



**IN THE COURT OF APPEAL  
PORT HARCOURT DIVISION  
HOLDEN AT PORT HARCOURT**

**ON TUESDAY, THE 20<sup>TH</sup> DAY OF JUNE, 2023**

**BEFORE THEIR LORDSHIPS:**

**JOSEPH SHAGBAOR IKYEGH  
FOLASADE AYODEJI OJO  
ABDUL-AZEEZ WAZIRI**

**JUSTICE, COURT OF APPEAL  
JUSTICE, COURT OF APPEAL  
JUSTICE, COURT OF APPEAL**

**APPEAL NO: CA/PH/8/CR/2023**

**BETWEEN:**

**RT. HON. CHUBUIKE ROTIMI AMAECHI ..... APPELLANT/  
APPLICANT**

**AND**

- 1. THE STATE**
- 2. TONYE COLE**
- 3. AUGUSTINE WOKOCHA**
- 4. SAHARA ENERGY RESOURCES LIMITED**
- 5. N. G. POWERS-HP LIMITED**

**RESPONDENTS**

**BALA ESQ  
SENIOR REGISTRAR I  
COURT OF APPEAL  
PORT HARCOURT**

**RULING**

**(PREPARED BY JOSEPH SHAGBAOR IKYEGH, JCA)**

This is a motion on notice brought under sections 6 (6), 240 and 287 (2) of the Constitution of the Federal Republic of Nigeria 1999, as altered, praying for-

- "1. An order setting aside ex- debito justitiae the entire proceedings conducted in respect of application argued by 1<sup>st</sup> respondent in the trial court culminating in the ruling/orders of the High Court of Rivers State, Coram: Hon. Justice Chinwendu Nwogu made on 17<sup>th</sup> day of May, 2023, in Charge No. PHC/3673/CR/2023; The State

V. Rt. Hon. Chibuike Rotimi Amaechi & Ors. Ordering for the interest of the appellant/applicant, being an order made in disregard of a pending appeal and an application for stay of proceedings all pending before this Honourable Court of the knowledge of the trial judge; in Appeal no. CA/PH/8/CR/2023; Rt. Hon. Chibuike Rotimi Amaechi & Ors. V. The State.

2. And for such further order(s) or other order(s) as this Honourable Court may deem fit to make in the circumstance."

The application is premised on these grounds-

- i. This application stems from the ruling and orders of the High Court of Rivers State in No. PHC/3673/CR/2023; The State V. Rt. Hon. Chibuike Rotimi Amaechi & Ors. directing the arrest of the appellant.
- ii. Trial court, on the 19<sup>th</sup> day of January, 2023, delivered a ruling wherein it granted an order of substituted service of the criminal information filed by the 1<sup>st</sup> respondent in Charge No. PHC/3637/CR/2022 on the appellant by publication in at least 2 (two) National Daily Newspapers amongst other reliefs, depriving the appellant's constitutional



rights to be personally served and notified of the charge against him.

- iii. The said order for substituted service was predicated upon an affidavit of nonservice deposed to by a bailiff of the trial court of a purported attempt to serve civil processes (Writ of Summons, Statement of claim, list of witness, statement on oath, list of documents, motion on notice, etc) on the appellant.
- iv. The appellant/applicant being dissatisfied with the ruling of the High Court of Rivers State, in Charge No. PHC/3637/CR/2022, delivered on the 19<sup>th</sup> day of January, 2023, lodged an appeal against same vide a notice of appeal filed on the 1<sup>st</sup> day of February, 2023, challenging the purported service of the information and proof of evidence on him.
- v. The grounds of appeal raise jurisdictional and substantial issues of law, including the validity of the purported order of substituted service of the criminal information and proof of evidence on the appellant, and complaint of lack of jurisdiction in trial court to grant the said order, relying on purported inability to service civil processes on the appellant.

- vi. The grounds of appeal contained in the notice of appeal also raise constitutional issues of breach of fair hearing and fair trial, which are recondite, substantial and/ or arguable.
- vii. The record of appeal was transmitted to this Honourable Court and the appeal duly entered on the 22<sup>nd</sup> day of February, 2023, as appeal No. CA/PH/8/CR/2023.
- viii. Upon the entry of the instant appeal, the power to entertain or grant stay of proceedings at the trial court under section 313 of the ACIL of Rivers State stood fossilized and frozen at the trial court, and became fully vested exclusively in the Court of Appeal by virtue of section 15 of the Court of Appeal Act, LFN (as amended).
- ix. Upon the appeal being entered, the appellant filed a motion on notice before this Court on 27<sup>th</sup> February, 2023, for stay of further proceedings of the High Court of Rivers State in the said charge pending the determination of the appeal, which application was predicated on peculiar provisions of section 313 of the Rivers State Administration of Criminal Justice Law, 2011 (L.F.N. 100, 2015").

**CERTIFIED TRUE COPY**

- x. Trial judge's attention was duly draw to the pendency of appeal and the application for stay of proceedings pending before this Honourable Court.
- xi. Trial judge in disregard of the pending appeal on service and competence of the private prosecutors proceeded to entertain and application at the behest of the prosecution and ordered the arrest of the appellant/applicant notwithstanding appellant/applicant's application for stay of proceedings before the Court of Appeal.
- xii. Trial judge also disregarded the application for stay of proceedings filed before his court and did not decide same before granting the application of the prosecution to arrest the appellant/applicant and other defendants before the court below.
- xiii. The action of the trial judge in granting the application of the prosecution is an utter disregard for the authority and processes of the Court of Appeal as a superior court created by the 1999 Constitution of the Federal Republic of Nigeria (as amended).



- xiv. There is the need for this Honourable Court to enforce its authority and hierarchy over the court below who acted in disregard of the processes of the Court of Appeal, as in its said ruling findings and pronouncements on validity the service of the information on the appellant were made.
- xv. The granting of this application is imperative to restore faith and confidence in this Honourable Court and its hierarchy, and being dominis litis over the subject matter of this appeal and to save off further confusion as to the authority of this Court."

The affidavit in support of the motion save the introductory part depose thus-

1. That the 1<sup>st</sup> respondent duly filed a counter affidavit and written address in opposition to the appellant's motion for stay of proceedings before this Honourable Court and the same is still pending for hearing and determination.
2. That I am further informed by the said Alphonso Sibi Esq., of counsel at the same date, time, place and circumstances aforesaid and I verily believe him that the pendency of a motion for stay of proceedings before the Court of Appeal does not inhibit or impede the exercise of the jurisdiction of the learned trial court to continue with

criminal proceedings or hearing and determination of a criminal case under the new dispensation of the administration of Criminal Justice Scheme in Nigeria.

3. That in furtherance of their determination to stave off the commencement of the hearing in the criminal proceedings against them, the appellant and the 2<sup>nd</sup> respondents resorted to the filing of multiple applications for stay of proceedings before the learned trial court and before this court, filing applications challenging the jurisdiction of the learned trial judge to hear the information, filing applications challenging the appearance of the private legal practitioners for the prosecution on the fiat of the Honourable Attorney-General of Rivers State and filing applications challenging the validity and propriety of the order for substituted service of the information and its accompanying proofs of evidence.
4. That while these aforesaid processes were being used to engage the learned trial court and to delay and frustrate the commencement or hearing of the criminal information/charge, the appellant and the 2<sup>nd</sup> to 5<sup>th</sup> respondents neglected, failed and refused to appear before the learned trial court to take their plea or to stand the criminal trial on the information/charge against them.
5. That in consequence of the said ambivalence of the appellant, the 1<sup>st</sup> respondent applied to the learned trial

court by motion on notice praying for an order directing that all the preliminary objections and interlocutory applications be taken along with the substantive case and that a warrant of arrest be issued against the appellant and his co-accused persons for the purpose of bringing them before the court to take their plea and stand their trial before the learned trial court. A copy of the said application is tendered herewith and marked Exhibit FU5.

6. That the said application was duly served on the appellant and he filed his counter affidavit and written address in opposition thereto. The learned trial court heard the said application and delivered a considered ruling on the 17<sup>th</sup> day of May, 2023, wherein the court upheld the application and ordered as follows-
  - i. An order be said is hereby made that all objections, motion on notice, notice of preliminary objection, interlocutory applications by the defendants/respondents before this Honourable Court against the hearing of this criminal charge/Information/trial against the defendants in whatever manner or form it is called or described, and whatever ground(s) shall only be considered along with the substantive issues and the court ruling(s) made at the time of delivery of the judgment.



- ii. An order of warrant of arrest be and is hereby made for the arrest, detension and production before this Honourable Court on the next adjourned date of the 1<sup>st</sup> defendant; Rt. Honourable Chibuike Rotimi Amaechi; 2<sup>nd</sup> defendant; Augustine Wokocha; 3<sup>rd</sup> defendant; Tonye Cole; 4<sup>th</sup> defendant; Sahara Energy Resources Limited and 5<sup>th</sup> defendant; NG Power-HP Limited, for the purpose of their arraignment, plea taking and standing their trail on the information/charge pending before this Honourable Court.
- iii. The Commissioner of Police, Rivers State Command and or the Police formation, under him and or the nearest Police Station where the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants resides and or carry on business is hereby directed to/shall arrest detain the defendants at the Nigeria Correctional Service, Port Harcourt Centre and produce them before this Honourable Court on the next adjourned date for arraignment, plea and trail. A copy of the ruling is tendered herewith and marked Exhibit FU6.
7. That the appellant and all the parties to the case were afforded the opportunity to be heard in respect of the said application before the said orders have since been appealed against to this Honourable Court by the 2<sup>nd</sup> respondent among others. The copy of the civil form 6

accompanied by the notice of appeal is tendered herewith and marked Exhibit FU7.

