

SUPREME COURT OF NIGERIA
FRIDAY 11TH APRIL, 2014. SC. 362/2009
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-
COOMASSIE, N. S. NGWUTA, O. ARIWOOLA,
C. B. OGUNBIYI, JJSC**

CHRISTOPHER OKWARA MBA APPELLANT
V.
THE STATE RESPONDENT

JURISDICTION - Fundamentality of - It is the authority court has to decide matters before it - And defect in jurisdiction is fatal to the proceedings - However well conducted (H1)

COURTS - Competence of - Madukolu v. Nkemdilim - Court is competent to exercise jurisdiction where inter alia - It is properly constituted - Subject matter of action is within its jurisdiction - And the action is initiated by due process of law (H2)

CRIMINAL PROCEDURE - Charges - Joint trial - By CPC s. 221(d) - Persons may be charged and tried together - Who are accused of different offences committed in the course of same transaction (H3)

CRIMINAL PROCEDURE - Institution of - Powers of AG Federation - As FCT HC has jurisdiction to try offences in counts 3 & 4 - It follows that the AG can validly issue fiat to any counsel of his choice - To prosecute criminal offence in FCT (H4)

FACTS

Accused/appellant and some other persons were arraigned before the High Court of the Federal Capital Territory Abuja on four counts charge bordering on conspiracy, attempted murder and murder under sections 97, 221 and 229 of the Penal Code. Official fiat was given by the Attorney-General of the Federation to the law firm of Afe Babalola (SAN) & Co. to prosecute the suspects. Prosecution/respondent's case is that sometime in the year 2001, some unknown gun men invaded the Abuja official residence of Dr. (Mrs.) Dora Akunyili i.e. the former D-G of the National Agency for Food and

Drug Administration and Control (NAFDAC). Their mission of firing shots at her did not succeed. Subsequently in 2003, another assassination attempt was launched by the same suspects on the same lady at a town called Agulu in Anambra State. The bullet fired on the lady missed its target and hit another motorist who died on the spot. Appellants and the others were named as the suspects in the attack.

Prior to the commencement of trial, learned counsel for 2nd and 3rd accused filed notice of preliminary objection seeking to set aside the fiat by the A-G Federation. The objection also challenged the jurisdiction of the court to try the offence which occurred in Anambra State. 2nd and 3rd accused later withdrew their application on the second leg of the objection on the jurisdiction of the court and same was struck out. Trial commenced in the matter. Later on, learned counsel for 2nd and 3rd accused re-filed the application which was earlier on withdrawn and struck out. The learned trial Judge in his wisdom, deferred hearing on the preliminary objection until such a date when accused would have argued their no case submission. Eventually in its ruling, the court upheld the application on no case submission in respect of counts 1 and 2, while jurisdiction was declined on counts 3 and 4. Dissatisfied, respondent appealed to the Court of Appeal Abuja Division. The court affirmed trial court's ruling on no case submission in respect of counts 1 and 2, but held that trial court has jurisdiction to try counts 3 and 4. Not satisfied, appellant appealed to Supreme Court based on the Court of Appeal's decision in respect of counts 3 and 4.

ISSUE FOR DETERMINATION

"Whether the Court of Appeal was right in holding 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 appellants?"

HELD (Unanimously dismissing the appeal per
MUHAMMAD JSC)

JURISDICTION - Fundamentality of

1. JURISDICTION, it is said, my lords, is the life-wire of litigation. It is the authority which a court has to decide matters

before it or to take cognizance of matters presented before it for decision.

Where a court, whether inferior or superior, lacks it, it cannot entertain the matter, civil or criminal, sought to be placed before it for litigation as the defect in jurisdiction is fatal to the proceedings however well conducted and is extrinsic to the adjudication.

Thus, in a criminal matter, the fundamental question to be considered by the trial court at that initial stage of the proceedings, especially where there is objection to the jurisdiction of the court, is not whether the prosecution's case has merit but whether the accused person is in the right court.

(p. 1609 B)

COURTS - Competence of - Madukolu v. Nkemdilim

2. In the locus classicus case of Madukolu v. Nkemdilim (1962) 2 SCNLR, 341, the ingredients of jurisdiction of a court have, generally, been stated as follows: that a court has the necessary competence to exercise jurisdiction in a cause or matter if:

(a) it is properly constituted with respect to the number and qualification of its membership

(b) the subject matter of the action is within its jurisdiction;

(c) the action is initiated by due process of law; and

(d) any condition to the exercise of its jurisdiction has been fulfilled. (p. 1609 E)

Charges - Joint trial

3. I agree with the Court below in its decision as above. I also agree with the learned Counsel for the respondent in his submission that as counts 1 and 2 of the charge sheet were allegedly committed within the Federal Capital Territory, Abuja, there is, therefore, a nexus between counts 1 and 2 and counts 3 and 4. They were all transactions/offences committed in the course of the same transaction and in pursuance of same purpose, which was to assassinate Pw1, Dr. Dora Akunyili. By virtue of the provision of Section 221[d] of the Criminal Pro-

cedure Code, persons may be charged and tried together who were accused of different offences committed in the course of the same transaction, and the purpose here, in this appeal, being to kill Pw1. (p. 1616 H)

B *CRIMINAL PROCEDURE - Institution of*

4. As the Federal Capital Territory High Court has jurisdiction to try the offences in counts 3 and 4 of the charge sheet, it goes without saying that the Honourable Attorney-General of the Federation, as found by the Court below has the power to prosecute persons who are alleged to have committed any Criminal offence in the Federal Capital Territory [See Section 301 of the Constitution; part 1 Section 1 of the Schedule to the Criminal Procedure Code Act, Cap 491 LFN [Abuja] 1990]. Therefore, the Honourable-Attorney General of the Federation can validly and legally issue a fiat to any counsel of his choice to prosecute a criminal offence in the Federal Capital Territory Abuja, including the one issued on the 10th of September, 2004, to the law firm of Chief Afe Babalola, [SAN] & Company. (p. 1617 F)

REPRESENTATION

Mathew Ojua, with Max Ogar, Emmanuel Nbang, Kakore Egbe, Ayuk Ndu Chinagozim [Miss], for the Appellant
F B.J. Akomolafe, with O. Ojo [Miss], for the Respondent

