**COMMISSIONER OF POLICE**

**V.**

**ANAYO UGWUMBA**

IN THE COURT OF APPEAL OF NIGERIA

ON FRIDAY, THE 28TH DAY OF FEBRUARY, 2020

CA/OW/508C/2018

**LEX (2020) – CA/OW/508C/2018**

**OTHER CITATIONS**

3PLR/2020/11 (CA)

(2020) LPELR-49546(CA)

**BEFORE THEIR LORDSHIPS**

AYOBODE OLUJIMI LOKULO-SODIPE, JCA

ITA GEORGE MBABA, JCA

IBRAHIM ALI ANDENYANGTSO, JCA

**BETWEEN**

COMMISSIONER OF POLICE - Appellant(s)

AND

ANAYO UGWUMBA - Respondent(s)

**ORIGINATING COURT**

Imo State High Court

**REPRESENTATION**

K.A NWAKUCHE, ESQ. - For Appellant

AND

B.O. MGBENULU, ESQ. - For Respondent

**ISSUES FROM CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE – BAIL APPLICATION:- Nature of – Whether part/incidental to the main prosecution – Whether independent counsel donated with powers via a fiat to prosecute the main charge is competent to appear for bail proceedings of accused persons so charged

CRIMINAL LAW AND PROCEDURE – FIAT TO PROSECUTE AN OFFENCE:- Meaning, basis and essence of - Life-span of a fiat –Authorities that can grant a fiat in matters of prosecution - Expiration of a fiat – How determined – Whether a fiat needs to be revalidated regarding the same case

CRIMINAL LAW AND PROCEDURE – FIAT TO PROSECUTE AN OFFENCE:- Fiat given to an independent counsel to prosecute a criminal case - Bail Applications, Interlocutory proceedings, appellate proceedings – Whether covered under the same original fiat

CRIMINAL LAW AND PROCEDURE – FIAT TO PROSECUTE AN OFFENCE:- Scope of a fiat – How determined – Conditions imposed by a donating authority of a fiat – Who may review or query compliance therewith – Whether lies with the court or opposing party/counsel to review extent of compliance with conditions imposed on a donee of a fiat

CRIMINAL LAW AND PROCEDURE – FIAT TO PROSECUTE AN OFFENCE:- Relationship created between a donor and donee of a fiat – Whether that of lawyer-client relationship – Implication for confidentiality of communications between donor and done

**PRACTICE AND PROCEDURE ISSUES**

COURT – CONDUCT OF A CASE:- Rule that a Judge must not be seen to descend into the arena of conflict in a trial to generate evidence or fact not canvassed or adduced by witness(es) or apparent on the face of the records before him, in order to decide a case – Applicability of to an attempt by a Court to question a fiat given to a Counsel to prosecute a case

COURT – CONDUCT OF A CASE:- Issue of representation by Counsel – Nature of as a matter of Counsel-client relationship, which this Court cannot get involved in - Where Counsel files processes and proceeds to announce himself in Court as appearing for a party – Duty of Court to presume that he is fully briefed to appear and not to inquire into his authority to appear

**CASE SUMMARY**

The Respondent had been charged before the Magistrates Court, Ubulu in Oru-West L.G.A of Imo State (in a holding Charge) for murder, sometime in April 2018. Because the Learned Magistrate had no jurisdiction to take the trial, it ordered the remand of the Respondent in the Prison, and for the case file to be sent to the Director Public Prosecution (DPP), for advice/further action. While the order of the said Magistrates Court, was pending, the Attorney General of Imo State issued a fiat to a private Legal Practitioner), on 23/5/2018, to prosecute the case for the Commissioner of Police (COP). While awaiting the further action or advice of the D.P.P., the Respondents Counsel applied to the High Court, for the bail of the Respondent, on 7/6/2018. The Respondents Counsel, B.O. Mgbenulu Esq (who appeared for the Respondent at the Magistrate Court), however, opposed the appearance of K.A. Nwakuche Esq for the Commissioner of Police (Appellant) at the High Court, saying that the fiat issued to the Appellants Counsel by the Hon. Attorney General was to prosecute the charge at the Magistrates Court and did not extend to prosecute this case in the High Court; that the fiat was in respect of the matter at the Magistrates Court in Charge No MUB/6C/2018.

