

**SUPREME COURT OF NIGERIA**  
FRIDAY 12TH JULY, 2013. SC. 254/2007  
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-  
ENEH, O. ARIWOOLA, C. B. OGUNBIYI,  
K. B. AKA'AH, JJSC**

MARCEL NNAKWE ..... APPELLANT  
V.  
THE STATE ..... RESPONDENT

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CRIMINAL PROCEDURE - Party - Legal representation - Right to -  
By Constitution 1999 s. 36 - Every party to a case has right of repre-  
sentation - By counsel of his choice (H1)

LEGAL PRACTITIONERS - Representation - Challenge to - Where  
counsel announces appearance on behalf of a party - The authority  
to challenge such representation - Only lies with the same party (H2)

CRIMINAL PROCEDURE - AG Federation - Represented by proxy -  
Challenge - Authority of counsel to prefer charge on behalf of the  
AG - Cannot be questioned by any other person (H3)

CRIMINAL PROCEDURE - Unlawful proceeding - Failure to object -  
Where accused fails to raise objection to such a procedure at trial -  
He cannot be allowed to raise same at appellate stage (H4)

CRIMINAL PROCEDURE - AG'S power - Delegation - Extent of -  
Count 4 cannot be excised from other preceding counts - As it arose  
from same transaction - And was incidental to the offences for which  
fiat was given (H5)

CRIMINAL PROCEDURE - Jurisdiction - Basis - Court assumes juris-  
diction in criminal trial - Where justice will be attained by it - And  
accused was apprehended within its judicial division - As well as for  
convenience of witnesses (H6)

JURISDICTION - Fundamentality of - It is bedrock of adjudication  
that cannot be conferred by consent of parties on court - And it can

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be raised at any stage - As absence of same renders the whole proceeding a nullity (H7)

COURTS - Competence of - Basis - Court is competent when it is properly constituted - With the subject matter within its jurisdiction - And the case initiated by due process of law (H8)

CRIMINAL PROCEDURE - Court - Jurisdiction - Statutory conferment - Court must be satisfied that offence is directly donated - By jurisdiction conferred in the enabling law (H9)

JUDICIAL PRECEDENTS - Stare decisis - Purpose - The principle is that lower courts are bound by ratio decidendi of higher courts - To ensure uniformity in decision making - And enhance development of coherent body of laws (H10)

CHARGES - Preferment - Jurisdiction - Appellant having entered FCT was rightly charged in its HC - As entry required in Penal Code s. 4(2)(b) - And the decision in Njoven's case were satisfied (H11)

CRIMINAL PROCEDURE - Multiple charges - Trial of - Jurisdiction - As offences in counts 1 & 2 and those in counts 3 & 4 - Were committed in the course of same transaction - Any of the States HC where the offence(s) occurred - Can entertain the case (H12)

CRIMINAL PROCEDURE - Commencement - AG Federation - Powers - By Constitution 1999 s. 174(1) - He can inter alia institute and discontinue - Criminal proceedings against any person in any court in Nigeria - Other than a Court Martial (H13)

CHARGES - Preferment - Validity - Powers of AG Federation - Having been statutorily empowered - The AG validly issued the fiat to counsel - For prosecution of appellant in counts 3 & 4 in the FCT (H14)

CRIMINAL PROCEDURE - Appeal - AG's Fiat - Duration of - On authority of Ebe v. COP - AG need not issue fresh fiat - Before counsel can proceed with prosecution of appeals - Arising from the charge

(H15)

APPEALS - Nature & purpose of - Appeal is continuation of an action - And no new issues can be raised on appeal (H16)

### **FACTS**

Accused/appellants and seven others were standing trial before the High Court of the Federal Capital Territory (FCT) Abuja for conspiracy, attempted murder and murder. The case for prosecution/respondent is that appellant and the others had at various times within the FCT Abuja and at Agulu Anambra State attempted to murder a former Director-General of NAFDAC - Mrs. Dora Akunyili. In the course of carrying out their intention at Agulu, the deceased one Emeka Onuekutu was killed by a bullet. Leave was thus granted respondent by the court to prefer a four count charge against appellant and others. The law firm of Chief Afe Babalola, SAN & Co. was briefed by the Attorney-General of the Federation (i.e. respondent) to prosecute the four count charge. The case therefore proceeded to trial.

At the point of respondent calling its 3<sup>rd</sup> witness, appellant for the first time filed a motion on notice, challenging the competence of counts 3 and 4. Appellant sought for inter alia an order setting aside the fiat issued by the Attorney-General against 2<sup>nd</sup> and 3<sup>rd</sup> accused as it relates to counts 3 and 4. Appellant also prayed that the motion be deferred for determination along with a no case submission to be filed by appellant after respondent had closed its case. The court agreed with appellant and eventually in its ruling on the motion, it held in favour of appellant. Dissatisfied, respondent lodged appeal in the Court of Appeal Abuja Division. The court affirmed the no case submission of appellant in relation to counts 1 and 2, but dismissed the motion challenging the competence of counts 3 and 4. It therefore ordered that trial should continue in respect of the said counts. Aggrieved, appellant appealed to Supreme Court.

### **ISSUES FOR DETERMINATION**

*"i. Whether Chief Afe Babalola, SAN & Co., a private prosecutor, was competent or had authority by the FIAT of the Attorney-General of the Federation to have charged the appellant in Count 4 with the alleged murder of one Emeka Onuekutu.*

ii. *Whether the Court of Appeal was right when it held that the High Court of the Federal Capital Territory, Abuja has jurisdiction to entertain the offence alleged in Counts 3 and 4 of the Charge preferred against the appellant.*

iii. *Whether the Court of Appeal was right when it held that the Attorney-General of the Federation can validly issue FIAT to prosecute the appellant in the Federal Capital Territory, Abuja in respect of the offences alleged in Counts 3 and 4.*

iv. *Whether the FIAT of the Attorney-General of the Federation dated 10th September, 2004 issued to Afe Babalola, SAN & Co., to prosecute could be used to initiate appellate proceedings without a fresh FIAT.”*

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

*Party - Legal representation - Right to*

**1. For instance, with reference to Section 36 of the Constitution of the Federal Republic of Nigeria, 1999, the law is well settled that every party to a case has an unfettered right of representation by counsel of his choice.**

**By implication therefore, this right, also inures to the benefit of the respondent, who is a party to the appeal at hand.**

(p. 3292 A)

*LEGAL PRACTITIONERS - Representation - Challenge to*

**2. Decided authorities of this court have also held out that where a counsel announces appearance on behalf of a party in any matter, the authority to challenge such representation only lies with the same party.** (p. 3292 B)

*CRIMINAL PROCEDURE - AG Federation - Represented by proxy*

**3. Furthermore, it has also been sufficiently emphasized by this court that the competence or otherwise of a private legal practitioner and his authority to prefer a charge on behalf of the Attorney-General of the Federation cannot be questioned by any other person.** (p. 3292 C)

*CRIMINAL PROCEDURE - Unlawful proceeding - Failure to object*

**4. For all intent and purpose and as rightly observed by the learned appellant's counsel, on a community reading of the fiat issued by the Attorney-General of the Federation, it did not specifically and expressly state that the appellant should be tried for the murder of Emeka Onuekutu. Be that as it may, the lower court in its own wisdom at page 1234 of the record concluded thus and said:-**

***"The offence in counts 1 and 2 of the charge and offences in counts 3 and 4 are all committed in the course of pursuance of the same purpose... since the four counts on the charge are offences committed in the course of the same transaction and in pursuance of same purpose which is to assassinate P.W.1."***

**It is instructive and as rightly argued and submitted by the learned respondent's counsel that the appellant has not deemed it relevant to appeal against the foregoing findings by the lower court at page 1234 of the record supra. Any complaint against same cannot now be entertained or heard as it is too late in the day. It is well settled in plethora of authorities that where an accused person in a criminal case fails to raise an objection to an unlawful procedure/proceeding at the trial, he cannot be allowed to raise same at the appellate stage.**  
(p. 3294 A)

*CRIMINAL PROCEDURE - AG power - Delegation - Extent of*

**5. The learned respondent's counsel also related familiarly to the provisions of Sections 213 and 214(1) of the Criminal Procedure Code Act Cap 491 Laws of the Federation of Nigeria (Abuja). On a careful perusal and consideration of the two connecting provisions, the confirmation of the findings by the lower court at page 1234 reproduced supra is obvious. That is to say while the former provision lays that a person accused of several offences of the same or similar character, may be charged with and tried at one trial for any number thereof the latter provides that if a series of acts so connected together as to form the same transaction is alleged, the ac-**

**cused may be charged with and tried at one trial for every offence which he would have committed if all such acts or someone or more of them without the rest were proved.**

**By the very nature of count 4, it cannot be excised from the other preceding counts as it arose from the same transaction and was incidental to the offences the fiat empowered the law firm of Chief Afe Babalola SAN & Co. to prosecute.**

**For further expatiation, recourse could be had on the authority of the case of Attorney-General, Ondo State V. Attorney-General, Federation (2002) 9 NWLR (Pt. 772) 222 at 335 where it was held by this court that-**

***“every grant of power includes by implication all such other powers as are reasonably incidental thereto and not expressly excluded.”***

**It would appear that the said laid down principle had received legislative recognition in Section 10(2) of the Interpretation Act, Cap 192, Laws of the Federation of Nigeria, 1990, which reproduction states:-**

***“10(2) An enactment which confers power to any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of it.”*** (p. 3295 B)

***Jurisdiction - Basis***

**6. The law is trite and has long been settled by this court that for a court to assume jurisdiction in a criminal trial, the following factors must be considered:-**

***“(i) That ends of justice would better be served by hearing the charge against the accused in that particular court seeking to assume jurisdiction.***

***(ii) That the accused was apprehended or in custody within the judicial division of the court seeking to assume jurisdiction.***

***(iii) Accessibility and convenience of the witnesses.”***  
(p. 3300 E)

***JURISDICTION - Fundamentality of***

**7. Jurisdiction is the corner stone and bedrock of adjudica-**

**tion; it can neither be compromised nor conferred by consent of parties upon a court. It is constitutional and very fundamental; hence the reason why it can be raised at any stage of a proceeding both at the trial and on appeal even if for the first time in this court. Where a court lacks jurisdiction, any proceeding conducted is in breach and renders same a nullity.** B  
(p. 3300 G)

*COURTS - Competence of - Basis*

**8. The competence of a court to adjudicate on any matter had long been laid to rest in the locus classicus case of Madukolu V. Nkemdilim supra wherein Bairamian, F.J. made the following observations at page 348 and said:-** C

***“Before discussing those portions of the record, I shall make some observations on jurisdiction and the competence of a court. Put briefly, a court is competent when-*** D

