APPEAL JUSTICES CAN RETURN TO CONCLUDE PART-HEARD MATTERS AFTER ELEVATION

The Court of Appeal has upheld section 396(7) of the Administration of Criminal Justice Act (ACJA)2015.

The Lagos Division of the Court on Wednesday 24th April, 2019 in CA/L/1043C/2018 in a well-considered judgement delivered by Hon. Justice M.L. Garba, JCA gave a boost to one of the innovative provisions of the ACJA 2015 embodied in section 396(7) to the effect that a judge who has been elevated to the Court of Appeal may be given dispensation to conclude part-heard matters being handled by him before his elevation. Whilst many observers have hailed this innovative provision as capable of reducing delay caused by elevation of trial judges to the Court of Appeal others wondered how the appellate court would view the provision. Some even argued that this ACJA provision is unconstitutional, citing the case of Ogbunniya v. Okudo in aid of their argument. This was a case where the Supreme Court annulled a judgement delivered in respect of a trial by a judge after his elevation to the Court of Appeal. However, in a robust judgement, delivered in Lagos in the cases of Udeogu v FRN, Orji Uzor Kalu v. FRN and others, Slok Nig. Ltd. v. FRN and Others, the Court of Appeal unanimously endorsed the fiat given by the President of the Court, Bulkachuwa, JCA to Hon. Justice Idris to enable the latter conclude several part-heard matters pending before him when he was elevated to the Court of Appeal. Fearing that these part-heard highprofile cases and others will be unduly delayed or even frustrated if they were assigned to another trial judge to start then de novo, after Justice Idris's elevation, the PCA granted a fiat to Justice Idris to conclude them. The judge, now a Justice of the Court of Appeal utilized the fiat and successfully concluded several pending cases. He even sacrificed his vacation to enable him to conclude the cases. When challenged, he simply referred the jurisdictional objections to the Court of Appeal rather than delivering an interlocutory ruling on the objection. But his Lordship, rightly did not stay Proceedings in the cases. He was therefore able to conclude several matters within a short time. This is a highly cerebral approach to the implementation of the ACJA. The Centre for Socio-Legal Studies (CSLS) recommends such to other justices who may still be entertaining doubts about the ACJA.

In one of the cases, a high profile defendant who had applied for such a fiat to be given to the judge, later made a u-turn to challenge the validity of the fiat when the ruling delivered by Idris J

turned out to be unfavorable to the defendant.

In approving the ACJA provision, Garba JCA rightly stated: "Novel and even absurd as it may be, the provisions of section 396(7) of the ACJA, apparently vests the requisite power and authority to the Hon. Justice M.B. Idris, JCA, to sit and exercise the jurisdiction of the Lower Court for the purpose of concluding the part heard criminal matters he had commenced but did not conclude as a Judge of the Lower Court before his elevation to the Court of Appeal'

The court distinguished the post ACJA cases from the older cases like Ogbunniya v. Okudo which were based on the state of the law at the material time when there were no statutory provisions, such as section 396(7) of ACJA, allowing, permitting or authorizing Justices of the Court of Appeal to go back to the court from which they were elevated, to conclude the matters they commenced, but could not conclude before their elevation.

This approach of the Court of Appeal is progressive and consistent with the overarching objectives of the the ACJA 2015 as well as the Constitution of the Federal Republic of Nigeria, 1999(As amended) on the issue of speedy trial. This decision is laudable as it is consistent with the current attitude of the Courts which has been quite favorable to the innovative provisions in the ACJA.

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