DECISION APPEALED AGAINST

Holding on the objection, the trial Court refused the appearance of the private legal Practitioner donated with the fiat to appear for the Commissioner of Police hence this appeal.

ISSUES DISTILLED FOR DETERMINATION

BY APPELLANT

1) Whether the trial Court had jurisdiction to hear and determine the objection to the appearance of a private Legal Practitioner with a fiat before him (sic)? (Ground 1)

2) Whether the trial Court was right when he (sic) came to the conclusion that the Prosecutor needed re-validation of fiat and evidence to show he had the authority of the Attorney General to prosecute a criminal charge before him (sic)? (Grounds 2 and 3).

BY RESPONDENT

[Adopted the issues as distilled by the Appellant but, rephrased the issue 1 to read:

Whether the trial Court was right to hear and determine the objection raised as to the appearance of a private legal practitioner without a fiat before him (sic) in a criminal case?]

AS ADOPTED BY COURT

[Court resolved the Appeal based on the two issues donated by the Appellant (which were adopted by the Respondent) with slight modification]

DECISION OF COURT OF APPEAL

The Court of Appeal reversed the decision of the Trial Court and remitted the case back to the Chief Judge of Imo State for re-assignment to another Judge, for the Bail Application to be taken, holding, inter alia:-

“Courts usually and normally take Counsels word for it, when Counsel announces that he is appearing for a client. The Courts do not require Counsel to tender written evidence to prove that he had been so briefed. It will be a sad day for legal profession in Nigeria when Counsel can no longer be believed that he is appearing for a client and it does not matter if that client is a State Government when Counsel appears in Court and states that he is instructed, the Court will not inquire into his authority to appear”.

**MAIN JUDGMENT**

ITA GEORGE MBABA, J.C.A. (Delivering the Leading Judgment):

This Appeal emanated from the decision of Imo State High Court in Suit No.HOU/30CM/2018, delivered on 15th October 2018, wherein the trial Court held that the power of the fiat dated 23/5/2018, obtained by the Appellants Counsel to prosecute the charge (MUB/6C/2018) at the Magistrates Court, against the Respondent (Anayo Ugwumba) did not extend to the power to appear before the High Court in the application to seek the bail of the Respondent.

A brief facts of the case shows that the Respondent had been charged before the Magistrates Court, Ubulu in Oru-West L.G.A of Imo State (in a holding Charge) for murder, sometime in April 2018. Because the Learned Magistrate had no jurisdiction to take the trial, it ordered the remand of the Respondent in the Prison, and for the case file to be sent to the Director Public Prosecution (DPP), for advice/further action. That was on 8/5/18 and the case was adjourned to 11/5/2018 for report (See pages 8 to 11 of the Records of Appeal). While the order of the said Magistrates Court, was pending, the learned Attorney General of Imo State issued a fiat to K.A. Nwakuche Esq (a private Legal Practitioner), on 23/5/2018, to prosecute the case for the Commissioner of Police (COP) in the charge No MUB/6C/2018. See the supplementary Records of Appeal, transmitted to this Court on 30/5/2019.

While awaiting the further action or advice of the D.P.P., the Respondents Counsel applied to the High Court, for the bail of the Respondent, on 7/6/2018. The Respondents Counsel, B.O. Mgbenulu Esq (who appeared for the Respondent at the Magistrate Court), however, opposed the appearance of K.A. Nwakuche Esq for the Commissioner of Police (Appellant) at the High Court, saying that the fiat issued to the Appellants Counsel by the Hon. Attorney General was to prosecute the charge at the Magistrates Court and did not extend to prosecute this case in the High Court; that the fiat was in respect of the matter at the Magistrates Court in Charge No MUB/6C/2018.

Holding on the objection, the trial Court refused the appearance of K.A. Nwackuche Esq for the Commissioner of Police (Appellant herein) and said:

The fiat to prosecute a case is given by the Attorney General after the office would have initiated the criminal charge. This is necessary because the particulars indicated on the face of the fiat to include the Charge Number, name(s) of the accused person, the conditions attached to the fiat. There is no evidence placed before this Court to show that the Attorney General has issued any fiat to K.A. Nwakuche to prosecute any criminal charge in this Court. This fiat is akin to power of Attorney donated by a donor to the donee. The donee cannot in the exercise of the power of attorney go beyond the express powers conferred on him by the donor. By the tenor of this FIAT, issued to K.A. Nwakuche Esq, the best he could have done in the circumstances of this case would have been to report to the Honourable Attorney General, in writing, stating the fact that the Magistrates Court declined jurisdiction to entertain this case being a murder charge and has transferred the case file to the State D.P.P. for further legal action.

