IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

BEFORE THEIR LORDSHIPS

ON FRIDAY, 8TH MAY, 2020

OLABODE RHODES-VIVOUR	**JUSTICE, SUPREME COURT**
MARY UKAEGO PETER-ODILI	**JUSTICE, SUPREME COURT**
OLUKAYODE ARIWOOLA	**JUSTICE, SUPREME COURT**
KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN	**JUSTICE, SUPREME COURT**
JOHN INYANG OKORO	**JUSTICE, SUPREME COURT**
AMINA ADAMU AUGIE	**JUSTICE, SUPREME COURT**
EJEMBI EKO	**JUSTICE, SUPREME COURT**

SC. 622C/2019

BETWEEN:

UDE JONES UDEOGU :: APPELLANT.

AND

1. FEDERAL REPUBLIC OF NIGERIA
2. ORJI UZOR KALU :::::::::::::::::::: RESPONDENT.
3. SLOK NIGERIA LIMITED

JUDGMENT

(Delivered by EJEMBI EKO, JSC)

On 31st October, 2016 at the Federal High Court, Lagos Division the Appellant, and the 2nd and 3rd Respondents were arraigned before the

Honourable, Justice M. B. Idris – Judge of the Federal High Court, on several criminal allegations or charges. They each pleaded not guilty to all the charges. Trial thereafter commenced before his Lordship M. B. Idris, J. The prosecution called a total of 19 witnesses and on 11th May, 2018 they closed their case. On 28th May, 2018 the Appellant entered a no case submission. The prosecution (the 1st Respondent) on 17th July, 2018, filed written address in opposition to the no case submission.

The Honourable, M. B. Idris, J was on 20th June, 2018, elevated to the Court of Appeal as a Justice of the Court. On 22nd June, 2018 the Honourable, Justice M. B. Idris took his oath as a Justice of the Court of Appeal and had from his said elevation ceased to be a judge of the Federal High Court.

On 2nd July, 2018, vide letter No. PCA/S.19/XIV/20 the President of the Court of Appeal, purporting to act under Section 396(7) of the Criminal Justice Act, 2015 (sic: Administration of Criminal Justice Act, 2015?) issued to the Honourable, Justice M. B. Idris, Justice of the Court of Appeal his "fiat/permission to conclude the part heard Criminal Matter: FHC/ABJ/CR/J6/07 between Federal Republic of Nigeria vs. Orji Uzo Kalu & 2 Ors now pending before the Federal High Court Lagos". The FIAT directed the Honourable, Justice M. B. Idris, JCA to conclude the matter before the end of September 2018. The salient portion of the FIAT No. PCA/S.19/XIV/20 dated 2nd July, 2018 at page 1360 of the Record, is herein below reproduced, to wit:

OFFICE OF THE HONOURABLE PRESIDENT
COURT OF APPEAL

Our Ref: PCA/S.19/XIV/20 Your Ref – Date: 2nd July, 2018

Hon. Justice M. B. Idris
Court of Appeal (Headquarters)
Abuja.

My Lord,

FIAT TO HON. JUSTICE M. B. IDRIS, JUSTICE COURT OF APPEAL TO CONCLUDE THE PART HEARD CORRUPTION TRIAL IN SUIT NO. FHC/ABJ/CR/56/07 AT THE FEDERAL HIGH COURT LAGOS.

By the virtue of the provisions of Section 396(7) of the Criminal Justice Act, 2015, you have my FIAT/permission to conclude the part heard criminal matter: FHC/ABJ/CR/56/07 between Federal Republic of Nigeria vs. Orji Uzo Kalu & ors now pending before the Federal High Court Lagos.

The matter to be concluded before the end of September, 2018.

Please be assured of my warmest regards.

Hon. Justice Z. A. Bulkachuwa, CFR
President, Court of Appeal.

Section 396(7) of the Administration of Criminal Justice Act, 2015 (ACJA, 2015) which the Honourable, the President

of the Court of Appeal seemed, purportedly, to act in pursuance of in the "FIAT/Permission" he issued to the Hon., Justice M. B. Idris, JCA to return to the Federal High Court, Lagos to conclude the part heard criminal matter he left thereat upon his elevation to the Court of Appeal, provides –

> 396(7) Notwithstanding the provision of any other law to the contrary, a judge of the High Court who has been elevated to the Court of Appeal shall have dispensation to continue to as a High Court Judge only for the purpose of concluding any part – heard criminal matter pending before him at the time of his elevation and shall conclude the same within a reasonable time.
>
> [underlinings supplied]

"Dispensation", according to both Oxford Advanced Learner's Dictionary and Black's Law Dictionary 9th Ed., is a

permission to do something that is ordinarily forbidden. That is; a permission to do something that is not usually done, allowed, legal or lawful. Therefore, the question is; On what constitutional authority does either the National Assembly or the President of the Court of Appeal stand to grant this "dispensation" to the Honourable, M. B. Idris, JCA to continue to act as a Judge of the Federal High Court after he had ceased to be a judge of the Federal High Court upon his elevation to the Court of Appeal?

Pursuant to the FIAT, above reproduced, Hon. M. B. Idris, JSC resumed his sitting in the criminal matter No FHC/ABJ/CR 156/07 Between: Federal Republic of Nigeria vs. Orji Uzo Kalu & ors. On 16th July, 2018 the prosecution sought to amend the charges. The application was vehemently opposed. In his considered ruling delivered on

Appellant was thereafter called upon to enter upon his defence. In his appeal against the ruling, the Appellant challenged the competence of M. B. Idris, JCA to continue to sit and hear the matter: FHC/CR/56/07 then pending before the Federal High Court, Lagos. The Court of Appeal (hereinafter called "the lower court") heard arguments in the appeal on 7th February, 2019 and on 24th April, 2019, in the considered judgment the justices of the lower Court unanimously dismissed the appeal – hence this further appeal.

This appeal is predicated on facts that are neither complex nor convoluted. The Honourable, Justice M. B. Idris was until 20th June, 2018 a Judge of the Federal High Court. On 20th June, 2018 he was elevated the Court of appeal and on 22nd June, 2018 he took his oath of allegiance and oath of

office as a Justice of the Court of appeal. It is neither disputed nor in any doubt that he had ceased to be a judge of the Federal High Court from the moment of his elevation to the Court of Appeal. His Lordship's subscription to the oath of the office of the Justice of the Court of appeal on 22nd June, 2018 puts the matter beyond any iota of doubt that he had ceased to be a Judge of the Federal High Court. As at 22nd July, 2018, when the President of the Court of Appeal issued to M. B. Idris, JCA –

> **By virtue of the provisions of Section 396(7) of the Criminal Justice Act, 2015, you have my FIAT/Permission to conclude the part heard matter: FHC/CR/56/07 – now pending before the Federal High Court, Lagos;**

the said Justice M. B. Idris, JCA had no doubt ceased to be a Judge of the Federal High Court.

