

SUPREME COURT OF NIGERIA
FRIDAY 30TH JANUARY, 2015. SC. 418/2014
CORAM:- U. M. PETER-ODILI, O. ARIWOOLA,
M. D. MUHAMMAD, K. B. AKA'AH, C. C. NWEZE, JJSC

TALAL AHMAD RODA APPELLANT
V.
FEDERAL REPUBLIC OF NIGERIA RESPONDENT

JURISDICTION - FHC - Criminal jurisdiction of - Is exercisable in the division within which offence was committed - But it can assume jurisdiction following inter alia an order of transfer (H1)

JURISDICTION - Objection - Determination of - Basis - Where the objection is raised by motion supported by affidavit - The affidavit evidence and facts deposed to in opposition must be considered (H2)

CRIMINAL PROCEDURE - Conspiracy - Proof - Apart from appellant's presence at the premises - No evidence exists to show that he agreed with co accused to store the firearms (H3)

CRIMINAL PROCEDURE - Jurisdiction - FHC - Decision of Abuja division of the court to try offence that occurred in Kano - Which bears no relationship with the offence in Abuja - Is perverse (H4)

CRIMINAL PROCEDURE - Conviction - Written law - Constitution 1999 s. 36(12) - No person can be convicted for an offence - Unless that offence is defined and penalty prescribed in a written law (H5)

FACTS

Before the Federal High Court Abuja, 3rd accused/appellant was arraigned along with four others on 16 count charge for various offences – terrorism and illegal storage of firearms in Kano and Abuja. Appellant and 2nd accused are resident in Kano, 1st accused is resident in Abuja while 4th & 5th accused are located in Abuja. Apart from appellant's physical presence at the premises where firearms were recovered in Kano, there is no evidence to show that he agreed with the co-accused to store the firearms or that he is further linked with

the storage of firearms in Abuja.

At the end of the trial, the court delivered its judgment. While the others were discharged and acquitted on all the counts, appellant on the other hand was convicted and sentenced on the amended count 9th of the charge under s. 1(14)(a)(i) of Miscellaneous Offences Act LFN 2004. Appellant was not satisfied with the judgment. Hence, he appealed to the Court of Appeal Abuja Division and raised objection to the jurisdiction of the trial court to try him in Abuja. The court held that any of the trial High Courts in Kano and Abuja has jurisdiction to entertain the matter. The court went on to affirm the conviction and sentence of appellant in the amended count 9. Aggrieved, appellant has appealed to Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the lower Court was right to have held that the trial Federal High Court sitting at Abuja had the territorial jurisdiction to try the offence in Count 9 when the said offence was allegedly committed in Kano.

2. Whether the wrong description of law in Count 9 does not go to the jurisdiction of the Court & adjudicate on it contrary to the holden of the Court that same was a formal defect which the appellant had waived by taking a plea to it.

HELD (Unanimously allowing the appeal per

MUHAMMAD JSC)

JURISDICTION - FHC

1. Cumulative application of the foregoing enabling provisions to the facts of the instant case makes learned appellant counsel’s position unassailable. I entirely agree with him that though the Federal High Court’s jurisdiction covers the whole Federation, its criminal jurisdiction by virtue of Section 45(a) of the Federal High Court Act remains ordinarily exercisable by the court in the Division within which the offence was committed. The court, it must however be pointed out, otherwise validly assumes jurisdiction in respect of an offence:

(1) Following an order of transfer even by a judge sitting in a Division other than the one within which the offence was

committed under section 22 of the Federal High Court Act.

(2) Within the purview of section 45(b) (e) of the Federal High Court Act and/or sections 64 and 65 of the Criminal Procedure Act if:

(i) there is doubt as to the Division within which the offence was committed;

(ii) the offence is connected with another offence recommitting within the Court's Division that tries the accused for both or all the offences including those committed outside the Division.

(iii) the offender committed the offence in the course of a journey and or the person or thing against whom the offence was committed resides or passed through the Division that tries the offender.

iv) the offence consists of several acts one of which occurred within the Division of the court that tries the offender.

(v) The offence being a continuing one and the commission of which continued into the Division the offender is tried or (3) Under Section 70 of the Criminal Procedure Act, if the offender is apprehended in the Division of the court that assumes jurisdiction and the interest of justice is as such better served by trying him in the Division other than the one within which the offence committed. (p. 138 H)

JURISDICTION - Objection - Determination of - Basis

2. And this brings to the issue whether in affirming court's assumption of jurisdiction over the case against the appellant, the court below is right when it limited the exercise to the examination of the charge alone. The pivotal nature of jurisdiction requires that an objection to it be determined on basis of available materials. Where the objection is raised formally by a notice of motion supported by an affidavit, the affidavit evidence and the facts deposed to in opposition to the motion, beyond the charge, must be considered. Though the criminal jurisdiction of a court may be determined by reference to the charge alone, in appropriate cases, it may be necessary to lead some evidence before it becomes clear enough to make a decision on the point. (p. 139 G)

CRIMINAL PROCEDURE - Conspiracy - Proof

3. Conspiracy, simply connotes the meeting of two or more minds to commit an offence. To succeed, the prosecution must establish either the act of the offender which constitutes the conspiracy as described in the charge or prove the circumstances from which the court can infer the agreement to commit the offence. Therefore, the prosecution must allege and prove an understanding between the offenders to hatch the crime. The prosecution need not allege and prove the specific place the accused persons agree to embark on the crime. Their being found together at the spot of the crime however provides enough reason for accused trial for conspiracy.

In the case at hand, all the available materials, the charge and the evidence proffered, all of which the trial court rightly considered in determining the objection against its competence, situate the appellant and his co-accused at No 3 Gaya Road Kano where the firearms unlawfully stored were recovered. There is nothing in evidence, beyond what the charge asserts, of any understanding between the appellant and the others to store the firearms at the premises. Aside from appellant's physical presence at the premises there is not the slightest piece of evidence, not even in Exhibit 3, appellant's extra judicial statement, to show that he agreed with co-accused to store the said firearms or that he is further linked with the storage of the firearms at Abuja. (p. 142 E)

CRIMINAL PROCEDURE - Jurisdiction - FHC

4. In my considered view, the decision of the Abuja Division of the trial court to try an offence which took place in Kano and bears no relationship whatsoever with the offence in Abuja, having not stemmed from any provision of the enabling statutes, is manifestly perverse. By virtue of Section 45(a) of the Federal High Court Act and the similar provision contained in Section 64 of the Criminal Procedure Act, the appellant could only be tried by the Kano Division of the trial court within which territorial expanse the offence was committed. The absence of any evidence to suggest any understanding between the

appellant and others in Abuja or a link between the storage of the firearms at Kano and those in Abuja further disentitle the Abuja Division's assumption of jurisdiction under Sections 45 (b) - (e) of the Federal High Court Act and/or the similar provisions in the Criminal Procedure Act. Again, there is no iota of evidence showing that the Abuja Division had assumed jurisdiction following an order of transfer from another judge as provided for under Section 22 of the Federal High Court Act or because the Justice of the case of the appellant after he had been apprehended in Abuja justifies his being tried in Abuja by virtue of Section 70 of the Criminal Procedure Act. It is for all these that I resolve appellant's first issue in his favour and indeed allow the appeal. (p. 143 C)

CRIMINAL PROCEDURE - Conviction - Written law

5. Finally, it must equally be conceded to learned appellant counsel that only a conviction for an offence specifically provided for under a written law survives an appeal. Section 151 of the Criminal Procedure Act and most significantly Section 36 (12) of the 1999 Constitution (as amended) guarantee that no person can be convicted for an offence unless that offence is defined and the penalty thereof is prescribed in a written law. Learned respondent counsel contends that although the correct law has not been outlined in the charge the appellant is convicted for, his conviction is maintainable under Section 1(14) (a)(i) of the Miscellaneous Offences Act CAP M174 LFN 2004. This cannot be correct. A cursory look at the wordings of the section of the law learned respondent counsel seeks to rely on shows that the offence of conspiracy is not contemplated by the provision.

The offence of conspiracy in the 9th count of the amended charge, learned appellant counsel is right, is not cognisable under Section 1(14) (a)(i) of the Miscellaneous Offences Act and appellant's conviction thereunder should have been quashed. It is trite that where the prosecution fails to charge an accused person for an offence known to law, an appeal against conviction under the incompetent charge will succeed. It is also the principle that where a charge lacks precision

and embarrasses an accused person a conviction thereunder will be quashed. Thus in the instant case, assuming that the Miscellaneous Offences Act has provided for conspiracy, and it does not, appellant who is charged under a different law cannot be convicted under the Miscellaneous Offences Act.

B (p. 143 H)

NOTABLE POINTS OF INTEREST

MUHAMMAD JSC

C 1. *Parties to refrain from proliferation of issues*

The respondent has adopted the foregoing issues distilled by the appellant as those calling for determination in the appeal. The issues are glaringly repetitive and prolix. It is certainly never the number of issues formulated and argued by the appellant that guarantees the success of his appeal. Rather, it is the relevance of these issues and the potency of the arguments thereon which puts the appellant on a better stead. This explains why appellate courts persistently frown at proliferation of issues and admonish parties to refrain from the unhelpful exercise. Appellant's arguments come through more forcefully and with disarming clarity if they are neither repetitive nor verbose. The appellant fares better if he formulates a number of grounds into a single issue. The better approach, therefore, is to formulate a single issue tersely to cover a number of grounds which are governed by the same applicable principles of law. Though economy of words is advised in the formulation of issues, succinctness remains the overriding indicia. (p. 130 E)

2. *Jurisdiction - Fundamentality of*

G Jurisdiction is the pillar upon which the entire case before a court or tribunal rests. The arraignment, trial, conviction and sentence of the appellant presuppose that the trial court and indeed the lower court that affirmed the former's decision all have the jurisdiction over the matter.

