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A review of the court of appeal's decision in Aliyu V. Federal republic of Nigeria & ORS

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Abstract

In 2017, the EFCC instituted an action at the Niger State High Court against Muazu Babaginda Aliyu, the former Governor of Niger State. While the case was still on and before it could be concluded, the EFCC instituted another case on money laundering at the Federal High Court, Abuja. The appellant believed that contrary to s. 36(9) of the 1999 Nigerian Constitution, it was a case of double jeopardy for both cases to be filed against him in relation to the same funds. The appellant's argument was founded on the belief that the charges of conspiracy and conversion of ecological funds filed at the State High Court were one and the same with the charges of money laundering at the Federal High Court. The appellant also argued that the Federal High Court was the court with jurisdiction and not the State High Court. He raised an objection on both issues at the State High Court but was ruled against leading to an approach of the Court of Appeal. The Court of Appeal was then faced with the task of (i) distinguishing between the charges filed at both courts (ii) deciding which court had jurisdiction to entertain the charges (iii) determine whether there was a case of double jeopardy.

Keywords: Money laundering, conversion of funds, double jeopardy, jurisdiction, predicate offences

1. Introduction

The appellant, during his tenure as the Governor of Niger State, was alleged to have misappropriated ecological funds allocated by the Federal Government to Niger State. In April 2017, the EFCC filed charges against the appellant at the State High Court, Minna in charge No. NSHC/EFCC.2C/20. The charges bordered on conspiracy and conversion of ecological funds allocated by the Federal Government to the Niger State Government. In May 2017, the EFCC instituted another case against the appellant on the offence of Money Laundering in respect of the same ecological funds at the Federal High Court, Abuja in charge No. FHC/ABJ/CR/71/2017. Both cases contained the same facts and witnesses leading the appellant to believe that a trial of both cases would amount to double jeopardy. It was argued that both cases were predicate offences having been drawn from the same set of facts following which the jurisdiction of the High Court, Minna to hear the case was challenged. The challenge of the jurisdiction of the Minna Court's jurisdiction was based on the argument that the offence of money laundering was triable by the Federal High Court. Therefore, if it was to be determined that the charge of money laundering and conversion of the ecological funds were predicate offences, the jurisdiction would rightly rest at the Federal High Court and the charge filed at the High Court, Minna would be void.

The summary of the appellant's points of argument was whether the EFCC could prosecute an accused person for predicate offences in a State High Court when the principal offence was instituted at the Federal High Court in relation to a common fund? The point of argument failed at the State High Court and was taken to the Court of Appeal. Contrary to the appellant's belief and argument; the Court of Appeal dismissed the appeal in its entirety.

2. Facts of the Case

The appeal was decided in May 2020 by the learned Justices of the Court of Appeal - Stephen Jonah Adah, JCA, Peter Olabisi Ige, JCA and Mohammed Baba Idris, JCA. It was an appeal against the decision of the justice of the High Court, Minna, where an application was filed to strike out the case or in the alternative transfer the case to the Federal High Court, Minna, which was believed to have the right jurisdiction.

Before hearing commenced at the State High Court, the appellant filed an application before the trial court seeking the following orders:

1. AN Order of this Honourable Court striking out the criminal charges contained in the case NO. NSHC/EFCC/2C/2017. In the alternative.

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2. AN Order directing that the charges in case No: NSHC/EFCC/2C/2017 be transferred to the Federal High Court, Minna, Niger State.
3. And for such further Orders or other Orders as this Honourable Court may deem fit to make in the circumstances of this case ^[2].

2.1 The grounds upon which these orders were sought were

- a) This Honourable Court does not have jurisdiction to try the alleged offences having been provided for by the Money Laundering Act 2011 (as amended).
- b) The complaints against the 1st Accused/Applicant are for conspiracy and conversion of ecological funds transferred to the Niger State Government by the Government of the Federal Republic of Nigeria.
- c) The complaint against the 1st and 3rd Accused persons in charge NFHC/ABJ/CR/71/2017 is for alleged conspiracy and Money Laundering of ecological funds between June, 2014 and July 2014.
- d) The Courts under the two charges that is to say in charge No. NSHC/EFCC/2C/20 and FHC/ABJ/CR/71/2017 in both the High Court Minna Niger State and Federal High Court Minna arose from the same transaction.
- e) The parties in both Courts - High Court Minna Niger State and Federal High Court Minna state are the same.
- f) The proof of evidence in the two Court depicts the same set of document, witnesses and statements ^[3, 1].

