**NIGERIAN ARMY**

**V.**

**BRIG. GEN. MAUDE AMINUN-KANO**

IN THE SUPREME COURT OF NIGERIA

THE 29TH DAY OF JANUARY, 2010

SUIT NO: SC. 243/2008

**LEX (2010) - SC. 243/2008**

OTHER CITATION:

(2010) LPELR-SC.243/2008

(2010) 5 NWLR (Pt. 1188) 429

**BEFORE THEIR LORDSHIPS:**

GEORGE ADESOLA OGUNTADE, JSC

FRANCIS FEDODE TABAI, JSC

IBRAHIM TANKO MUHAMMAD, JSC

JOHN AFOLABI FABIYI, JSC

OLUFUNMILOLA OYELOLA ADEKEYE, JSC

**BETWEEN**

NIGERIAN ARMY - Appellants

AND

BRIG. GEN. MAUDE AMINUN-KANO - Respondents

**ORIGINATING COURT**

1. COURT OF APPEAL

2. GENERAL COURT MARTIAL

**REPRESENTATION**

S.M. RILWANU with M.Y. AMANA - For the Appellants

A.B. MAHMUD (SAN) with ADAMS ABDULLAHI and AMINU SADAUKI - For the Respondents

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

CONSTITUTIONAL LAW - RIGHT TO HEARING:- Settled law that a judgment, which does not, ex-facie show the basis of a pronouncement of a guilty verdict on a citizen of Nigeria is an infraction of the citizen's right to Fair Hearing – Whether extends to decision of a General Court Martial

CONSTITUTIONAL LAW - FUNDAMENTAL RIGHTS:- Member of the armed forces before a military court martial – Whether entitled to protection under the Fundamental Rights entrenched in the 1999 Constitution of Nigeria

CRIMINAL LAW AND PROCEDURE - DOUBLE JEOPARDY:- Principle of criminal law that where a person accused of committing a criminal offence(s) which are recognized by law and where he has shown that he has either been pardoned of that offence(s) by the appropriate authority or that he has been tried by a court of law or a tribunal set up by law, then he cannot be subjected to any further trial by any court or tribunal on that same offence(s) – Legal effect of as a bar to further prosecution

MILITARY LAW – COURT MARTIAL:- Need to extend fair hearing rights under the Constitution of Nigeria to a party before it – Duty of a Court Martial to provide reasons for its judgment – Effect of failure thereto

**PRACTICE AND PROCEDURE ISSUES**

COURT - COMPETENCE OF COURT:- Where a court lacks competence to try person or subject matter before it - Decision arrives at on such a person or subject matter – Whether a nullity

EVIDENCE - DOCUMENT:- Duty of court to holistically consider the whole document in its construction – Necessity of in resolving alleged obscurity or ambiguity

JUDGMENT AND ORDER - STYLE OF WRITING JUDGMENT:- Essentials of a good judgment - Military Court Martial President – Flexibility allowed in the writing of judgment as distinct from conventional manner used by the Civil Court – Whether does not extend to the need to furnish reasons for their decision(s)

WORDS AND PHRASES - "CONDONATION": Meaning of

WORDS AND PHRASES - "WARNING": Meaning if

WORDS AND PHRASES - "DOUBLE JEOPARDY":- Meaning of

WORDS AND PHRASES - "COMMANDING OFFICER":- Meaning of

**MAIN JUDGMENT**

I. T. MUHAMMAD, JSC: (DELIVERING THE LEADING JUDGMENT):

Maude Aminun Kano, a brigadier-General in the Nigerian Army, (the respondent, herein) was the Commander of the Nigerian Army School of Finance and Administration (NASFA). In September, 2005 a covering order for the purposes of setting up a General Court Martial to try the respondent was signed by one Major General N. N. Madza, Commander, Army Headquarters Garrison, Abuja. The Court martial was accordingly set-up pursuant to the provisions of the Armed Forces Act, Cap. A20, Laws of the Federal Republic of Nigeria, 2004. The offences charged against the respondent as contained in the Convening Order for the General Court Martial and the Charge Sheet were in seven counts and read as follows:

"1st Charge: Making of false official document punishable under section 90(a) of the Armed Forces Act Cap. A20 Laws of the Federation of Nigerian, 2004.

In that he at NASFA Lagos on or about 27 May, 2003 made and forward (sic) an Academic Transcipt in respect of Co. (as he then was) PA Toun to University of Nigeria Usukka, which transcript contained information relating to the grades obtained by Co. PA Toun during his Accountancy Programme at NASFA, which was to his knowledge false in material particular.

2nd Charge: Negligent Performance of Duty Punishable under section 62(b) of the Armed Forces Act Cap. A20 Laws of the Federation of Nigeria, 2004

In that he at NASFA Lagos on or about 25 Feb.03 as chairman of NASFA Academic Board failed to exercise due diligence by not cross-checking fact before nullifying the HND Certificate awarded by NASFA to Brig. Gen Pa Toun, Col NE Ekwale and 4 others.

3rd Charge: Conduct to the prejudice of service discipline punishable under section 103(1) AFA Cap A20 Laws of the Federation of Nigerian, 2004.

In that he at Lagos, on or about 17 Mar 04 as Commandant NASFA, communicated false information on the academic records of Brig. Gen PA Toun, to Association of National Accountants of Nigeria, an action which tarnished the image of the senior officer and the Nigerian Army at large.

4th Charge: Conduct to the Prejudice of service discipline punshiable under section 103(1) AFA Cap A20 Laws of the Federation of Nigeria, 2004.

In that he at Lagos, on or about 17 Mar 04 as Commandant NASFA, communicated false information on the academic records of Col. NE Ekwale to Association of National Accountants of Nigerian, an action which tarnished the image of the senior officer and the Nigerian Army at large.

5th Charge: False accusation punishable under section 94(a) AFA Cap A20 Laws of the Federation of Nigeria, 2004.

In that he at NASFA Lagos on or about 2003 made an accusation against Col. PA Toun, (as he then)(sic) regarding his academic records at NASFA which accusation was false in material particular.

6th Charge: False Accusation Punishable Under Section 94(a) AFA Cap A20 Laws of the Federation of Nigeria, 2004.

In that he at NASFA Lagos on or about March 2003 made an accusation against Col NE Ekwale regarding his academic records at NASFA, which accusation was false in material particular.

7th Charge: Conduct to the prejudice of service discipline punishable under section 103(1) AFA Cap A20 Laws of the Federation of Nigeria, 2004.

In that he at NASFA Lagos on or about 25 Feb. 03 as Chairman of NASFA Academic Board de-certified Brig. Gen Pa Toun, and 5 others without recourse to the Board of Governors of NASFA or DAFA"

Learned defence counsel raised an objection the arraignment of the respondent because the charges preferred against him were bad for duplicity and for non-compliance with the provisions of the law. The trial court, after entertaining arguments from counsel in the matter, overruled the objection and directed that the respondent be arraigned. During the arraignment, the respondent pleaded not guilty to any of the charges preferred again him. Consequent upon that, trial commenced with the prosecution calling eight(8) witnesses. After the prosecution closed its case, the respondent raised an objection to the jurisdiction of the trial court to try him on ground that the Convening Authority lacked the competence to convene the trial court martial in that the respondent was under the 81 Division of the Nigerian Army and the offences for which he was being tried and committed in Lagos and the said Authority was based in Abuja. The objection was again overruled.

