

SUPREME COURT OF NIGERIA
FRIDAY 18TH MARCH, 2016. SC. SC. 215/2012
CORAM:- M. MOHAMMED CJN, S. GALADIMA,
O. RHODES-VIVOUR, N. S. NGWUTA,
M. D. MUHAMMAD, JJSC

ORJI UZOR KALU

..... APPELLANT

V.

1. FEDERAL REPUBLIC OF NIGERIA

2. UDEH JONES UDEOGU

3. SLOK NIGERIA LIMITED

..... RESPONDENTS

COURTS - Jurisdiction - Disciplinary power - Whatever a litigant did during lis pendes - Calculated to over reach his adversary - Would be undone by court in its disciplinary jurisdiction (H1)

ORDERS OF COURT - Co ordinate jurisdiction - Limit - Orders of Abia State HC - Cannot affect proceedings before Federal HC - Because the order is not directed at the said proceedings (H2)

CRIMINAL PROCEDURE - Fundamental rights - Provision of - The Constitution guarantees fair trial of appellant - Hence Court cannot undermine rights of appellant - In the event of his prosecution (H3)

CRIMINAL PROCEDURE - Investigation - Power of EFCC - The order from Abia State HC is interference - To duty of the Commission to investigate and prosecute financial crimes (H4)

CRIMINAL PROCEDURE - Prima facie case - The record of appeal containing proof of evidence - Discloses a prima facie case - For appellant to answer (H5)

FACTS

This action bordering on money laundering was commenced by prosecution/1st respondent before the Federal High Court Lagos against defendants/appellant, 2nd and 3rd respondents. The case as presented by 1st respondent is that the Economic and Financial Crimes Commission (EFCC) received several petitions from some Abia State

indigenes against appellant. The petitions border on the money laundering activities and illegal conversion of the Abia State money to the personal use of appellant and his cronies while appellant was the Executive Governor of the State. The EFCC commenced investigation into the matter and discovered that the State Government's funds running into some billions of Naira in various Banks were allegedly fraudulently withdrawn and illegally converted into drafts in favour of appellant and his cronies. There was also allegation of appellant awarding the State Government's contracts to companies where he has interest.

In view of these allegations 1st respondent filed the criminal charge. Subsequently, when appellant and the others were arraigned at the Federal High Court Abuja, he approached the Federal High Court Lagos and the Federal High Court Umuahia, seeking a sort of reprieve for an order to restrain the EFCC from arresting, detaining or prosecuting him. It would appear that when he failed in his bid to secure the said restraining order in these courts appellant went to the Abia State High Court Umuahia where he filed an application for enforcement of his fundamental rights. The Court made an ex parte order restraining the EFCC from arresting and/or detaining appellant. The said order was relied upon by appellant before the trial Federal High Court to argue that he can no longer be prosecuted. He applied that the charge be quashed. Respondent opposed the application seeking to quash the charge. The court dismissed appellant's application. Dissatisfied, appellant appealed to the Court of Appeal. The court also dismissed the appeal. Appellant has further come on appeal to the Supreme Court.

ISSUES FOR DETERMINATION

“(i) Whether the Court below was right when it held in sum that a charge preferred against an accused person contrary to the terms of an order made by a Court of competent jurisdiction is not thereby violated.

(ii) Whether the Court below lawfully and dutifully considered the Appellant's appeal without regard to all the materials placed before it, particularly Affidavit evidence (Grounds 3 & 4). (iii) Whether the Court below was right in holding that the proof of evidence discloses a prima facie case.

HELD

(Unanimously dismissing the appeal per GALADIMA JSC)

Jurisdiction - Disciplinary power

1. The principle of law upon which the Appellant has relied, is stated in DANIEL VS. FERGUSON (1891) 2 CH. 27. The principle is that whatever a litigant had done during lis pendes calculated to over reach his adversary, would be undone or obviated by the Court in its disciplinary jurisdiction.

(p. 2156 B)

ORDERS OF COURT - Co ordinate jurisdiction - Limit

2. The statement in UWAZURIKE'S case (Supra) is clear that the order of a Court of co-ordinate jurisdiction like that of Abia State High Court cannot affect the proceedings before the Federal High Court because the order is not directed at the said proceedings. (p. 2157 C)

Fundamental rights - Provision of

3. The Appellant was in Court to enforce his fundamental rights against the 1st Respondent, asserting that the alleged violation or threat to violate his rights equally violate the constitutional provisions as they relate to the rights he is seeking to protect, and he is saying that the due process of law has not been or will not be followed by the said 1st Respondent.

