**GABRIEL TORWUA SUSWAM**

**v.**

**FEDERAL REPUBLIC OF NIGERIA & ANOR**

IN THE COURT OF APPEAL OF NIGERIA

ON WEDNESDAY, THE 19TH DAY OF FEBRUARY, 2020

CA/A/1007C/2019

**LEX (2020) - CA/A/1007C/2019**

**OTHER CITATIONS**

3PLR/2020/20 (CA)

(2020) LPELR-49524(CA)

**BEFORE THEIR LORDSHIPS**

STEPHEN JONAH ADAH, JCA

PETER OLABISI IGE, JCA

EMMANUEL AKOMAYE AGIM, JCA -end!

**BETWEEN**

GABRIEL TORWUA SUSWAM - Appellant(s)

AND

1. FEDERAL REPUBLIC OF NIGERIA

2. OMODACHI OKOLOBIA - Respondent(s)-end!

**ORIGINATING COURT(S)**

FEDERAL HIGH COURT [Holden in Abuja, O.E. Abang J. Presiding]-end!

**REPRESENTATION**

J.B. Daudu, SAN with him, D.K Lorhemba, SAN, A. Adedeji Esq., M.J. Sule Esq., Emmanuel Oni Esq. and K. F. Umenji Esq. - For Appellant

AND

O.A. Atolagbe, Esq., with him, O.D. Mese Esq. - for 1st Respondents

Raymond Ashikem Esq., with him, Nabila S. Gaduya Esq. - for 2nd Respondent - For Respondent-end!

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

CRIMINAL LAW AND PROCEDURE – ADMINISTRATIVE TRANSFER OF CRIMINAL CASES - SECTION 98 OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT:- Power of the Chief Judge of a High Court to transfer a case – Basis of – Conditions precedent - Limitations on – Propriety/validity of effecting a recusal of a judge and transfer of part-based case based on complaints of third parties not before the court in the specific case

CRIMINAL LAW AND PROCEDURE - ADMINISTRATIVE TRANSFER OF CRIMINAL CASES - SECTION 98 OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT:- Trial Court Judge – Improper recusal of self from an ongoing case – Validity of for the purposes of activating transfer of the ongoing case pursuant to Section 98 of the ACJA to another judge – Need for there to be very serious and exceptional circumstances connected with actual parties before the Court – Effect of failure thereto

ADMINISTRATIVE AND GOVERNMENT LAW - JUDICIARY:- Judge of a High Court – Directive from the Chief Judge to hear a matter de novo – Whether Chief Judge’s directive can under any circumstance be ruled unlawful by that judge so as to reject the directive for invalidity - Section 19(3) and (4) of the Federal High Court Act – Administrative unity of the High Court in review

ETHICS – JUDICIAL OFFICER:- Accusations of corruption against a judge in connection with a trial made by a third party who is not a party to the trial – Unilateral recusal by judicial officer consequently – Propriety and legality/validity of same under S. 98 of the ACJA

ETHICS – JUDICIAL OFFICER:- Recalcitrant recourse to recusal on the part of a judicial officer – Implications for the expeditious and economic trial of criminal cases – Objective criteria for determining the allegations and expressions of lack of confidence in the impartiality of the Judge that can result in a Judge recusing himself from hearing or continuing the hearing of a case – Duty of a judge to abide therewith – Legality of failure thereto

CONSTITUTIONAL LAW AND HUMAN RIGHT – FAIR HEARING:- Power of Chief Judge to assign or re-assign cases to Judges of the Court – Basis of – Reassignment of part-heard matter to another judge for trial de novo - When would be deemed unlawful and a breach of fair hearing – Duty of appellate court thereto

MEDIA AND LAW:- Whimsical and malicious allegations made by online publications/websites not registered under Nigerian law – Where target of such allegations are judicial officers – Implications for justice administration – Duty of targeted judge where such allegations are made by third parties not before the court and where parties before the court express confidence in the impartiality and credibility of the court to conclude the matter -end!

**PRACTICE AND PROCEDURE ISSUES**

ACTION - ACADEMIC OR HYPOTHETICAL QUESTION(S)/ISSUES/SUIT/EXERCISE:- Commencement of trial de novo of a part-heard matter as ordered by Chief Judge following recusal of original judge tasked with the case– Appeal against decision of judge tasked with trial de novo to accept and run the case based on recusal letter of original judge – Appeal arising therefrom - Whether amounts to an academic exercise upon proof that trial de novo had commenced in earnest

COURT - HEARING: Unilateral recusal of Judge of a part-heard matter – Where done suo motu without notice to the parties and the affording of opportunity for them to address court on the issue – Legality and validity of

ACTION - HEARING: Judge of a High – Directive from the Chief Judge to hear a matter – Whether Chief Judge’s directive can under any circumstance be ruled unlawful by that judge as to reject the directive through a formal order as to its validity - Section 19(3) and (4) of the Federal High Court Act – Administrative unity of the High Court in review

APPEAL - UNAPPEALED FINDING(S)/DECISION(S): Effect of failure to appeal against specific findings of facts of Court

COURT - RECORD(S) OF COURT:- Records not forming part of evidence introduced ny parties to the suit before the Court – When would be deemed relevant and part of the record - Whether the Court is entitled to look at its file or record and make use of the contents including records not introduced as part of evidence by parties

COURT - TRANSFER OF CASES: Section 98(3) and (4) of Administration of Criminal Justice Act – Powers of the Chief Judge to assign or reassign part-heard cases – Basis and limits of

INTERPRETATION OF STATUTE - LITERAL RULE OF INTERPRETATION:- Intention of the legislature – Literal rule of interpretation - When words must be given their plain and ordinary meaning

INTERPRETATION OF STATUTE - SECTION 98 OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT: Interpretation of -end!

**MAIN JUDGMENT**

EMMANUEL AKOMAYE AGIM, J.C.A. (Delivering the Leading Judgment):

This appeal No. CA/A/1007C/2019 was commenced on 7/10/2019 when the appellant herein filed a notice of appeal against the judgment of the Federal High Court in criminal case No: FHC/ABJ/CR/362/2015 delivered on 30/9/2019 by O.E. Abang J. The notice of appeal which contains 10 grounds of appeal, was with leave of Court amended on 9-12-2019. The amended notice of appeal also contains 10 grounds of appeal.

The appellant and 1st respondent filed their respective briefs as follows- appellant’s brief, 1st respondent’s brief and appellant’s reply brief.

Learned counsel for the 2nd respondent stated during the hearing of this appeal that the 2nd respondent did not file a brief.

The appellant’s brief raised the following issues for determination-

1. Whether contrary to the decision of the Hon. Abang J of the Federal High Court Abuja, the Administration of Criminal Justice Act permits the transfer, the abandonment or relinquishment of a part-heard criminal case by its presiding Judge for any reason whatsoever, be it at the instance, instigation or with the support of the prosecution or defence or even at the instance of the Court itself? (Issue No1) (Grounds 1, 2, 3 and 10 of the notice of appeal).

2. Whether the resort by the trial Court to cloistered examination of documents in the case file in this matter as justification for the transfer of the case file by the Judges involved therewith is correct or justified in law and if answered in the negative whether the case file should not be returned to the Hon. A.R. Mohammed J for him to conclude adjudication and determine the charge one way or the other.

3. Whether the decision of Abang J being appealed against is in accord with the letter and spirit of the administration of Criminal Justice Act which prevents nomadic or itinerant movement of cases from one Court to the other and the clear absence of any order of the Hon. A.R. Mohammed J lawfully recusing himself from charge No. FHC/ABJ/CR/362/2015 between Federal Republic of Nigeria v. Gabriel Suswam and Omadachi Okolobia, the hearing notice showing that the matter has been transferred by the Honourable Chief Judge of the Federal High Court and every step taken thereafter are not:

(i) Unlawful

(ii) Breach of the applicants right to fair hearing and equality of arms with the prosecution.

(iii) Breach of Section 36(6) of the Constitution of the Federal Republic of Nigeria.

(iv) Breach of numerous provisions, particularly Sections 1(1) and 396(7) of the Administration of Criminal Justice Act 2015.

(v) Illegal, unconstitutional and therefore null and void? (Issue No 3) (Grounds 7, 8 and 9 of the Notice of Appeal).

The 1st respondent’s brief raised one issue for determination as follows-

“Whether the learned trial judge was not right in refusing to decline jurisdiction when this case was reassigned to his Lordship Hon. Abang, J. after Hon. A.R. Mohammed, J. had voluntarily withdrawn from the case the second time. (See grounds 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Notice of Appeal)”.

The 1st respondent had filed a notice of preliminary objection to the appeal which it reproduced and argued at pages 5 - 16 of its brief. The ground for the objection is that leave was not first obtained to file this interlocutory appeal on grounds of mixed law and facts and that therefore the appeal is incompetent. This objection became baseless and unnecessary when the appellant by a motion on notice filed on 16/12/2019 applied for, and was granted, leave to appeal on the grounds of mixed law and facts in grounds 1, 4, 5, 6, 7, 8, 9 and 10 of the amended notice of appeal. The objection is therefore hereby struck out.

I will determine this appeal on the basis of the issues raised for determination in the appellant’s brief.

I think that they can be conveniently determined together. Therefore I would consider them together as the appellant has done.

I have carefully read and considered all the arguments in the respective briefs on these issues.

