

IN THE COURT OF APPEAL
IN THE KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA
ON TUESDAY THE 05TH DAY OF MAY, 2026

BEFORE THEIR LORDSHIPS

ABIMBOLA OSARUGUE OBASEKI-ADEJUMO - JUSTICE, COURT OF APPEAL
ABDULLAHI M. BAYERO - JUSTICE, COURT OF APPEAL
SYBIL O. NWAKA-GBAGI - JUSTICE, COURT OF APPEAL

APPEAL NO: CA/K/75/C/2023

BETWEEN:

THE STATE

APPELLANT

AND



F.N. Mkom
Registrar
19/05/26.

1. ZAINAB TAHIR YUSUF
2. IBRAHIM KALAYI

SIGN

----- RESPONDENT

JUDGMENT

DELIVERED BY ABIMBOLA OSARUGUE OBASEKI-ADEJUMO, JCA

This appeal is against the Ruling of the High Court of Kaduna State, High Court Zaria Division delivered on 21/2/23 in Charge No: KDH/Z/41C/2022, wherein the Court overruled the Defendants applications of 1st and 2nd Respondents and exercised its inherent power to transfer the suit to a Chief Magistrate.

CA.K.75C.23

ABIMBOLA OSARUGUE OBASEKI-ADEJUMO, JCA



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BRIEF FACTS

The Respondents were charged with a 4-count charge of Criminal Conspiracy, Forgery and using as genuine a forged document under the Penal Code Law of Kaduna State whereupon 2nd Defendant raised a Preliminary Objection dated 14/12/2022 and prayed for the following reliefs:

1. An order dispensing with the appearance of the 2nd Defendant/Applicant/objector pending the hearing and determination of the Notice of Preliminary Objection before the Court.
2. An order dismissing charge No: KDH/Z/41C/2022 between the State and 1) Zainab Tahir Yusuf & 2) Ibrahim Kalayi, discharging and acquitting the 2nd Defendant, for being an abuse of Court Process which robs the Court of jurisdiction, as no (any) crime known to law is committed by the 2nd Defendant against the state or any other person, as the 2nd Defendant was only employed as a qualified legal Practitioner by the 1st Defendant to render his legal services of drafting a Deed of Assignment for her, which he did in that capacity and the complaint has not disclose any offence or offences nor Exhibit reasons upon which the Court can

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base any reasonable suspicion that an offence is committed by the 2nd Defendant.

3. An Order dismissing Charge No: KDH/Z/41c/2022 between the State and 1) Zainab Tahir Yusuf & 2) Ibrahim Kalayi, discharging and acquitting the 2nd Defendant, for being an abuse of Court Process which robs the Court of jurisdiction, as the complaint was filed malafide, meant to intimidate, annoy, irritate and harass the Defendants, specifically the 2nd Defendant, who acted as a lawyer discharging his legal duties.
4. An Order dismissing Charge No: KDH/Z/41c/2022 between the State and 1) Zainab Tahir Yusuf & 2) Ibrahim Kalayi, discharging and acquitting the 2nd Defendant, for being an abuse of Court Process which robs the Court of jurisdiction, as the complainant is forum shopping to find where he can maliciously deal with the 2ND Defendant without just cause, as same complaint with same facts and same ingredients was filed before Chief Magistrate Court, Fada, Zaria, which was later transferred to Chief Magistrate Court, King's Road Sabon Gari, Zaria and further filed before this Hon. Court, where same complaint was applied to be withdrawn by the prosecution before both Courts and the Defendants were

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discharged by the said Chief Magistrate Court, King's Road, Sabon Gari, Zaria and this Court over the same allegations.

5. An Order dismissing Charge No: KDH/Z/41c/2022 between the State and 1) Zainab Tahir Yusuf & 2) Ibrahim Kalayi, discharging and acquitting the 2nd Defendant, for being an abuse of Court Process which robs the Court of jurisdiction, as there is bona fide claim of right of ownership by the 1st Defendant in respect of the landed properties (property No. 5, 6 & 7, Sokoto Road, Zaria) involved in this case.
6. Such Orders as the honourable Court may deem fit to make in the circumstances.

The 1st Defendant likewise filed a Motion dated 6/1/2023 for an order striking out the charge for being an abuse of Court Process and amounts to forum shopping. The 1st Defendant's application was consolidated with the application of 2nd Defendant and upon the consideration by the trial Court, the Court gave its Ruling and ordered a transfer of the matter to the Magistrate Court which dissatisfied the Appellant and culminates in this appeal.