The appellant argued that Counts 5, 6 and 7 of the charge before the Federal High Court were similar to the charges at the State High Court and that by filing similar charges against him at the Federal and State High Courts, the EFCC was putting him in double jeopardy, otherwise.

Known as *autre fois* acquit and convict, which is contrary to section 36(9)⁴ the 1999 Constitution. On 11 December 2017, the learned trial judge, Hon. Justice A.M. Mayaki, while dismissing the application, distinguished the charges filed at both courts and held that the offences in both charges were not the same and that it could not be said that there was a case of double jeopardy. The basis of this was that the provision of the constitution against double jeopardy referred to already concluded cases. However, the instant case was quite different as court proceedings were yet to commence not to speak of being concluded.

2.2 This led to the filing of an appeal by the appellant. At the Court of Appeal, the issues raised for consideration were

- (a) Whether the trial of the Appellant in charge Number FHC/ABJ/CR/71/2017 subsumed the charges preferred against him in the State High Court.
- (b) Whether the charges of Criminal Breach of Trust Conversion and Conspiracy preferred against the Appellant in charge No. NSHC/MN/EFCC/2C/2017 in the Minna High Court are predicate offences to the charge of Money Laundering preferred against the Appellant in the Federal High Court.
- (c) Whether the doctrine of covering the field applies in this case and or the, High Court lacks Jurisdiction to try the case as constituted in view of the Money Laundering (Prohibition) Act 2011 as amended.

The summary of the issues constituting the appeal were (i) whether the EFCC could prosecute the appellant for predicate

offences and (ii) whether the State High Court, Minna where the case was instituted, had the jurisdiction to adjudicate the matter. Both are very crucial issues that could determine the life or death of the case at the State High Court. The Court of Appeal unanimously dismissed the appeal and upheld the ruling of the learned trial judge.

3. Case Review

3.1 Jurisdiction

Jurisdiction is a very important aspect of litigation without which a court or tribunal lacks authority to seat over and adjudicate a case. Any attempt by a court to do so can be challenged on appeal and be a ground for nullity. In perfect description of its importance, Ige, JCA held that:

Jurisdictional issue or point is always pivotal in adjudication over cause or matter instituted before a Court or Tribunal. Jurisdiction is the heart beat of every litigation suit Civil or Criminal. Any proceeding or trial embarked upon or undertaken without necessary jurisdiction by a Court or Tribunal will be a nullity. It can be raised at any stage of the proceedings and the Court seized of the cause or matter can also raise it *suo motu*. It is the engine room of any Court or Tribunal ^[2].

Indeed, in the absence of jurisdiction, the wheels of justice in any matter would remain stuck and any attempt to make it move (without first fixing the problem) would be a movement in the wrong direction. To ensure the court does not engage in a futile effort of driving the wheels of justice in the wrong direction, the issue of jurisdiction has to be first attended to. As Obaseki, JSC, rightly said in *Chief Daniel A. Oloba v Isaac Olubodun Akereja* ^[6].

The issue of jurisdiction is very fundamental as it goes to the competence of the Court or Tribunal. If a Court or Tribunal is not competent to entertain a matter or claim suit, it is a waste of valuable time for the Court to embark on the hearing and determination of the suit, matter or claim, it is therefore an exhibition of wisdom to have the issue of jurisdiction determined before embarking on the hearing and determination of the substantive matter.