CASES REFERRED TO

Adeniji v. State (2001) 13 NWLR (pt. 703) 375
G Njovens v. State (1973) 1 NWLR 331
Onwudiwe v. FRN (2006) 10 NWLR (pt. 988) 382
Emogu v. State (1997) 9 NWLR (pt. 519) 25
Clement v. Iwuanja (1989) 3 NWLR (pt. 107) 39
FGN v. Oshiomole (2004) 3 NWLR (pt. 860) 305
H Cardoso v. Daniel (1986) 2 NWLR (pt. 20) 1
Waziri v. State (1997) 3 NWLR (pt. 496) 689
Ngige v. Chukwu (2005) 2 NWLR (pt. 909) 123
Lawson v. State (1975) 4 SC 115
Okoro v. A-G (1965) 1 All NLR 283

Ndaeyo v. Ogunnaya (1977) 1 SC 11

Utih v. Onayivwe (1991) 1 NWLR (pt. 166) 166

Omoregbe v. Lawani (1980) 3-4 SC 108

Odulaja v. Haddad (1973) 11 SC 357

STATUTES REFERRED TO

Penal Code Cap 532 LFN 1990, ss. 4(2)(b), 97, 221, 229

Constitution of the Federal Republic of Nigeria 1999, ss. 211(1), 301

Criminal Procedure Code Cap 491 LFN 1990, ss. 134-139

LEAD JUDGMENT BY MUHAMMAD JSC

The facts of the case before the trial court (High Court of Justice of the Federal Capital Territory, Abuja) are, as herein below stated, briefly: in the month of October, 2001, unknown gun men allegedly invaded the Abuja residence of Dr. (Mrs.) Dorothy Akunyili, ostensibly for the purpose of firing gunshots at her. They did not succeed. Then on the 26th of December, 2003, Dr. [Mrs.] Dora Akunyili was allegedly attacked by gun men at AGULU, Anambra State. Names of persons suspected to have participated in the attempt to assassinate the former Director of the National Agency for Food and Drug Administration and Control (NAFDAC) were given as follows:

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. Olisa Emeka Igbokwe (a.k.a. Holy War) and
7. Jude Ugwu (a.k.a. Agada).

The Attorney-General of the Federation gave a fiat to the firm of Chief Afe Babalola to prosecute the persons suspected to have participated in the assassination attempt. An ex-parte application was filed accordingly by the said firm for leave to prefer a charge against the suspects for arraignment before the trial court. Leave to prefer the charge was granted and the following four count charge was preferred:

1. *“That you Francis C. Okoye (a.k.a. Ebubedike). Emmanuel Nnamdi Nnakwe (aka Aboy), Marcel Nnakwe, Emeka Orjiakor, Chris-*

topher Okwara Mbah (aka Persus) I Olisaemeka Igbokwe (aka Holy War), Chukuka Ezeukwu and Jude Ugwu (aka 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 Drugs Administration and Control (DG 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.

2. That you Francis C. Okoye (a.k.a. Ebubedike), Emmanuel Nnamdi Nnakwe (aka Aboy), Marcel Nnakwe, Emeka Orjiakor, Christopher Okwara Mbah (aka Persus), Olisaemeka Igbokwe (aka Holy War), Chukuka Ezeukwu and Jude Ugwu (aka Agada) on a day in the month of October 2001 at about 7pm at DG NAFDAC's residence on Freetown Crescent, Wuse II, Abuja did act, to wit, caused unknown gun men to invade the residence of Dr. (Mrs.) Dora Akunyili Director General, National Agency for Food and Drugs Administration and Control (NAFDAC) and forcibly entered the rooms in the House in search of the said 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 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.

3. That you Francis C. Okoye (aka Ebubedike), Emmanuel Nnamdi Nnakwe (aka Aboy), Marcel Nnakwe, Emeka Orjiakor, Christopher Okwara Mbah (aka Persus), Olisaemeka Igbokwe (aka Holy War), Chukuka Ezeukwu and Jude Ugwu (aka Agada) on the 26th day of December 2003 at Agulu in Anambra State did an act to wit, caused gunshots to be fired at Dr. (Mrs.) Dora Akunyili Director General National Agency for Food and Drugs Administration and Control (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 DG 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.

4. *That you Francis C. Okoye (aka Ebubedike), Emmanuel Nnamdi Nnakwe (aka Aboy), Marcel Nnakwe, Emeka Orjiakor, Christopher Okwara Mbah (aka Persus), Olisaemeka Igbokwe (aka Holy War), Chukuka Ezeukwu and Jude Ugwu (aka 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 the One Emeka Onuekutu by doing act to wit caused several gun shots to be fired at Dr. (Mrs.) Dora Akunyili DG NAFDAC while 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. AE763AJL 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 thereby committed an offence punishable under Section 221 of the penal Code."*

Before the commencement of trial, learned counsel for the 2nd and 3rd accused persons filed and served the prosecution with a Notice of Preliminary Objection seeking to quash or set aside the fiat issued by the Federal Attorney-General. In the preliminary Objection, the jurisdiction of the trial court to entertain the four counts as charged was also challenged on the ground, inter alia, that the territorial jurisdiction of Federal Capital Territory, Abuja High Court (trial court), does not extend to AGULU, Anambra State, where the NAFDAC Director General was attacked.

On 23rd January, 2004 the 2nd and 3rd accused persons withdrew their application challenging the jurisdiction of the trial court which was struck out. Trial thereafter commenced the same day when the prosecution opened its case by calling Dr. Dora Akunyili, as its 1st witness.

Learned counsel for the 2nd and 3rd accused persons, Chief Gani Fawehinmi (SAN) of (blessed memory) re-filed his Notice of Preliminary Objection which was earlier struck out. The learned trial judge deferred the hearing of the Preliminary Objection to a date when the accused persons would have argued their "no case" submission. On 23/9/05, the learned trial judge upheld the application of "no case" submission of the 2nd and 3rd accused persons in respect of counts 1 and 2. In respect of counts 3 and 4, the learned trial judge declined jurisdiction. He also declared the leave to prefer the

charge granted by him earlier, a nullity and same was set aside.

