AJAY PATIL

V.

FEDERAL REPUBLIC OF NIGERIA

COURT OF APPEAL

(LAGOS DIVISION)

CA/L/128/09

AMINA ADAMU AUGIE, J.C.A. (*Presided and Read the Leading Judgment*)

SAMUEL CHUKWUDUMEBI OSEJI, J.C.A.

ABIMBOLA OSARUGUE OBASEKI-ADEJUMO, J.C.A.

FRIDAY, 5TH DECEMBER 2014

APPEAL- Criminal appeal- Omnibus ground alleging that judgment is against weight of evidence – Validity and implication of.

APPEAL- Grounds of Appeal – Omnibus ground of appeal in criminal appeal – How couched

BANKING - "Bank credit" - Meaning of.

BANKING - "Bank" - Meaning of.

COURT - Chief Judge - Exclusive powers of to transfer cases.

COURT - Federal High Court - Charge under Dishonoured Cheque (Offences) Act prepared under Failed Banks Act No. 18 of 1994 - Jurisdiction of Federal High Court to entertain.

COURT - Federal High Court – Jurisdiction of to try offences created under Failed Banks Act, No. 18, 1994 – Extent of.

COURT - Federal High Court – Territorial Jurisdiction of - Extent of.

COURT - Federal High Court – Transfer of cases from one judicial division without fiat of the Chief Judge – Effect of on Competence of court.

COURT - Issue: of jurisdiction – Nature and importance of – whether party can waive.

COURT - Jurisdiction of court - Issue of - Fundamental nature of - When can be raised.

COURT – Jurisdiction of court – Substantive and territorial jurisdiction – Distinction between.

COURT – Rules of court – Object and importance of.

COURT - Transfer of cases - Transfer of case from one judicial division to another without fiat of Chief Judge – Effect of on competence of court.

COURT – Transfer of cases – Transfer of cases under sections 22 and 45, Federal High Court Act – Power of the chief judge in respect of.

CRIMINAL LAW AND PROCEDURE - Appeal - Grounds of appeal – Omnibus ground of appeal in criminal appeal- How couched.

CRIMINAL LAW AND PROCEDURE - Appeal - Grounds of appeal - Omnibus ground in criminal appeal alleging that judgment is against weight of evidence - Propriety of.

JURISDICTION - Federal High Court - Charge under Dishonoured Cheque (Offences) Act prepared under Failed Banks Act No. 18 of 1944 - Jurisdiction of Federal High Court to entertain.

JURISDICTION – Federal High Court – Jurisdiction of to try offences created under failed Banks Act, No. 18, 1944 – Extent of.

JURISDICTION – Federal high Court – Territorial jurisdiction of – Extent of.

JURISDICTION – Federal High Court – Transfer of cases from one judicial division without fiat of the Chief Judge – Effect of on competence of court.

JURISDICTION – Federal High Court – Venue of trial – Offence committed outside the judicial division in which court sits – When can be tried by the court.

JURISDICTION – Issues of Jurisdiction – Nature and Importance of – Whether party can waive.

JURISDICTION – Jurisdiction of court – Issue of – Fundamental nature of – When can be raised.

JURISDICTION – Jurisdiction of court – Substantive and territorial jurisdiction – Distinction between.

JURISDICTION – Territorial jurisdiction of court – What it entails.

JURISDICTION – Transfer of cases – Transfer of case from one judicial division to another without fiat of Chief Judge – Effect of on competence of court.

PRACTICE AND PROCEDURE – Court – Rules of court – object and importance of.

WORDS AND PHRASES – "Bank credit" – Meaning of.

WORDS AND PHRASES – "Bank" – Meaning of.

Issue:

Whether the honourable trial court had jurisdiction over the case of the appellant or have jurisdiction to try offences committed under the Dishonoured Cheques (Offences) Act, Laws of the Federation of Nigeria, 1990?

Facts:

The appellant and 5 others were arraigned at the failed banks Tribunal in Abuja on 12th May, 1999 for offences of conspiracy, theft of N87,732,887.26, property of Trans International Bank and obtaining credit in that sum by means of cheques which were dishounoured when presented on the around of insufficient funds. At the inception of the current civilian regime in 1999 the matter was inter transferred to the Federal High Court by virtue of Failed Banks Tribunal (Consequential Amendment) Act No. 62 of 1999.

From Federal High Court Abuja the case was transferred to Federal High Court Ilorin where trial started. After the prosecution had called two witnesses, the appellant filed a preliminary objection challenging the competence of the Federal High Court Ilorin to try the charge contending that all elements of the offences alleged occurred in Lagos and so only the High Court of Lagos State can try the matter. The objection was over ruled and trial continued. Trial was concluded and at the stage of address the Judge was transferred to Benin Division of the court. The prosecution applied to the Chief Judge and the case was transferred to Benin However, before the trial Judge Olayiwola, J. could have the parties addresses, he was transferred away and Okeke, J. inherited the case and after series of adjournment without appearance of parties ordered the matter to be transferred back to Ilorin division. From Ilorin division, the case was moved to Lagos before Olayiwola, J. who heard addresses of the parties and in his judgment convicted the appellant and sentenced him to one year imprisonment.

Being dissatisfied, he appealed to the Court of Appeal contending among other things that the Federal High Court Ilorin

division where the matter was tried lacked jurisdiction to hear the case, the evidence having shown that the offence was committed in Lagos State, it was also contended that by virtue of section 3(1) of the Dishonoured Cheques (Offences) Act, all offences under the Act ought to have been tried by the High Court of the State where the offence was committed. The respondent on its part contended that by virtue of section 1(1)(d) of the failed banks Tribunal (Consequential Amendment) Act n0. 62 of 1999, the Federal High Court has jurisdiction to try the offence.

Held (*Unanimously allowing the appeal*):

1. *On Nature of jurisdiction –*

   Jurisdiction is the blood that gives life to the survival of an action in a court of law and without jurisdiction, an action will be like an animal that has been drained of blood, it will cease to have life and any attempt to resuscitate it without infusing blood into it would he an abortive exercise, it is the authority a court has to decide matters that are litigated before it or to take congnizance of matters presented in a formal way for its decision. [*Utih v. Onoyivwe* **(1991) 1 NWLR (Pt. 166) 166:** *Mobil Producing (Nig.) Unltd. v. L.A.S.E.P.A.* **(2002) 18 NWLR (Pt. 798) 1 referred to.]** (*Pp. 502, para. A; 515, paras. D-E)*

2. *On When issue of jurisdiction can be raised -*

   Issue of jurisdiction being fundamental can be raised at any time, even on appeal. Mere taking part in a trial does not stop a party from raising the issue of jurisdiction. Parties cannot by consent

or otherwise vest in court jurisdiction it does not have. [*Adejumo v. David Hughes & Co. Ltd*. **(1989) 5 NWLR (Pt. 120) 146:** *Ezenwosu v. Ngonadi* **(1988) 3 NWLR (Pt. 81) 163;** A.P.C. Ltd. v. N.D.I.C. (N.U.B.) Ltd. **(2006) 15 NWLR (Pt. 1002) 404**; *Afribank (Nig.) Plc v Bonik Ind. Ltd*. **(2006) 15 NWLR (Pt. 973) 300;** *Ofor v. Leaders & Co. Ltd.* **(2007) 7 NWLR (Pt. 1032) 1 referred to.]** (*P. 508, paras. C-F*)

