

## **CHARGE AND INFORMATION**

### **PAPER PRESENTATION<sup>1</sup> AT THE THREE –DAY LEGAL DEPARTMENT IN-HOUSE TRAINING WORKSHOP ON THE ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015**

#### **WHAT IS A CHARGE/INFORMATION**

By virtue of the provisions of the Corrupt Practices And Other Related Offences Act, 2000<sup>2</sup>, it is provided that ‘where reasonable grounds exist for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, it is the duty of this Commission to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and, in appropriate cases, to prosecute the offenders found culpable at the end of the conclusion of its dispassionate investigation activities into the complaints earlier received by it.

Under the Administration of Criminal Justice Act, 2015, it is expressly provided that criminal proceedings may be instituted by either of these five (5) ways:-<sup>3</sup>

- (a) In a Magistrate Court either by any of these three ways, to wit:
  - The direct filing of a Charge ,or
  - The making of a Complaint [whether or not on oath], and
  - Lastly by the Magistrates’ receipt of a First Information Report brought by Officers of the Nigerian Police Force in majority of the states of the Northern States;
- (b) In the High Court, by Information filed by the Honourable Attorney-General of the Federation himself or by any other person so delegated by him in respect of an offence created by an Act of the National Assembly;
- (c) By Information or charge filed in the Court after the defendant has been summarily committed for perjury by a court;
- (d) By information or Charge filed in the court by any other prosecuting authority;

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1. Presentation by G. P. West [ACS(L)]

2. Section 6(a)

3. Section 109

(e) By Information or Charge filed by a Private Prosecutor.

A ‘Charge’<sup>4</sup> is defined as meaning ‘the statement of offence or statement of offences with which a defendant is charged in a trial whether by way of summary trial or trial by way of information before a court’

No specific definition is offered of the term ‘**Information**’<sup>4</sup>. However, ‘**Indictment**’<sup>4</sup> defined as meaning the filing of an information against a person in the High Court.

However, it should be noted that in the Court of Appeal had earlier in its decision in the case of Fawehinmi .vs. A-G, Lagos State<sup>5</sup> held that an Information is not the same thing as a Charge. The filing of an Information is a proceeding preliminary to a Trial. Unlike in a Charge, the accused person (defendant) is not directly indicted in an Information. Rather, the court is informed by the Attorney-General, who is responsible for the prosecution, that the accused committed the offence or offences. In other words, an Information is a mode of instituting criminal proceedings.

A charge and/ or Information as the case may be thus generally be described as a document which the purposes of our criminal justice administration system refers to a court process filed by a prosecuting authority or person in the course of transactions culminating in the initiation of criminal prosecution against a criminal defendant found culpable of the commission of offences prohibited under any extant substantive criminal law statute.

They are both likened to notices<sup>6</sup> directed more particularly at the defendant and the Honourable trial court containing in succinct terms the statement and particulars of the offences [criminal wrong doings] with which the criminal defendant as a person indicted is to be prosecuted for before a competent court of jurisdiction.

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4. Section 494(1) Administration of Criminal Justice Act, 2015

5. (No-1) (1989) 3 N.W.L.R (Pt. 112) 707.

6. Section 196(1) Administration of Criminal Justice Act, 2015

Contingent, upon the status of the court where the criminal trial proceedings are to take place in the hierarchy of courts and the territorial location of the court in the country where the case to be preferred against the criminal defendant would be tried, in all the Magistrates Courts in the Federation, The Federal High Court as well as majority of the High Courts in the Northern part of Nigeria, it is generally and technically referred to as a ‘**Charge**’, whilst, in the High Courts in the Southern part of Nigeria, it is also known and called ‘**Information**’.

### **WHO IS COMPETENT TO DRAFT A CHARGE/INFORMATION**

The class of persons affixed with the competence and responsibility for drafting of a ‘**charge**’ and ‘**information**’<sup>7</sup> are the appropriate prosecutorial authorities such as the Honourable Attorneys-General of the Federation [and the States], law officers working in the Chambers of the Honourable Attorneys-General of the Federation [and the States], both legal and lay officers of the Law Enforcement Agencies, private prosecutors as well as judicial officers such as trial Magistrates presiding over criminal matters in the Magistrate Courts in majority of the Northern states.

The word ‘charge’ in the course of this discourse would often be used interchangeably to refer to both a ‘charge’ and ‘information’ except where the context shows otherwise.

### **FORM OF A CHARGE IN THE MAGISTRATE, STATE HIGH COURT AND FEDERAL HIGH COURT**

Generally, a Charge contains in a single paragraph facts showing the nature of the offending upon which a criminal prosecution would be initiated. It basically is made up of two parts, .i.e., its commencement part which shows the statement of the offence committed and the particulars of the offence purportedly committed by the defendant. These two component parts are often times fused into a single paragraph narration.

Prior to the drafting of the Charge, the Prosecutor must take into cognizance and be very well adept with a foreknowledge of the following:-

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7. Sections 104, 106, 348(1) & 381 Administration of Criminal Justice Act, 2015

- a) The facts of the offending as had been elicited from the perusal of the testimonies of the petition, the complainant, witnesses and the response of the defendant[s] if any as could be gleaned from their volunteered extra-judicial statements and the recovered documents;
- b) The status of the Court(s) vested with the jurisdiction to entertain the charge;
- c) The ingredients or elements of the offence as stated in the law creating the offence;
- d) Be guided by the several illustrations of statutory precedents (forms) of charges and Information found in both the First and Second Schedules to the Act, respectively.

