

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: THE HON. JUSTICE PETER O. AFFEN

THURSDAY, FEBRUARY 20, 2020

CHARGE NO. FCT/HC/CR/324/2018

MOTION NO. M/5289/2019

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA PROSECUTION

AND

**1. CHRISTOPHER ANDEKIN }
2. RAJAN ZAKA } DEFENDANTS
3. JAFARU FADANARI MAMZA }**

R U L I N G

1. On 18/9/18, the Prosecution filed a five-count charge dated 17/9/18 against the three (3) Defendants on record, namely: *Christopher Andekin, Raja Zaka and Jafaru Fadanari Mamza*. Upon arraignment on 18/10/18, all three Defendants pleaded 'Not Guilty' and the matter was fixed for trial. Subsequently however, the Prosecution filed a motion on notice dated 1/3/19 praying the court for the following:

1. AN ORDER granting leave to the Complainant/Applicant to file an amended charge, additional Proof of Evidence to the charge in respect of which plea has been taken by the Defendants.
2. AN ORDER deeming as proper filed and served the amended charge, additional proof of evidence/documents attached to this Application same having been served on the Defendant's/counsel.
3. AN ORDER for such further Order(s) as this Honourable Court may deem fit to make under the circumstance."

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2. At the hearing of the motion on notice, *Sir Steve Odiase* of counsel for the Prosecution/Applicant relied on the 6-paragraphed affidavit dated 1/3/19 and an 11-paragraphed Further and Better Affidavit dated 23/4/19 [both deposed by *Sir Steve Ehi Odiase* [a Deputy Chief Detective Superintendent (DCDS) in the Legal/Prosecution Department of the Economic and Financial Crimes Commission (EFCC)], as well as a 4-paragraphed "Further, Further and Better Affidavit in Opposition to Defendants' Further, Further and Better Counter Affidavit dated 27/5/19" deposed on 18/6/19 by one *Machi Marcel*, a member of staff of the EFCC. He adopted the written address filed in support of the motion and urged the court to grant the amendment sought.
3. On behalf of the Defendants, *Festus Ukpe, Esq.* of counsel for the Defendants placed reliance on the several counter affidavits deposed by one *Yohanna Shankuk*, a Litigation Secretary in *Festus Keyamo Chambers*, solicitors to the Defendants, and adopted the written addresses filed in opposition to the motion for amendment in urging the court to refuse the amendment sought. The counter affidavits filed on behalf of the Defendants are as follows:
- (i) 9-paragraphed counter affidavit dated 11/3/19 [to which a Warrant of Arrest is annexed as Exhibit A];
 - (ii) 8-paragraphed Further and Better Affidavit dated 29/4/19;
 - (iii) 4-paragraphed Further, Further and Better Affidavit dated 27/5/19 [to which an Order vacating the warrant of arrest and Certified True Copy of a charge filed at Abuja Division of the Federal High Court are annexed as Exhibits A and B respectively];
 - (iv) 4-paragraphed 4th Affidavit in Opposition dated 26/6/19 [to which an Application for Certified True Copy of Charge and a copy of

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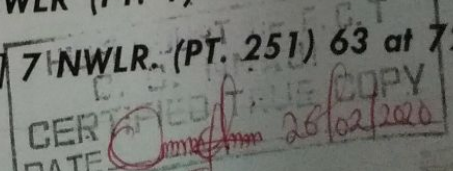
the Charge in the Federal High Court, Abuja are annexed as annexed as Exhibits AA and BB respectively].