The Criminal Justice Act, 2015, under which the President, Court of Appeal issued the FIAT/Permission pursuant to Section 396(7) thereof (as opposed to the Administration of Criminal Justice Act, 2015) does not exist in the *corpus juris* of the Laws of the Federation of Nigeria, particularly the 2015 edition thereof. Ordinarily, an act done pursuant to, or in furtherance of, a non-existent law is itself a nullity. It has no binding effect. As Ogundare, JSC had put it in ADEFULU & OR v. OKULAJA & ORS (1996) LPELR – 90 (SC) at 34 "null and void" means that which binds no one or is incapable of giving effect to any rights or obligations under any circumstances, or that which is of no effect.

The parties, particularly the Appellant, seem to think that the President, Court of Appeal, on 2nd July, 2018, issued his "FIAT/permission" to Hon. Justice M. B. Idris, JCA, "to

conclude the part-heard criminal matter: FHC/CR/56/07 – " pursuant to and in furtherance of Section 396(7) of the Administration of Criminal Justice Act, 2015, and not Section 396(7) of the non-existent Criminal Justice Act, 2015. It is on this basis and in the light of the decision of the Court of Appeal that the Appellant formulates the following 3 issues for the determination of this appeal. That is:

> **ISSUE ONE**: whether Court of Appeal was right when it held that Section 396(7) of the Administration of Criminal Justice Act, (ACJA) 2015 vests a Justice of the Court of Appeal with requisite power to sit and conclude part heard matter at the Federal High Court and that the said Section is not contrary to Sections 250 (2) and 253 of the Constitution of the Federal Republic of Nigeria 1999 as (amended)

issue is in consonance with the question on the constitutionality of both the statutory dispensation and the administrative Fiat/permission respectively given by the National Assembly in Section 396(7) ACJA, 2015 and the president of the Court of Appeal on 2nd July 2018.

The AJCA, 2015 in its 495 Sections, does not define "law", or "any other law", or the "any other law to the contrary" that its provision in Section 396(7) purports to override. It appears "any other law to the contrary" includes any other written law or statute, including the 1999 Constitution, as amended that contradicts Section 396(7) of the ACJA! The National Assembly, in view of the supremacy provision of the Constitution, in Section 1 thereof, could not have intended that audacious insubordination to the Constitution, or state of absurd fool hardiness of legislating

into Section 396(7) of the ACJA, 2015: that the provision would also override any provision of the Constitution to the contrary of Section 396(7) ACJA. The Constitution is the grund norm from which the ACJA, 2015 derived its legitimacy. Section 1(3) of the Constitution is emphatic –

> If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be avoid.

We had had previous decisions of this Court in **OGBUNYINYA & ORS v. OKUDO & ORS (1979) NSCC 77 and OUR LINE LTD v. S.C.C NIGERIA LTD & ORS (2009) 17 NWLR (pt. 1170) 383** to the effect that Hon, Justice Nnaemeka-Agu, Judge of Anambra State, and Hon. Justice Iguh, Chief Judge of Anambra State, having respectively been elevated to the Federal Court of Appeal (predecessor

as the High Court of the latter State also lacked extra-territorial jurisdiction, in respect of the matters pending in the High Court of the former State, outside its area of jurisdiction and authority.

The lower court acknowledged the extancy or subsistence of the decision in OGBUNYINYA v. OKUDO ((supra) and OUR LINE LTD v. S.C.C NIGERIA LTD (supra). In its judgment, at pages 2104 – 2105 of vol.4 of the Record, it made effort to distinguish the two cases from the instant case, thus –

> The cases OGBUNYINYA v. OKUDO and OUR LINE LIMITED v. SCC NIGERIA (supra) –, were decided on the state of the law at the material time and in the absence of any statutory provisions, such as Section 396(7) of ACJA, allowing,

permitting or authorising the affected Hon. Justice of the Court of Appeal and Supreme Court respectively, to conclude the matters they commenced, but could not conclude before their elevations.

The principle laid down and stated in the two (2) cases that a Judge elevated or appointed to a higher court would cease to be a Judge of the court from which he was elevated and would therefore lack the requisite statutory provisions (sic: jurisdiction?) allowing or authorising him to do so, is still extant and applicable in appropriate cases.

It is, however not, applicable in the Appellant's case since the provisions of Section 369(7) (sic: 396(7)) of the ACJA specifically permit and authorise the Hon. M. B. Idris, JCA, to sit in the lower court as a Judge of

> that court for the purpose of concluding part heard criminal matters commenced but not concluded by him before his elevation to the (Court of Appeal)

Mr. Rotimi Jacobs, SAN, of counsel to the 1st Respondent, the prosecutor, submits that "the law has changed since 2015 when the Administration of Criminal Justice Act was enacted". The primary duty of the respondent's counsel is ordinarily to defend the decision appealed. In the instant case he is on a discordant note with the decision appealed. The lower court had specifically stated that "the principle laid down and stated in the two (2) cases (i.e OGBUNYINYA v. OKUDO and OUR LINE LIMITED v. SCC NIGERIA (supra) that a Judge elevated or appointed to a higher court would cease to be a judge of the court from which he was elevated and would therefore lack

the requisite" jurisdiction to conclude his part-heard matter in the court from which he was elevated was/is still extant. The learned senior counsel cannot advocate the contrary of the decision appealed without the courtesy of a cross-appeal. He filed no cross-appeal on behalf of the 1st Respondent.

Has the law espoused in OGBUNYINYA v. OKUDO (supra), cited with approval in OUR LINE LTD V. SCC NIG. LTD (supra), changed since 2015 upon the enactment of the ACJA, 2015? Mr. George E. Ukaegbu of counsel to the Appellant has submitted that Section 396(7) of ACJA, 2015 "does not have the capacity of the import attributed to it as that is tantamount to saying that by the said provision, the National Assembly has amended the provisions of Section 250(2) and 253 of the 1999 Constitution which provisions the

principle in OGBUNYINYA & ORS v. OKUDO & ORS (supra) is in tandem with".