The appellant and 2nd respondent were arraigned on 10/11/2015 in the trial Court presided over by Hon. Justice A.R. Mohammed. Their trial proceeded thereafter and PW1, PW2, PW3 and PW4 conclusively testified as witnesses for the prosecution. On 22/5/2019, His Lordship A.R. Mohammed J. granted the appellant’s application for adjournment thusly-

“Application for adjournment by 1st Defendant’s counsel is granted. It is hoped that the 1st Defendant’s counsel will be ready for the continuation of the trial on the next adjourned date. This case is therefore adjourned to 9th and 10th of July, 2019 for continuation of trial.”

Proceedings in the criminal case in the trial Court however resumed before another Judge, Honourable Justice O.E. Abang on 24/9/2019. On this date Learned Counsel for the prosecution informed the Court that they got hearing notice that the case was to be heard by O.E. Abang J, that since the case was coming up before His Lordship for the first time, and would as a result start de novo, he was applying that the defendants be arraigned afresh. Learned Counsel for the appellant objected to the said application for the arraignment of the defendants on the ground that they had filed an application on 23/9/2019 challenging the resumption of proceedings in the case before O.E. Abang J and contending that the trial Court presided over by O.E. Abang J had no jurisdiction to continue the proceedings in the case.

The appellant’s said motion on notice filed on 23/9/2019 applied for-

“1. An Order of this Honourable Court declining jurisdiction in respect of CHARGE NO: FHC/ABJ/CR/362/2015 BETWEEN FEDERAL REPUBLIC OF NIGERIA V. GABRIEL TORWUA SUSWAM AND OMODACHI OKOLOBIA pending part-heard under the Administration of Criminal Justice Act 2015 before the Honourable A.R. Mohammed J. of the Federal High Court Abuja Judicial Division.

2. An Order of this Honourable Court returning the case file in CHARGE NO: FHC/ABJ/CR/362/2015 BETWEEN FEDERAL REPUBLIC OF NIGERIA V. GABRIEL TORWUA SUSWAM AND OMODACHI OKOLOBIA to the Honourable the Acting Chief Judge of the Federal High Court of Nigeria Hon. Justice John Tsoho to return the afore-described file to Hon. Mohammed J where the matter is extensively part-heard.

3. And for such orders as this Honourable Court may deem fit to make in the circumstances of this case.”

The 2nd respondent filed a similar motion on notice on 25-9-2019 praying for-

“1. An Order of this Honourable Court declining in respect of CHARGE NO: FHC/ABJ/CR/362/2015 BETWEEN FEDERAL REPUBLIC OF NIGERIA V. GABRIEL TORWUA SUSWAM AND OMODACHI OKOLOBIA pending part-heard under the Administration of Criminal Justice Act 2015 before the Honourable A.R. Mohammed J., of the Federal High Court Abuja Judicial Division.

2. An Order of this Honourable Court returning the case file in CHARGE NO: FHC/ABJ/CR/362/2015 BETWEEN FEDERAL REPUBLIC OF NIGERIA V. GABRIEL TORWUA SUSWAM AND OMODACHI OKOLOBIA to the Honourable Acting Chief Judge of the Federal High Court of Nigeria, Hon. Justice John Tsoho to return the afore-described file to Hon. Mohammed J., where the matter is extensively part-heard.

3. And for such orders as this Honourable Court may deem fit to make in the circumstances of this case.”

The trial Court, after considering the affidavits in support of the applications, the counter affidavits in opposition of the applications and the written addresses of all sides, rendered a ruling on 30/9/2019 dismissing the applications, ordered the trial of the case de novo and a fresh arraignment of the defendants the same day.

The defendants were accordingly so arraigned on 30-9-2019. Following their respective plea of not guilty to the counts of offences in the charge, the case was adjourned to 29th, 30th and 31st October, 2019 for trial.

During the hearing of this appeal, Learned Counsel for the 1st respondent informed this Court from the Bar that the trial of the defendants by the trial Court presided over by O.E. Abang J., is ongoing and that so far, three witnesses have testified for the prosecution. Learned SAN for the appellant agreed with the above factual statement of Learned Counsel for the 1st respondent. Upon this information, this Court asked the parties to address it on whether the fact that the trial de novo before O.E. Abang J. is on-going, has progressed to an advanced stage and three witnesses have already testified for the prosecution, has not rendered this appeal unnecessary and academic.

Learned SAN for the appellant has argued that the appeal is still relevant, valid and not rendered an academic exercise by the fact that three prosecution witnesses have already testified in the ongoing trial de novo because the appeal contends that since the case did not move from A.R. Mohammed J to O.E. Abang J. as required by the Administration of Criminal Justice Act, the trial Court presided over by O.E. Abang J had no jurisdiction to entertain the case and conduct proceedings therein, that the proceedings already conducted de novo including the testimonies of the three prosecution witnesses are a nullity and that the de novo trial would rob the appellant the advantage it has gained from the 1st respondent declaring its PW4 a hostile witness and cross examining him.

Learned Counsel for the 1st respondent simply argued that the appeal is rendered academic as there is no need for sending the case back to A.R. Mohammed J for retrial.

Even though this issue strikes at the competence of this appeal, and therefore should be dealt with first before delving into the merit of the appeal, I prefer to deal with it after I have considered and determined the merits of the issues raised for determination in this appeal because its determination preliminary would prejudge some parts of the merit of this appeal.

It is glaring from the record of this appeal that the parties had no notice of how and why the criminal case that had been adjourned by A. R. Mohammed J for continuation of trial became listed before O.E. Abang J. for hearing on 24/9/2019 and rightly contended that they were not aware of any order by A. R. Mohammed J. recusing himself from the case or an order transferring the case from A. R. Mohammed J to O. E. Abang J. It was the ruling of the trial Court determining their objection to the hearing of the case by O.E. Abang J. that informed them how the case moved from A.R. Mohammed J. to O.E. Abang J. The part of the said ruling containing this information reads thusly-

“The file, I perused its contents and realised that this matter was formerly before A.R. Mohammed J. of the Federal High Court bench Abuja division for adjudication. Before Mohammed J, 4 witnesses have been called, the 1st to 3rd witnesses have testified in chief and cross examined. The 4th witness is currently in the witness box testifying.

In the Court’s file, I stumbled on a letter written by A.R. Mohammed J. addressed to the Honourable Chief Judge of this Court dated 5/7/2019, informing His Lordship of his withdrawal from the matter, that the matter be re-assigned to another Judge for adjudication.

Before I go further in this matter, I want to quickly state that a Court of Law has jurisdiction to look at the contents of the case file and make use of any document therein in order to do justice in the matter. This is so because none of the parties in this matter. Therefore, it is lawful for the Court to make reference to the letter which is document in the file case relevant to the proceedings in order to do justice in this matter. The letter by A.R. Mohammed J. addressed to Honourable Chief Judge of this Court forms part of the records of the Court. Though the letter was not placed before the Court in any of the affidavits filed by the parties but they have made reference to the issue arising from the letter in the course of their argument. A portion of the letter is hereby reproduced for ease of reference starting from the 2nd paragraph of page 2 of the letter. Mohammed J said-

“Now another disturbing incident has occurred concerning the case. On 4th June 2019 the same Sahara Reporters have again published another report alleging that in June 2019, the 1st Defendant Gabriel Tarwua Suswam has bribed me with foreign currency (equivalent of 500 million) at the Transcorp Hilton Hotel, Abuja to quash the charge against him when the case comes up on 9th and 10th of July 2019. What I find very disturbing is the continuous attack on my integrity by Sahara Reporters on this case.

How can a Judge quash a case on a date when the trial is still ongoing. The prosecution is still calling evidence and has not close its case. This therefore makes it absurd to allege that a charge could be quashed at a stage when trial is still ongoing. Let me state categorically that there is no basis for me to continue presiding over this case. This is because if at the end of trial, the 1st Defendant is discharged or acquitted, the conclusion is that he has bribed me to do so. If on the other hand, the 1st Defendant is found guilty and convicted, the conclusion is that I did so to prove that I did not receive bribe from him. From whatever angle one looks at the situation it will be proper to recuse myself from handling this case. I therefore remit the case to your Lordship for re-assignment to another Judge in the overall interest of Justice.

Based on this letter addressed to the Honourable Chief Judge, Mohammed J. recused himself from the matter. The Chief Judge then in the discharge of this administrative functions re-assigned the matter to this Court as presently constituted.”

Learned SAN has argued that the Hon. Abang J. erred in law when he suo motu raised and relied on the contents of a letter dated 5th July 2019, not forming part of the record of the trial Court or the evidence of parties (having not been filed at the Registry of the FHC) and submissions of counsel in the Motion before the Court in arriving at his decision that the Hon. A.R. Mohammed J. before whom the matter was part-heard (having taken 4 of the Prosecution witnesses) had a basis and was indeed justified to have voluntarily recused himself from the trial of the Defendants, that the letter in issue was not brought to the attention of any of the parties either by Mohammed J. or by Abang J. and same did not form part of the documents filed and relied upon by the Parties in evidence in Appellant’s Application before the lower Court, that consequently, Hon. Abang J. having found that none of the parties before the lower Court especially the Appellant had any knowledge or notice of the letter referred to above, was in error to have considered same in determining the application before the Court, that this kind or style of adjudication, i.e. embarking on a voyage of discovery outside what the parties have placed before the Court’s is wrong, that indeed, both Hon. Abang J. himself and Hon. Mohammed J. fell into the same error when they referred suo motu to the contents of an alien document and used it as justification for Mohammed J’s irregular and unconstitutional recusal from the case.