Basically, a Charge shall contain and show the following:-

**(a) The name of the Defendant(s) and their aliases if known.**

Every defendant must be sufficiently identified by his known and acknowledged names, description and designation. In situations where they have taken to flight, such defendants could be aptly described as persons ‘who are at large’. The gender of the defendant must be indicated immediately after their names, to show if they are male or female, etc;

**(b) The Date, time and place of the Commission of the Offence**

The date is often preceded with the words ‘on’ or ‘about’<sup>8</sup> and ‘between’. Thus, the day on which the offending act occurred must be clearly stated and followed by the month and year.

The objective served by stating the time, date and place<sup>9</sup> of the commission of the offence is aimed at showing that the trial court is one aptly vested with the territorial jurisdictional competence to try the offence charged and that the defendants’ conduct is not one that is caught up either by limitation laws or one that is outside the commencement date of the law creating the offence bearing in mind the principle of law that penal legislations are not retrospective in their application.

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8. Basil Akpa .v. State (2007) 2 N.W.L.R (Pt. 1019) 500, wherein the meaning and legal effect of the use of the words ‘On’ or ‘about in a criminal charge/Information was decided.

9. The denotation of the place where the offending purportedly took place basically evinces whether or not the Trial Court can exercise its territorial jurisdiction. See Njovens .vs. State (1973) 5 S.C. 17; Adeniji .v. State (2001) 7 SCM 1 SC; Al-Mustapha .vs. State (2001) 8 N.W.L.R. (Pt.715) 414 CA; Contra Waziri .vs. State [1997] 3 N.W.L.R (Pt.496) 689 CA;

The time<sup>10</sup> of the commission of the offence may often times be immaterial, except time is stated to be of the essence in the law creating the offence, e.g. for the offence of burglary wherein the act of the breaking in must have occurred at night. Any mistake in stating the date, time and place could place the offence outside the jurisdiction of the Court and such charge could be struck out on a Preliminary Objection or Motion on Notice presented to quash the charge<sup>11</sup>.

- (c) **The Description of the Offence Committed**, the charge must state in unequivocal terms either the act done or omitted to be done which constitutes the offending .i.e., the essential ingredients of the offence as stated in the law creating the offence must be reflected in the Charge sheet;
- (d) **The Provision of the law creating the offence** breached by the defendant as well as the section of the law **prescribing the penalty or punishment** for the aforesaid breach;
- (e) **Copies of both the photograph[s] and finger prints impressions<sup>12</sup>** of the defendant[s] charged on the Charge sheet/Information;
- (f) **The Proof of Evidence<sup>13</sup> to be relied upon at the trial.**

The Proof of evidence is what should at a glance offer confirmation of the offending alleged against the defendant in the Charge sheet. It must show a causal link or nexus between the defendant and the acts constituting the offending, the commission of which on his part has necessitated his being prosecuted in Court in the proposed criminal trial and the proof must be shown to disclose a true case against the defendant.

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10. Waziri .vs. State [1997] (supra), 718

11. However, it should be noted that that as part of the innovations introduced under the Act, the determination of these applications would have to be kept in abeyance and ruling therein delivered concurrently alongside the final judgment in the substantive matter. See Section 396(2). Whilst, 221 prohibits the trial court from entertaining objections to the imperfect and /or erroneous nature of a Charge. Furthermore Section 222 appears to have extracted the powers and vested them exclusively upon an appellate Court.

12. These data are now to be enclosed although to the Charge when presented for filing. However their absence would not invalidate such Charge. See Section 196(2)

13. This refers to all the materials upon which the prosecution intends to rely at the trial to prove the guilt of the defendant. The prosecution now has placed upon it an onerous duty to disclose and front-load these at the point of filing the Charge at the Registry in trial at both the Magistrate and [Federal] High Courts. See Sections 350 (2) and 379

The Proof of evidence shall consist of the following:-

- i) List and photocopies of all Exhibits to be tendered;
- ii) List and Address of Prosecution Witnesses;
- iii) The photocopies of the Extra-judicial statements of all prosecution witnesses [Summary of all prosecution witnesses statements];
- iv) The photocopies of the Extra-judicial statements of the defendant[s].
- v) Any other document, report or material that the prosecution intends to use in support of its case at the trial;
- vi) Particulars of bail or any recognizance, bond or cash deposit, if the defendant is on bail,
- vii) Particulars of the place of custody, where the defendant is in custody;
- viii) Particulars of any plea bargain deals arranged with the defendant;
- ix) Particulars of any previous interlocutory proceedings, including remand proceedings, in respect of the Charge, and
- x) Any other relevant document as may be directed by the court and
- xi) Copy of the form for information requesting for Legal Representation as provided under Section 376(9)

### **WHO CAN DRAFT A CHARGE OR INFORMATION**

Several Illustrations<sup>14</sup> of the forms of Charges are offered in the Schedule to the Administration of Criminal Justice Act, 2015. These forms are permissive and not mandatory and Prosecutors and those who draft Charges are enjoined to modify them as the prevailing circumstances dictate.

Thus, a Charge in the Southern part of Nigeria when the offence is such that can be tried summarily is often drafted by the Policeman who conducts the investigation or alternatively, it is the duty of the 'resident' lay police court prosecutor to draft the charge.

