

SUPREME COURT OF NIGERIA
FRIDAY 19TH APRIL, 2013. SC. 207/2008
**CORAM:- M. MOHAMMED, J. A. FABIYI, B. RHODES-
VIVOUR, M. U. PETER-ODILI, K. B. AKA'AH, JJSC**

1. RALPH UWAZURUIKE
2. AMBROSE ANYASO
3. AUGUSTINE IHUOMA
4. CHIBUIKE NWOSU APPELLANTS
5. KELECHI UBABUIKE
6. CHIMANKPA OKOROCHA
7. BENEDICT ALAKWEM
V.
THE ATTORNEY-GENERAL
OF THE FEDERATION RESPONDENT

ORDERS OF COURT - Obedience to - A person served with valid court order - Should ensure that he obeys it in full - As failure to do so may amount to willful breach of it (H1)

ORDERS OF COURT - Non service - Effect - An order is not binding if made on a person - Who has not been served with it (H2)

COURTS - Federal High Court - Divisions - There are several divisions of the court - But their decisions are not binding on each other - As they are courts of coordinate jurisdiction (H3)

COURTS - Federal High Court - Jurisdiction - Treason - By 1999 Constitution s. 251(2) - The court can summarily try treason - Treasonable felony - And allied offences (H4)

CRIMINAL PROCEDURE - Charges - Summary trial - CPA s. 277 provides for summary trial - Whereby accused is not provided with - All evidence relied on by prosecution (H5)

CRIMINAL PROCEDURE - Trial on information - CPA s. 334 provides for trial on information - Containing the charge - PW statement - Accused's statement - And list of exhibits (H6)

CRIMINAL PROCEDURE - Charges - Validity - Federal H.C. Act s. 33(1)(2) - The four count charge is proper - Since proof of evidence does not accompany charge - In summary trial (H7)

CHARGES - Summary trial - Unfavourable condition to accused - Where accused is not satisfied with the information attached - He is expected to apply to the court (H8)

FACTS

Accused/appellants were summarily arraigned before the Federal High Court Abuja on four count charge of treason, treasonable felony and allied offences contrary to and punishable under the applicable provisions of the Criminal Code Act Cap 77, LFN 1990. Appellants entered not guilty pleas to the four count charge. Thereafter the learned trial Judge, Nyako J heard appellants' two motions for bail and dismissal of the charges in limine and to restrain prosecution/respondent from prosecuting appellants on the same facts as those in an earlier application of 1st November 2005.

The court refused the bail application and also refused to dismiss the charges against appellants. The court equally refused to restrain respondent from prosecuting appellants on the aforesaid application of 1st November 2005. Dissatisfied, appellants filed appeal to the Court of Appeal Abuja. In its judgment, the court admitted appellants to bail, but refused to dismiss the four count charge. Appellants have further appealed to Supreme Court challenging the refusal of the Court of Appeal to dismiss the four count charge.

ISSUES FOR DETERMINATION

1. Whether the arraignment of the appellant before the Federal High Court Abuja, despite a subsisting order of the Federal High Court Owerri to the contrary was proper in Law.

2. Whether the Court of Appeal should not have dismissed the charges against the appellant.

HELD (Unanimously dismissing the appeal per ***RHODES-VIVOUR JSC***)

ORDERS OF COURT - Obedience to

1. The well laid down position of the Law is that anyone who is served with, or becomes aware of a valid Order of court should ensure that he obeys it in full. Failure to obey a valid Court order may amount to willful breach of it which could lead to contempt proceedings with serious consequences.

(p. 1964 B)

ORDERS OF COURT - Non service - Effect

2. My lords, the Order made on 18/1/05 was an Order directed to proceedings before the Owerri Federal High Court and not to proceedings before the Abuja Federal High Court or proceedings that may subsequently arise before other Courts for breaches of the Law by Ralph Uwazuruike. The Order of the Owerri Federal High Court made on 18/1/05 was made ex-parte, i.e. without notice to the respondents. The Order was to be served on the respondent in time for an inter partes hearing fixed for 1/2/05. The onus is on learned counsel for the appellant to satisfy this Court that the said order was indeed served on the respondent. The Record of Appeal and the brief of learned counsel for the appellant were unable to discharge that onus. The respondent is in the circumstances not bound by an Order that was not served on him. The order did not bind him. The reasoning being that an order is not binding if made on a person who has not been served with it. In the absence of service it is clear that the ex-parte Order was obtained solely in the belief of counsel that it was enough to stall a criminal trial against the appellant. This sadly has not been the case and can never be the case. (p. 1964 D)

Federal High Court - Divisions

3. There is only one Federal High Court in Nigeria, but there are several Divisions of that court spread all over Nigeria. The decision of a Division of the court does not bind the other or another Division of the court. They are decisions of courts of co-ordinate jurisdiction. The Federal High Court Owerri and the Federal High Court Abuja are courts of concurrent jurisdiction. The Orders of an Owerri Federal High Court made

on the 18th of January 2005 restraining the named respondents from arresting Ralph Uwazuruike relates to the proceeding before the Owerri Federal High Court which were ongoing at the time the Orders were made ex-parte. The orders are in no way related, nor do they affect or stop a subsequent
B **arraignment of Ralph Uwazuruike for treason etc. (p. 1965 B)**

Federal High Court - Jurisdiction - Treason

4. Section 251(2) of the 1999 Constitution as altered by the first, second and third Alterations Act, 2010 states that:
C

“The Federal High Court shall have and exercise jurisdiction and powers in respect of treason, treasonable felony and allied offences.”

While section 33(2) of the Federal High Court Act
D **states that:**

“Notwithstanding the generality of subsection (1) of this section all criminal cases or matters before the Court shall be tried summarily.”

