


his wilful act, his act would not be unlawful. See *Ohoubamu V C.O.P* (1990) 6 NWLR (part 155) 201.


It is the case of the defendant that the complainant tore his clothe but upon suspecting that he is going to the police station to make a report, he tore his own clothe. Again, surprisingly, the police only recovered the complainant's clothe which was tendered and never said anything about that of the defendant.

Without wasting the time of the court, the said allegation has no props to stand. The standard of proof here is beyond reasonable doubt. The evidence proffered ought to have been of a high degree of cogency and consistent with a high degree of probability. I am sorry to say it is lacking here. No reasonable court can convict on it.

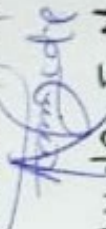
On a calm view, the prosecution has once again failed to prove the elements of the offence in count 2. In the result, I find the defendant not guilty of the offence. He is also accordingly discharged and acquitted.


Signed: N.A ONUNKWO ESQ
SNR. MAG. GRADE I
21/03/2018

Checked by 
Moneke S. N


DKEKE CHOMA

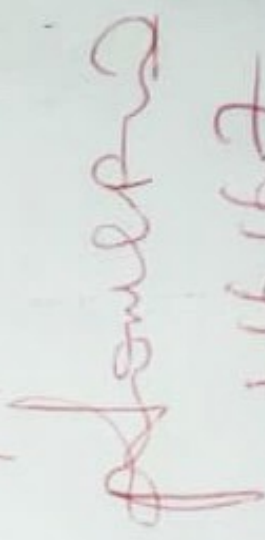
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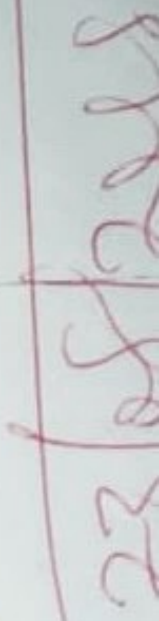

IKOKIDE E.N JP
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23/08/2018

**IN THE MAGISTRATE COURT OF ANAMBRA STATE OF NIGERIA
IN THE MAGISTRATE COURT OF AWKA MAGISTERIAL DISTRICT**

HOLDEN AT AWKA

ON WEDNESDAY, THE 21ST DAY OF MARCH, 2018

CHARGE NO: MAW/40c/2013

**BETWEEN
COMMISSIONER OF POLICE**

COMPLAINANT

V

OBIORA DIBOR

DEFENDANT

JUDGMENT

On 06 - 02 - 2013, the defendant was arraigned before me on a two counts charge of assault contrary to Section 252 of the Criminal Code Cap 36 Vol.2, Revised laws of Anambra State, 1991 and Malicious damage Contrary to Section 415(1) of the Criminal Code Supra.

Two witnesses testified for the prosecution and the defence respectively.

Testifying for the prosecution, PW 1, stated that the Ekwunife's family donated a power of attorney to him to manage their family land. The said document was tender as Exhibit A. He averred that on the 11th of January, 2013, a woman called him on phone, saying she saw the defendant and four men on that land taking pictures. According to him, the defendant told him that the land belongs to his father. He stated it was when he asked the defendant to prove his claim that he jumped at him, tore his clothe and hit him on the face with a stone. The said clothe was admitted as Exhibit B.

Testifying further, he said he noticed that one Baba Otu who was there with the defendant had two daggers. He thereafter went to the police station to lodge a report.

Under cross examination, he maintained he was given a power of attorney by the Ekwunife's family. He denied that what actually happened was not covered by the defendant with his camera.



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B

Inspector Eko Kanu testified as PW 2. He averred he investigated the matter with his team. According to him, he stated that PW 1 said that he received a call that the defendant and some people were in the land making video coverage, that when he asked the defendant for an explanation, he assaulted and tore his clothe. According to him, on the other hand, the defendant admitted making a video coverage and also presented a torn clothe which was tendered as ID 1. The photograph of PW 1 putting on the tore clothe was also tendered as ID 2 - 3.

Under cross examination, he admitted not being aware that the said land is a subject of litigation. With his evidence, the prosecution closed its case.

The defence thereafter opened with the evidence of the defendant. The latter testified as DW 1. He denied the charge. He averred that he went to his farm on the 3rd day of January, 2013 and saw the PW 1. According to him, he managed to cover the incident. He said that as he was about stopping a bike to go to the police station, PW 1 rushed to him and tore his shirt. He stated that the police confirmed it was an assault after seeing the video clip but unfortunately demanded for N30,000 before charging the matter to court. He refused and the police threatened to charge it to affray so that it would be difficult for him to prove in the court. Testifying further, he said that the police informed him that PW 1 complied and was told by the police to sell the land. The land was sold to one Mr. Okonkwo who went to the land registry and found out that he was given a forged document. The said document was admitted as Exhibit D.