***(1) 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***

***(2) 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*** E

***(3) the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.*** F

***Any defect in competence is fatal for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication.”*** (p. 3301 A)

*Court - Jurisdiction - Statutory conferment* G

**9. For purpose of conferring jurisdiction therefore, the court must be absolutely certain and satisfied that the offence or crime is directly donated by the jurisdiction conferred in the enabling law; where the offence or crime is however outside the statutory provision, the court cannot exercise jurisdiction as it lacks the authority to do so.** H  
(p. 3301 E)

*JUDICIAL PRECEDENTS - Stare decisis - Purpose*

- 10. The entry as construed in the case of Patrick Njovens V. State supra needed not be voluntary or legitimate. Put another way, any mode of entry is sufficient for the purpose of section 4(2)(b) of the Penal Code Act. The Federal Capital Territory**
- B Abuja in the instant case cannot therefore go outside the Interpretation of the decision by this court supra. This is because the principle of stare decisis is well entrenched in our system of judicial adjudication where lower courts in the hierarchy are bound by the ratio decidendi of higher courts. See**
- C Emoga V. State (1977) 9 NWLR (Pt. 519) 38 wherein this court held that both the Court of Appeal and the High Court are bound by the decision of the Supreme Court; that the refusal so to do was greatly erroneous.**
- D The rule is designed to ensure uniformity in decision making, foster stability and enhance the development of a consistent and coherent body of law as well as assure a quality of treatment for litigants similarly situated. (p. 3304 A)**

*E CHARGES - Preferment - Jurisdiction*

- 11. As rightly submitted by the learned respondent's counsel, it is apparent from the forgoing evidence that all the accused persons one way or the other did enter into the Federal Capital Territory, Abuja before they were charged to the Federal**
- F Capital Territory High Court to answer the charges against them. In other words, the concept of "entry" as required by Section 4(2)(b) of the Penal Code has, in the circumstance been met and thus bringing this case within the interpretation**
- G and meaning of the decisions in Patrick Njovens V. State and Adeniji V. State (supra) wherein it was held that entry into the territorial jurisdiction of the trial court by which ever means is sufficient. It follows squarely that the contrary argument put forward by the learned appellant's counsel is a sheer misconception of the view held by this court in the cases supra.**
- H (p. 3305 C)**

*CRIMINAL PROCEDURE - Multiple charges - Trial of - Jurisdiction*

**12. As rightly submitted on behalf of the respondent, the of-**



**fences contained in counts 1 and 2 of the charge and those contained in counts 3 and 4 were all committed in the course of the same transaction. Consequently therefore, it is correct to conclude that any of the States where either or all the offences on the charge sheet were committed or elements of the offences occurred has jurisdiction to entertain the suit.** B

**Counts 3 and 4 of the charge are continuing manifestation of the acts in counts 1 and 2 and are all interwoven elements of one of and the other; counts 3 and 4 are therefore also made triable by the High Court of the Federal Capital Territory, Abuja. (p. 3305 H)** C

*CRIMINAL PROCEDURE - Commencement - AG Federation*

**13. I will at this point wish to add that the power of the Honourable Attorney-General of the Federation and Minister of Justice to issue fiat in respect of criminal prosecution of any person is provided for by Section 174(1) of the Constitution of the Federal Republic of Nigeria, 1999, and the reproduction which states as follows:-** D

**“(1) The Attorney-General of the Federation shall have power:-** E

**(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court martial, in respect of any offence created by or under any Act of the National assembly;** F

**(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; to**

**(c) discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.” (p. 3310 F)** G

*CHARGES - Preferment - Validity - Powers of AG Federation*

**14. On a collective deduction of section 4(2)(b) of the Penal Code Act read along with section 134(a)(b)(c) and (d) of the Criminal Procedure Code Act as well as section 301 of the Constitution 1999, the only authority that can issue a fiat to prosecute the charges inclusive of counts 3 and 4 is the At-** H

**torney General of the Federation. This is especially with the offences having, by operation of law, automatically become those that were committed within the FCT upon the entry of the appellant into the FCT. In issuing the Fiat, the Attorney General acted as the Attorney General of the FCT and contrary to the submission on behalf of the appellant, it was therefore validly issued. Counts 3 and 4 of the charge that took place in Agulu, Anambra State automatically became offences committed in the FCT as soon as the appellant entered the FCT. Counts 3 and 4 are a continuing manifestation of the acts in counts 1 and 2 which took place in Federal Capital Territory Abuja. As rightly submitted by the learned respondent's counsel, all the counts 1, 2, 3 and 4 in the charge are offences committed in the course of the same transaction (that is, to assassinate P.W.1, Dr. (Mrs.) Dora Akunyili, the Director General of NAFDAC). In my humble view, the Hon. Attorney General of the Federation in the circumstance did validly and legally issue the fiat of 10th September, 2004 to the law firm of Chief Afe Babalola, SAN & Co, to prosecute the appellant and others in this case.**

**In the result, and contrary to the contention held by the learned appellant's counsel, the Attorney General of the Federation from all indications had the competence in law and therefore did validly issue the fiat in respect of the offences contained in the charge. The said issue 3 is also resolved against the appellant and in favour of the respondent. (pp. 3312 C/3313 G)**

**CRIMINAL PROCEDURE - Appeal - AG Fiat - Duration of**

**15. Without belabouring the point, I hasten to state that this court, as rightly submitted by the learned respondent's counsel had by its pronouncements, laid to rest the issue of fresh fiat at the appellate level. For instance, in the case of Ebe V. COP cited supra, the fiat which was issued to a counsel for purpose of prosecuting a criminal case at the magistrate court, was challenged at the High Court on appeal on the ground that no fresh fiat was obtained to prosecute the appeal. In resolving the issue this court at pages 206 and 217 - 218 of the report had this to say:-**

*“...once a fiat is granted to a counsel to prosecute or defend a case, the validity of the fiat would continue throughout the duration of the case for which the fiat was granted.*

*A fiat is a Latin word which means ‘let it be done.’ Technically, therefore, it denotes the grant or conferment of power on another by a person having complete authority on the issue upon which the fiat is given in matters of prosecution. The Attorney-General of a state or of the federation can give such a fiat. A commissioner of police can delegate his officers or private legal practitioners to represent him in a case. The life span of such an authority of fiat may extend to the conclusion of the case in question. It was certainly wrong of the learned High Court judge on appeal to have refused audience to the learned counsel who appeared for the respondent which resulted in the striking out of the appeal before him. His Lordship was misled and misdirected, unfortunately.”*

*As rightly submitted by the learned respondent’s counsel, the situation at hand did not require the Attorney General of the federation to issue a fresh fiat before the law firm of Chief Afe Babalola, SAN & Co. could proceed with the prosecution of the appeals arising from the charge. The learned appellant’s counsel with all respect, I hold got it all wrong and was grossly misconceived. This is more so with the present appeal being interlocutory, the main case is therefore still pending at the trial court; hence the extant conclusive notion held that the case for which the fiat was issued is still pending and the need for a fresh fiat does not in the circumstance arise. The law firm of Chief Afe Babalola SAN & Co. in otherwords needs no fresh fiat to prosecute any appeal arising from the charge.*

(pp. 3315 H/3316 G)

*APPEALS - Nature & purpose of*

**16. The law is well settled in plethora of authorities that an appeal is a continuation of the action and that no new issues can be raised on appeal.** (p. 3316 F)

## **REPRESENTATION**

Clement Onwuenwunor with Gerald Ogokeh Esq., for Appellant

Kehinde Ogunwumiju with Bridget Omon-Oleabhie and Abolanle Olawoya (Miss), for Respondent

**CASES REFERRED TO**

- Emeakayi v. C.O.P (2004) 4 NWLR (pt. 862) 158  
B Rex v. Aiyeola (1946/49) 12 WACA 324  
Olatunji v. State (2000) 12 NWLR (pt. 680) 182  
Oyenkwu v. State (2000) 12 NWLR (pt. 681) 256  
Nwambe v. State (1995) 3 NWLR (pt. 384) 358  
C FRN v. Adewunmi (2007) 10 NWLR (pt. 1042) 399  
Queen v. Owoh (1962) 1 All NLR 659  
Obisi v. Chief of Naval Staff (2004) 11 NWLR (pt. 885) 482  
Jurwode v. State (2000) 15 NWLR (pt. 691) 467  
Ebe v. COP (2008) 4 NWLR (pt. 1076) 189  
D State v. Aibangbee (1988) 3 NWLR (pt. 84) 548  
Madukolu v. Nkemdilim (1962) 2 SCNLR 341  
Njovens v. State (1973) 1 NMLR 331  
Adeniji v. State (2001) 13 NWLR (pt. 730) 375  
Usman v. State (1978) 6-7 SC 165  
E

**STATUTES REFERRED TO**

- Penal Code, s. 4(2)(b), (4)  
Constitution of Federal Republic of Nigeria 1999, ss. 36, 174, 211(1)  
F Criminal Procedure Code Cap 491 Laws of FCT 1990, ss. 134, 213, 214(1), 341  
Interpretation Act Cap 192 LFN 1990, s. 10(2)  
Criminal Code Laws of Lagos State 1973, s. 12(1)(2)(b)

G **LEAD JUDGMENT BY OGUNBIYI JSC**

This interlocutory appeal seeks to challenge the competence of the Respondent (the State/Attorney General of the Federation) and its counsel (the law firm of Chief Afe Babalola, SAN & Co. to prosecute the Appellant for the crimes of attempted murder and H murder.