On appeal, the court below agreed with the learned trial judge that the appellant had no case to answer in respect of counts 1 and 2 of the charge but that the trial court should assume jurisdiction to continue with the hearing of counts 3 and 4.

B It is against that decision that the appellant approached this court for a relief wherein, this court should make an order setting aside that part of the court below's decision which held that the High Court of the FCT, Abuja, has jurisdiction to entertain counts 3 and 4 of the charge preferred and affirm the trial court's decision declining
C jurisdiction to entertain counts 3 and 4 of the charge.

On the hearing date of this appeal (30/01/14) learned counsel for the respective parties, each adopted and relied on the brief of argument settled by him.

D In his brief of argument the learned counsel for the appellant, Mr. Ojuwa, framed a lone issue for determination which reads as follows:

*"Whether the Court of Appeal was right in holding that the High Court of the Federal Capital Territory, Abuja has jurisdiction to
E entertain the offences alleged in counts 3 and 4 of the charge preferred against the appellants?"*

Learned counsel for the respondent, Mr. Akomalafe, framed almost same issue as appellant's issue above, though with slight addition of a question on the validity of the fiat to prosecute the accused
F persons issued to Afe Babalola's firm.

In his submissions in the brief, learned counsel for the appellant stated that the offences in counts 3 and 4 allegedly took place in Agulu, in Anambra State and nowhere near the FCT, where the appellant was charged and being tried. He argued that the law governing the crimes is the Criminal Code Law of Anambra State. That the Penal Code under which the appellant and others were charged does not apply in Anambra State and it cannot be enforced in Anambra State directly or indirectly. Further, the offences alleged the appellants in counts 3 and 4 can only be prosecuted by the Attorney-General of Anambra State who is constitutionally empowered under
H Section 211(1) of the Constitution 1999. Learned counsel submitted further that the court below made an inexplicable somersault in its conclusion and sought to rationalize on the basis of extraneous and

legal factors why the appellant was charged in the FCT High Court instead of Anambra State High Court. The court below, he argued, blew both hot and cold, making it to suffer the indignity and opprobrium of approbation and reprobation. That court was wrong in its conclusion that the trial court has jurisdiction to entertain counts 3 and 4 of the charge against the appellant and others. The cases of *Adeniji v. State* (2001) 13 NWLR (Pt.703) 375 and *Patrick Njovens v. The State* (1973) 1 NWLR 331, are absolutely unhelpful to the case of the respondent as the facts and circumstances are not the same and are distinguishable. It was argued further that the appellant was arrested in Onitsha and brought to the FCT Abuja. Learned counsel for the respondent at the end, made references to Section 134 of the Criminal Procedure (CPC) which provides for venue of instituting a criminal proceeding and the case of *Onwudiwe v. FRN* (2006) 10 NWLR (Pt.988) 382 at 425 A - C. He urged that the appeal be allowed as no element of any of the offences alleged in counts 3 and 4 of the charge against the appellant occurred in Abuja, FCT, to confer jurisdiction on the FCT High Court.

Learned counsel for the respondent made his submissions (which is summarized) as follows: That by virtue of some statutory and judicial authorities relevant to the facts and circumstances of this case, particularly, counts 3 and 4 of the charge, the lower court's decision that the trial court has jurisdiction to entertain the said counts, is found, logical and was borne out of good reasoning. That a High Court of Justice will not be permitted to prefer the decision of the Court of Appeal to that of the Supreme Court on the same issue, principle or interpretation of the same law. He cited the cases of *Emogu v. State* (1997) 9 NWLR (Pt.519) 25 at 38 - B; *Clement v. Iwuanja* (1989) 3 NWLR (Pt.107) 39 at 53 - 54 H-A; *FGN v. Oshiomole* (2004) 3 NWLR (Pt.860) 305 at 324 G; *Cardoso v. Daniel* (1986) 2 NWLR (Pt.20) 1 at 5. Learned counsel for the respondent repeated his argument before the trial court that the FCT Abuja High Court can assume jurisdiction to try the case on hand, relying on the cases of *Patrick Njovens v State* (2001) 13 NWLR (Pt.730) 375 at 392 - 393. He argued that mere entry of the accused person to the jurisdiction of the court where they were eventually arraigned conferred jurisdiction on the court, whether or not the crime was committed within such jurisdiction irrespective of how such an accused

person entered into the jurisdiction. He submitted further that by virtue of Section 4(2)(b) of the Penal Code Act, the High Court of FCT Abuja has the jurisdiction to try this case. Learned counsel drew distinction between the cases of *Waziri v. State* (1997) 3 NWLR (Pt.496) 689 at 716 F - H and *Ngige v. Chukwu* (2005) 2 NWLR (Pt.909) 123 at 147-9, arguing that *Waziri's* case (supra), though of similar facts, is a Court of Appeal decision and *Ngige's* case is a civil one which has no direct or remote relevance to the issue of entry of an accused person within the jurisdiction of the court in criminal matters. Further submissions by learned counsel are that in criminal matters, it is the charge(s) and not the evidence of prosecution witnesses that determine the court's jurisdiction. Counts 1 and 2 were alleged to have been committed within the FCT, Abuja; there exists a nexus between counts 1 and 2 and counts 3 and 4 of the charge; he cited section 221(d) of the Criminal Procedure Code. In the summary of evidence of PWs 1 and 12 in their proof of evidence, counts 1 and 2 were said to have been committed in Abuja, F.C.T, Pw17 gave evidence on how the accused persons entered the jurisdiction of the FCT High Court. And, the evidence referred to in all the above instances showed that all the accused persons, one way or the other, entered into the FCT, Abuja before they were charged to the trial court. Learned counsel cited the provisions of Sections 134 to 139 of the Criminal procedure Code, Act, Cap 491 Laws of the Federation of Nigeria, 1990, which learned counsel argued, confer jurisdiction in respect of offences relating to counts 3 and 4, on the trial court. Further case law authorities such as *Lawson v. State* (1975) 4 SC 115; 121; *Okoro v. Attorney-General* (1965) 1 All NLR 283, were cited as well, all in support, that the trial court has jurisdiction to try counts 3 and 4 of the charges in addition to the fact that PW1 was on a journey through Agulu, en route Enugu to Abuja where PW1 resides.