It is mere speculation for the Appellant to have thought that the Courts, particularly the Federal High Court would whimsically undermine the rights of the appellant guaranteed by the Constitution. The rights to personality and freedom of movement respectively enshrined in Sections 35 and 41 of the said Constitution are subject to the procedure permitted by law and for the purpose of bringing the Appellant before a Court of law in execution of a Court order or upon reasonable suspicion of his having committed a criminal offence.

I cannot fathom the reason why the Appellant is so lily-livered in a matter the law fully guarantees his constitutional rights in an event of his prosecution in the Court established by the Constitution to judiciously and judicially provide ad-

equate facilities for his prosecution including due fair hearing as provided in S.36 of the Constitution, for the alleged offences of money laundering. (p. 2158 H)

CRIMINAL PROCEDURE - Investigation - Power of EFCC

B 4. I agree with the Court below that the suit No.HU/177/2007 filed at Abia State High Court by the Appellant was nothing but a “gagging suit” with the order made there from on 31/5/2007, designed to frustrate, prevent, and discourage the 1st Respondent from discharging its statutory functions.

C The suit of the Appellant, at Abia State High Court and the general and ambiguous order made therein from were clearly intended to “muzzle” or prevent the 1st Respondent from discharging its statutory function.

D Sections 6 (m) and 46 of the Economic and Financial Crimes Commission (Establishment) Act vest in EFCC the function and duty of investigating and prosecuting persons reasonably suspected to have committed economic and financial crimes. For a person to rush to Court to place a clog or
E shield against criminal investigation and prosecution is a clear interference with the powers given by law and the Constitution to EFCC in the conduct of criminal investigation and prosecution. It is clearly an abuse of due process of the law.

F (p. 2159 E)

CRIMINAL PROCEDURE - Prima facie case

5. The Appellant’s argument that he neither had shares in nor was he the alter ego of Slok Ltd and the illegality of withdrawal of some huge sums of money from the Account of Abia State Government of which he was the Executive Governor from 1999 to 2007; all these are matters for his defence at trial. My concern at this stage is to see whether a prima facie case has been disclosed in the information and whether there is
H any ground for proceeding. What the information must disclose is not the guilt of the accused person but only a prima facie case for the accused to answer.

The Trial High Court had the proofs of evidence before it. I have taken time to read through the record of appeal con-

taining the proofs of evidence and the briefs of argument exchanged and relied upon by the counsel for the respective parties. I do not agree that there is no scintilla of evidence in the proofs of evidence in support of counts 1-16. They disclose a prima facie case under Section 17 of the Money Laundering (Prohibition) Act (supra) earlier reproduced.

(p. 2163 D)

NOTABLE POINT OF INTEREST

GALADIMA JSC

1. Criminal law – Prima facie case – Meaning of

“Prima facie” is the establishment of a legally required reputable presumption. Prima facie is not the same thing as the proof which comes later when the Court has to find whether the accused is guilty or not guilty.

The standard of proof as to whether or not the accused is guilty of the criminal allegation is one of proof beyond reasonable doubt. (p. 2160 D)

REPRESENTATION

Awa U. Kalu (SAN) with N.B. Adukwu, Esq., A.N Nwodu (Miss), C.I. Obidike, Esq. and C.J. Nnaji, Esq., for the Appellant
Olalekan Ojo, Esq. with, O.A. Atolagbe, Esq. and H.O.P. Ejiga, Esq. for the 1st Respondent

George E. Ukaegbu, Esq. with, Emmanuel N. Ukaegbu, Esq. Thomas Sekibo, Esq. and Deborah M. (Miss) for 2nd and 3rd Respondents

CASES REFERRED TO

Abach v. Fawehinmi (2000) FWLR (pt. 4) 533

Babatunde v. Olatunji (2000) 2 NWLR (pt. 646) 60

Gov. of Lagos State v. Ojukwu (1986) 1 NWLR (pt. 18) 621

Ezegbu v. First African Trust Bank Ltd. (1992) 1 NWLR (pt. 220) 197

Olutola v. University of Ilorin (2004) 18 NWLR (pt. 905) 452

Uwazurike v. A-G Federation (2008) 10 NWLR (pt. 1096) 444

Dariye v. FRN (2015) 2 SCM 46

- A-G Anambra v. Uba (2005) 15 NWLR (pt. 947) 44
- Ajidagba v. IGP (1958) 1 NSCC 20
- Abacha v. State (2000) 11 NWLR (pt. 779) 437
- Ikomi v. State (1986) 3 NWLR (pt. 28) 340
- Njoku v. Eme (1973) 26 SC 293
- B Kale v. Coker (1982) 12 SC 252
- Bankole v. Pelu (1991) 8 NWLR (pt. 211) 23
- Lokoyi v. Olojo (1983) 8 SC

STATUTE REFERRED TO

- C Money Laundering (Prohibition) Act 2014, ss. 14, 17

LEAD JUDGMENT BY GALADIMA JSC

D This is an appeal by the appellant against the interlocutory decision of the Court of Appeal (the Court below) Abuja Division delivered on the 27th April 2012, wherein the Court affirmed the decision of the trial Federal High Court Abuja (the trial Court) and dismissed the Appellant's appeal in which he sought to set aside the decision of the said Federal High Court delivered on 8th May, 2009.

