IN THE COURT OF APPEAL OF NIGERIA
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON THURSDAY THE 13TH DAY OF OCTOBER 2022

APPEAL NO: CA/ABJ/CR/625/2022
CHARGE NO: FHC/ABJ/CR/383/2015

BEFORE THEIR LORDSHIPS:

HON. JUSTICE IUMMAI HANNATU SANKEY — JUSTICE, COURT OF APPEAL
HON. JUSTICE OLUDOTUN ADEFOPE-OKOJIE — JUSTICE, COURT OF APPEAL
HON. JUSTICE EBIOWEI TOBI — JUSTICE, COURT OF APPEAL

BETWEEN

NNAMDI KANU.....APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA.....RESPONDENT

JUDGMENT
(DELIVERED BY OLUDOTUN ADEFOPE-OKOJIE, JCA)

This is an appeal against part of the decision of the Federal High Court, Abuja Judicial Division, delivered on the 8th day of April, 2022, by His Lordship, **Hon. Justice B.F.M. Nyako**, in which the Court (hereinafter referred to as the "Lower Court"/"Trial Court"), in its Ruling on the

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Appellant's Preliminary Objection seeking the quashing/dismissal of the 15 Count Amended Charges preferred against the Appellant, retained Counts 1, 2, 3, 4, 5, 8 and 15 of the amended Chargesfiled on the 17th of January, 2022,while striking out Counts 6,7,9-14 of the same.

The Appellant, dissatisfied with the part of the decision of the Lower Court retaining Counts 1, 2, 3, 4, 5, 8 and 15, filed a five (5) ground Notice of Appeal on 29/4/2022. Subsequent to the transmission of the Record of Appeal to this Court on 15/6/2022, his Counsel, **Chief Mike A.A. Ozekhome SAN**, filed an **Appellant's Brief of Arguments** on 20/6/2022, in which five (5) issues were distilled for the Court's determination, namely:

1. **Whether the lower court properly evaluated and ascribed probative value to the Appellant's evidence, when it failed to consider, make finding of facts and accordingly pronounce on issue one raised for the trial court's determination, relating to the extraordinary rendition of the Appellant?**

2. **Whether the lower court has the jurisdiction to try the Appellant for alleged offences committed in vacuo or which situs was not stated?**

3. **Whether the Appellant can be prosecuted for an offence which its validity is the subject matter of an appeal?**

4. **Whether the lower court has the jurisdiction to try the Appellant for alleged offences committed outside its territorial jurisdiction?**

5. **Whether the Appellant can be tried for offences which the proof of evidence in support thereof does not disclose a prima facie case against him?**

In response, **D.E. Kaswe, Assistant Chief State Counsel** of the **Department of Public Prosecutions, Federal Ministry of Justice**, on behalf of the **Hon. Attorney-General of the Federation**, filed the **Respondent's Brief of Arguments** on the 3rd day of August 2022 but deemed properly filed by this Court on 13/9/2022upon Counsel's application.The issues formulated by the Appellant's learned Counsel were adopted by the Respondent's Counsel in the Respondent's Brief of Arguments.

In response, the Appellant's Counsel filed an **Appellant's Reply Brief** on 25/8/2022, consequentially deemed as properly filed on 13/9/2022.

I shall accordingly adopt the issuesfor determination formulated by the Appellant.

BRIEF FACTS OF THE CASE

The Appellant is the Defendant in **Charge No: FHC/CR/383/2015** wherein a four-count amended charge was pending against him. However, upon his rendition from Kenya to Nigeria on the 27th day of June, 2021, he was brought before the Lower Court on the 29th day of June, 2021. A seven count amended charge was filed against him by the Respondent on the 13th Octcber, 2021 and later amended on the 20th October, 2021. This Charge was further amended to a 15 Count Charge on the 17th of January, 2022.

Upon being served, the Appellant, on the 19th day of January, 2022, filed a Notice of Preliminary Objection challenging the jurisdiction of the lower Court to try him on the 15-Count Amended Charge. The Lower Court, in its Ruling delivered on the 8th Day of April, 2022struck out Counts6,7,9,10,11,12,13 and 14, and retained counts 1,2,3,4,5,8 and 15of the amended Charge. It is this Ruling against which the Appellant has appealed.

The 1st issue for determination is:

Whether the lower court properly evaluated and ascribed probative value to the Appellant's evidence, when it failed to consider, make finding of facts and accordingly pronounce on issue one raised for the trial

court's determination, relating to the extraordinary rendition of the Appellant?

Appellant's Submissions

The learned Silk for the Appellant submits that the Appellant was abducted from Kenya and extraordinarily rendered to Nigeria without being first subjected to extradition proceedings in Kenya, in violation of extant international conventions and treaties, as submitted before the lower Court. He could thus not be arraigned and tried on the 15-count Amended Charge, having not been properly brought before the Court. He contended that the Respondent, in its affidavit evidence, did not challenge or controvert the fact of the Appellant's abduction or extraordinary rendition to Nigeria nor did he lead credible and cogent evidence to show that the rendition of the Appellant was lawful and in accordance with due process of law and al international instruments, which burden was on it, being the arresting authority. He cited *Gov Kaduna State v Maikori (2020) LPELR - 50391 (CA).*The lower Court was thus in error to have upheld the submission of the Respondent's Counsel that the Bench Warrant earlier issued by the trial Court was sufficient authority to "abduct" the Appellant from Kenya, as the Administration of Criminal Justice Act 2015, upon which they relied, does not authorize the execution of a warrant of arrest by the Federal High Court outside Nigeria.

He submitted that the unlawful and extraordinary rendition, without any form of hearing or due process, is in violation of a plethora of international laws, to which the Respondent is a State Party, inclusive of *Articles 9 and 14 of the International Covenant on Civil and Political Rights; Article 12(4) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9, LFN 2004; Article/Part 5 (A) of the African Charter's Principles and Guidelines On Human and Peoples' Rights while Countering Terrorism in Africa; and Article 13 of the UDHR, 1984.*

Section 15 of the *Extradition Act Cap E25 Laws of the Federation of Nigeria 2004,* he said, prohibits the Appellant from either being detained, tried or otherwise dealt with in Nigeria for or in respect of an offence allegedly committed by him before his surrender to Nigeria. The lower Court thus does not have jurisdiction to try him on the Counts retained by it, having been allegedly committed by the Appellant before his forceful rendition and surrender to Nigeria. He cited in support British, American and South African authorities, submitting that prosecuting the forcibly abducted Appellant on these amended charges would be allowing them to benefit from their illegality.

The learned Silk further submitted that the failure of the Lower Court to pronounce on the issue of extraordinary rendition of the Appellant, which was properly raised before it in the Appellant's Preliminary Objection, is a gross violation of the Appellant's Right to fair hearing, citing the case of *Dasuki VS F.R.N. & ORS (2018) LPELR-43897 SC.*

Respondent's Submissions

The Assistant Chief State Counsel, in a combined response to issues 1 and 2 formulated by the Appellant, commenced by alluding to interlocutory applications filed by the Appellant, which he alleged had delayed the speedy hearing of the matter, contrary to the *Administration of Criminal Justice Act 2015(ACJA).* He submitted that the issue of whether the Appellant was properly brought before the trial court is a matter to be established during the course of the trial and not at this preliminary stage, as it is trite that the law forbids a court from delving into substantive matters when considering a Preliminary Objection, citing the cases of, *Attorney General of the Federation v. A. G. Abia State (2001) 11 NWLR (Part 725) Page 689; Akinrinmisi v. Maersk (Nig) Ltd. (2013) 10 NWLR (Part 1361) Page 73; James v. INEC (2015) 12 NWLR (Part 1474) Page 538.*

Appellant's Reply Brief

The learned Silk accused the Respondent's Counsel of failing to address the issues of the extraordinary rendition of the Appellant and the jurisdiction of the lower Court to entertain the amended charges against the Appellant, which must be determined first, before the Court can assume jurisdiction to entertain the matter. These facts, not having been controverted connote concession of the same, citing *Order 19 Rule 4(2) of the Court of Appeal Rules, 2021; Adeyeye &Ors v. Governor, Ekiti State & Anor(2011) LPELR-8974 (CA); Alhaji M.K Gujba v. First Bank of Nigeria PLC (2011) LPELR-8971 (CA).*

Oral Submissions of Counsel:

Appellant

At the hearing of the appeal on 13/09/2022 the learned Silk reiterated his submission on the duty of the lower Court to have struck out the counts retained, having being filed illegally without following the due process of the law and without the authority and consent of the Kenyan Authority, as these counts were allegedly committed before Appellant's forceful rendition from Kenya to Nigeria. He cited, in addition, the case of *Ezeze v. State(2004) LPELR-5659 (CA)* and *S. 2 (3) of the Terrorism Prevention Amendment Act.*

Respondent

The Assistant Chief State Counsel, urging the Court to dismiss the appeal, reiterated that the Appellant was brought in by due process of law, citing *S. 3, 4, & 5 the Administration of Criminal Justice Act Supra*, with respect to the Extradition Treaty.

RESOLUTION

The **Notice of Preliminary Objection** filed by the Appellant, the resolution in part of which has led to the filing of this appeal, is at **Page 137** of the Record.

The **Preliminary Objection**sought the following:

1. **AN ORDER striking out/quashing and or dismissing the 15 – count Amended Charge, specifically, counts 1 to 15 preferred against the Defendant/Applicant in the Amended Charge NO:FHC/ABJ/CR 383/2015, for the reason that the counts, as constituted, are**

incompetent and thus, deprive the Honourable Court of the jurisdiction to entertain the same.

2. **AN ORDER of the Honourable Court discharging and acquitting the Defendant/Applicant of all the counts in the 15 Count Amended Charge preferred against the Defendant/Applicant, upon the same being struck out/quashed and or dismissed.**

3. **AND FOR SUCH further order or orders as this honourable court may deem fit to make in the circumstances.**

The Grounds for the Objection are thirty-four (34) and complain about the incompetence of the grounds, the failure of the Respondent to comply with international treaties on terrorism and the contravention of international conventions and treaties on extradition, thus divesting the lower Court of jurisdiction to entertain the charges. The thirty-nine (39) paragraph affidavit in support and further affidavit, in addition to deposing to the incompetence of the grounds, also deposed to the extraordinary rendition of the Appellant from Kenya by the Respondent.

In the twenty (20) paragraph Counter Affidavit of the Respondent at **Pages 179-181** of the Record, the charges were stated to be competent.

The lower Court, in its Ruling at **Pages 267-285** of the Record, set out the Preliminary Objection of the Appellant, the grounds thereof and the contents of the affidavit in support of the Preliminary Objection. It also set out the Counter Affidavit of the Respondent, referred to the Further Affidavit of the Appellant, as well as the written addresses of both

parties.The Court then proceeded to examine the fifteen counts upon which the Appellant was arraigned *"to see if they disclose the commission of any offence known to law."*

It held itself *"not concerned with whether the counts of charge disclose any prima facie case but whether they are well framed within the provisions of the law".*

Itheld that *"Counts 6, 7, 9, 10, 11, 12, 13 and 14 have not disclosed an offence as framed and some are even duplicates. Counts 1, 2, 3, 4, 5, 8 and 15 show some semblance of allegations of offence on which the Court can proceed to trial. Consequently, the counts 6, 7, 9, 10, 11, 12, 13 and 14 are hereby struck out and the Court shall proceed on trial on Counts 1, 2, 3, 4, 5, 8 and 15."*

The seven (7) charges retained by the lower Court, out of the 15 count amended charges, are the following:

COUNT ONE

That you Nnamdi Kalu, Male, Adult, of Afaranukwulbeku, Umuahia North Local Government Area of Abia State sometimes in 2021 being a member and the leader of Indigenous People of Biafara. IPOB, a proscribed Organisation, did commit an act in furtherance of an act of Terrorism against the Federal Republic of Nigeria and the People of Nigeria by a making a broadcast received and heard in Nigeria within the jurisdiction of this Honourable Court, with intent to intimidate the population and you threatened that people will die, the whole world will stand still and you thereby committed an offence

punishable under Section 1(2)(b) of the Terrorism Prevention Amendment Act, 2013.

COUNT TWO

That you Nnamdi Kalu, Male, Adult, of Afranukwulbeku, Umuahia North Local Government Area of Abia State sometimes in 2021 did commit an act in furtherance of an act of Terrorism against the Federal Republic of Nigeria and the people of Nigeria made a broadcast received and heard in Nigeria within the Jurisdiction of this Honourable Court, with intent to intimidate the population, you issued a deadly threat that anyone who flouted your sit-at-home order should "write his/her Will" as a result Banks, School, Markets, Shopping Malls, Fuel Stations domiciled in the Eastern States of Nigeria were not opened for business, citizens and vehicular movements in the Eastern State of Nigeria were grounded within the Jurisdiction of this Honourable Court and you thereby committed an offence punishable under Section 1(2)(b) of the Terrorism Prevention Amendment Act. 2013.

COUNT THREE

That you Nnamdi Kalu, Male, Adult, of Afaranukwulbeku, Umuahia North Local Government Area of Abia State on diverse dates between 2018 and 2021 within the Jurisdiction of this Honourable Court, professed yourself to be a member and leader of the Indigenous

People of Biafara IPOB, a proscribed organisation in Nigeria and that you thereby committed an offence contrary to and punishable under Section 16 of the Terrorism Prevention Amendment Act, 2013.

COUNT FOUR

That you Nnamdi Kanu, Male, Adult, of Afaranukwulbeku, Umuahia North Local Government Area of Abia State on diverse dates between 2018 and 2021 made a broadcast received and heard in Nigeria within the Jurisdiction of this Honourable Court, in furtherance of an act of terrorism against the Federal Republic of Nigeria and the people of Nigeria in which you incite members of the Public in Nigeria to hunt and kill Nigerian security personnel and that you thereby committed an offence punishable under Section 1(2)(b) of the Terrorism Prevention Amendment Act, 2013.

COUNT FIVE

That you Nnamdi Kanu, Male, Adult, of Afaranukwulbeku, Umuahia North Local Government Area of Abia State on diverse dates between 2018 and 2021 made a broadcast received and heard in Nigeria within the Jurisdiction of this Honourable Court, in furtherance of an act of terrorism against the Federal Republic of Nigeria and the people of Nigeria in which you incite members of the Public in Nigeria to hunt and kill families of Nigerian security personnel and that you thereby committed an offence punishable under Section 1 (2) (h) of the Terrorism Prevention Amendment Act, 2013.

COUNT EIGHT

That you Nnamdi Kanu, Male, Adult, of Afaranukwulbeku, Umuahia North Local Government Area of Abia State on diverse dates between 2018 and 2021 made a broadcast received and heard in Nigeria within the Jurisdiction of this Honourable Court, in furtherance of an act of terrorism against the Federal Republic of Nigeria and the people of Nigeria in which you directed members of the Indigenous People of Biafara IPOB, A proscribed organization to manufacture Bombs and you there by committed an offence punishable under section 1 (2) (f) of the Terrorism (Prevention) (Amendment) Act, 2013.

COUNT FIFTEEN

That you Nnamdi Kanu, Male, Adult, of Afaranukwulbeku, Umuahia North Local Government Area of Abia State on diverse dates between the month of March and April 2015 imported into Nigeria and kept in Ubulisiuzor in Ihiala Local Government Area of Anambra State within the jurisdiction of this Honourable Court, a Radio Transmitter known as Tram 50L concealed in a container of used household items which you declared as used household items, and you thereby committed an offence contrary to section 47 (2) (a) of Criminal Code Act. Cap, Laws of the Federation of Nigeria 2004'.

The contention of the learned Silk is that the lower Court has no jurisdiction to entertain these charges by reason of the fact that the

Appellant was *"extraordinarily renditioned"* from Kenya and without the process of extraditing him by the Respondent.

The *Assistant Chief State Counsel*, for the Respondent, however, contends that the question of whether the Appellant was properly brought before the trial Court is a matter to be established during the course of the trial and not at a preliminary stage, as would be delving into the substantive matter at an interlocutory stage.

It is thus necessary, before going into the merits of this appeal, to determine this contention of the Respondent.

It is indeed settled law that the court, in determining an interlocutory application or the issueof jurisdiction, should refrain from delving into or determining the issues in controversy inthe substantive suit before deciding whether it hasjurisdiction to entertain the entire proceeding. See ***Akinrinmisi v Maersk (Nig) Ltd (2013) 10 NWLR Part 1361 Page 73 at 86 Para A-C per Muntaka Coomassie JSC; James v INEC (2015) 12 NWLR Part 1474 Page 538 at 577 Para C-F per Kekere-Ekun JSC.***

In the case of ***James v INEC****Supra* cited by the Respondent's Counsel, one of the issues that theCourt was required to determine in the suit was whether the election of 26th April was cancelled, abandoned or postponed. The Court held that the determination of whether the election was cancelled and a new electionscheduled, would knock the bottom out of the case. It would thus be wrong for the Court, in determining the issue of jurisdiction to delve into one of the issues in controversy in the suit and to

determine same before deciding whether or not it has jurisdiction to entertain the entire proceeding.

In the instant case, however, the rendition of the Appellant from Kenya to Nigeria is not an issue to be determined in the substantive case before the lower Court. The substantive suit is for the determination of the culpability of the Appellant for the retained 7 out of the Amended 15 counts upon which he was arraigned. Thus, determining whether the Appellant was illegally rendered to this country, and which illegality divested the lower Court of jurisdiction to entertain the charges against him does not amount to a determination of the substantive suit at an interlocutory stage, I hold.

Indeed, as was held by the same learned jurist, ***Kekere-Ekun JSC*** in the case of ***James v INEC*** *Supra*, at ***Page 583-584 Para H-A:***

"...it is clear that where a court lacks jurisdiction to entertain a cause or matter, it lacks jurisdiction to determine any issue arising within that cause or matter. To attempt to do so would amount to delving into the merit of the case, which would amount to a nullity in the event that the court lacks jurisdiction to determine the suit."

As also held by the *Supreme Court*, per ***Rhodes-Vivour JSC*** in ***Isaac Obiuweubi v Central Bank (2011) 7 NWLR Part 1247 Page 465*** at ***494 Para D-F,*** and cited with approval in ***James v INEC*** *Supra*, *"Any failure by the Court to determine any preliminary objection or any form of*

challenge to its jurisdiction is a fundamental breach which renders further steps taken in the proceedings a nullity".

I hold likewise. Delving into the trial of the Appellant, without a determination of whether the Court has jurisdiction to entertain the charges against the Appellant would render further steps taken in the proceedings a nullity, I hold. Once the question of jurisdiction is raised, it must be resolved before any further step is taken in the proceedings as the jurisdiction of the Court to entertain the suit is fundamental to the competence of the Court, and has been described as the lifeblood of adjudication. See ***Statoil (Nig) Ltd v Inducon (Nig) Ltd (2021) 7 NWLR Part 1774 Page 1 at 47-48 Para H-F per M.D. Muhammad JSC; Central Bank of Nigeria v Rahamaniyya G.R. Ltd (2020) 8 NWLR Part 1726 Page 314 at 337 Para A-B per Okoro JSC.***

Entertaining the Preliminary Objection, in the instant case, before the trial of the Appellant, would not have involved delving into the substantive matter, I hold.

Having dispensed with the contention of the Respondent's Counsel, I now proceed with the objection of the Appellant's Counsel that the lower Court has no jurisdiction to entertain these charges by reason of the fact that the Appellant was *"extraordinarily renditioned"* from Kenya and without the process of extraditing him by the Respondent.

The facts relating to this contention were deposed to in **Paragraphs 19-25**-of the Appellant's affidavit in support of the Preliminary Objection, at **Pages 149-150** of the Record as follows:

19. *That Section 1(A)(2) of the Terrorism (Prevention Amendment)*

Act, 2013imposes an obligation on the Attorney General of the

Federation, to maintain International co-operation forcompliance with International Treaties on terrorism.

20. *That the International co-operation and compliance envisaged in the said Section 1(A)(2) of the Act, presupposes, amongst other things that due process of law must be followed at all times, which also includes, that the Defendant in the instant charge must be rendered lawfully from any territory outside Nigeria.*

21. *That the Defendant was forcibly abducted from Kenya without due process and consequently extraordinarily rendered to Nigeria, without firstly subjecting him to extradition proceedings in Kenya, in violation of all*

known international conventions and treaties on extradition.

22. That the Defendant cannot be arraigned and tried on the 15-count Amended Charge, when he was not lawfully rendered to Nigeria and, consequently lawfully brought before the Court.

23. That prosecuting the Defendant on the 15-count Amended Charge, would amount to allowing the Complainant to benefit from its illegality and wrongdoing.

24. That he who comes to equity must come with clean hands, and no party should be allowed to benefit from his wrong doing, as the prosecution now attempts to do.

25. That the extraordinary rendition of the Defendant, robs the Honourable Court of the requisite jurisdiction to try him on the 15-Count Amended Charge.

In response to these averments, the Respondent averred as follows, at **Para 14-16** of its counter affidavit as follows:

14. *That paragraphs 15, 16, 17, 18, 19, 20, 28, 29, 30, 32, 33, and 36 of the affidavit in support of the notice of preliminary objection are objections, prayer and conclusions or legal arguments.*

15. *That paragraphs 21, 23, 24, 25, and 27 of the affidavit in support of notice of preliminary objections are not true.*

16. *That paragraph 22, 29, and 34 of the affidavit in support of notice of preliminary are not true.*

The learned Silk has argued that these denials by the Respondent do notconstitute sufficient traverse of the abduction and *extraordinary rendition* of the Appellant from Kenya to Nigeria and amount to an admission of the same.

