**MUSA IBRAHIM**

**V.**

**THE STATE**

SUPREME COURT OF NIGERIA

5TH DAY OF MAY 2017

SC. 652/2013

**LEX (2017) - SC.652/2013**

OTHER CITATIONS

2PLR/2017/155 (SC)

**BEFORE THEIR LORDSHIP**

MARY UKAEGO PETER-ODILI, JSC (Presided)

OLUKAYODE ARIWOOLA, JSC

KUMAI BAYANG AKAAHS, JSC (Read the Lead Judgment)

AMINA ADAMU AUGIE, JSC

SIDI DAUDA BAGE, JSC

**BETWEEN**

MUSA IBRAHIM – Appellant

AND

THE STATE – Respondent

**ORIGINATING COURT**

1. COURT OF APPEAL, KADUNA JUDICIAL DIVISION

2. HIGH COURT OF KANO STATE (Namallam J., Presiding)

**REPRESENTATION/LAWYERS**

NUREINI JIMOH with O. F. OSASONA, ZAHRADEEN A. AHMAD, B. ONWUBIKO, M. Y. MATHEW and DARE M. ARAOYE - for the Appellant.

MUKHTAR S. DANEJI, Solicitor-General of Kano State with M. M. SULEIMAN, Assistant Director, Legal Drafting; SALISU H. DANJIDDA, Assistant Director, Public Prosecution;

ABDULLAHI ABBA AJI and SULEIMAN ABDUSSAMAD – for the Respondent.

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

CRIMINAL LAW AND PROCEDURE – CHARGE:- Application to prefer - Discretionary powers of trial court to grant - Condition precedent to exercise of.

CRIMINAL LAW AND PROCEDURE – CHARGE:- Validity of - Determinant of - Defect in that is fatal - Nature of.

CRIMINAL LAW AND PROCEDURE - FACILITIES THAT MUST BE AFFORDED ACCUSED PERSONS:- What constitute.

CRIMINAL LAW AND PROCEDURE - PRIMA FACIE CASE:- Meaning of.

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - FINDINGS OF FACT BY LOWER COURTS:- Where concurrent - Attitude of Supreme Court to.

APPEAL - GROUND OF APPEAL FROM WHICH ISSUE FOR DETERMINATION IS DISTILLED:- Counsel - Need to indicate.

APPEAL - ISSUES FOR DETERMINATION:- Proliferation of - Impropriety of.

WORDS AND PHRASES – “PRIMA FACIE CASE”:- Meaning of.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant was alleged to have attacked PW2 with a knife while the latter was in front of his house listening to radio. He shouted for help and the deceased had come out to help him but the appellant also stabbed her, leading to her death. The prosecution thereafter filed an application before the High Court of Kano State to prefer a charge against the appellant.

The trial court granted the application consequent upon which the appellant was arraigned on a 2-count charge of attempt to commit culpable homicide punishable with death under section 229 of the Penal Code and culpable homicide punishable with death under section 221 of the Penal Code.

Learned counsel representing the accused applied to quash the charge on the grounds that there were not sufficient and adequate materials or facilities to enable the accused prepare his defence and meet the case of the prosecution. The prosecution opposed the application and the arguments of counsel were taken on that same 5 June 2012 and ruling was reserved to 9 July 2012 on which date, the learned trial judge overruled learned counsel on his application to quash the charge.

Dissatisfied, the appellant applied to quash the charge on grounds that there were no sufficient and adequate materials to enable the appellant prepare his defence and meet the case of the prosecution. The trial court dismissed the objection. An appeal filed by the appellant to the Court of Appeal was also dismissed.

Dissatisfied still, the appellant appealed further to the Supreme Court in light of the insufficient materials placed before the trial court before the grant of the application for leave to prefer same.

**DECISION(S) APPEALED AGAINST**

The Court of Appeal entered judgment, dismissing the appeal against the decision of the trial High Court granting the Respondent’s application to prefer a charge against the Appellant and dismissing the Appellant’s application to quash the charge preferred against the Appellant. Dissatisfied, the Appellant appealed to the Supreme Court.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

1. Whether the lower court was right in holding that the summary of the statements of the five prosecution witnesses, without more, are sufficient enough for the accused to answer the charge against him? OR

Whether the lower court was right in its finding that the trial court rightly refused to quash the charge on ground of insufficient materials placed before the court against the accused person in the charge?

2. Whether the lower court was right in holding that the provisions of the Kano State Legal Notice No.10 of 1979 titled “The Criminal Procedure Code Law (Cap. 30). The Criminal Procedure preferment of charges in the High Court Rules, 1979” is unconstitutional?

*BY RESPONDENT:*

1. Whether the lower court was right to have affirmed the decision of the learned trial judge’s refusal to quash the charge against the appellant.

2. Whether the lower court was right in holding that the Kano State Legal Notice No.10 of 1979 titled “The Criminal Procedure Code Law (Cap. 30). The Criminal Procedure preferment of charges in the High Court Rules 1979” is constitutional?

*AS FORMULATED BY COURT:*

Whether the lower court was right to have affirmed the decision of the learned trial judge’s refusal to quash the charge against the appellant.

**MAIN JUDGMENT**

AKAAHS JSC: (DELIVERING THE LEAD JUDGMENT):

This appeal borders on the propriety of the charge preferred against the accused and the constitutionality of the Kano State Legal Notice No.10 of 1979 titled “The Criminal Procedure Code (preferment of charges in the High Court) Rules, 1979, Cap. 30, Laws of Kano State of Nigeria.

The records do not show when the application to prefer the charge was moved but in the judgment of the trial court reproduced on page 16 of the records, Mrs. Sulaiman who appeared for the state moved the application to prefer the charge on 10 April 2001 (sic) 10 April 2012 and it was granted without objection.

On 5 June 2012, learned counsel representing the accused applied to quash the charge on the grounds that there were not sufficient and adequate materials or facilities to enable the accused prepare his defence and meet the case of the prosecution.

The prosecution opposed the application and the arguments of counsel were taken on that same 5 June 2012 and ruling was reserved to 9 July 2012 on which date, the learned trial judge overruled learned counsel on his application to quash the charge.