Whilst in the Magistrate Courts in the northern part of Nigeria, it is the presiding Magistrate that is saddled with the task of drafting of the Charge, after having painstakingly listened and heard the evidence of some of the witnesses of the Complainant who must have testified.

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14. See the enclosed precedents marked Annexures 'A' - 'E'

This procedure must be followed even if the Defendant admits the offence, when he is presented to the Court.

The Format of Charges in the Magistrate Court in the North is usually proceeded by a statement that is drafted by the presiding Trial Magistrate and it ends with a direction for trial. The Charge itself is contained in a single paragraph similar to a summary trial proceeding in the South.

Although, '**Information**'<sup>15</sup> is not specifically defined in the Administration of Criminal Justice Act, 2015, it represents and substitutes for the charge in a criminal trial in all of the States High Courts in Southern Nigeria, the [state] High Courts in Adamawa and Taraba States, respectively.

Every Count of the Information is made up of two (2) distinct paragraphs. The first paragraph which is called '**the Statement of Offence**'. This is usually a concise statement of the offence and the provision of the law creating the offence and/or punishing for its infraction.

The second paragraph is called '**the Particulars of Offence**'. This contains the name of the Defendant, the date, time and place of the commission of the offence and the description of the offence purportedly committed.

The Count[s] in an Information is preceded by an Information addressed to the Honourable Court notifying it that the defendant is charged with an offence.

All Information filed in a criminal trial in the state High Court just like the Charge must be accompanied with its enclosed Proof of Evidence to be relied upon at the trial.<sup>16</sup>

The Proof of evidence which is the sum total of all materials that the prosecution intends to rely upon at the trial of the defendant that the Act enjoins in must be attached to a Charge, is what should at a glance offer confirmation of the offending alleged against the defendant in the Charge sheet. It must show a causal link or nexus between the defendant and the acts constituting the

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15. Section 494 (1)

16. Section 379 (a) (i-x) and (b)

offending the commission of which on his part has necessitated his being prosecuted in Court in the proposed criminal trial and the proof must be shown to disclose a true case against the defendant.

The Proof of evidence shall consist of the following:-

- i) List and photocopies of all Exhibits to be tendered;
- ii) List and Address of Prosecution Witnesses;
- iii) The photocopies of the Extra-judicial statements of all prosecution witnesses [Summary of all prosecution witnesses statements];
- iv) The photocopies of the Extra-judicial statements of the defendant[s].
- v) Any other document, report or material that the prosecution intends to use in support of its case at the trial;
- vi) Particulars of bail or any recognizance, bond or cash deposit, if the defendant is on bail,
- vii) Particulars of the place of custody, where the defendant is in custody;
- viii) Particulars of any plea bargain deals arranged with the defendant;
- ix) Particulars of any previous interlocutory proceedings, including remand proceedings, in respect of the Charge, and
- x) Any other relevant document as may be directed by the court and
- xi) Copy of the form for information requesting for Legal Representation as provided under Section 376(9)

### **RULES GUIDING THE DRAFTING OF CHARGES/INFORMATION**

Bearing in mind that the Charge/Information is the originating process in a criminal trial and its whole essence is to afford both the Court and the defendant, more particularly, with sufficient notice of the nature of the offending purportedly committed by him which has in turn necessitated his being subjected to a criminal trial.

Prior to the drafting of the Charge, the Prosecutor must take into cognizance and be very well adept with a foreknowledge of the following:-

Four (4) guiding principles have evolved regulating the drafting of a valid Charge/Information upon which any competent trial could be predicated.



These basically are:-

- (a) **The Rule against Ambiguity/Uncertainty-** This rule provides that a charge/Information must contain all the statutory requirements for it to be valid. It permits of no exception and it postulates that any Charge/Information must be clear enough so as to afford the defendant adequate notice of the nature of the offence for which he has been charged and is facing trial in Court.
- (b) **The Rule against Duplicity-** This rule relates to the counts in the charge/Information and it specifically forbids/prohibits a situation where more than one offence is contained in a count. Thus, distinct offences must be specified in separate counts of the Charge Sheet or Information.
- (c) **The Rule against Misjoinder of Offences-** This rule generally provides that for every distinct offence with which the defendant is accused of committing, there must be a separate charge, which shall be tried separately.
- (d) **The Rule against Misjoinder of Offenders-** This rule generally forbids the joining of offenders together in a criminal cause or matter before the Court. Thus, it postulates that only a defendant should be charged on a Charge Sheet/Information, for the offences committed by him.

### **OBJECTIONS QUESTIONING THE VALIDITY OF CHARGES/INFORMATION**

A charge or information that breaches and does not comply with any of the four rules of drafting of Charges stands the risk of being invalidated and struck out and the ensuing proceedings thereafter vitiated and nullified by the Trial Court in the first instance or by an appellate court based upon an application presented by the defendant.

In the past such applications would be presented to be entertained by the Honourable Trial Court through either a Notice of a Preliminary Objection or by Motion on Notice, presented at any time praying that the Charge/Information be quashed by a defendant.

However, to stem the continuous adoption of such applications to quash as a strategy to often times delay the commencement of the trial proceedings, by way of innovations, under the provisions of the Administration of Criminal Justice Act, 2015, trial courts are now admonished not to entertain such applications challenging the validity of Charges on the basis of noticed

imperfections or their erroneous nature as Charges<sup>16</sup> and Information<sup>17</sup> filed by the prosecution in the course of criminal proceedings are now deemed to be enjoying a legal presumption of substantial compliance with every legal condition precedent required to constitute an offence.