The resume of the brief facts of this case simply dated back to the 13th day of October, 2004 when the High Court of the Federal Capital Territory granted the Respondent leave to prefer a four count charge of conspiracy, attempted murder and murder against the

Appellant and seven others. The law firm of Chief Afe Babalola, SAN & Co. was briefed by the Respondent to prosecute the following four count charge:-

*“Charge No. 1.*

*That you (1) FRANCIS C. OKOYE (a.k.a. Ebubedike); (2) EMMANUEL NNAMDI NNAKWE (a.k.a. Aboy); (3) MARCEL NNAKWE; (4) EMEKA ORJIAKOR; (5) CHRISTOPHER OKWARA MBAH (a.k.a. Persus); (6) OLISAEMEKA IGBOKWE (a.k.a. Holy War); (7) CHUKUKA EZEUKWU (a.k.a. ‘Let’s Go’) (8) JUDE UGWU (a.k.a. ‘Agada’) on or between October, 2001 to December, 2003 at different places in the Federal Capital Territory and Anambra State agreed to do or cause to be done an illegal act to wit: cause the death of Dr. (Mrs.) Dora Akunyili, Director General, National Agency for Food and Drug Administration and Control (D.G., NAFDAC) and that the said act was attempted to be done in pursuance of an agreement and that you thereby committed an offence punishable under Section 97 of the Penal Code.*

*Charge No. 2*

*That you (1) FRANCIS C. OKOYE (a.k.a. Ebubedike); (2) EMMANUEL NNAMDI NNAKWE (a.k.a. Aboy); (3) MARCEL NNAKWE; (4) EMEKA ORJIAKOR; (5) CHRISTOPHER OKWARA MBAH (a.k.a. Persus); (6) OLISAEMEKA IGBOKWE (a.k.a. Holy War); (7) CHUKUKA EZEUKWU (a.k.a. Let’s Go); (8) JUDE UGWU (a.k.a. Agada) on a day in the month of October, 2001 at about 7.00 pm at the D.G. NAFDAC’s residence on Freetown Crescent, Wuse II, Abuja, did an act, to wit; caused unknown gun men to invade the residence of Dr. (Mrs.) Dora Akunyili, Director General, National Agency for Food and Drug Administration and Control (D.G. NAFDAC) and forcibly entered the rooms in the house in search of the said Dr. Dora Akunyili for the purposes of firing gun shots at her with such intention and or Knowledge and under such circumstances that if by that act you had caused the death of the said Dr. Dora Akunyili you would have been guilty of culpable homicide punishable, with death and that you thereby committed an offence punishable under Section 229 of the Penal Code.*

*Charge No. 3.*

*“That you (1) FRANCIS C. OKOYE (a.k.a. Ebubedike); (2) EMMANUEL NNAMDI NNAKWE (a.k.a. Aboy); (3) MARCEL*

*NNAKWE; (4) EMEKA ORJIAKOR; (5) CHRISTOPHER OKWARA MBAH (a.k.a. Persus); (6) OLISAEMEKA IGBOKWE (a.k.a. Holy War); (7) CHUKUKA EZEUKWU (a.k.a. Let's Go); (8) JUDE UGWU (a.k.a. Agada) on the 26th day of December, 2003 at Agulu in Anambra State did an act to wit:- caused gun shots to be fired at Dr. (Mrs.) Dora Akunyili, Director General National Agency for Food and Drug Administration and Control (D.G. NAFDAC) while driving inside her Peugeot 406 Saloon official car with such intention or knowledge and under such circumstances that if by that act you had caused the death of Dr. (Mrs.) Dora Akunyili, D.G. NAFDAC you would have been guilty of culpable homicide punishable with death and that you thereby committed an offence punishable under Section 229 of the Penal Code."*

Charge No. 4

*"That you (1) FRANCIS C. OKOYE (a.k.a. Ebubedike); (2) EMMANUEL NNAMDI NNAKWE (a.k.a. Aboy); (3) MARCEL NNAKWE; (4) EMEKA ORJIAKOR; (5) CHRISTOPTIER OKWARA MBAH (a.k.a. Persus); (6) OLISAEMEKA IGBOKWE (a.k.a. Holy War); (7) CHUKUKA EZEUKWU (a.k.a. Let's Go); (8) JUDE UGWU (a.k.a. Agada) on the 26th day of December, 2003 at Agulu in Anambra State did commit culpable homicide punishable with death in that you caused the death of one Emeka Onuekutu by doing an act to wit: caused several gun shots to be fired at Dr. (Mrs.) Dora Akunyili, D. G. NAFDAC while she was driving inside her Peugeot 406 Saloon official car which gun shot missed their target but instead hit the deceased inside his Mitsubishi L300 Minibus with Reg. No. AE 763 AJL with the intention of causing the death of, and or with the knowledge that the death of the said Emeka Onuekutu would be the probable consequence of your act and thereby committed an offence punishable under Section 221 of the Penal Code."*

The case proceeded to trial during which the 7th Accused person, one Chukuka Ezeukwu (a.k.a. Let's go) became deceased. On the 3rd day of February, 2005, just before the prosecution was to proceed with its third witness, the appellant for the first time, by way of a motion on notice, challenged the competence of counts 3 and 4 of the charge and prayed the trial court to quash the said counts in terms of the following reliefs:-

1. AN ORDER quashing or setting aside the FIAT issued on

10th September, 2004 by the Attorney General of the Federation to prefer a charge against the 2nd and 3rd Accused persons/Applicants as it relates to counts 3 and 4.

2. AN ORDER setting aside the order of this Honourable Court dated 13th October, 2004 granting leave to the complainant to prefer a charge in the High Court of the Federal Capital Territory against the 2nd and 3rd Accused Persons/Applicants as it relates to counts 3 and 4. B

3. AN ORDER quashing the charge preferred against the 2nd and 3rd Accused Persons/Applicants as it relates to counts 3 and 4 in charge No. CR/28/04. C

4. AN ORDER discharging the 2nd and 3rd Accused Persons/Applicants on counts 3 and 4.”

On the 8th day of February, 2005, the learned respondent's counsel, Seeni Okunloye, SAN (of blessed memory) drew the attention of the court to the pendency of the motion *supra* and urged that it should be determined before proceeding with the hearing of the case. The learned appellant's counsel however held a divergent view that the motion be deferred for determination along with a no case submission to be filed by the appellant after the respondent had closed its case. Incidentally, the trial court agreed with the appellant's position. E

Subsequent to the close of the case by both parties therefore, the trial court, in a considered ruling delivered on 23rd September, 2005 ruled in favour of the appellant on both the no case submission as well as the motion on notice challenging the competence of counts 3 and 4. F

Dissatisfied with the foregoing ruling, the respondent, by a notice of appeal dated and filed on the 28th of September, 2005 appealed to the court below and the said notice was, on the 18th May, 2006, amended. On the 5th day of July, 2007, the court below allowed the respondent's appeal in part by affirming the no case submission of the appellant in relation to counts 1 and 2 but dismissing the motion on notice challenging the competence of counts 3 and, 4 and ordered that trial should continue in respect of the counts thereof. H

Unhappy with the second part of the decision, the appellant has now appealed to this court vide a notice of appeal dated the 24th August, 2007 but filed on the 30th of August, 2007. In otherwords,

the part of the Court of Appeal judgment which held that the High Court of the Federal Capital Territory, Abuja has jurisdiction to entertain counts 3 and 4 of the charge. The notice contained four grounds.

The crux of this appeal is the reversal of the decision of the learned trial judge by the justices of the Court of Appeal as it relates to the competence of counts 3 and 4 as well as the jurisdiction of the High Court of the Federal Capital Territory, Abuja to entertain same. The appellant also sought and was granted leave to raise and argue in this appeal, the issue as to whether Afe Babalola, SAN & Co. has authority to charge the appellant and others for murder of one Emeka Onuekutu, as stipulated in count 4.

In accordance with the rules of this count, briefs of arguments were exchanged between parties. While that of the appellant's main and reply briefs were settled by one Clement Onwuenwunor, Esq., the one for the respondent was settled by the learned counsel Kehinde Ogunwumiju, Esq.

On the 18th April, 2013 the appeal was heard; both counsel for the parties adopted and relied on their respective brief of argument and also adumbrated thereon. On the one hand and on behalf of the appellant the learned counsel Mr. Clement Onwuenwunor, Esq., in company of Gerald Ogokeh, Esq. urged that the appeal be allowed. On the other hand however, the learned counsel Mr. Kehinde Ogunwumiju who also led his two colleagues and represented the respondent submitted in favour of dismissing the appeal for want of merit.

From the four grounds of appeal filed, the appellant raised four issues for determination as follows:-

*i. Whether Chief Afe Babalola, SAN & Co., a private prosecutor, was competent or had authority by the FIAT of the Attorney-General of the Federation to have charged the appellant in Count 4 with the alleged murder of one Emeka Onuekutu.*

*ii. Whether the Court of Appeal was right when it held that the High Court of the Federal Capital Territory, Abuja has jurisdiction to entertain the offence alleged in Counts 3 and 4 of the Charge preferred against the appellant.*

*iii. Whether the Court of Appeal was right when it held that the Attorney-General of the Federation can validly issue FIAT to prosecute the appellant in the Federal Capital Territory, Abuja in respect*



of the offences alleged in Counts 3 and 4.

iv. *Whether the FIAT of the Attorney-General of the Federation dated 10th September, 2004 issued to Afe Babalola, SAN & Co., to prosecute could be used to initiate appellate proceedings without a fresh FIAT.*"

The respondent also formulated and adopted the four issues raised on behalf of the appellant; repeating same would be a waste of time. In the same way as the parties, I will also take the issues serially.

THE 1ST ISSUE challenges the competence of count 4 of the charge against the appellant and also the authority of the fiat given Chief Afe Babalola, SAN & Co., a private prosecutor by the Attorney-General of the Federation.

Submitting on behalf of the issue, the learned appellant's counsel reiterated the restrictive application of any fiat in legal proceedings wherein the donee of the authority thereof cannot go beyond the activities specifically authorized by the Fiat itself. In other words, that the scope of authority granted cannot be enlarged by the donee at his own discretion; that by the very nature of the Fiat herein, it did not authorize Chief Afe Babalola, SAN & Co. to prosecute the persons suspected to have caused the death of one "Emeka Onuekutu" as contained in count 4 of the charge sheet. Put differently, that the circumstances surrounding the death of Emeka Onuekutu was never subject matter of the FIAT of the Federal Attorney-General as contained in charge 4; consequently, that Chief Afe Babalola, SAN & Co. therefore acted without vires and completely outside the scope of their authority and on a frolic of their own. Reliance was made on the case of Emeakayi V. C.O.P (2004) 4 NWLR (Pt. 862) 158 and Rex V. Johnson Jaiyesimi Aiyeola (1946/49) 12 WACA 324; that a private prosecutor also has no power to prefer the charge in count 4 against the appellant and others because it violates Section 4(4) of the Penal Code and therefore an abuse of court process. Learned counsel in further submission maintained that any trial without the power to institute a criminal proceeding amounts to a nullity. Reference in support was drawn to the case of Olatunji V. State (2000) 12 NWLR (Pt.680) 182 at 191 and Oyenkwu V. State (2000) 12 NWLR (Pt. 681) 256 at 264 - 265.

On the totality of this issue, the learned counsel submitted that

Chief Afe Babalola, SAN & Co. lacked the competence or authority to prefer the charge in count 4 against the appellant and others when they had no such authority. The court was therefore enjoined to resolve this issue in favour of the appellant.

