter of the charge.

Factors for consideration to prosecute are:-

- (a) Who can exercise prosecutorial power over the offence.
- (b) The nature of the offence.
- (c) Where the offence is committed.

After a thorough consideration of the arguments and submission of counsel, I intend to be guided by the issues settled for determination by the appellant, which I shall embark to consider in serialim.

#### Issue One

Whether the lower court was right when it refused to consider the issue of whether a prima facie case was disclosed against the appellant from the proof of evidence attached to the charges which was one of the issues formulated by both parties as arising for determination in the appeal before the lower court on the ground that trial having not started and having considered issues 1 and 2 a consideration of this issue was premature and no longer necessary.

Before the trial court the appellant brought an application on notice on the 10<sup>th</sup> of October 2007 pursuant to Section 185 (b) if the Criminal Procedure Code, and Order 3 Rule 2 (a) (b) of the Criminal Procedure [Application for Leave to prefer a charge in the High Court] Rules 1970 for an order to quash all the forty-one count charges preferred against the accused person with leave of the High Court of Federal Capital Territory obtained on the 13<sup>th</sup> of July 2007 for failure to disclose a prima facie case against the accused person and consequently want of jurisdiction and competence by the court to adjudicate on this case as constituted. The Federal Capital Territory High Court refused the application.

The issue formulated in the brief of the appellant before the lower court was, *“Whether the learned trial judge was right when she refused to quash the entire forty-one count charges alleged against the appellant even when no prima facie case was disclosed against the appellant in the entire proof of evidence placed before the trial court.”* (Vide page 77 of volume 2 of the printed Records).

In the judgment of the lower at page 253 of volume 2 of the printed Records, the lower court pronounced that:-

*“Issue No. 3 cannot be taken since it raises the matter of whether or not the charges ought to be quashed for a prima facie case not being made put. This is because it is premature at this stage to consider the prima facie status of a matter which trial has not yet kicked off, and what is at play being the proof of evidence”*

Another part of the concurring judgment of lower court said that:-

*“Under issue three, the appellant has contended that no “prima facie” case has been disclosed against him “vide” the proof of evidence filed by the respondent in support of the offences charged. I agree with the learned trial judge that it was premature for him to delve into the merit of the case as he was called upon tactically by the appellant so to do. That will be tantamount to the lower court jumping the gun and the court will so no such thing. This point will be tackled when the case goes to trial.”*

Vide page 263 of volume 2 of the Records.

It is pertinent with the above reference to the conclusion of the lower court to also quote from that relevant conclusion of the learned trial judge. At page 485 of volume 1 of the Record the learned

trial court said that:-

*"I will resist the temptation to delve into the evidence to analyze the viability, truth or otherwise of the various allegations as I find that it is premature at this stage. Sufficient to note that I have taken into consideration all the various circumstances, submissions and explanations copiously set out by both sides and hold that it is all still allegation which must be subject to the rigors of a full trial where the proof is required and the court must make its own observation as to demeanours. In the light of the above decisions, I am satisfied that a prima facie case sufficient to put the accused person on trial has been established".*

From the extracts of the foregoing decisions of the two lower courts it is not difficult to spotlight one common feature in them, which is that the lower courts were being on the side of caution not to determine the guilt of the accused/appellant at a preliminary stage of the trial, hence the recurring use of the word "premature".

***I must express that the decisions of the two lower courts are borne out by the scenario before the court at the time of argument or the application before the Federal Capital Territory High Court and in the briefs of argument of the appellant before the lower court.***

Even right here at the Supreme Court - the appellant at page 6 paragraphs 3.7 and 3.8 of the brief of argument is still not relentless of the nature of reliefs prayed for.

Paragraph 3.8

In the spirit of good practice, the appellant considered in respect of (vii) above that the trial court was right when it held that the proof of evidence indeed accompanied the application for leave dated 13<sup>th</sup> July 2007 but contended that no due consideration was given to the entire charges viz-a-viz the proof evidence, witnesses, statements and documentary exhibits before the trial court's discretion was exercised to grant leave to the respondent to prefer the charges.

Paragraph 3.8

*"The above position can easily be deciphered upon a careful, consideration of the proceedings that took place on the 13<sup>th</sup> of July 2007, the same day the application to file the charges was made and the appellant was arraigned and his plea taken. Clearly the trial court in open court could not have had enough time to go through*

*entire processes filed before exercising its discretion to grant leave. We refer to the proceedings of the trial court at pages 450 - 451 of volume 1 of the printed Records”.*

The due consideration expected by the appellant is that the trial court should have given dispassionate consideration to the issues he raised in the application relying on the proofs of evidence particularly on the issue of non-disclosure of a prima facie case, on their merits, quash the charges and release the accused/appellant. B

In the criminal administration of justice under the Nigeria Legal System- the Criminal Procedure Code confers on a person accused of an indictable offence the right to have the charge quashed and this can be done by the accused person filing before the court a motion on notice under Section 185 (b) of the Criminal Procedure Code, supported by an affidavit praying the court to quash the charges preferred against him. C

Furthermore the accused person must state the grounds on which he wants the charge quashed, for example, that the offence alleged is not disclosed by the statements of witnesses or proof of evidence or that there is nothing linking the accused person with the charge or that the charge is an abuse of process of court. Parties must be heard by the court on the application, particularly the counsel for the State. D

Ohwovoriole v. FRN (2003) NWLR pt. 803, pg. 176.

Abachar v. State (2001) 7 SCNJ 1

Obegolu v. FRN (2006) 18 NWLR pt. 1010 pg. 188. F

On the procedure for the commencement of criminal proceedings in the High Court, by virtue of Section 185 of the Criminal Procedure Code, no person shall be tried by the High Court unless:-

a) He has been committed for trial to the High Court after a preliminary inquiry: Chapter 17 of the code. G

b) A charge is preferred against him without holding of a preliminary inquiry by leave of a judge of the High Court.

c) A charge of contempt is preferred against him in accordance with the provisions of section 314 or 315 of the code. H

An application to prefer a charge against an accused person before the High Court is made pursuant to the provisions of the Criminal Procedure Code (Application to prefers charge in the High Court) Rules 1970. Under the Rules the application must

be accompanied by:-

- a) A copy of the charges ought to be preferred
- b) Names of witnesses who shall give evidence at the trial.
- c) And proof of evidence (Written Statements) which shall be relied upon at the trial.

B Ohwovoriolè v. FRN (2003) 3 NWLR pt. 803 pg. 176

Gboko v. The State (2007) 17 NWLR pt 1063 pg. 272

C On the requirement of an application to prefer a charge, before granting his consent to prefer a charge in the High Court, the judge considering the application must be satisfied that the depositions placed before him disclosed an offence and that the trial would not be an abuse of process.

D In that exercise the High Court judge has discretion to grant or refuse the leave to prefer a charge but the discretion must be exercised judicially and judiciously. He must ensure that he has taken all the materials placed before him, in other words, the court must be provided with clear information as necessary material to act upon. It cannot be presumed. The relevant Law applicable must equally be made available. In the application before the High Court Federal  
E Capital Territory in the application for leave the attachments, were:-

- 1) A copy of the charge in respect of which the leave was sought.
- 2) The proof of evidence on which the prosecution sought to

rely on at the trial

F 3) A verifying affidavit

4) The list of witnesses

5) The statement of the witnesses and the accused person

6) Copies of documentary exhibits.

G In considering the application the trial court perused all relevant cases, and their decision to establish what amounts to proof of evidence and prima facie case which he took time to distinguish from the evidential prima facie evidence which ought to resolve the conflicting issues between the prosecution and the defence at the substantial trial.

H The trial court allowed itself to be guided by the steps taken by the apex court in the cases like Ikomi & Ore v. The State (1986) 1 WSLC 730

Multon P. Ohwovoviolè v. R. F. N (2003) 2 NWLR pt 803 pg. 176.

Ibrahim Bature v. The State (1994) 1 SCNJ pg. 19

U. B. A. Limited v. Stahlbau GMBH & CO KG (1989) 3 NWLR pt. 110 at pg. 874

Richard Igago v. The State (1999) 12 SCNJ pg. 140.

The trial court said at pg. 484 of the Record that:-

*"In this instant case, this application was heard exparte and this court certainly considered the proposed charge and all the bundle of documentary exhibits including the statement made by the accused person and other witnesses and was satisfied that there was established a situation calling for the case to proceed to full trial giving the accused person an opportunity to state his defence to the allegations"*

Furthermore the High Court said at page 485 that:

*"In the light of the above decisions, I am satisfied that a prima facie case sufficient to put the accused person on trial has been established"*.

The appellant raised this issue before the lower court because he was not satisfied with the decision which did not consider this issue of non-disclosure of the prima facie case on its merits. The lower court evaded the issue and discarded same as being premature. The lower court endorsed the decision of the trial court as to allowing the matter to go to full trial so that the accused/appellant can put in his defence. This reaction was borne out by the appellants counsel persuasion to stampede the trial court and the lower court into making a finding about the guilt or otherwise of the accused/appellant in the consideration of a preliminary question. The respondent became aware of this situation even at that stage of the argument and submission in the application to quash the charges before the Federal Capital Territory High Court.

**The term prima facie case was defined in the case of Ajidagba v. Inspector-General of Police (1958) SCNLR 60 following the Indian case of Sler Singh v. Jitend-dranthen (1931) ILR 59 Calc, 275.**

**It was stated as follows:-**

***"The term, so far as we can find has not been defined either in the English or in Nigeria Courts. In an Indian case, however we find the following dicta:-***

***"What is meant by prima facie case? It only means that***

***there is ground for proceeding. But a prima facie case is not same as proof which comes later when the court has to find whether the accused is guilty or not guilty and “the evidence discloses a prima facie case when it is such that if un-contradicted and if believed it will be sufficient to prove case against the accused”.***

The trial court in this case had considered the entire proof - of’ evidence. The court relied as a guide on the cases of Abacha v. The State (2001) SCNJ 1 and Ohwovoriole v. F.R.N (2003)2 NWLR pt. 803 pg. 176

Where in both cases the materials placed before the court on gleaning through them the court found that it was not provided with clear information as necessary material to act upon. Such decision cannot be made on presumption or suspicion. As opposed to the decision in the case of Ikomi v. The State where the court decided that the accused must be called upon for a defence going by the information in the proof of evidence. This is akin to the application in hand. What the information must disclose at this stage is certainly not the guilt of the accused but a prima facie case to answer. At the stage of deciding whether to prefer a charge the prosecutor is not obliged to decide as trial judge should, whether the available evidence is cogent enough to justify a conviction.

