

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

**HOLDEN AT AWKA**

**BEFORE HIS WORSHIP MIKE ANYADIEGWU ESQ. SNR. MAG. GRADE II**  
**THIS TUESDAY THE 29<sup>TH</sup> DAY OF AUGUST, 2017**

**MAW/42<sup>C</sup>/2015.**

**COMMISSIONER OF POLICE**

**VS.**

**LAWRENCE UKWUOMA**

Defendant Present.

Peter Ezeugwu for prosecution.

E. U. Udegbumam for defence.

**JUDGMENT**

The defendant was charged with a 3 counts charge of

1. Conspiracy to commit felony to wit assault occasioning harm and thereby committed an offence punishable under Sec. 495 (a) of the Criminal Code Cap. 36 Vol. II Revised Laws of Anambra State of Nigeria 1991 as amended.
2. Assault contrary to Sec. 258 and yet another assault contrary to Sec. 258 of the said law above.

PW1, Felix Anowai stated that the defendant (Lawrence Ukwuoma) brought an army officer to his house on 20<sup>th</sup> February 2015. He stated that the said army officer flashed his identity card to him and started hitting him with an Iron Belt all over his body with the defendant. He stated that he defendant hit him on his head and that he sustained injury. He said he collapsed and a friend rescued him. He said also that the said army officer brought out a gun. He said that he ran away and invited the police. He said he was subsequently directed to go for medical treating by the police and I was treated. He stated further that the defendant had once intervened when he beat his sister over indecent behavior. The PW1 was duely cross examined and Exhibit "A" was tendered which was his extra judicial statement in the police. In Exhibit "A", PW1 stated that he was having problems with the defendant because the defendant once came and questioned him why he should beat his sister for an alleged indecent conduct. He stated further in Exhibit "A" that the said sister told her that it was the defendant that taught her the alleged indecent behavior. He went further to say that the army man beat him and demanded a sum of ₦5,000 and that later he gave ₦2,000 to the said army officer. He state further in Exhibit "A" that the said army officer left with the defendant.

PW2, Chukwuemeka Okoye stated that he came to visit his Pastor (PW1) on 26<sup>th</sup> February 2016 and saw the defendant with somebody beating PW1 with Iron Belt to the extent that he collapsed. He stated that he wanted to stop them but they warned him not to interfere in the beating and that he further attempted to stop them and he was

threatened with something that look like gun. He said that the army man entered a motorcycle belonging to the defendant and drove off. PW2 was duly cross examined.

PW3, Gwande Hebax, the IPO stated that the PW1 was beaten by a person in an army uniform as reported to him and that he gave the PW1 medical form for medical examination. He stated that the said 8 year old sister of the PW1 made statement. He tendered the stated of the defendant. PW3 was duly cross examined.

DW1: Chukwuemeka Odum, stated that he knows the defendant as well as the complainant. He stated that he has treated an issue arising from excessive beating of an 8 year old girl by the complainant. He went further to say that the said girl had scars all over her body was evidence of maltreatment by the complainant. He stated that a military man came to him and told him that he will go to the complainant's house and get the little girl there. He stated further that the said little girl was at all material time locked up in a room by the complainant. He said he told the defendant to take him to the compound where the girl was being detained he stated how he went to the police to report a case of child abuse against the complainant. DW1 was duly cross examined.

DW2, Lawrence Ukwuoma, the defendant on record stated that the complainant is in the habit of maltreating his house helps. He stated that he did not conspire with anybody to beat the complainant. He said there was a burial in the neighborhood and a man dressed in army uniform came and showed him ID Card and asked him to show him the house where a little girl was being locked up in a kitchen so I took him to the place and I entered with him. So the military man went told the complainant to kneel down and he refused. So the wife of the complainant asked him if he wants to kneel down for his fellowman and the complainant wanted to kneel down but suddenly jumped and held the army man. The military man flogged him with his belt and we later left. I later discovered it was the vigilante man (DW1) that brought him. DW2 was duly cross examined.

Note that when a defendant commits identical offences in a single transaction against the same person at the same time the defendant can be charged and the act consisting the offences at similar character be stated in a single count. See *Police Vs. Ojeni* 1957 WNLRCt 387. Firstly, the defendant is charged with the offence of conspiracy to commit assault occasioning harm. Conspiracy is nowhere defined under the code but the courts have frequently resorted to the meaning ascribed to it by the WEST AFRICAN COURT OF APPEAL in *Mulkany Vs. R.* when it held that a conspiracy is an agreement by 2 or more persons to do an unlawful act by unlawful means. The complainant in his extrajudicial statement stated clearly "I heard somebody knocking on that day on my door ... the said man introduced himself as army man. He then asked me why am I making trouble with Lawrence Ukwuoma. That you know he is our friend and the man started beating me with his belt and as a result I sustained deep injury". He also said that when the man left with the defendant that he went to CPS. During his evidence in chief, he made a volte face. He told the court that he was beaten up by a man with an iron belt and the man was holding something like gun. He stated that the defendant also beat him and he fainted. PW2, came and said he was present during the event and even wanted to separate them but that he was threatened with something like gun. He made statement admitted as Exhibit "C" where the PW2 stated again that he was there and that he wanted to separate them. There was no mention of gun by both PW1 and PW2 in their

extra judicial statement. There was no mention of fainting in their statement. It is also not mentioned by PW1 that PW2 was there. PW1 and PW2 appears to have woken up from sleep during the trial and related a differed story all together.

It is trite law that oral evidence is inadmissible to contradict the contents of a document. In other words oral testimony cannot be used to state the content of a document. See Sec. 132 (1) Evidence Act when documentary evidence supports oral evidence, oral evidence becomes more credible. The opposite is the case here. The reasoning being that documentary evidence serves as a hanger from which to assess oral testimony – See Odutala Vs. Mabongunje 2013 per Rhodes – Visor JSC. PW1 and PW2 testimony in court after being examined by this court with a tooth comb I am of the view that it is a belated after thought story. PW1 who alleged that he fainted in his oral testimony did not tell the police at the earliest opportunity of his being fainted. He did not also tell the police that was available and intended to separate the fight. I think both of them rendered false account of what transpired. They both failed to link the defendant to the alleged criminal acts. There is a long and almost in exhaustive line of judicial ... by the court that material contradiction in the evidence adduced by the prosecution must create doubts in the mind of the court and such doubt will be resolved in favour of the defendant where evidence of witnesses are contradictory of each other, it is the duty of the court to discountenance same and treat the entire evidence as unreliable. The complainant and PW1 are both unreliable witnesses and their testimony accordingly treated as unreliable. This is a good case where a no case submission could have been made and upheld. I shall accordingly resolves all the doubts created by the testimony of PW1 and PW2 in favour of the defendant. He is accordingly discharged and acquitted in all the 3 counts.

Signed:

Mike Anaydiegwu Esq.

Snr. Mag Grade II

29/08/2017