On the manner of denial that would be sufficient to raise an issue of dispute, this Court held,in the case of ***Nickok Best Intl Ltd v UBA (2018) LPELR – 45239 (CA)*** per ***Mohammed Lawal Garba JCA****(as he then was)* at ***Page 9 Para B-E:***

"Where vital and material fact/s in a party's case are not so specifically, frontally and categorically denied and disputed, they are deemed admitted by the other party. Dosunmu v. Dada (2002) 13 NWLR (783), NNPC v. Sele (2004) 5 NWLR (866) 379, Jadcom Limited v. OgunsElectrs (2004) 3 NWLR (859) 153.

In that regard, general, obtuse, indistinct, unspecific and evasive averments in respect of specific, crucial, positive and distinct facts are considered not enough and not effective controversion or traverse to raise an issue of dispute that would warrant proof in a case". Emphasis Mine

As is apparent from the Respondent's Counter Affidavit, save a bare denial, there was no specific denial of the fact that the Appellant was in Kenya, was abducted therefrom and that there were no extradition proceedings undertaken prior to his forcible abduction. This is thus deemed an admission of those facts, I hold.

Indeed, as also pointed out by the Appellant's Counsel, there was no response whatsoever in the Respondents written address before the lower Court or in the Respondent's Brief of Arguments in this Court, to the very copious submissions of the Appellant in respect of the unlawfulness of his rendition from Kenya and the failure of the Respondent to have undertaken

extradition proceedings.The Respondent's Counsel was ominously silent on this issue.

The consequence of failing to respond to the adversary's submissions on pivotal issues was amply stated by this Court, in ***Alhaji M. K. Gujba V. First Bank Of Nigeria Plc & Anor (2011) LPELR 8971 (CA)***per ***ObandeOgbuinyaJCA***at ***Pages 42-43 Para B-A,***where His Lordship held:

> *"The learned Counsel for the Respondents, in his infinite wisdom, did not respond to the submissions of the learned counsel for the Appellant on this point. In law, that is a costly failure. The telling effect of that failure to answer to the Appellant's counsel's submissions is that the Respondents are deemed to have admitted them. On this principle of law, I draw on the case of NWANKWO v. YAR'ADUA (2010) 12 NWLR (pt.1209) 518 at 586, where Onnoghen, JSC, held:- "It is clear from the issues formulated and arguedby learned senior counsel for the 1st and 2nd Respondents in their brief of argument do notinclude argument on appellant's said issue No. 8.*
>
> *It is settled law that where an opponent fails orneglects to counter any argument or issue validlyraised in the brief of*

argument or during oralpresentation, the issue not so contested is deemedconceded by the defaulting party. I therefore, inthe circumstance, hold that the 1st and 2nd Respondents by not reacting to the issue inquestion, have conceded the issue as formulatedand argued by the learned counsel for theAppellant."

It follows that the Respondents played into thehands of the Appellant, on this issue, when theyfailed to join issues with the arguments of theAppellant therein. This omission, whether intentionor inadvertent, makes the appellant hold an ace onthis issue."

Underlining Mine

As also submitted by the learned Silk, this failure contravened **Order 19 Rule 4 (2)** of the **Court of Appeal Rules 2021**which stipulates:

"The Respondent's Brief shall answer all material points of substances contained in the Appellant's Brief and contain all points raised therein which the Respondent wishes to concede ..."

Having not responded to those facts, the Respondent, I hold, is taken to have conceded them. I thus agree with *Chief OzekhomeSAN*that the failure

of the Respondent to contest, not only the Appellant's affidavit but the copious submissions of the Appellant's Counsel on the Appellant's abduction from Kenya without extradition proceedings, and his *extra ordinary rendition* to Nigeria to answer to charges before the lower Court, are deemed conceded by the Respondent.I thereforehold that the Respondent, by not reacting to the issue in question, has conceded the issue of his abduction from Kenya and rendition to Nigeria.

The follow-up question is whether this "abduction" and rendition to Nigeria, without extradition proceedings was unlawful and whether it deprived the lower Court of jurisdiction to entertain the action.

The ***OAU Convention on the Prevention And Combating of Terrorism****(hereafter referred to as the* ***"OAU Convention"****)*provides as follows in *Articles 7, 8 and 11*thereof, on the manner of rendition of a person from a member state:

Article 7:

1. *"Upon receiving information that a person who has committed or who is alleged to have committed any terrorist act as defined in Article 1 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information.*

2. *Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution.*

3. *Any person against whom the measures referred to in paragraph 2 are being taken shall be entitled to:*

a. *communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled, to protect that person's rights or, if that person is a stateless person, the State in whose territory that person habitually resides;*
b. *be visited by a representative of that State;*
c. *be assisted by a lawyer of his or her choice;*
d. *be informed of his or her rights under sub-paragraphs (a), (b) and (c).*

4. *The rights referred to in paragraph 3 shall be exercised in conformity with the national law of the State in whose territory the offender or alleged offender is present; subject to the provision that the said laws must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended"*

PART IV

EXTRADITION

Article 8:

1. *"Subject to the provision of paragraphs 2 and 3 of this article, the States Parties shall undertake to extradite any person charged with or convicted of any terrorist act carried out on the territory of another State Party and whose extradition is requested by one of the States Parties in conformity with the rules and conditions provided for in this Convention or under extradition agreements between the States Parties and within the limits of their national laws.*

2. *Any State Party may, at the time of the deposit of its instrument of ratification or accession, transmit to the Secretary General of the*

OAU the grounds on which extradition may not be granted and shall at the same time indicate the legal basis in its national legislation or international conventions to which it is a party which excludes such extradition. The Secretary General shall forward these grounds to the State Parties.

3. Extradition shall not be granted if final judgement has been passed by a component authority of the requested State upon the person in respect of the terrorist act or acts for which extradition is requested. Extradition may also be refused if the competent authority of the requested State has decided either not to institute or terminate proceedings in respect of the same act or acts.

4. A State Party in whose territory an alleged offender is present shall be obliged, whether or not the offence was committed in its territory, to submit the case without undue delay to its component authorities for the purpose of prosecution if it does not extradite that person."

Article 11:

Extradition requests shall be in writing, and shall be accompanied in particular by the following:

a. an original or authenticated copy of the sentence, warrant of arrest or any order or other judicial decision made, in accordance with the procedures laid down in the laws of the requesting State;

b. a statement describing the offences for which extradition is being requested, indicating the date and place of its commission, the offence committed, any convictions made and a copy of the provisions of the applicable law; and

c. *as comprehensive a description as possible of the wanted person together with any other information which may assist in establishing the person's identity and nationality.*

Underlining Mine

The '***OAU Convention***'was adopted by the member states of the *OAU(Organisation of African Unity)*on July 1st1999 and ratified by this country on 28th of April 2002.

The '***Protocol to the OAU Convention on the Promotion and Combating of Terrorism***', which was adopted by the *3rd Ordinary Session of the Assembly of the African Union in Addis Ababa*on *8th July 2004*, provides in **Article 3** as follows:

> *"States Parties commit themselves to implement fully the provisions of theConvention".*

In addition to this, ***ThePrinciples and Guidelines on Human and Peoples' Right while Countering Terrorism in Africa***, adopted by the *African Commission on Human and Peoples' Rights*, during its *56th Ordinary Session in Banjul, Gambia(21 April to 7 May 2015)*, were developed on the basis of *Article 45of the African Charter on Human and Peoples Rights*, which Nigeria ratified on the *22nd June 1983*.This mandates the Commission to formulate standards, principles, and rules on which African governments can base their legislation.

Under **Part 5** of the said **Principles and Guidelines*on Human and Peoples' Right while Countering Terrorism in Africa***Supra, the act of

transferring or expulsion of a person from one state to another was circumscribed as follows:

"PART 5

Transfers Of Individuals

Transfers: A State may not "transfer" [e.g., deport, expel, remove, extradite] an individual to the custody of another State unless it is prescribed by law and in accordance with due process and other international human rights obligations All transfers are subject to the principle of non-refoulement. Transfers shall not be a justification for loss or revocation of nationality or to make an individual stateless. Deportation, expulsion, and removal cannot be used to circumvent criminal justice processes, including extradition procedures. Extraordinary rendition, or any other transfer, without due process is prohibited.

Explanatory Note: The forced transfer of an individual from the custody of one State to another entity necessarily requires the deprivation of liberty. For this reason, the process through which the transfer takes place must be provided for by law and not arbitrary. See Principle 3(A), Prohibition of Arbitrary Detention; Organization of African Unity Convention on the Prevention and Combating of Terrorism, Articles 8(1) and 11; and Explanatory Note to Principle 5(A)(ii), Non-Refoulement and Principle 9(A), Prohibition against Statelessness."

Underlining Mine

By ***Section 1 A (2)*** of the ***Terrorism (Prevention) Amendment Act 2013,*** there was a duty on thiscountry to ensure conformity of its policies with international standards and United Nations Conventions on Terrorism. The section provides:

> *"The Attorney-General of the Federation shall be the authority for the effective implementation and administration of this Act; and shall strengthen and enhance the existing legal framework to ensure-*
>
> *(a) conformity of Nigeria's counter-terrorism laws and policies with international standards and United Nations Conventions on Terrorism;*

Underlining Mine

It is clear from all these Conventions, Treaties and Guidelinesthat the Respondent, having removed the Appellant from another Country, without complying with the processes for his removal, was in flagrant violation of these laws and the fundamental human rights of the Appellant.

It was incumbent on the Respondent, who was the arresting authority, to prove the legality of the Appellant's arrest, abduction in this case. See ***Governor of Kaduna State v Makori (2020) LPELR – 50391 (CA)*** per ***Mohammed Baba Idris*** at ***Pages 29-30 Para A-B.*** This has however not been done by the Respondent.

The *Assistant Chief State Counsel* has justified the Respondent's actions by citing *Sections 3-5* of the *Administration of Criminal Justice Act Supra (ACJA)* which provides:

3. *A suspect or a defendant alleged or charged with committing an offence established by an Act of the National Assembly shall be arrested, investigated, inquired into, tried or dealt with according to the provisions of this Act, except otherwise provided in this Act.*

4. *In making an arrest, the police officer or other persons making the arrest shall actually touch or confine the body of the suspect, unless there is a submission to the custody by word or action.*

5. *A suspect or defendant may not be handcuffed, bound or be subjected to restraint except:*

   (a) there is reasonable apprehension of violence or an attempt to escape;

   (b) the restraint is considered necessary for the safety of the suspect or defendant; or

   (c) by order of a court.

These sections,however deal with the arrest of a suspect. They provide no justification for the removal of the Appellant from another country to this country to answer charges without the engagement of any legal process in that other country.

The issue of a warrant of arrest issued in Nigeria against the Appellant to answer to charges in Nigeria is thus no justification, as clearly stated in ***Part 5*** of the ***Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism in Africa*** *Supra*, for circumventing extradition proceedings or the criminal justice processes.

Indeed**Section 47(1) of the ACJA Act**, with regard to the execution of a warrant of arrest issued in Nigeria, only allows the execution of thewarrant within the borders of Nigeria.

It provides:

> *A warrant of arrest issued by a Federal High Court sitting anywhere in Nigeria may be executed in any part of Nigeria.*

As specifically stated in **Principles and Guidelines*on Human and Peoples' Right while Countering Terrorism in Africa***Supra* *"extraordinary rendition"*, or any other transfer, without due process is, prohibited.

"Extra Ordinary Rendition" was defined in **Black's Law Dictionary 10th Edition** as:

"The transfer, without formal charges, trial or court approval, of a person suspected of being a terrorist or supporter of a terrorist group to a foreign country for imprisonment and interrogation on behalf of the transferring country. When an innocent person is subjected to extraordinary rendition, it is also termed erroneous extradition. When a transfer is made to a country notorious for human rights violations, it may be colloquially termed torture by proxy or torture flight"

Our Courts apply strictly, conventions and treaties entered into by this country. This was stated very forcefully by the *Supreme Court*,on the matter of compliance with the *African Charter on Human and Peoples Rights*, in the case of ***Abacha v Fawehinmi (2000) 6 NWLR Part 660***

Page 228 at 289 Paragraph B-D per Ogundare JSC (of blessed memory), reading the leading judgment. where he held:

"Where, however, the treaty is enacted into law by the National Assembly, as was the case with the African Charter which is incorporated into our municipal (i.e. domestic) law by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. 10 Laws of the Federation of Nigeria 1990 (hereinafter is referred to simply as Cap. 10), it becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the courts. By Cap. 10 the African Charter is now part of the laws of Nigeria and like all other laws the courts must uphold it. The Charter gives to citizens of member states of the Organisation of African Unity rights and obligations, which rights and obligations are to be enforced by our courts, if they must have any meaning. It is interesting to note that the rights and obligations contained in the Charter are not new to Nigeria as most of these rights and obligations are already enshrined in our Constitution. See Chapter IV of the 1979 and 1999 Constitutions."Underlining Mine

Article 12 (4) of **African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9 LFN 2004**provides as follows:

> *A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.*

This was not done. By the extra ordinary rendition of the Appellant to this country, there wasa clear and egregious violation by the Respondent of International Conventions, Protocols and Guidelines, to which this country was bound, I hold.

Instructive is the decision of the **House of Lords***in* ***R. v Horseferry Road Magistrates Court, ex parte Bennett [1994] 1 AC 42, [1993] 3 WLR 90,***where,in a majority decision of four to one, per ***Lord Griffiths, Lord Bridge of Harwich, Lord Lowry,Lord Slynn of Hadley***with ***Lord Oliver of Aylmerton*** dissenting,it was held that where a Defendant in a criminal matter had been brought back to the United Kingdom in disregard of available extradition process and in breach of international law and the laws of the state where the Defendant had been found, the Courts in the United Kingdom should take cognisance of those circumstances and refuse to try the Defendant; and that, accordingly, the High Court, in the exercise of its supervisory jurisdiction, had power to inquire into the circumstances by which a person had been brought within the jurisdiction and, if satisfied

that there had been a disregard of extradition procedures, it might stay the prosecution as an abuse of process and order the release of the Defendant.

In coming to this decision, the *House of Lords* referred, inter alia, to the decision of the ***South African Court of Appeal*** in ***S. v. Ebrahim, 1991 (2) S.A. 553,*** the headnote of which reads:

> *'The appellant, a member of the military wing of the African National Congress who had fled South Africa while under a restriction order, had been abducted from his home in Mbabane, Swaziland, by persons acting as agents of the South African State, and taken back to South Africa, where he was handed over to the police and detained in terms of security legislation. He was subsequently charged with treason in a Circuit Local Division, which convicted and sentenced him to 20 years' imprisonment. The appellant had prior to pleading launched an application for an order to the effect that the court lacked jurisdiction to try the case inasmuch as his abduction was in breach of international law and thus unlawful. The application was dismissed and the trial continued. The court, on appeal against the dismissal of the above application, held, after a thorough investigation of the relevant South African and common law, that the issue as to the effect of the abduction on the jurisdiction of the trial court was still governed by the Roman and Roman-Dutch common law which regarded the removal of a person from an area of jurisdiction in which he had been*

illegally arrested to another area as tantamount to abduction and thus constituted a serious injustice. A court before which such a person was brought also lacked jurisdiction to try him, even where such a person had been abducted by agents of the authority governing the area of jurisdiction of the said court. The court further held that the above rules embodied several fundamental legal principles, viz. those that maintained and promoted human rights, good relations between states and the sound administration of justice: the individual had to be protected against unlawful detention and against abduction, the limits of territorial jurisdiction and the sovereignty of states had to be respected, the fairness of the legal process guaranteed and the abuse thereof prevented so as to protect and promote the dignity and integrity of the judicial system. The state was bound by these rules and had to come to court with clean hands, as it were, when it was itself a party to proceedings and this requirement was clearly not satisfied when the state was involved in the abduction of persons across the country's borders. It was accordingly held that the court lacked jurisdiction to try the appellant and his application should therefore have succeeded. As the appellant should never have been tried by the court, the consequences of the trial had to be undone and the appeal disposed of as one against conviction and sentence. Both the conviction and sentence were accordingly set aside."Underlining Mine

Citing this case with approval, ***Lord Griffiths***, in the case of **R v Horseferry** *Supra* held:

> *"The great growth of administrative law during the latter half of this century has occurred because of the recognition by the judiciary and Parliament alike that it is the function of the High Court to ensure that executive action is exercised responsibly and as Parliament intended. So also should it be in the field of criminal law and if it comes to the attention of the court that there has been a serious abuse of power it should, in my view, express its disapproval by refusing to act upon it.....Let us consider the position in the context of extradition. Extradition procedures are designed not only to ensure that criminals are returned from one country to another but also to protect the rights of those who are accused of crimes by the requesting country. Thus sufficient evidence has to be produced to show a prima facie case against the accused and the rule of speciality protects the accused from being tried for any crime other than that for which he was extradited. If a practice developed in which the police or prosecuting authorities of this country ignored extradition procedures and secured the return of an accused by a mere request to police colleagues in another country they would be flouting the extradition procedures and depriving the accused of the safeguards built into the extradition process for his benefit. It is to my mind unthinkable that in such circumstances the court should declare itself*

to be powerless and stand idly by; I echo the words of Lord Devlin in Connelly v. Director of Public Prosecutions [1964] A.C. 1254, 1354: "The courts cannot contemplate for a moment the transference to the Executive of the responsibility for seeing that the process of law is not abused." The courts, of course, have no power to apply direct discipline to the police or the prosecuting authorities, but they can refuse to allow them to take advantage of abuse of power by regarding their behaviour as an abuse of process and thus preventing a prosecution.

Lord Bridge of Harwich contributing, put the poser quite starkly, when he questioned:

"My Lords, this appeal raises an important question of principle. When a person is arrested and charged with a criminal offence, is it a valid ground of objection to the exercise of the court's jurisdiction to try him that the prosecuting authority secured the prisoner's presence within the territorial jurisdiction of the court by forcibly abducting him from within the jurisdiction of some other state, in violation of international law, in violation of the laws of the state from which he was abducted, in violation of whatever rights he enjoyed under the laws of that state and in disregard of available procedures to secure his lawful extradition to this country from the state where he was residing?"

Answering this question, ***Lord Bridge*** held:

"Whatever differences there may be between the legal systems of South Africa, the United States, New Zealand and this country, many of the basic principles to which they seek to give effect stem from common roots. There is, I think, no principle more basic to any

proper system of law than the maintenance of the rule of law itself. When it is shown that the law enforcement agency responsible for bringing a prosecution has only been enabled to do so by participating in violations of international law and of the laws of another state in order to secure the presence of the accused within the territorial jurisdiction of the court, I think that respect for the rule of law demands that the court take cognisance of that circumstance. To hold that the court may turn a blind eye to executive lawlessness beyond the frontiers of its own jurisdiction is, to my mind, an insular and unacceptable view. Having then taken cognisance of the lawlessness it would again appear to me to be a wholly inadequate response for the court to hold that the only remedy lies in civil proceedings at the suit of the defendant or in disciplinary or criminal proceedings against the individual officers of the law enforcement agency who were concerned in the illegal action taken. Since the prosecution could never have been brought if the defendant had not been illegally abducted, the whole proceeding is tainted. .....It is apt, in my view, to describe these circumstances, in the language used by Woodhouse J. in Moevao v. Department of Labour [1980] 1 N.Z.L.R. 464, 476, as an "abuse of the criminal jurisdiction in general" or indeed, in the language of Mansfield J. in United States v. Toscanino, 500 F.2d 267, as a "degradation" of the court's criminal process. To hold that in these circumstances the court may decline to exercise its jurisdiction on the ground that its process has been abused may be an extension of the doctrine of abuse of process but is, in my view, a wholly proper and necessary one."

Emphasis Mine

The Respondent, it is clear,in the rendition of the Appellant to this country, failed to utilize the processes stipulated, not only in international treaties and conventions but also local laws, to wit *Extradition Act Cap E25 Laws of the Federation 2004* and the *Terrorism (Prevention) Act of 2011* amended by the *Terrorism (Prevention) Act of 2013.*

The Courts must never shy away from calling the executive to order when they resort to acts of "*executive lawlessness*". The duty of the Courts is to maintain a balance between ensuring that law and order is obeyed and the protection of the individual from oppressive actions by the executive.

The learned Silk has accused the lower Court of failing to evaluate the evidence of the Appellant as contained in its affidavit before the Court and make findings of fact therefrom. It was also in error, he said, to have failed to pronounce on the issue in question, which was similarly raised before it. I find this to be true.

This issue, raised before the lower Court as the first issue for determination in the Appellant's Written Address, was the following:

Whether the Honourable Court has the requisite jurisdiction to try the Defendant on the 15-count amended charge, in view of the extraordinary and unlawful rendition of the said Defendant/Applicant?

Similar arguments as presented before this Court in support of the 1st issue for determination were also presented before the lower Court. The trial Judge, save setting out the issues for determination distilled by the Appellant in His Written Address, made no further mention of this issue, neither was there any resolution of the same. The Ruling of the lower Court, as I have stated earlier on in this judgment, was merely on the other issues raised regarding the competence of the grounds.

The Apex Court had occasion to emphasize the essentiality of lower courts pronouncing on all issues properly raised before them.

It held, in the case of ***C.N. Okpala & Sons Ltd v Nigerian Breweries PLC (2018) 9 NWLR Part 1623 Page 16 at 28 Para G-H*** per ***Okoro JSC***, as follows:

> *"In several decisions of this court, it has been repeatedly held that all lower courts, as a general rule, must pronounce on all issues properly placed before them for determination in order, apart from the issue of fair hearing, not to risk the possibility that the only issue or issues not pronounced upon are crucial, failure to pronounce on them will certainly lead to a miscarriage of justice. There is therefore need for every court or tribunal to make findings and pronounce on material and fundamental issues canvassed before it by the parties because failure to do so, as I said earlier, may result in a miscarriage of justice."*

See also ***Dasuki v FRN (2018) 10 NWLR Part 1627 Page 320 at 343 Para D*** per ***Eko JSC*** where the effect was held to be a *"breach of the right to fair hearing"*.