Ikomi v. The State (1986) 3 NWLR pt. 28 pg. 340.

I must remark however that the lower court before it endorsed the finding of the trial court should have examined what the trial court did and to conclude that the decision of the trial court was based on the exercise of a judicial discretion.

Since it is not constitutional for this court to sit directly on appeal over the decision of a High Court - I shall invoke Section 22 of the Supreme Court Act to assume the role of the court of Appeal In order to make the finding necessary for determining, the real question in issue between to parties. There were sufficient materials before the court in the proof of evidence which I am convinced from the findings of the High Court Federal Capital Territory on pages 482 - 485 vol. 1 of printed Record that learned the trial judge examined. I have reviewed the steps taken by the learned trial judge earlier on in this judgment.

The appellant was afforded the opportunity to argue on the

issue of prima facie case. Vide pages 91-107 of volume 2 of the Record. The respondent replied to the issue at pages 139 - 149 of volume 2 of the Record. On gleaning through the printed Records- and the proof of evidence like the statement of witnesses documents, cheque, bank statement, it is my conclusion that there were enough materials before the court to direct that the matter must go to trial. I find also that the trial court exercised its discretion judicially and judiciously after due consideration of the facts available in the proof of evidence. An appellate court will not interfere with the exercise of discretion by a trial court, and thereby substitute its own discretion unless such exercise was based on:-

- (1) Wrong and insufficient material.
- (2) Where no weight or insufficient weight was given to the relevant consideration.
- (3) When the trial court acted under a misconception of law.
- (4) When the court acted under misapprehension of fact.
- (5) In all other cases where it is in the interest of justice to do so.

Mobil Oil v. Federal Board of Inland Revenue (1977) 3 SC 97  
 Ukwe v. Bunge (1997) 8 NWLR pt. 518 pg. 527  
 Fumudoh v. Aboro (1991) 9 NWLR pt. 214 pg. 21.0  
 Ogar V. James (2000) 10 NWLR pt. 922 at page 621  
 University of Lagos v. Angoro (1985) 1 NWLR pt. 1 pg. 143  
 Solanke v. Ajibola (1969) NMLR pg. 523  
 Gbolohun v. Balogun (1990) 2 NELR pt. 134. pg. 576.

Contrary to the view expressed by the Learned Senior Counsel for the appellant the learned trial judge adequately had before him sufficient materials on which he came to the conclusion that prima facie case existed to support a criminal trial against the accused/appellant.

The court will commence on the voyage of giving elaborate and extensive consideration to all the materials arising in the proof of evidence when it is convinced there is no shred of evidence to link the accused with the crime so as to discharge the case on merits - in other words quash the leave to prefer the charge.

In the circumstance I have no reason to interfere with the ruling of the trial court. I resolve issue one in favour of the respondent.

Issue Two:-

Whether the lower court was right in affirming the decision of the trial court that the High Court of the Federal Capital Territory Abuja had territorial jurisdiction over criminal proceedings and offences that actually emanated or originated from Taraba State and none within the Federal Capital Territory Abuja.

B The sum total of the argument of the appellant here is that the lower court was wrong to have affirmed that the Federal Capital Territory High Court had territorial jurisdiction to try the appellant for criminal proceedings and offences that actually emanated or originated from Jalingo Taraba State and none within the Federal Capital Territory Abuja. The mere insertion of the word “Abuja” in each of the 41 heads of counts by the respondent does not cloth the trial court with territorial jurisdiction to try charges alleged against the appellant.

D The appellant submitted that the most important parameters that determine the place where an accused person is to be tried is either the place of commission of the offence or a place that is most proximate to the place of the commission of the offences which in this instance is Jalingo Taraba State. It was the contention of the respondent that the lower court was right in its finding that since the elements of the offences alleged against the appellant occurred within the Federal Capital Territory Abuja, the trial High Court had the territorial jurisdiction to entertain the charge preferred against the appellant.

F Courts are creatures of the Constitution, Decrees, Acts, Laws and Edicts and they clothe the courts with the powers and jurisdiction of adjudication. If the Constitution, Decrees, Acts, Laws and Edicts do not grant jurisdiction to a court or tribunal, the court and parties cannot by agreement endow it with jurisdiction. The jurisdiction is defined as the authority of a court to exercise judicial power which is the totality of the powers a court exercises when it assumes jurisdiction and hears a case. A court is competent to entertain a case when:-

H a) it is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another and

b) The subject matter of the case is within its jurisdiction and there is no feature in the case, which, prevents the court from exercising its jurisdiction and

c) The case comes before the court Initiated by due process of the law and upon condition precedent to the exercise of jurisdiction.

Madukolu v. Nkemdilim (1962) 2 SCNLR pg. 341

Oloride v. Oyebe (1984) 5 SC 1

Osafire & Anor v. Odi & Anor (NO 1) (1990) 3 NWLR pt. B 137 pg. 130.

Nalsa Team Associates v. NNPC (1996) 3 NWLR Pt. 439, p. 621.

Bronik Motors v. Wema Bank Ltd. (1993) 1 SCNLR page 296 C

Galadima v. Alhaji Tambai & 11 Ors (2000) 6 SCNJ pg 190

Obikoya v. Registrar of Companies (1975) 4 SC 32

In the consideration of this issue, the constitutional provisions for the jurisdiction of the High Court of the Federal Capital Territory, Abuja that is the adjudication jurisdiction and the territorial jurisdiction is statutory. The adjudication jurisdiction is embodied in Section 257 (1) and (2) of the 1999 Constitution. I shall quote hereunder: Section 257 (1)

(1) Subject to the provisions of Section 251 and any other provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of the Federal Capital Territory Abuja shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty for future, punishment or other liability in respect of an offence committed by any person. F

(2) The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of the Federal Capital Territory, Abuja and those which are brought before the High Court of the Federal Capital Territory, Abuja to be dealt with by the Court. G

The law which deals with venue for the trial of offence committed in the States in Nigeria is Section 64 of the Criminal Procedure Act, Cap 80 Laws of the Federation of Nigeria 1990. ***The law which regulates the territorial jurisdiction of the trial court is Section 4 of the Penal Code Cap 532 Laws of the Federation 1990.*** H  
Section 4 of the Penal Code provides as follows: -

## Section 4

(1) Whereby the provisions of any law of the Federation the doing of an act or making of an omission is made an offence, those provisions shall apply to every person who is in the Federal Capital Territory, Abuja at the time of his doing the act or making the omission.

(2) Where any such offence comprises several elements and any acts, omissions or event occur which, if they all occurred in the Federal Capital Territory, Abuja would constitute an offence, and any of such acts, omissions or events occur in the Federal Capital Territory Abuja, although the other acts, omissions or events, which if they occurred in the Federal Capital Territory, Abuja would be elements of the offence, occur elsewhere than in the Federal Capital Territory Abuja, then

(3) If the act or omission, which in the case of an offence committed wholly in the Federal Capital Territory, Abuja would be in the initial element of the offence occurs In the Federal Capital Territory, Abuja, the person who does that act or makes that omission is guilty of an offence of the same kind and is liable to the same punishment as it-all subsequent elements of the offence occurred in the Federal, Capital Territory, Abuja and

(4) If that act or omission occurs elsewhere than in the Federal Capital Territory Abuja and the person who does an act or makes that omission afterwards enters the Federal Capital Territory Abuja, he is by such entry guilty of an offence of the same kind and is liable to the same punishment as if that act or omission had occurred in the Federal Capital Territory, Abuja and he had been in the Federal Capital Territory Abuja, when it occurred.

***Under this act two different categories of offences to be charged before the Federal Capital Territory High Court Abuja, are specified under Section 4 (2) (a) (b) of the Penal Code Act: -***

(a) If the initial act or omission or event occurs in the Federal Capital Territory Abuja even though the other elements of the offence do not the person who does that initial act or omission is triable by the High court of Federal Capital Territory Abuja under the Penal Code.

(b) If the initial act or omission or event occurs outside the Federal Capital Territory Abuja, the others or other act or omission or

event occurring within the Federal Capital Territory Abuja, the person who does that initial act or omission afterwards enters the Federal Capital Territory Abuja he is by such entry triable by the High Court.

**From the foregoing provisions of Section 4 of the Penal Code Act, some of the elements of the offences charged must occur in Abuja before the High Court in Abuja, can assume jurisdiction. This section 4 of the Penal Code is *pari materia* with Section 12 (2) of the Criminal Code of Southern Nigeria and the cases decided on those sections would also be applicable to the construction of Section 4 of the Penal Code Act. There is consensus that once one of the elements of the offence or offences happen in a particular State, the High Court of that State would be competent to assume jurisdiction.**

In the case of *Njovens v. State* (1973) NWLR 76 at page 80 the term "element" was defined by the court at page 80 of the judgment where the court had this to say -

*"Admittedly Section 4 (2) of the Penal Code law is not easy to construe. The section is concerned with an offence that comprises of several elements and identifies these elements with act, omissions, events. It is clear therefore that the elements in the section is more widely concerned and is not and should not be limited to either actus reus or mens rea in conventional criminal jurisprudence. The initial element to which reference is made in the section is the initial act or omission concerned and for the purpose of applying section 4(2). It is necessary to look for that initial act or omission concerned and for the purpose of applying section 4 (2) it is necessary to look for that "initial element", If (a) that initial act or omission occurs in the State even though the other "elements" do not, the person who does that "initial act or omission" is punishable by the state under the Penal Code, on the other hand if (b) that Initial act or omission occurs outside the state, the other or others occurring within the state and the", person who does that "initial act or omission" afterwards enters the state, he is by such entry triable by the state under the Penal Code."*

In effect **whenever the issue, of the venue of the trial of an accused comes up for determination, the most appropriate way of resolving the issue is to identify the offences charged**

**and the elements of same as contained in the proof of evidence with a view to determining whether any of the acts constituting the offence occurred in the particular place where the accused is being tried.**

Again in the case of *Njovens & ors v. The State* 1973) ALL NLR pg. 371, this provision of Section 4 (2) of the Penal Code was illustrated as follows-

*“On a charge of abetment of an offence, the initial element is the Instigation or positive act or omission which constitutes the offence. In this case, the initial element took place outside Kwara State, but the commission of the act of abetment which is an element of a charge under Section 85 of the Penal Code (as opposed to Section 91) took place in Kwara State and on the evidence, the defendants were apprehended in that State. They were therefore properly tried in that State.”*

*Lawani Maigaji v. Commissioner of Police* (1971) MNLR 13.