The accused was dissatisfied and appealed against the ruling of the Court of Appeal, Kaduna on 20 July 2012. The appeal was heard on 14 February 2013 and it was dismissed by the Court of Appeal in its judgment No. CA/K/217/C/2012, delivered on 14 May 2013. This is a further appeal from that judgment. It should be borne in mind that the accused is yet to be arraigned and asked to plead to the charge.

The notice of appeal contains 5 grounds of appeal from which the following issues were distilled for determination:

1. Whether the lower court was right in holding that the summary of the statements of the five prosecution witnesses, without more, are sufficient enough for the accused to answer the charge against him? OR

Whether the lower court was right in its finding that the trial court rightly refused to quash the charge on ground of insufficient materials placed before the court against the accused person in the charge?

2. Whether the lower court was right in holding that the provisions of the Kano State Legal Notice No.10 of 1979 titled “The Criminal Procedure Code Law (Cap. 30). The Criminal Procedure preferment of charges in the High Court Rules, 1979” is unconstitutional?

Learned counsel did not indicate the ground or grounds of appeal to which any of the issues relate. The appellate courts have always emphasised the need for learned counsel to indicate the ground or grounds of appeal from which an issue for determination is derived. See Hein Nobelung Isensee K.G. v. U.B.A Plc (2012) 16 NWLR (Pt. 1326) 357, (2012) 26 WRN 146 and Nigerian Ports Plc v. Beecham Pharm. PTE Ltd (2012) 18 NWLR (Pt. 1333) 454, (2013) All FWLR (Pt. 671) 1402.

The principles guiding formulation of issues is that an issue may be formulated from one or several grounds of appeal but two issues cannot be formulated from a single ground of appeal. In this appeal, five grounds of appeal accompanied the notice from which two issues were formulated.

Issue 1 was given in the alternative. Having scrutinised the grounds, it is my view that issue 1 was distilled from grounds (ii), (iv) and (v), while issue 2 was distilled from ground 3. The grounds shorn of their particulars are reproduced as follows:

(ii) The learned justices of the Court of Appeal erred in law when the court held as follows: “I must, also observe that the said 1979 Rules, under which the application to the lower court was made did not contravene sections 6(6)(b) and (d) and 211(1)(a) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). One of the rights of an accused person guaranteed under section 36(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), is that the accused has a right to be informed promptly in the language that he understands and in detail of the nature of the offence. The appellant had been sufficiently and in great detail informed of the nature of the offence alleged to have been committed by him.”

(iii) The learned justices of the Court of Appeal erred in law when the court held as follows: “I must observe that section 36(6)(b) and (d) have to do with conduct of the criminal proceedings in the court. They have no correlation with filing an application for leave to the High Court to prefer a charge against the accused. The law enabling that Rules be made by the Chief Judge of Kano State stating that summary of evidence be attached to an application of preferment of criminal charge is not unconstitutional.”

(iv) The learned justices of the Court of Appeal erred in law when the court held as follows: “The summary of the evidence given at the bottom distinctly encapsulated the central facts f the case, that the appellant injured Adamu Sadauki and killed his daughter, Hafsatu Adamu and that he made confessional statement to the police. There were photographs taken at the scene of the crime and the medical report on the post-mortem performed on the deceased which will be tendered as exhibits at the trial. I wonder what else the appellant wanted disclosed that (the) have not been adequately and sufficiently conveyed to him by the summary of evidence. I sincerely believe that the trial court exercised its discretion judiciously and judicially and in line with the principles of law.”

(v) The learned justices of the Court of Appeal erred in law when the court held as follows: “Hearing in criminal charge has not begun, so the complaints that the appellant has not been given adequate time and facilities for preparation of his defence or he should examine in person or by his legal practitioner the witnesses called by the prosecution before any court or tribunal were merely imaginary.”

There is no need to reproduce ground 1 which is the omnibus ground and no issue could be framed from it since no oral evidence has been given. The alternative to issue 1 is unnecessary and I hereby discountenance it.

Learned counsel for the appellant referred to pages 63-64 of the record and argued that the conclusion reached by the lower court after examining the summary of evidence presented by the prosecution was wrong. He said it was not ripe at this stage for the lower court to mention that the police recovered the weapons which the accused allegedly used in perpetrating the crime since the materials mentioned by the lower court are part of the very essence of the complaint against the charge and are essential materials that the accused/appellant is entitled to have to enable him completely and effectually defend the charge against him.

Learned counsel also referred to Federal Republic of Nigeria v. Nwabara (2013) 5 NWLR (Pt. 1347) 331, (2014) All FWLR (Pt. 714) 76, where the proof of evidence, the statements of accused persons and other relevant documents to be tendered by the prosecution were made available to the defence and it was on this basis that the trial court exercised its discretion judiciously and judicially but in the instant case, it is the bare scanty summary of evidence which made reference to several materials without more that was presented before the court. He submitted that this court in Federal Republic of Nigeria v. Nwabara (supra), page 349 has insisted that it is oppressive and unconstitutional to put a person on trial unless the court approached to grant the leave is satisfied that the materials accompanying the application disclose enough facts to warrant a trial. He also submitted that the system of criminal justice in Nigeria requires that contents of a charge should not be a subject of speculation and inference; rather the essential ingredient of the offence must be disclosed in the charge since this is an inalienable right of an accused person. He maintained that the entire charge before this court does not reveal cold facts that will enable the court to proceed. He contended that the assertions in respect of the witnesses listed to testify are mere speculations and there is no prima facie case to enable the court exercise her unfettered discretion to proceed with the hearing of the case since there is no evidence before the court linking the accused to the alleged offence and no offensive weapon has been recovered; nor the medical report evidencing death been shown.

Also the purported confessional statement of the accused was not annexed to the charge. He submitted that the prosecution had failed to raise and place before this court all the necessary ingredients which form a valid charge.