The combined reading of section 251(2) of the Constitution and section 33(2) of the Federal High Court Act is that jurisdiction is conferred on the Federal High Court by the Constitution to try treason, treasonable felony and allied offences, and these offences shall be tried summarily.
E
F (p. 1966 A)

Charges - Summary trial

5. Section 277 of the Criminal Procedure Act provides for summary trials. Summary trials are short and fast. Cases tried summarily, are disposed in a prompt and simple manner. Attached to a charge to be tried summarily are scanty summary of the evidence the prosecution would rely on. Put in another way it is not all the evidence relied on by the prosecution that is made available to the accused person before trial.
G
H (p. 1966 D)

CRIMINAL PROCEDURE - Trial on information

6. On the other hand trials can also be on information. Section 334 of the Criminal Procedure Act provides for trial on

information. An information is a comprehensive document which guides the court, the prosecution and the accused person, during trial.

It contains the following:

- (a) the charge, statement of offence and particulars of the offence;** B
- (b) the statement of the witnesses for the prosecution;**
- (c) statement of the accused person;**
- (d) list of exhibits; and**
- (e) all relevant documents etc that the prosecution intends to rely on at trial. (p. 1966 E)** C

Charges - Validity

7. The learned trial judge then proceeded to direct the prosecution to file proof of evidence. The Court of Appeal agreed with the learned trial judge. The reasoning of that Court was that in the spirit of the Constitution, a man charged with treason which is an offence punishable with death must, know the details of the offence beforehand and be given adequate time to prepare his defence. I am in complete agreement with both courts below. I must say straightway that *Abacha v. State (supra)* is not relevant. That case was tried in a State High Court where trials are conducted on information. This suit was filed in the Federal High Court by virtue of the provisions of section 33(1) and (2) of the Federal High Court Act where offences such as treason, treasonable felony are tried summarily. In the circumstances the four count charge is not improper because in summary trials proof of evidence do not accompany the charge. (p. 1967 B) D E F G

CHARGES - Summary trial - Unfavourable condition to accused

8. Where the accused person is not satisfied with the information attached to the charge in a summary trial he is expected to apply to the court. To order the prosecution to provide more facts to the accused person is entirely in the court's discretion. H

The learned trial judge found that what was attached to the charge/s was enough for the accused persons to prepare for

their defence. Notwithstanding this finding the learned trial judge proceeded to order that the prosecution (respondent) files a proof of evidence. This was done. (p. 1967 F)

REPRESENTATION

- B F. Keyamo, O. Otemu, J. A. Inetor, for the Appellants
Chief (Mrs.) V. O. Awomolo, W. Balogun, E. Nwaeze, A. Odeyemi,
Miss. A. M. Amissine, for the Respondent

CASES REFERRED TO

- C Ezegbu v. FATB (1992) 1 NWLR (pt. 220) 699
Ibrahim v. Emein (1996) 2 NWLR (pt. 430) 322
Mobil Oil Nig. Ltd. v. Assan (1995) 8 NWLR (pt. 412) 129
Abacha v. State (2002) 5 NWLR (pt. 761) 638
D Gaji v. State (1974-1975) 9 NSCC 294
Erisi v. Idika (1987) 4 NWLR (pt. 66) 503
Gov. Lagos State v. Ojukwu (1986) 1 NWLR (pt. 18) 621
Fawehinmi v. IGP (2002) 7 NWLR (pt. 767) 606
FDB Fin. Serv. Ltd v. Adesola (2001) 6 NWLR (pt. 710) 690
E Kokoro - Owo v. Lagos State Govt (2001) 11 NWLR (pt. 723) 237

STATUTES REFERRED TO

- Criminal Code Act Cap 77 LFN 1990, ss. 27(1), 37(2), 62(1)(2),
63, 64, 277
F Federal High Court Act Cap 133 LFN 1990, s. 33(2)
Constitution of Federal Republic of Nigeria, ss. 45(1), 214, 251(2)
National Security Agencies Decree 1986 Cap 278 LFN 1990, s. 2(2)
(1)
G Police Act Cap 359 LFN 1990, s. 4

LEAD JUDGMENT BY RHODES-VIVOUR JSC

- On the 8th day of November, 2005 the appellants' as accused
persons were arraigned before a Federal High Court, Abuja, and
H charged on four counts which read as follows:

Count 1

That you Ralph Uwazurike (M) 45 years old, Chibuike Nwosu
(M) 23 years old, Benedict Alakwen (M) 45 years old, Chimankpa
Okorochoa (M) 19 years old, Kelechi Ubabuike (M) 27 years old,

Ambrose Anyaso (M) 46 years old and Augustine Ihuoma (M) all of MASSOB Headquarters, Okwe, Onu-Imo Local Government Area of Imo State on diverse dates (between January 2004 and October 2005) at Owerri Imo State and other places in Nigeria within the jurisdiction of the Federal High Court with intent to levy war, over-
awe and overthrow the legitimate Government of Nigeria did conspire among yourselves to commit felony to wit: treason against the President of the Federal Republic of Nigeria and you thereby committed an offence contrary to section 37(2) of the Criminal Code Act Chapter 77, Laws of the Federation of Nigeria 1990 and punishable under section 37 of the Criminal Code Act.

COUNT 2

That you Ralph Uwazurike (M) 45 years old, Chibuike Nwosu (M) 23 years old, Benedict Alakwen (M) 45 years old, Chimankpa Okorocho (M) 19 years old, Kelechi Ubabuike (M) 27 years old, Ambrose Anyaso (M) 46 years old and Augustine Ihuoma (M) all of MASSOB Headquarters, Okwe, Onu-Imo Local Government Area of Imo State on diverse dates (between January 2004 and October 2005) at Owerri Imo State and other places in Nigeria within the jurisdiction of the Federal High Court did commit treason against the Federal Republic of Nigeria by belonging to a Militant Group called MASSOB ARMY which is undergoing training with intent to levy war in order to intimidate overawe and overthrow the President and Government of the Federal Republic of Nigeria and up thereby committed a felony contrary to and punishable under section 237(1) of the Criminal Code Act chapter 77 Laws of the Federation of Nigeria 1990.