By failing to consider and make findings in respect of issue No 1 raised before it for determination, regarding the *extraordinary rendition* of the Appellant, the lower Court, I hold, failed to properly evaluate the Appellant's evidence, resulting in a breach of the Appellant's right to fair hearing.

The learned Silk has contended and sought in his reliefs in the Appellant's Notice of Appeal, that the Respondent be prohibited from detaining, trying or otherwise dealing with the Appellant in respect of any offences allegedly committed by him before his surrender to Nigeria by reason of ***Section 15*** of the ***Extradition Act Cap E25 Laws of the Federation*** *Supra.* The Respondent's Counsel proffered no arguments to counter this submission. The lower Court, I note, also failed to make any finding thereon.

Section 15 of the **Extradition Act Cap E25 Laws of the Federation 2004** provides:

> *"Where, in accordance with the law of any county within the Commonwealth or in pursuance of an extradition agreement between Nigeria and another country (whether within the Commonwealth or not), any person accused of or unlawfully at large after conviction of an offence committed within the jurisdiction of Nigeria is surrendered to Nigeria by the county in question, then, so long as he has not had a reasonable opportunity of returning to that country, that person shall not be detained (whether under this Act or otherwise), tried or otherwise dealt with in Nigeria for or in respect of an offence committed by him before his surrender to Nigeria other than-*
>
> *(a) the offence for which he was surrendered or any lesser offence which may be proved by the facts on which his surrender granted; or*
>
> *(b) any other offence (being one corresponding to an offence described in section 20 of this Act) of the same nature as the offence for which he was surrendered: Provided that a person falling within this*

section shall not be detained or tried for an offence by virtue of paragraph (b) of this section without the prior consent of the country surrendering him."

Underlining Mine

The consequence of this section, I hold, is that the Respondent is prohibited from being detained, tried or otherwise dealt with in Nigeria for or in respect of any offence allegedly committed by him before his *extraordinary rendition* to Nigeria. The lower Court thus has no jurisdiction, I further hold, to try the Appellant on Counts 1, 2, 3, 4, 5, 8 and 15 which were retained by it, being charges allegedly committed by the Appellant prior to his*extraordinary rendition.*

In addition, by the forcible abduction and *extraordinary rendition* of the Appellant from Kenya to this country on the 27th day of June 2021, in violation of international and state laws, the lower Court or indeed any Court in this country is divested of jurisdiction to entertain charges against the Appellant and I so hold.

I accordingly resolve Issue NumberOne in favour of the Appellant.

The resolution of this issue in favour of the Appellant disposes of this appeal, I hold, making a resolution of the other issues merely an academic exercise.

However, as the Supreme Court has expressed its desire, in a verdict where the issue of jurisdiction has determined a case, that the Court lower in hierarchy to the Supreme Court should still go ahead to pronounce on all

the other issues placed before it, in the event that this Court is overruled on the issue of jurisdiction, I shall determine the other issues raised by the Appellant's Counsel.

I shall take the 2nd and 5th issues together, being related, namely:

2. *Whether the lower court has the jurisdiction to try the Appellant for alleged offences committed in vacuo or which situs was not stated?*

5. Whether the Appellant can be tried for offences which the proof of evidence in support thereof does not disclose a prima facie case against him?

Appellant's Counsel

It is the submission of the learned Silk that where an information does not disclose a *prima facie* case against the Accused person, the Court is duty bound to quash the charge and dismiss the same.In the instant case, where there is nothing in the proof of evidence before the Trial Court to link the Appellant to the commission of the alleged offences contained in the retained Counts 1,2,3,4,5, 8 and 15 it ought to have quashed the charges. In support, he cited the cases of *Uwazurike V A-G, Federation (2008) 10 NWLR (Part 1096) at 444 Page 451 Para 7-9; F.R.N. V. Yakubu &Ors (2018) LPELR-43930 (CA); Udoike V. State (2016) LPELR-40109 (CA).*

The Counts retained, viz 1, 3, 2, 4, 5, and 8 of the 15-Count Amended Charge, he submitted,failed to disclose the *situs* where the Appellant made the alleged broadcasts from and this lacuna rendered the affected counts

incompetent and liable to be struck out/dismissed. Furthermore,the trial Court lacks the requisite jurisdiction to try the Appellant on the alleged offences where the alleged place of commission is not stated to be within the territorial jurisdiction of the Court. He cited in support the cases of *Ibrahim V State (2015) 11 NWLR (PT. 1469) 164 @ 174, Para. 11;Hannah Abraham v. F.R.N. (2018) LPELR-44136(CA); Ibori & Anor v. F.R.N & ORS (2008) LPELR-8370(CA); Section 45(a) of the Federal High Court Act Cap F12 LFN 2004; Ehindero V F.R.N. (2014) 10 NWLR (PT. 1415) 281 @ 312 paras B-F.*

Respondent's Submissions

The *Assistant Chief State Counsel*, for the Respondent, submitted, with the aid of a number of cases, the trite principle of law that there are two consecutive primary duties of a trial Court, perception and evaluation of the evidence of the parties before it. When the trial Court has judicially discharged these duties by a specific finding of the Court, the Appellate Court is not expected to assume the roles of the trial Court in re-evaluating the evidence, except if the decision of the trial Court is perverse or not supported by the records of the Court.

Learned Counsel further submitted that the issue of whether the Appellant was properly brought before the trial Court is a matter to be established during the course of evidence of the Respondent and not at the preliminary stage. The Court, he said, forbids a Court delving into the substantive matter to be tried, at the point of considering a preliminary objection to the hearing of the substantive matter. He cited *A/G Federation v A/G Abia*

State (2001) 11 NWLR Part 725 Page 689;Akinrinmisi v Maersk (Nig) Ltd (2013) 10 NWLR Part 1361 Page 73; James v INEC (2015) 12 NWLR Part 1474 Page 538. The trial Court, he said, properly evaluated the evidence and cannot be expected to make a pronouncement on issues where the Respondent has not called evidence to that effect.

In his oral submissions in Court, at the hearing of the appeal, Respondent's Counsel cited *S. 19 of the Federal High Court Act* and *S. 32 (1) of the Terrorism Prevention Amendment Act of 2022* in arguing that the Federal High Court of Abuja has the requisite jurisdiction to determine the suit.

RESOLUTION

The main purpose of a charge, I hold, is to give the accused person notice of the case against him and that is why the law is that an omission in a charge will only be fatal if it does not put an accused person on proper and sufficient notice of the case against him to enable him prepare adequately for his defence.

In the case of ***Lawan v. F.R.N (2022) 7 NWLR (Part 1829) Page 279 at 320-321 Para H-A, M.B Dongban-Mensem, PCA,*** held thus;

> *"By virtue of section 166 of the Criminal Procedure Act, no error in stating the offence or the Particulars required to be stated in the charge and no omission to state the offence or those Particulars shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission. What is most important*

is whether the accused person is charged with an offence known to law".

See also ***Ukpamazi v. State (2020) 18 NWLR (Part 1755) Page 157 at 174 Para F-G per M.D Muhammad JSC; Umar v. F.R.N (2019) 3 NWLR (Pt. 1660) 549 at 560 Para G per Bage JSC; Idi v. State (2019) 15 NWLR (Pt. 1696) 448 Pp. 478-479 Para G-A per Galumje JSC.***

I have looked at the counts in issue and it is clear that the charges as contained in Counts 1, 3, 2, 4, 5, and 8, of the 15-Count Amended Charge sufficiently put the Appellant on notice of the case against him.

The second limb of this issue deals with the Appellant's contention thatthe Learned Trial Court lacks the requisite jurisdiction to try the Appellant on the alleged offences where the alleged place of commission is not stated to be within the territorial jurisdiction of the Court.

In the case of ***Sulaiman v. F.R.N (2020) 18 NWLR (Part 1755) Page 180 at 205 Para C-F***the *Supreme Court* ***per Augie JSC*** had this to say:

> *In a criminal case, the best way to resolve the issue of territorial jurisdiction of a Federal High Court is to identify the offences charged and the elements of same as contained in the proof of evidence, with a view to determining whether any of the acts constituting the offences occurred in the particular place where the accused is being tried.*

A perusal of the counts in question and the attendant proofs of evidence show that the offences were allegedly committed via broadcasts received and heard in Nigeria,

S. 45(d) of the Federal High Court Act provides:

> *45. Subject to the power of transfer contained in this Act, the place for the trial of offences shall be as follows-*
>
> *(d) where-*
>
> *(i) it is uncertain in which of several areas or places an offence was committed, or*
>
> *(ii) an offence is committed partly in one area or place and partly in another, or*
>
> *(iii) an offence is a continuing one and continues to be committed in more areas or places than one, or*
>
> *(iv) an offence consists of several acts committed in different areas or places,*
>
> *such offence may be tried by a Court exercising jurisdiction in any of such areas or places. (underlining mine)*

In the instant case, the offences alleged are of such a nature where it is uncertain in which of several places it was committed, being a broadcast received and heard in Nigeria, of which the Federal Capital Territory, Abuja is a part of. I accordingly resolve the 2nd and 5th issues for determination against the Appellant.

The 3rd issue for determination, is:

Whether the Appellant can be tried for offences which the proof of evidence in support thereof does not disclose a prima facie case against him?

Appellant's Submission

The learned Silk has submitted that Count 3 of the Amended Charge relates to membership of a proscribed organization, the proscription of which is the subject of Appeal in ***Appeal No. CA/A/214/2018- Indigenous People of Biafra V. Attorney General of the Federation,*** *pending before the Court of Appeal, Abuja Division and is therefore sub judice. Consequently, it will be gravely prejudicial for the Appellant to be indicted on the said count when the Court of Appeal has not taken any decision on the issue, citing the cases of A.P.C VS Karfi (2018) 6 NWLR (Part 1616) Page 479 at 495 Para 30-31; F.A.T.B. LTD V Ezegbu (1992) 9 NWLR (Part 264) Page 132.*

Respondent's Submission

The *Assistant Chief State Counsel* submits that the status of the *Indigenous People of Biafra (IPOB)* is that it is a proscribed organization in Nigeria. As long as the appeal has not been determined, the order proscribing *IPOB* is still valid anc subsisting, until it is set aside. He cited the cases of *Trinity Mills Ins Brokers v Irukwu (2003) 13 NWLR Part 837 Page 228* and *Adeleke v Oyetola (2020) 6 NWLR Part 1721 Page 440.*

Resolution

Ruling on this issue, which was raised before it, the lower Court held that so long as the appeal against the proscription of *IPOB* had not been determined, the order of the Court proscribing *IPOB* is still in force. The trial Judge relied on the case of *Sadiq v Bembe (2021) LPELR-56240 (CA)* and *Agoro v Hon. Minister FCT (2018) LPELR – 44452 (CA).*

It is indeed true, as held by the lower Court that the decision of a Court is binding until it is set aside. As long as the appeal has not been determined, the order of proscription is still valid and subsisting. This issue is accordingly resolved against the Appellant.

The 4th issue for determination, is:

Whether the lower court has the jurisdiction to try the Appellant for alleged offences committed outside its territorial jurisdiction?

Appellant's Submissions

The learned Silk has submitted that Count 15 of the Amended Charge relates to an offence allegedly committed in *Ubuluisiuzor*, in *Ihiala Local Government Area* of *Anambra State*, outside the territorial jurisdiction of the Lower Court and since it is trite that an offence can only be tried by a Court exercising jurisdiction over the place or area where the alleged offence was committed, the lower court clearly lacks the requisite jurisdiction. He cited *Ibori V. F.R.N. (2009) 3 NWLR (Part 1128) page 283 at 308- 309, Para G-A;Section 39 (1) (a) and 2 of the Administration of*

Criminal Justice Act 2015; Section 45 of the Federal High Court Act, Laws of the Federation of Nigeria, 2004.

Respondent's Submissions

The response of ***D.E. Kaswe,*** *Assistant Chief State Counsel,* for the Respondent is that Count 15 of the charge against the Appellant borders on Terrorism and other related offences and that it is thus the Federal High Court that has exclusive jurisdiction to determine the matter. The Federal High Court, he said, exercises a single jurisdiction nationwide, with the various divisions created for administrative convenience and not for territorial jurisdiction, citing the case of *Kasido (Nig) Ltd v. Access Bank PLC (2022) 5 NWLR (Part 1822) Page 1 at 17 Para E-H; Biem v. S.D.P (2019) 12 NWLR (Part 1687) Page 377 at 404 Para C-E.*

REPLY BRIEF

In the Appellant's Reply brief, *Chief MkeOzekhome SAN* submitted that the Respondent's Counsel erroneously submitted that Count 15 borders on terrorism and other related offences, which is untrue. The Appellant was charged in Count 15, he said, for the importation of a transmitter contrary to *Section 47(2)(a) of the Criminal Code Act, Cap C45 LFN 2004* but the Trial Judge, in her Ruling of 8th April, 2022 amended the Criminal Code Act to read *Customs Excise Management Act.*

He contended, in his oral submissions before the Court on 13/09/2022, citing the case of *Sulaiman v. F.R.N. (2020) 18 NWLR (Part 1755) Page 180 at 200 -205 Para C-F,* that the Federal High Court was not conferred

with unfettered and unbridled jurisdiction vis-à-vis the venue for the hearing and determination of a criminal matter. He argued that the cases of *Kasido (Nig) Ltd V Access Bank PLC 5 NWLR (Part 1822) Page 1 at 17 Para E-H and Biem V S.D.P. (2019) 12 NWLR (Part 1687) Page 377 at 404 Para C-E* cited by the Respondent can be distinguished on the grounds that they relate to the venue and jurisdiction of the Federal High Court in civil cases as against the instant criminal matter.

RESOLUTION

The case of ***Sulaiman v. F.R.N. (2020) 18 NWLR (Part 1755) Page 180 at 200 -205 Para C-F*** cited by the Appellant is very instructive on this issue.

In the said case, the Supreme Court, per ***Augie JSC*** held:

> *"As far as the Federal High Court is concerned, it is settled that the fact that it is one court with Divisions dotted all over the Federation, does not mean that in criminal cases, the accused can be tried in any Division of the Federal High Court. This is because section 45 of the Federal High Court Act, which created the court provides;*
>
> *Subject to the power of transfer contained in this Act, the place for the trial of offences shall be as follows:*
>
> *(a) An offence shall be tried by a court exercising jurisdiction in the area or place where the offence was committed;*

(b) *When a person is accused of the commission of any offence by reason of anything which has been omitted to be done, and of any consequence which has ensued, such offence may be tried by a court exercising jurisdiction in the area or place in which any such thing has been done or omitted to be done, or any such consequence has ensued;*

(c) *When an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first-mentioned offence may be tried by a court exercising jurisdiction in the area or place either in which it happened, or in which the offence with which it was so connected happened;*

(d) *When -*

(i) *it is uncertain in which of several areas or places an offence was committed; or*

(ii) *an offence is committed partly in one area or place and partly in another; or*

(iii) *an offence is a continuing one and continues to be committed in more areas or places than one; or*

(iv) *an offence consists of several acts committed in different areas or places, such offence may be tried by a court exercising jurisdiction in any of such areas or places;*

(e) *An offence committed while the offender is in the course of performing a journey or voyage, may be tried by a*

court in or into the area or place of whose jurisdiction the offender or person against whom or the thing in respect of which the offence was committed reside, is or passed in the course of that journey or voyage.

So although section 19 of the Federal High Court Act provides that the court shall have and exercise jurisdiction throughout Nigeria section 45 of the Act specifically says that offences are to be tried in the area or place where any of the offences were committed.

In the instant case, it was glaring from the proof of evidence that the appellant allegedly collected and disbursed the money illegally in Ilorin rather than Lagos. By section 45(a) of the Federal High Court Act, the Federal High Court in Ilorin and not the one in Lagos had the territorial jurisdiction over the charge for which the appellant was tried. This was all the more so when no act or omission that formed part of the offence was shown to have occurred in Lagos." Underlining Mine

In line with this recent decision of the Supreme Court, Count 15 which has the *situs* of the alleged offence to be *Ubuluisiuzor,* in *Ihiala Local Government Area* of *Anambra State,* it is the Federal High Court in that judicial division that is the proper venue and division to adjudicate on this charge, I hold. I accordingly resolve this issue in favour of the Appellant.

CONCLUSION AND DECISION

However, in spite of resolving Issues Numbers 2, 3 and 5 in favour of the Respondent, having resolved Issue Number 1 in favour of the Appellant,

which deals with the jurisdiction of the lower Court to try the Appellant on the retained counts of the Amended Charges, this appeal succeeds and is allowed.

The decision of *Nyako J of the Federal High Court, Abuja Division*, delivered on the 8th day of April 2022 retaining Counts 1, 2, 3, 4, 5, 8 and 15 of the Amended Charge is set aside.The said charges are accordingly terminated and struck out.The Appellant is, in consequence,discharged.

OLUDOTUN ADEBOLA ADEFOPE-OKOJIE
JUSTICE, COURT OF APPEAL

COUNSEL:

CHIEF MIKE OZEKHOME (SAN) withBENSON IGBANOI, SIR IFEANYI EJIOFOR, MRS. AMAUCHE ONYEDUM andOSILAMA MIKE - OZEKHOME for Appellant.

D.E. KASWE ASST. CHIEF STATE COUNSEL ATTORNEY GENERAL'S CHAMBERS, FEDERAL MINISTRY OF JUSTICE with A. ADEWUNMI-ALUKO ASSISTANT CHIEF STATE COUNSEL, G.C. NWEZE SENIOR STATE COUNSEL for the Respondent.

APPEAL NO. CA/ABJ/CR/625/2022
JUMMAI HANNATU SANKEY, J.C.A.

I have read before now the lead Judgment of my learned brother, **Oludotun Adebola Adefope-Okojie, J.C.A**. where the facts and issues in disputation have been well captured. I agree with his lordship's reasoning and the conclusions. I will only add a few words in furtherance of my agreement.

The facts leading to the Appeal are briefly as follows: the Appellant had been standing trial before the Federal High on a four-count amended charge filed on March 16, 2018 for conspiracy to commit treasonable felony, treasonable felony, publication of defamatory matter respectively under Sections 516, 41(c) and 375 of the Criminal Code Act, Cap C77, Laws of the Federation 2004, and Improper importation of goods contrary to Section 47(2) of the Customs and Excise Management Act, Cap C45, Laws of the Federation of Nigeria, 2004. Thereafter, the Respondent filed a 7-count charge Amended charge on October 13, 2021; on October 20th 2021, the Respondent again filed a 7-count Further Amended Charge. Finally, on January 17th 2022, the Respondent filed a 15-count Amended Charge. It is this charge which formed the fulcrum of this Appeal.

In this 15-count Amended Charge, the original counts of charge were changed from the alleged offences of treasonable felony punishable under various provisions of the Criminal Code Act, to alleged offences of making broadcasts with intent to intimidate, to incite, incitement and acts of terrorism punishable under Sections 1(2) (b), 16, 1(2) (h), 1(2) f) of the Terrorism Prevention Amendment Act, 2013; as well as, the importation into Nigeria of a Radio Transmitter known as Tram 50L contrary to Section 47(2) (a) of the Criminal Code Act, Cap C45 Laws of the Federation of Nigeria 2004.

Upon service of the 15-count charge on the Appellant, he took his plea. Thereafter, the Appellant filed a Notice of preliminary objection on January 19th 2022 wherein

he challenged the jurisdiction of the lower Court to try him on the 15-count Amended Charge. Therein, he prayed for the following orders:

1. **"AN ORDER striking out/quashing and dismissing the 15-count Amended Charge, specifically, counts 1-15 preferred against the Defendant/Applicant in the Amended Charge No: FHC/ABJ/CR/383/2015, for the reason that the counts, as constituted, are incompetent and thus, deprive the Honourable Court of the jurisdiction to entertain the same.**
2. **AN ORDER of the Honourable Court discharging and acquitting the Defendant/Applicant of al the counts in the 15-Count Amended Charge preferred against the Defendant/Applicant, upon same being struck out/quashed and or dismissed.**
3. **AND FOR SUCH further order or orders as this honourable court may deem fit to make in the circumstances."**

There were 34 grounds for the application spanning pages 137-145 of the record of appeal. The preliminary objection was supported by a 39-paragraph affidavit (pages 147-152 of the record). A written address was equally filed, in obedience to the Rules of the Federal High Court, proffering arguments in support of the objection (pages 153-178 of the record). In response to the affidavit of the Appellant, the Respondent filed a Counter affidavit comprising of 20 paragraphs (pages 179-181 of the record). It also filed a Written Address in support (at pages 182-189 of the record). A Further affidavit in Reply on points of law was filed by the Appellant supported by a Written Address in Reply on points of law (pages 193-213 of the record).