On the second issue, learned counsel submitted that the Kano State Legal Notice No. 10 of 1979 is contrary to section 36(6)(b) and (d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). He submitted that where a trial judge proceeds to try an accused without strictly complying with the provision of the Criminal Procedure Code and the Constitution, that trial will be declared a nullity and placed reliance on Kajubo v. State (1988) 1 NWLR (Pt. 73) 721, (1988) 1 NSCC 475 because the prosecution and the tribunal have a duty to inform the accused of the precise grounds on which it is proceeding against the accused. It is a constitutional right not a favour or privilege to supply adequate facilities to the accused if his constitutional right to fair hearing is to be a real right and no subsidiary legislation will be allowed to deprive the accused of such right. He argued strongly that the Criminal Procedure Code Law (Cap. 30) Criminal Procedure (Preferment of Charges in the High Court) Rules which provides for summary of evidence as sufficient to merely put the accused on notice generally of the case against him and gives the prosecution liberty to adduce such further evidence as it may deem necessary, without a further summary of evidence is a negation of the right constitutionally given to the accused. He submitted that the Chief Judge of Kano State was wrong to make rules such as the Kano State Legal Notice No. 10 of 1979 which is inconsistent with the provisions of the 1999 Constitution. It should to the extent of the inconsistency with the Constitution be void. He therefore submitted that both the charge and the Rules made pursuant thereto which fatally sliced and unlawfully wrenched the constitutional right of the accused are unconstitutional and urged this court to declare the Rules as unconstitutional and void since the supremacy of section 1(1) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is binding on all authorities including the Chief Judge of Kano State.

In his response, the Solicitor-General of Kano State submitted that the grant of the application to prefer a charge and whether there were sufficient materials for the grant are interrelated since having sufficient materials is a prerequisite for granting the application. He cited the case of Grange v. Federal Republic of Nigeria (2010) 7 NWLR (Pt. 1192) 135 in support. Learned counsel argued that the prosecution is not bound to provide the appellant with the statements of witnesses and the medical report before the commencement of the trial and that failure to provide the said witness statements and medical report did not occasion a miscarriage of justice. He also submitted that the weapon, statement of the accused person and medical report were all tendered in evidence during the trial without objection by the appellant. He argued that the Kano State Legal Notice No.10 of 1979 which repealed the 1970 application for leave to prefer a charge rules only provides for summary of evidence and does not make it mandatory that the appellant should be provided with the materials, namely; witness statements, weapon and medical report. He said that what is contained in the charge, namely, the names of the victims and the accused, the place of the offence, the weapons used and what the witnesses will say in court are sufficient materials to enable the appellant prepare for his defence. He maintained that the issue whether there were sufficient materials before the court to warrant the grant of the application to prefer a charge is not only discretionary but is dictated by the facts and circumstances of each case as decided in Sunday v. State (2010) All FWLR (Pt. 548) 874, (2010) 18 NWLR (Pt. 1224) 223.

As to the constitutionality of the Kano State Legal Notice No. 10 of 1979, he said section 274 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), gives backing to the House of Assembly of the State to make laws empowering the Chief Judge to make rules for regulating the practice and procedure of the High Court. He therefore urged this court to affirm the decision of the lower court and dismiss the appeal.

It does appear to me that learned counsel for the respondent does not appreciate the submissions being made by learned counsel for the appellant. The pith of his arguments is that the essential ingredients of the offence must be disclosed in the charge and the proof of evidence made available to the accused to enable him prepare for the defence. It is not enough to list the witnesses that will testify but all the evidence must be laid bare.

He then attacked the Criminal Procedure Code Law, Criminal Procedure (Preferment of Charges in the High Court) Rules otherwise known as the Kano State Legal Notice No. 10 of 1979 which empowers the Chief Judge to allow the prosecution the liberty to adduce such further evidence as it may deem necessary without making the summary of evidence available to the accused prior to the calling of the additional evidence and invited this court to declare as unconstitutional the said Kano State Legal Notice No. 10 of 1979, because it is inconsistent with section 36(6)(b) and (6) of the 1999 Constitution (as amended).

Before the creation of States in Nigeria in 1967, criminal prosecutions were undertaken under the Criminal Procedure Act in the South (consisting of Eastern, Western, Mid-West Regions and the Federal Capital Territory of Lagos) and under the Criminal Procedure Code in the North. Kano State emerged as one of the six states which were created from the Northern Regions of Nigeria. The Criminal Procedure Code is contained in Chapter 30. Vol. 1, Laws of Northern Nigeria which came into force on 1 October 1963. It was first established in 1960 with 30 September 1960 as the commencement date, that is on the eve of independence. The law has seven sections while the Schedule has 396 sections. Chapters XV to XIX of the Schedule deal with the initiation of judicial proceedings before a court; summary trial; preliminary iniquity and commitment for trial to the High Court; trials by the High Court and charges. Preliminary investigations had to be carried out by a magistrate before trial could commence in the High Court. Sections 167 and 185 Criminal Procedure Code provided:

“167 (1) No person shall be committed for trial to the High Court except by a magistrate and after a preliminary inquiry has been held.

(2) Nothing in this section shall prevent the High Court trying a case summarily under paragraphs (b) or (c) of section 185.

185. No person shall be tried by the High Court unless:

(a) he has been committed for trial to the High Court in accordance with the provisions of chapter XVII; or

(b) a charge is preferred against him without the holding of a preliminary investigation by leave of a judge of the High Court; or

(c) a charge of contempt is preferred against him in accordance with the provisions of section 314 or section 315.

After the magistrate has completed the preliminary inquiry, he then frames the charge and forwards same to the Attorney-General and the accused. The Attorney-General has power to amend or alter the charge. Sections 180-182 provide as follows:

“180 When the accused is committed for trial, the magistrate shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence to the court which is to try the case and shall also send the charge and a copy of the record to the Attorney-General and to the accused.

181 At any time after the completion of the inquiry and before the commencement of the trial in the High Court, the Attorney-General may, by notice to the High Court, amend the charge as framed at the inquiry or substitute for that charge such other charge or charges as he may deem fit.

182 (1) The committing magistrate or in his absence any other magistrate may, if he thinks fit, and shall, if required by the Attorney-General, summon and examine supplementary witnesses after the commitment and before the commencement of trial and bind them over in manner herein before provided to appear and give evidence.

(2) Such examination shall if possible be taken in the presence of the accused and if not so taken the record thereof shall be read over to the accused before the trial.

(3) A copy of such record shall be given to the accused free of charge.”