*Mattaradona v. Aliu* (1995) 8 NWLR pt. 412 pg. 225.

*Waziri v. The State* (1997) 3 NWLR pt. 496 pg. 689.

*Haruna v. The State* (1972) NSCC pg. 550.

*Okoro v. A-G Western State* (1965) 1 ALL NLR pg. 283.

*Adeniji v. State* (2001) 13 NWLR pt. 375 pg. 392.

**In the appeal in hand, the proof of evidence shows that part of the elements of the offence with which the appellant was charged took place within the Federal Capital Territory, Abuja. These elements are-**

**(1) The initiation and payment of cheques issued in the name of the Accountant of Taraba State Liaison Office, Abuja - one Abdulraham Mohammed for on ward transmission to the appellant.**

**(2) Lodgments in bank accounts of close associates of the appellant here in Abuja.**

**(3) Purchase of property worth N165,000,000 with part of the proceeds of the offences in Abuja.**

The entire charge against him before the High Court Abuja was premised on the following transactions: -

(1) Approval of the sum of N250 million for the purchase of stationeries by the Taraba State Government.

(2) Approval by the, appellant of the sum of N24,700,000 for

the purchase of grains by the Taraba State Government.

(3) The award of a contract for the construction of water project at Ibi/Wukari by the Taraba State Government.

(4) Various sums of money which the accused/appellant collected from the Accountant in the Taraba State Liaison Office, Abuja.

***The application of Section 257 (1) and (2) of the 1999 Constitution is confined within the statutory interpretation given to relevant section.***

***It is my conclusion that the provisions can be construed as follows-***

***Section 257 (1) confers jurisdiction on the High Court of Federal Capital Territory Abuja to hear and determine criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.***

***Section 257 (2) defined civil and criminal proceedings referred to in Section 257 (1) to include proceedings which originate in the High Court of Federal Capital Territory Abuja or those that were brought to it in its appellate or supervisory jurisdiction.***

The criminal jurisdiction of the High Court of Federal Capital Territory is not limited to offences which originate in the Federal Capital Territory Abuja - while Section 257(2) embraces the original and appellate jurisdiction of the High Court. The operational word in the Section is include. In the case of *Mandara v. A-G (Fed.)* (1984) 1 SCNLR pg. 311 at pgs. 343-344, the court said-

*"I am satisfied that the word "include" is generally used in order to enlarge the meaning of words and phrases occurring in the body of a statute and not when it is so used these words or phrases must be construed as comprehending, not only such things as they signify, according to their natural import but also those things which the including clause declares that they shall include."*

In Section 257 (2) the word, include could capture other civil or criminal proceedings that did not originate in the High Court of the Federal Capital Territory but were brought to it.

In the interpretation of the provision of a statute or the constitution where the language used is plain and unambiguous effect must of necessity be given to its plain and ordinary meaning. It is that

- clear and unambiguous language that best conveys the intention of the lawmaker. The lawmaker must be taken to have intended the meaning expressed in such clear and unambiguous language and the court will not be at liberty to go outside the very provision in an attempt to ascertain the Intendment and purpose of the provision.
- B The obvious duty of the court in such a situation therefore is not the determination of what the lawmaker meant, but the meaning of the plain language used which best expresses his intention. Sections 257 (1) and (2) of the 1999. Constitution and Section (4) of the Penal
- C Code are both written in ordinary plain language which according to the literal approach best represent the intention of the lawmakers. Furthermore, ***it is the general principle of law governing the interpretation of our Constitution that it should be given an interpretation which would serve the interest of the Consti-***
- D ***tution and carry out its object and purpose. Its relevant provisions must be read together and not disjointly (sic disjointedly) and where the words of any section are clear and unambiguous, they must be given their ordinary meaning unless this would lead to absurdity or be in conflict with other provisions of the***
- E ***Constitution. Effect should be given to every word.***

A-G of Bendel State v. A-G of the Federation & Ors. (1981)

pg. 1

I.M.B. v. Tinubu (2001) 45 WRN pg. 1

- F Olafisoye v. FR.N. (2004) 4 NWLR pt. 864 pg. 580.

A-G Ondo State v. A-G Federation (2002) 9 NWLR pt. 722  
pg.228.

Awuse v. Odili (2005)16 NWLR pt.25 pg.12.

Egbue v. Araka (1996) 2 NWLR pt.433 694 at 702.

- G Aqua Ltd. v. Ondo State Sports Council (1988) 4 NWLR pt. 91 pg. 633.

Ararume v. INEC (2007) 9 NWLR pt. 1038 pg. 122.

- H ***In its conclusion, the lower court declared that the learned trial court was right in not declining jurisdiction as the FCT High Court has jurisdiction to proceed with the hearing of the charges against the appellant. This court agrees with the lower court.*** Issue Two is resolved in favour of the respondent.

Issue Three

Whether the lower court was right when it affirmed the deci-

sion of the trial court that the respondent who is not owner of the funds allegedly misappropriated by the appellant had the necessary locus standi to prosecute the case against the appellant by virtue of Section 174 (1) of the 1999 Constitution even though the funds belong to Taraba State Government.

The appellant submitted that the lower court was wrong when it affirmed the trial court's decision that the respondent not being the owner of the funds in question has the locus standi to prosecute the charges against the appellant under Section 174 (1) of the Constitution. By the combined effect of Sections 120 (1) - (4) and 211 (a) of the 1999 Constitution, only Taraba State through its Attorney General has the locus standi to institute and/or prosecute the appellant for alleged misappropriation of funds belonging to it.

I disagree with the appellant on the foregoing submission. Before I adduce my reasons, I wish to state briefly what locus standi means. The term locus standi entails the legal capacity of instituting, initiating or commencement of an action in a competent court of law or tribunal without any inhibition obstruction or hindrance from anybody or person whatsoever including the provisions of any existing law. The fundamental aspect of locus standi is that it focuses on the party seeking to get its complaint heard before the court. It is settled law that the plaintiff will have locus standi in a matter only if he has a special right or alternatively if he can show that he has sufficient or special interest in the performance of the duty sought to be enforced or where the interest is adversely affected. All these will be subject to the facts of each case. Whether an interest is worthy of protection is a matter of judicial discretion which often varies according to the remedy asked for.

Owodunni v. Registered Trustees of C.C.C. (2000) 6 Owners M. V. Baco Liner 3 v. Adeniji (1993) 2 NWLR pt. 274. Thomas v. Olufosoye (1986) 1 NWLR pt. 18 pg. 669. Adefulu v. Oyesile (1989) 1 NWLR pt. 122 pg. 377. Otapo v. Sunmonu (1987) 2 NWLR pt. 58 pg. 587. Adesanya v. President F.R.N. (1981) 2 NWLR pt. 358. Oduneye v. Efunnuga (1990) 1 NWLR pt. 164 pg. 618.

Professor Yesufu v. Gov. of Edo State & Ors (2001) 13 NWLR pt. 731 pg. 511

The import and connotation of the term Locus standi gives

the respondent the capacity and sufficient interest to prosecute this case for the under mentioned reasons -

(1) Each head of the count for which the appellant is charged is an offence under the Penal Code.

(2) The Penal Code is a Federal Legislation.

B (3) The offence under the Penal Code is a Federal offence which the Attorney-General of the Federation or any of its agencies may by Section 174 of the 1999 Constitution prosecute irrespective of ownership of the subject matter.

C (4) The fund subject matter of the charge is held in trust for the people of Taraba State.

(5) The Federal Government as the conscience of the nation has a stake in seeing that the fund is not misappropriated or diverted from the use of the people of Taraba State. Each State is therefore D accountable to the Federal Government.

(6) Taraba State is by virtue of Sections 2 and 3 of the 1999 Constitution one of the thirty-six States forming the Federal Republic of Nigeria.

E (7) The world is a global village, Nigeria as a Sovereign State has a duty to maintain a crime-free society within its territory in conjunction with the rest of the world, hence it maintains virile criminal sanctions through its agencies.

F 8. Prevention of crime is still substantially a Federal Government Affair hence organizations like Nigeria Police, Economic and Financial Crimes Commission, Independent Corrupt Practices Commission (ICPC) and all other related agencies.

G 9. By virtue of section 6 of the 1999 constitution, superior courts of records were created for each State of the Federation including a High Court in the Federal Capital Territory Abuja. By virtue of section 299 of the 1999 Constitution, the Federal Capital Territory enjoys equal status as the States of the Federal. The power to prosecute in the Federal Capital is exercised by the Federal Republic of Nigeria through the Office of the Attorney-General or his department, and other agencies of the Federal Government vested with H prosecutorial powers.

***Charges preferred at the High Court of Federal Capital Territory Abuja can only be initiated in the name of the Federal Republic of Nigeria. Since some of the elements of***

***the offences were committed here in Abuja - any prosecution on them has to be initiated in the name of the Federal Republic of Nigeria and not Taraba State. The charge cannot be defective because it was initiated in the name of the Federal Republic of Nigeria who is the lawful complainant in the Federal Capital Territory Abuja.*** B

The appellant is charged to court under the Penal Code. The Economic and Financial Crimes Commission which initiated the charges can only do so in the name of the Federal Government and not Taraba State, as an agency of the Federal Government. The claim that the money exclusively belongs to Taraba State and that the State has exclusive claim on it to the exclusion of any other authority by virtue of Section 120 of the 1999 Constitution cannot stand in the face of the pronouncement of this court in the case of A-G Ondo State v. A-G Federation (2002) 9 NWLR pt. 772 pg. 222 at page 308 D where this court stated as follows: -

*“It has been pointed out that the provisions of the act impinge on the cardinal principle of federalism, namely the requirement of equality and autonomy of the State Government and non-interference with the functions of State Government. This is true, but as seen above, both the Federal and State Governments share the power to legislate in order to abolish corruption and abuse of office. If this is a breach of the principle of federalism, then I am afraid it is the constitution that makes provisions that have facilitated breach of the principle. As far as the aberration is supported by the provision of the Constitution, I think it cannot rightly be argued that an illegality has occurred by the failure of the Constitution to adhere to the cardinal principles which are at best ideals to follow or guidance for an ideal situation.”* E F G

Olafisoye v. FR.N. (2004) 4 NWLR pt. 864 pg. 580.  
A-G Abia State v. A-G Federation (2006) 16 NWLR pt. 1005 pg.265.

