

IN THE HIGH COURT OF LAGOS STATE
HOLDEN AT THE IKEJA JUDICIAL DIVISION
SITTING AT COURT NO. 13, SPECIAL OFFENCES COURT.
BEFORE THE HON. JUSTICE M.A. DADA (MRS.) - JUDGE
TUESDAY THE 17TH DAY OF APRIL, 2018.

ID/6111C/17

BETWEEN

THE FEDERAL REPUBLIC OF NIGERIA ... COMPLAINANT

AND

TAOFEEK OLALEKAN ODEBIYI ... DEFENDANT

JUDGMENT

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By an Amended Information dated 10th January, 2018, the Defendant is charged with a one Count offence of Making False Information to a Public Officer contrary to Section 96 (a) and (b) of the Criminal Law of Lagos State No. 11 of 2011. The Particulars of the offence is that the Defendant on or about the 22nd day of September, 2014 in Lagos within the jurisdiction of this Court made to Atinuke Akinroyeje an officer of the Economic and Financial Crimes Commission, in the course of the exercise of her duty, a statement he knew to be false thereby causing her to release one Oseyomon Ebihitale on bail, an action she would not have taken if she had not relied on his undertaking.

The Defendant pleaded 'not guilty' and the said Public Officer, Atinuke Akinroyeje was the sole witness for the Prosecution. She testified how the Commission received a Petition against the Principal Suspect forwarded to her Team for investigation. Defendant came to stand Surety for the release of principal suspect whom he claimed was well known to him and applied for his bail in black and white. That the principal suspect reported for some time but stopped. The Defendant was called upon to produce him but was giving excuses and failed to produce him. When an invitation letter was written to the Defendant, he dishonoured it and after his eventual arrest, he volunteered a statement stating that he actually did not know the principal suspect.

She tendered the Petition dated 04/08/2014, the Bail Bond dated 03/10/2014 and 3 statements of the Defendant dated 20/09/17, 25/09/17 and 29/09/2017 all of which are Exhibits A-F respectively.

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Her further evidence under cross-examination is that the Principal suspect was in the Commission's custody not up to 2 weeks before he was released on bail to the Defendant. She stated that her Team asked for the biography of the Defendant from the Permanent Secretary, Ministry of Education where he works before his arrest. She testified that it is not their responsibility to verify the abode of Suspects because they always release them on bail to responsible Sureties and that the Defendants' statements were taken when he was in their custody.

This closed the Prosecution's case and the Defendant opened his defence and stated thus:-

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Yes, I have seen the charge against me. Yes, I know the principal suspect, Oseyomon Ebehitale Uzoamaka very well. Yes, I stood surety for this suspect at the Economic and Financial Crimes Commission's. The information I gave to the EFCC staff Atinuke Akinroyeje was not deliberately falsely made. On 20/09/2017, I was in the Bank in the morning and I met the Bank Manager and asked him why my account was locked since June. He gave various reasons that I had to revalidate my account. I was asked to bring 4 items, National Identity Card, Driver's license, Voter's card and any means of identification which included my work I. D card. So after waiting in the Bank for about 1 hour, I told the Manager that my children had not resumed back to school because for the past 4 months I've not been able to access my account. I demanded to know why since this is salary account. He said I should sit in his office that he wanted to make contact with the Head Quarters. So, 2 hours later, an Officer of the EFCC, Mr Muhammed Aminu Shuaib walked into the Bank premises and said I was under arrest by EFCC, that they needed my attention at EFCC. I pleaded with him that my 2 daughters 12 and 16 year olds were at home, that their mother just died on 6/02/16. He said there was nothing he could do about that. I was detained. I thought they would ask me to go and look for the boy because I'd forgotten about it since I bailed him in 2014 and I had not received any call from them. They said they came to my former office at Sports Development at Surulere and they were informed I had been transferred to Alausa, Ministry of Education, Human Resources. Then I was moved to Teachers' Establishment and Pensions Office, still in Alausa. So, they said I was running but I said as a civil servant, I was a man under authority and can be moved anywhere to any part of Lagos State to work and that they knew my house which they verified when I stood surety for the boy. Believing that I would be released on self-recognition, they took me to Okotie Eboh where I was detained. The information I gave to the EFCC officer were not false

