

SUPREME COURT OF NIGERIA
FRIDAY 8TH MAY, 2015. SC. 279/2011(CONS.)
CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,
M. U. PETER-ODILI, M. D. MUHAMMAD, K. B. AKA'AH,
K. M. O. KEKERE-EKUN, J. I. OKORO, JJSC

EBELE OKOYE - (SC.279/2011)
EJIKE OKOYE - (SC.279A/2011) APPELLANTS
CHIZOBA OKOYE - (SC.279B/2011)
CHIKA OKOYE - (SC.279C/2011)
ONYEKA OKOYE - (SC.279D/2011)
(CONSOLIDATED)
V.
COMMISSIONER OF POLICE RESPONDENT
(SC.279/2011, SC.279A/2011,
SC.279B/2011, SC.279C/2011,
SC.279D/2011) (CONSOLIDATED)

CRIMINAL PROCEDURE - Fair hearing - Provision of facilities - Must be afforded to accused to aid in preparation of his defence - Otherwise it will amount to violation of fair hearing or fair trial (H1)

CRIMINAL PROCEDURE - Defence - Facilities - Copies of - Where accused requests for facilities to enable him prepare his defence - It will suffice if prosecution makes available the photocopies (H2)

FACTS

Accused/appellants were arraigned before the Chief Magistrate Court Awka Anambra State, on a seven count charge of conspiracy to commit felony, conspiracy to commit a misdemeanour, unlawful assault occasioning harm on Police Officers, unlawful assault on Police Officers and malicious damage to property. After the appearance of counsel and without any further step being taken in the matter, counsel to appellants brought an application for an order of the court directing prosecution/respondent to furnish appellants with the documents which are relevant to the case. Respondent opposed the application. In its ruling, the court overruled the objection and granted the application.

Dissatisfied, respondent appealed to the High Court against the decision of the Chief Magistrate. Respondent argued that the learned trial Chief Magistrate was wrong in making the order because not having elected for trial on information, respondents were to be prosecuted based on the criminal summary trial procedure and not based on the procedure for trial on information. The appellate High Court dismissed the appeal and sustained the decision of the learned trial Chief Magistrate. Not yet satisfied, respondent appealed to the Court of Appeal. The Court of Appeal heard argument on both sides and in a well considered judgment, allowed the appeal and set aside the decision of the High Court. Aggrieved, appellants appealed to Supreme Court.

ISSUE FOR DETERMINATION

When is an accused person entitled to facilities for the preparation of his defence as provided in Section 36 (6) (b) of the 1999 Constitution (as amended) and what are the facilities?

HELD (Unanimously allowing the appeal per

AKA'AH'S JSC)

CRIMINAL PROCEDURE - Fair hearing - Provision of facilities

1. Thus the prosecutor will not be allowed to have sole access to evidence. In a situation where the accused person does not know the case he will meet, while the prosecution knows everything concerning the case against the accused ahead of time, amounts to nothing less than procedural inequality which is a gross violation of the principle of fair hearing or fair trial and is tantamount to a violation of the said Section 36 (6) of the Constitution.

The moment an accused person is facing a charge, his personal liberty is at stake and before that liberty is taken away, he must be afforded every opportunity to defend himself. It is immaterial whether he elects to be tried summarily or on information, once he becomes aware that he has a charge hanging over his neck for an infraction of the law and makes a request either orally or in writing for any facilities to prepare for his defence, the court must accede to his request and the pros-

ecution has to comply.

The appeal has merit and it is hereby allowed. The order that the appellant must elect to be tried on information before he can be entitled to adequate facilities for the preparation of his defence as provided in Section 36 (6) (b) 1999 Constitution (as amended) is hereby set aside. It is hereby ordered that the appellant be provided with the facilities contained in the Notice to Produce which was filed in the Magistrate's Court Awka by the respondent at no cost to the appellant.

(pp. 1504 C/1506 H/1507 F)

CRIMINAL PROCEDURE - Defence - Facilities - Copies of

2. In the notice to produce which the appellant filed at the Magistrate's Court Awka, he clearly spelt out in item 12 that he needed a copy of all routine police reports concerning the instant case which excluded legal opinions from the Attorney - General's Chambers. I wish to say that compliance with Section 36 (6) (b) of the Constitution is not subject to Sections 243, 244, 245, 246 and 247 of the Criminal Procedure Law of Anambra State. When a person is accused of an offence and requests for facilities to enable him prepare his defence, and the facilities in question are statements of witnesses, it will suffice if the prosecution makes available photocopies of the statements. (p. 1507 C)

NOTABLE POINTS OF INTEREST

AKA'AH'S JSC

1. Facilities – Definition of

The word 'facilities' is not defined in the Constitution. Blacks Law Dictionary 5th Ed (1975) defines facilities' as "*that which promotes the ease of any action, operation, transaction, or course of conduct... the word facilities' embraces anything which aids or makes easier the performances of the activities involved in the business of a person or corporation*".

The facilities that must be afforded the accused person are the 'resources' or 'anything which would aid' the accused person in preparing his defence to the crimes for which he is charged. These, no

doubt, include the statements of witnesses interviewed by the police in the course of their investigation which might have absolved the accused of any blame or which may assist the accused to subpoena such favourable witnesses that the prosecuting counsel may not want to put forward to testify. (p. 1502 F)

B

2. Issues not to be raised suo motu without fair hearing

The position of the law is that a court is not entitled to raise an issue and decide on it without affording the parties an opportunity to be heard. This is because in doing so the court is seen to leave its exalted position as impartial arbiter and descend into the arena of conflict. (p. 1525 B)

C

REPRESENTATION

D F. S. C. Obiorah with A. C. Ogbuodudu, for Appellant in SC.279/2011, SC.279A/2001 and SC.279B/2011

G. B. Obi for Appellant in SC.279C/2011

J. O. Asoluka with V. I. P. Ozumba, for Appellant in SC.279D/2001;

P. A. Afuba with P. I. P. Ozurumba, for Respondent in SC.279/2011,

E SC.279A/2011, SC.279B/2011 and SC.279D/2011

Chief Ikenna Egbuna for Respondent in SC.279C/2011

CASES REFERRED TO

F Tukur v. Govt. of Gongola State (1998) All NLR 42

Ogboru v. Uduaghan (2012) 11 NWLR (pt. 1211) 357

Layonu v. State (1967) 1 ALL NLR 198

Orisakwe v. Governor of Imo State (1982) 3 NCLR 743

Udo v. State (1988) 1 NSCC (pt. 19) 1163

G Gaji v. The State (1975) A.N.L.R. 268

Fawehinmi v. I-G of Police (2002) 7 NWLR 606

Oyeyemi v. Irewole L.G. (1993) 1 NWLR (pt. 270) 462

Udo v. State (1988) 1 NSCC (pt. 19) 1163

Kenon v. Tekam (2001) 14 NWLR (pt. 732) 12

H Onwuka v. Ononuju (2009) 11 NWLR (pt. 1151) 174

Ukaegbu v. Nwokolo (2009) 3 NWLR (pt. 1127) 194

Unity Bank Plc v. Bouari (2008) 7 NWLR (pt. 1086) 372

Adelaja v. Alade (1999) 6 NWLR (pt. 608) 544

Kuti v. Balogun (1978) 1 SC 53

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, s. 36

Criminal Procedure Code, s. 122

Criminal Procedure Law of Anambra State, ss. 243, 244, 245, 246
and 247 B

Magistrate Court Law (Cap. 88 Revised Laws of Anambra State of
Nigeria 1991), s. 69

Anambra State: Administration of Criminal Justice Law 2010, ss. 185,
186 C

BOOK REFERRED TO

Blacks Law Dictionary 5th ed.

LEAD JUDGMENT BY AKA'AHs JSC D

In order to fully understand this case and the tenacity with which it has been fought by counsel to the parties from the Chief Magistrate's Court Awka which went on appeal to the Anambra State High Court sitting in Awka and to the Court of Appeal, Enugu before its final destination in this Court, it is necessary to give the background facts before the Chief Magistrate Court set the ball rolling. However, it will be difficult to refer specifically to the pages in the record because of the haphazard way in which the record was compiled. The record being used in this appeal and the other appeals namely, SC.279A/2011; SC.279C/2011 and SC.279D/2011 was prepared in respect of Ejike Okoye & Ors vs Commissioner of Police in appeal No.CA/E/97/2008 whose appeal has been assigned SC.279A/2011. E F

The compiled record of the Chief Magistrate's Court reflect the proceedings of 10/7/06 and 3/8/06 before the appeal went first to the High Court and later to the Court of Appeal. The charge sheet nonetheless shows that the accused/appellants were arraigned on 24/5/06 before Dr. (Mrs.) V. N. N. Ibeziako, a Chief Magistrate in Awka and were granted formal bail. In the appellant's brief which he filed at the Court of Appeal repeating the address he made at the High Court, the prosecuting counsel Mr. B. A. Onwuemekaghi stated as follows in the opening paragraph: G H

"On 24th day of May, 2006, the appellant charged the re-

spondents to Chief Magistrate Court 1, Awka, in charges No.MAW/121C/2006 on a seven count charges of conspiracy to commit felony to wit serious Assault on Police Officers, and Malicious Damages to Properties. The Accused/Respondents took plea and pleaded not guilty to the counts. They were granted bail and the case was adjourned to

B 10th July, 2006 for the evidence of PW1. On that date fresh plea were taken by the Accused persons before a new Magistrate as the former one had been transferred”
(See page 81 of the record).