COUNT 3

That you Ralph Uwazurike (M) 45 years old, Chibuike Nwosu (M) 23 years old, Benedict Alakwen (M) 45 years old, Chimankpa Okorocho (M) 19 years old, Kelechi Ubabuike (M) 27 years old, Ambrose Anyaso (M) 46 years old and Augustine Ihuoma (M) all of MASSOB Headquarters, Okwe, Onu-Imo Local Government Area of Imo State on diverse dates (between January 2004 and October 2005) at Owerri Imo State and other places in Nigeria within the jurisdiction of the Federal High Court are members of unlawful society called MASSOB and you hereby committed a felony contrary to and punishable under section 64 of the Criminal Code Act chapter

77 Laws of the Federation of Nigeria 1990.

COUNT 4

That you Ralph Uwazurike (M) 45 years old, Chibuike Nwosu (M) 23 years old, Benedict Alakwen (M) 45 years old, Chimankpa Okorochoa (M) 19 years old, Kelechi Ubabuike (M) 27 years old, B Ambrose Anyaso (M) 46 years old and Augustine Ihuoma (M) all of MASSOB Headquarters, Okwe, Onu-Imo Local Government Area of Imo State on diverse dates (between January 2004 and October 2005) at Owerri Imo State and other places in Nigeria within the jurisdiction of the Federal High Court formed, managed and assisted C in the management of an unlawful society of more than ten persons known and called MASSOB MEMBERS with the objective of:

- (a) subverting or promoting the subversion of the Government of the Federal Republic of Nigeria and its officials;
 - D (b) committing, inciting acts of violence and intimidation;
 - (c) interfering with, resisting, encouraging interference with or resistance to the administration of law; and
 - (d) disturbance of peace and order in the entire country-
- Nigeria contrary to section 62(1)(2) and punishable under section E 63 of the Criminal Code Act chapter 77 Laws of the Federation of Nigeria 1990.

The accused persons entered not guilty pleas to the four count charge. Thereafter the learned trial judge, Nyako J heard two motions for:

- F 1. Bail
- 2. Dismissal of the charges in limine and to restrain the respondent from prosecuting the accused persons on the same facts as those in the application of 1st day of November 2005.

G In a considered Ruling delivered on the 27th of January 2006 the learned trial judge refused to grant the accused persons bail, and also refused to dismiss the charges against the accused persons. On restraining the respondent from prosecuting the accused persons on the same facts as those in the application of the 1st day of November, H 2005 the learned trial judge said:

“...I have not said anything about the orders made on the Fundamental Right Enforcement Procedure action, at Owerri because if the accused persons are alleging contempt then they know what to do but not to subsume that into this Criminal trial.”

Dissatisfied with the Ruling of the learned trial judge the accused persons filed an appeal. The appeal came before the Court of Appeal Abuja Division. In a judgment delivered on the 15th day of May, 2008 the Court of Appeal admitted all the accused persons to bail, but refused to dismiss the four count charge. This appeal is against the refusal of the Court of Appeal to dismiss the four count charge filed against the accused persons. B

In accordance with Rules of this court briefs were filled and exchanged. Learned counsel for appellants, filed separate briefs for the seven appellants on the 19th of August 2008, and reply brief on the 18th of November 2008. Learned counsel for the respondent filed a respondent's brief on the 9th of October 2008. In the brief filed on behalf of Ralph Uwazuruike two issues were formulated. They are: C

1. Whether the arraignment of the appellant before the Federal High Court Abuja, despite a subsisting order of the Federal High Court Owerri to the contrary was proper in Law. D

2. Whether the Court of Appeal should not have dismissed the charges against the appellant.

A sole issue was formulated for all the other six appellants and that issue is identical with issue 2 above. E

Learned counsel for the respondent adopted the appellants' issues. At the hearing of the appeal on the 31st day of January 2013 both counsel for the parties adopted their briefs. F

ISSUE 1

"Whether the arraignment of the appellant before the Federal High Court Abuja despite a subsisting order of the Federal High Court Owerri to the contrary was proper in Law."

Learned counsel for the appellants' (but submitting on behalf of Ralph Uwazuruike alone) Mr. F. Keyamo submitted that the arraignment of Ralph Uwazuruike before the Federal High Court Abuja, despite a subsisting order of the Federal High Court, Owerri to the contrary was a contemptuous act that should have moved the court to exercise its disciplinary jurisdiction to quash the charge/s against the appellant. Referring to the order of the Federal High Court, Owerri made on 18/1/05, he argued that the said order was a stay of any arrest of Ralph Uwazuruike contending that it was wrong for the respondent to arrest and charge him to court when the said order G H

was subsisting. Relying on *Ezegbu v. FATB* 1992 1 NWLR pt.220 p.699, *Alhaji A. Ibrahim v. Col. C. Emein & ors* 1996 2 NWLR pt.430 p.322. He submitted that since this criminal proceeding against the appellant has its root in illegality justice demands that the proceeding be quashed and the appellant discharged.

B In reply, learned counsel for the respondent, Chief (Mrs.) V.O. Awomolo argued that the order of the High Court Owerri did not prohibit the State from taking the appellant before a court of law for crimes he committed, contending that the said order cannot prohibit criminal prosecution against the appellant. Arguing further she observed that the appellant cannot continue to hide under the said ex-parte order to violate laws of the land. Reliance was placed on section 45(1) of the Constitution. Concluding her submissions she observed that the said order was not served on the respondent neither was he (respondent) put on notice of the said order. Learned counsel urged this court to sustain the decision of the Court of Appeal.

For clarity, I must explain that there are seven appellants' all of them were accused persons before the trial Federal High Court in E Abuja. Issue 1 relates only to Ralph Uwazuruike (one of the accused persons) since he was the only one who went before an Owerri Federal High Court for the enforcement of his fundamental rights which resulted in the Court's order of the 18th of January 2005.

F Issue 2 relates to all the appellants; since all of them want the charge/s dismissed.

