

IN THE COURT OF APPEAL
ABUJA DIVISION
HOLDEN AT ABUJA

ON THURSDAY THE 18TH DAY OF AUGUST, 2022

BEFORE THEIR LORDSHIPS:

<u>HARUNA SIMON TSAMMANI</u>	-	<u>JUSTICE, COURT OF APPEAL</u>
<u>E. O. WILLIAMS-DAWODU</u>	-	<u>JUSTICE, COURT OF APPEAL</u>
<u>DANLAMI ZAMA SENCHI</u>	-	<u>JUSTICE, COURT OF APPEAL</u>

APPEAL NO: CA/ABJ/CV/90/2022

BETWEEN:

BRIGADIER GENERAL JAFARU MOHAMMED - APPELLANT

AND

- | | | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-------------|
| <ol style="list-style-type: none">1. EXECUTIVE CHAIRMAN, ECONOMIC AND FINANCIAL CRIMES COMMISSION2. ATTORNEY GENERAL OF THE FEDERATION | } | RESPONDENTS |
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JUDGMENT

(DELIVERED BY HARUNA SIMON TSAMMANI, JCA)

This appeal is against the decision of the Federal High Court, sitting in Abuja per D. U. Okorowo, J. delivered on the 25th day of November, 2021 in Suit No: FHC/ABJ/CS/513/2021.

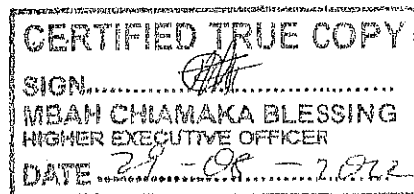
By an Originating Summons which was dated and filed on the 21/6/2021, the Appellant as the Plaintiff posed the following questions to be answered by the trial court:

1. *Whether, having regards to the provisions of Sections 217(1), 218(4) (b), 315(1) (a) and*

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(4)(b) of the Constitution of the Federation of Republic of Nigeria, 1999 (as amended), the Plaintiff a serving officer of the Nigerian Army is subject only to the provisions of the Armed Forces Act, 1994 "the Service Law" (Now codified as Armed Forces Act CAP A20, Laws of the Federation of Nigeria, 2004) with regards to Arrest, Invitation, Interrogation, Interview, Investigation being subjected to punishment by way of property deprivation and/or Prosecution in respect of the alleged offences of Criminal Conspiracy and Money Laundering levied against him by the 1st Defendant or in respect of any civil offence or offences within the meaning of Section 114 of the Armed Forces Act.

2. *Whether, in the light of the provisions of Section 217(1), 218(4) (b), 215(1) (a) and (4)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the provisions of Section 270(1)(a), 121 and 123 of the Armed Force Act, 1994, "the Service Law" (Now codified as Armed Forces Act, CAP A20 Laws of the Federation of Nigeria, 2004), the Provisions of Sections*

6(b), (h), (m), 7(1),(a),(b), 2(a), 13(1), (a), (b), (c), (d), 13(2)(a), (b),(c), 19(1), (2),(a),(b) and (c) or any provision or provisions of the Economic and Financial Crimes Commission (Establishment Act), 2004 are applicable to the Plaintiff as a serving officer of the Nigerian Army with regards to Arrest, Invitation, Interrogation, Interview, Investigation, being subjected to punishment by way of property deprivation, and/or Prosecution in respect of the alleged offences of Criminal Conspiracy and Money Laundering levied against him by the 1ST Defendant or in respect of any offence or offences within the meaning of Section 114 of the Armed Forces Act.

The Plaintiff/Appellant then prayed that if the questions are answered in the negative, the following reliefs should be granted in his favour:

- a. **A DECLARATION** that the Plaintiff being a serving officer of the Nigerian Army is subject only to the provisions of the Armed Forces Act, 1994 "the Service Law" (Now codified as Armed Forces Act CAP A20 Laws of the Federation of Nigeria, 2004) with regards to Arrest, Invitation, Interrogation, Interview,

Investigation, being subjected to punishment by way of property deprivation and/or prosecution in respect of the alleged offences of Criminal Conspiracy and Money Laundering levied against him by the 1st Defendant or in respect of any other civil offences or offences within the meaning of Section 114 of the Armed Forces Act.

- b. *A DECLARATION that the provisions of Sections 6(b) (h), (m), 7(1) (a) (b), 2(a), 13(1) (a), (b), (c), (d), 13(2)(a), (b), (c), 19(1), (2) (a), (b) and (c) or any provision or provisions of the Economic and Financial Crimes Commission (Establishment Act), 2004 are not applicable to the Plaintiff as a servicing officer of the Nigerian Army with regards to Arrest, Invitation, Interrogation, Interview, Investigation, being subjected to punishment by way of property deprivation and/or Prosecution in respect of the alleged offences of Criminal Conspiracy and Money Laundering levied against him by the 1st Defendant or in respect of any other civil offence or offences within the meaning of Section 114 of the Armed Forces Act.*

- c. *UPON the grant of DECLARATIONS (a) and (b) above, A DECLARATION that the Invitation, Investigation, Interrogation and/or Interview of the Plaintiff by the 1st Defendant in respect of the alleged offences of Criminal Conspiracy and Money Laundering levied against him by the 1st Defendant were illegal, ultra vires the powers of the 1st Defendant, unconstitutional, null and void;*
- d. *UPON the grant of the DECLARATIONS in (a), (b) and (c) above, AN ORDER of this Honourable Court restraining the Defendants either by themselves, their staff, officers men, employees or any other person, persons, organization or organizations acting for them or on their behalves from further inviting, arresting, investigating, interrogating, interviewing the Plaintiff, and/or set into motion machineries towards arraigning, and/or prosecuting him (the Plaintiff) before any civil Court of competent criminal jurisdiction in Nigeria in respect of the alleged offences of Criminal Conspiracy and Money Laundering levied against him by the 1st Defendant and/or in relation to any*

civil offence or offences within the meaning of Section 114 of the Armed Forces Act.

- e. ***ANY ORDER OR OTHER ORDERS as the Court may deem fit to make in the circumstances of this Suit.***

The facts of this case are straight forward. The Appellant, who was the Plaintiff before the lower court, is a serving military officer with the Nigerian Army. Sometime in 2020, the Appellant was invited by officials of the 1st Respondent for interrogation in relation to allegations of criminal conspiracy and money laundering. The Appellant honoured the invitation and made a statement to the officials of the 1st Respondent. Subsequently, the rented apartments of the Appellant were searched by the said officials of the 1st Respondent. Sometime in the month of March, 2021, the attention of the Appellant was drawn to an Interim Order of Forfeiture (exparte) which affected a personal property of the Appellant. The Order was made on 9th March 2021 by the lower court (per Honourable Justice F. O. G. Ogunbanjo). The Appellant verily believed that, as a senior army officer, he was subject to the provisions of the Armed Forces Act, Cap. A20, Laws of the Federation of Nigeria, 2004, and that the 1st Respondent could not side-step the provisions of that Act (Armed Forces Act) and, *inter alia*, ordinarily initiate an investigation into any allegation against him. Consequently, the Appellant commenced an action, vide an Originating Summons before the lower court.

