

**SUPREME COURT OF NIGERIA**  
FRIDAY 27TH FEBRUARY, 2015. SC. 252/2013  
**CORAM:- M. S. MUNTAKA-COOMASSIE,**  
**B. RHODES-VIVOUR, N. S. NGWUTA, K. B. AKA'AH,**  
**C. C. NWEZE, JJSC**

JOSHUA CHIBI DARIYE ..... APPELLANT  
V.  
THE FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT

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EVIDENCE - Prima facie case - Proof - Facts alleged against appellant discloses a prima facie case - That if not contradicted and if believed - Will be sufficient to prove the case against him (H1)

CRIMINAL PROCEDURE - Trial - Jurisdiction - The appropriate means to determine in which jurisdiction to try accused - Is to identify what element of the offence occurred where (H2)

CRIMINAL PROCEDURE - Institution of - Powers of A-G Federation - The offences being federal indictment - The A-G may by himself or through an agent - Prosecute the offences alleged (H3)

CRIMINAL PROCEDURE - Trial - Venue - As the key witnesses and appellant are resident within jurisdiction of the trial court - To move the trial to another location is an exercise in forum shopping (H4)

**FACTS**

Before the High Court of the Federal Capital Territory Abuja, accused/appellant (a former Governor of Plateau State) was arraigned by the Economic and Financial Crimes Commission (EFCC) for offences bordering on money laundering, abuse of office and corruption. The case was a follow up of a petition received by the Hon. Attorney-General of the Federation against the conduct of appellant in office. The EFCC was briefed by the Attorney-General to investigate and possibly prosecute the matter. Upon his arraignment following the grant of the application of the EFCC to prefer charge against him, appellant pleaded not guilty to the 23 counts of charge.

An adjournment was granted to enable respondent open its

case. However, on the date to which the case was adjourned, appellant brought a motion seeking for an order to quash the 23 count charge against him on diverse grounds, including lack of locus standi to prosecute him and lack of jurisdiction of the court to hear and determine the case. Respondent filed a counter-affidavit and a written address in opposition to the motion. The court dismissed the application. Appellant was not pleased with the ruling dismissing his application. Hence, he appealed to the Court of Appeal Abuja. The court heard and also dismissed the appeal. Dissatisfied, appellant has appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

(1) Does the proof of evidence disclose a prima facie case against the appellant?

(2) Does the High Court of the Federal Capital Territory Abuja possess the territorial jurisdiction to try the appellant on the charges filed against him?

(3) Has the Respondent power to prosecute the appellant for the offences charged?

(4) Is the High Court of the Federal Capital Territory Abuja forum non convenience for the trial?

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

*EVIDENCE - Prima facie case - Proof*

**1. The facts alleged against the appellant are such that if not contradicted and if believed, will be sufficient to prove the case against him. The truth or falsity of the allegation is not in issue at this state, but will be determined after the parties have presented their respective cases. The lower Court gleaned through the printed record and proofs of evidence and came to the conclusion that there were enough materials in the proof of evidence to proceed with the trial of the appellant. The conclusion cannot be faulted in view of the facts in the proof of evidence.**

***I cannot agree more with the Court below that the proof***

**discloses a prima facie case against the appellant and so I resolve the issue against the appellant.** (p. 544 G)

*CRIMINAL PROCEDURE - Trial - Jurisdiction*

**2. An offence may comprise of more than one element and the constituent elements may take place in different jurisdictions. In such case the appropriate means to determine in which jurisdiction to try the accused is to identify what element of the offence in the proof occurred where.**

**The offence may consist of attempts at the life of the victim occurring in different jurisdictions. Any of the jurisdictions in which an element occurred has territorial jurisdiction to try the accused.**

**In this case, an element of the offence charged as disclosed in the proof of evidence is the operation of an account in a bank in Abuja with State funds. There is no appeal on the finding and is deemed conceded by the appellant.**

**The point is crucial to the issue of territorial jurisdiction of the FCT High Court. The two Courts below made specific findings that this essential events took place within the territorial jurisdiction of the FCT High Court. The appellant did not contest the findings but kept a studied but loud silence on the issue.**

**It is deemed that the appellant accepted as proved the allegation that an element of the offence occurred within the territorial jurisdiction of the trial Court.**

**I would resolve the issue in favour of the respondent and against the appellant.** (p. 545 G)

*CRIMINAL PROCEDURE - Institution of - Powers of A.G.*

**3. First, as rightly pointed out by the learned senior counsel for the Respondent, the offences are charged under the provisions of the Penal Code which is a Federal legislation. It is a Federal indictment and the Attorney-General of the Federation by himself or through an agent may prosecute for the offences alleged.**

**The owner of the subject matter of the charges is immaterial. What is material is that a Federal enactment has been**

**violated.**

**The offences in the indictment against the appellant are financial crimes and under S.13 (2) of Economic and Financial Crimes Act, 2004 the Commission has powers to prosecute the appellant. The institution of proceeding against any person before any Court in Nigeria other than a Court Martial is not the exclusive prerogative of the Attorney-General of the Federation and/or his counterpart in the State. S.174 (1)(b) and (c) and S.211(1)(b) and (c).**

**It is my view that the Respondent has powers to prosecute the appellant directly or through an agent. I resolve the issue against the appellant.** (p. 546 G)

#### *CRIMINAL PROCEDURE - Trial - Venue*

**4. The question is whether or not the venue for the trial is suitable or convenient for the accused who is to stand trial. In the case at hand, key witnesses in the case are staff of the Bank in which the appellant operated the account of his company. The bank is domiciled in Abuja where the said staffs reside. Most of all, the appellant, a Senator of the Federal Republic of Nigeria, resides in Abuja within the jurisdiction of the trial Court.**

**To move the trial to Plateau State on the flimsy excuse that the documents relevant to the case are in Jos, is on the facts before us, an exercise in forum shopping, nor can the charge be struck out on the basis of forum non-convenience. I resolve the issue against the applicant.** (p. 548 A)

#### **NOTABLE POINTS OF INTEREST NGWUTA JSC**

##### **1. “Prima facie” and “prima facie case” – Definition of**

It is necessary to determine the import of the Latin expressions “prima facie” and “prima facie case”. In Black’s Law Dictionary, 8th Edition at page 1228, the expression “prima facie” is defined as “at first sight; a first appearance but subject to further evidence or information”.