The effect of such defects or errors occasioned by omission to state the offence, its particulars, duplicity, mis-joinder or non-joinder of parties and offences, would no longer be regarded as being material unless the defendant is shown to have been misled and this had occasioned a miscarriage of justice.<sup>18</sup>

Furthermore, where such errors or defects are upheld as being substantial/material and as having misled and occasioned injustice upon the defendant, culminating in his conviction an appellate court is enjoined to direct a retrial to be predicated upon another charge<sup>19</sup> or alternatively, quash the charge/information if the same is found to be invalid or incompetent<sup>20</sup>.

Under the Administration of Criminal Justice Act, such applications questioning the competence and or validity of a charge/Information upon their presentation after the plea of the defendant had been taken, all Trial Courts are admonished to stay action in the consideration and delivery of their Rulings to such applications to await the conclusion of the trial proceedings when a composite ruling and final judgment is expected to be delivered.<sup>21</sup>

### **AMENDMENT OF CHARGES/INFORMATION**

An Amendment to cure any noticed defects on the face of the charge/Information is generally allowed. The Amendment of the Charge/Information could take place prior to the initiation of criminal proceedings, i.e., before the filing of the Information/Charge in Court and the arraignment of the Defendant and his plea taken thereto. Alternatively, the necessity for it to be done could arise in the course of the proceeding before the

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16. Section 221

17. Section 396(2)

18. Section 220

19. Section 222(1)

20. Section 222(2)

21. 396 (2)

delivery of judgment by which said time the defendant has already being arraigned and the trial had commenced in earnest.

The nature the amendment could take may either be by way of the addition, alteration or outright withdrawal of some of the Counts contained in either the Charge or Information.

**(a) What is the Effect of a Trial proceeding to conclusion on an erroneous or imperfect Charge/Information.**

Generally, the effect of a failure on the part of both the prosecutor and the Court to effect corrections noticed on such defective Charge/Information by amending same would first and foremost depend on the **nature of the defect** on the face of the Charge.

Where the defect is substantial, such as a noticed breach of the rule against ambiguity or uncertainty of Charge/Information [which permits of no exception], which said rule provides that every Charge/Information must contain all the statutory prescriptions for a valid Charge/Information, it would either make the trial vitiated or a nullity or rob the court of its jurisdictional competence to adjudicate the criminal cause or matter.

However, where the noticed defect is inconsequential being a mere omission or error that is trivial and/or immaterial, more particularly if it runs against the other drafting rules against the **Misjoinder of offences, offenders and duplicity [all of which permit of some exceptions]**, and it is shown that the defendant had not being misled by the defect or errors on the face of the imperfect Charge/Information which was subsequently not amended to correct the noticed errors, the trial Court would not be robbed of its jurisdictional competence, nor would its trial proceedings be vitiated nor rendered a nullity.

Furthermore, where such errors or defects are upheld as being substantial/material and as having misled and occasioned injustice upon the defendant, culminating in his conviction an appellate court is enjoined to direct a retrial to be predicated upon another charge<sup>22</sup> or alternatively, quash the charge/information if the same is found to be invalid or incompetent<sup>23</sup>.

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22. Section 222(1)

23. Section 222(2)

### **Who has the power to amend a Charge/Information.**

Both the Trial Court<sup>24</sup> and the Prosecutor<sup>25</sup> are imbued with the powers to alter and/or amend the Charge/Information upon the discovery of any error or in a bid to add more counts to the existing ones.

Any amendment or alteration to the Charge must be sustainable under the earlier imperfect charge/Information. The new life should merely continue the life of the original charge. The Amended Charge/Information must bear the same Charge Number as with the imperfect Charge it seeks to substitute and it must be against the same defendant[s]. It cannot be an independent separate Charge/Information, co-existing with the original (imperfect) charge/Information it seeks to substitute.

It should be noted that the Courts as a principle of law are admonished from permitting the alteration or amendment of a Charge/Information, if doing so would cause injustice to the defendant.

#### **(b) Procedure for the Amendment of a Charge/Information**

Where either the alteration or amendment to the exiting original (imperfect) is at the instance of the Prosecution. The procedure is that the Amended Charge/Information is prepared incorporating either the corrections of the errors earlier noticed in the original Imperfect Charge/Information, which is then signed by the Prosecutor.

The altered or Amended Charge/Information must bear the same Charge Number as the earlier imperfect Charge/Information it seeks to substitute and it must be against the same defendant[s]. It is sufficiently entitled ‘**Amended Charge**’ or ‘**Amended Information**’ as the case may be. And it is thereafter taken to the Courts’ Registry, filed, processed and thereafter served on the defendant[s].

#### **(c) Ought a formal Motion on Notice be presented praying for the Trial Court’s leave to effect any Amendment sought to an erroneous or defective Charge/Information?**

Although, the impression one may get from a reading of the provisions of Section 216 (1) of the Administration of Criminal Justice Act, 2015 is that any alteration or amendment should be by the permission of the Trial Court. It is most humbly submitted that contrary to the views being expressed by defence

counsel and most of the Trial Judges, no such formal application is contemplated.

The Supreme Court had in its decision in the case of **Uguru .vs. State**<sup>24</sup> held otherwise. Their Lordships had stated that it was not obligatory for the prosecution to obtain the prior leave or permission of a Trial Court before it can proceed to amend and file the amended charge/Information as the same was never a condition precedent so as to clothe such Amended Charge/Information as being **incompetent** or **invalid**.