***Generally speaking, power to prosecute for an offence is not determined by the ownership of the property allegedly stolen or misappropriated. The determining factors are namely*** H

***(a) Who can exercise prosecutorial power over the offence.***

***(b) The nature of the offence charged.***

**(c) Where the offence is committed - the venue.**

The Federal Government created the Economic and Financial Crimes Commission by an act of the National Assembly in 2004. Section 6 of the Act provides that the Economic and financial Commission shall be responsible for-

B (1) Enforcement and due administration of the provision of the Act.

(2) The investigation of all the financial crimes including advance fee fraud, money laundering, counterfeiting, illegal charge transfers, future market fraud, fraudulent encashment of negotiating instruments, computer credit fraud, contract Scam etc.

C By virtue of Section 7 (1) (a) and 2 (f) of the Economic Financial Crimes Commission Act 2004, the Commission has power to cause investigations to be conducted as to whether any person, D corporate body or organization has committed an offence under the Act or other law relating economic and financial crimes. The Commission shall be the coordinating agency for the enforcement of the provisions of any other law or regulation to economic and financial crimes, including the Criminal Code and Penal Code. The Economic E and Financial Crimes Commission has power under Section 13 (2) of the Act to prosecute offences so long as they are financial crimes. The Commission has preferred the charges against the appellant for the purpose of prosecuting in the exercise of their power under the EFCC Act 2004. By virtue of the provisions of Sections 174 (1) (b) F (c) and 211 (1) (b) (c) of the Constitution of the Federal Republic of Nigeria 1999, the Attorney-General of the Federation or a State as the case may be has power to undertake criminal proceedings in respect of an offence under the law of the National Assembly or House G of Assembly. The power may be exercised by him in person or through the officers of his department.

Amadi v. FRN (2008) 18 NWLR pt. 1119 pg. 259.

The penultimate paragraph of the judgment of the lower court said:-

H *"I affirm the decision of the court below, the High Court of the Federal Capital Territory, Abuja which court has jurisdiction and for now there is no basis to quarrel with her finding and that the charge or information is properly before her instituted by the appropriate authority which in this instance she is the Federal Republic of Nigeria or Attorney-General of the Federation. There is therefore a*

*foundation upon which can go on with the trial.”*

On this score, we have before us two concurrent findings of the two lower courts that the charge before the FCT High Court, Abuja is competently before the court and the criminal charge can now proceed to hearing. This court has no cause to interfere with the two decisions. Appeal is dismissed for lacking in merit. B

Hearing can now resume in the criminal charge FCT/HC/CR/82/2007 already adjourned sine die on 17/1 /2008.

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**OGUNTADE JSC** C

I have had the advantage of reading in draft the lead judgment of my learned brother, Adekeye, JSC. I agree with the reasoning and conclusion in the said lead judgment. I would also dismiss the appeal. Appeal is accordingly dismissed. D

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**MOHAMMED JSC**

The judgment of my learned brother, Adekeye, JSC which has just been delivered was read by me before today. I agree that the appeal has no merit and the same is accordingly hereby dismissed. E

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**ONNOGHEN JSC** F

I have had the benefit of reading in draft, the lead judgment of my learned brother ADEKEYE, JSC just delivered.

I agree with his reasoning and conclusion that the appeal is without merit and should be dismissed.

I accordingly dismiss same and abide by the consequential orders made in the said lead judgment G

Appeal dismissed.

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**MUNTAKA-COOMASSIE JSC** H

I was opportune to read in draft the lead judgment of my Learned Lord Adekeye JSC, I am in agreement with his reasoning in dismissing the appeal. I only wish to add something on my own in support of the lead judgment. I have considered Section 22 of the

Supreme Court Act vis-a-vis the issue of prima facie case which the lower court should have considered and taken a decision on it did not do that in so many words.

By an application dated 13/7/07, the E. F. C. C applied for the High Court of Justice for the Federal Capital Territory, Abuja, to prefer charges against the Appellant, Jolly Tevoru Nyame. In support of the application are: -

1. Verifying affidavit;
2. 4 Count Charges involving Criminal misappropriation of funds, receiving gratification by Public Officer, Criminal breach of trust, and Public Officer obtaining valuable things without consideration.
3. List of witnesses containing 49 named potential witnesses;
4. List of exhibits; and
5. Proof of evidence with the witnesses' statements attached.

The application was granted and the Appellant was thereafter arraigned before the trial court. The Appellant by a motion dated 10/10/2007 prayed the trial court for the following: -

AN ORDER quashing all the 41 charges preferred against the Accused person with the leave of court obtained on the 13<sup>th</sup> July, 2007, for failure to disclose prima facie case against the Accused person and for want of jurisdiction and competence by this Honourable Court to adjudicate on the case as constituted.

The grounds of application are stated hereunder as follows:-

1. *The supremacy and binding effect of the constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as the 1999 Constitution) on all authorities and persons throughout Nigeria is enshrined in Section 1 of the said Constitution.*
2. *Sections 2 and 3 of the Constitution stipulates unequivocally consisting of 36 States named therein and a Federal Capital Territory,*
3. *Section 6 of the 1999 Constitution establishes courts of law for each of the states in Nigeria and a High Court for the Federal Capital Territory, Abuja, and each State High Court exercises both subject matters and territorial jurisdiction only over matters that are within or have occurred or arisen within the area of its territorial jurisdiction but not otherwise. See Sections 257, 272 and 299 of the 1999 Constitution and many pronouncements of Supreme Court on the subject including A-G- Abia State vs A-G- Federation (2006)*

1 NWLR (pt. 1005)265.

4. In the present ease, none of the offences charged or elements of the offences charged in the charged sheet when taken together with the proof of evidence filed occurred or took place in the Federal Capital Territory, Abuja, within the territorial jurisdiction of this Honourable Court, but in Taraba State, within the territorial jurisdiction of the High Court of justice of Taraba State of Nigeria. B

5. At all material times concerning the charges now laid against him the Accused/Applicant was the Governor of Taraba State of Nigeria where and by virtue or under cover of which office he is alleged to have committed the offences for which he is now charged. C

6. All the witnesses whose statements form part of the proof of evidence in this case are from Taraba State and their said statements concern matters or events which happened or took place in Taraba State but not in the Federal Capital Territory, Abuja. D

7. The mere insertion of the word “at Abuja” in the charges filed against the Accused/Applicant is immaterial and is in any event against the overwhelming evidence to the witness in the proof of evidence to the contrary and that alone cannot clothe the High Court of the Federal Capital Territory Abuja with jurisdiction. Therefore the word “at Abuja” in the various charges in this case is a mere embellishment by the prosecution which cannot confer jurisdiction. E

8. In the foregoing premises, the mere entry into or presence of the Appellant within the Federal Capital Territory without more is not enough to confer jurisdiction on the trial court to hear and determine the case. F

9. Since none of the offences, proceedings or element ingredients thereof originated at the Federal Capital Territory, Abuja, then by the provision of section 257 (1) and (2) of the 1999 Constitution, the Federal Capital Territory High Court clearly has no territorial jurisdiction to entertain the case. G

10. Since none of the offences charged or element/ingredients thereof happened or occurred in the Federal Capital Territory Abuja which under Section 299 of the 1999 Constitution is treated “as if it were one of the states of the Federation” by the provision of Section 4 (2) (h) of the Penal Code Act, Cap 532 LFN 1990, this Honourable Court lacks jurisdiction to hear and determine this case which shall be struck out for lack of competence and jurisdiction. H

11. *The proof of evidence required by the law to be attached to the Application to prefer charges was not attached to the said application dated 13<sup>th</sup> July, 2007 before leave of this Honourable Court was obtained on the same 13<sup>th</sup> July, 2007.*

B 12. *The jurisdiction of this Honourable Court was not properly invoked before leave was granted to prefer the charges against the Accused person.*

C 13. *Since the entire money alleged to have been misappropriated by the Accused belongs to the Taraba State Government, the Federal Republic of Nigeria (complainant herein) has no locus standi to prosecute the charges and this Honourable Court is thus deprived of jurisdiction to try same.*

D 14. *Since the criminal proceedings and/or offences originated in Jalingo Taraba State, then this Honourable Court whose jurisdiction is limited to Civil and Criminal cause and matters that originated in Abuja, Federal Capital Territory has no jurisdiction to try this case.*

E 15. *The offences of accepting gratification in respect of official Acts, obtaining valuable things without consideration as a Public Servant, misappropriation and criminal breach of trust contrary to Sections 115, 119, 309 and 315 of the Penal Code for which the Accused person is being charged are not disclosed in the written statements of witnesses and or proof of evidence (If any) attached to the charge sheet before the Honourable Court.*

F 16. *The written statements of witnesses and documentary exhibits do not disclose any prima facie case in respect of any of the alleged offences against the Accuse person requiring him to stand trial before this Honourable Court or any other court of law on any of the 41 counts contained thereon.*

G 17. *A careful consideration of the charges vis-a-vis the ingredients of all the alleged offences, the statement of witnesses in support of documents annexed thereto will lead to an inevitable conclusion that the entire charges constitute an abuse of court process”.*

H After hearing both parties in both oral submissions and written addresses, the trial court on the 20/11/07 refused the application and dismissed same.