In challenging the jurisdiction of the State High Court, the appellant opined that the money laundering charges at the Federal High Court was in respect of the same funds over which the conversion and conspiracy charges were made. He argued that the Money Laundering Act is a federal legislation and should therefore supersede the State Penal code which provided for the charges of conversion, criminal breach of trust and conspiracy at the State High Court. The aim of this point of argument was to prove that the charge of money laundering covers the charges at the State High Court and thus the only court with jurisdiction was the Federal High Court. However, the court decided that the issue was not whether the federal statute superseded the State's but whether the charges filed at the State High Court were within its jurisdiction. To this, the court held that there was a difference between the charge of money laundering filed at the Federal High Court and the charges of criminal breach of trust, conversion abetting commission of criminal breach of trust with respect to funds which formed a part of Ecological funds meant for Environmental Zone of Niger State which were filed at the State High Court.

The stance of the Court of Appeal in distinguishing the offences of money laundering from that of the State High Court charges was the right decision to make. Even though they are in respect of the same funds claimed to have been

misappropriated, they are still distinct offences created by different legislations. Assuming the offence of money laundering was provided for in the state legislation and the EFCC filed all the charges at the State High Court, it is impossible to imagine that the appellant would seek for the other charges to be struck out because they are similar to the money laundering charges. It then means that the individual charges could be filed at whichever court is believed to have jurisdiction by the EFCC.

4. The Appropriate Jurisdiction for the Trial of Financial Crimes

The institution of charges at either the State or Federal High Courts is based on the provision of s. 19(1) of *the EFCC Act* which provides that jurisdiction to entertain matters drawing from offences under the Act shall be at either the Federal High Court or High Court of a State or FCT.

This means that either the Federal High or State High Courts have jurisdiction to try offenders under the EFCC Act. However, in many cases instituted at the State High Court by the EFCC, there has been a challenge of the court's jurisdiction. The challenge of jurisdiction is often based on the fact that as a Federal Government agency, the jurisdiction of any action in which the EFCC is a party lies with the Federal High Court. Section 251 of the Nigerian Constitution outlines actions over which the Federal High Court has exclusive jurisdiction.

251. (1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters - (a) Relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party;

An examination of 251(1) (a) would reveal that the Federal High Court has jurisdiction over actions relating to Federal Government revenues in which an organ of the Federal Government or any person suing or being sued on its behalf is a party. The EFCC is a legal person capable of suing or being sued^[7]. On behalf of the Federal Government and so fits the description provided under S. 251(1)(a). It is also charged with the responsibility of investigating and prosecuting economic and financial crimes^[8], which includes financial crimes in relation to funds from Federal Government revenues. Moreover, s. 1(3) of the Constitution provides that the constitution is supreme and any law inconsistent with its provisions shall to the point of its inconsistency be void. This can be interpreted to mean that the provision of the EFCC Act granting jurisdiction on the Federal or State is void. Drawing from this, one may be quick to conclude that the Federal High has exclusive jurisdiction over matters instituted by the EFCC against offenders of the Act in relation to Federal Government funds. This is perhaps why there have been preliminary objections to the jurisdiction of the State High Court in many cases instituted by the EFCC.

However, it is important to take note that S. 251(1) begins with 'Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly.....'^[9]

The implication of this statement is that although the Federal High Court has exclusive jurisdiction over the listed matters,

it does not terminate the validity of the jurisdiction vested in any other court by any Act of the National Assembly. The interpretation is that as an Act of the National Assembly, the EFCC Act cannot be said to be inconsistent with S. 251(1).

In addition, it was held thus in *FRN v Nwosu*^[10, 3].

In criminal justice, the determination of jurisdiction will be taken in the light of the enabling law setting out the jurisdiction vis-a-vis the charge preferred against the accused (person)... While Section 251 (1) of the Constitution confers exclusive jurisdiction in civil matters in respect of items listed as (a) - (s), Section.251 (3) does not however confer exclusive jurisdiction on the Federal High Court in criminal causes and matters listed in subsection (1).

It can therefore be concluded that the EFCC has the discretion to determine which of the Federal or State High Courts it can file charges and either court would have full jurisdiction to entertain the matter. The State High Court can thus exercise jurisdiction over the matter as stipulated by s. 272(1) and 286(1)(b) of the 1999 Constitution.