E The background facts are simple and straight forward: Some-time in 2005, the Economic and Financial Crimes Commission (EFCC) received several petitions from some well-placed concerned indigenes of Abia State of Nigeria against the Appellant and some other persons. The said petitions bordered on abuse of office, corruption and money laundering. Upon receipt of these petitions, a team of investigation was constituted by the EFCC to discreetly investigate the petitions. Investigation revealed that the Appellant who was the Governor of Abia State between May, 1999 and May 2007, incorporated some limited liability Companies, one of which is SLOK NIGERIA (the 3rd respondent herein), of which he was a shareholder.

H It was the 1st respondent's case that the Abia State Government funds running into some billions of Naira in various Banks were allegedly fraudulently withdrawn and illegally converted into drafts in favour of the personal use of the Appellant in his SLOK GROUP of Companies. Other allegations leveled against the Appellant were that he awarded the State Governments contracts to such companies as ZEROCK CONSTRUCTION Ltd, HITEC CONSTRUCTION LTD,

HAPEL NIGERIA LTD and UDEX NIGERIA LTD in which he had interest. It was alleged that the contractors to whom contracts were awarded by the Appellant as the Governor, also obtained several bank drafts which were lodged into the 3rd Respondent's account as gratifications. In view of these allegations the 1st respondent filed a criminal charge against the 2nd and 3rd respondents herein and some other officials of the Abia State Government at the Federal High Court Lagos. The name of the appellant featured in the said charge but because he was still under official immunity, as such could not be prosecuted. The said charge was later withdrawn. Subsequently, when the appellant as well as the 2nd and 3rd respondents were arraigned at the Federal High Court Abuja, he approached the Federal High Court, Lagos and the Federal High Court, Umuahia, seeking a sort of reprieve for an order to restrain, the EFCC from arresting, detaining or prosecuting him. It would appear when he failed in his bid to secure the said restraining order in these Courts, the appellant went to the Abia State High Court, Umuahia where he filed an application for enforcement of his fundamental rights. On the 31st May, 2007, the Court made an ex parte order restraining the EFCC from arresting and/order detaining him, in the following term:

"That the leave so granted shall operate as a stay of all actions or matters relating to or connected with the complaint hereof until the determination of the motion on Notice."

The above order was relied upon by the appellant before the trial Federal High Court and the Court of Appeal to argue that he can no longer be prosecuted pending the hearing and determination of his motion on Notice. He also prayed the Court below to quash the charge against him on the ground that no prima facie case was disclosed in the entire proof of evidence.

The 1st respondent herein reacted by opposing the application to quash the charge before the Federal trial High Court. It filed a counter-affidavit with two Exhibits. In his considered ruling the learned trial judge dismissed the Appellant's motion to quash the charges preferred against him on 8th May, 2009. The Appellant's appeal to the Court below was further dismissed.

Dissatisfied with the judgment of the Court below the appellant further appealed to this Court vide his Notice of Appeal dated 4th day of May, 2012 containing 5 grounds. From these grounds the

appellant formulated 3 issues for determination, namely:

“(i) Whether the Court below was right when it held in sum that a charge preferred against an accused person contrary to the terms of an order made by a Court of competent jurisdiction is not thereby violated. (Grounds 1 and 2)

B *(ii) Whether the Court below lawfully and dutifully considered the Appellant’s appeal without regard to all the materials placed before it, particularly Affidavit evidence (Grounds 3 & 4). (iii) Whether the Court below was right in holding that the proof of evidence discloses a prima facie case. (Ground 5)”*

C Two issues distilled by the 1st respondent, for determination are as follows:-

“1. Whether the Court of Appeal was not right in affirming the decision of the trial High Court that the learned trial Judge was not bound by the ex parte order of the High Court of Abia State as to vitiate the charges (See grounds 1,2,3, and 5)

2. Whether the learned Justices of the Court of Appeal were right in affirming the decision of the learned trial judge to the effect that a prima facie case was disclosed against the ground 4).”