C The proceedings of 3/8/06 was before S. N. Okoye Esq. He recorded the presence of all the accused and that of 1st complainant as well as those of the counsel prosecuting and defence counsel. Christian Okoye was reported sick and a medical certificate was furnished while one Sgt. Odoh was reported to be on a training course.
D Immediately after this it would appear Dr. Obiorah representing the accused moved his application which was opposed by the prosecuting counsel and the ruling by the Chief Magistrate. It is necessary to produce the record which went thus:

E “Application for an order of court directing the Prosecution to furnish the defence with all documents. (Including statements of witnesses, and police investigation reports relating to this case) which are relevant to this case whether they tender same or not. Reply by prosecuting counsel that

F (a) this is summary trial and furnishing of relevant documents up front is not provided for in the CPL as in the case of trial on information.

G The cost of production of the photocopies shall be borne by accused persons I have deliberately omitted police investigation report from my order as relating to police internal administration. But this is not to hold that such a report became (sic) in issue in course of the trial the Court will be precluded from ordering its production.

Prosecuting police gives Notice of Appeal against the foregoing ruling Court:-

H The prosecuting police is to file his written notice and grounds of appeal within 30 (thirty days hence). ”

The sequence of events before the drama leading to the appeal unfolded is that on 10/3/06, Dr. Obiorah of counsel, had addressed a petition to the Inspector General of Police, the Assistant

Inspector - General of police Zone 9 Area Police Command, Umuahia and the Commissioner of Police Anambra State Awka accusing Mr. Ben A. Onwuemekai (presumably Mr. B. A. Onwuemekaghi) the prosecuting counsel of compromising his position in the case and even conspiring with Christian Okoye to destroy the evidence which the accused intended to rely upon in establishing their bona fide claim of right to the disputed property. Apart from the petition, Dr. Obiorah went further to file notice to produce in the Chief Magistrate Court. When the appeal went before the court of Appeal after the High Court affirmed the decision of the Chief Magistrate allowing the prosecution to furnish the defence with photo copies of statements of witnesses at the expense of the defence, learned counsel to the accused in obvious reference to the items listed in the notice to produce argued that whether in civil or criminal actions the parties are compelled through front-loading to disclose their evidence to each other prior to the hearing. He forcefully submitted that in a criminal trial where the rights of the accused to adequate facilities have been constitutionally guaranteed and protected, full disclosure of evidence prior to trial must not only be required as a desideratum - it is mandatory. The court below did not accept this argument. It set aside the decision of the High Court and remitted the case to the Chief Magistrate for the accused to take their plea before proceeding to trial. The appellants felt aggrieved and each of them appealed against the decision of the Court of Appeal.

The Notices of Appeal dated 15th July, 2011 containing five grounds of appeal each carried the same complaints and the appellants who appealed are Ebele Okoye, Ejike Okoye, Chika Okoye and Onyeka Okoye (See pages 157 - 166 of the records). The Notice of Appeal of Chizoba Okoye is not contained in the record but his appeal was assigned SC.279B/2011 and briefs were filed for the appellant and the respondent. I shall say more about appeal No.SC.279B/2011 later in this judgment. Since all the appeals raised the same issues, the appellants could have applied to consolidate the appeals and proceed to file a joint brief on behalf of all the appellants. See: Abba Tukur vs Government of Gongola State (1998) ALL NLR 42; Ogboru vs Uduaghan (2012) 11 NWLR (Part 1211) 357. FRN vs Dairo Unreported SC.229/2012 delivered on 30/1/2015.

I shall now proceed to consider the appeal of Ebele Okoye vs

Commissioner of Police which was assigned appeal No.SC.279/2011.

Dr. E.S.C. Obiora of counsel filed the appellant's brief raising three issues for determination as follows:-

I. Whether the Court of Appeal should have still set aside the judgments of the two Lower Courts when it had already upheld the decision of the said Lower Courts on the main issue before it, namely: that the statements of witnesses and police investigation report obtained by the prosecution/police in the course of its investigation of the crimes for which the appellant was charged, were part of the "adequate facilities" which the appellant is entitled to in order to adequately prepare for his defence, as mandated by Section 36 (6) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (Grounds 1 and 3 of the Notice of Appeal).

II. Whether the Court of Appeal was right in setting aside the decisions of the two Lower Courts on the ground that the appellant's demand to be afforded the constitutionally mandated 'facilities' was premature, when Section 36 (6) (b) of the 1999 Constitution does not set any time frame within which such 'facilities' would be provided and when the issue was not even raised or canvassed by any of the parties. (Ground 2 of the Notice of Appeal).

III. Whether the Court of Appeal was right in failing to decide on the alternate issue presented by the appellant which issue the said court even adopted. (Ground 4 of the Notice of Appeal).

The respondent's brief was settled by P. A. Afuba, Esq. He too raised three issues for determination in paragraph 3 of the respondent's brief as follows:

(i) Whether the court below was right when it held that the appellate High Court was wrong to have affirmed the order of trial Magistrate for the prosecution to avail the defence with copies of statements obtained by the police from witnesses in the course of investigation (Distilled from Grounds 1, 3 and 5)

(ii) Whether the court below was right in relying on the record of appeal to find that the application by the defence for copies of statements of witnesses examined by the Police in the course of investigation was premature in that the accused persons had not elected either to be tried summarily or by information at the time the application was made (Distilled from Ground 2)

(iii) Whether it was necessary to consider any other issue, hav-

ing regard to the findings already made by the Court below that the application of the defence for copies of statements of witnesses was premature (Distilled from Ground 4)

Having gone through the issues raised by the appellant and the respondent, I consider that there is only one issue for consideration and it is this: B

When is an accused person entitled to facilities for the preparation of his defence as provided in Section 36 (6) (b) of the 1999 Constitution (as amended) and what are the facilities?

Learned counsel for the appellant pointed out that what the High Court sitting on appeal decided which formed the basis of the appeal to the Lower Court was: C

“Appellant is entitled to be provided with “the statements of the prosecution witnesses to the police” as “part of the facilities” constitutionally mandated by Section 36 (6) (b) of the 1999 Constitution.” D

He said the court of Appeal upheld the above articulated decision of the appellate High Court and argued that having resolved the principal issue in the appeal in favour of the appellant, thereby upholding the decisions of the two Lower Courts, the Court of Appeal should have made the only logical order to affirm the decisions and dismiss the appeal. He submitted that the Court of Appeal’s somersault in allowing the appeal was caused by the issue it raised suo motu without giving the counsel appearing for the parties the benefit of being heard and deciding on the said issue. He urged that the issue of election which the Lower Court raised suo motu was not part of any of the grounds of appeal before the Court of Appeal; nor was it canvassed or disputed by any of the parties. E F

Learned counsel for the respondent argued that the accused persons had not been arraigned before the application by the defence was made for the supply of copies of statements obtained from witnesses during investigation. He asserted that the Court below was entitled to find out and hold as it did, that neither election nor plea had taken place before the trial court, at the time the application for the supply of copies of statements of witnesses was made by the defence and the law clearly allows the Lower Court to look at the record of appeal in order to determine whether the appellate High Court was right in affirming the order of the trial Magistrate. G H

I wish to observe that the record was poorly compiled. Whereas the registrar's statement which forwarded the record to this court stated that the appellant in SC.279A/2011 was arraigned before the Chief Magistrate Court on 2/2/2006, the minutes of the proceedings started from 10th July, 2006 while there is an endorsement on the charge sheet showing that the accused/appellants were arraigned on 24/5/2006 before Dr. (Mrs.) V. N. N. Ibeziako, a Chief Magistrate and were granted formal bail. It has become necessary to bring out this point in order to debunk the argument advanced by respondent's counsel in this appeal that the accused persons had not been arraigned when the application for the supply of copies of statements obtained during investigation was made by their counsel.

When learned counsel for the appellant made his application to the court to direct the prosecution to furnish the defence with all documents (including statements of witnesses, and police investigation reports relating to the case), he was invoking the appellant's constitutional right to fair trial as provided in Section 36 (6) (b) & (d) 1999 Constitution (as amended) which states -

"36 (6) Every person who is charged with a criminal offence shall be entitled to -

(b) be given adequate time and facilities for the preparation of his defence

(d) examine in person or by his legal practitioner the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution".