3. *On whether parties can waive jurisdiction of court –* **There is no question of waiver in jurisdictional issues. An appellant cannot consent to the lower court's jurisdiction or waive His right to complain about its lack of' jurisdiction to try him no matter how many times he raises it. Jurisdiction being a threshold issue can be raised at any time and anywhere, even for the first time at the Supreme Court.** [*Adesola v. Abidoye* (1999) 14 NWLR (Pt. 637) 28 referred to.] (P. 509, paras. B-C)

4. *On Powers of the Failed banks Tribunal inherited by the Federal High Court-*

   The Failed Banks Tribunal had powers to recover debts owed a failed bank, and if in the transaction between the customer and the bank, there was evidence to show that an offence defined in the Failed Banks Act No. 18 1994 or in any other law was committed by a customer, a charge could be brought against the customer under section 3(1) of

the Act. The Federal High Court inherited these powers when it took over matters pending at the Tribunal in 1999 pursuant to section 1(1)(a) and (d) of the Failed Banks Act. 1994. Thus the Federal High Court has powers to recover debts owed to a failed bank arising in the ordinary course of business and to also try other offences relating to the business or operation of a bank under any enactment.

5. *On Jurisdiction of Federal High Court to try offences under Dishonoured Cheques (offences) Act -*

By virtue of the Failed Banks Act, the Federal High Court has jurisdiction to try offences relating to the business or operation of a bank under any enactment. The issuance of the dishonoured cheque in this matter has been presented as arising as a banking transaction, therefore the court has jurisdiction over the matter. (P. 505, paras. E-F)

Per AUGIE. J.C.A. at pages 505-506, paras. F-A:

> **"What is so special about the Dishonoured Cheques Act that takes it over and above the provision of section 1(1(d) of the Failed Bank Act that gave the Federal High Court jurisdiction over bank-linked offences "under any enactment? An "enactment" simply means "a statute' and a "statute' in turn means – "a law passed by a legislative body"- see Black's Law Dictionary, 8th Ed.**

The fact that the said Act provide- that offences thereunder shall be tried summarily by a State High Court is of no moment in this matter that the Federal High Court inherited from the Failed Banks Tribunal, and asking that the Trial be severed so that the appellant can be tried at the State High Court for that particular offence, is absurd, to say the least. The appellant was accused of obtaining credit from a failed bank with the use of a dishonoured cheque, which makes it an offence relating to the business of a bank under another enactment, and by section 1(1)(d) of the Failed Banks Act, the lower court had jurisdiction to try the matter."

6. *On Proper venue for trial of criminal offences at the federal High Court –*

By virtue of section 45 of the Federal High Court Act, subject to the power of transfer contained in the Act, an offence shall be tried by a court exercising jurisdiction in the place where the offence was committed. In the instant case, the matter was transferred to the Federal High Court Abuja from the Failed Banks Tribunal and from Abuja it traveled to Ilorin, to Benin and back to Ilorin before it ended in Lagos. The Federal High Court Benin, lacked the power to have transferred the suit directly to Ilorin without reference to the Chief Judge. The Chief Judge would have given a

legal cover as to the issue of venue. (*Pp. 513 paras. C-D; 515, paras. G-H*)

7. *On Power of Chief Judge to transfer cases –*

The powers to transfer any case within a court is vested in the Chief Judge of that court, no judge sitting in a division is vested with such power. It is for an administrative convenience. [Ukachukwu v I.N.E.C. (2013) LPELR 20668 referred to.] (P. 516, paras. A-B)

8. *On Power of Chief Judge to transfer cases –*

Where a judge goes on transfer from one judicial division to another, the Chief Judge may by assignment order, direct that all cases that have reached certain advance stages be moved or carried on by the same Judge on transfer to another judicial division. This power is normally by an administrative fiat. For effective case management and to avoid a case being heard *de novo* which results in wastage of juridical time, the case file follows the Judge when transferred out of a division, but this must be backed up by the Chief Judge's fiat. In this case there was none. [*Ukachukwu v. I.N.E.C* **(2013) LPELR 20668 referred to.]** (P. 516. paras. E-D)

9. *On Territorial jurisdiction of courts –*

Issue of territorial jurisdiction cannot be equated with procedural jurisdiction. The courts are usually not seized of matters that occurs outside

their territory. In effect, where the ingredients of an offence occur outside the territorial jurisdiction of the court asked to adjudicate over the matter, the court will not assume jurisdiction over same for an apparent lack of jurisdiction. (*P. 508, paras. G-H)*

10 *On Distinction between substantive and territorial jurisdiction –*

Substantive jurisdiction refers to matters over which a court can adjudicate while territorial jurisdiction refers to the geographical area in which matters brought before a court for adjudication arose. (*P. 502, para. C*)

11. *On Importance of rules of court –*

Rules of court are lubricants of the machinery of justice, they contain minute details of various steps to be taken in the process of getting a court to hear and adjudicate on the different types of cases that come before it. In the instant case, once the matter was transferred to the Federal high Court, the rules of that court were expected to apply. [Chime v. Ude (**1996) 7 NWLR (Pt.461) 379 referred to.]** (*P.514. paras D-F)*

12. *On Future Of omnibus ground of appeal in criminal appeals –*

In a criminal appeal, the omnibus ground of appeal is a complaint that a verdict is unreasonable or cannot be supported having regard to the evidence. This is understandable

since a verdict in a criminal cast cannot stand unless there is some evidence to support it. The appropriate and proper omnibus grounds of appeal in a criminal appeal complain that the judgment is against the evidence or is not supported by the evidence. A ground that alleges that the judgment of the trial court in a criminal case is unreasonable, unwarranted having regard to the weight of evidence in an invitation to the appellate court to review the judgment of the trial court according to the burden or standard of proof in a civil case, that is, on a balance of probabilities or preponderance of evidence. This is contrary to section 135(1) of the Evidence Act, 2011 which provides that if commission of crime by a party in any proceeding is directly in issue, it must be proved beyond reasonable doubt.

In the instant case, ground four merely complained that the judgment of the trial court "is against the evidence". The appellant made no reference to "weight", there were no particulars of error from which to infer a complaint against "weight of evidence", and the court could not speculate that his complaint was against "weight of evidence" which is unacceptable in criminal appeals. [*Okezie v. Queen* (1963) 1 SCNLR 24; *Atuyeye v. Ashamu* (1987) 1 NWLR (Pt. 49) 267; Egboma v. State (2013) LPELR 21358 referred to.](Pp. 500-501, paras. D-C)

13. *On Meaning of 'bank' –*

In its ordinary grammatical meaning, the word 'bank' means an organization that provides financial services. It is a financial establishment for the deposit, loan, exchange or issue of money and for transmission of funds. [*F.M.B.N. v. N.D.I.C.* **(1999) 2 NWLR (Pt. 591) 333 referred to.]** (P. 505, pants. C-D)

14. *On Meaning of 'bunk credit' –*

Bank credit means credit that a hank makes available to a borrower. In this case, the appellant was alleged to have obtained credit in the sum of N87,732,887.26 from the bank. (*P. 505, paras. D-E)*

Nigerian Cases Referred to in the Judgment:

A.P.C. Ltd v. N.D.I.C. (N.U.B.) Ltd. (2006) 15 NWLR (Pt. 1002) 404

Abasi v. State (1992) 8 NWLR (Pt. 260) 383

Adejumo v. David Hughes & Co Ltd. (1989) 5 NWLR (Pt.120) 146

Adesola v. Abidoye (1999) 14 NWLR (Pt. 637) 28

Afribank (Nig.) Plc v. Bonik Ind. Ltd. (2006) 5 NWLR (Pt.973) 300

Agbai v. Okogbue (1991) 7 NWLR (Pt. 204) 391

Atuyeye v. Ashamu (1987) 1 NWLR (Pt. 49) 267

Baykan Ventures Ltd. v. Oceanic Bank Int'l Ltd. (2005.)