E It is not worthy that both the Appellant and 1st respondent raised similar issues for determination in the Court below. See page 1352 of the records. I must note however that these issues are substantially the same as the 1st respondent’s two issues before this Court. Appellant’s second issue is unnecessary embellishment of 1st Respondent’s issue 2. In view of the foregoing, I am of the view that the two issues, namely (i) and (iii) formulated by the Appellant are quite apt to the determination of this appeal.

G On the 14th day of January, 2016 when this appeal was heard, Awa U. Kalu SAN, of Counsel to the Appellant identified and adopted the Appellant’s brief of argument deemed filed on the 12th June, 2013 and the Reply brief was filed on 12th April, 2015. Without further amplifications on the issues formulated, he urged that the appeal be allowed. The brief of argument of 1st Respondent, settled H by Rotimi Jacobs SAN, was identified and relied upon by Olalekan Ojo Esq, of Counsel, was equally adopted. He urged that the appeal be dismissed.

APPELLANT’S ISSUE (i): Perusing the Appellant issue (i) herein, it is observed that in substance there is no difference between

it and the 1st Respondent issue No.1; that is, whether the Court below did not err when it held that the charge preferred against the appellant contrary to the terms of an order made by a Court of competent jurisdiction is not vitiated. It is contended that the Court below ought to have quashed the charge or information filed by the 1st Respondent in disregard of the ex parte order of Abia State High Court, made on 31st May, 2007 in the suit No.HU/177/2007. It is submitted that the position of this Apex Court with regard to existing order, judgment or ruling of a Court of competent jurisdiction, no matter how palpably null and void, unattractive, remains good law and binding until set aside by a superior or Court of competent jurisdiction. Reliance was placed on the cases of ABACHA V. FAWEHINMI (2000) FWLR (pt.4) 533 SC and BABATUNDE and ANOR V. OLATUNJI AND ANOR (2000) 2 NWLR (pt. 646) 60. B
C

On his part learned counsel for the 1st Respondent submitted that obedience to Court order is crucial to the survival of any constitutional democracy. D

Therefore, parties and the individuals, or government agencies must obey and comply with every subsisting order of a Court. That both the learned trial Judge and the Court below emphasized the need to comply with every subsisting order of a Court of competent jurisdiction. He referred to pages 1072-1079 and 1398 of the record for the statements of the learned trial judge and of the Court below respectively on this point' Learned counsel for the 1st Respondent however, agrees with the Court below when considering the peculiar circumstances of the case concluded that the charges preferred against the Appellant at the Federal High Court could not be quashed on account of an exparte order made by Abia State High Court. E
F
G

As I have earlier observed the real fulcrum of the Appellant's argument is that the Court below erred when it held that a charge preferred against the Appellant contrary to the terms of an order made by a Court of competent jurisdiction is not thereby vitiated. May it be observed that at the Court below similar argument was put up by the Appellant when he argued that the trial High Court erred not to have quashed the charge or information No FHC/ABJ/ CR/ 56/2007, which was filed by EFCC, the 1st Respondent herein, in brazen disregard of the ex parte order of Abia State High Court on H

31st May, 2007 in the suit No.Hu/177/2007. The same argument has been adduced before us under the Appellant's issue 1. The Appellant's grouse is the consequences of disobedience of Courts order by the Courts, or persons in authority, in the face of *lis pendes* (a pending suit).

B ***The principle of law upon which the Appellant has relied, is stated in DANIEL VS. FERGUSON (1891) 2 CH.27*** referred to, and applied in GOVERNOR OF LAGOS STATE V. CHIEF OJUKWU (1986) 1 NWLR, (Pt.18) 621 and EZEGBU V. FIRST AFRICAN TRUST BANK LTD (F.A.T.B) (1992) 1 NWLR (Pt 220) 197.

C ***The principle is that whatever a litigant had done during lis pendes calculated to over reach his adversary, would be undone or obviated by the Court in its disciplinary jurisdiction.***

D At the trial Federal High Court, the 1st Respondent herein had persuaded the Court to adopt and apply the authorities of OLUTOLA V. UNIVERSITY OF ILORIN (2004) 18 NWLR. (Pt.905) 452 and, UWAZURIKE V. ATTORNEY GENERAL OF THE FEDERATION (2008) 10 NWLR (Pt.1096) 444 at 458-59 which held that Courts of similar or concurrent jurisdiction are not bound to follow the decision of each other. The trial Court agreed and held it was not bound by the *ex parte* order of Abia State High Court of 31st May, 2007 in HU/177/2007. This was what prompted the appeal to the Court below. That Court was on a firm ground when it agreed with the Federal High Court that the *ex parte* order of the Abia State High Court would not avail the Appellant to argue that the order was binding on the Federal High Court so much as to render its warrant for the arrest of the Appellant and its proceedings in FHC/ABJ/CR/ 56 /2007 a nullity.

