

**IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA
IN THE HIGH COURT OF ONITSHA JUDICIAL DIVISION
HOLDEN AT ONITSHA**

**BEFORE HIS LORDSHIP HON. JUSTICE A. O. OKUMA
ON MONDAY THE 24TH DAY OF APRIL, 2017.**

CHARGE NO. O/21C/2016

BETWEEN:

**THE STATE
VS.
IFEANYI UZOR
MICHEAL IFENETU**

JUDGMENT

The defendants above named were on 18/4/2016 charged of the offence of conspiracy to commit felony to wit: armed robbery punishable under Section 6(b) of the Robbery and Firearms Special Provisions Act Cap R11 Laws of the Federation of Nigeria 2004 and the offence of armed robbery contrary to Section 1 (2) (a) of the same Act.

It is alleged that the defendants on the 8th day of February 2015, at Central Motor park, Upper Iweka, Onitsha in this Onitsha Judicial Division among themselves committed the above offence of conspiracy and while armed with guns, artificial guns and offensive weapons robbed one Dr. Esomonu Nneka of Ipad valued #100,000.00, a bag containing lipstick valued #6,000.00, cash sum of #6,000.00, drivers licence, gold wristwatch valued #12,000.00, avon wet lipstick valued #1500 and Avon eye liner valued #2,500.00.

Upon arraignment on the 28th day of June 2016, the defendants pleaded not guilty to both counts. That same day, the prosecution

opened her case with the evidence of Dr. Esomonu Nneka who testified as Pw1. She testified that she is a medical doctor working with Federal Medical Centre Owerri and that on 8/2/2015 being Sunday she entered a bus from Owerri and on getting to Central Park Onitsha a woman in the same commercial bus wanted to go down and the driver refused saying that he will only drop at Upper Iweka but the woman insisted and due to pressure from other passengers supporting the woman the driver was forced to stop and immediately about six men surrounded them with gun and where shouting: where is your bag? Did you hide anything? Is your earring gold? Pw1 testified that they collected her gold wrist watch, Avon Lipstick, eyeliner, Ipad, and drivers licence while she was lying down and had messed up herself being her first experience. She testified that the incident occurred by 8 pm and that they stole also about #6,000.00 from her.

Pw1 testified of how she later reported the incident at Okpoko Police Station and of how two days later she was called by security people through her mother whose number is in her driver's licence and the mother called her to inform her of the recovery of her driver's licence by security men. She testified that she went to Okpoko Police Station to report of the call by security men and of how the police at Okpoko gave her two policemen to accompany her to the security office where the security men brought out her driver's licence and said they caught two boys with it. Pw1 testified of how the policemen took the two boys to the police station and how the case was later transferred, being armed robbery case to SARS. Pw1's statement to the police was tendered unchallenged as Exhibit A while the driving licence was tendered as Exhibit B.

Under cross examination the witness testified that the incident happened at I. C. T Park and Central Park which are in the same place and that it is not in Okpoko but Awada. The witness testified that she never lived in Onitsha and don't know the area very well. She further testified that when the incident happened everybody in the bus found his way including the driver. She testified further that she does not know the driver and being that she messed herself up when she stood up she went her way. Pw1 further under cross examination stated that she made mistake of calling the place Okpoko station instead of Awada Police Station and that she made statement there. She identified her statement which was tendered as Exhibit C. she denied that the sum of #100,000.00 recovered by the police was handed over to her. She denied signing the bond for release of #100,000.00 and admitted signing the bond for release of her driver's licence which both were tendered by the 1st defendant's counsel as Exhibits D and D1.

The Pw1 also under cross – examination testified that there was gun shot that night before the operation started and that he will be surprised if the police said they used wood moulded like gun. The Pw1 further testified that it is not the vigilante men that showed the defendant to her but that she saw them that night of the incident and when she got to the vigilante office the defendants said they are the ones and she said yes they are the ones that robbed her.

