IN THE SUPREME OF NIGERIA

HOLDEN AT ABUJA

ON MONDAY THE 20TH TH DAY OF DECEMBER 2021

BEFORE THEIR LORDSHIPS

OLUKAYODE ARIWOOLA	**JUSTICE, SUPREME COURT**
JOHN INYANG OKORO	**JUSTICE, SUPREME COURT**
HELEN OGUNWUMIJU	**JUSTICE, SUPREME COURT**
ABDU ABOKI	**JUSTICE, SUPREME COURT**
TIJJANI…ABUBAKAR ……..	**JUSTICE,SUPREME COURT**

SC/CR/161/2020

BETWEEN

DR JOSEPH NWOBIKE SAN	**APPELLANT**

AND

FEDERAL REPUBLIC OF NIGERIA	**RESPONDENT**

JUDGMENT

(DELIVERED BY TIJJANI ABUBAKAR, JSC)

The Appellant in this appeal was charged before the High Court of Lagos State presided over by R.I.B. Adebiyi, J on a 3rd amended 18 Counts Information dated and filed on the 27th day of December, 2017 titled (the "Amended Information") for the offences of offering gratification to a public officer contrary to section 64(1) of the Criminal Law of Lagos State No. 11 of 2011 (the

"Criminal Law") – Counts 1, 2, 4, 5, and 6; attempting to pervert the course of justice contrary to section 97(3) of the Criminal Law of Lagos State – Counts 3, 7 to 17; and making false information to an officer of the Economic and Crimes Commission ("EFCC") contrary to section 39(2) of the Economic and Financial Crimes Commission (Establishment) Act, 2004 – Count 18. When the charge was read to the Appellant, he pleaded "not guilty" to all the counts. Trial commenced thereafter.

On the 30th day of April, 2018, the trial court delivered its judgment and found the Appellant not guilty of Counts 1, 2, 4, 5, 6 and 18 in connection with the offence of offering gratification to a public official; and making false information to an officer of the EFCC, he was consequently discharged and acquitted of those Counts. The Appellant was however found guilty and convicted of Counts 3, 7 to 17, to wit, attempting to pervert the course of justice, and consequently sentenced to thirty (30) days imprisonment on each count, terms of imprisonment to run concurrently.

The Appellant became nettled by the decision of the trial Court Dissatisfied with the decision of the trial court, and therefore filed notice of appeal on the 8th day of June, 2018 containing fourteen (14) grounds of appeal.

The Court of Appeal (Coram Ikyegh; Tukur; Tobi; JJCA) allowed Appellants appeal in part in a judgment delivered on the 19th day of December, 2019, setting aside the conviction and sentence of the Appellant in Counts 3, 12 and 14 but affirmed his conviction in Counts 7 to 11, 13, 15 to 17 of the Amended Information.

Still peeved by the decision of the Court of Appeal, (The lower Court) the Appellant further appealed to this court via notice of appeal dated the 10th day of February, 2020 but filed on the 11th day of February, 2020, containing eleven (11) grounds of appeal.

Learned Senior Counsel for the Appellant Kanu Agabi, SAN, CON, leading other Senior Counsel, filed the Appellant's brief of argument on the 1st day of June, 2020, the brief was deemed as properly filed and served on the 30th day of September, 2021, Counsel nominated eight (8) issues for determination. Learned Senior Counsel also filed the Appellant's reply brief on the 14th day of December, 2020.

The issues nominated for discourse in this appeal by the learned Senior Counsel for the Appellant are therefore as follows:

1. Whether, having regard to the provisions of sections 14 – 18 of the EFCC (Establishment) Act, 2004 and the decision in Emmanuel Ahmed vs. Federal Republic of Nigeria [2009] 13 NWLR (Pt. 1159) 536 at 552, the

EFCC had any authority to investigate and prosecute the Appellant for the offence of attempting to pervert the course of justice charged in Counts 7, 8, 10, 11, 13, 15, 16 and 17 of the Amended Information and if not whether the trial court and court below had jurisdiction to try the Appellant or to affirm decision of the trial court. (Arising from Ground 11 of the grounds of appeal).

2. Whether the court below was right in affirming the conviction and sentence of the Appellant for the offence of attempt to pervert the course of justice under section 97(3) of the Criminal Law, having regard to the fact, as found by the learned trial judge (a finding against which the prosecution did not appeal) that section 97(3) of the Criminal Law does not define the offence charged and was therefore inconsistent with section 36(12) of the Constitution of the Federal Republic of Nigeria, 1999 (the "Constitution") and therefore null and void. (Arising from Grounds 1 and 2 of the grounds of appeal).

3. Whether the court below erred in law when it affirmed the conviction and sentence of the Appellant for the offence of attempt to pervert the course of justice under section 97(3) of the Criminal Law, when the conduct of the Appellant did not constitute an offence define the law under which he was charged. (Arising from Grounds 3 and 5 of the grounds of appeal).

4. Whether their Lordships of the court below erred in law when they applied the reasonable man's test to their interpretation or construction of sections 97(3) of the Criminal Law, and 36(12) of the Constitution, when as found by the learned trial judge, section 97(3) of the Criminal Law, did not disclose any offence known to law. (Arising from Ground 4 of the grounds of appeal).

5. Whether the Lordships of the court below were right when they held that section 97(3) of the Criminal Law was not inconsistent with section 36(6)(a) of the Constitution, in view of the apparent breach of the provisions of section 36(2) of the Constitution. (Arising from Ground 6 of the grounds of appeal).

6. Whether their Lordships of the court below erred in law when they relied on the decision in Okpa v. State [2017] 15 NWLR (Pt. 1587) 1 to affirm the conviction and sentence of the Appellant having regard to the peculiar facts and circumstances of the instant case and the decision of this Honorable Court in Adegoke Motors vs. Adesanya [1989] 5 SC 113 and Oyeneyin vs. Akinkugbe [2010] 4 NWLR (Pt. 1184) 265 at 286, amongst others. (Arising from Ground 7 of the grounds of appeal).

7. Whether, in view of the findings of the courts below regarding the knowledge of the Appellant at the times the text messages were sent (i.e. that the Appellant knew that Mr. Jide was not responsible for the assignment of cases and had no powers to assign cases), the decision of the court below that the Appellant intended, by sending the text

messages to Mr. Jide, to tempt him to assign the Appellant's cases to preferred judges is perverse. (Arising from Ground 8 of the grounds of appeal).