G This case is on all fours with UWAZURUIKE V. A-G FEDERATION (2008) (Supra) wherein at pp. 458-459 the Court stated as follows:

H *"It is apparent that the Federal High Court, Owerri and Federal High Court, Abuja are Courts of concurrent jurisdiction, therefore the contention by the counsel for the Appellant that 1st Appellant was charged to Court maliciously in flagrant disrespect of an order of Federal High Court, Owerri cannot be correct, because Courts that are of similar or concurrent jurisdiction are not bound to follow the decision of each other. See - PROF. A.D. OLUTOLA V. UNIVER-*

SITY OF ILORIN (2005) 3 W. R. N. PAGE 22, (2004) 18 NWLR (PT.905) 416. I also agree with the submission of learned counsel for the respondent that an order granted by the Federal High Court, Owerri was an ex parte order for the applicant that is the 1st Appellant in this Court, to enforce his fundamental human rights. It was not order directed to the proceedings before the same Court sitting B in Abuja.

Consequently it is my view that the trial Judge was right not to have given credence to the Federal High Court, Owerri as the order given by that Court was not binding on her”.

The statement in UWAZURIKE’S case (Supra) is clear C that the order of a Court of co-ordinate jurisdiction like that of Abia State High Court cannot affect the proceedings before the Federal High Court because the order is not directed at the said proceedings.

The Court below, in further consideration of this point has this D to say on page 1355 of the record thus

“Let it be emphasized that injunction is a remedy in person on which is directed against the litigant and not the Court: At common law, from the decision of HART v. HART LR. 18 ch. DIV. 670 at 679- E 681 what is forbidden is an injunction to restrain a pending judicial, proceeding..... it shall not be at large and must be specific restrictions. See OZUEH V. EZEWEPUTA (2005) 4 NWLR (Pt.915) 221 at 241.

This point that an order of injunction must be identified clear F and cogent was emphasized in ONAGORUWA V. ADENIJI (1993) 5 NWLR (Pt.293) 317 at 339 and ORHUE V. EDO (1996) 9 NWLR (Pt.473) 475 at 448. Bearing in mind this principle Mr. Rotimi Jacobs, of counsel to 1st Respondent, submitted correctly in my view that the order made by Hon. Justice Kalu of Abia state on 31st May, 2007 in G suit No.HU/177/2007 was at large ambiguous and non specific”.

How was the order of Abia State High Court couched. It goes thus:

“It is ORDERED that the leave so granted shall operate as a H stay of all actions or matters relating to or connected with the complaint hereof until the determinations of the motion on Notice? That the Respondent would not suffer any detriment if they are restrained from arresting, detaining or prosecuting the Appellant until

he constitutionality and legality of the said threat is determined”.

The Court below describes the above order as “Creeping Order” likened to a weapon of mass destruction as it restrains everything, everyone under the earth. I agree the order is wide and at large, in view of the facts relied upon in the Appellant’s application for leave to enforce his fundamental rights to the dignity of his person guaranteed by Section 34 of the Constitution, his personal liberty guaranteed by Section 41 of the said Constitution . Paragraphs 15-18 of the appellant’s affidavit in support of the application are as follows:

“15. *The Applicant has never been confronted with any allegation of criminality. That the Applicant has committed no offence.*

16. *The objective of the Respondents particularly the 1st Respondent is to publicly humiliated the Applicant, subject him to degrading treatment, deny his right to personal Liberty and freedom of movement*

17. *The consequence of the foregoing it is therefore expedient for the Honourable Court to restrain the Respondents from carrying out their treat which is calculated solely to embarrass hereof (sic)*

18. *That the Respondent would not suffer any detriment if they are restrained from arresting, detaining or prosecuting the Appellant until the constitutionality and legality of the said threat is determined.”*

The hard facts relied upon by which the Appellant in his application for leave to enforce his fundamental rights, were because of his fear of arrest and prosecution which have the motive of publicly humiliating, degrading and embarrassing him.

I agree with the Court below on this point when it stated on page 1357 of the records thus:

“*These (allegations) are all speculations interspersed with sentiments founded largely on conspiracy theory, that is completely political it is trite that sentiments command no place in judicial deliberations. See EZEUGO V. OHANYERE (1979) 6 SC.17, MOHAMMED IDRISU V. MODUPE OBAFEMI (2004) 11 NWLR (Pt.884) 396 at 409.*”

The Appellant was in Court to enforce his fundamental rights against the 1st Respondent, asserting that the alleged violation or threat to violate his rights equally violate the con-

stitutional provisions as they relate to the rights he is seeking to protect, and he is saying that the due process of law the law has not been or will not be followed by the said 1st Respondent.