On the 20/9/2016 Mr. Joseph Obiorah testified for the prosecution as Pw2. Pw2 testified that on the 10th day of February, 2015 at night around 3 to 4 am while on patrol at Isiokpo by Mgbemena Street Awada he met the defendants carrying firewood and that a woman told them before that her firewood is missing as result he asked the defendant

where they were coming from and they answered No. 7 Isiokpo Street and he asked them whether that is where they got the firewood and the defendants said yes. Pw2 testified further that he followed the defendants to No. 7 Isiokpo but on the way one of them said that one woman gave them the firewood to sell and he asked them then to show him the woman. According to Pw2, at No. 7 Isiokpo Street people there said nobody sells firewood there and the defendants now took him to Ever Joy Bakery where the people in the factory confirmed that the firewood is from there before he took the defendants to their security office where he ordered defendants to search themselves and they brought out things in their pockets and that is how he saw the driving licence and when he asked and checked the driving licence he saw a phone number at the back of it and dialed the number a woman answered and he told the woman how he recovered it from the defendants and she shouted before he cut off the phone and the woman called back saying he should hold the boys that the robbed her that she is coming.

Pw2 further testified of how the woman later came with the police and he handed over the defendants to them and of how he made statement to the police on 10/2/2015 which statement was tendered by the prosecution as Exhibit E.

Under cross examination Pw2 testified that he did not place other persons for the complainant to say the people that robbed her and denied speaking with the complainant's mother. He testified that 2nd defendant brought out the driving licence from his pocket when he ordered them to bring out things in their pockets saying that it was

recovered from both of them. He denied that the 1st defendant claimed he picked the driving licence on the way.

On 27/9/2016 Police Corporal Egbunike Anthony testified as Pw3. He stated that he is with Special Anti Robbery Squad Onitsha. He testified that on 10/2/2015 at about 18.30 hours a case of armed robbery was transferred from Awada Police Station to their unit for investigation. He gave details of his investigation of the case and through him the police investigation report was tendered as Exhibit F. Through Pw3, the learned prosecution counsel also tendered the statements of the 1st defendant dated 10/02/2015 as Exhibit G and G1 and that of the 2nd defendant dated 10/02/2015 as exhibits H and H1. The search warrant dated 13/2/2015 was also admitted in evidence through Pw3 as Exhibits J and J1.

Under cross examination the Pw3 testified that he conducted search warrant not on the hideout of the defendants but on their house and premises. The learned 1st defendant's counsel through Pw3 tendered the 1st defendant's statement at Awada Police Station as Exhibit J2. The statement of Ngwuchukwu Chinwendu dated 10/2/2015 was also tendered by the learned counsel to the 2nd defendant through this witness with that of the 2nd defendant dated 10/2/2015 as Exhibits J3 and J4 respectively. The prosecution counsel closed her case with the evidence of Pw3.

On the 26/10/2016, the 1st defendant opened his defence testifying for himself as Dw1. He stated that he is a mason by profession and do not know the complainant in this case. Dw1 testified that on 10/2/2015 he was going to work and on getting to Owerri Road people were running helter scelter as that was the time the Governor ordered

all jobless people to go back to their villages. He stated that he wanted to cross to a nearby Filling Station and the people there said they are the people police were arresting and the police arrested him and put him with others and put them in their vehicle.

Dw1 further testified that they were carried to from Onitsha to Awka and that he made statement at Awada Police Station and did not make statement at SARS at Onitsha. He denied stealing from Pw1.

Under cross examination Dw1 testified that he was taken to both Awada Police Station and SARS Onitsha and denied telling the police what happened. He further testified that it was police that arrested him. When asked what he was doing by 3 to 4 am that day of his arrest, the Dw1 testified that he went to buy little thing to eat. He further testified that he was with the 2nd defendant very early that morning in the park as people were running helter sclter and when he came to him and they had a hand check. He said he told the 2nd defendant that he had a feeling of being arrested and told him that they should leave. He denied seeing the driving licence. He also denied stealing firewood.

