

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE AWKA JUDICIAL DIVISION
HOLDEN AT AWKA
ON THURSDAY THE 26TH DAY OF APRIL 2018
BEFORE THE HONOURABLE JUSTICE I.B. GAFAI
JUDGE

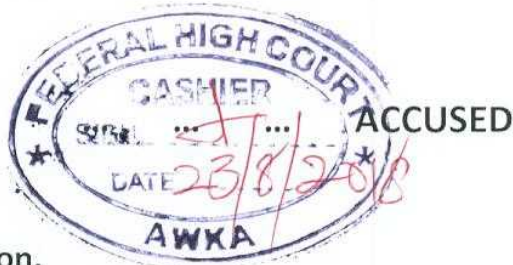
CHARGE NO:FHC/AWK/78C/2017

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ... COMPLAINANT

AND

DANLADI HAMZA LAWAL



Accused in Court.

Okafor Japhet for the Prosecution.

Mike Ikegbunam with A. D. Onuoha (Mrs) for the Accused.

JUDGEMENT

The Accused herein namely Danladi Hamza Lawal was arraigned in this Court on the 7th of November 2017 on a one count charge for an offence under the Miscellaneous Offences Act thus:

"That you, Danladi Hamza Lawal, adult, male of Old NITEL Office, Ziks Avenue, Awka, Anambra State on or about the 19th day of February 2017 at 2017 at Awka within the jurisdiction of this Honourable Court did conspire with others now at large to remove, uncluster, and vandalize NITEL cables, property of the Federal Government of Nigeria and thereby committed an offence contrary to Section 1(3) (b) Miscellaneous



Vincent Egon Egon
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Offences Act CAP M17 LFN 2004, and punishable under same law."

The charge was read and explained to the Accused in English which he understood to the satisfaction of the Court. He pleaded not guilty to the charge.

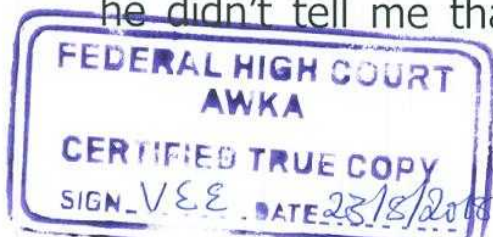
At the trial, the Prosecution called two witnesses in proof of its charge. PW1 is Ugwuja Edwin of the Nigerian Security and Civil Defence Corps (NSCDC) Anambra State Command. His evidence in chief is reproduced here thus:

"On 19/2/17 I was on surveillance behind Nitel Office Awka, I saw a truck, with some people by it excavating Nitel cables. I went there to find out what was happening. I saw a Nitel cable already inside their truck. I told them to stop. They refused and continued. They were about 8. I called office for reinforcement. They were arrested.

I arrested the driver of the truck being the Accused in this case, together with items such as diggers. That's all."

Upon cross examination, he stated thus:

"...when we arrested them, they showed us papers of authority to do what they were doing there, but we also had some paper from the Ministry of Communications to the contrary. No, they never told me that the paper from the Ministry of Communications does not apply to Anambra State. No, he didn't tell me that they paid the sum of N30M to



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excavate the whole of the Local Governments in Anambra State except 4 Local Government Areas. No, our own letter was not overtaken by events i.e. their own letter. I am not aware of any problem between the Ministry of Communications and NATCOM. No, I did not investigate if the matter had been resolved between Ministry of Communications and NATCOM before this charge was filed.

No, it is not true that we brought him to Court because he refused to part with money we demanded from him.

No, I cannot name any of the persons arrested together with the Accused. He alone is charged out of the eight suspects because of the illegal activity.

No, I don't know that he paid N30M for the excavation of the cables. That's all."

There was no re-examination. PW2 is one Okafor Victor Nkachukwu of the same office as the PW1. His evidence in chief is also reproduced thus:

"On 20/9/17, he was brought to me together with a case file involving him and others for investigation. I took the Accused to the scene of the crime, together with the items earlier recovered from the scene, which include 9 shovels, 9 diggers, 1 round digger, 1 sore cutter, 3 PVC pipes, 1 big chisel, 1 small chisel, 1 heavy duty Mercedes Benz Truck with reg. No. LND 578 XM, 1 long NITEL cable of about 29 metres, 1 sledge hammer. We brought them all to this Court except the truck because its tires are deflated."



