

*Economic and Financial Crimes Commission (EFCC)
Fiat for prosecuting offences under the Laws of Lagos State
Subsistence of*

IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS
BEFORE THE HON. JUSTICE CANDIDE-JOHNSON
MONDAY, 29TH APRIL, 2013

SUIT NO. LCD/177/2012

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA ...PROSECUTION/RESPONDENT

AND

1. OLAYINKA SANNI
2. OYEBODE ATOYEBI DEFENDANTS/APPLICANTS

"I have not been referred to any authority, whatsoever, that has had cause to look unto this distinct issue of the life span of the Exhibit EFCC 01 Fiat relied upon by the EFCC. To the extent that this Fiat is generated and tied to the "ancillary offences" under or in relation to Caps C17 and C18 of 2003, now repealed, in line with the judicial policy of U.A.C. v. MACFOY (1961) 3 WLR 1405 at 1409, that you cannot put something on nothing and expect it to stand, I hold and declare, therefore, that the lifespan of the Fiat dated 12/5/2004, Exhibit EFCC01 is spent, exhausted and an expired Fiat in respect of only a Criminal offence that is alleged committed and charged after the repeal of the Criminal Procedure Law ... on 28/5/2007 and equally significantly the repeal of the Criminal Code ... on 8/8/2011. Accordingly, I hold the said Fiat to be of limited validity to that extent except to offences under State Law prior to the aforesaid repeals." (Per Candide-Johnson J.)

The Economic and Financial Crimes Commission (EFCC) commenced a criminal action at the High Court of Lagos State in the name of the Federal Republic of Nigeria as the

prosecutor, against the Defendants/Applicants. Further to an amended Information and Proof of Evidence, the Defendants were arraigned for a two (2) count charge of conspiracy to steal contrary to Section 516 of the Criminal Code Cap C17 Vol. 2 Laws of Lagos State of Nigeria, 2003 and stealing (by fraudulent conversion) contrary to Section 390 of the Criminal Code Cap C17 Vol. 2 Laws of Lagos State of Nigeria, 2003. Both Defendants pleaded not guilty and were granted bail. Subsequently, their Counsel filed Notices of Preliminary Objection challenging the Amended Information, to which the Prosecution filed two separate Counter-affidavits with two documentary Exhibits.

Relying on the decisions in *George v. FRN (2011) 10 NWLR (Pt. 1284) 1* and *Amadi v. FRN (2008) 18 NWLR (Pt. 1119) 259*, the Prosecution challenged the objections of the Defendants contending that having pleaded to the charge, it was too late for the Defence to raise a challenge to the prosecutorial powers of the EFCC.

After scrutinizing the grounds of the objection and issues raised by parties, the Honourable Court distilled the following issues for determination– (1) Who is the proper party under the 1999 Constitution to exercise prosecutorial authority in respect of an offence under Lagos State Law (Constitutional objection); and (2) Who is the proper party in whose name a criminal charge is to be prosecuted under the relevant Criminal Laws of Lagos State (Statutory objection).

Revisiting the decision in *FRN v. Amadi (supra)*, His Lordship considered one of the three issues for determination which were pronounced upon by the Supreme Court – Whether the EFCC, as prosecutor, had the “power to prosecute the Appellant (Amadi) for Forgery and Uttering under the Criminal Code of Lagos State.” The Honourable Justice Aloma Mariam Mukhtar, JSC (as she then was) summarized the competing arguments of counsel in relation to the issue and after a considered analysis, proceeded to an affirmative determination in favour of the EFCC to the effect that the Commission had the power to prosecute Amadi in the High Court of Lagos State for the offences of Forgery and Uttering.

In arriving at this conclusion, especially as it relates to the fundamental issue of jurisdiction, the learned Justice of the Apex Court considered two relevant sub-issues. First was the nature and the scope of the power of the Attorney-General of Lagos State to institute and undertake criminal proceedings in respect of a Law enacted by a State House of Assembly in line with Section 211 Constitution of the Federal Republic of

Nigeria, 1999 (as amended); and second, in accordance with Section 167 Criminal Procedure Law Cap C18, Laws of Lagos State, 2003 (CPL) on the appropriate time to raise an objection regarding any formal defect that is patent on the face of the Charge Sheet as to its form or content. The first is a constitutional question while the second is a statutory question. Exhibit A – the letter of authorization – dealing with the matter of formal delegation of prosecutorial power from the A-G of Lagos State to EFCC, as a Commission, was held to be valid. Having stated that, the Supreme Court went ahead to consider the second leg of the issue and held that by virtue of Section 167 of the CPL of Lagos State, objection to a Charge for any formal defect shall be taken immediately after the Charge is read over to the accused and not later.

In light of the above decision, His Lordship, Candide-Johnson J was of the view that the constitutional aspect of the objection of the Defence touching prosecutorial authority is not affected by any time bar inherent in and distinct from the statutory provisions of Section 249 Administration of Criminal Justice Law, 2011 ((ACJL) which is the subsisting law on the matter), dealing with form and content of a Charge Sheet.

His Lordship observed that the Fiat – Exhibit EFCC01 – relied on in this case was the same fiat relied on in *Amadi v. FRN*. In the fiat written by the Director of Public Prosecutions (DPP) on the instruction of the A-G of Lagos State dated 12th May 2004, the DPP responded to the formal request by the Executive Chairman of EFCC to prefer charges under State Law. In the correspondence, the A-G of Lagos State formally delegated his prosecutorial powers in relation to offences under the Criminal Code Law and the Criminal Procedure Law of Lagos State (which were the extant laws on criminal prosecution), to the Attorney-General of the Federation (AGF) and the EFCC. This delegation was done in consideration of the category of offences the EFCC was established to address vis-à-vis the ancillary offences under the Criminal Code Law and the Criminal Procedure Law of Lagos State. My Lord noted further that neither the AGF, A-G of Lagos State nor the EFCC took into account that the two laws stated above have since been repealed by the Lagos State House of Assembly and are no longer existing laws within the meaning of Section 315 of the 1999 Constitution. As at 28th May 2007, the ACJL came into force. Further, the said ACJL, 2007 was also repealed by the ACJL 2011 which came into force on 8th August, 2011. Thus, the laws relied on by the Attorney-General of Lagos State as at May, 2004 to grant the fiat relied on by the EFCC suffered their legislative deaths years back.

The Court held further that the issue of Fiat, which is connected with the enormous constitutional power and role of an Attorney-General, ought not to be associated with the sort of ambiguity, controversy and uncertainty that EFCC01 has repeatedly generated in the Courts.

On this note, His Lordship *struck out* the Amended Information and Charge dated 7/2/2013.