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about my address and the address of the suspect. I was not given any opportunity to look for the suspect before I was brought to court. Rather than release me on bail, they just brought me to court. They didn't ask whether the information I gave to the officer were right or wrong. Yes, I made a statement while in detention which I made out of fear thinking if I didn't, they would not allow me to go and see my children. The statements I made to them were under terrible fear because the Badoo boys just struck in houses very close to me in Ibeshe Ikorodu and my children being left alone.

Uzoamaka was like a son to me. He and my son were friends. They grew up together at Onisusun I Oregun, 9 Anishare Street. His mother was a widow and we lived in the same house. He was 23 years old when I bailed him in 2014 and a Finance Student in University of Ife. So, it was purely out of compassion imagining him to be my son, Immanuel coupled with the fact that he lost his dad when he was a small boy and being a Pastor in the Redeemed Christian Church of God, I felt it was my duty to help him.

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Under cross-examination, he stated thus:-

All the statements I have made both here and at EFCC are all true. Uzoamaka is the boy I stood surety for at EFCC. Yes, he is the same boy called Ebehitale Oseyomon. Yes, I know him very well. In my statement in **Exhibit E** stating that 'Ebehitale Oseyomon was unknown to me personally', no, I did not make a false information to an officer of EFCC. Yes, I took him on bail. Yes, I promised the EFCC that I would produce him any time I was asked to do so. I was not given the opportunity to go and look for him. No call was made to me. She even said she brought a letter to my former office in September after I had left in June, 2017. Sincerely, I don't know where Ebehitale is now.

This closed the defence and trial.

The Defendant's Final Written Address by his Counsel, S. O. Isawumi is dated 23rd January, 2018. In his introduction of the case, he stated that the Defendant testified that he did not make a false statement to the officer Atinuke Akinroyeje as the suspect Oseyomon Ebehitale is well known to him and that because of the tension on him to be released to go and take care of his under aged children left un-catered for at home, as their mother recently died coupled with the fact that some of the officers told him that if he states that he did not know the suspect, they would allow him to go home, he wrote that the suspect was not known to him. He submitted a sole issue for determination, to wit, whether the Prosecution has proved beyond all reasonable doubt that the statement made by the Defendant to the EFCC that he knew Oseyomon is false.



He quoted **Section 96 (a) of the Criminal Law of Lagos State no. 11 of 2011** under which the Defendant is charged and submitted that the important words of this provision are, "gives any information which he knows or believes to be false" which according to him presupposes that before any conviction can be sustained in respect of this provision, the alleged statement must be proved to be false. This provision, he submitted is a re modified version of **Section 192** of the Criminal Code which deals with false declaration and statement. That **Section 193** of the Criminal Code provides that a person cannot be convicted upon the uncorroborated testimony of one witness. Counsel submitted that in the Criminal Law and Procedure of the Southern States of Nigeria, 3rd Edition by T. Akinola Aguda in his commentary on **Section 193** as to the evidence required to secure conviction in respect of **Sections 191 and 192** of the Criminal Code stated thus:-

- (a) Prove the circumstances which made it necessary in law to make the statement.
- (b) Then prove the making of the statement.
- (c) Then prove that, that part of the statement alleged false is actually false and
- (d) False to the knowledge of the accused person.