On the issue of whether the leave to prefer charges was properly made, the learned trial Judge, after referring to the cases of Ohwovoriole v. The Federal Republic of Nigeria (2003) 2MJSC and

Bature v. The State (1994) 1 SCNJ held as follows: -

*“In the instant case, the application was heard exparte, and the court certainly considered the proposed charges and all the bundle of documentary exhibits including the statement made by the Accused person and other witnesses and was satisfied that there was established a situation calling for the case to proceed to full trial giving the Accused person an opportunity to state his defence to the allegations. It is important to note that the “prima facie case” so called at this stage is not the evidential prima facie evidence which ought to resolve conflicting issues between the prosecution and the defence at the substantive trial”.*

The learned trial judge further held on the issue of prima facie thus: -

*“I will resist the temptation to delve into the evidence to analyse the viability, truth or otherwise of the various allegations as I find that it is premature at this stage. Sufficient to note that I have taken into consideration all the various circumstances, submissions and explanations copiously set out by both sides and hold that it is all still allegation which must be subject to the rigorous of a full trial where the proof is required and the court must make its own observation as to demeanours. In light of the above decisions I am satisfied that a prima facie case sufficient to put the Accused person on trial has been established”.*

On the issue of the locus standi of the Federal Government to initiate this proceeding, the learned trial Judge held thus: -

*“I am of the considered view which is in total agreement with the complainant that the power to prosecute for offences committed within the Federal Capital Territory is exercisable by the Federal Republic of Nigeria through either the Attorney General of the Federation or any other Federal Government Agency vested with prosecutorial (sic) powers. Therefore criminal proceedings can be initiated in the name of the Federal Republic of Nigeria. Section 45 of the Economic and Financial Crimes Commission (Establishment) Act 2004 defines Economic and Financial Crimes and by Section 6 (m) of the same Act vests the commission with the power to prosecute for all offences relating to or connected with Economic and Financial Crimes. Section 7 (2) (f) of the Economic and Financial Crimes Commission Act widened the scope of the enforcement by the Economic*

*and Financial Crimes Commission to cover the provisions of any law or regulation relating to Economic and Financial Crimes, including the Penal Code and Criminal Code. Therefore, the Federal Republic of Nigeria can initiate a charge filed by any of its agencies and can correctly bear the name of Federal Republic of Nigeria”.*

B On the issue of the Territorial jurisdiction raised by the Applicant, the learned trial Judge held as follows: -

*“Further under Section 4 (2) of the Penal Code Cap 532 LFN 1990 a situation is provided where the initial element of offence and where the act or omission occurred elsewhere than the Federal Capital Territory, by a person who after wards enters the Federal Capital Territory he is by such entry guilty of an offence of same kind and liable as if he had been in Federal Capital Territory when it occurred”.*

C Finally, the trial court held thus: -

D *“The court upon a calm and sober view of the application for leave and the bundle of documentary evidence provided at the time of the application finds that the course of justice will be better served if the matter proceeds to trial thereby affording the Accused person, the opportunity to defend himself from the allegations. The leave*

E *earlier granted to the complainant is proper and granted in order. Accordingly I find no merit in all the grounds raised in support of the application. The application in the motion for this leave to be quashed is hereby refused”.*

F See pages 467 - 490 of the Record of Proceedings.

The applicant was dissatisfied with the decision of the trial court and had as a result appealed to the Court of Appeal, herein after referred to as the lower court.

G The lower court heard the appeal on its merit and on the 24/2/09 affirmed the decision of the trial court and dismissed the appeal. Concerning the issues of competency of the charges and the territorial jurisdiction, lower court held as follows:-

H *“From the proof of evidence as contained in the statement of witness Abdulrahman Mohammed at page 295, salient elements of the offence as the initiation and cashing of relevant cheques and the allegation that the monies were made available to the Accused Appellant in Abuja, specifically in the Taraba State Government Lodge, Asokoro Abuja. That being so the learned trial Judge was right to adjudicate and it is of no moment that the Appellant in his statement*

*denied being connected with the alleged disbursements and collection of the cash referred to. This is because that is a matter to be adequately dealt with at the trial of the offences charged. I place reliance on Section 275 (1) and (2) of the 1999 Constitution and Section 4 (2) (b) of the Penal Code Act, Sections 6 (m) and 7 (2) of the Economic and Financial Crimes Commission Act and the cases of:- Waziri V. The State (Supra) at 715, Okoro V. Attorney - General Western Nigeria (1966) NMLR 13 at 15-16; Magajin V. Cop (1971) WLR 13; Haruna V. The State (1972) NSC 550 at 560 -561; Adeniji V. State (2001) NWLR (pt. 375) 392 - 393 “.* See pp 241 - 242 of the Record Vol. 2.

On the issue of the locus standi of the Federal Republic of Nigeria to initiate this proceedings, the lower court, on p 252 of the Record, held thus: -

*“In the pursuit, of crime prevention and prosecution we cannot run away from carrying out those assignments in full view of the necessary jurisdiction of court. The issue here is not who owns the money in question, but how the prosecution in the light of an alleged criminal infringement of the Penal Code Act or the EFCC Act can be handled properly on the balance of justice. Therefore the answer to whether the Respondent has locus standi or not cannot arise since in the enforcement of the law especially that of the criminal law Federal Government or its agencies can initiate and prosecute once the relevant statute so authorizes and in the case before us the constitution of the Federation 1999 vide Sections 174 and 299 so provide - I place reliance upon sections 6 (m) 46, 7 (2) of the E. F. C. C, Act 2004. Sections 174 and 299 of the 1999 Constitution; Olafisoye V. FRN (2004) 4 NWLR (pt. 864) 580; Attorney-General Abia State V. Attorney-General Federation (2006) 16 NWLR (pt. 1005) 265.”*

Finally, the lower court concluded as follows:-

*“Issue No. 3 cannot be taken since it raises the matter of whether or not the charges ought to be quashed for a prima facie case not being made out. This is because it is premature at this stage to consider the prima facie status of a matter which trial has not yet kicked off, and what is at play being the proof of Evidence. Also the constitutionality or otherwise of the Economic and Financial crimes Act cannot be under taken in this appeal. The appeal fails and is hereby dismissed”.*

See pages 253 of the record of proceedings.

The appellant was again dissatisfied with the unanimous decision of the court below and has as a result appealed to this court. In accordance with the provisions of the rules of the Supreme Court both parties filed and exchanged their respective Briefs of argument.

B The appellant in its brief dated 12/06/09 formulated three issues for determination as follows:-

1. Whether the lower court was right when it refused to consider the issue of whether a prima facie was disclosed against the Appellant from the proof of evidence attached to the charges which was one of the issues formulated by both parties as arising for determination in the appeal before the lower court on the ground that the trial having not started and having considered issues 1 and 2, a consideration of this issue was premature and no longer necessary?

D 2. Whether the lower court was right in affirming the decision of the trial court that the High Court of the Federal Capital Territory, Abuja had territorial jurisdiction over criminal proceedings and offences that actually emanated or originated from Taraba State and none within the Federal Capital Territory, Abuja?

E 3. Whether the lower court, was right when it affirmed the decision of the trial court that the respondent who is not the owner of the funds allegedly misappropriated by the appellant had necessary locus standi to prosecute the case against the appellant by virtue of Section 174 (1) of the 1999 Constitution even though the funds belong to Taraba State Government and not the Federal Government of Nigeria?

The respondent in its brief of argument dated 24/9/09 also formulated three (3) issues for determination as follows:-

G 1. Whether the lower court was wrong in its finding that since the elements of the offences alleged against the appellant occurred within the Federal Capital Territory, Abuja, the trial High Court had the territorial jurisdiction to entertain the charge preferred against the appellant (See ground one).

H 2. Whether the lower court did not give sufficient thought to the complaint of the Appellant as to whether a prima facie case was disclosed against him and ( if the answer is in the affirmative) whether a miscarriage of justice has been occasion thereby. (See ground four)

3. Whether the lower Court was wrong in affirming the deci-

sion of the trial High Court that the respondent herein, had the locus standi to prefer the charges against the appellant notwithstanding the contention that the Federal Republic of Nigeria was not the owner of the sums of money allegedly misappropriated by the appellant (See ground two).

At the hearing of this appeal, the learned counsel to the appellant adopted his brief of argument and urged this court to allow the appeal. B

On his issue No 1 as adumbrated in its brief of argument learned counsel submitted that it is trite that a court of law is bound to consider all issues properly joined by the parties and placed before it for determination, he cited in support the cases of:- C

- (i) Ajanaku V. Williams (2009) 3 NWLR (pt 1129) 617; and
- (ii) Adebayo V. A-G Ogun State (2008) 7 NWLR 1088.

That in the instant case the issue of non-disclosure of prima facie case against the appellant in the proof of evidence was a potent issue duly canvassed by both parties at the lower court which the lower court did not consider in its judgment. Learned counsel therefore submitted that the parties having joined issues and placed their respective cases on this issue of non-disclosure of a prima facie case in respect of the 41 count charges preferred against the appellant before the lower court, it has no other duty but to consider the said issue on its merit, counsel supported his submissions with the following decided cases:- D E

- (i) Brad V. Fard (1894) A. C. 44 at 49
- (ii) T. A. S. A. Ltd V. IAS Cargo Airlines (Nig) Ltd (1991) 7 NWLR (pt.202) 156 at 168; and
- (iii) UBA Ltd V. Achorn (1990) 6 NWLR (pt. 156) 254 at 272

Learned counsel further submitted that the lower court abdicated its duty to consider this issue on its merit more so when this procedure has been given judicial approval by this court in the following cases: F

- (a) Abacha V. The State (2001)7 SCNJ 1.
- (b) Ohwovoriole V. Federal Republic of Nigeria (2003) 1 SCNJ H 484
- (c) Ayidagba V. Inspector-General of Police (1958) 3 FSCP 5; and
- (d) Aifima V. State 2007 5 NWLR (Pt. 1023) 466 amongst

others.

Therefore the failure of the lower court to consider this issue has occasioned miscarriage of justice to the appellant, its right to be fairly heard as guaranteed by the 1999 Constitution in respect of all issues emanating from his appeal has on the process been breached  
B by the lower court. Learned counsel cited the case of

1. Okoyi V. Njokanma (1991) 7 NWLR (pt. 202) 131 at 146. Consequently, learned counsel urged this court to invoke the provisions of Section 22 of the Supreme Court Act to consider this issue as  
C argued in the brief filed before the lower court; the case of Obi V. INEC (2007) 11 NWLR (pt. 1046) 512 was cited.