1. Whether the arraignment of the appellant before the Federal High Court Abuja despite a subsisting Order of the Federal High Court Owerri to the contrary was proper in Law. R a l p h G Uwazuruike instituted a suit before an Owerri Federal High Court for the enforcement of his fundamental human rights, and on the 18th day of January, 2005 he obtained an order ex-parte. The respondents in the action were:

- H
1. The Director of State Security (S.S.S.) (Imo State)
 2. The Director-General, State Security Service S.S.S.
 3. The Commissioner for Police, Imo State
 4. The Inspector-General of Police
 5. The Attorney-General of the Federation and Minister of Justice.

The court ordered as follows:

1. Leave is granted the appellant to enforce his Fundamental Rights against the 5 named respondents.
2. The leave hereby granted shall act as a stay of any arrest, threat or arrest, invasion of the applicant's privacy or any act that would deprive the applicant of free movement in the country pending the hearing of the substantive application. B
3. The applicant shall not within the pendency of this action address any press conference or grant any interview whatsoever to any person or organization until the hearing and determination of the substantive application. C
4. The applicant shall within 7 days enter into bond in the sum of N100,000.00 to persecute the main application and if the applicant shall fail to diligently prosecute the case, shall forfeit the above sum to the Federal Government. D
5. Return date shall be 1/2/05 and case is adjourned to 1/2/05 for hearing.

This ex-parte order was made on the 18th of January, 2005 by an Owerri Federal High Court. The argument advanced by Mr. F. Keyamo is that the respondent was wrong to arraign Ralph Uwazuruike before an Abuja Federal High Court on the 8th of November 2005 on four count charge for treason etc, while the Owerri Federal High court Order of the 18th of January 2005 was still in force. This is what the Court of Appeal had to say: E

"...It is apparent that the Federal High Court, Owerri and Federal High Court, Abuja are courts of concurrent jurisdiction, therefore the contention by the counsel for the appellants' that 1st appellant was charged to court maliciously in flagrant disrespect of an order of Federal High Court, Owerri cannot be correct because Courts that are of similar or concurrent jurisdiction are not bound to follow the decision of each other See Prof A.D. Olutola v. University of Ilorin 2005 3 WRN p.22. F G

Furthermore on this issue the parties in the case before the trial court at Abuja are not the same with that of the case filed at the Owerri Federal High Court. H

I also agree with the submission of learned counsel for the respondent that the order granted by the Federal High Court Owerri was an ex-parte order for the applicant i.e. the 1st appellant in this

court to enforce his Fundamental Human Rights, it was not an order directed to the proceedings before same court sitting in Abuja. And apart from the above, there was no evidence of service of the court processes on the Attorney-General of the Federation.

Consequently, it is my view that the trial Judge was right not to have given credence to the Order of the Federal High Court, Owerri as the Order given by that Court was not binding on her.

In view of the foregoing, this issue is resolved against the appellants'...

The well laid down position of the Law is that anyone who is served with, or becomes aware of a valid Order of court should ensure that he obeys it in full. Failure to obey a valid Court order may amount to willful breach of it which could lead to contempt proceedings with serious consequences. See Mobil Oil Nig. Ltd. v. Assan 1995 8 NWLR pt. 412 p. 129.

My lords, the Order made on 18/1/05 was an Order directed to proceedings before the Owerri Federal High Court and not to proceedings before the Abuja Federal High Court or proceedings that may subsequently arise before other Courts for breaches of the Law by Ralph Uwazuruike. The Order of the Owerri Federal High Court made on 18/1/05 was made ex-parte, i.e. without notice to the respondents. The Order was to be served on the respondent in time for an inter partes hearing fixed for 1/2/05. The onus is on learned counsel for the appellant to satisfy this Court that the said order was indeed served on the respondent. The Record of Appeal and the brief of learned counsel for the appellant were unable to discharge that onus. The respondent is in the circumstances not bound by an Order that was not served on him. The order did not bind him. The reasoning being that an order is not binding if made on a person who has not been served with it. In the absence of service it is clear that the ex-parte Order was obtained solely in the belief of counsel that it was enough to stall a criminal trial against the appellant. This sadly has not been the case and can never be the case.

Ezegbu v. FATB 1992 1 NWLR pt.220 p.699 and Alhaji A. Ibrahim v. Col. Emein & ors 1996 2 NWLR pt 430 p.322, relied on by learned counsel for the appellant in support of the position of

the law that Orders of a court must be obeyed are irrelevant as in the two cases there was service of the order on the adverse party, while in this case there was no service on the respondent of the Owerri Federal High Court Order made 18/1/05. In the absence of service of the order the respondent is not expected to obey it. An Order not served on a respondent loses its potency and the respondent is not bound by it. The arraignment of the appellant before an Abuja Federal High Court was in accordance with the Law and both courts below were correct in their findings. B

There is only one Federal High Court in Nigeria, but there are several Divisions of that court spread all over Nigeria. The decision of a Division of the court does not bind the other or another Division of the court. They are decisions of courts of co-ordinate jurisdiction. The Federal High Court Owerri and the Federal High Court Abuja are courts of concurrent jurisdiction. The Orders of an Owerri Federal High Court made on the 18th of January 2005 restraining the named respondents from arresting Ralph Uwazuruike relates to the proceeding before the Owerri Federal High Court which were ongoing at the time the Orders were made ex-parte. The orders are in no way related, nor do they affect or stop a subsequent arraignment of Ralph Uwazuruike for treason etc. C D E

2. Whether the Court of Appeal should not have dismissed the charges against the appellant.

Learned counsel for the appellant observed that since there was no proof of evidence accompanying the charge the procedure by which the appellant was charged was improper. Relying on *Abacha v. State* 2002 5 NWLR pt.761 p.638. He submitted that in the absence of proof of evidence accompanying the charges' against the appellants all the charges' ought to be dismissed. F G

In reply learned counsel for the respondent observed that the appellants were arraigned to face a summary trial which does not require proof of evidence and not a trial on information which requires proof of evidence. Relying on section 33(2) of the Federal High Court Act, Section 251(2) of the Constitution, he argued that *Abacha v. State* supra is not applicable, contending that the courts below were right not to dismiss the charges. He urged on this Court to dismiss the appeal. H

Section 251(2) of the 1999 Constitution as altered by the first, second and third Alterations Act, 2010 states that:

“The Federal High Court shall have and exercise jurisdiction and powers in respect of treason, treasonable felony and allied offences.”

