

SUPREME COURT OF NIGERIA
FRIDAY 1ST JULY, 2016. SC. 74/2014,
SC. 73/2014, SC. 75/2014
CORAM:- W. S. N. ONNOGHEN, O. RHODES-VIVOUR,
N. S. NGWUTA, M. D. MUHAMMAD, C. B. OGUNBIYI,
C. C. NWEZE, A. SANUSI, JJSC

FEDERAL REPUBLIC OF NIGERIA APPELLANT
V.

1. OKEY NWOSU
2. DAYO FAMOROTI RESPONDENTS
3. AGNES U. EBUBEDIKE
4. DANJUMA OCHOLI

COURTS - Competence of - Conditions - Court is competent where it is properly composed - The subject matter of action is within its jurisdiction - And the matter is initiated by due process of law (H1)

COURTS - Competence - Defect in - Bars Court from proceeding further - In the absence of jurisdiction - As the action no matter how well considered - Will amount to a nullity (H2)

SUPREME COURT - Appeals - Jurisdiction - The Court hears and determines appeals from decision of Court of Appeal - To the exclusion of any other Court (H3)

SUPREME COURT - Rules of - Compliance with - SC Rules has Constitutional force and must be obeyed - As any noncompliance unless it is explained - Disentitles appellant from Court indulgence (H4)

APPEALS - Grounds - Validity - The present grounds and issues therein are direct attack on judgment of Court of Appeal - Hence they are competent (H5)

JUDICIAL PRECEDENTS - Binding nature of - *Uwazurike v. A.G Federation* being on different facts - Does not avail 1st respondent - As cases are authorities for what they decided (H6)

LEGISLATION - Proviso - Purpose of - It creates exceptions or throws light on ambiguous aspect of general enactment - And does not neutralize the general provision (H7)

SUPREME COURT - Appeals - Hearing of - SC Practice Direction O. 9 r. 3(1) empowers the Court to hear appeal - Where good cause is shown expressing clear intention to appeal (H8)

CRIMINAL PROCEDURE - A-G's fiat - Duration of - Once fiat is issued - Its validity to prosecute or defend a case - Continues throughout the duration of the case (H9)

CRIMINAL PROCEDURE - A-G's fiat - Delegation of - Private legal practitioner may be instructed by Attorney General - To appear in criminal case on his behalf (H10)

APPEALS - Right of - Is Constitutionally conferred - And except for ascertained fundamental noncompliance with the Rules - Supreme Court is duty bound to preserve the right (H11)

COURTS - Finding - Fair hearing - Where Court takes judicial notice of facts - And without allowing party affected - Makes a finding that is unfair to party - The finding will be set aside on appeal (H12)

COURTS - Issues - Fair hearing - A person against whom an issue is raised - Must be heard before the determination of the Court - Upon the issue one way or another (H13)

COURTS - Criminal trial - Jurisdiction - In determining whether or not it has jurisdiction to try offence - Court will consider the charge vis-à-vis the enabling law (H14)

JURISDICTION - Ousting of - Jurisdiction of Court can only be ousted - On the basis of specific provisions and words used in the enabling statute (H15)

CRIMINAL PROCEDURE - Stealing - Jurisdiction - Stealing being a

matter within legislative competence of Lagos House of Assembly - Trial Court retains jurisdiction to try 1st respondent (H16)

COURT PROCESSES - Abuse of - Feature - It shows in multiplicity of suits between same parties - And in respect of same subject matter - Taken out by a party to overreach or annoy the other party (H17)

CRIMINAL PROCEDURE - Double trial - Proof - 1st respondent having failed to show the fact of double trial on him - Cannot be availed by the rules in Constitution 1999 s. 36(9) (H18)

FACTS

Before the High Court of Lagos State, prosecution/appellant (i.e. the Economic and Financial Crimes Commission) preferred charge of stealing contrary to the Criminal Code of Lagos State, against accused/respondents after obtaining the fiat of the Attorney-General of the Federation. Appellant's case is that 1st respondent (Managing Director of Fin Bank Plc.) along with 2nd – 4th respondents who were Executive Directors in the said bank, had instituted a stock brokers firm, namely Springboard Trust and Investment Ltd., to purchase Fin Bank Plc shares in the name or front of seven companies allegedly registered by them. Those seven companies were used as conduit pipes to siphon fraudulently the sum of twenty billion naira (N20bn) of Fin Bank funds for the use of Springboard Trust and Investment Ltd. and the seven companies registered by them. This was done on the pretence that they were granting loans to the companies, when none of these companies had ever applied for loan or even maintained any account with the Bank.

On further investigation, it was discovered that another eight billion Naira (N8bn) was transferred to these seven companies through another stock broker company called Integrated Trust Investment Co. Ltd. also on the pretext that they granted loan to the these seven companies who were not customers of the bank. Following these revelations, respondents were arraigned before the Court. On arraignment, 1st respondent raised an objection challenging the jurisdiction of the trial court in the matter. Appellant opposed the objection and urged the Court to dismiss same. In its ruling, the Court dismissed the objection and assumed jurisdiction in the matter. Dis-

satisfied, respondents appealed to the Court of Appeal Lagos Division. The Court upheld the objection and struck out the charges preferred against respondents. Aggrieved, appellant appealed to the Supreme Court.

ISSUES FOR DETERMINATION

- B “1. *Whether the Court of Appeal was right in holding that the offence of stealing preferred against the 1st Respondent relates to the control of capital issues and the High Court of Lagos State had no jurisdiction to entertain same when such an issue was neither raised nor placed before the Court of Appeal by either of the parties.*
- C 2. *Whether the learned Justices of the Court of Appeal were right when their Lordships held that the High Court of Lagos State had no requisite jurisdiction to try the 1st Respondent for the offence of stealing by conversion preferred against him under section 390*
- D *(7) of the Criminal Code Law of Lagos State Cap. C17, Laws of Lagos State, 2003.*
- E 3. *Whether the learned Justices of the Court of Appeal were right in holding that the information preferred against the 1st Respondent at the High Court of Lagos State amounted to subjecting the 1st Respondent to double jeopardy.*

HELD (Unanimously allowing the appeal per

MUHAMMAD JSC)

F **COURTS - Competence of - Conditions**

1. Now, 1st respondent’s objection against this Court’s exercise of its jurisdiction raises issues touching on the competence of the court to entertain the instant appeal. It is well settled that a court is competent where all the conditions for the exercise of its jurisdiction are satisfied. The court on the authorities is competent where:-

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(a) **Its statutory composition is properly constituted as regards numbers and qualification.**

H (b) **The subject matter of the action is within its jurisdiction.**

(c) **The matter before the court is initiated by due process of law and upon the fulfillment of any condition precedent to the exercise of jurisdiction.** (p. 3727 G)

COURTS - Competence - Defect in

2. Certainly, a defect in the competence of the court as raised in 1st respondent's objections bars the court from proceeding further for, in the absence of necessary jurisdiction, no matter how well considered the court's purported resolution of the appeal is, it will be a nullity. (p. 3728 F) B

Appeals - Jurisdiction

3. Now, this Court, parties herein must be reminded, derives its jurisdiction as an appellate court to hear and determine appeals from the Court of Appeal to the exclusion of any other court from Section 233 of the 1999 Constitution as amended. The jurisdiction is exercisable only in respect of "decisions" of the Court of Appeal. A party to the "decision" or interested in it is entitled to invoke the court's jurisdiction as conferred which jurisdiction is to "be exercised in accordance with any Act of the National Assembly and the rules of court for the time being in force regulating the powers, practice and procedure of the court." It draws from the content of the enabling provision, therefore, that this Court can only hear and resolve a matter on appeal from the lower court on an issue over which the court has reached a decision. (p. 3728 H) C
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SUPREME COURT - Rules of - Compliance F

4. Again, the Supreme Court Rules constitute a mirror of constitutional intention and have the same force as the Constitution itself. The undoubted principle is that the rules must prima facie be obeyed. Any non-compliance with the rules, unless the lapse is explained or not fundamental, may disentitle the appellant of the court's indulgence. (p. 3729 D) G

APPEALS - Grounds - Validity

5. It is settled law that for grounds of appeal to be valid and competent, they must be related to the decision being appealed against and should constitute a challenge to the ratio of the decision on appeal. Thus where a ground of appeal as couched does not arise from the judgment and purports to raise an H

issue not decided by the judgment appealed against, both the ground and the issue it purports to raise are incompetent and liable to be struck out. It is equally trite that for issues for the determination of an appeal to be competent, they must be formulated from the grounds of appeal. The position, therefore, is that an incompetent ground of appeal cannot give birth to a competent issue and an issue distilled from a competent ground cannot be declared incompetent.

A dispassionate examination of the grounds of the instant appeal, see pages 3847 to 3860 of the record of appeal, and issues distilled from the grounds, see pages 5 - 6 of the appellant's brief, undoubtedly reveals that both relate to the judgment of the lower court synopsis of which has earlier been rendered in this judgment. I am of the firm and considered view that the entire grounds of appeal and the issues predicated on them are a direct and unalloyed attack on the judgment of the lower court appealed against. On the authorities, therefore, both the grounds and the issues are competent and I am unable to hold that they are otherwise. Those aspects of 1st respondent's objection which ascribe to the grounds of appeal and appellant's issues for the determination of the appeal attributes not manifest in them are not only misconceived but uncharitable. The 1st respondent, having neither filed a cross appeal nor a respondent's notice lacks the locus of raising issues not traceable to the extant Notice of Appeal and appellant's issues for determination which have necessarily drawn from the grounds of appeal. (p. 3730 A/H)

JUDICIAL PRECEDENTS - Binding nature of

6. In further appreciating arguments of both counsel in relation to 1st respondent's preliminary objection, we must readily imbibe the principle that cases are authorities for what they decided and they bind courts in cases subsequently put for their determination if the facts and the law in these subsequent cases are the same or similar as in those earlier decided. The decision of this Court in *Uwazurike V. A-G Federation* (supra) being on different facts, certainly, does not avail the 1st respondent. Instead, learned senior counsel to the

appellant is right, the decisions of this Court in *Ikpasa V. Bendel State* and the more recent case of *Nwite V. State* (supra) being on same or similar facts as in the instant matter do. (p. 3731 F)

LEGISLATIONS - Proviso - Purpose of

7. A proviso of necessity serves to cut down or qualify the general provision in the body of the section to which it relates. It would however be contrary to the ordinary operation of a proviso to give it an effect which would cut down the general provision beyond what compliance with the proviso necessarily requires. Thus a proviso only creates exceptions, relax limitations or throws light on any ambiguous aspect of the general enactment. It is certainly not the aim of a proviso to wholly neutralize the general provision it has created exceptions to. (p. 3732 H)

Appeals - Hearing of

8. In the case at hand, the extant proviso to Order 9 Rule 3(1) empowers this Court to hear the appeal in spite of the fact that the signature on the notice of appeal is not in strict compliance with sub rule 3 of the rule, in the interest of justice, where good and sufficient cause is shown by the intending appellant in manifesting a clear intention to appeal against the decision of the court below. For the fact that appellant's notice of appeal herein has been signed by its legal representative, in clear compliance with the general provision of the rule, 1st respondent's objection in this regard alone must fail. The proviso to the rule makes the objection all the more hopeless. (p. 3733 C)

CRIMINAL PROCEDURE - A.G fiat - Duration of

9. Firstly, the meaning, life-span and the need or otherwise for a donee of a fiat to be granted another fiat for the purpose of appealing against the decision of a trial court in respect of which proceedings a fiat had earlier been issued, have all been addressed in earlier decisions of this Court. I find Chief Daudu's reliance on these decisions apposite. In *Ebe V. C.O.P.* My lords

Akintan and I.T. Muhammad, JJSC, in their concurring judgments, restated the principle that once issued, the validity of a fiat to prosecute or defend a case continues throughout the case.

Inherent in the foregoing is the principle that the life of a fiat depends on its tenor, the very words by virtue of which the donor of the authority conveyed same to enable the donee exercise the powers so delegated. Of course where the donor, by the words he assigned the powers of prosecuting or defending the case to the donee, restricts the life-span of the fiat to particular proceedings, in the trial court for example, then by the clear words constituting the donation, the fiat ceases to function at the end of the trial proceedings. If, however, the fiat was issued in general terms, without limiting the function of the fiat to proceedings in particular court, because an appeal against the decision of a trial court is deemed to be continuation of the trial, the fiat would be deemed operable to the conclusion of the trial including any appeal thereon as well.

In the case at hand, where the fiat is not specifically limited to proceedings at the Lagos State High Court but for the “prosecution” of the respondents for offences of stealing contrary to Section 390(7) of the Criminal Code Law of Lagos State, the life of the fiat extends to the instant appeal in continuation of the “prosecution” commenced at the trial court through the lower court and thence to this Court. It is significant to observe that the 1st respondent as appellant at the court below did not object to the competence of the fiat thereat to defend the judgment of the trial court in spite of the fact that a fresh fiat had not been issued to provide the platform.
(pp. 3733 H/3734 E)

CRIMINAL PROCEDURE - A.G fiat - Delegation of

H 10. It has also long been settled that a private legal practitioner may be instructed by the Attorney-General to appear in a criminal case on the latter’s behalf. (p. 3735 H)

APPEALS - Right of

11. Finally, the preliminary objection must also fail given the facts surrounding the compilation and transmission of the record of the appeal which 1st respondent alleges stand in breach of the relevant provision of the 2013 Practice Directions of this Court. The allegations are not borne out of available facts on record. The right of appeal is constitutionally conferred and except for a fully ascertained fundamental non-compliance with the Rules, this Court is duty bound to preserve and facilitate. (p. 3736 B) B

COURTS - Finding - Fair hearing

12. Section 122(1) and (2) of the Evidence Act, learned senior appellant counsel is right, only empowers the lower court to take judicial Notice of all laws, enactments and any subsidiary legislations under them by the National Assembly or the State House of Assembly as the case may be. The appellant herein is entitled to be heard on whether or not the facts on which it preferred the information against the 1st respondent, have indeed come under any particular legislation passed by the National Assembly in respect of items specified under Section 251(1), the Federal High Court criminal jurisdiction therefrom is said to exclude that of the trial court. D

It is further instructive to note at this point that in spite of Section 122 of the Evidence Act, Section 124(3) subsequent to it has imposed a duty on the lower court thus:- E

“(3) The court shall give to a party to any proceeding such opportunity to make submission, and to refer to a relevant information, in relation to the acquiring or taking into account of such knowledge, as is necessary to ensure that the party is not unfairly prejudiced.” F

The foregoing clear and unambiguous provision certainly prevails over Section 122 of the same Act even if the latter allows, and I have held otherwise, the lower court to take judicial notice of the facts in the information against the 1st respondent at the trial court. The import of Section 124(3) of the Evidence Act is that where a court in resorting to Section 73 and 122 of the Act takes judicial notice of certain facts G

without allowing a party affected and makes a finding that is unfairly prejudicial to the party, being perverse, the finding will be set aside on appeal. (p. 3739 A)

COURTS - Issues - Fair hearing

B 13. Most importantly, Section 36(1) of the 1999 Constitution further provides:-

“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.”