I pause here awhile to have a peep at the establishment and enabling provisions of the 1999 Constitution as regards the Court of Appeal and the Federal High Court. Both courts are creations of the said Constitution, like the National Assembly.

Section 237 of the Constitution establishing the Court of Appeal, provides, inter alia –

> 237(1) There shall be a Court of Appeal.
>
> (2) The Court of Appeal shall consist of –
>
> a) A President of theCourt of Appeal; and
>
> b) such number of Justices of the Court of Appeal, -

- , as may be prescribed
by an Act of the National
Assembly.

Section 238(2) of the same Constitution provides that "the appointment of a person to the office of a Justice of the Court of Appeal shall be made by the President on the recommendation of the National Judicial Council". The Court of Appeal is ordinarily established to hear and determine appeals from the Federal High Court, etc; by virtue of Section 240 of the Constitution. The exception to its being exclusively an appellate Court is provided in Section 239 of the Constitution by which it is constituted to "have original jurisdiction to hear and determine any questions as to whether any person has been validly elected to the office of President or Vice-President" and/or whether such offices have ceased or become vacant.

The Court the Hon. M. B. Idris, JCA, was elevated to as the Justice of the Court of Appeal is substantially an appellate Court. The President of the Court of Appeal by his "fiat/permission" issued to the Hon. M. B. Idris JCA to proceed to the Federal High Court, Lagos to conclude the part-heard criminal matter: FHC/ABJ/CR/56/07 – did not direct him to perform any of the constitutional functions of the Court of Appeal. The Court of Appeal, being not a first instance Court vested jurisdiction to hear and determine criminal causes or matters, lacks jurisdiction to dabble into such matters.

Section 249 of the Constitution, the establishment provision regarding the Federal High Court, provides –

249.(1) There shall be a Federal High Court

(2) The Federal High Court shall

consist of –

(a) a Chief Judge of the Federal High Court; and

(b) such number of Judges of the Federal High Court, as may be prescribed by an Act of the National Assembly

By Section 250(2) of the Constitution the President, on the recommendation of the National Judicial Council, does the appointment of a person to the office of a Judge of the Federal High Court. It is clear from Section 251 of the Constitution that the Federal High Court is only a first instance Court. It has no appellate powers or jurisdiction. Section 252(2) of the Constitution empowers the National Assembly, by Law, to "make provisions conferring upon the Federal High Court powers additional to those" conferred by the Constitution "as may appear necessary or desirable for

enabling the Court more effectively to exercise its jurisdiction". This provision has to do with the powers or the jurisdiction of the Federal High Court as duly constituted under Section 253 of the Constitution. That is, that "the Federal High Court shall be duly constituted if it consists of at least one Judge of that Court". I should think that the special dispensation granted to the "Judge of the High Court elevated to the Court of Appeal – to continue to sit as a High Court Judge only for the purpose of concluding any part-heard criminal matter pending before him at the time of his elevation" cannot be accommodated under or by Section 252 of the Constitution. I must point out, right away, that by the tenor of Section 253 of the Constitution, the Federal High Court is not duly constituted by Judge(s) who had ceased to

My Lords, let us examine Section 396(7) ACJA, 2015 in the prism of the internal affairs or workings of the two Courts – the Federal High Court and the Court of Appeal. For as long as the Judge remains the Judge of the Federal High Court only the Chief Judge has the vires and powers to issue fiat directing him to conclude part-heard matters pending in that Court. He cannot grant a fiat to a Justice of the Court of Appeal to conclude part-heard criminal matters pending before the Federal High Court at the time of the latter's elevation to the Court of Appeal. Section 19(3) & (4) of the Federal High Court Act, Cap F12 LFN 2010 clearly consign the prerogative of assigning any judicial function to any Judge of the Federal High Court in respect of a particular cause or matter to the Chief Judge of the Federal High Court. The President of the Court of Appeal is not empowered to

share that statutory function with the Chief Judge of the Federal High Court. Section 19(3) & (4) of the Federal High Court Act provide –

> 19(3) The Chief Judge shall determine the distribution of the business before the Court amongst the Judges thereof and may assign any judicial function to any Judge or Judges or in respect of a particular cause or matter in a Judicial Division.
>
> (4) Subject to the direction of the Chief Judge, every Judge of the Court shall sit for the trial of civil and criminal causes or matters and for the disposal of other legal businesses the Chief Judge may think fit.
>
> [underlinings supplied]

The President of the Court of Appeal does not have any powers in law to direct any Judge of the Federal High Court to hear and determine any matter pending before the Federal High Court. He also lacks powers to issue any fiat/permission to any Judge of the Federal High Court to conclude any part – heard matter pending in that Court. The Chief Judge of the Federal High Court is by Section 1(2)(a) of the Federal High Court Act the sole statutory authority vested "overall control and supervision of the administration of the "Federal High Court". The President of Court of Appeal does not share in that function.

The Appellant submits, and I agree, that the President of the Court of Appeal is not recognized by both the ACJA, 2015 and the Federal High Court Act as the appropriate authority to exercise any powers pursuant to the provisions

of either the Federal High Court Act or the ACJA, 2015. Accordingly, the President of the Court of Appeal, when he informed the Honourable, Justice M. B. Idris, JCA vide his letter of 2nd July, 2018 of his "mandate" to wit:

> **You have my FIAT/Permission to conclude the part heard criminal matter: FHC/ABJ/CR/56/07 Between Federal Republic of Nigeria vs. Orji Uzo Kalu & Ors now pending before the Federal High Court, Lagos,**

obviously had acted ultra vires. I agree with the Appellant that the President of the Court of Appeal lacks the competence to control and supervise the administration of the Federal High Court as envisaged by Sections 1(2)(a) and 19(3) & (4) of the Federal High Court Act. Section 396(7) of the ACJA, 2015 does not so empower the President of the

Court of Appeal to usurp the statutory functions of the Chief Judge of the Federal High Court. The powers donated or vested by Sections 1(2)(a) and 19(3) & (4) of the Federal High Court can only be exercised within the limits prescribed by statute **(SANUSI v. AYOOLA (1992) 9 NWLR (pt. 265) 275 at 293)** and only by the authority or person to whom they are donated or vested. An exercise of any statutory power either outside the limits prescribed or by the person or authority not designated to exercise the power will certainly be ultra vires, null and void.