At the hearing of the Originating Summons, the parties adopted their Written Addresses. Thus, in a judgment delivered on the 25th day of July,

2021, the learned trial Judge answered the questions posed for determination against the Appellant; and accordingly dismissed the case. The Appellant was irked by the decision and therefore filed this appeal.

The Notice of Appeal consisting of five (5) Grounds of Appeal was filed on the 13th day of January, 2022. The parties then filed and exchanged Briefs of Arguments. The Appellant's Brief of Arguments settled by Omokayode A. Dada; Esq was filed on the 02/03/2022. Therein, three (3) issues were framed for determination as follows:

- i. Whether the lower court was right in coming to the conclusion that there was nothing in the Armed Forces Act, which restricts the 1st Respondent's power of investigation and prosecution of the Appellant (a serving military officer).*
- ii. Whether the lower court was correct in declaring that, by the provisions of the Economic and Financial Crimes Commission Establishment, etc) Act and the Armed Forces Act, the lower court was conferred with jurisdiction to try an offence under the Acts, when the condition precedent to assuming such jurisdiction had not been fulfilled in the case of the Appellant.
(Grounds 4 and 5).*

iii. *Whether the learned trial Judge was correct in deciding that the right of the Appellant to opt for trial at the Court-Martial, instead of a civil court, was limited to offences relating to service discipline.*

(Ground 3).

The 1st Respondent's Brief of Arguments was filed on the 14/4/2022 but deemed filed on the 08/6/2022. Three issues were distilled therein, for determination as follows:

1. *Whether there is in the Armed Forces Act any provision restricting the 1st Respondent's power to investigate and prosecute the Appellant, a serving military officer for Economic and Financial Crimes.*
2. *Whether there is in law any condition precedent to be first met before the Federal High Court or State High Court can exercise jurisdiction over the Appellant, a serving military officer for any offence under the Economic and Financial Crimes Commission Act.*
3. *Whether the right of the Appellant to opt for trial at the Court Martial, instead of a civil*

court, is not limited to offences relating to service discipline.

The 2nd Respondent's Brief of Arguments was filed on the 17/3/2022. Unlike the Appellant and the 1st Respondent, the 2nd Respondent distilled only one issue for determination as follows:

"Whether the Learned Trial Judge was right in coming to the conclusion that the Appellant as a serving military officer is not subject to only the provisions of the Armed Forces Act with regard to arrest, investigation and prosecution for offences of criminal conspiracy and money laundering to the exclusion of any other legislation".

The Appellant filed Appellant's Reply Brief of Arguments to each of the 1st and 2nd Respondent's Briefs of Arguments. The Appellant's Reply Brief to the 1st Respondent's Brief of Arguments was filed on the 9/5/2022 but deemed filed on the 08/6/2022. The Appellant's Reply Brief to the 2nd Respondent's Brief of Arguments was filed on the 22/3/2022.

I have carefully read and reviewed the issues raised by the parties. Upon so considering, I am of the view that the Appellant's and 1st Respondent's issues are similar in scope and substance. The lone issue distilled by the 2nd Respondent easily covers the three issues formulated by the Appellant and the 1st Respondent. That being so, this appeal shall be

determined on the three issues raised by the Appellant. In doing so, issues 1 and 2 shall be considered together while issue 3 shall be resolved alone.

On issue No.1, the Appellant's Counsel submitted that the specific provisions of **Section 121 and 123 of the Armed Forces Act, Cap. A20, Laws of the Federation of Nigeria, 2004** (hereinafter referred to as "The Armed Forces Act"), to the exclusion of the provisions of the **Economic and Financial Crimes Commission (Establishment, etc) Act, Cap. E1, Laws of the Federation of Nigeria, 2004** (hereinafter referred to as "The EFCC Act") or any other law, **regulate** how a serving officer of the Nigerian Army, including the Appellant, against whom allegations (both military and civil) are made, can be arrested, invited and/or investigated. Counsel quoted extensively **Sections 121 and 123** of the **Armed Forces Act**, which provide as follows:

Section 121:

"(1) A person subject to service law under this Act found committing an offence under any provision of this Act, or alleged to have committed or reasonably suspected of having committed the offence, may be arrested in accordance with the following provisions of this section.

(2) A person authorized to effect arrest under this Part of this Act may use such force as is reasonably for that purpose.

- (3) *An officer may be arrested by an officer subject to service law under this Act of superior rank, or, if engaged in a quarrel or disorder, by an officer of any rank.*
- (4) *A soldier, rating or an aircraftman may be arrested by an officer, warrant or petty officer non-commissioned officer subject to service law under this Act, provided that, a person shall be arrested by virtue of this subsection except by a person of superior rank.*
- (5) *A provost or any officer, warrant or petty officer, non-commissioner officer, rating or soldier, or aircraftman subject to service law under this Act who is lawfully exercising authority under a Provost Officer or on his behalf may arrest any officer or soldier, rating or aircraftman, provided that, an officer shall not be arrested by virtue of this subsection except on the order of another officer.*
- (6) *The power of arrest vested in a person by this section may be exercised either personally or by ordering into arrest the person to be arrested or by giving orders for that person's arrest". (emphasis mine)*

Section 123 of the same Act provides thus:

"Before an allegation against a person subject to service law under this Act (in this section referred to as the "accused") that he has committed an offence under a provision of this Act is further proceeded with, the allegation shall be reported, in the form of a charge, to the commanding officer of the accused and the commanding officer shall investigate the charge in the prescribed manner".

Relying on the above provisions, the Appellant's Counsel argued that where a person subject to service law, such as the Appellant in the instant case, is alleged to have committed or reasonably suspected of having committed an offence, he can be arrested by an officer of a superior rank, except in a situation where he is engaged in a quarrel or disorder, in which case he can be arrested by an officer of any rank. That it is beyond any reasonable argument that the arrest and/or invitation and investigation of the Appellant cannot be done or conducted by officials of the 1st Respondent. Counsel contended that by section 123 of the Armed Forces Act, as a person subject to service law, the allegation against the Appellant shall first be reported to his Commanding Officer, in the form of a charge, and the Commanding Officer shall investigate the charge in the prescribed manner. This, the Appellant's counsel submitted, are the **preceding steps** to be taken before the allegation could be further proceeded with under the law. He relied on the case of **Sogbesan v. Chief of Naval**

Staff & Anor (2015) All FWLR (Pt. 803) 1918 at 1947 Para. A – C,
where Garbà, J.C.A. (as he then was) posited thus:

"The provisions are as follows:

'123. Investigation of charges by commanding officer. Before an allegation against a person subject to service law under this Act (in this section referred to as the "accused") that he has committed an offence under a provision of this Act is further proceeded with, the allegation shall be reported, in the form of a charge, to the commanding officer of the accused and the commanding officer shall investigate the charge in the prescribed manner.'