8. Whether the issue formulated by the court below and on the basis of which its proceeded to affirm the conviction and sentence of the Appellant for the offences discharged in Counts 7, 8, 9, 10, 11, 13, 15, 16 and 17 of the Amended Information dated the 27th day of December, 2017, is prejudicial and inconsistent with the principles established by this Court to guarantee fair trial in the cases of Mbanefo vs. Molokwu [2014] 6 NWLR (Pt. 1403) 377 (SC) and Mogaji vs. Odofin (1978) 4 SC 91 as well as Ewulu vs. Nwankpu [1991] 8 NWLR (Pt. 21) 487 at 507 (CA) and Leko vs. Soda [1995] 2 NWLR (Pt. 378) 432 at 444 (CA). (Arising from Ground 10 of the grounds of appeal).

On the part of the Respondent, learned Counsel Buhari, Esq., leading other counsel filed the Respondent's brief of argument on the 2nd day of December, 2020 on behalf of the Respondent. The learned Counsel for the Respondent nominated the following three issues for discourse.

1. Whether the EFCC had authority to investigate and prosecute the Appellant for the offence of attempting to pervert the course of justice (Arising from Ground 11 of the grounds of appeal).
2. Whether the court below was right in affirming the conviction and sentence of the Appellant for the offence of attempt to pervert the course of justice under section 97(3) of the Criminal Law. (Arising from Grounds 1, 2, 3, 5, 6, 8 and 10 of the grounds of appeal).
3. Whether having regard to the evidence led, together with the exhibits tendered, it can be said that the lower court erred in upholding the Appellant's conviction on Counts 7, 8, 9, 10, 11, 13, 15, 16 and 17 of the Amended Information by the trial court. (Arising from Grounds 4, 7, 9, 11, 12, 13 and 14 of the grounds of appeal).

SUBMISSIONS OF COUNSEL FOR THE APPELLANT

ISSUE ONE

Learned Counsel for the Appellant said that the Counts 7, 8, 9, 10, 11, 13, 15, 16 and 17, which border on attempt to pervert the course of justice, relate to a non-financial crime, for which the EFCC has no power to investigate and prosecute. Reference was made to sections 6, 7, 14 – 18 and 46 of the EFCC Establishment Act. It is the contention of Learned Senior Counsel that where a statutory body acts outside the law setting it up or conferring powers on it, such act, irrespective of the objective, will amount to a nullity, relying on the cases of KNIGHT FRANK & RUTLEY (NIG.) LIMITED & ANOR. V. A.G. KANO STATE [1998] 4 SC. 251 at 261 – 262 and NYAME V. FRN [2010] 7 NWLR (Pt. 1193) 344 at 403.

Learned Senior Counsel relied on the case of EMMANUEL AHMED V. FEDERAL REPUBLIC OF NIGERIA [2009] 13 NWLR (Pt. 1159) 536 at 551 – 552, to emphasize the point that the Economic and Financial Crimes Commission can only investigate and prosecute offences relating to economic and financial crimes. Counsel said that penal legislation or provisions must be interpreted strictly, relying on the case of BOVAO V. F.R.N. (2017) LPELR – 43006 (CA). Learned Senior Counsel noted that the mere fact that the EFCC is the coordinating agency for the fight against corruption in Nigeria does not confer on it the unfettered powers to initiate prosecution in respect of all offences in Nigeria. Counsel finally contended that even though this issue was not raised before the courts below, to the extent that it borders on issue of jurisdiction, particularly on the fact that the case was not initiated by due process of law and upon fulfilment of condition precedent to the exercise by the Court of its of jurisdiction, it can be raised in this court for the first time and without leave, relying on the case of APGA V. OYE & ORS. (2018) LPELR – 45196 (SC); ALHAJI TAJUDEEN BABATUNDE HAMZAT & ANOR V. ALHAJI SALIU IREYEMI SANNI & ORS. (2015) LPELR – 24302 (SC). Learned Senior Counsel contended that it is elementary that proceedings, no matter how well conducted, without jurisdiction will be null and void, such proceedings Counsel said will not have recognition in legal parlance, he referred this Court to OLUBUNMI OLADIPO ONI V. CADBURY NIGERIA PLC 92016) LPELR-26061 (SC), R V. BOUNDARY COMMISSION FOR ENGLAND, EX-PARTE FOOT (1983) 2 WLR 458, STATE V. ONAGORUWA (1992)2 SCNJ 1, KALU V STATE (1998) 13 NWLR (Pt. 531, MOSES V. STATE (2006) ALL FWLR (Pt. 322) and EZEZE V, THE STATE (2014) 14 NWLR (Pt. 814)491 and urged the to resolve this issue in favour of the Appellant, set-aside the charge, conviction and sentence in Counts 7-11, 13 and 15-17.

ISSUES TWO, THREE AND FOUR

Learned Senior Counsel for the Appellant also contended that the learned trial Judge made a definite finding against the prosecution that section 97 (3) of the Criminal Law of Lagos State No 11 of 2011 does not define the offence of attempt to pervert the course of justice, and since the prosecution had failed to appeal against the said finding, it is deemed to have accepted it, relying on the case of ALHAJI MUSA SANI V. STATE [2015] 15 NWLR (Pt. 1483) 522 at 550. It was further contended that since there is no appeal against the conclusion of the trial Court, the Court of Appeal lacks jurisdiction to review, set aside and/or supplant same and the court below is therefore in error when it went beyond the scope of the complaint in the appeal before it to hold that the offence of 'attempting to pervert the course of justice' is "properly defined in section 97(3) of the Criminal Law and the penalty of two (2) years is imposed by the law."

Learned Senior Counsel said having concluded that the offence is not defined, the learned trial judge ought to have discharged and acquitted the Appellant on all counts relating to the offence, relying on the cases of BOVAO

V. FRM (2017) LPELR – 43006 (CA) and ALHAJI ABDULLAHI AMINU TAFIDA V. FRN [2014] 4 NWLR (Pt. 1399) 129 at 147 – 148.

Arguing further, Counsel contended that the court below was in error when it imported the 'reasonable man's' test into the interpretation of section 97(3) of the Criminal Law. Counsel said the provision did not define the offence of attempt to pervert justice and if it did, there would have been no need to resort to inferences of a reasonable man on what constitutes the offence. He also argued that definitions of offences must be express and cannot be inferred, and that the proper approach was for the court below to place the facts proved by the Respondent alongside the definition of the offence as provided under the Criminal Law, and not to improvise by relying on the inference of a reasonable man.

It is also the contention of the Learned Senior Counsel that the Appellant's conviction cannot be sustained by reliance on any law in Nigeria, as done by the lower Court, in so far as the offence is not defined under section 97 (3) of the Criminal Law in contravention of section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).Learned Counsel urged this Court to resolve this issue in favour of the Appellant against the Respondent.