This would have enabled the Honourable Attorney General to have the benefit of the state of the case and will also guide him in deciding whether to validate the FIAT, or take over the prosecution of the case himself, or delegate any of the law officers in his chambers or issue another fiat to another private practitioner to prosecute the accused person. See page 54 55 of the Records of Appeal.

This is the decision Appellant appealed against, as per the Notice of Appeal, filed on 31/10/2018, on pages 56 to 58 of the Records of Appeal. Appellant filed Brief of arguments on 14/11/2018 and distilled 2 issues for the determination of the Appeal, namely:

1) Whether the trial Court had jurisdiction to hear and determine the objection to the appearance of a private Legal Practitioner with a fiat before him (sic)? (Ground 1)

2) Whether the trial Court was right when he (sic) came to the conclusion that the ProsecAutor needed re- validation of fiat and evidence to show he had the authority of the Attorney General to prosecute a criminal charge before him (sic)? (Grounds 2 and 3).

The Respondent filed his brief on 15/3/2019, which was deemed duly filed on 18/3/2019. He adopted the issues as distilled by the Appellant but, rephrased the issue 1 to read.

Whether the trial Court was right to hear and determine the objection raised as to the appearance of a private legal practitioner without a fiat before him (sic) in a criminal case?

Arguing the Appeal, on 29/1/2020, Appellants Counsel, on issue one, said that, where issue of jurisdiction succeeds, the case ends (See Lakanmi Vs Adene (2003) 10 NWLR (Pt.828) 353; Utih Vs Onoyivwe (1991)1 NWLR (Pt.166) 166 at 206 - that jurisdiction, is the blood that gives life to the survival of an action in Court). Counsel said the trial Court had no jurisdiction to entertain the objection to the appearance of K.A. Nwakuche Esq, who appeared with a fiat of the Attorney General (AG) of Imo State to prosecute Anayo Ugwumba for murder in Charge No. MUB/6C/2018. That, he said, is because enquiries by Courts into the appearance of a legal practitioner, to represent a party, have always been condemned by this Court and the Supreme Court. He relied on Adewunmi Vs Plastex (Nig) Ltd (1986) 3 NWLR (Pt.32) 767, Tukur Vs Gov. of Gongola State (1989) 4 NWLR (Pt.117)517.

Counsel said that a Court has no business to enquire into the authority of a counsel to appear in a matter, with or without a fiat.

He urged us to answer the issue in the negative.

On issue 2, whether the trial Court was right to say that the Prosecution needed re-validation of the fiat and/or evidence to show that he had authority of the A.G. to prosecute the criminal charge in the High Court, Counsel answered in the negative. He said that the A.G. of Imo State did not need to issue a fresh fiat before the Prosecutor could appear before the lower Court to oppose the bail application; that the authorities which the Respondent relied on to seek renewal of the fiat were misconceived. He relied on C.O.P. Vs Ayi (2005) All FWLR (Pt.286) 679, which he said was brought to the attention of the trial Court, but it still went on a voyage canvassing other issues, not germane to the determination of the matter before it. Counsel said those issues raked up by the trial Court were completely uncalled for and irrelevant, considering the fact that the fiat issued on 23/5/2018 was to prosecute the case of C.O.P. Vs Anayo Ugumba, simpliciter, and the bail application filed by the Respondent was sequel to the bail not granted him at the Magistrates Court; that the appearance to oppose the application for bail was a continuation of the same prosecution of the Criminal Charge No.MUB/6C/2018.

Counsel said the Supreme Court had laid to rest the issue of fresh fiat, from Magistrate Courts to High Court or to Court of Appeal; that no fresh fiat is needed by a Counsel to travel from one Court to the other, particularly, where and when it is in respect of the same matter. He relied on the case of Ebe Vs C.O.P. (2008) All FWLR (Pt.406) 1849, where it was held:

Once a fiat is granted to a Counsel to prosecute or defend a case, the validity of the fiat would continue throughout the duration of the case for which the fiat was granted.