4. The Prosecution contends that from discoveries made in the course of reviewing the case file preparatory to the trial of the three (3) Defendants on record, it became necessary to amend the charge in order to include two (2) others [namely *Amaju Melvin Pinnick* and *Dr Muhammed Sanusi*] as 1st and 2nd Defendants, hence the court's discretion is being sought to regularise the Amended Charge [Exhibit EFCC 01] and additional documents and exhibits to the Proof of Evidence; that the amendment will not prejudice the Defendants in any way, rather it will afford them opportunity to know more about the case against them in line with international best practices and the dictates of the Administration of Criminal Justice Act 2015 [ACJA], placing reliance on the cases of **GBOKO v STATE [2007] 17 NWLR 272 at 277** and **ADEJOBI v STATE (2011) Vol. 6 (PT. 1) MSSC 101** [on the court's power and/or discretion to amend or alter, add or frame a new charge], as well as s. 216 ACJA 2015; that no formal charge is annexed to the counter affidavit to buttress the existence of any on-going criminal matter against the persons sought to be joined as 1st and 2nd Defendants in the Chief Magistrate Court of the FCT, Abuja as alleged; and even if it is so assumed without conceding, that cannot constitute a clog to the prosecution of the present charge since the Chief Magistrate Court of the FCT, Abuja is an inferior court before which the Complainant herein does not undertake prosecution; that Exhibit A annexed to the counter affidavit does not show any CR number and falls short of a warrant of arrest properly issued in the FCT; that apart from being an afterthought, the charge at the Federal High Court in Charge No. FHC/ABJ/CR/03/2019 dated 6/5/19 [as shown in Exhibit B] which came later in time is not the same as the amended charge and additional proof of evidence filed before this court

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on 1/3/19 for which leave is being sought; that the court must strive to do substantial justice rather than rely on technicality to defeat justice, citing **TABIK INV. LTD v GTB PLC (2011) 6 MJSC (PT.1) MJSC 1** and **CHIEF OLABODE GEORGE v F.R.N. [2011] 10 NWLR (PT. 1254) 1**; and that the courts determine live issues and do not embark on academic exercise, citing **JOSEPH v STATE (2011) MJSC (PT. 2) 1**, **ADELAJA & SONS v ALADE & ANOR [1999] 6 NWLR (PT. 608) 544** and **BAKARE v A.C.B. LTD [1986] 3 NWLR (PT. 26) 47**. The court was urged to discountenance the Defendants' antics as mere skilful manoeuvres intended to mesmerize or tactics used in guerrilla warfare purposely to cause distraction, which are not permissible in adjudication, and proceed to grant the amendment sought to enable the Prosecution serve same on the two new Defendants so that they can enter their plea before this court.

5. On behalf of the Defendants, it is forcefully contended that the Prosecution failed to attach the Proposed Amended Charge and additional proof of evidence to the present application; that *Amaju Pinnick* and *Muhammed Sanusi* whom the Prosecution seeks to join as co-defendants are already standing trial on the same charges [in Charge No. CR/03/2019] before the Chief Magistrate Court of the FCT holden at Wuse Zone 2, Abuja and the Presiding Learned Magistrate [*Hon. Mabel Taiye Segun-Bello*] issued a warrant of arrest against them as shown in Exhibit A, which warrant was subsequently vacated on the application of the Defendants; that whereas applications are not granted as a matter of course, the Prosecution has not placed any single fact or materials before this Honourable court to sustain the amendment sought, citing **WORLD GATE LTD v SENBANJO [2000] 4 NWLR (Pt. 654) 669** –per *Galadima, JCA (as he then was)*. Placing reliance on **UNIVERSITY OF LAGOS & ANOR v AIGORO [1985] 1 NWLR (PT. 1) 143 at 148** and **UNIPETROL (NIG.) LIMITED v MUSA [1992] 7 NWLR (PT. 251) 63 at 72**,



the Defendants maintain that the Prosecution has failed to show the purpose of the amendment or why the additional evidence and additional defendants were not presented before the court originally, etc., which are factors the court ought to consider before granting an application for amendment; that failure to exhibit either the proposed amended charge or additional proof of evidence is fatal to the application as the court has no basis for exercising its discretion in favour of the applicant; that Exhibits A and B are warrants of arrest obtained on the same subject by the present Applicant against the parties sought to be joined in this suit, which amounts to forum-shopping and indeed an abuse of the process of this Honourable Court, citing **MOHAMMED v PETRODEL RESOURCES (NIG) LTD (2018) LPELR-44197(CA)** –per Adumein JCA.

6. The further contention of the Defendants is that both the Special Presidential Investigation Panel on Recovery of Public Property [which is prosecuting the charge before the FCT Magistrate Court] and the Economic and Financial Crimes Commission (EFCC) are agents/agencies of the Federal Republic of Nigeria; that upon the imminent failure of the said proceedings before the FCT Magistrate Court following a challenge to its competence, the Complainant subsequently instituted another criminal charge in Charge No. FHC/ABJ/CR/93/2019 against the parties sought to be joined before the Abuja Judicial Division of the Federal High Court [as shown in Exhibit BB], the substance of which charge is one and the same as proposed amended charge herein alleging criminal breach of trust, conversion, misappropriation and diversion of monies belonging to the Nigeria Football Federation (NFF), and reliance is being placed on the same witnesses and documents as can be gleaned from the proofs of evidence. The court was urged to refuse

the amendment sought and proceed with the trial on the basis of the original charge.