ISSUE FIVE

Learned Senior Counsel said the lower Court misapplied the provisions of section 36(6) (a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and that the said provisions were never in issue between the parties in the appeal before the court. Counsel said the Appellant's argument before the lower court is that the provisions of section 97 (3) of the Criminal Law did not define the offence thereunder, hence unconstitutional and contrary to section 36 (12) of the Constitution. It is the contention of Learned Senior Counsel that the fact that an offence is provided for or "is known to Nigerian law" does not equate it to the offence being defined under the law.

Learned Counsel argued that while section 36(6)(a) of the Constitution applied by the lower Court, deals with the right of an accused person to be informed of the offence he is being charged for, section 36(12) deals with definition of an offence and prescription of penalty. He concluded that the court below took into consideration, matters which it ought not to have taken into account in reaching the perverse decision it reached, relying on the cases of CHUKWU V. INEC [2014] ALL FWLR (Pt. 741) 1531 at 1557 and DUROWAIYE V. UBN PLC [2015] 16 NWLR (Pt. 1484) 19 at 37 – 38. Counsel therefore urged that this issue be resolved in favour of the Appellant against the Respondent.

ISSUE SIX

Learned Counsel's contention under this issue is that the court erred when it relied on the decision in OKPA V. STATE (supra) to affirm the conviction and sentence of the Appellant. It is the position of learned Senior Counsel that the decision in OKPA V. STATE (supra) is inapplicable since the decision borders on the principles that misstatement of section under which an accused person is charged is not fatal to the case of the prosecution and does not vitiate any conviction and sentence, in so far as the offence for which the accused person was charged, is known to law. Learned Counsel contended that in this case, the Appellant's complaint is not that he was charged on a wrong law or that the section or law under which he was charged, was misstated; rather the issue is that section 97(3) of the Criminal Law did not define the offence of attempt to pervert the course of justice as required by section 36(12) of the Constitution.

ISSUE SEVEN

Learned Counsel noted that the fact that the Appellant sent text messages to Mr. Jide, the official of the Federal High Court, is not in dispute between the parties, what is in dispute is the intention with which the Appellant sent the text messages. Learned Counsel maintained that the sole purpose for which the Appellant sent the text messages was merely to confirm where his matters were assigned and not to influence the assignment of his cases to preferred judges, as asserted by the prosecution. Learned Counsel said the court below made a finding that the Appellant knew that Mr. Jide had no powers in line with his schedule of duty to assign cases and this knowledge is relevant for the purpose of determining the Appellant's intention. It is the argument of Learned Senior Counsel that before a person can be found guilty of a crime, the actus reus – the positive act of committing the crime and the mens rea – the criminal intent to commit the crime, must co-exist. He further argued that having found that the Appellant knew that Mr. Jide did not have the power to assign cases to Judges, it was totally illogical for the court below to hold that the Appellant's intention for sending the text messages to Mr. Jide was to influence and 'tempt' him to assign his cases to preferred judges. The case of SARAKI V. FRN [2018] 6 – 7 SC (Pt. 1) 111 at 160, was relied on for the point that decision of a court must align with its findings.

Learned Counsel also contended that no credible, direct evidence was led by the Respondent in proof of the Appellant's intention in sending the text messages since the aforesaid Mr. Jide was not called as a witness to testify on the reason for which the text messages were sent. It is also contended that the court below found as a fact that the words "assign" or "suggest" never featured in the text messages sent by the Appellant but in error inferred suo motu that the intention of the Appellant is clear from "the way the messages are couched". It is the submission of learned Senior counsel for the Appellant that the conclusion of the lower court that the way the messages are couched shows that it is not for the purpose of confirmation, this is not based on

evidence, but on sentiments and suspicion, hence not a good judgment. Learned Senior Counsel therefore urged the Court to resolve this issue in favour of the Appellant against the Respondent.

ISSUE EIGHT

The contention of Counsel here is that while determining the Appellant's culpability in relation to Counts 7 – 17 of the Amended Information, the court below couched its issue in a manner that pointedly shows that the court has already found the Appellant guilty of the offences he was charged in Counts 7 – 17 of the Amended Information even before it undertook an evaluation of the evidence led before the trial court. It is the submission of counsel that the said issue is extremely prejudicial to the Appellant and runs contrary to the principles laid down in the case of MOGAJI & ORS. V. ODOFIN & ORS (1978) 4 SC 65. Learned Counsel therefore argued that, the judgment emanating from the said issue should not be allowed to stand since same was reached without fair hearing.

Learned Counsel therefore urged this Court to resolve all the issues in this appeal in favor of the Appellant against the Respondent. He so urged this Court.

SUBMISSIONS OF COUNSEL FOR THE RESPONDENT

ISSUE ONE

On the part of the Respondent, Learned Counsel submitted that the Appellant's argument as to the meaning and limits of the 'economic and financial crimes' under section 46 of the EFCC (Establishment) Act is misconceived. Learned Counsel noted that the phrase "any form of corrupt malpractices" in the aforesaid section encapsulates acts aimed at subverting or perverting the course of justice, and even more so when done in the course of the Appellant's commercial practice. Learned counsel finally submitted on this issue that the Appellant's "corrupt malpractice" of attempting to pervert justice became an "economic and financial crime" within the contemplation of section 46 of the EFCC (Establishment) Act, when he sent text messages to the court officials to influence assignment of his cases.

ISSUE TWO

On the constitutionality of section 97(3) of the Criminal Law, Learned Counsel submitted that the provision has always been in Nigeria's penal statutes and is a verbatim reproduction of section 126(2) of the Criminal Code Act applicable in southern states of Nigeria. Noting that the Appellant's argument that the

offence in section 97(3) of the Criminal Law relating to attempt to pervert the course of justice is not defined, is misconceived, Counsel referred to section 97(1) of the Criminal Law which prescribes the penalty of seven (7) years imprisonment for any person found guilty of conspiring to obstruct or pervert the court of justice. Counsel also noted that the said section did not define what amounts to obstruction, prevention, perversion or defeating the course of justice. According to learned Counsel, the facts and circumstances of each case will determine what acts, conducts, or omission amounts to obstruction or perversion of course of justice.