All

FWLR (Pt. 286) 648

Chime v. Ude (1996) 7 NWLR (Pt. 461) 379

Dairo v. U.B.N. (2007) 16 NWLR (Pt. 1059) 99

Egboma v. State (2014) LPELR 21358

Ezenwosu v. Ngonadi (1988) 3 NWLR (Pt. 81) 163

F.M.B.N. Ltd. v. N.D.I.C. (1995) 16 NWLR (Pt. 400) 226

F.M.B.N. v. N.D.I.C. (1999) 2 NWLR (Pt. 591) 333

General Electric v. Akande (2010) 18 NWLR (Pt. 1225) 596

Ibrahim v. J.S.C. (1998) 14 NWLR (Pt. 554) 1

Inakoju v. Adeleke (2001) 4 NWLR (Pt. 1025) 423

Kwara State, I.N.E.C. v. P.D.P. (2005) 6 NWLR (Pt. 920) 25

Mobil Producing (Nig.) Unltd. V. L.A.S.E.P.A. (2002) 18 NWLR (Pt. 798) 1

Odunukwe v. Ofomata (2010) 18 NWLR (Pt. 1225) 404

Ofia v. Ejem (2006) 11 NWLR (Pt. 992) 652

Ofor v. Leaders & Co. Ltd. (2007) 7 NWLR (Pt. 1032) 1

Okereke v. James (2012) 16 NWLR (Pt. 1326) 339

Okezie v. Queen (1963) 1 SCNLR 24

Oloyo v. Alegbe (1983) 2 SCNLR 35

Olutola v. Unilorin (2004) 18 NWLR (Pt. 905) 416

Onwudiwe v. F.R.N. (2006) 10 NWLR (Pt. 988) 382

Stephen v. State (1986) 5 NWLR (Pt. 46) 978

Ukachukwu v. I.N.E.C. (2013) LPELR – 20668

Utih v. Onoyivwe (1991) 1 NWLR (Pt. 166) 166

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, 1979, s. 230(1)(d)

Constitution of Federal Republic of Nigeria, 1999, Ss. 249(1), 251(1)(d), 252, 351(1)(a)(3) and 270(1)

Dishonoured Cheques (offences) Act, S.3(1)

Failed Banks Act, Laws of the Federation of Nigeria, 1990, S. 1(1)

Failed Banks (Recovery of Debts) and Finacial Malpractices in Banks Tribunal Decree No. 18, 1994, S. 1(1)(a) and (d)

Failed Banks Tribunal (Consequential Amendment, Decree No. 62, 1999

Federal High Court Act, Ss. 22 and 45

Book Referred to in the Judgment:

Black's Law Dictionary, 8th Ed.

Appeal:

This was an appeal against the conviction and sentence of the appellant by the trial Federal High Court. The Court of Appeal in a unanimous decision allowed the appeal.

History of the Case:

Court of Appeal:

Division of the Court of Appeal to which the appeal was brought: Court of Appeal, Lagos

Names of Justices that sat on the appeal: Amina Adamu Augie, J.C.A. (Presided and Read the Leading Judgment); Samuel Chukwudumebi Oseji, J.C.A.; Abimbola Osarugue Obaseki-Adejumo, J.C.A.

Appeal No.: CA/L/128/09

Date of Judgment: O.T. opera [Mrs] (*with her*, C.I. Ajakaiye, [Miss]) – *for the Appellant*
S. O. Babakebe, Esq.- *for the Respondent*

High Court:

Name of the high Court: Federal High Court, Lagos
Name of the Judge: Olayiwola, J.
Date of Judgment: Friday, 13th June 2008

Counsel:

O.T. Opera [Mrs] (with her, C.I. Ajakaiye, [Miss]) – *for the Appellant*
S.O. Babakebe, Esq.- *for the Respondent*

AUGIE, .J.C.A. (**Delivering the Leading Judgment**): This appeal relates to a criminal matter that started in 1999 at the Failed Banks (Recovery of Debts) & Financial Malpractices in Banks Tribunal, and it has a very chequered history. The appellant and 5 other accused persons, including two companies, were arraigned before the Failed Banks Tribunal in Abuja on 12/5/1999, and charged with the offences of conspiracy, then of N87,732,887.26, the property of Trans International Bank (TIB), and obtaining credit in that sum by means of cheques, which were dishonoured when presented, on the ground that insufficient funds were standing to the credit of the drawers of the cheques, and he –

> "Thereby committed an offence contrary to the provisions of section 1(1)(b) of the Dishonoured cheques (Offences) Act read in conjunction with section 3(1)(d) of the Failed Banks (Recovery of

Debts) and Financial Malpractices in Banks Tribunal Decree No. 18 of 1994 (as amended)."

He pleaded not guilty to the said charge read and explained to him at the failed banks Tribunal, however, with the coming of a civilian government on 29/5/1999, and by virtue of the Failed Banks Tribunal (Consequential Amendment) Decree No. 62 of 1999, all proceedings pending before the Failed Banks Tribunal were transferred to the Federal High Court.

After a short stay at the Federal High Court, Abuja, the matter was transferred to Federal High Court, Ilorin, where the respondent sought and was granted leave to amend the charge by deleting the names of the 3rd and 4th accused persons, who were at large. The appellant pleaded not guilty to the amended charge on 8/7/2002, and trial commenced on 12/11/2002 with the testimony of PW1 – Ranti Orike, Executive Director of Trans International Bank (TIB). On 20/1/2003, the 1st accused person, who was the Manager of the Ilupeju branch of TIB, Lagos, changed his plea from not guilty to guilty and was sentenced to 2 years imprisonment.

The Investigating police Offiver testified as PW2 on 14/5/2003, and that same 14/5/2003, the appellant, now the 1st accused person, filed a notice of preliminary objection to the charge on the following grounds –

1. The transaction that gave rise to this charge arose out of a banker/customer relationship that existed between trans international Bank and 2nd and 3rd accused persons.
2. The transaction took place at Trans International Bank, Ilupeju, Lagos State Branch.
3. The proviso to section 251(1)(d) and section 252 of the (1999) Constitution repeats the terms of section

230(1)(d) of the 1979 Constitution and did not vest in this honourable court the jurisdiction to determine causes and matters relating to transactions between customer and bank.