Upon an Amended Notice of Appeal filed on 11/9/2025 deemed 6/10/25, the Appellant appeals to this Court against part of the decision transferring the matter to the Magistrate Court on three (3) grounds and in its Appellant's Brief settled by TAJUDEEN O.

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OLADOJA SAN of TAJUDEEN OLADOJA & CO. (ILAL'AMAAM CHAMBERS) deemed on 6/10/25, it distilled 2 issues for determination as follows:

1. Whether the learned trial Judge, who is not the Honourable Chief Judge of Kaduna State, was right to order the transfer of a criminal matter it has jurisdiction to hear and determine to a Chief Magistrate Court for determination.
2. Whether the learned trial Judge rightly granted an order of transfer of the case before him to a Chief Magistrate Court, gratis, in the absence of a specific relief in that regard made by the 1st Respondent herein (the Applicant) in the Motion on Notice filed on the 14th day of December, 2022.

The Respondents filed a Joint Respondent Brief of Argument on 13/10/25 settled by M. M ABDULKADIR ESQ, HASSAN Y. RILWAN ESQ, H. S. DABO ESQ, BELLO IBRAHIM ESQ of BELLO IBRAHIM

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& CO wherein they raised a Preliminary Objection and adopted the issues of the Appellant.

I shall determine the Preliminary Objection first before considering the substantive appeal. See, **ACHONU V. OKUWOBI (2017) 14 NWLR (Pt. 1584) 142 (SC)**, **ADAMU V. STATE (2017) 10 NWLR (Pt. 1574) 463 (SC)**, **AMMANI V. BALAREBE (2022) 14 NWLR (Pt. 1849) 165 (SC)**.

PRELIMINARY OBJECTION

The Preliminary Objection of the Respondents is pursuant to ORDER 6 RULE 2(1) (2), (3), (4) & (6) Court of Appeal Rules 2011 wherein the Respondents seek the following reliefs:

1. An order striking out the 5 grounds of appeal, filed by the Appellant, same being incompetent by their reasons of bring grounds of fact and mixed law and facts, on evaluation and analyzing of evidence and no leave of this Court was obtained before filling same
2. An order striking out the grounds No 1, 2, 3, 4 & 5 filed by the Appellant, same being incompetent by reason of their particulars i, ii and iii (for ground 1) particulars i, ii, iii, iv (for ground 2) particulars of ground 3 i, ii, iii, particulars of

ground 4 i, and particulars of ground 5 i, are narratives, argumentative, general in terms.

3. An order striking out the ground of appeal No. 4 and 5 being incompetent as it raised in its particulars, for the first time, without leave.
4. An Order striking out the Appeal same having not complained of any miscarriage of justice.
5. Any other Order or Orders as the Honourable Court may deem fit to make in the circumstance.

The grounds upon which the Objection is raised are:

1. The Appellant's appeal is predicated on an interlocutory ruling of the learned trial judge and filed grounds of appeal involving grounds of fact and mixed law and facts, on evaluation and analyzing of evidence without obtaining the leave of the trial Court or leave of this Honourable Court, which is a pre-condition before filing same.
2. The grounds of appeal, No. 1, 2 & 3 filed by the Appellant, particulars i, ii and iii (for ground 1) particulars i, ii, iii, iv (for grounds 2) particulars of ground 3 i, ii, iii are narratives, argumentative, general in terms.
3. There no complain that the ruling of the Learned Trial Judge did occasioned miscarriage of justice on the Appellant.

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ARGUMENT IN SUPPORT OF PRELIMINARY OBJECTION

Respondents submits that any ground of appeal which challenges the correctness of the lower Court's exercise of jurisdiction is not a ground of law but a ground of mixed law and fact. He cites **S. 242 1999 CONSTITUTION, EKEMEZIE v IFEANACHO (2019) LPELR-46518 (SC), CHIEF OF AIR STAFF v EDWARD (2019) LPELR-51173 (SC).**

Respondents further submits that a ground a ground of appeal which questions a decision/Ruling on mixed law and fact requires leave and failure to obtain leave renders the appeal incompetent. He relies on **DANGOTE INDUSTRIES LTD. & ANOR v OCEAN BEAN GULF & LEISURE RESORTS LTD & ORS. (2021) LPELR-53464 (CA), FRN v AFE (2021) NWLR (PT. 27) 1385 – 1386, OKWUAGBALA v IKWUEME (SUPRA).**