The preliminary objection was duly heard by the trial Court, and on April 8th 2022, it delivered its Ruling thereon. By its considered Ruling, it struck out eight out of the 15 counts of the Amended Charge, to wit: counts 6, 7, 9, 10, 11, 12, 13 and 14 of the 15-count charge. It however retained seven other counts of the charge, being counts 1, 2, 3, 4, 5, 8 and 15 of the Amended Charge. Dissatisfied with the part of

the decision of the lower Courtwherein it retained seven counts of the Amended Charge, the Appellant filed an Appeal to this Court *vide* his Notice of Appeal on April 29, 2022. Therein, he complained on five grounds. He sought the following reliefs from the Court:

A. **"An Order of this Honourable Court allowing the Appeal and setting aside in its entirety the Ruing/Final decision of the learned trial Court retaining counts 1, 2, 3, 4, 5, 8 and 15 of the Amended Charge.**
B. **An Order of this Honourable Court upon granting Relief A above, dismissing the remaining counts 1, 2, 3, 4, 5, 8 and 15 and accordingly discharging the Appellant on those counts.**
C. **An Order of this Honourable Court terminating the entire charge and discharging the Appellant.**
D. **And for such further Orders as the Honourable Court may deem fit to make in the circumstances of this Appeal."**

In arguing the Appeal before this Court, learned Senior Counsel for the Appellant framed five issues for determination as follows:

a. **"Whether the lower Court properly evaluated and ascribed probative value to the Appellant's evidence when it failed to consider, make finding of facts and accordingly pronounced on issue one raised for the trial Court's determination relating to the extraordinary rendition of the Appellant? (Culled from Ground 1)**
b. **Whether the lower Court has the jurisdiction to try the Appellantfor the alleged offences committed in vacuo or which the situs was not stated? (Culled from Ground 2)**
c. **Whether the Appellant can be prosecuted for an offence which its validity is the subject matter of an Appeal? (Culled from Ground 3)**
d. **Whether the lower Court has the jurisdiction to try the Appellant for alleged offences committed outside its territorial jurisdiction? (Culled from Ground 4)**
e. **Whether the Appellant can be tried for offences which the proof of evidence in support thereof does not disclose a prima facie case against the Appellant? (Culled from Ground 5)"**

Learned Counsel for the Respondent, D.E. Kaswe Esq., the Assistant Chief Counsel (ACSC) of the Department of Public Prosecution with the Federal Ministry of Justice, adopted the issues crafted by the learned Silk for the determination of the Appeal.

From the record of the lower court, the first issue which the Appellant presented to the trial Court for its determination of the preliminary objection was -

a. **"Whether the Honourable Court has the requisite jurisdiction to try the Defendant on the 15 Count Amended Charge, in view of the extraordinary and unlawful rendition of the said Defendant/Applicant?"**

Therefore, the crux of the preliminary objection was that the lower Court lacked jurisdiction to try the Appellant on the 15-count charge. The grounds of objection before the trial Court rested on the contention that since the Appellant was forcibly abducted and extraordinary rendered to Nigeria in violation of International Treaties, Conventions,Principles and Guidelines which have been ratified and even domesticated into the laws of Nigeria, the trial Court was divested of jurisdiction to entertain the suit. Thus, under the first issue for determination in this Appeal, the Court is invited to determine whether or not the trial Court failed in its duty to evaluate and ascribe value to the evidence proffered by the parties in the determination of whether it was vested with jurisdiction to proceed with the charge against the Appellant in the light of the affidavit evidence presented by the Appellant, that he was brought into Nigeria by illegal means.

The affidavit evidence offered by the Appellant in respect of this issue can be found specifically at paragraph xxi of the Appellant's affidavit (page143 of the record). For ease of reference, it states:

> **"xxi. That the Defendant cannot be arraigned and tried on the 15 count Amended Charge when he was not lawfully rendered to Nigeria and, consequently lawfully brought before the Court.**

In countering this allegation, the Respondent in paragraph 15 its Counter affidavit, simply deposed as follows:

> **"15. <u>That paragraphs 21</u>, 23, 24, 25, and 27 of the affidavit in support of the preliminary objection are nottrue."**(Emphasis supplied)

Aside from this general denial in this averment, nowhere in the Respondent's affidavit was the allegation contained in the Appellant's affidavit relating to the alleged forcible abduction and extraordinary rendition of the Appellant countered by any specific facts. Given the state of the affidavit evidence, it becomes apparent that, whereas the Appellant alleged that he was abducted and extraordinarily rendered from Kenya to Nigeria, after which he was arraigned before the lower Court on the 15-Count Amended Charge, the Respondent merely denies that this happened, without more. No further specifics were given as to how and where the Appellant was arrested and produced before the trial Court.The question which arises therefore is, whether this denial sufficed to controvert the specific allegation of the Appellant.

The law has long been settled that for a traverse of specific averments to amount to a denial and thus warrant further investigation, it cannot be general, but must be explicit, unequivocal and should not leave anyone in doubt as to the intention sought to be portrayed – **Bichi V Olagadejo (2021) LPELR-56709(CA) 25, B-A; Bamgbebin V Oriare (2009) 13 NWLR (Pt. 1158) 370; Ajibulu V Ajayi (2014) 2 NWLR (Pt. 1392) 483; Union Bank of Niferia Plc V Chimaeze (2014) 9 NWLR (Pt. 1411) 166; Chairman Moro LG V Lawal (2007) LPELR-11828(CA) 44-45, A-D; Ajomale V Yaduat No. 2 1991) 5 NWLR (Pt. 1) 25, 270.**

In **Danladi V Dangiri (2014) LPELR-24020(SC)**, the Supreme Court emphasized the law thus:

"The law is that essential allegations in a pleading or affidavit which are not specifically traversed are deemed admitted by the adverse party. In the face of specific and detailed allegations of facts, a denial of those facts must be specific."

Thus, a general traverse does not constitute an answer to a specific allegation. Where a deposition on oath is made against a party and he intends to dispute them, he must make an answer specifically addressing the specific depositions, and where possible, supply facts and documents in answer to buttress same."

Thus, given the state of affidavit evidence, it is apparent that, whereas the Appellant alleges that he was abducted and extraordinarily rendered from Kenya to Nigeria, after which he was arraigned before the lower Court on the 15-Count Amended Charge, the Respondent simply made a bare denial. The law is trite that a party who intends to dispute or controvert a specific fact or deposition in a pleading or affidavit of the opposing party, must do so by setting out facts in his affidavit that are specific, categorical and directly controvert the facts so denied. For that reason, general, obtuse, non-specific or evasive averments do not amount to an effective traverse or refutation, repudiation, contradiction or challenge.

The first issue for determination presented by the learned Senior Counsel for the Appellant to the trial Court was argued in his Written Address attached with the defendant's Defendant' supporting affidavit and the Reply on points of lawattached to the Further affidavit. Learned Counsel for the Respondent also filed a Written Address wherein he advanced arguments in response to the Appellant's submissions. Under issue one for determination in this Appeal, the Appellant'scomplaint is that the lower Court failed to properly evaluate and ascribe probative value to the affidavit evidence placed before it in support of the preliminary objection raised to the hearing and determination of the case against the Appellant.

The Appellant in his Notice of preliminary objection made a positive assertion that the Appellant was forcibly abducted from Kenya and extraordinarily rendered to Nigeria contrary toArticle 7 of the OAU Convention on the Prevention and Combating of Terrorism;The Principles and Guidelines on Human and Peoples' Right while Countering Terrorism in Africa, adopted by the African Commission on Human and Peoples' Rights based Article 45(1) (b) of the African Charter on Human and Peoples Rights;Part 5 (Transfer of Individuals) of the Principles and Guidelines.

Learned Silk for the Appellant submits that under Part 5 (Transfer of Individuals) of the Principles and Guidelines, the act of transferring or the expulsion of the Plaintiff from Kenya to Nigeria without due process of law, fits the definition of an act of extraordinary rendition which is expressly prohibited under the said Principles and Guidelines. Thus, the Appellant's contention before the trial Court was that it lacked the necessary *vires* to try him for the reasons stated, to wit: his alleged abduction from Kenya and extraordinary rendition to Nigeria.

The Respondent's answer to this was that the issue of whether the Appellant was brought properly before the trial Court is a matter to be established during the course of evidence presented by the Respondent, and not at the preliminary stages of trial. He relied on**AG Federation V AG Abia State (2001) 11 NWLR (Pt. 725) 689** among others, to buttress this submission.Upon due consideration of the reliefs sought in the Appellant's Notice of preliminary objection, the submission of the Respondent is misconceived.

The substance of the Appellant's contention under issue one before the trial Court is that because the Appellant was forcibly abducted from Kenya and extraordinarily rendered to Nigeria in contravention of international conventions and treaties which had been domesticated in Nigeria, to be arraigned on a charge containing counts of terrorism, the trial Court lacked the *vires* to try the Appellant

as charged. This is the issue that was placed before the lower Court for determination in respect of issue one of the preliminary objection. Whereas, the substantive matter that the Respondent presented to the lower Court for trial was a 15-Count charge for offences bordering on incitement, intimidation and terrorism contrary to various provisions of the Terrorism Act and the Criminal Code Act. It is therefore as clear, as day is from night, that a determination of the issue of how the Appellant was extradited to Nigeria and how this affected the jurisdiction of the lower Court to entertain the suit, has nothing to do with the allegations of terrorism, etc., to be tried against him in the substantive suit. Therefore, the issue of jurisdiction was properly raised before the trial Court and the learned trial Judge was obliged to have addressed it in its ruling.

It is in the light of this that I have closely perused the Ruling of the lower Court (contained at pages 267-285 of the record of appeal). Therein, it is plain after reviewing the processes laid before the Court and, in particular, the submissions of both learned Counsel for the parties contained in their Written Addresses, the learned trial Judge made his findings at pages 283-285 of the record. In respect of issue one for determination presented to it by the Appellant, the lower Court held specifically at page 283 of the record thus:

> **"The defendant is being charged under Section 1(2) of the Terrorism Act., which has been reproduced above, [for] any offence alleged to have been committed "within" or "outside" Nigeria can be brought under the Act. It is for the party alleging to prove the commission of the offence."**

Very simply put, it is starkly evident that the issue of jurisdiction raised under issue one, based on the way and manner the presence of the Appellant was procured before the trial Court, was not at all addressed by the learned trial Judge. Rather, by his finding reproduced above, the lower Court merely referred to the Law under

which the Appellant was charged and the duty placed on the Respondent to prove same.

Thus, in summary, in the face of the magnitude of allegations in the affidavit evidence presented by the Appellant, the Respondent kept mum and offered practically no response, only a general traverse which does not controvert the facts specifically alleged by the Appellant.Thesaying that "Silence is golden" is certainly not beneficial to the Respondent in the circumstance. The Respondent retreated under the shaky cover that the issue of jurisdiction raised touched on the substantive matters to be tried at the trial of the Appellant for acts of terrorism, etc. Clearly, the Respondent treated the allegations made in the Appellant's affidavit both casually and with levity, and did not address it with the seriousness it deserved.

Additionally, in respect of the Respondent's failure to controvert the material pieces of affidavit evidence in the Appellant's affidavit, the law is certain that unchallenged and uncontroverted credible material pieces of affidavit, as in this case, are deemed admitted and taken as having established the facts contained therein without further ado. I do so hold. See**SPDC Ltd V Access Bank Ltd (2021) LPELR-54640(CA) 17, C-A; Ladoke V Olabayo (1992) LPELR-15138(CA) 10, C-F.**

The trial Court also did not fare any better. It turned a blind eye to the weighty issue placed before it by refusing and/or omitting to make any pronouncement on it. The failure to resolve the said issue is in contravention of the settled position of the law repeatedly expounded by the apex Court in numerous decisions. The principle of law is that a trial Court is obliged to resolve all issues placed before it by parties. Where a trial Court fails to carry out that basic function, and determines the matter before it leaving out any issue raised by the parties without resolution, a

valid case may be made for a denial of fair hearing – **Ebee V State (2022) LPELR-56586(CA) 29-30, E-A; Ovunwo V Woko (2011) 17 NWLR (Pt. 1277) 522;Dakwang V NJC (2019) LPELR-48450(CA_ 15-17, C;Tatu V Estate of Late Isah Alh. Adamu (2014) LPELR-24160(CA) 20, B-E.** Therefore, the Appellant having placed the issue again before this Court, we are obliged to address it. The Supreme Court has said we must. And so, we will!

This Court should not be seen to shirk its duty and fidelity to the law. By Section 15 of the Court of Appeal Act 2004, the Court of Appeal ***"generally shall have full jurisdiction over the whole proceedings as if the proceedings as if the proceedings had been instituted in the Court of Appeal as Court of first instance and may rehear the case in whole or in part..."*** The lower Court, having not made any pretence at addressing the issue, I accept the invitation of the Appellant to step into the shoes of the lower Court to do that which it failed to do. The necessity to do so also lies in the fact that, as a penultimate Court, this Court is bound to determine all issues placed before it so that the Supreme Court will be availed of its findings and thus, be better placed and in a position to review the decision in the event of a further appeal to it. This serves the dual purpose of saving the ultimate Court from takingon the added burden of stepping into the shoes of this Court, as it is also empowered to do by the Rules of procedure guiding the Supreme Court, to wit: the Supreme Court Rules, 2014; or sending the issue back to this Court to be tried and a decision rendered on it, with a view to dispensing final justice to the case.

The facts relating to the substantive issue placed before the lower Court is contained in paragraphs 19-25 of the affidavit of the Appellant in support of the preliminary objection. In summary, it contends that the Respondent, in forcibly abducting the Appellant from Kenya and extraordinarily rendering him to Nigeria,

without extradition proceedings, violated Articles 7, 8 and 11 of the OAU Convention on the Prevention and Combating of Terrorism, which was adopted by member States of the Organization of African Unity on July 1st 1999, and ratified by Nigeria on April 28th 2002; Part 5 of the Principles and Guidelines on Human and Peoples Rights while countering Terrorism in Africa developed on the basis of the African Charter on Human and Peoples Rights, ratified by Nigeria on June 22nd 1983.

Learned Silk submits that under Part 5 (Transfer of Individuals) of the Principles and Guidelines, the act of transferring or the expulsion of the Plaintiff from Kenya to Nigeria without the due process of law, fits the definition of an act of extraordinary rendition which is expressly prohibited under the said Principles and Guidelines. Thus, since the Appellant's contention before the trial Court is that it lacked the necessary *vires* to try him for the reasons stated, to wit: his alleged abduction from Kenya and extraordinary rendition to Nigeria, it was incumbent upon Appellant to first establish these facts, especially where they were denied by the Respondent. It is for this reason that the learned Silk for the Appellant went on an exposition of the relevant laws and treaties, which werethoroughly and painstakingly addressed in the leading Judgment of my learned brother. The treaties, laws, *et al*, referred to and relied upon, are:

1) **The OAU Convention on the Prevention and Combating of Terrorism (OAU Convention) Articles 7, 8 and 11);**
2) **Protocol to PAU Convention;**
3) **The Principles and Guidelines on Human and Peoples' Rights while countering Terrorism in Africa (Article 3);**
4) **African Charter on Human and Peoples' Rights (Section 45);**
5) **Terrorism (Prevention) Amendment Act, 2013 (Section 1A (2);**
6) **Administration of Criminal Justice Act (Sections 3, 4, 5, & 47);**
7) **African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap A9 Laws of the Federation 2004;**

8) Extradition Act Cap E25 Laws of the Federation 2004 (Section 15).

It is instructive that Section 1A (2) of the Terrorism (Prevention) Act, 2013 specifically provides that:

> **"The Attorney General of the Federation shall be the authority for the effective implementation and administration of this Act; and shall strengthen and enhance the legal framework to ensure –**
>
> **(a) Conformity of Nigeria's counter-terrorism laws and policies with international standards and United Nations Conventions on Terrorism;"** (Emphasis supplied)

By this provision of law enacted by the National Assembly, Nigeria is mandated to ensure that its policies conform with international standards and United Nations Conventions on Terrorism. Thus, by forcibly removing the Appellant from Kenya and rendering him to Nigeria in total disregard of the Conventions, Treaties and Guidelines and Laws, the Respondent breached the fundamental rights of the Appellant guaranteed by the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The Appellant, having set out the depositions of facts in his affidavit as to the manner in which he was forcibly taken out of another country and brought back into Nigeria, the Respondent, as the arresting authority, was mandated to establish that it complied with the law in effecting the arrest of the Appellant – **Gov, Kaduna State V Maikori (2020) LPELR-50391(CA) 29-30, A-B per Idris, JCA.**

Yet, the Respondent had no answer. Rather, learned Counsel for the Respondent sought refuge in Sections 3-5 of the Administration of Criminal Justice Act (ACJA) 2015, which provides for the power and manner of arrest of a suspect or defendant by a police officer or other person where he is alleged to have committed an offence known to the laws of this land. These provisions are bound to be read along with Section 47(1) of ACJA which specifies that a warrant of

arrest issued by the Federal High Court can be executed anywhere in the country, and not outside its shores. It has no bearing on the issue at stake, which is the extradition of a person from one country and ferrying him into Nigeria, in the manner described in the Appellant's affidavit. Part 5 of the Principles and Guidelines on Human and Peoples' Rights while countering Terrorism in Africa, expressly provides that, even where a warrant of arrest has been issued against a person for the alleged offence of terrorism, extradition proceedings or the criminal justice processes shall not be circumvented. It specifically states that extraordinary rendition or any other transfer without due process is prohibited/forbidden. For ease of reference, Part 5 (supra) states –

> **"PART 5**
>
> **Transfers of Individuals**
>
> **Transfers: A State may not "transfer" (e.g., deport, expel, remove, extradite) an individual to the custody of another State unless it is prescribed by law and in accordance with due process and other international human rights obligations. All transfers are subject to the principle of non-refoulment. Transfers shall not be a justification for loss or revocation of nationality or to make an individual stateless. Deportation, expulsion and removal cannot be used to circumvent criminal justice processes, including extradition procedures. Extraordinary rendition, or any other transfer, without due process is prohibited.**
>
> **Explanatory Note: The forced transfer of an individual from the custody of one State to another entity necessarily requires the deprivation of liberty. For this reason, the process through which the transfer takes place must be provided by law and nor arbitrary. See Principle 3(A), Prohibition of Arbitrary Detention; Organization of African Unity Convention on the prevention and Combating of Terrorism, Articles 8(1) and 11; and Explanatory Note to Principle 5(A)**

(ii) Non-Refoulment and Principle 9(a), Prohibition against Statelessness." (Emphasis supplied)

The Supreme Court,in **Abacha V Fawehinmi (2000) 6 NWLR (Pt. 660) 228, 289, B-D, per Ogundare, JSC,** stated authoritatively that Courts shall strictly apply conventions and treaties entered into by Nigeria. Thus, the issue has not been left to conjecture or speculation as to whether or not Courts in Nigeria are bound to apply such conventions and treaties entered into and ratified by Nigeria. In addition, the Respondent, when confronted with the facts in the Appellant's affidavit, failed to show that in procuring the presence of the Appellant into the country and producing him before the trial Court for trial in obedience to a warrant of arrest, it complied with **Article 12(4) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act Cap A9, LFN 2004.** It provides –

> **"A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law."**

In the instant case, it was not contended by the Respondent, nor was any evidence presented, that any extradition proceedings were initiated with Kenya, the country from where the Appellant was renditioned to Nigeria or that the Appellant was taken by virtue of a decision taken in accordance with the law.

It is evident, as submitted by learned Senior Counsel for the Appellant, that there is a dearth of judicial decisions on this aspect of extradition. However, upon proper consideration, I am persuaded by the decisions referred to us, of Courts in the Commonwealth cited by learned Senior Counsel for the Appellant on this issue. See **R V Horseferry Road Magistrates Court, exparte Bennet (1994) 1 AC 42; (1993) WLR 90, a decision of the House of Lords; and S V Ebrahim, 1991 (2) S.A. 553.** In the former case, to wit: **R V Horseferry Road Magistrates Court,**

exparte Bennet (supra), which relied heavily on the latter decision, namely: **S V Ebrahim (supra)**, the House of Lords held that where a Defendant in a criminal matter had been brought back to the United Kingdom in disregard of available extradition process and in breach of international law and the laws of the State where the Defendant had been found, the Courts in the United Kingdom should take cognizance of the circumstances and refuse to try the Defendant; and that, accordingly, the High Court, in the exercise of its supervisory jurisdiction, had power to inquire into the circumstances by which a person had been brought into the jurisdiction, and if satisfied that there had been a disregard of extradition procedures, it might stay the prosecution as an abuse of process and order the release of the Defendant.

Learned Senior Counsel for the Appellant also submits that under the '**Doctrine of Speciality**' which pertains to extraditions, an extradited fugitive (whether renditioned or otherwise), is subjected to prosecution ONLY for those offences for which he or she was surrendered, extradited or renditioned. This Doctrine has been recognized in a manner of speaking under **Section 15 of the Extradition Act Cap E25 Laws of the Federation of Nigeria (LFN), 2004**. It states –

"Where in accordance with the law of any country within the Commonwealth or in pursuance of an extradition agreement between Nigeria and another country (whether within the Commonwealth or not), any person accused of or unlawfullyat large after conviction of an offence committed within the jurisdiction of Nigeriais surrendered to Nigeria by the country in question, then, so long as he has not had a reasonable opportunity to returning to that country, that person shall not be detained (whether under this Act or otherwise), tried or otherwise dealt with in Nigeria for or in respect of an offence committed by him before his surrender to Nigeria other than –

(a) The offence for which he was surrendered or any lesser offence which may be proved by the facts on which his surrender was granted; or

(b) Any other offence (being one corresponding to an offence described in section 20 of this Act) of the same nature as the offence for which he was surrendered;

Provided that a person falling within this section shall not be detained or tried for an offence by virtue of paragraph (b) of this section without the prior consent of the country surrendering him."

While I agree that it is apparent that Section 15(a) supra), prohibits the Appellant from being detained, tried or otherwise dealt with in Nigeria for or in respect of an offence allegedly committed by him before his surrender to Nigeria,the drawback for its application to the Appellant is that, from the affidavit evidence, the Appellant was not "surrendered" by Kenya to Nigeria. The evidence is that he was "forcibly abducted" and "extraordinarily rendered" to Nigeria. The two scenarios are mutually exclusive. It was based on this alleged extraordinary rendition that the Appellant challenged the jurisdiction of the trial Court to try him. Therefore, it is only logical that if Kenya did not "surrender" the Appellant to Nigeria, then the issue of acquiring the consent of the "surrendering country" i.e., Kenya, does not arise.Thus, I am of the considered view that the"Doctrine of Specialty', and by the same token, Section 15 (a) (supra) which prohibits the Appellant from being detained or tried in respect of the offences allegedly committed by him before his "surrender" to Nigeria, is not applicable to instant the facts of the case.