It is mere speculation for the Appellant to have thought that the Courts, particularly the Federal High Court would whimsically undermine the rights of the appellant guaranteed by the Constitution. The rights to personality and freedom of movement respectively enshrined in Sections 35 and 41 of the said Constitution are subject to the procedure permitted by law and for the purpose of bringing the Appellant before a Court of law in execution of a Court order or upon reasonable suspicion of his having committed a criminal offence.

I cannot fathom the reason why the Appellant is so lily-livered in a matter the law fully guarantees his constitutional rights in an event of his prosecution in the Court established by the Constitution to judiciously and judicially provide adequate facilities for his prosecution including due fair hearing as provided in S.36 of the Constitution, for the alleged offences of money laundering. I agree with the Court below that the suit No.HU/177/2007 filed at Abia State High Court by the Appellant was nothing but a “gagging suit” with the order made there from on 31/5/2007, designed to frustrate, prevent, and discourage the 1st Respondent from discharging its statutory functions. See the opinion of Lord Denning, Mr. on this point in WALLER STEINER V. MOIR (1974) 3 All ER 217. This important point made in this case is further restated in ATTORNEY-GENERAL V. TIMES NEWSPAPERS LTD (1973) 3 All ER. 54 at 60 per Lord Reid.

The suit of the Appellant, at Abia State High Court and the general and ambiguous order made therein from were clearly intended to “muzzle” or prevent the 1st Respondent from discharging its statutory function.

Sections 6 (m) and 46 of the Economic and Financial Crimes Commission (Establishment) Act vest in EFCC the function and duty of investigating and prosecuting persons reasonably suspected to have committed economic and financial crimes. For a person to rush to Court to place a clog or

shield against criminal investigation and prosecution is a clear interference with the powers given by law and the Constitution to EFCC in the conduct of criminal investigation and prosecution. It is clearly an abuse of due process of the law. See ABACHA V. FRN. (2014) 6 NWLR (Pt.1402) 43 at 112, DARIYE V. B FRN. (2015) 2 SCM P.46 at 68. ATTORNEY-GENERAL OF ANAMBRA V. UBA (2005) 15 NWLR (Pt.947) 44 at 67.

ISSUE (III) of the Appellant (1st Respondent's issue 2).

This issue raises the question whether the proof of evidence filed by the 1st Respondent (the prosecutor) has disclosed a *pima facie* case against the Appellant.

Learned counsel for the Appellant has submitted that since the arrest of the Appellant and materials, placed before the trial Federal High Court were in clear disobedience of the order of Court in a pending suit (*lis pendis*) therefore a valid charge or information could not have been preferred against him. That till his allegation of infringement of his human rights is determined, that means that every action done after the order was a nullity.

"*Prima facie*" is the establishment of a legally required reputable presumption. *Prima facie* is not the same thing as the proof which comes later when the Court has to find whether the accused is guilty or not guilty.

The standard of proof as to whether or not the accused is guilty of the criminal allegation is one of proof beyond reasonable doubt. Section 131 of the Evidence Act 2011.

If I may recall the grounds upon which the Appellant's Application for the enforcement of his fundamental rights in suit No.HU/177/2007 before the High Court of Abia State, Umuahia, was predicated, were *inter alia*.

"(i) The charge hereof and the prosecution of the 1st Accused/Applicant on the said charge breached an order of the Umuahia High Court made on 31st May, 2007 in suit No.HU/177/2007.

(ii) The Umuahia High Court in suit HU/177/2007 in a final Ruling to enforce the fundamental rights of the Applicant declared that the said charge was brought in clear, brazen and blatant disobedience to the order of the said Court made on 31st May 2007.

(iii) The subject matter of the charge, that is, alleged crime against the revenue of the Abia State Government is not within on

the jurisdiction of this Honorable Court.

(iv) The said charge did not come within the province and intendment of the money Laundering (protection) Act, 2004.

(v) The proof of Evidence did not disclose a prima facie case against the 1st Accused/ Appellant. ”

The fifth ground above on which the Appellant’s application B was premised is the main contention of the Appellant under this issue. It is essentially challenge to the applicability of Section 14(1) (a) of the Money Laundering (Prohibition) Act 2014, to the case at hand, as it concerns the Appellant. The section provides as follows:

“14 - (1) Any person who - C

(a) converts or transfers resources or properties derived directly from illicit traffic in drugs and psychotropic substances or any other crime or illegal act, with the aim of concealing or disguising the illicit origin of the resources or properties or aiding any person involved in the illicit traffic in narcotic drug or psychotropic substances or any other crime or illegal act to avoid the illegal consequences of his action. D