The fiat of the Attorney-General of the Federation to the law firm of Chief Afe Babalola to prosecute the accused persons in the FCT High Court under the Penal Code is valid and properly issued considering the facts and circumstances of the case. Learned counsel for the respondent made reference to part 1 section 1 of the Schedule to the Criminal Procedure Code Act, Section 301 of the 1999 Constitution to press the point that the only authority that can issue

fiat to prosecute the charges in this case is the Attorney-General of the Federation and the order nullifying the issuance of the fiat should be set aside. Learned counsel urged this court to dismiss the appeal and to hold that the FCT High Court, Abuja, has the requisite Jurisdiction to entertain this case and order the trial court to proceed with trial of the appellant and his six co-accused. B

JURISDICTION, it is said, my lords, is the life-wire of litigation. It is the authority which a court has to decide matters before it or to take cognizance of matters presented before it for decision. See: Ndaeyo v. Ogunnaya (1977) 1 SC 11, Miscellaneous Offences Tribunal v. Okafor (2001) 18 NWLR (Pt.745) 295 at p.326 - 327 H - A. C

Where a court, whether inferior or superior, lacks it, it cannot entertain the matter, civil or criminal, sought to be placed before it for litigation as the defect in jurisdiction is fatal to the proceedings however well conducted and is extrinsic to the adjudication. See Utih v. Onayivwe (1991) 1 NWLR (Pt.166) 166. D

Thus, in a criminal matter, the fundamental question to be considered by the trial court at that initial stage of the proceedings, especially where there is objection to the jurisdiction of the court, is not whether the prosecution's case has merit but whether the accused person is in the right court. In the locus classicus case of Madukolu v. Nkemdilim (1962) 2 SCNLR, 341, the ingredients of jurisdiction of a court have, generally, been stated as follows: that a court has the necessary competence to exercise jurisdiction in a cause or matter if: E

(a) it is properly constituted with respect to the number and qualification of its membership G

(b) the subject matter of the action is within its jurisdiction;

(c) the action is initiated by due process of law; and

(d) any condition to the exercise of its jurisdiction has been fulfilled. H

See also: Utih v. Onayivwe (supra).

Permit me my lords, to consider the provisions of the law which confer jurisdiction on criminal matters on a High Court of Justice of

the FCT Abuja.

Firstly, Section 4 of the Penal Code Act, FCT, Abuja, Cap. 532 of the Laws of the Federation, 1990 has made the following enactments:

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

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

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

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

H Secondly, Sections 134, 135, 136 and 139 of the Criminal procedure Code Act (for FCT Abuja) Cap. 491 of the LFN, 1990, provide as follows:

“134. An offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction -

(a) the offence was wholly or in part committed, or some act forming part of the offence was done: or

(b) *Some consequence of the offence has ensued; or*

(c) *Some offence was committed by reference to which the offence is defined; or*

(d) *Some person against whom, or property in respect of which, the offence was committed is found, having been transported either by the offender or by some person knowing of the offence.* B

135. *When it is uncertain in which of several districts an offence was wholly or in part committed, the offence may be inquired into or tried by a court having jurisdiction over any of those districts.*

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.* C

137. *Whenever a question arises as to which of two or more courts ought to inquire into or try an offence it shall be decided by the Chief Judge.* D

138.(1) *The Chief Judge may, whenever it appears to him that the transfer of a case will promote the ends of justice or will be in the interest of the public peace, transfer a case from one court to another at any stage of the proceedings.* E

(2) *Nothing in this section shall affect powers of transfer under the provisions of the Area Courts Act.*

139. *When a court has reason to believe that a person within the local limits of its jurisdiction has committed such limits an offence which cannot under the provisions of section 134 of this Code or any other law for the time being in force triable in the Federal Capital Territory, Abuja, it may inquire into the offence as if it had been committed within the local limits of its jurisdiction and compel the person in the manner herein before provided to appear before it and send him to a court having jurisdiction to inquire into the offence or, if the offence is bailable, may take a bond with or without sureties for his appearance before the court.* F G H

This court, in an earlier case of *Patrick Njovens & 3 Ors v. The State* (1973) NSCC 257, whose facts were, to some extent, similar to the facts of entry into jurisdiction of a court as alluded in the case on hand, interpreted the provision of Section 4 of the penal Code Law,

Cap 89, Laws of Northern Nigeria.

Even then, it was vividly admitted by this court, which I also do now, that Section 4(2) of the Penal Code Law is not easy to construe. Be that as it may, I align myself completely with the interpretation given in Njoven's case on some of the key words used in the section.

B For instance, in Njoven's case this court reasoned as follows:

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

There is need for me, my Lords, to state, though briefly, what happened in Njoven's case (supra), and that is, that there was committed a robbery which was spearheaded by one Felix Dumeh, on or about the 13th day of April, 1971 between Ilorin and Bacita in the Kwara Judicial Division. There were (4) four accused persons who were appellants before this court. The first three appellants were police officers and the fourth was a civilian, all residing in Ibadan. The charge sheet on which they were tried contained a total of nine counts. Count one which is relevant to the case on hand, is on having previous knowledge of the plan to commit the said offence by aiding, encouraging and instigating, intentionally, the commission of the said offence.

The argument put forward on behalf of the accused persons before the three man panel of justices of the Supreme Court that heard and determined Njoven's case (supra), is that the High Court Ilorin should not have exercised its jurisdiction to try the accused

persons on the offences charged since they were not offences contemplated by the Penal Code of Northern Nigeria which is applicable in Kwara State that no “initial elements” of the offences under the 1st and 2nd counts occurred in Kwara State, and section 4 of the Penal Code does not apply to the acts or omissions of the accused person as the accused persons had come into Kwara State involuntarily by being accused by the police and taken through and therefore did not enter Kwara State as required or contemplated by section 4(2)(b) of the Penal Code Law. Learned Director of Public Prosecution of Kwara State on the other hand, contended that the “initial elements” of the offences under the 1st and 2nd counts occurred in Kwara State and that the offences came within the purview of section 4(2)(a) and (b) of Penal Code Law and were therefore punishable by the Penal Code. In their judgment, the three wise men of the Apex Court; Coker, Ibekwe and Irikefe, JJSC; held, (per Coker JSC) as follows:

“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 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 indeed entered the state within the meaning and intent of the provisions of section 4(2)(b) of the Penal Code. We are satisfied ourselves that to construe the word “enter” in the subsection as meaning only a voluntary entry would be completely ridiculous since in that circumstance 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.”