H Both sides agree, and rightly too, that jurisdiction is to a court what a gate is to a premises or a door to a house, it remains the nerve centre of adjudication and the blood that gives life to the survival of an action in a court of law. Jurisdiction is so fundamental that it robs on

the competence of a court to hear and decide a case.

The term is tantamount to competence and constitutes the basis on which a court or tribunal tries a case. It is the life line of all trials since any proceedings conducted without it is a nullity. Jurisdiction, this Court has further stressed, is the authority that empowers a court to enquire into and decide matters presented formally for its decision and where the court exercise a jurisdiction it does not have, the court's decision amounts to nothing. (pp. 131 C/134 A) B

3. Jurisdiction – Sources of

Again, learned appellant counsel is right that, being creatures of the constitution and other enabling statutes, courts draw their powers and jurisdiction of adjudication from these legislations. Because it is a statute enabling requirement, jurisdiction can neither be acquired nor conferred on the court by consent of the parties or because the court is either oblivious or mistaken as to the defect in its jurisdiction. Jurisdiction cannot of course inhere in the court for the sake of convenience. (p. 134 E) C D

4. Competence of court

In the case at hand, whether or not the trial court has jurisdiction to try and convict the appellant inter alia depends, therefore, on whether in the context of its enabling laws:

(a) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevent the court from exercising its jurisdiction and F

(b) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. (p. 134 G) G

5. Jurisdiction can be resolved at anytime

Jurisdiction is never an issue the court will find too late to resolve. After all, it is either the court has it or not. Thus even after the conclusion of trial if the court on its own discovers that it has proceeded without the requisite competence, being a question of law, the court can retrace its path. Once either the person or subject matter in relation to which the court's jurisdiction is being exercised does not fall within the purview of its enabling statute, the court must let go. Oth H

erwise, no matter how well conducted its proceedings are, same will come to naught. (p. 140 B)

REPRESENTATION

- Ahmed Raji SAN, Adeola Adedipe (Mrs.), Chiamaka Anagu (Miss),
 B N.I. Zaruni, Zakeri Garuba, Oziegbe Oino-Egharevba (Miss), A. A. Usman, Olukayode Ariwoola Jnr., Esther Ajoje (Miss), Henry Nwakpa, Onyekachi Anozie for the Appellant
 I. A. Charles-Okoli for the Respondent

CASES REFERRED TO

- Nwudenyi v. Aleke (1996) 4 NWLR (pt. 442) 349
 Okere v. Governor of Oyo State (2012) 12 NWLR (pt. 1314) 240
 Madukolu v. Nkemdilim (1962) 2 NSCC 374
 D Okolo v. Union Bank of Nigeria (2004) 3 NWLR (pt. 859) 87
 Ibori v. FRN (2009) 3 NWLR (pt. 1128) 283
 Egunjobi v. FRN (2013) 2 NWLR (pt. 1342) 5
 Nnakwe v. State (2013) 18 NWLR (pt. 1385) 1
 Achineku v. Ishagba (1988) 4 NWLR (pt. 89) 44
 E Bamaiyi v. A-G Federation (2001) 12 NWLR (pt. 727) 468
 Ogbomor v. State (1985) 2 SC 289
 Enahoro v. The Queen (1965) All NLR 132
 Gbadamosi v. Queen (1959) 8 CNLR 47
 Opobiyi v. Muniru (2011) 12 SC (pt. 111) 83
 F State v. Onagoruwa (1991-1992) All NLR 579
 Abidoye v. FRN (2014) 5 NWLR (pt. 1399) 30

STATUTES REFERRED TO

- G Criminal Procedure Act, ss. 64, 65, 70, 71, 15(3), 151, 166, 167
 Terrorism (Prevention) Amendment Act 2013, s. 32
 Federal High Court Act 1973, ss. 19(2)(3), 33(1), 45
 Miscellaneous Offences Act Cap M174 LFN 2004, s. 1(14)(a)(i)
 Constitution of the Federal Republic of Nigeria, s. 36(12)

H

LEAD JUDGMENT BY MUHAMMAD JSC

The appellant was arraigned and tried along with four others on a sixteen count amended charge dated 25th July, 2013 at the Abuja Division of the Federal High Court, Coram Ademola J. While

the others were discharged and acquitted on all the counts at the end of the trial, the appellant on the other hand was convicted and sentenced on the 7th and 9th counts of the amended charge.

Dissatisfied, Mr. Roda appealed against the trial court's decision to the Abuja Division of the Court of Appeal, hereinafter referred to as the court below, on a Notice filed on 9th December, 2013 containing seven grounds. In allowing the appeal in part, the court below quashed the trial court's conviction and sentence of the appellant in respect of the 7th count but affirmed his conviction and sentence on the 9th count.

Still aggrieved, the appellant has further appealed to this Court vide an amended Notice of Appeal consisting of ten grounds filed on the 30th July, 2014. Having earlier filed and exchanged their briefs, parties at the hearing of the appeal adopted and relied on same as arguments for and against the appeal. They also proffered oral arguments by way of emphasis. The eight issues distilled in the appellant's brief as having arisen for the determination of the appeal read:-

"1. Whether the lower Court was right to have held that the trial Federal High Court sitting at Abuja had the territorial jurisdiction to try the offence in Count 9 when the said offence was allegedly committed in Kano. [Ground 3 of the main Notice of Appeal]

2. Whether the wrong description of law in Count 9 does not go to the jurisdiction of the Court to adjudicate on it contrary to the holden of the Court that same was a formal defect which the appellant had waived by taking a plea to it. [Ground 5 of the main Notice of Appeal]

3. Whether the lower court was right to have relied on the case of EGUNJOBI v. FRN (2013) 3 NWLR (Pt. 1342) 534 instead of ENAHORO v. THE QUEEN (1965) ALL NLR pg. 132 in affirming the conviction and sentence of the Appellant on Count 9 when their Lordships had already found in the Judgment that the Appellant was charged under a wrong description of law. [Ground 4 of the main Notice of Appeal]

4. In view of the fact that same evidence was led by the Prosecution to support Counts 9 & 10 of the Amended Charge and Count 10 had been struck out, whether the lower Court was right to have refused to strike out Count 9 of the Amended Charge [Ground 5 of the main Notice of Appeal]

5. *Whether it was right for the lower court in Count 9 to have singled out the Appellant for conviction when the other 2 Accused persons with whom he was jointly charged for conspiracy had been acquitted, and particularly because he was not separately charged for conspiracy. [Grounds 7 & 8 of the main Notice of Appeal]*

B 6. *Whether the lower Court can lawfully review the evidence led at the trial Federal High Court when there is no appeal by the Respondent on the fact or testimony which was believed by the trial Court. [Ground 2 of the main Notice of Appeal]*

C 7. *Whether the lower court was right to have convicted and sentenced the Appellant under Section 96 & 97 of the Penal Code and/or Sections 516 & 517 of the Criminal Code for an offence laid under Section 1(14)(a)(i) of the Miscellaneous Act 2004. [Ground 1 of the main Notice of Appeal & Ground 9 of the Additional Ground of Appeal]*

D 8. *Whether the Appellant's constitutional right to be heard was not violated when the lower Court suo motu convicted him under the Penal and/or Criminal Code for an offence laid under the Miscellaneous Act. [Ground 10 of the Additional Ground of Appeal]"*

E The respondent has adopted the foregoing issues distilled by the appellant as those calling for determination in the appeal. The issues are glaringly repetitive and prolix. It is certainly never the number of issues formulated and argued by the appellant that guarantees the success of his appeal. Rather, it is the relevance of these issues

F and the potency of the arguments thereon which puts the appellant on a better stead. This explains why appellate courts persistently frown at proliferation of issues and admonish parties to refrain from the unhelpful exercise. Appellant's arguments come through more force-

G fully and with disarming clarity if they are neither repetitive nor verbose. The appellant fares better if he formulates a number of grounds into a single issue. The better approach, therefore, is to formulate a single issue tersely to cover a number of grounds which are governed by the same applicable principles of law. Though economy of words

H is advised in the formulation of issues, succinctness remains the overriding indicia. See *Nwudenyi & ors v. Aleke* (1996) 4 NWLR (pt 442) 349, *Anaeze v. Anyaso* LPELR 480 (SC) and *Chief Emmanuel Eyo Eta & anor v. Elder Chief Okon H. A. Dazie* (2013) LPELR-20136 (SC).

In the instant case, eight issues have been formulated from ten grounds for the determination of the appeal. This in itself does not necessarily have adverse effect on the appeal. It however serves our purpose better to determine the appeal on the basis of the first two issues distilled by the appellant which issues run through the entire ten grounds in the appellant's Notice of Appeal. See Dokun Ajayi iabiyi v. Alhaji Mustapha Moberuogbe Anretiola & ors (1992) 10 SCNJ 1 and Folorunsho Olusanya v. Adebajo Osinleye (2013) LPELR 20641 {SC}. There is an added reason for the desired procedure. The two issues query the lower court's affirmation of the trial court's wrongful assumption of jurisdiction in the trial and the conviction of the appellant based on a fundamentally defective charge.

Jurisdiction is the pillar upon which the entire case before a court or tribunal rests. The arraignment, trial, conviction and sentence of the appellant presuppose that the trial court and indeed the lower court that affirmed the former's decision all have the jurisdiction over the matter. The appellant succeeds in showing that either or both courts below lacked the jurisdiction necessary for the proceedings they conducted into the matter. Beyond shaking the very foundation of the proceedings, the appellant breaks them in their entirety. In establishing that there was never a case for adjudication in the first place before the two courts, the appellant also shows that for that reason parties cannot be heard on the merit of a case that never was! The respondent's position is further worsened if the charge, on which the appellant is tried, is shown to be in breach of the due process. See Okere & ors v. Governor of Oyo State (2012) 12 NWLR (pt 1314) 240 at 267; Madukolu v. Nkemdilim (1962) 2 NSCC 374 at 379 and Okolo v. Union Bank of Nigeria (2004) 3 NWLR (pt 859) 87 at 108 and Gwede v. INEC & ors (2014) LPELR -23763 (SC).