The respondent made a plea in bar of trial on ground that by virtue of a document in which the charges against the respondent were withdrawn and substituted with a "final warning letter", which was admitted by the trial court as Exh. P.45, the respondent could not have been subjected to trial anymore as that letter, i.e. Exh. P.45 amounted to condonation by respondent's commanding officer, as provided by Section 171 of the Act. This plea was also dismissed by the trial court and the respondent was called upon to open his defence. A no case submission was made on behalf of the respondent by his counsel. The no case submission was overruled.

The respondent then opened his defence. He testified as Defence witness No.1 (DW1) and the three additional witnesses were called. At the close of the case learned counsel for the respective parties, each addressed the trial court. The trial Court Martial then invited the Judge Advocate to sum of the case and he did so.

After considering the evidence before it, and the summing up, the trial court found the respondent guilty on all the charges. It convicted and sentenced him to various terms of imprisonement. The respondent was also sentenced to a reduction in rank for each count. The respondent was subsequently compulsorily retired by the Army Council. Dissatisfied, the respondent appealed against the conviction, sentence and confirmation as well as the compulsory retirement. His appeal to the Court of Appeal, Abuja Division, was allowed by that Court. The decision of the trial court martial was set aside. The conviction was quashed. The sentence and compulsory retirement were all set aside. Dissatisfied, the appellants appealed to this court on seven grounds of appeal.

In this court, the appeal was heard on the 29th day of October, 2009. Learned counsel for the appellant adopted and relied on its amended brief of argument which was earlier filed on 10/12/08 but deemed filed on 29/10/09 . the learned Senior Advocate for the respondent adopted and relied on the respondent brief argument.

Learned counsel for the appellant formulated the following five issues for the determination of this court:

“i. Whether having regard to the content of Exhibit P.45 and the circumstances of the case, the Court of Appeal was right when it held that the said Exhibit constituted a condonation of the offence committed by the respondent thus precluding the Appellant to Court Martial him. (Ground One).

ii. Whether the court below was right in holding that following the issuance of Exhibit P.45, proceedings against the Respondent at the Court-Martial amounted to double-jeopardy when that issue was never raised by any of the parties in the appeal before it. (Ground 2)

iii. Whether in view of the trial-by-jury nature of the proceeding of the trial court, the court below was correct when it set aside the conviction and sentences passed on the Respondent by the trial court on ground that trial court did not adduce reasons or give proper findings in arriving at its decision and even if the court below was right in holding that the trial court should have adduced reasons and make findings, whether re-trial was not the proper order the court below ought to have made. (Grounds 3, 4, and 5)

iv. Whether having regard to the evidence led at the trial court, the court of appeal was right in holding that the prosecution did not prove necessary ingredients of the offences with which the respondent was charged under counts 1, 2, 5 and 6 of the Charge Sheet. (Ground 6).

v. Whether the court below was right to have held that counts 3, 4 and 7 of the charge sheet were bad for duplicity. (Ground 7)"

The learned SAN for the respondent equally set out five issues in his brief of argument for our determination. They are as follows:

“1. whether the Court of Appeal was right in finding that Exhibit P.45 amounted to condonation of the alleged offences for which the Respondent was charged and thereby right in holding that the condonation precluded the appellant to Court Martial the respondent.

2. Whether the Court of Appeal was right in holding that in view of the condonation of the allegations against the respondent by his commanding officer vide exhibit P.45 the subsequent trial conviction of the respondent amounted to double jeopardy.

3. Whether the Court of Appeal was right in holding that in the circumstance of the trial subject of this appeal the Court Martial has a duty to given reasons for reaching a particular finding and that failure to do so was fatal and whether the Court of Appeal was right in the circumstance of this case in not sending the case back to the Court Martial for re-trial.

4. Whether the Court of Appeal was right in holding that the Prosecution in this case did not prove the necessary ingredients of the offences with which the respondent was charged under counts 1, 2, 5 and 6 of the charge sheet.

5. Whether the Court of Appeal was right in holding that counts 3, 4 and 7 of the charge sheet were bad for duplicity.

The spring board from which learned counsel for the appellant started his argument on issue No.1 is exhibit P.45. He submitted that Exh.45 was signed by the Director of Army Finance and Administration (DFA), Brig.-General S. A. Owuama (as he then was). The Brig-General testified as prosecution witness 8 (PW8) and Exh. P.45 was tendered through him. Learned counsel for the appellant stated that the said Exhibit P.45 was the letter the respondent claimed that contained condonation of his wrongful deeds, which respondent further claimed constituted a bar to prosecution under section 171(1) of the Armed Forced Act, Cap.A20, LFN, 2004. It is also the letter which the court below accepted as a condonation of the respondent's acts. Learned counsel set out section 171 of the Act in full.

It is learned counsel's submission that upon proper construction, Exhibit P.45 does not contain any condonation of any of the charges preferred against the respondent. He drew this court's attention that there were two sets of facts each leading to several counts. He submitted that it is settled law that in the interpretation of the content of a document, the words therein must be accorded their plain, ordinarily, common and natural meaning. The case of Ishola v. UBA Ltd (2005) 6 NWLR (Pt.922) at pp.434-436 and 444 was referred to. He argued further that a look at the said Exhibit shows that the DAFA withdrew charges listed in paragraph 2(a), (b) and (c) of pages 1 and 2 of Exh. P.45 and substituted therein with a final warning. Learned counsel stated that non of the charges withdrawn featured in the charge sheet for which respondent was finally tried. Learned counsel set out the seven counts as charged. He went further to say that the only reference to the episode of allegation of fake certificate involving Brig-General PA Toun and Co. N. E. Ekwale in Exh. P.45 was only when PW8 was citing examples of how the respondent had been in the eye of the storm in the past and that was cited as one of the instances. He argued that at paragraph 4 of page 3 of the Exhibit, the writer of that Exhibit took beyond any doubt that the respondent's act of making false allegation of fake certiciate against the officers involves, had not been condoned or forgiven and that disciplinary action instituted against the respondent on the issue were stalled due to "administrative hiccups". This, according to the learned counsel, was a clear demonstration that as soon as the administrative hiccups were cleared, the appellant would resume disciplinary action against the respondent. Learned counsel then went into the semantics and definitions of the word "condonation"

Learned counsel submitted that even if the writer of Exh. P45 qualified as "Commanding Officer" of the respondent within the meaning of section 171(1)(c) of the Act, which was not condeded by learned counsel for the appellant, the writer of Exh. P45 had not in anyway, condoned the offences committed by the respondent which culminated in the trial of the respondent. He submitted that section 171 of the Act was inapplicable to bar prosecution of the respondent and afortiori, the court below was wrong to have construed Exh. P45 the way it did and to have treated the said Exh. as contained a condonation of the offences with which the respondent was charged in the trial court. He urged this court to resolve issue No.1 in favour of the appellant.