Counsel also relied on Marcel Nnakwe Vs State (2013) Vol. 223 LRCN (Pt.1)1 at 49:

As rightly submitted by the learned Respondents Counsel, the situation at hand did not require the Attorney General of the Federation to issue a fresh fiat before the law firm of Chief Afe Babalola, SAN & Co could proceed with the prosecution of the appeals arising from the charge.

Counsel also referred us to the admonition of the Supreme Court in the case of Adamu Suleman & Anor. Vs C.O.P. (2008) 8 NWLR (Pt.1089) 298 at 332, that judges should not give judgments based on sentiments or on their whims and caprices. He said that trial Court was on a frolic, and had ignored known legal principles. He urged us to resolve the issues for Appellant and allow the Appeal.

Counsel for Respondent, B.O. Mgbeanulu; Esq, answered the issue one in the affirmative, saying that the trial Court was right to refuse the appearance of K.A. Nwakuche Esq in the bail application, as there was no fiat authorising him to prosecute/or file a counter affidavit to the bail application.

On issue 2, Respondents Counsel also answered in the affirmative. He said that Appellants counsel needed re-validation of the fiat and evidence to show that he had authority to prosecute the charge. He argued that what was before the trial Court was not an appeal emanating from the Charge MUB/6C/2018, (for which Appellants counsel was issued a fiat to prosecute) but a bail application which was filed and hinged upon the failure of the Attorney General to file information against the Respondent. Counsel said it is a misconception of the law, to say that A.G. of Imo State does not need to issue a fresh fiat to the Appellant Counsel to oppose the application for bail. He argued that the cases of Ebe Vs Commissioner of Police (2008) All FWLR (Pt.406); C.O.P. Vs Ayi & Ors (2005) All FWLR (Pt.286) 679; Adewunmi Vs Plastex Nig. Ltd (1986)3 NWLR (Pt.32) 767 and Tukur Vs Gov. of Gongola State (supra) relied upon by Appellant, are distinguishable from this case at hand. He urged us to dismiss the Appeal.

RESOLUTION OF THE ISSUES

I shall resolve this Appeal on the two issues donated by the Appellant, which were adopted by the Respondent, with slight modification. I shall however, take the two issues together, as they all question the jurisdiction and decision of the trial Court to refuse the Appellants Counsel to appear for Appellant in the bail application on the basis of the fiat he obtained to prosecute the case.

It is pertinent to observe that the trial Court did actually acknowledge and admit that Appellants Counsel, K.A. Nwakuche Esq, had a fiat to prosecute the case C.O.P. Vs Anayo Ugwumba MOU/6C/2018 at the Magistrates Court. It rather sought Appellants Counsel to obtain a fresh fiat, or get the fiat re-validated before appearing at the High Court. The learned trial Court did not however, state when the fiat given to Appellants Counsel to prosecute the case, became invalid or out dated, to require re-validation or a fresh fiat.

I think the learned trial Court was in grave error, when it allowed the Respondents Counsel to mislead it into thinking that a Counsel who enjoys a fiat from Attorney General to prosecute a charge/case at the Magistrates Court, needs a fresh fiat to continue to represent the party (Appellant) at the High Court for the purpose of opposing application for the bail of the accused person (Respondent), or for the purpose of appeal against the decision of the Magistrate in the said case/charge.

The decisions of this Court and of the Apex Court on this issue are replete, and the trial Court even had the privilege of being referred to some.

For instance, the case of Ebe Vs Commissioner of Police (2008) All FWLR (Pt.406); C.O.P. Vs Ayi & Ors (2005) All FWLR (Pt.286) 679; Adewunmi Vs Plastex Nig. Ltd (1986)3 NWLR (Pt.32) 767 and Tukur Vs Gov. of Gongola State (supra), were all brought to the attention of the learned trial Court. (See page 49 of the Records of Appeal).

In that case of Ebe Vs C.O.P. (supra) the Supreme Court, on the lifespan of a fiat said:

once a fiat is granted to a Counsel to prosecute or defend a case, the validity of the fiat would continue throughout the duration of the case for which the fiat was granted. Per Akintan JSC.