Consequently, “prima facie case” is defined as:

*“(1) The establishment of a legally required rebuttable pre-*

sumption.

(2) *A party's production of enough evidence to allow the fact-finder to infer the fact at issue and rule in the party's favour.*"  
(p. 543 F)

## **2. Jurisdiction – Definition of**

Jurisdiction as defined in Black's Law Dictionary, 8th Edition page 867 is the Court's power to decide a case or issue a decree. See A-G Federation v. A-G Abia State & 35 Ors (2001) 7 SC (Pt. 1) 100 wherein this Court held that the word "jurisdiction" means the authority the Court has to decide matters before it or to take cognizance of matter presented in a formal way for its decision. Territorial jurisdiction implies a geographic area within which the authority of the Court may be exercised and outside which the Court has no power to act. Jurisdiction, territorial or otherwise, is statutory and is conferred on the Court by the law creating it. (p. 545 B)

## **3. Counsel not to delay the criminal justice process**

It is not the duty of learned Counsel to resort to motions aimed principally at delaying or even scuttling the process of determining whether or not there is substance in the charges as laid. In my view, this motion is a disservice to the criminal process and a contemptuous lip service to the fight against corruption. The tactics employed here is only one of the means by which the rich and powerful cripple the criminal process.

There are cases where the accused develop some rare illness which acts up just before the date set for their trial. They jet out of the country to attend to their health and the case is adjourned. If the medical facilities are not available locally to meet their medical needs it is only because due to corruption in high places the country cannot build proper medical facilities equipped with the state of the arts gadgets. There should be no clog in the process of determining whether or not a person accused of crime is guilty irrespective of his status in the society. (p. 548 H)

## **4. Lawyers must adhere to rules of ethical conduct**

Lawyers are engaged to espouse the case of their clients. It is a monopoly and they should bear in mind that like all monopolies, their

conduct are subject to strict rules of accountability for adherence to set ethical standards. They can fight the cause of their clients but as lawyers they must act within the rules regarding ethical conduct. They owe a duty to their client but they owe a higher duty to a higher cause - the cause of justice. (p. 550 C)

B

**REPRESENTATION**

Pwul SAN with F. S. Fimba, M. G. Pwal and K. G. Pwul, for the Appellant

C

Olulekan Ojo with Adebisi Adeniyi, O. A. Atolagbe and David Ojo, for the Respondent

**CASES REFERRED TO**

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

D UBA Ltd v. Stalhabua GMBH & Co KA (1989) 3 NWLR (pt. 100) 374

Duru v. Nwosu (1989) 1 NWLR (pt. 113) 24

Nyame v. FRN (2010) 7 NWLR (pt. 1193) 344

Nwankwo v. State (1983) 1 NCR 366

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

Sobakin v. State (1981) 5 SC 375

Ajidagba v. IGP (1984) SCNLR 60

Njovens v. State (1973) NNLR 76

Waziri v. State (1979) 3 NWLR (pt. 496) 689

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Comptroller of Prisons v. Adekanye (2002) 15 NWLR (pt. 290) 318

FRN v. Osahon (2006) 15 NWLR (pt. 973) 361

Pharma-Deko Plc v. NSITFB (2011) 5 NWLR (pt. 1241) 431

FRN v. Adewunmi (2007) 10 NWLR (pt. 1042) 399

G Chinwendu v. Mbamali (1908) 3-4 SC 31

**STATUTES REFERRED TO**

Criminal Procedure Code, ss. 185(b), 315

Penal Code Act, ss. 4, 309

H Criminal Procedure Act Cap. C41 LFN 2004, s. 64

Constitution of the Federal Republic of Nigeria 1999, ss. 174, 211, 257(1), 299(a)(b)(c)

**BOOK REFERRED TO**

Black's Law Dictionary, 8th Ed p. 1228

**LEAD JUDGMENT BY NGWUTA JSC**

In a petition received by the Hon. Attorney-General of the Federation in May, 2004, the appellant, then the Governor of Plateau State of Nigeria, was accused of various offences bordering on money laundering, abuse of office and corruption. The petition was referred to the Economic and Financial Crimes Commission (EFCC) for investigation and prosecution, if need be.

At the conclusion of the investigation, the respondent filed an application before the High Court of the Federal Capital Territory for leave to prefer a charge against the appellant. A proof of evidence was prepared and attached to the application. On 13th July, 2007 leave was granted to the respondent to prefer a criminal charge against the appellant. Upon his arraignment, the appellant pleaded not guilty to all the 23 counts of the charge preferred against him. The matter was adjourned to 13th November, 2007 for the prosecution to open its case. The appellant was admitted to bail.

On 13th November, 2007 the date to which the case was adjourned for the respondent to open its case, the appellant brought a motion before the trial Court praying for an order to quash the 23 count charge against him on diverse grounds, including lack of locus standi to prosecute him and lack of jurisdiction of the trial Court to hear and determine the case. The respondent filed a counter-affidavit and a written address in opposition to the motion.

On 10th December, 2007 the learned trial Judge denied the application and dismissed same. Appellant's appeal to the lower Court was dismissed on 17th June, 2010.

Still aggrieved, the appellant, by a notice of appeal filed on 13th July, 2007 appealed to this Court on eight grounds endorsed on the notice. From the eight grounds of appeal, learned senior counsel for the appellant distilled the following five issues for determination:

*"ISSUE NO. 1: Whether the lower Court was not wrong in affirming the ruling of the trial Court that the proofs of evidence disclosed a prima facie case against the Appellant. (Distilled from Ground 4)*

*ISSUE NO.2: Whether the Court of Appeal was right in affirm-*

*ing the decision of the trial Court to assume jurisdiction to try the charges for the offences alleged against the Appellant in the light of the clear provisions, inter alia, of Sections 257(1) and 299(a)(b) and (c) of the Constitution of the Federal Republic of Nigeria, 1999 and Section 4 of the Penal Code Act. (Distilled from Grounds 1, 2 and 3)*

B *ISSUE NO.3: Whether the lower Court was not wrong when it upheld the decision of the trial Court that the proper venue for the trial of the offences with which the appellant was charged was the High Court of the Federal Capital Territory Abuja, and by so doing, the right of the appellant to fair hearing was not infringed. (Ground 8)*

C *ISSUE NO.4: In view of the misdirection of law committed by the learned Justices of the Court below, whether their judgment is not perverse and liable to be set aside. (Distilled from Grounds 5 and 6)*

D *ISSUE NO.5: Whether the respondent, not being the Attorney-General of Plateau State, can without obtaining a fiat from the Attorney-General aforesaid, undertake the prosecution of the appellant based on allegation of misappropriating funds belonging to Plateau State exclusively over which the respondent has no legal backing. (Distilled from Ground 7)"*

The five issues are contained in the appellant's amended brief of argument.

