

**THE TERRITORIAL JURISDICTION OF THE FEDERAL HIGH COURT IN CRIMINAL TRIALS - ONE OF FORM OR SUBSTANCE\*?** This article is published in (2015) VOL. 7 Justice Journal P. 1

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**ABSTRACT**

*This paper examines the territorial jurisdiction of the Federal High Court in criminal trials in view of the provisions of Sections 19 and 45 of the Federal High Court Act Cap. F12 Laws of the Federation of Nigeria, 2004 against the decisions of the Court of Appeal in the case of Abiola v. Federal Republic of Nigeria and Ibori v. Federal Republic of Nigeria. This article argues that although statutorily there is only one Federal High Court in Nigeria, the concept of territorial jurisdiction is still very relevant. To that extent, the principle of law to the contrary in Abiola v. Federal Republic of Nigeria was wrong and the principles enunciated in Ibori v. Federal Republic of Nigeria were correct. However, there are certain offences for which the Federal High Court in any judicial division will have jurisdiction irrespective of where the offence was committed. In that case Abiola v. Federal Republic of Nigeria will be a good authority. This article argues that Ibori v. Federal Republic of Nigeria was wrongly decided on the facts of the case.*

**INTRODUCTION**

The definition of jurisdiction of Court generally as the power and authority to hear and determine a dispute between parties before it, is fairly established. But the issue of territorial jurisdiction of a Court which is an aspect of the jurisdiction of Court is not. This is especially so in view of provisions of the Constitution and opinions of writers<sup>1</sup>. The extent and scope of territorial jurisdiction of the Federal High Court takes additional form in view of the provisions of the Sections 19 and 45 of the Federal High Court Act<sup>2</sup> on the venue for trial of cases and the recent

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<sup>1</sup> See Sections 251(1), 272(1) Constitution of the Federal Republic of Nigeria, 1999 (as amended). Abiru H.O.: "The Concept of Territorial Jurisdiction" in I.O. Smith (ed) Law and Development in Nigeria: Essays in Honour of Alhaji Femi Okunu, Lagos Ecowatch Publications (Nig.) Ltd. (2004) P. 1.

<sup>2</sup> Cap. F12 Laws of the Federation of Nigeria, 2004.

decisions of the Nigerian Court of Appeal in two cases – *Ibori v. Federal Republic of Nigeria*<sup>3</sup> and *Abiola v. Federal Republic of Nigeria*<sup>4</sup>.

This paper is focused on venue or territorial jurisdiction of the Federal High Court in criminal trials<sup>5</sup> against the background of decisions in *Ibori v. Federal Republic of Nigeria* and *Abiola v. Federal Republic of Nigeria*. Although, the concept of territorial jurisdiction is the crux of criminal trials, there are cases when territorial jurisdiction may not be relevant in the Federal High Court.

This writer will contend that in so far as the recent decisions of the Court of Appeal in *Ibori v. Federal Republic of Nigeria* expounded the fact that the Federal High Court has no single jurisdiction throughout the Country in criminal matters it was arrived at *per incuriam*. Secondly, we shall demonstrate that the principle approved in *Abiola v. Federal Republic of Nigeria* that the Federal High Court has a single territorial jurisdiction in Nigeria is to be construed in the context of the facts and circumstances of the case. It is not a statement of the general principle of law.

## **JURISDICTION**

Jurisdiction is the competence, authority or power of a Court, including a Tribunal to deal with matters in controversy whether civil or criminal or hybrid submitted before it by parties thereto from inception to judgment<sup>6</sup>.

Jurisdiction has been variously distinguished from other concepts such as judicial power<sup>7</sup>, inherent power etc<sup>8</sup>. The Jurisdiction of Court

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<sup>3</sup> (2009) 3 NWLR (Pt. 1128) 94.

<sup>4</sup> (1995) 1 NWLR (Pt. 382) 203

<sup>5</sup> On venue for trials in civil matters at the Federal High Court, see *Owners of M.V. Arebella v. Nigeria Agricultural Insurance Corporation* (2008) 11 NWLR (Pt. 1097) 182.

<sup>6</sup> O. F. Ogbunya: *Understanding the Concept of Jurisdiction in the Nigeria Legal System*, Enugu Snaap Press Ltd., 2008 Pp. 2 – 3, See also *Mobil Producing (Nig.) Unlimited v. LASEPA* (2002) 18 NWLR (Pt. 798) 1, *Madukolu v. Nkemdilim* (1962) 1 ALL N.L.R. (Pt. 4) 587 (1962) 2 SCNLR 341, *Babatola v. Obaoku* (2005) 8 NWLR (Pt. 927) 386.