My Lords, I now come back to the reason the lower Court gave for the inapplicability of the principle laid down by this Court in **OUR LINE LTD v. SCC (NIG) LTD** (supra) in which the case of **OGBUNYINYA v. OKUDO** (supra) was cited with approval. The lower Court acknowledged that the

principle laid down in those two (2) cases "is still extant and applicable". The lower Court, however, found the principle inapplicable to the instant case "since the provisions of Section [396(7)] of the ACJA specifically permit or authorize the Hon. M. B. Idris, JCA to sit in the lower Court as a Judge of that Court for the purpose of concluding part-heard criminal matters commenced but not concluded by him before his elevation to (Court of Appeal)". I have been trying to demonstrate the fallacy of this argument advanced by the lower Court.

Section 254(1) of the 1979 Constitution, the subject of interpretation providing the anchor on which the decision in **OUR LINE LTD v. SCC (NIG.) LTD** (supra) was fastened, is almost in pari materia with Section 290(1) of the 1999 Constitution. The only difference is the addition of the words

– "declared his assets and liabilities as prescribed under the Constitution and has subsequently taken" – appearing in Section 290(1) of the 1999 Constitution. Section 254(1) of the 1979 Constitution simply provided –

> **254(1) A person appointed to any judicial office shall not begin to perform the functions of that office until he has taken and subscribed the oath of allegiance and the judicial oath prescribed in the sixth Schedule to this Constitution.**

Section 290(1) of the 1999 Constitution with the additional clause provides –

> **290(1) A person appointed to any judicial office shall not begin to perform the functions of that office until he has declared his assets and liabilities as**

prescribed under this Constitution and has subsequently taken the Oath of Allegiance and the Judicial Oath prescribed in the Seventh Schedule to this Constitution.

The interpretation given to Section 254(1) of the 1979 Constitution is to the effect that a Judge elevated to a higher Court had ceased to be a Judge of the Court from which he was elevated and had, by that appointment therefore, been deprived of the jurisdiction to conclude the hearing of the – case before him at the Court from where he was elevated. In the unanimous judgment of this Court, delivered on Friday, 17th July, 2009, in OUR LINE LTD v. SCC (NIG) LTD the point was poignantly made in the opinions of Mohammed, JSC (who delivered the lead judgment) at pages 406 – 407

and Onnoghen, JSC at pages 414 – 415. That decision in OUR LINE LTD v. SCC (NIG.) LTD (supra) holds sway. The lower Court admitted that it is still a good law. It is, in my opinion, material and applicable to this case in the resolution of the core issue in this appeal, even under Section 290(1) of the 1999 Constitution.

I have no doubt, whatever, that the Honourable, M. B. Idris, JCA, having been elevated to the Court of Appeal, had ceased to be a Judge of the Federal High Court. Accordingly, he had been deprived of whatever jurisdiction he had as a Judge of the Federal High Court to proceed in the case "to conclude the hearing and ultimate determination" of the part-heard criminal case No. FHC/ABJ/CR/56/07 – Between Federal Republic of Nigeria v. Orji Uzor Kalu & Ors. (in which the Appellant herein was the

2nd Defendant) which was pending at the Federal High Court, Lagos at the time the said Honourable, M. B. Idris, JCA was elevated to the Court of Appeal.

The enactment of Section 396(7) of ACJA, 2015 is an attempt by the National Assembly, in view of this Court's interpretation of Section 254(1) of the 1979 Constitution which is reproduced as the substantial part of Section 290(1) of the 1999 Constitution, to whittle down the operation of the said provisions of the Constitution. Ab initio Section 396(7) of the ACJA, 2015 was set out to frontally contradict and challenge the letters, substance and spirit of Section 290(1) of the 1999 Constitution. To that extent Section 396(7) of the ACJA, 2015 is inconsistent with the Constitution, particularly Section 290(1) thereof. Therefore, by operation of Section 1(3) of the Constitution, Section 396(7) of the ACJA, 2015, to

the extent of its inconsistency with Section 290(1) of the Constitution, is void.

I hereby allow this appeal. Section 396(7) of the ACJA, 2015 is, in my firm view, an unnecessarily gratuitous legislative interference with, intrusion into or an outright usurpation of the appointing powers of the Executive arm consigned specifically to the President of the Federal Republic of Nigeria by the Constitution in Sections 250(1) and 238(2) thereof. The "FIAT/permission" issued on 2nd July, 2018, by the President, Court of Appeal to the Honourable, Justice M. B. Idris, JCA to proceed to the Federal High Court, Lagos and conclude the part-heard criminal matter: FHC/ABJ/CR/56/07-, notwithstanding the fact that the Honourable, Justice M. B. Idris, JCA, upon his elevation to the Court of Appeal had ceased, not only to be a

Judge of the Federal High Court, but also to have and exercise the powers and jurisdiction of the Federal High Court, is ultra vires Sections 1(2)(a) and 19(3) & (4) of the Federal High Court Act, the same being an outright usurpation of the office and powers of the Chief Judge of the Federal High Court. The said FIAT/Permission, issued without any lawful or constitutional authority and being a nullity, is hereby set aside. All steps, including actions, proceedings and decisions and orders issued, taken and/or conducted pursuant to the said FIAT/Permission dated 2nd July, 2018 as they pertain to and relate to the Appellant herein are hereby set aside.

The judgment of the Court of Appeal No. CA/L/1064C/2018, delivered on 24th April, 2019 particularly in respect of the Appellant and as it affected him is hereby set

aside. The case No. FHC/ABJ/CR/56/2007, as it pertains or relates to the Appellant as the 2nd Defendant at the trial Court, is hereby remitted to the Chief Judge of Federal High Court for re-assignment to another judge of the Federal High Court for trial *de novo*.

Appeal allowed.

EJEMBI EKO

JUSTICE, SUPREME COURT

Appearances:

Chief Solomon Akuma, SAN, with George E. Ukaegbu, Esq., Emmanuel U. Akuma, Esq. and Daniel Okorie, Esq. for the Appellant

Adebisi Adeniyi Esq. with O. A. Atolagbe, Esq for the 1st Respondent

L. O. Fagbemi SAN; Chief H. O. Afolabi, SAN with K. O. Fagbemi, Esq., Omosanya A. Popoola, Esq. and Thomas Ojo, Esq. for the 2nd Respondent.