The provisions are very plain and clear and so unambiguous in what they provide for. They do not require any interpretation at all because the law is settled that where the provisions of a statute are clear and unambiguous, the duty of a court is to give them their ordinary grammatical meanings in the context in which they are employed and used by the legislature. See Aqua Ltd v. Ondo State Sports Council (1989)5 NWLR (Pt. 123) 539; A-G, Bendel State v. Agbofodoh (1999) 2 NWLR (292) 476. The above provisions require that when an allegation was made against a person subject to the service of the

Armed Forces law, of the Commission of an offence under the law, the allegation shall be reported to his commanding officer, in form of a charge and the commanding officer shall investigate the charge, as prescribed by the law. The report to the commanding officer and investigation by him are to be made and carried out before the allegation is further proceeded with. The report and investigation by the commanding officer are therefore preceding steps to be taken in respect of any allegation against a person under the service law, before the allegation could be or is further proceeded with under the provisions. The report to and investigation by the commanding officer are the foundation or basis upon or on which further steps could be taken or proceeded with in respect of the allegation of the commission of an offence against a person subject to the Armed Forces Act. This was put beyond argument by the use of the word 'shall' before the words 'reported' and 'investigate' in the above provisions. In the case of Onochie v. Odogwu (2006) All FWLR (Pt. 317) 544, (2006) 2 SCNJ 96 at 114, (2006) 6 NWLR (975) 65 at 80 – 90 it was held that the use of the word 'shall' in a statute or rule of court makes it mandatory that the provisions or rule must be observed. That 'shall' is used to express a command or exhortation, or what is

legally mandatory. See also Oko v. Nigerian Navy (2007) 25 WRN 46, Ifezue v. Mbadugha (1984) 3 SCNLR 427, (1984) 5 SC 79, Omokeodo v. Inspector General of Police (1999) 6 NWLR (607) 467, Bamaiyi v. Attorney General of Federation 92001) FWLR (Pt. 64) 344, (2001) 12 NWLR (727) 468 at 480. In these premises of the law, an obligation, command or exhortation was imposed or issued in the provisions of 123 above that a report of an allegation of an offence against an officer of the Armed Forces must be made to his commanding officer, who must investigate it in the prescribed manner, before the allegation is further proceeded with. The use of the words 'further proceeded with' clearly shows that the report and the investigation to and by the commanding officer respectively, are steps that must be or have to be taken before the other later steps could be taken in respect of the allegation. The provisions of section 123 did not say who shall make the report of an allegation against an officer to his commanding officer but in their tenor, it can be said that it is the person making the allegation, either directly or otherwise. It would appear that who shall make the report is not important in the provisions. What is vital therein is that a report of the allegation against the officer or person subject to the service

law as made to and received by his commanding officer. Section 291 of the interpretation section of Armed Forces Act, has defined who a commanding officer is, for the purposes and within the context of its provisions. He is defined in the following clear terms:

'Commanding officer' in relations to a person, means the officer commanding the unit to which the person belongs or is attached. The section defines 'unit' as follows:

'Unit' means an establishment, base or any other formation of the Armed Forces personnel which has been declared to be a unit by the Armed Forces Council'.

For the purposes of section 123 therefore, a commanding officer' of the accused' as stipulated therein, means the officer commanding the establishment, based on any formation of the forces personnel, declare a unit by the Armed Forces Council which was established under section 4 of Armed Forces Act".

The Appellant's counsel further submitted that the provisions of the said Sections 121 and 123 of the Armed Forces Act apply to both military and civil offences, and that the sections limit the powers of the 1st Respondent with respect to arrest, invitation and investigation of the

Appellant, who is a serving officer of the Nigerian Army. The learned Counsel on behalf of the Appellant also contended that the allegations of criminal conspiracy and money laundering against the Appellant by the 1st Respondent, fall within the gamut of "other civil offences" stipulated in Section 114 of the Armed Forces Act which provides thus:

- "(1) A person subject to service law under this Act who commits any other civil offence whether or not listed under this Act or committed in Nigeria or elsewhere, is guilty of an offence under this section.*
- (2) For the purposes of subsection (1) of this section 'civil offence' means an act or omission punishable as an offence under the panel provisions of any law enacted in or applicable to Nigeria, and in this Act 'corresponding civil offence' means the civil offence the commission of which constitutes the offence under this section.*
- (3) A person convicted by a court-martial for an offence under this section is liable-*
- (a) if the corresponding civil offence is treason or murder, death; and*
 - (b) in any other case, to suffer any punishment or punishments which is a civil court could award for the*

corresponding civil offence, if committed in Nigeria beings a punishment or punishments less than maximum punishment, which a civil court could so award as is so provided....

- (4)
(5)"

That the Armed Forces Act, which is an offshoot of **Section 218 (4) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)**, is a specific statute made for, *inter alia*, the disciplinary control of members of the armed forces of the Federation (and the Appellant in this case is one of them), the general provisions of the EFCC Act, or any other statute, on arrest, investigation and prosecution of a member of the armed force, such as the Appellant in this case, cannot derogate from the special provisions of the Armed Forces Act in respect of the arrest, investigation and prosecution of a member of the armed forces of the Federation, such as the Appellant in this case. Learned counsel urged us apply the maxim *generalibus specialibus non derogant or specialia generalibus derogant*, the case of **Integrated Data Services Ltd. v. Adewumi (2013) LPELR – 21032 (CA) At 14 Paras. B – E**, where Ogunwumiju JCA (as he then was) said:

"On the applicable limitation law in the circumstances of this case, I am of the view that a specific law made on an issue overrides

general law made on the same issue. N.D.I.C. v. Okem Enterprises Ltd. & Anor (2004) 4 SCNJ 244. Thus, where there is a specific provision as in this case, it prevails over general provisions on the same subject matter. S.2(a) of the Limitation Act Laws of the Federation of Nigeria which is a provision of general application cannot be applicable in the face of S.12(a) of the NNPC Act, which specifically provides a limitation period to institute a suit against the corporation. Whereas the general law provides a limitation period of three months, the specific legislation applicable to the corporation provides for a limitation period of twelve months...."