In summary therefore, from an objective consideration of the totality of the affidavit evidence presented before the trial Court, which stands completely uncontroverted, the uncomfortable fact has been established that, in the manner in which the Appellant was rendered into Nigeria, there was a complete disregard and breach of both international treaties and conventions, as well as local laws, *id est*, the Extradition Act Cap E25, Laws of the Federation of Nigeria, 2004; and the Terrorism (Prevention) Act, 2011 as amended by the Terrorism (Prevention) Act, 2013.

Having found as above, the question now is: whether the trial Court was vested with jurisdiction to try the Defendant as charged, in view of the extraordinary and unlawful rendition of the Appellant? As earlier shown, the learned trial Court evaded this issue which questioned its jurisdiction. This was in error because it is settled law that it is the duty of a Court to pronounce on every issue properly placed before it for consideration and determination before arriving at a decision, and where it fails to do so, it may lead to a miscarriage of justice. See **Ovunwo V Woko (2011) LPELR-2841(SC).** In **Musa V State (2021) LPELR-57772(SC) 8-9, B-A, Aboki, JSC** held *inter alia*:

> **"Let me, as a preliminary point, state that the law is settled that, it is the duty of a Court either of first instance or appellate jurisdiction to consider all the issues joined and argued by the parties before the Court and where it failed to do so, valid reasons must be advanced for the neglect."**

Again, in **C.N. Okpala & Sons Ltd V Nigerian Breweries Plc (2018) 9 NWLR (Pt. 16, 28, G-H, Okoro, JSC** held:

> **"In several decisions of this Court, it has been repeatedly held that all lower Courts, as a general rule, must pronounce on all issues properly placed before them for determination in order, apart from the issue of fair hearing, not to risk the possibility that the only issue or issues not pronounce upon are crucial, failure to pronounce on them will certainly lead to a miscarriage of justice. There is therefore need for every court or tribunal to make findings and pronounce on material and fundamental issues canvassed before it by the parties because failure to do so, as I said earlier, may result in a miscarriage of justice."**

See also **Sifax Nig. Ltd V Migfo Nig. Ltd (2018) LPELR-49735(SC) 56-57, D-E; Momoh V Umoru (2011) LPELR-8130(SC) 74, A-F.**

Therefore generally, lower Courts are admonished by the apex Court to pronounce on issues properly placed before them in order to avoid the risk or possibility that

the only issue or issues decided upon, could be faulted on appeal resulting to a miscarriage of justice and/or breach of the right to fair hearing. Once issues are joined by parties, it is the duty of the Court trying the matter to resolve it in its judgment and not sweep it under the carpet and that is especially so in respect of a non-final Court like the trial Court. The trial Court ought to have resolved the issue one way or another. When a Court fails to consider and pronounce on even a sole vital issue, the judgment is vitiated on ground of lack of fair hearing. I therefore hold that the learned trial Judge was in grave error when he refused and/or omitted to resolve all material issues placed before it. In conclusion, the trial Court, by failing to consider and resolve issue one placed before it for determination in respect of the extraordinary rendition of the Appellant, failed in its duty to properly evaluate and ascribe probative value to the affidavit evidence, which occasioned a breach of the Appellant's right to fair hearing.

Laws are meant to be obeyed. Where a law sets down the way and manner a thing is to be done, citizens, and more so the State, is obliged to obey. No matter how grievous the offence(s) charged, all persons are entitled to a fair trial conducted in obedience to the tenets of the law. Courts must also uphold the law as it is and not as it ought to be, and never to suit the convenience of any person, natural or juristic. Nigeria is a democracy and by its very Constitution, the rule of law must prevail and be upheld.

Finally, the exhortation of the Supreme Court, **per Ogundare, JSC, made in the case of Abacha V Fawehinmi (2000) LPELR-14(SC) 13-14, C-B**, is pivotal to the facts of this Appeal. Therein, his lordship emphatically pronounced thus–

> **"... Where, however, the treaty is enacted into law by the National Assembly as was the case with the African Charter which is incorporated into our municipal (i.e., domestic) law by the African Charter on Human and Peoples Rights (Ratification and Enforcement)**

Act Cap 10, Laws of the Federation of Nigeria 1990 (hereinafter referred to simply as Cap. 10) it becomes binding and our Courts must give effect to it like all other laws falling within the judicial powers of the Courts. By Cap. 10 the African Charter is now part of the Laws of Nigeria and like all other Laws, the Court must uphold it. The Charter gives to citizens of member States of the Organization of African Unity rights and obligations, which rights and obligations are to be obeyed by our Courts, if they must have any meaning. It is interesting to note that the rights and obligations contained in the Charter are not new to Nigeria as most of these rights and obligations are already enshrined in our Constitution. See Chapter IV of the 1979 and 1999 Constitutions."(Emphasis supplied)

Section 15 of the Extradition Act, cap E25 Laws of the Federation 2004, relied on by the Appellant by way of reliefs sought in his Notice of Appeal, provides –

"Where, in accordance with the law of any country within the Commonwealth or in pursuance of an extradition agreement between Nigeria and another country (whether within the Commonwealth or not), any person accused of or unlawfully at large after conviction of an offence committed within the jurisdiction of Nigeria is surrendered to Nigeria by the country in question, then, so long as he has not had a reasonable opportunity of returning to that country, that person shall not be detained (whether under this Act or otherwise), tried or otherwise dealt with in Nigeria for or in respect of an offence committed by him before his surrender to Nigeria other than –

(a) The offence for which he was surrendered or any lesser offence which may be proved by the facts on which his surrender was granted; or

(b) Any other offence (being one corresponding to an offence described in section 20 of this Act) of the same nature as the offence for which he was surrendered: Provided that a person falling within this section shall not be detained or tried for an offence by virtue of paragraph (b) of this section without the prior consent of the country surrendering him."(Emphasis supplied)

It is therefore for all the above reasons that I find that the trial Court was bereft of jurisdiction to try the Appellant for counts 1, 2, 3, 4, 5, 8 and 15 allegedly committed by him prior to his extraordinary rendition. In this regard, I agree with the leading Judgment of my learned brother that the Appellant has proved his entitlement to the benefit of Section 15 of the Extradition Act Cap E25, Laws of the Federation (supra) which prohibits the Appellant from being detained, tried or otherwise dealt with in Nigeria for any offence allegedly committed by him before his extraordinary rendition to Nigeria. Issue one is accordingly resolved in favour of the Appellant.

With the resolution of this issue, it should no longer be necessary to consider other issues raised in the Appeal. However, as a penultimate Court, I will still proceed to address the other outstanding issues for determination in the Appeal, in the event that I am overruled. In **Alafia V Gbode Ventures Ltd (2016) LPELR-26065(SC) 16-17, the Supreme Court per Galadima, JSC** exhorted Courts lower in hierarchy to the Supreme Court, thus:

"While this Court being the final Court of Appeal can afford not to pronounce on other issues placed before it where it finds that the Court lacked jurisdiction, the Court of Appeal whose decision on jurisdiction may be faulted by this Court should not be debarred for considering and pronouncing on such other issue(s) raised in the Appeal. It should pronounce on them, and the Court below has rightly done so in this case."

Again, the Apex Court, in **Elelu-Habeeb V AG Federation (2012) LPELR-15515(SC) 53-56, B, per Mohammed JSC,** held–

> **"The main question for determination in this second issue in the cross-appeal is whether the Court below was right in proceeding to take and determine the substantive case on its merits after deciding that the trial**

Court lacked jurisdiction in the case that was brought before it by Originating Summons... In a situation such as this, the Court below had no option than to be guided by the law as contained in particular in the case of Katto V Central Bank of Nigeria (1991) 9 NWLR (Pt. 214) 126, 149, where Akpata JSC, (of blessed memory) stated the position of the law thus –

> "As rightly submitted by Mr. Aluko-Olokun, the Court of Appeal ought to have proceeded in the alternative on the basis that the trial Court could have been right, to give its views and decision on the issues raised in the grounds of appeal. Where a trial Court after holding that it had jurisdiction proceeded to determine the matter before it and an intermediate Court of Appeal thinks the trial Court lacked jurisdiction, the said intermediate Court should in the alternative resolve the complaints in the appeal, unless both Counsel, particularly Respondent's Counsel, concede that the trial Court lacked jurisdiction, the Court of Appeal whose stance on jurisdiction may be faulted by the Supreme Court should not ignore other issues raised in the appeal. It should pronounce on them. The position now is that issues which ought to have been resolved by the Court of Appeal in its Judgment dated 30th January, 1989, about three years ago, will now have to be sent back to it for hearing and determination... In the instant case therefore when the Court below after deciding that the Federal High Court lacked jurisdiction and proceeded in the alternative on the basis that the trial Court could have been right in its decision on the issue of jurisdiction to give its views and decision on the remaining issues raised in the grounds of appeal on the merits of the case, the Court below in my view, did exactly what this Court mandated it to do in line with the decisions in Katto V CBN (supra) and Adah V NYSC (supra)." (Emphasis supplied)

Also, in the case of **Adah V NYSC (2004) 13 NWLR (Pt. 891) 639, 643**; in a case which presented with a similar position, **Uwaifo, JSC** said –

> **"The Court below, not being the final Court, had a duty to decide the merits of the case upon issue canvassed before it, not issue of jurisdiction, to the effect that the Benue State High Court lacked jurisdiction. This is because if on an appeal to this Court, it was reserved on that issue, it would prevent the necessity of remitting the appeal to it, to resolve the other issues arising from the appeal as originally made to it. The Court below was in error to have failed to resolve all the issues canvassed before it rather than confine itself only to issue of jurisdiction."** (Emphasis supplied)

See also **Garba (Rtd) V Mohammed (2016) LPELR-40612(SC) 56-57, per Kekere-Ekun, JSC; Arulogun V COP, Lagos State (2016) LPELR-40190(CA) 9, per Augie, JCA (as he then was); & Dilli V Adamu (2016) LPELR-40227(CA) 25, per Ekanem, JCA.** I shall therefore proceed in the further considerat on of the issues hereunder.

Issue two:

Under issue two for determination, the Appellant questions whether the lower Court has jurisdiction to try the Appellant for the offences alleged in Counts 1, 2, 3, 4, 5 and 8 of the Amended Charge when the *situs* from where the Appellant made the alleged broadcasts was not disclosed. Learned Silk for the Appellant submits that this is a lacuna which rendered the said Counts of Charge incompetent and liable to be struck out/dismissed. Learned Senior Counsel also contends that this issue was not again considered on the merit by the learned trial Judge. A cursory look at the Respondent's Brief of argument confirms that the Respondent also did not respond to this issue. Notwithstanding this, the Court still has a bounden duty to consider the submissions of the Appellant on the issue *vis-à-vis* the Ruling complained of, as well as the facts and law on the subject.

In this regard, I have looked at the Ruling of the lower Court on the issue. It appears that the learned trial Judge addressed this issue at page 284 of the record of appeal where she pronounced curtly as follows:

> **"The defendant is being charged under Section 1(2) of the Terrorism Act which has been reproduced above, any offence alleged to have been committed "within" or "outside" Nigeria can be brought under the Act. It is for the party alleging to prove the commission of the offence."**

I note the point made by the learned Silk in the Appellant's Reply Brief on this issue at paragraph 2.9 that since the issue of the defect in the charge touches on jurisdiction, the provisions of the Administration of justice Act cannot be used to estop the objection thereon. Be that as it may, in the interest of a speedy hearing and determination of criminal cases trial Courts and to cure the mischief where criminal cases are bogged down by interminable objections and interlocutory applications, the Legislators in their wisdom enacted certain specific provisions in the Administration of Criminal Justice Act. Sections 220 and 221 of ACJA (supra) are quite explicit and pointed on its application to charges against accused persons at trial. For ease of reference, they are reproduced hereunder:

> **"220. An error in stating the offence or the particulars required to be stated in a charge or an omission to state the offence or those particulars, or any duplicity, mis-joinder or non-joinder of the particulars of the offence shall not be regarded at any stage of the case as material unless the defendant was in fact misled by the error or omission.**
>
> **221.Objections shall not be taken or entertained during proceeding or trial on the ground of an imperfect or erroneous charge."**

Thus, by these provisions, it is undisputable that an objection shall not be taken by the Court on the grounds of an imperfect or erroneous charge. See the decision of this Court in **Udebunu V The State (2016) LPELR-40959(CA) 13, B-D, per Ogunwumiju, JCA (now JSC),** where it was held thus:

> **"In the new Administration of Criminal Justice Act, 2015, S. 221 provides that an objection shall not be taken by the Court on the grounds of an imperfect or erroneous charge. Also, in arraignment by information, the new ACJ Act S. 396(2) provides that any objection to the charge as contained in the information may be raised at any time before judgment provided the objection is considered with the substantive issues and a ruling made at the time of delivery of the judgment."**

Oputa, JSC had this to say in **Ogbomor V State (1985) LPELR-2286(SC):**

> **"The important thing about a charge is that it must tell the person accused enough, so that he may know the case alleged against him and prepare his defence... The emphasis is not on whether or not there were defects, errors or omissions in the charge but on whether or not those defects, errors or omissions could and did in fact mislead the defence."**

Again, in **Ikpa V State (2017) LPELR-42590(SC)**, the apex Court held that no error in stating the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by such error or omission.

See also**Makanjoula V State (2021) LPELR-54998(SC) 55-58, A; Obodo V State (2016) LPELR-40939(CA) 13, C-D; Alintah V FRN (2008) LPELR-3788(CA); Bahago V State (2021) LPELR-50212(CA) 36-37, B-A.**

The Appellant did not make any effort to state how he has been misled by this omission or that he was even misled. This is in particular in reference to the proofs of evidence which contained numerous extra-judicial statements said to have been made by the Appellant which provides details of the allegations in the counts of charge. These proofs of evidence have been duly served on the Appellant thereby putting him on notice of the evidence to be presented against him during the trial. As a result, it is my humble opinion that the learned trial Judge acted in tandem with the extant law in the Administration of Criminal Justice Act (ACJA) when it

overruled the objection on this point. I therefore resolve issue two in favour of the Respondent.

Issue three:

Issue three for determination questions whether the Appellant can be prosecuted for an offence whose validity is the subject matter of an appeal. Both parties are agreed that there is a pending appeal before this Court from the decision of an unspecified Court of law (not the trial Court) on the validity of the status of the Indigenous People of Biafra (IPOB) as a proscribed organization in Nigeria, in **Appeal No. CA/A/214/2018 between Indigenous People of Biafra V Attorney General of the Federation**. It is noted that the Appeal did not arise from the proceedings in respect of the case now under appeal, but in respect of another case which this Court, as presently constituted, is not privy to. In addition, the parties in that Appeal are obviously not parties to this Appeal.

Nonetheless, the law is trite that the order of a competent Court of law is valid and subsisting until set aside – **Adeleke V Oyetola (2020) 6 NWLR (Pt. 1721) 440, 551, F-G (SC)**. This long-standing principle of law was expatiated by the Supreme Court in the case of **Babatunde V Olatunji (2000) LPELR-697(SC) 13-15, E-A, per Katsina-Alu, JSC** as follows –

> **"A judgment of a court of competent jurisdiction remains valid and binding even where the person affected by it believes that it is void, until it is set aside by a Court of competent jurisdiction. In Chuk V Cremer (1846) 1 Coop. temp. Cott. 342; 47 E.R. 884, Lord Cottenham, L.C. said:**
>
> **"A party, who knows of an order, whether null and void, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid – whether it was regular or irregular. That they should come to the Court and not take it upon themselves to determine such a question. That the course of a party**

knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it existed it must not be disobeyed."

This view was re-echoed by Romer, L.J. in Hadkinson V Hadkinson (1952) 2 All E.R. 567 where he said:

"It is the plain and unqualified obligation of every person against or in respect of whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by it believes it to be irregular or even void."

In a nutshell, the judgment of a Court of competent jurisdiction subsists unless and until it is set aside even where the person affected by it believes it to be void and irregular. The procedure for setting it aside is simple. The party affected must appeal against the judgment. The position clearly therefore is this. That a person who knows of a judgment, whether null or valid, given against him by a Court of competent jurisdiction, cannot be permitted to disobey it. His unqualified obligation is to obey it unless and until that judgment has been set aside. See Rossek V A.C.B. Ltd (1993) 8 NWLR (Pt. 312); Hadkinson V Hadkinson (1952) 2 All E.R. 567." (Emphasis supplied)

See also Okeke V Uwaechina (2022) LPELR-57291(SC) 14, B-F, per Aboki, JSC; Adegbanke V Ojelabi (2021) LPELR-54992(SC) 32-33, D-A, per Kekere-Ekun, JSC; FRN V Ozekhome (SAN) (2021) LPELR-54666(CA) 26-27, A-D, per Uwa, JCA; Afolabi V State (2016) LPELR-40300(SC) 36, C, per Muhammad, JSC; Fidelity Bank Plc V The M.V. Tabora (1999) LPELR-44504(SC) 35-37, E-B, per Peter-Odili, JSC; Ezeokafor V Ezeilo (1999) LPELR-1209(SC) 22, D-E, per Achike, JSC; Ajao V Alao (1986) LPELR-285(SC) 37, A-B, per Karibi-Whyte, JSC; Kigo (Nig) Ltd V Holman Bros (Nig) Ltd (1980) 5-7 SC 60, per Eso, JSC.

Therefore, the law remains that any finding of a Court of competent jurisdiction remains valid until same is set aside consequent upon an appeal. Therefore, the

trial Court was right in its finding that the it will proceed with the trial since on the prevailing facts and the law, it is undisputed that the Indigenous People of Biafra (IPOB) is proscribed by a valid and subsisting Judgment of a competent Court of law which has not been set aside.

Besides, Section 306 of the ACJA 2015 is meant to obviate delay in criminal proceedings to enable fair hearing within a reasonable time devoid of the employment of interlocutory appeals to forestall fair hearing within a reasonable time in criminal proceedings. The section frowns on stay of the proceedings of a trial Court on account of any interlocutory appeal. See **Destra Investments Ltd V FRN (2018) 1 SCM 66, 72-73, A-C, per Akaahs, JSC** This provision allows for speedy trial of cases and is meant to avoid and/or prevent the difficulties often encountered by trial Judges who are often bogged down by interlocutory appeals filed by Counsel, which may tend to stultify, or even, truncate the proceedings of the trial Court. It is also trite that an appeal does not operate as a stay of proceedings under the ACJA. See **Onnoghen V FRN (2019) LPELR-51364(CA) 94-96, B-E, per Ige, JCA.** This is more so that in the instant case, the appeal referred to did not arise from the proceedings of the case now under appeal.

Issue four:

The fourth issue for determination questions whether the trial Court is vested with jurisdiction to try the Appellant for the alleged offence in count 15 of the charge committed in Ubuluisiuzor in Ihiala Local Government Area of Anambra State, outside its territorial jurisdiction. Learned Silk, Chief Mike Ozekhome, argued in the trial Court had no jurisdiction to try the Appellant for the allegation in count 15 of the charge since it was said to have been committed in Ubuluisiuzor in Ihiala Local Government Area of Anambra State, which he contends is outside the territorial jurisdiction of the trial Court. For this, he placed reliance on Section 45 of the Federal High Court Act. Conversely, learned Counsel for the Respondent,

D.E. Kaswe Esq., answered the question in the affirmative, and relied on Section 19 of the Federal High Court Act. In support of the Section 19(1) of the Federal High Court Act, no doubt provides that the territorial jurisdiction of the Federal High Court is the entire State of Nigeria. For ease of reference, Section 19(1) (supra) provides –

> **"(1) The Court shall have and exercise jurisdiction throughout the Federation, and for that purpose the whole area of the Federation shall be divided by the Chief Judge into such number of judicial Divisions or part thereof by such name as he may think fit."**

Section 45 of the same Act (supra) provides –

> **"Subject to the power of transfer contained in this Act, the place for the trial of offences shall be as follows:**
>
> **(a) An offence shall be tried by a court exercising jurisdiction in the area or place where the offence was committed;**
>
> **(b) When a person is accused of the commission of any offence by reason of anything which has been omitted to be done, and of any consequence which has ensued, such offence may be tried by a court exercising jurisdiction in the area or place in which any such thing has been done or omitted to be done, or any such consequence has ensued;**
>
> **(c) When an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first-mentioned offence may be tried by a court exercising jurisdiction in the area or place either in which it happened, or in which the offence with which it was so connected happened;**
>
> **(d) When –**
>
> **(i) It is uncertain in which of several areas or places an offence was committed; or**
>
> **(ii) An offence is committed partly in one area or place and partly in another; or**
>
> **(iii) An offence is a continuing one and continues to be committed in more areas or places than one; or**

(iv) An offence consists of several acts committed in different areas or places, such offence may be tried by a court exercising jurisdiction in any of such areas or places;

(e) An offence committed while the offender is in the course of performing a journey or voyage, may be tried by a court in or into the area or place of whose jurisdiction the offender or person against whom or the thing in respect of which the offence was committed resides, is or passed in the course of that journey or voyage."

Territorial jurisdiction implies a geographical area within which the authority of the Court may be exercised and outside of which the Court has no power to act. Jurisdiction, territorial or otherwise, is statutory and is conferred on the Court by the law creating it. Thus, territorial jurisdiction means jurisdiction which a Court may exercise over a person residing or carrying on business within a defined area. In the context of criminal law, territorial jurisdiction is dependent on the enabling law setting out the jurisdiction of the Court against the accused person. In other words, the Court cannot exercise jurisdiction where the offence is outside the enabling law.

