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 THURS THE 16TH DAY OF FEB 2017.

CHARGE NO HN/5C/2014:

BETWEEN:

THE STATE : : : : **PLAINTIFF**

AND

1. **NNAEMEKA ODOH**
2. **CHIBUZOR ANYAMUENE** : : **DEFENDANTS**

JUDGEMENT:

The initial charge in respect of this case was filed on 3rd April, 2014. It was a five Count charge of the offences of conspiracy, burglary and stealing.

Before trial proceeded, precisely on the 19th day of May 2014, the prosecution sought leave to amend the charge in terms of the Amended Charge filed on 12th May 2014. The said amendment by way of substitution reduced same to a two count charge. This was not opposed and so was granted as prayed. That brought about the birth of a substituted charge which became the subject matter of the trial.

Fresh plea was taken thereto on the said 19th May 2014, whereupon the Defendants pleaded not guilty.

From the Amended charge, the statement of offence in respect of this case reads as follows;

COUNT 1 –

STATEMENT OF OFFENCE

BURGLARY, contrary to Section 378 (a) and stealing contrary to Section 353 (12) of the Criminal Code, Cap 36 Vol. 11, Revised Laws of Anambra State 1991.

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PRINCIPAL/REGISTRAR

HIGH COURT
NNEWI
22/12/18

PARTICULARS OF OFFENCE

Nnaemeka Odoh and Chibuzor Anyamuene on the 22nd day of November, 2012 at Umudike Ukpor in Nnewi Judicial Division did break and enter the dwelling house of one Emmanuel Onumazi at night, with intent to commit felony therein, namely to steal therein and did steal therein one Q-link Motor Cycle with Reg. No. QVO 95 ATN valued at N95,000.00, property of Emmanuel Onumazi.

COUNT 2 –

STATEMENT OF OFFENCE

Burglary, contrary to Section 378 (a) and stealing contrary to Section 535 (12) of the Criminal Code, Cap 36 Vol. 11, Revised Laws of Anambra State 1991.

PARTICULARS OF OFFENCE

Nnaemeka Odoh and Chibuzor Anyamuene on the 22nd day of November 2012 at Madam Ranger's Quarter Inyagbano, Umudim Nnewi in the Nnewi Judicial Division did break and enter the dwelling house of one Linda Okoye at night time, with intent to commit felony therein, namely to steal therein and did steal therein a C3 Nokia handset valued N5,000.00 total value estimated as N16,000.00 property of Linda Okoye.

The Defendants pleaded not guilty to the amended charge as read. Actual hearing commenced on 8th July, 2014 with the evidence of PW1.

Altogether, the prosecution fielded 3 witnesses. The 1st Defendant testified in his defence as a lone witness while the 2nd Defendant opted to make a no case submission. The testimonies of the Prosecution witnesses are herein below summarized.

PW1 was one Emmanuel Onumazi. He is a member of vigilante at Ukpor. He told the story of how on the night of 21st day of November 2012, he parked the Security Motorcycle in his house and left for the usual routine patrol in the company of other vigilante members.

On returning home between 12 midnight and 1.am of 22nd November, 2012 he realized that the said motorcycle was no longer where it was packed. He quickly called other members of the vigilante. He further phoned Ukpor vigilante, Nnewi vigilante and Ukpor Police to notify them. The said motorcycle is a Q-Link CG 125 valued at about N95,000.00 as at then belonging to the Umudike Vigilante Group, Ukpor.

At about 6 am of 22nd November 2012, one Leonard, a member of Ukpor Vigilante called PW1 informing him that the missing motocycle had been recovered by the Nnewi Vigilante.

He quickly went to the office of Nnewi Vigilante where he was informed that both the motorcycle and the suspects have been taken to CPS Nnewi. He then proceeded to CPS Nnewi. There, he was interviewed and referred to SARS Nnewi where the case was transferred to.

At SARS Nnewi, PW1 identified the missing motorcycle and volunteered his statement. He did not see the suspects until the date of arraignment at the Chief Magistrate Court where he eventually saw them.

Under cross-examination by the defence counsel, PW1 maintained that he discovered that the motorcycle was missing when he came back from night patrol between 12 midnight and 1.00 am of the next day. He also maintained that the said Leonard whom he mentioned earlier is also a member of Ukpor Vigilante.

