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IN THE COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF NNEWI JUDICIAL DIVISION

HOLDEN AT NNEWI:

BEFORE HIS LORDSHIP, THE HON JUSTICE O. M. ANYACHEBELU ON
TUES THE 4TH DAY OF APRIL 2017.

SUIT NO HN/ 26C/2012:

BETWEEN:

THE	STATE	: : :	COMPLAINANT
AND			
AMOB ILOAKPU	: : :	DEFENDANT	

JUDGMENT:

The information and proofs of evidence in respect of this charge was filed at the High Court Registry on 15th August 2012. It is essentially a one count charge.

The statement of offence reads;

"Illegal possession of firearms, contrary to section 3 (1) of the Robbery and Firearms (Special Provisions) Act Cap RII, Laws of the Federation 2004.

PARTICULARS OF OFFENCE:

Amobi Iloakpu on the 13th day of November 2011, at Umudala Village, Ezinifite in the Nnewi Judicial Division was in illegal possession of firearms.

This was one of those cases inherited by this court as constituted consequent upon transfer of Judicial Officers. This court took over proceedings effective from 1st July 2013. It took some time before the Defendant could be served notice of trial for effective arraignment.

On the 27th January 2014, the Defendant pleaded not guilty to the said charge.

It is significant to stress that this case has really had a checkered history. The alleged offence took place on 13th November 2011. It was almost two years

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thereafter that the Defendant was successfully arraigned at the High Court. It is also important to mention that the charge for remand proceedings at the Chief Magistrate Court was for armed Robbery.

Actual trial started on 27th February 2014 with the evidence of the IPO as PW1. In the course of his testimony, objection was raised to the admissibility of an alleged confessional statement. Trial within trial was ordered and conducted. In a considered ruling delivered by this court on 30th October 2014, the court rejected the said statement as being involuntary.

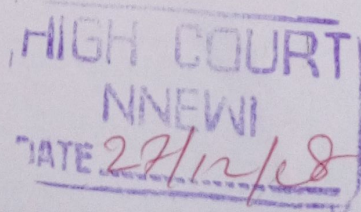
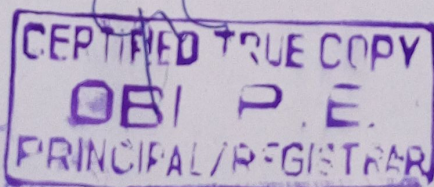
After the ruling was delivered on 30th October 2014, the case was severally adjourned at the instance of the Prosecution to enable the State secure the attendance of the said IPO to continue with his evidence. That was how the case eventually protracted to 1st March 2016 after an intermittent Judiciary strike as well.

PW1 was Sergeant Oyon Bassey – Force No 371503 attached to SARS Nnewi Unit.

According to him while on duty, the DPO of Police Station, Ezinifite transferred an armed robbery case against Defendant and one Chineye Emeaso. Case was assigned to him for investigation. Two suspects were transferred along.

Through this witness the following were received and admitted as exhibits, namely;

- (1) Exhibit P1 – Statement of Reuben Onyemazu dated 14/11/2011.
- (2) Exhibit P2 & P2 (a) – The statement of Rebecca Dike dated 15/11/2011 together with attached photocopy respectively.
According to PW1, the gun which was recovered and handed over to Police was said to have been released to the vigilante.
- (3) Exhibit P3 – Copy of the Bond to produce dated 12/4/2012.
- (4) Exhibit P4 – One piece of expended double barrel cartridge.
PW1 also stated that there were said to be some letters from the Community to the Police, complaining about nefarious activities of the Defendant.
- (5) Exhibit P5 – Letter dated 15/11/2011.
- (6) Exhibit P6 – Letter dated 28th November 2011.



At the end of the examination in chief, the PW1 was partly cross-examined. The case was on 14/6/16 adjourned for cross-examination to continue.

The case thereafter suffered several adjournments at the instance of the Prosecution. The Prosecution was unable to produce the said PW1 to take the cross-examination. No other witness was available despite about five (5) adjournments on record for that purpose.

Eventually on 16th February 2017, the Prosecution in the face of incomplete cross-examination of the one and only witness namely the PW1 (i.e. IPL) threw in the towel on the basis that neither the PW1 nor any other witness was forthcoming. At that stage, the Prosecution announced the close for the case for Prosecution.

For the defence, the defence counsel stated that there was nothing to defend and opted to address the court on what appeared to be a no case submission. Addresses were then ordered and filed accordingly.

On the 7th of March 2017, both counsel addressed the court.

In his written submission, learned Defence Counsel raised one issue, which issue was adopted by prosecution counsel. It is thus;

"Whether the Prosecution established a prima facie case against the Defendant and if in the negative, the proper order the court will make.

I have read the proceedings, the exhibits, and appreciated the written submissions of both counsel.

It is the case of the defence, that no prima facie case has been made out against the Defence to warrant or worthy of any evidence. The burden is and always remains on the Prosecution to prove his case against the Defendant beyond reasonable doubt.