<sup>7</sup> Whereas jurisdiction is the right in the Court to hear and determine the dispute between the parties, the judicial power in the Court is the authority to make certain orders and decisions with respect to the matter before the Court over which it has jurisdiction. There must be jurisdiction before the exercise of judicial power – *Ajomale v. Yadaut* (No. 1) (1991) 5 NWLR (Pt. 191) 257.

<sup>8</sup> The Supreme Court in *Akilu v. Fawehinmi* (No. 2) (1989) 2 NWLR (Pt. 102) 122 at 197 showed a relationship between jurisdiction and inherent power. Whereas inherent power of a Court is that which is not expressly spelt out by the Constitution or in any statute or rule but which can, of necessity be invoked by any Court to supplement its express jurisdiction

may either be original or appellate<sup>9</sup>, concurrent or exclusive<sup>10</sup>, limited or unlimited<sup>11</sup>, substantive<sup>12</sup> or territorial.

From the above classification of jurisdiction, our focus shall be on territorial jurisdiction but also drawing a distinction between substantive jurisdiction and territorial.

The purpose of this paper is not to discuss all the above types of jurisdiction but to focus on territorial jurisdiction of the Federal High Court within the context of criminal trials or litigation.

## **CONCEPT OF TERRITORIAL JURISDICTION**

Blacks Law Dictionary<sup>13</sup> defines territorial jurisdiction as:

- (a) Jurisdiction over cases arising in or involving persons residing within a defined territory;
- (b) Territory over which a government, one of its Courts or one of its sub-divisions has jurisdiction.

Territorial jurisdiction is sometimes referred to as geographical area or venue jurisdiction. Hence it has to do with the geographical area within which a matter arose<sup>14</sup>. The Court will therefore lack the competence to adjudicate over matters and persons outside its territorial jurisdiction.

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and powers; the inherent power does not extend the jurisdiction of a Court of record; it rather lubricates the statutory jurisdiction to make it work.

<sup>9</sup> Original jurisdiction is a court's power to hear and decide a matter before any other Court can review the matter whereas appellate jurisdiction is the power of a Court to review or revise a lower Court's decision. See B.A. Garner (ed): Blacks Law Dictionary (8<sup>th</sup> ed) USA West Publishing Co, 2009 p. 928.

<sup>10</sup> Concurrent jurisdiction is the jurisdiction that might be exercised simultaneously by more than one Court over the same subject matter and within the same territory, a litigant having the right to choose the Court in which to file the action. Exclusive jurisdiction on the other hand is the Court's power to adjudicate an action or class of actions to the exclusion of all other Courts. See: B.A. Garner: Blacks Law Dictionary (op. cit) pp. 928, 930.

<sup>11</sup> The jurisdiction of Court is limited when it is restricted to adjudicate over listed items/matters, both in terms of subject matter, persons or value of property. It is under statutory limits and prescriptions. Unlimited jurisdiction arises when the enabling statute does not impose any restriction on subject matter, persons or value of property it can handle. See: *Tukur v. Govt. of Gongola State* (1989) 4 NWLR (Pt. 117) 517 at 561, B.A. Garner: Blacks Law Dictionary (op. cit) p. 930.

<sup>12</sup> Substantive jurisdiction refers to matters over which the Court can adjudicate and it is usually provided expressly in the Constitution or enabling statute. It is also sometimes referred to as the subject matter jurisdiction. *Tukur v. Govt. of Gongola State* (*Supra*). *Ibori v. F.R.N.* (op. cit.) at p. 308. Rules of Court do not confer jurisdiction.

<sup>13</sup> Op. cit. at Page 931. This definition was applied in the case of *Iyanda v. Lamba II* (2002) 8 NWLR (Pt. 801) 267.

<sup>14</sup> *Ibori v. Ogboru* (2005) 6 NWLR (Pt. 920) 102; *Ibori v. F.R.N.* (Op. cit.) at p. 308.