In arguing the appeal under their first issue/learned appellant's counsel contends that the concept of territorial jurisdiction is settled in our criminal jurisprudence. The territorial jurisdiction of the trial court, he submits, is restricted to the determination of offences committed within the particular judicial Division of the court. It does not matter that the court is a single court and has uniform jurisdiction across the entire Federation. Learned counsel buttresses his submission with the Court of Appeal's decision in Ibori v. F.R.N. (2009) 3 NWLR (pt 1128) 283 at particular 308-309 and 323-324.

Further on the issue, learned counsel submits that the evidence the respondent led confirms that the appellant was at all times resident in Kano. He is not shown to be in Abuja and while there to have consummated the act of conspiracy for which he was eventually convicted. It is the principle, submits learned counsel, appellant would
B only be tried by the Kano Division of the Federal High Court within which locality the offence he was convicted for took place. The lower court's finding at pages 1218 and 1221 of vol. 3 of the record of Appeal that the Abuja as well as the Kano division of the trial court
C have jurisdiction to try and convict the appellant, submits learned counsel, is perverse. The court's reliance on the case of Egunjobi v. FRN (2013) 2 NWLR (Pt. 1342) 5, it is contended, is not grounded in law.

The law, it is further argued, goes beyond the charge sheet in
D the determination of whether or not a court has jurisdiction over an alleged offence. The totality of available material, the charge as well as the proof of evidence, learned counsel submits must be considered in arriving at a decision one way or the other on the question of the court's jurisdiction. In the case at hand where evidence has been
E led, it is submitted, determination of an objection to the trial court's territorial jurisdiction by reference only to the charge sheet amounts to abdication of duty. The lower court's affirmation of the trial court's abdication of responsibility in that regard, contends learned appellant's
F counsel, must, on the authority of Nnakwe v. State (2013) 18 NWLR (pt 1385) 1 at 45, be resolved against the respondent.

Arguing the appeal under the second crucial issue but along with their 3rd related issue, learned appellant's counsel refers to the lower court's findings at pages 1222 and 1223 of vol. 2 of the record
G of appeal that there is indeed a wrong description of the section of the law under which the trial court convicted and sentenced the appellant for the 9th count on the charge sheet. The court's application of Sections 166 & 167 of the Criminal Procedure Act to the defect in the trial court's mistakes as being procedural, submits learned counsel,
H is a complete departure from settled authorities on the point. The trial court's failure of ensuring that the section as well as the written law under which the appellant is being tried and convicted contravenes Section 15(3) of the Criminal Procedure Act. The omission, learned counsel submits, is fundamental and goes to the root of the

appellant's trial. Relying inter-alia on *Achineku v. Ishagba* (1988) 4 NWLR (pt 89) 44; *Bamaiyi v. A. G. Federation* (2001) 12 NWLR (pt. 727) 468, *Ogbomor v. The State* (1985) 2 SC 289 at 311 and particularly *Enahoro v. The Queen* (1965) ALL NLR 132 at 139-140; *Gbadamosi v. Queen* (1959) 8 CNLR 47; *Commissioner of Police (Mid West) v. Akpata* (1967) 1 ALL NLR 249 at 254-255 and *Abidoye v. FRN* (2014) 5 NWLR (pt 1399) 30 at 56 & 57, learned appellant's counsel urges the resolution of the two issues against the respondent in upholding appellant's appeal.

Responding, learned respondent's counsel argues appellant's 1st, 2nd and 3rd issues jointly. He submits that by virtue of Section 32 of the Terrorism (prevention) (Amendment) ACT 2013 the trial court, notwithstanding the fact that the act for which the appellant is convicted took place in Kano, has jurisdiction over the matter. In addition, Section 19(2) and (3) of the Federal High Court Act 1973 as amended, confers the Chief Judge of the Federal High Court the power to assign the case to the Abuja Division of the Court. The decision in *Ibori v. FRN* (supra) which the appellant relies on, contends learned respondent's counsel, recognizes the discretionary powers which the Chief Judge, in taking into account the Terrorism (prevention) (Amendment) Act 2013, rightly exercised by assigning appellant's case to the Abuja Division of the trial court. Concluding their very terse response, it is submitted that appellant's belated complaint against the procedural defects in the two counts of charge he is convicted for cannot, given sections 166 and 167 of the Criminal Procedure Act applicable to the trial court, be entertained.

Replying on points of law, learned appellant counsel contends that the trial court cannot assume jurisdiction under a statute different from the one pursuant to which the appellant is charged and convicted. Section 1(14)(a)(i) of the Miscellaneous Offences Act under which the appellant is tried and convicted, is separate and distinct from section 32 of the Terrorism (prevention) (Amendment) Act 2013 the respondent asserts empowers the trial court to assume jurisdiction for offences totally unrelated to terrorism. The Abuja Division of the trial court is not by law, learned appellant counsel insists, empowered, to try offences which occurred in Kano completely outside its territorial limits. The powers of the Chief Judge of the Federal High Court the respondent further contends was invoked in clothing the

trial court with jurisdiction, learned appellant submits, not being statutorily donated does not avail the trial court.

Both sides agree, and rightly too, that jurisdiction is to a court what a gate is to a premises or a door to a house, it remains the nerve centre of adjudication and the blood that gives life to the survival of an action in a court of law. Jurisdiction is so fundamental that it robs on the competence of a court to hear and decide a case.

The term is tantamount to competence and constitutes the basis on which a court or tribunal tries a case. It is the life line of all trials since any proceedings conducted without it is a nullity. Jurisdiction, this Court has further stressed, is the authority that empowers a court to enquire into and decide matters presented formally for its decision and where the court exercise a jurisdiction it does not have, the court's decision amounts to nothing. See *Dapianlong & 5 ors V. Dariye* (2007) 4 SCNJ 286; *Alhaji Saka Opobiyi V. Layiwola Muniru* (2011) 12 SC (Pt 111) 83; *The State V. Dr. Olu Onagoruwa* (1991-1992) ALL NLR 579 and *Olusegun Egunjobi V. Federal Republic of Nigeria* (2012) 12 SC (Pt. IV) 148.

Again, learned appellant counsel is right that, being creatures of the constitution and other enabling statutes, courts draw their powers and jurisdiction of adjudication from these legislations. Because it is a statute enabling requirement, jurisdiction can neither be acquired nor conferred on the court by consent of the parties or because the court is either oblivious or mistaken as to the defect in its jurisdiction. Jurisdiction cannot of course inhere in the court for the sake of convenience. See *Raymond. S. Dangote V. Civil Service Commission Platteau* (2001) 5 SCM 59, *B.A. Shittu-Bey V. Attorney General of the Federation & anor* (1998) 7 SCNJ 264 and *Agu V. Odojin* (1992) 3 SCNJ 161.

In the case at hand, whether or not the trial court has jurisdiction to try and convict the appellant inter alia depends, therefore, on whether in the context of its enabling laws:

(a) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevent the court from exercising its jurisdiction and

(b) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. See *Madukolu V. Nkemdilim* (1962) 2 NSCC 374

at 379-380; Miscellaneous offences Tribunal & anor V. Nwammiri Ekpe Okoroafor & anor (2001) 12 SCM and SLB Consortium Limited V. NNPC (2011) 4 SC (Pt. 1) 176.

Given the facts of this case, learned appellant counsel's reliance on the Court of Appeal's decision on similar facts in Ibori V. FRN (supra), particularly the dicta of Augie and Oredola JJCA at pages 308-309 and 323-324 respectively, cannot be ignored. Firstly Augie JCA held as follows:-

"Courts are usually not seized of matters that occur outside their territory. Thus where ingredients of an offence occur outside the territorial jurisdiction of the court, such a court will not assume jurisdiction over the offence for apparent lack of jurisdiction."

Oredola JCA remains more forth-coming in his concurring contribution inter-alia thus:-

"The law is also settled that a court's jurisdiction is, prescribed, embedded or engraved in the statute which creates it. It is usually circumscribed and not open ended and at large. Thus the fact that there is only one Federal High Court with decision of the said court dotted all over the country for administrative convenience, logistic and purposes does not mean that any or all offences allegedly committed by an accused person anywhere in Nigeria can be tried in any division of the said Federal High Court. Ordinarily and without express provision in the creating statute, a court's jurisdiction should not be extended beyond its territorial limit. What is more, jurisdiction is ...firmly rooted and must be in accordance and consonance with laid down provisions in the creating statute."

The foregoing is a profound and authoritative exposition of the law on the issue in point. 1 cannot agree more.

Section 249 of the 1999 Constitution (as amended) which provides for the establishment of the trial court, the Federal High Court and Sections 1, 9(1), 22, 19(1) and (3), 22(1), 33(1) and 45 of the Federal High Court Act which actually creates the court and prescribes its territorial jurisdiction are hereinunder, for their relevance and ease of reference, reproduced-

"The 1999 Constitution

249 - (1) There shall be a Federal High Court

(2) The Federal High Court shall consist of

(a) a Chief Judge of the Federal High Court and

(b) such number of Judges of the Federal High Court as may be prescribed by an Act of the National Assembly”

The Federal High Court Act CAP F12

“Section 1 (1) There is hereby established a High Court of Justice which shall be styled “the Federal High Court” (in this Act referred to as “the Court”).

(2) The Court shall consist of the following:

(a) the Chief Judge, who shall have overall control of and supervision of the administration of the court; and

(b) seventy Judges of the Federal High Court.

Section 9 (1) The jurisdiction vested in the Court shall, as far as practice and procedure are concerned, be exercised in the manner provided by this Act or any other enactment or by such rules and orders of court as may be made pursuant to this Act.

Section 19 (1) the Court shall have and exercise jurisdiction throughout the federation, and for that purpose the whole area of the Federation shall be divided by the Chief Judge into such number of Judicial Divisions or part thereof by such name as he may think.