Respondents argues that grounds 1 – 3 along with its particulars are mixed law and facts; and in line with the authorities cited, counsel urges the Court to strike out the appeal. That, where a ground of appeal alleges misdirection, the particulars of such misdirection must be lucidly given. He relies on **OKORIE v UDOM (1960) 5 F.S.C 162, AMADI v OKOLI (1977) 7 S.C**

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57, YARO v THE STATE (1972) 4 S.C 63, COBHAM v STATE (1970 – 72) 1 R.S.L.R 49 (P. 131), OJOH v KAMALU (2005) 12 S.C.N.J 236 @ PG. 258.

RESOLUTION OF PRELIMINARY OBJECTION

By virtue of Section 242(1) of the 1999 Constitution, appeals that are not on grounds of law and law alone shall be with leave of Court and where such leave is not obtained, the appeal shall be deemed incompetent.

On Classification of grounds of appeal, it is not easy to distinguish a ground of law from a ground of fact or mixed law and fact. But if a ground of appeal reveals a misunderstanding by the lower Court of the law or a misapplication by it of the law to the proved or admitted facts, then it will be a question of law; if it requires questioning the evaluation of facts before application of law, then it amounts to a question of mixed law and fact.

In AMANA V. IGALA AREA TRAD. COUNCIL (2022) 15 NWLR (PT. 1854) 475 (SC) -

“The distinction between a ground of appeal which raises and involves question of pure law and one which involves question(s) of mixed law and facts and fact alone, is admittedly not

easily identifiable. However, the Supreme Court has over the years, evolved guidelines to be used in the proper identification of the nature of the grounds of an appeal. As a general step and requirement, the court is required to closely consider and examine the grounds of the appeal along with the specific particulars set out in support thereof together, for the purpose of identifying the real complaint or grievance contained in each of the grounds. The nature of a ground of appeal is not determined or dependent on the label tagged on it or on the notice of appeal by counsel, but is revealed from the careful examination of the complaint embedded in the body of the ground taken along with the particulars which ossify it..."

Also, in **AGONSI V. UKWU (2023) 2 NWLR (PT. 1869) 441 (SC)**, the apex expressed that:

"There is a thin line of difference between grounds of law, grounds of facts, and grounds of mixed law and facts. However, the guidelines for classifying a ground of appeal are: Where the Court is being invited to investigate the existence or otherwise of certain facts upon which the award of damages to the respondents was

based, such a ground of (a) appeal is a ground of mixed law and fact. A ground of appeal, which challenges the findings of fact made by the trial Court or involves issues of law and fact is a ground of (b) mixed law and fact. Where evaluation of facts established by the trial Court before the law is applied is under attack or question, the ground of appeal is (c) one of mixed law and fact. Where the evaluation of evidence tendered at the trial is exclusively questioned, it is a (d) ground of fact."

The Appellant in this case, filed an Amended Notice of Appeal against part of the Ruling of the trial Court in paragraph 2 he sets out the grounds of appeal as follows:

GROUND ONE

The learned trial judge, who is not the Honourable Chief Judge of Kaduna State, erred in law when after holding that he had jurisdiction to entertain the 4-count charge against the Respondents, removed the case from the cause list and transferred the matter to the Chief Magistrate Court, No.1, Chediya Road, Zaria for determination when the statutory power to make such an order is exclusively vested in the Honourable

Chief Judge of Kaduna State, and by so doing the Court below occasioned grave miscarriage of justice to the Appellant.

GROUND TWO

The learned trial judge fundamentally erred in law and wrongly invoked his inherent powers by transferring a criminal charge pending before his Lordship to the Chief Magistrate Court 1, Chediya Road, Zaria for determination; when the learned trial judge held thus:

"However, in view of the notorious fact that the Court's docket in criminal and civil cases is full to capacity, I will exercise an inherent power of this Court to transfer the criminal case in suit No. KDH/Z/41c/2022 to Chief Magistrate Court 1, Chediya Road to be determined by the Chief Magistrate. This case is hereby removed from the cause list of this Court by an order of transfer to Chief Magistrate Court 1 Chediya Road, Zaria".