On the 2<sup>nd</sup> issue formulated by the appellant, the learned counsel contended that the lower court was wrong to have affirmed the trial court's decision that- it had territorial jurisdiction to try the  
D appellant for criminal proceedings and offences that actually emanated from Taraba State and none within the Federal Capital Territory, Abuja. Learned counsel submitted that by the virtue of the provisions of Section 257 (1) and (2) of the 1999 Constitution the Territorial jurisdiction of the trial court is limited only to criminal proceed-  
E ings offences that originated within the Federal Capital Territory Abuja and since the offences alleged against the appellant originated in Jalingo, Taraba State then the High Court of the Federal Capital Territory Abuja has no territorial jurisdiction to try the offences. The mere  
F mentioned of the word. "Abuja" each of the 41 counts by the respondent does not clothe the trial court with the territorial jurisdiction to try the charges alleged against the appellant. The trial court was under a duty to carefully look at the entire facts, circumstances, documents and other evidence placed before it to arrive at the correct  
G position, he relied on the case of I BWA V. Imana (2001) 17 WRN 1. The appellant contended that the sole reason why the respondent stated that some elements of the offences charged occurred in Federal Capital Territory Abuja is the initiation and payment of cheques issued in the name of the accountant of the Taraba State Liaison  
H officer Abuja, one Abdulrahman Mohammed, it was therefore the submission of the learned counsel to the appellant that the respondent's contention was misconceived for the facts that the cheques attached to the proof of evidence was initiated in Jalingo by some individuals excluding the appellant, none of the cheques bear

the appellant's name. The appellant did not personally cash any money and that the statement of Abdulrahman Mohammed is unreliable as it contradicts the contents of the documents attached to the proof of evidence. It is therefore wrong for the lower court to have contended that some elements of the offences occurred in Abuja.

It is the submission of the learned counsel to the appellant that the lower court was wrong in placing reliance on Section 4 (2) (b) of the Penal Code Act and Section 6 (m) and 7 (2) of the Economic and Financial Crimes Commission Act (EFCC) in Conferring territorial jurisdiction on the trial court as the said Sections are inconsistent with the provisions of Section 257 (2) of the constitution, and to the extent of this inconsistency they were void. B  
C

On the 3<sup>rd</sup> issue for determination, learned counsel submits that the lower court was in error when it relied on the provisions of Section 174 (1) of the 1999 Constitution to hold that the respondent who is not the owner of the funds allegedly misappropriated has the necessary locus standi to prosecute the said offences with which the appellant was charged before the trial court. D

Taraba State is considered as one of the 36 States that constitutes the Federal Republic of Nigeria by virtue of the provisions of Sections 3 (1) and 2 of the 1999 Constitution, hence only the attorney-General of Taraba State has the locus standi to prosecute anyone for offence committed against the laws of that State by virtue of the provisions of Section 211 (9) of the 1999 Constitution. E

Again by virtue of the provisions of Section 120 (1) of the 1999 Constitution all revenues, funds or monies received by a state belongs to that state and only the state has the powers to control the withdrawal or disbursement of the said funds. Learned counsel further submitted that the contention of the Respondent that only the Federal Government retains the power to prosecute offences committed within the Federal Capital Territory Abuja, is of no moment in view of the facts that neither the offence nor elements or part thereof occurred anywhere near the Federal Capital Territory, Abuja, couple with the fact that the E.F.C.C. who is prosecuting the appellant is not a department of the Attorney-General of the Federation neither is the prosecutor an officer of his department as required under Section 174 (1) of the 1999 Constitution. F  
G  
H

The learned counsel to the respondent at the hearing of this

appeal also adopted his brief of argument and urges this court to dismiss the appeal.

On its issue No. 1, learned counsel submitted that the territorial jurisdiction of the High Court of the Federal Capital Territory in Criminal matter is not determined by the provisions of Section 157  
B (2) of the 1999 Constitution but by Section 4 of the Panel Code Act. It is the submission of the learned counsel to the respondent that the two different instances were seemed to have been created by the provisions of Section 4 (2) (a) (b) of the Panel Code Act to wit:-

C (i) If the initial act or Omission or event occurs in the Federal Capital Territory Abuja, even though the other elements do not, the person who does that initial act or omission is triable by the High Court of the Federal Capital Abuja under the Panel Code, and

D (ii) If the initial act or omission or event occurs outside the federal Capital Territory Abuja, the offence or other acts or omissions or events occurring within the Federal Capital Territory Abuja, the person who does the initial act or omission afterwards enters the Federal Capital territory Abuja, he is by such entry triable by the High Court of Federal Capital Territory Abuja under the Panel Code. Reliance  
E was placed on the cases of:- NJOVENS V. STATE (1973) NNLR 76 180; WAZIRI V. THE STATE (1997) 3 NWLR (pt. 496) 689 at 716.

Hence from the provisions of section 4 of the Panel Code Act, some of the elements of the offences charged must occur in the  
F Federal Capital Territory Abuja before the High Court in Abuja can assume jurisdiction. Counsel cited the following cases: - Okoro V. Cop (1971) NNLR 13, Haruna V. State (1972) NSCC 550, at 560; and Adeniji V. State (2001) 13 NWLR (pt. 375) 392.

G It was the submission of the learned counsel that in order to determine the venue of the trial of an accused the charges preferred against the appellant must be looked into, the elements of the offences alleged (which are the acts, omissions or events) and the available evidence, available in the proof of evidence, showing connection  
H between the offences alleged and the Federal Capital Territory, Abuja. In respect of the counts alleging criminal misappropriation of funds, counsel referred to Section 308 of the Panel Code and the ingredients of the offence.

On the alleged misappropriated sum of N250M, counsel iden-

tified the memo that was raised for the purchase of office equipment and stationeries, the approval of the appellant in his handwriting, and the cheque of Pacific Bank account of Salman Global Ventures in Abuja, where the money was chased with on Equipment supplied, and the statement of one Abubakar Tufare where it was the money was cashed and given to the appellant in Abuja. B

On receiving gratification by public officer, counsel referred to Section 115 of the Panel Code and the ingredients of the offence. Counsel referred to the sum of N80M accepted by the appellant through Salman Global Ventures Limited on account of the IBI/ WUKARI Water project, the said sum was paid into the PACIFIC BANK C account of Salman Global Venture Ltd in Abuja, which the appellant did not deny in his statement.

Learned counsel moved to the counts bordering on Criminal breach of trust he referred to Section 315 of the Penal Code and the ingredients of the offence and referred to the sum of N24,3000,000 for the purchase of grain; which amount Abdulrahman Mohammed said in his statement the money was collected and handed over to the appellant at the Taraba Government Lodge in Abuja, the said Abdulrahman Mohammed is the Accountant in the Government Lodge Abuja. This was corroborated by the statement of Japhelth Wubon, the permanent Secretary in Taraba State Liaison Office Abuja. Learned counsel then submitted that all these show some of the acts and ingredients of the offences took F place in Abuja. He further submitted that the provisions of Section 4 (2) (b) of the Panel code is not only consistent with the constitutional provisions of Section 257 of the 1999 Constitution, but also in line with same. Section 257 (1) of the 1999 Constitution confers jurisdiction on the High Court of the Federal Capital Territory to hear and G determine criminal proceedings referred to it.

Section 257 (1) included proceedings which originated in the High Court of Federal Capital Territory Abuja or those that were brought to it in the appellate or supervisory jurisdiction. He therefore submitted that the appellant misconstrued “Civil or Criminal proceedings”, which originated in the High Court of Federal Capital Territory to mean an offence that originates in the Federal Capital Territory Abuja. The word “proceedings” can never mean or take the place of the word “offence”, learned counsel submitted. It is his fur H

ther submission that by the words of subsection 2 of Section 257, the Criminal Proceedings which the High Court of the Federal Capital Territory Abuja can entertain includes that which originates in the High Court of the federal Capital Territory Abuja, it goes without saying that the section does not exclude or purport to exclude offences which may originate in any other state and be completed or be partly performed in the federal Capital Territory Abuja. The case of *Mandara V. A-G Federation* 1984 SCNLR 31 at 343-344 was cited in support. Section 4 of the panel Code Act cannot therefore be said to derogate from Section 257 of the 1999 Constitution.

On the issue No. 2 in the respondents brief of argument dealing with the issue of whether the proof of evidence disclosed prima facie case against the appellant which the appellant alleged was not considered by the lower court even though both parties joined issues on it, learned counsel submits that the resolution of issue one formulated by the respondent in respect of which copious arguments have been canvassed is enough to resolve or determine the issue of prima facie. This is so because the two issues are intrinsically connected with each other.

In the resolution of the issue of venue, the lower court considered the proof of evidence before resolving that the High Court of Federal Capital Territory Abuja has jurisdiction, that the lower court only avoided delving into the substantive issue in an interlocutory application. The learned counsel did not dispute powers of this court to determine whether the proof of evidence disclosed prima facie case against the appellant pursuant to the provisions of Section 22 of the Supreme Court Act. He then submitted that since all the materials are before this court, if the court held that the lower court was in error for non-considering the issue, he urged the court to invoke its power as provided in the said section 22. However, in the consideration of this issue, the learned counsel placed reliance on statements of the witnesses and the documentary exhibits and urged this court to hold that the proof of evidence disclosed prima facie case against the appellant.