8. That I have been further informed by Alphonso Sibi Esq., of counsel for the 1<sup>st</sup> respondent at same date, time, place and circumstances as aforesaid and I verily believe him as follows-

- i. That the instant application of the appellant/applicant before this Honourable Court is defective and incompetent as it is not shown to have signed by any cognizable legal practitioners for the appellant from among the over 22 legal practitioners whose names are subscribed on the motion paper.
- ii. That the subject matter of the appellant's appeal in this case is the order for substituted service of the information/charge on the appellant and not the decision of the learned trial court delivered on the 17<sup>th</sup> day of May, 2023, directing the arrest of the appellant.
- iii. That this Honourable Court only reviews decisions of the court below based on appropriate appeals and has no jurisdiction to review a decision of the court below based on an application of this nature at the instance of the appellant/applicant.
- iv. That in criminal proceedings, stay of proceedings is not permissible to be used to scuttle criminal trials.

- v. That the appellant/applicant has not place any material before this Honourable Court to enable the court exercise its discretion In favour of the grant of the instant application to set aside the orders of the learned trial court.
- vi. That the appellant/applicant has not disclosed any special or exceptional circumstances of warrant the grant of stay of further proceedings.
9. That I know for a fact that the order for substituted service which the appellant/applicant is purported to appeal against to the Court of Appeal did not deprive him of any right and has not affected him adversely in any way as it merely brought the pendency of the charge to his notice to afford him the opportunity to defend himself before the learned trial court.
10. That continuation of proceedings in this matter before the learned trial court will not adversely affect the appellant/applicant's alleged right of appeal, if any, in way as the proposed interlocutory appeal is only designed to confuse issues and delay the expeditious hearing and determination of the merits of the charge in this matter.
11. That the prayer for the setting aside of the warrant of arrest is designed to enable the appellant to continue



to dribble the learned trial court and frustrate his arraignment and trial ad infinitum.

12. That the grant of the application to set aside the warrant of arrest will stultify the progress of the case before the learned trial court and impede the 1<sup>st</sup> respondent's right of access to court for the prosecution of offenders in the maintenance of law and order in Rivers State.
13. That this application is brought in bad faith and the interest of justice is better served by the refusal of same."

The applicant filed further affidavit on 24. 05. 2023 wherein it is deposed as follows-

"I Charity Nwanosike, female, adult, litigation secretary and Nigerian citizen of No. 2, Peremabiri Street, D/Line, Port Harcourt, Rivers State do hereby make Oath and state as follows-

1. That I am a litigation secretary in the office of Edward & William, one of the firms of legal practitioners working with Lateef O. Fagbemi, SAN, lead counsel for the appellant/applicant in this appeal.
2. That I also rendered secretarial assistance to the firm of Edward & William and Prince Lateef O. Fagbemi, SAN, the lead counsel representing the appellant/applicant in prosecution of this appeal.

3. That by virtue of my aforesaid position, I am very conversant with the facts of this case.
4. That I have the information, authority and consent of the appellant/applicant as well as that of my principal to depose to this affidavit.
5. That on the 19<sup>th</sup> May, 2023, I deposed to an affidavit in support of the appellant/applicant's motion on notice filed on the same date, seeking to set aside the ruling and orders of the trial court, wherein I referred to the ruling and orders of the High Court of Rivers State In Suit No. PHC/3673/CR/2023: The State V. Rt. Hon. Chibuike Rotimi Amaechi & Ors.
6. That as at the time of filing the affidavit, copies of the said ruling and orders had not been made available by the said trial judge. The ruling and orders have now been released to the applicant. Copy of the said ruling and orders are attached and marked "Exhibit A and A1".
7. That I also referred to the appellant/applicant's letter to trial court dated 27<sup>th</sup> of February, 2023, and the motion on notice filed on the 17<sup>th</sup> April, 2023, before the trial court for stay of its proceedings pending the determination of an application before this court and that as at the time of filing the said affidavit the trial

court had not issued the applicant with certified true copies of the said documents.

8. That I have now obtained the Certified True Copy of both documents. Certified True Copy of the said letter is attached and marked "Exhibit D" while certified true copy of the said motion on notice is attached and marked "Exhibit E".
9. That I also referred to the record of proceedings of the trial court, copy of the said record of proceedings is attached and marked "Exhibit G".

Attached to the main affidavit are the affidavit of non service, Exhibit B, motion on notice filed at the Court of Appeal (the Court) on 29. 03. 2023, praying for an order of the court staying further proceedings in charge No: PHC/3273/CR/2022 in which the applicant is a defendant with others at the High Court of Rivers State (the lower court) pending the hearing and determination of the appellant/applicant's appeal before the Court, which is attached to the motion paper as Exhibit C with deluge of other attachments concerned with the said motion for a stay of further proceedings of the lower court.

Also, attached to the main affidavit are Exhibits showing the lower court and learned counsel for the respondent were aware of the pending motion for stay of further proceedings in the said criminal case and that notwithstanding the lower court prompted by the respondent accepted its submissions for a bench warrant to issue and did issue bench warrant for



the arrest of the appellant/applicant to compel his attendance at the criminal proceedings pending at the lower court.

The respondent filed counter affidavit on 26. 05. 2023 with these deposition-

"I Fabulous Usim, an adult, male, Christian, citizen of the Federal Republic of Nigeria, and litigation secretary of Bridgestone Law Attorneys, No. 15 A, Ndele Street, D/Line, Port Harcourt do hereby depose an Oath and state as follows:

1. That I am the litigation secretary in Bridgestone Law Attorneys, the law firm of the counsel representing the 1<sup>st</sup> respondent in this case.
2. That by virtue of my said position and schedule of official duties, I am seized of and conversant with the facts of this case based on my personal observation, official documents and records that came to my notice and also from information which I received from the Honourable Attorney-General of Rivers State on behalf of the 1<sup>st</sup> respondent and from the team of lawyers representing the 1<sup>st</sup> respondent.
3. That I have the consent and authorization of my employer and that of the 1<sup>st</sup> respondent to depose to this counter affidavit on its behalf and in opposition to the appellant/applicants motion for setting aside ex debito justitiae.

4. That I have seen and read a copy of the appellant/applicants motion on notice filed on the 19<sup>th</sup> day of May, 2023, praying for setting aside ex debito justitiae and the 20 paragraphs affidavit in support deposed to by Charity Nwanosike, a litigation secretary of Edward & Williams Law Firm, and except as I may hereinafter expressly admit, all the allegations of fact contained in the said affidavit are hereby denied as false and misleading.
5. That paragraph 2 and 19 of the said affidavit of Charity Nwanosike are false and misleading and in direct response thereto I depose to this counter affidavit and state as follows-
  - i. That on the 15<sup>th</sup> day of November, 2022, the Honourable Attorney-General of Rivers State on behalf of the 1<sup>st</sup> respondent, filed an information in Charge No. PHC/3673/CR/2022 before the High Court of Rivers State against the appellant and the 2<sup>nd</sup> to 5<sup>th</sup> respondents on 7 counts charges of conspiracy, stealing and obtaining money by false pretences contrary to sections 419, 422, 427, and 390 (9) of the Criminal Code Cap. 37, Vol. 2, Laws of Rivers State of Nigeria, 1999.
  - ii. That on the 16<sup>th</sup> day of December, 2022, the Honourable Attorney-General of Rivers State issued a fiat No. MJ/DPP/236/5.10/VOL.1/19 by which he authorized legal

practitioners namely; (i) Donald Chika Denwigwe SAN (ii) Ferdinand Oshioke Orbih SAN (iii) Prof. Andrew Chukwuemerie SAN (iv) DIKE Udenna Esq., (v) Alphonso Sibi Esq., and (vi) Nwanyanwu Pius Chinaeke, Esq., to represent the 1<sup>st</sup> respondent jointly and/or severally in the prosecution of the criminal charge No. PHC/3673/CR/2022 (The State V. Rt. Hon. Chibuike Rotimi Amaechi & Ors.) and any other persons that the prosecution shall in their discretion deem necessary. A copy of the said fiat is tendered herewith and marked Exhibit FU1.

- ii. That due to the inability of the bailiff of the court below to find the appellant and 2<sup>nd</sup> and 3<sup>rd</sup> respondents to effect personal service of the information and its accompanying proof of evidence on them, the 1<sup>st</sup> respondent applied by motion ex-parte to the learned trial court for leave to serve the said processes by substituted means, which application was duly granted on 19<sup>th</sup> January, 2023. A copy of the said order is tendered herewith and marked Exhibit FU2.
- iv. That in compliance with the said order of the court in Exhibit FU2, the 1<sup>st</sup> respondent duly served the information and its accompanying proof of evidence together with hearing notices on the appellant and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents by publication in the National



- Newspaper Vol. 13, No. 622 of Thursday, January 26, 2023, at pages 20 to 25 thereof. A copy of the said publication is tendered herewith and marked Exhibit FU3.
- v. That upon becoming aware of the charge against him, the appellant proceeded on the 1<sup>st</sup> day of February, 2023, to file a notice of appeal purporting to appeal to this Honourable Court to challenge the order for substituted service of the information by which he became aware of the charge against him and thereafter on the 2<sup>nd</sup> day of February, 2023, he also filed a motion on notice praying for stay of further proceedings in the matter before the court below on account of the said notice of appeal. A copy of the said motion for stay is tendered herewith and marked Exhibit FU4.
  - vi. That I know for a fact that the said application, which was filed on the 2<sup>nd</sup> day of February, 2023, being fixed for plea taking and commencement of the trial of the appellant and the 2<sup>nd</sup> and 5<sup>th</sup> respondents, was filed deliberately in a bid to scuttle the proceedings and hearing of the charge against the appellant on that date, which objective it achieved and the matter was adjourned to 28<sup>th</sup> February, 2023, for plea and motions.
  - vii. That the purported appeal on which the said application for stay of proceedings was founded was part of a grand design of the appellant and his co-defendants to scuttle

proceedings and frustrate the hearing of the criminal charge against them.