All the States in Northern Nigeria including Kano State have enacted their own Criminal Procedure Code Laws. The Criminal Procedure Code Law of Kano State currently in operation is cap.37, Vol. 1 revised Edition of the Laws of Kano State, 1981. It adopted substantially the Criminal Procedure Code Law of Northern Nigeria but abolished the holding of preliminary inquiry before charging an accused person for trial in the High Court.

According to the learned counsel for the appellant, the objection of the appellant is that he is not challenging the grant of leave to prefer a charge but the objection is predicated on insufficient materials presented by the prosecutor to enable him know the case he has to meet before trial.

The argument goes beyond what learned counsel has stated. His complaint is that the lower court after examining the summary of evidence, came to the conclusion that the accused is guilty of the charge. I am of the considered view that what is important is the consideration given by the learned trial judge to grant leave to prefer the charge against the accused/appellant i.e. whether the discretion was exercised judicially and judiciously or it was done whimsically. See Ikomi v. State (1986) 3 NWLR (Pt. 28)

340. In that case, the appellants were charged with the murder of Mr. Uanile Agbede, a police constable assigned to guard and protect the 1st appellant who was a judge of the High Court of Bendel State and at the material time, the Chairman of the Bendel State Armed Robbery and Firearms Tribunal, Benin. The 2nd appellant lived in the 1st appellant’s official quarters and ran errands for him while the 3rd appellant was the 1st appellant’s cook/steward. Their indictment was consequent upon the consent given on 16 December 1985 by the Chief Judge of Bendel State pursuant to an application by the Attorney-General of Bendel State under section 340(2)(b) of the Criminal Procedure Law of Bendel State, 1976.

The depositions in support of the application revealed the following facts:

(a) That the deceased police constable (Agbede) duly reported for duty on the fateful night on 4 July 1983 at the official residence of the 1st appellant at No.3 Obaahon Street, G.R.A. Benin.

(b) That the deceased was let into the premises by theV2nd appellant who opened the gate.

(c) That the gate of that premises was locked and the key was held by either the 2nd or 3rd appellant.

(d) That the premises was fenced round and had two exits gates permanently locked when not in use.

(e) That there was nothing to indicate that those gates were opened on the fateful night.

(f) That when the gate was opened by the 2nd appellant the next morning, the deceased police constable was found in a pool of blood clearly murdered.

(g) That during that night only the deceased, the appellants and the two daughters of the 1st appellant were know to be in the 1st appellant’s premises.

(h) That the medical evidence showed that the deceased was found in a pool of blood; that there were signs of violence, loss of most of deceased’s penis and scrotum; that there were incised wounds on his neck and chin; that his death was consistent with manual strangulation and sharp cutting object in respect of peno-scrota injuries.

The appellant filed a motion to quash the information to which the Chief Judge had given his consent on the ground that no offence was disclosed and that the information was an abuse of the process of the court. The arguments advanced by counsel were rejected by the High Court and Court of Appeal. On a further appeal to the Supreme Court, it was held that before granting leave or consent to file an information, a judge must be satisfied that the depositions in support of an application for the leave or consent disclose an offence and that the trial will not amount to abuse of process. In Abacha v. State (2002) FWLR (Pt. 118) 1224, (2002) 11 NWLR (Pt. 779) 437, Belgore JSC (as he then was) explained what the trial judge should take into consideration in exercising his discretion to grant leave to prefer a charge against an accused when he said at page 483:

“There must be clear particulars and facts to justify the exercise of discretion. It is not the law, neither is it the justice, to say once the application is made on information, and all necessary document as are attached, without more, the application to prefer charge must be granted.... There must be facts in the proofs of evidence to justify the grant of the application. Otherwise indictments will always be allowed to be tried where enough particulars are absent in the proofs of evidence. I must not be understood to hold that guilt of the accused must be established before approving the information to file the indictment; far from it. There must be prima facie case to be tried and the accused must be sufficiently linked to be in a situation where an explanation is necessary from him at the trial.”

In the Ikomi’s case, supra, it was held that once a prima facie case of the commission of the offence has been disclosed on the information in respect to which the persons so named could be linked, consent of the judge to prefer the charges should be granted. Coker JSC expressed his difficulty in differentiating between “suspecting a person” of having committed an offence and “a prima facie evidence” against him when he said at page 376:

“I have had some serious doubts as to the true dividing line between the concepts of “suspecting a person” for committing an offence on the one hand and “prima facie evidence against that person for the offence. A person might be suspected for committing an offence even though there is no evidence-direct or circumstantial – whatsoever against him. In such a case further investigation leading to possible evidence of the person’s involvement becomes necessary before he could be charged with the offence. A prima facie case is made against a person where on the face of the available evidence an offence has been committed and there is evidence which possibly ground convicting the suspect.

It is the suspicion which leads to investigation and discovery of evidence against the suspect. Suspicion alone is not sufficient to justify preferring a charge against a person, there must be evidence linking the suspect with the offence. There ought to be some evidence however remote which calls for some explanation from the suspect. At the stage of deciding whether to prefer charge the prosecutor is not obliged to decide, as the trial judge should whether the available evidence is cogent enough to justify a conviction. But there must be evidence to meet all the essential elements of that offence. It is my view that if on a proper appraisal of the available evidence there is absence of any necessary ingredient of the offence, the judge who is requested to give his consent to preferment of the information should decline.”

In his own judgment, Karibi-Whyte JSC said: “In the exercise of this quasi-judicial duty, it is necessary that a prima facie case of the commission of the offence should be made out against the persons named in the information. It is sufficient to show that an offence has been disclosed on the information in respect to which the persons so named could be linked. Where the information discloses the commission of an offence, as in this case, and the deposition supports the indictments, it is not sufficient to quash the indictment because the accused persons may not be convicted on trial. All that is required at this stage is that the evidence on the depositions should support the charge as laid in the information and link the accused persons.” The parameters which a trial judge should use in exercising his discretion to grant consent to prefer a charge against an accused therefore is to assess the information to see if an offence has been disclosed linking the accused and the depositions support the indictment. It is with this backdrop that the application to prefer the charge against the appellant should be examined.