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It is Counsel's submission that using these criteria, the Prosecutor can be said to have only succeeded by the evidence in respect of grounds (a) and (b) but failed to prove (c) and (d). That apart from the evidence made by the Prosecutor that the Defendant made the statement to them that he knew the suspect personally; there is no other independent or collaborative (sic) evidence to show that the Defendant did not know the suspect as stated by him. He argued that the only evidence adduced and put forward to show or prove that the statement is false is still another statement made subsequently when the Defendant had been arrested and put in their custody and he was desperate to get himself released to attend to his under aged children left without guardian as he knew he would not return home to them. Learned Counsel stated that it would be risky for the court to rely on another statement made by the Defendant as collaboration of the fact that he did not know the suspect he stood surety for because he had made two conflicting statements of which the Court would not know which one to believe. He submitted that in such a situation, the best position is for the court to expunge and disregard the conflicting statements as stated by the Supreme Court in **AKIBU HASSAN VS. THE STATE 2001 11 SCM 101** where he said the Court held that in a circumstance of conflicting statements, the trial court which is to test the veracity of such statements or otherwise by testing it or



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comparing it with other facts outside the statements, but that here, no other facts are provided. He submitted that corroborative evidence must be independent to collaborate (sic) the statement that the statements that the suspect is never known to the Defendant and that the Defendant equally stated that he was never given any opportunity to produce the suspect.

He finally submitted that there is a vital issue by virtue of the conflicting statements of the Defendant which the Prosecution failed to provide a corroborative evidence to clarify and as such should be resolved in favour of the Defendant.

He urged the court to discharge the Defendant of the charge against him as, according to him, the Prosecution has failed to adduce enough evidence to prove beyond reasonable doubt he guilt of the Defendant relying on **ONAGORUWA VS. STATE 1993 7 NWLR** (incomplete citation).

The Prosecution's Final Written Address by Nkereuwem Mark Anana is dated 14th February, 2018. After a review of the case and the evidence before the court, he also raised and submitted a sole issue for determination thus; whether having regards to the evidence adduced by the Prosecution in this case, it cannot be said that the Prosecution has proved its case against the Defendant.

He submitted that the Prosecution has successfully discharged the burden placed on it by proving the essential elements of the offence preferred against the Defendant and relied on **ALAKE VS. STATE 1997 7 NWLR PT. 205 567 @ 591** per Niki Tobi as defining what amounts to a reasonable doubt in the context of our criminal jurisprudence as follows:

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"It is generally believed that once there is the slightest doubt in the mind of the court, then the Accused must, as a matter of law, be discharged and acquitted. I think that is rather a wide statement of the legal position. That was the position I took in **SANNI ADISA VS. THE STATE 1991 1 NWLR PT. 168 490**. I have since realised that I went too far. I think the adjective "reasonable" qualifying the noun "doubt" should not give rise to that very wide statement. I think the position should be this. Once the ingredients of the particular offence the accused person is charged with is proved, that constitutes proof beyond reasonable doubt. Otherwise not. I must apologise to the profession for stating the principle so wide and beyond its already onerous ambit"

Learned Counsel submitted that the prosecution has proved the essential ingredients of the alleged offence and to that extent it can be sad that it has proved this case beyond reasonable doubt which is what is required and not

proof beyond all doubt. He quoted H- Denning J as he then was in **MILLER V. MINISTER OF PENSION 1947 2 ALL ER 373** on the meaning and the import of proof beyond reasonable doubt.

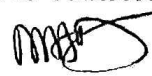
He submitted that **Exhibit A** which is the Petition shows that there is a Principal suspect which the Defendant took on bail while **Exhibit B** is the Bail Bond attached with the Defendant's Application for the bail of the Principal suspect promising to produce the Principal suspect whenever needed.

On the Defendant's testimony that the officers of the EFCC told him that if he did not state that he did not know the principal suspect they would not allow him to go home, counsel submitted that it is too late for the Defendant having not raised any objection to the tendering of his statement in Exhibit E in evidence. He referred to **UWEH VS. THE STATE 2012 LPELR 19996 (CA)**.

