IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE JOS JUDICIAL DIVISION
HOLDEN AT ENUGU
ON TUESDAY THE 31ST DAY OF OCTOBER, 2017
BEFORE HIS LORDSHIP
HONOURABLE JUSTICE D.V. AGISHI
JUDGE

SUIT NO. FHC/EN/CR/10/2012

BETWEEN

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

UCHENNA IROAKAZI ..... ACCUSED PERSON

JUDGMENT

The accused person is standing trial on a two count charge of uttering and being in possession of counterfeit and bank notes contrary to Section 5 of the Counterfeit Currency (special provisions) Act, Cap C35, LFN 2004.

When the charge was read to the accused person. He understood and pleaded not guilty. In proof of its case the prosecution called 3 witnesses and tendered various exhibits. The accused person also testified in his own defence.

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1502-191-9294

The brief facts of the case are that the accused person who claim to be a taxi driver was hired by an unknown person for a fee of N100,000. The contract was for the accussed person to convey this person to 3 States and that the journey terminnated in Enugu on the 3rd day where the accused was paid in a brown envelope. According to the accused person he used N500 and repaired his Car air AC and went to joint (Amala Embassy) to eat indomie but there and then it was discovered the money was fake currency. Accused was then arrested by the army and handed over to EFCC.

The defence has raised a sole issue for determination thus:

> **"Whether the prosecution has proved the offence charged beyond reasonable doubt as required by law."**

It is submitted by the defence that the prosecution failed in their duty to prove guitly knowledge of the accused person evidence having not been led to show that the accused person knew that the currency was counterfeit, and yet had it in his possession and equally uttered it. Mr. E. N. Onyibor who argued that there are two (2) elements of the offence (ie the physical & mental elements) stated that the prosecution was only concerned with the physical

element. But that both elements must be proved together inorder to amount to proof beyond reasonable doubt.

Referring to Section 5(1) (a) & (4) I 5(1) (b) and 5 (3) of the Act above, the defence argued that (The phrase "Knowing it to be counterfeit" plays a key role in this type of offence) Knowledge is essential ingredient in this offence, that it must be proved that accused person had the counterfeit currency knowingly and uttered same knowingly.

It was further submitted that none of the three prosecution witnesses gave evidence to show that the accused person knew that the currency notes that he was paid by the passenger he carried were counterfeit. It is argued that the accused person in both his extra judicial statement and evidence before this Honourable Court had categoriaclly stated that he was not aware that the money he was paid with were counterfeit. That the prosecution failed in its duty to debunk the above testimonies of the accused person, meaning that the testimony of the accused person is true.

The defence went on to analyse the evidence of all the prosecution witnesses inorder to show that the essential ingredient

of the offence which is kwowledge of the fact that the notes were counterfeit was not proved.

Referring to the evidence of pw1, this Court is urged to hold that pw1 did not investigate this case but was merely directed to transfer it together with the accused and the currency to EFCC for investigation. Also that the 2nd prosecution witness was not a forensic expert and only took extra judicial statement of the accused person which were tendered in evidence .

It was also submitted that from the evidence of pw3 anybody who is not trained as counterfeit analyst as the accused person will not be in a position to know that the currency was counterfeit.

In their further submission it was stated that Section 5 (3) of the counterfeit currency Act had created a rebuttable presumption of law which accused through Exhibits CC2 & CC7 (which are his extra judicial statement) and his oral testimony was able to rebut. Reliance is here placed on the case of **ISMAIL VS. STATE (2011 LPELR 9352 (SC).** It was therefore submitted that the accused person having rebutted this presumption of law through his oral evidence in Court cannot lead to a decision on any issue again same having being rebutted. That the prosecution has therefore

expected to prove that which is presumed but which has been rebutted as failure by the prosecution to prove same will entitle the accused person to discharge and acquittal.

The prosecution in its submission conceeded the fact that the burden of proving the guilt of the accused person lies on its shoulders. However the phrase "beyond all reasonable doubt" according to the Complainant is not to be interpreted as beyond all shadow of doubt. Plethora or cases have been cited to support this principle of law.