D The foregoing has been interpreted in relation to court proceedings to mean that the lower court cannot make any determination on an issue whether raised by a party or the court itself suo motu without hearing the party against whom the issue is raised. Learned senior counsel for the 1st Respondent’s submission that the lower court is right in proceeding on the issue on the basis of their oral submission does not put the lower court on a better stead. The principle remains that by whatever means and manner an issue is raised before a court, the Constitution requires that the person against whom the issue is raised must be heard before the determination of the court on the issue one way or another.

F As a whole, it is glaring from all that I tried to state above that the lower court’s resolution of an issue it raised suo motu and without having heard the appellant stands in breach of the appellant’s right under Section 36(1) of the 1999 Constitution. The court is without jurisdiction to proceed on the fruitless exercise. Proceedings resulting from such an exercise being a travesty of justice must be vacated. In resolving the 1st issue in appellant’s favour I hereby so order.

H (pp. 3739 H/3743 A)

COURTS - Criminal trial - Jurisdiction

14. It has long been settled that in determining whether or not it has jurisdiction to try an offence the court will consider the

JURISDICTION - Ousting of

15. Learned senior counsel for the appellant is right, and here see the decision of this Court in Eze V. Republic, (supra), a case learned senior counsel relies upon, the jurisdiction of a court can only be ousted on the basis of specific provisions and words used in the enabling statute. (p. 3745 G)

CRIMINAL PROCEDURE - Stealing - Jurisdiction

16. The jurisdiction of the trial court as spelt out under Section 272 of the 1999 Constitution operates subject to the restriction placed on it by Section 251 (2) and (3) of the same Constitution. The latter subsection vests criminal jurisdiction in the Federal High Court regarding all the items for which the court is conferred exclusive civil jurisdiction under Section 251(1). None of these items pertains simple stealing for which the 1st respondent stands trial at the trial court. He is not being charged for stealing shares. As learned senior counsel for the appellant further observed, and correctly too, the 1st respondent does not stand trial at the Federal High Court for the same offence of stealing preferred against him at the trial court. At the Federal High Court, he faces trial only for those offences for which, by virtue of the relevant items in the Exclusive Legislative List, the National Assembly has passed laws on. The lower court's judgment that the trial court has lost its jurisdiction to the Federal High Court on the basis of the latter's exclusive jurisdiction under Section 251(1) of the 1999 Constitution is therefore, perverse. It is a decision that neither draws from the evidence on record nor from a correct construction of Section 251(3) of the Constitution the lower court held the exclusive jurisdiction of the Federal High Court stems from. The truth is that stealing is a matter which falls within the legislative competence of the Lagos State House of Assembly and having been legislated upon, the trial court retains the jurisdiction of trying the 1st respondent. (p. 3746 D)

COURT PROCESSES - Abuse of - Feature

17. Under this issue, abuse of court process, one need to note, appears endlessly defined in our law reports and related sources. It remains, basically, the multiplicity of proceedings between the same parties and in respect of same or similar subject matter taken out by one party with the intention of overreaching or annoying the other party. Its occurrence is not restricted to improper use of the judicial process in litigation. It occurs even where there is proper use of the court processes. Generally, however, abuse of court process lies in the employment of the judicial process to the annoyance and irritation of not only its opponent but against efficient and effective administration of justice. (p. 3749 A)

CRIMINAL PROCEDURE - Double trial - Proof

18. Section 36(9) of the 1999 Constitution as amended provides:-

“No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.”

It appears to me that in the clear and unambiguous words which make the foregoing, 1st respondent comes under the provision if he establishes the fact of:-

(a) his being tried by any court or tribunal of competent jurisdiction for a criminal offence, and

(b) his having been either convicted or acquitted by the court or tribunal and

(c) his being tried thereafter for the very offence or another with the same ingredients as the offence for which he was previously tried and either convicted or acquitted and

(d) a superior court has not ordered the subsequent trial.

The 1st respondent comes under the rule only if he jointly establishes the foregoing four requirements, none of which, from the record, he has so proved. Having failed to establish that he is being prosecuted for the same or substantially the same offence at the trial court as he is being tried at the Fed-

eral High Court, the rule does not avail him. The lower court is wrong to hold otherwise. (p. 3750 D)

NOTABLE POINT OF INTEREST

MUHAMMAD JSC

1. Judicial precedents – Stability in legal development

The foregoing is a graphic demonstration of the essence of precedents in jurisdictions that observe them. They provide stability and certainty in the development of the law. Seemingly lazy and deliberate wrong appreciation of the ratio decidendi in an earlier decision which binds a court results in conflicting judgments on the same issue the attendant effect of which is inexorably, a disturbed and distorted development of the law. The decision in *Uzoho V'. N.C.P.* (supra) learned senior counsel for the 1st respondent referred this Court to, remains unavailing because of the untoward attributes inherent in the decision. Furthermore, it is wise to always remember that this Court remains the country's apex Court from which fountain all courts and authorities, by virtue of Section 287 of the 1999 Constitution, necessarily drink. (p. 3741 H)

REPRESENTATION

SC. 73/2014

J. B. Daudu (SAN) with E. C. Ukala (SAN), D. D. Dodo (SAN), Rotimi Jacobs (SAN), Dr. K. U. K. Ekwueme Esq., Chima Okereke Esq., Anozie Obi, L. E. Ogar (Mrs.), Festus Jumbo Esq., Adedayo Adedeji Esq., Patrick Okoh Esq., Ginika Ezeoke (Miss), Yunusa Umar Esq., B. B. Daudu Esq., S. O. Sanny (Miss), H. M. Ibega Esq., C. E. Ogbozor (Miss), C. C. Oyere (Miss), E. Obeya (Miss), A. A. Dayo Esq., Abayomi Okubote, Adetutu Olowu, for the Appellant.

Ayodeji Adedipe for the 1st Respondent

Nnamdi Oragwu Esq; with Eric Otojahi and Ewis Okpoh for the 2nd Respondent.

Seyi Sowemimo with Subomi Osinusi for the 3rd Respondent.

Mrs. A. O. Rhodes-Vivour with Friday O. Abu and Anthony Onwaeze for the 4th Respondent

SC.74/2014

J. B. Daudu (SAN) with E. C. Ukala (SAN), D. D. Dodo (SAN), Rotimi

- Jacobs (SAN), Dr. K. U. K. Ekwueme Esq., Chima Okereke Esq., Anozie Obi, L. E. Ogar (Mrs.), Festus Jumbo Esq., Adedayo Adedede Esq., Patrick Okoh Esq., Ginika Ezeoke (Miss), Yunusa Umar Esq., B. B. Daudu Esq., S. O. Sanny (Miss), H. M. Ibega Esq., C. E. Ogbozor (Miss), C. C. Oyere (Miss), E. Obeya (Miss), A. A. Dayo Esq., Abayomi B Okubote, Adetutu Olowu, for the Appellant
Anthony Idigbe (SAN) with Nnamdi Oragwu and Eric Otojahi for the 1st Respondent
Seyi Sowemimo (SAN) with Subomi Osinusi, Dr. K. U. K. Ekwueme, Abayomi Okubote, Adetutu Olowu (Miss) for the 2nd Respondent
C Ayodeji Adedipe for the 3rd Respondent
A. O. Rhodes-Vivour with Friday O. Abu and Anthony Onwaeze for the 4th Respondent
SC.75/2014
D J. B. Daudu (SAN) with E. C. Ukala (SAN), D. D. Dodo (SAN), Rotimi Jacobs (SAN), Dr. K. U. K. Ekwueme Esq., Chima Okereke Esq., Anozie Obi, L. E. Ogar (Mrs.), Festus Jumbo Esq., Adedayo Adedede Esq., Patrick Okoh Esq., Ginika Ezeoke (Miss), Yunusa Umar Esq., B. B. Daudu Esq., S. O. Sanny (Miss), H. M. Ibega Esq., C. E. Ogbozor E (Miss), C. C. Oyere (Miss), E. Obeya (Miss), A. A. Dayo Esq., Abayomi Okubote, Adetutu Olowu, for the Appellant
Seyi Sowemimo (SAN) with Subomi Osinusi for the 1st Respondent
Nnamdi Oragwu with Eric Otojahi and Ewis Okpoh for the 2nd Respondent
F Ayodeji Adedipe for the 3rd Respondent
Mutiu Akinrinmade with Ahmed Oyegbami for the 4th Respondent

CASES REFERRED TO

- G Uhunwangbo v. Okojie (1989) 5 NWLR (pt. 122) 471
Uwazuruike v. A-G Federation (2007) 8 NWLR (pt. 103) 1
U.A.C. v. Mcfoy (1962) AC 154
Emeakonyi v. COP (2004) 4 NWLR (pt. 862) 158
Ebe v. COP (2008) 4 NWLR (pt. 1076) 189
H Ikpassa v. Bendel State (1981) NSCC 200
Nwite v. State (2013) 17 NWLR (pt. 1382) 157
Nnakwe v. State (2013) 18 NWLR (pt. 1385)
Tinubu v. I.M.B. Securities Plc (2001) 16 NWLR (pt. 740) 670
Emeshie v. Abiose (1991) 2 NWLR (pt. 172) 192

Consotium MC v. NEPA (1992) 6 NWLR (pt. 246) 132
 Nalsa & Team Associates v. NNPC (1991) 8 NWLR (pt. 212) 652
 Madukolu v. Nkemdilim (1962) 1 ALL NLR 7
 Sken-Consult (Nig) Ltd. v. Ukey (1981) 1 SC 6
 Ajao v. Alao (1986) LPELR-285 (SC)

B

STATUTES & RULES REFERRED TO

Criminal Code Law of Lagos State, s. 390
 Constitution of the Federal Republic of Nigeria 1999, ss. 36, 233, 251, 272, 287
 Evidence Act 2011, s. 122(2)(a)
 Federal High Court Act, s. 7
 Supreme Court Practice Direction 2013, O. 9 r. 3(1)

C

LEAD JUDGMENT BY MUHAMMAD JSC

D

This is an appeal against the judgment of the Court of Appeal, Lagos State Division, delivered on the 21st of November 2013 allowing 1st respondent's appeal against the decision of the Lagos State High Court. The latter had overruled the preliminary objections of the respondents challenging its jurisdiction to try them for the offence of stealing by conversion under Section 390 of the Criminal Code Law of Lagos State. On allowing the appeal, the Court of Appeal struck out the charges preferred against the respondents at the Lagos State High Court, hereinafter referred to as the trial court. Aggrieved by the decision of the Court of Appeal, hereinafter referred to as the lower court, the appellant has appealed to this Court on a Notice containing ten grounds. The summary of the facts that brought about the appeal is hereinunder offered.

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A petition to the Economic and Financial Crimes Commission, (EFCC), by the Central Bank hinging on financial misappropriation and false misrepresentation of financial records by the respondents during their tenure on the management of the Finbank Plc, where the 1st respondent was the Managing Director with the 2nd – 4th respondents being Executive Directors, led to an investigation. Chiefly, the commission found out in the course of the investigation that the respondents had allegedly incorporated seven Pseudo Companies and at various occasions transferred funds from the Finbank Plc to the fake companies through two separate stock

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broker companies.

In one breath, it was discovered that funds of the bank in excess of N20 billion had been transferred through Springboard Trust & Investment Limited ostensibly as loans to the seven fake companies even though the companies neither maintained any accounts with the bank nor applied for any such loans.

The commission further discovered that over 18 billion naira had illegally been transferred to another Stock broker company, Integrated Trust Investment Company Limited, which sum was utilized by the latter to acquire several units of shares of the Finbank Plc in the names of the seven Pseudo Companies incorporated by the respondents.

The transaction in respect of the various sums converted through Integrated Trust Investment Limited forms the basis of the amended charge No. FHC/L/383C/2009 preferred against the respondents at the Lagos Division of the Federal High Court. The transaction relating to the funds allegedly stolen through Springboard Trust and Investment Limited, on the other hand, constitutes the basis of the information filed against the respondents at the trial court.

To prosecute the charges preferred against the respondents at the Lagos State High Court, the Honourable Attorney General of the Federation and the Chairman of the Economic and Financial Crimes Commission (EFCC) rely, inter-alia, on a fiat granted to them by the Hon. Attorney General of Lagos State.

On their arraignment, the respondents filed preliminary objections urging the trial court to strike out and/or quash the information preferred against them as same is incompetent and an abuse of the process of the court as well. The prosecution opposed the objections. In a considered composite ruling delivered on 24th May 2011, the trial court dismissed the preliminary objections which were jointly heard.

Dissatisfied with the ruling, the 1st respondent herein appealed to the lower court which, in its judgment delivered on 21st November 2013, allowed the appeal. The instant appeal is against the said judgment of the lower court.

The first respondent, Okey Nwosu, had filed and served a Notice of preliminary objection challenging the competence of appellant's Notice of Appeal filed on 5th December 2013 as well as its brief of

argument. The preliminary objection is founded inter-alia on the grounds that the Notice of Appeal, not having been signed by the appellant, is defective; that the appeal is being prosecuted by a private prosecutor on the basis of a defective and inadequate fiat and that appellant's brief cannot arise from a fundamentally defective Notice of Appeal and incompetent fiat. B

In arguing the objection in 1st respondent's brief and by the submissions in amplification of same, Chief Anthony Idigbe, SAN, submits that by Order 9 rule 3(1) of the rules of this Court it is mandatory that the appellant signs the Notice of Appeal to this Court himself. The Notice of appeal that has not been so signed being fundamentally defective robs this Court of its jurisdiction to hear and determine the appeal. Citing *Leaders & Company Ltd and Another V. Musa Bamaïyi* (2010) LPELR-1771 (SC), *Uhunwangbo V. Okojie* (1989) 5 NWLR (Pt 122) 471, *Uwazuruike V. A-G Federation* (2007) D 8 NWLR (Pt 103) 1 and *U.A.C V. Mcfoy* (1962) AC 154 at 60, learned senior counsel urges that we so hold.