6. That I have been informed by Alphonso Sibi Esq., one of the counsel representing the 1<sup>st</sup> respondent in this matter on Thursday the 25<sup>th</sup> day of May, 2023, at about 11am during a briefing review session in respect of this matter in his office at Bridgestone Law Attorneys, No. 15 A, Ndele Street, D/Line, Port Harcourt and I verily believe him as follows-
  - i. That the appellant/applicant has no right of appeal against the ex-parte order/ruling/decision of the learned trial court granting leave to the 1<sup>st</sup> respondent for substituted service of the determination and its accompanying processes on the appellant and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.
  - ii. That the 5 grounds of appeal relied on by the appellant/applicant raise issues of mixed law and facts but the appellant/applicant did not seek the prior leave of the court below or this Honourable Court before filing the purported notice of appeal (Exhibit B) in this case.
  - iii. That the purported notice of appeal (Exhibit B) was filed outside the 14 days limited by law for the filing of interlocutory appeals to the court of appeal.



- iv. That the purported notice of appeal (Exhibit B) was not signed personally by the appellant as required by law for the validity of a criminal appeal.
- v. That the prayer for stay of further proceedings pending interlocutory appeal is antithetical to the expeditious hearing and determination of criminal proceedings under the administration of Criminal Justice Law of Rivers State.
- vi. That there is no valid or competent appeal pending before this Honourable Court capable of grounding the instant application for stay of further proceedings of the trial before the learned trial court.

Attached to the further affidavit as Exhibit A containing a Ruling of the lower court in which it acknowledged the pendency of the motion for stay of further proceedings pending appeal filed by the applicant on 17. 04. 23 and proceeded to grant the application of the 1<sup>st</sup> respondent by issuing a warrant of arrest on the applicant and the other four defendants for their arrest, detention and production before the lower court by the police in Rivers State Police Command on the next adjourned date for the purpose of their arraignment, plea taking and standing their trial on the information/charges pending before the lower court which is also reflected in the enrolled order drawn up on 17. 05. 2023, Exhibit A1.

Also, attached to the further affidavit as Exhibit E is the defendant's solicitors' letter to the Chief Registrar of the High Court of Rivers State



dated 27. 02. 2023 with attachments relating to the motion for stay of further proceedings pending appeal.

While Exhibit G is the proceedings of 12. 01. 2023, 19. 01. 2023, 28. 02. 2023, 21. 03. 2023, 18. 04. 2023, 26. 04. 2023 and 17. 05. 2023 in which the lower court took some preliminary applications in which the issue of stay of proceedings pending appeal surfaced.

The proceedings ended on 17. 04. 2023 with an adjournment for the applicant and the other co-defendants to be produced on bench warrant to stand their trial on 04. 07. 2023.

The written address in support of the application relied on the cases of **Akintude V. Yinka (2010) 21 WRN 144, Arab Bank Ltd. V. Comex (1996) NWLR (Pt. 608) 648 at 671, Mohammed V. Oluwunmi (1993) 4 NWLR (Pt. 287) 254 at 277, NAB V. Comex Ltd. (1999) 6 NWLR 648 at 672, Mohammed V. Olawunmi (1993) 4 NWLR (Pt. 287) 254 at 277-278**, and section 240 of the 1999 Constitution as altered, to contend that respect for the hierarchy of the courts dictates that proceedings pending before an appellate court should be reckoned with by a lower court pending the determination of the application before an appellate court; upon which the applicant urged that the application be granted.

The 1<sup>st</sup> respondent opposed that application in a written address premised on the grounds that the written address in support of the application was signed by an unidentifiable legal practitioner; that the notice of appeal is defective in that it was not signed by the appellant himself; that a stay of criminal proceedings is rarely granted; that there is

no right of appeal from an ex parte order; and that placing reliance on the cases of **Ezea & Anor. V. Ugwuanyi & Ors. (2015) LPELR-40644 (CA)** page 35-40, **Aremu V. Shinaba (2014) LPELR-22445 (CA)**, **PMB LPD V. NDIC (2011) 12 NWLR (Pt. 1261) 253**, **Tanimu V. Rabi**u (2018) NWLR (Pt. 1610) 505, **Hon. Victor Tamie Fingesi & Anor. V. INEC & 2 Ors. (unreported judgment)**, **Madam Elizabeth Ewukoya & Anor. V. Tajudeen Buari & Ors. (2016) LPELR-40492 (CA)**, **Bovoa V. FRN & Anor. (2017) LPELR-43006 (CA)**, **Igbokwe V. Edom & Ors. (2015) LPELR-25576 (CA)**, **SPDC V. Registrar of Business Premises, Abia State (2015) LPELR-24258 (CA)**, **Adamu V. State (2018) LPELR-49282 (CA)**, **Eyop Industries Ltd. V. Ekong (2021) LPELR-55837 (CA)**, **Nika Fishing Co. Ltd. V. Lavina Corp., (2003) 11 NWLR (Pt. 1114) 509 at 540**, **Mustapha V. FRN (2017) LPELR-43131 (CA)**, **Chukwu V. IGP (2018) LPELR-45249 (CA)**, **Kanu V. FRN (2022) LPELR-58768 (CA)**, **Sunny V. I.G.P. (2018) LPELR-50097 (CA)**, **Onnoghien V. FRN (2019) LPELR-47524 (CA)**, **Innoson (Nig.) Ltd. V. IGP (2018) LPELR-50884 (CA)**, **Azi V. FRN (2019) LPELR-46430 (CA)**, **Alioke V. Oye & Ors. (2018) LPELR-45153 (SC)**, **Bako & Ors. V. Bako & Ors. (2015) LPELR-40749 (CA)** and section 340 of the Administration of Criminal justice Law of Rivers State.

There is a signature on top of the signature page of the motion paper in page 4 thereof and a tick against the name of Achinike William-Wobodo as counsel that signed the motion paper, who also was led by senior counsel at the hearing of the application. The same page 4 has the stamp



and seal of the Nigerian Bar Association bearing the name of Mr. Achineke G. Willam-Wobodo which is to expire In March, 2024. These materials put together attest to the fact that Mr. Achineke G. William-Wobodo, a legal practitioner, signed the processes. There is, therefore, no substance in the contention that the motion paper was not signed by an identifiable legal practitioner.

The notice of appeal attached to the motion paper was signed by a legal practitioner on behalf of the appellant in line with the second leg of order 17 rule 5 (1) of the Court of Appeal Rules, 2021, which permits a legal representative of the appellant to sign notice of appeal on his behalf. See, for example, the Supreme Court case of **Amuda V. F.R.N. (2021) 7 NWLR (Pt. 1774) 130 at 148-151**, to the same effect.

The notice of appeal is challenging the service of process on the applicant which is an issue of jurisdiction and therefore a point of law which is appealable as of right under section 241 (1), (b) of the 1999 Constitution, as altered, read with the definition of 'decision' under section 318 (1) to the effect that a 'decision' means in relation to a court any determination of that court and includes judgment, order, conviction, sentence, recommendation.

I wish to observe that this court entertained an appeal in respect of an ex parte order for substituted service in the case of **Dike and Ors. V. Kay-Kay Construction Limited (2017) 14 NWLR (Pt. 1584) Page 1**.

Consequently, I most respectfully feel no force in the stance of the 1<sup>st</sup> respondent in respect of the above contentions.



There is no quarrel about accelerated hearing of a criminal case under the Rivers State Administration of Criminal Justice Law No. 7 of 2015 which, also, makes provision for a stay of proceedings under section 313, therefore unlike the Administration of Criminal Justice Act 2015 upon which the 1<sup>st</sup> respondent cited some cases (supra) that forbid stay of criminal proceedings which cases are largely irrelevant in the present circumstance.

Courts survive on discipline. It is elementary that a process pending before a court above the lower court, no matter how frivolous, must be respected by the lower court. It is for the higher court to decide on the merits or otherwise of the process. The Supreme Court case of **Mohammed & Anor. V. Olawunmi (1993) 4 NWLR (Pt. 285) 254 at 277-281** stated in clear terms that-

"The record of proceedings shows that the learned trial judge was aware of the application dated 8<sup>th</sup> May, 1991 filed in the Court of Appeal a day before he delivered his ruling of 9<sup>th</sup> May, 1991, the substance of that application was to stay all the proceedings which include the issue of sentence before him pending the determination of the appeal. The learned trial judge left nobody in doubt about his awareness of the application filed in the Court of Appeal.....

Within the stipulated days, the defendants/respondents went to the Court of Appeal and since then the legal battle started. Today however, the court is possessed with the order of the Court of Appeal dated 4<sup>th</sup> April,

1991, refusing order for stay of further proceedings. A new motion has again been filed at the Court of Appeal asking for another for stay of proceedings. It appears to me that although the motion has just been filed there, this court can proceed with the sentence as no interim order is made or obtained from the Court of Appeal. I therefore proceed to sentence.