PW2 was one Anthony Amaizu, a trader and a member of the vigilante group. He confirmed knowing the 1st Defendant but not his name. He recalled the 22nd November 2012. While they were on patrol, they noticed a motorcycle coming towards them with its head lamp off.

On flashing their torchlight, they discovered that two persons were on the said motorcycle. On getting close to where they were, the one behind on the motorcycle jumped off and ran into the bush; while the one riding also abandoned the motorcycle and ran into the bush.

PW2 and other vigilante members chased and caught up with only the 1st Defendant. Both the 1st Defendant and the motorcycle were taken to their office. When he was searched and some items, namely four different handsets, one razor blade and one thousand naira were recovered.

Also, the make of the motorcycle is Q-Link. It had inscribed "Umudike Vigilante Unit" on it.

Thereafter, SARS Nnewi was invited and was handed over the 1st Defendant and the items recovered. PW2 further made statement at the SARS Nnewi.

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Under cross-examination by the defence counsel, PW2 admitted that they saw 1st Defendant around 4.00 am in the morning of the incident. He further admitted that 1st Defendant was not arrested in connection with a specific offence but stressed that their movement at that time was suspicious. He denied knowing the 1st Defendant prior to the incident.

PW3 was one Linda Okoye. She is a Police Officer – woman Corporal – Force No. 029168 attached to Ozubulu Police Station. According to her, she recalled the 22nd November, 2012 specifically at about 3.00 am, she heard a noise outside. She checked but saw nobody. However she noticed that her window louvers had been removed and her two phones Nokia C3 and 3310 were removed along with the charger.

At about 6.30 am of that same morning, a certain man from PW3's state of origin came and informed her that Umuezeokalum vigilante group arrested two persons and recovered one phone bearing PW3's picture as its screen saver. She then proceeded to the vigilante office with the man. At the said office she identified the phone and saw the Defendants.

They were subsequently taken to the SARS office at Nnewi where she made her statement.

Under cross – examination, PW3 admitted that no part of her premises was broken into apart from the louvers. She stated that the noise she heard sounded like someone jumping over a wall. However she admitted hearing a gunshot also which she understood was from the vigilante. She confirmed that the Defendants were not caught with any gun.

She admitted not seeing the person that took her phone. According to her, it was at the vigilante office that she saw the 1st Defendant with the phone. The Defendant's counsel reminded her that she never stated in her statement to the Police that she heard any noise that sounded like somebody jumping across a wall, that she only mentioned that she heard a gunshot. She however maintained that though she cannot remember exactly what she said, but she believed she mentioned that in her statement.

Copy of the statement to Police made by PW3 dated 22/11/204 was admitted and marked as Exhibit P1.

With the conclusion of the evidence of PW3 on 22/02/2016, the case was severally adjourned at the instance of Prosecution as they were allegedly making efforts to bring the 4th witness PW4 who is the Investigation Police Officer to testify. The efforts proved abortive. The prosecution eventually

voluntarily announced the close of case for prosecution on 21/9/2016. The case was further protracted by the then former defence counse, R. N. Ifeukwu who at a stage even withdrew appearance. It was not until the 20th October 2016, that the present defence counsel i.e. Chief G. O. Osuigwe willingly volunteered to represent the Defendants on probono basis. The defence eventually opened on 9th November 2016 with the evidence of 1st Defendant as DW1.

His evidence in defence is to the effect that on the said 22nd November 2012, he was at Ukpor doing his tilling job. He denied knowing anything about the allegations against him.

According to him, on that fateful day, they closed from work very late in the evening. The owner of the building requested and insisted that they should pass the night. He and the 2nd Defendant eventually slept over at the place and in the morning at about 6 am they left for another job at Asaba.

On their way, they met some security men (vigilante) where they parked their vehicle. They stopped them, asked them where they were coming from and further demanded for their I.D. Card which was given to them. DW1 was then searched. His phone and cash amount of N28,000.00 were sized.

The vigilante took them and other people they had arrested to their office. There they alleged that they all came to a certain house and stole a motorcycle, burgled a house and stole some phones.

Subsequently, they were taken to CPS Nnewi and then to SARS Nnewi. At SARS they asked that they should pay N250,000.00 each in order to be released.
DW1 insisted that he does not have such amount of money. They therefore stayed at SARS until they were finally arraigned in court.

He reinstated that the vigilante did not recover any motorcycle from him and that at the time of his arrest, the only phone with him was his phone.