(3) The Chief Judge shall determine the distribution of the business before the Court amongst the Judges thereof and may assign any judicial function to any Judge or Judges or in respect of a particular cause or manner in a Judicial Division

22 (1) A Judge of the Court may at any time or at any stage of the proceedings in any cause or matter before final judgment, either with or without application from any of the parties thereto, transfer such cause or matter before him to any other Judge of the Court.

33 (1) Subject to the provisions of this section, criminal proceedings before the Court shall be conducted substantially in accordance with the provisions of the Criminal Procedure Act, and the provisions of that Act shall, with such modifications as may be necessary to bring it into conformity with the provisions of this Act, have effect in respect of all matters falling within the jurisdiction of the Court.

45 Subject to the power of transfer contained in this Act, the place for the trial of offences shall be as follows:-

(a) An offence shall be tried by a Court exercising jurisdiction in the area or place where the offence was committed;

(b) When a person is accused of the commission of any of-

fence by reason of anything which has been omitted to be done, and of any consequence which has ensued, such offence may be tried by a Court exercising jurisdiction in the area of place in which such thing has been done or omitted to be done or any such consequence has ensued;

(c) 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 by a court exercising jurisdiction in the area or place either in which it happened, or In which the offence with which it was so connected, happened;

(d) When-

It is uncertain in which of several areas or places an offence was committed; or

(ii) an offence is committed partly in one area or place and partly in another; or

(iii) an offence is a continuing one and continues to be committed in more areas or places than one; or

(iv) an offence consists of several acts committed in different areas or places, such offence may be tried by a Court exercising jurisdiction in any of such areas or places;

(e) an offence committed while the offender is in the course of performing a journey or voyage, may be tried by a Court in or into the area or place of whose jurisdiction the offender or 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.”

Section 33(1) of the Federal High Court Act reproduced supra particularly necessitates the reproduction hereinunder of sections 70 and 71 of the Criminal Procedure Act it makes applicable to the trial court as well.

“70. Courts may assume jurisdiction under certain conditions

(1) Notwithstanding the provisions of sections 64, 65 and 67 of this Act, a judge or magistrate of a division or district in which a person is apprehended who is charge with an offence, alleged to have been committed in another division or district, may, if he considers that the ends of justice would be better served by hearing the charge against such person in the division or district in which he has been apprehended and having regard to the accessibility and convenience of the witnesses, proceed to hear the charge and the person

charged may be proceeded against, tried and punished in any division or district in which he was apprehended, or is in custody on a charge for the offence, or has appeared in answer to a summons lawfully issued charging the offence, as if the offence had been committed in that division or district, and the offence shall, for all purposes incidental to, or consequential on the prosecution, trial or punishment thereof, be deemed to have been committed in that division or district:

Provided that, if at any time during the course of any proceedings taken against any person before any court in pursuance of this subsection, it appears to the court that the accused would suffer hardship if he were proceeded against and tried in the division or district aforesaid, the court shall forthwith, but without prejudice to a magistrate's powers under section 67 of this Act, cease to proceed further in the matter under this subsection.

(2) Where any person is charge with two or more offences, he may be proceeded against, tried and punished in respect of all those offences in any division or district in which he could be proceeded against, tried or punished in respect of any one of those offences, and all the offences with which that person is charged shall, for all purposes incidental to or consequential on the prosecution, trial or punishment thereof, for deemed to have been committed in that division or district.

71. Assumption of jurisdiction after commencement of proceedings.

In case any cause is commenced in any other division or district than that in which it ought to have been commenced, the judge or magistrate, as the case may be, may assume jurisdiction in accordance with the provisions of section 70 and all acts performed and all decisions given by the judge or magistrate during the trial or inquiry shall be deemed to be valid in all respects as if the jurisdiction had been assumed prior to the performance of the said acts and the giving of the said decisions."

Cumulative application of the foregoing enabling provisions to the facts of the instant case makes learned appellant counsel's position unassailable. I entirely agree with him that though the Federal High Court's jurisdiction covers the whole Federation, its criminal jurisdiction by virtue of Section 45(a)

of the Federal High Court Act remains ordinarily exercisable by the court in the Division within which the offence was committed. The court, it must however be pointed out, otherwise validly assumes jurisdiction in respect of an offence:

(1) Following an order of transfer even by a judge sitting in a Division other than the one within which the offence was committed under section 22 of the Federal High Court Act. B

(2) Within the purview of section 45(b) (e) of the Federal High Court Act and/or sections 64 and 65 of the Criminal Procedure Act if:

(i) there is doubt as to the Division within which the offence was committed; C

(ii) the offence is connected with another offence recommitting within the Court's Division that tries the accused for both or all the offences including those committed outside the Division. See Lawson v. State (1975) 4 SC 115 at 121. D

(iii) the offender committed the offence in the course of a journey and or the person or thing against whom the offence was committed resides or passed through the Division that tries the offender. E

iv) the offence consists of several acts one of which occurred within the Division of the court that tries the offender. See Okoro V. State (1965) 1 ALL NLR 283.

(v) The offence being a continuing one and the commission of which continued into the Division the offender is tried or (3) Under Section 70 of the Criminal Procedure Act, if the offender is apprehended in the Division of the court that assumes jurisdiction and the interest of justice is as such better served by trying him in the Division other than the one within which the offence committed. See Usman V. State (1978) 6-7 SC. F G

And this brings to the issue whether in affirming court's assumption of jurisdiction over the case against the appellant, the court below is right when it limited the exercise to the examination of the charge alone. The pivotal nature of jurisdiction requires that an objection to it be determined on basis of available materials. Where the objection is raised formally by a notice of motion supported by an affidavit, the affidavit evidence and the facts deposed to in opposition to the H

motion, beyond the charge, must be considered. Though the criminal jurisdiction of a court may be determined by reference to the charge alone, in appropriate cases, it may be necessary to lead some evidence before it becomes clear enough to make a decision on the point. Jurisdiction is never an issue the court will find too late to resolve. After all, it is either the court has it or not. Thus even after the conclusion of trial if the court on its own discovers that it has proceeded without the requisite competence, being a question of law, the court can retrace its path. Once either the person or subject matter in relation to which the court's jurisdiction is being exercised does not fall within the purview of its enabling statute, the court must let go. Otherwise, no matter how well conducted its proceedings are, same will come to naught. See Attorney General of Lagos State V. Dosunmu (1989) 6 SC (Pt 11)1; Attorney General Kwara State V. Olawale (1993) 1 SCNJ 208; Otunba F.E. Sowemimo & Anor V. The State (2004) 4 SCM 207 and The State V. Dr. Olu Onagoruwa (1991-1992) ALL NLR 579.

In the case at hand, see particularly pages 660-664 of vol. 2 of the record of Appeal, the trial court was urged to decline jurisdiction in counsel's final address after both sides had led evidence and closed their respective cases. It was contended that by virtue of Section 45(a) of the Federal High Court Act the court's criminal jurisdiction remains territorially restricted to the Division within which the offence was committed. Count 9 of the amended charge and the evidence proffered in proof of same, it was submitted, clearly show that the offence occurred entirely in Kano.

The respondent dwelt on the confessional statement of the appellant, other Exhibits tendered by the respondent and the oral evidence of some of its witnesses in countering appellant's objection then. At pages 1092-1093 of Vol 2 of the record of appeal, the trial court held as follows:-

"Apart from the 3rd Accused Person's confessional statement, Exhibit DSSIC, his oral evidence (DWI) of 12/8/2013 before this Court which are credible and positive, there's also the evidence of PW1 (DSSI) PW4 (DSS4), PW6 (DSS6) who are witnesses of truth as well as Exhibits DSS6 & DSS27A, B,C,E,F (DVD Recording of 3rd Accused Person). They speak volumes of the criminal design, conduct or intention between the 3rd Accused Person and Abdulhassan Tahir

on this count.

The Prosecution has proved the essential ingredients of conspiracy as charged in COUNTS 7 & 9 against the 3^d Accused Person, Talal Ahmed Roda from the overwhelming oral and documentary evidence before the court..”

The lower court at page 1218-1221 held on the point thus:-
“Where the issue of jurisdiction in a criminal case is raised, it is the charge before the court that is to be considered. See EGUNJOBI V. FEDERAL REPUBLIC OF NIGERIA (2013) 3 NWLR (pt. 1342) 534, 551. It is therefore my view that senior counsel for the appellant was not on a strong wicket when he founded his issue of jurisdiction on the evidence led.

Counts 7, 8, and 9 relate to the appellant. Count 10, 15 and 16 do not relate to him and so I shall not weary myself with them. Count 7, 8, and 9 are counts on conspiracy, unlawful importation of prohibited firearms and unlawful storage of the same in Kano. They are more fully set out hereunder.

The impression given in the counts is that the conspiracies were done as part of an alleged common criminal pursuit at Kano and Abuja. It follows therefore that either the Federal High Court Kano Division or Abuja Division had jurisdiction over the matter.

The lower court therefore had jurisdiction to try those counts against the appellant.”

The foregoing decision of the lower court would be right if the determination of the objection to the trial court’s jurisdiction over the offence for which the appellant is convicted is limited to the charge alone. This is the general procedure alluded to by my learned brother, Fabiyi JSC in Egunjobi v. FRN.