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY THE 8TH DAY OF MAY, 2020
BEFORE THEIR LORDSHIPS

Olabode Rhodes-Vivour	**JUSTICE, SUPREME COURT**
Mary Ukaego Peter-Odili	**JUSTICE, SUPREME COURT**
Olukayode Ariwoola	**JUSTICE, SUPREME COURT**
Kudirat Motonmori Olatokunbo Kekere-Ekun	**JUSTICE, SUPREME COURT**
John Inyang Okoro	**JUSTICE, SUPREME COURT**
Amina Adamu Augie	**JUSTICE, SUPREME COURT**
Ejembi Eko	**JUSTICE, SUPREME COURT**

SC. 622C/2019

BETWEEN:

Ude Jones Udeogu — **APPELLANT**

AND

1. Federal Republic of Nigeria — **RESPONDENTS**
2. Orji Uzor Kalu
3. Slok Nigeria Limited

JUDGMENT

(Delivered by **AMINA ADAMU AUGIE, JSC)**

I had the privilege of reading a draft copy of the lead Judgment delivered by my learned brother, Eko, JSC, and I fully adopt his reasoning and conclusion, which represents my views, on the Issues canvassed in this Appeal. However, I will add a few words to emphasize the points he made in the lead Judgment.

The Issue in this Appeal boils down to whether a Judge of the High Court, who has been elevated, can go back to the Court from which he was elevated, to carry on sitting as High Court Judge and conclude part-heard criminal cases.

Before the advent of the Administration of Criminal Justice Act in **2015**, the position of the law on this Issue was, more or less, cut and dried because this Court made it very clear that such a situation was totally out of the question.

In **Ogbunyiya & Ors V. Okudo & Ors** *(1979) NSCC (Vol. 12) 77*, one of the Issues raised was whether a Judgment given by a Judge, who has ceased to be a Judge of that Court, is given without jurisdiction. This Court held thus:

> ***We are satisfied that it was the intention of the Supreme Military Council, as expressed in Exhibit SC (1) – that (1) the appointment of Nnaemeka-Agu., J., as a Judge of the Federal Court of Appeal should, and did, take effect from 15/6/1977, and (2) on that date (15/6/1977) he ceased to be a Judge of the High Court of Anambra State, and (3) when, therefore, on 17/6/1977, he gave the Judgment now on appeal, he did so without jurisdiction. Accordingly, the Court of Appeal erred in law in rejecting the contention of the Appellants that the Judgment in these proceedings is null and void. The Appeal succeeds.***

In **Our Line Ltd. V. S.C.C. (Nig.) Ltd.** *(2009) 17 NWLR (Pt. 1170) 382 SC*, Iguh, CJ, Anambra State (as he then was) had adjourned the case to **4/6/1993.** However, on **3/6/1993**, it was announced that he had been appointed a Justice of the Supreme Court, and would be sworn in on a date to be announced later. On **4/6/1993**, he proceeded with the trial and delivered Judgment on **20/7/1993**.

The Court of Appeal held that by the appointment, he lost the jurisdiction to conclude the hearing and deliver the Judgment. It nullified the Judgment and remitted the case to the High Court for trial *de novo*. In affirming its decision, this Court, per Mahmud Mohammed, JSC (as he then was), stated as follows:

> ***The exercise of the act of appointment itself is different from the requirement of taking oath before assuming office or performing the functions of the office. It is for this reason that I find myself agreeing with the Court below in its Judgment that the learned trial Chief Judge was already a Justice of the Supreme Court of Nigeria when he decided to proceed with the hearing of the Appellant's claims on 4/6/1993, culminating in the delivery of the Judgment on 20/7/1993. This is in line with the decision of this Court in Ogbunyiya & Ors V. Obi Okudo & Ors (1979) All NLR 105 at 116 - - With the appointment of the learned trial Judge on or about 3/6/1993, as a Justice of the Supreme Court, he had ceased to be the Chief Judge of Anambra State by that appointment and, therefore, deprived of the jurisdiction to conclude the hearing and ultimate determination of the Appellant's case before him as he did in the Judgment of the trial Court - - which the Court below, rightly in my view, declared a nullity for having been given without jurisdiction.***

The position of the law, as stated in those two cases decided in **1979** and **2009**, remained undisturbed without a ripple in the sky, until **2015**, when the said Act, Administration of Criminal Justice [**ACJA**], pioneered a novel or what has been described as a *"revolutionary"* provision in its Section 396(7), which says that:

> *Notwithstanding the provision of any other law to the contrary, a Judge of the High Court who has been elevated to the Court of Appeal shall have dispensation to continue to sit as a High Court Judge only for the purpose of concluding any part-heard criminal matter pending before him at the time of his elevation and shall conclude the same within a reasonable time:* ***Provided that this sub-section shall not prevent him from assuming duty as a Justice of the Court of Appeal.***

By virtue of the above provision in **ACJA**, the President of the Court of Appeal, by a letter dated **2/7/2018**, issued a *fiat* to M.B. Idris, JCA, *"to conclude the part heard criminal matter: FHC/ABJ/56/07 between Federal Republic of Nigeria vs. Orji Uzo Kalu & ors, now pending before the Federal High Court, Lagos".*

M.B. Idris, J., was the trial Judge hearing the matter before his elevation. As M.B. Idris, JCA, he returned to the Federal High Court to conclude the trial, and in a Ruling delivered on **31/7/2018**, he dismissed the No-Case Submission made by the Appellant, and called upon the Appellant to enter his defence.

At the Court of Appeal, the Appellant also challenged the competence of M.B. Idris, JCA, to continue to sit and hear a matter before Federal High Court. In its Judgment delivered on **24/4/2019**, the Court of Appeal held as follows –

> ***The provisions of Section 396(7) of ACJA apparently vests the requisite power and authority to M.B. Idris, JCA to sit and exercise the jurisdiction of the lower Court for the purpose of concluding the part heard criminal matters he had commenced but did not conclude as a Judge of the lower Court before his elevation to the Court of Appeal. The cases of Ogbunyiya v Okudo and Our Line Ltd. V S.C.C. Nigeria (supra) - - were decided on the state of the law at the material time and in the absence of any statutory provision such as Section 396(7) of ACJA, allowing, permitting or authorizing the affected Hon. Justice of the Court of Appeal and Supreme Court respectively, to go back to the Courts from which they were elevated, to conclude the matters they commenced, but could not conclude before their elevations.***

The Appellant's contention is that Section 396(7) of **ACJA** cannot override the express provisions of Sections 250(2) and 253 of the Constitution. As he put it:

> Section 396(7) does not have the capacity of the import attributed to it as that is tantamount to saying that by the said provision, the National Assembly has amended the provisions of Section 250(2) and 253 of the 1999 Constitution, which provisions, the principle in **Ogbunyiya & Ors V. Okudo & Ors** in tandem with.