Under cross-examination, DW1 admitted that a vigilante group exists in his community at Obosi but that they neither have a gate nor a special building where they stay. He stated that they operate from the Chairman's place. Insisted that they do not have time restriction in the said Community.

He admitted being a tiller by profession. He maintained being at Ukpor doing his tilling work on the said 22nd November 2012. He confirmed being arrested at Ukpor by both the Ukpor vigilante and Nnewi vigilante and was

taken to CPS Nnewi. He reinstated that they were walking when arrested. He conceded owning Carter C. G. Motorcycle and a Nokia 3110C phone.

At the conclusion of the evidence of DW1, the Defence counsel reinstated that they intend to enter a no-case submission for the 2nd Defendant and thereby closed their case at this stage.

With the close of the case for defence, both counsel filed written addresses duly adopted as final addresses on 19/12/2016. It needs be reinstated that the defence made the no case submission on behalf of the 2nd Defendant and relied on it.

I have read the processes, the record of proceedings and appreciated the legal submissions of both counsel. The learned Defendant's counsel raised two (2) issues for determination, and argued same. Fortunately, the Prosecution counsel adopted the said 2 issues. They are as follows;

1. Whether the Prosecution made out a case sufficiently to warrant the 2nd Defendant entering his defence?

2. Whether the Prosecution proved the guilt of the 1st Defendant beyond reasonable doubt as required by Law in order to sustain a conviction?

Before delving into these issues, some preliminary reinstatement need be made.

This is a criminal trial. Section 135 (1) of the Evidence Act reinstates the position thus;

> ***"If the commission of a crime by a party to any proceedings is directly in issue, in any proceeding, civil or criminal, it must be proved beyond reasonable doubt".***

In so proving, the prosecution is entitled to do so by one or more of the following ways;

(1) Evidence of eye witness.
(2) Confessional statement.
(3) Circumstantial evidence.

See the case of **DA'U VS STATE 2016 7 NWLR PART 1510 Pg 83 Ratio 3.**

See also the Supreme Court case of

AKWUOBI VS STATE
2017 2 NWLR PART 1550
Pg 421 Ratio 12.

In the instance case, it is apparent that the Prosecution hinges their case on circumstantial evidence. The court will still address that aspect hereunder.

The court must therefore reiterate the provisions of the law and requisite ingredients in order to access how far the Prosecution were able to make out a case.

Section 378 (a) of the Criminal Code provides that;

Any person who

a. Breaks and enters the dwelling house of another to commit a felony therein or

b. Is guilty of a felony and is liable to imprisonment for fourteen years.

If the offence is committed in the night, the offender is liable to imprisonment for life.

Section 353 of the Criminal Code Cap 36 Vol. II Revised Laws of Anambra State 1991 provides;

> ***"Any person who steals anything capable of being stolen is guilty of a felony and is liable, if no other punishment is provided, to imprisonment for 3 years.***

Section (12) provides that -

> ***"Notwithstanding anything contained in sub section (5) (6) (7) (8) and (9) of this section, wherein these subsections the value of the property stolen exceeds two thousand Naira, the offender is liable to imprisonment for 14 years.***

From the above, the ingredients of the offence of Burglary are that there must be a breaking and an entry. It must be a dwelling house and the offender must have the intent to commit felony therein.

To establish the offence of stealing on the other hand, the Prosecution must prove that the Defendant stole anything capable of being stolen being property of any known or identifiable person.

At this stage, the court would then consider the issues.

ISSUE 1 – Whether the Prosecution made out a case sufficiently to warrant the 2nd Defendant entering his defence?

The records show that the learned counsel to the Defendants did state that he was making a no case submission on behalf of the 2nd Defendant and that he was relying on it.

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

Section 193 – "If at the close of the evidence in support of the charge, it appears to 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".