It was submitted by the Appellant's counsel that the lower court wrongly came to the conclusion that there was nothing in the Armed Forces Act, which restricted the 1st Respondent's power of investigation and prosecution of the Appellant, who is an officer of the armed forces of the Federation.

On the other hand, the 1st Respondent's counsel submitted that the Appellant as a serving military officer is subject to both civil and military law and as such can be proceeded against by the 1st Respondent in exercise of her statutory functions and duties as encapsulated under

sections 6 and 7 of the EFCC Act without recourse to the Armed Forces Act. This contention, the 1st Respondent argued, is a fall out of the Compact a soldier enters into upon enlistment or Commission into the Armed Forces. That the doctrine of Compact postulates that members of the Armed Forces have dual legal capacity cum status; first as citizens of the country and then as military personnel. Therefore, they are bound by both civil and military laws. It was further argued that in effect one does not relinquish his citizenship rights by becoming a soldier, rather their inherent citizenship rights mandate them the performance of civil obligations to their country which includes the observance of the laws of the land and submission to the jurisdiction of both civil and military courts. Conversely, the fact of one becoming a soldier does not ipso facto rob one of his inherent civil rights except for those necessary for proper administration of the Armed forces and maintenance of a high level of discipline amongst troops. The case of Oladele & Ors v. Nigerian Army (2004) LPELR-7346(CA) was cited where this Court per Aderemi JCA, held thus:

"Let it be said that the members of the Armed Forces in this country have not denounced their membership of the Nigerian Society and it seems to me that they cannot do so in a manner calculated to jettison the provision of the Nigerian Constitution, the grundnorm"

Expounding on this counter argument, it was submitted that in **Groundwork of Military Law and Military Rule In Nigeria**, Hon. Justice Okey Achike (JSC) Rtd., extensively discussed the doctrine of

Military Compact. At page 49 of the book, when he elaborated thus:

"....A soldier by being in uniform accepts to be bound by military obligations in addition to, but not in substitution for, his civilian obligations. His civilian obligations amongst others include liability for ordinary breach of a civil contract, liability in tort for trespass, and criminal for an offence prescribed under the Criminal Code...."

It was added that General T.E.C Chiefe (Rtd) Ph.D, a seasoned Military Lawyer and former Director, Army Legal Services, while expounding on the Doctrine of Military Compact stated at page 55 of his work "Military Law in Nigeria under Democratic Rule" 2008 thus:

"It is clear from the above that a soldier by virtue of his dual status of being a soldier and a citizen is subject to both military laws as a member of the Armed Forces and to the ordinary laws of the land as a citizen. He can therefore be tried for alleged offences under the Armed Forces Act as a soldier and also under the Criminal or Penal Code for offences in civil courts as citizens. Indeed, in the case of the State V Jerry Emezie and 5 Others (1970-1971) 1 E.C.L.R. 178, Major S.S. Tomoye was arraigned in a civil court, for

stealing with five civilians. Also in Police V Sani Mohammed, the accused who was a soldier was charged in a civil court with robbery. It is important, however, to point out that the soldier can plead double jeopardy if after a trial in a civil court, he is subjected to another trial, for the same offence, by the military authorities, under the AFA. The plea is also available to a soldier where after his trial by a court martial, he is charged before a civil court for same offence."

The 1st Respondent argued that the Armed Forces Act adequately takes into cognizance this doctrine of Compact which renders a soldier subject to both civil and military law; that this is found in Sections 170 and 255 of the Armed Forces Act. The Sections provides thus:

"170(1): Subject to the provisions of this Act prohibiting retrial where conviction is quashed, nothing in this Act shall restrict the offences for which a person may be tried by a civil court or the jurisdiction of a civil court to try a person subject to service law under this Act for an offence.

170(2): Where a person is tried by a civil court for an offence and he has in pursuance of this Act been punished for an act or omission constituting

(whether wholly or in part) that offence by his Commanding Officer or appropriate superior authority, the civil court shall, in awarding punishment, have regard to his punishment in pursuance of this Act.

255(1): Where a person subject to service law under this Act has been tried before a civil court (whether at the time of trial he was so subject or not) a certificate signed by a Judge, Registrar of Court or Magistrate stating all or any of the following matters, that is-

- a) That the person has been tried before the court for an offence specified in the certificate, or*
- b) The result of the trial; or*
- c) What judgment or orders was given or made by the court; or*
- d) That other offences specified in the certificate were taken in consideration at the trial, shall, for the purposes of this Act, be evidence of the matters stated in the certificate.*

On the part of the 2nd Respondent, it was submitted that the essence of sections 114(1), 121, and 123 of the Armed Forces Act is not to oust the jurisdiction of civil court to try a person subject to service law or to exclude

such a person from being investigated for purpose of prosecution before a civil court. Rather the crux of the section 114(1) which is an omnibus provision is to ensure that a person subject to service law, like the Appellant in this Appeal, is not to be regarded as incapable of committing a civil offence. In effect, a person subject to service law may be tried either by a civil court or a General Court-Martial.

Flowing from the argument of counsel above, it is important to state that none of the arguments completely ousted the jurisdiction of either of the fora or courts. It is important to state that this bifurcation is relevant at the trial level only, once the matter passes the trial stage, our appellate justice system has always been within the bout of our general arrangement for justice in the Country.

I agree with the submission of the Appellant that the offences of Conspiracy and money laundering are offences triable by Court- martial as well, and that the exercise of the powers of arrest and investigation of a serving military officer by the 1st Respondent's officers have therefore been restricted by the Armed Force Act. The EFCC Act, or any other statute, on arrest, investigation and prosecution of a serving member of the armed forces, such as the Appellant in this case, cannot therefore derogate from the special provisions of the Armed Forces Act in respect of the arrest, investigation and prosecution of the Appellant as a serving military officer. I reject the Respondents' submissions on this issue. I hold that by the Armed Forces Act, the allegations against the Appellant ought to have been reported to the Military authorities in the manner prescribed

by the Act and not otherwise. This is what the Appellant's counsel refer to as condition precedent in his Issue No.2, as shall be seen anon.