4. In the premises of the above, the issues in dispute are matters within the exclusive jurisdiction of the Lagos State High Court.
5. The element of the charge commenced and ended in Lagos State.
6. Accordingly, this honourable court is devoid of jurisdiction to entertain this suit and same should therefore be struck out and/or transferred to the Lagos High Court, which is the appropriate Court that has jurisdiction to hear this charge".

In his ruling delivered on 6/11/2003, P.F. Olayiwola, J., held *inter alia*-

> "On territorial scope of the Federal High Court, I agree with the submission of respondent that a criminal matter, which originated in Lagos can be prosecuted in Ilorin. I rely on the case of *Abiola v. Federal Republic* (supra) a; 212 where the Court of Appeal held –
>
> '...There is only one Federal High Court with territorial jurisdiction over the entire country ... the FHC in this country irrespective of Where it sits in Lagos. Abuja or even Maiduguri in Borno State, the jurisdiction of the Court is not restricted to any particular judicial division of the court but courts across the entire country'.
>
> This application therefore fails and is according dismissed."

After a number of adjournments, the chief Inspector of the bank testified as PW3 on 22/9/2004. Thereafter, learned counsel for the

appellant made a no-case submission on 10/1/2005, and in his ruling delivered on 25/2/2005, the learned trial Judge, olayiwola, J., concluded as follows-

> "In my opinion, a *prima facie* case has been made, which is open to the accused to rebut. Having regard to the forgoing, the no-case submission is overruled. The accused is hereby called to make a defence to the case."

The lower court granted him leave to appeal against the above ruling. However, in refusing his application to stay the proceedings, it held that -

> "Granting the stay asked for would only cause an unnecessary delay to the trial of this matter and that the Court of Appeal could conveniently lake the issues raised in the notice of appeal together with the substantive issues if the judgment of court goes against the accused, the prayer for stay of proceedings is refused."

The lower court dismissed the said application on 15/4/2005, and then adjourned the matter to 16/5/2005 "to enable the defence open its case". The appellant testified in his defence on 19/7/2005, and thereafter closed his case. The matter was adjourned to 12/10/2005 for address of counsel but things took another turn as Olayiwola, J. got transferred to benin before hearing the addresses of the counsel. The prosecution applied to the Chief judge, and the matter then followed Olayiwola, J., to Benin.

In Benin, the matter came up before Olayiwola, J., On 7/6/2006 and 24/7/2006 but could not go on. On 25/1/2007, another Judge, Okeke, J., came into the picture, and since parties were absent and unrepresented, the matter was adjourned to

28/2/2007 and then 25/2/2007 for mention. On 25/4/2007, the situation was the same, and Okeke, J. had this to say-

> "This matter came up thrice without the parties being in court. I have been informed that he could not be served due to lack of funds. This matter was being heard in Ilorin by hon. Justice Olayiwola. When he was transferred to Benin Division the case followed him. Since my assumption in Benin Division this matter came up thrice without the parties being in court. It is better to act on the side of caution by transferring this suit to Ilorin. Therefore, suit no. FHC/IL/FBMT/2C/2000 is hereby transferred back to Ilorin Division."

There is no indication of what happened but the record shows that on 26/10/2007 the matter came back to Olayiwola, J., but this time in Lagos. After some adjuourments, counsel addressed the court on 25/1/2008, and in his judgment delivered on 13/6/2008, Olayiwola, J., explained-

> "Judgment ought to have been delivered but for my transfer to *Enugu en-route Awka,* the ultimate destination. This brought about dislocations and inconveniences, which delayed the delivery of this Judgment till now."

He found the appellant guilty, and convicted and sentenced him to 12 months imprisonment on each count, which were to run concurrently. The appellant was later admitted to bail pending appeal on 28/7/2008.

Dissatisfied with the said judgment, he appealed to this court with a notice of appeal containing 3 grounds of appeal, which he amended with the leave of this court. The amended notice of appeal contains 6 grounds of appeal, and ne distilled 4 issues for

determination therefrom in his brief of argument prepared by Mrs. O. T. Opera. The issues are –

1. Whether the honourable trial court had jurisdiction over the case of the appellant or have jurisdiction to try offences committed under the Dishonoured Cheques (Offences) Act, LFN, 1990?
2. Whether the offence of stealing is established against the appellant by virtue of exhibit g?
3. Whether there is any substantial evidence upon which the offence of conspiracy had been proved.
4. Whether the judgment is not against the weight of evidence?

But the respondent took exception to ground 4 of the amended notice of appeal and his issue 4, and filed a notice of preliminary objection to that effect in its brief settled by K. K. Eleja, Esq., S. O. Babaakebe, Esq., and A. Abdulrauf, Esq. The grounds of its Objection are as follows -

1. Ground 4 is unknown to Criminal Procedure.
2. Ground 4 as it stands is incurably defective and liable to be struck out.
3. (The) issue predicated on the incompetent ground 4 and arguments canvassed thereon in the appellant's brief have also become incompetent on the footing of incompetence of ground 4.
4. Both ground 4 and issue for determination formulated therefrom are liable to be discountenanced or struck out.

The said ground 4 simply complains that – "The judgment is against the evidence", and the respondent's contention is that the said complaint is against the weight of evidence, which is alien and unknown to criminal procedure, and it is only a ground that is

known only to civil proceeding. It submitted that the said ground 4 is incompetent especially as the offences alleged are not serious, and referred us to *Abasi v. The State* (1992) 23 NSCC (Pt. 3) 159; (1992) 8 NWLR (Pt. 260) 383, where Ogwuegbu, JSC, stated as follows –

> "I will like to make an observation on the manner ground one of the grounds of appeal that the decision is all together unreasonable, unwarranted and cannot be supported having regard to the weight of evidence is not a ground of appeal in criminal caes, which are usually not decided on the weight of evidence or balance of probabilities. That ground of appeal is incompetent and ought to have been struck out but for the serious nature of the charge."

Thus, the respondent argued that a ground of appeal complaining about weight of evidence is an incompetent ground in a criminal appeal, and such a defective ground can only be waived where the offence is a very serious one, such as one carrying death sentence as in the *Abasi case*. Furthermore, that the incompetence of ground 4 has afflicted the issue formulated therefrom by the appellant, thus, his arguments thereon are liable to be expunged, struck out or discountenanced by this court as an issue together with arguments thereon must relate to competent ground of appeal, citing *Agbai v. Okogbue (1991) 7 NWLR* (Pt. 204) 391, and that even though the said issue 4 was also distilled from ground 6, which it has not objected to, it is settled that where a single issue is distilled from a competent and incompetent ground of appeal then arguments thereon are liable to be struck out or discountenanced because –

> "An appellate court would not embark on a laborious exercise of sifting the chaff from the grains, which is the primary responsibility of a party like the

> appellant. In other words, court will not convert itself to a surgeon; whose primary responsibility is to embark on surgical operation with a view to separating diseased part or afflicted portion from a sound and healthy portion of the anatomy."