In the appeal on hand, the argument put forward by the learned counsel for the appellant in trying to distinguish Njoven’s case (supra) and this appeal is, inter alia, as follows:

“4.19 The Court of Appeal relied heavily on the case of Patrick Njovens v. The State (1973) 1 NMLR 331 which was properly distinguished by the learned trial judge. The case is absolutely unhelpful to the case of the respondent as the facts and circumstances are not the same. In Njovens, the abetment of the crime of robbery took place in

Ibadan but the crimes of robbery were committed in Ilorin and Bacita. The accused persons though resident in Ibadan traveled to Ilorin and were all arrested within jurisdiction. In the instant case the appellant is resident in Onitsha outside the jurisdiction of the High Court of the Federal Capital Territory.

B 4.20 *The alleged attempted assassination of the Director General. NAFDAC PW1 and the alleged murder of Emeka Onuekutu took place in Adulu, Anambra State, outside the jurisdiction of High Court of the Federal Capital Territory. The appellant was arrested in Onitsha and brought to the Federal Capital Territory, Abuja.*

C 4.27 *It is our contention that section 4(2)(b) is the pivotal section in this appeal, Paragraph (b) should not be read in isolation of subsection (2) of section 4 from where the provision follows: if so read, it becomes clear that subsection (2) makes provision for an offence that has several elements. Under section 4(2)(a), once the initial element occurred in Northern Nigeria, and the other elements occur elsewhere, the offender is liable under the Laws of Northern Nigeria.*

E 4.28 *Similarly, under 4(2)(b) where the initial element occurs elsewhere than in Northern Nigeria, then for it to offend the Laws of Northern Nigeria an aspect of the other elements making up the offence must occur in Northern Nigeria and the person enters Northern Nigeria.*

F 4.29 *We submit that this interpretation is the intendment and effect of the provision of section 4(2)(a) and (b)...”*

G The learned counsel for the appellant, I believe, is trying to make distinction without difference. Firstly, it is in evidence that all the accused persons including the appellant entered into the jurisdiction of the FCT. PW17, in his testimony, stated as follows:

H *“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 Abuja, which the 8th accused was arrested by the SSS when he tried to distract the SSS from carrying out their duties in the investigation”.*

This evidence was neither contradicted or denied by the appellant. This means that the appellant and the remaining accused persons in one way or the other, entered into the Federal Capital Territory, Abuja, before they were charged to the FCT High Court to answer the charges preferred against them. In Njoven's case, this court adopted the submission of learned Director of Public Prosecution 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 indeed entered the State within the meaning and intent of the provisions of section 4(2)(b) of the Penal Code. This court went further to say that:

"To construe the word "enter" in the subsection as meaning, only a voluntary entry would be completely ridiculous since in that circumstance 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."

I agree with the Court below in its decision that the Court of Appeal's decision in Waziri Vs. The State [Supra] cannot override or be preferred to the two Supreme Court's decisions on the issue of entry of an accused within jurisdiction of the trial Court.

"This shows clearly that even if the offence was committed outside Lagos State, and afterwards the appellant comes into Lagos State that entry of the appellant into Lagos State confers jurisdiction on the Lagos High Court to try him of the offence, As this Court held in Patrick Njovens v. The State [1973] 5 SC. 17"

"Whether the offender be apprehended in the State or be in custody in the State, his entry is complete within the purpose and intent of the sub-section and is triable in the state"

Secondly, on whether the offences contained in counts 3 and 4, and or their elements, took place in the FCT, to confer jurisdiction on the trial court, the trial court made the following observations:

"I have observed the precision with which the 2 counts charge stated the venue of the act - meaning the misconduct, it was clearly consummated at Agulu in Anambra State. There is no dispute as to this, except that the prosecution is of the view that there are certain manifestations of the consummated misconduct within the FCT. I find difficulties in perceiving these manifestations partly because the word MANIFESTATION of the misconduct as consummated at Agulu could

assume the nature of post consummation or prior to that status. In either case it must go beyond mere consequences of the misconduct, such manifestation must be of the status of elements that constitutes the offence as charged. The prosecution respondent had invoked the case of *Patrick Njovens* (supra) as well as placed reliance on counts B 1 and 2 of the charge as elements of counts 3 and 4... On the case of *Patrick Njovens* (supra) it is clear that for that decision to apply part of the elements of the offence must have been consummated partly in Agulu and FCT, I therefore agree with the submissions of the applicants that the case of *Patrick Njovens* is inapplicable in the circumstances. None of the elements of the 2 (two) counts charge 3 and 4 took place in the Federal Capital Territory and that being the case, instituting the action before the High Court, Federal Capital Territory is inappropriate.”

D I think the learned trial judge was carried away by the submissions made by the learned Counsel for the 2nd and 3rd respondents before that Court, who concluded that no elements of the offences were shown to have taken place in the Federal Capital Territory, Abuja and the High Court in Abuja could not assume jurisdiction over the matter. The Court below, however, per ADEKEYE, JCA [as she then was] made a finding and held as follows:

“Since the four counts on the charge are offences committed in the course of the same transaction and in pursuance of some purpose which is to assassinate pw1. With the community reading of F 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 the Federation 1990, and Section 301 of the 1999 Constitution the honourable Attorney General can validly issue the G FIAT dated the 10th of September, 2014 to the Law Firm of Chief Afe Babalola [SAN] & Co. to prosecute the respondent here at the Federal Capital Territory, Abuja.

I also hold that the Federal Capital Territory High Court Abuja can assume jurisdiction over this matter.”