For the interpretation of similar provisions under section 126 of the Criminal Code Act, reliance was placed on the following texts: Encyclopedia of the Criminal Law of the Southern States of Nigeria, Vol. 1 by Sir Chief T. A. Nwamara at pages 331; Criminal Law and Procedure of the Southern States of Nigeria, 3rd Edition by T. Akinola Aguda. On the constitutionality of section 97(3) of the Criminal law, Learned Counsel relied on the cases of R. V. COTTER (2002) 2 CR. APP. R. 29; R. V. GRIMES (1968) 3 ALL ER 179; & R. V. KENNY (2013) 3 ALL ER 85 at 95 where it was held that the ambit of the offence of attempt to pervert the course of justice was sufficiently defined for the purpose of Article 7 of the European Convention on Human Rights, similar to section 36(12) of the Constitution and that the fact constituting perversion of justice varies from case to case. Learned Counsel submitted that from the evidence on record, it cannot be said that various overt acts of the Appellant did not amount to an act constituting attempt to pervert the course of justice envisaged under section 97(3) of the Criminal Law.

ISSUE THREE

Learned Counsel submitted that the prosecution must establish beyond reasonable doubt the offences in Counts 7 – 11 and 13, 15 – 17, that the Appellant attempted to pervert the course of justice by suggesting vide text messages sent to a Court official to interfere with the normal and regular course of assignment of cases and influencing the assignment of cases he had interest in, to preferred judges. Learned counsel contended that apart from Exhibits P18 – P21, the prosecution also relied on the evidence of PW7 as well as Exhibits D4 and D5, to prove that the Appellant was influencing the assignment of his cases. Counsel therefore urged this court not to interfere with the findings of the trial court, which was properly made and supported by evidence, relying on the case of IGAGO V. THE STATE [1999] 6 NWLR (Pt. 608) 568 at 580 and a host of other cases.

APPELLANT'S REPLY

Learned Senior Counsel for the Appellant submitted that the Respondent failed to respond to some vital and fundamental issues argued by the

Appellant including error of the lower Court, in adopting the reasonable man's test; error in applying the provisions of section 36(6)(a) of the Constitution instead of section 36(12) of the Constitution, error in relying on the decision in OKPA V. STATE (supra); non-definition of offence of attempt to pervert the course of justice, amongst others. It is the submission of Learned Senior Counsel that the Respondent is deemed to have conceded to these arguments.

Counsel submitted that contrary to the stand of the Respondent, under section 46 of the EFCC (Establishment) Act, the test of whether an offence is an economic and financial crime is whether the objective of the act which is alleged to be a crime is geared towards earning wealth illegally but that from the charge brought against the Appellant, it is clear that attempt to pervert the course of justice was not contemplated in that section. He urged the court to adopt the ejusdem generis rule of interpretation.

Learned Senior Counsel further maintained that since the Respondent did not appeal against the decision of the trial court regarding the non-definition of the offence under section 97(3) of the Criminal Law, it is deemed to have accepted same and cannot therefore assert the contrary. He further submitted that since the Appellant was not charged under the Criminal Code Act, any reliance on same as well as other texts and foreign decisions are unhelpful to the case of the Respondent. Learned Senior Counsel finally submitted that the third issue formulated by the Respondent does not relate to any of the grounds of appeal and the arguments canvassed thereon do not in any way respond to the arguments canvassed by the Appellant under issues 4 and 7 argued in his brief of argument; thus, the Respondent is deemed to have conceded to the aforesaid arguments. Learned Senior Counsel for the Appellant urged this Court to allow the appeal.

RESOLUTION

ISSUE ONE

The issues nominated for discourse in this appeal are all capable of resolving the issues in controversy between the contending parties. I must state that the issues crafted for determination by the Appellant seemingly capture the grievance of the Appellant and appear to be all encompassing for the purpose of dealing with this appeal, I will therefore adopt them as the issues to resolve in this appeal and deal with them as basis for resolving the appeal.

The first issue crafted by the Appellant in this appeal questions the power of the EFCC to investigate and prosecute the Appellant for the offence of attempt to pervert the course of justice as contained in Counts 7 – 11, 13, 15 – 17 of the Amended Information. Indeed, the effect of the combined provisions of sections 6(b); 7(1)(a) & (2)(f) and 13(2) of the EFCC (Establishment) Act,

leaves no doubt that the EFCC has the power to investigate, enforce and prosecute offenders for any offence, whether under the Act or any other statute, in so far as the offence relates to commission of economic and financial crimes. See EMMANUEL AHMED V. FRN (supra); NYAME V. FRN (supra). Now, while it is the submission of the Learned Counsel for the Appellant that the offences in Counts 7 – 11, 13, 15 – 17 of the Amended Information relating to attempt to pervert the course of justice are not economic and financial crimes, it is the submission of the learned Counsel for the Respondent that to the extent that the counts border on acts aimed at perverting the course of justice, is a form of 'corrupt malpractices', it is an economic and financial crime which the EFCC can prosecute. It is clear to me that the argument canvassed by the Learned Counsel for the Respondent wholly and exclusively revolves around section 46 of the EFCC (Establishment) Act, which defines economic and financial crimes thus:

"Economic and financial crimes means the non-violent criminal and illicit activity committed with the objective of earning wealth either individually or in a group or organized manner thereby violating existing legislation governing economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, foreign exchange malpractice including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc."

In this fine definition, the words that call for interpretation in the context of determining if the offence for which the Appellant was convicted is an economic and financial crime or not, is the words "any form of corrupt malpractices", which the Respondent argues, accommodate an offence bordering on attempt to pervert the course of justice under section 97(3) of the Criminal Law. Learned Senior Counsel for the Appellant on the other hand urged this Court to adopt the ejusdem generis rule of interpretation in construing the scope of the words – "any form of corrupt malpractices" within the contemplation of section 46 of the EFCC (Establishment) Act. I must not fail to mention that the application of the ejusdem generis rule is not a matter of course and this court has admonished that this rule must not be pushed too far but be applied with caution in the absence of other indications disclosing the explicit intention of the legislature. See: SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA V. FEDERAL BOARD OF INLAND REVENUE [1996] 8 NWLR (Pt. 466) 256.

According to the canons of interpretation of statutes, it is a cardinal principle that, where the ordinary and plain meaning of words used are clear and unambiguous, effect must be given to those words in their natural and ordinary meaning or literal sense without resorting to any intrinsic aid. See: OKOTIE-EBOH V. MANAGER (2004) LPELR – 2502 (SC).

In YUSUFU & ANOR V. OBASANJO & ORS (2003) LPELR -3540 (SC), this Court held that "corrupt practices" denote or can be said to connote and embrace certain perfidious and debauched activities which are felonious in character being redolent in their depravity and want of ethics. By the same token, in OLAREWAJU V. AFRIBANK (2001) LPELR – 2573 (SC), this Court adopted the definition of "malpractice" at pages 762 and 667 of the Chambers' 20th Century Dictionary 1983 Edition, where it was defined as "an evil or improper practice; professional misconduct; treatment falling short of reasonable skill or care; illegal attempt of a person in position of trust to benefit himself at others loss."