6. Now, a cardinal principle of our jurisprudence is that courts of law exist to decide the rights of parties before it and not to punish them for errors or mistakes they may make in the conduct of their cases by deciding otherwise than in accordance with their rights. A necessary corollary of the above principle is that the court may at any stage of the proceedings before judgment alter or amend criminal charges, pleadings or endorsements as may be necessary for the purpose of determining the real question(s) in controversy in a case. There is no kind of mistake or error which, if not fraudulent or intended to over-reach, the courts cannot correct if this can be done without injustice to the other party. The courts generally lean towards granting an amendment save in situations where: (i) the amendment sought will occasion injustice to the other party; (ii) the applicant is acting *mala fide*; or (iii) the applicant has by his blunder done some injury to the respondent which cannot be compensated by costs or otherwise. See **OJAH v OGBONI (1976) 1 NMLR 95 at 99**, **KODE v YESUFU [2001] 4 NWLR (PT. 703) 392**, **AJAKAIYE v ADEDEJI [1990] 7 NWLR (PT. 161) 192** and **ADELAJA v ALADE [1994] 7 NWLR (PT. 358) 537**. Crucially, it has been held that an amendment may be sought and granted even if it is in consequence of an objection raised by the adverse party. See **ITA v DADZIE [2000] 4 NWLR (PT. 652) 168 at 181**. An amendment, whenever granted by the court, relates back to the date of the original process amended, and what stood before the amendment is no longer material before the court and ceases to define the issues to be tried. See **F.R.N. v ADEWUNMI [2007] 10 NWLR (PT. 1042) 399**, **OSITA NWOSU v IMO STATE ENVIRONMENTAL SANITATION AUTHORITY [1990] 2 NWLR (PT. 135) 688**, **COL. ROTIMI v MCGREGOR (1974) 11 SC 133 at 152**, **VULCAN GASES LTD v GESELLSCHAFT [2001] 9 NWLR (PT. 719) 610**

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and *UNILORIN v ADENIRAN* [2007] 6 NWLR (PT. 1031) 498 *at*. This doctrine of 'relation back' is however a legal fiction designed to achieve certain ends, although it does not obliterate the date the amended process was actually filed. See *TSOKWA OIL MARKETING CO v BANK OF THE NORTH LIMITED* [2002] 11 NWLR (PT. 777) 163, (2002) 1 NSCQR 738 *at* 753 –*per Onu, JSC.*

7. Amendment or alteration of a charge is governed by s. 216 of the *Administration of Justice Act 2015 (ACJA)* which provides thus:

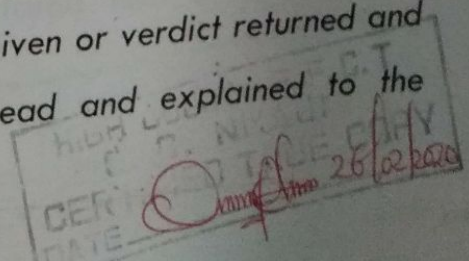
216. (1) A court may permit an alteration or addition to a charge or framing of a new charge at any time before judgment is pronounced.

(2) An alteration or addition of a new charge shall be read and explained to the defendant and his plea to the amended or new charge shall be taken.

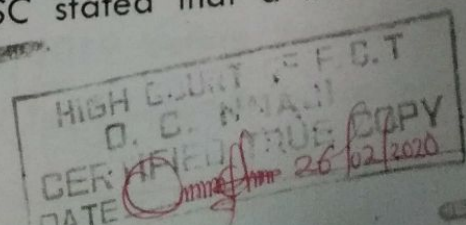
(3) Where a defendant is arraigned for trial on an imperfect or erroneous charge, the court may permit or direct the framing of a new charge, or an addition to, or the alteration of the original charge.

(4) Where any defendant is committed for trial without a charge or with an imperfect or erroneous charge, the court may frame a charge or add or alter the charge as the case may be having regard to the provisions of this Act.