The 9th count of charge for which the appellant is tried and convicted, see page 559 of Vol. 2 of the record of appeal, reads;
“COUNT 9

That you MUSTAPHA FAWAZ, 49, male, Lebanese citizen, of wonder land Amusement Park Resort, No 1, Kukwaba hills, opp National Stadium, Abuja, and you ABDALLAH THAHINI, 48, male, Lebanese citizen, of End of Audu Bako Way, Kano, you TALAL AHMAD RODA, 51, male, Lebanese Citizen of No 3, Gaya Road, Kano, conspired with one ABDALHASSAN TAHIR, GHAZI KASSIM and others (now at large) between February 1988 and March 2008

in Kano and Abuja with the jurisdiction of this Honourable Court to unlawfully store in House No 3, Gaya Road, Kano prohibited firearms including but not limited to the following (a) 11 Anti-Rockets (16mm), (b) 2 Mortars (81mm), (c) 4 Landmines; (d) 21 Rocket Propelled Grenades (RPG) with their Chargers; (e) 1 Rocket Propelled Grenade Launcher; (f) 16 RFC Chargers; (g) 76 Military Type Hand Grenades; (h) 17 AK 47 Rifles; (i) 10,921 pieces of AK 47 Ammunition; (j) 9 PPK Pistols; (k) 1 PPK Pistol Magazine; (l) 1 Submachine gun (SMG); (m) 103 Parcels of TNT Slabs and each contains 3 Pieces of TNT; (n) 334 (7.65mm) Ammunition; (o) 80 pieces of Explosive initiators; (p) 18 Hand Grenade caps; (q) 4 pieces of Walter PPK silencers; and (r) 2 Improvised Explosives devices (IEDS) and you thereby committed an offence punishable under Section 1(14) (a) (i) of Miscellaneous offences Act, M17, LFN 2004.”

In proof of the charge, the respondent called ten witnesses whose evidence at the end of the trial established the fact of the unlawful storage of firearms in House No. 3, Gaya Road Kano. The trial court assumed jurisdiction in respect of the charge on the basis of the evidence of some of respondent’s witnesses and the extra judicial statement of the appellant which situated him at the premises where the firearms were retrieved, No 3 Gaya Road Kano, and nothing more.

Conspiracy, see Gbadamosi and Others V. The State (1991) 6 NWLR (Pt 196) 182, **simply connotes the meeting of two or more minds to commit an offence. To succeed, the prosecution must establish either the act of the offender which constitutes the conspiracy as described in the charge or prove the circumstances from which the court can infer the agreement to commit the offence. Therefore, the prosecution must allege and prove an understanding between the offenders to hatch the crime. The prosecution need not allege and prove the specific place the accused persons agree to embark on the crime. Their being found together at the spot of the crime however provides enough reason for accused trial for conspiracy.** See Clarke V. State (1987) 2 NWLR [Pt 58] 645 and Ikemson V. State (1989) 3 NWLR (Pt 110) 455 at 472, Haruna V State (1972) 2 ALL NLR 302 and Mumuni V. State (1975) 6 SC 79.

In the case at hand, all the available materials, the charge

and the evidence proffered, all of which the trial court rightly considered in determining the objection against its competence, situate the appellant and his co-accused at No 3 Gaya Road Kano where the firearms unlawfully stored were recovered. There is nothing in evidence, beyond what the charge asserts, of any understanding between the appellant and the others to store the firearms at the premises. Aside from appellant's physical presence at the premises there is not the slightest piece of evidence, not even in Exhibit 3, appellant's extra judicial statement, to show that he agreed with co-accused to store the said firearms or that he is further linked with the storage of the firearms at Abuja.

In my considered view, the decision of the Abuja Division of the trial court to try an offence which took place in Kano and bears no relationship whatsoever with the offence in Abuja, having not stemmed from any provision of the enabling statutes, is manifestly perverse. By virtue of Section 45(a) of the Federal High Court Act and the similar provision contained in Section 64 of the Criminal Procedure Act, the appellant could only be tried by the Kano Division of the trial court within which territorial expanse the offence was committed. The absence of any evidence to suggest any understanding between the appellant and others in Abuja or a link between the storage of the firearms at Kano and those in Abuja further disentitle the Abuja Division's assumption of jurisdiction under Sections 45 (b) - (e) of the Federal High Court Act and/or the similar provisions in the Criminal Procedure Act. Again, there is no iota of evidence showing that the Abuja Division had assumed jurisdiction following an order of transfer from another judge as provided for under Section 22 of the Federal High Court Act or because the Justice of the case of the appellant after he had been apprehended in Abuja justifies his being tried in Abuja by virtue of Section 70 of the Criminal Procedure Act. It is for all these that I resolve appellant's first issue in his favour and indeed allow the appeal.

Finally, it must equally be conceded to learned appellant counsel that only a conviction for an offence specifically

provided for under a written law survives an appeal. Section 151 of the Criminal Procedure Act and most significantly Section 36 (12) of the 1999 Constitution (as amended) guarantee that no person can be convicted for an offence unless that offence is defined and the penalty thereof is prescribed in a written law. Learned respondent counsel contends that although the correct law has not been outlined in the charge the appellant is convicted for, his conviction is maintainable under Section 1(14) (a)(i) of the Miscellaneous Offences Act CAP M174 LFN 2004. This cannot be correct. A cursory look at the wordings of the section of the law learned respondent counsel seeks to rely on shows that the offence of conspiracy is not contemplated by the provision.

The offence of conspiracy in the 9th count of the amended charge, learned appellant counsel is right, is not cognizable under Section 1(14) (a)(i) of the Miscellaneous Offences Act and appellant's conviction thereunder should have been quashed. It is trite that where the prosecution fails to charge an accused person for an offence known to law, an appeal against conviction under the incompetent charge will succeed. See Aoko V. Fagbemi & anor (1961) 1 ALL NLR 400. It is also the principle that where a charge lacks precision and embarrasses an accused person a conviction thereunder will be quashed. Thus in the instant case, assuming that the Miscellaneous Offences Act has provided for conspiracy, and it does not, appellant who is charged under a different law cannot be convicted under the Miscellaneous Offences Act. See Enahoro v. The Queen (1965) ALL NLR 132, Abidoye V. FRN (2014) 5 NWLR (Pt -4399)30.

Learned respondent counsel's insistence that it is belated, given the provision of Section 167 of the Criminal Procedure Act, for the appellant to raise his objection to the minor procedural slip of the trial court as affirmed by the lower court is unjustified in law.

Firstly, respondent counsel must accept the fact that the appellant, on perusal of the record of this appeal is not raising this concern for the first time either here or at the lower court. Having objected to the defect in the charge at the trial court, Section 167 of the Criminal Procedure Act cannot be used to otherwise sustain an incompetent

charge. See *Nnakwe V. The State* (2013) Vol. 223 LRCN (Pt. 1) 1 at 25, *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. Appellant's 2nd issue for the determination of the appeal is resolved against the respondent as well. Were the trial court to have jurisdiction and contrary to the perverse decision of the lower court, it does not, the appeal would have all the same succeeded with the resolution of appellant's 2nd issue for the determination of the appeal. B

In sum the appeals succeeds. The proceedings of the lower court and that of the trial court it purports to affirm are hereby set aside. The conviction and sentence of the appellant consequentially are hereby quashed. C

PETER-ODILI JSC, CFR

I agree with the reasoning and judgment just delivered by my learned brother, Mohammad Dattijo, JSC and to underscore my support, I shall make some comments. D

The Appellant by a Notice of Appeal and additional Appeal challenged the Judgment of the Court of Appeal in which his sentence on Court 9 of the Amended Charge was affirmed. E

FACTS:

The facts are to be clearly seen from the Issues for determination. F

1. Whether the lower Court was right to have held that the trial Federal High Court sitting at Abuja had the territorial jurisdiction to try the offence in Count 9 when the said offence was allegedly committed in Kano. [Ground 3 of the main Notice of Appeal]

2. Whether the wrong description of law in Count 9 does not go to the jurisdiction of the Court & adjudicate on it contrary to the holden of the Court that same was a formal defect which the appellant had waived by taking a plea to it. [Ground 5 of the main Notice of Appeal] G

3. Whether the lower court was right to have relied on the case of *EGUNJOBI v. FRN* (2013) 3 NWLR (Pt. 1342) 534 instead of *ENAHORO v. THE QUEEN* (1965) ALL NLR pg. 132 in affirming the conviction and sentence of the Appellant on Count 9 when their Lordships had already found in the Judgment that the Appellant was H

charged under a wrong description of law. [Ground 4 of the main Notice of Appeal]

4. In view of the fact that same evidence was led by the Prosecution to support Counts 9 & 10 of the Amended Charge and Count 10 had been struck out, whether the lower Court was right to have refused to strike out Count 9 of the Amended Charge [Ground 5 of the main Notice of Appeal]

5. Whether it was right for the lower court in Count 9 to have singled out the Appellant for conviction when the other 2 Accused persons with whom he was jointly charged for conspiracy had been acquitted, and particularly because he was not separately charged for conspiracy. [Grounds 7 & 8 of the main Notice of Appeal]

6. Whether the lower Court can lawfully review the evidence led at the trial federal High Court when there is no appeal by the Respondent on the fact or testimony which was believed by the trial Court. [Ground 2 of the main Notice of Appeal]

7. Whether the lower court was right to have convicted and sentenced the Appellant under Section 96 & 97 of the Penal Code and/or Sections 516 & 517 of the Criminal Code for an offence laid under Section 1(14)(a)(i) of the Miscellaneous Act 2004. [Ground 1 of the main Notice of Appeal & Ground 9 of the Additional Ground of Appeal]

8. Whether the Appellant's constitutional right to be heard was not violated when the lower Court suo motu convicted him under the Penal and/or Criminal Code for an offence laid under the Miscellaneous Act. [Ground 10 of the Additional Ground of Appeal]

Arguing along the lines of the Appellant's Brief settled by Robert Clarke SAN and filed on 8/8/14, learned counsel for the Appellant Ahmed Raji SAN on the 13/11/14 which he adopted, learned counsel set out to push forward their position.

Mrs. Charles Okoli, learned counsel for the Respondent adopted their Brief of Argument settled by Simon C. Egede Esq. and filed on 15/8/14. She equally adopted the issues as formulated by the Appellant.

i shall however utilise the issues as joined or argued separately by the Respondent as I find it an easier route to take.