In a bid to give Judicial implication/interpretation of the above section, the Defence counsel referred to the case of

DANIEL OKAFOR VS STATE
(2016) 13 NCC 396

where the Supreme Court stated thus;

"In the well known case of ***Ibeziakor Vs COP 1963 1 ALL NLR 60 at 63 – 64***, this court stated the guidelines for upholding a no case submission. The court held thus;

> "A submission that there is no case to answer may be properly made and upheld
>
> a. where there has been no evidence to prove an essential element of the offence charged
> b. when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict upon it"

In the more recent case of

DESTRA INV LTD VS FRN
2017 2 NWLR PART 1550
Pg 485 Ratio (1), the Court of Appeal emphasized as follows;

> "At the close of the prosecution's case, a submission of no-case to answer made by counsel to the accused person postulates one or all of the following:
>
> (a) That there has been throughout the trial no legally admissible evidence at all against the accused person to link him in any way with the commission of the offence charged.
>
> (b) That there was no evidence which might have linked the accused person with the alleged offence charged and that the evidence presented by the prosecution has been so discredited under cross examination that no reasonable court can be called upon to act on such evidence.
>
> (c) That even if the court believes the evidence adduced by the prosecution, there is no sufficient material on which the court can convict the accused person.

See also the case of ***Daboh Vs State (1977) 5 SC 197***

Three witnesses testified for the Prosecution. PW1 was the complainant, in whose custody the alleged motorcycle actually got lost. He did not say anything about the Defendants. In fact, he sincerely stated that it was on date of arraignment that he saw them for the first time.

PW2 was one Anthony Amaizu, a trader and member of vigilante. According to him, when they accosted the motorcycle approaching without headlights, there were two persons on it. The one at the back, on sighting them, jumped down and ran into the bush.
The one riding also jumped and ran into the bush but was eventually caught and identified as 1st Defendant. The records show that nothing more was said of the 2nd Defendant in connection with the arrest and the circumstances. There was no evidence before the court from the Prosecution to suggest that 2nd Defendant was that person that jumped off and ran into the bush.

Incidentally the court is left only to speculate. None of the Prosecution witnesses, particularly PW2 stated how and why the 2nd Defendant got involved and was arrested.

The PW3 was Linda Okoye. She testified to with regards to the telephones, she admitted not seeing the person that allegedly broke into her premises to steal the phones.
With regards to the evidence, she merely stated that at the vigilante office, she identified her phone and saw the Defendants.

On the whole, there was no evidence linking the 2nd Defendant with the alleged offences charged at all. It must be recalled the IPO who purportedly investigated the case did not testify at all. In the end, there was no evidence stating the reason and circumstances that led to the arrest of the 2nd Defendant. What role did he play directly or indirectly, the court was not told. As stated, the court cannot be subjected to speculation.

The mere fact that the Defendants were seen at the vigilante office by PW3 where PW3 identified her phone was not proof of any element of the offence.

One fact needs to be reinstated at this stage. It is true that 1st Defendant in his testimony stated that he was with the 2nd Defendant. Would that be enough to link the 2nd Defendant to the offence without evidence from the Prosecution? With respect, I think not.

In the first place, it must be remembered that for the no case submission, reliance is restricted to the stage of "*at close of case for Prosecution*" and not at close of defence.

Secondly it must be appreciated that any evidence from 1st Defendant which links the 2nd Defendant must be seen as evidence of an accomplice which needs corroboration in order to have weight, and be relied upon. In this case, there was no corroboration.

Findings of the court must be supported by concrete and real evidence and not speculation.

See **ONUOHA VS THE STATE**
2002 1 NWLR PART 748
Pg 406.

It is my view and I so hold, that upon a review of the case of the Prosecution, there has not been any legally admissible evidence at all against the 2nd Defendant to link him in any way with the commission of the offence charged.

In the case cited by Defence Counsel, namely

FRN VS EKWENUGO
2007 3 NWLR PART 1021
Pg 209 – the court of Appeal stated that "

"if there is no sufficient evidence connecting the accused with the statutory elements of the offences with which he is charged, the court of trial must as a matter of law discharge him".

In the circumstances, and in view of my finding, I resolve issue one in favour of the 2nd Accused and uphold the no case submission in favour of the 2nd Defendant. He is therefore entitled to be discharged which discharge by implication entails acquittal as well.

ISSUE 2 – Whether the Prosecution proved the guilt of the 1st Defendant beyond reasonable doubt as required by Law in order to sustain a conviction?

The facts of this case as per the evidence placed before the court has been sufficiently reproduced above. The court has also made reference to the ingredients of the offence.

In the instant case, there was neither direct evidence of an eye witness nor any form of confession by the Defendants particularly the 1st Defendant whose involvement is under review. It is therefore taken that what the Prosecution sought to rely on is circumstantial evidence.

In the case cited by Prosecution counsel, namely;

STATE VS USMAN
2005 1 NWLR PART 906,
Pg 80 at 124, the court held that

"Evidence which could ground a conviction could be direct or circumstantial".