It suffices therefore to say that the words "corrupt malpractices" entail conduct that might or affect the honest and impartial exercise of a duty; encompassing a vicious and fraudulent intention to evade the prohibitions of the law; something against or forbidden by law; moral turpitude or exactly opposite of honesty involving intentional disregard of law from purely improper motives. To this extent therefore, I have given a careful consideration to the natural, ordinary, and plain interpretation of the expression "corrupt malpractices", which is not defined under the EFCC (Establishment) Act, and with all due respect, find it difficult to accept that the literal interpretation is effective in discovering the intention of the legislature with respect to ascertaining the scope of the expression "any form of corrupt malpractices" used in section 46 of the EFCC (Establishment) Act. If the literal meaning is adopted, it means that the powers of the EFCC will be at large and open ended, because by that interpretation, every criminal and illicit activity committed will fall within the scope of "corrupt malpractices" and consequently be regarded as an economic and financial crime, which the EFCC will be empowered to investigate, so doing will make a pigmy of other legislations and render them barren and sterile, this is certainly not the intention of the legislature necessitating the establishment of the EFCC and enacting the Act. I must at this stage have recourse to the United Nations Convention against corruption which gave rise to and compelled the enactment of the Economic and Financial Crimes (Establishment Act) 2004. The United Nations General Assembly Resolution 58/4 of 31st October 2003, brought the Convention into force. The Statement made by the United Nations Secretary General Kofi Anan (of blessed memory) is important, he said

"……The Convention introduces a comprehensive set of standards, measures and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight corruption. It calls for preventive measures and the criminalization of the most prevalent forms of corruption in both public and private sectors. And it makes a major breakthrough by requiring Member States to return assets obtained through corruption to the country from which they were stolen.

These provisions—the first of their kind—introduce a new fundamental principle, as well as a framework for stronger cooperation between States to prevent and detect corruption and to return the proceeds. Corrupt officials will in future find fewer ways to hide their illicit gains. This is a particularly important issue for many developing countries where corrupt high officials have plundered the national wealth and where new Governments badly need resources to reconstruct and rehabilitate their societies….. "

The Convention required each state party to the convention to enact a law criminalizing certain acts, I must add that from the statement of purpose of the convention, the criminalization sought from State parties to the convention is designed to curb corruption as expressly captured in the preamble to the convention. Part of the Preamble to the Convention is also reproduced as follows:

"Preamble

The States Parties to this Convention,

Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,

Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international co- operation to prevent and control it essential,

Convinced also that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively,

Convinced further that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively,

Convinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law,

Determined to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international co-operation in asset recovery,

Acknowledging the fundamental principles of due process of law in criminal proceedings and in civil or administrative proceedings to adjudicate property rights,

Bearing in mind that the prevention and eradication of corruption is a responsibility of all States and that they must cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, if their efforts in this area are to be effective,

Bearing also in mind the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of rejection of corruption,

The United Nations Convention Against Corruption, particularly article 15 provides for domestication and criminalization of offences under the convention by State parties, in line with this obligation therefore, Nigeria enacted the EFCC Act.

Article 15 of the Convention provides as follows:

Article 15. Bribery of national public officials

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

I think it is at this stage improper to import and encompass all criminal offences under the Economic and Financial Crimes Commission (Establishment Act) 2004, the criminal offences contemplated by the Convention must be offences fitting the statement of purpose of the Convention, the criminal offences must not be at large as to include every conceivable criminal offence. In my humble understanding therefore it is necessary to consider other canons of interpretation, particularly the ejusdem generis rule. I am conscious of the fact that recourse to the rule is applied with caution in the interpretation of statutes, the rule is applied where there are concrete, cogent, convincing and compelling reasons, I am convinced that where there is absence of clear definitions of an offence in a statute, it will be justified to apply the

ejusdem generis rule. The ejusdem generis rule is applied where in an Act, there are strong reasons (a) from the history and circumstances connected with its passing, (b) from the structure of the Act itself, to indicate the real meaning of the Legislature, that the rule is one which not only can, but ought to be applied. See: ONASILE V. SAMI & ANOR (1962) LPELR – 25040 (SC); where this Court held as follows:

"It is true that the ejusdem generis rule should not be pressed too far: it cannot be applied unless there is a category or class into which things of "the same kind as those specified" can be fitted. On the other hand, the disjunctive construction should, also, not be pressed too far, or it will produce something totally alien to the context. The aim must be to arrive at the intention of the legislature, and the method indicated by Sankey, J., in A.G. v. Brown, (1920) 1 K.B., 773, at p. 798, may well be followed; the learned judge said:-Although therefore the doctrine of ejusdem generis is to be applied with caution, where in an Act of Parliament there are strong reasons (a) from the history and circumstances connected with its passing, (b) from the structure of the Act itself, to indicate the real meaning of the Legislature, in my view the doctrine of ejusdem generis is one which not only can, but ought to, be applied."

See: also A.G. V. BROWN (1920) 1 K.B. 773

The ejusdem generis rule is an interpretative one which the Court would apply, in an appropriate case, to confine the scope of general words which follow special words as used in a statute or document or Constitution within the genus of those general words. In the interpretation of statute therefore, general terms following particular ones apply only to such persons or things as are ejusdem generis with those understood from the language of the statute to be confined to the particular terms. The general words are therefore to be read as understanding only those things of the kind as that designated by the preceding particular words or expressions, unless there is something to show that a wider sense was intended by the legislature.

In section 46 of the EFCC (Establishment) Act under consideration, the general words that call for interpretation are "any form of corrupt malpractices" following the particular words "… embezzlement, bribery, looting". An application of the ejusdem generis rule to the interpretation of the words "any form of corrupt malpractices" does not lend credence to the position taken by the Respondent. Indeed, the words "any form of corrupt malpractices" must be construed within the context of the specific class which it follows, and must be confined to the particular class. In my humble view therefore, the legislature thought it proper and for right and good reasons, to place the general expression "any other form of corrupt practices" to come after the offences "embezzlement", "bribery" and "looting" and same must be confined to such specific words and not to expand, extend or elongate it to accommodate any corrupt malpractices at large. A fortiori, it must be

pointed out, as the Learned Senior Counsel for the Appellant rightly argued and as conceded by the Respondent, that the test for ascertaining if a criminal conduct can be regarded as an economic and financial crime is such that must be a non-violent criminal and illicit activity committed with the objective of earning wealth. I do not think it will be safe to regard the offence of attempt to pervert the course of justice which the Appellant was convicted for, where it has not been shown that it was committed with the objective of earning wealth, and be regarded as an economic and financial crime, thereby vesting the power to investigate and prosecute in the Economic and Financial Crimes Commission .