Relaying on its evidence, the prosecution argued that the case against the accused person was properly investigated in relation to the allegations levelled against him. That the accused person even voluntered his statement in which he admitted that the suspected counterfeit banknotes were found in his possession. Secondly that the Accused person equally admitted spending part of the suspected counterfeit currency (Exhibit CC1). It is therefore argued that since the confessional statement of the Accused person has been tendered in evidence and admitted without objection the reasonable conclusion is that it was made voluntarily and can be relied upon to convict the Accused person. Reliance is here placed

on the cases of **SHUAIBU ISA VS. KANO STATE (2016) LPELR – 48811 (SC).**

OBASANJO EGHAREVBA VS. STATE (2016) LPELR – 48829 (SC).

HON ISHOR IKPO VS. STATE (2016) LPELR – 40114(SC). This Count is even urged to convict the Accused person based on his confessional statement in this case.

It was also submitted that the 2nd ingredient in the Count which is uttering has equally been proved. Reliance here is on the evidence of the Accused before this Honourable Court as well as his extra judicial statement in which he never denied spending the said counterfeit currency as stated in ***SECTION 5(4) OF THE ACT.***

The prosecution went further to submit that they wrote a letter to the Central Bank of Nigeria to verify the authenticity of the currency notes found in possession of the Accused person (Exhibit CC4). The reply received confirmed that the currency notes are indeed counterfeit. Further reliance is placed on the evidence of PW3 who is a trained counterfeit and forgery analyst. He examined the currency found in possession of the Accused person and confirmed that they are counterfeit. Therefore this Court is urged to hold that the entire prosecution evidence has irresistibly pointed to

the conclusion that the currency found in possession of the Accused person are indeed counterfeit.

The evidence of the defence has seriously been discredited as falling short of standard required for a reasonable denial in a criminal trial. That the Accused himself could not come out to even describe the passenger he allegedly carried for 3 days to different states whom he picked from Enugu and finally ended up dropping him back in Enugu. No personal information about the said passenger/customer whatsoever so to say and for that reason this Court is urged to discountenance the defence of the Accused person in its entirety and to place no reliance on it. Reliance is here placed on **USEN FRIDAY EKPO VS. FRN (1982) LPELR 1096 (SC), (1982)6 S.C.10.**

In their reply on points of Law to the prosecution's final address it is submitted that throughout the prosecution written argument, they did not join issues with the defence on the phrase "knowing it to be counterfeit" as contained in Section 5(1)(a) & 5(1)(b) of the (supra) Act under which the accused was charged. It was argued that since its doubtful whether or not the accused knew that the currency were counterfeit, the Court is duty bound to

resolve such doubt in favour of the accused person and to hold that the accused person was not aware that the currency notes were counterfeit. Reliance is placed on the Court of Appeal case of Major **HAMZA AL-MUSTAPHA VS. STATE 2013 LPELR – 20995 (CA) where the Court held that:**

> **"It is the law that where doubts obtains in the case of the prosecution same shall, and must be resolved in favour of the accused person"**

Secondly, that the cases cited by the prosecution are not applicable in this case but they are distinguishable. The argument here is that in the cases cited by the prosecution the charge was perfect with the prosecution inserting the phrase "knowing it to be counterfeit" as contained in the law. But that in the present charge, the phrase "knowing it to be counterfeit" is omitted hence making the charge before this Honourable Court to be imperfect with disclosure of no offence. The Court is urged to strike out this case and to discharge the accused person.

It is trite law that in all criminal trials the burden is on the prosecution to prove beyond reasonable doubt the guilt of the accused person. Where the prosecution fails to prove the guilt of an

accused beyond all reasonable doubt, such doubt would lead to his discharge. See the cases of **NWANGWA VS. STATE (1997) 8 NWLR (Pt 517) 463.**

KALU VS. STATE (1998) 4 NWLR (Pt 90) 503.