Learned Counsel for the 1st respondent did not respond to the above argument.

The argument of Learned SAN for the appellant that the letter dated 5th July, 2019 did not form part of the record of the trial Court in the case before it is incompetent and invalid because there is no ground of this appeal complaining against the specific holding of the trial Court that the letter is a document in the case file relevant to the proceedings. In the Court’s file, I stumbled on a letter written by A.R. Mohammed J. addressed to the Honourable Chief Judge of this Court dated 5/7/2019, informing His Lordship of his withdrawal from the matter, that the matter be re-assigned to another Judge for adjudication is document in the file case relevant to the proceedings in order to do justice in this matter. The letter by A.R. Mohammed J. addressed to Honourable Chief Judge of this Court forms part of the records of the Court. Though the letter was not placed before the Court in any of the affidavits filed by the parties but they have made reference to the issue arising from the letter in the course of their argument. By not appealing against this holding, the appellant accepted it as correct, conclusive and binding. See Iyoho V Effiong (2007) 4 SC (Pt.iii) 90. Having accepted it as correct, conclusive and binding, he cannot competently and validly argue contrary to the holding. See Dabup V Kolo (1993) 12 SCNJ 1.

Since the said letter of A.R. Mohammed J. is a document in the file of the case and is relevant to the issues arising for determination from the applications of the defendants objecting to the hearing of the case by O.E. Abang J, it was validly relied on by O.E Abang J to determine the issue of how the case file moved from A.R. Mohammed J to him. The argument of Learned SAN that the trial Court should not have relied on the said letter because it was not brought to the attention of the parties to the case and therefore none of the parties had knowledge or notice of it is not correct. A Court can rely on every record in the file of the case before it in determining the issues raised by the parties for its determination. The record of a case includes the recordings of the daily proceedings, the processes filed in the case, the endorsements and documents in the case file concerning the administrative actions of the Judge or the registry staff concerning the case. Some of these administrative actions may not be brought to the notice of the parties to the case. In our present case, one of such administrative actions of the Judge has created a situation where a criminal case whose hearing before him had progressed to an advanced stage is now being heard de novo by another Judge. In determining the issue of how and why the said case, adjourned for continuation of hearing by A.R Mohammed J, is now before O.E. Abang J, the record in the case file showing why and how the case came before him was correctly relied on by Abang J to determine the issue of how and why the case adjourned for continuation of hearing by A.R. Mohammed J moved to him. He could not have validly ignored and disregarded the letter in the case file that shed light on how the file moved to him from A.R. Mohammed J in determining the issue of how and why the file so moved, even though the letter did not form part of the affidavit evidence adduced by the parties before him. This is because it is part of the record of the case file.

The trial Court found as a fact that based on this letter addressed to the Honourable Chief Judge, Mohammed J. recused himself from the matter and that the Chief Judge then in the discharge of his administrative functions re-assigned the matter to O. E. Abang J. This finding is not challenged by any ground of this appeal. It is therefore accepted by the appellant as correct, conclusive and binding on how the case file moved from A.R. Mohammed to O.E. Abang J. See Iyoho V Effiong (2007) 4 SC (Pt.iii) 90.

It is obvious from this unchallenged finding that O.E. Abang J did not unilaterally take over the case from A.R. Mohammed J. It was reassigned to him by the Chief Judge of the Federal High Court in exercise of his power under Section 19(3) and (4) of the Federal High Court Act which provides that -

“(3) The Chief Judge shall determine the distribution of the business before the Court amongst 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.”

Let me now consider the issue of whether it was right and lawful for A.R. Mohammed J who was hearing the criminal case and had adjourned it after the conclusion of PW4’s testimony for continuation of hearing, to have suo moto recused himself from continuing to hear the case and returned the case file to the Chief Judge for reassignment without notice to the parties to the case. Although the decision of A.R. Mohammed J recusing himself from continuing the trial of the case is not the specific subject of this appeal, it is relevant to the determination of this appeal because the ruling of O.E. Abang J of 30/9/2019 appealed against here, essentially considered the lawfulness and propriety of the said recusal and the resulting reassignment of the case by the Chief Judge to O.E. Abang J as justifying his trial of the case. The reliance on the recusal by O.E. Abang J in his ruling of 30/9/2019 constitutes the crux of the complaints in grounds 1, 2, 3, 4, 6, 7, 9, 10 of his appeal.

I agree with the submission of the Learned SAN for the appellant that it was wrong and unlawful for A.R Mohammed J to have surreptitiously and suo motu recused himself from continuing the hearing of the criminal case after 4 witnesses had testified for the prosecution and returned it to the Chief Judge of the Federal High Court for reassignment to another Judge without notice of the parties to the case and without affording them the opportunity to address him on that issue before he recused himself.

A Judge of the Federal High Court can without an application from any of the parties to a case before him or her recuse himself or herself from the case by virtue of Section 22(1) of the Federal High Court Act Cap. F12 Vol.6 Laws of the Federation 2004 which provides that “A Judge of the Court may at any time or that any stage of the proceedings before final judgment, either with or without application from any of the parties thereto, transfer such cause or matter from before him to any other judge of the Court”. But this power cannot be exercised according to the whims of the Judge or in any manner. Since the trial of the case was ongoing and the matter had been adjourned from 22nd May 2019 to 9th and 10th July 2019 for continuation of trial, A.R. Mohammed J’s recusal or withdrawal from the case is a step or process in the case that sets aside his order adjourning the case for continuation of trial on 9th and 10th July 2019. Such a step or process by a Judge in the ongoing trial proceedings in a case before him must be done in open Court during the proceedings and not in the secrecy of his office without notice to the parties in the ongoing proceedings. This is so by virtue of Section 36(3) and (4) of the Constitution of the Federal Republic of Nigeria which requires that-

“(3) The proceedings of a Court or the proceedings of any tribunal relating to the matters mentioned in Subsection (1) of this section (including the announcement of decisions of the Court or tribunal) shall be held in public.

(4) Whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a Court or tribunal.”

By virtue of these provisions, every part of an ongoing proceedings before a Court must be in public and not in secrecy. See N.A.B Ltd v Barri Engineering Nig Ltd (1995) LPELR - 2007 (SC) in which the Supreme Court held that “Public confidence in the administration of justice can be weakened by secrecy. Even handed justice is best done when it is done in the public gaze." See also the decision of this Court in Okpokiri V Okpokiri.

As it is, the failure of A.R. Mohammed J to give the parties the opportunity to be heard on the need for his recusal or withdrawal from continuing the trial of the case before he recused himself therefrom and returned the case file to the Chief Judge for reassignment to another Judge for trial de novo, violates the fundamental rights of the parties given to them by S.36(1) of the 1999 Constitution. They were entitled to be heard before being deprived their right to the progression of the trial proceedings that had reached an advanced stage and being imposed with the obligation to start the trial afresh and suffer more financial and other costs than they would have suffered if the trial had continued before A.R. Mohammed J. The criminal trial having commenced and reached an advanced stage, the parties therein had acquired a right to the progression and continuation of the trial. Neither of the parties to the proceedings should suffer a deprivation of that right without a hearing, especially, where, as in this case, the defendant has secured an advantage from the prosecution cross-examining its PW4, which advantage may be lost if the trial restarts. The decision of a Judge to deprive the parties of that right by recusing himself from continuing the trial can only be made after affording all the parties the opportunity to be heard on the need for his or her recusal. I do not agree with the argument of Learned Counsel for the 1st respondent that A.R. Mohammed J was right in suo motu recusing himself from trying the case without hearing the parties on the issue and that he need not do so.

The decision of this Court in Estisione H. Nig Ltd & Anor v. Osun State Government & Anor (2012) LPELR - 7938 (CA) relied on by Learned Counsel as stating that a Judge can suo motu recuse himself from an ongoing trial without hearing the parties on the need for such recusal did not decide so. This Court in that case restated the grounds upon which a Judge can recuse himself from a case. The exact text of the core of that decision reads thusly-

“This case is unique in the sense that it is not a case where a trial Judge has been asked to disqualify himself from further participation in the proceedings or where, after a judgment or ruling had been given there was an allegation of likelihood of bias. Rather the learned trial Judge took the initiative and disqualified himself suo motu. Ordinarily this should not cause any aggravation because ethically, a Judge has a duty to recuse himself from proceedings where the factors enumerated by learned counsel for the appellants and set out earlier in this judgment i.e. pecuniary or proprietary interest, relationship with one of the parties, a previous expression of an opinion about the subject matter of the dispute, a previous expression of partisanship by expressing opinions antagonistic to or favourable to one of the parties before him, exist. Section C Rule 1 of the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria provides that a Judicial Officer should disqualify himself in a proceeding in which his impartiality might reasonably be questioned. Several instances are set out therein, including those enumerated above. The instances are not exhaustive. There is no doubt, as held in the case of Ajileye Vs Fakayode (1990) 5 NWLR (148) 92 cited by learned counsel for the appellants, that by virtue of Section 6(6) (b) of the 1999 Constitution a party who submits his civil rights and obligations shall not be deprived of that right where the Court has jurisdiction to entertain his claim unless the trial Judge is legally disqualified from taking up the matter.”

The reasons A.R. Mohammed J stated in his letter of 5/7/2019 to the Chief Judge for his recusal from continuing the trial of the case do not justify his said recusal in law.