The Notice of Appeal, it is further contended, is signed by a private legal Practitioner instead of the Attorney-General of the Federation or even an officer of the Economic and Financial Crimes Commission. The private legal practitioner, contends learned senior counsel, purports to sign the Notice of Appeal on .the basis of the blank fiat issued by the Attorney-General of Lagos State in 2004 to prosecute the respondents. The fiat so issued for indefinite purpose and time cannot provide the basis of prosecuting the instant appeal. Relying on the decisions of this Court in *Emeakonyi V. COP* (2004) 4 NWLR (Pt 862) 158 at 178 - 179 and *Ebe V. COP* (2008) 4 NWLR (Pt 1076) 189 at 206 and *U.A.C. V. Mcfoy* (supra), learned senior counsel for the 1st respondent submits that the fiat had lapsed after the conclusion of the case commenced at the trial court in 2010. The appeal not having been commenced by a fresh fiat, the Notice of Appeal and the appellant's brief all being defective should be discontinued. F

The appeal, learned senior counsel further contends, is filed H outside the fifteen days provided for filing under the Supreme Court (Criminal Appeals) Practice Directions 2013 and without time having been extended for the appellant to do so. The appeal, for that reason, it is submitted, remains incompetent.

The record of appeal transmitted to this Court, learned senior counsel finally submits, is in respect of the decision of the lower court in appeal No. CA/601/2013. Yet appellant's brief filed and served on the 1st respondent, it is contended, relates to the lower court's decision in respect of appeal No. CA/625/2013. As the necessary materials for the determination of the appeal are not before this Court, it is urged, the Notice of Appeal and the appellant's brief should be ignored.

Responding, Chief J.B. Daudu SAN submits that the appellant in the instant appeal not being a natural person cannot personally sign its Notice of Appeal. By Order 9 rule 3(1) of the rules of this Court, learned senior counsel contends, an appeal by an unnatural person or body corporate is to be as prescribed in form 24 contained in the first schedule to the rules which clearly shows that the appeal may be signed by the counsel who representing the appellant. The Notice of the instant appeal having been so signed, it is incorrect to insist that the Notice of Appeal is incompetent. The decision of this Court in *Uwazuruike V. A-G Federation*, it is submitted, does not avail the respondent. Instead, the more appropriate decisions of this Court in *Ikpasa V. Bendel State* (1981) NSCC 200 and *Nwite V. State* (2013) 17 NWLR (Pt 1382) 157 at 163, learned senior counsel submits, rule this case.

Also, learned senior counsel for the appellant's submits, the fiat issued the appellant's counsel by the Federal Attorney-General and the EFCC is not, by its tenor, restricted to the prosecution of the respondents at the trial court alone. The life of the fiat extends to the conduct of the instant appeal as well. A fresh fiat is not required in order to prosecute the appeal. Learned senior counsel relies on *Nnakwe V. State* (2013) 18 NWLR (Pt 1385), *Ebe V. COP* (2000) 4 NWLR (Pt 1076) 189 at 206 and *Tinubu V. I.M.B. Securities Plc* (2001) 16 NWLR (Pt 740) 670 at 707.

The further grounds of 1st respondent's objections as manifested at paragraphs 3.8 - 3.16 of the latter's brief, it is contended, instead of attacking the grounds in appellant's Notice of Appeal challenge the ruling of the trial court in respect of the various issues raised before and were determined by that court. 1st respondent who has neither appealed nor cross appealed against the lower court's judgment cannot resurrect and introduce the issues here. His role is to

defend the lower court's decision. Relying on *Asogwa V. PDP* (2013) 7 NWLR (Pt 1353) 207 at 271 learned appellant's senior counsel maintains that an objection which surreptitiously seek to reintroduce the issues raised at the trial court must be discountenanced.

The instant appeal, it is further contended, does not fall within the contemplation of the Supreme Court's Practice Directions of 2013 as the 1st respondent seem to assert. Under rule 8 of the said Practice Directions, it is argued, the Appeal Certification Committee must certify the appeal as having been filed outside the time the Practice Directions provides to enable 1st respondent raise the issue. The Committee, learned senior counsel submits, has not been constituted as no notice to that effect has yet been issued. The record of the instant appeal, it is submitted, was compiled and transmitted by the Registrar of the lower court to the Supreme Court. The sin of the Registrar, on the authority of *Duke V. Akpabiyo LG* (2005) 19 NWLR (Pt 959) 130 at 150 - 151, *Long-John V. Blakk* (1998) 6 NWLR (Pt 555) 524, it is submitted, should not be visited on the appellant.

Concluding, it is submitted that the issues the appeal raises and the clear intention the appellant has shown to prosecute the appeal renders 1st respondent's objections uncalled for. Courts, it is argued, have shifted away from the narrow technical approach that characterized some of their earlier decisions. The justice of the matter here, it is submitted, requires that the appellant is heard more so when the 1st respondent has not shown what injustice he would suffer if the appeal is heard. 1st respondent who is guilty of delay cannot, in equity, be heard to complain. Further citing *Emeshie V. Abiose* (1991) 2 NWLR (Pt 172) 192 at 200, *Consotium MC V. NEPA* (1992) 6 NWLR (Pt 246) 132 and *Nalsa & Team Associates V. NNPC* (1991) 8 NWLR (Pt 212) 652, learned senior counsel urges that 1st respondent's objection be overruled.

Now, 1st respondent's objection against this Court's exercise of its jurisdiction raises issues touching on the competence of the court to entertain the instant appeal. It is well settled that a court is competent where all the conditions for the exercise of its jurisdiction are satisfied. The court on the authorities is competent where:-

(a) Its statutory composition is properly constituted as regards numbers and qualification.

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

(c) The matter before the court is initiated by due process of law and upon the fulfillment of any condition precedent to the exercise of jurisdiction. See *Madukolu V. Nkemdilim B* (1962) 1 ALL NLR 7 at 94, *Sken-Consult (Nig) Ltd & ors V. Ukey* (1981) 1 SC 6 and *Ojo Ajao & or V. Opoola Alao & ors* (1986) LPELR-285 (SC).

Learned senior counsel for the 1st respondent contends that since the Notice of Appeal herein has not been signed by the appellant itself, the appeal is incompetent and the court, because of the defect, cannot assume and exercise jurisdiction over the appeal; that since the appeal is not being prosecuted on the basis of a fresh fiat, separate from the one by virtue of which the information was filed against the respondents at the trial court, the appeal is incompetent; that since the information filed against the respondents at the trial court is incompetent, this appeal cannot arise from that which is incompetent and that since the correct record of the appeal has not been transmitted to this Court and, if it has, the transmission stands in contravention of the Supreme Court's Practice Directions 2013 the appeal cannot be founded on the invalid record.

By these submissions has the instant appeal been shown either not to have been initiated by due process of law or upon the fulfillment of any condition precedent to the exercise of jurisdiction by this court? Or still, is the subject matter of the appeal not within the jurisdiction of this Court? None of 1st respondent's submissions begrudges the statutory composition of the court or the qualification of any of the justices.

Certainly, a defect in the competence of the court as raised in 1st respondent's objections bars the court from proceeding further for, in the absence of necessary jurisdiction, no matter how well considered the court's purported resolution of the appeal is, it will be a nullity. See *Petrojessica Enterprises Ltd & anor V. Leventis Technical Company Ltd* (1992) LPELR-2915 (SC) and *Osadebay V. A-G Bendel State* (1991) 1 NWLR (Pt 169) 525.

Now, this Court, parties herein must be reminded, derives its jurisdiction as an appellate court to hear and deter-

mine appeals from the Court of Appeal to the exclusion of any other court from Section 233 of the 1999 Constitution as amended. The jurisdiction is exercisable only in respect of “decisions” of the Court of Appeal. A party to the “decision” or interested in it is entitled to invoke the court’s jurisdiction as conferred which jurisdiction is to “be exercised in accordance with any Act of the National Assembly and the rules of court for the time being in force regulating the powers, practice and procedure of the court.” It draws from the content of the enabling provision, therefore, that this Court can only hear and resolve a matter on appeal from the lower court on an issue over which the court has reached a decision. See Kalu V. Odili (1992) 5 NWLR (Pt 240) 130 at 140 and Francis Adesegun Katto V. Central Bank of Nigeria (1999) LPELR- 1677 (SC).

Again, the Supreme Court Rules constitute a mirror of constitutional intention and have the same force as the Constitution itself. The undoubted principle is that the rules must prima facie be obeyed. Any non-compliance with the rules, unless the lapse is explained or not fundamental, may disentitle the appellant of the court’s indulgence. See Williams V. Hope Rising Voluntary Funds Society (1982) 1 ALL NLR (Pt 1) at 5 and Bank of Baroda V. Mercantile Bank Ltd (1987) 3 NWLR (Pt 60) 233 at 239.

Chief J. B. Daudu SAN insists, and rightly too, that appellant’s grudges as contained in all the grounds in its Notice of Appeal filed on 5th December 2013 are wholly and completely against the lower court’s judgment delivered on 21st November 2013. These are complaints the appellant, it is contended, by virtue of S. 233 of the 1999 Constitution as amended, may raise and the court has the undoubted jurisdiction to hear and determine. 1st respondent’s objection asserting incompetence on the part of the court to proceed on appellant’s legitimate grievances, further submits learned senior counsel, is totally off the cuff. Besides, none of the issues the appellant raises stands in any fundamental breach of any law or this Court’s rules of practice. In particular, Chief Daudu further submits, the arguments in paragraphs 3.8 - 3.16 of pages 8 - 11 of the 1st respondent’s brief which dwell on the trial court’s rather than the lower court’s judgment appealed against and which findings are not the subject matter

of appellant's complaints in the instant appeal, being of no moment, must be ignored. These are very profound submissions indeed.

It is settled law that for grounds of appeal to be valid and competent, they must be related to the decision being appealed against and should constitute a challenge to the ratio of the decision on appeal. Thus where a ground of appeal as couched does not arise from the judgment and purports to raise an issue not decided by the judgment appealed against, both the ground and the issue it purports to raise are incompetent and liable to be struck out. It is equally trite that for issues for the determination of an appeal to be competent, they must be formulated from the grounds of appeal. The position, therefore, is that an incompetent ground of appeal cannot give birth to a competent issue and an issue distilled from a competent ground cannot be declared incompetent. See CCB Plc V. Ekperi (2007) LPELR - 876 (SC), (2007) 3 NWLR (Pt 1022) 493 and Akpan V. Bob (2010) 17 NWLR (Pt 1223) 421.

It is clear from the record of this appeal that the issue in controversy between the parties at the trial court, following the preliminary objections of the respondents, is whether the information taken out on the 29th March 2011 against the respondents for state offences under Section 390 (7) of the Lagos State Criminal Code Law, initiated by the Attorney General of the Federation and the EFCC, is competent. The parties joined issues on the competence or otherwise of the information. At the lower court, 1st respondent's Notice of Appeal against the trial court's ruling spans pages 3691 – 3751 of the record. The four issues for the determination of the appeal distilled from the grounds of the appeal are at pages 3693 - 3694 of the record.

The crucial findings of the lower court leading to its final determination of the appeal before it are at pages 3837 - 3838. The court at page 3839 - 3841 concluded that the trial court lacked jurisdiction over the subject matter of the appeal before it as the law has made jurisdiction over the offences against the Respondents exclusive to the Federal High Court. The court also declined deciding the remaining two issues set out for the determination of the appeal as same had become academic or hypothetical.

A dispassionate examination of the grounds of the in-

stant appeal, see pages 3847 to 3860 of the record of appeal, and issues distilled from the grounds, see pages 5 - 6 of the appellant's brief, undoubtedly reveals that both relate to the judgment of the lower court synopsis of which has earlier been rendered in this judgment. I am of the firm and considered view that the entire grounds of appeal and the issues predicated on them are a direct and unalloyed attack on the judgment of the lower court appealed against. On the authorities, therefore, both the grounds and the issues are competent and I am unable to hold that they are otherwise. Those aspects of 1st respondent's objection which ascribe to the grounds of appeal and appellant's issues for the determination of the appeal attributes not manifest in them are not only misconceived but uncharitable. The 1st respondent, having neither filed a cross appeal nor a respondent's notice lacks the locus of raising issues not traceable to the extant Notice of Appeal and appellant's issues for determination which have necessarily drawn from the grounds of appeal. Addedly, neither the appellant nor the 1st respondent, learned senior appellant's counsel is correct, is allowed by law to agitate in this Court issues determined at the trial court by way of an appeal, asserting same to be a challenge to the jurisdiction of this Court or in response to such purported objection. See *Oguma Associated Companies Nig Ltd V. I.B.W.A. Ltd* (1988) 1 NWLR (Pt 73) 658 *Nzekwu V. Nzekwu* (1989) 2 NWLR (Pt 104) 373, *Eliochin (Nig) Ltd V. Mbadiwe* (1986) 1 NWLR (Pt. 14) 47 and *Adio & anor V. State* (1986) NSCC (Vol. 17 Pt 1) 525. These decisions remain binding on this court. **In further appreciating arguments of both counsel in relation to 1st respondent's preliminary objection, we must readily imbibe the principle that cases are authorities for what they decided and they bind courts in cases subsequently put for their determination if the facts and the law in these subsequent cases are the same or similar as in those earlier decided.** See *Osumanu V. Amadu* (1949) 12 WACA 437, *Atolagbe V. Awuni* (1997) LPELR H - 593 (SC) and *M. Ahmadu Usman V. M. Sidi Umaru* (1992) 7 SCNJ 388. **The decision of this Court in *Uwazurike V. A-G Federation* (supra) being on different facts, certainly, does not avail the 1st respondent. Instead, learned senior counsel to the**

appellant is right, the decisions of this Court in *Ikpasa V. Bendel State* and the more recent case of *Nwite V. State* (supra) being on same or similar facts as in the instant matter do.