While responding to issue No.1 in his brief of argument, the learned Senior Counsel for the respondent submitted that the Court of Appeal was right in its finding that Exh. P.45 condoned the alleged offences for which the respondent was charged and the court was right as well, in holding that the appellant was precluded from trying the respondent before the trial court martial. He stated that the facts as borned by the record are that the offences with which the respondent was charged were all in relation to signing exhibits P.16 A & B. He stated further that when the allegations were made against the respondent, this Commanding Officer, PW8, had condoned the offences vide Exh.P45. Further, the Court of Appeal was asked to interpret the provisions of section 171 of the Armed Forces Act, Cap. A20, LFN, as it relates to the circumstances of the case. The learned SAN set out section 171 of the Act with particular emphasis on subsection(1)(c) and (2) )(c). The learned SAN argued that the operation of section 171 is dependent upon the existences of some features such as:-

i. Allegation of offence(s)

ii. Condonation of the offence(s) by the Commanding Officer of the respondent and

iii. Knowledge of all the circumstances of the alleged offences by the Commanding Officer before the condonation

The learned SAN quoted some excepts from exhibit P45 to show that there was an allegation of all the offences at the time exhibit P45 was made. The author of exhibit P45, argued the SAN, had full knowledge of all the circumstance of the allegations before writing the letter (exh. P45). Further the Court Martial made a finding that he author of exh.P45 was at the material time the Commanding Officer of the respondent. The learned SAN argued that there was no appeal or cross-appeal by any of the parties to the Court of Appeal on that finding of the trial court martial. The learned SAN stated the position of the law that the ruling of the trial court in that circumstance was accepted by both parties and in the absence of appeal, the court below and indeed this court has no jurisdiction to disturb that finding. He cited and relied on the case of Calabar v. Ekpo (2008) 11 MJSC, p.104 at P.123.

What is in dispute before this court, submitted the learned SAN, is whether the Court of Appeal was right in holding that the content of exhibit P45 constitutes condonation of the offences for which the respondent was charged. He submitted further that in resolving the issue, this court needs only to interpret the content of that exhibit and the principle in such exercise is that the document itself is the best evidence and words in the document should be given their ordinary meaning and that reading exhibit P45 as a whole, the entire offences mentioned therein had been withdrawn and substituted with a warning as contained in the said exhibit. The learned SAN urged this court to resolve issue one in favour of the respondent.

I consider it pertinent to begin by consideration of issue No.1 from both the appellant's and respondent's respective briefs of argument from the perspective of Exhibit P.45. What is this exhibit? This exhibit, from the record of appeal, pages 385 - 387 of Vol. 1 of the record, is a letter written and signed by PW8. It was tendered and admitted in evidence by the trial court martial as exhibit "P45". The trial court martial identified the letter as the document before it and titled as follows:

"withdrawal of charges preferred against Col. M. Aminun Kano (N/6422) and substitution with a final warning letter, Reference number NA/FIN11/2/A/94 dated 23rd September, 2003 from the NAFC HQS Area 7 Garki, Abuja and signed by SA Owuama Brig-General DAFA. This document is hereby admitted in evidence before this GCM and is marked Exhibit P45."

This exhibited is contained at pages 1321 to 1324 of second volume of the records of appeal. Although it is lengthy, I find it expedient to reproduce this exhibit verbatim and it reads as follows

"HEADQUARTERS

Nigerian Army Finance Corps,

Proto Type Complex,

Area 7,

Garki-Abuja.

NA/FIN11/2/A/94

See Distribution

23 Sep. 03

WITHDRAWAL OF CHARGES PREFERED AGAINST COL M AMINU KANO (N/6422) AND SUBSTITUTED WITH A FINAL WARNING LETTER

References:

A. NASFA/6/A/311 dated 01 Aug. 03

B. NA/FIN/11/2/A/VOL./1/78 dated 8 Aug. 03

C. NASFA/6/A dated 11 Sep 03

D. NASFA/6/415 dated 1 Sep 03

E. NA/FIN/11/2/A/VOL.1/84 dated 3 Sep 03

F. NA/FIN/11/2/A/VOL.1/84 dated 3 Sep 03

G. NA/218/A dated 9 Sep. 03

1. References A-F above are antecedents to Reference G requesting DAFA to stand down the disciplinary action against you on the grounds that you have already appeared for COA(A)'s interview. I have to register my utmost displeasure for your misdemeanor and to hereby warn you seriously to desist forthwith in all forms, content and structure from acts already documented against you vide Reference F.

2. You are seriously warned against the following:

a. Disobedience to particular orders punishable under section 65/(1) of the AFD 1993 (as amended) for failing to comply with the directive to withdraw a letter you initiated directly to NACOL without clearance from HQ NAFC.

b. Conduct to the prejudice of service discipline punishable under section 103(1) of AFD 1993 (as amended), for disregarding proper channel of communication by corresponding directly with AHQ Dept. of ms on your complaint about posting within the NAFC.

c. Disobedience to particular orders punishable under section 56(2) of the AFD 1993 (as amended) for failure to comply with a directive to withdraw the letter to AHQ Dept of MS.

3. For purpose of personnel records and service related matters, it is expedient to state that your misdemeanor is borne out of your ultimate ambition to head the NAFC as DAFA prematurely and without regard for the key ingredients of discipline and loyalty. You are neither disciplined nor loyal; neither do you pretend to be. The honour and dignity of the military profession is anchored on the bedrock of discipline and loyalty - two attributes you very grossly lack. How then do you aspire to lead men?

4. Given your progression in service, you have most times been in the eye of the storm. A few examples are being cited to buttress this assertion:

a. As a Maj, you had criticized your posting as DDA Fin Washington in preference for London. You were to be posted subsequently to 32 FAB to teach you a lesson that your postings and deployments in the NA are not issues you can pick and choose but an integral part of a career plan.

b. In all appointments held in NAPPO, NAAI and presently as Ag. Comt NASFA, you had conducted yourself in such unprofessional manner as to earn letters of warnings and in most cases outright letters of displeasure. Even then, you had throughout remained obstinate, defiant and strong headed.

c. Early this year, you were seriously indicted by the BOI set up by HQ NAFC which investigated your allegation of fake certificates against Col NE Ekwale and Col. PA Toun. It is rather unfortunate that this allegation ever arose because it was stage-managed by you to ridicule and project the two senior officers as cheats. The report confirmed that there were persuasive, corrobative and convincing evidence to ascertain the genuineness of certificates issued to these officers in 1983. It was even that mischievous that in 2003, you had to forward a false transcript without reference to HQ NAFC in respect of Col PA Toun to UNN to counter a true and authentic one issued twenty years earlier in 1983. You have therefore, by your conduct brought NASFA to disrepute and smeared the image of the NA and maligned the person of Col. Toun whom to perceive as a stumbling block for your quest to power. Disciplinary actions instituted against you on this issue were stalled due to administrative hiccups.