5. Predicate Offences and Double Jeopardy

The attempt by the appellant to prove that both charges at the Federal and State High Courts were predicate offences and subject to the jurisdiction of the Federal High Court can be likened to dictating how the prosecution was expected to handle its case. Criminal prosecution is the responsibility of the prosecutor. It is also within his prerogative to determine what charges would be filed and what witnesses would testify against the accused. It is not expected that the accused should dictate the way and manner with which the prosecution would be handled; this includes the type of charges and number of witnesses to be called in the case^[11].

Notwithstanding, the Court of Appeal considered whether the appellant's argument held true facts. In determining what a predicate act and offence is, the Court of Appeal made reference to the definition in the 10th edition of the Black's Law Dictionary. One of the definitions of predicate act given by the dictionary is '...An act that must be completed before legal consequences can attach either to it or another act or before further action can be taken. A predicate act itself may be criminalized if it is followed by or performed in tandem with another prohibited act...'^[12].

'a Crime that composed of some, but not all of the elements of a more serious crime and that is necessarily committed in carrying out the greater crime; battery is a lesser included offence of murder; for double jeopardy purposes a lesser included offence considered the "same offence" as the greater offence, so that acquittal or conviction of either offence precludes a separate trial for the other'^[13].

In addition to this definition of a predicate offence, Peter Olabisi Ige, JCA, who read the leading judgement, held that^[4]:

...a predicate offence can be said to be an offence or criminal act which emanates or germinates from an earlier principal offence committed by Accused/Defendant in a criminal investigation leading to trial. The later charge or offence against the Accused or a Defendant constitutes an offence or offences stemming out arising from the earlier principal criminal act or offence for which Accused/Defendant is been charged or being prosecuted for^[14].

As the learned trial Judge observed, the dates of the offences of money laundering –which was filed at the Federal High Court- was different from the date of the offences of criminal breach of trust, conspiracy and conversion of funds -filed at

the State High Court- notwithstanding the fact that both offences were committed in relation to funds from the same source. The Court of Appeal adopted the same position and determined that the charges at the Federal and State High Courts were distinct. This clearly distinguishes the charges and dismisses the claim of predicate offences and double jeopardy which formed the main part of the appeal. In extension, where the Court ruled that money laundering and conspiracy and conversion of funds were not predicate offences, it terminated the issue of lack of jurisdiction at the state high court. Since, both are distinct offences, one cannot overrule the other and the courts where each was filed has sufficient jurisdiction to try their respective matters.

6. Recommendation and Conclusion

The issues raised by the appellant can at best be said to be an effort to make the case drag on and test the possibility of the court dismissing the charges at the state high court. This would enable the appellant to be under prosecution for only the offence of money laundering rather than the multiple charges filed against him. It is appealing to know that the prosecutor, EFCC, was unwavering and ready to enforce the provisions of the law against financial crimes. Without the staunch position of the trial judge and the justices of the Court of Appeal, the appellant would have succeeded in relying on technicalities¹⁵ to escape the long arms of the law. This shows that issues of appeal on grounds of technicalities require a closer examination. It is possible that there is no breach of the law as being claimed by the appellant. Without close observation of the provisions of the law, the courts may have ruled that filing the charges at both courts amounted to double jeopardy.

The court is the final hope of the common man that seeks justice. It is also the hope of the public for the conviction of people found guilty of breaching the provisions of the law. This should be the position of the court at all times as it was in this case.

7. References

1. Aliyu v Federal Republic of Nigeria & ORS (2020) LPELR-50517 (CA).
2. Ibid.
3. Section 36(9) 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.
4. Aliyu v FRN (supra) at 43.
5. (1988) 3 NWLR (PT. 84) 508 at 520.
6. S. 1(2)(b) EFCC Act.
7. S. 7 EFCC Act.
8. This includes s. 1(3) of the Constitution that declares void any law inconsistent with the provisions of the Constitution.
9. (2016) 17 NWLR (Pt 1541) 226 at 304.
10. Achike, JSC in Chima Ijioffor v. The State (2001) NWLR (pt 718) 371.
11. Aliyu v FRN at 28.
12. Ibid at 28.
13. Per Peter OlabisiIge, JCA at 29.
14. The argument of predicate offences and double jeopardy.