The appellant countered in his reply brief that the respondent's notice of preliminary objection is inappropriate, incompetent and misconceived because a preliminary objection can only be filed against the hearing of an appeal and not merely against one ground of appeal; that he had only pointed out that the lower court did not properly evaluate the evidence; that even if the ground complains about weight of evidence, the lower court did not properly evaluate the evidence in support of the charge and the evidence led did not sufficiently connect him to both the offences of stealing and conspiracy but the court still went ahead to convict him for those offences. Stephen v. State (1986) 5 NWLR (Pt. 46) 978 cited; and that the cases cited by the respondent will not avail its as they are clearly distinguishable from the present case. Relying on the decision of the Supreme Court in odunukwe v. Ofomata (2010) 18 NWLR (Pt. 1225) 404; General Electric v. Harry Akande (2010) 18 NWLR (Pt. 1225) 596 and Okereke v. James (2012) 16 NWLR (Pt. 1326) 339, he urged this court to discountenanced the notice of preliminary objection objection as a preliminary objection filed against only one ground of appeal cannot stop the hearing of the said issue in the appeal and even the appeal itself.

Obviously, this objection stands no chance, and will be overruled. The said ground merely complains that the judgment of the lower court "is against the evidence". The appellant made no reference to-"weight"; there are no particulars of error from which to infer a complaint against "weight of evidence; and this court

cannot speculate that his complaints is against "weight of evidence" which is unacceptable in criminal appeals. See Okezie v. Queen (1963) 1 All NLR 1; (1963) 1 SCNLR 24, where Ademola, CJF, said –

> "The words "weight of evidence" are not applicable in criminal appeals. This court would like to stress that a criminal appeal on the facts is not quite the same as an appeal on facts in a civil case. In a civil appeal, the general ground is that the judgment is against the weight of evidence whilst in a criminal appeal, it is that the verdict is unreasonable and cannot be supported having regard to the evidence".

In a criminal appeal, the omnibus ground of appeal is that the verdict is "unreasonable or cannot be supported having regard to the evidence", which is understandable, since a verdict in a criminal case cannot stand unless there is some evidence to support it. See *Atuyeye & Ors v. Ashamu* (1987) 1 NWLR (Pt. 49) 267 and *Eghoma v. The State* (2013) LPELR-2I358 (CA), where Agim, JCA, very aptly observed as follow s-

> "The said ground 9 is not the appropriate omnibus ground of appeal in a criminal appeal. The appropriate and proper omnibus ground of a criminal appeal is that the judgment is against the evidence or is not supported by the evidence. A ground of appeal that complains or alleges that the judgment of the trial court in a criminal case "is unreasonable, unwarranted having regard to the *weight of evidence" is an invitation* to this court to review the judgment of the trial court according to the burden and standard of proof in a civil case, that is, on a balance of probabilities or preponderance of

> evidence. This is contrary to S. 135(1) of the Evidence Act, 2011, which provides that if the commission of a crime by any party to any proceedings, it must be proved beyond reasonable doubt. Such a ground of appeal that invites the court to determine an appeal on clearly fundamentally wrong principles is not arguable"

In this appeal, the reverse is the case, the appellant is not complaining that the judgment of the lower court is against the "weight of evidence", he only complained that the said judgment *is against the evidence,* and there is no room whatsoever to infer that he meant *weight of evidence.* The respondent's objection, therefore, lacks merit, and it is overruled.

Be that as it may, the respondent hedged its bet and submitted in the same brief that the issues that call for determination are as follows:

1. Whether having regard to the state of the law when the appellant was arraigned and tried, the Federal High Court possesses jurisdiction to try the appellant for the offences charged?
2. Whether the prosecution, proved the offences of conspiracy and stealing against the appellant to justify his conviction?
3. Whether the conviction and sentence of the appellant for presenting dishonoured cheque was proper and whether there was proper evaluation of the evidence adduced at the trial?

It married the issues for determination to the grounds of appeal; thus-

> "Issue No; 1 cover grounds 1 and 5 while issue No. 2 covers grounds 2, 3 and 6. *Issue No. 3 covers ground 4."*

Obviously, jurisdiction in all its glory must take center stage in this appeal because it is the authority a court has to decide matters that are litigated before it or to take cognizance of matter presented in formal way for its decision. See Mobil Producing (Nig.) Unlimited v. L.A.S.E.P.A. (2002) 18 NWLR (Pt. 798) 1. Jurisdiction may be territorial or substantive jurisdiction refers to matters over which the court can adjudicate, and territorial jurisdiction refers to the geographical area in which matters brought before it for adjudication arose. The appellant challenged both the substantive jurisdiction and the territorial jurisdiction of the lower court, and we need to resolve both before anything else. Starting with substantive jurisdiction, the appellant objected first by way of preliminary objection, and in its final address before the lower court. In its ruling on the objection dated 6/11/2003, the lower court stated -

> "I disagree with the suggestion that the jurisdiction of the Federal High Court is limited to the causes set out in paragraph (a) – (q) of section 251(1). Section 251(1) itself indicates that the National Assembly may confer jurisdiction on the F.H.C. in addition to the causes in paragraphs (a) – (q). I agree with the learned counsel to the respondent that the Failed Banks Decree No. 18 of 1994 is an existing law, which *ipso facto* is an Act of the National Assembly, in the same light, I do not see any conflict between the Decree 18 of 1994 one the 1999 Constitution as S.

> 24 of the Decree relates to criminal prosecution of offences under Part III of the Decree. I agree with the contention that the Okem's case relied upon by the applicant is not apposite to this case as it related to the issue of debt arising from the grant of overdraft facilities. I want to rely on *Comptroller of Nigerian Prisons v. Adekanye* (1999) 10 NWLR (Pt. 623) 400 at 407 where the Court of Appeal held... In the light of the above, the 1st leg of this objection is rejected."

In its judgment delivered on 13/6/2008, the lower court held as follows -

> "Learned counsel to the defence submitted that the Federal High Court has no jurisdiction but the prosecution counsel has argued to the contrary I have listened to both counsel. Section 1(1)(d) of the Failed Banks Act. Cap F2,LFN, 2004 gives jurisdiction to the Federal High Court to try other offences relating to the business or operation of a bank under any enactment. The issuance of the dishonoured cheque in this matter has been presented as arising as a banking transaction. I therefore hold that the F.H.C. has jurisdiction. In the same light by virtue of the Failed Bank Tribunal Consequential Amendment Decree No. 62 of 1999, all proceedings pending before the Failed Banks were transferred to the Federal High Court. These are existing legislations in the country the Federal High Court, therefore, in my opinion has been clothed with jurisdiction in respect of the dishonoured cheques issue in this Charge."

The appellant insists that the lower court had no jurisdiction to entertain offences arising out of the Dishonoured Cheque-(Offences) Act, 1990, and he referred us to the position of the law as enunciated in *Olutola v. Unilorin* (2004.) 18 NWLR (Pt. 905) 416 and *Kwara State I.N.E.C. v. P.D.P.* (2005) AFWLR (Pt. 271) 980; (2005) 6 NWLR (Pt. 920) 25, and the following provision of the law - Section 1(1) of the Failed Banks Act, LFN, 1990, which provides that -

> "The Federal High Court (in this Act referred to as "the Court") shall have power to –
>
> (a) Recover, in accordance with the provisions of this Act, the debts owed to a Failed bank, arising in the ordinary course of business and which remain outstanding as at the date the bank is closed or declared a failed bank by the Central bank of Nigeria;
>
> (b) Try the offences specified in Part III of this Act;
>
> (c) Try the offences specified in the banks and Other Financial Institution Act and the Nigerian Deposit Insurance Corporation Act; and
>
> (d) Try other offences relating to the business or operation of a bank under any enactment."