8. The above provision of s. 216(1) ACJA bears marked similarity with ss. 162, and 163 of the repealed Criminal Procedure Act to the effect that “[w]hen a person is arraigned or tried on an imperfect charge or erroneous charge, the Court may permit or direct framing of a new charge or add to or otherwise alter the original charges” and “[a]ny Court may alter or add to any charge at any time before judgment is given or verdict returned and every such alteration or addition shall be read and explained to the



accused", which provisions were construed by the Supreme Court (per Kalgo JSC) in **UGURU v THE STATE [2002] 9 NWLR [PT. 771] 90, (2002) 4 SC (PT. 2) 13, (2002) LPELR-3325 (SC) 1**. A charge or some counts in the charge in any criminal trial may be amended or altered at any time before judgment is given, provided that the amended charge is explained to the accused and he is called upon to plead thereto. The language of s. 216(1) ACJA is 'a court may permit an alteration or addition to a charge or framing of a new charge'. Thus, in order for the prosecution to amend a charge already before a court, the prosecution is required to seek leave or consent, whether orally or in writing by way of formal motion. See **Bob Osamor: Fundamentals of Criminal Procedure Law in Nigeria (2004), p. 216**. The trial court has the discretion to allow the amendment sought if the interest of justice justifies it, but as is the case with all instances of judicial discretion, the discretion to allow or decline an amendment must be exercised 'judicially' [i.e. in accordance with law] and 'judiciously' [i.e. in accordance with reason and good sense, and be replete with intellectual candour and tenacity of mind and purpose]. Generally, any amendment can be made provided that there is no injustice to the accused person. See **R v KANO & ARISAH (1951) 20 NLR 32, OKWECHIMA v POLICE (1956) 1 FSC 73** and **OSAREREN v FRN (2018) LPELR-43839(SC)**. The power to alter a charge includes the power to substitute a fresh charge; but upon the grant of any amendment to a charge, the court must call upon the accused to plead thereto. See **OBI v STATE (2016) LPELR-40543(CA), THEOPHILOUS v FRN (2012) LPELR-9846(CA) 1 at 22-26** –per Ejembi Eko, JCA (as he then was) and **AGBANIMU v FRN (2018) LPELR-43924(CA)**. Expounding on the procedure for amending a charge in **UGURU v THE STATE supra** [at p. 10 of the e-Report], his Lordship Kalgo JSC stated that a trial court is empowered:



"...[T]o alter, amend or add to any charge in any criminal case before it at any time before judgment is given in the case. It does not give any condition precedent to its application but ensures that the amended charge be read out and explained to the accused. This means that whenever the prosecution decides to amend the charge already before the Court, it can proceed to do so without asking for permission or leave to do so. It then applies to the Court to accept the amendment ... and the Court after hearing the parties, may or may not accept or allow the amendment. If it allows the amendment, the amended charge shall replace and the new charge read to the accused person as the new charge. If the Court rejects the charge then the original charge remains. This is what obtains in criminal matters pertaining to amendment of charges generally."

9. In the case at hand, the Prosecution seeks to join *Amaju Melvin Pinnick* and *Dr Sanusi Mohammed* as 1st and 2nd Defendants by introducing certain counts against them as shown in the proposed "Amended Charge" dated 1/3/19 [annexed to the Further Affidavit dated 23/4/19 as Exhibit BB], and has applied for the court's leave or 'permission' so to do. It cannot escape notice that *Amaju Melvin Pinnick* and *Dr Mohammed Sanusi* were listed as witnesses in the initial proof of evidence filed before me. It would seem therefore that the decision to introduce and frame charges against them by way of an amendment is an afterthought. But be that as it may, the matter is still at its incipient stages and the Prosecution is yet to open its case. As a general rule, an amendment sought at the incipient stages of litigation is granted almost as a matter of course as there is hardly any injustice the defendant will suffer if the amendment sought is granted at this stage.
10. The Defendants alleged the existence of a similar criminal charge on the same subject matter in Suit No. CR/03/2019 before the FCT Chief Magistrate Court presided by *Hon Mabel Taiye Segun-Bello* who initially

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issued a warrant of arrest against the parties sought to be joined but subsequently vacated the warrant; and that following a challenge to the competence of the said charge, a fresh criminal charge was filed against the parties sought to be joined in Charge No. FHC/ABJ/CR/93/2019 before the Abuja Judicial Division of the Federal High Court [as shown in Exhibit BB], the substance of which is one and the same as the proposed amended charge alleging criminal breach of trust, conversion, misappropriation and diversion of monies belonging to the Nigeria Football Federation (NFF) for which reliance is being placed on the same witnesses and documents as can be gleaned from the proofs of evidence.