The 1st count alleged that Musa Ibrahim i.e. appellant on 11 April 2011 attempted to commit culpable homicide by stabbing one Adamu Sadauki with a knife on the head at Ja’aen Quarters Sharada in Kumbotso Local Government Area of Kano State while the 2nd count stated that the appellant caused the death of Hafsatu Adamu by stabbing her with a knife on the head and hand with the knowledge that her death would be the probable consequence of the act and thereby committed an offence punishable under section 221 of the Penal Code. Five witnesses have been slated to testify namely, Hasiya Adamu Ja’aen Sharada who was together with Hafsatu Adamu (deceased). The deceased left her in the room to attend to the distress of their father. Later when she went out of the room, she saw the appellant attacking the deceased and when he noticed her presence, he ran away leaving the deceased in a pool of blood. She made a report of the incident to the police before taking the injured to the hospital and later discharged. The second witness is Adamu Sadauki Ja’aen Sharada. He is to state that on 11 April 2011, he was sitting in front of his house listening to radio when the appellant attacked him with a knife. He shouted for help and as a result the deceased came out where she was attacked by the appellant.

He and the deceased were taken to the hospital for treatment. He was later discharged but the deceased was confirmed dead. The investigators are Sergeant Ibrahim Gambo Sharada of Sharada Police Division, Kano and Cpl. Muazu Sani, C.I.D. Bompai Kano. Sgt. Ibrahim Gambo took the injured people to Murtala Mohammed Hospital where Hafsatu was confirmed dead while Adamu Sadauki Ja’aen Sharada was admitted, treated and later discharged. He also visited the scene of crime where he took photographs and recovered a pair of shoes. He arrested the appellant the next day and recovered some weapons from him. Cpl. Muazu Sani recorded the appellant’s statement in Hausa and translated it to English.

The two heads of count have disclosed the offences of attempt to commit culpable homicide and culpable homicide while the depositions linked the appellant with acts that caused injury to Adamu Sadauki Ja’een Sharada and Hafsatu Adamu. Hafsatu Adamu was confirmed dead in the hospital.

A consideration of the charge and the depositions of the witnesses leave no one in doubt that the trial judge exercised his discretion judicially and judiciously in consenting to the charge being preferred against the appellant in the High Court of Kano State. The lower court rightly refused to quash the charge because sufficient materials were placed before the High Court which enabled it to grant consent to the prosecution to prefer the charge against the appellant as the summary of the statements of at least two of the witnesses linked the appellant with the charge preferred against him.

The second issue questions the constitutionality of the Criminal Procedure (Preferment of Charges in the High Court) Rules otherwise known as Kano State Legal Notice No.10 of 1979 which were made by the Chief Judge of Kano State pursuant to the powers conferred by section 373 of the Schedule to the Criminal Procedure Code Law, Rules 2 and 3 provides:

“2 (i) If the Attorney-General or a person authorised by him intends to prosecute an accused in the High Court, he shall cause the charge together with a summary of evidence to be filed in the High Court. The High Court shall then fix a date for mention of the case. On the date fixed for mention the Attorney-General or his representative shall serve on the accused or his counsel one copy of the charged summary of evidence.

(ii) The summary of evidence need not state the names of the witnesses but it shall be sufficient to put the accused on notice generally of the case against him.

(iii) Notwithstanding the above subsections, the prosecution shall be at liberty to adduce such further evidence as it may deem necessary without further summary of evidence.

(3) At the date fixed for mention, the prosecution shall and the accused may produce to the High Court a list of witnesses.”

Learned counsel relying on section 36(6) of the 1999 Constitution argued that it is constitutional and necessary that the accused person be afforded all facilities and materials to defend the charge. In a rather long winding submission, learned counsel argued that the provision of adequate facilities to an accused is a constitutional right and not a privilege and the Kano State Legal Notice No. 10 of 1979 that grants the prosecution the liberty to adduce further evidence as it may deem necessary without a further summary of evidence is a negation of the right constitutionally given to the accused which includes informing the accused of the precise grounds on which he is being prosecuted against and letting him have access to written statements to be tendered at the trial. Learned counsel argued that since the Criminal Procedure Code of Kano State is an existing law by virtue of section 315 of the Constitution, section 185 of the Law dealing with trial by the High Court must be strictly complied with and the power granted to the Chief Judge of Kano State under section 373(1) of the Criminal Procedure Code, should not be used as an umbrella to circumvent the constitutional provisions on the right of fair hearing.

The issues being agitated in this appeal came up in Okoye v. Commissioner of Police (2015) All FWLR (Pt. 799) 1101, (2015) 17 NWLR (Pt. 1488) 274. In that case, learned counsel for the appellant made an application to the court to direct the prosecution to furnish the defence with all documents (including statements of witnesses, and police investigation report in the case) and he invoked the appellant’s constitutional right to fair trial as provided in section 36(6)(b), 1999 Constitution as amended.

The question was then posed: “When is an accused person entitled to facilities for the preparation of his defence as provided in section 36(6)(b) of the 1999 Constitution (as amended) and what are the facilities?

After adopting the definition of the word “facilities” as contained in Black’s Law Dictionary, 5th Edition at page 531, this court held at page 290: “The facilities that must be afforded the accused person are the ‘resources’ or ‘anything which would aid’ the accused person in preparing his defence to the crime for which he is charged. These no doubt include the statements of witnesses interviewed by the police in the course of their investigation which might have absolved the accused of any blame or which may assist the accused to subpoena such favourable witnesses that the prosecuting counsel may not want to put forward to testify.”

It was decided in Udo v. State (1988) 1 NSCC (Pt. 19) 1163, (1988) 3 NWLR (Pt. 82) 316 that section 33(6)(d) of the Constitution of the Federal Republic of Nigeria, 1979, (which is in pari materia with section 36(6)(b) and (d) of the 1999 Constitution) is a provision of “equal opportunities for both the prosecution and the defence...” Thus the prosecutor will not be allowed to have sole access to evidence. It was explained in Udo v. State supra, that in a situation where the accused person does not know the case he will meet, while the prosecution knows everything concerning the case against the accused ahead of time would amount to nothing less than procedural inequality which is a gross violation of the principle of fair hearing or fair trial. Oputa CJ (as he then was) echoed the same sentiments in Orisakwe v. Governor Imo State (1982) 3 NCLR 743. See also Layonu v. State (1967) 1 All NLR 198.