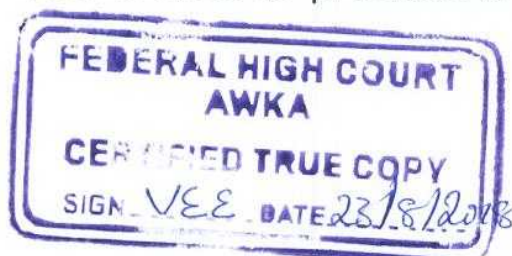
Through PW2, the Prosecution tendered these items in evidence except the truck and in the absence of any objection by the Defence same were admitted in evidenced and marked in the order listed by the PW2 as exhibits "1" to "9" respectively. Furthermore, the Statement made by the Accused recorded by the PW2 was also tendered in evidence and was admitted without objection as exhibit "10". In his further evidence in chief, PW2 testified as follows:

"He did not produce any license backing what he was doing. Before then, there was a letter to the Commandant General of our organization stopping the extraction of Old NITEL Cables.

In August 2017, the same Ministry of Communications wrote a letter to my commandant General stating the names of the companies authorized to do the business of extraction of Old NITEL Cables. The name of the Company for which the Accused worked is not among those listed. That's all."

Under cross examination, the PW 2 stated thus:

"Yes, I received the case diary together suspects. Altogether there were 8 suspects including the Accused. No, the Accused did not show us any documents. He didn't tell me he hired the truck. He was unable to produce any documents.



No, one Mr. Sulaiman a Police Officer from the Police Headquarters Awka came to me in connection with this case. No, he did not tell me that he paid N30M for the contract of the excavation of the NITEL Cables.

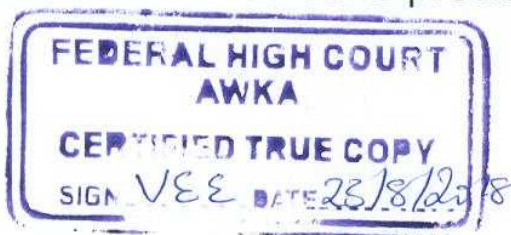
The other suspects arrested with him were labourers he engaged. Nobody gave me any money because our bail is free. He is not doing his business genuinely. That's all."

There was no re-examination and the Prosecution closed its case.

When the case came up for Defence on the 21st of February 2018, the Prosecution informed the Court that it had filed an amended charge two days earlier on the 19th of February 2018. The amended charge reads:

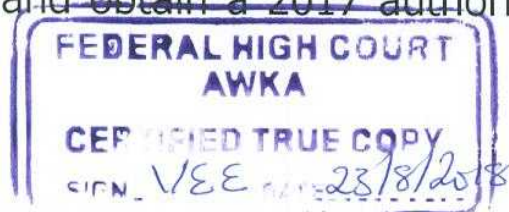
"That you Danladi Hamza Lawal, adult, male of old Nitel Office, Ziks Avenue Awka, Anambra State on or about the 19th day of February 2017 at Awka within the jurisdiction of this Honourable Court without lawful authority vandalized Nitel cables, property of the Federal Government of Nigeria and thereby committed an offence contrary to S. 1 (3) (b) Miscellaneous Offences Act M17 LFN 2004 and punishable under same law."