Upon being assigned a case file to adjudicate upon, a legal duty is imposed upon the Judge to try the dispute in the case diligently and expeditiously, within a reasonable time to its conclusion, dispassionately without fear or favour. Although S.22 of the Federal High Court allows for the transfer of the case by the Judge to another, it would amount to an abdication of his judicial duty, if he suo motu or upon the application of any of the parties stops the continuation of proceedings in the case, and withdraws from continuing to adjudicate upon it and send it back to the Chief Judge for reassignment or transfer it to another Judge for reasons that are not permitted by law. The legally recognised and permitted reasons are that the facts in the case establish the existence of a real likelihood that he or she would be partial or biased in the adjudication of the case, that there is a feature in the case, such as the existence of some pecuniary or other interest of the Judge in the subject matter of the case, that make it impossible for justice to be seen to have been done or that provide a reasonable basis for suspecting that the impartiality and independence of the Court as constituted or presided over by the Judge is not guaranteed. See Womiloju & Ors V. Anibire & Ors (2010) 10 NWLR (1203) 545 in which the Supreme Court restated the law on the point thusly-

“Judicial bias is usually insufficient to justify disqualifying a judge from presiding over a case. To justify disqualification or recusal the Judge’s bias usually must be personal or based on some extrajudicial reason. In the case of Kenon v. Tekam (2001) 14 NWLR (pt. 732) pg. 12, Bias is defined as- “An opinion or feeling in favour of one side in a dispute or argument resulting in the likelihood that the Court so influenced will be unable to hold an even scale” where an allegation of bias is established by evidence or acknowledgement, it disqualifies a judge from participating in the matter placed before him.

An allegation of bias or likelihood of bias against a judge is usually a very serious matter not to be taken with nonchalance. It must be supported by clear, direct, positive, unequivocal and cogent evidence from which real likelihood of bias could be inferred and not mere suspicion. For an allegation of Judicial bias against the person of a Judge to succeed, the accuser must establish his allegation on some extra judicial factors/reasons such as where such factors or reasons are absent such “perceived” judicial bias is insufficient to justify disqualifying a judge from participating in a case which is properly brought before him for adjudication. The allegation cannot be founded, on mere conjecture or hearsay. On the test for determining real likelihood of bias, the Court does not look at the mind of the Justice himself or at whoever it may be who sits in a judicial capacity. It does not look to see if there was real likelihood that he would, or did in fact favour one side at the expense of the other. The Court looks at the impression which would be given to the other people. Even if he was as impartial or could be, nevertheless if right minded persons think that in the circumstances there was a real likelihood of bias on his part, and then he should not sit. And if he does sit, his decision cannot stand. The reason is plain enough. Justice is rooted in confidence and confidence is destroyed when right-minded people go away thinking that the judge was biased. Where the conduct of a judge or tribunal is impugned, the Court or tribunal is not concerned with whether judge/adjudicator was in fact biased. Where even the evidence adduced has pointed strongly to the inference that a judge or adjudicator was infact biased, the Court confines itself to the determination of whether a likelihood of bias has been established. The question is always answered by inference drawn from the circumstances of the case. The reason for this attitude of the Court is that it would be unseemly for the Court to purport to pry into the state of mind of any judicial officer.”

Allegations in an online news medium that in June 2019 the Judge trying the criminal case has been bribed with foreign currency in the sum equivalent to 500 million naira by the appellant to quash the charge against him when it comes up on 9th and 10th July 2019, which allegation is not made by any of the parties to the case and has been held by the same Judge to be false, spurious and absurd, not being established, therefore remaining mere allegation, do not show the existence of a reasonably real likelihood that the Judge would be biased or partial in the trial of the case.

In any case, non of the parties applied for the recusal of the Judge from continuing the hearing of the case. The proceedings of the trial Court on 6-6-2016 show that the same A.R. Mohammed J had on that day recused himself from continuing the trial of the case for a similar reason. The proceedings of that day read thusly-

Court- My attention has been drawn to a publication in the Sahara Reporters of Friday, the 27th of May, 2016 alleging that the 1st Defendant in this matter had entered a financial agreement with me to give him a soft landing in the trial of this case. I now call upon both the prosecution and the defence to comment on this development, before the Court could take a decision on this issue.

Jacobs SAN- It is a pity that such report was made. I have noted that no Court is singled out in Nigeria today from this kind of allegation. If it is every publication that the Court can disqualify itself, then the Court would not do any work. Personally, I did not see anything wrong in the way this case is being handled. We have full confidence on the Court because it is handling the matter professionally. It will cost government money because we have brought witnesses from Lagos and Benue. It will therefore prejudice the prosecution. I urge the Court to conclude this case.

Daudu SAN- I urge the Court not to take anything Sahara reporters said seriously. They have made allegations against me personally. If the Court refuse to handle the case now, then it is a cheap blackmail. Sahara reporters have no address where you can serve them process. The only way the Court can disqualify itself if the Court prejudged the case or there is proof of pecuniary interest. I therefore associate myself with the prosecution that it would be tedious to start the case all over again.

Onoja Esq- I agree in total with the submission of the learned senior counsel for the prosecution and the defence. My own view is that the publication is the handiwork of mischief makers bent on truncating this trial. It would work serious hardship on the 2nd Defendant if the Court recluse itself from the trial of the case. I align myself with the learned silk and urge the Court to continue with the case. This is because we have a lot of respect on the integrity of this Court.

Court- It is correct that the publication ought not be taken seriously because it is the trend these days, that is, to accuse a Judge handling a matter of all sorts of wrongdoing. It has happened to the learned justices of the Supreme Court of Nigeria and the Court of Appeal by the same Sahara reporters. In comparison to these eminent jurists, Justice Mohammed, presiding at this level, is certainly an inconsequential personality.

However, my worry, and which is fundamental, is “justice or the fairness in it”, is not as the judge, or the prosecution or the defence has seen it. No. it is a cardinal principle of the fair trial that a reasonable man sees it as being fair. The allegation is now in the “public domain”. Whatever this Court would do eventually, may be capable of different interpretation by the “reasonable man out there” for or against the publication. Let me illustrate. If the Defendants are convicted at the end of the trial, whatever evidence the prosecution brought to secure the conviction would be lost on the reasonable man, because, as far as he is concerned, the publication has intimidated the Judge to hand down the conviction.

If, on the other hand, the Defendant are not convicted, the same reasonable man would then say, “we know of the allegation long ago”. In this situation, the judge is caught-off in-between, so that whatever his decision turns out to be, the reasonable man or public may not appreciate it.

What should be considered and borne in our mind is that the allegation came in the course of the case. I agree that the matter has gone a bit far, but it is still the case of the prosecution the Court is considering. My honest and sincere view is that it is better to excuse myself from this case rather than continue with it. Parties should appreciate the fact that the allegation in a way has affected the institution of the Federal High Court, therefore it is better to allow the matter go before another judge to start afresh than to remain in this Court.

It is for the above reasons that I hereby remit the case file of this matter to the Hon. Chief Judge for re-assignment to another Judge in the overall interest of justice.

The record of this appeal contain the decision of the Chief Judge rejecting the recusal and returning the file back to A.R. Mohammed J to try. The decision reads thusly-

I have seen your representation on this matter. The prosecution team and the defence team led by Rotimi Jacobs and J. Daudu came to my chambers and intimated me of this development and they expressed confidence in you to do justice to this case. The prosecution also said that it will cause hardship for him to have get his witnesses to testify again. I quite agree with him and the defence counsel that it will cause hardship to the prosecution and the defence counsel to have to start this case de novo which had gone far.

We should not be cowed down by sponsored Newspaper publications in the performance of our duties. I therefore see no reason why you cannot sit on this case to its logical conclusion without fear or favour.

I hereby return this case file to your lordship to hear and conclude the matter.

The above reproduced records of this appeal show that all the parties expressed their confidence in the impartiality of the Judge in the matter and urged him to go on with the trial of the case, that A.R. Mohammed J himself held that the allegations do not deserve being taken seriously and the Chief Judge said there was no reason why he cannot continue the trial of the case to its logical conclusion and that Judges should not be cowed down by sponsored newspaper publications of obvious falsehood in the performance of their judicial duties. Such whimsical and malicious allegations, by faceless and anonymous persons in an on-line medium, considered by all parties to be false and adjudged by the Judge against whom they were made as false, absurd and not serious cannot be a legally recognised basis for recusing himself from continuing with the trial of the case.

There is no doubt that allegations of judicial corruption against a Judge in the news media, even though obviously false, baseless, illogical, unreasonable and malicious, easily disrepute the Judge as it generates odium against him by a pubic that is more excited by such allegations. As a popular Woloff proverb says, “sai sai (the fool) has not spoken the truth, but he has spoilt the mind”. Such allegations are bound to traumatise and psychologically harass the Judge and his or her family. But should Judges simply abdicate their judicial duties whenever such allegations are made against them. Certainly not. If that is allowed, no case would be conclusively tried by any Judge. While suffering the psychological pain of such allegation in any case, their oath of office, code of judicial conduct and the Constitution binds them to continue the hearing of the case to conclusion, if there is no reasonable basis for any of the parties to the case to fear that he is likely to be biased or partial. The fear the allegation has generated in the mind of the Judge cannot be a valid basis for the Judge to abandon his judicial duty to try the case by recusing himself from trying the case. The fear nursed by the Judge is whimsical and baseless since he has adjudged the allegations as false, baseless and absurd and both parties insist that they have confidence in the impartiality of the Judge. In any case, the Judge’s fear that the parties are likely to suspect his impartiality is not recognised in law as a valid ground for his refusal to do his judicial work. The law requires the Judge to hear and determine all cases before him or her without any fear. The refusal of A.R. Mohammed J to continue the trial of the case cannot be justified in law and in fact.