On standard of proof in criminal cases it was also held in the case of **SHEHU VS. STATE (2010) 8 NWLR (Pt 1195) 117** that it is where all essential ingredients of an offence charged have been satisfactorily proved by the prosecution that same can be said to have been proved beyond reasonable doubt.

The accused person has been charged under Section 5 (1)(a) (4) & 5(1)(b) (3) of the counterfeit currency (Special Provisions) act cap C35 Laws of the Federation 2004 and punishable under the same Act.

For clear understanding of the law the said relevant provisions are hereunder reproduced as follows:

5. Uttering and being in possession of counterfeit currency

(1) Any person who-

(a) utters any counterfeit bank note or current coin knowing it to be counterfeit; or

(b) has in his possession any counterfeit bank note or current coin, knowing it to be counterfeit; or

(3) where a person has fifty or more counterfeit bank notes or current coins in his possession, the Federal High Court before whom such person is tried may, presume knowledge that they are counterfeit bank notes or current coins and also an intention to utter any of them, unless he proves the contrary.

(4) for the purposes of this section, a person shall be deemed to have uttered a counterfeit bank note or current coin, if he has tendered any such bank note or current coin to another person as if it were genuine legal tender.

To prove that the accused person committed the offence of uttering counterfeit Bank note in N500 denomination, and also for being found in possession of counterfeit bank notes in N1000 and 500 naira denomination, the prosecution witnesses testified that the accused was found in possession of the above named counterfeit bank notes and equally admitted same in his confessional statement.

Looking at the evidence before me, I find that the facts of this case are very simple and straight forward. The parties in this Suit have conceded to almost all the facts of the case as follows:

-That the accused had in his possession counterfeit bank notes.

-That accused uttered the said bank counterfeit bank note when he allegedly paid 500 naira for repair of his car Ac, and also paid for indomie of 300 naira, gave out 500 naira note to be balanced N200.

-That the counterfeit bank note were even more than fifty.

The above facts are also the ingredients which needed proof in order to establish the offence of uttering counterfeit bank note as well as being in possession of same so it is taken that they are proved already, the two, parties in this case having conceded to same.

The only contention by the defence is that the phase "knowing it to be counterfeit" is a mandatory proof by the prosecution.

It has been argued that the prosecution failed to prove that the accused knew that the currency was fake at the time he had it in his possession and then moved on to utter it.

Knowledge in this case is the mens rea of the offence here and needed to be proved by the Prosecution. The prosecution needed to

prove that the accused knew that the counterfeit bank note in his possession at the time of the arrest was fake.

It is however very difficult for this Honourable Court to believe that the accused person was not aware that the currency notes he had in his possession were counterfeit and he had possessed it unknowingly and also uttered it unknowingly.

I have looked at Exhibits CC2 which is the confessional statement of the accused person made on 11/1/2012 when the facts of the case were still very fresh in his head. In that extra judicial statement accused stated thus:

> **"I paid N500 to repair my Ac at Coal Camp and I bought indomie N300, which I gave them N500 to give me change. It was then that they discovered it was a fake money and I also discovered it too---."**

The accused person clearly admitted in his confessional statement that he discovered that the bank notes in his possession were fake. In the case of **FRANCIS NKIE VS. FRN (2014) LPELR.SC 174/2011** it was held that once a confessional statement was voluntarily made, that is to say the confession is

direct and unequivocal, and it was tendered in Court without objection from the accused person, a judge would be at liberty to act on it and proceed to convict since a confessional statement is the best evidence that the accused person committed the crime for which he is charged---."

Here the accused did not retract or resile from his extra judicial statement (exhibit CC2) this is to say that the statement was voluntarily made. See also the case of **EGHAREVBA VS. STATE LPELR-48829 (SC)** on same principle. That an accused person can be convicted safely on his confessional statement and I so hold.

It is the submissions and argument of the defence that one Stephen Faloni who the counterfeit note was purported to have been uttered to was not called as a witness to demonstrate to the Court how it was uttered to him to ascertain the mental element of the accused person. The defence has termed this **Stephen Faloni** as a vital witness whose evidence is very fundamental to this case. I am however not carried along by the defence in this argument. This is especially as they have failed to demonstrate to this Court how

vital the evidence of the said witness is in determing this case. I therefore find such argument to be of no relevance here.