Learned senior counsel to the appellant cannot be faulted in his submission, firstly, that Order 9 rule 3(1), breach of which the respondent asserts invalidates the Notice of the instant appeal, has a proviso which, this Court in its determination of whether or not the notice of appeal is in compliance therewith, cannot ignore. The relevant part of sub rule 1 of rule 3 along with the proviso read:- “Rule 3: Applicant to file notice of appeal {Form 24}

(1) ...A notice of appeal shall be in the form prescribed in the First Schedule to these Rules and shall be signed by the appellant:

Provided that, notwithstanding that the provisions therein have not been strictly complied with, the court may, in the interest of justice and for good and sufficient cause shown, entertain an appeal if satisfied that the intending appellant has exhibited a clear intention to appeal to the court against the decision of the court below.” (Underlining mine for emphasis)

The notice prescribed for criminal appeals in Form 24 in the First Schedule to the Rules, learned senior counsel again cannot be faulted, provides that the complainant or its legal representative may sign the notice by stating at its lower part thus:-

“Dated this..... day of..... 2015
Complainant/Defendant (or his legal practitioner)”

In interpreting the foregoing rule, this Court in *Nwite V State* (supra) held that where the person appealing is an unnatural person which phrase includes a body corporate, the proper person to sign the notice of appeal is an officer of the appellant or its legal representative. The further dimension the instant appeal raises regarding the validity of the notice of appeal, given the rule of court under reference, touches on the import of the proviso to the very rule. Chief Daudu’s submission on the effect of the proviso to Order 9 rule 3(1) that notwithstanding the strict non-compliance with the rule, this Court may, in the interest of justice, still entertain the appeal is beyond reproach.

A proviso of necessity serves to cut down or qualify the general provision in the body of the section to which it re-

lates. It would however be contrary to the ordinary operation of a proviso to give it an effect which would cut down the general provision beyond what compliance with the proviso necessarily requires. Thus a proviso only creates exceptions, relax limitations or throws light on any ambiguous aspect of the general enactment. It is certainly not the aim of a proviso to wholly neutralize the general provision it has created exceptions to. See Alli V. Ikusebiala (1985) 1 NWLR (Pt 4) 630 at 641, Ekwunife V. Wayne (W.A) Ltd (1989) 5 NWLR (Pt 122) 422 at 440 - 441, F.I.B. Plc V. Pegasus Trading Office (GMBH) and ors LPELR - 1288 SC and Abasi V. State (1992) LPELR – 20 SC.

In the case at hand, the extant proviso to Order 9 Rule 3(1) empowers this Court to hear the appeal in spite of the fact that the signature on the notice of appeal is not in strict compliance with sub rule 3 of the rule, in the interest of justice, where good and sufficient cause is shown by the intending appellant in manifesting a clear intention to appeal against the decision of the court below. For the fact that appellant's notice of appeal herein has been signed by its legal representative, in clear compliance with the general provision of the rule, 1st respondent's objection in this regard alone must fail. The proviso to the rule makes the objection all the more hopeless. See Nwosu V. Board of Customs & Excise (1988) 1988 LPELR-2131 (SC) and N. D. I. C. V. Okem Enterprise Ltd & anor (2004) 10 NWLR (Pt 880) 107.

1st respondent's other grouse with the instant appeal is to the fact that the appellant requires, but has not obtained, a separate fiat from the one issued in arraigning the respondents at the trial court for the purpose of commencing this appeal. It is further contended that this Court declines jurisdiction because the record of appeal has not been compiled and transmitted within the time the Court's Practice Directions 2013 provides. The two queries are resolvable by drawing from the earlier decisions of this Court on such contentions.

Firstly, the meaning, life-span and the need or otherwise for a donee of a fiat to be granted another fiat for the purpose of appealing against the decision of a trial court in respect of which proceedings a fiat had earlier been issued, have all been addressed in earlier decisions of this Court. I find Chief Daudu's

reliance on these decisions apposite. In Ebe V. C.O.P. My lords Akintan and I.T. Muhammad, JJSC, in their concurring judgments, restated the principle that once issued, the validity of a fiat to prosecute or defend a case continues throughout the case. I.T. Muhammad JSC, appears more elaborate when at page B 217 - 218 of the law report he stated this:-

“On the issue of expiration of fiat raised by the appellant learned counsel, the learned counsel should appreciate the connotation and efficacy of a fiat. Firstly, it is a Latin word which means “let it be done” Technically, therefore, it denotes the grant or conferment of power on another by a person having complete authority on the issue upon which the fiat was given in matters of prosecution, the Attorney-General of a State or of the Federation can give such a fiat.

...The life span of such an authority or fiat may extend to the conclusion of the case in question.

It was certainly wrong of the learned High Court Judge on appeal to have reprised condense to the learned counsel who appeared for the respondent which resulted in the striking out of the appeal before him. His lordship was misled and misdirected, unfortunately.” (Underlining supplied for emphasis).

Inherent in the foregoing is the principle that the life of a fiat depends on its tenor, the very words by virtue of which the donor of the authority conveyed same to enable the donee exercise the powers so delegated. Of course where the donor, by the words he assigned the powers of prosecuting or defending the case to the donee, restricts the life-span of the fiat to particular proceedings, in the trial court for example, then by the clear words constituting the donation, the fiat ceases to function at the end of the trial proceedings. If, however, the fiat was issued in general terms, without limiting the function of the fiat to proceedings in particular court, because an appeal against the decision of a trial court is deemed to be continuation of the trial, the fiat would be deemed operable to the conclusion of the trial including any appeal thereon as well.

In the case at hand, where the fiat is not specifically limited to proceedings at the Lagos State High Court but for the “prosecution” of the respondents for offences of stealing con-

trary to Section 390(7) of the Criminal Code Law of Lagos State, the life of the fiat extends to the instant appeal in continuation of the “prosecution” commenced at the trial court through the lower court and thence to this Court. It is significant to observe that the 1st respondent as appellant at the court below did not object to the competence of the fiat thereat to defend the judgment of the trial court in spite of the fact that a fresh fiat had not been issued to provide the platform. In *Nnakwe V. The State*, (supra) this Court at page 50 held thus:-

“The law is well settled in plethora of authorities that an appeal is a continuation of the action and that no new issues can be raised on appeal. See the case of Chinda v. Amadi (2007) 7 NWLR (Pt. 767) 505 at 517, see also Oredoyin v. Arowolo (1989) 4 NWLR (Pt. 114) 172 at 211.

As rightly submitted by the learned Respondent’s Counsel, the situation at hand did not require the Attorney-General of the Federation to issue a fresh fiat before the law firm of Chief Afe Babalola, SAN & Co. could proceed with the prosecution of the appeals arising from the charge. The learned Appellant’s counsel, with all respect, I hold got it all wrong and was grossly misconceived. The law firm of Chief Afe Babalola, SAN & Co. in other words, needs no fresh fiat to prosecute any appeal arising from the charge.”

The principle remains that every grant of power, by implication includes all such powers as are reasonably incidental thereto and not expressly excluded. See *Attorney-General Ondo State V. Attorney-General, Federation* (2002) 9 NWLR (Pt 772) 227 at 335 and *Nnakwe V. State* (supra) and *Tinubu V. IMB Securities Plc* (2001) 16 NWLR (Pt 740) 670 at 707.

Learned senior counsel for the 1st respondent has relied on *Emeakayi V. COP*, (supra) to suggest that the principle is unavailing to the appellant herein. Quite apart from the fact that the decision is that of the Court of Appeal and, for that reason, does not override the decision of this Court, the decision is not, in any manner, in conflict with the position this Court stated on the principle. Mohammed JCA (as he then was now CJN), stated the law correctly at page 179 of the report that the life-span of a fiat depends on the tenor of the words donating it.

It has also long been settled that a private legal practi-

tioner may be instructed by the Attorney-General to appear in a criminal case on the latter's behalf. See Director of Public Prosecutions V. Akozor (1962) 1 ALL NLR 235 at 237, Nafiu Rabi V. Kano State (1980) 8-11 SC 130, The State V. Salihu Mohammed Gwonto & 4 ors (1983) 3 SC 62 and Tukur V. Govt. of Gongola B (1988) 1 SC 78.

Finally, the preliminary objection must also fail given the facts surrounding the compilation and transmission of the record of the appeal which 1st respondent alleges stand in breach of the relevant provision of the 2013 Practice Directions of this Court. The allegations are not borne out of available facts on record. The right of appeal is constitutionally conferred and except for a fully ascertained fundamental non-compliance with the Rules, this Court is duty bound to preserve and facilitate. D

On the whole, having found no merits in the preliminary objection, I hereby overrule same. The appeal being competent shall be considered duly.

At paragraph 3, pages 5 - 6 of the appellant's brief, the three E issues distilled for the determination of the appeal read:-

"1. Whether the Court of Appeal was right in holding that the offence of stealing preferred against the 1st Respondent relates to the control of capital issues and the High Court of Lagos State had no jurisdiction to entertain same when such an issue was neither raised F nor placed before the Court of Appeal by either of the parties. (Distilled from Ground 1 of the notice of appeal)

2. Whether the learned Justices of the Court of Appeal were right when their Lordships held that the High Court of Lagos State G had no requisite jurisdiction to try the 1st Respondent for the offence of stealing by conversion preferred against him under section 390 (7) of the Criminal Code Law of Lagos State Cap. C17, Laws of Lagos State, 2003. (Distilled from grounds 2, 3, 4, 5, 6 and 7 of the Notice of Appeal)

3. Whether the learned Justices of the Court of Appeal were right in holding that the information preferred against the 1st Respondent at the High Court of Lagos State amounted to subjecting the 1st Respondent to double jeopardy. See ground 8 and 9."

The appeal shall be determined on the basis of the forgoing

issues distilled by the appellant as same have subsumed the not dissimilar issues raised by 1st respondent.

On the 1st issue learned counsel for the appellant argues that the lower court's crucial finding at page 3837 – 3838 of Vol. VIII of the record of appeal which concluded thus:-

“...No doubt, the pith and substance of the complaint of stealing as evidence (sic) by the conversion as instructed, into shares concerns a matter of Capital issue which is item 12 on the Exclusive Legislative List.

By Section 251(i) (s) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the Federal High Court to the exclusion of any other court is conferred with the jurisdiction to entertain matters over which only the National Assembly can legislate”...is not traceable to any of the issues distilled by the 1st respondent and by which parties required the lower court to determine the appeal. Such a decision in respect of an issue on which issues had not been joined by the parties before the court is perverse. The court, it is submitted, is not permitted by law to raise an issue suo motu and proceed to determine same without affording the parties the opportunity of addressing it on the point. Relying on *Usman V. Umaru* (1992) 7 NWLR (Pt 254) 377 at 398, *Irom V. Okemba* (1998) 3 NWLR (Pt 540) 19 at 25, *Eba V. Ogodo* (1984) 4 SC 84 at 112 learned senior counsel urges the resolution of the issue in appellant's favour.

Responding to appellant's arguments on the 1st issue, Chief Anthony Idigbe SAN for the 1st respondent submits that the 1st respondent it was who raised the issue in the course of arguments of the appeals jointly heard by the lower court. Being an issue on jurisdiction, the manner same is raised does not compromise appellant's right to fair hearing. Section 122(2) (a) of the Evidence Act 2011, it is further argued, entitles the lower court to take judicial notice of all laws, enactments and subsidiary legislations. Item 12 in the Exclusive Legislative List of the 1999 Constitution, it is contended, covers the conduct of the respondents jurisdiction in respect of which is donated by, as rightly held by the lower court, Section 251 of the very Constitution, exclusively to the Federal High Court. The Evidence Act in this context provides one of the exceptional situations where a court having raised a matter suo moto can resolve it without input from the

parties. Learned senior counsel to the 1st respondent relies on *Uzoho V. N.C.P.* (2007)10 NWLR (Pt 1042) 320 at 345 - 346, *Saude V. Abdullahi* (1989) 4 NWLR (Pt 116) 387 at 408 and urges that the issue be resolved against the appellant.

Similar arguments have been advanced by the other respondents in their briefs of argument on appellant's first issue. It is needless to reproduce them again.

Replying on points of law, Chief J.B. Daudu SAN submits that the record of appeal belies the submission of 1st respondent's counsel that he raised the fresh issue at the lower court. By whomsoever and howsoever an issue is raised, learned senior counsel further submit, parties to the court's proceedings must be heard before the court's decision on the point.

Item 12 in the Exclusive Legislative List of the 1999 Constitution it is submitted, does not confer any jurisdiction on the Federal High Court. It remains an item which the National Assembly can legislate on and does not affect the residual powers of the State Assembly to legislate on stealing. Reliance has been placed by senior appellant's counsel on the *Queen V. Akwule and Others* 1963 NSCC E 157, *Bronik Motors Ltd V. Wema Bank Ltd* (1983) NSCC 226 at 267 and *Leaders & Co Ltd V. Bamayi* (2010) 18 NWLR (Pt 1225) 329 in his insistence that the lower court's finding which has occasioned miscarriage of justice be set aside.

My lords, whether or not the information preferred against the 1st respondent is triable exclusively by the Federal High Court because the allegations therein relate to capital issue transactions, an item within the legislative competence of the National Assembly, is a matter in respect of which the parties, from the record of appeal, certainly, never joined issues at the lower court. It thus cannot be disputed that the lower court's finding at pages 3837 - 3838 of Vol VIII of the record of appeal, concluding part of which has earlier been reproduced in this judgment, is consequent upon the consideration of an issue raised suo motu by the court and in respect of which parties were not heard. The excuses made by the 1st respondent in defence of the lower court's decision on an issue the court raised suo motu and without giving the parties a hearing remain farfetched. With due deference, I am unable to agree with learned senior counsel for the 1st respondent that Section 122 of the Evidence Act en-

titles the lower court to take judicial notice of the facts which take the information preferred against the respondents out of the trial court's jurisdiction and vests same in the Federal High Court instead.