By Section 19(1) of the Act (supra), the Federal High Court is said to be one Court for the purpose of jurisdiction, and the Divisions of the Court created for administrative convenience. However, in fidelity with the interpretation of these provisions on the jurisdiction of the Federal High Court, I am inclined to accept the position canvassed by learned Senior Counsel for the Appellant. I also agree that the principle of law is that where there exists a general provision and a specific provision concerning a subject matter, the law does not permit the general provision to derogate from the specific provision. The Latin maxim for this is: *generaliaspecialibus non derogant*, meaning, the special provision is interpreted as taking away the effect of a general provision. See Madumere V Okwara (2003) FWLR (Pt. 143) 206, 246, per Uwais CJN (as he then was).

The Supreme Court has since laid to rest the issue of the apparent conflict in the two provisions of the same Act delineating the jurisdiction of the Federal High Court. This is in the more recent case of **Sulaiman V FRN (2020) 18 NWLR (Pt. 1755) 180, 200-204, C-F**, relied upon by the Appellant's Counsel. Hear his lordship on this issue:

> **"As far as the Federal High Court is concerned, it is settled that the fact that it is one court with Divisions dotted all over the Federation, does not mean that in criminal cases, the accused can be tried in any Division of the Federal High Court. This is because section 45 of the Federal High Court Act, which created the Court, provides: ... So, although section 19 of the Federal High Court provides that the court shall have and exercise jurisdiction throughout Nigeria, section 45 of the Act specifically says that offences are to be tried in the area or place where any of the offence were committed.**
>
> **In the instant case, it was glaring from the proof of evidence that the appellant allegedly collected and disbursed the money illegally in Ilorin rather than in Lagos. By section 45(a) of the Federal High Court Act, the Federal High Court in Ilorin and not the one in Lagos had the territorial jurisdiction over the charge for which the appellant was tried. This was all the more so when no act or omission that formed part of the offence was shown to have occurred in Lagos."** (Emphasis supplied)

See also **Patil V FRN (2014) LPELR-24078(CA) per Augie, JCA (now JSC); and Ibori V FRN (2009) 3 NWLR (Pt. 1128) per Augie, JSC.**

Thus, based on the extant statutory and case law on the issue, the applicable provision to the set of facts presented in this case with reference to count 15 of the charge, which allegedly took place inUbulisiuzor in Ihiala Local Government Area of Anambra State, is Section 45(a) of the Federal High Court Act (supra). Therefore, count 15 of the charge ought to be tried by the Federal High Court in Anambra State and not in the Federal High Court Abuja. Issue four is therefore resolved in favour of the Appellant.

Issue five:

The fifth issue for determination is whether the charge against the Appellant disclosed a *prima facie case*. As to what constitutes a *prima facie* case, the Supreme Court **per Ariwoola, JSC stated in the case of Ajuluchukwu V The State (2014) 13 NWLR (Pt. 1425) 641, 651** that:

> **"A *prima facie* case will be made out when the evidence adduced by the prosecution disclosed evidence which if believed by the Court will be sufficient to prove the case against the accused. It is evidence that covers all the essential elements of an alleged offence."**

The learned Jurist also added:

> **"However, pursuant to Section 286 of the Criminal Procedure Law, a Judge is duty bound to discharge an accused person if it appears to the Court that a case is not made out against the accused sufficient to require him to make a defence. It is not a sufficient case made up if there is only a casual reference to the accused. There must be some materials warranting the accused to give explanation or deny."**(Emphasis supplied)

Thus, in the determination of whether or not a *prima facie* case has been made out against an accused person in a criminal trial, it presupposes that the prosecuting body must have adduced evidence at the trial, which the trial Court can look into to determine if a *prima facie* case is disclosed sufficient to call upon the accused/defendant to enter his defence. Such a determination cannot be made merely on proofs of evidence, which are not evidence, having not been formally presented to the trial Court in the form of evidence through witnesses and/or documents and subjected to the rigors of cross-examination and scrutiny.

This distinction between: whether an offence is disclosed by the proofs of evidence and whether a *prima facie* case has been established against an accused person, was well captured in a decision of this Court in **Udebunu V The State (2016)**

LPELR-40959(CA) 9-13, C-G, where **Ogunwumiju, JCA (now JSC),** in pronouncing on the grounds for objecting to a charge, held –

> **"Attempts were made in Abacha V State to define what constitutes a *prima facie* case. Let us take the definition approved by Ajidagba V IGP (1958) SCNLR 60 which if adopted is to the effect that a *prima facie* case means there are grounds for proceeding with the charge. I have to explain that criminal proceedings come in several stages. The police investigation that culminates in the case file being sent to the Director of Public Prosecutions who decides if a crime has been committed and the persons to be accused and who advises the Attorney General to initiate public prosecution on behalf of the State. The materials prepared by the police and sent to the Director of Public Prosecutions which are statements of witnesses and exhibits gathered are called "proof of evidence". The proof of evidence is generally statutorily required to be served on the Accused when the charge is preferred by information to the High Court...**
>
> **The issue of whether a *prima facie* case had been made by the prosecution to warrant a reaction from the accused as provided by the Procedural Laws and Acts usually comes in when the prosecution witnesses have given evidence on OATH before a Court of law. Thereafter, the accused's counsel may make a submission to the effect that the accused has no case to answer usually called a NO CASE SUBMISSION. See S. 285 of the Criminal Procedure Act, S. 191(5) (d), S. 159(1) of the Criminal Procedure Code and S. 257 and 258 of the Administration of Criminal Justice Act 2015. The trial Court decides whether or not based on the evidence so far adduced in open Court, subjected to the fire of cross-examination, the prosecution has made a *prima facie* case against the accused to warrant the accused being obliged to make a defence in answer to the charge. Where the judge upholds the submission, the accused must be discharged and acquitted. Where the judge overrules the submission, the accused must enter a defence to the charge. See Adeyemi V The State (1991) 6 NWLR (Pt. 195) Pg. 1; Tongo V C.O.P. (2007) 12 NWLR (Pt. 1049) Pg. 525.**

Even though both parties made heavy weather about whether a *prima facie* case has been made, I humbly think that phrase confuses the issue. In Sher Singh V Jiten-Dranthen (193) 1 LR 59 Calc. 275, adopted by the State, the prosecution evidence available should be such that there is "ground for proceeding". At the stage of proffering the charge and asking an accused to plead to it, the issue of whether if the evidence were uncontradicted and if believed would be sufficient to prove the case against the accused person does not arise. In my humble view, at that point, there is no "evidence" strictly so called. The proof of evidence is like pleadings in a civil case and pleadings is not evidence until the facts therein are adopted or sworn to in open Court. Therefore, the proof of evidence is to put the accused on notice of the evidence against him and also merely to show whether there is ground for proceeding, whereas a made-out *prima facie* case shows that on the available evidence on oath if believed, the accused could be convicted if he has no reasonable defence or evidence to rebut it.(Emphasis supplied)

Thus, it is obviously in pursuance of the right of the Appellant, as stated in the case of **Abacha V State (supra) and Udebunu V The State (supra)** above, that this issue has been canvassed before this Court. Consequently, I too have painstakingly read through the proofs of evidence contained in the record of appeal, and I agree with the finding of the learned trial Judge that the police reports and extra judicial statements of the Appellant disclose offences to which the Appellant has been linked. It is therefore right for the Respondent to bring before the trial Court evidence to buttress what constitutes allegations in the charge, buttressed by the proofs of evidence. It is therefore premature at this stage of the proceedings to question whether or not a *prima facie* case is disclosed.

At this stage of the trial proceedings, no more than this can be said because to go into further details, may be prejudicial and pre-emptive of the trial. In summary therefore, it has not been shown that subjecting the Appellant to trial will lead to a miscarriage of justice based on this issue. The Rules of criminal procedure guiding

trial Courts set down in the Criminal Procedure Code (CPC) and in the Criminal Procedure Act (CPA), are clear on the fact that after the close of the case for the prosecution, the accused is at liberty to make a no-case submission. If the no-case submission is upheld, the accused is discharged and acquitted. If not, he still has an opportunity to defend himself from the Charge.

From a totality of the findings, the summary is that from the five issues presented for the determination of the Appeal, two issues, to wit: issues one and four, are resolved in favour of the Appellant; while three issues, to wit: issues two, three and five are resolved in favour of the Respondent. Therefore, barring the critical andpivotal issue of jurisdiction resolved in favour of the Appellant, the trial of the Appellant could have resumed at the trial Court. However, since it is trite that jurisdiction is the life-blood of anycase before a Court of law, the resolution of issue one in favour of the Appellant means that the trial Court is stripped of jurisdiction to try the Appellant for the offences charged.

Consequently, on the whole, in the interest of clarity and for the avoidance of doubt, in view of my findings under issue one, the Appeal succeeds.

It is for these reasons, and for the more comprehensive reasons in the leading Judgment by my learned brother, **Oludotun Adefope-Okojie, J.C.A.**, that I too find merit in the Appeal. It succeeds and is allowed. I abide by the consequential orders set out therein.

JUMMAI HANNATU SANKEY,
JUSTICE, COURT OF APPEAL.

CERTIFIED TRUE COPY
SIGN.....
MBAH CHIAMAKA BLESSING
HIGHER EXECUTIVE OFFICER
DATE 17/10/2022

EBIOWEI TOBI, JCA

CA/ABJ/CR/625/2022

I have read in draft the leading judgment just delivered by my learned brother **Hon. Justice Oludotun Adefope-Okojie, JCA** which upheld the preliminary objection of the Appellant and thereby setting aside the ruling of the lower court. I agree with the reasoning and the conclusion reached therein. I will however wish to add a few comments of mine.

From the Record of Appeal transmitted on 15/6/2022, the Appellant is facing a 15 count amended charge filed on17/1/2022following his rendition to Nigeria by the Government of Kenya on 27/6/2021. Before he fled the shores of Nigeria, he was standing trial on a four count charge bordering on treason filed on 16/3/2018 under the Criminal Code Act of Nigeria. On his return, the charges were amended severally with the latest amendment being the 15 count amended charge filed on 17/1/2022 which borders mainly on terrorism under the Terrorism (Prevention) Amendment Act, 2013. He pleaded not guilty to allthecounts as shown in pages 245 -246 of the record in the proceedings of 19/1/2022. The Appellant on 19/1/2022 fileda Notice of Preliminary objection challenging the jurisdiction of the lower court to try him on the amended charge. The objection is based mainly on the premise among other grounds that his rendition from Kenya to Nigeria to stand trial for the offences he is charged withdid not comply with International Laws, International Treaties and the domestic Laws of Nigeria on the subject of extradition. The main thrust of the objection was that his rendition from Kenya to Nigeria did not follow due process, unlawful and illegal, which takes away the jurisdiction of the lower court

over him. It is Appellant's position articulated by his counsel that the courts in Nigeria have no jurisdiction to try him since he was rendered to Nigeria and further that he cannot be tried for Terrorism offences when the offence he was tried for before he fled from Nigeria is Treason. According to the Appellant as stated in the 34 paragraphs grounds and deposed to in the 39 paragraphs affidavit in support, what happened to him is not extradition but extraordinary rendition.In the circumstance he prayed the lower court to strike out/quash and or dismiss the 15 count amended charge brought against him.

The lower court coram: **Hon. Justice B.F.M. Nyako** considered the application and delivered his ruling on 8/4/2022. This is what his lordship said at page 285 of the record:

> ***"In this instant application or preliminary objection, the next thing that calls is to look at the counts of charge and see if they disclose any alleged offence to warrant a trial.***
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> ***The counts of charge have been reproduced above, I have read the counts and the sections/provisions of the law under which they were framed and I opine that counts 6,7,9,10,11,12,13 and 14 have not disclosed an offence as framed and some are even duplicates (sic). Counts 1, 2, 3,4,5,8 and 15 show some semblance of allegations of offence on which the court can proceed to trial.***
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> ***Consequently, the counts 6,7,9,10,11,12,13 and 14 are hereby struck out and the court shall proceed to trial on counts 1,2,3,4,5,8 and 15."***

The clear order of the court is that in agreeing with the Appellant, counts 6,7,9,10,11,12,13 and 14 were struck out while counts **1,2,3,4,5,8 and 15** were retained for trial. Eight (8) counts were struck out while seven (7) were retained. This is ordinarily a pass mark but law is not mathematics. This midway victory was not satisfactory to the Appellant and so he filed this appeal on 29/4/2022, made up of 5 grounds found at pages 286-295 of the record. The Appellant wants his joy to be full hence he is before this court. Whether his desire will be granted is a function of the law and the facts before the court and not a function of sentiment, emotion and public opinion. This court, like any court in Nigeria and indeed in the whole world is a court of law and justice and not a court of sentiment. The apex court has held in a cloud of cases that decisions of court should not be based on emotion or sentiment. The duty of court is to do justice according to law and not sentiment. See **Umanah vs NDIC (2016) LPELR-42556 (SC); Kalu vs FRN & Ors (2016) LPELR-40108; PML (Nig) Ltd vs FRN (2017) 7 NWLR (Pt 1619) 448.** Furthermore, a court can only make use of evidence before it and not information obtained outside the court. Though this is a case of great national interest,in deciding this appeal, I will not be influenced by public opinion or social media analysis. See **Abubakar & Ors vs Yar'adua (2008) LPELR-51.** The apex court per Ogwuegbu, JSC in this respect in **Mobil Oil (Nig) Ltd vs Nabsons Ltd (1995) LPELR-1885(SC) held** thus:

> ***"It is indeed undesirable and dangerous for a trial Judge to make use of any information obtained outside the court as the basis for a decision in a case before him."***

I am guided in deciding this appeal by the statement of a wise jurist when he said

"A good Judge follow the law while a bad Judge follow people."

The point I am trying to make here is that being an appeal of great national interest, expectations are high and various opinions have been expressed and will still be expressed, most times clouded by sentiment. I am blind and deaf to all those opinions before and after this judgment. I will look at the law and the facts before this court in determining this appeal to enable me dothe justice of the matter which I can live with and have a commendation before my God, the Judge of all judges, when I face Him at the end of my journey on earth. The decisions of court are not to be coloured to satisfy any of the parties before it but rather to meet the tenet of justice no matter who is involved. The decisions of courts are not to reflect public opinion but rather justice according to law propelled by the facts. I am emboldened by this because of my consciousness that one day I will appear before my God to account for every judgment I give or contribution I make to any judgment including this appeal. All I desire to hear from my God is, welcome and well-done my faithful servant. To aim for such recommendation, I must be guided by my judicial oath to do justice to all without fear or favour. A person who does justice, stand with God and those who do not do justice do not stand with God.

What is before this court is an interlocutory appeal which has the capacity of terminating the proceedings at the lower court and in this court if the preliminary objection is upheld. This is the effect of

upholding a preliminary objection. Preliminary objections are raised most times to challenge jurisdiction and competence of a suit before a court. In **Okereke vs Yar'Adua (2008) 12 NWLR (Pt 1100) 95,** the apex court held

> ***"Preliminary objection is a special proceeding whereby the Respondent contest the competence of a suit and jurisdiction of the court and if upheld has the effect of terminating the life of the suit by being struck out."***

See also**Obasi vs Mikson Establishment Industries Ltd (2016) LPELR-40704; Aje Printing (Nig) Ltd vs Ekiti (2021) 13 NWLR (Pt 1794) 498; Moore vs Flour Mills (Nig) Plc (2022) 11 NWLR (Pt 1841) 365.** If however the preliminary objection is overruled, the lower court will assume jurisdiction and determine counts 1, 2, 3,4,5,8 and 15. At this stage of the proceedings, a court is not supposed to make any pronouncement or finding that will affect the merit of the substantive case. The relevant evidence before the court is affidavit evidence and application will have to be determined by the affidavit evidence. It will not require calling oral evidence. If the state of the affidavit evidence is such that oral evidence will be required, a court cannot uphold a preliminary objection but rather call for oral evidence before determining same. This situation arises when there are conflicting affidavit evidence which cannot be resolved by the documents before the court. See **Registrar, College of Education, Katsina- Ala vs Gbande (2014) 5 NWLR (Pt 1401) 589; Tambco Leather Works Ltd vs Abbey (1998) 12 NWLR (Pt 579) 548.Onwubuya vs**

Ikegbunam (2019) 16 NWLR (Pt. 1697) 94; Ajewole vs Adetimo (1996) 2 NWLR (Pt 431)391.

This preamble is necessary as we shall soon find out that the point mentioned here will be relevant in resolving issue 1 in this appeal. The question whether the extradition or the extraordinary rendition of the Appellant from Kenya to Nigeria is lawful is in the front burner on the issue of jurisdiction of the lower court. Without letting nothing out of the bag, it is clear that if I hold that the Respondent did not follow due process in extraditing the Appellant to Nigeria, the preliminary objection is likely to be upheld while if on the other hand I hold that the extradition is lawful, the preliminary objection is likely to be overruled. To determine which way to go, it is important to determine whether there is evidence from the Appellant that he was unlawfully or wrongly extradited from Kenya and further whether the Respondent countered the allegation. If the Respondent countered the allegation, then it will be difficult to resolve the legality of the extradition by the affidavit evidence, which means oral evidence, will be required. If oral evidence will be required then the preliminary objection will not be upheld. It is therefore a very important aspect of this judgment to determine whether there is conflicting affidavit evidence which will require oral evidence.

Having laid the foundation for the determination of this appeal, I will now address the issues formulated by the counsel to the parties in the briefs of argument. The Appellant counsel is Chief Mike A.A. Ozekhome (SAN) who lead a team of lawyers and the Respondent counsel is Assistant Chief State Counsel (ACSC) of the Department of Public

Prosecution of the Federal Ministry of Justice. His name is D.E. Kaswe Esq. For the determination in this appeal, are five issues donated by the learned silk which the learned ACSC adopted. I will also adopt them as my issues in determining this appeal. I reproduce them herein:

1. ***Whether the lower court properly evaluated and ascribed probative value to the Appellant's evidence, when it failed to consider, make finding of facts and accordingly pronounce on issue one raised for the trial court's determination, relating to the extraordinary rendition of the Appellant?***

2. ***Whether the lower court has the jurisdiction to try the Appellant for alleged offences committed in vacuo or which situs was not stated?***

3. ***Whether the Appellant can be prosecuted for an offence which its validity is the subject matter of an appeal?***

4. ***Whether the lower court has the jurisdiction to try the Appellant for alleged offences committed outside its territorial jurisdiction?***

5. ***Whether the Appellant can be tried for offences which the proof of evidence in support thereof does not disclose a prima facie case against him***

RESOLUTIONS

ISSUE ONE

I will address the issues in their numerical order starting with issue 1. On issue 1, my lord, **O.A. Adefope-Okojie, JCA** in the leading judgment has stated so adequately well the law on extradition and the need for Government to ensure that any extradition follows the procedure laid down by International Laws and Treaties and even domestic Laws. In this respect the relevant laws and treaties learned senior counsel referred to which my learned brother adequately addressed in the leading judgment are **OAU Convention on the Prevention and Combating of Terrorism, (OAU convention) (Articles 7,8 and 11), Protocol to OAU Convention, The Principles and Guidelines on Human and Peoples' Right while countering Terrorism in Africa (Article 3), African charter on Human and Peoples Right (Section 45), Principles and Guidelines on Human and Peoples' Right while Countering Terrorism in Africa (Part 5); Terrorism (Prevention) Amendment Act, 2013 (Section 1A (2)); Administration of Criminal Justice Act (Sections 3,4, 5, 47), African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004; Extradition Act Cap E25 Laws of the Federation (Section 15).**The position of the law on what will constitute an extraditionin the light of the above legislation and treaties has been properly addressed by the learned silk and my learned brother in the leading judgment. I am not sure I have anything useful to add other than to say that laws and rules are meant to be obeyed by all and sundry as no one should be above the law. Adherence to the rule of law is what makes a democracy a true democracy. Similarly, treaties are to be followed by all signatories to it. If a country decides to be signatories to a treaty, it is a direct

notification that that country will comply with the terms of the treaties.It is true that an International Treaty cannot determine rights of citizens and does not become operating law in a country until it is domesticated as only National States are subject to international law. The further truth is that a country who is a signatory to a Treaty should comply with the Treaty. See**A.G Federation vs A.G of Abia State &Ors (2001) LPELR-24862(SC); Abacha & Ors v. Fawehinmi (2000) 4 S.C (Pt II) 1**. No Government can extradite any person without following due process which includes making the request and having a hearing to eventually extradite the person complying with all known laws and procedures. Even when the person is properly extradited he can only be tried for the offence he is extradited for based on the doctrine of speciality.

The procedure must be complied with otherwise the extradition will be unlawful in law and can be properly described as extraordinary rendition. The Appellant has averred in the affidavit in support that his rendition from Kenya did not comply with the law. This is found in paragraphs 19,20,21,22,23,24 and 25 of the affidavit in support. I will reproduce the said paragraphs as follows:

> ***19. That Section 1(A)(2) of the Terrorism (Prevention Amendment) Act, 2013 imposes an obligation on the Attorney General of the Federation, to maintain International co-operation forcompliance with International Treaties on terrorism.***
>
> ***20. That the International co-operation and compliance envisaged in the said Section 1(A)(2) of the Act, presupposes, amongst***

other things that due process of law must be followed at all times, which also includes, that the Defendant in the instant charge must be rendered lawfully from any territory outside Nigeria.