There being no objection to the amended charge being read on that date, same was read to the Accused in the same manner as done previously on the original charge. He



pleaded not guilty to it. It was on this amended charge that the Accused proceeded to open his Defence immediately; by which he testified as DW1 in chief thus:

"I am a driver as well as a metal scrap trader. On 19/2/17, we were behind NITEL Office at Ziks Avenue;; it was on a Sunday. One officer of the NCD saw us there. He asked us who permitted us to do that. We replied him that it was our own. He asked for paper of permission on us to do that. We gave him the permission paper. He read it but said it was an illegal permission. I told him that it was what I had as my authority to do so. I told him that even the C.O.P. of Anambra State is aware of our work and permission. On that particular date however the Police did not escort us to the work place. The NCD Officer called his colleagues; they came with the vehicle and arrested me and my workers. They detained me up to the following day. The Police Headquarters sent 2 of their officers to the NCD demanding for our release. The police told them that they (the police) were satisfied with the permission paper shown to them by us. After the 2 police officers left, the Civil Defence Officers asked me to find somebody to bail me. I was released on bail but they refused to release my vehicle. After their investigation, the Civil Defence Officer called me and told me that their investigation revealed that the documents we presented were genuine, that person was the Deputy Commandant and he was together with the PW1. He however informed me that they had another paper from the Ministry of Communications that our line of work be stopped. He advised me to go and obtain a 2017 authorization papers if I wanted to



continue on that line of job. They however still refused to release my vehicle. I told him that it was not my vehicle and that I was paying N40, 000 daily to the owner. He refused to release the vehicle. I went to the Territorial Manager of the defunct NITEL. He came and explained to them that our line of business is legitimate and that they should release my vehicle. The Commandant finally stated that he would never release the vehicle and that he has referred the case to his headquarters at Abuja. (DW shown some papers by his learned counsel) Yes, these are the documents of authority I possessed and showed the officers of the NSCDC. The originals are with the sellers".

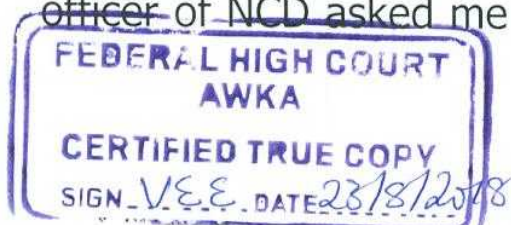
Through his further evidence in chief, five documents were tendered in evidence being:

- i. Letter of 08/03/16 addressed to C.O.P. by NATCOM;
- ii. Sales Agreement of 05/7/16 between Alh Yunusa and Main Spring Bank;
- iii. Agreement dated 02/10/17 between Ndu Agu of Main Spring and Danladi Hamza Lawal;
- iv. Memorandum of Agreement between the Accused and Chinedu Godwin Okolo dated 28/11/16.
- v. Scrap Cable Purchase Agreement dated 07/7/16.

These were admitted in evidence without objection as exhibits "11", "11A", "11B", "11C" and "11D" respectively.

Upon cross examination, the Accused stated thus:

"Yes, the business I am doing is for myself. Yes, the officer of NCD asked me to produce papers of 2017. It



is not because my own paper is not valid but simply because they had another paper from the Ministry of Communications.

No, I am not aware that the Ministry of Communications has stopped that contract. I paid the money for the contract work to Alh. Surajo and Mr. Jude. On your question whether the said Alh. Surajo and Jude are representatives of the Ministry of Communications, I reply that in the first place NITEL sold to NATCOM, NATCOM sold to Main Spring Bank, Main Spring Bank sold to Bargu Petroleum Company, Bargu Petroleum sold to Yunusa and Alh Kabiru Dauda at the rate of Twenty One Million, Five Hundred Naira. I was a witness to the transaction. Then Alh. Surajo, Muazu and Mr. Jude bought it at the rate of Forty Five Million. I bought the remainder for Alh. Surajo and Jude at the rate of N30M.

It is not true that I knew that my contract had been stopped. That's all."

There was no re-examination. DW2 is one Adbullahi Muhammad. He testified in chief thus:

"The Accused hired my truck at the rate of N40, 000. He told me that he was given a contract at Awka in Anambra State. It was in 2016. He showed me the genuine paper on the contract. I even came down to Awka.

On 19/2/17, I was in Kano when the Accused called on phone that he has a problem with the NCD. I came down to Awka. It was 28th July 2017. He took me to the place where the truck was impounded. No, I did not visit the office of the NCD in Awka. That's all."