On the issue No. 3, of the respondents Brief of Arguments, learned counsel concedes that section 6 of the 1999 Constitution establishes courts of law for each state of the Federation and 9 High Court of the Federal Capital Territory Abuja, but is must however, be

pointed out that the Federal Capital Territory Abuja is by Section 299 of the 1999 Constitution treated as if it were one of the states of the Federation. The legislative powers exercisable by the respective State Houses of Assembly are exercisable by the National Assembly in respect of the Federal Capital Territory. The power to prosecute for the offences committed within the Federal Capital Territory Abuja is exercisable by the Federal Republic of Nigeria either through the Attorney-General of the Federal or any of its agents vested with the prosecutorial powers. Hence offences alleged in this case were committed or partly committed within the Federal Capital Territory, Abuja. Criminal Proceedings can only be initiated in the name of the Federal Republic of Nigeria. In addition, counsel submitted that by virtue of the provisions of Section 6 (m) of the Economic and Financial Crime Commission Act 2004, the Economic and Financial Crime Commission who is prosecuting this case is specially vested with the power to prosecute for all offences connectedly or relating to Economic or Financial Crimes. And Section 7 (2) (f) of the EFCC Act provides that the EFCC shall be the coordinating agency for the enforcement of the provisions of any law or regulations relating to economic and financial crimes including the Penal Code and Criminal Code.

On the issue that the funds allegedly mis-appropriated did not belong to the Federal Government, Counsel submitted that having regard to the embarrassing dimension which corruption has assumed in the Nigerian Nation it is desirable, a centrally co-ordinated fight against corruption and all corrupt official, this he submitted will not relegate principles of Federalism, he cited in support the case of Attorney -General, Ondo State vs. Attorney-General of the Federation (2002) 9 NWLR (Pt. 772) 222; and Attorney -General, Abia State vs. Attorney-General of the Federation (2006) 16 NWLR (pt. 1005) 265.

It was further submitted by the learned counsel that the power to prosecute for an offences in the Federal Capital Territory, Abuja, is not determined by the ownership of the property allegedly stolen or mis-appropriated or even the subject matter of the charge, what is relevant to determine are:-

- (a) who can exercise prosecutorial power over the offences;
- (b) the nature of the offence charged and/or where the offence is committed. Hence where an offence is committed in the

Federal Capital Territory, Abuja the Attorney-General of the Federal or any of the agencies of the Federal Government with prosecutorial powers may, by the provisions of Section 174 of the 1999 Constitution, prosecute the accused person in any court except Court Martial.

B Now, issue No. 1 in the appellants brief of argument bordering on the failure of the lower court to consider whether the proof of evidence disclosed prima facie case against the appellant, is the same with issue No.3 in the respondent's Brief of Argument. The respondent has submitted that the lower court considered this issue as it was  
C subsumed in the issue relating to the determination of the venue and competence of the charge 1, with respect, completely disagree with respondent on this point, the lower court's pronouncement was specific and clear. On this issue the lower court held per Odili, JCA as  
D follows:-

*"Issue No. 3 cannot be taken since it raises the matter of whether or not the charges ought to be quashed for prima facie case not being made out. This is because it is premature at this stage to consider the prime facie status of a matter which trial has not yet  
E kicked off, and what is at play being the proof of evidence."*

The general principle of law, in my humble understanding, is that a court should not comment on the substantive issues at the hearing of an interlocutory application. Substantive issues are meant to be decided on its merit, any attempts to lure the court into deciding such issues at the interlocutory proceedings should be resisted.  
F See: Bank of Ireland v. UBN Ltd. (1998) 7 SCNJ 385; Oduba v. Hontmangrachi (1997) 5 SCNJ 216. The lower court was apparently trying to follow this principle. However, the question that comes  
G to my mind, is "does this principle apply to this present case"? My answer is in the negative. The question whether the proof of evidence disclosed prime facie case against the appellant, is not to decide whether there is sufficient evidence in the proof of evidence that indicts or capable of proving the case against the appellant or enough  
H to convict the appellant for the offence charged, rather it is to examine the proof of evidence to find whether there is any evidence connecting the appellant to the offences charged or any allegation is the statements upon which the appellant can be called to explain his own position. It is not only unjust but also painful and unfair that an ac-

cused should be put on trial if there is no link between him and offence charged. I Rely on the following cases on this point:- Abacha V. The State (2001) 7 SCNJ 1; Ohwovoriole V. Federal Republic of Nigeria (2003) 1 SCNJ 484; Artuama V. The State (2007) 5 NWLR (pt. 1028) 466; Ikomi V. The State (supra) this court held an accused person should not be put on trial if there is no link between him and that offence. If the Judge grants consent to prefer information in the absence of such information, is bound to be quashed.” Also in Abacha v. The State (supra) this court per Belgore, JSC (as he then was) held that:-

“Thus if facts in a deposition where an oath in preliminary investigation or not on oath in mere statements attached to an information do not disclose a prime facie, the indictment must be quashed.”

In view of the above I have no hesitation in holding that the lower court was wrong in holding as it did. The determination of whether proof of evidence attached to a charge discloses a prima facie case or not does not involve the determination of whether the accused person was guilty or not, or whether there is sufficient evidence to convict him, rather it is to examine whether there is a connection or link between the accused person and the statements attached to the charges. Where there is a link a prime facie court would be entitled to proceed to trial, where there is no such link the charges should be dropped and quashed and the accused person discharged. For these reasons I resolve this issue in favour of the appellant. However, both parties have agreed and urged this court to invoke the provisions of Section 22 of the Supreme Court Act, to decide whether the proof of evidence in this case disclosed prime facie case against the appellant or not. I think this is a proper situation where this court should invoke its powers under Section 11 of the Supreme Court Act. This is so because all the material facts needed to determine this issue are before this court to remit this case back to the lower court to determine this sole issue will result in undue delay in the determination of this matter, and, it is in the interest of the parties and this society to put an end to litigation. See: Anyegwu v. Onuche (2009) 3 NWLR (pt. 1129) 659; and Obi v. INEC (2007) 11 NWLR (pt. 1046) 565. The learned counsel to the appellant have submitted that there is no link between the appellant and statement of witnesses

attached and that cheques attached were not signed by him. Learned counsel also submitted that the statement of Abdulrahman Mohammed which linked the appellant was denied by the appellant in his statement. The learned counsel, to the respondent to the contrary submitted that there was strong link between the appellant and the  
 B witnesses' statement attached to the charge and other documentary evidence. Learned counsel referred to some of the statements where accused person was linked with the offence.

I have carefully gone through the statements of the witnesses  
 C attached as part of evidence, and I will just refer to some of the witnesses statements and see whether there is a link between them and the appellant.

One Abubakar Tutare, a onetime commissioner of Finance under the appellant said:-

D *"On the issue of one hundred and eighty Million that I have collected back the said amount from Alli -Ibrahim Abubakar and was given to my Government by myself at Abuja, the money was collected in case as part of two hundred and fifty Million meant for the purchase of stationeries."*

E On the issue of receiving gratification as public officer, the allegation that involves the sum of on the Ibi/Wukari water project, the appellant in his own statement said:-

F *"I know Abubakar Ibrahim of Salman Global Ventures. I was been informed that EFCC call to interrogate the transaction regarding Ibi-Wukari water project. I was told my share of the funds was N80,000,000.00 which I never received directly but posted to Abubakar Ibrahim account. I was later told the money has been refunded to EFCC."*

G On the allegation of breach of trust involving the sum of N24,300,000.00 for the purchase of grains, one Abdulrahman Mohammed said in his statement:-

H *"On 8<sup>th</sup> July, 2005 I went to Jalingo officially to collect a cheque of twenty four Million three hundred thousand N24,300,000.00 (Naira only) meant to purchase some grains for Taraba State. When I came back I was instructed to cash the cheque and bring the cash to Governors lodge, P. T. Y Danjuman House, Asokoro. The instruction was given by me by his Excellency, Rev. Jolly T. Nyame through his chief detail mail, Adamu Aboki, which I obliged as usual. I brought the*

*money and kept it in his bedroom upstairs under the custody of his Stewart Mr. Dennis Umar Bobbo that has been the usual thing when I am instructed to bring monies to him at several times. Evidence of such payment will be brought by me tomorrow in Sha Allah."*

One Jopheth Wubon, who was as the Permanent Secretary in the Taraba State Liaison office, Abuja in his own statement said:- B

*"The cheque was raised and the money cashed by the Accountant of the liaison office, Abuja, Mal Abdurahman Mohammed who confirmed to me he delivered the sum i.e. N24,300,000.00 to His Excellency the Executive Governor then Rev. Jolly T. Nyame C personally. No grain was actually purchased."*

Witness statements of D. S. Tunde, Andrew A. Anbinkanme Joel Andrew, Bello Yero amongst others made copious reference to the accused person. As I stated before, the learned counsel submitted that the appellant denied some of the allegations in these statements and since the cheques were not cashed directly by the appellant made the statements to contradict documentary evidence thus rendering them inadmissible. With due respect to the learned counsel the fact that the appellant denied the contents of the statement is of no moment at this stage. So also is the issue of them being contradictory to the contents of the documents. It is for the trial court to determine their admissibility at the trial and not at this stage. I am of the firm view that there is a sufficient link between the appellant and witnesses' statements contained in the proof of evidence and I therefore hold that the proof of evidence disclosed prime facie case against the appellant. The trial court was therefore correct in granting the application to prefer charges against the appellant. D E F

On the second issue argued in the appellant brief of argument which is the same as issue No. one in the respondent's brief, as it concerns the jurisdiction of the High Court of Federal Capitals Territory, Abuja to try the offences charged, the learned counsel to the appellant predicted his submission on the provisions of Section 257 (1) and (2) of the 1999 Constitution and contended that the trial court only has jurisdiction to hear and determine criminal cases where the offences were committed within the Federal Capital Territory, Abuja. That, in the instant case, the alleged offences were committed in Jalingo Taraba State. It was his further contention that section 4 of the penal code is in consistent with provisions of Section 257 of the G H

1999 Constitution only conferred jurisdiction on the High Court of the Federal Capital Territory, Abuja, like other States High Court to hear both civil and criminal matters that is wholly and fully committed in the Federal Capital Territory. That where offence is partly committed in two different states, the High Court of any of the States can  
 B hear and determine the matter. He relied on the provisions of Section 4 of the panel code and submitted that section 4 of the panel code is not in any way inconsistent with the provisions of section 257 of the 1999 Constitution.

C My Lords, from the facts of this case and from part of the statements of the witnesses that I have set out above the following facts are not in dispute:-

1. The issuance of the cheque involved in the transactions that formed the basis of the offences were done in Jalingo Taraba  
 D State.