5. The crucial question is why must you remain perpetually impervious to correction? You may wish to recall that for over fifteen years of my personal contact with you, I have remained one of your closest confidants in the Finance Corps. I have always counseled and cautioned you each time your persistent acts of misconduct brought you into collution course with a superior authority or your peers. At most times you had shown a great sense of remorse but only to come up later with some more despicable behaviours. You simply cannot change. Even the tone of your letter of apology vide reference D did not show a contrite heart but of one who was compelled to satisfy an administrative procedure for fear of being sanctioned.

6. All along you have not only tried in vain to undermine the authority of the past DAFAS; you have equally tried to malign the reputation of your peers and subordinates to confer underserved advantage on your person. Your disdain for all perceived opposition to enable you have smooth sail to the appointment of DAFA is not in doubt. The irony, however, is that you are lacking in intellectual capacity, respect of followership, peers and subordinates. I have often pointed out this to you in my discussion with you. For instance, you cannot claim to have the respect and followership of at least the first ten most senior Colonels in the NAFC. You simply cannot boss over them. it is curious to note that you have been getting off the disciplinary hooks in the past by playing to your advantage obvious primordial sentiments inherent in our socio-political system.

The foregoing is presented hopefully for ease in you're your change process. You are seriously warned.

SA OWUAMA,

Brig. Gen.

DAFA." (underlining supplied for emphasis)

After setting out some excepts from exhibit P45, the court below, in its judgment, held as follows:

"From even the excerpts of some parts of P45 the same letter referred to above the Respondent had unwittingly agreed that the Appellant had already been seriously indicted in respect of the allegation of fake certificate against Col. NE Elewale and Col. PA Toun....

By what the Respondent's counsel had proffered it is clear that indictment of the Appellant and disciplinary actions against him had taken place and bringing him before a subsequent court martial comes within the realm of double jeopardy which our legal and judicial system abhor and cannot stand. I place reliance on Ashaka v. Nigerian Army Council (2007) 1 NWLR (Pt.1015) 408 which applied section 119 Nigeria Army Act, Cap 294 LFN 1990 which is impair materia with section 171 of the Armed Forces Act."

It is the above holding that the appellant is challenging. He posited that upon "Proper Construction", exhibit P45 does not contain any condonation of any of the charges preferred against the respondent. He went on to say that a look at the said exhibit shows that the DAFA withdrew charges listed in paragraph 2(a), (b) and (c) of pages 1 and 2 of the exhibit and substituted them with a final warning and that none of the charges contained in paragraph 29a), (b) and (c) referred to above, featured in the charge sheet for which the respondent was finally tried.

I earlier on reproduced the seven charge counts upon which the respondent was tried and convicted. I think there is need also, to reproduce, equally, the three charges covered by paragraph 2(a), (b) and (c) of pages 1 and 2 of exhibit P45 which were said to have been withdrawn by the DAFA (PW8). They are as follows:

"2. You are seriously warned against the following

a) Disobedience to particular orders punishable under section 65(1) of the AFD 1993 (as amended) for failing to comply with the directive to withdraw a letter you intiated directly to NACOL without clearance from HQ NAFC.

(b) Conduct to the prejudice of service discipline punishable under section 103(1) of AFD 1993 (as amended), for disregarding proper channel of communication by corresponding directly with AHQ Dept. of NS on your compliant about posting within the NAFC.

(c) Disobedience to particular orders punishable under section 56(2) of the AFD 1993 (as amended) for failure to comply with a directive to withdraw the letter to AHQ Dept. of MS."

The first charge of seven counts and the three counts charge as shown above, are what the learned counsel for the appellant. I think, referred to in his brief under issue 1 as "two set of facts, each leading to a set of three counts and another of seven counts".

There is also need to quote the provisions of section 171 of the Armed Forces Act as contained in Cap. A20, Laws of the Federation of Nigeria, Vol.A1. It provides as follows:

"171. Offences already disposed of not to be retried.

1) Where a person subject o service law under this Act -

a) Has been tried for an offence by a competent civil court or a court - martial under service law; or

b) Has been charged with an offence under service law and has bad the charge dismissed, or has been found guilty on the charge on summary trial under his act; or

c) Has had an offence condoned by his commanding officer, he shall not be liable in respect of that offence to be tried by a court - martial or to have the case dealt with summarily under this Act."

The task before me now is the resolution of the thorny issues as contended by the parties in this appeal as raised in issue No 1 and that is: firstly, whether exhibit P45 amounts to condonation of the offences upon which the respondent was arraigned, tried and convicted by the trial court martial in view of the provisions of section 171 of the Act or, secondly whether, the withdrawal of charges preferred against the respondent and which were substituted by "warning" contained in exhibit P45, were limited only to the contets of paragraph 2 of P45, as contended by the appellant.

I think we need to seek for the definition of the word "condoned" (v.t) of condone which, literally means, "to pardon", "to overlook" (an offence); "to forgive or to act so as to imply forgiveness." Thus, condonation is the act of condoning or pardoning a wrong act, the implied forgiving or pardon of an offence by overlooking it. (see: The Lexicon Webster Dictionary, Vol.1, 1980 reprint, the Delan Publishing Coy; Inc. USA, P.211)

In law, however, the word "condone" or "condonation" which has several variants such as condonment, condonance, strictly speaking, has to do with matrimonial causes specially and it connotes the conditional remission or forgiveness, by means of continuance or resumption of marital cohabitation, by one of the married parties of a known matrimonial offence e.g. adultery, committed by the other, that would constitute a cause of divorce the condition being that the offence shall not be repeated. See: Obafemi v. Obafemi (1965) 1 NWLR 446 at p.448. If adultery is charged as a ground for divorce and condonation is proved, the forgiving spouse is barred from proof of that offence. (Blacks Law Dictionary Eighth Edition 2004 reprint by St. Paul, MINN, West Publishing Coy. P.315). See also: Garner, B.A, (1995) A Dictionary of Modern Legal Usage 2nd ed., Oxford University Press, p.197

In the revised editions of 1999 and 2004 of the Blacks Law Dictionary, the authors brought to fore the definition of the word condonation as it relates to general application of the word where they defined it to mean a victim's express or, especially implied, forgiveness of an offence by treating the offender as if there had been no offence. (see 9th ed. of 2004 thereof). In a case almost similar to the present appeal, our brothers at the Court of Appeal, Ibadan Division, in the case of Asake v. Nigerian Army Council (2007) 1 NWLR (Pt.1015) at page 427, took judicial notice of the definition given to the word 'condonation' as stated above. That of course tallies with the literal definition of the word which I readily adopt in considering this issue.

From the record, two sets of facts which led to the charges levied against the respondent emerged; the first set of facts were contained in the charge sheet as shown in the Amended Convening Order for the General Court Martial dated 12th Sept. 2005, signed by Maj. Gen. NN Madza, Commander, Army Headquarters Garrison, Abuja. The charge sheet contained seven charges against the respondent which I reproduced at the begiing of this judgment. (This charge sheet was dated and signed byt eh said Maj. Gen. Madza on the 5th of Sept. 2005). The other set of charges were three in number and were drafted against the respondent. They read as follows:

1st Charged

a) Statement of Offence -

Disobedience to particular orders punishable under section 56(1) of AFC 1993

b) Particulars of offence in that he at:

APAPA LAGOS, failed to comply wit the directive to withdraw a letter NASFA/8/G/238 dated 2nd July 03 intiated directly to NACOL having been specially instructed to do so vide NA/FIN/115/G/4/90/dated 15 July 03

2nd Charge

a. Statement of Offence:

Disobedience to particular orders punishable under section 56(2) of AFD 1993

b) Particulars of offence in that he at:

APAPA LAGOS, failed to comply wit the directive vide NAFIN/112/A/Vol.1/78 dated 8TH Aug. 03 To withdraw a letter he initated to AHQ Dept. of MS vide NASFA/6/A/311 dated 01 Aug.03. been specially instructed to do so vide NA/FIN/115/G/4/90/dated 15 July 03.