It is noteworthy that on 6/6/2016 when A.R. Mohammed J sought to recuse himself from trying the case, all parties pleaded with him to continue the trial of the case, assured him of their confidence in his impartiality and drew his attention to the fact that they would suffer hardship if the matter is tried de novo before another Judge. When he did not heed their pleas and recused himself and returned the case file to the Chief Judge, all the parties again went to the Chief Judge to plead with him to reassign the case back to A.R. Mohammed J to continue the trial of the case as to start it de novo would cause hardship to all of them and they restated their confidence in the fair trial of the case by A.R. Mohammed J. The Chief Judge heeding their pleas reassigned the case to A.R. Mohammed J, who obeyed the directive of the Chief Judge and continued the trial of the case. Then on 5/7/2019 he wrote to the new Chief Judge, returning the case file to him for reassignment on the ground that he had recused himself from trying the case. It is obvious from the record of this appeal that Auta CJ was the Chief Judge that refused the first recusal by A. R. Mohammed J and directed him to continue the trial of the case, that Auta CJ was no longer in office when A.R. Mohammed J for the second time recused himself from the case and that the new Chief Judge approved his recusal and reassigned the case to O.E. Abang J. It is curious that A. R. Mohammed repeated his recusal from the case with the advent of the new Chief Judge on the ground of a repeat of the same false allegation in the same online medium by anonymous persons against him. He disregarded the existing directive of the then Chief Judge that he continues trying the case and should not allow himself to be cowed down by such obviously false and unreasonable allegations, as all the parties to the case have continued to affirm their confidence in his ability to try the case impartially.

Against the background of the insistence by all the parties that he continues the trial of the case to avoid them suffering the hardship that a trial de novo would entail and their assurance of their confidence that he would try the case fairly, A.R. Mohammed J’s repeated refusal to continue the trial of the case, could not have been meant to further the ends of justice in the case. The recusal clearly impairs the expeditious and economic trial of the case. To avoid this kind of reaction to allegations of judicial corruption by a Judge concerning his conduct of a case before him, the law has established objective criteria on the nature of the allegations and expressions of lack of confidence in the impartiality of the Judge that can result in a Judge recusing himself or herself from hearing or continuing the hearing of a case. See Womiloju & Ors V Anibire & Ors (supra) Olue V Enenwali (1976) All NLR 70 and Estisione H. Nig Ltd & Anor v. Osun State Government & Anor (supra).

Let me now consider the question of whether the Chief Judge of the Federal High Court should have returned the case file to A.R. Mohammed J and directed him to continue trial of the case or was right to have reassigned the case to another Judge, O.E. Abang J to try it de novo, since A.R. Mohammed had no legally valid reason for refusing to continue trying the case. The Chief Judge to whom the letter of 5-7-2016 was written by A.R. Mohammed J returning the case file, should have followed the footsteps of his predecessor, Chief Judge I.N. Auta and returned the case file to A.R. Mohammed J directing him to continue with the trial of the case. The Chief Judge’s approval of A.R. Mohammed J’s unilateral refusal to continue hearing the case for no valid legal reason and his reassignment of the case to another Judge, O.E. Abang J to try the case de novo violates the fundamental rights of the defendants in the case to a fair trial within a reasonable time, as the trial of the case that had progressed to the extent that four prosecution witnesses had testified would have to be started de novo, thereby protracting the trial of the defendants. The reassignment of the case to another Judge, disregards the hardship that a trial de novo would cause the prosecution in terms of the obvious expense and difficulties it would be put into in order to secure the attendance of the four witnesses that had already testified.

The Chief Judge’s approval of A.R. Mohammed J’s refusal to continue the trial of the case and the reassignment of the case to another Judge gives the impression that a Judge is not mandatorily bound to try a case assigned to him or her to a logical conclusion and has the choice of trying it or refusing to try it. Such a notion if accepted, would defeat the provisions of S.36(1) of the 1999 Constitution which requires that a case be heard and concluded within a reasonable time and render the due process of administration an uncertain journey and a sham. The convenience of a Judge and his choices do not constitute the justice of the case and should not be allowed to defeat the justice of each case and the due process of administration of justice.

The administration of a Court must pursue the sole objective of promoting the ends of justice in each case that comes to the Court and should not treat the convenience and choices of a presiding Judge as more important than the justice of the case. I agree with the submission of Learned SAN for the appellant that the trial Court per O.E. Abang J erred in law when it held that a Judge who voluntarily recuses himself or herself from trying a case cannot be compelled to try it. A Judge has no right or power to pick and choose according to his convenience, which, amongst the cases assigned to him, to try or not try. He or she has no such choice in law.

“The Chief Judge’s approval of A.R. Mohammed J’s recusal from continuing the trial of the case and reassignment of the case to O.E. Abang J has the effect of a transfer of the case from A.R. Mohammed J to O.E. Abang J. Therefore the Chief Judge should have shown a regard to the provisions of S.98(1) and (2) of the Administration of Criminal Justice Act in approving the recusal and reassigning the case. The exact text of these provisions read thusly-

“98-(1) The Chief Judge of High Court may, where it appears to him that the transfer of a case will promote the ends of justice or will be in the interest of the public peace, transfer any case from one Court to another.

(2) The power of the Chief Judge referred to in subsection (1) of this section shall not be exercised where the prosecution has called witnesses”.

As the facts of this case show, the reassignment or transfer of the case to O.E. Abang J because of the fears of A.R. Mohammed J on account of the false allegations of corruption against him could not have been intended to promote the ends of justice in the case as it disregards the facts that four witnesses had already testified for the prosecution and a trial de novo would inflict avoidable hardship on the parties. There are no facts to show that the demands of justice in the case made it compelling to transfer or reassign the case to O.E. Abang J in spite of the fact that four witnesses had already testified for the prosecution.

I do not agree with the submission of Learned SAN for the appellant that the transfer of part heard cases is absolutely prohibited by Section 98(2) of the Administration of Criminal Justice Act. This provision cannot be read as placing an absolute ban on the transfer or reassignment of a part heard criminal case from one Judge to another by the Chief Judge. Being a legislation that prescribes the procedure to be followed in criminal trials, the word “shall” in subsection (2) of Section 98 should be read as giving a permissive power to choose to do so or not to do so, according to the dictates of the justice of the case, having regard to the fact that witnesses have already testified for the prosecution. It prescribes a guide for the exercise of the discretion vested in the Chief Judge by Section 19(3) and (4) of the Federal High Court Act and Subsection (1) of S.98 of Administration of Criminal Justice Act. This is the meaning that the said words of the provision can reasonably bear. In any case, it is settled law that mandatory words in statute prescribing procedure are not read as mandatory and sacrosanct. See Mobil Oil Producing UNLTD V LASEPA (2002)18 NWLR (Pt.798) 1 and Port Harcourt Refining Co. Ltd v. Okoro (2010) LPELR - 4861 (CA). It is for this reason that mandatory words such as shall in rules of procedure are not treated as permissive and not mandatory and sacrosanct as the justice of the case permits. See Alaribe v. Nwankpa & Ors (1999) 4 NWLR (Pt 600) in which this Court per Ikongbeh JCA (of blessed memory) adopted the holding of the English Court in Liverpool Bank v. Turner (1860) 30 LJ, Ch. 379 to 381 (cited by Craies in his Treatise Statute Law, 4th Edition, p.233) that “No universal rule can be laid down for the construction of statutes as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of Courts of justice to try to get at the real intention of the legislature, by carefully attending to the whole scope of the statute to be construed. See also Katto v. CBN (1991) 11 - 12 SC 178, Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 528 and Obi v. INEC & Ors (2008) 1 - 2 SC 23.

However, failure to have regard to the requirements of Section 98(1) and (2) of the Administration of Criminal Justice Act in transferring or reassigning a case, would render such a transfer or reassignment arbitrary, capricious and not serving the ends of justice. Where the circumstances of the case disclose features that show that the Judge trying a case is palpably partial and biased or has continued to show disregard for rules of fair hearing and even law or is hostile against one party or has already determined the case or made up his mind or has become unfit to carry on his judicial duties and that allowing him to continue the trial of the case would result in a serious miscarriage of justice that might be difficult or impossible to remedy, the Chief Judge should be able to transfer the case to another judge. The reading of S.98(2) as absolutely prohibiting the transfer of part heard cases, would in the circumstances listed above, be unreasonable and result in impracticality, absurdity and injustice. As stated in Synopsis 2 by Sir Vahe Bairamian at paragraph 1 page 1: Assumptions; aim: The Courts have to ascertain the meaning of a statute before they can apply it, and in this task they are guided by certain principles which are described rules of interpretation or construction. They assume, as matter of commonsense, that a legislator (1) uses the right words to express his intention (2) is reasonable and consistent and (3) legislates with a practicable object in view. The first aim is to arrive at an interpretation which the words of the statue can fairly bear and which yields a practicable result with due regard to the object of the statue; and the ultimate aim is to arrive at an interpretation which achieves harmony among the provisions of the statute as a whole, and which also produces consistency with relevant provisions, if any, in other statutes."