21. *That the Defendant was forcibly abducted from Kenya without due process and consequently extraordinarily rendered to Nigeria, without firstly subjecting him to extradition proceedings in Kenya, in violation of all known international conventions and treaties on extradition.*

22. *That the Defendant cannot be arraigned and tried on the 15-count Amended Charge, when he was not lawfully rendered to Nigeria and, consequently lawfully brought before the Court.*

23. *That prosecuting the Defendant on the 15-count Amended Charge, would amount to allowing the Complainant to benefit from its illegality and wrongdoing.*

24. *That he who comes to equity must come with clean hands, and no party should be allowed to benefit from his wrong doing, as the prosecution now attempts to do.*

25. *That the extraordinary rendition of the Defendant, robs the Honourable Court of the requisite jurisdiction to try him on the 15-Count Amended Charge.*

The Respondent has challenged all those paragraphs to the effect that they offend Section 115 of the Evidence Act which provides that an affidavit should be statement of fact and should not contain extraneous issues such as objections, prayers,legal arguments and conclusion. In**Okponipere vs State (2013) LPELR-19931(SC)** the apex court

stated this clearly while considering the same position under Section 86 and 87 of the Evidence Act per Ariwoola, JSC (now CJN) in these words:

> ***"Ordinarily, on what an affidavit and counter affidavit should contain, the legal position is no longer disputable and it is clear, that the law requires as provided in Sections 86 and 87 of the Evidence Act that, it shall contain only a statement of fact and circumstances derived from personal knowledge of the deponent or information which he believes to be true and shall not contain extraneous matter by way of objection or prayer or legal argument or conclusion. See; Ishaya Bamaiyi Vs. The State & Ors (2001) 8 NWLR (Pt.715) 270 (2001) 4 SC (pt.1) 18, (2001) LPELR 731."***

See also **Emeka vs Chuba-Ikpeazu & Ors (2017) LPELR-41920 (SC); Bamayiyi vs State (2001) 8 NWLR (Pt 715) 270**

I have looked at the above paragraphs and bringing them under the scrutiny of Section 115 of the Evidence Act, most of the paragraphs cannot stand as they are either conclusions or legal arguments. I make bold to say paragraphs 19, 20, 22, 23, 24 and 25 are legal arguments and not statements of facts. I therefore strike them out as no decision can be based on them. See **Odey vs Alaga (2021) 13 NWLR (Pt 1792) 1; A.G. Adamawa State vs A.G. Federation (2005) 18 NWLR (Pt 958) 581.**

The only paragraph that can survive is paragraph 21 which reads thus:

> ***"That the Defendant was forcibly abducted from Kenya without due process and consequently extraordinarily rendered to***

Nigeria, without firstly subjecting him to extradition proceedings in Kenya, in violation of all known international conventions and treaties on extradition."

This paragraph survived the drag net of Section 115 of the Evidence Act. It is clearly a statement of fact. This sole paragraph is enough to estab ish the allegation against the Respondent thatthe Appellant was not lawfully extradited from Kenya. Having established that, by paragraph 21 of the affidavit in support, the burden now shifts to the Respondent to showthat the rendition of the Appellant was lawful and therefore an extradition and not extraordinary rendition as it was done in compliance with known International Laws, International Treaties and Domestic Laws.

It is my considered opinion that following the clear averment of the Appellant in paragraph 21 of the supporting affidavit, the Respondent need to place some cogent evidence to rebut the allegation. The question is, what is in the counter affidavit to rebut the clear averment of paragraph 21 of the affidavit in support. I have gone through the averments in the 20 paragraph counter affidavit of the Respondent; the relevant paragraphs are 14 -16 which I hereby reproduce:

14. That paragraphs 15, 16, 17, 18, 19, 20, 28, 29, 30, 32, 33, and 36 of the affidavit in support of the notice of preliminary objection are objections, prayer and conclusions or legal arguments.

15. That paragraphs 21, 23, 24, 25, and 27 of the affidavit in support of notice of preliminary objections are not true.

16. That paragraph 22, 29, and 34 of the affidavit in support of notice of preliminary are not true.

Are these paragraphs sufficient rebuttal in law to tackle the Appellant's challenge of his rendition from Kenya on the grounds that it is illegal and unlawful? It is the submission of Chief Mike Ozekhome (SAN)that paragraph 21 of the affidavit was not denied as the denial in paragraph 15 of the counter affidavit is not a denial known to law. D. E. Kaswe Esq of counsel for the Respondent submitted that paragraph 15 is sufficient denial in law which will require oral evidence to prove the allegation of the Appellant. If there is no denial by the Respondent or the denial is not such that is known to law, the Respondent will be deemed to have admitted the averment by the Appellant that he was extraordinary rendered from Kenya. In such a situation, the evidence before the lower court will be acted upon as unchallenged evidence. See**APC vs INEC & Ors (2014) 11. S.C. 157; Military Gov of Lagos State & Ors v. Adeyiga & Ors (2012) LPELR-7836(SC); Rabe vs FRN (2019) 4 NWLR (Pt 1662).**

The real issue hereis whether the Respondent denied the allegation of the Appellant. If I hold that he denied the allegation then I will agree with the Respondent's counsel that this is not the time and stage to call oral evidence to solve the conflict. If oral evidence is needed to solve the conflict in the affidavit evidence, then the preliminary objection will fail. In other words,oral evidence will be required at the main trial and not at this stage where all the court will do is to look at the affidavit evidence to come to the conclusion on which to believe.

In looking at the affidavit evidence before the court, in the light of paragraph 21 the Respondent should provide details to show that the

Appellant was brought into Nigeria in accordance with the law and the Treaties. The Respondent at this stage should state the procedure it followed in what he called an extradition of the Appellant from Kenya. There is no such express evidence in the counter affidavit in rebuttal of the assertion and allegation of the Appellant. There is no evidence to show that there was extradition request made by the Government of Nigeria to the Government of Kenya. All that the Respondent has before the court is paragraph 15 which is a general denial. The question is whether that is sufficient in law to rebut the express averment of unlawful rendition or what the Appellant's senior counsel called extraordinary rendition of the Appellant from Kenya.

Let me at this stage take a little excursion into the law on the effect of general denial. The law on this which is settled is that a general denial in an affidavit is no denial in law. What will amount to denial will be specific statement of facts which states the story of the other side. In a case fought on affidavit evidence, the affidavit is the pleading. The law is settled that general denial is not sufficient traverse for specific averment in an affidavit. In other words, general denial of a paragraph in an affidavit which makes specific allegations is not sufficient and in fact not enough.See Danladi **vs Dangiri (2015) 2 NWLR (Pt 1442) 124; Ogunsola vs Usman (2002) 14 NWLR (Pt 788) 636; Dairo vs Reg. Trustee, T.A.D. Lagos (2018) NWLR (Pt 1599) 62; Ugwuanyi vs NICON Insurance Plc (2004) 15 NWLR (Pt 897) 612.** To amount to denial of the express averment of the Appellant, the Respondent is expected to depose to facts to negate the case or the specific allegation of the Appellant. Such must be specific facts but not

general sweep of denial as was done in paragraph 15 of the counter affidavit. See**Adejugbe & Anor v. Ologunja (2004) 6 NWLR (Pt 868 46); Gov. Ekiti State vs Ojo ((2006) 17 NWLR (Pt 1007) 96.**This court has held in **Atakpa vs Ebetor (2015) 3 NWLR (Pt 1447) 549** that a mere general denial is too shallow and is completely ineffective as a challenge to averment of specific details.Thebest general denial can do is to place the other party on notice that he will have to prove what he has asserted. By paragraph 21, the Appellant has discharged that burden which the Respondent has a duty to rebut. The rebuttal must by specific response address the allegation.It is after this has been done that the court will place both stories on the imaginary scale of justice to enable it decide which is weightier. In law, a general denial as in paragraph 15 of the Respondent's counter affidavit carries no weight. Once there is nothing to place on the other side of the scale of justice, the averment by the Appellant is deemed admitted. If the Respondent has admitted whether expressly or by implication in the eyes of the law, what can a court as an unbiased umpire, which is not in law allowed to make a case for any of the parties do except to endorse and act on the admission made.

The Respondent in my opinion was too casual in responding to the allegation contained in paragraph 21 of the Appellant's affidavit in support. It would amounted to some form of specific denial if the Respondenthad shown that it made a request for the extradition of the Appellant and that some form of extradition trial was done. On the state of the affidavit evidence before the court, the Respondent has not made any specific denial of the allegation made against it.

Though address of counsel is not evidence, let me see whether there is anything I can hold onto as submission in this all important issue that can sway me in favour of the Respondent. Here again, nothing to assist the court. The submission of Respondent's counsel is as casual as the counter affidavit. I am surprised that in spite of the copious submission of learned silk on this issue from pages 7-20 citing legal authorities, statutory and case laws, both binding and persuasive authorities, the Respondent counsel only addressed it in pages 5-8 of the Respondent's brief. He made no reference to the authorities cited by the Appellant but summarised all the Appellant counsel's 13 pages submission on this issue by trivialising it in simply submitting that 'the issue of whether the Appellant was properly brought before the trial court is a matter to be established during the course of evidence of the Respondent not in the preliminary stage.' The danger with this submission is that if I hold that this is the appropriate time and place to raise the objection and that there is nothing that calls for evidence in the substantivecase, then the Respondent would have conceded to the submission of learned silk. This is because there is no argument from the Respondent's counsel to oppose the argument of learned silk on the matter. The Respondent's counsel did not help the case of the Respondent. Both in the affidavit evidence and his submission he did not give this issue the attention it deserved. This will cost the Respondent issue 1. The Respondent has lost two life lines in relation to issue 1. My understanding of the Appellant's objection which the Respondent trivialised and the lower court said nothing about is that the lower court has no jurisdiction to try the Appellant since he was rendered from Kenya. This is an issue of jurisdiction in my opinion. The importance of the issue of jurisdiction has

been settled by the courts as a threshold issue which must be determined once raised and should be resolved one way or the other before moving forward. The Supreme Court made this point in **Idisi vs Ecodril (Nig) Ltd & Ors (2016) LPELR-40438(SC)** where it held:

> ***"In all, the point must be noted here that jurisdiction is of paramount importance in the process of adjudication. As such, where there is a deficit in regard thereof, everything done or every step taken in the proceedings amounts to nothing, Attorney General for Trinidad and Tobago v Erichie (1893) Ac 518, 522; Timitimi v Amabebe 14 WACA 374; Mustapha v Governor of Lagos State [1987] 2 NWLR (pt 58) 539; Utih v Onoyivwe [199l] 1 NWLR (pt 166) 206. Put differently, jurisdiction is the life-wire of any proceeding in Court and everything done in its absence is, simply, a nullity, Jumang Shelim and Anor v. Fwendim Gobang [2009] 7 SCM 165; [2009] 12 NWLR (pt 1156) 435. That is the fate of the Ruling of the trial Court [Akoro, J] as, rightly, found by the lower Court."*** **Per NWEZE, J.S.C**

In the light of the evidence before the lower court, it is imperative on the lower court to make a finding on the issue one way or the other in carrying out one of its major responsibility in the adjudication process. A court has the duty to evaluate the evidence before it, make a finding therein and stating the reasons for the finding and decision. See**Ezemba vs Ibeneme & Anor (2004) 7 S.C (Pt 1) 45; Nnadozie & Ors vs Mbagwu (2008) LPELR-2055(SC)**

A court in addition to evaluating evidence before it has the responsibility to address all issues and facts placed before it and the inability to do

that will amount to lack of fair hearing. I am compelled to cite the case of **Uzuda & Ors v. Ebigah & Ors (2009) LPELR-3458(SC)**of the Supreme court which I find most instructive in this regard. The apex court held:

> ***"My lords, Courts are supposed to be Courts of law but they are equally Courts of justice. Substantial justice cannot be done unless Courts of justice strain to ensure that all the facts and issues put before them by both parties cases are considered before arriving at their decision. The effect of not considering the case put forward by a party before the Court that decided the case amounts to a complete black out of the unheard party. A party to a dispute must be heard before the determination of his rights by a Court of competent jurisdiction, without let or hindrance from the beginning to the end. The right to a fair hearing in a suit is not only a common law requirement in Nigeria but also a statutory and constitutional requirement. This principle is fundamental to all court procedure and proceedings. Thus, when a party submits an issue to a court for determination, that Court must consider and make pronouncement on it, unless if such amounts to hypothetical or academic issue. Where such issues amount to mere hypothetical and academic issue, the Court would not have jurisdiction to hear it. In the case of Opuiyo vs. Omoni Wari (2007) 6 SCNJ 131 recently decided by this Court it was held thus:***
>
> ***"As a matter of law, a court has the duty to consider the issues submitted to it for adjudication. Where a Court failed to consider and adjudicate on such issues, it is usually an***

error of law because the omission constitutes a denial to the party complaining of his right of fair hearing as enshrined in the constitution". Per Oguntade JSC at P. 138." Per MUNTAKA-COOMASSIE, J.S.C.

What did the lower court do with the evidence and the submission of counsel on this point? I have read the ruling of the lower court again and again so that I do miss out on anything, it is clear as submitted by the learned silk that the lower court did not address this issue at all in the ruling. This is surprising because we all know how important it is when jurisdiction is challenged.The lower court should have made a pronouncement on this point but his lordship did not. No reason was given and I cannot speculate a reason. The truth is that the lower court did not consider this point. In the light of that, Appellant senior counsel has urged this court to exercise the powers under the Court of Appeal Act to decide on this issue.

It is on the strength of the provision of the Court of Appeal Act that I have made the findings above and make further findings on issue 1.

In the light of the evidence before the lower court, and the finding that there is no denial known to law of paragraph 21 of the affidavit in support, it is not hard for me to make the finding that the lower court ought to have made, which is that the rendition of the Appellant to Nigeria from Kenya did not comply with International Laws, Treaties and the Laws of Nigeria. Apart from the fact that the rendition of the Appellant did not comply with the laws, there is yet another point, which is that, a person extradited can only stand trial for the offence he is extradited for.There are a few loose ends in the Respondent's case. In

the absence of any evidence as to the extradition request from Nigeria, there is nothing to show what he was rendered for. Is it the 4 count charge that borders on treason which he was standing trial for before he fled Nigeria or the terrorism charges which he was charged for after he was brought back to Nigeria? By the provision of the law, he cannot be charged for the four counts but for the amended charges if he was extradited and not extraordinarily rendered. This is the third life line for the Respondent which again it has lost. In my opinion the Respondent has lost all the life lines it can hold onto, to have issue 1 resolved in its favour. It is clear from the record that the lower court did not properly evaluate and ascribe probative value to the Appellant's evidence when it made no finding on the issue relating to his extraordinary rendition from Kenya. I resolve this issue in favour of the Appellant.

In the light of the above is there any need to address the other issue in this appeal. This court not being the final court will need to address the other issuesperadventure the decision is wrong on issue 1. This is the position of the law. SeeAdah vs NYSC (2004) LPELR-69(SC);

ISSUE TWO

On issue 2 learned silk made very strong weather of the inability of the Respondent, in the charge, to state where the broadcast was made from as a fundamental defect in the counts and therefore the charge is incompetent and the lower court had no jurisdiction. The question is, does that make the charge defective? This may take me into an excursion on what makes a charge defective or makes it valid. Before we find out whether the charge is valid or not, it will not be out of place to know what a charge is. The apex court per Kekere-Ekun, J.S.C has

defined a charge in the most simple language in the case of **Okoye & Ors v. C.O.P &Ors (2015) 4-5 S.C (Pt 1)** 101 in these words

> ***"The word "charge" is both a noun and a verb. Black's Law Dictionary 9th edition defines it as follows: As a noun: "A formal accusation of an offence as a preliminary step to prosecution. "As a verb: "To accuse (a person) of an offence. "In line with the two definitions of the word "charge"referred to above, a person is "charged" with a criminal offence when he is formally accused of having committed an offence. The formal accusation in writing is what constitutes the charge against him. Once he is made aware of the charge against him he is entitled to commence the preparation of his defence."*** **Per KEKERE-EKUN, J.S.C.**

A valid criminal charge must be clear as to what a person is accused of, that is to say the law he is alleged to have violated. A person cannot be accused of an offence not known to law. This requires that the offence must be such that is defined within the law stating what constitute the offence and the punishment therein. The main problem the Appellant's counsel has with the charge is that it did not disclose the place the broadcast was made from. The charge read that it was heard in Nigeria but did not disclose where the broadcast was made from. This submission of counsel as to the fact is correct. The charge is couched in such a way that the Appellant made '**a broadcast received and heard in Nigeria within the jurisdiction of this Honurable Court.**' Clearly where the broadcast was made from is not stated in the charge. The question is, is that fundamental to the validity of the charge as to make it an issue for preliminary objection? A charge is valid if it discloses an

offer ce known to law that is to say, the offence must be a creation of law and the particulars required will be such as stated in the law. At this point, I will look at Section 1 (2) (b) (f)(h) of the Terrorism Prevention Amendment Act 2013. The section provides thus:

"A person or body corporate who knowingly in or outside Nigeria directly or indirectly willingly

(b) commits or act preparatory to or in furtherance of the act of terrorism;

(f) assists, facilitates, organizes or directs the activities of person or organization engaged in any act act of terrorism

(h) invites, promises or induces any other person by any means whatsoever to commit any act of terrorism or any of the offences referred to in this Act

Commits an offence under this Act and is liable on conviction to a maxim of death sentence."

Bythe above section under which the Appellant is charged, an offence is committed if the act that constitute the offence is committed within or outside Nigeria. I am of the firm view in agreeing with his lordship of the lower court that once the act is alleged to have been done 'in or outside Nigeria' the person can be so charged. The rules of interpretation is clear to the effect that the literal rule of interpretation will be applied to find the intention of the law maker by given the words used in the statute their ordinary grammatical meaning if the words are clear with no hidden meaning. Such interpretation will be used when no absurdity will be occasioned. See**Nwobike vs FRN (2021) LPELR-56670 (SC); Abegunde v. Ondo state House of Assembly & Ors (2015) 4-5 S.C.(pt I) 1**

The phrase 'in or outside Nigeria' is clear enough. In Nigeria, means within the territory of Nigeria not minding the state it was committed. If the alleged offence is committed within the geographical land space of Nigeria either in the land, sea or air, a person can be tried in Nigeria. Outside Nigeria simply means anywhere on planet earth which does not fall within the geographical space covered by Nigeria. With that in mind, I make bold to say that the fact that the situs the broadcast was made from isnot been mentioned does not make the charge defective. The law has not changed in my understanding to the effect that if an offence is committed in parts, the accused can be tried where the offence commenced or where it was concluded. See **Patrick Njovens vs State (1973) 5 SC 12.** If I am right here, I do not think where the broadcast was made from is an important ingredient of the offence. While the cases cited by the learned silk are good laws but with due respect to him, they were wrongly applied. To appreciate the point I am making, my understanding of the counts and the section under which they are couched is that what is more important is where the broadcast was heard and not where it was made. What is settled from the charge is that the Appellant is alleged to have made a broadcast with the intention of doing what he is alleged to have done. I am firm in holding that the charge is valid not withstanding that the situs of the broadcast was not stated therein. The fact that the charge did not state the place the broadcast was made from does not make it defective.

What then is a defective charge? A charge is defective if the offence a person is charged for is not known to law and ambiguous within the context of the law creating the offence. See**IGP vs Sonoma (2021)**

LPELR- 53381(SC). I must go further to state clearly that, the mere fact that a charge is defective will not fundamentally affect the trial of a person. To this end, I am embolden by the decision of the Supreme Court per Saulawa, J.S.C in **Jibrin vs State (2021) LPELR-56233 (SC).**

> ***"It is well settled, beyond per adventure, that a mistake or defect in a charge which neither embarrassed nor misled an accused person in his defence (as in the instant case) is not sufficient reason to quash conviction. This is predicated upon the proposition that where a charge is defective, for the defence to succeed on an objection to the charge being defective, the defence has the herculean task of establishing prejudice has been occasioned thereto or suffered a miscarriage of Justice. See ONASILE VS. SAMI (1962) ANLR 271 (FSC); COP VS. OKOYEN (1964) ANLR 298 (SC); MANGAI VS. THE STATE (1993) 3 NWLR (Pt. 279) 108; OKEWU VS. FRN (2012) 9 NWLR (Pt. 1395) 327; TORRI VS. NPSN (2011) 13 NWLR (Pt. 1254) 365."*** **Per SAULAWA, JSC**

To succeed on this objection, the Appellant must show that he was misled and prejudiced by the counts. There is no evidence to that fact and in fact the substance of the charge against the Appellant is not affected by the charge not stating where the broadcast was made from.

On the strength of the above, I resolve issue 2 in favour of the Respondent. This is not withstanding that the Respondent made no submission on this issue. The fact that the Respondent made no submission on this issue does not in law automatically mean that the issue will be resolved in favour of the Appellant. This court can still look

at the legal position and come up with a decision which I have now.The apex court made this clear in**Ogunsanya vs State (2011) LPELR-2349(SC),** where it was held thus:

> ***"No amount of brilliant address or playing to the gallery by counsel can make up for lack of evidence to prove or defend a case in court. The main purpose of an address is to assist the court, and is never a substitute for compelling evidence. Failure to address will not be fatal or cause miscarriage of justice. This is so because whether counsel addresses a court or not the court must do its own research with the sole aim of seeking the truth and determining which side is entitled to judgment. In the absence of address by counsel the trial was fair."*** **Per RHODES-VIVOUR, JSC**

ISSUE THREE

The Appellant senior counsel on issue 3 has submitted that there is an appeal before this court challenging the proscription of IPOB following an earlier decision of the Federal High Court proscribing IPOB. The trial on the count that deals with the Appellant professing to be a member and leader of the proscribed IPOB will prejudice the appeal, learned silk submitted. The Respondent's counsel countered this statement by stating a general position of the law that a valid judgment is subsisting until it is set aside on appeal. This much the lower court stated at page 284 of the judgment. His lordship held thus:

> ***"On the issue of belonging to a proscribed organisation, this issue is on appeal but for as long as the appeal has not been determined,***

the order of court proscribing is still in force until set aside."