The respondents' counsel in their brief argued and this was not rebutted before us that the attentions of the learned trial judge was drawn to the case of **Vaswani Trading Co. V. Savalakh & Co. (1972) ALL NLR 922 or (1972) 12 S.C. 77**. In that case, this court in a clear language frowned at the attitude of a lower court that will render the order being sought nugatory. The court said-

"We think also that it is idle for the respondents to argue, as learned counsel on their behalf has attempted to do, that they were not aware of the pending proceedings in this court.

No argument was advanced before him that that authority should not be followed. In this appeal, the judge from the passage quoted above from his ruling was aware of the application but deliberately chose to ignore the

process. This unfortunate attitude in disregarding the process of the Court of Appeal borders on judicial impertinence. It is an affront to the authority of the Court of Appeal. All the courts established under our Constitution derive their powers and authority from the Constitution. The hierarchy of courts show the limit and powers of each court. To defy the authority and powers of a higher court appears to me undesirable and distasteful. Even without the ratio of the Vaswani's case, the best and reasonable course of action was to have adjourned the matter before him pending the determination of the application before the Court of Appeal. The rules of court are made for the orderly conduct of trials. A litigant will be allowed to pursue his rights in so far he acts within the law and the rules. To deny him that right will be deny him justice. It is better to wait the decision of a higher court in respect of matter pending in the lower court so as to avoid embarking on an exercise in futility. What is of considerable importance is that there must be respect for the authority of each court. Even if



a judge disagrees with the decision if a higher court, he is constitutionally bound to accord it respect until it is set aside. A lower court should try to avoid defiance of the order or process of a superior court.

Where there is an application before a higher court for a stay of proceedings in the lower court, a decision by the lower court which will render the result of such application should be avoided. It will amount to a mere speculation for the trial court to come to the conclusion that an appeal or application before the higher court or appellate court will fail. An appeal against the judgment or ruling is a complaint against the decision.

Being aware of the motion dated 8<sup>th</sup> May, 1991, and unless the learned trial judge wanted to pre-empt the Court of Appeal, one would expect that having waited almost three years to pass sentence, he would have waited a little longer to have the application of the 8<sup>th</sup> of May, 1991 disposed of by the Court of Appeal more so that his attention was drawn to it before passing sentence. The question arises- was the Court of Appeal justified in the

circumstance, in proceeding to hear and determine the application before it dated 8<sup>th</sup> May, 1991 for stay of further proceedings? I rather think so. Indeed I would also say that the Court of Appeal would be justified in setting aside the order of sentence made by the learned trial judge on 9<sup>th</sup> May, 1991.

What the learned trial judge did on 9<sup>th</sup> May, 1991, was to foist on the Court of Appeal a fait accompli thereby rendering it impossible for that court to arrive at a decision one way or the other on the merit of the application before it or render any decision one way or the other on the merits of the application before it or render any decision it might take on the application nugatory or futile. The courts have always frowned on such conduct. See **Vaswani V. Savalakh (1972) 1 ALL NLR 922**, where G. B. A. Coker, J.S.C., in circumstances not dissimilar observed at pages 972-930 of the report-

In the present case there is no doubt that the writ was executed and possession wrested from the applicants whilst their motion to this court for a stay execution was pending and

waiting a date to be assigned by this court for the hearing of the application". (My emphasis).

Further, this Court (Oguntade, Pats-Acholonu, Aderemi JJ. CA) had this to say in the case of **Nigeria-Arab Bank Limited V. Comex Limited (1999) 6 NWLR (Pt. 608) 648 at 665, 666, 669, 671.**

"I must state that it smacks of a lust of unbridled exercise of judicial power to ride a rough shod of the appellant (defendant) motion for stay of proceedings. It is true to stay that, a motion or an appeal is pending in an appellate court does not necessarily mean that the court below should stop all further proceedings but High Court in obedience to the hierarchical nature of the court must try not to foist on the appellate court a situation of utter hopeless thereby leaving the Court of Appeal with nothing but a dead baby....."

Now, in **Mohammed V. Olawunmi (supra)** the Supreme Court per Olatawura J.S.C. at page 277-278 observed.

"In this appeal, the judge from the passage quoted from his ruling was aware of the application but deliberately chose to ignore the process. This unfortunate attitude in disregarding the process of the Court of Appeal borders on judicial impertinence. It is an affront to the authority of the Court of Appeal.



All the courts established under the Constitution derive their powers and authority from the Constitution. The hierarchy of courts show the limit and powers of each court. To defy the authority and process of a higher court appears to me undesirable and distasteful. Even without the ratio of the Vaswani's case, the best and reasonable course of action was to have adjourned the matter pending the determination of the application before the Court of Appeal."

Undoubtedly, every judge has the duty to conduct the business of the court with expedition. But in doing so, all the necessary safeguards that ensure the delivery of justice must be observed.....

By proceeding with the case when it had a clear notice that an application for stay of proceedings was pending before the Court of Appeal, the lower court had unwittingly embarked on a course, which amounted to a truncation of the appeal before the Court of Appeal.

See also the cases (supra) particularly the lucid judgment prepared by His Lordship Kekere-Ekun, J.C.A., (now J.S.C.,) in **Akintunda V. Yinka** (supra) cited on the point by learned senior counsel for the applicant.

I conclude that regardless of the conduct of a litigant, the sanctity, integrity, and sacred status of a process pending before a higher court must be respected by a lower court once it is brought to its notice, whether or not the process is frivolous, which is the prerogative of the higher court to decide one way or the other. And in this case, it is worthy of note that by section 313 of the Rivers State Administration of Criminal Justice Law No. 7 of 2015 cited (supra) by the applicant, a stay of proceedings may be granted in a criminal trial in deserving circumstances and at the discretion of the court.

In the result, I find substance in the application and hereby grant it in terms of the motion paper (supra). The proceedings conducted by the lower court leading to the rulings/orders made on 17. 05. 2023 are hereby set aside as they were made in disregard of the motion for a stay of further proceedings pending before the Court which had earlier been fixed for hearing on 09. 06. 2023.

  
**JOSEPH SHAGBAOR IKYEGH**  
JUSTICE, COURT OF APPEAL.  
20. 06. 2023.



**COUNSEL:**

A. G. William-Wobodo Esq. for the Appellant/Applicant.  
Chief F. O. Orbih, SAN with Alphonso Sibi Esq. for the 1<sup>st</sup> Respondent.  
C. C. Orlu Esq. for the 2<sup>nd</sup> Respondent with P. Odalumeh.  
Jonas G. Inlayemana Esq. for the 3<sup>rd</sup> Respondent.  
Akinwale Esq. for the 4<sup>th</sup> and 5<sup>th</sup> Respondents.

**ANAS BALA ESQ**  
SENIOR REGISTRAR I  
COURT OF APPEAL  
PORT HARCOURT

  
30/6/2023




**APPEAL NO: CA/PH/8CR/2023**

**ABDUL-AZEEZ WAZIRI, J.C.A.**

I have had the privilege of reading in draft form the lead Ruling duly prepared and delivered by my learned brother, **JOSEPH SHAGBAOR IKYEGH, JCA.**

He has exhaustively dealt with all the issues canvassed by the contending learned Senior Counsel on this application. I have nothing useful to add or subtract but wholly endorse the reasoning and conclusion reached thereat in granting the application. I abide by all the consequential Orders made in the Ruling.

  
.....  
**ABDUL-AZEEZ WAZIRI**  
JUSTICE, COURT OF APPEAL.

**ANAS BALA ESQ**  
SENIOR REGISTRAR I  
COURT OF APPEAL  
PORT HARCOURT

  
30/6/2023



**CERTIFIED TRUE COPY**



**IN THE COURT OF APPEAL**  
**PORT HARCOURT JUDICIAL DIVISION**  
**HOLDEN AT PORT HARCOURT**

**ON TUESDAY THE 20<sup>TH</sup> DAY OF JUNE, 2023**  
**BEFORE THEIR LORDSHIPS:**

**JOSEPH SHAGBAOR IKYEGH** == **JUSTICE, COURT OF APPEAL**  
**FOLASADE AYODEJI OJO** == **JUSTICE, COURT OF APPEAL**  
**ABDULAZEEZ WAZIRI** == **JUSTICE, COURT OF APPEAL**

**APPEAL NO: CA/PH/8CR/2023**

**BETWEEN:**

**RT. HON. CHIBUIKE ROTIMI AMAECHI** ..... **APPELLANT/  
APPLICANT**

**AND**

1. THE STATE  
2. TONYE COLE  
3. AUGUSTINE WOKOCHA  
4. SAHARA ENERGY RESOURCES LIMITED  
5. N.G. POWERS- HP LIMITED

} **RESPONDENTS**

**RULING (DISSENTING)**

**DELIVERED BY FOLASADE AYODEJI OJO, JCA**

By a Motion on Notice brought pursuant to the provisions of Sections 6(6), 240, 287(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and under the inherent jurisdiction of this Honourable Court, the Appellant/Applicant seeks the following reliefs:

"AN ORDER SETTING ASIDE EX DEBITIO JUSTICIAE, the entire proceedings conducted in respect of application argued by 1<sup>st</sup> Respondent in the trial Court culminating in the Ruling/Orders of the High Court of Rivers State, Coram: Hon. Justice Chinwendu Nwogu made on 17<sup>th</sup> day of May, 2023 in Charge No. PHC/3673/CR/2023: The State vs. Rt. Hon. Chibulke Rotimi Amaechi & Ors. Ordering for the arrest of the Appellant/Applicant, being an Order made in disregard of a pending appeal and an application for stay of proceedings all pending before this Honourable Court to the knowledge of the trial Judge, in Appeal No. CA/PH/8/CR/2023: Rt. Hon. Chibuike Rotimi Amaechi & Ors vs. The State.