The result, in my view therefore, is that the Appellant has discharged the burden of showing that the definition of "economic and financial crime" in section 46 of the EFCC (Establishment) Act admits of intention to apply the ejusdem generis rule, as only by so doing can we give effect to the meaning of "any form of corrupt malpractices" in the context of economic and financial crime. Accordingly, I am unable to accept, the submissions of learned Counsel for the Respondent that the offence of attempting to pervert the course of justice under section 97(3) of the Criminal Law of Lagos State No.11 of 2011 is an economic and financial crime, which the EFCC is empowered to investigate and prosecute. Consequently, Counts 7 – 11, 13, 15 – 17 of the Amended Information have no foundation, and since the aforesaid counts are the only ones upon which the Appellant was convicted and sentenced, it follows therefore that the case of the prosecution was not erected on any pedestal whatsoever, it did not come before the Court initiated by due process of law; the trial court therefore lacked jurisdiction and ought to have declined jurisdiction. The law is well settled that, where a Court of law deals with a matter without jurisdiction, so doing amounts to embarking on a worthless exercise because no matter how brilliantly well the case is conducted it will be a complete nullity. It is the law that an order of Court made without jurisdiction is a nullity. See: ODOFIN VS AGU (1992) NWLR (Pt.229) 350: NIDOCCO LTD. VS GBAJABIAMILA (2013) 14 NWLR (Pt.1374) 350; EKPENYONG VS NYONG (1972) 2 SC (REPRINT) 65 @ 73 – 74 Lines 40 – 45. In the circumstance therefore, this issue is resolved in favor of the Appellant against the Respondent.

ISSUES TWO, THREE AND FOUR

The core complaint under the second, third and fourth issues is in connection with the propriety or otherwise of the decision of the lower court to consider and determine the question whether the offence of attempt to pervert the course of justice constituted in section 97(3) of the Criminal Law is defined in the absence of an appeal against the decision of the trial court on the point. It is noteworthy that right from the proceedings at the trial court, the Appellant seriously contended that the offence penalized in section 97(3) of the Criminal is devoid of definition which is in contravention of section 36(12) of the

Constitution. From the records, the learned trial judge reached a definite conclusion on this issue, when he held at page 42 of the judgment, captured at page 2039, Volume 4 of the records of appeal, after considering the application of Rules 30, 31(5) and 34 of the Rules of Professional Conduct for legal Practitioners to the charge against the Appellant, and held as follows:

"Contrary to the submission of learned SAN to the Defendant, these provisions are relevant and applicable to the acts of the Defendant. S. 97(3) of the Criminal Laws of Lagos State pursuant to which the Defendant stands charged does not define or describe the manner of perversion anticipated under this provision…."

Notwithstanding the above conclusion reached by the Court, the learned trial judge proceeded to consider the state of the law and the evidence led by the prosecution before eventually reaching the conclusion that the Appellant was guilty of the offences in Counts 7 – 17, which are relevant to this appeal.

Aggrieved by the above decision therefore, the Appellant filed an appeal against the decision to the lower Court, the first issue nominated by the Appellant in his brief of argument was couched in a manner evincing his grievance against the decision of the trial court. The issue reads as follows:

"whether the learned trial judge was right when, in spite of her own finding that section 97(3) of the Criminal Law of Lagos State, No. 11 of 2011, does not define or describe the manner of perversion sought to be criminalized, she nevertheless proceeded, without jurisdiction, to convict the Appellant of the offences in Counts 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Amended Information which were clearly inconsistent with section 36(12) of the Constitution and therefore null and void. (Arising from Ground 1 of the grounds of appeal).

It is interesting to note that throughout the entire judgment of the lower Court, the above fundamental question was not considered and determined. Rather, as the records clearly show, the lower Court re-formulated the issues, while stating that the issues formulated by the Appellant will serve as guidance. The lower Court at page 2262 of the records while re-affirming its readiness to be guided by the issues crafted by the Appellants, said as follows:

"..The issues for determination as formulated by the Appellant appear more exhaustive, so I will be so guided by the issues formulated by the Appellant. I will however not take word for word the issues as couched by the Appellant. In however formulating my own issues which the law allows me to do. I am seriously guided by the issues as formulated by the Appellant…."

The relevant issue seemingly touching on the issue at hand, but which inexorably does not capture the Appellant's grievance is as found at page 22 of the judgment of the lower court, found at page 2261, Volume 4 of the records of appeal, the issue reads as follows;

"Whether section 97(3) of the Criminal Law of Lagos State upon which the Appellant was convicted defined the offence he was convicted of and whether the said provision is not contrary to section 36(12) of the 1999 Constitution of the Federal Republic of Nigeria?"

A juxtaposition of the above issue with the issue formulated by the Appellant will clearly leave no one in doubt that they relate to separate complaints and a resolution of one does not necessarily resolve the other, the grouse of the Appellant touches on the conclusion reached by the trial Court that there was no clear definition of the alleged offence of perverting the cause of justice within the four walls of section 97(3) of the criminal law of Lagos State. I have no doubt at all, that a court has the inherent power, in the interest of justice, to reject, modify or re-frame issues distilled for the determination of a case before it. However, the exercise of this power is not open ended or limitless, the issue so formulated must be rooted in the grounds of appeal, the Court must ensure that any issue so modified, or re-formulated comes within the ambit of the complaint contained in the grounds of appeal. See: FRN V. BORISADE (2015) LPELR – 24301 (SC), where my lord and brother NWEZE JSC held as follows and I quote:

"..Even then, the power of this Court to reformulate issues is not in doubt in so far as the issues so re-formulated are within the grounds of appeal. The court, usually, embarks on this option for the purpose of clarity and precision when it observes that the issues, which the parties distilled, are clumsy; imprecise or are proliferated, Reptico S.A. Geneva v. Afribank Nig. Plc. (2013) LPELR -20662 (SC) 35, A-D; Unity Bank Plc. v. Bouari [2008] 2 SCM 193; [2008] All FWLR (pt. 416) 1825; [2008] 7 NWLR (pt. 1086) 372; Emeka Nwana v. FCDA and Ors. [2004] 7 SCM 25; Agbakoba v. INEC [2008] 12 SCM (pt. 2) 159; [2008] All FWLR (pt. 410) 799; [2008] 18 NWLR (pt. 1119) 489. It can, also, do this for a more judicious and proper determination of the appeal or to narrow the issue or issues in controversy in the interest of brevity, Musa Sha Jnr. and Anor v. Da Rap kwan and Ors. [2000] 8 NWLR (Pt. 670) 585; [2000] 5 SCNJ 101; Okoro v. The State [1988] 12 SC 191; Latunde and Anor v. Lajunfin [1989] 5 SC 59; Unity Bank Plc v. Edward Bonari [2008] 7 NWLR (pt. 1086) 372, 401; [2008] 2 SCM 193.."

