

IN THE COURT OF APPEAL  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT ABUJA

APPEAL NO: CA/ABJ/.....2019  
CHARGE NO: CCT/ABJ/01/2019

BETWEEN

JUSTICE ONNOGHEN NKANU WALTER SAMUEL ..... APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE that the Appellant herein, Justice Onnoghen Nkanu Walter Samuel being dissatisfied with the rulings/judgment of the Code of Conduct Tribunal, Coram Danladi Umar (Chairman), William Atedze (Member 1) and Julie A Anakor (Member II) delivered on the 18<sup>th</sup> of April, 2019, wherein it ruled on the Application challenging its jurisdiction and to recuse itself from the proceedings as well the judgment on the substantive matter against the appellant, do hereby appeal upon the grounds set out in paragraph 3 hereof and will at the hearing of the appeal, seek the Reliefs and Orders set out in paragraph 4.

2. PART OF DECISION/RULING COMPLAINED OF:

The whole decision on the two applications and the judgment of the Court.

3. GROUNDS OF APPEAL

GROUND ONE

The lower tribunal erred in law when it dismissed the Appellant's application challenging its jurisdiction and thus occasioned a grave miscarriage of justice.

*Notice of Appeal*  
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**REGISTRAR**  
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NAME.....*Larasa*  
SIGN.....*[Signature]*  
DATE.....*18/4/19*

*RCR No. 26 20317*

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## PARTICULARS OF ERROR

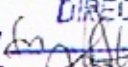
- (1) The Appellant was at the time the charges were filed on the 11<sup>th</sup> of January, 2019 before the lower tribunal a judicial officer and was not subject to the jurisdiction of the lower tribunal.
- (2) On the authority of *Nganjiwa v. FRN (2018) 4 NWLR (Pt. 1609) 301 at 340-342* only the National Judicial Council has the power to discipline the Appellant for misconduct and not the lower tribunal.
- (3) The lower tribunal had in the case of *FRN V. Sylvester Nwali Nguta* in charge No: CCT/ABJ/01/2017 delivered on 9<sup>th</sup> January, 2018 affirmed the position of the Court in *FRN Nganjiwa v. FRN* and dismissed the chargers and acquitted and discharged Justice Nguta being a Judicial Officer subject only to the discipline of the National Judicial Council.
- (4) The lower tribunal has no jurisdiction over serving judicial officers such as the appellant save the National Judicial Council.
- (5) The Motion on Notice dated 14<sup>th</sup> January, 2019 challenging jurisdiction ought to be granted in all material particular as it purports to save the lower tribunal of needless futile exercise.

## GROUND TWO

The lower tribunal erred in law when it dismissed the Appellant's Application seeking the chairman to recuse himself from further proceedings on the ground of real likelihood of bias and thus occasioned a miscarriage of justice.

## PARTICULAR OF ERROR

- (1) Once an allegation of real likelihood of the bias is raised the Court or tribunal will have nothing more to say except to watch its hands from further proceedings in the matter.
- (2) The Appellant has alleged that the chairman of the lower tribunal is biased towards him as a result of open remarks in the tribunal as well as the manner in which the proceedings was being conducted.

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- (3) The appellant has alleged that from the conduct of the chairman of the tribunal and indeed member ii, he was not going to be granted fair hearing in the proceedings.
- (4) The lower tribunal exhibited open bias in words and conduct against the Appellant in the proceedings.

### GROUND THREE


The lower tribunal erred in law when it refused to recuse itself from the proceedings in view of the open declaration by the chairman of the tribunal that he is only accountable to the president who appointed him and no body because he is not a judicial officer and thus occasioned a grave miscarriage of justice.

### PARTICULARS OF ERROR

- (1) The trial of the Appellant offends the natural principle of fair hearing that a man cannot be a judge in his own case because the executive is the accuser, prosecutor and the adjudicator.
- (2) The Appellant could not have gotten fair trial in view of the fact that the executive arm of government to which the lower tribunal belongs and its members appointed by the president as the head of the executive and who is the Prosecutor and accuser are all constituted together as the complainant, accuser or prosecutor and the judge.
- (3) The lower tribunal ought to have recuse itself from the case of the Appellant without much ado.
- (4) The refusal to recuse himself has vindicated the Appellant's position that the Chairman is a person of interest in the proceedings.