Contrary and in response to the foregoing submissions, the learned respondent's counsel re-affirmed the competence of count 4 and proceeded to advance the reasons predicated his conclusion which in a nutshell are all inclusive of one and the other. The contention, in otherwords projects the Attorney General of the Federation as the only person that can raise an objection against the representation by Chief Afe Babalola SAN & Co. for the prosecution of any of the counts in the charge; that while there is no evidence on record that the Attorney-General of the Federation did not authorize the law firm of Chief Afe Babalola SAN & Co. to prefer and prosecute count 4, evidence abounds that the Attorney-General authorized and ratified the preferment of the said count which is an offence committed in the course of the same transaction as counts 1 - 3.

In further submission, the learned counsel re-echoed that having not objected to the procedure relating the preferment of count 4 at the trial court, the appellant is bound by same and cannot now be heard to raise the objection at this stage as it is too late in the day. Finally and on the totality of this issue, the learned counsel argued the inapplicability of all the authorities cited on behalf of the appellant, as irrelevant; he therefore urged that this issue be resolved in favour of the respondent.

The determination of this issue relates to the competence of count 4 wherein the appellant is charged with the murder of one Emeka Onuekutu. In other words, whether or not the fiat of the Attorney General of the Federation given under his hand on 10th September, 2004 is sufficient an authority given Chief Afe Babalola, SAN & Co., a private prosecutor to have charged the appellant in the said count. The contentious count 4 preferred against the appellant had been reproduced earlier in the course of this judgment and it was pursuant to the fiat issued on the 10th September, 2004 which contents state as follows:-

*"AUTHORIZATION UNDER SECTION 174 OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999*

*In exercise of the powers conferred upon the Attorney-Gen-*

*eral of the Federation and Minister of Justice, I CHIEF AKINLOLU  
OLUJINMI SAN Honourable Attorney-General of the Federation and  
Minister of Justice, hereby authorize CHIEF AFE BABALOLA, SAN  
& CO. Legal Practitioner to exercise on my behalf the powers conferred upon me as Attorney-General of the Federation by Section  
174(1) of the Constitution of the Federal Republic of Nigeria, 1999* B  
*and to prosecute the persons suspected to have participated in the  
attempt to assassinate the Director-General of NATIONAL AGENCY  
FOR FOOD AND DRUG ADMINISTRATION AND CONTROL  
(NAFDAC) in the case of:*

*THE STATE* C

*AND*

1. FRANCIS C. OKOYE (a.k.a. Ebubedike)
2. EMMANUEL NNAMDI NNAKWE (a.k.a. Aboy)
3. MARCEL NNAKWE D
4. EMEKA ORJIAKOR
5. CHRISTOPHER OKWARA MBAH (a.k.a. persus)
6. OLISAEMEKA IGBOKWE (a.k.a Holy War)
7. CHUKUKA EZEKWU (a.k.a Let's Go)
8. Jude Ugwu (a.k.a. Agada) E

*DATED AT ABUJA THIS 10TH DAY OF SEPTEMBER 2004  
SGD.*

*CHIEF AKINLOLU OLUJINMI, SAN*

*Hon. Attorney-General of the Federation and Minister of Justice.”* F

The grouse of the appellant's complaint against the fiat centres around the purpose, which was to “Prosecute the persons suspected to have participated in the attempt to assassinate the Director-General of NATIONAL AGENCY FOR FOOD AND DRUG ADMINISTRATION AND CONTROL (NAFDAC) Dr. Dora Akunyili.” In G otherwords, that the fiat did not authorize Chief Afe Babalola, SAN, & Co. to prosecute the persons suspected to have caused the death of one “Emeka Onuekutu” as contained in count 4 of the charge sheet. It is the appellant's contention therefore that the death of Emeka Onuekutu and the circumstances surrounding his death were never H a subject matter of the fiat issued by the Federal Attorney-General.

It is obvious from all indication that the appellant is challenging the authority and extent of the fiat given by the Attorney-General of the Federation. The reference made to statutory provisions and also

decided authorities will certainly provide the insight solution to the question so raised.

***For instance, with reference to Section 36 of the Constitution of the Federal Republic of Nigeria, 1999, the law is well settled that every party to a case has an unfettered right of representation by counsel of his choice. See Nwambe V. The State (1995) 3 NWLR (Pt. 384) 358. By implication therefore, this right, also inures to the benefit of the respondent, who is a party to the appeal at hand.***

***Decided authorities of this court have also held out that where a counsel announces appearance on behalf of a party in any matter, the authority to challenge such representation only lies with the same party. Furthermore, it has also been sufficiently emphasized by this court that the competence or otherwise of a private legal practitioner and his authority to prefer a charge on behalf of the Attorney-General of the Federation cannot be questioned by any other person.*** See the case of FRN V. Adewunmi (2007) 10 NWLR (Pt. 1042) 399 wherein Kalgo JSC at pages 416 - 417 held and said:-

*“The Court of Appeal properly recognized this when it said:-  
“There is no doubt that under the scheme of things in 1997, the Attorney-General of the Federation could in appropriate circumstances authorize a private legal practitioner to undertake the prosecution of offences... It is also noteworthy that only the Attorney-General of the Federation could at the time raise questions as to whether or not such authority to prosecute was properly given.” I entirely agree with the Court of Appeal on this.”* (Emphasis is mine.)

Also at page 424 of the said report and in his concurring contribution, Ogbuagu JSC had this to say:-

*“Firstly, when or where counsel announces that he is appearing for a party, it is now firmly settled that it is not for the court to start an enquiry into his authority and the court never does.”*

The same principle was earlier applied by this court in the case of Compt. N.P.S V. Adekanye (No. 1) 2002 15 NWLR (Pt.790) 318. This was a case where the respondents were prosecuted by a private legal practitioner on behalf of the Federal Government. Upon objection raised by the respondents’ counsel, the Court of Appeal sought for the production of the fiat by counsel to the Federal Government.

On further appeal to this court, a presumption of authority was held in favour of a counsel who announces appearance for a party, notwithstanding that he possesses a fiat or a letter of instruction. It was further held that the presumption of authority can only be rebutted by hard evidence adduced by the other party; this from all indications has not been shown to be the case in the present appeal. B

Rather, and from the available evidence, it is on record that the Attorney-General of the Federation did authorize and ratify the preferment of the said count 4. There is no contrary evidence to this fact which can only be debunked by producing such as clearly re- C  
stated in Adekanya's case supra.

The learned appellant's counsel in the reply brief submitted and argued that by Section 4(4) of the Penal Code Act the Attorney General of the Federation has no power to arraign the appellant in count 4 with the death of Emeka Onuekutu having occurred outside the FCT, Abuja; that he cannot, therefore, authorize Chief Afe Babalola SAN & Co. to prosecute; hence count 4, counsel submitted was preferred without authority and is therefore incompetent. Reference in support was made to the case of Queen V. Owoh (1962) 1 All NLR 659 at 881. With all due respect, I hasten to state emphatically that the case under reference is not applicable but is remarkably distinguishable from the one under consideration. E

In other words, in the case under reference, while there was no power delegated to the Director of Public Prosecution under the Constitution of Eastern Nigeria, he was also not designated as a person authorized to sign information under s. 341 of the Criminal Procedure Code. Unlike the instant case under consideration, the Attorney General of the Federation constitutionally is in control of the power delegated. F G

For further physical confirmation of the Attorney General's authorization, reference can be drawn from the record of appeal at pages 1185 - 1189 of volume 3 which covered the proceedings on the day the respondent's appeal was argued at the lower court. It is apparent from all indications that counsel from the law firm of Chief Afe Babalola, SAN & Co. were led by Chief Bayo Ojo, SAN, the learned Attorney-General of the Federation himself, to argue the appeal. The representation covered all the counts since evidence did not exempt count 4 as sought to allege by the appellant. There is H

therefore no better way by which the Hon. Attorney-General could have signified or affirmed and ratified his consent and authority given the Law firm of Chief Afe Babalola SAN & Co. than his preferring all the counts in the charge inclusive of count 4.

**For all intent and purpose and as rightly observed by the learned appellant's counsel, on a community reading of the fiat issued by the Attorney-General of the Federation, it did not specifically and expressly state that the appellant should be tried for the murder of Emeka Onuekutu. Be that as it may, the lower court in its own wisdom at page 1234 of the record concluded thus and said:-**

***"The offence in counts 1 and 2 of the charge and offences in counts 3 and 4 are all committed in the course of pursuance of the same purpose... since the four counts on the charge are offences committed in the course of the same transaction and in pursuance of same purpose which is to assassinate P.W.1."***

**It is instructive and as rightly argued and submitted by the learned respondent's counsel that the appellant has not deemed it relevant to appeal against the foregoing findings by the lower court at page 1234 of the record supra. Any complaint against same cannot now be entertained or heard as it is too late in the day. It is well settled in plethora of authorities that where an accused person in a criminal case fails to raise an objection to an unlawful procedure/proceeding at the trial, he cannot be allowed to raise same at the appellate stage. See the cases of Obisi V. Chief of Naval Staff (2004) 11 NWLR (Pt 885) 482 at 499 - 500 and Jurwode V. The State (2000) 15 NWLR (Pt. 691) 467 at 488 where this court held that:**

***"...the appellant was not prejudiced at all... since neither himself nor his counsel ever at any time raised any objection to the absence of an alleged interpreter. Failure of a party as in the instant case, to object to the adverse procedure adopted at the trial debars him from raising it later."***

The foregoing authority relates to an accused person who could not speak English and therefore ought to have been afforded an interpreter; this court held that having not protested against the failure to comply with the Constitutional procedure at the trial, the ap-

pellant could not be heard to complain at this stage especially where he was all along represented by counsel. By parity of reasoning, since the appellant did not object to the competence of count 4 at the trial court, he cannot as rightly submitted by the learned respondent's counsel be allowed to raise same at this stage. It is far too late in the day with the door having been firmly closed and sealed. B

***The learned respondent's counsel also related familiarly to the provisions of Sections 213 and 214(1) of the Criminal Procedure Code Act Cap 491 Laws of the Federation of Nigeria (Abuja). On a careful perusal and consideration of the two connecting provisions, the confirmation of the findings by the lower court at page 1234 reproduced supra is obvious. That is to say while the former provision lays that a person accused of several offences of the same or similar character, may be charged with and tried at one trial for any number thereof the latter provides that if a series of acts so connected together as to form the same transaction is alleged, the accused may be charged with and tried at one trial for every offence which he would have committed if all such acts or someone or more of them without the rest were proved.*** C D E

***By the very nature of count 4, it cannot be excised from the other preceding counts as it arose from the same transaction and was incidental to the offences the fiat empowered the law firm of Chief Afe Babalola SAN & Co. to prosecute.*** F

***For further expatiation, recourse could be had on the authority of the case of Attorney-General, Ondo State V. Attorney-General, Federation (2002) 9 NWLR (Pt. 772) 222 at 335 where it was held by this court that-***

***"every grant of power includes by implication all such other powers as are reasonably incidental thereto and not expressly excluded."*** G

***It would appear that the said laid down principle had received legislative recognition in Section 10(2) of the Interpretation Act, Cap 192, Laws of the Federation of Nigeria, 1990, which reproduction states:-*** H

***"10(2) An enactment which confers power to any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are***

***incidental to the doing of it.***

In buttress of his submission the learned appellant's counsel affirmatively relied on the cases of Emeakayi V. C.O.P. (2004) 4 NWLR (Pt. 862) 158 and Rex V. Johnson Jaiyesimi Aiyeola (1946/49) 12 WACA 324 supra which authorities do not have any useful bearing on the appellant's case whatsoever. This is because while the former was predicated on Anambra State High Court Law, the latter was also not predicated on the 1999 Constitution. This is unlike the all embracing Section 174 wherein wide power is given the Attorney General of the Federation to prosecute. For instance and in other words, the power to prosecute in Emeakayi V. C.O.P. (supra) is definite and restrictive to the prosecution of bail application only.