In arguing Issue No. 2, it has been submitted by the Appellant's counsel that, for any Court, including the lower Court in the instant case, to assume jurisdiction to try the Appellant for any offence under the EFCC Act and the Armed Forces Act, the allegations made against the Appellant must have been reported to his commanding officer, in the form of a charge, and the commanding officer must have investigated the charge in the prescribed manner in line with the provisions of Section 123 of the Armed Forces Act. In other words, there is a condition precedent stipulated in Section 123 of the Armed Forces Act, which must be fulfilled before the lower court, or any court can properly assume jurisdiction to try an officer of the armed forces of the Federation for any offence under the EFCC Act and the Armed Forces Act. Learned counsel referred us to Sections 115, 123, 124, 126, 127 and 128 of the Armed Forces Act. It was contended that no such report was made to the Commanding Officer of the Appellant and no investigation was conducted by the commanding officer of the Appellant. It was further submitted as a trite point of law that before a court of law can assume jurisdiction over a matter, if there are conditions precedent provided by the law, such conditions precedent must be fulfilled. Learned counsel then referred to Madukolu & Ors v. Nkemdilim (1962) 2 NSCC 374 at 379 line 46 – p. 380 line 5. Emphasis was also laid on the need to fulfill the conditions prescribed in a statute that is applicable to a **specific group** of persons before a court of law can validly assume jurisdiction to try a person that belongs to such a group. The

decision of the Court of appeal delivered on 11th December 2017 in Appeal No. CA/L/969c/2017 –Nganjiwa v. Federal Republic of Nigeria, at Page 30 – 33 of the judgment, per Obaseki – Adejumo, J.C.A., was cited and relied upon.

Again, the learned Counsel reiterated in his submission that the allegation against the Appellant must first be reported to his commanding officer who will conduct an investigation in relation to the allegation before any further step can be taken against the Appellant. It was contended that the provisions of the EFCC Act must be subordinated to those of the Armed Force Act, when the person against whom an allegation has been made is an officer of the armed forces. On this point, reliance was placed on the case of **Central Bank of Nigeria v. Registered Trustees of the Nigerian Bar Association & Anor. (2021) 5 NWLR (Pt. 1769) 268 at 363 Para. D – P, 365 Para. G & p. 373, Paras. B & C.**

Learned counsel for the Appellant further submitted that the Sections of the **Economic and Financial Crime Commission (Establishment Act), 2004**, with respect to arrest, invitation and investigation of financial crime offenders are not applicable to the Appellant as a serving military officer and same cannot take precedence over the Armed Forces Act which is the law applicable to officers and men of the Nigerian Armed Forces, a constitutional body. The Court of Appeal case of **CBN vs. Regd. Trustees of N.B.A. (supra)** was cited where at page 373 para B-C, it was stated thus:

"In conclusion, I agree with the submissions of learned senior counsel to the 1st Respondent

that SCUML cannot override or take precedence over the statutory and constitutional bodies including Supreme Court of Nigeria which are charged with the responsibility of regulating the legal profession as well as disciplining or erring lawyers. The legal practitioners Act remains the law that regulates the practice of law and Rules of professional conducts for legal practitioners unless and until it is amended or repealed”.

It was argued by the Appellant’s counsel that the Armed Forces Act, to the exclusion of any other law, specifically provides in sections 121 and 123, procedures to be adopted in the arrest, invitation and investigation of any serving officer of the Nigerian Armed Forces, such as the Appellant in this case, who is alleged to have committed an offence. It was further argued that the 1st Respondent cannot under any guise, take over the responsibilities of the institutions established by the **Constitution of the Federal Republic of Nigeria, 1999 (As Amended)** and that the **Economic and Financial Crimes Commission (Establishment Act), 2004** cannot override or take precedence over the Armed Forces Act.

Responding to the argument of the Appellant on this issue, the 1st Respondent submitted that the Appellant’s submissions on section 121 and 123 of the Armed Forces Act have no basis in law and that same be discountenanced. The sections merely provides for the power of the Commanding Officer to investigate an allegation against his soldier brought

to him. The section does not oust the jurisdiction of other investigative bodies such as the 1st Respondent to investigate matters within their jurisdictional competence, duly donated to them by statute. The 1st Respondent retorted that if the intendment of the Legislature was to oust the jurisdiction of any other body to investigate arrest and prosecute service personnel, the Parliament would have so provided by using the phrase "Notwithstanding the provision of any other law" in the opening sentence of section 123. It was further argued that the investigation and consequent arrest of the Appellant was sequel to intelligence that a serving military officer was acquiring properties in a manner not commensurate with his lawful earnings as an officer of the Armed Forces- an economic and financial crime. Section 7 of the EFCC Act emphatically empowers the Commission to cause investigation to be conducted as to whether any person has committed an offence of the nature of economic and financial crime.

The Section provides thus:

Section 7(1): The Commission has power to-

(a) Cause investigation to be conducted as to whether any person, corporate body or organization has committed any offence under this Act or other law relating to economic and financial crimes;

(b) Cause investigation to be conducted into the properties of any person if it appears to the Commission that the person's life style and

extent of the properties are not justified by his source of income;

The 1st Respondent contended that investigation of the Appellant can thus be situated within the clear provisions of Section 7(1) (b) above and by the use of the phrase "any person" in the Section, the Legislature did not intend to exclude any person, military or not, from the applicability of the law. On the jurisdiction of the Court over the Appellant, Section 19 of the EFCC Act confers full jurisdiction on the courts over the Appellant in respect of the offence for which he is being investigated. The Section provides that the Federal High Court or High Court of a State or of the Federal Capital Territory has jurisdiction to try offenders under this Act.

The 2nd Respondent disagreed with the applicability of the decision in the case of **Sogbesan v. Chief of Naval Staff & Anor [2015] All FWLR[Pt.803] 1918 at 1947** cited by the Appellant. Rather, it was argued that the case is the authority that for the service person to take advantage of the service law, the offence under consideration must have been committed under the Armed Forces Act. According to His Lordship Garba JCA:

"The above provisions [section 123] require that when an allegation was made against a person subject to the service of the Armed Forces Law, of the commission of an offence under the law, the allegation shall be reported to his commanding officer, in form of a charge and the commanding officer shall

investigate the charge as prescribed by the law."

The 2nd Respondent then contended that what triggers the procedure prescribed by section 123 of the Armed Forces Act is the commission of an offence under the law. The 'law' in this case is not the general law but the Armed Forces Act.

It is important to draw here, that both the court martial and the civil court have jurisdiction to try a person subject to service law on matters of civil offences. What is left to resolve is whether there are circumstances surrounding the assumption of such jurisdiction. I am not unmindful of the nature of the special arrangement made for the persons subject to judicial service law as expounded in **Nganjiwa's Case (supra)** cited by the Appellant's counsel. Like in the case of the jurisdiction of the courts, the powers to investigate a person subject to service law is not exclusive to the 1st Respondent. One may query, other than the person's employer, who is more positioned to investigate an army officer who is alleged to be living above his lawful earning? Neither section 7 nor 19 of the EFCC Act could be construed to confer exclusive jurisdiction on the 1st Respondent or the civil courts in this respect. In this regard, decision of the Supreme Court recommended by the 2nd Respondent in **Attorney General Lagos State v. Dosunmu** is apt, where it was held that:

"It is the duty of the Courts to expound their jurisdiction but it is not part of our duty to expand our jurisdiction. That will require legislation. The best advice here is that given

by Rigby, LJ in ReWatkins [1896] LR 2 CD p. 339 that we ought not to overstep our jurisdiction because we think it might be advantageous so to do"

I hold the view that the argument of the 1st Respondent that section 123 of the Armed Forces Act does not oust the jurisdiction (powers) of other investigative bodies such as the 1st Respondent to investigate matters within their jurisdictional competence, duly donated to them by statute, is misconceived. What the Armed Forces Act provides is how the power should be exercised and when the jurisdiction should be assumed. I agree with the Appellant that the condition provided by section 123 of the Armed Forces Act is a condition precedent. The case of Madukolu v Nkemdilin (supra) is therefore relevant. Issues 1 and 2 are therefore resolved in favour of the Appellant.