Section 122(1) and (2) of the Evidence Act, learned senior appellant counsel is right, only empowers the lower court to take judicial Notice of all laws, enactments and any subsidiary legislations under them by the National Assembly or the State House of Assembly as the case may be. The appellant herein is entitled to be heard on whether or not the facts on which it preferred the information against the 1st respondent, have indeed come under any particular legislation passed by the National Assembly in respect of items specified under Section 251(1), the Federal High Court criminal jurisdiction therefrom is said to exclude that of the trial court.

It is further instructive to note at this point that in spite of Section 122 of the Evidence Act, Section 124(3) subsequent to it has imposed a duty on the lower court thus:-

“(3) The court shall give to a party to any proceeding such opportunity to make submission, and to refer to a relevant information, in relation to the acquiring or taking into account of such knowledge, as is necessary to ensure that the party is not unfairly prejudiced.”

The foregoing clear and unambiguous provision certainly prevails over Section 122 of the same Act even if the latter allows, and I have held otherwise, the lower court to take judicial notice of the facts in the information against the 1st respondent at the trial court. See Mrs. F. Bamgboye v. Administrator-General 14 WACA 616 at page 619 and A-G Lagos V. AG Federation (2014) LPELR 22701 (SC). The import of Section 124(3) of the Evidence Act is that where a court in resorting to Section 73 and 122 of the Act takes judicial notice of certain facts without allowing a party affected and makes a finding that is unfairly prejudicial to the party, being perverse, the finding will be set aside on appeal. See Ali V. Alesinloye (2000) 6 NWLR (Pt 660) 177 and Sagay V. Sajere (2000) 15 NWLR (Pt 661) 360.

Most importantly, Section 36(1) of the 1999 Constitution further provides:-

“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
 B ***secure its independence and impartiality.”***

The foregoing has been interpreted in relation to court proceedings to mean that the lower court cannot make any determination on an issue whether raised by a party or the
 C ***court itself suo motu without hearing the party against whom the issue is raised. Learned senior counsel for the 1st Respondent’s submission that the lower court is right in proceeding on the issue on the basis of their oral submission does not put the lower court on a better stead. The principle remains that by whatever means and manner an issue is raised***
 D ***before a court, the Constitution requires that the person against whom the issue is raised must be heard before the determination of the court on the issue one way or another.***
 See Kuti V. Balogun (1978) 1 SC 53, Adegoke V. Adibi (1992) 5
 E NWLR (Pt 242) 410 and Ndiwe V. Okocha (1992) LPELR – 1972 (SC).

In Ojukwu V. Yar’adua (2009) 12 NWLR (Pt 1154) 50 at 176 my learned brother Onnoghen JSC succinctly restated the correct
 F procedure the lower court failed to imbibe thus:-

“In the instant case, the application of section 146(1) of the Electoral Act, 2006 to the preliminary objections was suo motu. It is not the law that a court cannot raise an issue suo motu but that if the issue is necessary for the determination of the matter before it, the
 G ***court must call on the parties or their counsel to address it on same before basing its decision on it. In the instant case, the lower court did not call on counsel for either party to address it on section 146(1) of the Electoral Act, 2006 when the objections were not based on the said section by the objectors. By not inviting counsel for the appellant***
 H ***to address it on that provision of the Act, the lower court denied the appellant of his right to fair hearing when it proceeded to base its decision on that provision thereby rendering the decision liable to be set aside.”***

See also Chief Dr. Felix Amadi & anor V. INEC & 2 ors (2012)

2 SC (Pt 1) and Brig General Mohammed Buba Marwa (RTD) V. Admiral Murtala Nyako (RTD) & 9 ors (2012) 1 SC (Pt III) 44.

It is the further contention of the 1st respondent that the decision in Uzoho V. N.C.P. (supra) justifies the lower court's decision on an issue it raised suo motu and without having heard the parties. I disagree. The decision is incapable of covering the void in the lower court's judgment learned senior counsel for the 1st respondent very well appears to know is impossible to remedy. B

Firstly, the decision in Uzoho V. N.C.P. (supra) is a judgment of the Court of Appeal which clearly cannot override the large body of decisions by this Court on the point. Most importantly, in that case Omoloye JCA who, in the lead judgment attributed to an earlier judgment of the Court of Appeal what it did not say, stands in manifest error. In the earlier judgment of the Court of Appeal Omoloye JCA wrongly drew from, Oke V. Oke (2006) 17 NWLR (Pt 1008) 224, Augie JCA at pages 237 - 238 of the report correctly stated the principle ruling the issue in contention before the court, whether leave must be obtained by a party seeking to raise a fresh issue at the appellate court has any exception, thus:- C

"It is true as the respondent rightly submitted, that an appellant will not be allowed to raise on appeal a point or issue that was not raised or canvassed or argued at the trial court or considered by the trial court, without the leave of this Court. An exception to the principle in issue here is that where the issue of jurisdiction is involved, it can be raised at any time and even on appeal for the first time, and considering the fundamental nature of jurisdiction, it can be raised at the appeal level without any leave, at the instance of the parties or by the court suo motu in order to avoid an exercise in futility see... and Elugbe V. Omokhale (2004) 18 NWLR (Pt 905) 319 where the Supreme Court held: F

'It is generally the law that fresh matters cannot be raised on appeal without leave of the court. But the issue of jurisdiction has always been considered exceptional. Therefore, the Court of Appeal was in error not to have allowed the parties to fully address it on the question of jurisdiction raised before it.' G

The foregoing is a graphic demonstration of the essence of precedents in jurisdictions that observe them. They provide stability and certainty in the development of the law. Seemingly lazy and de-

liberate wrong appreciation of the ratio decidendi in an earlier decision which binds a court results in conflicting judgments on the same issue the attendant effect of which is inexorably, a disturbed and distorted development of the law. The decision in *Uzoho V'. N.C.P.* (supra) learned senior counsel for the 1st respondent referred this Court to, remains unavailing because of the untoward attributes inherent in the decision. Furthermore, it is wise to always remember that this Court remains the country's apex Court from which fountain all courts and authorities, by virtue of Section 287 of the 1999 Constitution, necessarily drink.

The Supreme Court has remained consistent on the necessity on the part of a court that raises an issue suo motu to hear the parties before determining the issue. Agreed that a jurisdictional issue may be raised at any time and requires no leave of court. Once raised even by the court on its own, however, parties must be heard before a determination by the court. Learned senior counsel for the 1st respondent postulates that in the instant case the lower court has correctly raised the issue on behalf of the 1st respondent because the appeal being heard arose from a composite ruling of the trial court. He has missed the point. It is not that the court is bereft of the powers to raise the issue itself. No. What Section 36 of the 1999 Constitution disentitles the court, be it repeated for the upteenth time, is to determine the issue without hearing the parties as it has done here. This court's decisions on the principle are legion. Restating its importance as well as the effect of a court's failure to observe the principle, this Court in *Irom V. Okimba* (supra), cited by learned senior appellant counsel, held as follows:

"Questions pertaining to law or the Constitution are always very important and must be addressed promptly once they surface in any proceedings. They can touch on the very foundation of jurisdiction or illegality and that is the reason why they must be addressed at any time before judgment. Thus, where parties in the ground of appeal and briefs of argument never addressed to a point of law of great importance to the decision or a constitutional issue and it surfaces during or after the appeal has been heard the court has a duty not to ignore that point. Then what are the duties of the court in such a circumstance? The court is to invoke the time honoured principle of hearing the parties on the issue."

As a whole, it is glaring from all that I tried to state above that the lower court's resolution of an issue it raised suo motu and without having heard the appellant stands in breach of the appellant's right under Section 36(1) of the 1999 Constitution. The court is without jurisdiction to proceed on the fruitless exercise. Proceedings resulting from such an exercise being a travesty of justice must be vacated. See Oje v. Babalola (1991) 4 NWLR (Pt 185) 267 and Katto V. Central Bank (1999) 5 SC (Pt 11) 21. ***In resolving the 1st issue in appellant's favour I hereby so order.***

On the 2nd issue, J.B. Daudu SAN for the appellant submits that the charge vis-à-vis the enabling law remain the only two processes a court requires to determine whether or not it has jurisdiction to try a particular offence. Having not limited itself to these two, it is argued, the lower court not surprisingly arrived at the wrong decision. The offence of stealing having been created under a state law, it is only sensible to conclude, contrary to what the lower court has done, that the state law only confers jurisdiction on a state court within the purview of Sections 211 and 272 of the 1999 Constitution and notwithstanding the jurisdiction conferred on the Federal High Court under Section 251(3) of the same Constitution. Indeed, the jurisdiction the Federal High Court enjoys by virtue of Section 251(3) of the Constitution 1999 (as amended) it is submitted, is not exclusive. Learned senior counsel supports his submissions with the decisions in Nyane V. FRN (2010) 7 NWLR (Pt 1193) 344 at 394, Abbas V. COP (1998) 12 NWLR (Pt 577) 308 at 318, and The State V. Williams (1978) NSCC 38 at 44.

The ordinary offence of stealing under Section 390(7) of the Criminal Code Law, Cap 17 Laws of Lagos State 2003, further argues senior counsel, does not relate to any of the offences against control of capital issues specifically provided for by sections 105 - 114 of Investment and Securities Act (No 27) 2007 by virtue of which the Federal High Court can, under Section 251(1) of the 1999 Constitution, may assume jurisdiction. None of the offences under the Act dwells on the offence of stealing, which is undoubtedly a residual matter provided by the State Assembly to be tried by a State Court. Reliance is placed on Akwule & ors V. The Queen (1963) NSCC 157, Eze V FRN (1987) 1 NWLR (Pt 51) 50 and The State V Will-

iams (supra), *The Queen V. Owoh & ors* (supra) and *Balewa V. Doherty* (1963) 1 WLR 949.

Concluding on the issue, learned senior counsel for the appellant submits that the lower court, beyond the charges preferred against the respondents, wrongly relies on appellant's purported admission B that the charges relate to control of capital issue and the report of the team of investigators that money allegedly stolen by the respondents no longer exists in determining in which court jurisdiction rest. These findings of the lower court, it is contended, are erroneous either because they are not borne by the record or because the court has, at C interlocutory stage, determined the issue in controversy between the parties. Relying on *Agip (Nig) Ltd V. Agip Pedro Int'l* (20100 5 NWLR (Pt 1187) 348 at 412, *Ojukwu V. Gov. of Lagos State* (1986) 2 NWLR (Pt 26) 39, *Iweka V. SCOA (Nig) Ltd* (2000) 7 NWLR (Pt 664) 325, D *N.D.I.C. V. SBN Plc* (2003) 1 NWLR (Pt 801) 311, learned senior counsel for appellant urges that the findings be set aside by this Court.

On appellant's 2nd issue, learned senior counsel for the 1st respondent supports the lower court's reference and reliance on all available facts in arriving at the decision ousting the trial court's jurisdiction to proceed on charge No. ID/115C/2011 against the respondents. The lower court's resort to the information and proof of evidence on record in deciding the objections of the respondents against the trial court's assumption of jurisdiction over the charge preferred against them, it is submitted, is in order. Learned senior counsel relies F on *Ikomi v. State* (1986) 3 NWLR (Pt 28) 340 at 346 – 347; *Abacha V. State* (2002) 5 NWLR (Pt 761) 638 and *Adeyemi V. State* (1991) 6 NWLR (Pt 195) 1 at 35 in support of his submissions.

Secondly, several provisions of the Interpretation Act and the G Administration of Criminal Justice Law of Lagos State (ACJL) which curtail multiplicity of actions and forum shopping, it is contended, also justify the decision appealed against. It is beyond doubt that the facts which constitute the information preferred against the respondents at the trial court, submits learned senior counsel, are the very H facts on which basis the charges at the Federal High Court predicate. The lower court, it is argued, can never be wrong in disallowing the abuse of its processes.

Because the facts constituting the information against the respondents fall squarely within the purview of item 12 of the Exclusive

Legislative List, it is submitted, Section 251(3) of the 1999 Constitution which confers exclusive jurisdiction on the Federal High Court has excluded the trial court's jurisdiction. The proof of evidence clearly shows respondents to be officers of the Finbank Plc and arraigned for offences which relate to investment in shares. The words employed in section 251 (1) and (3) and 272(1) of the 1999 Constitution as amended which confer jurisdiction on the Federal High Court and the trial court respectively are unequivocal. By the operation of the two sections, the finding of the lower court is unassailable. Relying on the decisions in *N.D.I.C V. Okem Enterprises Ltd* (2004) 10 NWLR (Pt 880) 107 at 167 and *ANPP V. ROASSD* (supra), learned senior counsel for the 1st respondent submits that appellant's wrong position on the issue be held as such. B

The respondents, it is argued, could not have committed the alleged offence because the money having ceased to be in existence could not be converted. Further relying on *R. V. Setrena* (1951) 13 WACA 132 and *Ifegwu V. Federal Republic of Nigeria* (2001) 13 NWLR (Pt 729) 103 at 131 learned senior counsel urge the resolution of the issue against the appellant. D

1st respondent's foregoing arguments represent the contentions of the other respondents and, in considering them, we shall be addressing similar submissions of these other respondents. E

Appellant's contentions on his 2nd issue, in my considered view, are unassailable. I shall elaborate.

It has long been settled that in determining whether or not it has jurisdiction to try an offence the court will consider the charge vis-à-vis the enabling law. See *Onwudiwe V. FRN* (supra). F

Learned senior counsel for the appellant is right, and here see the decision of this Court in Eze V. Republic, (supra), a case learned senior counsel relies upon, the jurisdiction of a court can only be ousted on the basis of specific provisions and words used in the enabling statute. Section 251 of the 1999 Constitution as amended, Section 7 of the Federal High Court Act which is ipsima verba to it, Section 272 of the Constitution which provide for the jurisdictions of the Federal High Court and the trial court respectively are not self executing. It is true that the sections have spelt out instances when the Federal High Court and the trial G

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court may assume jurisdiction. The provisions however remain dormant until the National Assembly and the Lagos State House of Assembly make laws in their respective areas of competence to create offences by virtue of which the courts would exercise jurisdiction. The 1999 Constitution in Section 4(6) vests legislative powers of a State of the Federation in the House of Assembly of the State. By subsection 7 of the same section, the Assembly is empowered to make laws for the peace, order and good government of the State and any part thereof with respect to any matter not included in the Exclusive Legislative List, any matter included in the concurrent legislative list and any other matter with respect to which it is empowered in accordance with the provision of the Constitution. Thus where as in the instant case the Lagos State House of Assembly competently makes laws creating offences in respect of which courts in the state may assume jurisdiction, the jurisdiction as vested abides.