In open Court on the next hearing date the Prosecutor notifies the Court that he intends to substitute the Amended Charge with the original Imperfect Charge on record and that it has been served on the defendant and that the nature of the amendments contained therein are not of the nature that would occasion injustice to the defendant and that the Court should receive and substitute same and direct the Registrar of the Court to read out same to the defendant for his plea to be taken to the Counts in the Amendment Charge/Information.

#### **(d)The Procedure after Amendment of a Charge/Information**

- Generally, The new Amended Charge/Information shall be read out and explained to the defendant and he shall be asked to plead to the same and his plea to the respective counts in the amended Charge/Information recorded.

In response to the vexed issue as to whether or not after an amendment of a count in a multi-count Charge/Information, if fresh pleas must be taken from the defendant[s] to all the counts and not only to the amended count[s]?

The Supreme Court had in its decision in the case of **Attah .vs. State**<sup>25</sup> stated in unequivocal terms that where a Charge is amended, the Trial Court must obtain a fresh plea ONLY to the amended count **and not TO ALL the counts** in the charge sheet. *It stated that the earlier pleas entered to the un-amended counts were still valid.*

Additionally, it should be noted that in a Criminal Trial in the Magistrate Court in the South, where the ongoing trial before the Trial Magistrate was as a result of the Defendant's election to be tried by the Magistrate Court, apart from a

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24. (2002) 4 S.C. (Pt. 2) 13, 17-18

25. (1993) 7 N.W.L.R (Pt. 305) 257

fresh plea, his consent should also be sought afresh as to whether or not he still intends to elect for the continuation of his trial at the Magistrate Court.

- The Court shall either oblige both the Prosecutor and the defendant[s] with an adjournment after the amendment is effected.

- An endorsement shall be made in its records by the Trial Court to reflect the Amendment to the Charge/Information.

-Both the prosecutor and the defendant shall be allowed to recall or re-summon any witnesses who may have been earlier examined. The right afforded the parties to recall witnesses who had previously testified is however circumscribed as the parties shall have only a **limited right**<sup>26</sup> to either examine or cross examine such recalled and/or re-summoned witnesses with **references to the amendments only**. They are not permitted to use this as an escape route to re-open their cases by bringing in evidence outside the tenor of the facts covered by the amendments.

**(f) Effect of the consequences of a failure to comply with the procedure prescribed after an amendment is made to an imperfect Charge/Information.**

The position of the law is that the failure on the part of either the Trial Court or the Prosecutor to comply with the post amendment statutory requirements shall render such trial proceedings not only vitiated but equally null, void and of no effect, in circumstances where the Fresh Plea of the defendant was improperly taken<sup>27</sup> or not taken at all to the counts in the amended Charge/Information.

However, where there are sufficient and overwhelming evidence on record in proof of the culpability of the defendant at the conclusion of the trial, the fact that there were incidents of none compliance with the some of the above statutory prescriptions would not lead to the vitiation of the concluded trial proceedings. The Appellate Court may rather opt to direct a re-trial instead.

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26. Section 219, *Ambrose Ezihie .v. IGP* (1965) All N.L.R 597[Reprint]; *Rachel Ndukwe .v. State Appeal No-CA/PH/265/2003*, Judgment delivered on 3/12/03;

27. Where the fresh plea is taken in Chamber, rather than in open Court- *Edibo .v. State* (2007)13 N.W.L.R (Pt.1051) 308 SC, wherein the Supreme Court held that proceedings in chambers are invalid and any orders made therein are null and void. *Contra Oyedipo .v. Onyinloye* (1987) 1 N.W.L.R (Pt. 50) 356

## **QUASHING OF CHARGES//INFORMATION**

Generally, the defence counsel upon service upon them and a perusal of the copy of the Charge Sheet or Information would proceed to present an application either by way of a Motion on Notice or a Preliminary Objection to the Trial Court to Quash the Charges contained in the Charge Sheet or Information preferred against the Defendant.

They will often times predicate the essence of their not too altruistic application upon the re-statement of the law that by the provisions of the Constitution of the Federal Republic of Nigeria, 1999 [As amended], and case laws that a citizen accused of a criminal misdeed must not be subjected to the rigors of a criminal trial if no nexus is shown between himself and the commission of the offences asserted against him by the establishment of a prima facie case by the prosecution against him.

They will further submit that an accused person genuinely aggrieved that no such nexus and/or prima facie case has been shown or exists can as of right proceed to urge that such defective charges be quashed by the trial court at any stage of the proceedings, either in the course of the main trial or prior to its conclusion.

The grounds upon which the application to quash is often times predicated upon is either a perceived or real breach of any one or all of the four earlier discussed rules guiding the drafting of Charges, more particularly, the rule bordering against uncertainty or ambiguity of Charges/Information. They will assert that the “offence for which the defendant is being charged to court for does not constitute an offence as well claim that the proof of evidence does not indict and/or show a nexus between Accused person and his commission of the offences he has being charged with”.

The grounds for the quashing of the Charge/Information may be either directed at the competence of the Charge/Information filed before the Court, which a fortiori, is a challenge to the jurisdiction of the Trial Court. It could also be directed at a discernible formal defect on the face of the Charge.