On issue 3, learned counsel for the Appellant submitted that, having regard to the materials placed before it, the lower court wrongly held that the right of the Appellant to opt for trial at the court-martial, instead of a civil court, was limited to offences relating to **service discipline**. **Section 117** of the **Armed Forces Act** provides as follows:

"Notwithstanding anything in the foregoing sections of this Act, a commanding officer shall not proceed summarily with the trial of an officer, a warrant or petty officer until he has afforded the officer, warrant or petty officer an opportunity of electing to be tried

by a court-martial and if the person so elects in writing, the commanding officer shall take the prescribed steps with a view to the charge being tried by a court-martial”.

That it is clear from the above provisions that the application of section 117 of the Armed Forces Act is not limited or restricted to offences relating to conduct and service discipline; the commanding officer shall not proceed summarily with the trial of an officer, such as the Appellant in the instant case, until the person against whom an allegation has been made is given an opportunity to elect to be tried by a court-martial. Reliance was placed to buttress this point on sound statement of his lordship, M. L. Garba JCA (As he then was) in the case of Sogbesan vs Chief of Naval Staff & 1 Other (supra) as follows:

“The report to the commanding officer and investigation by him are to be made and carried out before the allegation is further proceeded with. The report and investigation by the commanding officer are therefore preceding steps to be taken in respect of any allegation against a person under the service law, before the allegation could be or is further proceeded with under the provisions. The report to and investigation by the commanding officer are the foundation or basis upon or on which further steps could be taken or proceeded with in

respect of the allegation of the commission of an offence against a person subject to the Armed Forces Act. This was put beyond argument by the use of the word "shall" before the words "reported" and "investigate" in the above provisions. In the case of Onochie v. Odogwu (2006) All FWLR (Pt.317) 544, (2006) 2 SCNJ 94 at 114, (2006) 6 NWLR (975) 65 at 89-90 it was held that the use of the word "shall" in a statute or rule of court makes it mandatory that the provisions or rule must be observed. That "shall" is used to express a command or exhortation, or what is legally mandatory. See also Oko v. Nigerian Navy (2007) 25 WRN 46, Ifezue v. Mbadugha (1984) 3 SCNLR 427, (1984) 5 SC 79 Omokeodo v. Inspector General of Police (1999) 6 NWLR (607) 467, Bamaiyi v. Attorney General of Federation (2001) FWLR (Pt.64) 344, (2001) 12 NWLR (727) 468 at 480. In these premises of the law, an obligation, command or exhortation was imposed or issued in the provisions of section 123 above that a report of an allegation of an offence against an officer of the Armed Forces must be made to his commanding officer, who must investigate it in the prescribed manner, before the allegation is

further proceeded with. The use of the words 'further proceeded with' clearly shows that the report and the investigation to and by the commanding officer respectively, are steps that must be or have to be taken before the other later steps could be taken in respect of the allegation.

The provisions of section 123 did not say who shall make the report of an allegation against an officer to his commanding officer but in their tenor, it can be said that it is the person making the allegation, either directly or otherwise. It would appear that who shall make the report is not important in the provisions. What is vital therein is that a report of the allegation against the officer or person subject to the service law as made to and received by his commanding officer.

Offences under the Armed Forces Act are listed in **Part XII** of the Act, that is, **Section 45 – 114** thereof. **Section 114** relates to "**Other civil offences**". These "other civil offences" are and include any other civil offence, whether or not listed under the Armed Forces Act. They are offences under the penal provisions of any law enacted in or applicable to Nigeria. See: **Section 114 (1) and (2)** of the **Armed Forces Act**. When the provisions of the sections under Parts XII, XIII and XIV of the Armed Forces Act are read together, it would be discovered that section

117 of the Act relates to **all** offences, including "other civil offences" under the Act, and not just offences relating to service discipline. It was rightly submitted by the Appellant's counsel that the Appellant has the right, under the Armed Forces Act, to elect to be tried by a court-martial for any offence under the penal provisions of any law enacted in or applicable to Nigeria, including an offence under the EFCC Act. Exhibit EFCC 1, which can be found on **pages 85 and 86** of the Record of Appeal, was placed before the lower court by the 1st Respondent through its counter-affidavit to the Originating Summons. The content of the exhibit read thus:

"...Major General AO Adetayo and Brigadier General R. I. Odi are subject to both Military and Civil laws and could therefore be directly served by your organization without involving Headquarters Nigerian Army. You are therefore at liberty to communicate directly with them in line with extant law procedures. However, it is also within the officers' rights to seek for legal protection and support from the army. In the event that the officers chose to be tried under Military laws, you would be requested to furnish the Nigerian Army with all relevant details on the case..."

It was also rightly argued by the Appellant that the assertion made in Exhibit EFCC 1 was apparently inspired by the provisions of Section 117 of the Armed Forces Act; that the Appellant, by the depositions in paragraphs 9 and 10, of the affidavit in support of the Originating Summons, indicated that the allegations made against him should be investigated by the

Nigerian Army, and if, by the investigation, it was discovered that an offence had been committed, he would elect to be tried by the court-martial. Even though exhibit EFCC 1 was put forward by the 1st Respondent, and the contents show that the Appellant could elect or opt to be tried by a court-martial, the lower court did not use that portion of the document.

The 1st Respondent argued against the right of the Appellant to opt for trial at the Court-martial instead of a civil court. The 1st Respondent's learned counsel contended that the choice is limited to offences relating to service discipline/military offences and that the lower court was perfectly right when it held that the right of the Appellant to opt for trial at the court-martial, instead of a civil court is limited to offences relating to service discipline. It was contended that the provisions of Section 117 of the Armed Forces Act, is quite clear that the power given to the Commanding Officer under the section is as regards offences for which the Commanding Officer is empowered to proceed and deal with summarily. On the import of section 99 of the Armed Forces Act, cited by the 1st Respondent, the Appellant rightly responded that without any iota of doubt that the purport and intendment of section 99 of the Armed Forces Act is to make it an offence for any person subject to service law either within or outside Nigeria to prevent or obstruct the execution by a police officer of a warrant for the arrest of a person subject to service law under the Act, who has committed an offence punishable on conviction by a civil court, or a person subject to service law that prevents or obstruct arrest of a person subject to service law under the Act, by a police officer acting in exercise of his power.