I am of the view that the accused’s right to fair trial would seriously be impaired if the prosecution is given the liberty to adduce further evidence without giving a summary of the evidence to the accused as provided in Rule 2(iii) of the Criminal Procedure (Preferment of Charges in the High Court) Rules, 1979. I am not persuaded by the argument advanced by the learned Solicitor-General of Kano State that the prosecution is not duty bound to provide the appellant with the “weapons, statement of the appellant and medical report before the commencement of the trial.” The prosecution of an accused should not be a seek and hide game with the prosecution springing a surprise on the accused by the production of evidence, the veracity of which the accused cannot test under cross-examination. After the accused has entered his plea but before the actual trial commences, the accused or the counsel representing him should be availed with all the facilities that will assist in the preparation of his defence. For the avoidance of doubt what the accused requires is the statement of witnesses and police investigation reports and any medical or expert report which bears relevance to the offence allegedly committed by the accused.

The conclusion I have reached on the issues raised in this appeal are as follows:

1. The learned trial judge exercised his discretion judicially and judiciously in granting his consent for the prosecution to prefer the charge against the appellant in the Kano State High Court because the charge and depositions of the witnesses slated to testify have disclosed the commission of an offence linked to the appellant. The lower court therefore rightly refused to quash the charge because sufficient materials were place before the High Court judge and the summary of the statements of the witnesses linked the appellant with the charge preferred against him.

2. The appellant is entitled to all facilities which will enable him prepare for his defence. Such facilities apart from the list of witnesses to testify and summary of depositions should include the statements of all witnesses both for and against the prosecution, the medical report issued on the deceased and the police investigation report which will assist the appellant in the preparation of his defence. Rule 2(iii) of the Criminal Procedure (Preferment of Charges in the High Court) Rules, 1979 should be amended so that where the prosecution intends to call additional witnesses, the list of additional witnesses should be accompanied by a summary of their evidence and their written statements should be made available to their accused.

I find that this appeal lacks merit and it is hereby dismissed.

Since trial is yet to commence, I hereby direct that immediate steps should be taken to arraign the appellant before the High Court and the case should be given expeditious hearing.

**PETER-ODILI JSC:**

I am in agreement with the judgment just delivered by my learned brother, Kumai Bayang Akaahs and to underscore my support for the reasoning, I shall make some comments.

This is an appeal against the decision of the Court of Appeal, Kaduna Division anchored by Abdu Aboki, Teresa Ngolika Orji-abadua and Ita G. Mbaba JJCA which appellate court dismissed the appeal against the decision of the trial High Court per Namallam J. The facts leading to this appeal would be stated hereunder.

Facts:

The appellant was arraigned before the Kano High Court presided over by Hon. Justice S. B. Namallam in Charge No. K/ 05/2012 on a two-count charge of attempt to commit culpable homicide punishable under section 229(1) of the Penal Code and culpable homicide punishable with death under section 221 of the Penal Code. A scanty 2 and a half-page summary of evidence of 5 witnesses were annexed to the charge. There was no written statement of the witnesses nor any of the documents referred to or analysis or proof of the evidence stated.

The appellant took objection stating that the materials brought forward by the prosecution are not sufficient materials and facts to enable him understand and defend the charge placed before the court against him. The appellant states that he is in the dark as to the materials to be used to prosecute him. The appellant also stated that reliance on “Criminal Procedure (Preferment of Charges in the High Court) Rules, 1979” which the prosecution filed the scanty processes are unconstitutional.

The High Court disagreed with the appellant’s complaint and the Court of Appeal dismissed the appeal there. It is in dissatisfaction that the appellant has come before the Supreme Court on appeal.

On 9 February 2017, date of hearing, Nureini Jimoh of counsel for the appellant adopted his brief of argument filed on 22 November 2013, in which were formulated the issues stated hereunder, viz:

1. Whether the lower court was right in holding that the summary of the statements of the five prosecution witnesses, without more, are sufficient enough for the accused to answer the charge against him?

2. Whether the lower court was right in its finding that the trial court rightly refused to quash the charge on ground of insufficient materials placed before the court against the accused in the charge?

3. Whether the lower court was right in holding that the provisions of the Kano state Legal Notice No. 10 of 1979 titled. “The Criminal Procedure Code Law (Cap. 30) the criminal procedure (Preferment of Charges in the High Court) Rules, 1979 is not unconstitutional?

The Solicitor-General of Kano State, Mukhtar Sani Daneji of counsel for the respondent adopted his brief of argument filed on the 20 October 2014 and he reshaped a little the two issues crafted by the appellant and came up with his thus:

1. Whether the lower court was right to have affirmed the decision of the learned trial judge’s refusal to quash the charge against the appellant.

2. Whether the lower court was right in holding that the Kano State Legal Notice No.10 of 1979 titled “The Criminal Procedure Code Law (Cap. 30). The Criminal Procedure preferment of charges in the High Court Rules 1979” is constitutional?

I see issue one as put forward by the respondent as good enough question in the determination of this appeal as sufficient and I shall use it as a sole issue.

Sole issue:

Whether the lower court was right to have affirmed the decision of the learned trial judge’s refusal to quash the charge against the appellant.

Learned counsel for the appellant submitted that what is available as part of the complaint against the charge is essential materials to enable the appellant completely and effectually defend the charge against him. He cited Federal Republic of Nigeria v. Nwabara (2013) 5 NWLR (Pt. 1347) 331, (2014) All FWLR (Pt. 714) 76 as having a distinguishing feature; section 36(6)(b) of the 1999 Constitution (as amended); Okoye v. Commissioner of Police (2015) All FWLR (Pt. 799) 1101, (2015) 17 NWLR (Pt. 1488) 274 at 301; Timothy v. Federal Republic of Nigeria (2008) All FWLR (Pt. 402) 1136 at 1152. That appellant as person charged with a criminal offence was entitled to be informed promptly in the language he understands and in detail, the nature of the offence. He referred to section 185(b) of the Criminal Procedure Code; Momodu v. State (2007) LPELR - 8380 (CA), (2008) All FWLR (Pt. 447) 67 at 139.