This is good law and this is the position of the law.

The Appellant in paragraph 17 of the affidavit in support averred that no final pronouncement of the proscription of IPOB has been made by the court in Nigeria. This averment as shown in paragraph 17 is premised on the fact that there is an appeal against the judgment proscribing IPOB. Learned senior counsel once again cited good law but not relevant to the case in point. It is a settled principle of law that a decision of a court and indeed the judgment and order of a court is valid and subsisting and should be obeyed until such is set aside on appeal or a court has given an order of stay of execution. The current law as it relates to the legality of IPOB is that it is a proscribed Organization because the decision of the court on this matter has not been set aside. There is no motion or better still any order setting aside the judgment. It does not matter how anyone feels about it but that is the law today as to the status of IPOB. Until this court sets aside that order, that is the position of the law. See **A.G kwara State & Anor vs Lawal& Ors (2017) LPELR-42347(SC).**The apex court buttressing the sanctity of a judgment of a court had held that even when a party feels the judgment is wrong, for as long as the judgment is subsisting it is valid and therefore must be obeyed. In **Babatunde & Ors vs Olatunji & Anor (2000) 2 S.C 9** the Supreme Court held:

"A judgment of a Court of competent jurisdiction remains valid and binding, even where the person affected by it believes that it is void, until it is set aside by a Court of competent jurisdiction. In Chuk v. Cremer

(1846) 1 Coop. Temp. Cott. 342; 47 E. R. 884 Lord Cottenham, L. C. said: "A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid - whether it was regular or irregular. That they should come to the Court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it existed it must not be disobeyed. "This view was re-echoed by Romer, L.J. in Hadkinson V. Hadkinson (1952) 2 All E.R. 567 where he said:

"It is the plain and unqualified obligation of every person against, or in respect of, whom an order is made by a Court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. "In a nutshell, the judgment of a Court of competent jurisdiction subsists unless and until it is set aside even where the person affected by it believes it to be void or irregular. The procedure for setting itaside is simple. The party affected must appeal against the judgment. The position clearly therefore is this. That a person,who knows of a judgment, whether null or valid given against him, by a Court of competent jurisdiction cannot be permitted to disobey it. His unqualified obligation is to obey it unless and until that judgment has been set aside.

See Rossek v. A. C. B. Ltd. (1993) 8 NWLR (Pt.312) 382; Hadkinson v. Hadkinson (1952) 2 All E.R. 567." **Per KATINA-ALU, JSC**

The obligation on the society to obey court orders is not undermined simply because there is an appeal against the judgment. An appeal on its own does not operate as a stay and so the fact that there is an appeal against the order proscribing IPOB, does not mean that the order no longer exist. That apart, the appeal is against the legality of the organisation called IPOB, it has nothing to do with the Appellant as a person unlike count 3 which is directed at the Appellant as the professed leader of IPOB. Understandably the Appellant senior counsel has made his submission looking at the issue from the speculative view point of the appeal going in favour of IPOB. The question is, is that the only possibility? Certainly not, the other possibility is the appellate court upholding the proscription order. I really do not seem to see the point learned silk is making in this issue. Assuming the appeal goes in favour of IPOB, that is IPOB will not be a proscribed organisation and the Appellant is found guilty for been a leader of a proscribed organisation, there are options open to the Appellant. There are so many speculations involved in this issue and the law is that, court decisions should not be based on speculation but rather on the evidence presented before it along with the law. A court is not allowed to speculate on possibilities but rather base its decisions on proved facts that is evidence before the court. See **Ogunye & Ors v State (1999) LPELR-2356(SC);Awolola v. Governor of Ekiti State &Ors (2018) LPELR-46346(SC).**The Supreme Court made this position very clear in

Olalomi Industries Ltd vs N. I.D.B. Ltd (2009) 16 NWLR (Pt 1167) 266 when it held:

> ***"The Court can make inferences or analytical deductions from certain established facts and situation before the Court but the Court must never speculate. Speculation is a mere imaginative guess which even when it appears plausible should not be allowed by Court to fill any gap in the evidence before it. Ibori v. FRN (2009) 3 NWLR pt. 1127 pg. 94."***
> **Per ADEKEYE, JSC**

The submission of the learned silk on this issue is purely based on speculation and conjectures which has no place in legal reasoning. See also **Galadima vs State (2012) LPELR-15530(SC).**I have no difficulty resolving this issue in favour of the Respondent against the Appellant.

ISSUE FOUR

Issue 4 deals with whether the jurisdiction of the Federal High Court covers the whole Nigeria. This issue is based on the premise that the offences the Appellant is alleged to have committed in count 15 took place in Ubuluisiuzor in Ihiala Local Government Area of Anambra State. On this issue, while Chief Mike Ozekhome (SAN) placed reliance on Section 45(a) of the Federal High Court Act, D.E. Kaswe Esq placed reliance of Section 19 of the same Act. Section 45(a) of the Federal High Court Act provides thus:

> **"Subject to the power of transfer contained in this Act, the place for the trial of offence shall be as follows-**

(a) an offence shall be tried by a court exercising jurisdiction in the area or place where the offence was committed;

(b) when a person is a accused of the commission of any offence by reason of anything which has been omitted to be done, and of any consequence which has ensued, such offence may be tried by a court exercising jurisdiction in the area or place in which any such things has been done or omitted to be done, or any such consequence has ensued;"

The Respondent submitted in this regard that the Federal High Court is a single Court covering the Federation and that the administrative division of the court will not forestall the trial of any person charged in a criminal trial in any offence in any divisions of the Court. This issue borders on the territorial jurisdiction of the court. The general position is as stated by the Respondent which is that the Federal High Court is a single court as the decision of the court is the decision of the Federal High Court and not seen as the decision of the division. The learned silk has made a distinction between civil and criminal matters. It is the submission of counsel that in criminal matters, the accused will be tried in the judicial division in which the offence was allegedly committed. In this respect, it is the submission of counsel that the Federal High Court has no jurisdiction to try the Appellant outside where the offence was alleged to have been committed. In simple language, the learned senior counsel is submitting that the division of the Federal High Court with jurisdiction to try the Appellant is the Federal High Court in Anambra State and not the Federal High Court in Abuja. The Respondent counsel

referred to Section 19 of the Federal High Court Act and a few cases to submit that the lower court was in order.

I will start in addressing this issue by reproducing Section 19 of the Federal High Court Act since I had reproduced Section 45 (a) of the same Act above. Section 19 (1)states thus:

> ***"The Court shall have and exercise jurisdiction throughout the federation, and for that purpose the whole area of the Federation shall be Divided by the Chief Judge into such number of Judicial Divisions or part thereof by such name as he may think fit."***

This is a general provision of the power of the Chief Judge to divide the court into division to decide matters. This section has not specifically made provision for which division will have powers over specific matters. In this respect, the most relevant provision will be Section 45 (a) which is a more specific provision. The law is clear that when interpreting a statute, a court should not read a section in isolation but read the statute as a whole document. See **Akpamgbo-Okadigbo & Ors vs Chidi & Ors (2015) 3-4 S.C (Pt II) 48; Rivers State Government of Aigeria &Anor vs Specialist Konsult (Swedish Group) (2005) LPELR-2950(SC)**

Another legal principle that will assist me in determining this issue is the principle that states that when there seem to be a conflict between two sections in a statute, the specific provision will be interpreted to be superior to the general provision. In this respect, I find the case of

Madumere & Anor vs Okwara & Anor (2013) 6-7 S.C. (Pt II) 95

instructive, where it was held:

> ***"It is instructive to restate here that this Court has held that where a specific provision of a statute is subsequent to a general provision, the specific provision of the statute will prevail. In AG Ogun State & Ors. v. AG Federation (2003) FWLR (part 143) 206 at 246, Uwais, CJN (as he then was) restated the principle thus:-***
>
> ***"It seems to me that the provisions of Section 162 subsections (1) and (10) of the 1999 Constitution are general in nature while those of Section 163 (b) of the Constitution, which deal in particular with capital gains tax and stamp duties are specific. Therefore, the latter provisions override the former for generalibus specialia dorogant (i.e. special things derogate from general things"***
>
> ***See also; Edet Akpan v. The State (1986) 3 NWLR (Pt 27) 225."*** **Per MUHAMMAD, J.S.C.**

See **Kraus Thompson Organisation v. N.I.P.S.S. (2004) LPELR-1714(SC)**

Section 19 gives general powers to the Chief Judge of the Federal High Court to have divisions of the court and the assignment of Judges to sit in any division. On the issue of which division has powers to determine a matter that falls within the jurisdiction of the court, Section 45 (a) reproduced above with side note of 'place where offences may be tried' will be applicable since this is a specific provision. By this section, offences that falls within the jurisdiction of the Federal High Court can only be tried in the division of the court with jurisdiction to, in that

place. Most of the cases decided under Section 19 are civil cases and cannot be authority for this case which is a criminal case. In this regard I find the case of this court in **Fani-kayode vs FRN & Ors (2019) LPELR-46796(CA)** very instructive as I feel persuaded by the decision. This is what this court per Tukur, J.C.A said:

> ***"There is no doubt that the starting point with regards to the territorial jurisdiction of the Federal High Court is the statutorily codified and judicially noticed principle that the jurisdiction of the Federal High Court is one and nationwide. It is also however settled that same has been divided into Judicial Divisions and where a crime has been committed, such crime ought to be prosecuted in the Judicial Division of the Federal High Court in the State or States where any of the elements of the crime was allegedly committed, or one that is close to it, subject to the power of transfer, by which a matter may be tried outside the State of commission upon compelling reasons to so do. The foregoing is in my view the import of the Provisions of Sections, Section 45 of the Federal high Court Act; and Sections 93, 98, 385, 386 of the Administration of Criminal Justice Act, 2015, relied on by both parties. See: ABDULLAHI v. FRN (2018) LPELR-44719(CA); and Ibori v. Federal Republic of Nigeria (2008) LPELR-8370(CA). The first major question that must be answered in this appeal is whether any element of the crime allegedly committed by the Appellant occurred in Lagos... These in my view are clear allegations that some act forming part of the offence or at least the consequence of it happened in Lagos. Only evidence would show the truth or otherwise of the***

allegations." The implication of the above is that it cannot be rightly said that Lagos is not the proper place for the trial of the criminal matter leading to this appeal on the grounds that it is not the place of the commission of the offence..." **Per TUKUR, JCA**

I feel compelled to cite one more case on this all important point as clearly there is a distinction between Section19(1) and Section 45(a) of the Federal High Court Act on the issue of the division with territorial jurisdiction to try a criminal matter such as this. This is the case of **Patil vs FRN (2014) LPELR-24078(CA)** where this court per Augie, JCA (now JSC) held:

"We now come to the main issue itself, which is the game-changer, and it is hinged on the conclusion of the lower Court as follows - "It is immaterial that the offences were allegedly committed at the Ilupeju Branch of TIB, the offence can be arraigned before any Federal High Court in Nigeria - see the case of Abiola V. FRN - where the Court of Appeal held - "By virtue of Section 228 of the 1979 Constitution, there is only one Federal High Court with territorial jurisdiction all over the country- The Federal High Court in Abuja therefore has jurisdiction to try the Appellant for the offences allegedly committed in Lagos. "Basically, the Appellant's contention is that the lower Court ought to have applied the decision of this Court in Ibori V. FRN (supra) rather than rely on the decision of this same Court in Abiola V. FRN (supra), in assuming jurisdiction to try him. The Respondent, on the other hands, insists that the lower Court was right to apply the decision in Abiola V. FRN (supra) as the situation in Ibori V. FRN (supra) is

distinguishable from this case. As it turns out, I wrote the lead Judgment in Ibori V. FRN (supra) and since our decision was affirmed by the Supreme Court, I am in the vantage position of deciphering what is what, and determine who is right. The Application that led to Ibori's case was brought pursuant to Sections 19 and 45 of the Federal High Court Act..."

After reproducing Sections 19 and 45 of the Federal High Court Law his lordship went on to hold:

"....These are general provisions in the Acts of the National Assembly on thestatutory or substantive jurisdiction of the Federal High Court; they subtract nothing from the provisions of the Federal High Court Act dealing with the geographical jurisdiction of its Divisions. Section 45 of the Federal High Court Act specifically provides that offences are to be tried by a Court exercising jurisdiction in the area or place where the offences were committed. In this case, the offences were allegedly committed in Delta State, and the Respondent filed the charges against the Appellants directly in the Kaduna Division of the Federal High Court without going through the Chief Judge or any one. There is nothing in the Respondent's Counter Affidavit setting out the criteria used or reason for choosing the Federal High Court in Kaduna. - - - The Respondent conceded in its brief that the nearest Court to Delta State is the Benin Division of the Federal High Court, but without any explanation, the Appellants were picked up and taken to Kaduna where they were arraigned over offences allegedly committed in Delta State...."

Still on the case of **Patil,** his lordship made a distinction between the Abiola's case and the Ibori's case in these words:

> ***"The lower Court relied on the decision of this Court in Abiola V. FRN (supra), to justify the Respondent's action in choosing its Court directly, but Abiola's case is easily distinguishable from this one. To start with, the charges against Abiola related to treason, which is "the offence of attempting to overthrow the government of a State to which one owes allegiance, either by making war against the State or by materially supporting its enemies"- see Blacks Law Dictionary, 8th Ed. Treason, as the Appellants rightly submitted, therefore "relates to the entire country and can consequently be tried in Abuja which is the seat of Government". This case, on the other hand, relates to offences of corrupt enrichment and money laundering, which were allegedly committed by the Appellants when the 1st Appellant was the Governor of Delta State, and the charges are therefore localized to Delta State. If the Respondent felt so strongly that it would not be safe for it to try the Appellants in the Benin Division of the Federal High Court, which oversees Delta State, then it should have taken the matter to the Chief Judge of the Federal High Court for assignment to any other division. Filing the charges against the Appellants directly at the Kaduna Division of the Court for offences allegedly committed in Delta State, without recourse to the Chief Judge or any directive to that effect goes against the spirit and essence of the provisions of the Federal High Court Act, which vests the Chief Judge of the Federal High Court with the power to create and***

assign any judicial function to any Judge or Judges in a Judicial Division, and which also stipulates that offences shall be tried in the judicial divisions where they are alleged to have been committed".

***There we have it; Abiola's case dealt with treason, which is an offence against the State, and triable in Abuja, which is the seat of Government. But I must add, albeit in passing that the said case was decided in 1995, before the 1999 Constitution added a new coloration to the jurisdiction of the Federal High Court in respect of some specific offences. However, the situation in Ibori's case is completely different. He was arraigned before a Federal High Court Judge sitting in Kaduna, and charged with offences relating to certain amount of money belonging to Delta State. Section 45 of the Federal High Court Act says that subject to the power of transfer contained in the said Act, an offence shall be tried by a Court exercising jurisdiction in the place where the offence was committed. .."* Per AUGIE, JCA**

I have extensively quoted the case above because I believe it addressed this issue properly. The appropriate section that will apply to this case in this appeal is section 45 (a) and therefore count 15 ought to be tried in the Federal High Court in Anambra State and not in Abuja. Ubulisiuzor is in Ihiala Local Government Areaof Anambra State. That count should have been tried in the Federal High Court in Anambra State and not the Federal High Court in Abuja. Count 15 offends Section 45 (a) of the Federal High Court Act. Since count 15 specifically states that the offence was committed in ubulisiuzor in Anambra State, I must resolve this issue in favour of the Appellant. For avoidance of doubt, it is only

with respect to count 15Section 45 (a) applies to as the other counts come under the exception which his lordship brought out in the Patil's case referred to above. This is because the offence of terrorism is not localised and the way the offence is couched makes it of National application. This is more so as the Appellant's counselcouched issue 4 in relation to count 15. I resolve issue 4 in favour of the Appellant.

ISSUE FIVE

The last issue is issue 5. Which was whether the Appellant can be tried for offences which the proof of evidence in support did not disclose a prima facie case. The submission of the Appellant counsel is that the proof of evidence did not disclose a prima facie case and therefore the charge should be quashed. The Respondent's counsel submitted that at this stage, the issue of prima facie proof does not arise. In this respect, it is my considered view in agreeing with the Respondent's counsel that at this stage what is required is not proof of a prima facie case but rather whether the charge discloses an offence. A court will only look out for a prima facie case after the evidence of the witnesses of the prosecution has been taken to decide whether there is reason for the court to call on the accused to defend himself or for the court to proceed with the hearing. In this regard I refer to **Fagoriola v. FRN (2013) LPELR-20896(SC)** where the Supreme Court held:

> ***"A prima facie case is said to exist when there is evidence sufficient enough to support the***

allegation made against the accused person. It means that a presumption of guilt is made out against the accused, and as soon as a prima facie case is made out against the accused, he should rebut same on fact in his defence. See Igho v. State (1978) 3 SC p. 87. This Court in Ubanatu v. Cop (2000) 3 NWLR (pt.643) 115 at 129. My learned brother Ogwuegbu, JSC, (as he then was) defined prima facie as follows: "But prima facie case is not the same as proof which comes later when the Court has to find whether the accused is guilty or not guilty" pp.125-131. In the case of Duru v. Nwosu (1989) 1 NWLR (pt.113) 24 at 43 Nnamani JSC (as he then was of blessed memory) stated thus: "It seems to me the simplest definition is that which says that there is ground for proceeding. In other words, that something has been produced to make it worthwhile to continue the proceeding. On the face of it, suggests that the evidence produced so far indicates that there is something worth looking at." **Per MUNTAKA- COOMASSIE, JSC**

This implies that before a party can challenge the case of the prosecution on grounds of lack of prima facie case, evidence must have been adduced before the court. It is premature at this stage to challenge the counts or the charge on the ground that the proof of evidence did not reveal a prima facie case against the Appellant. The Appellant in raising a preliminary objection wants this case to be terminated meaning there is even no reason to start hearing as there is no evidence in the proof of evidence to even try him for the offences in the first place.

Let me state that in trial before the Federal High Court, proof of evidence is not necessary as summary trial is acceptable and recognised. In my opinion, a court will not have to dig into the proof of evidence to determine whether it can proceed to hearing provided the charge is competent and it discloses an offence known to law. Indeed even if the accused is charged under a wrong law, the court will still proceed to try the accused provided the facts discloses offence known to law. See Aviomoh **vs C.O.P. (2022) 4 NWLR (Pt 1819) 68;Lawan v. FRN (2022) LPELR-56968 (CA); Nyame vs FRN (2021) 6 NWLR (Pt 1772) 289.** All that is required at this stage is that the charge must disclose an offence. I have looked at the proof of evidence, I cannot agree with the Appellant's counsel that the proof of evidence does not disclose anything connecting the Appellant to the offences he is charged with. To that extent issue 5 is resolve in favour of the Respondent.

On the whole out of the five issues, I resolve issues 1 and 4 in favour of the Appellant while issues 2,3 and 5 in favour of the Respondent. Generally, the Appellant is supposed to go back for trial on Counts 1,2,3,4, 5 and 8 excluding count 15. This however is not the legal position particularly because issue 1 has been resolved in favour of the Appellant. By resolving issue 1 in favour of the Appellant, it is my finding that the lower court has no jurisdiction to try the Appellant for the offences he is charged with because his extradition from Kenya did not comply with International Laws, Treaties and Domestic Law in Nigeria. The order that a court can make in the circumstance which my learned

brother has ably made in the leading judgment is to strike out the counts 1, 2, 3, 4, 5, 8 and 15.

Having held that the lower court had no jurisdiction to try the Appellant based on the reasons given in the leading judgment by my learned brother and stated in this judgment, the order this court can make is to strike out the counts the lower court retained which is the substance of this appeal. The law is clear and certain that when a court lacks jurisdiction, the appropriate order to make is to strike out the case and not dismissal. See**Panalpina World Transport (Nig) Ltd vs. JB Oladeen International &Ors (2010) LPELR 2902 (SC) pages 23-24.**

In the circumstance, counts 1, 2, 3, 4, 5, 8 and 15 are struck out. That is the reasonable conclusion I can reach in the circumstance. This invariably means that the decision of the lower court cannot stand and therefore it is set aside.

The Appellant in addition to seeking for an order to allow the appeal and setting aside the ruling of the lower court has asked specifically as a relief that the Appellant be discharged. This court is not only a court of law but also a court of justice. In the lower court, counts 6, 7, 9, 10, 11, 12, 13 and 14 were struck out. Now, this court has struck out the counts the lower retained, that is counts 1, 2, 3, 4, 5, 8 and 15. The implication of this is that, there is no charge against the Appellant. This means, there is no charge hanging on his head as at today. In the circumstance, is it difficult to grant the order to discharge him? I believe not. Since in law, one cannot place something on nothing and expect it to stand, in the present reality of no charge hanging on the head of the Appellant, I

am also comfortable as decided by my learned brother to discharge the Appellant.

For the reasons above and much more for the fuller reasons in the leading judgment by my learned brother **Hon. Justice Oludotun Adefope-Okojie, JCA,** I allow this appeal, setting aside the ruling of the lower court delivered on 8/4/2022. I cannot but abide by the consequential order made by my learned brother to discharge the Appellant on the charges proffered against him in the amended charge of 17/../2022.

EBIOWEI TOBI

JUSTICE, COURT OF APPEAL

CERTIFIED TRUE COPY
SIGN.....
MBAH CHIAMAKA BLESSING
HIGHER EXECUTIVE OFFICER
DATE 17/10/2022