And Section 3(1) of the Dishonoured Cheques (Offences) Act that says:

> "Offences under this Act shall be tried summarily by the High Court of the State where the offence was committed and the procedure applicable in the case of summary trial of the offences before such court shall apply to the same extent for the purposes of trials for offences under this Act."

He submitted that the lower court based its reasoning on section 1 of the Failed Bank Act, which is a general provision, while section 3(1) of the Dishonoured Cheques (Offences) Act is a specific provision on its jurisdiction to try the offences, citing *Inakoju v. Adeleke* (2001) 4 NWLR (Pt. 1025) 423, that the statute creating the offences of the dishonoured cheques creates the court that will have jurisdiction, so another court not contemplated by the statute creating the offences cannot assume jurisdiction, citing *Baykan Ventures Ltd. V. F.R.N.* (2006) 10 NWLR (Pt. 988) 382, and that the offence on the Charge that he is said to contravene is under the Dishonoured Cheques Act, which statute ultimately has the court tested with the jurisdiction to try all the offences under the said Act.

The respondent also referred to section 1 of the Failed Banks Act, and submitted that the said provision are large and expansive enough to accommodate the offences alleged against the appellant; that the lower court's position regarding its jurisdiction to try the offences alleged is not only profound but clearly unassailable; that by the Failed Banks Tribunal (Consequential Amendment) Decree No. 62 0f 1999, all proceeding pending before the defunct Failed Banks Tribunal were transferred to the Federal High Court without regard to subject matters but generally; that the said Decree No. 62 qualified as an existing law within the purview of section 315(1) (a) of the 1999 Constitution, and its provisions overrule those of the Dishonored Cheque Offences Act; that the legislature was conscious of its existence before it promulgated Decree No 62 of 1999 by which jurisdiction was rested in the Federal High Court, and the legal implication is that the lawmaker was resolute in conferring jurisdiction on the Federal High Court even in respect of cases dealing with Dishonored Cheques Act; and that cases cited by the appellant are

distinguishable and inapplicable to the peculiar facts and the background of this case.

We must remember that this is a criminal matter that started at the Failed Banks Tribunal in May 1999, and that the Tribunal had powers to recover debts owed to a failed bank, and if in the transaction between the customer and the bank, there was evidence to show that an offence defined in the Decree or in any other law was committed by a customer, a charge could be brought against the customer. See section the customer. See section 3(1) of the Failed Banks decree No. 18 of 1994. The *Federal high court* inherited these powers when it took over matters pending at the tribunal in 1999. Pursuant to section 1(1)(a) and (d) of the failed Banks Act, LFN, 1994, the *Federal High Court* has powers to recover debts owed to failed bank, arising in the ordinary course of business, and to also "try other offences relating to the business or operation of a bank under any enactment."

The word "bank" is not defined in our constitution or any other law, however, in its ordinary grammatical meaning, the word "bank" means – ''an organization that provides financial service" – see F.M.B.N. v. N.D.I.C. (1999) 2 NWLR (Pt. 591) 333. See also Black's Law Dictionary, 8th Ed., where "bank" is defined as – "a financial establishment for the deposit, loan, exchange, or issue of money and for the transmission of funds"; and ''bank credit" is also defined as – "credit that a bank makes available to a borrower". In this case, a close reading of the charge against the appellant shows that he is alleged to have obtained credit in the sum of N87,732,887.26 from the said bank by means of a dishonoured cheque.

The lower court is right; it has power to try ofences relating to the business or operation of the bank under any enactment, and "the issuance of the dishonoured cheque in this matter has been

presented as arising as a banking transaction”, and it, therefore, had jurisdiction over the matter. Obviously, its reasoning cannot be faulted in any way. What is so special about the dishonoured cheques Act that takes it over and above the provision of section 1(1)(d) of the Failed Banks Act that the Federal High Court jurisdiction over bank-linked offences “under any enactment? An “enactment’ simply means “a statue’ and a “statute’ in turn means – “a law passed by a legislative body”- see Black’s Law Dictionary, 8th Ed.

The fact that the said Act provides that offence- thereunder shall be tried summarily by a State High Court is of no moment in this matter that the Federal High Court inherited from the Failed Banks Tribunal, and asking that the trial be severed so that the appellant can be tried at the State High Court for that particular offence, is absurd, to say the least. The appellant was accused of obtaining credit from a failed bank with the use of a dishonoured cheque, which makes it an offence relating to the business of a bank under another enactment, and by section 1(1)(d) of the Failed Banks Act, the lower court had jurisdiction to try the matter.

Thus, the issue of substantive jurisdiction is resolved against him. However, the appellant also contends that the lower court did not have territorial jurisdiction to try him as the offences he was said to have committed happened in Lagos, and none of the elements of the offences occurred anywhere apart from Lagos. He further argued as follows -

> 'The proceedings commencing from arraignment to judgment is a nullity. The decision of the learned trial Judge that there is only one Federal High Court and reliance on the case of *Abiola v. F.R.N.* (1995) 3
> NWLR (Pt. 382) 203 by the learned trial court

cannot be the correct position of law. In *Ibori v. F.R.N.* (2009) 3 NWLR (Pt. 1128) 283 at 323 paras. G - H the Court of Appeal held... The entire criminal proceeding from arraignment at Abuja, to Ilorin and Benin were irregular and done without jurisdiction of the court. All the ingredients of the alleged offences took place in Lagos. None of the elements of the offence took place or allegedly took place outside Lagos either in Abuja, Ilorin, Benin and everything done from arraignment to Judgment is done without jurisdiction and therefore consequently irregular, null and void."

The respondent, however, contends that since the appellant's objection was overruled by the lower court and the appellant went on to take part in the trial up to conclusion instead of pursuing an appeal on the issue of territorial jurisdiction, he is deemed to have consented to being tried by the said Ilorin Judicial Division of the Federal High Court. It also argued, citing *Mobil Prod. (Nig.) Unltd. v. L.A.S.E.P.A.* (2002) 18 NWLR (Pt. 798) 1 that procedural issue of jurisdiction can be waived by a party as opposed to substantive issue of jurisdiction; that by having partaken in the trial, the challenge to the court's territorial jurisdiction has become a moot point since it has been waived and has no fundamental impact again; that the view expressed by this court in Abiola's case is in conformity with the provision of the Constitution, which regulates its jurisdiction; and that under section 251(1) and (3) of the Constitution, its jurisdiction is not limited to any particular territory but section 270(1) establishes a High Court for each State and in contrast to this is the provision of section 249(1), which established a *Federal High Court* for the entire Federation.