The law is trite that the prosecution does not have the obligation to call all witnesses. In the case of **ADESINA & ANOR VS. STATE (2012) LPELR-SC 304/2010 it was held:**

> **"It is the prerogative of the prosecution to call witnesses relevant to its case. It is also settled law that the prosecution is not bound to call every person that was linked to the scene of the crime by physical presence to give evidence of what he saw. Once persons who can testify to the actual commission of crime have done so, it will suffice for the satisfaction of proof beyond reasonable doubt in line with Section 138 of the Evidence Act. See also AKALONU VS. STATE (1999) LPELR-CA/PH/151/96.**

I have generally found the testimonies of the Complainant witnesses consistent and the cases cited by the prosecution are also very applicable to the facts of this case. Pw3 is an expert in counterfeit and forgery analysis. He testified to the effect that the currency found on the accused person was fake. I believe that the duty of this witness is to give scientific analysis of what a true and

fake currency is, and this is to fulfill the requirement of law which presumes that Bank currency can only be certified fake after it has undergone such analysis by an expert.

I find that the evidence of all the prosecution witnesses are consistent and actually point to the irresistible conclusion that the counterfeit currency found in the possession of the accused are indeed counterfeit and I so hold.

As per the provision of Section 5(3) of the counterfeit currency (supra) Act this Court is urged to uphold the defence submission that rebuttable presumption of the law stated therein has successfully been rebutted by the accused person. This is said to be done by means of Exhibit CC2, CC7 and the oral testimony of the accused on oath before this Honourable Court. The oral evidence of the accused is said to be inconsonance with his extra judicial statements. The defence has as earlier stated in the beginning part of this judgment relied on the Supreme Court case of **ISMAIL VS. STATE (Supra).** Defence is particular with the Apex Court finding that:

> **"A rebuttable presumption of law is one which leads to a decision on a particular issue in favour**

of the party who establishes it or relies upon it, unless it is rebutted. Rebuttable presumption of law maybe created by statute, or may exist as common law, and it may cast either a legal or evidential burden on the party seeking to rebut the presumption except it is the rule of common law---"

I am most respectfully in full support of the above decision of the apex Court that from the facts of this case the statutory law cast an evidential burden on the accused person who is seeking to rebut the presumption. And the question is whether the accused has succeeded in discharging this legal duty/burden.

The accused relied on his oral evidence before this Honourable Court which he termed it uncontroverted in rebutting the presumption in Section 5(3). Again I must confess that I am not carried along by the defence in their argument here.

Firstly, the defence has not pointed out from accused oral evidence where and how the accused has rebutted the presumption in the said Section 5(3). I cannot see how this rebuttable presumption has been discharged by the defence when even the

extra judicial statement of the accused person (Exhibit CC2) supports the case of the prosecution.

The defence has not shown any tangible evidence to earn it the benefit of rebuttal here. The accused has been able to admit committing the offence in his confessional statement which admission I have already concluded is enough to warrant his conviction.

Secondly, I am not also convinced with the evidence of the accused that he was paid the counterfeit bank note in a brown envelope and he collected the money given to him by a man he claims was a stranger to him without counting the said money to know exactly how much he was paid and in what denomination he was paid. I disbelieve this piece of evidence and I hold that it is the height of deceit calculated to mislead this Honourable Court.

I also find it very odd that the accused, person carried a passenger for 3 solid days to 3 different States and yet does not have any particulars of the said passenger, no name, no telephone number and no description whatsoever. It is my conclusion that the accused did not carry any passenger anywhere. He is only faking a

defence to escape the wrath of law having known the implication of what he has done.

From all the foregoing evidence, its my humble view that the accused has not successfully rebutted the presumption of law as claimed by him.

Secondly, the prosecution has successfully proved its case against the accused person beyond reasonable doubt as required by law. The accused person is found guilty on the two counts charge and is convicted as charged.

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D. V. AGISHI
JUDGE
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