In that case, Mohammad JSC, on the meaning of a fiat and its lifespan, said:

On the issue of expiration of fiat raised by the Appellants Counsel, the learned counsel should appreciate the connotation and efficacy of a fiat. Firstly, it is a Latin word which means, Let is be done. Technically, therefore, it denotes the grant or conferment of power on another, by a person having complete authority on the issue upon which the fiat was given. In matters of prosecution, the Attorney General of State or of the Federation can give such a fiat. A Commissioner of Police can delegate his officers or private legal practitioners to represent him in a case. The lifespan of such an authority or fiat may extend to the conclusion of the case in question.

And in the case of C.O.P. Vs Ayi & Ors (2005) All FWLR (Pt.286) 679, the Supreme Court said:

Lastly on the issue 1, the fiat stated was not necessary to re-validate same from the Attorney General before he could appear and appeal to the High Court.

And in Marcel Nnakwe Vs State (2013) 1 at 49 the Supreme Court, per Ogunbiyi JSC said:

As rightly submitted by the learned Respondents Counsel, the situation at hand did not require the Attorney General of the Federation to issue a fresh fiat before the law firm of Chief Afe Babalola SAN & Co. could proceed with the prosecution of the appeals arising from the charge. The learned Appellants Counsel, with respect, I hold, got it all wrong and was grossly misconceived. This is more so with the present appeal being interlocutory, the main case is therefore still pending at the trial Court; hence the extant conclusive notion held that the case for which fiat was issued is still pending and the need for a fresh fiat, does not, in the circumstance, arise. The Law Firm of Afe Babalola & Co. SAN, in other words, needs no fresh fiat to prosecute any appeal arising from the charge.

That case of Marcel Nnakwe Vs State (supra) has much in common with the case, at hand, whereof the real issue in contention is not also about the substantive charge or trial thereof, which is yet to commence. What is in issue is application for the bail of the accused person, following the order for his remand in prison by the learned Magistrate, who had no jurisdiction to try the accused person for murder, but sent his case file to the DPP for further action (possible arraignment of the accused in the High Court).

What is surprising to me is the fact that the Respondents Counsel, who should have been interested in the speedy determination of the bail application, in the interest of his client (Accused person), is the person stalling the determination of the bail application, by opposing the appearance of the Appellants Counsel to oppose the bail application. Meanwhile, the Respondent, who was ordered to be remanded in the prison custody by the Magistrate, since 4/5/2018 (And even before the arraignment on 4/5/18, he had been in Police Custody, having been arrested since 1/1/2018 pages of the Records of Appeal). The Respondent has therefore, been languishing in the prison, with no obvious hope of quick reprieve, as long as the bail application is stalled, and/or the DPP is yet to come up with a decision, whether to try him or let him out. The style and procedure adopted by the Respondents Counsel, in my view, rather appears to hurt his clients interest more.

There is no way it can be argued that the application for the bail of the Respondent was not an offshoot of the order of the learned Magistrate, remanding the Respondent in Charge No MUB/6C/2018; and that the Appellants Counsel was still exercising his mandate in the fiat, to prosecute the Respondent in Charge MUB/6C/2018, which is still pending (waiting for the advice/decision of the DPP in the matter). The fiat donated to the Appellants Counsel by the learned Attorney General of Imo State on 23/5/2018, stated as follows:

Charge No MUB/6C/2018

COMMISSIONER OF POLICE

VS

ANAYO UGWUMBA

AUTHORITY TO PROSECUTE

In exercise of the Powers conferred on me by Section 78(1) of the Magistrate Courts Law, Cap. 82, Laws of Eastern Nigeria, 1963, applicable to Imo State and of all other powers enabling me on that behalf I, MILETUS O. NLEMEDIM ESQ; Attorney General of Imo State of Nigeria, DO HEREBY AUTHORIZE K.A. NWAKUCHE ESQ Solicitor and Advocates of the Supreme Court of Nigeria, to prosecute the case of COMMISSIONER OF POLICE VS ANAYO UGWUMBA (CHARGE NO: MUB/6C/2018)

It is hereby specifically provided that the Authority includes the Power to amend and/or add to the charge, if necessary, but does not include the Power to add to the number of accused persons. It is further provided that the Prosecuting Counsel shall give the Honourable Attorney General a written brief on the stages of position of the case, bi-monthly and/or at any time it may be so required.