GROUND THREE

The learned trial judge fundamentally erred in law by granting a relief not sought by the 1st Respondent in her application of 6th January, 2023; and thereby occasioned a miscarriage of justice to the Appellant.

From the grounds reproduced above, it is clear that while grounds 1 & 2 seeks to evaluate the provision of the law in S. 111 of Kaduna State Administration of Criminal Justice Law 2017 to assess the propriety of the order of the trial Court; ground 3 complains against the trial Court for granting a relief not sought by the Respondent in their application before the trial Court. Hence, I find that ground 1 & 2 are grounds of law on the basis that, the law is the crux for determination of the complaints in these grounds; and ground 3 is a ground of mixed law and fact because in evaluating issues under this ground, the Court will have to examine law and facts in this case, to arrive at a just conclusion.

In the circumstance, it is trite that where an appeal is brought on grounds of fact or mixed law and fact, it is trite that leave of Court must be sought and obtained before issues from such grounds can be validly raised; failure to obtain leave of Court would render those grounds incompetent and liable to be struck out. However, if the Notice of appeal contains grounds of law which do not require leave the appeal can still be heard on the grounds of law but if there is no competent ground to sustain the appeal, the appeal must consequently be struck out. This is the

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position of this Court in **ENE v ASIKPO (2010) 10 NWLR (PT. 1203) 477 (CA)**, which held that:

“Leave of Court will be required where an appeal consists of grounds of fact or mixed law and facts. However, where leave was not sought and obtained, the appeal will not be struck out where there are grounds of law that can sustain it. In the instant case, grounds C and D were incompetent and were struck out. However, since grounds A and B were grounds of law which did not require the leave of Court to be filed, they were valid grounds that could sustain the appeal.”

See also, **JIMOH v MIN., F.C.T (2019) 5 NWLR (PT. 1664) 45 (SC)**, **AMMANI v BALARABE (2022) 14 NWLR (PT. 1849) 165.**

Therefore, in the instant case, out of the 3 grounds of appeal distilled by the Appellant grounds 1 & 2, being grounds of pure law which does not require leave of Court, are valid on their own to sustain the determination of the appeal. Hence, grounds 3 along with issues 2 distilled therefrom are incompetent and liable to be struck out; the Appellant having not sought and obtained the leave of this Court.

Consequently, issue 2 in the Appellant's Brief is struck out.

The Preliminary Objection is sustained in part having found ground 1 & 2 along with issue 1 competent.

SUBSTANTIVE APPEAL

Learned SAN cited reliefs of the Respondents application at the lower Court as well as the decisions of the lower Court to submit that the provisions of S. 111 of Kaduna State Administration of Criminal Justice Law are unambiguous and its plain meaning is that the Chief Judge may transfer a matter. He relies on S. 3 of the same ACJL for definition of Court and argued that the trial Judge not being the Chief Judge of Kaduna State erred in law to have transferred the case to the Chief Magistrate Court and lacked such power to make the order of transfer as such the order is without jurisdiction and a nullity. He cited **PDP v EZEONWUKA (2008) 3 NWLR (PT. 1606) 187 @ 244, AKILU v FAWEHINMI (NO. 2) (1989) 2 NWLR (PT. 102) @ 197 – 199.**

ISSUE 2

Learned SAN submits that the 1st Respondent application sought for an order of striking out the charge at the trial Court but the trial Court went on to make an unsolicited order of transfer and it

was wrong for the trial Court have done so. That the Court lacks jurisdiction to make an order over a matter not placed before it or grant a relief not claimed by the party before it. He cites **ATIVIE v KABELMETAL (NIG.) LTD. (2008) 10 NWLR (PT. 1095) 399 @ 414, OKUBULE v OYAGBOLA (1990) 4 NWLR (PT. 147) 723 @ 744, KALIO v KALIO (1975) 2 SC 15, OLUROTIMI v IGE (1993) 8 NWLR (PT. 311) 271, UNION BEVERAGES v OWOLABI (1988) 1 NWLR (PT. 68) 128 @ 123, NIGERIAN HOUSING DEVELOPMENT SOCIETY LTD. & ANOR v MUMUNI (1977) 2 SC 57 @ 81, NIGERIA AIR FORCE v SHEKETE (2002) 18 NWLR (PT. 798) 129 @ 151, UGO v OBIKWE (1989) 1 NWLR (PT. 99) 566**