Learned Counsel further in reaction to the Defendant's contention that he was not given an opportunity to look for suspect, referred to PW1's testimony on how she and her team got across to the Defendant on phone and told him that the person he stood surety for was no longer reporting. And thereafter took responsibility to write to the Ministry of Education an invitation letter which the Defendant dishonoured leading to his arrest. He argued that the documents before the court show that the Defendant took the principal suspect on bail in 2014 and so between then and 17th March, 2017 when he stopped reporting, the Defendant cannot say that he was not given an opportunity to produce the principal suspect and as he had stated during his cross-examination that he does not know where Oseyomomn Ebehitale is.

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On the Defendant's counsel's submission in his Final Written Address that Section 96 of the Criminal Law of Lagos State is a modified version of Section 192 of the Criminal Code, he submitted Section 96 (a) and (b) of the Criminal Law of Lagos State has nothing to do with corroboration. That for the defence to import the section of a law that the Defendant is not charged with and begin to argue on it is like a student who leaves the exam question, ask a different question and begin to answer it, is bound to fail. He referred to the Defendant's Statement in **Exhibit E** where he said, "I know that in my first statement I wrote that I know Uzoamaka, because according to the lawyer, if I don't know Uzoamaka personally, they won't grant my application for his bail". This, learned Counsel submitted is contrary to his submission in paragraph 3.06 that there is no evidence to show that the defendant did not know the suspect. He cited **DEMO OSENI VS. THE STATE 2012 LPELR- 7833 (SC)** as holding that "the law is settled that even without corroboration, a confession is sufficient

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to support a conviction so long as the court is satisfied of the truth" per Ngwuta JSC. He referred also to **MOHAMMED VS. YAHAYA 1986 12 SC 282 AT 290.**

He finally submitted that the complaint of the defence that the prosecution called only one witness and no other witness to collaborate the case of the prosecution is not the law. He urged the court to convict the Defendant accordingly.

The case of the Prosecution is that the Defendant made false information to the officer of the Economic and Financial Crimes Commission thereby making the officer to grant bail in reliance on the information which he at the time of making it knew to be false.


Both Counsel quoted **Section 96 (a) and (b) of the Criminal Law of Lagos State no. 11 of 2011** which is hereby re-produced thus:-

"Any individual who gives any information which he knows or believes to be false, to any person employed in the public service with the intention of causing such person:

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- (a) To do or omit to do anything which such person ought not to do or ought to omit to do if the true facts concerning the information given were known to such person; or
- (b) To exercise or use his lawful powers as a person employed in the public service to the injury or annoyance of any other person, is guilty of a misdemeanour and liable to imprisonment for one year"

From the evidence before the Court, the first statement has been confirmed by the Defendant to be true while he stated that the he made the second statement under stress describing it as the "untrue" statement. The Prosecution's case on the other hand is that the Defendant by the second statement denied his assertion in the first statement that the principal suspect was "well known" to him. The burden placed on the prosecution was therefore discharged and it shifted to the defence. The evidence of the Defendant during trial as stated in the foregoing affirming the first statement, the table again shifted and moved the burden back to the prosecution to prove that the said statement was in fact false and that, that statement was given to PW1 which said information had the intention of causing her to do or omit to do anything she ought not to have done or ought to omit to do or omitted to do if the facts concerning the information given were known to her, or that she exercised or used her lawful power as a public officer to the injury and annoyance of any other person.



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Exhibit B, the Bail Bond by which the Defendant got the principal suspect released is dated 3/10/14 while the Application for Bail is dated 22/09/14. **Exhibit C** is the Defendant's statement to EFCC dated 20/09/2017 wherein he stated that the principal suspect was introduced to him by one Barrister John Ayeni who is his church member and a friend of his younger brother. **Exhibit E** dated 25/09/17 confirms his story in **Exhibit C**. From these statements, juxtaposed with **Exhibit F**, reference was made to the principal suspect by the Defendant as Uzoamakà which never appeared in **Exhibits A** and **B** as well as the Information with which he is standing trial. It was in **Exhibit F** that the Defendant indeed confirmed Uzoamaka as same as Ebehitale Oseyomon.