In further reference to his submission, the learned appellant's counsel also tenaciously relied on Section 4(4) of the Penal Code which provides as follows:-

*“4(4). The provisions of subsection (2) do not extend to a case in which the only material event that occurs in Northern Nigeria is the death of a person whose death is caused by an act or omission at a place outside, and at a time when that person was outside, Northern Nigeria.”*

In the case at hand, the deceased Emeka Onuakutu in count 4 was not said to have died in Abuja but in Anambra State. Section 4(4) of the Penal Code supra is therefore irrelevant because, for the Section to apply there must be the proof that *“the only material event that occurs in the Northern Nigeria is the death of a person etc.”*

Having established therefore that the Attorney-General of the Federation authorized and ratified the filing of count 4 of the charge, its competence can no longer be in issue. This is because it arose from the same transaction and was incidental to the offences which the fiat empowered the law firm of Chief Afe Babalola, SAN & Co. to prosecute. I further wish to state as a consequence that the further authorities in the like of Olatunji V. State (2000) NWLR (Pt. 680) 182, Oyenkwu V. State (2000) 12 NWLR (Pt. 681) 256 and Okafor V. State (1976) 5 SC 16 all cited by the learned appellant's counsel are irrelevant and of no moment.

The 1st issue herein is therefore resolved against the appellant and in favour of the respondent.

ISSUE 2



Whether the Court of Appeal was right when it held that the High Court of the Federal Capital Territory, Abuja has jurisdiction to entertain the offences alleged in counts 3 and 4 of the charge preferred against the appellant.

The learned appellant's counsel while faulting the judgment of the lower court at page 1235 of the record, submitted that in criminal trial, the status of the complainant/victim of the alleged offence as well as the probable political consideration behind the alleged offence, do not vest jurisdiction on the court. The learned counsel in support of his submission cited the decision of this court in the case of *State V. Aibangbee* (1988) 3 NWLR (Pt. 84) 548 at 577 per Eso, JSC and submitted that the lower court committed an error and went on a voyage of its own by abdicating to consider the case before it. Further reference was also related to the case of *Madukolu V. Nkemdilim* (1962) 2 SCNLR 341 at 348 where the conditions laid down are of necessity for the competence of a court to adjudicate. Submitting on counts 3 and 4, learned counsel argued that they are offences allegedly committed and consummated with all their elements exclusively committed in Agulu, Anambra State; consequently, that the law governing the alleged crimes is the Criminal Code Law of Anambra State. The learned counsel submitted further that the Penal Code, not being an existing law in Anambra State, it cannot be enforced therein directly or indirectly.

In summary and taking into consideration the totality of the appellant's arguments, certain salient conclusions are obvious;

1) that the offences alleged against the appellant in this case as contained in counts 3 and 4 can only be prosecuted by the Attorney-General of Anambra State who is empowered by Section 211(1) of the Constitution of the Federal Republic of Nigeria, 1999;

2) that in the absence of the Attorney-General however, the prosecution could be taken up by any person to whom he issues a fiat before a competent court in Anambra State and under the relevant Criminal Procedure Law of Anambra State;

3) that the Court of Appeal, having aligned with the trial court at page 1230 of the record of appeal that the penal Code is not an existing law in Anambra State and therefore, not subject to jurisdiction of the Federal Capital Territory, had no valid justification to have somersaulted in its conclusion;

4) that the lower court also in disturbing the findings and conclusions arrived at by the trial court was therefore wrong in it, holding that the High Court of the Federal Capital Territory, Abuja has jurisdiction to entertain the said counts 3 and 4; also that the reliance on the cases of Patrick Njovens V. The State (1973) 1 NMLR 331 and  
B Adeniji V. The State (2001) 13 NWLR (Pt 730) p.375 was submitted as erroneous because none of the elements of the offences in counts 3 and 4 occurred in Abuja;

5) that all the elements of the offence of robbery in Patrick  
C Njoven's case were interlinked as against the instant case where the alleged crimes were consummated in Agulu, Anambra State as found by the trial court and affirmed by the lower court.

Continuing further, and on the interpretation of Section 4 of the Penal Code, the learned appellant's counsel submitted that the  
D Court of Appeal in their decision clearly misconstrued the said provision and also Section 134 of the Criminal Procedure Code. In other words, while Section 4 of the Penal Code makes provision for offences against laws of Northern Nigeria on the one hand, Section 134 of the Criminal Procedure Code on the other hand provides for  
E the venue where criminal proceedings are to be instituted in Northern Nigeria which counsel argued does not support counts 3 and 4 of the charge against the appellant for trial in Abuja; that a proper and workable interpretation of a particular statute or subsidiary legislation, should not be taken in isolation but as part of a greater whole.  
F

The learned counsel on the totality submitted that, with the alleged offences in counts 3 and 4 being hard offences against the criminal code Law of Anambra State and not political, the court should resolve this issue in favour of the appellant.

G In response to the submission on the 2nd issue, the learned respondent's counsel applauded the lower court's decision as very sound, logical and also borne out of sound reasoning; in other words, the view held that the trial court has jurisdiction to entertain counts 3 and 4 of the charge. The governing authorities relied upon by the  
H respondent are the cases of Njovens V. State (1973) 1 NMLR 331 at 345 and Adeniji V. State (2001) 13 NWLR (Pt. 730) 375 wherein it was held that mere entry of an accused person into the jurisdiction of the court where he was eventually arraigned was sufficient to confer jurisdiction, whether or not the crime was committed within such

jurisdiction. Learned counsel emphatically noted that the mode of entry into the jurisdiction is immaterial and copious reference was related to Section 4(2)(b) of the Penal Code Act of the High Court of Federal Capital Territory, Abuja. The counsel drew a remarkable distinction between the cases cited by the learned appellant's counsel in particular *Waziri V. State* (1997) 3 NWLR (Pt. 496) 689 which he argued are inapplicable as against those of *Patrick Njovens V. State* and *Adeniji V. State* supra. In confirming the jurisdiction of the Federal Capital Territory High Court therefore the following reasons are enumerated by counsel that:-

- a) In a criminal matter, it is the charge before the court that determines its jurisdiction to entertain the case. In other words, the charge is of most significant consideration for a court to assume jurisdiction over the alleged offence committed by the accused person;
- b) counts 1 and 2 on the charge sheet were alleged to have been committed within the Federal Capital Territory, Abuja;
- c) there exists a nexus between counts 1 and 2 committed within the Federal Capital Territory, Abuja and counts 3 and 4 of the charge committed in Agulu, Anambra State;
- d) by virtue of Section 221(d) of the Criminal Procedure Code, persons may be charged and tried together who were accused of different offences committed in the course of the same transaction. (The transaction was the mission to kill P.W.1.);
- e) on a collective summary of the evidence by P.W.1, P.W.12 and P.W.17, the offence in counts 1 and 2 which were said to have been committed in FCT Abuja, are all intertwined or interwoven with the elements of conspiracy and attempted murder contained therein.

Following from the foregoing facts, circumstances and the charge before the trial court therefore, the learned counsel submitted that the High Court of Federal Capital Territory, Abuja has unqualified jurisdiction to entertain this matter; that the offences contained in counts 1 and 2 of the charge as well as counts 3 and 4 were all committed in the course of the same transaction and consequently, any of the states where either of all the offences on the charge sheet was committed or elements of the offences occurred has jurisdiction to entertain this suit.

On the totality, the learned respondent's counsel restated that the objection by the appellant to the jurisdiction of the trial court to

try counts 3 and 4 of the charge herein is frivolous and baseless, a ploy to avoid justice and the court is urged to dismiss this appeal and call on the accused persons to enter their defence to the charge herein. The issue, counsel argued should be resolved against the appellant in favour of the respondent.

B For avoidance of doubt and recapitulations, counts 3 and 4 of the charge have been reproduced earlier in the course of this judgment. Also and in reference, I deem it appropriate to reproduce a part of the judgment of the lower court at page 1234 of the record wherein Adekeye (JCA) (as she then was) in delivering the lead judgment affirmed the jurisdiction of the trial court to entertain the foregoing counts and said:

C *"The offence in counts 1 and 2 of the charge and offences in counts 3 and 4 are all committed in the course of pursuance of the same purpose. Any of the states where any of all the offences on the charge sheet was committed or elements of the offences occurred had jurisdiction to entertain this suit - pursuant to Sections 134 - 139 of the Criminal Procedure Code Act Cap 491 Laws of the Federation of Nigeria, 1990...*

E *I also hold that the FCT High Court Abuja can assume jurisdiction over this matter."*

***The law is trite and has long been settled by this court that for a court to assume jurisdiction in a criminal trial, the following factors must be considered:-***

F ***"(i) That ends of justice would better be served by hearing the charge against the accused in that particular court seeking to assume jurisdiction.***

G ***(ii) That the accused was apprehended or in custody within the judicial division of the court seeking to assume jurisdiction.***

***(iii) Accessibility and convenience of the witnesses.***" See Usman V. State (1978) 6-7 SC 165.

H ***Jurisdiction is the corner stone and bedrock of adjudication; it can neither be compromised nor conferred by consent of parties upon a court. It is constitutional and very fundamental; hence the reason why it can be raised at any stage of a proceeding both at the trial and on appeal even if for the first time in this court. Where a court lacks jurisdiction, any***

**proceeding conducted is in breach and renders same a nullity.**

***The competence of a court to adjudicate on any matter had long been laid to rest in the locus classicus case of Madukolu V. Nkemdilim supra wherein Bairamian, F.J. made the following observations at page 348 and said:-***

***“Before discussing those portions of the record, I shall make some observations on jurisdiction and the competence of a court. Put briefly, a court is competent when-***

***(1) 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***

***(2) 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***

***(3) the case comes before the court initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.***

***Any defect in competence is fatal for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication.”***

***For purpose of conferring jurisdiction therefore, the court must be absolutely certain and satisfied that the offence or crime is directly donated by the jurisdiction conferred in the enabling law; where the offence or crime is however outside the statutory provision, the court cannot exercise jurisdiction as it lacks the authority to do so.*** See Onwudiwe V. F.R.N. (2006) 10 NWLR (Pt 988) 382 at 425.