F In his own brief of argument, learned senior Counsel for the respondent isolated the following four issues for the Court to resolve:

G *"1. Whether the Court of Appeal was not right in affirming the decision of the trial High Court that a prima facie case was disclosed against the appellant in the proofs of evidence placed before the Court. (See Ground 4).*

*2. Whether the High Court of Federal Capital Territory, Abuja does not have the territorial jurisdiction to entertain the charge preferred against the appellant, having regard to the provision of S.257 of the 1999 Constitution and Section 4 of the Penal Code Act. (See H Grounds 1, 2 and 3).*

*3. Whether the finding by the lower Court that the High Court of Federal Capital Territory, Abuja was the proper venue for the trial of the offences alleged against the Appellant was not right as to amount to a denial of the Appellant's right to fair hearing. (See*

Ground 8).

4. *Whether the lower Court was wrong in affirming the decision of the trial High Court that the Respondent herein had the requisite locus standi to prosecute the Appellant in respect of the offences charged. (See Grounds 5, 6 and 7)."*

Issue 1 in the appellant's amended brief (erroneously stated as "The second issue...") centres on the decision of the trial Court, affirmed by the court below, that a prima facie case was disclosed in the proof of evidence against the appellant. B

Learned Senior Counsel impugned the decision of the Court below for failure to properly, judiciously consider the entire processes filed by the respondent in the trial Court. He referred to *Ikomi v. State* (1986) 3 NWLR (Pt.28) 340, *UBA Ltd v. Stalihabua GMBH & Co KA* (1989) 3 NWLR (Pt.100) 374 in his argument that a consideration of application pursuant to S.185(b) of the Criminal Procedure Code involves the exercise of the Court's discretion, a discretion that must be exercised judiciously and judicially. He referred to *Duru v. Nwosu* (1989) 1 NWLR (Pt.113) 24 at 33 for the definition of the expression "prima facie". C

He referred to counts 2, 9, 11, 13, 15, 17, 19, 21 and 23 of the charge against the appellant and submitted that a charge of criminal misappropriation contrary to S.309 of the Penal Code Act must disclose that the property in question is moveable, that the accused converted it to his own use and that he did so dishonestly. He argued that the money was not shown to have been misappropriated as there was no evidence linking the appellant with moving the money or part thereof. F

Learned senior counsel referred to the counts charging Criminal Breach of Trust contrary to S.315 of the Criminal Code Act and argued that the proof of evidence does not contain a prima facie proof that the accused was either a public servant, a merchant or a factor, a legal practitioner or an agent, that he was in that capacity entrusted with the property in question or had dominion over it, and that he committed criminal breach of trust in respect of the property in question. He urged the Court to resolve the issue in favour of the appellant. H

In issue 2 (to which learned Counsel referred as Issue 1), he referred to Sections 257(1) and 299(a) (b) and (c) of the Constitu-

tion of the Federal Republic of Nigeria, 1999 (as amended) and Section 4 of the Penal Code Act and contended that the trial Court had no territorial jurisdiction to hear and determine the case and ipso facto the Court below was in error when it affirmed the decision of the trial Court that it had jurisdiction to hear and determine the case.

B He referred to S.64 of the Criminal Procedure Act Cap. C.41, LFN 2004 for the venue for the trial of criminal offences and S.4 of the Penal Code Act Cap. P.3 LFN 2004 for territorial jurisdiction of the trial Court. He drew attention to *Nyame v. FRN* (2010) 7 NWLR (Pt. 1193) 344 at 394-396.

C According to learned senior counsel, apart from presumption there is no element of the offence which was specifically stated to have occurred in the Federal Capital Territory and that the phrase “*at Abuja in the Abuja Judicial Division of High Court of the Federal Capital Territory*” is a ploy aimed at “*obtaining jurisdiction by manipulation.*” He maintained that the finding of the lower court on prima facie case and the territorial jurisdiction of the trial Court is perverse in the sense that it runs counter to the contents of the proof of evidence before the trial Court. He urged the Court to resolve the issue in favour of the appellant.

In issue 3, learned senior counsel impugned the decision of the Court below that the trial Court is the proper venue for the trial of the offences with which the appellant was charged as a breach of the appellant’s right to fair hearing. He referred to a situation in which some elements of the offences charged occurred in one jurisdiction and the others occurred in another jurisdiction and submitted that in such a case, the doctrine of forum non convenience comes into operation. He cited *Nyame v. FRN* (supra).

G He contended that since the majority of witnesses are officials in the service of Plateau State Government residing in Jos and the documents to be relied upon at the trial emanated mostly from Jos, the matter ought to be tried in Plateau State on the principle of forum non convenience. He relied on *Nwankwo v. State* (1983) 1 H NCR 366 at 402.

Learned senior counsel reproduced S.36(6) of the Constitution (as amended) (learned Senior Counsel erroneously assigned the fair hearing provision in S.36(1) of the Constitution to S.36(6) thereof) and argued that a trial of the offences in the trial Court would dero-

gate from the appellant's right to fair hearing. He urged the Court to rely on the authorities he cited and resolve issue 3 in favour of the appellant.

Issue 4 deals with alleged misdirection in law committed by the Court below rendering its judgment perverse and liable to be set aside. He referred to pages 821-822 for instances of misdirection in law. He contended that it was a misdirection for the lower Court to rely on the case of *A-G Ondo State v. A-G Federation* (2002) 9 NWLR (Pt. 772) 222 at 284-285 as the facts of the case at hand are not on all fours with the facts of the case.

In issue 5, learned senior counsel argued that the respondent, not being the Attorney-General of Plateau State whose authority was not obtained, cannot prosecute the appellant on allegation of misappropriating funds belonging to Plateau State exclusively. He cited Section 211 of the Constitution for the functions of the Attorney-General of a State and S.174(1) of the Constitution (*supra*) the Attorney-General of the Federation and submitted that only the owner of the property has a right and locus standi to seek redress in relation to it.

He maintained that the respondent did not establish legal right or entitlement to any part or total sum of money contained in the charges. He urged the Court to resolve the issue in favour of the appellant.