As held in Okumagba v. Egbe (1965) 1 All NLR 62 adopting the statement in Maxwell on Interpretation of Statutes (10th Ed.) at page 6- “Judges are not always prepared to concede as plain language that which involves absurdity and inconsistency”. The Supreme Court in Awolowo v. Shagari & Anor (1979) All NLR 120 held that “It is a cardinal principle applicable to all kinds of statutes that you may not for any reason attach to a statutory provision a meaning which the words of that provision cannot reasonably bear.”

If Section 98(2) of the Administration of Criminal Justice Act is read as meaning that the Chief Judge has no power to transfer a part heard criminal case from one Judge to another, it would render it inconsistent with the provisions of Section 19(3) and (4) of the Federal High Court Act which gives the Chief Judge the power to determine the distribution of the business before the Court amongst the Judges thereof and assign any judicial function to any Judge or Judges in respect of a particular cause or matter in a judicial division and which subjects the sitting of any Judge for the trial of any civil or criminal case to the direction of the Chief Judge. If so read as an absolute ban of the power to transfer part heard criminal cases, then Section 98(2) of ACJA would curtail or reduce the wide power given to the Chief Judge in all cases. Such a meaning would render it inconsistent with Section 19(3) and (4) of the Federal High Court Act. The meaning that would render Section 98(2) of the Administration of Criminal Justice Act consistent with Section 19(3) and (4) of the Federal High Court Act is that it guides the Chief Judge on how it should exercise the discretionary power vested on it by Section 19(3) and (4) of the Federal High Court Act. It is a trite principle of interpretation that a statute must be read in a manner that makes it consistent or in substantial conformity with other States on the same subject matter. The statutes of a State on its Court system are read together as a single code. See Ejoh v. IGP (1963) 1 All NLR 250, Aluko v. R (1903) 1 All NLR 398, Akaighe v. Idama (1964) 1 All NLR 322, Ariyo v. Ogele (1968) 1 All NLR 1 at 6 Mabera v. Obi (1972) 1 All NLR (Pt. 2) 336 and Appraiser v. NRC (1964) 1 All NLR 63. This meaning is consistent with the object of the Administration of Criminal Justice Act as a procedural legislation to provide for how the power and jurisdiction of the Court is to be exercised and not to curtail or increase it.

This approach is purposive and teleological. The Court in interpreting the provision of a legislation must be progressive in its approach, beginning with an adherence to the express words of the said provision, and, considering if the literal meaning of those words does not defeat the intendment or object of the statute or produce injustice. If the literal meaning of the expressed words defeat the intendment of the statute or yield injustice or absurdity, then that is not the meaning that the said words can reasonably bear.

In the light of the foregoing, I hold that the decision of this Court in FRN V. Lawan (2018) LPELR - CA/A/717C/2017 that subsection (2) of S.98 Administration of Criminal Justice Act absolutely prohibits transfer of part heard cases and does not permit of the exercise of discretion by the Chief Judge was reached per incuriam. I therefore depart from it.

Let me consider if Subsections (3) and (4) of S.98 of Administration of Criminal Justice Act should have been followed by the Chief Judge before reassigning the case to O.E. Abang J. The exact text of S.98(3) and (4) of the Administration of Criminal Justice Act read thusly-

“3. Where the Chief Judge is to exercise this power subsequent to a petition, the Chief Judge shall cause the petition to be investigated by an independent body of not more than three reputable legal practitioners within one week of receipt of such petition.

4. The investigating body shall submit its report within two weeks of appointment except otherwise specified.”

It is clear from the express words of Section 98(3) and (4) of the Administration of Criminal Justice Act that the provisions apply only if a petition is written to the Chief Judge opposing the trial or continued trial of a case by a Judge. In our instant case, no such petition was written to the Chief Judge who reassigned the case to another Judge because A.R. Mohammed J, who was trying the case recused himself from continuing the trial of the case and returned the case file to the Chief Judge for reassignment. So the condition precedent for the application of Section 98(3) and (4) does not exist in this case. Therefore it cannot apply here.

However, it is doubtful if an external body outside the judiciary as constituted by the 1999 Constitution can investigate allegations of judicial corruption or misconduct against a Judge in an ongoing case so as to enable the Chief Judge exercise its discretionary power to transfer or not transfer the case from the Judge. It is equally doubtful if a body outside the judiciary, not being the Judicial Service Commission of a State or the National Judicial Council as the case may be, can investigate allegations of judicial corruption or any misconduct against a Judge of a High Court or any other judicial officer for that matter. Another doubt is whether such a body not being part of the Court before which a case is pending, can validly investigate matters that form part of the issues in an ongoing judicial proceedings before the Court. I will not determine these issues here because the parties herein have not had the opportunity of addressing this Court on them.

Let me now consider if O.E. Abang J should have refused the directive of his Chief Judge to try the case and returned the case file to A.R. Mohammed J for continuation of the trial as the defendants prayed for in their application in the trial Court and as the appellant has continued to argue in this appeal.

O.E. Abang J in his ruling held that “making an order returning the case file to the Hon. Chief Judge of this Court for same to be returned to Hon. Justice A.R. Mohammed will be an affront to the authority of the Hon. Chief Judge of this Court.” Learned SAN for the appellant has argued that this holding is not correct and that if O.E. Abang J made such an order judicially, it could not be construed as an act of insubordination. This argument ignores the law that the Federal High Court constituted by any Judge of the Court is one and the same Court and the provisions of Section 19(3) and (4) of the Federal High Court Act as follows-

“(3) The Chief Judge shall determine the distribution of the business before the Court amongst 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.”

The distribution of judicial work between the Judges of the Court does not affect the jurisdiction of the Court constituted by any of the Judges of the Court to try any of the cases and touches on the management of the hearing of the cases brought to the Court in its competent jurisdiction.

By virtue of the provision of Section 19(3) and (4) of the Federal High Court Act, O.E. Abang J was bound to comply with the directions of the Chief Judge reassigning the case to him for trial. O.E. Abang J has no power to review the manner A.R. Mohammed J recused himself from the case and how the Chief Judge exercised his discretion to reassign the case to him. Even though the reassignment of the case to O.E. Abang J is obviously arbitrary, unreasonable and does not promote the ends of justice, the Judge cannot refuse to comply with the direction of the Chief Judge.

Issue No. 1 is resolved in favour of the appellant. Issues Nos. 2 and 3 are resolved in favour of the 1st respondent.

Let me deal with another feature in this case that was brought to our attention during the hearing of this appeal. That feature is the fact that 3 prosecution witnesses have already testified in the trial de novo before O.E. Abang J and the trial is ongoing. All parties to this appeal agree on this fact. We asked the parties to address us on whether this appeal still serves any useful purpose beyond being an academic exercise, now that the trial de novo has progressed to the stage that 3 prosecution witnesses have already testified. Learned SAN for the appellant argued that the fact that the trial de novo commenced and has progressed thus far does not render this appeal useless and academic, that the appeal seeks to show lack of jurisdiction of the trial Court constituted by O.E. Abang J to try the case and that therefore if it is held that the said Court as so constituted has no jurisdiction to try the case, then the entire trial de novo proceedings including the testimonies of the 3 prosecution witnesses would be a nullity for lack of jurisdiction. Learned Counsel for the 1st respondent argued replicando that the commencement and progression of the trial de novo has rendered the appeal useless and an academic exercise.

Let me now determine the merits of this arguments.

By virtue of Order 7 Rule 4 of the Court of Appeal Rules 2016this Court can decide an appeal on a ground not contained in the notice of appeal provided the parties to the appeal are given reasonable opportunity to address this Court on the said ground. The exact text of Order 7 Rule 4 reads thusly-

“Notwithstanding the foregoing provisions the Court in deciding the appeal shall not be confined to the grounds set forth by the Appellant;

Provided that the Court shall not if it allows the appeal, rest its decision on any ground not set forth by the Appellant unless the Respondent has had sufficient opportunity of contesting the case on that ground.”

In any case where in an ongoing proceedings before this Court, or indeed any other Court, an event occurs, that renders the proceedings useless and an academic exercise, the Court can, either at the instance of any of the parties to the case or suo motu, determine the competence of such proceedings after giving each party to the case, the opportunity to be heard on the issue.

The Court cannot ignore such an issue for any reason and proceed to engage in the determination of the merits of the case, which determination may not add any value to or change the position of the claimant or appellant, even if his case succeeds. Where such an issue arises, it touches on the jurisdiction of the Court to try the dispute and the competence of the action.

The trite principle of law which is of considerable antiquity is that Courts have no jurisdiction to entertain and try academic questions as such questions have no life in them and have no practical value or effect, except to engage in arid and or barren theorization. See Imegwu v Okolocha & Ors (2013) LPELR -19886 (SC) and Okotie- Eboh V Manager & Ors (2004) 20 NSCQR 214.