Furthermore, that going by the marginal note against the sections, the intention of the law maker not to curtail the territorial jurisdiction of the Federal High Court on the one hand, and to curtail and limit the territorial jurisdiction of a State High Court is clearly discernible; and that marginal notes may be used to shed limit on an enactment with the view of bringing out the intention of the legislature, citing *Oloyo v. Alegbe, Speaker, Bendel State House of Assembly* (1983) 2 SCNLR 35; *F.M.B.N. Ltd. v. N.D.I.C.* (1995) 16 NWLR (Pt. 400) 226 and *Ibrahim v. J.S.C.* (1998) 14 NWLR (Pt. 554) 1. He further argued that *lbori v. F.R.N.* (supra) relied on heavily by the appellant is distinguishable from this case because its Judicial Divisions are created for judicial convenience and where a party intends to challenge its territorial jurisdiction be must do so fully before commencement of trial; that in lbori's case, the appellant went the full hug in his challenge to the territorial jurisdiction of the Kaduna Division; and that the arraignment of the appellant was originally done pursuant to the Failed Banks Decree, which created Failed Banks Tribunal without emphasis on the place of commission of crime but the *Ibori's case* on the converse was initiated under a completely different regime of law.

The appellant countered in his reply brief that the respondent's contention should be discountenanced as taking part in the trial does not foreclose him from raising the issue of jurisdiction. He referred us to the following authorities on the issue of jurisdiction/territorial jurisdiction. Adejumo v. David Hughes & Co. Ltd (1989)5 NWLR (Pt. 120) 146: Ezenwosu, v. Ngonadi (1988) 3 NWLR (Pt. 81) 163: *A.P.C. Ltd. v. N.D.I.C.* (N.U.B.) Ltd. (2006) 15 NWLR (Pt. 1002) 404; *Afribank Nig. Ple v. Bonik Ind. Ltd.* (2006) 5 NWLR (Pt.973) 300; *Dairo v. U.B.N.* (2008) WRN (Vol. 2.) 1; (2007) 16 NWLR (Pt. 1059) 99; *Ofor v. Leaders & Co. Ltd.* (2007) 7 NWLR (Pt. 1032) 1 and *Ofia v. Ejem* (2006) 11

NWLR (Pt. 992) 652 and submitted that what suffices is that from facts before it, there is nothing on which the court can adjudicate. Now, there are two angles to this issue; the respondent raised the subject of waiver, which is that the appellant consented to be tried at the Ilorin Division of the court because he did not appeal against its ruling wherein it dismissed his objection and held that it had jurisdiction, and it cited *Mobil Prod. (Nig.) Unltd. v. LA.S.E.PA.* (supra) to buttress its position - "that procedural issue or jurisdiction can be waived by party as opposed to substantive issue of jurisdiction" - see page 9 of its brief of argument.

The appellant's stance that taking pan m the trial does not mean that he cannot raise the issue of jurisdiction which can also be raised anytime, even on appeal, and he referred us to the following authorities –

- *Adejumo v. David Hughes & Co Ltd*. (supra)

  "Parties cannot by consent or otherwise vest in a Court the jurisdiction it does not have"
- *Ezenwosu v. Ngonadi* (supra)
  "Jurisdiction is so fundamental to every adjudication that absence of it renders the entire proceedings a nullity no matter 'now well conducted and derided".
- *A.P.C. Ltd. v. N.D.I.C.* (N.U.B.) Ltd. (supra)-
  "...The issue of jurisdiction could be raised at any stage of litigation and even for the first time on appeal".
- *Afribank Nig. Plc v. Bonik Ind Ltd*. (supra) -
  "A suit, which ought to have been brought in one State cannot confer jurisdiction on a Court in another state even by agreement or consent of the parties, as such lack of jurisdiction is a fundamental vice".

- *Ofor v. Leaders & Co Ltd.* (supra)-

> "The issue of jurisdiction being extrinsic and peripheral can be raised at any stage of proceeding even on appeal".

The authorities cited by the appellant say it all; case law is on his side, and what the respondent lost sight of in arguing as it did is that the issue of territorial jurisdiction cannot be equated with procedural jurisdiction. Courts are usually not seized of matters that occur outside their territory. In effect, where the ingredients of an offence occur outside the territorial jurisdiction of the court asked to adjudicate over the matter, the court will not assume jurisdiction over same for an apparent lack of jurisdiction.

There is no question of waiver in such a situation - see Adesola v. Abidoye (1999) 14 NWLR (Pt. 637) 28 where Karibi-Whyte, JSC, held-

> ''It is an elementary proposition – that where there is no power to exercise jurisdiction, no legal action results. *A fortiori* the question of a waiver does not arise. What is not within the competence or control of a party cannot be subject matter of a waiver".

Certainly, the appellant cannot consent to the lower court's jurisdiction or waive his right to complain about its lack of jurisdiction to try him at the Ilorin Division of the lower court; no matter how many times he raises it. Jurisdiction being what it is – a threshold issue; it can be raised anytime and anywhere, even on appeal at the Supreme Court for the first time. See Adesola v. Abidoye (supra), where karibi-Whyte, JSC, further held –

> "It is an elementary but cardinal principle of the exercise of jurisdiction that where the court lacks jurisdiction the parties cannot confer and vest

> jurisdiction on it. Accordingly, the fact that the parties fought a case erroneously on the basis that the court had jurisdiction when there was none cannot *estop* a party from subsequently taking the contrary position … It follows from this – that jurisdiction cannot be acquired by consent of the parties, nor can it be enlarged by *estoppels* ... This principle is fortified by the well settled principle that the issue of jurisdiction which determines the competence to exercise jurisdiction can be raised at any stage of a trial and indeed even for the first time on appeal."

Without mincing words, this aspect is resolved in favour of the appellant. No matter how many times he challenged the lever court's jurisdiction and whether he appealed against the ruling of the lower court or not, the appellant cannot be deemed to have consented to its jurisdiction

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 F.R.N.* - where the Court of Appeal held-

Basically, the appellant's contention is that the lower court ought to have applied the decision of this court in than *Ibori v. F.R.N.* (supra) rather than rely on the decision of this same court in *Abiola v. F.R.N.* (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. F.R.N.* (supra) as the situation in *Ibori v. F.R.N.* (supra) is distinguishable from this case.

As it turns out, I wrote the lead judgment in *Ibori v. F.R.N.* (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. Section 19 provides that -

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*.
2. For the more convenient dispatch of business, *the court may sit in any one or more Judicial division as the Chief Judge may direct* and he may also direct one or more Judges to sit in anyone or more of the Judicial division.
3. *The Chief Judge shall determine the distribution of the business before the court among the judges thereof and may assign any judicial function to any judge or judges or in respect of a particular cause or matter in a judicial division.*
4. *Subject to the directions of the Chief judge*, every Judge of the court shall sit for the trial of civil and criminal causes or matters and for the disposal of other legal business the *Chief Judge may think fit*."

   (Italics mine)

And section 45 of the Federal High Court Act further provides as follows-

> "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 he tried by a Court exercising jurisdiction in the area or place where the offence was committed*."
>
> (Italics mine)

In the ruling appealed against, the learned trial judge held as follows:

> "… A community reading of Section 19 and 45 of the Federal High Court Act does not take away the jurisdiction of the court irrespective of where it is sitting. And even if the provisions of sections 19 and 45 of the Federal High Court Act are meant to limit the venue of the trial in this court to an area or place where the offence is allegedly committed, which is not the correct position, such cannot still be the use on the strength of the unequivocal position of section 19 of the Money Laundering (Prohibition) Act."