In conclusion, he urged the Court to set aside the decision of the two Courts below as it is not a situation of concurrent findings of fact. He urged the Court to allow the appeal, set aside the decision of the two Courts below and strike out the case in the trial Court.

Issue 1 in the Respondent's brief raises the question of whether or not the lower Court was right in affirming the decision of the trial Court that a *prima facie* case was disclosed against the appellant in the proof of evidence before the trial Court. Learned senior counsel for the respondent said that there is a concurrent finding of fact as the two Courts are *ad idem* that the facts in the proof of evidence are sufficient to call upon the appellant to stand trial. He referred to *Sobakin v. State* (1981) 5 SC 375 and reminded the Court of its practice over the years not to interfere with the concurrent findings of facts of the two Courts below.

Learned senior counsel referred to *Ajidagba v. IGP* (1984)

SCNLR 60 for the meaning of prima facie case as indicative of the fact that there is ground for proceeding, adding that prima facie case is not the same as the proof which comes at the trial. He contended that once it is shown that there are facts which clearly reveal a crime and a link between the crime and the accused person there is a prima facie case and the accused has to face his trial.

In deciding whether or not there is a prima facie case, learned senior counsel argued, the Court usually considers the entire proofs of evidence. He relied on *Ikomi v. The State* (1986) 3 NWLR (pt. 28) 340.

Learned Senior Counsel referred to the offences charged, the statement of Mrs. Dorothy Uko at pages 136-137 of the record and S.315 of the Penal Code Act as well as the elements of the offence of criminal breach of trust. He urged the Court to reject the submission of the appellant that he was not a public servant at the material time as the appellant at page 503 Vol. 1 of the record conceded in his written statement that he was a public servant.

He referred to the 5th Schedule to the 1999 Constitution which defines public officer for the purpose of the Code of Conduct to include Governors and Deputy Governors and S.10 of the Penal Code Law Cap. 89 Laws of the Northern Nigeria 1963 for the definition of "Public Servant"; and S.10 of the Penal Code Act Cap 532 Laws of the Federation, 1990 which also defines the words "Public Officer", and submitted that the appellant falls within the said definition.

Learned senior counsel urged the Court to hold that the Court below was right when it held that a prima facie case was disclosed against the appellant in the proofs of evidence.

Issue 2 is whether or not the High Court of Federal Capital Territory Abuja has territorial jurisdiction to entertain the cause against the appellant. Learned senior counsel referred to page 797 of the record where the Court below made a finding of fact that, inter alia: *"...it is not in dispute that almost all the elements of the offence as stated in this judgment occurred in Abuja..."* and contended that the said finding of fact was not challenged by the appellant.

He stated that the facts of this case are on all fours with the facts in *Njovens v. State* (1973) NNLR 76 at 80, *Waziri v. State* (1979) 3 NWLR (Pt.496) 689 at 716 and urged the Court not to depart

from its decisions in the said cases. Learned Senior Counsel reproduced s. 257(1) of the Constitution (supra) and argued that the territorial jurisdiction of the FCT High Court includes:

*“...to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.”* B

He urged the Court to hold that the elements of the offences charged occurred within the Federal Capital Territory Abuja within the territorial jurisdiction of the trial Court. He urged the Court to resolve the issue against the appellant.

In issue 3 on the proper venue for the trial of the offences charged, learned senior counsel argued that apart from the fact that the appellant, a Senator of the Federal Republic of Nigeria, resides in Abuja, some of the witnesses also reside and work in Abuja and the bank where the accounts into which lodgments were made operates also in Abuja, making the doctrine of forum non convenience inapplicable. He urged the Court to dismiss the argument of the appellant which is intended to delay the hearing of the substantive case. C D

In issue 4 on whether or not the respondent had the requisite locus standi to prosecute the appellant in respect of the offences charged, learned Senior Counsel referred to pages 821 - 822 of the record for a summary of the resolutions of issues in contention and said that the summary was lifted from the judgment of this Court in Nyame v. FRN (supra) and argued that the summary of the judgment of this Court cannot be a misdirection as the facts of the two cases are the same substantially. E F

He reproduced a portion of the judgment of this Court in A-G Ondo State v. A-G Federation (2002) 10 NWLR (Pt.772) 222 at 308 and said that the reproduced portion is adaptation/application of the judgment of this Court in Nyame v. FRN (supra). He referred to and relied on page 403 of the judgment wherein this Court held that generally the power to prosecute for offence is not determined by the ownership of the property alleged to have been stolen or misappropriated. He named the determinant factors as: G H

(a) The nature of the offence.

(b) Where the offence is committed, i.e. the venue.

He referred to Section 13(2) of the Economic and Financial Crimes Commission Act of 2004 and submitted that the Commission

is empowered to prosecute offences of financial crimes and pursuant to the powers conferred on it, the Commission has preferred the charges against the appellant.

Learned senior counsel argued that having regards to the nature of the offences charged and the place at which the offences were committed, the respondent has powers to prosecute the appellant. Relying on *Nyame v. FRN* (supra), learned senior counsel contended that the ownership of the stolen property cannot determine who has power to prosecute for the offences. He referred to Section 211(1) of the 1999 Constitution (supra) and debunked the argument that the power to prosecute is exclusively that of the Attorney-General of Plateau State and officers in his department.

He argued further that even if the appellant is prosecuted in Plateau State, Section 211(1) of the Constitution envisages the power of other authorities to institute criminal proceedings in Plateau State.

He relied on *Comptroller of Prisons v. Adekanye* (2002) 15 NWLR (Pt.290) 318 at 329, *FRN v. Osahon* (2006) 15 NWLR (Pt.973) 361 at 406, *Pharma-Deko Plc v. NSITFB* (2011) 5 NWLR (Pt.1241) 431 at 450 - 451 and *FRN v. Adewunmi* (2007) 10 NWLR (Pt.1042) 399 at 427. Learned senior counsel urged the Court to dismiss the appeal and affirm the decision of the Court below.

Learned senior counsel for the appellant filed a reply on points of law only in respect of the respondent's issue 1. He submitted that a finding by the Court that a prima facie case has been disclosed in the proof of evidence is not a finding of fact but a conclusion of law. He stated that the proof of evidence constitutes facts from which a Court may draw a conclusion and such conclusion is a legal conclusion and not a finding of fact. He relied on *Chinwendu v. Mbamali* (1908) 3-4 SC 31 at 75, *Lamai v. Orbih* (1980) 5-7 SC 28; *Ezeonwu v. Onyechi* (1996) 3 NWLR (Pt. 38) 499 at 526.