The Appellant's learned counsel submitted rightly that it is not in doubt that the Appellant is not being charged for having committed an offence under section 99 of the Armed Forces Act for the section to be applicable to his case; and assuming without conceding that section 99 of the Act is applicable to him he must be tried by a court-martial and not by a civil court. This court is of the firm view that the offences of Criminal Conspiracy and Money Laundering for which the Appellant was invited or being investigated by the 1st Respondent's officers, though not military offences listed under the Armed Forces Act, they are other civil offences within the meaning of Section 114(1) of the Armed Forces Act and that those offences are also punishable under the penal provisions of section 17 and section 14(1) respectively of the Money Laundering Prohibition Act, 2011, a law enacted and applicable to Nigeria. The Appellant's counsel is therefore correct in his submission that both offences are contrary to the provisions of Section 114(1) of the Armed Forces Act and thus ought to be tried by a court-martial.

On exhibit EFCC 1, which is obviously not in respect of an offence relating to service discipline, the lower court ought to have considered the effect of the whole document and not part of it. The second part of the exhibit supports the Appellant's contention that he has the right to opt for trial by Court-martial.

The apex Court has given the doctrine of 'election' an illuminating interpretation in **Fanyam v. Gov., Benue State [2022] 11 NWLR (Part 1840) p 33 at p 50** of the report as follows:-

Election means the exercise of a choice; especially, the act of choosing from several possible rights or remedies in a way that precludes the use of other rights or remedies.....Election means choosing between two alternative rights or inconsistent rights. Therefore, if an instrument confers two rights on an individual in such a fashion that one right is in lieu of the opposite, that person can only choose or elect one of the rights.

The right to elect under s. 117 of the Armed Forces Act is rooted down to section 36 of the 1999 Constitution (as altered) which lays the foundation of fair hearing and fair trial in all circumstances. Section 117 of the Armed Forces Act has enacted a situation where a person subject to service law must be heard in determining the forum for the purpose of trying him for an offence. In such determination, it is to be conducted that the person be heard as per his choice of the forum. I therefore agree with the Appellant that the recognition of the right of a person under service law to elect or opt for a forum to be tried is germane to that person's right to fair hearing. Therefore, I am of the view that where the right is taken away, or even denied, it goes down to the deprivation of the person's constitutional right to fair hearing. It is equally important to state that the appellate jurisdiction of the civil courts over both the fora remains intact. What is important is for the Respondents to show how the Appellant's right to elect will prejudice or constitute any injustice to them. **It is an**

important crux of our justice system that both the accuser and the accused be provided a level playing ground in all circumstances.

Let me again go back to exhibit EFCC 1. The import of that exhibit is the recognition of the subject's right to elect the forum to initiate criminal justice against him. The trial court was wrong in choosing which portion of Exhibit EFCC 1 to rely on. The authority of Egor vs. Ovat [2014] All FWLR Part 755 Page 281 at page 310 Paras F - H Page 311 Paras A -E, cited in the Appellant's reply to the 1st Respondent on this issue is apt and clear. So also the decision of this Court in Sogbesan vs Chief of Naval Staff & 1 Other (supra).

Let me observe that by the doctrine of compact, a person subject to service law is entitled to the protection and privileges accorded by his service law by virtue of the compact. To argue otherwise, is to defeat the whole essence of the compact so meticulously advanced by the 1st Respondent. The fact that in the authorities relied upon by the Respondents there were no instances of election does not mean that the right to elect does not exist. I do not think so. The lower Court was clearly in error in rejecting the point. I hold that the right to elect exist as argued by the learned Appellant's counsel and supported by exhibit EFCC 1 as well as the Armed Forces Act. I also hold the view that looking at the Armed Forces Act as a whole, the import and intendment of the Act is to subject all Serving military officers to the Jurisdiction of the Court-Martial. Let me also add that I agree entirely with the Appellant that the 1st Respondent's officials would not be failing in their duties or be prejudiced in any way, if

the Appellant is not tried by a court-martial as a serving military personnel. This issue is also resolved in favour of the Appellant.

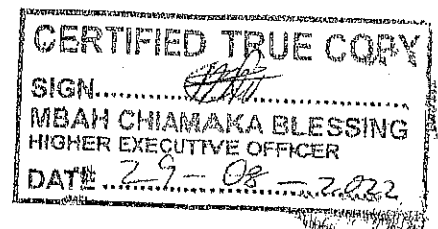
Having thus resolved it is apparent that this appeal has merit. It is hereby allowed. Consequently, the Judgment of the Federal High Court delivered on the 25th day of November, 2021 in *Suit No.* ^{FHC} ~~FGH/ABJ/CS/513/2021~~ is hereby set aside. Accordingly, I hereby declare as follows:

1. That the Plaintiff being a serving officer of the Nigerian Army, is subject only to the provisions of the Armed Forces Act, 1994 "the Service Law" (Now codified as Armed Forces Act CAP A20 Laws of the Federation of Nigeria, 2004) with regards to Arrest, Invitation, Interrogation, Interview, Investigation, being subjected to punishment by way of property deprivation and/or prosecution in respect of the alleged offences of Criminal Conspiracy and Money Laundering levied against him by the 1st Defendant or in respect of any other civil offences or offences within the meaning of Section 114 of the Armed Forces Act.
2. That the provisions of Sections 6,(b),(h), (m), 7(1),(a),(b), 2(a), 13(1), (a), (b), (c), (d), 13(2)(a), (b), (c), 19(1), (2),(a) (b) and (c) or any provision or provisions of the Economic and Financial Crimes Commission (Establishment Act), 2004 are not applicable to the Plaintiff as a servicing officer of the Nigerian Army with regards to Arrest, Invitation, Interrogation, Interview, Investigation, being subjected to punishment by way of property deprivation and/or Prosecution in respect of the alleged offences of Criminal Conspiracy and Money Laundering

levied against him by the 1st Defendant or in respect of any other civil offence or offences within the meaning of Section 114 of the Armed Forces Act.