### GROUND FOUR

The lower tribunal erred in law when it held that the Appellant confessed to the charges framed by admission and use that as a basis to hold that the Appellant did not declare his Assets from the year 2005 when he became a justice of the Supreme Court and thus occasioned a gross miscarriage of justice.

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## PARTICULARS OF ERROR

- (1) The Appellant did not admit the fact of non-declaration of Assets from year 2005 as the Justice of the Supreme Court.
- (2) The Appellant only stated that he did not declare in 2009 as required because he forgot and did the declaration immediately it realized same.
- (3) By the evidence of DW1 and exhibit DW2 tendered it has affirmed the statement of the appellant that he forgot to make a declaration in 2009 but did in 2010 when he remembered showing there was a declaration after all contrary to count one of the charge.

## GROUND FIVE

The lower tribunal erred in law when it held that the evidence of DW1, did not create reasonable doubt on the evidence of the prosecution witnesses that the Appellant did not make declaration of assets since 2005 and thus occasioned a miscarriage of justice.

## PARTICULARS OF ERROR

- (1) The case of the prosecution in count one is that the Appellant did not declare his assets since 2005.
- (2) The evidence of DW1 has debunked that assertion of non declaration from 2005 on the part of the Appellant.
- (3) The doubt created by DW1's evidence no matter how minute ought to be resolved in favour of the Appellant.
- (4) The Respondent did not present the Register they have of all assets declaration forms in their custody before the lower tribunal to ascertain whether the Appellant presented or declared his own forms or not which has created serious doubt on the veracity and sincerity of the case of the Respondent which doubt ought to be resolved in favour of the Appellant.

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## GROUND SIX

The lower tribunal erred in law when it held that the Appellant is guilty of counts 2-6 of the charge in view of the fact that the Appellant made an admission that he did not declare the Standard Chartered Bank Account Numbers in the 2014 declaration and thus occasioned a miscarriage of justice.

## PARTICULARS OF ERROR

1. The Appellant's statement that he did not declare the Account numbers in the Standard Chartered Bank in the 2014 Declaration because he never believed the account numbers were opened does not amount to an admission in law that he made false statements as indicated in counts 2-6.
2. The declaration for 2014 and 2016 were all made the same day being 16<sup>th</sup> December, 2016 but the disparity was that whereas the 2016 declaration had the account numbers, in Standard Chartered Bank that of 2014 did not have but in any event, the said account numbers were declared.
3. The Account numbers were the ones declared by the Appellant himself in the 2016 declaration and was not found out from any other source.
4. The Appellant did not make any false statement or declaration by the omission to state the account numbers in the 2014 declaration.

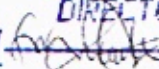
## GROUND SEVEN

The lower tribunal erred in law when it held that the Appellant made false statement by the omission to declare the Account numbers in Standard Chartered Bank in 2014 declaration the same way he did in the 2016 declaration and held counts 2-6 to be proved and thus occasioned miscarriage of justice.

## PARTICULARS OF ERROR

- (1) Section 15 (2) of the Code of Conduct Bureau and Tribunal Act is very clear and unambiguous when it provides that there must be verification

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by an authorized officer before one can be said to have made a false declaration.

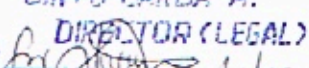
- (2) The PW2 admitted that the declaration of the Appellant were not verified by even one of the three verification steps to be taken.
- (3) The Standard operation procedure 2017 of the Conduct of Conduct Bureau was not followed before the charges were filed against the Appellant.
- (4) Omission to declare an asset is not a false statement by the code of conduct Bureau and Tribunal Act (CCTA) and the Standard Operation procedure.
- (5) Counts 2-6 of the charge are without the backing of the Constitution and the CCTA and as such cannot stand.

#### **GROUND EIGHT**

The lower tribunal erred in law and acted without jurisdiction when it ordered that the Assets of the Appellant be confiscated and thus occasioned a miscarriage of justice.