From the above authorities, learned senior counsel submitted that the case of *Sobakin v. State* (supra) cited and relied on by learned senior counsel for the respondent is inapplicable. Based on the above and the argument in his brief he urged the Court to resolve the issue in favour of the appellant and against the respondent.

I have considered the issues formulated on behalf of the parties. Some of the issues overlap with a resultant repetition of the argument proffered. Some of the issues are split. For instance, in my

view, the issue of venue for trial is subsumed in the issue of jurisdiction and should not have been presented as a separate issue. There is need to narrow down the issues for precision, clarity and brevity and for a judicious and proper determination of the issues in contention between the parties.

In the circumstances, I will adopt the established principle of reformulating the issues in the brief, taking care not to go outside the grounds of appeal. It is my view that the following reformulated issue will adequately dispose of the appeal:

(1) Does the proof of evidence disclose a prima facie case against the appellant?

(2) Does the High Court of the Federal Capital Territory Abuja possess the territorial jurisdiction to try the appellant on the charges filed against him?

(3) Has the Respondent power to prosecute the appellant for the offences charged?

(4) Is the High Court of the Federal Capital Territory Abuja forum non conveniens for the trial?

I will resolve the four issues seriatim and in so doing I will have to walk a tight rope so as to avoid delving into the merit vel non of the charges while determining the preliminary objection.

Issue 1 is whether or not a prima facie case is disclosed in the proof of evidence before the trial court, a poser answered differently by the parties. While the appellant vigorously contended that the proof of evidence disclose no prima facie case against him the respondent maintains the contrary.

It is necessary to determine the import of the Latin expressions “prima facie” and “prima facie case”. In Black’s Law Dictionary, 8th Edition at page 1228, the expression “prima facie” is defined as “at first sight; a first appearance but subject to further evidence or information”.

Consequently, “prima facie case” is defined as:

“(1) *The establishment of a legally required rebuttable presumption.*

(2) *A party’s production of enough evidence to allow the fact-finder to infer the fact at issue and rule in the party’s favour.*”

Applying the above definitions to the facts of this case, the question is whether or not there is a fact or set of facts in the proof of

evidence that would require the appellant to stand trial. For instance, if the facts contained in the proof of evidence are so incredible as to be outside the realm of reality, the Court will not require an answer of the appellant.

To take a very simple example, if the allegation in the proof is that the appellant blew up the 2nd Niger Bridge or that he blew up the Kano Airport the Court would dismiss the allegations with a wave of the hand because it is a known fact that the 2nd Niger Bridge has not even been built and the Kano Airport is intact. In these instances there would be no prima facie case against the appellant.

To determine whether there is a prima facie case against the appellant, the entire processes before the trial Court - the charge, the statements of offences, the statements of prospective witnesses as well as the statements of the appellant will be considered.

In Count 2 of the charge laid against the appellant, it was alleged that he misappropriated the huge sum of N204,000,000.00 (Two hundred and four million naira) belonging to his State Government. It was alleged that the money was paid into the account of Ebenezer Retnan Ventures. Did the entity, Ebenezer Retnan Ventures into whose account the money belonging to the Plateau State Government was paid belong to the Plateau State Government? Who operated the account - the State Government or the appellant?

The account was opened and operated in the name of Ebenezer Retnan. Further it was opened without proper documentation. This and similar allegations involving a whooping sum of N1,161,162,900.00 (One billion, one hundred and sixty one million, one hundred and sixty two thousand nine hundred naira only) are not allegations that can be dismissed with a wave of the hand whether they are considered collectively or individually.

***The facts alleged against the appellant are such that if not contradicted and if believed, will be sufficient to prove the case against him. See Ajidagba v. IGP (1948) SCNLR 60. The truth or falsity of the allegation is not in issue at this state, but will be determined after the parties have presented their respective cases. The lower Court gleaned through the printed record and proofs of evidence and came to the conclusion that there were enough materials in the proof of evidence to proceed with the trial of the appellant. The conclusion cannot be faulted***

***in view of the facts in the proof of evidence.***

***I cannot agree more with the Court below that the proof discloses a prima facie case against the appellant and so I resolve the issue against the appellant.***

Does the High Court of Federal Capital Territory Abuja have the territorial jurisdiction to try the appellant on the charges laid against him? This is issue 2. B

Jurisdiction as defined in Black's Law Dictionary, 8th Edition page 867 is the Court's power to decide a case or issue a decree. See A-G Federation v. A-G Abia State & 35 Ors (2001) 7 SC (Pt. 1) 100 wherein this Court held that the word "jurisdiction" means the authority the Court has to decide matters before it or to take cognizance of matter presented in a formal way for its decision. See also National Bank v. Shoyoye (1977) 5 SC 181. C

Territorial jurisdiction implies a geographic area within which the authority of the Court may be exercised and outside which the Court has no power to act. Jurisdiction, territorial or otherwise, is statutory and is conferred on the Court by the law creating it. D

Section 255(1) of the Constitution of the Federation 1999 as amended created the High Court of the Federal Capital Territory Abuja in the following terms: E

*"S.255(1): There shall be a High Court of the Federal Capital Territory, Abuja."*

S.257(1) of the Constitution (supra) confers on the Court jurisdiction inter alia: F

*"...to hear and determine any criminal proceeding involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person."*

***An offence may comprise of more than one element and the constituent elements may take place in different jurisdictions. In such case the appropriate means to determine in which jurisdiction to try the accused is to identify what element of the offence in the proof occurred where.*** See S.4 of the Penal Code as interpreted in Nyame v. FRN (2010) 7 NWLR (Pt.1193) 344 at 394-395, a case in which the facts are similar to the facts herein. See also Njovens v. The State (1973) NNLR 76 at 80. G

***The offence may consist of attempts at the life of the victim occurring in different jurisdictions. Any of the jurisdic-*** H

**tions in which an element occurred has territorial jurisdiction to try the accused.** This was the case in *Mbah v. The State* (2014) 235 LRCN 1 where the first attempt on the life of the victim took place in October, 2001 in Abuja and the last and final attempt was carried out in 2003 at Agulu, Anambra State. This Court held that the 2003 attempt on the life of the victim in Anambra State was a continuation of the earlier attempt of 2001 in Abuja and that the FCT High Court has territorial jurisdiction to try the accused.