It is trite that before a conviction can be based upon a retracted confession, which is in Exhibits C and E that he did not know the principal suspect, it is desirable to have some evidence outside the confession which would make it probable that the confession is true. See **Olusegun Otufale and others VS. The State, 1968, NMLR, 261** and **Sule Salawu VS. The State, 1971 NMLR, 249**.

There is no doubt that the Defendant having admitted the second information to be false, it needs no further proof. This second information is therefore declared by the Defendant to be false, but the question is, can it be sustained under **Section 96 (a) and (b) of the Criminal Law of Lagos State, no. 11 of 2011** under which the Defendant was eventually by an Amended Information dated 10th January, 2018 charged as opposed to **Section 39 (2) of the Economic and Financial Crimes Commission Act, 2004** under which he, by the former Information dated 10th October, 2017, was initially charged? The answer, I am afraid is a 'no'. This is because there is no evidence before the court to show that PW1 did or omitted to do anything which she ought not to do or omit to do on account of the 2nd Statement of the Defendant which he admitted to be false.

Furthermore, there is nothing by **Section 96(b)** of the Criminal Law, to show that the Defendant by this second statement caused PW1 to exercise or use her lawful power to the injury or annoyance of any other person. The position of the law is that the injury or annoyance must be to a third party by PW1 on account of the said false statement.

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The offence of making false statement is proved against the Defendant. This agrees indeed with **Section 192** of the Criminal Code Act as postulated by the Defendant's counsel. However, by **Section 193** thereof, the Defendant cannot be convicted upon the uncorroborated testimony of one witness, which corroboration must come from the prosecution.



The law is that no matter how worthless the defence set up by an accused person at his trial may be, the trial court still has a duty to consider them dispassionately before dismissing them. See **ONUOHA Vs. THE STATE, 1988, 3 NWLR, PT. 83, 460.**

The poser therefore is, is there any evidence outside the "confession" in Exhibits C and E which would make it probable that the confession was true? The answer again is 'no'. Rather as said earlier, the reference to the principal suspect as 'uzoamaka' years after the bail in issue without any 3rd party's input is one that suggests that the Defendant may in fact have known him before taking him out on bail. This somehow supports the case of the defence which in essence reduces the weight on the scale of the case of the prosecution.

From the foregoing therefore, I find myself unable to convict the Defendant as charged. The fact of his recognisance is still binding on him and he has not been discharged as the Surety of the principal suspect in this case.

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Consequently therefore, I hold that the charge against the Defendant cannot be sustained. He is therefore hereby discharged.

This is the Judgment of this Court.

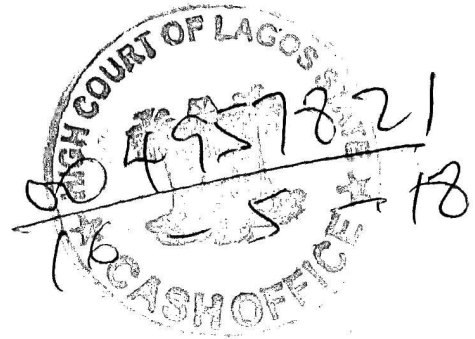
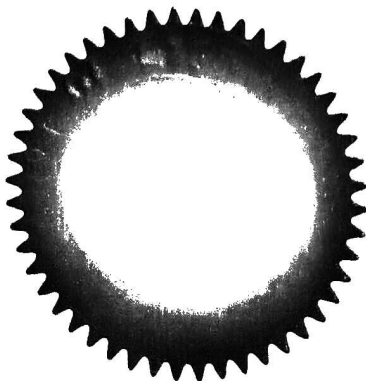


HON. JUSTICE M. A. DADA (MRS.)
JUDGE
(17/04/18)


Defendant Present.

N.N. Anana for the Prosecution.

S.O. Ishawumi for the Defendant.



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Akinwande O. P.
Commissioner For Oath:
High Court Of Lagos, Ikeja

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