B While section 33(2) of the Federal High Court Act states that:

“Notwithstanding the generality of subsection (1) of this section all criminal cases or matters before the Court shall be tried summarily.”

C The combined reading of section 251(2) of the Constitution and section 33(2) of the Federal High Court Act is that jurisdiction is conferred on the Federal High Court by the Constitution to try treason, treasonable felony and allied offences, and these offences shall be tried summarily.

D Section 277 of the Criminal Procedure Act provides for summary trials. Summary trials are short and fast. Cases tried summarily, are disposed in a prompt and simple manner. Attached to a charge to be tried summarily are scanty summary of the evidence the prosecution would rely on. Put in another way it is not all the evidence relied on by the prosecution that is made available to the accused person before trial.

E On the other hand trials can also be on information. Section 334 of the Criminal Procedure Act provides for trial on information. An information is a comprehensive document which guide the court, the prosecution and the accused person, during trial.

F It contains the following:
G (a) the charge, statement of offence and particulars of the offence;

(b) the statement of the witnesses for the prosecution;

(c) statement of the accused person;

(d) list of exhibits; and

H (e) all relevant documents etc that the prosecution intends to rely on at trial.

Now, can it be said that the four count charge is improper because there is no proof of evidence accompanying the charge/s. The learned trial judge remarked that:

“...but I believe without compromising the fundamental requirement that an accused needs to know the evidence against him so as to prepare his defence.. What the prosecution has filed is titled summary of Overt Act. It goes ahead to itemize the acts alleged against the accused persons and the times and places... it has given the accused person all they need to know to prepare their defence. If they need more all they need do is apply to the court to order the prosecution to provide more facts or be more explicit...”

The learned trial judge then proceeded to direct the prosecution to file proof of evidence. The Court of Appeal agreed with the learned trial judge. The reasoning of that Court was that in the spirit of the Constitution, a man charged with treason which is an offence punishable with death, must know the details of the offence beforehand and be given adequate time to prepare his defence. I am in complete agreement with both courts below. I must say straightway that Abacha v. State (supra) is not relevant. That case was tried in a State High Court where trials are conducted on information. This suit was filed in the Federal High Court by virtue of the provisions of section 33(1) and (2) of the Federal High Court Act where offences such as treason, treasonable felony are tried summarily. In the circumstances the four count charge is not improper because in summary trials proof of evidence do not accompany the charge.

Where the accused person is not satisfied with the information attached to the charge in a summary trial he is expected to apply to the court. To order the prosecution to provide more facts to the accused person is entirely in the court’s discretion. See Gaji v. State 1974-1975 9 NSCC p.294. The learned trial judge found that what was attached to the charge/s was enough for the accused persons to prepare for their defence. Notwithstanding this finding the learned trial judge proceeded to order that the prosecution (respondent) files a proof of evidence. This was done.

What then may I ask is the need for this appeal? It is the case of the appellants that the charge/s against them are improper because there was no proof of evidence accompanying the charge. The learned trial judge ordered proof of evidence filed. With the filing of

the proof of evidence there was no longer the need to have the charge/s dismissed since the non filing of proofs of evidence was the reason for seeking dismissal of the charge/s. In a summary trial accused persons are entitled to know the nature of the charge and not the nature of the evidence. The appellants were charged for treason before a Federal High Court and by virtue of section 33(1) and (2) of the Federal High Court Act they are to be tried summarily. Though the appellants are not entitled to know the nature of evidence against them, the learned trial judge, ordered the nature of evidence (information) served on the appellants and this was done before the appellants' filed their appeals in the Court of Appeal. This appeal to my mind is unnecessary and clearly a waste of precious judicial time since all the information imaginable that the appellants' would need for their defence has been available to them before they appealed to the Court of Appeal.

Courts are set up for the sole purpose to do substantial justice between the parties. Substantial justice entails justice to the court, the accused person and the public. The argument that the charge/s should be dismissed because it was not accompanied by proof of evidence is a mere technicality designed to defeat the course of justice. In the light of the fact that the proof of evidence has been filed and is available to the appellants' trial should proceed with dispatch.

The result is that the two issues urged in this appeal on behalf of the appellants' fail, and the appeal must fail as there is no merit. This appeal is dismissed.

MOHAMMED JSC

This Appeal is against the Judgment of the Court of Appeal Abuja Division of 15/5/2008 in which Bada JCA in the lead Judgment refused to quash the charges against the Appellants of Treason and Treasonable offences against the state for alleged failure of the prosecution to support their application for trial with proofs of evidence. The Order of the Federal High Court, Owerri which the Appellants claimed was violated by the trial Federal High Court Abuja where the Appellants were arraigned for trial reads:-

"The leave hereby granted shall act as stay or any arrest threat of arrest, invasion of the Applicant's privacy or any act that would

deprive the Applicant of free movement in the Country pending the hearing of the substantive application.”

This order relates to the 1st Appellant alone. The court of Appeal allowed the Appellants appeal, granted them Bail but refused to quash the charges against them in spite of its finding that the charges were not supported by proof of evidence as required by law in the prosecution of capital offences. The Appellants are on a further appeal here against the refusal by the Court of Appeal to quash the charges against them. The 2 issues raised in the 1st Appellants brief of argument are:-

“1. Whether the arraignment of the Appellants before the Federal High Court Abuja, despite a substituting order of the Federal High Court Owerri to the contrary was proper in law. (Ground 1).