**In this case, an element of the offence charged as disclosed in the proof of evidence is the operation of an account in a bank in Abuja with State funds. There is no appeal on the finding and is deemed conceded by the appellant.** See *Onibulo v. Nkibu* (1982) 2 SC 60 at 63.

**The point is crucial to the issue of territorial jurisdiction of the FCT High Court. The two Courts below made specific findings that this essential events took place within the territorial jurisdiction of the FCT High Court. The appellant did not contest the findings but kept a studied but loud silence on the issue.**

**It is deemed that the appellant accepted as proved the allegation that an element of the offence occurred within the territorial jurisdiction of the trial Court.** (See *Zacchus A. Koya v. UBA Ltd* (1997) NWLR (Pt. 481) page 251 ratio 2). **I would resolve the issue in favour of the respondent and against the appellant.**

Issue 3 is whether or not the respondent has powers to prosecute the appellant in view of the fact that the subject matter of the charge does not belong to the Federal Government but is the property of the Plateau State Government.

**First, as rightly pointed out by the learned senior counsel for the Respondent, the offences are charged under the provisions of the Penal Code which is a Federal legislation. It is a Federal indictment and the Attorney-General of the Federation by himself or through an agent may prosecute for the offences alleged.**

**The owner of the subject matter of the charges is immaterial. What is material is that a Federal enactment has been violated.** See s. 174(1) of the Constitution of the Federation, 1999

as amended for the exercise of the power of the Attorney-General of the Federation. Subsection 3 provides:

*“In exercising his powers under this section, the Attorney-General of the Federation shall have regard to the public interest, the interest of justice and the need to prevent abuse of legal process.”*

See the case of Anyebe v. The State (1986) 1 SC 87 where this Court held that the Attorney-General of Benue State had no power to prosecute an accused for an offence under S.28 of the Firearms Act, an offence created by the Act of the National Assembly except with the express authority of the Federal Attorney-General. It is a different matter if the Federal legislation was made to operate within the State. See Emelogo v. The State (1988) 5 SCNJ 79. It is not the case here.

It follows from the above and this was the opinion of this Court in A-G of Ondo State v. A-G of the Federation (2009) 90 NWLR D (Pt.772) 222 at 308 that *“generally speaking, power to prosecute for an offence is not determined by the ownership of the property allegedly stolen or misappropriated...”* The determining factors are:

- (a) Who can exercise prosecution power over the offence,
- (b) The nature of the offence charged and,
- (c) Where the offence was committed - the venue.

***The offences in the indictment against the appellant are financial crimes and under S.13 (2) of Economic and Financial Crimes Act, 2004 the Commission has powers to prosecute the appellant. The institution of proceeding against any person before any Court in Nigeria other than a Court Martial is not the exclusive prerogative of the Attorney-General of the Federation and/or his counterpart in the State. S.174 (1)(b) and (c) and S.211(1)(b) and (c).***

***It is my view that the Respondent has powers to prosecute the appellant directly or through an agent. I resolve the issue against the appellant.***

Issue 4 is whether as argued by the appellant, the High Court of the Federal Capital Territory Abuja, is forum non-convenience. In other words, is the trial Court unsuitable for the trial of the appellant. See Black's Law Dictionary, 8th Edition 680. The expressions *“suitable and convenience”* associated with a determination of forum convenience and forum non-convenience refer, in my view, to the per-

son standing trial.

***The question is whether or not the venue for the trial is suitable or convenient for the accused who is to stand trial. In the case at hand, key witnesses in the case are staff of the Bank in which the appellant operated the account of his company. The bank is domiciled in Abuja where the said staffs reside. Most of all, the appellant, a Senator of the Federal Republic of Nigeria, resides in Abuja within the jurisdiction of the trial Court.***

***To move the trial to Plateau State on the flimsy excuse that the documents relevant to the case are in Jos, is on the facts before us, an exercise in forum shopping, nor can the charge be struck out on the basis of forum non-convenience. I resolve the issue against the applicant.***

Before I conclude this judgment, I will make a few observations:

The language employed by the learned senior counsel for the appellant is inappropriate and smacks of allegation of impropriety against his brother Silk. Manipulation in the context of this case connotes some sort of moral turpitude. The duty of the prosecuting counsel is not to win, but to place all the relevant facts before the Court to enable it decide the merit vel non of the case. Manipulation of the facts implies a deliberate distortion of the facts to mislead the Court in its decision and this would amount to unethical conduct on the part of a prosecuting counsel.

Trial in the case was to start on 13th November, 2007 about eight years ago. The trial is yet to start. The issues raised in this application could have been properly raised in a no-case submission at the end of the prosecution's case; or in the defence of the appellant if called upon to defend.

In essence, learned senior counsel is asking the Court to set aside its landmark decision in such case as Patrick Njoven v. The State (supra) and Nyame v. The State (supra). In Nyame's case, the facts are on all fours with the facts of this case. And there is no tenable reason for this Court to go back on its earlier decision on the points raised in the application.

It is not the duty of learned Counsel to resort to motions aimed principally at delaying or even scuttling the process of deter-

mining whether or not there is substance in the charges as laid. In my view, this motion is a disservice to the criminal process and a contemptuous lip service to the fight against corruption. The tactics employed here is only one of the means by which the rich and powerful cripple the criminal process.

There are cases where the accused develop some rare illness which acts up just before the date set for their trial. They jet out of the country to attend to their health and the case is adjourned. If the medical facilities are not available locally to meet their medical needs it is only because due to corruption in high places the country cannot build proper medical facilities equipped with the state of the arts gadgets. There should be no clog in the process of determining whether or not a person accused of crime is guilty irrespective of his status in the society.

Let me trace the genesis of this appeal.

The trial Court having considered the application before it, granted leave to the respondent to prefer the charge against the appellant. Upon his arraignment in July, 2007 appellant appeared to have seen no defect in the charge and joined issue on each of the 23 counts of the charge with the respondent.

On the day slated for the trial to open, 13/11/2007, the appellant reversed himself, as it were, and filed an application urging the Court to quash the charge laid against him for the various reasons stated in the application. The trial Court heard the application and made a considered ruling dismissing same.