3rd Charge

a. Statement of Offence:

Conduct to the prejudice of service discipline punishable under section 103(1) of AFD 1993

b) Particulars of offence in that he at:

APAPA LAGOS, Disregarded proper channel of communication by corresponding directly with AHQ Dept of MS on his complaint about posting within the NAFC vide NASFA/6/A/311 dated 01 Aug.03.

The three offences were reported by Brig. Gen. SA Owuama, DAFA HQ. NAFC .

It is to be noted that in the convening letter accompanying the charge sheet dated 3 Sept. 03, which was signed by one Col. Al Muraina, for the DAFA, the heading was in respect of discipline of "officer" Col. M. Aminun Kano (N/6422). The letter and the charge sheet were circulated to, among others: AHQ Gar. Abuja; AHQ DONAA AHQ Dept of MS

On the 09 Sept. 03, a letter from the Headquarters, Nigerian Army, Dept. of Administration, Ministry of defence which was signed by Brig. Hen Hou Adoga, for COA (A) And circulated to among others, HQ NAFC and office of the COAS AHQ Dept of MS AHQ Gar, disciplinary action was directed to be stood down against the respondent. However, a letter of displeasure be written against the senior officer (i.e. the respondent) and he be seriously warned, going by his antecedents were high lighted in exhibit P45 which was written as a result of that letter of 9th Sept. 203. Ref NA/218/A.

In his warning letter to the respondent, Bri. Gen. Owuama (DAFA) and PW8 at the trial court after having particularized the three offences contained in the latter charges, went on to say that the respondent had, in most times, been in the eye of the storm. He cited instances where respondent criticized this posting as DDA Fin. Washingtom in preference to London. Conducting himself in such unprofessional manner which earned him letters of warnings and outright letters of displeasure; his indictment by Bol, set up by HQ, NAFC which investigated allegation of fake certificates against Col. BE Ekwale and Co.TA Town which, the General (PW8), said were stage - managed by the respondent to redicule and project the two senior officers as cheats; forwarding of false transcript without reference to HQ. NAFC in respect of Col. PA Toun to UNN to counter a true and authentic one issued twenty eyars earlier in 1983, thereby bringing NASFA to disrepute and smeared the image of the NA and maligned the person of Co. Town whom respondent perceived as a stumbling block for his quest for power PW8 ended that paragraph in P45 stating that displinary actions instituted against the respondent on that issue were stalled due to administrative hiccups.

It is after all these that PW8, the author of exhibit P45 ended by saying:-

"The foregoing is presented hopefully for ease in your change process. You are seriously warned."

What is "warning"? in the Collins Learners Dictionary (Concise Edition 1996) the word "warning" is defined as something which is said or written to tell people of a possible danger, problem or other unpleasant thing that might happen. It is an advance notice of something that will happen often something unpleasant or dangerous. Blacks Law Dictionary defines "warning" to be "the pointing out of a danger, especially to one who would not otherwise be aware of it." In the realm of civil or public service, the word connotes a kind of mild punishment which paves way, where occasion demands, to the avalanche of the full wrath of the law where the same offence(s) is/are repeated by the person warned.

I think this definition will fit in well within the general concepts of theory of punishment under the Criminal Law where for instance an accused person has been found guilty but due to the nature of the offence, the personalities involved and provisions made by the punitive section of that law, the accused can be sentenced to a warning.

In view of the above therefore, could exhibit P45 be said to isolate any of the two sets of charges against the respondent for the purposes of handing down the warning? I must answer this question in the negative. Even if the author of exhibit P45 unwittingly made comments on the issuance of false certificates, forwarding of false transcript and other matters related thereto which were "stage managed" by the respondent against Col. Toun and Col. Ekwale, that document containing the set of three charges shown in paragraph 2 thereof and some elements cited by the author of exhibit P45, extracted from the other charges cannot be fragmented or segmented. Although exhibit P45 is not an Act of Parliament or a piece of any legislation, it is a document written with a particular purpose. In order to read the mind of the maker/author of that document it is necessary to subject such document to an appropriate rule of interpretation that a passage is best interpreted by reference to what precedes and what follows it. This makes it mandatory for one to read the whole passage or document and every part of it should be taken into account. Viscounts Simonds, in the case of Attorney-general v. Earnest Augustus (Prince) of Honover (1957) AC 436 at p.463, stated inter alia:

"it must often be difficult to say that any terms are clear and unambiguous until they have been read in their context. That is not to say that the warning is to be disregarded against creating or imaging an ambiguity....it is a must only to the extent that the elementary rule must be observed that no one should profess to understand any part of a statute or of any other document before he has read the whole of it. Until he has done so he is not entitled to say that it or any part of it is clear or unambiguous."

This means that if a section of a legislation (in this appeal I take it to mean any part of any of the paragraphs contained in exh. P45) appears to be obscure its true meaning can only be ascertained by reference to what precedes it as well as what follows it. Thus, by taking a look at exh. P45, starting from the title of the document.

"WITHDRAWAL OF CHARGES PREFERED AGAINST COL. M. AMINU KANO (N.6422) AND SUBSTITUTION WITH A FINAL WARNING LETTER."

And traversing through the contents of the whole document which is made up of seven paragraphs, the last ended the document in the following words:

"7. The foregoing is presented hopefully for ease in your change process. You are seriously warned."

Reference to the "foregoing" is reference to all the matters or issues discussed prior to this last paragraph. If the author of exh. P45 had wanted to isolated some of the charges preferred against the respondent, he would have limited his reference in paragraph 2 to those charge as express enactment shuts the door to further implication. It is the general practice of the courts to read statutes on the same subject matter together. Statutes are said to be of the same subject or matter where they relate to the same thing or person or they have a common purpose. Such statutes are read, construed or applied together so that the intention of the legislature is discovered from the whole set of enactments on the same subject matter. In R. v. Loxdale (1755) 1 Burr 445 at p.447, Lord Mansfield stated that where different statutes deal with the same subject matter even when made at different times, expired, or not referring to each other, they shall be taken and construed together, as one system and as explanatory to each other. I am therefore in respectful disagreement with the learned counsel for the appellant in his submission that:

"Giving that none of the charges preferred against the respondent at the trial court featured in paragraph 2 of pages 1 and 2 of exhibit P.45, coupled with the clear statement that the disciplinary actions against the respondent on the false allegation of fake certificate in relation to Col. Toun (as then was) and Col. Ekwale, were stalled by administrative hiccups, it cannot be said that the appellant had pardoned, overlooked or forgiven the respondent for those false allegations."