As stated earlier, the PW1was the person from whose custody the said motorcycle got missing. He did not say that his house was broken into. According to him, the said motorcycle is a Q – Link CG 125 valued at about N95,000= belonging to Umudike Vigilante Group Ukpor.

From the evidence, the PW2 testified that they recovered a motorcycle Q – Link with the inscription "Umudike Vigilante Unit" on it.

The 1st Defendant denied the charge against him. The burden was therefore on Prosecution to prove case beyond reasonable doubt.

An appreciation of the evidence before the court reveals as follows;

1. Whereas PW1 maintained that the motorcycle in question belongs to Umudike Vigilante Unit yet the charge stated emphatically that the said motorcycle belongs to the PW1 i.e. Emmanuel Onumazi.

   The issue then is if indeed a machine belonging to the vigilante group was recovered, can a Defendant be convicted for stealing a motorcycle belonging to PW1 in the circumstances.

   With respect, I think not. This is because part of the ingredient for the offence of stealing is that the property stolen must be capable of being stolen and be property of any known or identifiable person. Again this is a criminal trial and requires that proof must be beyond reasonable doubt. The finding of court must be based on evidence and not speculation.

2. To make matters worse, there was evidence that the said motorcycle was recovered. Unfortunately it was not tendered and there was no explanation for that omission thereby raising doubt as to whether actually any such motorcycle was recovered from the 1st Defendant bearing in mind that the Defendants denied the charge and burden was on Prosecution to prove.

With respect to the 2nd count as it relates to the telephone. PW3 stated that she noticed that a louver was removed from the window and the telephone removed.
According to her, at the office, where the Defendants were already arrested, she identified the phone which was purportedly seen with the 1st Defendant.

The 1st Defendant denied and maintained that the phone that was recovered from him was his own phone. Incidentally, the IPO did not testify to state the circumstances of the arrest and the connection of the 1st Defendant.

The telephones itself, which were said to have been recovered and which PW3 supposedly identified were not produced and/or tendered in court and no explanation given for the omission. In my view, these matters were fatal to the case of the Prosecution because it reduced the evidence against the 1st Defendant to mere suspicion.

According to *Iguh JSC (as he then was) in the case of IKO Vs STATE 2001 14 NWLR PART 732 Pg 221*

> ***"Suspicion, no matter how high, cannot ground criminal responsibility".***

I have referred to the above authority bearing in mind that if it was true that the telephones were recovered from the 1st Defendant then the suspicion that he stole it was high. But then, the Prosecution had a primary duty to establish their case as the Defendant was entitled to remain silent.

The Prosecuting counsel dwelt so much on the evidence of the DW1 in urging the court to draw conclusions against the Defendant e.g. the Prosecution counsel contended that the identity of DW1 who claimed to be a tiller was in issue as he did not show he knew how to tile.
With respect, that did not make much impact as it was for the Prosecution to establish the case.

In the case of **ORJI VS STATE**
2008 3 NCC 455, the Supreme Court held that

> "the position of the law on circumstantial evidence is that before it can ground a conviction, the evidence must be strong against and point irresistibly to the guilt of an accused person".

With respect, based on the totality of the evidence before the court the Prosecution failed to achieve that standard.

It may well be that the Defendants are 'bad' boys. But the Prosecution left undone so much of what ought to have been done. I do not have sufficient evidence to ground conviction. I have no option than to resolve the 2nd issue in favour of the Defence.

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The end result is that having considered this case on the merits and resolved as indicated, I hereby enter judgment in the following terms;

1. In respect of the 1st Defendant namely Mr. Nnaemeka Odoh, the Prosecution failed to prove their case beyond reasonable doubt, against him, he is therefore discharged and acquitted in respect of the said counts (1) and (2) of the charge.

2. In respect of the 2nd Defendant namely Chibuzor Anyamuele, the no case submission relied upon succeeds in respect of both counts (1) and (2) of the charge. He is therefore discharge.

For avoidance of doubt, the implication of this discharge is also an acquittal.

O. M. ANYACHEBELU
Judge.
16th Feb 2017.

Parties – Defendants are present. Produced from custody.

Appearances – N. C. Obunadike Ifedi (Mrs.) State Counsel for the Prosecution.

Chief g. O. Osuigwe with C. Evan Nwosu (Miss) for the Defendants.

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