For completeness, the thirteen (13) grounds of appeal filed by the Appellant, without their respective particulars as set out at pages 2104 to 2118 of the records of appeal are reproduced as follows:

- The learned trial judge erred in law and came to a wrong conclusion when, in spite of the learned trial judge's own finding that "S. 97(3) of the Criminal Law of Lagos State, No. 2011, pursuant to which the Defendant stands charged does not define or describe the manner of perversion anticipated under this provision", proceeded nevertheless to convict the Appellant under the said section relying on the Oxford Advanced Learners Dictionary and Rules 30, 31(5) and 34 of the Rules of Professional Conduct for Legal Practitioners 2007

- The learned trial judge erred in law and thereby came to a wrong decision when she held that the provisions of the Rules of Professional Conduct for Legal Practitioners, 2007 are relevant and applicable in proof of the offence of attempt to pervert the course of justice charged in Count 3 of the 3rd Amended Information dated 27th December, 2017, when the said Rules of Professional Conduct are not penal provisions capable of imposing criminal liability or resulting in the conviction of the Appellant.

- The learned trial judge erred in law and thereby came to a wrong decision which occasioned miscarriage of justice when she held that:

"The Defendant by giving money to Hon. Justice Yinusa, interacting with the Judge without the opposing counsel present, as admitted by him under cross-examination and maintaining a relationship which gave the appearance of gaining special favor acted outside the Rules of Professional Conduct above the stated and sought to change the Rules of Professional Conduct and ultimately justice in a bad way."

- The learned trial judge erred in law and thereby came to a wrong decision which occasioned a miscarriage of justice when she held that the Appellant was guilty of attempting to pervert the course of justice by offering the sum of N750,000.00 to Honorable Justice M.N. Yinusa.

- The learned trial judge erred in law and thereby came to wrong conclusion when she held at page 43 of the judgment, as follows:

"The Court finds the prosecution proved beyond reasonable doubt that the Defendant by paying N750,000 into the account of one Justice Yinusa on the 19th of March 2015 attempted to pervert the course of justice."

- The learned trial judge erred in law and thereby came to a perverse decision which occasioned a miscarriage of justice when she held that:

"Learned SAN for the Defendant submitted in his address that Mr. Jide is not Administrative Judge at Federal High Court and that the assignment of cases is not his responsibility. The Defendant gave evidence as such. There was however evidence in Exhibit P22 that the Defendant gave money to Mr. Jide from time to time. This was clearly to ensure that he was responsive to the requests for assignment of cases."

- The learned trial judge erred in law and thereby came to a perverse decision when she held that:

"The Defendant in this case went beyond a mere intention to pervert the course of justice and acted. His acts were sending the text messages to Mr. Jide and every so often sending "gifts" to Mr. Jide to ensure that he carried out his instructions."

- The learned trial judge erred in law and thereby came to a wrong conclusion when she held that:

"In spite of Mr. Jide not being the administrative judge or the most senior judge who assigns cases he was influential and able in 6 out of 11 cases in counts 7 – 17 to ensure the matters were assigned to the judges suggested by the Defendant."

- The learned trial judge erred in law when she found the Appellant guilty of the offences charged in counts 7 – 17 of the 3rd Amended Information dated 27th December, 2017, notwithstanding the failure of the prosecution to call Mr. Jide, a vital witness and to produce the statement which he made during the course of investigation.
- The learned trial judge erred in law and thereby came to a wrong decision when she failed to resolve various doubts created in the case of the prosecution in favour of the Appellant.
- The learned trial judge erred in law when she relied on inadmissible evidence to which the Appellant had objected such as Exhibits P2, P18, P19, P20, P21 and P22 and relied upon the said pieces of inadmissible evidence to convict the Appellant.
- The learned trial judge erred in law when she failed to rule on the submission by the Appellant that section 38 of the EFCC (Establishment) Act which purports to confer powers on the EFCC to procure and use evidence from whatever person or source without regard to law or procedure is unconstitutional, null and void and a breach of the Appellant's right to fair hearing as guaranteed by section 36 of the Constitution.
- The decision of the learned trial judge is altogether unreasonable, unwarranted and cannot be supported having regard to the evidence adduced before her."

Looking at the above grounds of appeal, I am unable to find any ground of appeal upon which the issue so re-formulated by the lower Court can be sustained. As a matter of fact, whereas ground one (1) complains of the decision of the trial court to proceed to determine the guilt of the Appellant after concluding that the offence is not defined under section 97(3) of the Criminal Law; ground two (2) questions the reliance by the trial court on the provisions of a non-penal code – the Rules of Professional Conduct for Legal Practitioners – in determining the guilt of the Appellant; grounds three (3) to

eleven (11) essentially question the decision by the trial court that the prosecution was able to establish the guilt of the Appellant beyond reasonable doubt. Further, in ground twelve (12), the Appellant questions the reliance on inadmissible evidence by the trial Court and finally, ground thirteen (13), the Appellant's complaint is that the learned trial judge erred when he failed to rule on the Appellant's submission that section 38 of the EFCC (Establishment) Act is unconstitutional. See pages 2104 to 2118, Volume 4 of the records of appeal. By necessary inference therefore, no ground of appeal questions the decision made by the trial Court to the effect that section 97(3) of the Criminal Law of Lagos State does not define the manner of perversion of justice upon which the Appellant could be tried and convicted. The settled position of the law is that when an issue is not placed before the court for discourse, the Court has no business whatsoever delving into it and dealing with it. A court of law has no business whatsoever delving into issues that are not properly placed before it for resolution, a Court of law has no business being over- generous and open-handed, dishing out unsolicited reliefs, a Court of law is neither father Christmas granting unsolicited reliefs, nor Knight errant looking for skirmishes all about the place, a Court of law as an impartial arbiter must confine its self to the reliefs sought and the issues before it submitted for resolution. see: EJOWHOMU V. EDOK-ETER LTD (1986) 5 NWLR (Pt. 39) 1 at 21, OSSAI V. WAKWAH (2006) 2 SCNJ 19 at 36 and CHIEF FRANK EBBA V. WASHI OGODO & ANOR (1984) 4 SCNLR 372. It follows therefore, that when re-formulating the issues crafted by the contending parties, as the issues in controversy, the Court of Appeal must ensure that such re-formulated issue(s) have foundation and are rooted in the grounds of appeal contained in the notice of appeal before it. The power of the Court of Appeal is limited to re-formulating issues that are capable of addressing the grievance of an appellant, who has taken all necessary steps to ventilate his grievance against the decision of a trial court, the Court of appeal has no business engaging in crafting fancy and flowery issues for determination in the abstract, employing words that are catchy and tantalizing.