The word 'facilities' is not defined in the Constitution. Blacks Law Dictionary 5th Ed (1975) defines facilities' as *"that which promotes the ease of any action, operation, transaction, or course of conduct... the word facilities' embraces anything which aids or makes easier the performances of the activities involved in the business of a person or corporation"*.

The facilities that must be afforded the accused person are the 'resources' or 'anything which would aid' the accused person in preparing his defence to the crimes for which he is charged. These, no doubt, include the statements of witnesses interviewed by the police in the course of their investigation which might have absolved the

accused of any blame or which may assist the accused to subpoena such favourable witnesses that the prosecuting counsel may not want to put forward to testify. In *Layonu vs State* (1967) 1 ALL NLR 198 citing with approval the case of *R. v. Clarke* 22 Cr. App. R 58 held that a defendant is entitled to see a written description of himself given by a police officer to his superior, with a view to cross-examining that officer on alleged discrepancies between the content of that document and his sworn testimony. B

The facts in *Layonu's* case *supra* are quite informative and they are as follows:

At the beginning of the trial, defence counsel applied for statements made to police in connection with the case; prosecuting counsel was willing to supply only those made by prosecuting witnesses - though not till the time for cross-examining them came - but the trial Judge, citing a passage from the head note to *R v Clarke*, ruled that the defence must first establish that there were discrepancies between a witness' previous statement to the police and his testimony and refused production of the statements. On being convicted on the strength of the evidence of two eye witnesses who identified the appellants as having taken part in the attack on the deceased, the appellants complained that they had been deprived of the opportunity of testing the stories of these witnesses against their previous statements to the police and further that there were sufficient discrepancies between the statements and the evidence of the two witnesses to make it unsafe to uphold the convictions, this Court in allowing the appeal held that the trial Judge improperly refused production of these statements when it stated: C D E F

"a defendant is entitled to see any written statement in the possession of the prosecution which was made by a witness called by the prosecution and which relates to any matter on which the witness has given evidence, and to cross-examine the witness on it and then tender it solely to impeach his credit." G

Interpreting Section 33 (1) of the 1979 Constitution (now Section 36 (1) of 1999 Constitution (as amended) Oputa CJ (as he then was) stated in *Orisakwe vs Governor of Imo State* (1982) 3 NCLR 743 at page 758:- H

"If the right of fair hearing under Section 33 (1) of the Constitution and under the rule of natural justice is to be any real right, it

must carry with it a corresponding and equal right in the person accused of any misconduct to know the case which is made against him. He must know the evidence in support - not merely bare und unsupported allegations - and then he must be given the opportunity to contradict such adverse or incriminating evidence.

B *This is the right of fair hearing and nothing short of it will suffice."*

This Court in *Udo vs State* (1988) 1 NSCC (part 19) 1163 at 1172 declared that Section 33 (6) (d) of the 1979 Constitution (which is in pari materia with Section 36 (6) (d) of the 1999 Constitution) is a provision of "*equal opportunities for both the prosecution and the defence...*", ***Thus the prosecutor will not be allowed to have sole access to evidence. In a situation where the accused person does not know the case he will meet, while the prosecution knows everything concerning the case against the accused ahead of time, amounts to nothing less than procedural inequality which is a gross violation of the principle of fair hearing or fair trial and is tantamount to a violation of the said Section 36 (6) of the Constitution.***

E It seems the decision in *Gaji vs The State* (1975) A.N.L.R. 268 runs contrary to *Layonu vs State* supra which came after *Gaji's* case. What happened in *Gaji's* case was that the defence applied for the production of statements made to the police by prosecution witnesses but the applications were opposed by the prosecution contending F that no foundation was laid for the compulsory production of those statements; furthermore their production is forbidden by the provisions of Section 122 of the Criminal Procedure Code.

The learned trial judge in refusing to grant the applications did G not deal with the objection as to the absence of foundation. On appeal to this Court it was held that the trial court has a discretionary power to order the production of any document including such statement, if such production is necessary in the interest of justice. It was further held that where compulsory production is required, Section H 122 CPC must be complied with, and the Section contains conditions and circumstances under which such statements must be produced. The decision in *Gaji's* case was limited to the interpretation of Section 122 CPC but did not touch on the right to fair hearing and the equal opportunities that should be afforded the prosecution and

the defence.

The appellant's case in *Gaji vs State* supra was further weakened because his counsel had advised him not to plead to the charge and after the prosecution had closed its case, learned counsel for the appellant rested his case on the prosecution and the appellant declined to give evidence. If learned counsel had applied for the production of the statements to enable him prepare his defence instead of informing the Court he would challenge the statements of the prosecution witnesses, it is most likely that the refusal by the trial judge to order the production of the statements would have been overturned on appeal. B
C

In the instant appeal, for the appellant to be on equal footing with the prosecutor at the commencement of the trial, the appellant should be given the statements the witnesses made to the police and relevant materials relating to the case such as the photographs of the property they are accused of damaging. D

The argument being advanced by learned counsel for the respondent which is in tandem with the decision of the Court below is that the appellant ought to have elected to be tried summarily or on information before he would be entitled to the facilities he is requesting for to assist him in his trial. The reasoning by the court below is that: E

"The Chief Magistrate Court is not the place to ask for what belongs to proofs of evidence. Besides, the Chief Magistrate Court cannot just direct the Prosecuting Counsel to give the Respondents the documents because he is a Policeman, and pursuant to Section 243 (1) of the CPL it is only after the accused has elected to be tried at the High Court that the Magistrate can direct the Prosecuting Police Officer to transmit the case file to the Attorney - General, who will then direct the DPP and other law officers in his office, to prepare the proofs of evidence. Apparently, the respondents and the two Lower Courts jumped the gun. The respondents had not been asked or elected to be tried at the High Court where they would have gotten the documents as a matter of right. They will have to go back to the finishing line und start all over again." (See page 144). F
G
H

I find it extremely difficult to accept this reasoning by the Lower Court which formed the basis for allowing the appeal. The High Court sitting on appeal after considering the Advanced Learner's Dictio-

nary definition of facility in relation to Section 36(6) (b) of the Constitution said at page 70 of the record:-

“By the above provision of the 1999 Constitution it means that adequate time and facilities shall be given to every person charged with a criminal offence for the preparation of his defence. The Constitution of the Federal Republic of Nigeria 1999 did not state that this is applicable only to persons who are charged with a criminal offence at the High Courts. It says to every person charged with a criminal offence. It does not therefore matter which court the person is charged with a criminal offence. By virtue of that provision of the 1999 Constitution of Nigeria once a person is charged with a criminal offence he is entitled to the facilities for the preparation of his defence.”

In resolving the issue the Court held at page 71 thus:

“The Court has a discretionary power to order the production of any document including such statement, if such production is necessary in the interest of justice. Although, the trial at the Lower Court in the case is a summary trial, but the defence are entitled in my view, since they have applied, to be given copies of the statements made by the prosecution witnesses as one of the facilities they require for the preparation of their defence as provided by Section 36 (6) (b) of the 1999 Constitution.”

This settled the issue more so as the High Court went further to point out that the Constitution is the grundnorm and fundamental law of the land which is supreme over all other laws. If Order 3 Rule 2 (1) of the High Court of Anambra State (Civil Procedure) Rules, 2006 provides for front - loading of documents to enable a defendant know what the claim against him entails so as to enable him prepare for his defence, how much more is it expected of the prosecution to provide the necessary facilities to a person accused of an offence to enable him prepare his defence. The prosecution by making available the facilities the appellant demanded in the notice to produce will help clear the air on the allegation made against Mr. B. A. Onwuemekaghi, the prosecuting counsel of what can be described as his partisanship and his becoming an agent of a wrong - doer in the pursuit of a private vendetta.

The moment an accused person is facing a charge, his personal liberty is at stake and before that liberty is taken away,

he must be afforded every opportunity to defend himself. It is immaterial whether he elects to be tried summarily or on information, once he becomes aware that he has a charge hanging over his neck for an infraction of the law and makes a request either orally or in writing for any facilities to prepare for his defence, the court must accede to his request and the prosecution has to comply. In *Fawehinmi v. Inspector-General of Police* (2002) 7 NWLR 606, Uwaifo JSC expressed the view at page 681 that-

“...in a proper investigation procedure, it is unlawful to arrest unless there is sufficient evidence upon which to charge and caution a suspect. It is completely wrong to arrest, let alone caution a suspect, before the police look for evidence implicating him.”

In the notice to produce which the appellant filed at the Magistrate’s Court Awka, he clearly spelt out in item 12 that he needed a copy of all routine police reports concerning the instant case which excluded legal opinions from the Attorney - General’s Chambers. I wish to say that compliance with Section 36 (6) (b) of the Constitution is not subject to Sections 243, 244, 245, 246 and 247 of the Criminal Procedure Law of Anambra State. When a person is accused of an offence and requests for facilities to enable him prepare his defence, and the facilities in question are statements of witnesses, it will suffice if the prosecution makes available photocopies of the statements.