The Supreme Court in the case of *Tukur v. Govt of Gongola State*<sup>15</sup> in drawing a distinction between substantive or subject matter jurisdiction and territorial jurisdiction stated as follows:

“The first is the legal capacity, the power and authority of a Court to hear and determine a judicial proceeding - in the sense that it has the right and power to *adjudicate* concerning the particular *subject-matter* in controversy. The second is the geographical area in which and over which the legal jurisdiction of the Court can be exercised. This area of authority is called the area of *geographical jurisdiction or venue*. Both are important when one is considering the concept of jurisdiction” .

Jurisprudentially, criminal jurisdiction is basically territorial. Generally, this means that the Court will have jurisdiction only where an element of a crime occurs within the territory<sup>16</sup>.

In the case of *Singh v. Rajah Fariokote* <sup>17</sup> the Privy Council observed:

“Territorial jurisdiction attaches (with special exceptions) upon all persons either permanently or temporarily resident within the territory while they are without it, but it does not follow them after they have withdrawn from it, and when they are living in another independent country. It exists always as to land within the territory ....”.

The provisions governing territorial jurisdiction in Nigeria are the Criminal Code (Law or Act)<sup>18</sup>, Penal Code (Law or Act)<sup>19</sup>, Penal Code (Northern States Federal Provisions) Act, 1960<sup>20</sup>, State High Court Laws and the Federal High Court Act<sup>21</sup>.

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<sup>15</sup> (1989) 4 NWLR (Pt.117) 517 at 560 – 561. See also *Dalhatu v. Taraki* (2003) 15 NWLR (Pt. 843) 310; *Ogunde v. Gateway Transit Ltd.* (2010) 8 NWLR (Pt. 1196) 207.

<sup>16</sup> Three types of territorial jurisdiction has been identified – Extra territorial jurisdiction, territorial and local jurisdiction – Oluwatoyin Doherty: *Criminal Procedure in Nigeria – Law and Practice*, Blackstore Press Limited (1990) Page 159, *Adebayo v. State* (2012) LPELR 9164.

<sup>17</sup> (1894) A.C. 670 at p. 683

<sup>18</sup> Section 12 and 12A Criminal Code Act Cap C38 LFN, 2004; Cap. C17 Laws of Lagos State, 2003.

<sup>19</sup> Section 4 Penal Code Law Cap. 89 Laws of the Northern Nigeria or Act in the Federal Capital Territory, Abuja Cap. 53 LFN, 1990

<sup>20</sup> Cap. P3 LFN 2004, Section 5(2).

<sup>21</sup> Section 7(4) Federal High Court Act Cap. F12 Laws of the Federation of Nigeria, 2004 confers on the Federal High Court original jurisdiction in respect of offences under the provisions of the Criminal Code Act, Penal Code Act or the Penal Code (Northern States), Federal Provisions Act; Proceedings are to be initiated by the Attorney-General of the Federation. See: *A.G. Karibi-Whyte: The Federal High Court Law and Practice, Enugu*,

From the relevant statutes, a Court will have territorial jurisdiction in criminal trials, in the following circumstances:

- (a) When a person within the boundaries of a State is alleged to have committed an offence, he is triable in that State<sup>22</sup>.
- (b) When a person is alleged to have committed an offence, if the initial elements of the alleged offence occurred in one State and the subsequent elements occurred elsewhere, the State where the initial elements of the offence occurred can try the offender, as if the subsequent element also occurred within that state<sup>23</sup>.
- (c) When a person is alleged to have committed an offence, if the initial elements of the alleged offence occurred in one State and the subsequent elements occurred in another State, then if the offender afterwards enters the State where the subsequent element occurred, he is by such entry triable in that other State<sup>24</sup>.
- (d) When a person is alleged to have committed an offence, and the only material event that occurs in a State is the death of a person whose death was caused by an act or omission done outside the State, at a time when the deceased was outside State, no Courts in that State has jurisdiction over the offence arising from such act or omission<sup>25</sup>.

Whilst the territorial jurisdiction of the State High Courts, including the High Court of the Federal Capital Territory are fairly well settled, the territorial jurisdiction of the Federal High Court is not<sup>26</sup>.

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*Fourth Dimension Publishing Co. Ltd., 1984, p. 333.* These provisions emphasise territorial jurisdiction of the Federal High Court.

<sup>22</sup> Section 4(1) Penal Code Law, Section 12 and 12A(1) Criminal Code Act (ibid).

<sup>23</sup> Section 4(2) Penal Code Law, Section 12A(2)(a) Criminal Code; *Okoro v. A.G. West* (1966) NMLR 13; *Queen v. Osoba* (1961) NSCC 5.