ISSUES 1, 2 & 3:

These first ask the question whether the trial at the Federal

High Court sitting at Abuja had the territorial jurisdiction to try the offence in Count 9 allegedly committed In Kano. Also, whether the wrong description of law in count 9 did not go to the jurisdiction of the Court to adjudicate and thereby vitiating the conviction and sentence based on that wrongly described law.

For the Appellant was argued that the principle of territorial jurisdiction is settled that the jurisdiction of the Federal High Court is restricted to the determination of an offence which was committed within the locality or judicial Division where the Court is situated. This being an exception to the general rule that the Federal High Court has a uniform jurisdiction across the Federation. He cited *Ibori v FRN* (2009) 3 NWLR (Pt. 1128) 283 at 308 - 309. B
C

That the evidence led by the Prosecution confirmed that the Appellant (one of the accused persons with Abdalhassan Tahir and Ghazi Kassim (the other accused persons) and others at large showed that the alleged meeting of the minds by the said persons made in Kano. That for the Court of Appeal to hold that it need not consider the evidence led in Count 9 to determine the jurisdiction of the Court is erroneous and ought to be set aside. He cited *Nnakwe v State* (2013) 18 NWLR (Pt 1285) 1 at 45. D
E

That the decision of the Court below that a wrong description of the section under which the Appellant was charged would not amount to a formal defect curable by Section 166 of the Criminal Procedure Act (CAP) is perverse and unsupported by the plethora of settled authorities on this principle. That the error in description of the section of the law went to the root of the matter which is jurisdictional. He referred to Section 151 (3) CAP; *Achineku v Ishagba* (1988) 4 NWLR (Pt. 89) 44; *Bamaiyi v A.G. Federation* (2001) 12 NWLR (Pt. 727) 468. F
G

It was submitted that the Court below was wrong to rely on the case of *Egunjobi v FRN* (2013) 3 NWLR (Pt. 1342) 534 instead of *Enahoro v The Queen* (1965) All NLR 132 and *Abidoye v FRN* (2014) 5 NWLR (Pt. 1399) 30.

For the Appellant was contended that it is not correct to say that the Appellant waived his right to object to the charge as a formal motion dated and filed on 25th June, 2013 before the charge was read, all the accused challenged the charges before the Court but overruled. H

Learned counsel for the Respondent reacted by submitting that the Federal High Court has the territorial jurisdiction to try the offence in Count 9 and the Chief Judge pursuant to Section 19 (2) and (3) of the Federal High Court Act 1973 has power to assign cases to any of the judicial divisions of the Court for convenient dispatch of business. That where the issue of jurisdiction in a criminal case is raised, it is the charge before the court to that is to be considered. He relied on *Egunjobi v FRN* (2013) 2 NWLR (Pt. 1342) 534 at 551.

It was further contended for the respondent that no error in stating the particulars of a charge shall be regarded as material unless the accused was misled on account thereof. He cited Sections 166 and 167.

In reply on points of law in line with the Reply Brief filed on 18/8/14, learned counsel for the Appellant said that for the purpose of conferring jurisdiction, the court must be absolutely certain and satisfied that the offence or crime is directly donated by the jurisdiction conferred in the enabling law. He cited *Nnakwe v State* (2013) 18 NWLR (Pt. 138511; *Onwudiwe v FRN* (2006) 19 NWLR (Pt. 988) 382 at 425.

To answer the questions raised is to firstly make the point that the general rule is that the Federal High court has a uniform Jurisdiction across the federation. However, an exception exists that in the determination of an offence committed within the locality or judicial division of the Federal High Court has to be tackled by the Court situated within that locality. On this, the court of Appeal case of *Ibori v FRN* (2009) 3 NWLR (Pt. 1128) 283 at 308 -309, 323 - 324 is helpful and self explanatory and I shall quote the dicta of Augie and Oredola JJCA therein and thus:-

“Territorial or geographical jurisdiction refer to the geographical area in which matters brought before the Courts for adjudication arose.

Courts are usually not seised of matters that occur outside their territory. Thus, where ingredients of an offence occur outside the territorial jurisdiction of the Court, such a court will not assume jurisdiction over the offence for apparent lack of jurisdiction.”

In concurring, Oredola (JCA) on pages 323 - 324, paragraphs H-D also held that:-

“Jurisprudentially, criminal jurisdiction is territorial. Thus, juris-

dition in criminal matters in Nigeria is principally and mainly territorial, it depends to a large extent on where the alleged offence, at least the initial element, part or essential ingredient of the offence took place. It thus stands to reason that if civil matters recognise territorial jurisdiction limitations, afortiori criminal matters, which by their very nature are inhibitive, restrictive and impinge on the liberty and freedom of an accused person. B

The law is also settled that a court's jurisdiction is prescribed, embedded or engraved in the statute which creates it. It is usually circumscribed and not open ended and at large. Thus, the fact that there is only one Federal High Court with divisions of the said court dotted all over the country for administrative convenience, logistic and other purposes does not mean that any or all offences allegedly committed by an accused person anywhere in Nigeria can be tried in any division of the said Federal High court. Ordinarily and without express provision in the creating statute, a court's jurisdiction should not be extended beyond its territorial limit. What is more, jurisdiction is not subject to emotion, sentiment, whims and caprices of anyone. It is firmly rooted and must be in accordance and consonance with laid down provisions in the creating statute". C D E

Taking the general rule in view and the explanation thereof by the learned justices of the Court of Appeal which views are mine exactly and contextualizing those views with the evidence established in this case, clearly nothing linking the alleged conspiracy and ingredients thereof of the Appellant and the others within the territory of Abuja for which an Abuja Court could rest its jurisdiction. It is to make it easy for a trial Court to ascertain the territorial jurisdiction that Order 3 (a) and Order 4 (i) of the Federal High Court (Criminal) Practice Direction 2013 has been put in place directing for the accompaniment of a charge with the Statement of Evidence and not a bare Charge Sheet. I will cite the said Directions aforesaid thus:- F G

Order 3 (a):

The complainant shall not file a charge unless it is accompanied by an affidavit stating that all investigations into the matter had been concluded and in the opinion of the prosecutor, a prima facie case exists against the accused persons. H

Order 4: Duties of the Prosecution.

(i) to serve copies of the statement of evidence and documen-

tary exhibits upon the Defence 7 days before the arraignment hearing.

(ii) To provide a written case summary on the evidence as it presently stands.

B (iii) To specify what further evidence is to come, and how long that evidence will take to be served on the Court and the defence.

The above clearly has put paid to a situation where the judge is to make a blind guess as to his territorial jurisdiction when faced with a criminal charge. See *Nnakwe v State* (2013) 18 NWLR (Pt. 1385) C 1 at 45.

Now getting into the matter of the wrong description of the law in Count 9 in relation to the Court below relying on *Egunjobi v FRN* (2013) 3 NWLR (Pt. 1342) 534 in affirming the conviction and sentence of the Appellant. The Court of appeal had no difficulty identifying that there was really a wrong description of the section under D which the Appellant was charged but that the defect was curable by Section 166 of the Criminal Procedure Act. I shall quote the said CPA provision as follows:-

E *“No error in stating the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material Unless the accused was in fact misled by such error or omission”.*

F Section 166 CPA has to be read along with Section 151 (3) of the CPA which provides thus:-

“The written law and the section of the written law against which the offence is said to have been committed shall be set out in the Charge”.

The follow up poser that would arise is, if an Appellant charged G under Section 1 (14) (a) (i) of the Miscellaneous Offences Act under which the Appellant was charged in Count 9 for conspiracy which section aforesaid did not create or contain the offence of conspiracy can be substituted with an offence under the Penal Code outside the statute under which the Appellant was charged? The Court of Appeal H answered in the affirmative which I cannot go along with. The reason being that the defect in the charge under a non existent law is a fundamental defect which goes to the root of the Jurisdiction of the Court in the light of Section 151 (3) of the CPA which provides for a charge under a written law and section of the written law against

which the offence is said to have been committed being mandatorily set out in the charge leaving no option. The situation is to opposite what transpired in *Gbadamosi v Queen* (1959) SCNLR 471 where appellant was charged under a wrong description of law for initially making a false statement to public officers pursuant to Section 125 (1) A of the Criminal Code instead of Section 125 (1) (b) A of the Criminal Code. The guide as proffered by this Court in *Abidoeye v FRN* (2014) 5 NWLR (Pt. 1399) 30 is useful for our purpose and has captured exactly what should be. I would therefore quote my Lord Ngwuta, JSC for clarity and as follows:-

“In my view, the inclusion of ingredients or elements in the particulars of offence which are not required by the facts of the case particularly by the section of the law creating the offence is as bad as omission of ingredients required by the facts and section of the statute creating the offence. In either case, a conviction of the accused without an amendment of the charge cannot be said to be founded on proof of the offence charged, as distinct from the offence created by statute. This is not a case of formal defect on the face of a charge against which objection should have been raised at the reading of the charge as provided in Section 167 of the Criminal Procedure Law of Lagos State. It is a case of the prosecutor in an attempt to stir up and build public discontent against the appellant as a thief created and charged the appellant with offences different from offences created by the Statutes pursuant to which he purported to charge the appellant. ...Any mistake in the particulars of offence in a charge shall lead any conviction based on such charge to be quashed on appeal”.

The case of *Abidoeye* (supra) followed the position already laid down in *Enahoro v The Queen* (1965) All NLR 132.

For emphasis is to state that Section 151 (3) of the CPA has prescribed without equivocation and with the commanding word of ‘shall’ in setting out the written law and section thereof with which an accused is charged and so that condition precedent must be fulfilled before the charge can have the validity upon which a conviction can be made and sustained. I rely on *Achineku v. Ishagba* (1988) 4 NWLR (Pt.89) 44; *Bamaiyi v. A. G. Federation* (2001) 12 NWLR (Pt. 727) 468; *Ogbomor v. The State* (1985) 2 SC 289 at 311.