In its decision in the case of **Daniel Asuquo Edet .vs. State (2008) 14 N.W.L.R (Pt. 1106) 52, 69.** The Court of Appeal following and applying the principles enunciated in the decision of the Supreme Court in **Ikomi .vs. State (1986) 3 N.W.L.R. (Pt. 28) 340** listed the various conditions under which an Information/Charge may be liable to be quashed. These are where:-

- (a) The Court has no jurisdiction to try the offence;
- (b) The deposition do not disclose the offence or offences charged; and
- (c) The consent given was in the circumstances amounting to abuse of the court's process or contrary to Section 340(3) of the Criminal Procedure Law.....

And that an objection to an Information for whatever reason may be taken at any stage before the trial of the offence charged in the Information.

When this happens the duty of the Prosecutor to the Honourable Trial Court would be in urging the Trial Judge to present counter arguments urging the Court to dismiss such applications to quash the Charge/Information on the grounds of it not only being vexatious, but also frivolous and devoid of merit.

It is most humbly submitted here that a proper determination of this issue must commence with a determination of what a 'prima facie case' is at this stage of the proceedings bearing in mind that the defendant has not undergone a formal trial and no evidence whether documentary or oral has either been led or tendered by either of the parties thus necessitating that great caution would need to be exercised and no evaluation of the facts contained in the Proof of Evidence should be undertaken.

The decision of the Supreme Court in the case of **IKOMI & ORS .v. STATE [986] 17 N.S.C.C. (Pt.1) 730, 731** has for long settled the issue of what constitutes 'a prima facie case' at the stage of proceedings when application to quash a charge is presented and being determined by a Trial Judge that had earlier granted its leave to the Prosecution to prefer a criminal charge against an accused person as in the present circumstances.

It was held therein thus that:-

*“Once there are circumstances from which it can be justly inferred that an accused person could have committed an offence, he should be put on his trial. Whether there are co-existing circumstances which would weaken that inference or whether the evidence leads irresistibly to the accused person's guilt can only be determined at the trial. It is not the law that circumstantial evidence must lead irresistibly to the conviction of the accused. **The issue is not whether the evidence is sufficient to ground a conviction. All that is necessary is whether the evidence discloses a prima facie case, even if weak, against the accused person”.** [underlining mine for emphasis]*

Also, the Supreme Court further reiterated that:-



*“all that is required at the point when a judge grants consent to prefer information is that there be evidence which requires some explanation”.*

The Supreme Court again restated this position in the very popular case of **ABACHA .v. STATE [2002] 11 NWLR (PT 779) 437, 486 & 496.** The court raised and answered the question of what a prima facie case constitutes at the stage of filing a Charge and arraignment of the accused person in court. Following its earlier decision in the case of **IKOMI .v. THE STATE (supra),** the court stated on what constitutes a prima facie case warranting the accused to face trial as follows:

*“The term prima facie case is difficult to define precisely. However, facts that clearly reveal a crime and show that the accused person is linked with it may be prima facie evidence that the accused has something to explain at the trial.”*

Reiterating its views further, Their Lordships of the Supreme Court stated thus:-

*“Prima facie (case) means that there is ground for proceeding and evidence discloses a prima facie case when it is such that if uncontradicted and if believed it will be sufficient to prove the case against the accused. But a prima facie case is not the same as proof which comes later when the court has to find whether the accused is guilty or not guilty.”*

The question that should agitate the mind of the Trial Court at this stage of the proceedings when the Accused has presented his application seeking to quash the charges preferred against him upon the leave earlier granted by the Honourable Court: **is how can a court, as in this case, determine when a Charge discloses a prima facie case?**

At page 496 of the report of the case under consideration, their Lordships of the apex court stated inter alia:-

*“In deciding whether a prima facie case exists for the accused to answer in an information for indictment, the authorizing Judge, or the Judge before whom the indictment is placed must look at the proof of evidence attached to the information in totality and not pick words out of context”.*

Applying the above principles of law to the case at hand, the argument should be whether it can truly be said that the Charge/information filed in this case against the defendant discloses no prima facie case against him/her?

The prosecutor should proceed to urge the Court to find and hold in the affirmative that it does. In urging the Trial Judge to so hold, submissions should be made to show that all the counts/charges and the attached proof of evidence discloses offences known to law and they firmly establish a strong prima facie case against the defendant therein as they show a strong causal link between the

defendant with the commission of all the offences charged in the counts of the Charge/Information preferred against him.

Also, the attention of the Court, it is most humbly submitted should be drawn to the intendment of the defence to use the application for quashing that has been presented a means foisting a delay in the commencement of the hearing of the testimonies of prosecution witnesses at defendant's trial in derogation of the admonitions contained in the provisions of both the Practice Direction of the High Court of the Federal Capital Territory, 2014 as well as the Administration of Criminal Justice Act, 2015.

The Prosecutor should refer and draw the Trial Court's attention to the provisions of Section 396 (1) and (2), respectively of the Administration of Criminal Justice Act, 2015, more particularly subsection (2) thereof.

The provisions of the aforementioned section are reproduced hereunder:-

#### Section 396

- (1) ' The defendant to be tried on an Information or Charge shall be arraigned in accordance with the provisions of this Act relating to the taking of Pleas and the procedure on it'
- (2) ***After the plea has been taken the defendant may raise any objection to the validity of the Charge or Information at any time before judgment provided that such objection shall only be considered along with the substantive issues and a ruling thereon made at the time of the delivery of judgment.*** [Underlining mine for emphasis]

The Trial Judge should thus be enjoined to reserve and defer the hearing and delivery of the ruling on the application to quash which is timed to delay the proceedings towards the end of the conclusion of the trial after witnesses testimonies for both the Prosecution and the defence have been heard and documentary evidence received as enjoined by the provisions of Section 396 (2) of the Administration of Criminal Justice Act, 2015.