<sup>24</sup> See: *Njovens v. State* (1973) All NLR 76; (1973) NSCC Vol. 8 page 257, where the Supreme Court held that even if the subsequent entry was invalid, the Court will have jurisdiction.

<sup>25</sup> Section 4(4) Penal Code, 12A Criminal Code

<sup>26</sup> See *Ibori v. Federal Republic of Nigeria* (Supra) at Pages 323 – 324. Sections 255(1), 270(1) Constitution of the Federal Republic of Nigeria, 1999 (as amended) in the case of *Ukpai v. Okoro* (1983) 2 SCNLR 380, the Supreme Court held that there is only one High Court in a state but the division into judicial division is for administrative convenience, for criminal trials, there are express provisions on the judicial divisions that can try a matter when an offence is committed.

## **TERRITORIAL JURISDICTION OF THE FEDERAL HIGH COURT**

The Federal High Court is conferred with statutory jurisdiction under the Constitution and the Federal High Court Act to try offences<sup>27</sup>.

Section 19(1) of the Federal High Court Act provides that the Court shall have and exercise jurisdiction throughout the Federation, and for that purpose the whole area of the Federation shall be divided by the Chief Judge into such number of judicial divisions or parts thereof by such name as he may think fit. The implication of this provision is that although the Federal High Court has territorial “jurisdiction throughout the Federation”, it also has “local jurisdiction”<sup>28</sup> within its judicial divisions as determined by the Chief Judge of the Federal High Court<sup>29</sup>.

It is this writer’s opinion that from the provisions of Section 19 of the Federal High Court, the rules as to territorial jurisdiction in the States of the Federation will be applicable to the Federal High Court<sup>30</sup>. This position is emphasized by Section 45 which provides that: Subject to the power of transfer contained in this Act, the place for the trial of offences shall be as follows –

- (a) an offence shall be tried by a Court exercising jurisdiction in the area or place where the offence as committed<sup>31</sup>;
- (b) when a person is accused of the commission of any offence by reason of anything which has been omitted to be done, and of any consequence which has ensued, such offence may be tried by a Court exercising jurisdiction in the area or place in which any such thing has been done or omitted to be done, or any such consequence has ensued;
- (c) when an act is an offence by reason of its relation to any other act which is also an offence, a charge of the first-mentioned offence may be tried by a Court exercising jurisdiction in the area or place either in which it happened, or in which the offence with which it was so connected, happened<sup>32</sup>;

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<sup>27</sup> Section 251(2), (3) Constitution (op. cit.), Section 7, Federal High Court Act (op. cit.)

<sup>28</sup> The term “local jurisdiction” means that where an offence is committed within the boundaries of a State, it will be necessary to determine which Judicial Division or Magisterial District, the offence is to be tried.

<sup>29</sup> Section 19(2) & (4) Ibid.

<sup>30</sup> Sections 12, 12A Criminal Code, 4 Penal Code (n. 18, 19). Further impetus is given by the provisions of Section 7(4) and 64(3) of the Federal High Court Act (op. cit.). See: O. Doherty: Criminal Procedure in Nigeria (op. cit.) p. 163 – 167; *Dairo v. U.B.N.* (2008) WRN (Vol. 2) 1 at 18 - 19.

<sup>31</sup> *R. v. Sodipo* 12 WACA 374, *R. v. Diyaofu* (1955 – 56) WRNLR 30

<sup>32</sup> *Tete Lawson v. State* (1975) 4 S.C. 115

- (d) when -
- (i) it is uncertain in which of several areas or places an offence was committed; or
  - (ii) an offence is committed partly in one area or place and partly in another; or
  - (iii) an offence is a continuing one and continues to be committed in more areas or places than one; or
  - (iv) an offence consists of several acts committed in different areas or places such offence may be tried by a Court exercising jurisdiction in any of such areas or places;
- (e) an offence committed while the offender is in the course of performing a journey or voyage, may be tried by a Court in or into the area or place of whose jurisdiction the offender or person against whom or the thing in respect of which the offence was committed resides, is or passed in the course of that journey or voyage<sup>33</sup>”.

It is in view of these statutory provisions that this paper shall consider the Court of Appeal decisions in the cases of *Abiola v. Federal Republic of Nigeria* and *Ibori v. Federal Republic of Nigeria*.