The court below was clearly in error when it made the election of the appellant to be tried on information as a condition precedent to exercising his right to request for facilities to prepare his defence.

The appeal has merit and it is hereby allowed. The order that the appellant must elect to be tried on information before he can be entitled to adequate facilities for the preparation of his defence as provided in Section 36 (6) (b) 1999 Constitution (as amended) is hereby set aside. It is hereby ordered that the appellant be provided with the facilities contained in the Notice to Produce which was filed in the Magistrate’s Court Awka by the respondent at no cost to the appellant.

Although no appeal has been filed in SC.279B/2011, in view of the fact that Chizoba Okoye is one of the accused in Charge No.

MAW/2/C/2006, he too should be granted the facilities that the appellant has been given in this appeal to enable him prepare for his defence. Appeal allowed.

The facts and arguments in appeal Nos.SC.279A/2011; SC.279C/2011 and SC.279D/2011 are the same as in appeal
B No.SC.279/2011. The resolution and consequential orders made in SC.279/2011 shall therefore abide SC.279A/2011; SC.279C/2011 and SC.279D/2011.

C

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead judgment of my earned brother AKA'AHs JSC just delivered.

I agree with his reasoning and conclusion that the appeals have
D merit and should be allowed.

The facts of this case are not in dispute and have been stated in detail in the said lead Judgment. I therefore do not intend to repeat them herein except as may be needed to emphasize the point being made.

To my mind, the main issue in the appeals is whether the Lower
E Court was right when it set aside the decisions of the Lower Courts on the ground that the appellants' demand to be afforded the constitutionally mandated "facilities" was premature, when Section 36(6)(b)
F of the 1999 Constitution does not set any time frame within which such facilities would be provided and when the issue was raised suo motu.

The above position is advised by the fact that the Lower Court had earlier in its Judgment, agreed with the courts below that the
G statements of witnesses and police investigation of the crimes charged were part of the "adequate facilities" which the appellants are entitled to in order to adequately prepare their defence in accordance with the provisions of Section 36(6)(b) of the 1999 Constitution.

It should be noted that the Lower Courts - Magistrate, High
H Court and Court of Appeal, all found and/or held that by the provisions of Section 36(6)(b) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, appellants are entitled to copies of all the statements of the witnesses examined by the police in the course of their investigation of the case prior to the hearing of the charge.

The Lower Court, at page 134 of the record specifically stated the position thus:

“In a nutshell, the word facilities” embrace anything that would make it easier to perform any action or course of conduct, etc Section 36(6)(b) of the 1999 Constitution stipulates that every accused person is entitled to be given adequate facilities for the preparation of his or her defence” “Defence” is defined as an accused person’s “stated reason why the Prosecutor has no valid case; especially, his or her answer, denial or plea: For instance, an accused person’s defence may be a complete and total denial of the commission of the offence, etc. Looking at it from this angle, the evidence against the accused, including statements of witnesses for the prosecution, would be necessary for the preparation of his defence. So, they are facilities within the meaning of the said Section 36(6)(b) and this issue must be resolved in favour of the Respondents”. [Emphasis supplied by me].

The Lower Court, in coming to the above quoted conclusion has resolved the main issue in the case in favour of the present appellants which resolution is in concurrence with the Lower Courts. In the circumstance, that was to have been the end of the appeal but the Lower Court went further to raise the issue of election of summary trial by the appellants as a precondition for the application or invocation, by the appellants of the provisions of Section 36(6) (b) of the 1999 Constitution as amended. At page 144 of the record, the Lower Court held thus:-

“In this case, there is no record of the Respondents being asked mandatory question whether they were to be tried by a Judge at the High Court or consent to a summary trial at the Chief Magistrate before they applied for documents to enable them prepare their defence. All I can say, without being accused of acting on speculation, is that the documents that they applied for would have been part of the proofs of evidence against them, if they have elected to be tried at the High Court.

The Chief Magistrate Court is not the place to ask for what belongs to proofs of evidence. Besides, the Chief Magistrate Court cannot just direct the Prosecuting Counsel to give the Respondents the documents because he is a policeman, and pursuant to Section 243(1) of the CPL, it is only after the accused had elected to be tried at the High Court that the Magistrate can direct the Prosecuting Po-

lice Officer to transmit the Police case file to the Attorney-General, who will then direct the DPP and other law officers in his office to prepare the proofs of evidence. Apparently, the Respondents and the two Lower Courts jumped the gun. The Respondents had not been asked or elected to be tried at the High Court where they would
B *have gotten the documents as a matter of right".* Again emphasis supplied by me.

It should be emphasized that the issue discussed and resolved supra was raised suo motu by the Lower Court.

C It was not raised by any of the parties in the appeal neither were the parties heard thereon by the Lower Court.

It is settled law that though a court, is at liberty to raise an issue suo motu, it can only validly rely on the issue so raised in determining the matter after hearing parties in the case on the said issue. Where
D the court fails to observe this rule or principle of fair hearing, the decision is a nullity and consequently subject to be set aside by an appellate court. In the circumstance, it is clear that the Lower Court was in error in basing its decision to set aside the decision of the appellate High Court on an issue it raised suo motu without hearing
E the parties, particularly, the present appellants who were adversely affected by that decision.

Secondly, I am of the view that the Lower Court was in error in holding that for the provisions of Section 36(6) (b) of the 1999
F Constitution, as amended, to apply to the facts of this case, appellants must first and foremost elect either summary trial or trial on information particularly as the right enures more to an accused on trial on information. The above holding is a complete summersault from the position the court held when it resolved the main issue.
G Secondly the interpretation given by the Lower Court to the provisions of Section 36(6)(b) of the 1999 Constitution, as amended is not supported by that provision. Section 36(6)(b) and (d) of the 1999 Constitution, as amended, provide inter alia, as follows:

H *"Every person who is charged with a criminal offence shall be entitled to:*

(b) be given adequate time and facilities for the preparation of his defence

(d) examine in person or by his legal practitioner, the witnesses called by the prosecution before any court or tribunal and obtain the

attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution”.

From the above provision, it is very clear that it applies to every person who is charged with a criminal offence. It does not talk of the nature of the offence charged nor the mode of trial of the said offence. The provision thus applies to every person who is charged with any criminal offence triable in any court either by way of summary trial or trial on information. The provisions of Section 36(6)(b) therefore applies across board - both in summary trial and trial on information and the person charged does not need to elect to be tried either summarily or on information for the provision to apply to him.

It should also be pointed out that the provisions of Section 36(6)(b) supra does not envisage a time frame, condition(s) precedent under which it will come into operation.

It is for the above and the more detailed reasons contained in the said lead Judgment that I too find merit in the appeal and allow same and abide by the consequential orders made therein.

Appeals allowed.

GALADIMA JSC

I have had the privilege of reading in draft the lead judgment of my learned brother AKA'AH JSC just delivered. I agree entirely with his reasoning and conclusion that this appeal has merit and should be allowed.

The background facts leading to this appeal which are not in dispute have been carefully set out in detail in the Lead Judgment. It is therefore needless to state and repeat them.

The issue that is germane to this appeal is whether the court below was right when it set aside the decisions of the Lower Court on the ground that the Appellant's demand to be accorded the facilities, constitutionally provided, was premature, in view of the fact that Section 36(6)(b) of the Constitution of the Federal Republic of Nigeria 1999 does not give any time frame within which such facilities would be provided the appellant; more so when the court had to raise the issue suo motu.

I have observed that the courts below, namely: Chief Magistrate Court, High Court and the Court of Appeal all held that by the provisions of Section 36(6)(b) of the Constitution, Appellant is entitled to copies of all the statements of the witnesses examined by the police in the course of their investigation of the case prior to the hearing of the charge.

i. The Lower Court at page 134 of the record stated clearly that:

“...The word “facilities” embrace and thing that would make it easier to perform any action or course of conduct, etc. Section 36(6)(b) stipulates that every accused person is entitled to be given adequate facilities for the preparation of his or her defence...”

The court held that the evidence against the accused including statement of witnesses for the prosecution are necessary for the preparation of his defence and these are therefore facilities within the meaning of Section 36(6)(b). From the foregoing, the Lower Court has resolved the main issue in the case in favour of the instant appellant agreeing with the Lower Courts, thereby deciding the appeal in favour of the appellant. However, it made a summersault and held that for the provisions of Section 36(6)(b) (supra) to apply to the facts of this case, Appellants must first and foremost elect either summary trial or trial on information. This is contrary to the provision of the said Section (36)(6)(b) of the Constitution which is clear and unambiguous. The Section does not differentiate between the nature of the offence, the accused is charged or the mode of trial of the offence. Whether the person is charged with any criminal offence in a court either by way of summary trial or trial on information, he must be given adequate time and facilities for the preparation of his defence. He does not need to elect to be tried either summarily or on information for the section to apply to him. In addition no time frame is provided as condition precedent under which it will come into operation. I am of the respectful view that the court below went on unnecessary wild goose chase and this had occasioned miscarriage of justice, requiring the intervention of this court.

