

IN THE COURT OF APPEAL
HOLDEN AT LAGOS

ON THURSDAY THE 1ST DAY OF JULY, 2004
BEFORE THEIR LORDSHIPS;

JAMES OGENYI OGEBE
PIUS OLAYIWOLA ADEREMI
MUSA DATTIJO MUHAMMAD

JUSTICE, COURT OF APPEAL
JUSTICE, COURT OF APPEAL
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CA/L/351/2002

BETWEEN:

- | | | |
|------------------------|------------------------------------|------------|
| 1. CADBURY NIGERIA PLC | - 1 ST ACCUSED PERSON) | |
| |) | |
| 2. BUNMI ONI | - 2 ND ACCUSED PERSON) | APPELLANTS |
| |) | |
| 3. ADEGBOYE TUNJIRS | - 3 RD ACCUSED PERSON) | |

AND

FEDERAL PUBLIC OF NIGERIA

COMPLAINANT/RESPONDENT

J U D G M E N T
(DELIVERED BY J. O. OGEBE, JCA)

The Appellants were, at the Federal High Court, Lagos charged with the offences of importing Dairy Products for sale without registration, and labeling, packaging and advertising the said products in a manner that is false, misleading and likely to create a wrong impression as to its safely and quality punishable under Section 6 and 7 of the Drugs and Related Products (Registration etc) Decree 1993 (as Amended by Section 5 of the Drugs and Related Products (Registration etc) (Amendment) Decree of 1999, Section 1 (1) of the Trade Malpractices (Miscellaneous Offences) Decree No 67 of 1992, and Section 17 of the Food and Drug Act (Cap 150) 1990 (as Amended by Decree No. 21 of 1999).

Two out of the three Accused, viz 1st and 3rd Accused Persons were served with the Charge Sheet while the 2nd Accused was not served. However, a Bench Warrant of Arrest was issued on the 2nd Accused by the Trial Court based on purported service by the Bailiff of the Court on the 2nd Accused who was in London at the time he was claimed to have been served

While the charge was pending, the 1st Accused being a responsible Corporate person entered into negotiations with the Complainant for an amicable resolution of the issues that occasioned the charge. Certain conditions were imposed by the Complainant with which the 1st Accused person complied.

Counsel to the Appellants subsequently filed an Application against the charge on the grounds that the Complainant National Agency for Food and Drug Administration and Control (NAFDAC) no longer has locus standi to prosecute the case in view of the resolution of the issues between the parties. Rather than hear this application the Court insisted that the 2nd Accused must be produced in Court to answer to the charge. The Court subsequently ordered the arrest and production in Court of the 2nd Accused Person and the oral application later made by Counsel to the Appellant for Court to vacate the Order on grounds of lack of jurisdiction was refused. Hence this appeal.

The learned counsel for the Appellants filed a brief of argument on their behalf and identified three issues as follows

1. Whether the Learned Trial Judge was right to have refused to vacate her Order issuing Bench Warrant for the arrest of the 2nd Accused/Appellant after she found as a fact that the 2nd Accused/Appellant was not served personally with the Charge Sheet and/or any other Court processes.
2. Whether the Learned Trial Judge was right to have ordered Counsel to the 2nd Accused to produce the 2nd Accused in Court and to have insisted that the 2nd Accused be produced when he, 2nd Accused was challenging the jurisdiction of the Court on Grounds of non-service of the Charge Sheet on him.

Whether the Learned Trial Judge was right to have refused to entertain the application showing that the issues constituting the Offences Charged has been completely resolved by the Accused and the Complainant

The respondent did not file any brief and did not appear in Court to oppose its appeal.

Under issue one the learned appellant s counsel submitted that the trial Court was wrong in holding that the order of the Bench Warrant issued for the arrest of the 2nd Appellant subsisted even after the Court found that the 2nd

appellant was not served with the charge sheet. The Learned Counsel further submitted that without proper service the Court, lacked jurisdiction to make any orders against the 2nd appellant. He relied on the case of Adeoye Vs. The State (1999) 6 NWLR (Pt 605) 74.

On the second issue the Learned Counsel for the Appellants complained that the trial Judge had no power under any law to order that the 2nd appellant be produced in court by his Counsel.

On the third issue, the Learned Counsel for the appellants submitted that the trial Judge was wrong to have refused to entertain the application showing that the issue leading to the offences charged had been completely settled between the appellants and the complainant.

It is trite law that no Court has jurisdiction over a person who has not been served with court processes and any order or judgment given against such a person is nullity and must be set aside. See the cases of Adeoye Vs. The State (1999) 6 NWLR (Pt. 605) page 74, Eyorokoromo Vs. State (1979) 6 9 S.C. 3 A.C.B. Vs. Losada Nig. Ltd. (1995) 7 NWLR Pt. 405 page 26.

On the second issue, I agree with the submission of the Learned Counsel for the Appellants, that the trial Judge had no power under any law to order a Counsel to produce an accused person. The trial Judge found as a fact at page 84 of Record of Appeal as follows:

I therefore hold that it is clear the 2nd Accused was not served personally. Having found out service was not personal.

I also concede that Under section 89 (a) of Civil Procedure Act 80 Laws of Federal 1990 any service on an individual has to be personal

With this finding the trial Court had no business insisting that the 2nd appellant must be produced in Court. Infact the trial Court ought have set aside its earlier order of bench warrant issued for the arrest of the 2nd appellant.

On the 3rd issue it is my view that if the complainant and appellants had settled the matter which led to the prosecution of the appellants, it was the duty of

the complainant to withdraw the case against the appellants and not for appellants to bring a motion to establish that they could no longer be prosecuted. This issue is of no consequence in this appeal.

For all I have said in this judgment, I find merit in this appeal which I hereby allow. I set aside the proceedings before the trial Court as a nullity. I do not consider it appropriate in the circumstances of this case to order a retrial. I therefore discharge the appellants of the offences preferred against them in the lower Court.

J. O. OGEBE
Justice, Court of Appeal.

APPEARANCE

A.O. Olufon with F. A. Aigbadumah
and F. Adesanmi for the appellant.
Respondent not represented.