It is my view that Exh. 45 has covered both sets of charges framed against the respondent. The warning handed over to the respondent must, for all intents and purposes, be construed to mean condonation as contemplated by section 171 of the Act.

Now, for the avoidance of doubt, I find it pertinent to set out, herein below, the provisions of section 1271 of the Act which reads as follows:

"171(1) Where a person subject to service law under this Act -

(a) has been tried for an offence by a competent civil court or a court-marital under service law; or

(b) has been charge with an offence under service law and has had the charge dismissed, or has been found guilty on the charge on summary trial under this Act; or

(c) has had an offence condoned by his commanding officer; he shall not be liable in respect of that offence to be tried by a court-marital or to have the case dealt with summarily under this Act.

(2) For the purposes of this section:-

(a) a person shall not be deemed to have been tried by a court-martial if confirmation is withheld of a finding by the court-marital that he is guilty of the offence or of a finding by a court-martial that he is not guilty of the offence by reason of insanity.

(b) a case shall be deemed to have been dealt with summarily notwithstanding that the finding of the officer who summarily tried the charge has been quashed or varied on review thereof;

(c) an offence shall be deemed to have been condoned by the commanding officer of a person alleged to have committed the offence if, and only if, that officer or any officer authorized by him to act in relation to the alleged offence has, with knowledge of all circumstances, informed him that he will not be charged with the offence;

(d) a person ordered under section 100 of this Act to be imprisoned for an offence under that section shall be deemed to have been tried by a court-martial for the offence.

(3) Where confirmation of a finding of guilty of an offence is withheld, the accused shall not be tried again by a court-martial for that offence unless the order convening the latter court-martial is issued not later than 28 days after the promulgation of the decision to withheld confirmation. (underlining supplied for emphasis)

This section, to my mind, is as clear as the sunlight. No word would require any interpretation other than the plain and ordinary one. Every word is so clear and plain. In the case of Everard v. Poppleton (1884) 5 QB 181 at p.184., Lord Denham observed:

"Nothing is more unfortunate than a disturbance of the plain language of the legislature, by the attempt to equivalent terms."

Thus, no court will attempt to interpret or construe an Act of Parliament contrary to the express words of the Act.

Another point raised by the learned counsel for the appellant is that the writer of Exh.P45 did not qualify as "commanding officer" of the respondent within the meaning of section 171(1)(c) of the Act and even if he is, which was not conceded by the appellant, he had not in any way condoned the offences committed by the respondent which culminated in his trial by the trial court. Section 171 was thus inapplicable to bar the prosecution of the respondent and the court below was wrong in its interpretation of exh. P45.

A "commanding officer" in the Nigerian Army has been defined to be, in relation to a person, "the officer commanding the unit to which the person belongs or is attached." The respondent was a serving senior officer of the Nigerian Army and was subject to service law. He was posted as the Commandant of NASFA, Apapa, Lagos. In this regard, the trial court in its ruling on objection as to its jurisdiction to try the respondent stated, inter alia:

"NASFA which is currently situated in Lagos is not under 81 Division though cited in Lagos. It is an outfit that is under the direct Command of the Director of Army Finance and Account (DAFA). The DAFA himself is under the direct Command of the Chief of Army Staff (COAS) as his staff officer and by extension is also under the administrative and daily control of the Garrison Commander who is here in Abuja ... The court therefore considers the posting of the officer a jurisdiction and that has been approved by the Army authority..."

The above goes to establish that PW8 at the time he wrote and signed exh. P45 qualified as Commanding Officer of the respondent within the meaning of section 171(1)(c) of the Act. This section, at the risk of repetition, provides:

"(1) Where a person subject to service law under this Act -

(c) has had not offence condoned by his Commanding Officer;

He shall not be liable in respect of that offence to be tried by a court-martial or to have the case dealth with summarily under this Act."

I am in complete agreement with the court below when it held:

"Furthermore, the position of the respondents counsel that General, S. A. Owuama the author of the letter is not the Commanding Officer by the definition in the Act would not persuade me to go along with that thinking as the letter was clearly written by a superior of the appellant who can be referred to as Commanding Officer of the appellant which in oral evidence the General confirmed...

In the light of the foregoing I resolve this issue in favour of the appellant and agree with appellant that his trial and conviction after the earlier indictment and warning amounted to double jeopardy." (underlining supplied for emphasis)

"Double Jeopardy" is the subject of issue No. 2 from the appellant's brief of argument. Even in its ordinary usage, "double jeopardy" connotes the unlawful procedure of subjecting a person to a trial on two separate occasions for the same offence (see: The Lexicon Webster Dictionary, 1980 reprint, vol. 1 page 298). In law also, it connotes the act of being prosecuted or tried twice for substantially the same offence. (see: B. A. Garners Dictionary of Legal Usage, 2nd ed. 1995 page 292)

It is the submission of learned counsel for the appellant that since exhibit P45 did not cover any of the offences for which the respondent was charged at the trial court but contains a statement to the effect that disciplinary actions against the respondent were stalled due to administrative hiccups, no disciplinary actions which the under the Act connote trial by a court-martial had been taken against the respondent prior to his being charged before the trial court. There could not have been any situation of double jeopardy, contrary to the position taken by court below. Learned counsel tried to draw distinction between indictment and trial by a competent civil court or court martial as envisaged in section 171(1)(a) of the Act. There is no where in the provisions of section 171 where indictment would be said to constitute a bar to prosecution. Learned counsel submitted that the court below was wrong in holding that the trial of the respondent at the trial court amounted to double jeopardy following his indictment by the Board of Inquiry (BOI) as indicated in Exh. P45. He cited and relied on the case of Onyeanusi v. Miscellaneous Offences Tribute (2002) 12 NWLR (Pt.781) 227 at p.250; Tukur v. Government of Gongola State 9188) 1 NWLR (Pt.68) 39 AT 51 - 52 G - B. Learned counsel finally submitted on this issue that double jeopardy was never canvassed by the respondent in the appellant's brief at the court below. As the court below failed to confine itself to the case presented, that failure occasioned a miscarriage of justice, Learned counsel cited a litany of cases including; Ekpenyong v. Nyong 91975) 2 SC 71; Olatunji v. Adisa (1995) 2 NWLR (Pt.376) 167.

I agree with the learned SAN for the respondent in his submission that it is never in dispute that the court below found that the respondent had been condoned by this commanding officer for the offences for which he was tried. The court below, applying section 171 of the Act and the case of Asaka v. Nigerian Army (supra) held that the condonation in law is a bar to subsequent prosecution. The court below then applied the provision of that law rightly, in my view, to hold that once an offence had been condoned, any subsequent trial of the same offence(s) would amount to double jeopardy. In the case of Asaka v. Nigerian Army Council (2007) 1 NWLR (1015) 408, the appellant at the Court of Appeal was alleged to have borrowed $300.00 from one L.Cpl. Yau Suleiman. He failed to pay back the money. L.Cpl. Suleman wrote a letter for redress of injustice. The Commanding Officer of the appellant investigated the matter and informed the appellant that,

"There is no problem as far as he (the appellant) was going to pay the boy back, there will be no trouble"

This appellant was later charged with conduct prejudicial to service discipline contrary to section 71 of the NA Act 1960 (revised). The appellant was at the end of trial convicted. On appeal, the appellant contended that the offence had been condoned by his Commanding Officer and thus, by virtue of section 119 Nigerian Army Act, Cap 294 LFN, 1990 (which is in pari material) with section 171 of the Act. The appellant's trial and conviction for the offence was held to be a nullity.