RESPONDENTS LEGAL ARGUMENT

Counsel submits that the Appellant admitted that the trial Judge is the assigning Judge in Zaria Judicial Division presiding over High Court 1. That the trial Judge only suggested that he would re-assign the case file to Court 2 or 3 as against descending to the level of a Magistrate Court to determine a Criminal Proceeding that is within the ambits of S. 272 & 251(1) of the 1999 Constitution. Counsel further submits that, the Appellant's assertion that the trial Judge transferred the case to the Magistrate Court, is erroneous and a mere opinion which is not

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backed by any legal substance. That it is an academic exercise and Appellant has not alleged any substantial miscarriage of justice that occurred as a result of the order.

Respondent argues that no matter where the matter was transferred to Court 1 or 2 or the Magistrate Court, the ultimate goal is justice and no more, hence the trial Judge was right and had properly exercised discretion to transfer the matter to the Magistrate Court who also has jurisdiction to hear same. He cites **MOSES v GIADOM (2021) NWLR (PT. 14) 783 @ 801 – 804.**

ISSUE 2

That the assertion of Appellant that the order of transfer was not sought by the Respondents is misconceived as the two applications contained Omnibus Prayers which in essence means that the Respondents are moving the Court to use its discretion and or inherent powers to give any order(s) the Court deems fit. He refers to the case of **LASISI v OKOBI & ORS (2021) LPELR-56055 (CA).**

RESOLUTION

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In the resolution of this appeal, the competent issue for determination in this appeal is issue 1 in the Appellant's Brief of Argument.

In issue 1, the Appellant challenges a part of the decision of the trial Court found at page 146 – 154 of the record of appeal, after evaluation of the application before it, the Court went further in its concluding paragraph to state as follows:

"However, in view of the notorious fact that the Court's docket in criminal and civil cases is full to capacity, I will exercise an inherent power of this Court to transfer the criminal case in Suit No. KDH/Z/41C/2022 to Chief Magistrate Court I Chediya Road to be determined by the Chief Magistrate. This case is hereby removed from the cause list of this Court by an order if transfer to Chief Magistrate Court I Chediya Road Zaria. This shall be the ruling and order of this Court. (signed)"

Based on the foregoing, the question arises whether the trial Judge had the power to make the order of transfer of a case?

In the Administration of Criminal Justice Law 2017 of Kaduna State provides in S. 111 that:

"(1) The Chief Judge may, where it appears to him that the transfer of a case will promote the ends of justice or will be in the interest of the public peace, transfer any case from one Court to another.

(2) The power of the Chief Judge referred to in subsection (1) of this Section shall not be exercised where the prosecution has called witnesses."

Also, in the High court Civil Procedure Rules of Kaduna state under Order 35 rule 1 it provides that:

"1. Where the Chief Judge has in exercise of any powers conferred on the Chief Judge by any relevant law, ordered the transfer of any action or matter from a lower Court to the High Court, a copy of the order duly certified by the Registrar shall forthwith be sent to the Registrar of the lower Court and the latter shall forthwith transmit to the High Court documents referred to in the

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relevant law and other
necessary documents and
processes.”

The import of the law cited above is that both in Civil and Criminal matters, the Chief Judge holds the power to transfer matters between Courts.

In the instant case, it is clear that and plain that the trial Judge ordered a transfer to the Magistrate Court in Chediya Road and not transfer to any High Court 1 or Court 2. The only one who can transfer matters at the High Court is the Chief Judge, it then follows that, any other person who transfers a matter will be doing it in excess of his powers.

In **Alanamu v. F.R.N. (2020) 4 NWLR (Pt. 1713) 19 (CA)**, reviewing S. 98(1) of ACJA which is in *pari materia* with S.111 of Kaduna State ACJL on the Power of Chief Judge of High Court to transfer criminal case from one court to another and when power cannot be exercised it was held that:

“By Section 98(1) of the Administration of the Criminal Justice Act, 2015, the Chief Judge of a High Court may, where it appears to him that the transfer of a case will promote

the ends of justice or will be in the interest of the public peace, transfer any case from the Court to another. However, by section 98(2) of the Act, the power of the Chief Judge referred to in subsection of the section shall not be exercised where the prosecution has called witnesses. Thus, by virtue of the provision of Section 98(2) of the Act, the Chief Judge cannot exercise the power to transfer any case in which the prosecution has called witnesses. In this case, the complaint of the appellant was that the trial Court erred when it relied on the provisions of Section 98(1) and of the Act to refuse the application to transfer the case."