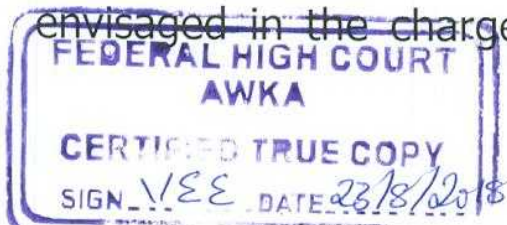
Under cross-examination, stated thus:

"No, I was not part of the business of the Accused. I only hired out my truck to him. It was an agreement. It was oral agreement. I did not observe anything on the truck. Yes, my mission here is to tell the Court that the truck belongs to me. No, I am not aware that the truck was used to do something illegal. I am hearing it from you now. That's all."

There was no re-examination and the Defence closed its case too. Both learned counsel for the parties filed their written address; which they adopted on the 27th of March 2018. In his written address, the learned counsel for the Accused Mike Ikegbunam Esq. formulated a lone issue for the determination of this Court thus:

"Whether the Accused person can be held liable for vandalising or removing property he has honest and bonafide belief to be his legitimate property."

Drawing support from the decisions in **Nguta vs. C.O.P. (1962) 6 ENLR 68; Nwakire vs. C.O.P. (1992) 5 NWLR Pt 214, 289** and others, he submitted in the main that the Accused having proved a bonafide claim of right over the property that forms the subject of the charge, he cannot be made to bear the criminal liability envisaged in the charge. It is his further submission that



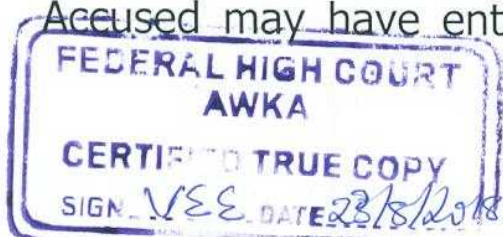
the proof of bonafide claim of right by the Accused has not been controverted in anyway by the Prosecution. He thus urged the Court to discharge and acquit the Accused.

In his written address, the learned Prosecution's counsel Okafor Japhet Esq. did not formulate any issue for determination but appears to have adopted the lone issue for the Accused (*supra*). Disappointingly, I have found a lengthy summary of the evidences adduced but with very little specific submissions on same. For the sake of clarity, I will reproduce in verbatim the more relevant portion of his written address here thus:

"Whether the Accused Person can be held liable for vandalizing or removing property which he was honest and bonafide belief to be his legitimate property?

In answer to the above, we state that the Accused can be held liable because as at the 19th day of February 2017 when the Accused was arrested, the contract has been suspended or cancelled. So it will be improper to hold that he was doing a legitimate work, which he knew was suspended but he went ahead to do it. It is also contradictory for a person to purchase a contract of N30, 000, 000 (Thirty Million Naira only) just for him to be receiving N1, 000 per hole he opened.

All the authorities cited by the Defence have no nexus with the issue at hand. It is crystally clear that the Accused may have entered a contractual relationship

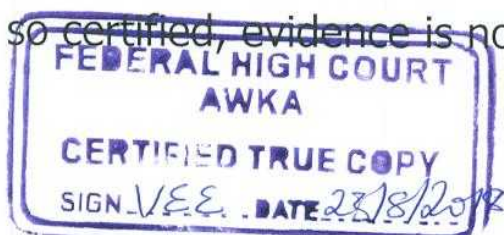


with Main Spring Ltd, but such contract was suspended as at the time of the offence. Also the Accused stated in his testimony that PW1 asked him to produce 2017 document which he did not have. By 2017 document, PW1 was aware that the contract of 2016 had been cancelled and a 2017 document would avail him.

Thus concluding, we state that as at the time of arrest of the accused person, the contract had been cancelled or suspended. We also attach a copy of the letter of suspension which the accused is aware of.

May it please the Court."