The applications of the defendants in the trial Court sought to restrain O.E. Abang J from commencing and trying the case de novo. After dismissing the applications and upon holding that he was bound by the directive of the Chief Judge reassigning the case to him to hear the case, O. E. Abang J proceeded immediately to commence the trial de novo on 30-9-2019 before this appeal was filed on 7-10-2019. I have considered that since the trial Court, as constituted by O.E. Abang J has the jurisdiction to try the case, and since trial de novo has commenced and is progressing expeditiously, it would rather further protract and complicate the trial of the case to send it back to A.R. Mohammed J, to continue the trial of the case, considering that A.R. Mohammed J has persisted in an unjustified reluctance and refusal to continue the trial of the case, and thereby abdicated his judicial duty. I have also considered that it could be better to focus on the expeditious trial of the case by the Court presided over by O.E. Abang J who has demonstrated a dispassionate and diligent commitment to the trial of the case with commendable judicial courage and comportment. But this appeal has shown that A.R. Mohammed’s recusal from trying the case is not in accordance with law and would not serve the ends of justice. Considering that 4 prosecution witnesses had already testified before A.R. Mohammed J, that all parties to the case have consistently expressed their confidence in his impartial trial of the case, that no injustice would be caused any party if A. R. Mohammed J continues the trial of the case and to prevent or control the abusive use of false allegations against a Judge trying or hearing a case to cause the recusal of the Judge from trying the case and thereby instigate the trial of the case de novo and frustrate the expeditious trial of the case within a reasonable time, I think that A.R. Mohammed J should continue trying this case at the trial Court.

In the light of the foregoing, I hold that the expeditious progression of the trial de novo has not rendered this appeal useless and academic and has only created a valid and credible alternative situation and foisted on this Court the duty to choose between the two situations.

On the whole, this appeal succeeds in part. It is hereby ordered that O.E. Abang J should discontinue the trial of Criminal Case No. FHC/ABJ/CR/362/2015 forthwith and that A.R. Mohammed J continue the trial of Criminal Case No. FHC/ABJ/CR/362/2015 in an accelerated manner. I make no order as to costs.

**STEPHEN JONAH ADAH, J.C.A.:**

I have had the benefit of reading in draft the judgment just delivered by my learned brother, Emmanuel Akomaye Agim, JCA.

I am in agreement with the reasoning and the conclusion that this appeal be allowed. I however, want to lend support to the fact that all the Courts set up by the 1999 Constitution of the Federal Republic of Nigeria are to administer justice in order to enhance the flourishing of the fundamental right of the parties to fair hearing. Section 36(1) of the Constitution prescribes that in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a Court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

The underlining factor of this provision is to give the party a fair hearing within a reasonable time. A breach of this right is catastrophic to the proceeding before the Court in which it is breached. Wagbatsoma v. FRN (2018) 8 NWLR (Pt. 1621) 199 where Kekere-Ekun, JSC held as follows:

“...This issue is quite fundamental for it is well settled that any proceedings conducted in breach of a party’s fundamental right to fair hearing, which is guaranteed by Section 36 of the 1999 Constitution, renders the entire proceedings null and void. In Kotoye Vs. C.B.N. (1989) 1 NWLR (Pt.98) 419 @ 488 C-D it was held thus: “The rule of fair hearing is not a technical doctrine. It is one of substance. The question is not whether injustice has been done because of lack of fair hearing. It is whether a party entitled to be heard before deciding had in fact been given the opportunity of a hearing. The order or judgment thus entered is bound to be set aside. This is because such an order is against the rule of fair hearing, one of the twin pillars of natural justice which is expressed in the maxim: audi alteram partem.” See also: A.G. Rivers State Vs. Ude & Ors. (2006) 17 NWLR (Pt.1008) 436; (2006) LPELR-626 (SC) @ 19 B - D; Odedo Vs. P.D.P. (2015) LPELR-24738 (SC) @38-39 C-B; Hon. Justice Titus Adewuyi Oyeyemi (Rtd.) Vs. Hon. Timothy Owoeye & Anor. (2017) LPELR-41903 (SC) @ 56 B - E.”

In the instant case, the parties had their matter pending at the lower Court before A.R. Mohammed J. None of the parties requested the learned trial judge to recuse himself from the proceeding of the Court. The learned trial judge made up his mind that he would not handle the case of the parties but did not intimate the parties before he returned the case file to the Chief Judge of the Court for reassignment to another judge. This was after the prosecution had called four witnesses in the case. The Chief Judge reassigned the case to Judge CE. Abang, J., to try the case de novo. Which means trying the case afresh to the detriment of the parties. This introduced not only a twist but an obstruction to the right of the parties to have their matter determined within a reasonable time. Indeed, the parties were put to obvious hardship and hazards.

Of more consequence is the fact that the Administration of Criminal Justice Act, Section 98 was not followed by the Chief Judge in exercising his discretion to effect transfer of the case from A.R. Mohammed to O.E. Abang, J. Under Section 98(1) of ACJA, the law grants the Chief Judge a general discretion to effect a transfer where such transfer will serve the ends of justice.

In the instant case, the prosecution had called four witnesses so it was not available for the Chief Judge to effect transfer of the case off hand. The transfer from Hon. Justice A.R. Mohammed to O.E. Abang, J., by the Chief Judge was therefore unjustified. It is in this respect and for the fuller reasons advanced in the lead judgment of my learned brother that I completely agree with the lead judgment that the appeal be allowed.

I abide by the consequential orders made thereat.

**PETER OLABISI IGE, J.C.A.**:

I have read in advance the lucid judgment of my Learned Brother AGIM, JCA.

My Lord AGIM has also ably set out in some great detail the facts culminating into the appeal herein.

This appeal revolves around the real intention of the National Assembly of Nigeria in enacting Section 98 into the Administration of the Criminal Justice Act 2015 which provides as follows:-

"98.(1) The Chief Judge of a High Court may, where it appears to him that the transfer of a case will promote the ends of justice or will be in the interest of the public peace, transfer any case from one Court to another.

(2) The power of the Chief Judge referred to in Subsection (1) of this Section shall not be exercised where the prosecution has called witnesses.

(3) Where the chief Judge is to exercise this power subsequent to a petition, the Chief Judge shall cause the petition to be investigated by an independent body of not more than three reputable legal practitioners within one week of receipt of such petition.

(4) The investigating body shall submit its report within two weeks of appointment except otherwise specified."

There is no doubt that the principles of Interpretation of a Constitution and Statutes are well settled. The trite law is that provisions of a Constitution or Statute must be construed or interpreted literally giving the words in such Constitution or Statute their ordinary grammatical meaning. The provisions must be read as a whole and not in isolation in order to bring out succinctly the real intention and desire of the law makers.

A Court or Tribunal must ensure that it does not put or introduce any interpretation that will engender confusion into the provisions of the law being construed. See-

1. OCHOLI ENOJO JAMES SAN VS. INEC & ORS (2015) 12 NWLR (PART 1474) 538 AT 588 D - G per KEKERE- EKUN JSC who said:

“In interpreting the provisions of the Constitution and indeed any statute, one of the important considerations is the intention of the lawmaker. In addition to giving the words used, their clear and ordinary meaning (unless such construction would lead to absurdity), it is also settled that it is not the duty of the Court to construe any of the provisions of the Constitution in such a way as to defeat the obvious ends it was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends. See: Mohammed v. Olawunmi (1990) 2 NWLR (Pt. 133) 458; Rabiu v. The State (1981) 2 NCLR 293; Adetayo v. Ademola (2010) 15 NWLR (supra) at 190-191 G- A; 205 D- F.”

2. COCACOLA NIGERIA LTD & ANOR VS MRS TITILAYO AKINSANYA (2017) 17 NWLR (PART 1593) 74 AT 121 G - H TO 122 A - B per EJEMBI EKO, JSC who said:-

"It is only when the words of the statute are capable of two interpretations: one leads to absurdity, and the other does not, that the Court will conclude that the legislature does not intend the absurdity and will adopt the other interpretation that does not lead to any absurdity. The judex neither makes laws nor does it possess any power to amend any statute. Intent of the lawmaker and or the purpose in forming the enactment of the particular provisions of a statute are intertwined. It is from the words of the statute and no other source, that the intention of the framers of a statute or Constitution must be ascertained. Thus, as ADEREMI, JSC, stated in Action Congress v. INEC (2007) 12 NWLR (Pt. 1048) 222 at 318 para. F, (2007) 6 SC (Pt. 11) 212:

"a judge’s duty which is even a command on him is to interpret the clear and unambiguous words according to their ordinary, natural and grammatical meanings and must not add to or remove any words therefrom; no onerous weight or burden must be foisted on an otherwise clear and unambiguous provision.”

3. APC & ANOR VS. ENGR. SULEIMAN ALIYU LERE & ANOR (2020) 1 NWLR (PART 1705) 254 AT 284 F-G per RHODES- VIVOUR, JSC who said:-

"Where the words used in a statute are clear and free from ambiguity they should be read and construed as it is without any interpretation or embellishments. The words should be given their ordinary meaning except where such a construction would be ridiculous, not logical and sensible. See A.G. Anambra State Vs. A.G. Federation (1993) 6 NWLR (Pt. 302) P. 692; Mobil v F.B.I.R (1977) 3 SC P. 3; Toriola v Williams (1982) 7 SC P. 27.”

The learned trial Judge found in his Ruling pages 554 - 555 as follows:-

"In the early part of this ruling, reproduced the relevant part of page 2 of A. R. Mohammed J’s letter to the Honourable Chief Judge rescuing himself voluntarily from the matter.

Though none of the parties made reference to this letter specifically, however the prosecution Counsel alluded to the issue of voluntary withdrawal in his written address when he said A. R. Mohammed J. withdrew from the case on his own. Therefore I have jurisdiction to act on the letter found in the Court’s file in order to do justice in this matter. See the following cases FUMUDOH V. ABORO (1991) 9 NWL.R (PT. 214) P. 210 of P. 229; AGBAREH V. MIMRA (2008) 2 NWLR (PT. 1011) 378 AT 411 - 412 to the effect that the law is trite that a Court of Law is entitled to look into the Court’s record and make use of any document it considers relevant in determining the issues before it.