The reproduction of Section 4(2)(b) of the Penal Code Act is relevant and it provides as follows:-

***“4(2) where any such offence comprises several elements and any acts, omissions or events occur which, if they all occurred in Northern Nigeria would constitute an offence, and any of such acts, omissions, or events to occur in Northern Nigeria, although the other acts, omissions, or events, which if they occurred in Northern Nigeria would be elements of the offence occur elsewhere than in Northern Nigeria***

***(b) If that act or omission occurs elsewhere than in Northern Nigeria, and the person who does that act or makes that omission afterwards enters Northern Nigeria, he is by such entry guilty of an***

*offence of the same kind, and is liable to the same punishment, as if the act or omission had occurred in Northern Nigeria and he had been in Northern Nigeria when it occurred."*

In the case of Patrick Njovens V. State (supra) this court, while interpreting Section 4(2)(b) of the Penal Code Act had this to say:-

B *"We cannot of course agree with the contention of learned counsel for the accused persons. Section 4(2)(b) of the Penal Code Law which deals with cases in which the initial element occurs outside the state, does require that the person who does that act or omission*  
 C *should "afterwards enter" the state before being triable or punishable under the Penal Code. The learned Director of Public Prosecutions submitted on this aspect of the case that any mode of entry is sufficient for the purpose of the section and that even if the accused persons were kidnapped and brought into the state they have in-*  
 D *deed entered the state within the meaning and intent of the provisions of S.4(2)(b) of the Penal Code. We have satisfied ourselves that to construe the word 'enter' in the subsection as meaning only a voluntary entry would be completely ridiculous since in that circum-*  
 E *stance no criminal will ever enter the state when he knows or realizes that such entry may make him triable by the laws of the state."* (emphasis provided).

Also and in confirming the decision reached in Patrick Njovens V. State (supra) this court again while interpreting a similar provision  
 F of the criminal code law of Lagos State held the same view in a much latter case of Adeniji V. State supra at 392 - 393. The relevant Section is 12A(2)(b) which states as follows:-

*"If that act or omission occurs elsewhere than in the Lagos State and the person who does that act or makes that omission after-*  
 G *wards comes into Lagos State, he is by such coming into the Lagos State guilty of an offence of that same kind and is liable to the same punishment as if that act or omission had occurred in Lagos State and he had been in Lagos State when it occurred."*

H The court from all deductions have shown that even if the offence was committed outside Lagos State, and the appellant eventually enters into Lagos State, by the mere act of such entry, jurisdiction is automatically conferred on the Lagos High Court to try him of the offence. The view held in the earlier case of Patrick Njovens V. The State is therefore squarely applicable on all fours as rightly sub-

mitted by the learned respondent's counsel.

In opposing the view held by the respondent, the appellant affirmatively relied on the case, of *Waziri V. State* supra and argued that in the absence of any element of the offences having taken place in the Federal Capital Territory, Abuja, that the High Court in FCT could not assume jurisdiction over the matter. He also relied on the case of *Ngige V. Chukwu* (2005) 2 NWLR (Pt. 909) 123 wherein the only issue was whether the High Court, Enugu State, had the territorial and substantive jurisdiction directing the Inspector-General of police to remove the 1st appellant from office as Governor of Anambra State. On the extent of territorial jurisdiction of the High Court of a State, the Court of Appeal at page 147 of the report held that the court owes it a duty to adhere strictly to the Constitutional provision which cannot be stretched to cover matters outside its scope.

It is instructive to restate as rightly observed by the learned respondent's counsel that the case of *Ngige V. Chukwu* (supra) cited by the learned appellant's counsel is civil in nature and did not have direct or remote relevance to the issue of entry of an accused within the territory of the court that would assume jurisdiction in criminal matters. Furthermore, the other case of *Waziri V. State* (supra), although similar in facts to the two Supreme Court cases of *Patrick Njovens V. State* and *Adeniji V. State* (supra), is however a Court of Appeal decision which is of persuasive authority. It cannot as a matter of precedent and principle be preferred or override the two Supreme Court decisions on the issue of entry of an accused within the jurisdiction of the trial court.

Following from the foregoing authorities and in particular the case of *Adeniji V. State* (supra) it was clearly held that the appellant's entry into Lagos conferred jurisdiction on the Lagos State High Court not withstanding that the offence was committed outside Lagos. In otherwords, it was the mere entry into Lagos State that conferred the jurisdiction to try him of the offence. The relevant governing provision is section 12(1)(2)(b) of the Criminal Code Laws of Lagos State, 1973 wherein subsection (2)(b) for instance said:-

*“(2)(b) If that act or omission occurs elsewhere than in the Lagos State and the person who does that act or makes that omission afterwards comes into the Lagos State he is by coming into Lagos State guilty of an offence of the same kind and is liable to the same*

*punishment, as if that act or omission had occurred in Lagos State and he had been in Lagos State when it occurred."*

***The entry as construed in the case of Patrick Njovens V. State supra needed not be voluntary or legitimate. Put another way, any mode of entry is sufficient for the purpose of section 4(2)(b) of the Penal Code Act. The Federal Capital Territory Abuja in the instant case cannot therefore go outside the Interpretation of the decision by this court supra. This is because the principle of stare decisis is well entrenched in our system of judicial adjudication where lower courts in the hierarchy are bound by the ratio decidendi of higher courts. See Emoga V. State (1977) 9 NWLR (Pt. 519) 38 wherein this court held that both the Court of Appeal and the High Court are bound by the decision of the Supreme Court; that the refusal so to do was greatly erroneous.***

***The rule is designed to ensure uniformity in decision making, foster stability and enhance the development of a consistent and coherent body of law as well as assure a quality of treatment for litigants similarly situated.*** See Clement V. Iwuanyanwu (1989) 3 NWLR (Pt. 107) 39 at 53 - 54, see also Ekperokun V. University of Lagos (1986) 4 NWLR (Pt. 34) 162 at 193; Federal Government of Nigeria V. Oshiomhole (2004) 3 NWLR (Pt. 860) 305 at 324 and African Newspapers V. Nigeria (1985) 2 NWLR (Pt.6) 137 where this court at page 141 held and emphasized that no discretion is given the judges of the lower courts to depart from the decisions of higher courts in the hierarchy even where such were erroneous. I also need to add that this court had in Cardoso V. Daniel (1986) 2 NWLR (Pt 20) 1 at 5 held that subordinate courts are also bound by their own decisions. They cannot, for any reason therefore, ignore or refuse to follow the decisions of the Supreme Court: hence the confirmation that courts are jealous of the principle of judicial precedents and will not tolerate interference therewith. A judge is an adjudicator and not a law maker, he must therefore apply the law in its given form. See Akpan V. State (1994) 8 NWLR (Pt. 361) 226 at 243 - 244.

On a community reading of the record of appeal and with particular reference made to the evidence given before the trial court at pages 689 and 690 by one Christian Ojor as PW.17, (the Inves-



tigating Officer), this was his evidence:-

*“I know all the accused persons as I have come across them during investigation. 1st accused was forwarded to the SSS by the Police Headquarters, Abuja, he remained with the SSS during the period of investigation and up to the time he was arraigned before this court similarly, the 2nd accused, 3rd accused, 4th accused but 5th accused reported himself to our office at Okar after he was declared wanted from where he was brought to our Abuja Office, he remained in our custody till arraignment before this court similarly the 6th accused, he reported himself at Okar office of the SSS after he was declared wanted, from there he was brought to Abuja, while the 8th accused was arrested by the SSS when he tried to distract the SSS from carrying out their duties in the investigation.”*

***As rightly submitted by the learned respondent’s counsel, it is apparent from the forgoing evidence that all the accused persons one way or the other did enter into the Federal Capital Territory, Abuja before they were charged to the Federal Capital Territory High Court to answer the charges against them. In other words, the concept of “entry” as required by Section 4(2)(b) of the Penal Code has, in the circumstance been met and thus bringing this case within the interpretation and meaning of the decisions in Patrick Njovens V. State and Adeniji V. State (supra) wherein it was held that entry into the territorial jurisdiction of the trial court by which ever means is sufficient. It follows squarely that the contrary argument put forward by the learned appellant’s counsel is a sheer misconception of the view held by this court in the cases supra.***

Sections 134 through to 139 of the Criminal procedure Code Act Cap 491 Laws of the Federation of Nigeria 1990 contained the statutory provisions on jurisdiction. Specifically and by Section 134(a) of the said law, an offence shall ordinarily be inquired into and tried by a court within the local limit of whose jurisdiction the offence was wholly or in part committed, or some acts forming part of the offence was done.

***As rightly submitted on behalf of the respondent, the offences contained in counts 1 and 2 of the charge and those contained in counts 3 and 4 were all committed in the course of the same transaction. Consequently therefore, it is correct***

**to conclude that any of the States where either or all the offences on the charge sheet were committed or elements of the offences occurred has jurisdiction to entertain the suit.**

**Counts 3 and 4 of the charge are continuing manifestation of the acts in counts 1 and 2 and are all interwoven elements of one of and the other; counts 3 and 4 are therefore also made triable by the High Court of the Federal Capital Territory, Abuja.** See again Patrick Njovens V. The State (supra).

In further re-iteration and while interpreting similar provisions of the Criminal Procedure Act (CPA) in the case of Lawson V. The State (1975) 4 SC 115 at 121 this court also held that:

*“When an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first mentioned offence may be tried or inquired into by a court having jurisdiction in the division or district either in which it happened, or in which the offence with which it was so connected happened.*

*We are satisfied that the offence charged in the 5th count is related to the other offences with which the 2nd appellant was charged and which later offences are indisputably triable by the learned trial judge who had tried this case.”*

It was further held in the same case also that:

*“An offence which is only an offence by reason of its connection with other offences is triable either where the offence occurred or where the offences to which it is related occurred.”*

The provision of Section 136 of the Criminal Procedure Code also serves a confirming legislation and it states:-

*“136 An offence committed by a person whilst he is in the course of performing a journey or voyage may be inquired into or tried by a court through or into the local limits of whose jurisdiction he, or the person against whom, or the thing in respect of which the offence was committed, resides, is or passed in the course of that journey or voyage.”* (Emphasis provided).