2. Whether Court of Appeal should not have dismissed the charges against the Appellants.”

On the 1st issue, it was clear from the order that it was made in granting leave to the 1st Appellant to enforce his Fundamental Rights said to have been breached by the Respondents. The order of stay of action was made pending the determination of the application for the alleged breach of Fundamental Right which apparently was not concluded before the Appellants were arraigned before the Abuja Federal High Court. The Court of Appeal was thus right in resolving this issue against the Appellants as there was no evidence that the Ex-parte order of Owerri Federal High Court was served on the Respondent, the Attorney-General of the Federation or the Federal High Court Abuja.

The Law on disobedience of the Court order is trite - see ERISI V. IDIKA (1987) 4 NWLR (Pt. 66) 503. In the instant case there was no proof that the Attorney-General of the Federation was served with the order or that the Federal High Court Abuja was served with the order. The Owerri Federal High Court order being ex-parte and pending the determination of the application to enforce the alleged breach of Fundamental Human Rights, was binding on the parties to the application alone pending the determination of the application. It cannot be binding on other parties or other Courts not involved in action to enforce Fundamental Human Rights of the 1st Appellant.

The issue No. 2 is whether having regard to absence of proof of evidence and adoption of summary procedure of Federal High

Court in arraigning the Appellants for capital offences, the Appellants were properly arraigned. On the authority of *ABACHA V. STATE* (2002) 5 NWLR (Pt. 761) 638 if at the commencement of a prosecution of a charge or information filed by the prosecution the information does not disclose facts supporting prima facie case against accused person, the charge must be quashed against that accused person. That case was decided upon existing information on charges supported by proof of evidence. The position is not the same as in the present case. Therefore, in the absence of proof of evidence to be used by the trial Court in determining whether or not prima facie case had been disclosed against the Appellants having regard to the charges against them, the Appellants application to quash or dismiss the charges against them cannot be granted. In this respect I must say that I completely agree with my learned brother Rhodes-Vivour, JSC, in his lead Judgment that the Appellants appeal is devoid of merit and ought to be dismissed.

Accordingly, I also dismiss this appeal and affirm the decision of the Court below.

E

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - Bode Rhodes-Vivour, JSC. I agree completely with the reasons therein advanced to arrive at the conclusion that the appeal is devoid of merit and should be dismissed.

On 8th November, 2005 the appellants were arraigned before the Federal High Court, Abuja on a four count charge touching on treason and other attendant felonious offences. The appellants herein, as accused persons at the trial court, pleaded not guilty to the four counts contained in the charge sheet. On behalf of the appellants, two applications were filed for bail and dismissal of the charges in limine and to restrain the respondent from prosecuting them on the same facts as those in the application of 1st day of November, 2005.

The learned trial judge of the Federal High Court, Abuja-Nyako, J. heard the two motions and in a considered ruling handed out on 27th January, 2006, the prayers of the appellants were refused. The appellants felt unhappy with the stance posed by the learned

trial judge and appealed to the Court of Appeal, Abuja Division (the court below). In a judgment handed out on 15th May, 2008, the appellants were granted bail but the prayer to dismiss the four count charge was refused. This is a further appeal to this court against the refusal of the court below to dismiss the four count charge.

Before this court, briefs of argument were filed and exchanged by the parties. In the brief of argument filed on behalf of the 1st appellant, the two issues formulated for determination read as follows:

“1. Whether the arraignment of the appellant before the Federal High Court Abuja despite a subsisting order of the Federal High Court, Owerri to the contrary was proper in law.”

2. Whether the Court of Appeal should not have dismissed the charges against the appellant.”

A sole issue formulated on behalf of each of the other appellants in identical tones reads as follows:-

“Whether the arraignment of the appellant before the Federal High Court Abuja despite a subsisting order of the Federal High Court Owerri to the contrary was proper in law.”

I wish to point it out here that in the ex-parte application filed by the appellants at the Federal High Court, Owerri, the respondent was not a party to same. Any order made against a person who was not a party to the action before the court is to no avail. Such cannot stand the test of time and is not binding on such a non-party to the action. See: *Uku v. Okumagba* (1974) 1 All NLR 475. All I want to stress is that the respondent cannot be expected to fold his hands and not take necessary action to protect the security and cohesion of the Nation in respect of the alleged treasonable acts. There was no inhibition placed on him in this direction. I do not, for one moment, see how the steps taken by the respondent, in the prevailing circumstance, can be faulted.

Let me further stress one vital point before I am done. It is that trial on information, as done in *Abacha v. The State* (2002) 5 NWLR (Pt. 761) 638 is quite distinct from the summary trial of the appellants by the Federal High Court, Abuja. The four count charge was read to the appellants and they pleaded not guilty. To satisfy their desire, proof of evidence was ordered by the trial court and furnished accordingly.

Summary trial entails immediate action without following the rigmarole in normal legal procedures. In some cases, it is often carried out *brevi manu*. It may appear unusual but where such is the law as dictated by section 33 of the Federal High Court Act, Cap 133, LFN 1990, so be it. It is to be noted that the real trial is yet to commence. Even if the charges are quashed, such, in the main does not seem to obliterate the re-arrest of the appellants and an ensuing cog which may result on the bail granted them by the court below.

For the above reasons and those carefully adumbrated in the lead judgment, I too, feel that the appeal is devoid of merit and should be dismissed. I order accordingly. Let speedy trial proceed without any further undue delay. I abide by all the, other consequential orders contained in the lead judgment.

D

PETER-ODILI JSC, CFR

I am in total agreement with the judgment and reasoning just delivered by my learned brother, Bode Rhodes-Vivour JSC. In doing so I shall make some comments.

This is an appeal against the judgment of the Court of Appeal, Abuja Division Coram: Jimi Olukayode Bada, Oyeibisi Omolaye, Olujimi Lokulo-Sodiye JJCA delivered on the 15th day of May 2008. The appeal was brought about as a result of the refusal in the judgment of the lower court to quash the charges preferred against the appellants and some others before the Federal High Court, Abuja. Dissatisfied with the said judgment, the appellants appealed to this court.