#### **ABIOLA v. FEDERAL REPUBLIC OF NIGERIA**

The Appellant was arraigned on a 5 count charge before the Federal High Court, Abuja of Treason and Treasonable felony punishable under Sections 37(1), 41(a), 41(c), 51 and 107(3) of the Criminal Code Act.

Before the commencement of the trial, the Appellant by Motion on Notice challenged the competence of the Federal High Court in Abuja to try him for the alleged offences. The grounds of the application were *inter alia* that the Court is not competent to hear and determine the offences charged and that the charges were only triable by a Federal High Court exercising jurisdiction in Lagos where the offences are alleged to have been committed. In his Ruling, the learned trial Judge held that the Federal High Court sitting in Abuja can try an offence committed in Lagos in so far as he has been ordered to do so by the Chief Judge.

The Appellant appealed against the Ruling to the Court of Appeal. It was argued that since all the offences alleged in the 5 counts laid before the trial Court were said to have been committed in Lagos and nowhere else in Nigeria by virtue of Section 45(a) of the Federal High Court Act only the Federal High Court sitting in Lagos has jurisdiction to try the Appellant.

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<sup>33</sup> Section 64(d), (e) Criminal Procedure Act, Sections 135 & 156 Criminal Procedure Code.

It was argued that since Section 45 of the Federal High Court Act which made specific provision for venue of trial had not made corresponding provision similar to Section 70 of the Criminal Procedure Act which allows a trial court to assume jurisdiction for the trial of an offence committed outside its area or place, it was the intention of the legislature to deny the Federal High Court the power to assume jurisdiction under the general provision of Section 70 of the Criminal Procedure Act. It was emphasized that Section 45(a) is mandatory.

The Respondent's counsel argued *inter alia* that the offences in the counts affected the entire country. He stated that since the Appellant was charged with treason and treasonable offences with the aim of intimidating or overawing the Head of State and Commander-in-Chief of the Armed Forces who lives or resides in Abuja, the acts of the Appellant though committed in Lagos, the consequence or the object will be to intimidate or overawe the Head of State who lives in Abuja which is the seat of the Federal Military Government. He also argued that the Federal High Court, sitting in Abuja has jurisdiction to try the Appellant by virtue of the provisions of Section 45(c) and 45(d)(iii) of the same Federal High Court Act because the offences in the counts are not only related offences but also continuing offences affecting the entire country. Under Sections 70 and 71 of the Criminal Procedure Act, the trial court may also assume jurisdiction to try the Appellant in Abuja in spite of the fact that the offences were alleged to have been committed in Lagos.

The Respondent also relied on Section 49B of the Criminal Code Act which provides:

“49B(1) Notwithstanding any rule of law or practice, charges for any offences, except treason, may be joined with a charge for any offence against the preceding section in the same charge or information, if those charges are founded on the same facts, or form, or are a part of, a series of offences of the same or similar character.

(2) A person charged with an offence against this chapter who is in Nigeria may, whether or not the offence was committed in Nigeria or in any Nigerian ship or aircraft, be taken in custody to any place in Nigeria, and may be proceeded against charged, tried and punished in any place in Nigeria, as if the offence had been committed in that part of Nigeria, and for all purpose incidental to or consequential on the trial or punishment of the offence it

shall be deemed to have been committed in that part of Nigeria”.

The Court of Appeal held:

- (a) Having regard to the type of offences against which the Appellant was charged before the trial Court and the fact that there is only one Federal High Court established for this Country which exercise jurisdiction throughout the Country including Abuja, the Federal High Court sitting in Abuja has jurisdiction to try the Appellant for the offences alleged to have been committed in Lagos.
- (b) In the present case, the offences punishable under Sections 37(1), 41(a) and 41(c) with which the Appellant was charged are offences against Chapter 6 of the Criminal Code and having regard to the provision of Section 49B(2) of the Criminal Code, the Appellant may be tried by any competent Court anywhere in Nigeria including the Federal High Court sitting in Abuja. For this reason alone, it would appear even at this stage that the issue of whether the Federal High Court sitting in Abuja has jurisdiction to try the Appellant for the offences alleged to have been committed in Lagos has been put to rest.

It will be deduced from the decision of the Court that the often quoted passage<sup>34</sup> that tends to show that there is only one Federal High Court for criminal trials is quoted out of context. In the circumstances of the *Abiola Case*, the territorial jurisdiction of the Federal High Court is still recognized especially in view of the express provisions of Section 45 Federal High Court Act<sup>35</sup>.