In the light of the foregoing reasons and the more detailed reasons contained in the lead judgment, I too find merit in the appeal and it is allowed. I abide by the consequential order made thereon.

The facts and circumstances of the Appeal No.SC.279/2011

and the issues in contention are the same as in SC.279A/2011; SC.279B/2011; SC.279C/2011 and SC.279D/2011 (set out above), in which the lead judgment has just been delivered by my learned brother, AKA'AH'S whose reasoning and conclusion, I have agreed, I too agree entirely with him that these appeals are meritorious and should be allowed. They are accordingly allowed. I abide by the consequential orders contained in them. B

PETER-ODILI JSC

I am in agreement with the judgment and reasonings just delivered by my learned brother, Kumai Bayang Aka'ahs, JSC and to underscore that support, I shall make some remarks. C

These appeals originated from a criminal trial before Chief Magistrate S. N. Okoye sitting at Awka Magisterial District of Anambra State. The learned Magistrate had granted an application by the defence counsel for the prosecutor to avail the defence with copies of statements of all witnesses examined by the police in the course of the investigation. An appeal by the prosecution against the order to the High Court was heard by J. C. Iguh J. of the High Court sitting in Awka which High Court dismissed the appeal, affirming the decision of the learned Chief Magistrate. D E

The prosecution further appealed to the Court of Appeal sitting in Enugu Division Coram: A. A. Augie, A. O. Lokulo-Sodipe, S. C. Oseji JJCA which allowed the appeal setting aside the decision of the High Court. F

FACTS BRIEFLY STATED:

1. The Appellants herein were charged at the Chief Magistrates Court, Awka, accused persons on a seven-count charge of conspiracy to commit felony, conspiracy to commit a misdemeanour, unlawful assault occasioning harm on Police Officers, unlawful assault on Police Officers and malicious damage to property. The charge number was MAW/121C/2006 and the endorsed date of arraignment on the charge sheet was 24th May, 2006. The name of the Magistrate endorsed on the charge sheet was Dr. (Mrs.) V. N. N. Ibeziako. G H

2. The record of appeal (see pages 7, 8 and 9) however show that all the accused persons including the Appellant appeared before

a different Magistrate, His Worship S. N. Okoye Esq. who presided as Court Decongestion Chief Magistrate on 3rd August, 2006. Immediately after the appearance of counsel on the said date, and without the charge being read to the accused persons, and also without any election for summary trial or trial by information being made by the
B accused persons and also without any plea to the count in the charge sheet being made by the accused person, the defence counsel made the following application to the presiding Chief Magistrate:

*“Application for an order of Court directing the prosecution to
C furnish the defence with the documents (including statements of witnesses, and police investigation reports relating to this case) which are relevant to this case whether they tender same or not”.*

The learned trial Chief Magistrate overruled the objection of the prosecuting counsel and granted the application of the defence
D counsel in the following terms;

*“I am of the view that if front leading does not occasion miscarriage of justice in a trial (sic). All that the court is to ensure is that the process and delay associated with a trial on information is not imported into a summary trial. The court is also to ensure that the
E expense to which a prosecutor is not put in a summary trial (i.e. for photocopying and transmission) are not put on a prosecutor should the court be minded that relevant documents to a criminal trial be furnished up front to the defence.*

My view being as in the going, (sic) and hereby grant the application of the learned defence counsel that the photocopy each all the Statements of all the witnesses examined by the Police in course of investigation of the case be furnished to the defence on or before the next adjourned date...”
F

Not being satisfied with the decision of the learned Chief Magistrate, the prosecuting counsel appealed to the High court against the said decision. In arguing the appeal at the High Court, learned counsel for the prosecution contended inter alia that the learned trial
G Chief Magistrate was wrong in making the order because not having
H elected for trial on information, the accused persons were to be prosecuted based on the criminal summary trial procedure and not based on the procedure for trial on information. The appellate High Court dismissed the appeal and sustained the decision of the learned trial Chief Magistrate.

Still not being satisfied with the decision of the appellate High Court, the prosecutor further appealed to the Court of Appeal and filed four grounds of appeal. I shall reproduce the first ground of appeal and some of the particulars.

“GROUND ONE: ERROR IN LAW:

The learned Judge erred in law when he held as follows: “al- though, the trial at the Lower Court in the case is a summary trial but the Defence are entitled in my view, since they have applied to be given copies of the statements made by the prosecution witnesses as one of the facilities they required for the preparation of their defence as provided by Section 36(6) (b) of 199 Constitution.”

PARTICULARS OF ERROR:

(i) Summary trial at the Lower Court does not require these procedures as contained in the judgment.

(ii) Once an accused person is put to an election in accordance with Section 193 of the Criminal Procedure Law of Anambra State, Cap.37 as amended, the procedure for summary trial will be followed as laid down.

(iii) ”

The Court of Appeal heard argument on both sides and in a well considered judgment, allowed the appeal and set aside the decision of the High Court. It is against the decision of the Court of Appeal that the appellant herein who was the 1st accused person at the trial court has appealed and has filed five grounds of appeal.

The appeals were heard on the 12th day of February, 2015 and learned counsel for the Appellant, in SC.279/2011 Dr. E. S. C. Obiorah adopted his Brief of Argument filed on 22/8/11 and in it crafted three issues for determination, viz:-

i. Whether the Court of Appeal should have still set aside the judgments of the two Lower Courts when it had already upheld the decision of the said Lower Courts on the main issue before it, namely: that the statements of witnesses and police investigation report, obtained by the Prosecution/Police in the course of its investigation of the crimes for which the Appellant was charged, were part of the “adequate” “facilities” which the Appellant is entitled to in order to adequately prepare for his ‘defence as mandated by Section 36(6) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (Grounds 1 and 2).

ii. Whether the Court of Appeal was right in setting aside the decisions of the two Lower Courts on the ground that the Appellant's demand to be afforded the constitutionally mandated 'facilities' was premature, when Section 36 (6) (b) of the 1999 Constitution does not set any time frame within which such 'facilities' would be provided and when the issue was not even raised or canvassed by any of the parties (Ground 2).

iii. Whether the Court of Appeal was right in failing to decide on the alternate issue presented by the Appellant which issue the said court even adopted. (Ground 4).

Mr. P. A. Afuba, learned counsel for the Respondent adopted their Brief of Argument filed on the 18/7/12 in which were formulated three issues for determination which are as follows:-

1. Whether the Court below was right when it held that the appellate High Court was wrong when it affirmed the order of (sic) trial Magistrate for the prosecution to avail the defence with copies of statements obtained by the police from witnesses in the course of investigation. (Grounds 1, 3 and 5).

2. Whether the Court below was right in relying on the record of appeal to find that the application by the defence for copies of statements of witnesses examined by the Police in the course of investigation was premature in that the accused persons had not elected whether to be tried summarily or by information at the time the application was made. (Ground 2).

3. Whether it was necessary to consider any other issue, having regard to the findings already made by the Court below that the application of the defence for copies of statements of witnesses was premature.

The No.1 issue as crafted by the Respondent seem to me apt for use in the determination of this appeal and I shall so utilised. It is thus:-

Whether the Court below was right when it held that the appellate High Court was wrong to have affirmed the order of the trial Magistrate for the prosecution to avail the defence with copies of statements obtained by the police from witnesses in the course of investigation.

Canvassing the position of the Appellant, learned counsel, Dr. Obiorah stated that the decision of the Court of Appeal or Court

below did not flow logically from the conclusions reached by it on the principal issue for determination presented to it which is whether or not the statements of witnesses and police investigative report obtained in the course of police/prosecution investigation were part of the adequate facilities which Appellant was entitled to in order to prepare for his defence in keeping with Section 36 (6)(b) of the Constitution 1999. That the court below in answering that question affirmatively went off tangent in setting aside the judgments of the two Lower Courts. He cited *Oyeyemi v. Irewole Local Government* (1993) 1 NWLR (Pt.270) 462 at 476 (SC). B

For the Appellant was further submitted that the Court of Appeal raised the issue of election suo motu, made its findings and based its judgment thereon without the parties being given an opportunity to address that court on the issue. That every person who is charged with a criminal offence whether in the Magistrate Court or High Court has the constitutional right to demand to be given adequate time and facilities for the preparation of his defence and so a denial of such facilities is a denial of accused's fundamental right of fair hearing. He relied on *Udo v. State* (1988) 1 NSCC (Pt. 19) 1163 at 1172; *Kenon v. Tekam* (2001) 14 NWLR (Pt. 732) 12 at 41; Section 69 of the Magistrate Court Law (Cap.88 Revised Laws of Anambra State of Nigeria, 1991); Sections 185 and 186 Anambra State; Administration of Criminal Justice Law 2010 (ACJL). C D E

P. A. Afuba, learned counsel for the Respondent contended that the accused persons had not been arraigned before the application by the defence was made for the supply of copies of statements obtained from witnesses in the cause of investigation. That is that, the charges had not been read to the accused persons and the accused had not exercised their right of election and had not also pleaded to the charges, and so, the application by the defence counsel was made before the jurisdiction of the Magistrate was crystallized. F G

That the Court of Appeal was right to raise the issue of election having the duty to abide by the contents of the record which it could peruse in spite of that fact not having been raised by the High Court in its appellate jurisdiction as it was a substantial point of law. He cited *Onwuka v. Ononuju* (2009) 11 NWLR (Pt. 1151) 174; *Ukaegbu v. Nwololo* (2009) 3 NWLR (Pt. 1127) 194. H

It was further contended for the Respondent that when the

application of the defence at the trial court for copies of statements of witnesses was made, it was premature which could be termed academic and speculative outside the realm of adjudication. That the court of Appeal was right to have ignored it and considered the relevant matter staring it on the face which it used to dispose of the entire appeal.