3. That the Invitation, Investigation, Interrogation and/or Interview of the Plaintiff by the 1st Defendant in respect of the alleged offences of Criminal Conspiracy and Money Laundering levied against him by the 1st Defendant were illegal, ultra vires the powers of the 1st Defendant, unconstitutional, null and void.
4. That AN ORDER of this Honourable Court is granted restraining the Defendants either by themselves, their staff, officers men, employees or any other person, persons, organization or organizations acting for them or on their behalves from further inviting, arresting, investigating, interrogating, interviewing the Plaintiff, and/or set into motion machineries towards arraigining, and/or prosecuting him (the Plaintiff) before any civil Court of competent criminal jurisdiction in Nigeria in respect of the alleged offences of Criminal Conspiracy and Money Laundering levied against him by the 1st Defendant and/or in relation to any civil offence or offences within the meaning of Section 114 of the Armed Forces Act.


HARUNA SIMON TSAMMANI
JUSTICE, COURT OF APPEAL.

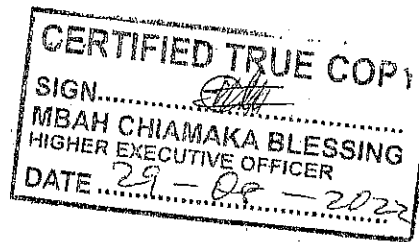


COUNSEL:

O. A. Dada; Esq for the Appellant.

C. O. Ugwu; Esq. for the 1st Respondent.

Olarewaju AKinsola; Esq for the 2nd Respondent.



APPEAL NO. CA/ABJ/CV/90/2022

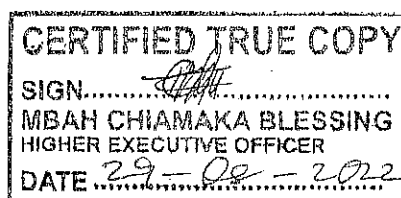
ELFRIEDA OLUWAYEMISI WILLIAMS-DAWODU, (JCA)

I read before now, the lead Judgment just delivered by my learned brother, **Haruna Simon Tsammani, JCA**, and I am in total agreement with the reasoning and conclusion reached therein.

I therefore also find merit in this Appeal and hereby allow it. I set aside the Judgment of the Federal High Court delivered on the 25th day of November, 2021 in Suit No. FCH/ABJ/CS/513/2021.

I make no order as to costs.

E. O. Williams-Dawodu
E. O. WILLIAMS-DAWODU
Justice, Court of Appeal



APPEAL NO. CA/ABJ/CV/90/2022
DANLAMI ZAMA SENCHI, JCA

I was in conference of the panel of Justices that heard this appeal. And I had also the opportunity of reading in draft before now the lead judgment of my learned brother, *HARUNA SIMON TSAMMANI, JCA* just delivered. The lead judgment aptly captured and reflected all the views I expressed during the conference. I therefore entirely agree with the findings and conclusion arrived thereat in the lead judgment and I adopt same as mine.

I want to comment however on the complaints of the Appellant in Grounds 4 and 5 against the decision of the Trial Court from where the second issue for determination of the Appellant was culled from. There is no doubt and the undiluted facts and evidence on Record in this appeal showed that the Appellant is a serving Military Officer in the services of the Nigeria Army.

I have seen and perused the arguments or submissions of counsel in their respective briefs of arguments as regards the provisions of the Armed Forces Act and the powers of the 1st Respondent under the EFCC Act to arrest, investigate and prosecute a serving member of the Armed Forces. The 1st

Respondent submits that the Appellant as a serving Military Officer is subject to both civil and Military Laws and as such can be proceeded against by the 1st Respondent in exercise of her statutory duties enshrined under sections 6 and 7 of the EFCC Act without recourse to the Armed Forces Act. I agree that the Appellant is subject to both Civil and Military Laws; however the Armed Forces Act is not a subordinate legislation to the EFCC Act. The procedure to arrest, investigate and prosecute the Appellant by the 1st Respondent must take into account the provision of the Armed Forces Act especially Section 121 and 123 of the Armed Forces Act. Section 123 of the Act says:-

"Before an allegation against a person subject to services law under this Act (in this section referred to as the accused) that he has committed an offence under a provision of this Act is further proceeded with, the allegation shall be reported, in the form of a charge, to the Commanding Officer of the accused and the Commanding Officer shall investigate the charge in the prescribed manner."

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Section 123 of the Armed Forces Act was considered in the case of *SOGBESAN V CHIEF OF NAVAL STAFF & ANOR, (2015) ALL FWLR (pt 803) 1918 at 1947 paragraphs A-C* per GARBA JCA (as he then was now JSC). This Court as per GARBA JCA said:-

"The above provisions require that when an allegation was made against a person subject to the service of the Armed Forces Law, of the commission of an offence under the Law, the allegation shall be reported to his Commanding Officer in form of a charge and the Commanding Officer shall investigate the charge, as prescribed by the Law. The Report to the Commanding Officer and investigation by him are to be made and carried out before the allegation is further proceeded with. The Report and investigation by the Commanding Officer are therefore preceding steps to be taken in respect of any allegation against a person under the service Law, before the allegation could be or is further proceeded with under the provisions. The Report to an investigation by the Commanding Officer are

the foundation or basis upon or on which further steps could be taken or proceeded with in respect of the allegation of the commission of an offence against a person subject to the Armed Forces Act. This was put beyond argument by the use of the word "shall" before the words "reported and "investigate" in the above provisions."

It is crystal clear that from the tenor of the provision of section 123 of the Armed Forces Act, it is the person making the allegation against a person subject to Armed Forces Act that makes the allegation to the Commanding Officer of the suspect. In otherwords, the procedural step is for the 1st Respondent to present its charge to the Commanding Officer of the accused. In the instant case of the Appellant the 1st Respondent, from the facts and evidence on Record did not comply with S.123 of the Armed Forces Act.

A further consideration of the provisions of the Armed Forces Act, the Appellant is subject to both Civil Courts and Court Martial in offences involving stealing and Money laundering. Therefore the Appellant reserves the right of election to submit to the Civil Court or the Court Martial.

CERTIFIED TRUE COPY

Thus, the conditions to subject the Appellant to trial, arrest, investigation or prosecution having not been fulfilled or satisfied, the trial Court was wrong to have assumed jurisdiction. See **MADUKOLU & ORS V NKEMDILIM (1962)2 NSCC 374 at 379** line 46 and page 380 line 5 and **NGANJIWA V FRN**, Appeal No.CA/L/969C/2017 delivered on 11/12/2017 which appeal was recently affirmed by the Apex Court.

In the whole, I agree with the conclusion in the lead judgment that this appeal is meritorious and it is hereby allowed by me as well. Accordingly, the decision of the Federal High Court in suit No. FHC/ABJ/CS/513/2021 delivered on 25/11/2021 by D. K OKOROWO, J is hereby set aside.

I indorse and adopt as mine the consequential Orders made in the lead judgment.

I make no Orders as to costs.


DANLAMI Z. SENCHI
(JUSTICE, COURT OF APPEAL)