#### **PARTICULARS OF ERROR**

- (1) The Appellant having resigned his appointment since the 4<sup>th</sup> of April, 2019 is no longer a Public Officer capable of being punished for any wrongdoing by the lower tribunal.
- (2) By the CCTA only Public Officers are subject to the jurisdiction of the lower tribunal.
- (3) The assets of the Appellant ordered to be confiscated were assets declared legitimately by the appellant himself in 2016 and have not been verified to be false or proceeds of corruption and by evidence before the tribunal and as such the tribunal lacks the power to confiscate same.
- (4) The Appellant was not charged for abuse of office corruption or that he acquired any assets as proceeds of corruption to be asked to forfeit same.

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## GROUND NINE

The lower tribunal erred in law when it held that count one of the charge is valid and proceeded to convict the Appellant upon it.

### PARTICULARS OF ERROR

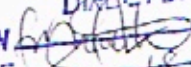
- (1) Count one brought under section 15 (1) of the Code of Conduct Bureau and Tribunal Act (CCTA) is in conflict with paragraph 11 (1) and (2) the fifth Schedule to the Constitution and thus inconsistent.
- (2) Section 15 which is inconsistent with the provision of the constitution shall to the extent of the inconsistency be null and void.
- (3) Count one anchored on a bad law or law inconsistent with the constitution cannot stand and thus liable to be struck out in view of Section 1 (3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)
- (4) The Appellant cannot be convicted on an unexisting or inconsistent law.

## GROUND TEN

The lower tribunal erred in law when it held that Exhibit 1 is not a documentary hearsay but admissible in law and thus occasioned a grave miscarriage of justice.

### PARTICULARS OF ERROR

- (1) Exhibits 1 is copy of the petition signed by one Dennis Aghanya but who was never called as witness to adopt his petition.
- (2) Without the presence of the petitioner, Exhibit 1 is a which the prosecution relied upon to prefer the charges are worthless document which the lower tribunal ought to have thrown away without dissipating energy.

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- (3) Exhibits 1 by an anonymous petition manifestly inadmissible in law and the evidence and the entire exercise as it has to do with the case of the prosecution must crumble with the documents.

#### GROUND ELEVEN

The lower tribunal erred in law when it held that Exhibits 4 and 5 are admissible contrary to the Provision of the Evidence Act and thus occasioned a miscarriage of justice.

#### PARTICULARS OF ERROR

- (1) Exhibits 4 and 5 offends section 84 (1) (2) and (4) of the Evidence Act in that there is no verifying certificate and are as such inadmissible.
- (2) The makers of Exhibits 4 and 5 were not called to testify on the documents and as such are mere documentary hearsay.
- (3) PW3 admitted that she was not the maker of Exhibit 4 and 5 and that they were computer generated evidence.

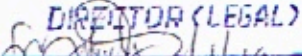
#### GROUND TWELVE

The Honourable Tribunal erred in law when it convicted the Defendant/Appellant on Count ONE of the charge, for failure to declare his assets and liabilities, even when the essential elements of the offence as charged had not been proved beyond reasonable doubt as required by law.

#### PARTICULARS OF ERRORS

Count ONE of the charge alleged that the defendant, "between 8<sup>th</sup> June, 2005 to 14<sup>th</sup> December, 2016 failed to declare and submit a Written Declaration....."

1. The essential elements of the offence are:
  - a. That the defendant is a public officer.
  - b. That the defendant failed to declare and submit a written declaration of all his assets and liabilities for over eleven years from 2005.
  - c. That the alleged failure to declare took place within three months after taking office as justice of the Supreme Court of Nigeria.

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2. The prosecution was only able to prove that the defendant is a public officer, but could not prove that the defendant failed to declare and submit his assets and liabilities for over 11 (eleven) years as charged.
3. The Supreme Court in **George VS. FRN (2014)5 NWLR (Pt. 1399) 1 at 24** has held that the Prosecution must prove the offence as charged irrespective of the provision of the statute creating the offence.

### GROUND THIRTEEN

The Honourable Tribunal erred in law when it tried and convicted the Defendant/Appellant for failure to declare and submit assets declaration Forms, between 2005 and 2016, which alleged offence is unknown to law; and in total violation of **Section 36 (12) of the 1999 Constitution**.