In the light of the above therefore, it is easy to answer the question of the category to place the defect in the framing of the

charge, whether formal defect which is curable or fundamental going
The latter is the correct answer and so transpired here was incurable
and the Lower court ought to have so held. The issues are resolved
in favour of the Appellant.

ISSUE 4:

B This raises the question whether the fact that, same evidence
was led by the prosecution to support counts 9 and 10 of the Amended
Charge and count 10 had been struck out whether the Lower court
was right to have refused to strike out Count 9.

C For the Appellant, learned counsel submitted that, there is no
proof that the purported cache of weapons was discovered in the
house in Kano, the prosecution also failed to lead evidence of conspi-
racy between the Appellant and the two accused with him and the
two others at large. That in a charge of conspiracy, the prosecution
D has the burden to prove not only the inchoate or rudimentary na-
ture of the offence but also the meeting of the minds of the accused
persons with a common intention and purpose to commit a particu-
lar offence all of which is absent in the case in hand. He cited
Gbadamosi & Ors. V The State (1991) 6 NWLR (Pt. 196) 182; Ishola
E v The State (1972) 10 SC 63 at 76 - 77; Amadi v State (1993) 8
NWLR (Pt. 314) 644 at 663 - 664.

For the Respondent was submitted that a court convict an ac-
cused for conspiracy to commit an offence notwithstanding that the
substantive offence was not successfully proved.

F Mrs. Charles Okoli of counsel referred to Balogun v A.6. Ogun
State (2002) 6 NWLR (Pt. 763) 512. She stated that the Appellant's
confessional statement and his oral evidence were enough on which
the court could act and make the conviction of conspiracy against the
G Appellant. She cited Dibia v State (2007) 9 NWLR (Pt. 1038) 30;
Nwaebonyi v State (1994) 5 NWLR (Pt. 343) 130.

In regard to the issue here raised being whether the offence of
Conspiracy was established, it needs be said that in an offence so
described, the prosecution has the burden to prove or establish the
H meeting of the minds of the accused persons with a common inten-
tion and purpose to commit a particular offence. It is of course stating
the obvious to say that without evidence, the offence cannot be es-
tablished. See Gbadamosi & Ors. V The State (1991) 6 NWLR (Pt;
196) 182; Ishola v The State (1972) 10 SC 163 at 76 - 77; Ahmad v

State (1993) 8 NWLR (Pt. 314) 644 at 663 - 664. It is noteworthy that the evidence from which the offence of conspiracy can be established is proof beyond reasonable doubt and no less as it is the guilt of the accused that is at stake and so where as in this case, there is a paucity of evidence or little from which an inference of the conspiracy can be inferred, then the benefit of the doubt has to be given to the accused as the burden does not shift in that regard, I rely on *Shekete v NAF* (2000) 16 WRN 56 at 66; *Bakare v State* (1987) 1 NWLR (Pt. 52) 579; *State v Azeez* (2008) 14 NWLR (Pt. 1108) 439. B

Again, from what I have stated above, I resolve this issue in favour of the Appellant. C

ISSUE 5

The issue here is whether the Lower court can single out the appellant for conviction when the other two accused jointly charged with him on conspiracy had been acquitted and there was no separate charge on which appellant was charged. D

Learned Senior Advocate for the Appellant canvassed the point that where facts proved are different from those stated in the charge, a conviction on the charge cannot stand and should be quashed. That in the case at hand, the evidence led was not in proof of the joint offence of conspiracy in Count 9 and so the conviction thereon should be set aside being perverse. He relied on *Algbe v State* (1976) 9 - 10 SC 77 at 223; *Akinlemibola v COP* (1976) 10 NSCC 345 at 352 etc. E

For the Respondent was contended that the facts in this case ought to be considered on its own and not within a general concept and so an appellate court cannot substitute its findings with those of the trial court which had the opportunity of hearing, seeing and watching the demeanour of the witnesses. She cited *Sule v The State* (2009) 7 NWLR (Pt. 1169) 33 at 63; *Babarinde v State* (2014) 3 NWLR (Pt. 1395) 56 at 594; *FRN v Iweka* (2013) 3 NWLR {Pt. 1341} 285 at 334. F

The question raised herein throws up the fact that the evidence of conspiracy which needed be proved for the Count 9 charge should demonstrate how the appellant, the other accused person with others now at large conspired to unlawfully store prohibited weapons at No.3 Gaya Road, Kano. In handling the matter of this essential ingredient, the Court of Appeal held that even though the H

accused persons were jointly charged to have conspired with other persons and since the accused person were discharged and acquitted for lack of evidence, the appellant can be separately convicted on that same joint charge. I shall recapture snippets of the said judgment of the Court below for our purpose here and it is thus:-

B *“The evidence led in respect of the appellant was separate and different from that led in respect of the other accused person especially the 1st accused person. It follows therefore that the acquittal of the other accused persons would not automatically result in the acquittal of the appellant”.*

C In doing what it did, the Court below went from the wrong premises that it could spilt the Charge and convict the appellant on the evidence led against him, this they did without bearing in mind that the said Abdul Hassan Talir and Ghazi Kassim at large were not D parties to the Amended Charge nor did the prosecution lead any evidence against them and the crucial issue is that appellant cannot conspire alone. I place reliance on *Aigbe v State* (1976) 10 SC 77; *Akinlemibola v COP* (1976) 10 NSCC 345 at 352; *Ogugu v State* (1990) 2 NWLR (Pt. 134) 539 at 553.

E The situation above stated is well capture by *Ogbuagu, JSC in Sule v The State* (2009) 17 NWLR (Pt. 1169) 33 in this dictum-

“I concede that generally as it takes two people to conspire, a person cannot be convicted of conspiracy if the others are acquitted and discharged.”

F Clearly there was no basis for what the Court below did in the conviction and sentence of the appellant for conspiracy when his co-accused were discharged and acquitted for lack of evidence and nothing on which conspiracy connecting the appellant with the other persons at large without an amended charge to that effect and evidence G led in support thereof. The issue is hereby resolved against the Respondent and in favour of the Appellant.

ISSUE 6

H The question herein raised is whether the Lower court can lawfully review the evidence led at the trial Court and there being no appeal by the Respondent on the fact or testimony on which the trial Court reached its decision.

Learned counsel for the Appellant said the prosecution did not cross-examine the Appellant on the issue of accidentally seeing the

weapon AK 47 at Sultan Road, Kano and upon which Mr. Isa told him, he had a licence for it. That this unchallenged evidence should be accepted as proof of the fact it sought to establish. He cited *Nweke v State* (1985) 3 NWLR (Pt. 13) 444; *State v Oka* (1975) 9-11 SC 17 etc. That the Court below ought not to have re evaluated the oral evidence of the Appellant during the trial. B

For the Respondent was contended that what the Lower Court did was to give their reasoning in arriving at their decision relying on the evidence already admitted without objection by the defence and relied upon by the trial court in reaching its decision and not a review C of the evidence.

The Court below indeed erred when it went to review what the trial court did concerning the evidence of the Appellant with regard to how he accidentally saw the weapon an AK 47 at Sultan Road. The prosecution did not cross-examine the appellant on the testimony thus, making it unchallenged or uncontroverted evidence D and the trial court accepted the evidence as true. This makes it difficult to accept on what foundation the Court below set out on its review as doing so could be entering into an arena within the exclusive domain of the trial court especially since the appellate court has E no opportunity of hearing and watching the demeanour of the witnesses. See *Nweke v State* (1985) 3 NWLR (Pt. 13) 444; *Popoola v Adeyemo* (1992) 8 NWLR (Pt. 257) 1.

For a fact, the re-evaluation of the oral evidence by the court F below was improper and the issue is resolved in favour of the Appellant.

ISSUES 7 & 8:

These question whether the Lower court was right to have convicted and sentenced the Appellant under Sections 96 and 97 of G the Penal Code and/or Sections 516 & 517 of the Criminal Code for an offence laid under Section 1 (14) (a) (i) of the Miscellaneous Act 2004. Whether the Appellant's constitutional right to fair hearing was not violated by the Court below making the conviction and sentence H aforesaid by raising the issue suo motu.

For the Appellant it was contended that the Penal Code and Criminal Code are not Federal legislations and so a charge under Miscellaneous Offences Act cannot take comfort under the Penal Code for conviction and sentence. He referred to *Garba Matasi & Ors v*

Ahmadu Dungaladima (1993) 3 NWLR (Pt.281) 206.

That it was wrong for the Lower court to hold that the Appellant can be punished under the Penal Code and/or the Criminal Code which are State legislations and the prosecution not having obtained the necessary fiat or authority so to do and so an exercise outside the
 B jurisdiction of the court existed. He cited *Owoh v Queen* (1962) 2 SC NLR 409 at 410; *Anyebe v State* (1986) 1 NWLR (Pt 14) 39 at 43; *Olusemo v COP* (1998) 11 NWLR (Pt. 575) 517.

That when the Lower court convicted the Appellant on the
 C Penal Code, he had no opportunity to defend himself and so the act ran counter to the fact that a valid charge must specify the law prescribing and punishing for the offence upon which an accused would adequately prepare his defence. He relied on *Yabugbe v COP* (1992) 2 NWLR (Pt. 234) 152 at 176; *Commissioner of Police v Agi* (1980)
 D 1 NCR 234; Section 36 of the 1999 Constitution; Section 151 (3) of the Criminal Procedure Act.

Responding, learned counsel for the Respondent stated that the fact that the rules are generally mandatory does not necessarily mean that any defect in drafting a charge would nullify the proceedings or the conviction as the defect must be shown to have affected
 E the accused in the conduct of his defence. He referred to Section 166 CPA.

That going by the records, the Appellant was given all the opportunities to defend himself and so the Court of Appeal was right in
 F doing what it did.

The question here has already been answered and for reconfirmation, I do not hesitate in saying that the Lower court was wrong to have convicted and sentenced the Appellant under Sections 96
 G and 97 of the Penal Code and/or Sections 516 and 517 of the Penal Code for an offence laid under Section 1 (14) (a) (i) of the Miscellaneous Offences Act 2004.