The jurisdiction of the trial court as spelt out under Section 272 of the 1999 Constitution operates subject to the restriction placed on it by Section 251 (2) and (3) of the same Constitution. The latter subsection vests criminal jurisdiction in the Federal High Court regarding all the items for which the court is conferred exclusive civil jurisdiction under Section 251(1). None of these items pertains simple stealing for which the 1st respondent stands trial at the trial court. He is not being charged for stealing shares. As learned senior counsel for the appellant further observed, and correctly too, the 1st respondent does not stand trial at the Federal High Court for the same offence of stealing preferred against him at the trial court. At the Federal High Court, he faces trial only for those offences for which, by virtue of the relevant items in the Exclusive Legislative List, the National Assembly has passed laws on. The lower court's judgment that the trial court has lost its jurisdiction to the Federal High Court on the basis of the latter's exclusive jurisdiction under Section 251(1) of the 1999 Constitution is therefore, perverse. It is a decision that neither draws from the evidence on record nor from a correct construction of Section 251(3) of the Constitution the lower court held the exclusive jurisdiction of the Federal High Court stems from. The truth is that stealing is a matter which falls

within the legislative competence of the Lagos State House of Assembly and having been legislated upon, the trial court retains the jurisdiction of trying the 1st respondent. See Daboh & anor V. State (1977) NSCC 309 at 321-322.

The fact that the information preferred against the 1st respondent does not pertain any of the items enumerated in Section 251(1), and so not being matters for which the Attorney-General of the Federation may initiate proceedings, explains the donation of the fiat by the Lagos State Attorney-General to the former to prosecute the respondents in respect of offences not recognizable by the Federal High Court. The section of the Lagos State Criminal Code Law which creates the offence of stealing the 1st respondent stands trial for at the trial court is not a legislation with respect to any matter in the Exclusive Legislative List. The lower court's judgment to the contrary, I agree with learned senior counsel to the appellant, is accordingly perverse. This is appellant's strongest wicket which, more than anything else, warrants the resolution of appellant's 2nd issue in his favour. It is so ordered.

On appellant's 3rd issue, reference is made to the lower court's finding at page 3839, Vol. VIII of the record of appeal where the court, learned senior counsel for the appellant contends, wrongly invokes the rule against double jeopardy to oust the jurisdiction of the trial court. Section 39(9) of the 1999 Constitution as amended, it is submitted, specifically provides for the rule. The lower court's decision in this regard which does not show that the respondents had previously been acquitted or convicted by a court of competent jurisdiction for the same offence they are being arraigned at the trial court, it is contended, cannot persist as same is contrary to the constitutional provision. The lower court's wrong decision, it is further argued, cannot be sustained on the finding that the proceedings at the trial court constitute abuse of the process of court. Most certainly, it is submitted, the facts on which the charges against the respondents at the trial court stand manifestly differ from the content of the amended charge No. FHC/L/383C/2009 preferred against the respondents at the Federal High Court. Relying inter-alia on *Edu V COP 14 WACA 163*, *Connelly V. DPP (1964) 2 ALL ELR 401 at 446*, *Sebastian Adigwe V. FRN (2013) 1 BFLR*, learned senior counsel for the appellant urges that the issue be resolved against the respondent.

On the whole, it is prayed that the appeal be allowed.

On the 3rd issue, learned senior counsel for the 1st respondent, having adopted their previous submissions as are relevant, contends that the information against the respondents at the trial court being double jeopardy to them, the lower court's judgment nullifying the proceedings at the trial court is order. The facts and circumstances that led to the charges against the respondents at the Federal High Court are the same as those on which the information at the trial court is founded. The proof of evidence at pages 15 - 876 of Volumes 1&11 of the record of appeal which are on banking and capital market transactions, it is argued, are the same facts from which the information at the trial court is crafted and relabeled under the general offence of stealing. It is the law, argues learned senior counsel for the 1st respondent, that proceedings at the trial court beyond being double jeopardy to respondents, constitutes abuse of process of the trial court in the case. Double jeopardy is not restricted, it is further argued, only to situations where an accused has been convicted and suffers double punishment. The Interpretation Act CAP 123 of the laws of the Federation 2004 in Section 25, Sections 157 - 161 of the Criminal Procedure Act and Sections 153 - 174 of the Administration of Criminal Justice Law of Lagos State, learned senior counsel contends, make multiple criminal proceedings in respect of the same facts unlawful. Learned senior counsel refers inter-alia to Ahmed V. FRN (2009) 13 NWLR (Pt 1159) 536, Connelly V. DPP (1964) 2 ALL ER 401, R V. Jinadu (1948) 12 WACA and Ikomi V. State and prays that this Court resolves the issue against the appellant and save the parties to the matter, including the court, from the abuse and jeopardy the case has generated.

Again, other respondents have proffered similar arguments as 1st respondent's foregoing submissions consideration of which will suffice in the resolution of the issue.

Replying on points of law, learned senior counsel to the appellant submits that by the very decision in Connelly V. D.P.P. (supra) double jeopardy becomes an issue only where a person is subsequently tried for the same offence as he was previously tried both in fact and law and either convicted or acquitted. This, learned senior counsel submits, is not the case presently. He reiterates that the third issue be resolved in appellant's favour and their meritorious appeal

allowed.

Under this issue, abuse of court process, one need to note, appears endlessly defined in our law reports and related sources. It remains, basically, the multiplicity of proceedings between the same parties and in respect of same or similar subject matter taken out by one party with the intention of overreaching or annoying the other party. Its occurrence is not restricted to improper use of the judicial process in litigation. It occurs even where there is proper use of the court processes. Generally, however, abuse of court process lies in the employment of the judicial process to the annoyance and irritation of not only its opponent but against efficient and effective administration of justice. See *Oyegbola v. Esso West African Inc* (1966) 1 ALL NLR 170, *Okorodudu V. Okoro-madu* (1977) 3 SC 21 and *Saraki V. Kotoye* (1992) LPELR – 3016 (SC).

In the case at hand, it appears unreasonable to suggest that the prosecution of the 1st respondent by the appellant at the trial court is aimed at either irritating or annoying him or is a bid by the latter to stall the effective and efficient administration of justice. Certainly 1st respondent is not being prosecuted at the trial court for the very offences he is arraigned at the Federal High Court. The two courts, as earlier demonstrated in this judgment enjoy, in terms of the respective offences before them, mutually exclusive jurisdictions. The one is limited to hearing and determining offences created by the National Assembly in respect of its area of competence while the other is competent to determine only such offences the Lagos House of Assembly, in its area of competence, legislated upon and vests it with jurisdiction. Besides, the offence of stealing as created by the Lagos State House of Assembly, notwithstanding the same or similar facts as constitutes other offences created by the National Assembly, retains its identity as being not only dissimilar but distinctively different. It is wrong in the light of these characteristics for the lower court to hold that the trial court's jurisdiction has abated on the grounds that the proceedings before it against the 1st respondent constitute abuse of the process of that court.

It is the lower court's further finding that the trial court's jurisdiction is excluded on the basis of the double jeopardy the 1st respondent is subjected to as a result of the trial he stands at the trial

court in spite of an earlier arraignment at the Federal High Court. This finding too cannot endure.

I am particularly uncomfortable with the submissions of Chief Idigbe SAN for the 1st respondent that in determining whether or not in the instant case the rule against double jeopardy avails the 1st respondent resort must be made not only to the Constitution but other laws of the country as well. Chief Daudu comes out wiser when he posits that the 1999 Constitution having provided for the rule resort to other laws including the interpretation Act becomes unnecessary. This Court in *Nafiu Rabi V. Kano State* (1980) LPELR - 2936 (SC) has held that much. Indeed the Constitution, being our supreme law and which, on the issue, is clear and unambiguous, must be the only provision to resort to in the determination of whether or not the rule is available to the 1st respondent.

D Section 36(9) of the 1999 Constitution as amended provides:-

“No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.”

It appears to me that in the clear and unambiguous words which make the foregoing, 1st respondent comes under the provision if he establishes the fact of:-

(a) his being tried by any court or tribunal of competent jurisdiction for a criminal offence, and

(b) his having been either convicted or acquitted by the court or tribunal and

(c) his being tried thereafter for the very offence or another with the same ingredients as the offence for which he was previously tried and either convicted or acquitted and

(d) a superior court has not ordered the subsequent trial.

See *Sunday Okoh V. State* (1984) LPELR 2459, *Nigerian Army V. Aminu Kano* (2010) 5 NWLR (Pt 1188) 429 and *Nafiu Rabi V. Kano State* (supra).

The 1st respondent comes under the rule only if he jointly establishes the foregoing four requirements, none of which, from the record, he has so proved. Having failed to establish

that he is being prosecuted for the same or substantially the same offence at the trial court as he is being tried at the Federal High Court, the rule does not avail him. The lower court is wrong to hold otherwise.

In concluding, I reject Chief Idigbe's postulation that the lower court's resort to legislations, including the Interpretation Act, in interpreting Section 36(9) of the Constitution is correct. It is not. Such legislations are only resorted to as aid in construing a provision which constitutive words are unclear and ambiguous. See *Arake V. Egbue* (2003) 17 NWLR (Pt 848) 1, *Adigun V. A-G Oyo State* (No 2) (1987) 1 NWLR (Pt 56) 197. For all these, I resolve appellant's 3rd issue in his favour too.

Accordingly, his meritorious appeal is allowed, and the perverse judgment of the lower court set aside. The decision of the trial court, in consequence, prevails. The case is remitted to the Lagos State Chief Judge for the trial of the 1st respondent to be pursued expeditiously.

APPEALS SC.73/2014 AND SC.75/2014

The judgment in SC. 74/2014 being on the very issues Appeals SC. 73/2014 and SC. 75/2014 agitate, shall be the decision of this Court in the two latter appeals.

Appeals allowed.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead Judgment of my learned brother M.D. MUHAMMAD J.S.C. just delivered. I agree with his reasoning and conclusion that the preliminary objections lack merit and should be dismissed while the appeals are meritorious and ought to be allowed.

The facts relevant for the determination of the appeals have been stated in detail in the lead Judgment making it unnecessary for me to repeat them herein except as may be needed for the point being made.

On the objections, particularly as to the signing of a notice of appeal by counselor legal representative instead of the appellant in person where appellant is not a natural person, Order 9 Rule 3(1) of the Supreme Court Rules provides thus:

“Subject to the provisions of sub-rules(3) of this rule, appeals shall be brought by notice (hereinafter called “the notice of appeal”) to be filed in the Registry of the court below which shall set forth the grounds of appeal and shall state clearly whether the appeal is against some decision of the court below other than conviction or sentence.

B A notice of appeal shall be in the form prescribed in the First Schedule to these Rules and shall be signed by the appellant;

Provided that, notwithstanding that the provisions therein have not been strictly complied with, the court may, in the interest of justice and for good, and sufficient cause shown, entertain an appeal if
C satisfied that the intending appellant has exhibited a clear intention to appeal to the court against the decision of the court below”

Looking at Form 24 referred to in the First Schedule supra, it is clear that it provides that the notice of appeal can be signed by the
 D complainant or its legal practitioner as indicated in the lower part of the said Form 24.

From the above, it is not in doubt that a prosecuting counsel engaged to prosecute a criminal matter on behalf of the Federal Republic of Nigeria, as in the instant case, is competent to initiate or sign
 E a notice of appeal on behalf of the Federal Republic of Nigeria. See IKPASA VS BENDEL STATE (1981) NSCC 200; Nwite Vs State (2013) 17 NWLR (Pt. 1382) 157 at 163.

However, where the intending appellant is a natural person, the notice of appeal has to be signed personally by him as decided by
 F this court in a number of cases including Uwazurike Vs Attorney-General of the Federation (2007) 8 NWLR (Pt. 1035) 1.

On the issue of a fresh fiat at each stage of the prosecution/proceeding of the criminal case, this court has in number of cases
 G including Nnakwe Vs State (2013) 18 I NWLR (Pt. 1385) 1 at 51 - 52 stated the position of the law thus:

“As rightly submitted by the learned respondent’s counsel, the situation at hand did not require the Attorney-General of the Federation to issue a fresh fiat before the law firm of Chief Afe Babalola,
 H *SAN& Co. could proceed with the prosecution of the appeals arising from the charge. The learned appellant’s counsel with all respect, I hold got it all wrong, and was grossly misconceived. This is more so with the present appeal being interlocutory, the main case is therefore still pending at the trial court; hence the extant conclusive notice*

held that the case for which the fiat was issued is still pending and the need for a fresh fiat does not in any circumstance arise. The law firm of Chief Afe Babalola SAN & Co. in other words needs not fresh fiat to prosecute any appeal arising from the charge..." See also the case of Ebe Vs C.O.P (2008) 4 NWLR (Pt. 1076) 187 and Tinubu Vs I.M.B. Securities PLC (2001) 16 NWLR (Pt. 740) 670 at 707. B

On issue No.1 on the merit of the appeal, it is very clear from the record that the lower court raised the issue complained of suo motu and used same to determine the appeal without calling on the parties/counsel to address it thereon. It is now trite law that a Judge is at liberty to raise any issue suo motu but must allow counsel for the parties to address him on the issue before basing his decision in the matter on it. Failure to do so amounts to a breach of the rules of fair hearing constitutionally guaranteed by the provisions of section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended and as decided by this court in a number of cases including Kuti v. Balogun (1878) 1 SC 53; Adegoke v. Adibi (1992) 5 NWLR (Pt. 242) 410; Ogukwu v. Yar'Adua (2009) 12 NWLR (Pt. 1154) 50. C D

It is clear and I hold that the raising of the issue suo motu by the lower court without calling on counsel for the parties to address it thereon before raising its decision on same breached the provisions of the said Section 36(1) of the 1999 Constitution, as amended and rendered the decision reached thereby, liable to be set aside for being null and void. E

On issue 2, it is not in doubt that the respondents are charged with the offence of stealing which offence is created by the Lagos State House of Assembly under the Lagos state Criminal Code Law. It is not an offence created by the National Assembly and within the exclusive legislative list for which the Federal High Court would have had exclusive jurisdiction under the provisions of Section 251 (3) of the 1999 Constitution as amended and as argued by learned counsel for the respondents. In the circumstances, it is clear, and I hereby hold, that the State High Court has the requisite vires/jurisdiction to hear and determine the charge as filed. F G H

Secondly, the offence being a creation of a State House of Assembly, it follows without fear of contradiction that the Attorney-General of the State concerned has the power to issue a fiat to a private prosecutor to prosecute the offence in the State High Court,

as in the instant case. The offence charged has nothing whatsoever to do with the operations of the capital market whatsoever.