The effect of this Section is to confer jurisdiction on a court where the victim of an offence resides if the offence was committed while the victim was on a journey. It is in evidence on record that P.W.1, the victim of the incident, lives or resides in Abuja in the Federal Capital Territory. This fact stands unchallenged, undisputed and also shown on the record by evidence of P.W.1 herself as well as

count 2 of the charge where her residence was “on Freetown Crescent, Wuse II, Abuja”.

As a further booster, to the foregoing, this court in the case of Okoro V. Attorney-General (1965) 1 All NLR 283 also held that where an offence has several elements, and the initial element or part thereof occurs in one state and the others in another state or where different offences are committed in the course of the same transaction in different territorial jurisdictions then both states have concurrent jurisdiction to try the offender. It was further held that a trial by a competent court in one state would operate as a bar to a second trial in another state.

With all due respect to the learned appellant’s counsel, he appears to have misconceived the interpretation of the decisions of this court particularly in the cases of Patrick Njovens V. State and Adeniji V. State (supra) and also the other related authorities. The jurisdiction of the Federal Capital Territory Abuja was, I hold rightly invoked in respect of counts 3 and 4 and the lower court cannot be faulted in affirming the view taken by the trial court.

The said issue is, I hold resolved against the appellant and ruled in favour of the respondent.

### ISSUE 3

Whether or not the lower court was right when it held that the Attorney-General of the Federation could validly issue fiat to prosecute the Appellant at the Federal Capital Territory, Abuja in respect of counts 3 and 4 of the charge dated the 27th day of September, 2004.

Submitting on this issue, the learned appellant’s counsel related copiously to the conclusion arrived at by the lower court at page 1234 of the record in its judgment and disagreed as erroneous that there is nothing in the sections relied upon that vests the Attorney-General of the Federation with power or authority to issue FIAT in respect of offences created under a state law and which were committed wholly outside the Federal Capital Territory Abuja. He submitted on the contrary that the facts of this appeal and the applicable law suggest otherwise. In further maintaining his stance, the learned counsel referred to Section 174(1) of the Constitution of the Federal Republic of Nigeria, 1999 relating issuance of fiat by the Federal Attorney-General. Learned counsel informed that by the provision, the

Attorney-General of the Federation is incompetent to prosecute an offence created under a State law i.e. offences not created by an act of the National Assembly unless the offence is committed in the Federal Capital Territory, Abuja; that on the totality of the facts from counts 3 and 4, the appellant and others allegedly committed offences contrary to the Penal Code, which is not an existing law enforceable in Anambra State either directly or indirectly. The offences, counsel submitted, can only be prosecuted by the Attorney-General of Anambra State, who is empowered by Section 211(1) of the Constitution of the Federal Republic of Nigeria; that on the premise, the appellant and others can only be arraigned in respect of counts 3 and 4 by the Attorney-General of Anambra State or by any person to whom he issues a fiat before a court in Anambra State and under the Criminal Procedure Laws of Anambra State. Reference by counsel on the Constitutional dichotomy of powers was made to the decisions of this court in the cases of *Owoh V. Queen* (1962) 2 SCNLR 409 and *Anyebe V. State* (1986) 1 NWLR (Pt.14) 39. In his continued submission, the learned counsel highlighted that, whether an offence is classified as federal or state, it is a matter of substantive law which can be resolved by examining the relevant statute creating the offence; that the offences charged in counts 3 and 4 are matters on residual list and are within the exclusive jurisdiction of a state House of Assembly; that the Criminal Code is a law within the residual power of the House of Assembly of Anambra State and consequent upon which it is applicable to counts 3 and 4 as an existing law within the purport of Section 315 of the Constitution of the Federal Republic of Nigeria, 1999; related reference to buttress his submission was made to the decision of this court in the case of *Attorney-General Abia State V. Attorney-General of Federation* (2002) 6 NWLR (Pt.763) 264.

The learned appellant's counsel in further argument contends that the Penal Code as applicable in the Federal Capital territory, by virtue of Section 13 of the Federal Capital Territory Act, Cap F6 LFN, 2004 does not have a federal application/coverage and therefore cannot be stretched to apply in Agulu, Anambra State. As a consequence, that the Attorney-General of the federation has no locus standi to issue a FIAT in respect of offences allegedly committed in Agulu, Anambra State without express authorization by the Attor-

ney-General of Anambra State. The learned counsel urged in the result that the issue be resolved in their favour.

In response to the submission made on behalf of the appellant, the learned respondent's counsel adopted all their arguments earlier advanced under issue 2 and in addition also submitted the wrong impression created by the appellant that the charge against him was brought under the criminal code of Anambra state; that a simple perusal of the charge before this court will reveal that same was brought under the Penal Code applicable in the FCT. The learned counsel re-iterated the validity of the fiat authorizing the law firm of Chief Afe Babalola, SAN & Co to prosecute the appellant and others in the High Court of Federal Capital Territory, Abuja under the Penal Code as properly issued.

On whether or not the powers of the Federal Attorney-General are limited to offences created under the Act of the National Assembly as submitted on behalf of the appellant, the learned respondent's counsel related to Part 1 section 1 of the schedule to the Criminal Procedure Code Act, Cap 491 Laws of Abuja FCT, 1990, which makes the provisions of Criminal procedure Code applicable in the Federal Capital Territory. Closely related to the foregoing is also the provision of Section 301 of the Constitution of the Federal Republic of Nigeria 1999 read along with Section 4(2)(b) of the Penal Code Act (supra).

In issuing the fiat, learned counsel maintained, it must be noted that the Attorney General of the Federation did not act as the Attorney-General of the Federation or the Attorney-General of Anambra State; rather that he acted as the Attorney-General of the FCT and that since the offences for which he issued the fiat were crimes under the laws of the FCT, the fiat was validity issued; that the appellant clearly got it wrong when he submitted that counts 3 and 4 were only triable by the Attorney General of Anambra State. While alluding to the wide implication and influence of the power of the Attorney-General of the Federation under Section 174 of the Constitution, the learned counsel drew attention to the view held by this court in the case of Attorney-General Ondo State V. Attorney-General, Federation supra Counsel in the result submitted as absurd the expectation by the appellant that the charge be filed in the High Court of the FCT but drafted under Anambra State Criminal Code and be prosecuted

by the Attorney-General of Anambra State. The learned counsel therefore submitted as irrelevant the cases of *Owoh V. Queen* and *Anyebe V. State* supra and urged that the issue be resolved against the appellant and in favour of the respondent.

The appellant's bone of contention herein is questioning the Attorney-General of the Federation whom he argued has no power or locus standing to issue FIAT in respect of the offences alleged in counts 3 and 4 which occurred in Anambra State, without the express authorization of the Attorney-General of that state.

For the determination of this issue, I would wish to refer to the judgment of the lower court at page 1234 of the Record of Appeal wherein it held as follows:-

*"With the community reading of Section 4(2)(b) of the Penal Code CAP 532 Laws of the Federation 1990, Section 134(a)(b)(c) and (d) of the Criminal Procedure Act Cap 491 Laws of Federation 1990, and Section 301 of the 1999 Constitution the Honourable Attorney-General can validly issue the FIAT dated the 10th of September, 2004 to the Law firm of Chief Afe Babalola, SAN & Co. to prosecute the respondents here at the Federal Capital territory, Abuja."*

It is obvious from the foregoing that the determination of this issue is a matter of law and purely predicated on the collective interpretation of the various provisions referred in the judgment as rightly pronounced by their Lordships of the Court of Appeal. For purpose of recapitulation, I have earlier in the course of this judgment reproduced the relevant Sections 4(2)(b) and 134 of the Penal Code and Criminal Procedure Act respectively.

***I will at this point wish to add that the power of the Honourable Attorney-General of the Federation and Minister of Justice to issue fiat in respect of criminal prosecution of any person is provided for by Section 174(1) of the Constitution of the Federal Republic of Nigeria, 1999, and the reproduction which states as follows:-***

***"(1) The Attorney-General of the Federation shall have power:-***

***(a) to institute and undertake criminal proceedings against any person before any court of law in Nigeria other than a court martial, in respect of any offence created by or under any Act of the National assembly;***

***(b) to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; to***

***(c) discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.*** B

From the totality of the argument submitted on behalf of the appellant, it was contended that having regard to the fact that the offences in counts 3 and 4 are State offences, the Honourable Attorney-General of the Federation has no power to grant a fiat on these offences as he did under Section 174 of the Constitution of the Federal Republic of Nigeria 1999. To put in another way, it is the contention of the appellant that the powers of the Federal Attorney-General are limited only to the offences created under the Act of the National Assembly. C D

It is relevant to point out at this juncture and make reference to Part 1 of the schedule to the Criminal Procedure Code Act, Cap 491 Laws of Abuja FCT, 1990, which makes the provisions of Criminal Procedure Code applicable in the Federal Capital Territory and simply states thus:- E

*“In criminal procedure code, unless the context otherwise admits - Attorney General means the Attorney General of the Federation.”*

Another powerful and likewise related provision is Section 301 of the Constitution of the Federal Republic of Nigeria 1999 which states as follows:- F

*“Without prejudice to the generality to the provisions of Section 299 of this Constitution in its application to the Federal Capital Territory, Abuja this Constitution shall be construed as if-* G

*(c) references to persons, offices and authorities of a state were references to the persons, offices and authorities of the Federation with like status, designations and powers, respectively and in particular, as if references to the Attorney General, Commissioners and the Auditor General for a state were references to the Attorney General, Ministers and Auditor-General of the Federation with like status, designation and powers.”* H

The Federal Capital Territory, Abuja from the foregoing provision is unique in its operational status with a special feature and edge

over and above the States. In otherwords, the section provides that where the Attorney General of a State is vested with any powers under the Constitution or any law, the same power is vested in the Federal Attorney General if it is to be exercised in the Federal Capital Territory. Put bluntly and as rightly submitted on behalf of the respondent, the Attorney General of the Federation is also an Attorney-General of a State when exercising his powers under the section with respect to matters within the Federal Capital Territory. Therefore, it is not out of place to conclude for the sake of the section that the Attorney-General of the Federation is the Attorney-General of the FCT.