From all I said therefore, it is apparent that the decision of the trial Court runs contrary to the position maintained by the Respondent who strenuously and doggedly argued that the provisions of section 97(3) of the Criminal Law are not only known to law but also expressly define the offence and therefore do not contravene the provisions of Section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Ordinarily, a cross-appeal against this part of the decision by the Respondent would have served as stimulus for the Court of Appeal to consider the correctness or otherwise of the decision of the trial court on this point. The records support the fact that the Respondent's saw the perceived threat to the prospects of its case on appeal at the lower Court, that it was doomed to crumble unless an attempt was made to file a cross-appeal against the decision of the trial court which met a brick-wall, due to the failure by the Respondent to file the aforesaid cross-appeal within the time prescribed by law, as found in the Ruling of the Court of Appeal, Lagos Judicial Division (The lower Court) (Coram, Garba;

Obaseki-Adejumo; Kolawole, JJCA) delivered on February 27, 2019 at page 2221, Volume 4 of the records of appeal, wherein the Respondent's application for extension of time to cross-appeal was refused and dismissed. The lower Court found the reasons for the delay in bringing the application untenable. I must add, that having read the Ruling of the lower Court dismissing the application for extension of time to cross appeal, particularly at page 2235 of the records of appeal Vol 4, the Respondents flung the usual unparticularized, non-specific and nebulous inadvertence of Counsel as reasons for the delay in bringing the application, naturally the lower Court found them untenable, frivolous, and vexatious, the application was therefore held to be without merit and dismissed.

It is therefore clear that there was no cross-appeal against the decision of the trial Court that section 97(3) of the Criminal Law of Lagos State does not define the offence for which the Appellant was charged, tried and convicted, and upon which the lower court could concrete its consideration and determination of the aforesaid issue crafted by the Court. The law is settled that a decision of a Court of competent jurisdiction not appealed against remains valid, subsisting and binding on the parties and is presumed acceptable by them. It is also the law that where there is an appeal on some points only in a decision, the appeal stands or falls on those points appealed against only while the other points or decisions not appealed against remain valid, subsisting and unchallenged. See: MICHAEL V. THE STATE (2008) LPELR – 1874 (SC); where my lord MUSDAPHER (JSC, CJN) (of blessed memory) said as follows:

"It is the law that where there is an appeal on some points only on a decision, the appeal stands or falls on those points appealed against only while the other points or decision not appealed remain unchallenged."

See also:

CAPTAIN SHULGIN OLEKSANDR & ORS v. LONESTAR DRILLING COMPANY LIMITED & ANOR (2015) LPELR – 24614 (SC). It therefore follows that, the issue whether section 97(3) of the Criminal Law of Lagos State defines the offence the Appellant was charged with, has been settled by the trial court and remains unchallenged.

Therefore, in line with the issue formulated by the Appellant, the Court of Appeal ought to have restricted itself to the determination of the consequence of the unchallenged decision of the trial court on the charge against the Appellant and nothing more. Having failed to determine the relevant question therefore, same remains live and falls on this court to consider, and I must say that the answer to this issue is not far-fetched. I will just

quickly refer to Section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides as follows:

"Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law."

Against the backdrop of the unchallenged reasoning and conclusion of the trial Court, that section 97(3) of the Criminal Law does not define the offence of perversion of justice for which the Appellant was charged, tried and convicted, unless it is shown that the offence is defined under any other written law, it follows therefore that the aforesaid provision offends the provisions of and is inconsistent with section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The Learned Counsel for the Respondent argued forcefully that the provisions of section 97(3) of the Criminal Law of Lagos State, which is a direct reproduction of section 126(3) of the Criminal Code Act, is very clear, well defined, and not in conflict with section 36(12) of the Constitution. Unfortunately, the Respondent who saw the prospects of its appeal drifting and deeming for failure to file cross appeal for the Respondent, could not paddle its application for extension of time to appeal to success, there was no cross-appeal against the decision of the trial court that the said provision did not define the offence for which the Appellant was charged, tried and convicted. Having found that the offence is not defined, the only logical inference the trial court was bound to make is that the aforesaid section is inconsistent with the provisions of Section 36(12) of the Constitution and refrain from fruitless evaluation and determination of the guilt of the Appellant on a charge founded on an offence which is not defined by law.

Before drawing the curtain here, I need to footnote a word of caution that the above conclusion, particularly on the constitutionality of section 97(3) of the Criminal Law, was reached based on the peculiar circumstance of the instant appeal, there is no appeal against the decision of the trial court on the constitutionality of section 97(3) of the trial court, this court cannot therefore consider and determine the question on the merit. As it stands therefore, there is no live issue on the constitutionality of the aforesaid section before this court and no pronouncement can be properly made on same. A valid cross appeal could have provided an opportunity for pronouncement on the merit.

Be that as it may, having resolved that the EFCC does not have the power to prosecute the offences constituted in Counts 7 – 17 of the Amended Charge

and that, in the light of the decision of the trial court that section 97(3) of the Criminal Law of Lagos State. No. 11, 2011 does not define the manner of perversion of justice for which the Appellant may be held culpable, it follows that the Appellant cannot be tried and convicted on the aforesaid Counts 7 – 11, 13, 15 – 17 of the Amended Information and by necessary implication therefore, the conviction of the Appellant cannot be sustained. I find this point a convenient place to conclude the determination of this appeal.

On the whole therefore, I find merit in this appeal and it is hereby allowed. The decision of the Court of Appeal delivered on the 19th day of December, 2019 in APPEAL No: CA/L/856C/2018 is hereby set aside. Appellant's conviction and sentence on Counts 7 – 11, 13, 15 – 17 of the Amended Information are hereby set aside, the Appellant is consequently discharged.

TIJJANI ABUBAKAR,

JUSTICE, SUPREME COURT