Appellant appealed to the Court of Appeal and the said Court dismissed the appeal and affirmed the decision of the trial Court. Appellant then appealed to this court. Meanwhile, the case instituted in 2007 is yet to take off. In my view and in view of the facts herein, the sole aim of the appellant is to stall the hearing in the charge laid against him. Now the appellant has come to the last bus stop in his journey to scuttle his trial.

Predictably, he may open another avenue to derail the criminal justice delivery system in his case. He is using the rules of law to fight the law for justice delayed, not to mention unduly delayed, is a mockery of justice. He embarked on this unnecessary long journey despite the fact that any mistake in the particulars of the charge will render the whole proceedings liable to be quashed at the end of the

trial. See *Okeke & Ors v. I.G.P.* (1965) 2 All NLR 81, *Queen v. Gbadamosi* (1959) 4 JSC 181.

The same applies to the issue of jurisdiction. A trial conducted without jurisdiction is a nullity, irrespective of how well it is conducted. See *Odofin v. Agu* (1992) 3 NWLR (Pt. 229) 350, *Osa v. Akureju* B (1989) 3 NWLR (Pt. 84) 508.

When a Court has granted leave to prefer a charge, dismissed the application to quash the charge and this decision was affirmed on appeal, the gain in avoiding a trial on a charge perceived to be incompetent ought to be weighed against the possibility of standing C two trials in place of one. In this case, the appeal up to the Supreme Court has taken more time and expenses than the actual trial would have taken.

Lawyers are engaged to espouse the case of their clients. It is a D monopoly and they should bear in mind that like all monopolies, their conduct are subject to strict rules of accountability for adherence to set ethical standards. They can fight the cause of their clients but as lawyers they must act within the rules regarding ethical conduct. They owe a duty to their client but they owe a higher duty to a E higher cause - the cause of justice.

In conclusion, all the issues having been resolved against the appellant, the appeal is completely bereft of merit and it is hereby dismissed. The judgment of the Court below which affirmed the judgment of the trial Court is affirmed. F

The High Court of the Federal Capital Territory Abuja can now proceed with the trial of the appellant on the charges laid against him.

Appeal dismissed. Trial of the appellant to commence.

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### **MUNTAKA-COOMASSIE JSC**

The appellant, the then Governor of Plateau State of Nigeria was accused of various allegations bordering on money laundering, H abuse of office and various forms of corruption. The petition was referred to the Economic and Financial Crimes Commission (EFCC) for the purposes of investigation and possible prosecution.

At the end of their investigation the EFCC, the respondent filed an application before the High Court of the Federal Capital Ter-

ritory to prefer charges against the appellant. Application was granted. Applicant applied to quash the charge. Application was denied. He appealed to the Court of Appeal.

The Court of Appeal Abuja Division, court below for short, affirmed the decision of the trial court.

Aggrieved, the appellant, Joshua Chibi Dariye appealed to this court. The appellant adopted his brief of argument before us on 27th November, 2015. The respondent also did the same. B

We had a conference on this appeal. My learned brother Ngwuta was kind enough to allow me to have a preview of his leading judgment. I entirely agree with his lordship reasoning and conclusions leading him to dismiss the appeal. I also dismiss this appeal in its entirety. The matter should expeditiously commence before the trial court. The matter could still come on appeal by the prosecution or the accused person/respondent. C D

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### ***RHODES-VIVOUR JSC***

I read in draft the leading judgment prepared by my learned brother, Ngwuta, JSC. So completely do I agree with it that I can only make observations on a very disturbing trend in our criminal justice system. E

The appellant was at one time the Governor of Plateau State in Nigeria. He was accused by the Economic and Financial Crimes Commission (EFCC) of offences concerning, but not limited to abuse of office, money laundering and corruption. Criminal charges were brought against him in 2007 and since then he has tried all means known to law to quash the charges against him. The trial court and the Court of Appeal were of the view, and rightly too, that the appellant should defend himself before the court, as there is nothing to show a fair trial is not guaranteed. F G

It has been the practice since the third Republic commenced in 1999 for well to do individuals who face criminal cases, to ensure such trials never proceed. This is done by filing in court relevant and irrelevant applications, appeals all designed to stop the trial from proceeding to conclusion. This is a disturbing trend that has been allowed to fester for too long. The courts should rise and stop this disturbing trend in our criminal justice system. Happily, both courts H

below and this court have done so in this case. There is no merit whatsoever in this appeal. The Federal High Court should proceed with the trial forthwith.

For this, and the comprehensive reasoning in the leading judgment the appeal is dismissed.

B

### **AKA'HS JSC**

I had a preview of the judgment of my learned brother, Ngwuta JSC. I agree that the appeal is bereft of any merit and should be dismissed. I wish to comment briefly on issue 2 which is whether the Court of Appeal was right in affirming the decision of the trial Judge to assume jurisdiction to try the charges for the offences alleged against the appellant in the light of the clear provisions inter alia, of Sections 257(1) and 299(a), (b) and (c) of the Constitution of the Federal Republic of Nigeria 1999 and Section 4 of the Penal Code Act.

Contrary to the submission of learned senior counsel that the statements of the witnesses and documents exhibited including the Bank cheques/instruments never linked the appellant with Abuja and he was never linked with any offence that originated in the Federal Capital Territory Abuja, the statements and documents which supported the allegation of criminal misappropriation in counts 2, 9, 11, 13, 15, 17, 19, 21 and 23 show that the various amounts were paid by draft into the account of Ebenezer Retnan ventures in All States Trust Bank in Abuja which is owned by the appellant. To graphically illustrate the point as contained in count 2 a Lion Bank of Nigeria Plc cheque for N204,000,000.00 (Two Hundred and Four Million Naira) only was raised by the Accountant-General of Plateau State and sent to Diamond Bank with instructions to issue a Bank Draft in favour of All States Trust Bank Plc payable at Abuja (See pages 362, 363 and 399 of the records). The said draft was cleared and deposited in the account of Ebenezer Retnan Ventures on 17/5/2001 (See page 438 of the records). The witness statement of Mrs. Dorothy Uko shows that the person who operates the account called Ebenezer Retnan Ventures domiciled at Abuja Wuse Zone IV is the appellant. (pages 136 -137 of the records). There is an unbroken link from when the money left the custody of the Accountant-Gen-

eral of Plateau State and its final destination in the account of Ebenezer Retnan Ventures in the All States Trust Bank Plc. Abuja.

Consequently the High Court of the Federal Capital Territory Abuja could exercise territorial and subject matter jurisdiction over the trial of the appellant.