***On a collective deduction of section 4(2)(b) of the Penal Code Act read along with section 134(a)(b)(c) and (d) of the Criminal Procedure Code Act as well as section 301 of the Constitution 1999, the only authority that can issue a fiat to prosecute the charges inclusive of counts 3 and 4 is the Attorney General of the Federation. This is especially with the offences having, by operation of law, automatically become those that were committed within the FCT upon the entry of the appellant into the FCT. In issuing the Fiat, the Attorney General acted as the Attorney General of the FCT and contrary to the submission on behalf of the appellant, it was therefore validly issued. Counts 3 and 4 of the charge that took place in Agulu, Anambra State automatically became offences committed in the FCT as soon as the appellant entered the FCT. Counts 3 and 4 are a continuing manifestation of the acts in counts 1 and 2 which took place in Federal Capital Territory Abuja. As rightly submitted by the learned respondent's counsel, all the counts 1, 2, 3 and 4 in the charge are offences committed in the course of the same transaction (that is, to assassinate P.W.1, Dr. (Mrs.) Dora Akunyili, the Director General of NAFDAC). In my humble view, the Hon. Attorney General of the Federation in the circumstance did validly and legally issue the fiat of 10th September, 2004 to the law firm of Chief Afe Babalola, SAN & Co, to prosecute the appellant and others in this case.***

It is instructive to relate that this court had in judicial authorities alluded to the implications and influence of the wide and enormous



power vested in the Federal Attorney General under section 174 of the Constitution. For instance, and again in the case of Attorney-General, Ondo State V. Attorney-General, of the Federation supra, at 419 it was held that:-

*“The Attorney-General of the Federation derives his powers under section 174 of the Constitution as an agency of the Federal Government, and the court cannot control the manner he exercises those powers so conferred. Nor can he be prevented from exercising his functions on the grounds that his jurisdiction does not extend to any particular state in Nigeria. Section 174 of the 1999 Constitution does not impose any such limitation.”*

With the crimes having automatically become those committed within the FCT, the discretion to prosecute in the FCT was absolutely that of the Federal Attorney-General to exercise; he cannot be questioned not even by the court which has no control over the manner he exercises the power so conferred.

The learned appellant’s counsel in the course of his submission cited the decision in the case of Owoh V. Queen supra. In that case, the Director of Public Prosecution of the Federation signed information which was prosecuted at the Eastern State High Court and under the laws of the Eastern State. As rightly submitted on behalf of the respondent, the authority as against the one in issue, is irrelevant and also highly distinguishable. This is because the charge in the case at hand unlike the case in reference, was instituted by the Attorney General of the FCT under the laws of the FCT and before the High Court of the FCT.

In the same vein, the case of Anyebe V. State supra was also relied upon by the learned appellant’s counsel. The Attorney General of Benue State in that case instituted criminal proceedings in respect of a federal offence without the express authority of the Attorney General of the Federation. The case is also remarkably distinguishable as it is inapplicable to the facts of the instant case.

***In the result, and contrary to the contention held by the learned appellant’s counsel, the Attorney General of the Federation from all indications had the competence in law and therefore did validly issue the fiat in respect of the offences contained in the charge. The said issue 3 is also resolved against the appellant and in favour of the respondent.***

## 4TH ISSUE

Whether the FIAT of the Attorney-General of the Federation dated 10th September, 2004 issued to Chief Afe Babalola, SAN & Co., to prosecute could be used to initiate appellate proceedings without a fresh FIAT.

B It is the submission by the learned appellant's counsel that the right of appeal, though Constitutional and exercisable by a party aggrieved by the decision of a trial court from which appeal goes to the Court of Appeal and thereafter to this court, the procedure initiating the appellate process is vital to the success of any appeal. The counsel C further maintained that being a criminal appeal, the charge preferred against the appellant and others at the trial court was pursuant to a FIAT dated 10th September, 2004 and that it did not therefore include an authority to appeal or file an appeal against any of the rulings of the trial court, where the appellant and others were prosecuted. The learned counsel argued in the result that Afe Babalola SAN & Co. has no authority to appeal or validly file an appeal against the ruling of the trial court dated 24th September, 2005 or any other ruling of the trial High Court without a fresh mandate through another FIAT from the Hon. Attorney-General of the Federation; that E having not done so, the respondent's appeal at the lower court was rendered incompetent. Reference was related copiously to the persuasive decision of the Court of Appeal in the case of Emeakayi V. COP (2004) 4 NWLR (Pt 862) 158 also the case of Rex V. Johnson F Jaiyesinmi Aiyeola (1946/1949) 12 WACA 324 at 326; that the above authorities have settled as obligatory the need to obtain a fresh mandate before their appeal was filed and the consequential effect of the failure to obtain such authority had rendered the appeal at the lower G court incompetent and should have been struck out.

On the legal effect of the subsequent amendment of the Notice of Appeal by adding an additional ground to the existing grounds, learned counsel submitted that the move cannot validate the invalid Notice. Reference was laid on the case of Macfoy V. United Africa H Company Ltd. (1962) AC 152 where the principle is well enunciated by the famous jurist, Lord Denning that you cannot place something on nothing and expect it to stand. It is a hollow ground and will certainly crumble.

On a final note, the learned counsel maintained as unfortu-

nate the error committed by the lower court in holding that the FIAT in question can be used to activate the appellate jurisdiction of the said court; that the court should in the circumstance have struck out the 1st respondent's Notice of Appeal for incompetence.

In his brief response to the foregoing arguments, the learned respondent's counsel related to the decision of this court in the case of Ebe V. COP (2008) 4 NWLR (Pt. 1076) 189. On the totality, he posited that contrary to the contention held by the appellant's learned counsel, the Attorney-General of the Federation did not need to issue a fresh fiat before the law firm of Chief Afe Babalola, SAN & Co. could proceed with the prosecution of the appeals arising from the charge. As a confirmation, the counsel informed the court and drew its attention wherein the main trial is still pending at the trial court and therefore the case for which the fiat was issued is un-concluded and the need for fresh fiat did not arise. He urged that this issue should also be resolved in favour of the respondent.

The appellant's contention in this issue is to the effect that the 1st respondent's appeal to the Court of Appeal and which notice was filed by the law firm of Afe Babalola, SAN & Co. was incompetent since the FIAT issued therein was to prosecute and not to undertake any appellate proceeding.

It is a fact and well taken as rightly submitted on behalf of the respondent that the content of the fiat dated 10th September, 2004 and issued by the Hon. Attorney-General of the Federation was to "prosecute the persons suspected to have participated in the attempt to assassinate the Director-General of NATIONAL AGENCY FOR FOOD AND DRUG ADMINISTRATION AND CONTROL (NAFDAC), Dr. Dora Akunyili."

Following from the argument advanced on behalf of the appellant, the question begging for an answer is, whether the said fiat issued supra is incompetent to prosecute this appeal on the ground that no such express provision was made to cover thereof? Put differently, whether Afe Babalola SAN & Co. required a fresh mandate through another fiat from the Hon. Attorney-General of the Federation before they could validly initiate appellate proceedings in the matter at hand?

***Without belabouring the point, I hasten to state that this court, as rightly submitted by the learned respondent's coun-***

**sel had by its pronouncements, laid to rest the issue of fresh fiat at the appellate level. For instance, in the case of Ebe V. COP cited supra, the fiat which was issued to a counsel for purpose of prosecuting a criminal case at the magistrate court, was challenged at the High Court on appeal on the ground**  
**B that no fresh fiat was obtained to prosecute the appeal. In resolving the issue this court at pages 206 and 217 - 218 of the report had this to say:-**

**“...once a fiat is granted to a counsel to prosecute or defend a case, the validity of the fiat would continue throughout the duration of the case for which the fiat was granted.**  
**C**

**A fiat is a Latin word which means ‘let it be done.’ Technically, therefore, it denotes the grant or conferment of power on another by a person having complete authority on the issue upon which the fiat is given in matters of prosecution. The Attorney-General of a state or of the federation can give such a fiat. A commissioner of police can delegate his officers or private legal practitioners to represent him in a case. The life span of such an authority of fiat may extend to the conclusion of the case in question. It was certainly wrong of the learned High Court judge on appeal to have refused audience to the learned counsel who appeared for the respondent which resulted in the striking out of the appeal before him. His Lordship was misled and misdirected, unfortunately.”**  
**E**

**The law is well settled in plethora of authorities that an appeal is a continuation of the action and that no new issues can be raised on appeal. See the case of Chinda V. Amadi (2002) 7 NWLR (Pt 767) 505 at 517, see also Oredoyin V. Arowolo (1989) 4 NWLR (Pt 114) 172 at 211.**  
**G**

**As rightly submitted by the learned respondent’s counsel, the situation at hand did not require the Attorney General of the federation to issue a fresh fiat before the law firm of Chief Afe Babalola, SAN & Co. could proceed with the prosecution of the appeals arising from the charge. The learned appellant’s counsel with all respect, I hold got it all wrong and was grossly misconceived. This is more so with the present appeal being interlocutory, the main case is therefore still pending at the trial court; hence the extant conclusive notion**  
**H**

***held that the case for which the fiat was issued is still pending and the need for a fresh fiat does not in the circumstance arise. The law firm of Chief Afe Babalola SAN & Co. in otherwords needs no fresh fiat to prosecute any appeal arising from the charge.***

The said issue is also resolved against the appellant in favour of the respondent. B

On the totality of this appeal and with all the four issues resolved against the appellant and in favour of the respondent, the appeal, I hold is devoid of any merit and is hereby dismissed. In the result, the judgment of the lower court is also affirmed by me and I hereby make an order that the High Court of Federal Capital Territory Abuja has jurisdiction to continue to entertain counts 3 and 4 on the charge and conclude the case to its logical conclusion. Hearing of the case in criminal trial should therefore continue in respect of counts 3 and 4 on the charge. C D

Appeal is hereby dismissed while hearing is to continue accordingly.

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### **ONNOGHEN JSC**

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

I agree with his reasoning and conclusion that the appeal lacks merit and should be dismissed. F

My learned brother has dealt exhaustively with the relevant issues raised in the appeal leaving me with nothing useful to add.

I therefore dismissed the appeal for want of merit.

Appeal dismissed. G

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### **CHUKWUMA-ENEH JSC**

I read the lead judgment of my learned brother Ogunbiyi JSC in this matter with which I entirely agree. All the issues raised for determination have been rightly resolved against the Appellant. The appeal has no merit whatsoever and should be dismissed. I endorse all the consequential orders contained therein. H

**ARIWOOLA JSC**

I had the opportunity of reading the draft of the lead judgment just delivered by my learned brother, Clara Ogunbiyi, JSC.

My Lord dealt with all the issues that came up in the appeal so admirably and comprehensively that I have nothing more useful to add. I am in complete agreement with the reasoning therein and the conclusion beautifully arrived thereat.

The appeal is surely unmeritorious and lacking in substance. It deserves to fail and be dismissed. I too dismiss same.

I abide by the consequential order in the said lead judgment.

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**AKA'AHS JSC**

I was privileged to read the draft of the judgment of my learned brother, Ogunbiyi JSC wherein the four issues raised in the appeal were exhaustively dealt with. I agree with the reasoning and conclusion reached in the leading judgment that the interlocutory appeal lacks merit and it is accordingly dismissed.

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