#### **IBORI v. FEDERAL REPUBLIC OF NIGERIA.**

The Appellants (James Onanefe Ibori and Udoamaka Okoronkwo) and three others who were Limited Liability Companies - Mer Engineering Limited, Bainnox Limited and Sagicon Nigeria Ltd. were arraigned before the Federal High Court, Kaduna on various charges of corrupt enrichment, money laundering e.t.c. They pleaded not guilty and were

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<sup>34</sup> Ibid at page 232D “that there is only one Federal High Court established for the country which exercises jurisdiction throughout the country including Abuja”.

<sup>35</sup> Section 49B Criminal Code Act only reinforces this concept of territorial jurisdiction. Section 70 Criminal Procedure Act is also relevant and applicable to the Federal High Court by Section 33(1), Federal High Court Act.

admitted to bail. Before the commencement of trial, the Appellants – James Onanefe Ibori and Udoamaka Okoronkwo filed an application praying inter-alia for an order transferring the matter to the Chief Judge of the Federal High Court for onward transfer and arraignment to the judicial division where the 129 Counts in the charge were allegedly committed on the ground that continuing with the trial in Kaduna is contrary to the provisions of the Federal High Court; grossly violates the accused/applicants’ rights to fair hearing particularly the right and opportunity to adequately prepare their defence to the 129 counts made against them and that Kaduna is a *forum non-convenience* chosen by EFCC for reason of *forum shopping*.

The applicants also sought for an order that the presiding Judge recuse himself from further participation in the trial on the ground of likelihood of bias.

The Applicants’ contention was that the charges related to certain amounts of money and property of Delta State alleged to be transferred to a 3<sup>rd</sup> Party for the benefit of the accused persons. It was their contention that none of the allegations have any connection with Kaduna and the alleged offences, properties, bank accounts, documents, evidence and witnesses were not in Kaduna; that the charges were filed directly without following due process as required by the Federal High Court and that the entire allegations is woven around legitimate expenditures of Delta State Government.

From the affidavits of the Applicants, the following facts were discernable:

- (a) that it was both impracticable and impossible to gather vital materials for defence and brief counsel because of the distance between Delta State and Kaduna, the forum for trial.
- (b) that it will be unbearably expensive to move over 200 witnesses and 50 witnesses for the 1<sup>st</sup> and 2<sup>nd</sup> Applicants respectively to Kaduna to testify.
- (c) apart from the risk involved in moving vital documents from Delta State to Kaduna, it is doubtful whether the administration of Delta State would willingly permit the movement of her sensitive documents across such a vast distance.
- (d) there are several divisions of the Federal High Court proximate to Delta State and the insistence of the EFCC to try them in Kaduna

raises a presumption that they are looking for a favorable forum to prosecute (*forum shopping*).

The EFCC opposed the application on the grounds *inter-alia* that:-

- (a) there is no Federal High Court in Delta State.
- (b) at all material times when the matter came up, hundreds of Applicants' supporters came to the Court from Delta State and other parts of the Country. This was financed by the Applicants. Even Senior officials of Delta State Government including Commissioners, both past and present have been coming to Court on every adjourned date.
- (c) the supporters of the Applicants have been showing violent disposition both in Court and outside the Court premises thereby endangering the lives of both the Prosecution and the proposed prosecution witnesses.
- (d) the supporters of the Applicants have been so aggressive that they pulled down the wall of the Court premises when the oral application for bail was refused on 17<sup>th</sup> December, 2007. Apart from the manifest aggressiveness, the supporters have been showing violent disposition in the Court premises by singing war songs and uttering unprintable words against prosecution counsel and the Court.

In view of these attitudes, it would be dangerous to conduct the trial of the accused persons in Delta State or any other State close to their area of influence.

After argument by Counsel, the learned trial Judge in his ruling held that the Federal High Court, Kaduna is the proper venue for the trial and that the charges against the Applicants were validly filed in the Court. By virtue of Sections 19(1) and 45 of the Federal High Court, there is only one Federal High Court. It is immaterial, where the Court is sitting. Reliance was placed on the case of *Abiola v. Federal Republic of Nigeria*.

The Applicants appealed to the Court of Appeal and the Court formulated a single issue for determination:

“Whether the Federal High Court, Kaduna, is the right forum to try the appellants for offences allegedly committed in Delta State, and concerning money/property belonging to the Delta State Government”.