The Court of Appeal in Asaka's case (supra) after reviewing the entire evidence and the prevailing law on the matter, held, inter alia:

"in my opinion, PW1 genuinely felt that he settled the miniature allegation against the appellant and condoned the misdemeanor.; Put succinctly, PW1, the C. O. condoned the alleged act of the appellant.... the misdemeanor (if indeed there was any) was condoned by Pw1 - the Commanding Officer."

The Court of Appeal consequently discharged and acquitted the appellant.

The issue of interest which affords me an opportunity for comparison is that both Asake in the above case cited and the respondent in this appeal were members of the Armed Forces of Nigeria and each was subject to service law under the various Armed Forces Laws prevailing at the time he was condoned and then (wrongly of course) put to trial. The provision of section 119 of Cap. 294 of the Army Act, LFN, 1990, is in pari materia with section 171 of the Act under which the respondent has been convicted and sentenced to various forms of punishments including reduction in rank. In as much as I find the decision of the Court of Appeal in Asake's case (supra) to be good law as of now, in the sense that this court did not have any opportunity to set aside that decision, I find myself inclined to re-state the position of the law that any serving person or officer of the Nigerian Armed Forces who is subject to service law especially the prevailing law as is now contained in the Armed Forces Act, Cap A20 LFN, 2004; who has been alleged to have committed some crimes and has been condoned by his Commanding Officer, under the Act, cannot be subjected to double jeopardy by standing trial before a court or tribunal of whatever nature and howsoever. To allow for that would tantamount to making mockery of the Act especially section 171 thereof. The provisions of any law made by the legislature are not made for mere fun of it or for the purposes of meeting the whims and caprices of the interpreter. They must be interpreted and applied to meet the circumstances, issue, conditions or situations for which they are made.

Further, I find it uncomfortable from my favourable consideration the argument of learned counsel for the appellant that the learned justices of the court below were wrong in holding that the trial of the respondent at the trial court amounted to double jeopardy following his indictment by the Board of Inquiry (BOI) as indicated in Exh. P45 and thereby, unwittingly reading into section 171 of the Act what the law maker did not provide as a bar to prosecution and the court below had no power to do that. I think I should remind the appellant, in this connection, that it was when complaints were heightened against the respondent and put across to the DAFA, that another BOI (Board of Inquiry) was set-up to investigate the respondent. The BOI's investigation report was complied and signed bty one Capt. K. C. Okoro (CO SI). The report made a number of recommendations, almost all of which formed the basis for the charges preferred against the respondent in seven counts charge contained in the first charge sheet. The BOI recommended, among others:

"As an alternative to the above mentioned charges other administrative measures could be taken against Brig. Gen. Aminun - Kano."

Series of documents were written and signed by or on behalf of the DAFA, addressed to the respondent and some of the formations/institutions/persons, severally warning the respondent with the last one which culminated in exhibit p.45. One of such documents reads in part:

"Your letter reference C was received.... However, you were told to come and discuss the issue raised with me before further action could be taken. Surprisingly, you went ahead to write the letter and distributed to formations without my instructions. You used the wrong channel of communication. You wrote to external organization without being directed. You wrote to COAS without being directed. Your action also amounts to circulating confidential information without authority form me.

2. You were earlier warned vide reference A and B to always clear policy matter with the DAFA. Before circulating, you have flouted this warning at least twice. This only shows that you are obstinate an arrogant, refusing to take instructions from your superiors. This is not acceptable to me. I am therefore expressing my strongest displeasure at your refusal to obey simple instructions.

3. This letter will be placed on record in your file in this Headquarters. A further misdemeanor will be reported to MS 'A' and will subsequently be reflected in your annual PER. Please note and take immediate action to correct yourself.

4. You are warned.

Signed.

VB Williams

Maj. Gen.

DAFA

In another document written and signed by Brig. Gen. Hou Adoga for COA (A), the respondent was alleged to have breached channel of communication in the N. A. Charges were forwarded to AHQ Gar for disciplinary action. The signatory of that document said that he was directed to request for a stand down of the disciplinary action as the respondent "realized his folly and wrote a letter of apology." However, going by the antecedents of the senior officer (i.e. respondent), he was to be written a letter of displeasure and seriously warned.

That, in my understanding was what gave rise to the letter quoted above. That letter signed by DAFA Maj. Gen. V. B. Williams was titled "Letter of Displeasure: Col. M. Aminun - Kano (N/64/22). Paragraph 2 thereof was full of reprimand/displeasure etc.

In this evidence in Chief, PW8 while recasting the episode, lamentably observed:

"I preferred the charges and submitted it (sic) to the Department of Administration for further necessary action Gem. Iliya called us because he was Chief of Administration by then and tried as the lawyers will say to adjudicate and make sure that things got well, at the end he advised that he has reprimanded Gen. Aminun-Kano that he is going to be of good behaviour that I should withdraw the charges and give him another chance but that I should write a FINAL WARNING LETTER to him which I did and in that letter, there is nothing in that letter I didn't discuss with Gen. Basharu two or three years earlier, his leadership potential, his inability to manage relations with peers, persistent insubordination, acts of indiscipline and so on and so forth. I even emphasized that this is somebody so dear to me but what hurt (sic) me most is that he doesn't listen to my advice."(Italics and underlining, mine for emphasis)

Thus as per exh. P45, the charges preferred against the respondent were withdrawn administratively. PW8 stated the position categorically when he said:

"So, when Gen. Iliya, they put it in writing that I should withdraw the charges, I said fine, no problem, which I did."

From the above therefore, one can see very clearly that all the charges and not some few selected as the appellant would want me to believe, were withdrawn by PW8, the then Commanding Officer of the respondent. It is a surprise to see that same charges were brought back again against the respondent. But PW8, in his testimony in chief stated the reason for such a step-backward:

"Only two weeks later gen. Iliya wrote that I should press on with the charges why? Because my officer has blackmailed him that he was settled by Finance that is why he was supporting them. And they insisted that I should press on with the charge .... so, I laughed and said to Gen. Iliya. He is the 81 Div. if you nee him, you can call him." (underlining for emphasis).

It is again clear that the resurgence of the charges laid before the trial court, with the aim of trying the respondent was in a bid to assuage the "Blackmail" alleged to have been made by the respondent against Gen. Iliya, who was the Chief of Administration.

