

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: THE HON. JUSTICE PETER O. AFFEN

TUESDAY, APRIL 25, 2017

CHARGE NO. FCT/HC/CR/75/2017

MOTION NO. M/2820/2017

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA PROSECUTION

AND

NZE CHIDI DURU DEFENDANT

R U L I N G

THE DEFENDANT/APPLICANT herein, *Nze Chidi Duru* was arraigned before this court on a four-count charge: two counts of criminal breach of trust, and one count apiece of fraudulently making a false document and fraudulently using as genuine a forged document contrary to *ss. 315, 364 and 366* of the *Penal Code Act, Cap. 532, Laws of the Federation of Nigeria (Abuja) 1990*. The specifics of the charge against him, which is dated 16/1/17, read as follows:

"CHARGE

That you Nze Chidi Duru while being the Vice Chairman of First Guarantee Pension Ltd. sometime in July, 2010 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, being entrusted with dominion over certain properties to wit: ₦15,000,000.00 (Fifteen Million Naira) being part payment of 30%

equity shares of First Guarantee Pension Ltd. sold to Novare Holdings Proprietary Ltd., committed criminal breach of trust in respect of the said sum by diverting same to pay for land allocations from Lagos State Government in favour of Grand Towers Plc and MVJDA Africa Ltd., companies of which you have interest and you thereby committed an offence punishable under Section 315 of the Penal Code Act Cap. 532 Laws of the Federation of Nigeria, 1990.

COUNT 2

That you Nze Chidi Duru while being the Vice Chairman of First Guarantee Pension Ltd. sometime in July, 2010 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory being entrusted with dominion over certain properties to wit: ₦1,123,646.58 (One Million, One Hundred and Twenty Three Thousand, Six Hundred and Forty Six Naira, Fifty Eight Kobo) being part payment of 30% equity shares of First Guarantee Pension Ltd. sold to Novare Holdings Proprietary Ltd., committed criminal breach of trust in respect of the said sum by authorizing same to be paid into the First Bank Plc. Account of B. P. Outsourcing Ltd., a Company of which you have interest and you thereby committed an offence punishable under Section 315 of the Penal Code Act, Cap. 532, Laws of the Federation of Nigeria 1990.

COUNT 3

That you Nze Chidi Duru while being the Vice Chairman of First Guarantee Pension Ltd. sometime in June 2008 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did knowingly and fraudulently make a false document to wit: an ordinary resolution of First Guarantee Pension Limited dated 2nd June 2008 purporting same to have been signed by all the subscribers/shareholders of the said First Guarantee Pension Limited which you knew to be false and thereby committed an offence

punishable under Section 364 of the Penal Code Act Cap. 532 Laws of the Federation of Nigeria 1990.

COUNT 4

That you Nze Chidi Duru while being the Vice Chairman of First Guarantee Pension Ltd. sometime in June 2008 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did knowingly and fraudulently use as genuine a forged document to wit: an ordinary resolution of First Guarantee Pension Limited dated 2nd June, 2008 purporting same to have been signed by all the subscribers/shareholders of the said First Guarantee Pension Limited and forwarded same to Folashade Ogundare and Hon. Isegba Terngu with the intention of causing it to be believed that the said document was genuine which you knew to be false and thereby committed an offence contrary to Section 366 of the Penal Code, Cap. 532 Laws of the Federation of Nigeria (Abuja) 1990 and punishable under Section 364 of the same Act."

The Defendant/Applicant entered a plea of 'Not Guilty' to all four counts of the charge against him, but could not see his way clear as to whether the due process of this court has been validly invoked or whether this court ought to exercise its jurisdiction to entertain and determine the charge preferred against him. By a notice of preliminary objection dated 1/2/17 but filed on 2/2/17, he prays for the following:

- "1. AN ORDER of this Honourable Court declining to exercise its adjudicatory power in this suit on ground that the entire proceeding is an abuse of the process of this Honourable Court.
2. AN ORDER prohibiting the Complainant from further prosecuting the instant charge or any other charge against the Defendant/Applicant, or seeking any form of indulgence before

this Honourable Court or any other court in Nigeria in respect of, pertaining to and or relating to in any manner whatsoever, the Target Examination Report of the National Pension Commission in respect of First Guarantee Pension Limited, owing to the Orders of the Federal High Court made in the Judgment of my Lord, Justice D. U. Okorowo in Suit No. FHC/ABJ/CS/709/2011 delivered on the 18th day of July 2012.

3. AN ORDER discharging the Defendant/Applicant of all the offences contained in the instant charge, the said charge which cannot be lawfully prosecuted by the Complainant in view of the valid Orders of injunction granted against the Complainant in Suit No. FHC/ABJ/CS/61/13 contesting their right to prosecute the Applicant.
4. AND for such further order(s) as this Honourable Court may deem fit to make in the circumstances."

The grounds upon which the preliminary objection is predicated are as follows:

- "1. The first set of reasons upon which the jurisdiction of this Honourable Court is being contested are that:
 - a. The counts contained in the present suit is predicated on a complaint made by some shareholders of First Guarantee Pension Limited on matters connected with or incidental to the "Target Examination Report of First Guarantee Pension" arising from the "Draft Target Examination Report of First Guarantee Pension Limited" prepared by the National Pension Commission which has been nullified by a court of law as contained in the