11. Ordinarily, where a criminal charge is pending against an accused person before a court of law, it would constitute an abuse or misuse of court process to arraign him/her before another court [whether of superior or inferior jurisdiction] for the same offence(s) or on the same subject matter. The law prohibits exposure to double jeopardy. In this connexion, I have given a careful and insightful consideration to the depositions in the various counter affidavits filed on behalf of the Defendants as well as the exhibits annexed thereto. I have equally examined the proposed amended charge and the additional proofs of evidence filed by the Prosecution. I note that the alleged criminal charge against the parties sought to be joined before the FCT Chief Magistrate Court is not one of the documents exhibited by the Defendants. Needless to say that courts of law [which are also courts of equity] do not base their decisions on speculation, conjecture or mere hypothesis [See *AGIP (NIG) LIMITED v AGIP PETROLI INT'L* [2010] 42 NSCQR 167, *AJIKAWO v ANSALDO* [1991] 2 NWLR (PT. 173) 359 at 372, *ARCHIBONG v ITA* [2004] 23 WRN 1 at 27, *ADEFULU v OKULAJA* [1996] 9 NWLR (PT. 473) 668 and *IKENTA BEST (NIG) LTD v A-G RIVERS STATE* [2008] ALL FWLR (PT. 417) 1 at 36], and this court will not indulge in any speculation as to whether the said

charges are the same as those being introduced by the amendment sought.

12. But as it relates to Charge No. FHC/ABJ/CR/93/2019 before the Abuja Judicial Division of the Federal High Court, an examination of Exhibit BB reveals marked similarities between the charges before the Federal High Court and the charges the Prosecution seeks to introduce by way of amendment in the instant case. It cannot escape notice that there is a great deal of overlap in the counts alleged in the two cases: both cases allege conspiracy, criminal breach of trust and fraudulent conversion of funds belonging to the Nigeria Football Federation [NFF]. Whereas Counts 5, 6, 7, 8, 9, 10 and 17 in Charge No. FHC/ABJ/CR/93/2019 before the Federal High Court, and Count 1 of the proposed amended charge before me allege the offence of conspiracy contrary to s. 96 and punishable under s. 97 of the Penal Code, Counts 12 and 13 in Charge No. FHC/ABJ/CR/93/2019 as well as Counts 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the proposed amended charge are in respect of criminal breach of trust by the parties sought to be joined contrary to s. 311 and punishable under s. 312 of the Penal Code. Criminal infractions on various dates are alleged on the face of the proposed amended charge before me, but an examination of the proof of evidence [notably the extra-judicial statements made during the pendency of this action by one *Oyetunde Anthony Aderibigbe* on 8/1/19 and 28/1/19, one *Christopher Green* on 14/1/19, and one *Harrison Jalla* also on 14/1/19] reveal that the alleged infractions relate essentially to the sum of \$8.4m said to be a grant by FIFA to the Nigeria Football Federation (NFF) sometime in 2014, which is the subject matter of Charge No. FHC/ABJ/CR/93/2019 at the Federal High Court. Indeed, the Prosecution's case summary contained in the proof of evidence makes it clear beyond peradventure that this criminal charge is the offshoot of a petition [dated 20/12/16] by the

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erstwhile Minister of Sports alleging that "NFF misappropriated grants from Federation of International Football Associations (FIFA) to NFF (sic) for the development of football in Nigeria". Both charges have the same underlying subject matter, even as some of the witnesses listed are the same.