Commits an offence under this section and is liable on conviction to a term of not less than 2 years or more than 3 years.” E

Section 17 of the said Act creates the offence of conspiracy, aiding and abetting the offence of money laundering. It provides:

“17. Any person who -

(a) conspires with aids, abets or counsels any other person to commit an offence, or F

(b) attempts to commit or is an accessory to an act or offence, or

(c) incites, procures or induces any other person by any means whatsoever to commit any offence, under this Act, commits an offence and is liable on conviction to the same punishment as prescribed for that offence under this Act.” G

See the earlier Section 16 which criminalizes the retention of the proceeds of a crime or an illegal act on behalf of another. It provides as follows: H

“16. Any person who -

(a) whether by concealment, removal from jurisdiction, transfer to nominees or otherwise retains the proceeds of a crime or suspecting that other person to be engaged in a criminal conduct or has

benefited from a criminal conduct, or conspiracy aiding etc.

(b) *knowing that any property either in whole or in part directly or indirectly represents another Person's proceeds of a criminal conduct, acquires or uses that property or has possession of it, commits an offence under this Act and is liable on conviction to imprisonment for a term of not less than 5 years or to a fine equivalent to 5 times the value of the proceeds of the criminal conduct or to both such imprisonment and fine."*

The Appellant has argued that the particulars given in respect of counts 1-15, apart from being incompetent and confusing are inconsistent with the provisions of Section 17 of the Act reproduced above.

The Court below painstakingly considered the submissions of respective counsel for the parties on this point and held that there was a *pima facie* case disclosed against the Appellant. At page 1366 - 1369 Vol. 2 of the record the Court considered the issue on the application of Sections 14 and 17 reproduced above and held as follows:

"I do not see how the allegation is inconsistent with the provision of Section 17 of the Money Laundering (Prohibition) Act, 2004, does, in any way, mislead or confuse the Appellant. The Appellant did not say, and I cannot myself see, what makes the allegation incompetent."

The Appellant and the 2nd and 3rd Respondents herein were arraigned before the Federal High Court on a charge containing 107 counts. The Appellant is involved on 97 of the counts, namely I - 97. Count 17 gives the straw sample of counts 17 - 44 and 65 - 97, It states as follows:

"That you ORJI UZORK KALU, UDEH JONES UDEOGU, SLOK NIGERIA LIMITED, EMEKA ABONE (now at large) and EUNICE AGWU (now at large) on or about July 7th 2005 within the jurisdiction of this Honourable Court did transfer through Manny Bank Ltd, (now Fidelity Bank plc) the sum of N12,500,000:00 (Twelve Million, Five Hundred Thousand Naira) into Slok Nigeria Ltd. 's account with First Inland Bank Plc (a company solely owned by Orji Uzor Kalu and members of his family) which formed part of the funds you illegally withdrew from the account of Abia State Government with the aim of concealing the illicit origin of the said funds and you thereby com-

mitted an offence punishable under Section 14(1)(a) of Money Laundering (Prohibition) Act, 2004.”

The ingredients of the offence under Section 14(1)(a) of the Money Laundering (Prohibition) Act (Supra) reproduced above, and as submitted by ROTIMI JACOBS SAN, of counsel to the 1st Respondent (EFCC) are that:

“(i) *The accused converted transferred resources or property,*
 (ii) *The resources or property must have been derived directly or indirectly from drugs related offences or any other crimes or illegal acts,*

(iii) *The conversion or transfer of the resources or property must be with the aim of:*

(a) *concealing or disguising the illicit origin of the resources or property or*

(b) *aid any person involved in any of the acts of drug related offences or any other crime or illegal act so as to evade the illegal consequences of his action.*”

The Appellant’s argument that he neither had shares in nor was he the alter ego of Slok Ltd and the illegality of withdrawal of some huge sums of money from the Account of Abia State Government of which he was the Executive Governor from 1999 to 2007; all these are matters for his defence at trial. My concern at this stage is to see whether a prima facie case has been disclosed in the information and whether there is any ground for proceeding. (See *AJIDAGBA v IGP* (1958) 1 NSCC 20 at 21, *ABACHA v THE STATE* (2000) 11 NWLR (Pt. 779) 437 at 495. **What the information must disclose is not the guilt of the accused person but only a prima facie case for the accused to answer.** *IKOMI v THE STATE* (1986) 3 NWLR (pt. 28) 340 at 376.

The Trial High Court had the proofs of evidence before it. I have taken time to read through the record of appeal containing the proofs of evidence and the briefs of argument exchanged and relied upon by the counsel for the respective parties. I do not agree that there is no scintilla of evidence in the proofs of evidence in support of counts 1-16. They disclose a prima facie case under Section 17 of the Money Laundering (Prohibition) Act (supra) earlier reproduced.