AND FOR SUCH FURTHER ORDER(S) OR OTHER ORDER(S) as this Honourable Court may deem fit to make in the circumstance."

The grounds for the application as contained on the face of the motion paper are as follows:

- i. This application stems from the Ruling and Orders of the High Court of Rivers State in Charge No. PHC/3673/CR/2023: The State vs. Rt. Hon. Chibuike Rotimi Amaechi & Ors. directing the arrest of the Appellant.
- ii. Trial Court, on the **19<sup>th</sup> day of January, 2023**, delivered a ruling wherein it granted an order of substituted service of the criminal information filed

by the 1<sup>st</sup> Respondent in Charge No: PHC/3673/CR/2022 on the Appellant by publication in at least 2 (two) National Daily Newspapers amongst other reliefs, depriving, the Appellant's constitutional right to be personally served and notified of the charge against him.

- iii. The said order for substituted service was predicated upon an affidavit of nonservice deposed to by a Bailiff of the trial Court of a purported attempt to serve civil process (Writ of Summons, Statement of Claim, List of Witness, Statement on Oath, List of Documents, Motion on Notice, etc) on the Appellant.
- iv. The Appellant/Applicant being dissatisfied with the ruling of the High Court of Rivers State, in Charge No: PHC/3673/CR/2022 delivered on the 19<sup>th</sup> day of January, 2023 lodged an appeal against same vide a notice of appeal filed on the 1<sup>st</sup> day of February, 2023, challenging the purported service of the Information and Proof of Evidence on him.
- v. The grounds of appeal raise jurisdictional and substantial issues of law, including the validity of the purported order of substituted service of the criminal Information and Proof of Evidence on the Appellant, and complaint of lack of jurisdiction in the trial Court to grant the said order, relying on



purported inability to serve civil processes on the Appellant.

- vi. The grounds of appeal contained in the Notice of Appeal also raise constitutional issues of breach of fair hearing and fair trial, which are recondite, substantial and/or arguable.
- vii. The Record of Appeal was transmitted to this Honourable Court and the appeal duly entered on the **22<sup>nd</sup> day of February, 2023** as Appeal No: CA/PH/8CR/2023.
- viii. **Upon entry of the instant appeal, the power to entertain or grant stay of proceedings at the trial Court under section 313 of the ACJL of Rivers State stood fossilized and frozen at the trial Court, and became fully vested exclusively in the Court of Appeal by virtue of Section 15 of the Court of Appeal Act, LFN (as amended).**
- ix. Upon the appeal being entered, the Appellant filed a Motion on Notice before this Court on **27<sup>th</sup> February, 2023 for stay of further proceedings of the High Court of Rivers State in the said charge pending the determination of the appeal,** which application was predicated on peculiar provisions of **Section 313 of the**

**Rivers State Administration of Criminal Justice Law, 2015 ("RS ACJL, 2015").**

- x. Trial Judge's attention was duly drawn to the pendency of appeal and the application for stay of proceedings pending before this Honourable Court.
- xi. Trial Judge in disregard of the pending appeal on service and competence of the Private Prosecutors proceeded to entertain an application at the behest of the prosecution and ordered the arrest of the Appellant/Applicant notwithstanding Appellant/Applicant's application for stay of proceedings before the Court of Appeal.
- xii. The Trial Judge also disregarded the application for stay of proceedings filed before his Court and did not decide same before granting the application of the prosecution to arrest the Appellant/Applicant and other Defendants before the Court below.
- xiii. The action of the trial Judge in granting the application of the prosecution is an utter disregard for the authority and processes of the Court of Appeal as a superior Court created by the 1999 Constitution of the Federal Republic of Nigeria (As Amended); and
- xiv. There is need for this Honourable Court to enforce its authority and hierarchy over the Court below who acted in disregard of the processes of the



Court of Appeal; as in its said Ruling findings and pronouncements on validity the service of the Information on the Appellant were made.

- xv. The granting of this application is imperative to restore faith and confidence of this Honourable Court and its hierarchy, and being *dominis litis* over the subject matter of this appeal and to stave off further confusion as to the authority of this Court.

Briefly, the background facts leading to the application as can be gathered from the Affidavit in support of the application and the record are as follows:

The Attorney-General of Rivers State filed an Information in Charge No: PHC/3673/CR/2023 against the Appellant and the 2<sup>nd</sup> to 5<sup>th</sup> Respondents on a seven (7) count charge of conspiracy, stealing and obtaining money by false pretence contrary to Sections 419, 422, 516A and 390(a) of the Criminal Code, CAP. 37, Volume 2, Laws of Rivers State of Nigeria, 1999.

The bailiff of the lower Court who was unable to serve the Appellant and 2<sup>nd</sup>-5<sup>th</sup> Respondents deposed to an affidavit of service that attempts at effecting personal service of the originating processes on the Appellant and 2<sup>nd</sup>-5<sup>th</sup> Respondents were not successful.

Consequent upon this, the 1<sup>st</sup> Respondent filed a motion ex-parte seeking for an order of substituted service of the Information, Proof of Evidence and other processes on the Appellant, 2<sup>nd</sup>-5<sup>th</sup> Respondents by



publishing same in National Newspapers. The application was granted. In compliance with the order so made, the above-named originating processes were published in the Nation Newspaper of Thursday, 26<sup>th</sup> of January, 2023.

Aggrieved by the Order of the lower Court and the subsequent publication made in the Nation Newspaper, the Applicant approached this Court vide a Notice of Appeal seeking to challenge the service of the originating processes of Court on him vide substituted means. He thereafter filed an application for stay of proceedings before this Court. He gave notice of the pending application to the lower Court vide a letter dated 27<sup>th</sup> of February, 2023. He also filed an application for stay of proceedings at the lower Court amongst several other applications which are in the nature of objections. The 1<sup>st</sup> Respondent filed a Motion on Notice before the lower Court wherein he sought an Order of the trial Court directing that all pending applications be heard together with the substantive Suit. In a reserved Ruling delivered on the 17<sup>th</sup> of May, 2023, the lower Court directed that all objections, motion on notice, Notice of Preliminary Objection and all other pending applications shall be considered with the substantive Suit.

The Court further directed that the Appellant and his Co-Defendants (2<sup>nd</sup>-5<sup>th</sup> Respondents) be arrested, detained and brought before it for the purpose of their arraignment, plea taking and trial.

It is against this background that the Appellant filed the instant application which is supported by a 20-paragraphed affidavit with six documents marked Exhibits A, A1, B, C, D and E respectively. It is also

supported by a Written Address of Counsel. The Application is further supported by a 9-paragraphed Further Affidavit sworn to on the 26<sup>th</sup> of May, 2023 and a Written Address. The Applicant's Counsel filed a list of additional authorities on the 31<sup>st</sup> of May, 2023.

The 1<sup>st</sup> Respondent who is opposed to the application filed a 20-paragraphed Counter-Affidavit supported with seven documents and a Written Address on the 26<sup>th</sup> of May, 2023.

At the hearing of the Motion on the 26<sup>th</sup> of May, 2023, learned Senior Counsel for the Applicant, Chief Akin Olujinmi, SAN identified all the processes filed on behalf of the Appellant/Applicant. He relied on the Affidavit and Further Affidavit as well as the exhibits attached thereto, adopted the Written Addresses filed in support of the applications as his oral argument in urging us to grant the application as prayed.

In his oral submission, learned Senior Counsel argued the lower Court should have halted the proceedings before it in view of the motion for stay of proceedings pending before this Court. He relied on the provision of Section 313 of the Administration of Criminal Justice Law of Rivers State, 2015 in support of his argument.

Learned Senior Counsel to the 1<sup>st</sup> Respondent, Chief F.O. Orbih SAN relied on the Counter-Affidavit, the exhibits attached thereto and adopted the Written Address in support of the Counter Affidavit as his oral argument in urging us to refuse the application.

In his oral submissions before us, learned Senior Counsel to the 1<sup>st</sup> Respondent opined that the motion is incompetent on the ground that the identity of the Counsel who signed it is unknown. He further argued that in criminal matters, the fact that a party filed a motion for stay of proceedings



will not tie the hands of the Court. He relied on the Administration of Criminal Justice Law as well as the case of **MUSTAPHA VS. F.R.N. (2017) LPELR- 43(CA)** in support of his argument.

In the Written Address in support of the Application, learned Senior Counsel to the Applicant/Appellant submitted the following sole issue for determination:

**"Whether the proceedings and Ruling/Orders of the High Court of Rivers State, Coram: Hon. Justice Chinwendu Nwogu made on 17<sup>th</sup> day of May, 2023 in Charge No. PHC/3673/CR/2023: The State vs. Rt. Hon. Chibuike Rotimi Amaechi & Ors. ordering for the arrest of the Appellant, ought not to be set aside, having been made in disregard of the pending appeal and application for stay of proceedings all pending before this Court and to the knowledge of the trial Judge; in respect of Appeal No. CA/PH/8/CR/2023: Rt. Hon. Chibuike Rotimi Amaechi & Ors vs. The State".**

For his part, learned Senior Counsel to the 1<sup>st</sup> Respondent submitted the following sole issue for determination:

**"Whether the Applicant has made out a proper case or demonstrated and shown the existence of special and exceptional circumstances to warrant the grant of the reliefs sought on the face of the**



**motion paper in all the circumstances of this case."**

I have carefully examined the issues submitted by learned Senior Counsel to the respective parties and I am of the view that the sole issue formulated on behalf of the Appellant would suffice. I shall therefore determine this application thereon.