FACTS

The appellants with some others were summarily arraigned before the Federal High Court, Abuja on a four count charge to wit:

1. Treason against the President of the Federal Republic of Nigeria, contrary to Section 37(2) of the Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria, 1990 and punishable under Section 37 of the Criminal Code Act;

2. Felony contrary to and punishable under Section 27 (1) of the Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria, 1990.

3. Felony contrary to and punishable under Section 64 of

the Criminal Code Act, Chapter 77, Laws of the Federation of Nigeria, 1990.

4. Offences contrary to Section 62 (2) and punishable under Section 63 of the Criminal Code Act, Chapter 77 Laws of the Federation of Nigeria, 1990.

On the 8th day of November 2005 when the accused persons were arraigned, they were represented by counsel, Chief Ziggy Azike. All the four counts of the charge were read to each of the appellants and they understood the charges and pleaded not guilty. The court ordered the appellants to be remanded in the custody of the State Security Service (SSS). On the 21/11/05 the appellants filed an application for bail and on the 21/1/06 applied that the charge against them be dismissed. Both applications were consolidated and heard together.

In a considered Ruling the trial Judge refused the applications for dismissal of the charges against them and directed the prosecution to file further proof of evidence before the commencement of the trial. The appellants appealed to the Court of Appeal which refused to quash the charges even though it agreed there was no valid proof of evidence. Further dissatisfied the appellants appealed to this court.

At the hearing date of 31st January 2013, learned counsel for all the appellants, Festus Kayamo Esq., adopted the various Briefs of Arguments of each of the appellants filed on 19/8/08. In the Brief of Argument of the 1st appellant were distilled two issues for determination as follows:

1. Whether the arraignment of the appellants before the Federal High Court, Abuja despite a subsisting order of the Federal High Court Owerri to the contrary was proper in law. (Ground 1).
2. Whether the Court of Appeal should not have dismissed the charges against the appellant. (Ground 2).

However in each of Briefs of Argument of the other seven appellants had crafted a single issue being:

Whether the Court of Appeal should not have dismissed the Charges against the appellant. (Ground 1).

Learned counsel for the respondent adopted their brief of argument settled by Wale Balogun Esq. and filed on 9/10/08. He adopted the appellants' issues for determination of the grounds of

appeal, in the Notice of Appeal with the slight modification to the second issue to wit:

Whether the Court of Appeal should have dismissed the Charges against the appellants.

B Clearly the issues as framed for the 1st appellant would be appropriate for use in the determination of this appeal and taken together.

C Learned counsel for the appellants submitted that the arraignment of the appellant before the Federal High Court Abuja, despite a subsisting order of the Federal High Court, Owerri to the contrary was a contemptuous act that should have moved the court to exercise its disciplinary jurisdiction to quash the charge against the appellant. That the Court of Appeal ought not to have shut its eyes to the disobedience of orders emanating from the same court on the D premise that they are not bound by orders of courts of co-ordinate jurisdiction. He stated that it was an unjudicial abdication of the inherent powers conferred by Section 6(6) (a) of the constitution of the Federal republic of Nigeria, 1999 and that sanctions for acts of disobedience of court are not limited to only committal proceedings E but also to reversal of acts done in such disregard of court orders. He cited: *Erisi v. Idika* (1987) 4 NWLR (Pt. 66) 503 at 512; *Ezegbu v. FATB* (1992) 1 NWLR (Pt.220) 699 at 725; *Governor of Lagos State v. Ojukwu* (1986) 1 NWLR (Pt. 18) 621; *Alhaji Auwal Ibrahim v. Col. Cletus Emein & Ors.* (1996) 2 NWLR (Pt.430) 322 etc.

F Going on, Mr. Keyamo of counsel said the sum total of the judgment of the court below is that there was no valid proof of evidence accompanying the charges against the appellants and the procedure by which the appellant was charged was improper. That the G only conclusion the Court of Appeal should have come to was that the charges be dismissed, the information having not disclosed any fact supportive of a prima facie case against the accused/appellants. He referred to *Abacha v State* (2002) 5 NWLR (Pt. 761) 638. He said the subsequent proof of evidence filed after the plea had been H taken was a denial of fair hearing as the accused was made to plead to a charge, particulars in support of which were not fully revealed to him at the time of plea.

In response, learned counsel for the respondent contended that the conclusion of the appellant in the arraignment for trial of the

1st appellant was erroneous. That an act is alleged to be contemptuous of court it must be a direct disobedience of a positive order of court. He said the order of the court did not prohibit the state from taking the 1st appellant before a court of law for crimes he committed. He said it is the constitutional duty of the state to enforce all laws and where a crime has been committed, to place the suspect before the court for trial did not precede the order and was not concerned by the order of the court. He cited section 45(1) of the Constitution of the Federal Republic of Nigeria 1999 which purport is to put a check on the enjoyment and exercise of all the rights granted and protected by the constitution in order to safeguard the entire society and the public interest at large. That it is preposterous for the appellant to seek to hide under the banner of the ex parte order to continue to violate the laws of the land by leading an unlawful organization and expect the state to shirk its constitutional duties of protecting lives and properties of other peace loving Nigerians. He cited Section 2 (2) (1) of the National Security Agencies Decree 1986 Cap 278 Laws of the Federation 1990; Section 214 of the Constitution recognises the power of the Police in Nigeria; Section 4 of the Police Act, Cap 359 Laws of the Federation of Nigeria, 1990; *Fawehinmi v. IGP* (2002) 7 NWLR (pt.767) 606; *FDB Fin. Serv. Ltd v. Adesola* (2001) 6 NWLR (Pt. 710) 690 at 699; *Kokoro - Owo v Lagos State Government* (2001) 11 NWLR (Pt.723) 237 at 246.