2. The payment of the cheques and the alleged handing over of the monies to the appellant was done in Abuja;

3. That the alleged offences were partly committed in Jalingo Taraba State and Abuja, within the Federal Capital Territory; and

E 4. The appellant entered the Federal Capital Territory Abuja I where he was arrested and arraigned before the High Court of Federal Capital Territory, Abuja.

In order to appreciate the submissions of the learned counsel to the parties one must digest Section 257 (1) of the 1999 Constitu-  
 F tion.

In my mind, Section 257 1) of the 1999 Constitution confers jurisdiction to hear both civil and criminal proceedings to include proceeding which originate in the High Court of the Federal Capital Territory Abuja and those brought before it in the exercise of its appellate or supervisory jurisdiction. The section does not preclude the court from exercising jurisdiction over criminal matters which offences were partly committed in other state and in the Federal Capital Territory Abuja. With respect, the word "include" is an indication that the  
 H contents of the section are not exclusive. It does not exclude offences which may originate in any other state and be completed in Abuja. In the case of MANDARA VS. ATTORNEY-GENERAL (1984)1 SCNLR 313, while interpreting the word "include" in a statute, Obaseki, JSC held as follows:-

*"I am satisfied that the word "include" is generally used in order to enlarge the meaning of words or phrases occurring in the body of a statute, and not when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the including clause declares that they shall include."* B

The argument of the appellant's counsel that since the offences alleged against the appellant all emanated or originated in Jalingo, Taraba State then the High Court of the Federal Capital Territory, Abuja has no territorial jurisdiction to try the offences pursuant to Section 257 (2) of the 1999 Constitution is not tenable. The learned counsel seemed to be concerned mainly with where the offences originated or emanated. As I have found above the offences were completed in Abuja even though they originated from Taraba State. Section 4 of the Penal Code, Cap 532 Laws of the Federation 1999 D provides as follows:-

*"4(1) whereby the provisions of any law of the Federation the doing of an act or the making of an omission is made an offence, those provisions shall apply to every person who is in the Federal Capital Territory, Abuja at the time of his doing the act or making the omission."* E

*(2) Where any such offence comprises several elements and any acts, omission or events occur which if they all occurred in the Federal Capital Territory Abuja, although the other acts, omissions or events which it they occurred in the Federal Capital Territory, Abuja occur elsewhere then in the Federal Capital Territory Abuja, then* F

*(a) If the act or omission, which in the case of an offence committed wholly in the Federal Capital Territory Abuja would be the initial element of the offences, occurs in the Federal Capital Territory, Abuja the person who does that act or makes that omission is guilty of an offence of the same kind and is liable to the same punishment as if all the subsequent elements of the offences occurred in the Federal Capital Territory, Abuja.* G

*(b) If that act or omission occurs elsewhere than in the Federal Capital Territory, Abuja and the person who does that acts or makes that omission after words enters the Federal Capital Territory, Abuja he is by such entry guilty of an offence of the same kind, and is liable to the same punishments, as if that act or omission had oc-* H

*curred in the Federal Capital Territory, Abuja and he had been in Federal Capital Territory, Abuja, when it occurred.”*

In my view two different instances appear to have been created by the provisions of Section 4 of the panel code act i.e.

(1) If the initial act or omission occurs in the Federal Capital Territory, Abuja even though the other, elements do not, the person who does that initial or omission is triable by the High Court of the Federal Capital Authority Abuja, and

(2) If the initial act or omission or event occurs outside the Federal Capital Territory, Abuja, the other acts or omissions or events occurred in the Federal Capital Territory Abuja and the person who committed acts or omission or event afterwards enters the Federal Capital Territory, Abuja he is by such entry triable by the High Court of Federal Capital Territory, Abuja.

It is important to note that some of the elements of the crimes must occur in Abuja before the High Court of the Federal Capital Territory Abuja could possess the jurisdiction to try the offences. The authorities are unanimous that if one of the elements of the offence or offences occurred in a particular State, the High Court of that State would be competent to assume jurisdiction. In the case of *NJOVEN V. The State* (1973) NNLR 76 at 80 this court held as follows:-

*“Admittedly Section 4 (2) of the panel code law is not easy to construe. The section is concerned with an offence that comprises of several elements and identifies these elements with “acts, omissions, events”. It is clear therefore that the elements in the Section is more widely concerned and is not and should not be limited to either acts or mens rea in conventional criminal jurisprudence. The initial elements, to which reference is made in the Section is the initial act or omission concerned and for the purpose of applying Section 4(2) it is necessary to look for that initial elements. If*

*(a) that initial element or omission “occurs in the State even though the other elements do not, the person who does that initial and or omission is punishable by the state under the penal code, on the other hand if;*

*(b) that initial act or omission occurs outside the State, the other or others occurring within the State and the person who does that initial act or omission, after*

*wards enters the State, he is by such entry triable by the State under the penal code."*

See: also the cases of Waziri v. The State (Supra) (Pt.716); Okoro v. Attorney-General Western Nigeria (1966) NMLR 13, 15-16; Haruna v. State (Supra) at 560 -561; and Adeniji v. The State (supra).

At this stage where the element of the offence or offences took place could only garnered from the statements in the proof of evidence, and not from any affidavit sworn to by the accused person, the accused person could not call affidavit evidence in addition to what may be garnered from the proof of evidence. See: AL-Mustapha V. The State (2001) 5 NWLR (Pt. 715) 414 at 422 per Oguntade, JCA (as he then was).

As I have said before, the elements of the offences charged in this case partly took place in Taraba State and the Federal Capital Territory, Abuja it therefore follows that either the High of Taraba State or the High Court of the Federal Capital Territory Abuja could try the offences. The lower court was therefore, in my view, right in holding that the trial court has the jurisdiction to try this matter. I also wish to point out that I am unable to see any inconsistency between the provision of Section 4 of the Penal Code Act and Section 257 of the 1999 Constitution. On the contrary the word "includes" in Section 257 (2) of the 1999 Constitution saves, the provisions of Section 4 of the Penal Code". The jurisdiction of the High Court to try criminal offences is not limited to only where the acts or omissions wholly took place within the State but also where part of the acts, omission or event took place in another State. I therefore resolve this issue against the appellant.

The last issue in contention in this case involves the question of the locus standi of the respondent to prosecute the case since the funds allegedly misappropriated belong to Taraba State and not the Federal Government. It was the contention of the learned counsel to the appellant that by virtue of the provisions of Section 211 (1) of the 1999 Constitution, it is the Attorney-General of Taraba State that has the power to prosecute the appellant, since the funds allegedly stolen belong to Taraba by virtue of the provisions of Section 120(1) of the 1999 Constitution.

Learned counsel to the respondent submitted that by virtue of Section 299 of the 1999 constitution, the Attorney-General of the

Federation has power to initiate criminal proceedings against any person who has committed an offence within in the Federal Capital Territory, Abuja before the trial court. Learned counsel referred to Section 7 (2) of the EFCC Act, which empowers the commission to prosecute offenders on behalf of the Federal Government of Nigeria.

B In the consideration of Sections 120, 211, 174 and 299 of the 1999 Constitution, and Sections 6 (m) and 7(2) of the EFCC Act, 2004 the lower court held as follows:-

C *“In the pursuit of crime prevention we cannot run away from carrying out those assignments in full view of the necessary jurisdiction of court. The issue here is not who owns the money, in question, but how the prosecution in the light of an alleged criminal infringement of the penal code Act, of the EFCC can be handled properly on the balance of justice of an alleged therefore the answer to whether*  
D *the respondent has locus standi or not cannot arise since in the enforcement of the law especially that of the criminal law the Federal Government or its agencies can initiate and prosecute once the relevant statute so authorize and in the case before us the constitution of the Federation 1999 vide sections 174 and 299 so provide. I place*  
E *reliance upon sections 6 (m), 46, 7(2) of the EFCC Act, 2004, Sections 74 and 299 of the 1999 Constitution, Olafisoye v. FRN (2004) 4 NWLR (Pt. 864) 59, Attorney-General Abia v. Attorney-General Federation (2006) 16 NWLR (Pt.1005) 55.”*

F The holding of the lower court above is in accord with decision of this court in Attorney-General Ondo State v. Attorney-General Federation (2002) 9 NWLR (Pt. 772) 222 at 308 where this court held thus:-

G *“It has been pointed out that provisions of the Act impinge on the cardinal principle of Federalism, namely the requirement of equality and autonomy of the State Government and non interference with the functions of State Government. This is true, but as seen above, both the Federal and State Government share the power to legislate in order to abolish corrupt and abuse of office. If this is a*  
H *breach of the principle of federalism, then, I am afraid, it is the constitution that makes provisions that have facilitated breach of the principle. As far as the aberration is supported by the provisions of the constitution, I think it cannot rightly be argued that an illegality has occurred by the failure of the constitution to adhere to the cardi-*

*nal principle which is at best ideals to follow in guidance for an ideal situation.”*

To my mind both the State and Federal Government has the joint responsibility to fight corruption and abuse of office which have been the bane of our society. Section 7 (m) of the EFCC Act, 2004, empowers the EFCC to enforce any law or regulation relating to economic and financial crimes including the criminal code and penal code See: Attorney-General Abia State v. Attorney-General Federation Supra at 265. It is not a defence known to law that an accused cannot be prosecuted by the authority with prosecutorial powers on the ground that the prosecutor is not the owner of the stolen items. Criminal offence is an offence against the State. A prosecutor needs not have an interest in the subject matter of the complaint before he could prosecute an accused person. He is protecting the State and its citizens, and it is my view that every prosecutor or authority or agency vested with the powers to prosecute should be encouraged to carry out their duties, provided the due process is maintained and followed. In the circumstance I find no merit in the submissions of the appellant and I consequently resolve this issue against the appellant.

Finally, the appeal is devoid of any merit and same is accordingly dismissed. This case is hereby remitted back to the trial court for trial. If the respondent is able to prove their case against the appellant in accordance with the law, then of course, the appellant shall be punished accordingly. However, if the prosecution could not establish their allegations beyond reasonable doubt, then it goes without saying, that the appellant will be discharged and acquitted by the trial court and no other. That this matter being a case that has been lingering on since 2007 an order of accelerated hearing by the trial court is hereby made for the quick and just dispensation of justice of the matter.