An assigning Judge is not an exception rather what the law admits is that the power is solely that of the Chief Judge. Even if the trial Judge is the one that assigns, that is he is the assigning judge within a division with more than one judge, it does not amount to him wearing the toga of the chief judge, such authority cannot be delegated by the wordings of the act he cannot suo motu transfer the matter to the Magistrate Court.

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His authority is confined to assigning only to the judges within the division.

Contrary to the Respondents argument at paragraph 3.3 of their joint brief of argument, I do not find anywhere that the Appellant admitted that the Judge can transfer the matter by virtue of the fact that he is an assigning judge.

An act which is provided for in a legislation must be done only in the way specified by the legislation. Any manner other than that provided by the law would be adjudged spurious and will be discountenanced. An act done pursuant to but not in keeping with the intent, tenor and format of a given statute is not only irregular, it is also false. The act must be invariably discountenanced. Unless such a law is altered or amended by a legitimate authority, then whatever is done in contravention of those provisions amounts to a nullity and of no effect whatsoever. See, **UDE V. NWARA (1993) 2 NWLR (PT. 278) 638;** **M.P.P.P. V. I.N.E.C. (2015) 18 NWLR (PT. 1491) 251;** **F.R.N. V. WABARA (2013) 5 NWLR (PT.1347) 331;** **NNONYE V. ANYICHIE (2005) 2 NWLR (PT. 910) 623;** **NTIERE V. N.P.A. (2008) 10 NWLR (PT. 1094) 129.**

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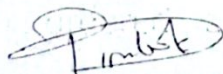
Thus, I find that a miscarriage of justice must not occur before the law can be complied with; in fact the law was made to prevent a miscarriage of justice.

Therefore, the trial was ultra vires to have made an order that is outside its jurisdiction and as such amounts to a nullity.

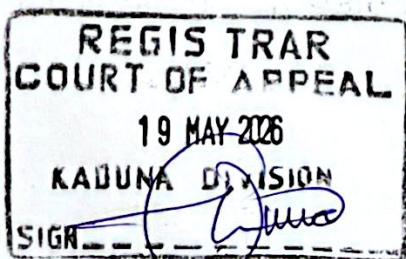
I resolve issue 1 in favor of the Appellant.

Consequently, the appeal succeeds and is allowed. Therefore, the part of the Ruling of the trial Court delivered on 21/2/2023 which ordered a transfer of the matter in CHARGE NO: KDH/Z/41C/2022 is hereby set aside.

It is hereby ordered that this matter be returned to the Chief Judge of Kaduna state for re-assignment to another judge other than K. DABO (J.).



ABIMBOLA OSARUGUE OBASEKI-ADEJUMO
JUSTICE COURT OF APPEAL



F. H. Alkom
Registrar
19/05/26

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APPEARANCES

FOR APPELLANT

- TAJUDEEN O. OLADOJA S.A.N
- BARNABAS JOHN ESQ.
- KALIFA ADAMU

FOR RESPONDENT

- M. M. ABDILKADIR ESQ.

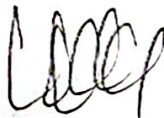
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CA/K/75C/2023

ABDULLAHI MAHMUD BAYERO, JCA

I read in advance the lead judgment delivered by my learned brother, **ABIMBOLA OSARUGUE OBASEKI-ADEJUMO, JCA.**

There is merit in this Appeal and is accordingly allowed by me. I abide by the consequential orders.



**ABDULLAHI MAHMUD BAYERO
JUSTICE, COURT OF APPEAL.**



*F. M. Alkom
Registrar
19/05/26*

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SYBIL NWAKA GBAGI, JCA

CA/K/75/C/2023

I read the Ruling of my learned brother **ABIMBOLA OSARUGUE OBASEKI ADEJUMO JCA** before its delivery. I am in agreement that the appeal is meritorious and same succeeds and allowed.

I also abide by the consequential order that matter be returned to the Chief Judge of Kaduna State for re-assignment to another judge other than K. Daba J.



**SYBIL NWAKA GBAGI
JUSTICE, COURT OF APPEAL.**



*F. N. Mkom
Registrar
19/05/26*

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