But to set the record right for avoidance of doubt, what the Lower court did was a fishing expedition for a punishing Act where
 H ever it may be found and thereby left the Federal terrain for a state law which the penal Code is without the enabling authority of a Fiat from the Attorney of the Kogi State and without an amendment to the charge stating the offence under the State legislation. Too many hurdles all of which the prosecution had not scaled before the Lower

court ventured to make its conviction and sentence. See *Owoh v Queen* (1962) 2 SC NLR 409 at 410.

Again to be said is the absence of fair hearing since the Appellant was not given an opportunity to defend Himself on the Penal Code on which the tower court anchored its decision thereby infringing Section 36 of the 1999 Constitution as amended. From the foregoing and the better reasoning in the lead judgment of my learned brother, M. D. Muhammad, JSC, I resolve the issues in favour of the Appellant and allow the appeal. B

I abide by the consequential orders earlier made. C

ARIWOOLA JSC

My learned brother Dattijo Muhammad JSC obliged me with the draft of the lead judgment he just delivered. I am satisfied and I agree entirely with the reasoning therein and the conclusion arrived thereafter. I will also resolve the two issues taken to decide this appeal in favour of the appellant. The appeal is meritorious and deserves to succeed. It is hereby allowed by me. D

Accordingly, the conviction and sentence by the trial Federal High Court and its affirmation by the court below are to be and are hereby quashed. The appellant is entitled to be and is hereby acquitted. E

AKA'AHS JSC

The appellant who was the 3rd accused was arraigned alongside Mustapha Fawaz, Abdallahi Thahini, Amigo Supermarket Limited and Wonderland Amusement Park 16 count charge for various offences. Apart from the appellant and 2nd accused who are resident in Kano, the 1st accused is resident in Abuja while 4th & 5th accused are located in Abuja. At the end of the trial all the other accused were discharged and acquitted on all the counts, only the appellant was convicted and sentenced on the amended Counts 7 and 9. His appeal to the Court of Appeal was allowed in part as the conviction on Count 7 was quashed but affirmed on Count 9. The appellant was not satisfied and further appealed to this Court in his amended Notice of Appeal filed on 30th July, 2014 from which eight issues were F

formulated in the appellant's brief. The respondent adopted the issues formulated by the appellant and responded to them seriatim in the respondent's brief.

My learned brother, M. D. Muhammad JSC considered the first two issues before he allowed the appeal and quashed the conviction and sentence imposed on the appellant. I agree that the appeal should be allowed but for different reasons. Count 9 on which the conviction was affirmed reads as follows :-

"COUNT 9

That you MUSTAPHA FAWAZ, 49, male, Lebanese citizen, of wonder land Amusement Park Resort, No 1, Kukwaba hills, opp National Stadium, Abuja, and you ABDALLAH THAHINI, 48, male, Lebanese citizen, of End of Audu Bako Way, Kano, you TALAL AHMAD RODA, 51, male, Lebanese Citizen of No 3, Gaya Road, Kano, conspired with one ABDALHASSAN TAHIR, GHAZI KASSIM and others (now at large) between February 1988 and March 2008 in Kano and Abuja with the jurisdiction of this Honourable Court to unlawfully store in House No 3, Gaya Road, Kano prohibited firearms including but not limited to the following (a) 11 Anti-Rockets (16mm), (b) 2 Mortars (81mm), (c) 4 Landmines; (d) 21 Rocket Propelled Grenades (RPG) with their Chargers; (e) 1 Rocket Propelled Grenade Launcher; (f) 16 RFC Chargers; (g) 76 Military Type Hand Grenades; (h) 17 AK 47 Rifles; (i) 10,921 pieces of AK 47 Ammunition; (j) 9 PPK Pistols; (k) 1 PPK Pistol Magazine; (l) 1 Submachine gun (SMG); (m) 103 Parcels of TNT Slabs and each contains 3 Pieces of TNT; (n) 334 (7.65mm) Ammunition; (o) 80 pieces of Explosive initiators; (p) 18 Hand Grenade caps; (q) 4 pieces of Walter PPK silencers; and (r) 2 Improvised Explosives devices (IEDS) and you thereby committed an offence punishable under Section 1 (14) (a) (i) of Miscellaneous offences Act, M17, LFN 2004."

The amended count 9 for which the appellant was convicted and sentenced alleged that he conspired with Mustapha Fawaz, Abdallah Thahini, Abdalhassan Tallin Ghazi Kassim and others (now at large) to unlawfully store the prohibited firearms in house No. 3, Gaya Road Kano.

But Mustapha Fawaz and Abdallah Thahini, the 1st and 2nd accused who stood trial with him for conspiracy were discharged and acquitted of the charge.

As it takes two to conspire, a person cannot be convicted of conspiracy if others are discharged and acquitted. See: *Ogugu vs State* (1990) 2 NWLR (Part 134) 539.

There is no separate count in the amended charge where the appellant and Abdulhassan Tahir were accused of conspiracy to war-
rant sustaining the conviction of the appellant for conspiracy on count 9. The charge in Count 9 is bad because and must be set aside. See: *Olowo vs State* (2012) 17 NWLR (Part 1329) 346. B

Despite the fact that the punishment for the offence was laid under section 1 (14) (a) (i) of Miscellaneous Offences Act Cap, M17, LFN 2004, this did not affect the jurisdiction of the court to adjudicate if it is shown that at the time of the trial, he could have been tried and convicted under an existing law which prescribed punishment for the offence. See: *Yagbube vs C. O. P.* (1992) 4 NWLR (Part 234) 152; *Egunjobi vs F. R. N* (2013) 3 NWLR (Part 1342) 534. Section D 32 of the Terrorism (Prevention) (Amendment) Act 2013 provides, as follows:

“32 The Federal High Court located in any part of Nigeria regardless of the location where the offence is committed shall have jurisdiction to E

(a) Try offences under this Act or any other related enactment.”

In *Egunjobi vs F. R. N* supra this Court in, interpreting the jurisdiction donated to the Tribunal in section 3 (i) (b) (c) and (d) of the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Tribunal held as follows per Fabiyi JSC at pages 553 - 554:- F

“The court below rightly in my view, found that the jurisdiction of the tribunal may be classified under two headings viz:

1. Jurisdiction to try newly created offences under the Decree i.e.. Those specified under Part III of the Decree. G

2. Jurisdiction over existing offences created under other enactments. With respect to 2 above the court below got it right when it felt that the Tribunal has the jurisdiction to try such offences created under other enactments regardless of the time they were committed. In effect Count 1 of charge was preferred based on an existing offence under another enactment, to wit Criminal Code Act”. H

Section 3 (i) (b) (c) (d) which the Court interpreted provided as follows:-

“3 (i) The Tribunal shall have power to -

(b) try the offences specified in Part III of the Decree;

(c) try the offences specified in the Banks and other Financial Institution Decree 1991 and the Nigeria Deposit Insurance Corporation Decree 1988 and;

(d) try other offences relating to the business or operation of a bank under any enactment.”

In the same way as the Failed Banks Tribunal has jurisdiction to try other offences relating to the business or operation: of a bank under any enactment so also does the Federal High Court have jurisdiction to try offences not only under the Terrorism (Prevention) (Amendment) Act 2013 but also under any other related enactment. This means that if there was a valid charge for conspiracy, notwithstanding that the punishment for the offence is laid under section 1 (14) (a) (i) of the Miscellaneous Act 2004 a conviction under Sections 96 and 97 of the Penal Code and Sections 516 and 517 of the Criminal Code would still stand. Section 32 of the Terrorism (Prevention) (Amendment) Act 2013 gives the Federal High Court territorial jurisdiction to try the offence laid down in Count 9 in any part of Nigeria regardless of where the offence was committed. The argument that since the offence was alleged to have been committed in Kano, it cannot be tried in Abuja is of no consequence and a conviction cannot be set aside on that ground.

The conviction of the appellant is being set aside not because the trial court had no territorial jurisdiction to try the case but because the charge was bad and also because some of the accused were discharged and acquitted of the charge for conspiracy. The appeal is hereby allowed and the conviction and sentence set aside for the reasons given.

G _____

NWEZE JSC

My distinguished Lord, Musa Dattijo Muhammad JSC, obliged me with the draft of the leading judgment just delivered now. I agree that the proceedings of the Court of Appeal [lower court] and the trial court, which it affirmed, should be set aside.

It is, actually, surprising that, in 2013, decades after the famous case of *Aoko v Fagbemi* (1961) 1 All NLR 400, a prosecutorial agency could fall into the error of charging any person for an offence

which is neither defined in any written nor whose punishment is delineated in such a law.

That was unfortunately, what happened in this case. As amply, demonstrated in the leading judgment, the offence of conspiracy, in the ninth count of the Amended Charge before the trial court, is neither contemplated in section 1 (14) (a) (1) of the Miscellaneous Offences Act nor is any punishment for the said offence prescribed there-under. That notwithstanding, learned counsel for the respondent invited this court to sustain the appellant's conviction in the above Act.

With profound respect to counsel, this court would not indulge in such a sacrilegious act against the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which, like its 1960, 1963 and 1979 progenitors, consecrates the prescription against conviction for an Offence unless it is defined and the penalty therefore ordained in a written law, *Aoko v Fagbemi* (supra); *Udoku v Onugha* (1963) 2 All NLR 107; *Deduwa v state* (1975) LPELR -937 (SC); *Ogbomor v state* [1985] 2 SC 289, 309; *Ifegwu v FRN* [2001] 13 NWLR (pt 729) 103; [2003] FWLR (pt 167) 703.

It is for these, and the more detailed, reasons in the leading judgment that I, too, shall enter an order setting aside the judgment of the lower court. In consequence, I, equally, enter a further order quashing the trial court's conviction and sentence of the appellant.

F

G

H