### PARTICULARS OF ERROR

1. Section 36 (12) of the 1999 Constitution Provides: -


**“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 therefor is prescribed in a written law....”**

2. The allegations contained in all the six counts of the charge constitute no offence known to law, as the offence as charged is neither defined in any law nor is any punishment prescribed therefor.
3. In relation to assets declaration, the only offence defined and known to law is found in **Paragraph 11 (2) of the Fifth Schedule to the 1999 Constitution**, relating to making a statement in an assets declaration Form which has been verified and found to be false by the person authorized in that behalf.

### GROUND FOURTEEN

The Honourable Tribunal erred in law when it convicted the defendant/Appellant for false declaration of assets when the essential elements of the offence as defined under **Paragraph 11 (2) of the Fifth Schedule to the Constitution (1999)** had not been proved beyond reasonable doubt.

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### PARTICULARS OF ERROR

1. The essential elements of the offence created under Paragraph 11 (2) of the Fifth Schedule to the 1999 Constitution are:-
  - a. That the defendant is a public officer.
  - b. That the defendant submitted an assets declaration Form to the Code of Conduct Bureau.
  - c. That a Statement in the Form was verified, and found by a person authorised in that behalf to verify it, to be false.
2. The prosecution was only able to prove that the defendant is a public officer, but the prosecution failed to prove that the defendant's assets declaration Form was verified by a person authorised in that behalf; and that a Statement in that declaration was found by the person authorised to verify it, to be false.


### GROUND FIFTEEN

The lower Tribunal erred in law when it convicted the defendant /Appellant based on an alleged confessional statement, which confession statement did not constitute confession as known to law, as it was not precise, clear and unequivocal as required by law to sustain a conviction.

### PARTICULARS OF ERROR

1. In law, a confessional statement must be clear, precise and unequivocal before it can be relied upon by a court to convict.
2. The defendant merely stated that he forgot to declare some of his accounts in **Exhibit 2**; but the omitted accounts were clearly declared in **Exhibit 3**.
3. The defendant did not admit guilt to any of the essential elements of the offences charged.
4. The Tribunal's inference of admission or confession of guilt did not take into consideration the other pieces of evidence and circumstances of the case pointing to denial of guilt by the defendant.

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## GROUND SIXTEEN

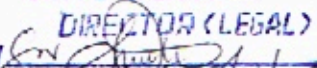
The Honourable Tribunal erred in law when it placed on the defendant the burden of proving his innocence in violation of **Section 36 (5) of the 1999 Constitution, and Section 135 (1) of Evidence Act 2011.**

## PARTICULARS OF ERROR

1. The burden of proof lies on the Prosecution in criminal or quasi-criminal proceedings.
2. The onus was on the Prosecution to prove that the defendant did not declare and submit his assets declaration Form to the Code of Conduct Bureau for over 11 (eleven) years as charged.
3. The Code of Conduct Bureau is vested with power to receive and keep custody of assets declaration Forms.
4. The burden was placed on the Prosecution to produce the register of assets declaration Forms received and kept in its custody.
5. The Prosecution failed to produce, and indeed, rather withheld the register which would have shown the public record of public officers who had submitted and those who had not submitted their assets declaration Forms within the period material to this case.

## **4. RELIEFS SOUGHT AT THE COURT OF APPEAL**

1. **AN ORDER** allowing this appeal
2. **AN ORDER** that the lower tribunal lacks the jurisdiction to entertain the case.
3. **AN ORDER** that the lower tribunal ought to have recuse itself from the proceedings before it.
4. **AN ORDER** that the charge has become academic.
5. **AN ORDER** setting aside the conviction of the Appellant.
6. **AN ORDER** setting aside the order for forfeiture of assets made by the Honourable Tribunal.
7. **AN ORDER** discharging and acquitting the Appellant.

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Dated at Abuja this 18<sup>th</sup> day of April 2019.

SIGNED



APPELLANT

Justice Onnoghen Nkanu Walter Samuel

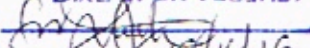
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