He referred this Court to the "*persuasive decision*" of Kolawole, JCA, in Charge No. FHC/ABJ/CR/85/2009*: FRN V. Iwueke & Ors*, in his Ruling delivered on **25/1/2019**, wherein Kolawole, JCA, who faced a similar challenge, held thus:

> *When I read the provision of Section 252(2) of the Constitution which provides: "Notwithstanding subsection (1) of this Section, the National Assembly may by law make provisions conferring upon the Federal High Court powers additional to those conferred by this Section as may appear necessary or desirable for enabling the Court more effectively to exercise its jurisdiction". The question which welled up in my thoughts is whether the provision of Section 396(7) of **ACJA** can be validated by this provision? The simple answer is that the legislative powers conferred by the Constitution on the National Assembly in this regard, is only exercisable with limitation to Federal High Court. The provision of Section 396(7) of **ACJA** over-ambitiously extended the powers to cover a Justice of the Court of Appeal, who by reason of his elevation, has taken a fresh Oath of allegiance and judicial oath as prescribed in the Seventh Schedule in fulfillment of the provision of Section 290(1) of the Constitution. A Judge of the Federal High Court or **FCT** or State High Court elevated to the Court of Appeal has ceased to be a Judge of the said Court and going by Section 253 of the Constitution, it is my view that this Court is not "duly constituted" because I have ceased from **22/6/18** to be a Judge of the Federal High Court. The National Assembly lacks legislative powers to make a statutory provision such as Section 396(7) of **ACJA**, by which it seeks to "confer additional jurisdiction" on a Justice of the Court of Appeal not covered or within the contemplation of Section 252(2) of the Constitution - - The primary goal of the National Assembly was to facilitate quick and speedy administration of criminal justice in Nigeria in line with the purpose of the Act - - It is no doubt a laudable intention, but it cannot be driven through unless the extant provisions of the Constitution in relation to the Courts created pursuant to Section 6(5)(a) – (k) - - are amended to enable a Judge appointed pursuant to the Constitution to wear two (2) caps as a Judge of the Federal High Court and of the Court of Appeal. In the absence of any such alteration or amendment to the jurisdiction and powers conferred on the said Courts - - the provision of Section 396(7) of **ACJA** is - - like a "statutory dyke" erected overnight by the National Assembly on the settled coast lines of the Judicature as encapsulated in Chapter VII of CFRN, 1999 As Amended.*

The point made by Kolawole, JCA, is well taken and I am, certainly persuaded. A High Court Judge is a High Court Judge and a Justice of the Court of Appeal is a Justice of the Court of Appeal, and they have their own judicial functions, set out in the Constitution of the Federal Republic of Nigeria **1999** as amended. There is nowhere in that Constitution, where it is provided that one person shall be both High Court Judge and Justice of the Court of Appeal at the same time.

There is a clear demarcation between a High Court and Court of Appeal, and there is no constitutional provision that suggests, implies or makes room for the creation of a hybrid Judge or Hybrid Justice, to operate in both Courts.

I liken them to ghosts roaming around the four walls of the High Courts, because being Justices of the Court of Appeal, the Chief Judges have no say over whatever they do when they are wearing the cap of a High Court Judge, and the President of the Court of Appeal has no say over what they do there. In other words, such a situation cannot be the outcome envisaged by Section 396(7) of **AJCA** on the justice system and Court administration, as we know it.

Thus, I stand squarely and solidly with the position taken by this Court in **Ogbunyiya V. Okudo** *(supra)* and **Our Line Ltd. V. SCC (Nig.) Ltd.** *(supra).* Section 396(7) of **AJCA** has no place in our statute books, and the law remains that a Judge, who has been elevated to Court of Appeal, cannot go back to the High Court, put on a second cap, and continue sitting as a High Court Judge.

It is for this and the other well-expressed reasons in the lead Judgment that I also allow this Appeal, and set aside the decision of the Court of Appeal. I abide by all the consequential Orders in the lead Judgement.

Amina Adamu Augie,
Justice, Supreme Court

SUPREME COURT OF NIGERIA
CERTIFIED TRUE COPY
BILKISU B. MUSA
SENIOR REGISTRAR
SIGN DATE 11/5/20

Official

APPEARANCES

Chief Solomon Akuma, SAN, **with**
George E. Ukaegbu, Esq.,
Emmanuel U. Akuma, Esq., **and**
Daniel Okorie, Esq.,
For the **Appellant**

Adebisi Adeniyi, Esq., with
O. A. Atolagbe, Esq.,
For the **First Respondent**

Prince Lateef Fagbemi, SAN, **and**
Chief H. O. Afolabi, SAN, **with**
K. O. Fagbemi, Esq.,
Omosanya A. Popoola, Esq., **and**
Thomas Ojo, Esq.,
For the **Second Respondent**

IN THE SUPREME COURT OF NIGERIA

HOLDEN AT ABUJA

ON FRIDAY THE 8TH DAY OF MAY, 2020

BEFORE THEIR LORDSHIPS

OLABODE RHODES-VIVOUR	JUSTICE, SUPREME COURT
MARY PETER-ODILI	JUSTICE, SUPREME COURT
OLUKAYODE ARIWOOLA	JUSTICE, SUPREME COURT
KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN	JUSTICE, SUPREME COURT
JOHN INYANG OKORO	JUSTICE, SUPREME COURT
AMINA ADAMU AUGIE	JUSTICE, SUPREME COURT
EJEMBI EKO	JUSTICE, SUPREME COURT

SC. 622C/2019

BETWEEN

UDE JONES UDEOGU - APPELLANT

AND

1. FEDERAL REPUBLIC OF NIGERIA
2. ORJI UZOR KALU
3. SLOK NIGERIA LIMITED

} RESPONDENT

JUDGMENT

(DELIVERED BY KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, JSC)

I have had the benefit of reading in draft the judgment of my learned brother, EJEMBI EKO, JSC just

delivered. His Lordship's reasoning and conclusion reflect my views in this appeal. I shall add some comments in support and for emphasis.