Therefore the provisions of Section 98(2) of ACJA in my humble view does not apply where a judge voluntarily withdraws from the case. In that situation the Chief Judge or a head of Court can re-assign the case to another judge. To this end, re-assigning this case to be heard de novo by this Court as presently constituted by the Honouroble Chief Judge of the Court is not an abuse of Court’s process or that the Defendant have been denied fair hearing. A. R. Mohammed J. of the Federal High Court bench having recused himself from the case for the reason stated in his letter, the Honourable Chief Judge of this Court was and is at liberty to re-assign this matter to any Judge of the Federal High Court bench for adjudication.”

The learned trial Judge had earlier in his Ruling on pages 545 - 547 found as follows:-

"Before Mohammed - J, 4 witnesses have been called, the 1st to 3rd witnesses have testified in chief and cross examined. The 4th witness is currently in the witness box testifying.

In the Court’s file, I stumbled on a letter written by A. R. Mohammed J addressed to the Honourable Chief Judge of this Court dated 5/7/2019, informing His Lordship of his withdrawal from the matter, that the matter be re-assigned to another Judge for adjudication. Before I go further in this matter, I want to quickly state that a Court of Law has jurisdiction to look at the contents of the case file and make use of any document therein in order to do justice in the matter.

This is so because none of the parties in this matter made reference to this letter. Therefore, it is lawful for the Court to make reference to the letter which is a document in the file case relevant to the proceedings in order to do justice in this matter. The letter by A. R. Mohammed J addressed to Honourable Chief Judge of this Court forms part of the records of the Court. Though the letter was not placed before the Court in any of the affidavits filed by the parties but they have made reference to the issue arising from the letter in the course of their argument. A portion of the letter is hereby reproduced for ease of reference starting from the 2nd paragraph of the letter. Mohammed J. said -

Now another disturbing incident has occurred concerning the case. On 4th June, 2019 the same Sahara Reporters have again published another report alleging that in June 2019 the 1st Defendant Gabriel Tarwua Suswam has bribed me with foreign currency (equivalent of 500 million) at the Transcorp Hilton Hotel, Abuja to quash the charge against him when the case comes up on 9th and 10th of July 2019. What I find very disturbing is the continuous attack on my integrity by Sahara Reporters on this case.

How can a Judge quash a case on a date when the trial is still ongoing. The prosecution is still calling evidence and has not close its case.

This therefore makes it absurd to allege that a charge could be quashed at a stage when trial is still ongoing.

Let me state categorically that there is no basis for me to continue presiding over this case. This is because if at the end of trial, the 1st Defendant is discharged or acquitted, the conclusion is that he has bribed me to do so. If on the other hand, the 1st Defendant is found guilty and convicted, the conclusion is that I did so to prove that I did not receive bribe from him. From whatever angle one looks at the situation it will be proper to recuse myself from handling this case. I therefore remit the case to your Lordship for re-assignment to another Judge in the overall interest of Justice"

Based on this letter addressed to the Honourable Chief Judge, Mohammed J rescued himself from the matter. The Chief Judge then in the discharge of his administrative functions re-assigned the matter to this Court as presently constituted. My lords, I have carefully considered arguments on both sides. The Defendants relied principally on the Court of Appeal’s decision in the case of FEDERAL REPUBLIC OF NIGERIA V. FAROUK LAWAN Supra that interpreted the provisions of ACJA generally but in particular Section 98(2) of the said Act. The findings of the Court of Appeal is that where a criminal case or trial is part heard, the Head of Court cannot re-assign the matter to another Judge.

I am of the firm view that the learned trial Judge erred in law when he held that the provisions of the Section 98(2) of Administration of Criminal Justice Act does not apply to a case where a Judge voluntarily withdraws from the case and that in such a case, the Chief Judge of the Federal High Court could reassign the case to another Judge.

The interpretation placed on Section 98(2) of Administration of Criminal Justice Act 2015 by the lower Court fails to take into consideration the distinction between a part-heard matter and a case in which no witness has been called. The power donated to the Chief Judge of a High Court in Section 98(1) of Administration of Criminal Justice Act relates to a criminal case in which witnesses have not been called by the prosecution. The Chief Judge must in exercising his statutory power of transfer as provided under Section 98(1) of Administration of Criminal Justice Act bear in mind and comply with the conditions precedent contained in Section 98(1) of Administration of Criminal Justice Act viz:

1. That the transfer will promote the ends of justice;

2. That the transfer will be in the interest of public peace.

The need for the transfer must be apparent from the surrounding circumstances or happenings in the case before a particular Court. The transfer must be in tandem with Section (1) of the Administration of Criminal Justice Act 2015 which provides:-

"1(1) The purpose of this Act is to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.”

Section 98(2) of the Administration of Criminal Justice Act, 2015 prohibits and restrains the Chief Judge of a High Court from exercising the statutory powers of transfer [bestowed] upon the Chief Judge in Section 98(1) “where the prosecution has called witnesses.” The power to transfer any criminal case from one Judge or Court to another is statutory curtailed vide Section 98(2) of Administration of Criminal Justice Act.

There is no petition against Hon. Justice A. R. Mohammed who has taken four witnesses in the case and if (which is not the case here) it could be said there was/is a Petition, he (the trial Judge) must await the crystallization of Section 98(3) and (4) before there could be any reassignment or transfer from one Judge to another Judge.

The fact remains that the Sahara Reporters which Mohammed - J alleged made allegations of having collected money from Defendant, is not a party before the Honourable Justice A. R. Mohammed and none of the parties before him complained about his conduct in the handling or hearing of the case against the Appellant and the other Defendant.

Honourable Justice A. R. Mohammed ought not to have recused himself from the further hearing of the case and the Hon., the Chief Judge of Federal High Court acted in violation of Section 98(2) of Administration of Criminal Justice Act which mandatorily prohibits him from transferring a part-heard matter from one Judge to another and in the absence of any Petition which may necessitate invocation of Section 98(3) and (4) of Administration of Criminal Justice Act. Even then, the Hon. Chief Judge could not transfer the case until the report mentioned in Section 98(4) of Administration of Criminal Justice Act has been considered so as to determine the truth or otherwise of the Petition. Where it is proved that the Petition is unfounded, the Hon. Chief Judge cannot transfer the case where witnesses have been called.

Just as the law seeks to ward off frivolous Petitions and prevent parties from forum shopping and third party or fifth Columnist from truncating hearing of a part-heard criminal trial, the law is also put in place to ensure that a trial Judge in criminal cases to which Administration of Criminal Justice Act is applicable cannot at will and on flimsy or lame excuse abandons a part-heard matter mid-stream and recuse himself. There must be very serious and exceptional circumstances but NOT from third parties who may be playing the devil advocate with the sole aim of obstructing the criminal trial particularly in high profile cases. Such third parties may also be the unforeseen hands of one of the parties in the case for purposes of forum shopping or in search of a favourable Court by one of the parties using a total stranger to meddle in the smooth trial of the case. A trial Judge has taken Oath to do justice to parties before him and to ensure the Rule of Law. It will not augur well for Administration of Criminal Justice for a trial Judge who has taken witnesses in a criminal case to opt out of the trial of the case without cogent reasons permitted by Jaw to recuse himself from hearing to conclusion, a part- heard matter. Another Judge could also follow suit after taken two or more witnesses on the ground that a third party had accused him of impropriety or misconduct in respect of the case.

This is the rationale behind the decision of this Court in the case of FRN V. LAWAN (supra) where OWOADE, JCA had this to say:-

"From a plain and literal construction of the above provision, the Chief Judge of a High Court may transfer a case from one Court to another in the interest of justice. Where the exercise of the power of the Chief Judge under Sub-Section (1) of Section 98 is subsequent to a petition, he shall cause the petition to be investigated and obtain a report by virtue of Subsections (3) and (4) of Section 98 before exercising the power of transfer under Sub-Section (1) of the provision. However, by Sub-Section (2) which is not qualified by either Sub-Sections (3) or (4) of the provision the power of the Chief Judge under the provision “shall not be exercised where the prosecution has called witness(s)". It is clear therefore that even where the power of transfer of the Chief Judge is subsequent on a petition, such power cannot be exercised where witness(es)" have been called. To my mind, the provision of Sub-Section (2) of Section 98 of the ACJA is deliberate and it is indeed to assist the efficient and speedy administration of justice. The question would naturally arise - suppose a petition alleging bias is written against a Judge in respect of a case he is handling after witnesses have been called. The simple answer which is perhaps the only one contemplated by the draftsman of the ACJA is that the case should continue and be concluded. The Report under Subsection (4) of Section 98 may then become relevant either for the purpose of impeaching the judgment on appeal and/or for disciplinary action against an erring Judge as the case may be. The implication of my above reasoning is that the provision of Sub-Section (2) of Section 98 of the ACJA is absolute and does not permit of the exercise of any discretion by the Chief Judge. This is because while Sub-Sections (4) are subjected to Sub-Section (1) of Section 98, Sub-Section (1) of Section 98 ACJA is not subjected to Sub-Section (1) of the Enactment."

For the above reasons and the fuller reasons ably articulated in the lead judgment. I too will allow the appeal.

I agree with the reliefs granted in favour of the Appellant and the consequential Orders contained in the lead judgment.-end!