He relied on *Unity Bank Plc v. Bouari* (2008) 7 NWLR (Pt. 1086) 372 at 409; *Adelaja v. Alade* (1999) 6 NWLR (Pt. 608) 544.

The blurb of the matter before the court can be stated briefly to be, that Appellant is of the view that the court of Appeal was wrong in holding that Appellant's demand to be afforded the constitutionally mandated 'facilities' was premature when Section 36 (6) (b) of the 1999 Constitution has not set any time frame within which such facilities would be provided and when the issue was not even raised or canvassed by any of the parties; that the Appellant was entitled to those facilities without hindrance under Section 36 (6) (b) of the Constitution irrespective of the trial being a summary one.

The stand of the Respondent is that it was premature for those facilities i.e. copies of the statements of witnesses examined by the Police in the course of investigation to be made available to the Appellant as accused when he had not elected either to be tried summarily or by information at the time the application was made.

Faced with the two opposing views above, the appellate High Court had in its ruling in favour of the stance of the Appellant stated thus at pages 71-72:-

"The Respondents who are the accused persons at the Lower Court are entitled to the statements made by the prosecution witnesses to the police. This is so because criminal trials are not hide and seek games. The statements of the prosecution witnesses to the police, in my view, form part of the facilities to be given to the defence for the preparation of his defence. Such statements are not evidence of the facts contained in it and the only use to which the defence can put is to cross-examine the witness on it and then, if it is intended to impeach his credit, to put the statement in evidence for that sole purpose. See, Sections 199 and 209 of the Evidence Act.

The Defendant or his counsel has no means of knowing whether the statement can be put to this use until he has seen it. The prosecuting counsel whose traditional duty is not to secure a conviction,

but to see that justice is done, should put no hindrance in his way and the court, which exists to do justice should make whatever order that may appear necessary to enable the accused person to put forward any defence that may be open to him.

The Court has a discretionary power to order the production of any document including such statement, if such production is necessary in the interest of justice. Although, the trial at the Lower Court in the cases is a summary trial, but the defence are entitled in my view, since they have applied, to be given copies of the statements made by the prosecution witnesses as one of the facilities they require for the preparation of their defence as provided by Section 36 (6) (b) of the 1999 Constitution”.

The Court of Appeal presented with the above position of the appellate High court took a peculiar route, firstly, raising the issue of election suo motu and deciding that without the election, the Appellant could not ask for the facilities as such an application would be premature and the relief not available to him at such a point. It said so as captured in page 144 of the Record as follows:-

“In this case, there is no record of the Respondents being asked the mandatory question whether they want to be tried by a Judge at the High Court or consent to a summary trial at the Chief Magistrate Court before they applied for documents to enable them prepare their defence. All I can say, without being accused of acting on speculation, is that the documents that they applied for would have been part of the proofs of evidence against them, if they had elected to be tried at the High Court.

The Chief Magistrate Court is not the place to ask for what belongs to proofs of evidence. Besides, the Chief Magistrate Court cannot just direct the Prosecuting Counsel to give the Respondents the documents because he is a Policeman, and pursuant to Section 243(1) of the CPL, it is only after the accused has elected to be tried at the High Court that the Magistrate can direct the prosecuting Police Officer to transmit the Police case file to the Attorney-General, who will then direct the DPP and other law Officers in his office, to prepare the proofs of evidence. Apparently, the Respondents and the two Lower Courts jumped the gun. The Respondents had not been asked or elected to be tried at the High Court where they would have gotten the documents as a matter of right”.

That judgment of the Court below has created an upset to the Appellant whose counsel urges this court to reject the finding and decision and rather go along what the trial Magistrate and appellate High Court did in keeping with Section 36 (6) (b) & (d) of the 1999 Constitution.

B I shall therefore quote that Section for our enlightenment and it is thus:-

Section 36 (6) (b) & (d):-

C *“Every person who is charged with a criminal offence shall be entitled to -*

(b) Be given adequate time and facilities for the preparation of his defence.

D *(d) Examine, in person or by his legal practitioner, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the Court or tribunal on the same conditions as those applying to the witnesses called by the prosecution”.*

My understanding of those clear words of Section 36 (6) (b), which had no ambiguity in them, is that the provision has no time
E frame, conditions, circumstances or situations within which or under which the ‘adequate facilities’ should be afforded the person charged with a crime. Also it stated “every person”, not a particular group of persons who is charged. Therefore the provision is all embracing and
F not for categorization of the particular court to which that person charged has been brought and so has no dichotomy or distinction to the accused tried summarily in a magistrate court or tried on information in the High Court apart from also not providing any condition upon the happening before the entitlement to the adequate facilities will enure to the accused person. I rely on *Ogboh v FR.N.*
G *(2002) 10 NWLR (Pt. 774) 21; Udo v. State (1988) 1 NSCC (Pt. 19) 1163.*

H Another way of placing the situation is that there must not be a procedural inequality or unfairness in any trial and that there has to be ensured that one of the parties is not put at a disadvantage and so whatever information concerning the case for which the accused stands on trial, that information should be made available to the accused without stint as the prosecutor is not allowed the sole access to evidence which he obtained by public fund and use it as a sledge ham-

mer on a hapless accused person who has no reach to such power.

Thus, all doors must be left open and unlocked for the truth to be on display as anything to the contrary impinges on the right to fair hearing of the accused. See Section 36 (6) of the 1999 Constitution; Kenon v. Tekan (2001) 14 NWLR (Pt. 732) 12 at 41.

From the foregoing, the issue is resolved in favour of the Appellant and in line with the better articulated lead judgment, I too allow the appeal and set aside the judgment of the Court of Appeal and restore the judgment and orders of the appellate High Court which upheld what the trial Magistrate did. I abide by the consequential orders made.

SC.279A/2011

I have had the privilege of reading the draft judgment of my learned brother, Kumai Bayang Aka'ahs, JSC and in support of the reasonings, I shall make some comments.

The facts have been well set out in the judgment of SC/279/2011, the sister case and the question is whether the learned Chief Magistrate was right to order the granting of the application of the Appellant as accused, that he be furnished with all information already available to the prosecution before the Appellant had made his election. The High Court in appellate jurisdiction agreed but the Court of Appeal set aside the order on the ground that it was premature as the election of which Court the accused is to be tried had not taken place.

Now before this Court, I am in agreement with the Magistrate and High Court as it was the inalienable right of the accused/appellant within the ambit of Section 36 of the 1999 Constitution to be so granted. Therefore, I too allow the appeal and abide by the consequential orders made in the lead judgment.

SC.279B/2011

I am in total agreement with the judgment and reasonings just delivered by my learned brother, Kumai Bayang Aka'ahs, the draft of which he graciously made available to me. I shall make some comments in support of those reasonings.

The facts of this appeal are already fully stated in the sister case of SC.279/2011 and what is at stake is whether the facilities sought by the accused/appellant at the Magistrate Court were within his rights and grantable on arraignment without making his election. The learned

Chief Magistrate answered positively and so was agreed to by the appellate High Court but the Court of Appeal disagreed stating it was premature since Appellant had not made his election for the forum for trial, whether Magistrate Court or High Court.

B In keeping with the fuller reasons already delivered in SC.279/2011, I am of the humble view that all facilities should be made available to the accused/appellant in line with Section 36 of the 1999 Constitution so that he is fully equipped with the information to prosecute his defence.

C I allow the appeal and abide by the consequential orders made. SC.279C/2011

I agree with the judgment just delivered by my learned brother, Kumai Bayang Aka'ahs, JSC and in support of the reasonings, I shall make some comments.