13. My attention has been drawn to a motion on notice dated 10/12/19 filed by the parties sought to be joined praying for: (i) "AN ORDER of this honourable court directing a departure from its Rules and thereby granting leave to the parties sought to be joined/Applicants to be heard in the determination of the Complainant's motion dated and filed on 1st March 2019 pending before this Honourable Court"; (ii) "AN ORDER of this honourable court dismissing Charge No. CR/324/19 for being an abuse of court process on account of the principle of *autre fois acquit*"; or in the alternative (iii) "AN ORDER of this honourable court striking out Complainant's motion on notice dated and filed 1st March 2019 for being an abuse of court process on account of the principle of *autre fois acquit*". The basis of this application is "that on 5th November 2019 while this application for amendment was still pending, the Federal High Court discharged and acquitted the parties sought to be joined in this suit of all the allegations against them" and "they cannot be subjected to trial on the same set of offences again", as such, it will be in the interest of justice to grant the application.

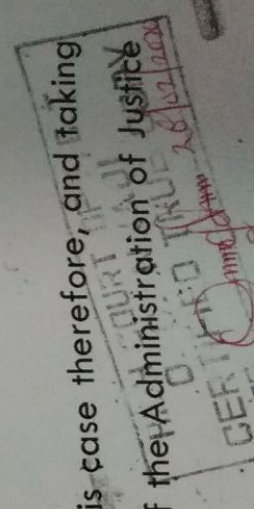
14. Without much ado, I must state right away that I find no valid legal pedestal upon which the parties sought to be joined [i.e. *Amaju Melvin Pinnick* and *Dr Sanusi Mohammed*] could validly stand to bring the said application. The law, as I understand it, is that an accused person is not subject to the court's jurisdiction until he is formally arraigned; *a fortiori*, a person sought to be joined in a pending criminal proceeding by way of

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an amendment is not subject to the court's jurisdiction until the application to join him is granted and his plea is taken. Crucially, the provision of s. 396(2) of the Administration of Criminal Justice Act (ACJA) 2015 is to the effect that it is only after a defendant has been arraigned that he can raise objection to the validity of the charge, and even at that "the objection shall be considered along with the substantive issues and a ruling thereon made at the time of delivery of judgment".

15. However, having already held that there is a great deal of overlap between the proposed amended charge before me and the one in Charge No. FHC/ABJ/CR/93/2019 before the Federal High Court, I find myself unable to shut my eyes to the certified copy of the order of the Federal High Court [Coram: Ijeoma Ojukwu, J.] dated 5/11/19 which is contained in the Record of Proceedings annexed to the said motion as Exhibit B. Needless to say that the said order forms part of the records in the case file before me and I am entitled to make reference to it as I find necessary. See **FUMUDOH v ABORO [1991] 1 NWLR (PT. 214) 210 at 229** and **ONAGORUWA v ADENIJI [1993] 5 NWLR (PT. 293) 317**. The said Record of Proceedings of the Federal High Court reveal that "[c]onsequent upon the disbandment of the [Special Presidential Investigation] Panel by the President of the Federal Republic of Nigeria, the case file was transferred to the office of the Attorney General of the Federation" and the prosecution "agreed with the defence counsel that there is need to dismiss the charge and acquit the Defendants" whereupon the Federal High Court ordered that "the Charge against the Defendants is dismissed and each Defendant is acquitted in view of s. 355 of the Administration of Criminal Justice Act".

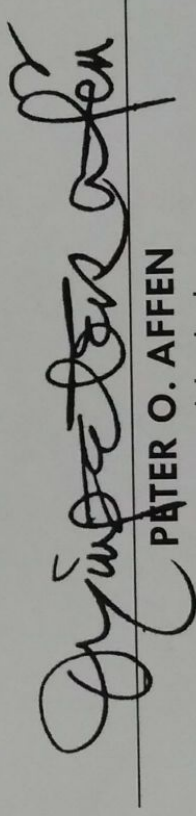
16. In the peculiar facts and circumstances of this case therefore, and taking into consideration the overriding objective of the Administration of Justice



Act 2015 "to ensure that the system of administration of criminal justice promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of rights and interests of the suspect, the defendant, and the victim", the inevitable conclusion to which I must come is that it will not be in the interest of justice to grant the proposed amendment to enable the Prosecution introduce charges on the same or similar alleged infractions for which the parties sought to be joined have already been acquitted at the Federal High Court, which is not permissible in law.

17. I accordingly decline the amendment sought. The case shall proceed to trial against the three (3) defendants on record without further assurance.
IT IS SO ORDERED.




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Honourable Judge

Counsel:

Sir Steve Odiase for the Prosecution.

Festus Ukpe, Esq. for the Defendants.