On issue 3 which deals with double jeopardy the answer is clearly within the provisions of Section 36(9) of the 1999 Constitution as amended, which provides as follows:

B *“No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence serve upon the order of a superior Court”*

C In the instant case, there is no evidence of any trial or previous trial of the respondents and for which they were convicted or acquitted. The record rather show that the respondents are standing trial in the Lagos State High Court and Federal High Court, Lagos Division D for different offences, which trials are yet to be concluded. In the circumstance, it is clearly premature to raise the issue of double jeopardy as the facts fall far too short of what is required for the application of the principle.

E It is for the above reasons and the more detailed reasons given in the lead Judgment of my learned brother MUHAMMAD JSC, that I hold that the appeals have merit and should be allowed. In conclusion, I hold that appeal No: (1) *S.C./73/2014* is meritorious and is consequently allowed by me (2) *S.C./74/2014* be and is hereby allowed, and, (3) *S.C./75/2014* is allowed for being meritorious.

F Appeals allowed.

RHODES-VIVOUR JSC

G I have had the advantage of a preview of the leading judgment of my learned brother Muhammad, JSC. I am in agreement with his reasoning and conclusions that the appeal be allowed, that the decision of the Court of Appeal is set aside and the judgment of the High Court restored. I agree with his lordship that the leading H judgment shall be the decision of this court in Appeal Nos. SC.73/2014 and SC.75/2014.

NGWUTA JSC

I had the opportunity of reading in draft the lead judgment delivered by my learned brother, M. D. Muhammad, JSC. I agree entirely with the exhaustive reasoning leading to the inevitable conclusion that the appeal is meritorious and ought to be allowed.

Though his Lordship dealt meticulously with all the relevant issues canvassed by the parties I would like to chip in a few words. B

The substance of the information filed by the appellant before the High Court of Lagos State is stealing of specified funds by conversion. The respondents were charged under Section 390 (7) of the Criminal Code Cap 17 Laws of Lagos State. In my view, conversion in the context of the information filed against the respondents is a mode of stealing. Neither the method the respondents employed in stealing the fund nor what each did with the stolen fund can change the character of the offence or transform it from an offence against the law of Lagos State to a Federal indictment. C

The offence is not within the contemplation of Sections 105-114 of the Investment and Securities Act No. 27 of 2007. It is not a matter under the exclusive jurisdiction of the Federal High Court under Section 251 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The objection to the jurisdiction of the trial Court is not sustainable. E

The validity of the information signed by the learned Senior Counsel prosecuting the case with the fiat issued to him by the Attorney-General of Lagos State is intricately tied to the question whether or not the fiat is spent at the conclusion of the trial, and does not cover appeals arising from the decision of the trial Court. F

Appeal is not the inception of a new case. It is a continuation of the original case. It is an invitation to a higher Court to review the decision of a lower Court to find out whether, on the proper consideration of the facts placed before it and the applicable law the Court arrived at a correct decision. See *Oredatori v. Arowolo* (1989) 4 NWLR (Pt. 114) 172 at 211. G

There is therefore an unbroken link between the case at the trial Court and the last appeal arising therefrom. The word “*fiat*” originates from the Latin expression “*Let it be done*”. In view of the unbroken connection between the case at trial Court and the last appeal from the decision on it a fiat to prosecute a case is not spent on H

the conclusion of the case at the trial Court.

It is valid for the duration of the trial and the appeal even to the last appeal at the apex Court. See *Egbe v. COP* (2008) All FWLR (Pt. 406) 1849 SC at 1860 paras F-G; *COP v. Toban* (2009) All FWLR (Pt. 483) 1302 at 1321 paras G-H.

B Since the life span of a fiat to prosecute a case extends to appeals arising from the case at the trial Court the information signed by the Senior Counsel prosecuting at the trial Court was signed on the authority of the fiat and *ipso facto* the authority of the Attorney-General who signed the fiat.

C Order 9 Rule 3 of the Supreme Court Rules provides, *inter alia*, that “*A notice of Appeal shall be in the form prescribed by the First Schedule to the Rules and shall be signed by the appellant*”. Order 1 of the Rules (*supra*) defines appellant thus:

D “*Appellant*” means a party appealing from a decision or applying for leave on behalf thereof and includes the legal practitioner retained or assigned to represent him in the proceedings before the Court

E The information filed against the respondent cannot be said to be incompetent on the sole ground that it was signed by the legal practitioner to whom the Attorney-General had given a fiat to prosecute the case. The information was signed by “The legal practitioner retained or assigned to represent him” within the intendment of the rule and is deemed to have been signed by the appellant.

F For the above and the fuller reasons in the lead judgment, I also allow the appeal. I adopt the consequential orders made in the lead judgment for trial of the 1st respondent as well as the order relating to appeals Nos. SC.73/2014 and SC.75/2014.

G _____

OGUNBIYI JSC

I read in draft the lead judgment just delivered by my learned brother Dattijo Muhammad, JSC. On the one hand, I agree that the preliminary objections raised are overruled as lacking in merit and are as a consequence hereby dismissed. On the other hand and on the merit of the appeals however, same are meritorious and allowed.

The appeals are against the decision of the Court of Appeal Lagos wherein the lower court allowed the appeal of the 1st Respon-

dent against the decision of the High Court of Lagos and held that the court had no requisite jurisdiction to try the 1st Respondent for offence of stealing by conversion, under Section 390 of the Criminal Code Law of Lagos State on the ground that the funds allegedly stolen had been used to purchase shares and by reason of that usage, the matter was in the realm of control of capital issues, listed as item No. 12 in the Exclusive Legislative list and in respect of which only the Federal High Court is vested with jurisdiction. B

The 1st - 4th Respondents were all Executive Directors of Fin Bank Plc. EFCC received a petition from Central Bank of Nigeria against them. The petition bordered on financial misappropriation and false misrepresentation of financial records which the Respondents allegedly committed while they were in the management of Fin Bank Plc. C

Charges were preferred against the Respondents at the High Court. D

The 1st Respondent, on 16th May, 2011 filed a notice of preliminary objection praying the trial High Court for an order striking out and/or quashing the information preferred against him on the grounds that the information was incompetent and that same constituted an abuse of court process. E

The trial court dismissed the preliminary objection on 24th May, 2011. On appeal to the Court of Appeal by 1st Respondent/ Appellant, the lower court allowed the appeal and set aside the decision of the trial court which dismissed the preliminary objection filed by the 1st Respondent. The lower court allowed 1st respondent's appeal on the ground that the High Court Lagos State had no jurisdiction to try the respondent for the offence of stealing by conversion and hence the appeal now before us. F

The three issues formulated from the ten grounds of appeal are well spelt out in the lead judgment and I will not reproduce same in this judgment. G

The Court in this appeal is called upon to determine whether, by the combined reading of the provisions of Sections 251 (1) & (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), item 12 of the Exclusive Legislative list contained in schedule 2 to the said 1999 Constitution, section 7(1) (2), (3), (4) and 8(1) of the Federal High Court Act, the High Court of Lagos State is H

divested of the jurisdiction to entertain offences of stealing by conversion and conspiracy merely because the money allegedly stolen was used to buy shares.

The 1st Respondent on the 21/10/2014 filed a notice of preliminary objection challenging the competence of the appeal and B predicated same on three grounds hereunder:-

(a) That the notice of criminal appeal was not signed by the appellant but by a legal practitioner contrary to Order 9 Rule 3 of the Rules of this court.

C (b) That there is the lack of fiat by Private Prosecutor/Legal Practitioner to purportedly lodge the present appeal before this court.

(c) That the appellant/respondent filed its purported and incompetent brief of argument without the leave of the court.

My learned brother has dealt with the preliminary objection D extensively in his leading judgment and I will not over flog the issue but adopt his conclusion as mine, and hereby also dismiss the objection in the same vein.

On the merit of the appeal, the lower court ruled that since the funds allegedly stolen had been used to purchase shares, the High E Court of Lagos State had no jurisdiction to try the 1st respondent for the offence of stealing because the matter had fallen into the realm of control of capital issues, listed as item No. 12 in the Exclusive Legislative list, which the Federal High Court only has the jurisdiction to entertain. It is intriguing however that none of the issues formulated F by the 1st respondent herein as appellant before the Court of Appeal or the appellant herein as the 1st respondent before the lower court bordered on the control of capital issue.

For instance, at page 3827 Vol. VIII of the record of appeal, G the Court of Appeal credited arguments to both the 1st respondent and the appellant herein which were not contained in their briefs of argument. As rightly submitted by the appellant's counsel therefore, it would appear that the Court of Appeal had preconceived arguments which it decided to ascribe to parties and which formed the H basis of its decision. The question of control of capital issues was neither submitted upon by the parties nor raised by them. The lower court was in grave error to have made it the basis of its decision. The court below was under a duty to allow parties to have addressed there on the issue raised *suo moto*. The concept of fair hearing is well

entrenched in our Constitutional provision by section 36(1) and any proceeding conducted without strict compliance will be adjudged a nullity and of no effect. Judicial authorities are well founded there on the principle. For instance, in the case of *Usman V. Umaru* (1992) 7 NWLR (Pt 254) 377 at 398, Ogundare JSC had this to say:-

"It has been held time without number by this court that a court must not decide an issue not raised by parties and in respect of which they have not been given an opportunity to address the court."

This court also made a similar pronouncement in the cases of *Iron V. Okimba* (1998) 3 NWLR (Pt 540) 19 at 25 per Belgore, JSC [as he then was] and *Eba V Ogodo* [1984] 4 SC 84 at 112 per Eso, JSC in restating the principle as

"With utmost respect, it should be plain to the Court of Appeal that when an issue is not placed before it, it has no business whatsoever to deal with it. A court of Appeal is not a knight errand looking for skirmishes all about the place."

Whilst it is open for a court to raise an issue *suo motu* in appropriate cases, it is within the Constitutional province of parties to be afforded an opportunity to be heard there on the issue raised.

The lower court was in grave error in holding that the offence of stealing preferred against the 1st respondent relates to the control of capital issues and that the High Court of Lagos State had no jurisdiction to entertain same when such an issue was neither raised nor placed before that Court by either of the parties. The issue is hereby resolved in favour of the appellant.

The 2nd issue is whether the High Court of Lagos State had no requisite jurisdiction to try the 1st respondent for the offence of stealing by conversion preferred against him?

The 1st respondent was not charged for stealing shares but rather for stealing over N20 Billion belonging to Fin Bank Plc. There is evidence that the Respondents moved funds from Fin Bank Plc to another company for the purpose of using same to buy shares in the name of Pseudo Companies. The offence of stealing was completed as soon as the funds were moved and transferred in the circumstances referred to. The fact that the funds were subsequently used to buy shares is totally irrelevant.

In Criminal law and the administration of Criminal justice, the determination of jurisdiction will be taken in the light of the enabling

law setting out the jurisdiction vis-à-vis the charge preferred against the accused. Section 272 of the 1999 Constitution is also relevant. The charge before the court is what determines its jurisdiction.

While section 251(1) of the Constitution confers exclusive jurisdiction in civil matters in respect of items listed as (a) - (s), section B 251(3) does not however confer exclusive jurisdiction on the Federal High Court in Criminal causes and matters listed in subsection (1). By the use of the phrase *“the Federal High Court shall also have and exercise jurisdiction”* can only mean that other courts apart from the C Federal High Court can exercise jurisdiction also in respect of criminal matters relating to matters listed in section 251(1). The phrase *“to the exclusion of any other court”* is omitted deliberately.

It is difficult in the circumstance, to appreciate the reasoning by the Court of Appeal that what the Respondents did with the pro- D ceeds of crime of stealing would divest the court [high court] of its jurisdiction to try the offence of stealing.

In resolving the question as to what confers jurisdiction on a court in a criminal matter, Tobi, JSC had the following to say in Onwudiwe V. FRN (2006) 10 NWLR (pt. 988) 382 at 425:

E *“Let me first take the issue of jurisdiction vehemently canvassed by learned counsel for the appellant. In other words, in order to have jurisdiction, the court must have been satisfied that the offence or crime is directly donated by the jurisdiction conferred on the court in the enabling law. Where the offence or crime is outside enabling F law, the court cannot exercise jurisdiction because it lacks jurisdiction to do so.”*

The lower court in the case at hand, was obliged to consider the nature of the charge preferred against the 1st respondent in de- G termining the question of jurisdiction but it failed to do so. The offence of stealing being alleged against the 1st respondent was created under the law enacted by the Lagos State House of Assembly, the same house could not have conferred jurisdiction on the Federal High Court but only conferred on the High Court of the State.

H The offence of stealing does not fall within items (a) - (s) listed in section 251 of the 1999 Constitution. The control of Capital issue does not also fall within any of the items specifically listed in section 251(1) of the 1999 Constitution. Assuming that the offence of stealing falls within the items listed as (a) - (s) in section 251, that in itself

would not confer exclusive jurisdiction on the Federal High Court to try criminal cases arising from such items. This is in view of section 251(3) and the phrase *“the Federal High Court shall also have and exercise jurisdiction.”*

By section 251(3) the Federal High Court shall also have jurisdiction along with other courts in criminal causes or matters but not an exclusive jurisdiction as was conferred on the Federal High Court in civil matters listed in subsection 1 of s. 251 of 1999 Constitution. B

The Section 251(1)(s) of the said Constitution relied upon by the Court of Appeal is inapplicable in the instant case as it is clear from the provision that the Federal High Court can only exercise Criminal jurisdiction in a matter where such jurisdiction has been specifically conferred upon it by an Act of the National Assembly. The lower court relied on that section but did not refer to any Act of the National Assembly which confers exclusive jurisdiction on the Federal High Court to try the offence of stealing. C
D

As rightly submitted by the appellant therefore, the learned justices of the Court of Appeal were in great error in holding that the High Court of Lagos State had no requisite jurisdiction to try the 1st respondent for the offence of stealing by conversion preferred against him under section 390(7) of the Criminal Code Laws of Lagos State, 2003. I resolve the said issue also in favour of the appellant. E

The 3rd issue is whether the prosecution amounted to subjecting the respondents to double jeopardy and thus constituted an abuse of the court process. F

The concept or rule of double jeopardy is specifically provided for under section 36(9) of the 1999 Constitution which provides thus:-

“No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for an offence having the same ingredients as that offence save upon the order of the superior court.” G

The underlying principle of the foregoing provision is to guide against a situation where an accused would be punished twice for the same offence. It presupposes a situation where an accused would be subjected to double trial for the same offence. There is no suggestion in the instant case that the 1st respondent had been convicted by the Federal High Court. H

In other words, it is on record that hearing is yet to commence in the substantive case which is still at an embryo stage.