Under cross examination, his statement was admitted as Exhibit E. He maintained that it was the complainant that attacked him when he saw him covering the land with a camera. He insisted that the land belongs to him.

Vincent Elenem testified as DW 2. He stated that the defendant is his brother of half-blood and that the land belongs to them. He averred that the oldest member of the complainant's family told them in writing that the land does not belong to them. It was admitted and Exhibit F and G. He said that the power of attorney tendered by the complainant was fake because the land was allocated to the Ekwunife's family of Amenyi and not Umuogbu. A report to that effect was admitted as Exhibit H.



Under cross examination, he admitted he was not present when the offences were committed. Now, in Nigeria we operate an adversarial and not an inquisitorial system of administration of criminal justice. Where the commission of a crime is in issue, it must be proved beyond all reasonable doubt. Reasonable doubt is founded on reason which is rational, devoid of sentiment, speculation or parochialism. The doubt should be real and not imaginative. The evidential burden is satisfied if a reasonable man is of the view that from the totality of the evidence before the court, the defendant committed the offence. The proof is not beyond all shadow of doubt. There could be shadows of doubt here and there but when the pendulum tilts towards and in favour of the fact that the defendant committed the offence, a court of law is entitled to convict even though there are shadows of doubt here and there. See *Afolalu V State* (2010) ALL FWR (pt 588)812. A reasonable doubt not mean some light, airy, insubstantial doubt that may slip through the minds of any of us about almost anything at some time or other, it does not mean a doubt begotten by sympathy out of reluctance to convict. See *Nwaturuocha V State* (2011) 6 NWLR (pt 1242) 170. *Igabele V State* (2004) 15 NWLR (part 896) 314 at 334.

The constitutional presumption of innocence wears a garb of sacrosanctity. This implies that there is no burden on the defendant to prove that he did not commit the offence charged. The burden rests squarely on the prosecution to prove affirmatively that he did. See *Nwodo V State* (1991) 4 NWLR (part 185) 341 at 355.

Let me hurriedly add that the mere fact that the defendant persistently lied in court, if any, does not establish his guilt. It may arouse suspicion but the law is settled that suspicion however grave does not take the place of legal proof. See *Adamu V State* (2010) 18 NWLR (part 1195) 112.

Armed and guided by the settled principles and case laws adumbrated at supra, let me now deal with the offences brought against the defendant before me.

Let me deal with the first count, which is assault. The essential ingredients or elements which constitute the offence and which must be proved beyond reasonable doubt in order to secure conviction for the offence are

- a. that there was a strike, touch or application of any kind of force by the defendant on the complainant;

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- b. that harm was caused to the complainant thereby;
 - c. that the strike, touch or application of the force was not authorized, justified or excused by law.

Put differently, in proving the offence of assault, the prosecution needs to establish that a person was physically attacked. There is no dispute on this. Secondly, that the defendant was responsible in doing so and did so intentionally. See *Uluebeka V State* (2011) 4 NWLR (1237) 358 at 361.

PW 2 under cross-examination admitted that a case of affray came to his knowledge through the complainant. He equally admitted that both the complainant and the defendant came to report at the same time and that was why a charge of affray was instituted. Indeed a case of affray was initially brought before me which for whatever reason was substituted and the name of the complainant disappeared. I must point out that the statement made by the complainant at the police station and that made in the court were contradictory. In Exhibit C, he stated he met the defendant on the land taking pictures, which he denied in the court. The photograph of the complainant putting on a tore shirt was not tendered as an exhibit. The defendant raised a lot of allegations against the investigating police officer which if juxtaposed with the manner and reasoning behind substituting the charge after a presumed close of investigation, one begins to wonder what indeed transpired. I must say right away, that the prosecution failed woefully in proving the elements of assault. I am sorry to say that a conviction cannot be secured based on the feeble attempts to prove the offence. The defendant is hereby discharged and acquitted in count I.

Let me deal with the last count, which is on malicious damage to property. The mens rea of the offence is created in the words "wilfully and unlawfully". The injury to the property should not only be wilful but it should also be unlawful. The ordinary meaning of "wilful is deliberate or intentional". When an act is said to have been done unlawfully, it means that it was done deliberately and intentionally, not by accident or inadvertence. Therefore, the state of mind contemplated by the word "wilfully" means that the defendant had an intention to do the particular kind of harm that was done, or alternatively that he must have foreseen that harm may occur, yet continued recklessly to do the act. With regard to the requirement of unlawfulness, it must be proved that the act was unlawful. Thus, if a defendant had a lawful excuse

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