Thus, it can be seen that all efforts were exerted by army of the superior officers of the respondent to see that "matter" died a natural death. This is again clear from the testimony of PW8 where he replied to a question put to him by the prosecution:

"We agreed like in Military Pariance that we will ground arms, as it were; let the sleeping dog lie because this (sic) certificates were authentic. I have been there so, forget about it. He said okay, we all shook hands, then Col. Toun was in the War College, it was himself and Ekwale and I asked them you go and sort out the remaining issues, make sure that this thing dies a natural death because if it goes beyond this, gentlemen, it is like a wild fire somebody has said. You don't know whom it will consume and I told them, either way, it goes beyond this is a none issue, as far as I am concerned." (underlining for emphasis)

Now, I think this is what the court below was stating that by subjecting the respondent to another series of punishments, conviction,s sentences before another body, whether sitting as a panel, a tribunal, a court of law including the court martial, inspite of all the warning, reprimands in strong terms, which were of course capable of portraying the respondent as an "irresponsible" senior officer of the Nigerian Army, would means subjecting the respondent to double jeopardy. This would certainly be against the spirit of section 171(1)(c) of the Act. It is also against the general principles of penal laws in this country including the Constitutions of the Federal Republic of Nigeria, 1999 section 36(10) of the Constitution provides:

"No person who shows that he has been pardoned for a Criminal Offence shall again be tried for that offence"

This lays down the principle of criminal law that where a person accused of committing a criminal offence(s) which are recognized by law and where he has shown that he has either been pardoned of that offence(s) by the appropriate authority or that he has been tried by a court of law or a tribunal set up by law, then he cannot be subjected to any further trial by any court or tribunal on that same offence(s). A bar to further prosecution has now been placed between him and those offences. See: North Carolina v. Pearee (1969) 395 US 711; Imade v. IGP (1993) 1 NWLR (Pt.271) 608; Barmo v. State (2000) 1 NWLR (Pt.641) 424 at p.440 – C.

The holding of the court below, in my view, has rightly been done inconformity with prevailing law and I affirm it.

Consequent upon that, it is my view that all other issues as formulated by the learned counsel for the appellant appear to be an exercise in fullity and academic rigmarole as the issue of lack of jurisdiction of the trial court martial must ipso facto, affect all other issues considered by the lower court. I need not consider issues 3 - 5 of the appellants brief of argument. I think it is an established principle upon which our courts operate in this country that where a court lacks competence to try a person or subject matter before it whatever decision it arrives at on such a person or subject matter is a nullity. See Abdusalam v. Salawu (2002) 13 NWLR (Pt.785) 505; Galadima v. Tambai (2000) 11 NWLR (Pt.677) 1; Adisa v. Oyinwola (2000) 10 NWLR (Pt.674) 116; Madukolu v. Nkendilim (1962) 2 SCNLR 342. Although the respondent raised a point of objection to the jurisdiction of the trial court, on a different ground i.e. jurisdiction relating to territory, it is not in dispute that section 171 of the Act divests any court on tribunal of competence to subject the respondent to any further trial after having been condoned by the appropriate authority. Thus, if any court or tribunal should proceed to make pronouncements on persons such as the respondent inspite of the condonation and damning the consequences of lack of competence, this court cannot close its eyes on such abnormally or illegality. Issues 3 - 5 are no more live issues before this court and are accordingly struck out.

This appeal is decided only on issues Nos. 1 & 2 as formulated by the appellant. Accordingly, I hereby dismiss this appeal as lacking in any merit. I affirm the decision of the court below.

**G. A. OGUNTADE, JSC:**

I have had the advantage of reading in draft a copy of the leading judgment of my learned brother, Muhammad, JSC. I agree with his reasoning and conclusion. I only need say that whilst it is not to be expected that Military Court Martial President would write their judgment in the conventional manner used by the Civil Court, it is still compulsory that their judgment should show the reasoning behind the conclusions arrived. The judgment should discuss the nature of the evidence called, which evidence is rejected or accepted and why. It is only in this way that the 1999 constitution of Nigeria could be complied with. A judgment, whether in the Military or Civil Courts which does not; ex-facie show the basis of a pronouncement of a guilty verdict on a citizen of Nigeria is in my view an infraction of the citizen's right to Fair Hearing. Being a serving member of the armed forces does not exclude a citizen from protection of the Fundamental Rights entrenched in the 1999 Constitution of Nigeria. I would also dismiss this Appeal as in the leading judgment.

**F. F. TABAI, JSC:**

I was privileged to read, in draft, the Leading Judgment of my Learned brother, Muhammad, JSC. I agree entirely with the reasoning and conclusions therein that the Appeal lacks merit. The result is that I also dismiss the Appeal with costs as assessed in the Leading Judgment.

**J. A. FABIYI, JSC:**

I have read before now the judgment just delivered by my learned brother, Muhammad, JSC. I completely agree with the reasons therein advanced to arrived at the conclusion that the appeal lacks merit and should be dismissed.

The real issue for resolution in this appeal is whether Exhibit P.45 written by P.W.8, respondents Commanding officer, amounted to condonation as provided by section 171 of the Armed Forces Act, Cap. A20 Laws of the Federation of Nigeria, 2004.

Exhibit P.45 has its title as:-

"WITHDRAWAL OF CHARGES PREFERRED AGAISNT COL. M. AMINUM KANO (N/6422 AND SUBSTITUTION WITH A FINAL WARNING LETTER"

The stated vital exhibit concludes as follows:

"7. The foregoing is presented hopefully for ease in your change process. You are seriously warned."

Condonation as defined in Black's Law Dictionary, 6th Edition at page 295 means 'pardon of offence, voluntary overlooking, and implied forgiveness by treating offender as if offence had not been committed. Wilson v. Wilson 14 Ohio App. 2d 148."

It is apt to depict the provision of section 171(1) (c) of the stated Act here below for ease of reference. It states as follows:-

"171(1) Where a person subject to service law under this Act-

(c) has had an offence condoned by his commanding officer, he shall not be liable in respect of that offence to be tried by a court-marital or to have the case dealt with summarily under this Act."

From the title of Exhibit P45, P.W.8 the commanding office expressed withdrawal of charges against the respondent and substitution of same with a final warning letter. It concludes with serious warning dished out to the respondent. I am of the considered view that P.W.8, the commanding officer condoned the alleged acts of the respondent. P.W.8 should not contest same as such may be likened to 'a person who puts his hands on the plough and tries to look back.' With due humility, I expressed a similar view in Asake v. Nigerian Army Council (2007) 1 NWLR (Pt.1015) 408 at 429. Herein, I wish to keep my peace.

Having shown that he has been pardoned, the respondent should not be tried for the same offices(s) to avoid souble jeopardy. This is as provided in section 36(10) of the 1999 Constitution of the Federal Republic of Nigeria.

My learned brother has covered all the salient points. I fully support his reasoning and conclusion that the appeal lacks merit. It is hereby dismissed as the decision of the court below is affirmed.

**O. O. ADEKEYE, JSC:**

I had a preview of the judgment just delivered by my learned brother I. T. Muhammad, JSC. My Lord is his leading judgment had meticulously considered the two surviving issues raised for determination by the appellant in this appeal. it is an exhaustive judgment which in my thinking adding anything by way of contribution will only lead to the unnecessary repetition of the facts and applicable principles of Law already thoroughly examined in the judgment. I also dismiss the appeal as lacking in merit and affirm the decision of the lower court.