The above clearly spelt out the scope of the powers granted to Nwakuche Esq to prosecute the accused person Anayo Ugwumba in the Charge, and it ensured that the prosecuting Counsel maintained constant touch with the Attorney General by briefing the A.G., every two weeks or as required on the progress of the prosecution. It should also be noted that the fiat was issued on 23/5/2018, after the arraignment of the Respondent and order of rem and of Respondent on 8/5/2018.

The Bail Application, as earlier stated, was an off shoot of the matter in the charge No. MUB/6C/2018, and, in fact, carried the said charge Number and the parties: Commissioner of Police Vs Anayo Ugwumba. There is nothing in the application to suggest that the Hon. Attorney General was left in the dark about the progress of the case and the step Appellants counsel was taking to oppose the bail application.

It, therefore did not lie with Respondent's Counsel nor with the lower Court, hearing the bail application, to determine the validity of the fiat given to the Appellants Counsel, and to order Appellants Counsel to go for re-validation or renewal of the fiat, as the same was still subsisting and valid.

The lower Court had no business to consider the validity of the fiat at all, and it strayed outside its jurisdiction when it wasted its time and energy to consider the Fiat, rather that what was before it, the Bail Application. That was a misadventure and distraction which a Court is barred from undertaking. Lawal Vs Eleko & Ors (2010) LPELR 4426 (CA); Usman Vs FRN (2015) LPELR 40584 (CA); Obi Vs The A.G. Imo State (2014) LPELR 24280 CA A Judge must not be seen to descend into the arena of conflict in a trial to generate evidence or fact not canvassed or adduced by witness(es) or apparent on the face of the records before him, to decide a case, Ayoade Vs Spring Bank Plc (Pt.1396)93.

I think a Court cannot question a fiat given to a Counsel to prosecute a case. See The State Vs Ughanwa & Ors (2019) LPELR 48868 CA; Nnakwe Vs State (2013)18 NWLR (Pt.1385)1; Ebe Vs COP (2008) 4 NWLR (Pt.1076) 189; Ogboru & Anor Vs Uduaghan & Ors (2013) LPELR 20805 (SC).

In the case of Zakirai Vs Muhammad (2017) LPELR 42349 SC at 12 13, the Supreme Court held:

To start with, the issue of representation by Counsel is a matter of Counsel-client relationship, which this Court cannot get involved in See the case of Chief MKO Abiola Vs FRN (1996) LPELR 40 (SC).

See also Ahanonu Vs Chukwuemezie (2015) LPELR 40997 CA, it was held:

Where Counsel files processes and proceeds to announce himself in Court as appearing for the appellant or the respondent, the Court will presume that he is fully briefed to appear and therefore cannot turn round to complain of denial of personal representation of his client again.

In the case of Akalonu Vs Omokaro (2002) LPELR 7131 CA, this Court said:

it does not lie with the Appellant in the instant appeal to question the instruction or extent of the instruction of the learned counsel for respondent when a counsel appears in Court and states that he is instructed, the Court will not inquire into his authority to appear. Allen Vs Francis (1914) 3 KB 1065.

See also Tukur Vs Government of Gongola State (1988)1 NWLR (Pt.68)39, where it was held:

Courts usually and normally take Counsels word for it, when Counsel announces that he is appearing for a client. The Courts do not require Counsel to tender written evidence to prove that he had been so briefed. It will be a sad day for legal profession in Nigeria when Counsel can no longer be believed that he is appearing for a client and it does not matter if that client is a State Government when Counsel appears in Court and states that he is instructed, the Court will not inquire into his authority to appear See also FRN Vs Alioha & Ors (2016) LPELR 40940 (CA).

I see merit in this appeal and so resolve the issues for the Appellant and allow the Appeal. The decision of the trial Court in HOU/30/CM/2018 is hereby set aside, and the case remitted to the Learned Chief Judge of Imo State to be assigned to another Judge, to take the Bail Application. Parties to bear their Respective costs.

**AYOBODE OLUJIMI LOKULO-SODIPE, J.C.A.:**

I agree.

**IBRAHIM ALI ANDENYANGTSO, J.C.A.:**

I agree.