D The facts of this case have been well captured in the sister case of SC.279/2011, and there is no need repeating them. However, the appeal has to do with whether the oral application by Appellant's counsel for an order of court directing the prosecution to furnish the defence with all documents including statements of witnesses, police
E investigation reports relating to the case. The learned Chief Magistrate granted the application, an order upheld by the High Court on appeal but which the Court of Appeal set aside stating that it was premature as the Appellant had not made his election on where he
F was to be tried. Now on appeal to this Court, I am of the humble view and for the reasons well stated in the sister case of SC.279/2011 that the appeal should be allowed as it was within the inalienable right of the accused/appellant to be furnished with adequate facilities or equal information to enable him present his defence.

G In short, I allow the appeal and abide by the consequential orders made in the lead judgment.

SC.279D/2011

H I am grateful to my learned brother, Kumai Bayang Aka'ahs, JSC for the draft judgment he made available to me and in support of the reasonings, I shall make some comments.

The facts are already well stated in SC.279/2011 and they raise the question whether the accused/appellant was entitled to be furnished with adequate facilities before his election at the trial Magistrate Court. The Chief Magistrate said he was so entitled and the

High Court agreed and the Court of Appeal disagreeing set aside the positive order of the Chief Magistrate. Now before this court, I am of the humble view that the appellant is so entitled in line with Section 36 of the 1999 Constitution and so, I too abide by the consequential orders made in the lead judgment.

B

MUHAMMAD JSC

Having had a preview of the lead judgment of my learned brother Aka’ahs, JSC just delivered, I entirely agree that being meritorious the appeals be allowed.

It must be emphasized that the appeals are all about what facilities the appellants are, by virtue of Section 36 (6)(b) of the 1999 Constitution, entitled to have in facilitating their defence to the offences they are charged. The appeals further raise the question of the Lower Court’s competence in raising and deciding an issue on its own without giving a hearing to the parties before it.

The Lower Court at page 1.34 of the record of appeal rightly concurred with the two other courts below, the Magistrate and the High Court, that the facilities an accused is entitled to:-

“... embrace anything for the preparation of his or her defence... including statement of witnesses for the prosecution.... they are facilities within the meaning of.... Section 36 (6)(b)”.

The appellants had demanded the statements of witnesses examined by the police in building the case against them. In spite of the Lower Court’s forgoing correct decision, it proceeded suo motu to raise and determine the issue of their election of summary trial as a precondition to their accessing the “facilities” Section 36 (6)(b) of the Constitution entitles them to.

Section 36(1) and (6)(b) being germane for the determination of the issue the appeal raises are herein under reproduced for ease of reference.

“36(1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

(6) Every person who is charged with a criminal offence shall be entitled to-

(b) be given time and facilities for the preparation of his defence.”

The appellants are right that courts must give effect to statutes as they are. The intention of the legislature is paramount and discernible only by reference to the words used in the very statutes being interpreted and applied. See *N.D.I.C. v. Okem Ent. Ltd* (2004) 10 NWLR (Pt. 880) 107, A-G, Lagos State v. A-G, Federation (2004) 18 NWLR (Pt. 904) 1. In the case at hand, the provision of Section 36(6) (b) supra entitles the appellants to whatever “facilities” they consider useful in the preparation of their defence to the offences they are being prosecuted. The Section does not require them to first elect that they be tried summarily before they become entitled to the “facilities”, the statements of witnesses they ask for, in the preparation of their defence.

I also agree with the appellants that by virtue of Section 36(1) of the 1999 Constitution the Lower Court lacks the competence of raising and determining the issue of their election of summary trial as a precondition for their accessing the statements of witnesses they desire in the preparation of their defence without giving them a hearing.

The court’s decision that proceeded without the appellants’ input is ipso facto void. See *Mohammed & Anor v. Olawunmi* (1990) 2 NWLR (Pt. 133) 485 and *Vivian Clems Akpamgbo-Okadigbo & 4 Ors v. Egbe Theo Chidi & 13 Ors* (2015) LPELR-24564 (SC).

It is particularly for the foregoing and indeed the fuller reasons contained in the lead judgments that I also allow the appeals. I abide by the consequential orders made in the lead judgment.

KEKERE-EKUN JSC

I have had the benefit of reading in draft the judgment of my learned brother, Aka’ahs, JSC just delivered, I agree with the reasoning and conclusion that the appeal is meritorious and should be allowed.

The facts giving rise to the appeal has been comprehensively set out in the lead judgment. Having regard to the constitutional na-

ture of this appeal, I shall add a few words in support of the lead judgment and for emphasis. The main issue to be determined in this appeal is whether the Court of Appeal (the Lower Court) was right to have raised suo motu the issue of whether the appellant had elected to be tried summarily or on information and whether it was to hold that he would only be entitled to adequate facilities for the preparation of his defence after he has elected to be tried on information. B

The position of the law is that a court is not entitled to raise an issue and decide on it without affording the parties an opportunity to be heard. This is because in doing so the court is seen to leave its exalted position as impartial arbiter and descend into the arena of conflict. See: Kuti v. Balogun (1978) 1 SC 53 @ 60; Obawole v. Williams (1996) 10 NWLR (Pt. 477) 146; Stirling Civil Eng. (Nig.) Ltd. v. Yahaya (2005) 11 NWLR (Pt. 935) 181; Omokuwajo v. F.R.N. (2013) 9 NWLR (Pt. 1359) 300; Ominiya v. Alabi (2015) LPELR- D SC.41/2004. An appellate court is also not entitled to raise an issue not raised by either of the parties at the trial court or on appeal and base its decision thereon without affording the parties an opportunity to be heard. The court, being an impartial arbiter, must never be seen to be making a case for one of the parties. A careful perusal of the record in the instant appeal shows that the issue as to whether the accused persons at the trial Chief Magistrates Court had elected whether to be tried summarily in the Chief Magistrates Court or on information at the High Court and its effect on the application to be provided with all relevant materials that would enable them prepare for their defence, was never raised by any of the parties from the Chief Magistrates Court right through to the Court of Appeal. Indeed in determining the appeal the Lower Court adopted the two issues formulated by the appellant, to wit: E

1. *“Whether the learned High Court Judge was right when he held that the statements of witnesses and police investigation reports, obtained by the appellant (now the respondent) in the course of its investigation of the crimes for which the respondents (now appellants) were charged, are within the purview of the ‘adequate’ ‘facilities’ which the respondents (appellants) need for the preparation of their defence as mandated by Section 36 (6) (b) of the Constitution of the Federal Republic of Nigeria.* F

2. *Notwithstanding the answer to issue No.1 above, whether* G

the learned High Court Judge was right in holding that the learned trial Chief Magistrate has the authority and power to order the appellant to furnish the respondents with the copies of statement of witnesses and the police investigation reports, obtained by the appellant in the course of its investigation of the crimes for which the respondents stand charged.”

For the Lower Court to suo motu raise and determine any other issue outside the two issues for determination formulated by the appellant and accepted by the parties as representing the issues in contention between them, without giving them a hearing, is a grave violation of their fundamental right to fair hearing as guaranteed by Section 36 (1) of the 1999 Constitution. On this ground alone the judgment of the Lower Court ought to be set aside.

The other issue to be considered is whether there is any condition precedent to the application of Section 36 (6) (b) of the Constitution. It provides thus:

36 (6) Every person charged with a criminal offence shall be entitled to –

(b) be given adequate time and facilities for the preparation of his defence;

The golden rule of interpretation of statutes is that where the words used in a statute are clear and unambiguous they must be given their natural and ordinary meaning unless to do so would lead to absurdity or inconsistency with the rest of the statute. It was held inter alia in: Ibrahim v. Barde (1996) 9 NWLR (Pt. 474) 513 @ 517 B-C per Uwais, CJN (as he then was) that if the words of the statute are precise and unambiguous, no more is required to expound them in their natural and ordinary sense. He held further that the words of the statute alone, in such circumstance, best declare the intention of the lawmaker. See also: Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377 @ 402 F-H; Adisa v. Oyinwola & Ors (2000) 6 SC (Pt. II) 47; Uwazurike & Ors. v. A-G, Federation (2007) 2 SC 169.

In A-G Federation v. Guardian Newspaper Ltd. (1999) 9 NWLR (Pt. 618) 187 @ 264 G-H this court held:

“... a court of law is not to ascribe meanings to the clear, plain and unambiguous provisions of a statute in order to make such provisions conform with the court’s own view of their meaning or of what they ought to be in accordance with the tenets of sound social

policy.”

The word “charge” is both a noun and a verb. Black’s Law Dictionary 9th edition defines it as follows:

As a noun: “A formal accusation of an offence as a preliminary step to prosecution.”

As a verb: “To accuse (a person) of an offence.”

In line with the two definitions of the word “charge” referred to above, a person is “charged” with a criminal offence when he is formally accused of having committed an offence. The formal accusation in writing is what constitutes the charge against him. Once he is made aware of the charge against him he is entitled to commence the preparation of his defence. This is when the provisions of Section 36 (6) (b) of the Constitution will be activated.