**SOLE ISSUE:**

**"Whether the proceedings and Ruling/Orders of the High Court of Rivers State, Coram: Hon. Justice Chinwendu Nwogu made on 17<sup>th</sup> day of May, 2023 in Charge No. PHC/3673/CR/2023: The State vs. Rt. Hon. Chibuike Rotimi Amaechi & Ors. ordering for the arrest of the Appellant, ought not to be set aside, having been made in disregard of the pending appeal and application for stay of proceedings all pending before this Court and to the knowledge of the trial Judge; in respect of Appeal No. CA/PH/8CR/2023: Rt. Hon. Chibuike Rotimi Amaechi & Ors vs. The State"**

Arguing the sole issue, learned Senior Counsel to the Applicant relied on the case of **VASWANI TRADING CO VS. SAVALAKH & CO. (1972) ALL NLR 922** to submit that in line with the age long doctrine of hierarchy of the Courts, a lower Court must respect a higher Court so as not to cause confusion in the judicial system. He submitted that by virtue of the provisions

of Section 240 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), the trial Court (High Court of Rivers State) is subordinate to this Court (Court of Appeal).

He submitted that where a process or application is pending before the Court of Appeal and same has been brought to the attention of a lower Court; the lower Court should exercise restraint and await the decision of the Court of Appeal before continuing with its own proceedings on the matter. He called in aid of his submission the cases of **MOHAMMED VS. OLAWUNMI (1993) 4 NWLR (PT. 287)254; AKINTUNDE VS. YINKA (2010) 21 WRN 144.**

He further submitted that where an appeal has been entered at the Court of Appeal, the lower Court ceases to have jurisdiction over the matter. He relied on the case of **NWORA VS. NWABUEZE (2019) 7 NWLR (PT. 1670)1** in support of his submission. He submitted this Court became fully seised of the matters pursuant to Section 15 of the Court of Appeal Act.

He submitted that the Order made by the trial Court on 17<sup>th</sup> May, 2023 in defiance of applications pending before this Court is grave and grievous. He contended the trial Court ought to have stayed the proceedings pending determination of the application for stay of proceedings pending before this Court.

He argued that the deliberate refusal of the trial High Court to subject itself to a Court higher or superior to it amounts to judicial impertinence which is capable of enthroneing anarchy. He relied on the cases of **AG-**

CA.PH/RCR.2023



KADUNA & ORS VS. A-G FED & ORS in SUIT NO. SC. 162/2023 (UNREPORTED) delivered on 3<sup>rd</sup> of March, 2023; L.M.B. LTD VS. P.T.F. (2006) 5 NWLR (PT. 974)463; OKONKWO VS. FRN & ANOR (2011) LPELR- 4723(CA); AONDOAKAA VS. OBOT & ANOR (2011) LPELR- 4723(CA) in support.

He submitted the restorative order sought vide this application can be granted by this Court pursuant to the provisions of Sections 6(6)(b), 240 and 287(2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). He relied on the cases of REGISTERED TRUSTEES, APOSTOLIC CHURCH VS. OLOWOLENI (1990) 6 NWLR (PT. 158)514; OTOGBOLU VS. OKELUWA & ORS (1981) 12 NSCC 275 in support of his submission.

In conclusion, he urged us to answer the sole issue in the affirmative, grant the application and set aside the entire proceedings, Ruling and Order of the trial Court in Suit No. PHC/3673/CR/2023 BETWEEN THE STATE VS. RT. HON. CHIBUIKE ROTIMI AMAECHI & ORS made on 17<sup>th</sup> of May, 2023.

Learned Senior Counsel to the 1<sup>st</sup> Respondent in response submitted that the application is incompetent as the Motion was not signed by a legal practitioner as required by law in that the name and identity of the person whose signature is inscribed on the process was not disclosed. He called in aid of his submission the case of EZEA & ANOR VS. UGWUANYI & ORS (2015) LPELR- 40644(CA).

He urged us to note that there are twenty-two (22) names of Counsel on the application and there is no tick beside the name of any Counsel to



indicate which of them signed the process. He relied on the cases of TANIMU VS. RABIU (2018) NWLR (PT. 1610)505; HON. VICTOR TAMIE FINGESI & ANOR VS. INEC & 2 ORS (UNREPORTED JUDGMENT) APPEAL NO. CA/PH/EPT/GOV/546/2019 delivered on 2<sup>nd</sup> of December, 2019; MADAM ELIZABETH EWUKOYA & ANOR VS. TAJUDEEN BUARI & ORS (2016) LPELR- 40492(CA); BOVOA VS. FRN & ANOR (2017) LPELR- 43006(CA).

He submitted that improper signing of a Court process is a fundamental defect and not mere technicality. He urged us to strike out the application.

He further submitted the law is that the Notice of Appeal in criminal appeals must be signed personally by the Appellant. He cited the case of ADAMU VS. STATE (2018) LPELR- 49282(CA) in support of his submission. He contended the Notice of Appeal in the instant criminal appeal was not signed personally by the Applicant/Appellant and therefore incompetent. He cited the case of EYOP INDUSTRIES LTD VS. EKONG (2021) LPELR- 55837(CA) in support of his argument.

It is his further contention that criminal matters are statutorily required to be conducted daily and as such the grant of stay of proceedings is untenable in law. He cited the cases of NIKA FISHING CO. LTD VS. LAVINA CORP (2003) 11 NWLR (PT. 1114)509; MUSTAPHA VS FRN (2017) LPELR- 43131(CA); CHUKWU VS. IGP (2018) LPELR- 45249(CA); KANU VS FRN (2022) LPELR- 58768(CA); SUNNY VS. IGP (2018) LPELR- 50097(CA); ONNOGHEN VS. FRN (2019) LPELR- 47524(CA); INNOSON (NIG) LTD VS. IGP (2018) LPELR- 50884(CA); AZI VS. FRN (2019) LPELR- 46430(CA); ALIOKE VS.

**OYE & ORS (2018) LPELR- 45153(SC)** and the provisions of Section 403(1)-(7) of the Administration of Criminal Justice Law of Rivers State.

He further submitted that the order of the trial Court directing the arrest of the Appellant has not been challenged on appeal by the Applicant/Appellant but by the 2<sup>nd</sup> Respondent in another appeal and urged us to hold that a grant of this application will be pre-emptive of the appeal filed at the instance of the 2<sup>nd</sup> Respondent.

In conclusion, he urged us to resolve the sole issue in favour of the 1<sup>st</sup> Respondent and dismiss the application in its entirety.

Learned Senior Counsel to the 1<sup>st</sup> Respondent has challenged the competence of the instant Application. I shall therefore consider the objection raised to the competence of the Application before delving into the sole issue for determination.

It is the contention of learned Senior Counsel to the 1<sup>st</sup> Respondent that the Motion on Notice was not signed by an identified person. I have gone through the record of this Court and I find that in the copy of the Motion in the Court's file, the name of the Counsel listed as No. 6, Achinike William-Wobodo has a tick in front of it. There is also a Nigerian Bar Association (NBA) seal of the said Counsel on the process. The issue of placing a tick beside the name of Counsel was dealt with extensively in the case of **WILLIAMS VS. ADOLD/STAMM INTERNATIONAL NIGERIA LTD (2017) 6 NWLR (PT. 1560)1** when the Supreme Court, per Kekere-Ekun, JSC at pages 19-20, Paragraphs A-B held as follows:

**"It is contended on behalf of the respondents that the written address in support of the application**



is incompetent for failure to disclose the identity of learned counsel who signed it by marking and/or making a tick beside his name. Reliance was placed on section 24(2)(1) of the Legal Practitioners Act (LPA) Cap. 207, Laws of the Federation of Nigeria, 1990, *Bala v. Dikko* (2013)4 NWLR (Pt.1343) 52; *Oketade v. Adewunmi* (2010) 8 NWLR(Pt.1195) 63; *P.M.B. Ltd. v. N.D.I.C.* (2011) 12 NWLR (Pt.1261)253 at 262, F - G; *Okafor v. Nweke* (2007) 10 NWLR (Pt.1043) 521 at 532 – 533, B - C. Learned counsel urge the court to strike out the written address. There is no response to this submission on behalf of the applicant.

There is no doubt that it has been held in a plethora of decisions of this court and it is now firmly settled that a court process that is not signed by a legal practitioner whose name appears on the roll of legal practitioners and who is entitled to practice as a barrister and solicitor as provided for in sections 2 and 24(2)(1) of the LPA, Cap.L11, LFN, 2004 is incompetent and liable to be struck out. See: *Oketade v. Adewunmi (supra)*; *Okafor v. Nweke (supra)*; *F.B.N. Plc v. Maiwada* (2013) 5 NWLR (Pt.1348) 444. In *S.L.B. Consortium Ltd.*



*v. N.N.P.C. (2011) 9 NWLR (Pt.1252) 317* at 331, B - 332,A, this court affirmed its earlier decision in *Registered Trustees of Apostolic Church Lagos Area v. Rahman Akindele (1967) NMLR263; (1967) SCNLR 205* and held that a process prepared and filed in court by a legal practitioner must be signed by the legal practitioner, and it is sufficient signature if the legal practitioner simply writes his own name over and above the name of his/or firm in which he carries out his practice.