**INNOVATIONS INTRODUCED BY THE ADMINISTRATION OF  
CRIMINAL JUSTICE ACT, 2015 WITH REGARDS TO  
CHARGES/INFORMATION**

- (a) There is a mandatory requirement and an onerous duty placed upon the Prosecution to not only frontload but make available to the Defendant all the materials [Proof of evidence] it would be relying upon in proof of the offences stated in the counts of the Charge/Information- **See Sections 195 & 379;**
  
- (b) For purposes of clarity, what the Proof of Proof of Evidence shall consist of are now adumbrated; **See Section 379 (a) & (b);**
  
- (c) The adoption of Preliminary Objections to the validity of Charges/Information as a strategy to stall the commencement of trial proceedings has now being curtailed. Such objections are ordinarily not to be entertained. However, if after the defendant takes his plea and presents same, the Ruling on such applications are to deferred till the end of the trial proceedings when a composite ruling on such objections would have to be delivered alongside the Final Judgment; **See Sections 220-222 and 396(2),** respectively;
  
- (d) Specific time lines are prescribed and limited for both the Honourable Trial Court and the parties taking certain actions. Thus, upon filing of the Charge, a seven (7) day time line is prescribed for effecting service upon the defendant. In the case of an Information, a Fifteen (15) day time line is prescribed for the same to be assigned by the Chief Judge and thereafter the Trial Judge shall have same scheduled on the Court's cause List for arraignment/plea taking and a three (3) day for service upon same upon the defendant- **See Sections 110 (2) & 382;**
  
- (e) The incidence of trials having to recommence denovo on the ground of the elevation of the Trial Judge to the Appellate Court in criminals matters commenced by way of Information/Charge is no longer norm;
  
- (f) The right of a Prosecutor to file and serve Additional Proof of evidence in the course of the trial proceedings is now codified – **See Section 379(2);**

- (g) Allowance is now made by the provisions of **Section 382 (5)** for the leave of the Honourable Trial Court to be obtained to facilitate the service of the Information upon an evasive defendant through any of the following:-
- (i) His Legal Practitioner;
  - (ii) His sureties;
  - (iii) On an Adult in his household;
  - (iv) Or in such other alternative manner the Court shall deem fit in the circumstances of the case.

**ANNEXURE 'A'**

An example of the format of such charge before a Magistrate Court in any part of Southern Nigeria is as shown below:-

**IN THE MAGISTRATE COURT OF THE RIVERS STATE OF NIGERIA**

**IN THE ABUA MAGISTERIAL DISTRICT**

**HOLDEN AT ABUA**

**CHARGE N0- PMC/CR/ /2015**

**BETWEEN**

**COMMISSIONER OF POLICE .vs. MR. SAMUEL ANTHONY (M) 35 YEARS**

**COUNT ONE**

That you, Samuel Anthony (m) between the months of May, 2009 and May, 2010 or thereabout at Abua, in the Abua Magisterial District, did conspire together with other persons still at large to commit a felony to wit: stealing and you thereby committed an offence contrary to and punishable under Section 516 of the Criminal Code Law, CAP N84 Laws of the Rivers State of Nigeria, 2004.

.....

**Cpl G. P. West**

**POLICE OFFICER**

**Date of Arraignment:**

**Plea:**

**Finding:**

**Sentence:**

**Court Order:**

**Magistrate:**

**Prosecutor:**

**Bail:**

**Date of Adjournment:**

**ANNEXURE 'B'**

An example of the format of such charge before a Magistrate Court in any part of Northern Nigeria is as shown below:-

**IN THE MAGISTRATE COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA MAGISTERIAL DISTRICT**

**HOLDEN AT WUSE**

**CHARGE N0- AMC/CR/ \_\_\_\_\_ /2015**

**BETWEEN**

**COMMISSIONER OF POLICE .vs. MR. SAMUEL ANTHONY (M) 35 YEARS**

(a) I, **Musa Bala Zakari, Chief Magistrate Grade 1**, do hereby charge you, **Olakunle Tosin Akinsola (m)**, as follows:

(b) That you on or about the 30<sup>th</sup> day of July, 2015, at the Federal Hosuing Estate, Lugbe, Airport Road, Abuja committed the theft of an Infinix Hot 2 GSM handset, the property of Mrs. Peace Arocha and thereby committed an offence punishable under Section 287 of the Penal Code Act, CAP 532 Laws of the Federal Capital Territory of Nigeria of 2006 and triable by the court of a magistrate of the third grade (or by the High Court).

(c) And I hereby direct that you be tried by such court on the said Charge.

.....

**MUSA BALA ZAKARI**

**CHIEF MAGISTRATE [GRADE 1]**

**ANNEXURE ‘C’**

An example of the format of such charge before a [State] High Court in any part of Northern Nigeria is as shown below:-

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**CHARGE NO- HC/CR/ \_\_\_\_\_ /2015**

**BETWEEN**

**FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT**

**Vs**

**MR. SAMUEL YAHAYA.....DEFENDANT**

**CHARGES**

**COUNT ONE**

That you, Samuel Yahaya (M) between the months of May, 2009 and May, 2010 or thereabout at Abuja, forged a National Youths Service Corps [NYSC] Certificate of Exemption with No-0001180937 and dated 9/1/07, purporting same to have been validly issued to you by the directorate of the National Youths Service Corps upon your having being exempted from participation in the service corps and you thereby committed an offence contrary to and punishable under Section 13 (4) (b) of The National Youths Service Corps Act, CAP N84 Laws of the Federation of Nigeria, 2004.