The genesis of this appeal has been comprehensively traced in the lead judgment. I shall not repeat the exercise. Suffice it to say that the sole issue for determination in this appeal is as formulated by learned counsel for the 1st respondent, to wit:

> *"Whether, having regard to the provisions of Section 396 (7) of the Administration of Criminal Justice Act, 2015, the Court of Appeal was not right in holding that Honourable Justice M.B. Idris was competent to continue to sit and exercise jurisdiction over the part-heard matter in charge No. FHC/CR/56/2007 between the Federal Republic of Nigeria Vs Orji Uzor Kalu & 2 ors. pending at the Federal High Court, notwithstanding His Lordship's elevation to the Court of Appeal and His Lordship's subsequent swearing in as a Justice of the Court of Appeal."*

Before going further, I deem it necessary to reproduce Section 396 (7) of the Administration of Criminal Justice Act, 2015 (hereinafter referred to as the ACJA), which provides:

> *"396 (7) Notwithstanding the provision of any other law to the contrary, a Judge of the High Court who has been elevated to the Court of Appeal shall have dispensation to continue to sit as a High Court Judge only for the purpose of*

concluding any part-heard criminal matter pending before him at the time of his elevation and shall conclude the same within a reasonable time.
Provided that this subsection shall not prevent him from assuming duty as a Justice of the Court of Appeal."

In a nutshell, the provision purports to empower a High Court Judge who has been elevated to the Court of Appeal to return to the court from which he was elevated to conclude part-heard criminal matters. The issue in contention before the lower court was whether Section 396 (7) of the ACJA could confer such jurisdiction on him, having regard to the provisions of the Constitution of the Federal Republic of Nigeria 1999, as amended (hereinafter referred to as the Constitution), relating to the constitution and membership of the Federal High Court and the Court of Appeal and the decisions of this court in **Ogbunyiya Vs Okudo & Ors. (1979) NSCC 77 and Our Line Ltd. Vs S.C.C. Nig. Ltd. & Ors. (2009) 17 NWLR (Pt.1170) 383; (2009) LPELR-2833 (SC)**.

The lower court held, inter alia:

"The principle laid down and stated in [the] two cases that a Judge elevated or appointed to a higher court would cease

to be a Judge of the court from which he was elevated and would therefore lack the requisite jurisdiction to sit in that court in the absence of relevant and specific statutory provisions allowing or authorising him to do so is still extant and applicable in appropriate cases. It is however not applicable in the appellant's case since the provision of Section 396 (7) of the ACJA specifically permits the Hon. M.B. Idris to sit in the lower court as a Judge of that court for the purpose of concluding part heard criminal matters commenced but not concluded by him before his elevation to the Court of Appeal."

Learned counsel for the appellant argued that the Constitution is the supreme law of the land and that Section 396 (7) of the ACJA cannot override the express provisions of Sections 250 (2) and 253 thereof. On the supremacy of the Constitution, reference was made to the case of: **Abacha Vs Fawehinmi (2000) LPELR-14 (SC); Adisa Vs Oyinwola (2000) LPELR-186 (SC)**. Learned counsel referred the court to the persuasive decision of Kolawole, JCA in *Charge No. FHC/ABJ/CR/85/2009: FRN Vs Kenneth Iwueke & 2 Ors.*, delivered on 25th January, 2019, where His Lordship had cause to rule on the same issue, having been issued a fiat by the Honourable President of the Court of Appeal (hereinafter referred to as the Hon. PCA) to conclude a

criminal matter that was part heard by him before his elevation to the Court of Appeal. His Lordship declined jurisdiction on the ground that Section 396 (7) of the ACJA is inconsistent with the provisions of Section 253 of the Constitution and *ultra vires* the powers of the National Assembly to make laws, as provided for in Section 252 (2) thereof.

Learned senior counsel for the 1st respondent, on the other hand, contends that Section 396 (7) of the ACJA is a novel provision in criminal justice administration, duly enacted by the National Assembly to serve a specific purpose, that is, to ensure the speedy trial and quick disposal of criminal cases, which had hitherto suffered excessive delays, often caused by the *de novo* commencement of part heard cases due to the elevation of the presiding Judge to the Court of Appeal. He submitted that in the interpretation of a statute, the court must take into consideration the mischief sought to be cured by the enactment and that Section 1 of the ACJA states the purpose of the enactment in very clear terms, to wit:

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

He urged the court to consider the spirit and substance of the enactment and not to rely on technicalities. He contended that the cases of **Ogbunyiya Vs Okudo (supra) and Our Line Ltd. Vs S.C.C. Nig. Ltd. (supra)** were predicated on the law as it existed in 1979 and 2009, before the ACJA was enacted in 2015. He submitted that the two authorities are distinguishable from the present circumstances because there was no statutory provision such as Section 396 (7) of the ACJA, conferring power on the elevated Judge to conclude his part heard criminal cases.

In **Madukolu Vs Nkemdilim (1962) SCNLR 341**, it was held that a court is competent when:

(1) it is properly constituted as regards numbers and qualification of members of the bench, and no member is disqualified for one reason or another; and

(2) the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction; and

(3) the case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.

Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the adjudication.

The Federal High Court, High Court of a State or the High Court of the Federal Capital Territory as well as the Court of Appeal and Supreme Court are all courts of record established by Section 6 (5) (a) – (k) of the Constitution, as amended. The constitution and membership of the Federal High Court are provided for in Sections 250 (2) and 253 of the Constitution, as follows:

"250 (2) The appointment of a person to the office of a Judge of the Federal High Court shall be made by the President on the recommendation of the National Judicial Council.

*253. The Federal High Court shall be duly constituted if it consists of at least one Judge of **that court**."*

It is not in dispute that M.B. Idris, JCA, upon the fiat of the Acting PCA, sat at the Federal High Court, Lagos and concluded hearing in suit no.

FHC/ABJ/CR/2007, which was part heard before him, and delivered judgment therein on 31/7/2018, after he had been elevated to the Court of Appeal and sworn in as a Justice of that court on 22nd June, 2018. In what capacity did His Lordship conclude proceedings and deliver judgment? Was he exercising jurisdiction as a Judge of the Federal High Court or as a Justice of the Court of Appeal? Did the Hon. PCA have the requisite authority to direct a Justice of the Court of Appeal to sit at the Federal High Court to conclude a part heard matter? These are all questions that agitate the mind in this case.