H **I agree with the Court below in its decision as above. I also agree with the learned Counsel for the respondent in his submission that as counts 1 and 2 of the charge sheet were allegedly committed within the Federal Capital Territory, Abuja, there is, therefore, a nexus between counts 1 and 2 and counts**

3 and 4. They were all transactions/offences committed in the course of the same transaction and in pursuance of same purpose, which was to assassinate Pw1, Dr. Dora Akunyili. By virtue of the provision 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, and the purpose here, in this appeal, being to kill Pw1.

Further, since there is nexus between counts 1 and 2 and 3 and 4, it is clear from the proof of evidence [pages 6-9 and 14 - 16 of Vol. one of the Record of Appeal] of Pws' 1 and 12 that the offences in counts 1 and 2 were said to have been committed in the Federal Capital Territory Abuja. Thus, the implication is that the offences of conspiracy and attempted murder were all hatched in the Federal Capital Territory Abuja. From the trial Court's proceeding of 3rd February, 2005, one OKWUDIRI UDECHUKWU [Pw3] [page 557, Vol. two of the Record of Appeal] the witness, among other things, stated as follows:

"I then demanded to know the kind of job they were to do and 2nd accused said, they were to kill the woman - Director General NAFDAC who had destroyed their drugs worth 36 Million Naira in addition, she had seized some of their drugs imported from Holland and China and it was likely the woman - Director General of NAFDAC will destroyed [sic] the drugs. I then asked how we could see the woman and 2nd accused said she is based in Abuja and they tried to do the job in Abuja without success".

As the Federal Capital Territory High Court has jurisdiction to try the offences in counts 3 and 4 of the charge sheet, it goes without saying that the Honourable Attorney-General of the Federation, as found by the Court below has the power to prosecute persons who are alleged to have committed any Criminal offence in the Federal Capital Territory [See Section 301 of the Constitution; part 1 Section 1 of the Schedule to the Criminal Procedure Code Act, Cap 491 LFN [Abuja] 1990]. Therefore, the Honourable-Attorney General of the Federation can validly and legally issue a fiat to any counsel of his choice to prosecute a criminal offence in the Federal Capital Territory Abuja, including the one issued on

the 10th of September, 2004, to the law firm of Chief Afe Babalola, [SAN] & Company.

In the final analysis, I find no merit in this appeal which is dismissed hereby by me. I affirm the decision of the Court below that the High Court of the Federal Capital Territory Abuja has jurisdiction to continue to entertain counts 3 and 4 on the charge and complete the case on its merit. Hearing in this Criminal matter should without further delay, continue in respect of the said counts.

C

MUNTAKA-COOMASSIE JSC

The facts of the case are briefly thus: In the month of October, 2001 Dr. Madam Dorathy Akunyili was attacked by unknown gunmen at her Abuja Residence presumably to assassinate her. The attempt failed. Another attempt by some gunmen occurred at her Agulu, Residence in Anambra State. Some names were gathered as the suspected gunmen who attempted to assassinate the former Director of the NAFDAC, they are:

1. Francis C. Okoye (a.k.a. Ebubedike)
2. Emmanuel Nnamdi Nnakwe (a.k.a. aboy)
3. Marcel Nnakwe
4. Emeka Orjiakor
5. Chistopher Okwara Mbah (a.k.a. Persus)
6. Olisa Emeka Igbokwe (a.k.a. Holy war) and;
7. Jude Ugwu (a.k.a. Agada).

Leave to prefer charges against the suspects were granted in an ex parte motion. The said suspects were then arraigned before the trial court. The trial court framed four count charges against each of the above six accused persons for conspiracy to do an illegal act to wit cause the death of Dr. (Mrs.) Dora Akunyili Director General, National Agency for Food and Drugs Administration and Control (D.G. NAFDAC) etc. The four-count-charges are punishable under the following sections of the penal code.

1. Section 97 of the Penal code
2. Section 229 of the Penal code
3. Section 221 of the Penal Code for causing the death of Emeka Onuekutu.

The fiat given to the firm of Chief Afe Babalola to prosecute

the Appellant and Ors by the Hon. Attorney-General of the Federation was seriously challenged by the 2nd and 3rd accused persons by way of filing a Notice of Preliminary Objection in Order to quash or set aside the fiat issued by the Federal Attorney-General. In the course of arguing the preliminary objection the applicant brought the issue of territorial jurisdiction of the trial court, that is to say the alleged incident happened in Agulu Anambra State therefore court in Abuja territory area cannot entertain the matter. The trial court struck out their application. Trial therefore commenced in earnest at the trial High Court Abuja. B

Chief Gani Fawehinmi SAN of Blessed memory re-filed the application which was earlier struck out. Again the accused persons filed a “no case submission” in that court in respect of the 2nd and 3rd accused persons vis-à-vis counts 1 and 2, and Counts 3 and 4. The learned trial judge gave up and declined jurisdiction. He also set aside the leave he earlier on granted as a nullity. C D

On appeal the court of Appeal Abuja division then held no case submission in respect of the 1st and 2nd counts charge, succeeded. However, the 3rd and 4th Counts shall continue by the trial Court. E

The appellant was aggrieved and lodged an appeal to this Court against the order of the Court below to the effect that the trial Court in Abuja has jurisdiction to entertain counts 3 and 4 of the charge sheet. F

On the hearing date before us and in compliance with the Rules of the Supreme Court, learned counsel for the parties filed and exchanged their respective briefs of argument. Parties then formulated their own respective issues for the determination of the appeal and both counsel for the parties argued and made their own submissions. The Appellants counsel in conclusion urged this Court to allow the appeal while learned counsel for the Respondent Mr. Akomolafe urged us to hold that the appeal lacks merit and same should be dismissed. G

I was privileged to have read before today the illuminating and straight forward lead judgment of my learned brother Tanko Muhammad JSC. H

I have read closely the reasons and conclusions reached by his lordship and since the case of Patrick Njovens vs The State (1973) 1

NWLR 531, which was considered by me as locus classicus in this area of the law was considered by my lord, I adopt the reasons and conclusions as mine. The issues of entry by the Appellant into Abuja after the alleged commission of the said crime was neatly treated by my lord in the lead judgment. The Appellant was allegedly outside
 B the jurisdiction in Agulu in Anambra State but afterward entered Abuja whether voluntarily or he was arrested and brought does not matter, he enters Abuja.