For the appellant it was contended that a strict compliance with a mandatory requirement relating to the procedure in a criminal trial is a pre-requisite of a valid trial and where that fails, the trial would be declared a nullity by an appeal court. See Ifezue v. Mbadugha (1984) 1 SCNLR 427, (1984) NSCC (Vol. 15) 314, (1984) 5 SC 79; Kajubo v. State (1988) 1 NWLR (Pt. 73) 721, (1988) 1 NSCC 475 etc.

Learned counsel for the respondent submitted that the failure of the prosecution to provide the appellant with the weapons, statement of the appellant and medical report before the commencement of the trial did not occasion any miscarriage of justice. That the issue whether there was sufficient material before the court to warrant the grant of an application to prefer a charge is not only discretionary but is dictated by the facts and circumstances of each case. He cited Sunday v. State (2010) All FWLR (Pt. 548) 874, (2010) 18 NWLR (Pt. 1224) 223.

That the right of the appellant as provided under section 36 of the 1999 Constitution is envisaged only during the trial. That section 274 of the same Constitution supports the position of the lower court on what the court below did.

In brief, the position of the appellant is that the Criminal Procedure (Preferment of Charges in the High Court Rules from No. 10 of 1979, Kano State Legal Notice) have limited the accused’s constitutional right to “adequate time and facilities” to the “summary of evidence” and “it shall be sufficient to put the accused on notice generally of the case against him and that “the prosecution shall be at liberty to adduce such further evidence as it may deem necessary, without a further summary of evidence” is inconsistent with the provisions of the 1999 Constitution of the Federal Republic of Nigeria. That this court should therefore declare those rules unconstitutional and void with the quashing of the charge and discharging the accused/ appellant being the fallout.

The respondent with an opposite view contends that what the accused/appellant is to be provided with is a concise previous statement of witnesses and facts that give a clear picture or sufficiently convey to the accused the nature of the evidence to be adducted by the prosecutor at the trial.

The learned trial judge held thus:

“The test and guiding principles for consideration in an application to quash charge against an accused have been laid down in the case of Grange v. Federal Republic of Nigeria (2010) 7 NWLR (Pt. 1192) 135, where it was decided that:

1. The court must confine itself to the proof of evidence and the witnesses statements attached thereto to show whether a prima facie case has been disclosed. Where the proof of evidence does not disclose a prima facie case, the court will quash the charge against the accused;

(b) The proof of evidence must sufficiently link the accused with the offence although it needs not be conclusive proof of the accused person’s guilt which is a matter to be decided at the substantive trial;

(c) Where there is no sufficient linkage of the accused to the offence allegedly committed, the court would be on a good ground to quash the charge against the accused person.”

From the guidelines, I have not been able to see anything where the case at hand fell short of expectations required, all the requirements are fulfilled as sufficient facts have been placed to link the accused with the offence he stands charge. The argument of counsel that - there are not sufficient material and facts in view of the charge placed before the court misplaced as all what is required under the law reasonable enough to give notice to the accused of the case he will expect have been adequately provided for by the charge and also the further argument of counsel that the charge fell short of constitutional requirement is speculative as he has not been able to show what short falls if any the charge reflects. Having arrived at this position as stated above and having gone through the charge, I have not seen any procedural or formal defect that will warrant the charge to be quashed, accordingly, the application to quash the charge by the defence is lacking in merit and hereby overruled.

The Court of Appeal in the judgment anchored by Orji Abadua JCA at pages 63-74 of the record dealt effectively with the matter and held thus:

“It is clearly shown in the summary of the statements of the five witnesses the prosecution intends to call that they were not speculating, they were exact as to whom they saw attacked the deceased and stabbed Adamu Sadauki, the second witnesses on the list.

The statements of the first and second witnesses on the list linked the appellant to the crime. Then the statement of the third witness on the list showed that a pair of shoes belonging to the appellant was recovered by the police from the scene of the crime.

The police arrested the suspect the following day and also recovered the weapons which he allegedly used in perpetrating the crime. The fourth witness obtained statements from the appellant, while the fifth witness, a Medical Doctor is to state the outcome of his examination on the deceased. The summary of the evidence given at the bottom distinctly encapsulated the central facts of the case, that the appellant injured Adamu Sadauki and killed his daughter Hafsatu Adamu and that he made confessional statement to the police. There were photographs taken of the scene of the crime and the medical report on the post-mortem performed on the deceased which will be tendered as exhibits at the trial. I wonder what else the appellant wanted disclosed that have not have been adequately and sufficiently conveyed to him by the summary of evidence. I sincerely believe that the trial court exercised its discretion judiciously and judicially and in line with the principles of law.”

The learned justice of the court below further held as follows:

“I must also observe that the said 1979 rules, under which the application to the lower court was made, did not contravene sections 36(6) (b) and (d) and 211 (1) (a) and (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). One of the rights of an accused person guaranteed under 36(6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is that the accused has a right to be informed promptly in the language that he understands and in details of the nature of the offence. The appellant had been sufficiently and in great detail informed of the nature of the offence alleged to have been committed by him. Then section 36(b) says that every person who is charged with a criminal offence is entitled to be given adequate time and facilities to prepare for his defence. This obviously flows into his right to an adjournment in order to secure the services of a counsel or the attendance of his witnesses. I must observe the section 36(6) (b) and (d) have to do with conduct of the criminal proceedings in the court. They have no correlation with filing an application for leave to the High Court to prefer a charge against an accused.

The law enabling that Rules be made by the Chief Judge of Kano State stating that summary of evidence be attached to an application for preferment of criminal charge is not unconstitutional. Hearing in the criminal charge has not begun, so the complaints that the appellant has not begun, so the complaints that the appellant has not been given adequate time and facilities for preparation of his defence or he should examine in person or by his legal practitioner, the witnesses called by the prosecution before any court or tribunal were merely imaginary and not factual.”