**DATED THIS.....DAY OF .....2015.**

**G. P. WEST**

**ASSISTANT CHIEF LEGAL OFFICER**

**[gogodaye@yahoo.com 08035476476]**

**THE INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES  
COMMISSION,**

**PLOT 802, CONSTITUTION AVENUE, CENTRAL AREA DISTRICT, ABUJA, F.C.T.**

**FOR: THE HONOURABLE ATTORNEY-GENERAL OF THE FEDERATION**

**ANNEXURE 'D'**

An example of the format of such charge before a Federal High Court sitting in any of its judicial divisions in any part of Nigeria is as shown below:-

**IN THE FEDERAL HIGH COURT OF NIGERIA**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ABUJA**

**CHARGE NO- FHC/CR/ \_\_\_\_\_ /2015**

**BETWEEN**

**FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT**

**Vs**

**1. MR. SAMUEL YAHAYA**

**2. MR. GEORGE MSHELIA**

**3. MR. OLUSEGUN MATTIAS**

**4. MR. ABIGAIL SAKA**

**5. MESSRS JULIUS MAKKER NIGERIA LTD**

} **DEFENDANTS**

**CHARGES**

**COUNT ONE**

That you, Samuel Yahaya (m), George Mshelia (m), Olusegun Mattias (m), Abigail Saka (f), and Messrs Julius Makker Nigeria Limited on or about the 30<sup>th</sup> day of the month of September, 2013 or thereabout, within the jurisdiction of the Federal High Court conspired amongst yourselves by entering into a collusive agreement to award a fake contract in the sum of Twenty-Eight Million, Six Hundred And Four Thousand, Four Hundred And Twenty-Eight Naira, Forty kobo only (₦28,604,428.40) to a contractor, Messrs Julius Makker Nigeria Ltd for the re-asphalting of the sixteen (16) kilometre Obafemi Awolowo Way, within the Abuja Municipal Area Council, Abuja for which there was no basis and you thereby committed an offence contrary to Section 58 (4) (a) of the Public Procurement Act, 2007 and punishable under Section 58 (5) of the Public Procurement Act, 2007.

**DATED THIS.....DAY OF .....2015.**

**G. P. WEST**

**ASSISTANT CHIEF LEGAL OFFICER**

**[gogodaye@yahoo.com 08035476476]**

**THE INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED OFFENCES COMMISSION,**

**PLOT 802, CONSTITUTION AVENUE, CENTRAL AREA DISTRICT, ABUJA, F.C.T.**

**FOR: THE HONOURABLE ATTORNEY-GENERAL OF THE FEDERATION**



**ANNEXURE 'E'**

An example of the format of such charge before any of the State High Courts sitting in any part of Southern Nigeria is as shown below:-

**IN THE HIGH COURT OF THE ONDO STATE OF NIGERIA**

**IN THE AKURE JUDICIAL DIVISION**

**HOLDEN AT AKURE**

**CHARGE NO...../...../2014**

**BETWEEN**

**FEDERAL                      REPUBLIC                      OF                      NIGERIA**  
.....**COMPLAINANT**

**VS**

- 1. OLUFEMI ABIODUN OMOTOSO (M)**
- 2. SUNDAY DADA ADEBAYO (M) .....DEFENDANT**

**INFORMATION**

At the High Court of the Ondo State Holden at Akure on the ..... day of ..... 2014, the Honourable Court is informed by the Attorney General of the Federation on behalf of the Federal Republic of Nigeria that:

- 1. OLUFEMI ABIODUN OMOTOSO (M)**
- 2. SUNDAY DADA ADEBAYO (M)**

Are charged with the following offences to wit:

**STATEMENT OF OFFENCE: COUNT ONE**

The use of office to confer corrupt advantage upon self contrary to and punishable under Section 19 of the Corrupt Practices And Other Related Offences Act, 2000.

**PARTICULARS OF OFFENCE**

Olufemi Abiodun Omotoso (m) on or about the 21<sup>st</sup> day of January, 2010 or thereabout, while being a Public Officer used his office as the Medical Director, Federal Medical Centre [FMC], Owo, Ondo State to confer a corrupt advantage upon himself when he received the sum of One Million, Five Hundred Thousand Naira (₦1,500,000.00) only, paid to him from the Centre's coffers for the purpose of the hosting of the visit by the Minister of (State) Health in January, 2010 when no such ministerial visit had been either scheduled nor convened.

**DATED THIS.....DAY OF .....2015.**

**G. P. WEST**

**ASSISTANT CHIEF LEGAL OFFICER**

**[gogodaye@yahoo.com 08035476476]**

**THE INDEPENDENT CORRUPT PRACTICES AND OTHER RELATED  
OFFENCES COMMISSION,**

**PLOT 802, CONSTITUTION AVENUE, CENTRAL AREA DISTRICT,  
ABUJA, F.C.T.**

**FOR: THE HONOURABLE ATTORNEY-GENERAL OF THE  
FEDERATION**