The objection raised by the appellant regarding his arraignment and trial by the Economic and Financial Crimes Commission before the High Court of the FCT were also raised in *Nyame vs F.R.N.* (2010) 7 NWLR (Part 1193) 344. In that case, as in this one, the appellant had filed a motion seeking to quash all the forty - one (41) count charge preferred against him, after the High Court of the Federal Capital Territory, Abuja had granted leave to prefer the said criminal charges against him pursuant to Section 185(b) of the Criminal Procedure Code. The appellant argued that there was failure to disclose a prima facie case against him and for want of jurisdiction and competence to adjudicate on the case as constituted. The grounds of the application were inter alia that since none of the proceedings, offences or elements thereof originated at the Federal Capital Territory, Abuja, then by the provisions of Section 257(1) and (2) of the 1999 Constitution, the High Court of the Federal Capital Territory had no jurisdiction to entertain the case; that only the High Court of Taraba State sitting at Jalingo had the requisite jurisdiction to try the case as constituted against the appellant in accordance with Sections 272 and 299 of the 1999 Constitution since all the offences and elements thereof originated in Taraba State and the respondent lacked the locus standi to prosecute the charges thus depriving the trial court of jurisdiction to try the case. The application was dismissed as lacking in merit. The trial court held that the power to prosecute for offences committed within the Federal Capital Territory is exercisable by the Federal Republic of Nigeria through either the Attorney-General of the Federation or any other Federal Government agency vested with prosecutorial powers and consequently, the respondent had the required locus standi to initiate and prosecute the appellant. The trial court further held that from the proofs of evidence which accompanied the charge, it was satisfied that a prima facie case sufficient to put the appellant on trial had been established. The appellant who was not satisfied appealed to the Court of Appeal and later to this Court but the appeals were dismissed. In this Court Sections 257(1) and

(2) of the 1999 Constitution and Section 4 of the Penal Code, Cap. 532 Laws of the Federation of Nigeria, 1990 were considered.

Section 257 (1) and (2) of the 1999 Constitution provides:

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

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

Section 4 of the Penal Code Cap. 532 Laws of the Federation of Nigeria 1990 states:

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

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

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

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

The arguments in this appeal are a rehash of the arguments raised in the Nyame’s case and since the facts and circumstances that prevailed in the Nyame’s case are present in this case, the outcome in the earlier case will apply mutatis mutandis to the present appeal. C

For the reasons I have stated in this judgment and the more detailed reasons contained in the judgment of my learned brother, Ngwuta JSC, I too find no merit in the appeal. I hereby dismiss the appeal and direct that the appellant should be arraigned before the High Court of the Federal Capital Territory, Abuja to face his trial. D

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### NWEZE JSC

I had the advantage of reading the draft of the leading judgment which my noble Lord, Ngwuta JSC, just delivered now. I am persuaded by His Lordship’s most eloquent reasoning and compelling conclusion. E

I have noticed a most worrisome trend in recent times, Affluent Nigerians, particularly, the politically-exposed citizens of this great country, imagining that they are above the laws of the land, have perfected some awkward and graceless tactics of delaying their trial when they run into conflict with our penal statutes. The appellant in this appeal falls into this category. In 2007, about eight years ago, leave was granted to the respondent to prefer criminal charges against him. He was, duly, arraigned before the High Court of the Federal Capital Territory, Abuja (hereinafter, simply, referred to as “the lower court”). He pleaded not guilty. F G H

However, on November 13, 2007, the date set aside for the Prosecution to marshal its witnesses, he [the appellant] implored the trial court to quash the numerous charges against him on the grounds, inter alia, that the trial court lacked the jurisdiction to hear and deter-

mine the charges against him.

When his application was dismissed, he proceeded to the Court of Appeal, Abuja Division (in this judgment, simply, referred to as “the lower court”) which heard and dismissed his appeal. Instead of returning to the trial court to face his trial, he appealed against the lower court’s judgment. The leading judgment has reformulated the issues for determination thus:

1. Does the proof of evidence disclose a prima facie case against the appellant?

2. Does the High Court of the Federal Capital Territory, Abuja, possess the territorial jurisdiction to try the appellant on the charges filed against him?

3. Has the respondent power to prosecute the appellant for the offences charged?

4. Is the High Court of the Federal Capital Territory, Abuja, forum non convenience for the trial?

I, entirely, agree with the leading judgment that the Prosecution’s case discloses a prima facie case, see, for example, count two of the charge. Ever since Abbot FJ, in *Ajidagba v. Police* (1958) 3 FSC 5, approvingly, adopted the definition of the phrase “prima facie” case from the Indian decision in *Sher Singy v Jitendranathsen* (1931) I.L.R. 59 Calc 275, subsequent decisions have, consistently, endorsed it.

It simply comes to this: evidence discloses a prima facie case when it is such that if un-contradicted and if believed, will be sufficient to prove the case against the defendant. *Ohwovoriele v FRN* [2003] 2 NWLR (pt.803) 176; [2003] 1 SC (pt.1) 1; (2003) LPELR-SC.392/2001; *Ajiboye v State* [1994] 8 NWLR (pt.364) 587; *Ekwunugo v FRN* [2008] 15 NWLR (Pt.1111) 630; [2008] 7 SC 196; *Tongo v COP* (2007) LPELR-SC.105/2000; *Abacha v State* [2001] 3 NWLR (Pt.699) 35; *Daboh v State* [1977] 5 SC 197. Upon its painstaking examination of the proof of evidence, the lower court endorsed the trial court’s position that it discloses a prima facie case against the appellant. I entertain no doubt that the lower court was right in so doing.

On the questions of territorial jurisdiction of the trial court and whether the said trial court could hear and determine the charges against the appellant, it suffices to re-iterate the views of this court in

Nyame v FRN (2010) All FWLR (Pt.527) 618, where Adekeye JSC laid down a very illuminating guide on how to resolve the issue of venue of trial of an accused person. According to the legal Amazon:

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

The leading judgment has, methodically, identified the offences charged and their elements as contained in the proof of evidence, I am in agreement with the conclusion that the lower court, rightly, affirmed the trial court's ruling that it was, properly, seised of the matter. It is for these, and the more detailed reasons in the leading judgment that I, too, shall dismiss this appeal as wholly, D unmeritorious. The appellant should return to the trial court forthwith, to face his trial.

Appeal dismissed.

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