I am at one with the positions of the respondent’s counsel that sufficient materials were made available to the appellant such as the names of the victims and the accused, the place of the offence, weapons used and what all the witnesses will say in court. Therefore, in the exercise of the court’s discretionary duty in granting the application to prefer a charge were properly performed in tune with the facts and circumstances of this particular case. See cited Sunday v. State (2010) All FWLR (Pt. 548) 874, (2010) 18 NWLR (Pt. 1224) 223.

The anxiety of the appellant in pushing forward the complaints we are now grappling with is premature and not backed by law. Raising the inconsistency theory as between the 1979 Rules of Kano State Criminal Procedure Rules as against the 1999 Constitution is clearly off the mark. For a fact the concurrent findings and conclusions of the two courts below are unassailable and nothing existing to propel this court to interfere with them as the exercise of the discretion on the preferment of the charge was made judicially and judiciously.

In the light of the foregoing and the better reasoning in the lead judgment, I too dismiss this appeal as lacking in merit as I abide by the consequential orders made.

**ARIWOOLA JSC:**

I had the opportunity of reading in draft, the lead judgment of my learned brother, Akaahs JSC just delivered. I am in total agreement with the reasoning and conclusion and I adopt them as my own. As a result, the appeal lacks merit I also dismiss the appeal.

Appeal dismissed.

**AUGIE JSC:**

I had a preview of the lead judgment delivered by my learned brother, Akaahs JSC, and I agree that the appeal lacks merit and should be dismissed; and the case be remitted to the Kano State High Court for the arraignment and trial of the appellant.

My learned brother addressed the issues raised meticulously, and I will only add a few words to reinforce the points he made.

To start with, the appellant made it clear in his brief that his objection is not as to the grant of “leave to prefer a charge”, the test having been settled by this court in Sunday v. State (2010) All FWLR (Pt. 548) 874, (2010) 18 NWLR (Pt. 1224) 223, and Federal Republic of Nigeria v. Nwabara (2013) 5 NWLR (Pt. 1347) 331, (2014) All FWLR (Pt. 714) 76; rather it was after the grant of leave that he objected to the charge as there are insufficient materials to enable him know the case that he had to meet before trial.

He argued that the court below had, at the pre-trial stage, examined the summary of evidence and concluded that he was guilty of the charge. His quarrel is with its decision as follows:

“It is clearly shown in the summary of the statement of the five witnesses the prosecution intends to call that they were not speculating, they were exact as to whom they saw attacked the deceased and stabbed Adamu Sadauki, the second witness on the list. The statements of the first and second witnesses on the list linked the appellant to the crime. Then the statement of the third witness on the list showed that a pair of shoes belonging to the appellant was recovered by the police from the scene of the crime.

The police arrested the suspect the following day and also recovered the weapons, which he allegedly used in perpetrating the crime. The fourth witness obtained statements from the appellant, while the fifth witness, a medical doctor is to state the outcome of his examination on the deceased. The summary of the evidence given at the bottom distinctly encapsulated the central facts of the case, that the appellant injured Adamu Sadauki and killed his daughter Hafsatu Adamu and that he made confessional statement to the police. There were photographs taken of the scene of the crime and the medical report on the post-mortem performed on the deceased which will be tendered as exhibits at the trial. I wonder what else the appellant wanted disclosed that have not have been adequately and sufficiently conveyed to him by the summary of evidence. I sincerely believe that the trial court exercised its discretion judiciously and judicially and in line with the principles of law.”

Obviously, his complaint on this ground is of no consequence in this appeal because it is clear that all that the court below did was to narrate the facts as set out in the summary of evidence.

At this stage of the proceedings, all that is required is that a prima facie case of the commission of the offence should be made out against the person named in the information, and it is sufficient to show that an offence has been disclosed therein in respect of which the person so named therein could be linked - See Ikomi v. State (1986) 3 NWLR (Pt. 28) 340 SC. A prima facie case is one that has proceeded up to where it will support findings if evidence to the contrary is disregarded.

Prima facie evidence means evidence, which on the face of it, is sufficient to sustain the charge against the accused person - See Abacha v. State (2002) FWLR (Pt. 118) 1224, (2002) 11 NWLR (Pt. 779) 437 SC; Ajidagba v. I. G. P. (1958) SCNLR 60, (1958) 3 FSC 5, wherein this court quoted with approval, the definition of the said term in the Indian’s case of Star Sigh v. Jitendrana-thsen (1931) I.L.R. 59 thus: What is meant by prima facie (case)? It only means that there is ground for proceeding - But a prima facie case is not the same as proof, which comes later, when the court has to find whether the accused is guilty or not guilty, and the evidence discloses a prima facie case when it is such that if uncontradicted and if believed it will be sufficient to prove the case against the accused.

In this case, it is clear that the trial court was right to refuse to quash the charge because the depositions of the witnesses slated to testify disclosed the commission of an offence linked to the appellant, and the court below was right to affirm same.

In the circumstances, I also dismiss this appeal, and affirm the decision of the court below affirming that of the trial court.

**BAGE, JSC:**

My lord, Kumai Bayang Akaahs JSC, availed me with a copy of the judgment just delivered, for which I am in complete agreement with. I will add a few words of my own in total support.

The law is grounded on the fact that once a person is accused of a criminal offence, he must be charged to court. The most important thing about the charge in any criminal case is that it must tell the person accused enough, so that he may know the case alleged against him and prepare his defence.

The emphasis is not on whether or not there were defects, errors or omissions in the charge, but on whether those defects, errors or omissions could and in fact misled the defence, a defect which does not prejudice the defence is no ground for quashing a charge. See Mgbemene v. I.G.P. (1963) 2 SCNLR 261, (1964) 1 All NLR; Omisade & Ors. v. Queen (1964) 1 All NCR 233; R. v. Ijoma & Ors. (1962) All NLR 402.

In the instant case, the appellant did not prove to this court that he is in any way misled by the charge. The lower court rightly refused to quash the charge because sufficient materials were placed before the High Court which enabled it to grant consent to the prosecution to prefer the charge against the appellant as the summary of the statements of at least two of the witnesses linked the appellant with the charge preferred against him.

For the more detailed reasoning contained in the lead judgment, I too find no merit in this appeal and it is accordingly dismissed by me. The judgment of the lower court is hereby affirmed. Appeal dismissed.

Appeal dismissed