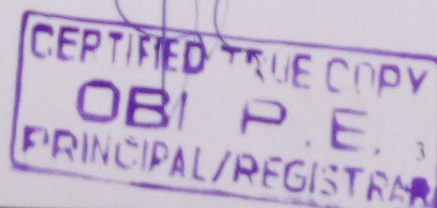
See Section 135 of the Evidence Act 2011.

In the case of

NWOSU VS THE STATE

1988 8 NWLR (Part 562) 433 at 444, the court stated

"In all criminal trials, the burden of proof is always on the Prosecution proving beyond reasonable doubt the guilt of the Accused. Failure to do so will automatically lead to discharge of the Accused".



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Section 193 of the Administration of Criminal Justice Law 2010, provides;

"If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the Defendant sufficiently to require him to make a defence, the court shall as to that particular charge discharge him".

It is significant that by the provisions of this Section, the court could even do so suo moto.

With a view to finding an explanation as to the purport of a no case submission, the defence counsel referred to the case of

EKWENUGO VS FRN

2008 15 NWLR PART 1111

Pg 630 at 632 – 634 where Supreme court stated thus;

"A submission that there is no case to answer by an accused person means that there is no evidence on which, even if the court believes it, it could not convict.... that certain essential elements of the offence for which the accused stands charged was not proved by the Prosecution; that no evidence was led to prove such essential element".

Furthermore, it is now adopted over on long line of decided cases that a submission of no case to answer could only be properly made and upheld when;

- a. There has been no evidence to prove an essential element in the alleged offence; and/or
- b. The evidence adduced by the Prosecution had been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

It is true as submitted by Prosecution Counsel that even though the burden was on the Prosecution to prove beyond reasonable doubt, however it did not mean beyond any shadow of doubt.

See

OKOLI VS STATE

2014 31 WRN 65,

where proof beyond reasonable doubt was defined as follows;

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"...proof beyond reasonable doubt stems out of a compelling presumption of innocence inherent in our adversary system of criminal justice. To displace this presumption, the evidence of the prosecution must be proof beyond reasonable doubt, not beyond shadow of any doubt that the accused person is guilty of the offence charged. Absolute certainty is impossible in any human adventure including the administration of justice...."

The only evidence by the Prosecution towards discharging this great burden of proof beyond reasonable doubt is the evidence of the IPO who testified as PW1.

I hasten to say that it appears that the only trump card the Prosecution appears to have had was the purported confessional statement which was rejected after a full trial within trial.

I say so because apart from tendering statements and letters, the PW1 under examination in chief did not give evidence of any actual investigation conducted, more so as no investigation report was tendered.

What is however more important is that the Prosecution failed to produce the witness to take the full cross-examination.

The lone and only witness was just partly cross-examined at the stage he seized coming for unexplained reasons. \

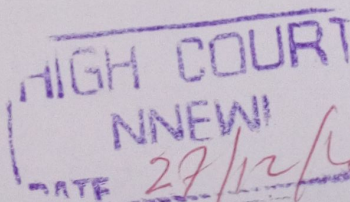
With respect, evidence of a witness which has not been subjected to cross-examination by an adverse party cannot be said to be a credible evidence that will sustain proof.

It may be otherwise if the defence refused to cross-examine when given the opportunity to do so. The issue of unchallenged evidence as contended by the Prosecution counsel does not arise at all in the instant case.

With respect, based on what has been stated, it is clear to me that the evidence before the court is manifestly unreliable that no reasonable tribunal could safely convict on it.

As a step further, I would even add that even if the evidence in chief of the said PW1 is believed as true (even in the face of no cross-examination), yet it cannot sustain any essential element of the alleged offence.

In fact there was no evidence that any firearms was found in the possession of the Defendant.



Further, with regards to what was allegedly deposited with the Police and later released to the vigilante, the question that yearned for answer was whether such could pass for firearm, without a licence. Interestingly there was no such evidence in that regards.

In all these, it is so certain that the Prosecution failed to even make out a prima facie case. The defence was entitled to keep silent as there was no burden on him to prove his innocence.

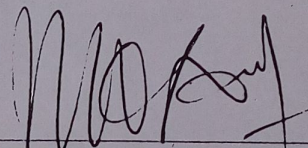
Based on the above, it is my view and I so hold that the Prosecution failed to make out a prima facie case against the Defence.

The lone issue is therefore resolved in favour of the Defendant.

Having therefore considered the case as indicated, I uphold the no case submission and hold that the Prosecution failed to make out a prima facie case.

Accordingly the Defendant, namely Amobi Iloakpu is hereby discharged.

For avoidance of doubt, the discharge in the circumstances is equivalent to a discharge and acquittal.



O. M. ANYACHEBELU

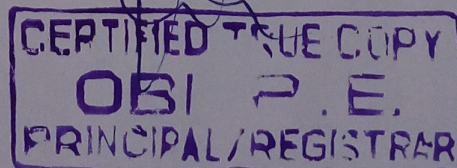
Judge.

4th April 2017.

Parties – Defendant is present. He is on bail.

Appearances – Awa P. Awa Esq. State Counsel appears for the Prosecution.

Oliver Ngwu Esq. holds brief for Onyechi Ononye Esq. for the Defendant.



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