Learned counsel for the respondent submitted that the charges brought by the respondent against the appellants before the Federal High Court were offences of felony contrary to sections 37(1) & (2), 62, 64 of the Criminal Code Act, chapter 77 Laws of the Federation; 251 (2) of the Constitution 1999, Section 33 of the Federal High Court Act Cap 133 Laws of the Federation 1990.

The first issue that deals with the Federal High Court, Abuja disobeying the order of the Federal High Court, Owerri which had granted an interim order granted ex-parte in the enforcement of the Fundamental Human Rights of the 1st appellant debarring the law enforcement agencies from arresting, detaining or prosecuting him. It is not a matter of debate that an order of any court should be respected and not disobeyed. However this order was not brought to the notice of the respondent or any of the agencies referred to. The order in a way comes within what had been described by this

court in some authorities as “a muted trumpet”. Such an instrument therefore cannot be a basis for contempt of court proceedings against any agency which acts within its authority but contrary to whatever is contained in the ineffective order which really is a stillborn instrument and cannot come within the purview of a positive order of court to which there has been a direct disobedience to.

It is to be stated therefore that the cases of Erisi v. Idika (1987) 4 NWLR (Pt. 66) 503 at 512, Ezegbu v. FATB (1992) 1 NWLR (Pt.220) 699 at 725; Alhaji Auwal Ibrahim v. Col. Cletus Emein & Ors. (1996) 2 NWLR (Pt. 430) 322 to which 1st appellant’s counsel, Mr. Keyamo anchored his arguments do not apply in the circumstances of this case. The trial court in this instance, Federal High Court, Abuja was correct in not placing any importance to that earlier order, albeit a silent one at that without effect. I cannot resist the judicial authorities referred to this court by Chief (Mrs.) V. O. Awomolo for the respondent and in particular FDB Fin. Serv. Ltd v. Adesola (2001) 6 NWLR (Pt. 710) 690 at 699 where the Court of Appeal held thus:

“Generally, before an order of court can be binding on a person, he must be seen to have made a party to the case before the court. The rationale for this principle is not farfetched; it is the unqualified obligation of every person properly made a party to the case, and against or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged.”

In another scenario the Court of Appeal had in the unreported appeal No. FCA/E/117/79 Rt. Hon. Dr. Nnamdi Azikiwe v. FEDECO delivered on 5th day of February 1980, a judgment orchestrated by Phil Ebosie JCA stated:

“As the appellant had no notice of the order, he cannot be expected to comply with it even if he wanted to. There is no doubt that the news media carried the news of the court’s proceedings of that day and the appellant being a legal adviser to one of the leading newspapers in the country must have read of it, but it is unreasonable to expect him to act on reports in newspapers, or treat the said reports as a court order. Although he may do if he wished, but it did not amount to disobedience of the court order if he refuses, or neglects to do everything without being served with a properly drawn up order of the court. The omission to serve on the appellant the

court's order is in my opinion the first flaw in the proceedings."

The Supreme Court placed a stamp of authority on the principle above enunciated this time in the case of Kokoro-Owo v. Lagos State (2001) 11 NWLR (Pt. 723) 237 at 246 where this court placed on record that the court cannot make an order against a person who is not a party or privy to the proceedings before it. That the only condition upon which an order can affect a party is that he is not kept out of the action as a court acts in vain by issuing an order against a person who has not been heard or given an opportunity to be heard.

It is clear that Issue 1 which is solely for the 1st appellant cannot be resolved in his favour.

In respect to the issue No 2 which concern all the appellants and that is the appellants querying the legality of a summary trial in regard to the Criminal proceedings initiated in the Federal High Court against each and every one of them. The grouse of Mr. Keyamo of counsel is that since the Court of Appeal in its summation found that there was no valid proof of evidence accompanying the charge against the appellants and the charge also brought under a summary procedure being improper, the Court of Appeal ought to have dismissed the charge or quashed it thereby. He relied on the case of Abacha v. State (2002) 5 NWLR (pt. 761) 638.

The view of learned counsel for the appellant was not acceptable to Chief (Mrs.) Awomolo of the respondent who posited that the circumstances in the case of Abacha (supra) are different from the present. Indeed that is the correct position. In the Abacha v State (supra) the accused was charged through information which required the attachment of proof of evidence, failure of which led to the quashing of the charge. In the present case the Accused/appellants were charged under section 33 of the Federal High Court Act Cap 133 laws of the Federation 1990. That section and subsection 2 thereof provides:

"33(2), notwithstanding the generality of subsection (1) of this section all criminal cases or matters before the court shall be tried summarily."

Oxford English Dictionary Tenth Edition defines "summary" to mean:

"a brief statement of the main points of something."

1. Not including unnecessary details.

2. (of a legal process or judgment) done or made immediately and without following the normal legal procedures”

The meaning of summary trial being clarified above, the situation is what it is, placed before court the substance of what is complained of against the appellants who are not left in the dark of what
B to defend to. The absence of elaboration of the details would not affect either the validity or potency of the charge nor would the colour of the proceedings change on account of that absence of details. This second issue is also resolved against the appellants.

C From the above and the more detailed reasoning in the lead judgment, I too dismiss this appeal for lacking in merit. I affirm the judgment of the court below. I abide by the consequential orders in the lead judgment.

D

AKA’AHS JSC

I read in draft the well articulated judgment of my learned brother, Rhodes-Vivour JSC and I entirely agree that all that the appellants require to enable them face their trial has been provided by
E the prosecution.

I only wish to add that the granting of leave to the 1st appellant by the Federal High court Owerri to enforce his fundamental rights does not amount to a permanent injunction against the state
F from prosecuting him of the offences he is alleged to have committed. The ex-parte order was meant to last between the 186 January, 2005 and 1st February, 2005 when the respondent would have been served with the Motion on Notice for the enforcement of his fundamental human rights. He therefore cannot dangle the ex-parte order
G as the talisman to ward off the State from proceeding against him. The ex-parte order was spent by 1/2/2005, the return date when the hearing of the substantive application was to commence.

The appeal is a mere waste of time and it is hereby dismissed.

H