Section 396 (7) of the ACJA purports to grant a Judge of the High Court, who has been elevated to the Court of Appeal, a dispensation to continue to sit as a High Court Judge to conclude any part heard criminal case pending before him at the time of his elevation. The subsection is to be applied *"notwithstanding any other law to the contrary."*

The power of the National Assembly to make laws for the peace, order and good governance of the

Federation or any part thereof, as provided for in Section 4 (1) – (4) of the 1999 Constitution as amended is circumscribed by the overall supremacy of the Constitution. Section 1 (3) of the Constitution provides:

> *"1 (3) If any other Law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other Law shall to the extent of the inconsistency be void."*

See: INEC Vs Alhaji Balarabe Musa (2003) LPELR-24927 (SC) @ 100 A – C; A.G. Abia State Vs A.G. Federation (2002) 6 NWLR (Pt.763) 264.

In **INEC Vs Musa (supra) @ 35 – 36 B – A**, His Lordship, Ayoola, JSC, stated, inter alia:

> *"Where the Constitution has enacted exhaustively in respect of any situation, conduct or subject, a body that claims to legislate in addition to what the Constitution had enacted, must show that it has derived the legislative authority to do so from the Constitution."*

Section 249 of the Constitution, as amended, provides for the establishment of the Federal High Court as follows:

> *"249 (1) There shall be a Federal High Court.*
> *(2) The Federal High Court shall consist of –*
> *(a) a Chief Judge of the Federal High Court; and*

(b) such number of Judges of the Federal High Court as may be prescribed by an Act of the National Assembly."

Section 250 (2) provides for the procedure for the appointment of a person as a Judge of the Federal High Court, while Section 253 makes clear provision for the constitution of the Court. It provides that the court shall be duly constituted if it consists of at least one Judge of THAT court. Sections 237 and 238 provide for the establishment of the Court of Appeal and the mode of appointment of a Justice of the Court of Appeal, while Section 247 provides, inter alia, that the Court of Appeal shall be duly constituted if it consists of not less than three Justices of the court. Having sworn to an oath of office pursuant to Section 290 (1) of the Constitution on 22nd June, 2018, as a Justice of the Court of Appeal, M.B. Idris, JCA had ceased to be a Judge of the Federal High Court. As at 31st July 2019 when he delivered judgment in suit no. FHC/ABJ/CR/56/2007, he could not be said to be a Judge of that court as required by

Section 253 of the Constitution. The court was therefore not properly constituted.

Section 396 (7) of the ACJA, pursuant to which the PCA purported to act, cannot override the clear provisions of the Constitution by donating power to a Justice of the Court of Appeal to continue to sit as a High Court Judge for whatever purpose. The provision is inconsistent with Sections 253 of the Constitution. Furthermore, Section 252 (2) of the Constitution, which empowers the National Assembly to make provisions conferring additional powers on the Federal High Court, can only apply to the Federal High Court. It does not confer any power on the National Assembly to make any law relating to the powers exercisable by a Justice of the Court of Appeal. It follows therefore, that by virtue of Section 1 (3) of the Constitution, as amended, Section 396 (7) of the ACJA is void to the extent of its inconsistency with Section 253 thereof.

Notwithstanding the noble intentions of the lawmakers in enacting Section 396 (7) of the ACJA to ensure the speedy and efficient disposal of criminal

cases, the extant position of the law remains as stated in the cases of **Ogbunyiya Vs Okudo (supra) and Our Line Ltd. Vs S.C.C (Nig.) Ltd. (supra)**.

In **Our Line Ltd. Vs S.C.C. (Nig) Ltd. (supra)**, proceedings in suit no. 01239/89 were part heard before Hon. Justice A.I. Iguh, Chief Judge of Anambra State, as he then was, and adjourned for further hearing to 4th June, 1993. On or about 3rd June, 1993, it was announced and published in newspapers, some parts of the Nigerian Weekly Law Report, as well as electronic and print media, that he had been appointed a Justice of the Supreme Court and would be sworn into office at a later date. At the resumed hearing, learned counsel for the defence raised the issue as to whether His Lordship could continue with the hearing in the circumstance. His Lordship held that since his appointment was to take effect at a later date, he was competent to continue with the hearing. He concluded the hearing and delivered judgment on 20th July, 1993. The Court of Appeal set aside the judgment for being a

nullity, having been delivered without jurisdiction. On appeal to this court, it was held, inter alia:

> *"...with the appointment of the learned trial Chief Judge on or about 3rd June, 1993 as a Justice of the Supreme Court, he had ceased to be the Chief Judge of Anambra State by the appointment and therefore deprived of the jurisdiction to conclude the hearing and ultimate determination of the plaintiff/appellant's case before him as he did in the judgment of the trial court on 20th July, 2001, which the court below, rightly in my view, declared a nullity for having been given without jurisdiction."*
> *(See: (2009) LPELR-2833 (SC) @ 27 B – F)*

The court cited with approval, its previous decision in **Ogbunyiya Vs Okudo (supra)** to the effect that the act of appointment of a Judge is quite different from the requirement of taking an oath before assuming office or performing the functions of the office, as required by Section 290 (1) of the Constitution. Once a Judge has been appointed, even if he is yet to take his oath of office, he ceases to be a Judge of the court from which he was elevated.

I also agree with my learned brother, Ejembi Eko, JSC, that the Honourable PCA had no jurisdiction to interfere with the administration of the Federal High

Court by directing a Justice of the Court of Appeal to preside over a matter pending before that court. The jurisdiction to assign cases to any Judge of the Federal High Court is exclusively that of the Chief Judge of the court.

For the above and fuller reasons ably advanced in the lead judgment, I find merit in this appeal. I allow it and abide by the consequential orders made therein.

Appeal allowed.

KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN
JUSTICE, SUPREME COURT

Official

CHIEF SOLOMON AKUMA, SAN for the Appellant with George Ukaegbu Esq., Emmanuel Akuma Esq., and Daniel Okorie Esq.

ADEBISI ADENIYI ESQ. for the 1st Respondent with O.A. Atolagbe Esq.

PRINCE LATEEF FAGBEMI, SAN and **CHIEF H.O. AFOLABI, SAN** for the 2nd Respondent with K.O. Fagbemi Esq., Omosanya A. Popoola Esq. and Thomas Ojo Esq.