I have observed that the Court below, with due respect, went extra miles, in minutest details as if the appeal before it (the subject matter of the trial of the Appellant) have been completed. The Court was expected to only decide at this stage whether a prima facie case has been established against the Appellant to warrant him facing his trial. In any case, the Court rightly concluded when affirming the decision of the trial Court to the effect that a Prima facie case was disclosed against the Appellant.

In conclusion, in the light of all I have said, I cannot help but dismiss this appeal for lacking in merit. It is dismissed. I affirm the decision of the Court below which rightly affirmed the decision of the trial Federal High Court that it was not bound by the ex parte order of Abia State High Court as to vitiate the charges preferred against the Appellant. It is therefore ordered that the Learned Chief Judge of the Federal High Court should assign the case to another Judge for expeditious trial.

MOHAMMED CJN

The lead Judgment of my learned brother Galadima, J.S.C., which has just been delivered, was read by me before today. I am in complete agreement with him in the resolution of the issues arising for the determination of this appeal and in arriving at the conclusion that the appeal ought to be dismissed. I also dismiss the appeal and abide by the consequential orders made in the lead judgment.

RHODES-VIVOUR JSC

I have read in draft the leading judgment delivered by my learned brother, Galadima, J.S.C. and I agree that there are no redeeming features in this appeal. The appeal is also dismissed by me.

NGWUTA JSC

I have read in draft the lead judgment just delivered by my learned brother, Galadima, J.S.C., and I entirely agree with the reasoning leading to the conclusion that the appeal is devoid of merit.

I will add a few words on issue 2 in the 1st Respondent's Brief

Argument - that is, whether or not a prima facie case was disclosed in the proof of evidence against the appellant.

Prima facie applies as a rule of onus of evidence, It seems that the words have nor English law or in Nigerian law. In *Ajidagba v. Inspector-General of Police* (1958) 3 FSC 5 (1958) SCNLR 60, Abbot, FJ, said (at page 6 of the report):

"We have been at some pain to find a definition of the term 'prima facie'. The term, so far as we can find has not been defined either in English or in Nigerian Courts."

His Lordship then relied on an Indian case of *Sher Sinsh v. Jitendranathsen* (1931) 1 LR 59 Case 275 where the Indian Court held, inter alia:

"What is meant by a prima facie (case)? It only means that there is ground for proceeding... But a prima facie is not the same as proof which comes later when the Court has to find whether the accused is guilty or not guilty" (per Grose, J) and "the evidence discloses a prima facie case when it is such that if uncontradicted and if believed it will be sufficient to prove the case against the accused."

In *Ikomi v. State* (1986) 5 SC 226, the Supreme Court had this to say:

"The question is in all these circumstances, can it be justly said that there is nothing linking the appellants with the offence? I think there is, I hold that there was a prima facie case on the face of those proofs of evidence..., I am of the view that... all that is required at the point when a judge grants consent to prefer information is that there be evidence which requires some explanation." (Underlining mine)

The term, prima facie case, answers the questions on the face of the proof of evidence: is there a ground for proceeding? Does the proof of evidence disclose an offence or offences and if so, is the accused linked with the offence as to require him to explain his involvement therein?

These questions raise issues of fact. The trial Court found as a fact that the proofs of evidence disclose that crimes have been committed and that, being linked with the said crimes, appellants have some explanation to make. The Court of Appeal reviewed the case and affirmed the finding of facts by the trial Court, resulting in concurrent finding of facts of the two Courts below.

Where there is sufficient evidence to support concurrent find-

ings of facts by the trial Court and the appeal Court this Court should not disturb the findings. See *Njoku & Ors v. Erne & Ors* (1973) 26 SC 293 at 306; *Kale v. Coker* (1982) 12 SC 252 at 271. In the case at hand, appellants who would want to set aside concurrent findings of facts of the two Courts below failed to demonstrate any perversity
B in the said findings. It was not established that the said findings were bedeviled with any substantial error whether in substantive or procedural law which if left uncorrected will read to miscarriage of justice. See *Bankole v. pelu* (1991) 8 NWLR (pt. 211) 23; *Lokoyi & Anor v. Olojo* (1983) 8 SC 61 at 68.

C For the above and the sound reasoning in the lead judgment I also dismiss the appeal for want of merit.
Appeal dismissed.

D

MUHAMMAD JSC

I had a preview of the lead judgment of my learned brother Galadima JSC just delivered I agree with the reasoning and conclusion therein that the appeal lacks merit. I dismiss the appeal too and
E abide by the consequential order made in the lead judgment.

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