The Lower Court in its judgment admirably analyzed and determined what constitutes “facilities” within the meaning of Section 36 (6) (b) of the Constitution. The court held at page 134 of the record:

“It is true that the word “facilities” is not defined by the 1999 Constitution but the dictionary meaning of the word “facility” gives us an idea of what “adequate facilities”, which it mentions in its Section 36 (6) (b) connotes. Webster’s New World Dictionary defines the word “facility” inter alia as -

“Ease of doing or making; absence of difficulty; the means by which something can be done.”

Dictionary.com defines “facilities” inter alia as -

“Something that permits the easier performance of an action, course of conduct, etc; to provide someone with every facility for accomplishing a task ... the quality of being easily or conveniently done or performed ...”

In a nutshell, the word “facilities” embraces anything that would make it easier to perform an action or course of conduct, etc. Section 36 (6) (b) of the 1999 Constitution stipulates that every accused person is entitled to adequate facilities for the preparation of his or her “defence”.

“Defence” is defined as an accused person’s “stated reason why the prosecutor had no valid case”, esp., his or her “answer, denial or plea”. For instance, an accused person’s defence may be a complete and total denial of the commission of the offence, etc. Looking at it

from this angle, the evidence against the accused, including statements of witnesses for the prosecution, would be necessary for the preparation of his defence. So they are “facilities” within the meaning of the said Section 36(6) (b), and this issue must be resolved in favour of the Respondents.” (Emphasis mine)

B In my view, the well considered finding above is unassailable. It is in accord with the intention of the legislature to provide a person charged with a criminal offence with sufficient opportunity to prepare his defence and to prevent surprises being sprung on him at the trial. This is fundamental, as the accused person could be facing the loss of his life or personal liberty. There is nothing in Section 36 (6) (b) of the Constitution that restricts its application to either a summary trial or a trial on information or provides for a condition precedent to its application. With the greatest respect to the learned Justices of the court below, having held that the evidence against the appellant, including the statements of witnesses to the Police, were part of the facilities that would aid him in the preparation of his defence, ought to have stopped there and dismissed the appeal. The literal interpretation of Section 36 (6) (b) does not admit of the meaning ascribed to it by the Lower Court.

It is for these and the more detailed reasons ably advanced in the lead judgment that I also find the appeal to be meritorious and allow it accordingly. I abide by the consequential orders as contained in the lead judgment.

F The facts and circumstances of this appeal No. SC.279/2011 and the issues in contention are the same as in Appeal Nos. SC.279A/2011, SC.279B/2011, SC.279C/2011 and SC.279D/2011 (set out above) in which the lead judgment has just been delivered by my learned brother, Aka’ahs, JSC.

I agree entirely with my learned brother that the appeals are meritorious and should be allowed.

I allow the appeals and abide by the consequential orders as contained in the lead judgment.

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OKORO JSC

I was obliged in advance a copy of the judgment just delivered by my learned brother, Aka’ahs, JSC with which I agree with the

reasons adduced to reach the conclusion that this appeal has merit and deserves to be allowed. The facts leading to this appeal have been ably captured in the lead judgment and I do not intend to repeat the exercise here except as it may be necessary to refer to in the course of this judgment.

The point must be made that in this matter, all the courts i.e. B Magistrate's Court, High Court and the Court of Appeal agree that the appellant was entitled to be given "necessary facilities" by the respondent to enable him adequately prepare for his defence as provided for in Section 36(6) (b) of the (1991) Constitution of the Federal Republic of Nigeria (as amended). The three Lower Courts held C in unmistakable terms that the appellant was entitled to copies of all the statements of the witnesses and police investigation report to assist the appellant prepare his defence. In fact, the Court of Appeal held emphatically on page 134 of the record of appeal on the issue D as follows:

"Looking at it from this angle, the evidence against the accused, including statements of witnesses for the prosecution, would be necessary for the preparation of his defence. So, they are facilities within the meaning of the said Section 36(6) (b) and this issue must E be resolved in favour of the respondents."

It is my view that the above conclusion by the Lower Court represents the correct interpretation of Section 36(6) (b) of the 1999 Constitution (supra). This is so because the intendment of the said F Section is to give an accused person adequate facilities to prepare his defence whether tried at the Magistrates' Court or High Court. The section does not make any distinction as to which court it applies.

Had the Lower Court ended its judgment here, there would have been no need for this appeal as the main issue for determination had been decided in favour of the present appellant. G

On page 144 of the record, the court below went on a wild goose chase which has resulted in a miscarriage of justice and has given birth to this appeal. This is what the Lower Court said:

"In this case, there is no record of the respondents being asked H mandatory question whether they were to be tried by a judge at the High Court or consent to a summary trial at the Chief Magistrate Court before they applied for documents to enable them prepare their defence. All I can say, without being accused of acting on specu-

lation, is that the documents that they applied for would have been part of the proofs of evidence against them, if they had elected to be tried at the High Court.

The Chief Magistrates Court is not the place to ask for what belongs to proofs of evidence. Besides, the Chief Magistrate Court cannot just direct the prosecuting counsel to give the respondents the documents because he is a policeman, and pursuant to Section 243(1) of the CPL, it is only after the accused had elected to be tried at the High Court that the Magistrate can direct the Prosecuting Police officer to transmit the Police case file to the Attorney-General, who will then direct the DPP and other law officers in his office to prepare the proofs of evidence. Apparently, the respondents and the two Lower Courts jumped the gun. The respondents had not been asked or elected to be tried at the High Court where they would have gotten the documents as a matter of right."

The grouse of the appellant herein is that the above issue was raised suo motu by the Court of Appeal and that same was resolved by the Lower Court without calling on the parties to address the court before making such a far reaching conclusion. It has not been denied that the allegation by the appellant is true. The record of appeal shows clearly that the Lower Court raised the issue suo motu and went ahead to resolve it. This is unfair and cannot be allowed to stand.

In this country, the right to fair hearing is a constitutional right. See section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). In view of this, we have always insisted that on no account should a court raise a point suo motu and, no matter how clear it may appear to be, proceed to resolve it one way or the other without hearing the parties. See *Oje v. Babalola* (1991) 4 NWLR (Pt. 185) 267, *Ugo v. Obiekwe* (1989) 1 NWLR (Pt. 99) 566 at 581, *Adegoke v. Adibi* (1992) 5 NWLR (Pt. 242) 410.

The tragedy of the court below is that after deciding the case properly, it veered into this issue on its own which has dented the good work it did in this appeal. This aspect of the decision cannot be allowed to stand. Even on this issue alone, this appeal deserves to be allowed.

The court below also held that in order for Section 36(6) (b) of the 1999 Constitution to apply, the accused person must first elect

to be tried by the High Court. With due respect, this is contrary to what it held earlier that Section 36(6) (b) applies to trials both in the High Court and Magistrates Court. This is akin to giving you something with the right hand and taking away by the left. The law does not work that way. It is always certain and does not keep any one in doubt. I have read Section 36(6) (b) of the 1999 Constitution (as amended) over and over again and I am unable to see where it is stated or even suggested that an accused person must first elect to be tried in the High Court before the section can apply. It is a fundamental or primary duty of the court to ascertain the natural meaning of the words used in a statute. The court must not speculate or write into the statute words which the legislature did not use. There is nothing to suggest that an accused person is to elect before the Section applies. See *American Cyanamid Company v. Vitality Pharmaceuticals Ltd* (1991) 2 NWLR (Pt. 171) 15. I hold the view that Section 36(6) (b) applies to both summary trial in the Magistrate's Court and trial on information in the High Court. The distinction made by the court below was made without any legal support whatsoever.

Based on the above reasons and the more elaborate ones in the lead judgment, I too agree that this appeal has merit and is hereby allowed. I abide by the consequential orders made in the lead judgment.

SC.279A/2011

In view of the fact that the facts and issues contained in Appeal No. SC.279/2011 which has earlier been decided today are the same as in the instant appeal, it becomes a waste of precious judicial time to repeat the exercise.

Accordingly, this appeal is also allowed. I also abide by the consequential orders made in the lead judgment.

SC.279B/2011

In view of the fact that the facts and issues contained in Appeal No. SC. 279/2011 which has earlier been decided today are the same as in the instant appeal, it becomes a waste of precious judicial time to repeat the exercise.

Accordingly, this appeal is also allowed, I also abide by the consequential orders made in the lead judgment.

SC.279C/2011

In view of the fact that the facts and issues contained in Appeal

No. SC. 279/2011 which has earlier been decided today are the same as in the instant appeal, it becomes a waste of precious judicial time to repeat the exercise.

Accordingly, this appeal is allowed. I also abide by the consequential orders made in the lead judgment.

B SC.279D/2011

In view of the fact that the facts and issues contained in Appeal No. SC.279/2011 which has earlier been decided today are the same as in the instant appeal, it becomes a waste of precious judicial time to repeat the exercise.

C Accordingly, this appeal is also allowed. I also abide by the consequential orders made in the lead judgment.

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