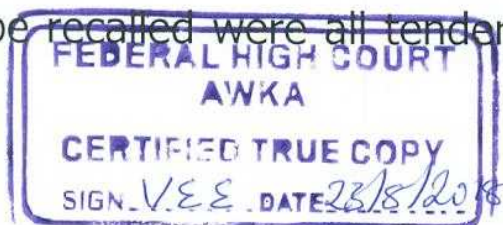
Let me quickly explain here that the letter referred by the learned counsel in the concluding portion of his written address (supra) is one that he has attached to his written address being a photocopy of an uncertified letter from the Ministry of Communication Technology addressed to the Commandant General of the NSCDC, Abuja. For the purpose it is meant to serve, this letter is simply worthless for two reasons. Firstly, it is not certified as a true copy of its original which the Court could recognise, being a public document under the provisions of Section 102 and 106 of the Evidence Act 2011. See also **Abdullahi vs. FRN (2016) LPELR SC 288/2012; Omisore vs. Arigbesola (2015) LPELR – SC 204/2015**. Secondly, even if it were so certified, evidence is not tendered by way of annexure to



written address but either from the Bar with consent of the other party or through a witness. Learned Counsel shall restrict his role as counsel simpliciter. The said letter is therefore discountenanced.

From the entire facts, the Prosecution's case is simple to understand. The Accused contravened the provisions of Section 1(3) of the Miscellaneous Act (Supra) by vandalising NITEL scrap cables same having been prohibited by a letter to that effect from the Federal Ministry of Communication Technology. The case of the Accused is similarly simple and straight forward: he purchased the scrap cables legitimately and in compliance with all due legal process on it before the said prohibitive letter of the Federal Ministry of Communications surfaced and more so when the said letter did not include Anambra State among the states listed for the application of the prohibition contained in the letter by the Federal Ministry of Communications.

Let it be remembered here that in the course of the oral evidence in chief of PW2, he was led by the learned Prosecution counsel to testify on and identify a number of items including the Statement of the Accused which as may be recalled were all tendered in evidence, and admitted as



exhibits "1" to "10". Of specific note here is the said letter by the Federal Ministry of Communications; which, curiously enough, was never tendered in evidence although the Prosecution led some foundation on it tending to hint that it was set to tender it in evidence as well. The entire case of the Prosecution seems to have been built on the alleged prohibition contained in the said letter. The Court watched with dismay at the manner in which the Prosecution seemed decidedly unwilling to proceed to tender the said letter in evidence.

From the entire evidence of both Prosecution witnesses together with exhibits "1" to "10", it is clear that the charge is basically hinged on the alleged prohibition contained in the said letter by the Federal Ministry of Communications. Failure to tender same in evidence is thus fatal to the Prosecution's case. There is no how the Prosecution can be said to have proved its charge beyond reasonable doubt in accordance with the provisions of Section 135 of the Evidence Act 2011.

For whatever it might have been worth to the Prosecution, it is in the evidence of PW2 that the said letter was made by the Federal Ministry of Communications in August 2017, which once again clearly strengthens the



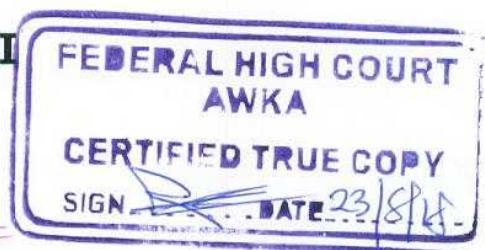
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SEA (Lit)

evidence of the Accused that the said letter came up only after the scrap metals had already been validly sold to him. Even more worse to the Prosecution's case is the letter from the Federal Ministry of Works and Housing dated the 5th of April 2016 and another letter from the Anambra State Ministry of Road Construction, Road Furniture and Maintenance both front loaded to the original charge but which the Prosecution understandably refrained from tendering in evidence owing to the clear inference in both letters in favour of the Accused.

From the totality of the evidence before the Court as highlighted herein earlier, the only reasonable finding the Court can arrive at is the failure of the Prosecution to prove the commission of any offence against the Accused; talk less of proving same beyond reasonable doubt. The charge fails and is dismissed. The Accused is accordingly discharged and acquitted.



SIGNED
I.B. GAFAI
JUDGE
26/4/18



A-280 = Vincent Egonor
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