On page 14 of the applicant's written address, at the bottom of the page, the handwritten name, Ladi Williams, appears above two names, Chief Ladi Rotimi Williams, SAN and Chris I. Eneje. The grouse of the respondents appears to be that there is no mark beside either of the two names to identify which of them signed the process. In the instant case, the name Ladi Williams, though handwritten, is very clear and legible. The respondents are not contending that Chief Ladi Rotimi Williams, SAN is not the same person as Ladi Williams who signed the process or that the person who signed the process is not a legal practitioner whose name is on the roll of legal practitioners entitled to practice law in Nigeria. I

am satisfied that there is no doubt as to who signed the process and that he is a legal practitioner whose name is on the roll. The omission to place a tick beside the name Chief Ladi Rotimi Williams, SAN has not misled the respondents nor this court as to who signed the process and such omission cannot invalidate it. I therefore hold that the applicant's written address filed on 16/11/2015 is competent."

Furthermore, in HOLBORN NIGERIA LIMITED VS. PRIME PLASTICHEM NIGERIA LIMITED (2019) LPELR- 51212 (CA), this Court held, per Oredola, JCA as follows:

"As my noble Lord, Adefope-Okojie, JCA rightly pointed out, litigants in recent times do tend to have too frequent recourse to some points which border on technicalities, in order to obtain cheap victories, particularly on appeal. One of such antics is to attack an action or suit on appeal or at a stage when the opposing party would be helpless in rectifying the error; it is the issue of who signed a process, particularly the originating process. This method of obtaining cheap victory should as much as possible be discouraged.

In the instant case, there is no doubt that two legal practitioners were listed under the signature which was amended on the said



originating process: Alade Agbabiaka, SAN and M.O. Nasir Esq. The originating process was also resiled with the stamp of Agbabiaka Alalde Abiola, SAN. In the instant case, unlike the case of TANIMU & ANOR. VS RABIU & ORS. (2017) ALL FWLR (PT. 900) 391, the owner of the seal endorsed on the originating process is clearly identifiable and there was no indication that the process was signed for on behalf of Alade Agbabiaka (SAN) & Co.

It is important to observe, that the requirement of the law is to ascertain and ensure that the process in question was signed by a legal practitioner, hence, the usual or dire need to click the name of the particular legal practitioner who actually signed the process and also affixed his stamp or seal on the process. The objective herein, is to prevent a non-legal practitioner particularly in a law firm from signing a process on behalf of a legal practitioner or to readily detect such an infraction. The facts and given circumstances in the case at hand is distinct and peculiar. The originating process was signed and a stamp of a readily identifiable legal practitioner was affixed to the process. Also, there is nothing indicative on the process, that it was signed on



behalf of a law firm. Thus, I am also of the firm viewpoint and do agree with my noble Lord, Adefope-Okojie, JCA, that the verifiable stamp of Alade Agbabiaka Abiola, SAN has fulfilled the necessary requirement, that the legal practitioner who signed a process should be clearly identified or be identifiable. If ticking a name suffices to do the required and engender identifying the person who signed a process, affixing a stamp of an identifiable legal practitioner whose name was directly placed under a signature endorsed in a Court process should as well suffice."

I find no merit in this leg of the objection. It falls and it is dismissed. The 2<sup>nd</sup> leg of the objection is on the competence of the Notice of Appeal. To my mind, the competence or otherwise of the Notice of Appeal is a matter to be determined at the hearing of the substantive appeal. It is trite that a Court shall not comment on the merits or otherwise of an appeal yet to be heard. See AGWU VS. JULIUS BERGER (NIG) PLC (2019) LPELR-47625(SC); EHINDERO VS. FEDERAL REPUBLIC OF NIGERIA (2018) 5 NWLR (PT. 1612)301; IN RE-ABDULLAHI (2018) LPELR- 45202(SC) AND AKINRIMISI VS. MAERKS NIGERIA LIMITED (2018) 10 NWLR (PT. 1361)73.

I shall therefore refrain from determining the competence or otherwise of the appeal pending before us at this stage.

I shall now go on to consider the sole issue formulated for the determination of this application. For ease of reference, it is reproduced hereunder:

**"Whether the proceedings and Ruling/Orders of the High Court of Rivers State, Coram: Hon. Justice Chinwendu Nwogu made on 17<sup>th</sup> day of May, 2023 in Charge No. PHC/3673/CR/2023: The State vs. Rt. Hon. Chibuike Rotimi Amaechi & Ors. ordering for the arrest of the Appellant, ought not to be set aside, having been made in disregard of the pending appeal and application for stay of proceedings all pending before this Court and to the knowledge of the trial Judge; in respect of Appeal No. CA/PH/8CR/2023: Rt. Hon. Chibuike Rotimi Amaechi & Ors vs. The State."**

By the instant application, the Appellant/Applicant seeks the following Order:

**"An Order setting aside ex debito justitiae the entire proceedings conducted in respect of application argued by the 1<sup>st</sup> Respondent in the trial Court culminating in the ruling/order of the High Court of Rivers State, Coram: Ho. Justice Chinwendu Nwogu made on 17<sup>th</sup> May, 2023 in Charge No: PHC/3673/CR/2023; THE STATE VS. RT.**



**HON. CHIBUIKE ROTIMI AMAECHI & ORS ordering the arrest of the Appellant/Applicant being an Order made in disregard of a pending appeal and an application for Stay of Proceedings all pending before this Honourable Court to the knowledge of the trial Judge in APPEAL NO: CA/PH/8CR/2023; RT. HON. CHIBUIKE ROTIMI AMAECHI & ORS VS. THE STATE."**

I have earlier on set out the background facts which led the Appellant to filing the above application.

I have also gone through the proceedings of 17<sup>th</sup> May, 2023 before the lower Court sought to be set aside. On that day, the 1<sup>st</sup> Respondent brought an application before the lower Court wherein he prayed that all pending applications which include Notice of Preliminary Objection et al be heard along with the substantive Suit. The said application was granted and the Court so ordered. The Appellant and the 2<sup>nd</sup>-5<sup>th</sup> Respondents against whom an Information containing criminal charges had been filed before the lower Court had not appeared before the Court for the purpose of arraignment and taking their plea. The bailiff of the lower Court deposed to an Affidavit that he was unable to serve them after several attempts. The Court ordered that they be served via substituted means and also ordered their arrest for the purpose of their appearance before the Court to attend their trial.



From all what transpired before the lower Court, it is my firm view that the proceedings and rulings sought to be set aside were an exercise of the discretionary powers of the learned trial Judge.

One of the grounds upon which the instant application is predicated is as follows:

**"(Xii) The Trial Judge also disregarded the application for stay of proceedings filed before his Court and did not decide same before granting the application of the prosecution to arrest the Appellant/Applicant and other Defendants before the Court below."**

The Appellant has challenged the decision of the trial Judge to first hear and determine the 1<sup>st</sup> Respondent's application before the Motion for Stay of Proceedings which he filed. The order of priority of hearing applications made by a Court is not a decision in fact and in law. It is not a determination to completion of the prayers and/or reliefs sought by the parties. It is entirely the exercise of the discretionary power of the Court which cannot be made subject of an appeal. See OKEKE VS. UZOCHUKWU MOTORS NIGERIA LIMITED (2001) 3 NWLR (PT. 700)338; UNITED AGRO VENTURES LIMITED VS. FIRST CITY MERCHANT BANK LTD (1998) 4 NWLR (PT. 547)546. There is nothing to set aside in that part of the proceedings and I so hold.

I have earlier on held that the proceedings and ruling sought to be set aside was an exercise of the discretion of the learned trial Judge. It is trite

that a Judge exercises judicial discretion when the interest of justice so demands. It is founded upon facts and circumstance presented before the Court. Such judicial discretion must however be exercised honestly and in the spirit of the law. See POPOOLA VS. NIGERIAN ARMY (2022) 6 NWLR (PT. 1825)1; FRANCIS VS. FEDERAL REPUBLIC OF NIGERIA (2021) 5 NWLR (PT. 1769)398 AND TANKO VS. STATE (2009) 4 NWLR (PT. 1131)430.

Learned Senior Counsel to the Appellant relied on the provisions of Section 313 of the Administration of Criminal Justice Law of Rivers State, 2015 to submit that the trial Judge had a discretion to grant a stay of proceedings.

Section 313 (supra) provides as follows:

**"An application for stay of proceedings in respect of criminal matters before the Court shall be at the discretion of the Court"**

It goes without saying whichever way one looks at it that the focal point of the instant application is the exercise of the discretionary powers of the trial Judge. It is trite that a Judge shall exercise his discretion judicially and judiciously. See YAKUBU VS. FEDERAL REPUBLIC OF NIGERIA (2023) 1 NWLR (PT. 1864)97; SANI VS. STATE (2023) 2 NWLR (PT. 1887)77; EZIRIKE VS. STATE (2022) 7 NWLR (PT. 1883)207; IGWE VS. PEOPLE OF LAGOS STATE (2021) 7 NWLR (PT. 1778)425; IDAM VS. STATE (2020) 12 NWLR (PT. 1737)1.



In EYE VS. FEDERAL REPUBLIC OF NIGERIA (2018) 7 NWLR (PT. 1619)495 AT 509, PARAGRAPHSD-E, the Supreme Court, per Bage, JSC held as follows:

"In exercising its discretion, the court is bound to examine the evidence before it without considering any extraneous matter. The court cannot exercise its whims indiscriminately. Similarly, there is no room for the court to express its sentiments. I must say that, it is a hard matter of law, facts and circumstances, which the court considers without being emotional sensitive or sentimental.

See *Adamu Suleman & Anor v. COP Plateau State* 33 NSCQR (Pt.2) 735 at pp. 758-759 (2008) 8 NWLR (Pt. 1089) 298."

Continuing further at Page 511, Paragraphs A-B, his Lordship further held as follows:

"A judicial discretion ought to be founded upon the facts and circumstances presented to the Court, from which it must draw a conclusion governed by law. A discretion must be exercised honestly and in the spirit of the law.