As rightly submitted by the appellant's counsel, it has been made clear that the transactions forming the basis of the charges before the Federal High Court are different from those forming the basis of the charges before the High Court of Lagos State. For any defendant or accused person to rely on the principle of double jeopardy, he must show that he has been previously convicted or acquitted in respect of the same offence with which he is charged in the subsequent case. In the instant case, the only contention by the 1st Respondent before the court of Appeal was that he was being prosecuted at the Federal High Court. This cannot be a basis for invoking a plea of double jeopardy. In the case of *Chief of Air Staff v. Iyen* (2005) 6 NWLR (Pt. 922) 496 at 535. Edozie JSC said that:-

"according to Section 36(9) of the 1999 Constitution, it is a conviction or acquittal by a court of competent jurisdiction that can found a plea of autre fois convict or autre fois acquit."

As rightly submitted by the appellant's counsel, the concept of double jeopardy is totally inapplicable to the facts of the case leading to the instant appeal and the Court of Appeal was in grave error to have relied on same.

In the result, the learned Justices of the lower court were therefore wrong in holding that the information preferred against the 1st respondent at the High Court of Lagos State amounted to subjecting him to double jeopardy.

This issue is also resolved in favour of the appellant.

With the few words of mine and more particularly on the fuller reasoning given by my learned brother M. D Muhammad, JSC in his lead judgment, I also hold the view that the appeals have merit.

In the result, I therefore set aside the judgment of the lower court while that of the trial Court is hereby restored. A further order is also made in terms of the lead judgment that the case should be remitted to the Lagos State Chief Judge for the trial of the 1st respondent forthwith.

In conclusion, appeals Nos. SC.73/2014; SC.74/2014 and SC. 75/2014 are all found to be meritorious and succeed.

They are therefore allowed.

NWEZE JSC

My Lord, Dattijo Muhammad, JSC, obliged me with the draft of the leading judgment just delivered now.

This contribution shall only be circumscribed to the question agitated in issue three, namely:

Whether the learned Justices of the Court of Appeal were right in holding that the information preferred against the first respondent at the High Court of Lagos State amounted to subjecting the first respondent to double jeopardy. B

From an intimate reading of the record of appeal and the first respondent's brief, it would seem obvious that both the lower court and the distinguished senior counsel for the first respondent ranked the two concepts of "abuse of process" and "double jeopardy" equi-Cpollently. Senior counsel for the appellant disagreed with these views.

My Lords, speaking for this court in *Federal Republic of Nigeria v Dairo and Ors* (2015).6 NWLR (Pt 162) 182 I explained that:

...the concept of abuse of process applies only to proceedings which are bereft of good faith; which are not only frivolous, but also vexations or oppressive; which, almost always, have an element of malice in them, having been commenced mala fide, to irritate or annoy the opponent, Okafor v AG Anambra (1991) 6 NWLR (Pt. 200) 659 and the efficient and effective administration of justice, Ekpuk v Okom (2001) 44 W.R.N 85; Saraki v Kotoye (1992) 9 NWLR (Pt 264) 156, 188.

They include instances where there are a multiplicity of actions on the same subject matter against the same opponent on the same issue; Okorodudu v Okoromadu (1977) 3 SC 21; NV Scheep v MV. "S. Araz" (2000) 15 NWLR (Pt. 691) 622. Such abuse lies more in the multiplicity of the actions rather than in the exercise of the right, FRN v Abiola (1997) 2 NWLR (Pt 488) 44; Owonikoko v Arowosanye (1997) 10 NWLR (Pt 523) 61; Morgan v W. A. A & Eng. Co. Ltd (1971) 1 NWLR 219. F

Contrariwise, the ancient principle, expressed in the terse Latin maxim, *nemo debet bis vexari, si constat curiae quod sit pro una et eadem causa*, meaning that no man ought to be twice vexed, if it is proved to the court that it is for one and the same cause, runs through the entire gamut of our legal system, whether it be in civil or criminal matters, *Mills v Cooper* (1967) 2 All ER 100, 105; *Aro v Fabolude* G

(1983) ANLR 1.

It, actually, forms the foundation of the plea of *res judicata* in civil cases and the pleas of *autrefois convict* and *autrefois acquit* in criminal cases, *Aro v Fabolude* (supra). As Lord Diplock explained in *Mills v Cooper* (1967) 2 ALL ER 100, 105, the general rule of estoppel applied to criminal proceedings “but in a form modified by the distinctive character of criminal as compared with civil litigation. Here it takes the form of the rule against double jeopardy, of which the simplest application is to be found in the pleas of *autrefois convict* and *autrefois acquit*.”

The said plea of *autrefois*, like most of the old doctrines in the English Criminal Law of procedure and evidence, was evolved by the English Judges in the exercise of their power of vouchsafing to the accused person the protection to which he was entitled against double peril in the criminal trial process.

Grounded in the maxim that a man shall not be brought into danger of this life for the same offence more than once, Hawkins’ *Pleas of the Crown*, 8th ed., vol. 2, at 515, cited in *Reg. v Thomas (Keith)* (1985) QB 604; *Reg. V. King* (1987) 1 Q.B. 214, 218, the principle was that no man should be placed in peril of legal penalties more than once on the same accusation, *Reg. v Miles* (1890) 24 Q. B. D. 423, 438.

Thus, on the authorities, it is clear that the meaning of “jeopardy” is “real risk of danger of punishment following conviction, *Reg. v Thomas (Keith)* (supra).”

However, in order to support the said plea, it is not necessary that the conviction should have been followed by sentence, *Rex v. Sheridan* (1937) 1 K.B. 223, 229. The explanation is simple: it is the conviction, and not the nature of the sentence, which constitutes the bar, *Reg. v. Miles*, 24 Q. B. D 423, 438, 430-433.

Thus, once a criminal charge has been adjudicated on by a court having jurisdiction to hear and determine it, that adjudication is final and may be pleaded in bar to any subsequent prosecution for the same offence, notwithstanding that no significant punishment resulted from the first conviction. Hawkins’ *Pleas of the Crows* (supra).

Although not necessary for the determination of the instant appeal, I may note, in passing, that whilst its applicability to criminal

proceedings in this country has long been endorsed, per Idigbe JSC in *Nafiu Rabi'u v State* (1980) NSCC 291, there have been judicial reservations about the extent of the application of the American doctrine of “double jeopardy” based on the Fifth Amendment to the US Constitution, to our Nigerian Constitutional practice, per Udoma and Idigbe JJSC in *Nafiu Rabi'u v State* (supra). B

SANUSI JSC

This appeal is against the Judgment of the Court of Appeal, Lagos division (court below) delivered on 21st of November 2013 in which the court below upturned the Ruling of Lagos High Court (the trial court). At the trial court, the respondents were co-accused or codefendants brought separate preliminary objections challenging the competence of the trial court to try them on the offences they were charged with and arraigned before it on the ground that the basis of the charges framed against them related to matters within the realm of capital market issues as listed in Item 12 of the Exclusive Legislative List and in respect of which only the Federal High Court and NOT the State High Court (like “the trial court”) has jurisdiction. C D E

FACTS OF THE CASE

The prosecution now appellant/accused the 1st respondent, the Managing Director of Fin Bank Plc along with the 2nd, 3rd and 4th Respondents who were Executive Directors (ED’s) in the said bank, for instituting a stock brokers firm, namely SPRINGBOARD TRUST AND INVESTMENT LIMITED, to purchase Fin Bank Plc shares in the name or front of seven companies allegedly registered by them. Those seven companies were used as conduit pipes to siphon fraudulently the sum of twenty billion naira (N20bn) of Fin Bank funds for the use of SPRINGBOARD TRUST INVESTMENT LTD and the seven companies registered by them. That was done on the pretence that they were granting loans to the companies, when none of these companies had ever applied for loan or even maintained any account with the Bank. F G H

On investigation, it was discovered that another eight billion Naira (N8bn) was transferred to these seven companies through another stock broker company called *INTEGRATED TRUST INVESTMENT COMPANY LTD* also on the pretext that they granted loan to

the these seven companies who were not customers of the bank.

The Economic and Financial Crimes Commission (EFCC) preferred charge against the respondents herein after obtaining FIAT of the Attorney-General of the Federation and arraigned them before the Lagos State High Court of offences under the Criminal Code of Lagos State. On arraignment, the 1st respondent raised objection challenging the jurisdiction of the trial court albeit unsuccessfully.

Dissatisfied with the Ruling of the trial court, the respondents appealed to the court below which upheld their objection. The court below held that the offence of stealing by conversion of the money allegedly stolen had been used to purchase shares, hence by reason of that, the matter was within the realm of Capital Market issues as listed in Item 12 of Exclusive Legislative List. The court below struck out all the charges. It should be noted that the court below suo motu raised the issue of capital market without affording the parties opportunity to respond to it.

Aggrieved by the judgment of the lower or court below, the appellant appealed to this court. In their briefs of argument the respondents raised preliminary objection alleging that the appeal was incompetent inter alia, because:-

(1) The notice of appeal was signed by a legal practitioner and not by the appellant contrary to Order 9 Rule 3 of the Supreme Court Rules.

The summary of my view about the preliminary objection is that Order 9 Rule 3 does not help the objectioner.

Order 9 Rule 3 - provides:-

(1) Subject to the provisions of sub-rule 3 of this rule, appeals shall be brought by notice (hereinafter called "the notice of appeal") to be filed in the registry of the court below which shall set forth the grounds of appeal and shall state clearly whether the appeal is against some decision of the court below other than conviction or sentence. A notice of appeal shall be in the form prescribed in the First Schedule of these Rules and shall be signed by the appellant. Provided that notwithstanding that the provisions herein have not been strictly complied with, the court may, in the interest of justice and for good sufficient cause shown, entertain an appeal if satisfied that the intending appellant has exhibited a clear intention to appeal to the court against the decision of the court below"

From the wordings of the above provisions, one can say that the fact that the notice of appeal was signed by the legal practitioner is not fatal to the appellant's case bearing in mind the fact that the appellant herein is not a natural person but an artificial person as opposed to where the appellant is a natural entity. See Uwazurike's case (supra). Even then, by the proviso of the provisions (supra), the court can still allow that, in the interest of justice and if the appellant by filing the notice had shown intention to appeal against the decision of the court below. See *Egbe v. COP* (supra) where this court held that the Attorney-General of the Federation or State Attorney-General can give FIAT to his officers or even private legal practitioner. In this instant case, the AGF has given fiat and sue fiat in my view, covers proceedings in the appellate courts too. I therefore hold the view, that the Preliminary Objection filed by the respondent is not well taken and is accordingly overruled by me.

Now having summarily dealt with the preliminary objection and overruling same, I shall summarily consider the three issues for determination raised by the appellant. While dealing with these issues I will not bother to reproduce the submissions of learned counsel on each of them, as it will amount to repetition since they were ably reproduced in the leading judgment.

ISSUE NO. 1

This issue is whether the court was right in holding that the offence of stealing preferred against the 1st respondent relates to Capital Issues and that the trial court lacks jurisdiction to entertain same when such issue was neither raised nor canvassed by counsel placed before the court below. Having gone through the record, I am unable to see anywhere the issue of capital market was raised or canvassed by the learned counsel for the parties at the court below. The issue of control of capital issue was therefore suo motu raised by the court below without it giving the learned counsel for the parties opportunity to respond. The lower court therefore goofed in raising such issue suo motu without calling upon them to respond to same, even if it is correct that they fell under such coverage. The issue is therefore resolved in favour of the appellant. **ISSUE NO.2**

On this issue, the point raised is whether the learned justices of court below were correct in holding that the trial court lacked the requisite jurisdiction to try the 1st Respondent for the offence of steal-

ing by conversion preferred against him under section 390(7) of the Criminal Code of Lagos State.

On this issue my view is, that the subject matter of the offence the 1st respondent was charged with is simply stealing, simpliciter, Hence it is within the jurisdiction of the High Court of Lagos State to try stealing offender and the 1st respondent was charged under Section 390(7) of the Criminal Code of Lagos State. This issue is equally resolved in favour of the appellant against the respondent
ISSUE NO.3

This issue queries whether the court below was right in holding at the information preferred against the 1st respondent at the High Court of Lagos State, amounted to double jeopardy.

My reaction to the above question posed on double jeopardy, is that I do not see any issue of double jeopardy there. We should not lose sight of the fact that the present matter is still on interlocutory stage. Hearing on the charge is still to commence since it has not reached the stage of calling witnesses or evidence before the accused/defendants raised their objection which gave rise to the ruling delivered by the trial court which went on appeal to the court below and later found its way to this court. Since evidence was yet to be taken, there is yet to be conviction or acquittal at that stage. In fact, there is yet to be a trial in the proper sense.

By the provision of Section 25 of the Interpretation Act, double jeopardy can only exist where there is acquittal or conviction. This issue therefore must be and is accordingly resolved against the respondent and in favour of the appellant.

On the whole, with these few comments, and for the more detailed reasoning in the leading judgment of my learned brother MUSA DATTIJO MUHAMMAD JSC, I also see merit in this appeal. The appeal is therefore accordingly allowed by me. I set aside the judgment of the lower court and restore the decision of the trial court. I abide by the consequential orders made in the leading judgment.

It is my order also that this judgment should bear in the other two appeals, namely appeals Nos.SC.73/2014 and SC.75/2014.