The donation of the fiat to the Afe Balolola's chambers by the
 C Honourable Attorney General is in order and it will continue to be so. The decision of the Court below that the Abuja High Court has jurisdiction to hear and determine this criminal charges, that is counts 3 and 4, is correct and it is hereby affirmed by me. The matter should have been concluded by now, one way or the other. I mean to say
 D that by now the accused persons including the Appellant herein should have been convicted and sentenced or else they should have been discharged and acquitted had the accused persons allowed hearing proper to take place. Appeal, again lack merit. Same is hereby dismissed.

E

NGWUTA JSC

I had the privilege of reading and considering in draft the lead
 F judgment of My Lord and learned brother, I. T. Muhammad, JSC.

In the resolution of the lone issue in the appeal, His Lordship set out the facts, the legislations and case law relevant to the case and his reasons with profound clarity.

I wish to chip in a few words by way of emphasis on one issue:
 G the link between the botched attempt on the life of Professor Dora Akunyili at her residence in Abuja and the other attempt on her life resulting in the death of a bus driver in Agulu, Anambra State. The two attempts on the life of the former Director-General of NAFDAC took place in October 2001 and December, 2003 respectively.

H My Lords, the time and distance between them notwithstanding, the two attempts on the life of the former DG of NAFDAC are linked in the sense that the attempt to kill her in Agulu in 2003 is a continuation of the earlier one and meant to achieve what the attempt in her residence at Abuja failed to accomplish.

Both attempts constitute one process or chain of events with the single purpose of snuffing out the life of the former DG of NAFDAC. The surrounding circumstances, in relation to Mrs. Akunyili and the accused persons, lead credence to the view that the two incidents, though occurring in different places at different times, were in pursuance of one project, to kill Professor Akunyili. The later incident at Agulu, Anambra State, is a confirmation of the incident initiated and carried out at Abuja without success. B

Any doubt as to the fact that the incident at Agulu was a continuation of the earlier incident in Abuja with the common objective of eliminating Mrs. Akunyili who was considered an impediment to the business interests of the accused person is cleared by PW3 who testified before the Federal Territory High Court on 3/2/2005. See page 557 Vol. 2 of the record for the testimony of PW3, Okwudili Udechukwu whose help was enlisted in the execution of the project: C

"I then demanded to know the kind of job they were to do and the 2nd accused said they were going to kill the woman - Director-General NAFDAC who had destroyed their drugs worth 36 million naira in addition, she had seized some other drugs imported from Holland and China and it was likely the woman - Director General of NAFDAC will destroyed (sic) the drugs. I then asked how we could see the woman and the 2nd accused said she is based in Abuja and they tried to do the job in Abuja without success." E

Though the PW3 was cross-examined at length by Chief Gani Fawehinmi, SAN (may his soul rest in peace), no question was raised on the incident at Agulu being a continuation of the attempt to kill Professor Akunyili in her Abuja residence. In the same vein, learned Counsel for the 2nd and 3rd accused did not question the PW3 on the crucial aspect of his testimony - the link between the incidents at Abuja and Agulu. None of learned Counsel for 5th, 6th and 8th accused cross-examined the PW3 at all. F

It therefore follows that the fact that the incident at Agulu was an attempt to achieve the objective which the incident at Abuja failed to achieve was not challenged and the same remains a settled point between the parties. See *Omoregbe v. Lawani* (1980) 3-4 SC 108; *Odulaja v. Haddad* (1973) 11 SC 357; *Nigerian Maritime Services Ltd v. Afotobi* (1978) 2 SC 79. H

Section 4 of the Penal Code Act, FCT, Abuja, Cap 532 Laws of

the Federation, 1990 provides, inter alia:

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

The act that was executed at Abuja was continued at Agulu, Anambra State was an offence made so by the provisions of the law of Anambra State and the Penal Code. It follows that the accused person can be tried under the Penal Code Act of the FCT Abuja since they were in Abuja at the time they carried on the act in October 2001, and they were within the FCT before they were arraigned.

The vexed issue of entry under s.4(2) (b) of the Penal Code has been put to rest by the Supreme Court in *Njovens v. The State* D (1998) 1 ACLR 224 at 253 wherein Coker, JSC, said:

“Looking back at Section 4 (2) of the Penal Code Law we are of the view that the entry postulated by the sub-section is not necessarily a voluntary entry, and whether the offender be apprehended in the State or be in custody in the State, his entry is complete for the purpose and intent of the sub-section and he is triable in the State under the Penal Code.”

The crucial element is the presence of the accused persons within the borders of the FCT. On the facts of this case once the accused persons have entered the FCT, they are triable under the Penal Code irrespective of the manner of entry which could be voluntary or forced. They can be tried in any of the jurisdictions within which the attempt on the life of Mrs. Akunyili was made.

My Lords, before I conclude, let me, with profound respect, deprecate the finding of the Court below at page 1235 of Vol. III of the record. The lower Court said, inter alia:

“In recent times the Courts have leaned in favour of moving cases out of their usual and regular venue or jurisdiction particularly in political cases based on security reports on the safety of complainants, prosecution and witnesses particularly where parties in opposition enjoy strong physical and financial influence which can affect investigation and disrupt vital evidence. This case is not any means an exception to bringing present of a case out of local venue in the interest of justice. On this note I advocate that there must be a new

dawn in our criminal trials. The Court must emerge from the woods and avoid situations where the criminal justice shall become a casualty of procedural technicality.”

The above dictum of the lower Court is as unfortunate as it is baseless in law and/or practice. Their Lordships of the Court below did not deem it necessary to cite a single case in support of their novel view that *“In recent times the Court have leaned in favour of moving cases out of their usual and regular venue or jurisdiction...”*.

In my humble view, this is an unauthorised attempt to build forum shopping into our criminal justice delivery system. I agree with learned Counsel for the appellant that the Court below cannot rationalize its decision by resort to *“extraneous and non-legal factors.”*

Be that as it may, the lower Court has enough materials upon which it rightly dismissed the appeal. The extra-judicial finding is unnecessary and surplus luggage which, when discarded, leaves the judgment unchanged.