See *University of Lagos & Ors v. C. I. O. Olaniyan* (1985) 1 S.C 295 at 344 (1985) 1 NWLR (Pt. 1) 156.

It must be borne in mind that the essential difference between an arbitrary or wrongful exercise of discretion, on the one hand, and judicial cum judicious exercise of it on the other is that where as the former is the exercise of it with either no reason at all or with wrong or insufficient, correct and convincing reason. While judicial and judicious exercise of discretion is acceptable in law, an arbitrary exercise of it is not."

It follows that in the exercise of his discretion, a Judge must take the law as well as the peculiar facts and circumstances of each case into consideration. To my mind, the applicable law to be taken into consideration by the trial Judge in determining whether or not to grant an application for stay of proceedings is Section 403(1)-(7) of the Rivers State Administration of Criminal Justice Law which provides as follows:

**"403(1) The defendant to be tried on an information or charge shall be arraigned in accordance with the provisions of this Law relating to the taking of pleas and the procedure on it.**

**(2) Without prejudice to section 228, after a plea is taken, the defendant may raise any other objection at any time before the final judgment, provided that the objection shall only be considered along**



with the substantive issues and the Court ruling made at the time of delivery of the judgment.

- (3) Upon arraignment, the trial of the defendant shall proceed daily until the conclusion of the trial unless it is impracticable to do so.
- (4) The Court shall vigorously scrutinise every application for an adjournment and an adjournment may only be granted in an exceptional case in the interest of justice and;
  - (a) Where daily trial is impracticable after arraignment, no party shall be entitled to more than three adjournments from arraignment to final judgment.
  - (b) Provided that the interval between each adjournment shall not exceed 14 working days.
- (5) Where it is impracticable to conclude a criminal proceeding after the parties have each exhausted their three adjournments, the interval, between one adjournment to another shall not exceed 7 days, inclusive of weekends.

- (6) In every circumstance, where an application for an adjournment is made, the Court may award reasonable cost or make an order pursuant to section 260 and 329(4).
- (7) Notwithstanding the provision of any other law to the contrary, a Judge of the High Court who is 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."

It is clear from the words used in the foregoing statutory provision that prosecution of criminal matters shall be conducted on a day to day basis. The law is so emphatic that it restrains the exercise of discretion in the grant of adjournments. This is to ensure speedy trial of criminal cases within reasonable time. It is trite that an appellate Court is always reluctant to interfere with the exercise of the discretion of a trial Judge and would be compelled to do so only where:



- (i) The discretion is wrongly exercised
- (ii) The exercise of the discretion was tainted with some illegality or substantial irregularity
- (iii) There is miscarriage of justice or
- (iv) It is in the interest of justice to interfere.

See DAVID VS. COMMISSIONER OF POLICE (2019) 2 NWLR (PT. 1655)175; OGUNSANYA VS. THE STATE (2011) 12 NWLR (PT. 1261)401; DOKUBO-ASARI VS. FEDERAL REPUBLIC OF NIGERIA (2007) 12 NWLR (PT. 1048)320.

The onus is on the Applicant to show that the learned trial Judge exercised his discretion wrongly.

Furthermore, it is sacrosanct that criminal trials must be dealt with timeously. In OWUNNA VS. STATE (2022) 11 NWLR (PT. 1842)477 AT 487-488, PARAGRAPHS G-A, the Supreme Court, per Abba-Aji, JSC held as follows:

"Similarly, this court in Dasuki v. F.R.N. & ors (2018) LPELR-43897(SC), (2018) 10 NWLR (Pt.1627) 320 alluding to Ariori v. Elemo (1983) 1 SCNLR 1 and Fawehinmi v. N.B.A. (No.2) (1989)4 SC (Pt.1) 63, (1989) 2 NWLR (Pt.105) 558 stated that a party can waive a right inuring to him for fair hearing/trial. It also made it clear that the public right to speedy trial or determination by the Court within a reasonable

**time cannot be waived. No litigant has a right to unnecessarily delay the hearing of his suit and move the Court to proceed at his pace. In order to give effect to the liberty of an accused person incarcerated, the essentiality of speedy trial imposes a duty on the court and the parties (including their counsel) to ensure that any antics or gimmicks aimed at delaying the determination of the matter must be avoided."**

In the instant case, the Appellant who is aware of the pendency of an Information containing criminal charges against him has not appeared before the Court to take his plea and submit himself to trial. He has been served by substituted means pursuant to an order of Court. He has however chosen to file series of applications before the lower Court and this Court to stall his arraignment.

To my mind, the Appellant is trying to use the processes of Court to stop the lower Court from performing its constitutional duty. He should not be allowed to do so. The instant application is aimed at frustrating his arraignment before the lower Court and I so hold. Every Court has an inherent duty to protect its authority and prevent its processes from being abused. An attempt to effect the personal service of the Information containing criminal charges against the Appellant failed hence the application for substituted service. The Information and other processes filed at the lower Court were published in a National Newspaper pursuant to an Order of Court.



The Appellant who refused to subject himself to the authority of the lower Court, a competent Court of law should not be allowed to use the process of this Court to frustrate his trial and I so hold. It is my considered view that the trial Judge has a right to protect the integrity of his Court.

The learned trial Judge took the provisions of Section 403(1) to (7) of the Rivers State Administration of Criminal Justice Law (supra) into consideration when he directed that all pending applications and objections be taken together and ordered the arrest of the Appellant as well as the 2<sup>nd</sup> to 5<sup>th</sup> Respondents. The order of direction of proceedings and the order of arrest made by the trial Judge on 17<sup>th</sup> May, 2023 accord with the spirit and letters of Section 403(1) to (7) (supra) and Section 36(4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and I so hold.

The Appellant does not have a right to delay his trial unnecessarily as he has attempted to do. A Court has a duty to ensure that any antics or gimmicks aimed at delaying a criminal trial is avoided. The discretion of the trial Court was rightly exercised and not tainted with any illegality and I so hold.

The next question is whether the discretion exercised by the learned trial Judge has occasioned miscarriage of justice to the Appellant. Miscarriage of justice simply means justice miscarried. It means failure on the part of the Court to do justice. It is justice misapplied, mis appreciated or misappropriated. See **GAZZALI VS. STATE (2019) 4 NWLR (PT. 1661)98; AMEH VS. STATE (2018) 12 NWLR (PT. 1632)99; ITU VS. STATE (2016) 5 NWLR (PT. 1506)443; STATE VS. AJIE (2000) 11 NWLR (PT. 678)434.**

Undoubtedly, the order made by the lower Court was to ensure the Appellant appeared in Court to answer to the charges filed against him. I do not see how this has occasioned miscarriage of justice to him.

I wish to state that the overall interest of justice should be considered by a Court in all circumstances. The interest of justice is justice to all concerned which include the Applicant, the Respondents, the public and the Court. It is to be further noted that it is not the function of an appellate Court to retry a case and set aside the decision or proceedings of a lower Court merely because it would have reached a different conclusion on some point or all the facts. An appellate Court shall set aside the decision or proceedings of the trial Court when and if it is satisfied that there is a substantial fault which led to a miscarriage of justice. See **NONGO VS. ACHADO & ORS (2023) LPELR- 60110 (SC); SHALLA VS. STATE (2007) 15 NWLR (PT. 1066)240; KIM VS. STATE (1992) 4 NWLR (PT. 233)17.**

Learned Senior Counsel to the Applicant has contended that the trial Court should have stayed the proceedings before it in view of the application pending before this Court. To my mind, the Applicant who has refused to appear before the lower Court to answer to charges filed against him should not be allowed to run to this Court for protection. The sanctity of Courts should be protected and a litigant should not be allowed to disrespect a trial Court by hiding under the guise of an application filed before an appellate Court. The Information containing the criminal charges was filed at the lower Court before any other application. The Applicant was aware having been served via substituted means. He did not present himself to the Court in obedience to the Court Order but chose to file



applications. The sanctity of the judicial system must be protected and should not be abused. I say no more.

In the final analysis, I am of the view that no miscarriage of justice was occasioned to the Appellant in the proceedings of 17<sup>th</sup> May, 2023 sought to be set aside. I find no merit in this application and it is accordingly dismissed.



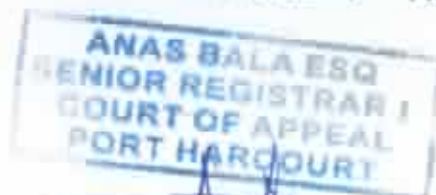
HON. JUSTICE FOLASADE AYODEJI OJO  
JUSTICE, COURT OF APPEAL



**COUNSEL:**

CHIEF AKINLOLU OLUJINMI, SAN; A.J. OWONIKOKO, SAN; H.O AFOLABI, SAN; TUDURU EDE, SAN WITH A.G. WILLIAM WOBODO AND ABDULWAHAB ABAYOMI FOR THE APPELLANT/APPLICANT. D.C. DENIGWE, SAN; CHIEF. F.O. ORBIH, SAN WITH ALPHONSO SIBI, ESQ AND PIUS C. NWANYANWU FOR THE 1<sup>ST</sup> RESPONDENT CYRICUS CHINEKUM AND PRECIOUS ODALUMEH FOR THE 2<sup>ND</sup> RESPONDENT

JONES G. INIAYEMANA FOR THE 3<sup>RD</sup> RESPONDENT  
AKINWOLE WITH B. NWOSU AND F. UNUOVO FOR THE 4<sup>TH</sup> AND 5<sup>TH</sup> RESPONDENTS



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