The Court (Augie, J.C.A., delivering the leading judgment) held as follows:

- (a) Section 45 of the Federal High Court Act specifically provides that offences are to be tried by a court exercising jurisdiction in the area or place where the offences were committed. In this case, the offences were allegedly committed in Delta State, and the respondent filed the charges against the appellants directly in the Kaduna Division of the Federal High Court without going through the Chief Judge or any one. There is nothing in the respondent's counter affidavit setting out the criteria used or reason for choosing the Federal High Court in Kaduna.
- (b) The *Abiola* case is distinguishable because it is a charge of treason which relates to the entire country and can consequently be tried in Abuja which is the seat of government. This case, on the other hand, relates to offences of corrupt enrichment and money laundering, which were allegedly committed by the Appellants when the 1<sup>st</sup> Appellant was the Governor of Delta State, and the charges are therefore localised to Delta State.
- (iii) Filing the charges against the appellants directly at the Kaduna Division of the court for offences allegedly committed in Delta State, without recourse to the Chief Judge or any directive to that effect goes against the spirit and essence of the provisions of the Federal High Court Act, which vests the Chief Judge of the Federal High Court, the power to create and assign any judicial function to any Judge or Judges in a judicial division, and which also stipulates that offences shall be tried in the judicial divisions where they are alleged to have been committed.

It is submitted that *prima facie* there is nothing wrong in the decision of the Court of Appeal in *Ibori v. Federal Republic of Nigeria*. It is based on the accepted principle in criminal trials that the Court that would exercise jurisdiction (territorial jurisdiction) is that in the area or place where the offence was committed<sup>36</sup>.

However, it is submitted with respect, that this decision overlooks, the nature of the offences for which the Appellants were charged. A case

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<sup>36</sup> Section 45(a) Federal High Court Act.

of money laundering (one of the counts in the case) invariably involves transfer of monies from one country to another, one state to another and even from one judicial division to another<sup>37</sup>.

The effect of this is that it will be erroneous to lay down a strict rule as decided in the *Ibori case*, that because the offence of money laundering or corrupt enrichment took place in Delta State, the accused person or person must be tried in Delta State. Even if the initial element of the offence took place in Delta State, the subsequent elements<sup>38</sup> are likely to spill over to another state or even to another country. In such a case, the accused person can be tried in any part of the country.

In a charge laid under the Terrorism Prevention Act<sup>39</sup>, for example, it will be inappropriate to follow the decision in *Ibori*. It is therefore submitted that *Abiola v. Federal Republic of Nigeria* remains a good decision which can be applied to specific offences<sup>40</sup>.

## CONCLUSION

It is therefore our submission that *Ibori v. Federal Republic of Nigeria* was wrongly decided based on the nature of the charges before the Court. The Federal High Court in Kaduna State had jurisdiction. On the other hand, the case of *Abiola v. Federal Republic of Nigeria* was rightly decided. It was a case of treason.

The crux of this writer's position is that the nature of the charges before the Federal High Court will determine the Court that will have jurisdiction to entertain the case. If it is a case that has "local" effect, it must be restricted to the Federal High Court in the judicial division. In that case Section 45(a) of the Federal High Court Act will apply. On the

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<sup>37</sup> Extra-territorial, territorial and local jurisdiction. See n. 16.

<sup>38</sup> Sections 15 and 16 of the Money Laundering (Prohibition) Act, 2011 (as amended) creates offences. Section 15(2) provides that any person or body corporate in or outside Nigeria who directly or indirectly conceals or disguises the origin of; converts or transfer; removes from the jurisdiction or acquires, uses, retains or takes possession or control of any fund or property knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of a unlawful act commits an offence of money laundering under the Act.

<sup>39</sup> Terrorism (Prevention) Act, 2011 (as amended) by the Terrorism (Prevention) Amendment Act, 2013.

<sup>40</sup> The Court recognized this in *Ibori v. Federal Republic of Nigeria* at P. 313 Paragraph H. Infact Section 32(1) Terrorism (Prevention) Amendment Act, 2013 provides that the Federal High Court located in any part of Nigeria, regardless of the location where the offence is committed shall have jurisdiction to try offences under the Act or any other related enactment.

other hand, if it will have national or international effect, the Federal High Court located in any part of Nigeria should have jurisdiction to entertain the matter.