For the above and the profound reasoning in the lead judgment I also dismiss the appeal for want of merit. I abide by the consequential order in the lead judgment.

E

ARIWOOLA JSC

My learned brother, Tanko Muhammad, JSC obliged me with the draft of the lead judgment just delivered. I am in complete and total agreement with the reasoning and the conclusion arrived thereat.

F

There is no doubt, the lead judgment dealt with the issue involved in the appeal exhaustively and I have nothing more to add. The court below was indeed right in holding that the trial 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 appeal is unmeritorious and liable to dismissal. Accordingly, it is dismissed.

I abide by the consequential orders in the lead judgment.

H

OGUNBIYI JSC

This is an appeal against the judgment of the Court of Appeal

Abuja dated 5th July, 2007. The respondent's appeal before the lower court resulted from the two rulings delivered by the High Court of the Federal Capital Territory, Abuja on the 8th February, 2005 and 23rd September, 2005.

B The respondent by a letter dated 9th September, 2004 written
by Hon. Attorney-General of the Federation and Minister of Justice
authorized the law firm of Chief Afe Babalola, SAN & Co. to prosecute the persons suspected to have participated in the attempt to assassinate former Director-General of NAFDAC. A fiat dated 10th
C day of September, 2004, signed by Chief Akinlolu Olujinmi, SAN,
the then Hon. Attorney-General of the Federation and Minister of Justice was attached to the letter.

Pursuant to the said letter, the law firm of Chief Babalola, SAN
& Co. filed an application ex parte for leave to prefer a charge in the
D Federal Capital Territory High Court on 28/9/2004. Leave was accordingly granted on 13th October, 2004 and four counts charge of conspiracy, attempted murder and murder respectively under sections 97, 221 and 229 of the Penal Code were preferred against the accused.

E Before commencement of the hearing, counsel to the 2nd and 3rd accused persons before the trial court filed and served the prosecution with a notice of preliminary objection on two grounds as follows:-

F (1) By asking the court to quash or set aside the fiat issued by the Hon. Attorney-General.

(2) They also challenged the jurisdiction of the High Court of the Federal Capital Territory, Abuja to entertain the four counts charge preferred on the ground amongst others that the territorial jurisdiction of the High Court of the Federal Capital Territory, Abuja does
G not extend to Agulu, Anambra State where the former Director-General of NAFDAC was attacked by gun men on the 26th December, 2003.

H The second leg of objection on jurisdiction was, however withdrawn on 23rd January, 2004 by the 2nd and 3rd respondents and same was accordingly struck out. Trial began and upon the prosecution's 1st witness giving evidence, counsel to the 2nd and 3rd accused persons again revisited and filed their notice of preliminary objection which was earlier withdrawn. Same was served on the pros-

ecution and trial proceeded. The trial court judge in his own wisdom deferred the hearing of the application challenging the jurisdictional competence of the court until after the accused persons had argued their no case submission applications at the time the prosecution had closed its case.

The trial court in its ruling of the 23rd September, 2005 eventually upheld the application on the no case submission by the 2nd and 3rd accused persons in respect of counts 1 and 2 while jurisdiction was declined on counts 3 and 4. B

The respondent appealed to the lower court which in its judgment dated 5th July, 2007 agreed and endorsed the trial court's ruling that the appellant had no case to answer in respect of counts 1 and 2 on the charge while it disagreed on counts 3 and 4 wherein an order was made that the trial court should assume jurisdiction to continue the hearing. C

The appeal before us relates to counts 3 and 4 and the issue formulated is:- D

Whether or not the lower court was right when it held that the Hon. Attorney-General of the Federation could validly issue a fiat to prosecute the appellant at the High Court of the Federal Capital Territory, Abuja in respect of counts 3 and 4 of the charge preferred against the appellant dated the 27th September, 2004? E

The totality of the argument on behalf of the appellant now before us is centered on the submission that, with the offences in counts 3 and 4 having taken place in Agulu, Anambra State, which is nowhere near the Federal Capital Territory, Abuja, the issue of jurisdiction is hereby put to question on the following arguments; that the law governing the alleged crimes is the Criminal Code Law of Anambra State and hence the penal Code under which the appellant and others were charged does not apply to Anambra State; also and in the same vein, that the offences in counts 3 & 4 can only be prosecuted by The Attorney-General of Anambra State who is constitutionally empowered by Section 211(1) of the Constitution 1999 (as amended). F

At page 1234 of volume 3 of the record of proceedings, the lower court found and held in conclusion as follows:- G

"...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 497 Laws of the Federation of Nigeria, 1990.

...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 has not been shown anywhere on the record before us that the appellant lodged an appeal against the foregoing conclusion arrived at by the lower court.

By section 301 of the Constitution of the Federal Republic of Nigeria 1999, the Attorney-General of the Federation is also the Attorney-General of a State with respect to matters within the Federal Capital Territory. See the authorities in the cases of Patrick Njovens v. State (1973) 1 NMLR 331 at 345 and Adeniyi v State (2001) 13 NWLR (Pt.730) 375 at 392 - 393, where it was held that mere entering of the accused persons to the jurisdiction of the court where they were eventually arraigned conferred jurisdiction on the court, whether or not the crime was committed within such jurisdiction. It was also specifically noted that, how such accused entered into the jurisdiction is immaterial.

It is further relevant to note the provision of section 4(2)(b) of the Penal Code Act where the High Court of the Federal Capital Territory will have jurisdiction in situation where even if the act occurs elsewhere than in Northern Nigeria, provided the person accused enters the jurisdiction, he is automatically by such entry be subject to the trial by the court.

My learned brother I. T. Muhammad, JSC has adequately and comprehensively dealt with the issue raised in this appeal and with the few words of mine in corroboration thereof I am also of the view that the appeal is devoid of any merit and I hereby dismiss same. In the same vein, I also uphold and affirm the decision of the lower court and make an order that the Federal Capital Territory High Court, Abuja has the requisite jurisdiction to entertain the case and to continue with the trial forthwith.