In the lead judgment, which I wrote I stated as follows at pages 311/14:

> "The provisions of sections 19 and 45 of the Federal High Court Act have absolutely nothing provisions of the said Sections 19 of the EFCC Act and Money Laundering (Prohibition) Act; they deal with completely different aspects of the jurisdiction of the Federal High Court. The EFCC Act established the Economic and Financial Crimes Commission (EFCC), which is "charged" with the responsibility of

coordinating the various institutions involve money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria". Section 19 of the Money laundering (Prohibition) Act also provides that "The Federal High Court shall have exclusive jurisdiction to try offences" under this Act. Section 19 of the Money Laundering (Prohibition) Act also provide that "the Federal High Court shall have exclusive jurisdiction to try offences" under the Act. These are general provisions in the Acts of the National Assembly on the statutory or substantive jurisdiction of the Federal High Court; they subtract nothing from the provision 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 Deity State, and the respondent filed the charge against the appellants direct in the Kaduna Division of the Federal High Court without going through the Chief Judge or anyone. 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 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. The lower Court relied on the decision of this Court in *Abiola v. F.G.N.*

(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 material supporting us enemies”. See Black's 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 appellant when the 1st appellant was the Governor of Delta State, and the charges are therefore localized to Delta State. If the respondent felt 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 chances against the appellants directly at the Kaduna Division of the Court for offences allegedly communed in Delta State, without recourse to the Chief Judge of 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 the 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. The offences allegedly committed by *Ibori* Were limited to Delta State, and I will repeat what I said in conclusion in my judgment in that case –

> "The respondent submitted that unlike the situation in Nwankwo's case the Chief judge of the Federal high Court can and did designate the lower court to hear and determine cases such as the one with which the appellants are being charged the appellants however countered that there is nothing in the printed record to establish the designation alleged by the respondent, thus, It must be a fact within the personal knowledge of the respondent, which draws attention to the issue of forum shopping. I agree; there is nowhere in the said Acts mentioned that specifically designated ''Hon. Justice M. L. Shuaibu" as an EFCC Judge. There is nothing on record, no gazette, no circular, no order or even an administrative directive from the Chief Judge of the Federal High Court showing that he was so designated, and can hear the matter in Kaduna. The

> only conclusion or reasonable inference one can draw is that EFCC preferred his court and the only reason must be for forum shopping. I do not see how the learned trial Judge could justify assuming jurisdiction in this case. Why was his court chosen? What were the criteria used to determine why he should be the one to hear the matter."

In this case, the matter was transferred from the said Tribunal in Abuja to the federal High Court in Abuja and later traveled from Ilorin to Benin and back to florin before it ended in Lagos for address and judgment. The respondent argued as follows at page 11 of its brief of argument -

> "The arraignment of the appellant was originally done pursuant to tire Bailed Banks Decree which created Failed Banks Tribunal without emphasis on the place of commission of crime. The Ibori's case on the converse was initiated under a completely different regime of law."

Obviously, its argument comes to naught when it is considered that the Failed Banks Tribunal had its own Rules that died with it on 29/5/1999, while the Federal High Court has its Rules that must be complied with. It is settled that Rules of Court are lubricants of the machinery of justice; they contain minute details of various step to be taken m the process of getting a court to hear and adjudicate on the different types of cases that comes before it. See *Chime v. Ude* (1996) 7 NWLR Pt. 461) 379 SC.

Hence, once the matter was transferred to the Federal High Court, the Rules of that Court kicked in. and wore expected to be complied with. It may be a different story if it remained in Abuja but it was transferred to Ilorin Division of the Federal High court,

and there must be something to show that the said transfer to Ilorin was sanctioned by the Chief Judge. The bottom line is that there is nothing to connect the offences to Ilorin as the appellant rightly submitted at page 6 of his brief of argument -

> "The offences that (he) was said to have committed all happened in Lagos. There is none of the elements that occur anywhere apart from Lagos. The complainant is in Lagos. (He) and other accused persons were in Lagos. Yet (he) was tried in Abuja. Ilorin. Benin and judgment was only in Lagos."

The appellant is right; everything to do with the alleged offences is linked to Lagos, and so, the proceedings from the beginning to end are a nullity, because the Ilorin Division lacked jurisdiction to try him in the first place.

This issue is resolved in his favour, and in the circumstances, it will not be necessary to address the others issues relating to the proceedings. The appeal is allowed, and the lower court's decision in its entirety is hereby set aside. The appellant is discharged but not on the merits.

OSEJI, J.C.A.: My Lord Amina Adamu Augie, PJCA has afforded me the privilege of reading before now the draft of the lead judgment just delivered.

My Lord has exhaustively addressed all the issues in contention and I am in total agreement with the reasonings and conclusions contained in the said lead judgment.

I therefore have nothing extra to add except to emphasise on the admonition of the Supreme in Util v. Onoyivwe (1991) 1 NWLR (Pt. 166) 166; (1991) 1 SCNJ 25 to the effect that 'jurisdiction is the blood that gives life to the survival of an action in a court of law and without jurisdiction, the action will be like an animal that has been drained of blood. It will cease to have life and any attempt to resuscitate it without infusing blood into it would be an abortive exercise.

For this and the fuller reason given in the lead judgment, I too allow this appeal and also abide by the consequential order made therein.

OBASEKI-ADEJUMO, J.C.A.: I had the privilege to have lead before now the lead judgment delivered by my learned brother, Hon. Justice Amina Adamu Augie, PJ. I am in agreement with the reasoning and conclusion contained therein.

In addition, I wish to re-iterate that the Federal High Court, Benin as constituted lacked the powers to have transferred the suit directly to Ilorin without reference to the Chief Judge. Perhaps the fiat of the Chief Judge would have given a legal cover as to the issue of venue i.e. Ilorin division, where it was finally concluded, except for the judgment which was in Lagos.

The powers to transfer any case within a court is vested in the Chief Judge of that court, no Judge sitting in a division has been so vested with such power. It's for an administrative convenience. The court in *Prince Hon. Nicholas Ukachukwu v. Independent National*

Electoral Commission (INEC) & Anor (2013) LPELR-20668 (CA) sheds more light on this, where it stated thus:

> "For example where a Judge goes on transfer from one Judicial division to another, the chief judge may by assignment order, direct that all cases that have reached certain advance stages be moved or carried on by the same judge on transfer to another judicial division. This power is normally by an administrative fiat ..." Per Owoade, J.C.A. (Pp. 37-38, paras. F-G)

For effective case management and avoiding a case being heard *de novo*, (which results in wastage of judicial time) the case file follow the Judge when transferred out of a division, but this must be backed up by the Chief judge's fiat - in this case there was none. See sections 22 and 45 of the Federal High Court Act. The use of the word "Subject to the power of transfer" contained in section 45 of the Federal High Court Act is a condition precedent. The relevant section provides thus:

> "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 toed by the court exercising jurisdiction in the area or place where the offence was committed;
>
> (b) …….
>
> (c) When an act is an offence two 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) ……..”

This provision takes care of a scenario where a Judge is transferred from one division to another and a cause is part heard or has reached an advanced stage - the Chief Judge may direct where such matter shall be continued or concluded For the reasons stated in the lead judgment and the aforementioned. I also allow the appeal and set aside the lower court's decision including the conviction and the sentence stated therein and discharge the appellant, but not on the merit.

Appeal allowed.