On the 10th November, 2015 the 2nd defendant testified in his defence as Dw2. He said he is a mechanic by profession living at Eziora Ozubulu. He denied knowing the complainant and denied being found with the complainant's driving licence. The Dw2 admitted making statement at Awada Police Station on 10/2/2015 and stated that he was taken to SARS at C. P. S Onitsha where he denied making statement. He testified that he told the police that he was at Ozubulu on 8/2/2015 during his interrogation.

Under cross examination the Dw2 testified that he does not know the police officers that recorded his statements at Awada Police Station but knows the officer that recorded his statement at Onitsha. He stated that he was arrested at Iweka Road Onitsha while coming back from Umunede where he went for outside work. He claimed that he was the only person arrested and denied knowing the 2nd defendant. The 2nd defendant denied confessing to the police. At close of the evidence of the defendants, written address was called for, ordered and exchanged by the learned defence counsel and the learned prosecution counsel.

The final written address of M. C. Eze Esq. of counsel to the 1st defendant and that of B. I. Nkemena Esq. of counsel to the 2nd defendant with the final address of R. C. Aganam – Onyezeh Mrs., Senior State counsel, for the state are for ease and convenience deemed incorporated into this judgment.

By operation of the provisions of Sections 139 and 135 of the Evidence Act 2011 the burden of proof beyond reasonable doubt that the defendants in this case committed the criminal offences as charged rests on the prosecution. See the decisions in STATE V. EMINE (1992) NWLR (pt 256) 658, YONGO V. C. O. P (1992) NWLR (pt 257) 36. In the case of ALOR V. THE STATE (1997) 4 NWLR (pt 501) Adio J. S. C posited the law thus:

"The burden of proving the charge against an accused is on the prosecution and it never shifts. See ARUNA V. THE STATE (1990) 5 NWLR (pt 155) 125 at p.137. In discharging the burden of proof, the prosecution must prove all the essential ingredients of the offence as contained in the charge".

As can be seen above, for the prosecution to succeed, he/she must prove all the essential ingredients of the offence as contained in the charge. The defendants in this case are charged of the offence of conspiracy and armed robbery. In EKE V. STATE (2011) 3 NWLR 589 the Supreme Court per Fabiyi J.S.C stated the ingredients of the offence of armed robbery thus:

"The essential ingredients of the offence of armed robbery, as listed in the case of BELLO V. STATE (2007) 10 NWLR (pt 1043) 564 are as follows:

- (a) *That there was a robbery or series of robbery.*
- (b) *That each of the robbery was an armed robbery.*
- (c) *That the accused was one of those who robbed".*

See further the decisions in BOZIN V. THE STATE (1995) 2 NWLR (pt 8) 465, ALABI V. THE STATE (1993) 7 NWLR (pt 307) 511 at 523 and AFOLALU V. STATE (2010) 16 NWLR (pt 1220) 584 SC.

With respect to the offence of Conspiracy the Supreme Court has this to say in the case of THE STATE V. OLASHEHU SALAWU (2011) LPELR – 8252 (SC) per Muhammed J. S. C:

"In order to establish that conspiracy has been committed by some set or group of persons suspected to have committed a crime/crimes, the law requires the prosecution to prove that:

- (a) *An agreement between two or more persons to do or cause to be done, some illegal act or some act which is not illegal but by illegal means.*

- (b) *Where the agreement is other than agreement to commit an offence that some act besides the agreement was done by one or more of the parties in furtherance of the agreement.*
- (c) *Specifically that each of the accused individually participated in the conspiracy.*

As earlier stated the guilt of the defendants are to be proved by the prosecution counsel and like R. C. Aganam – Onyeze Esq. prosecution counsel submitted in her address the prosecution can discharge this onerous burden placed on her through:

- (a) Confessional statement
- (b) Evidence of eye witness of the crime
- (c) Circumstantial evidence.

As seen by this honourable court the only eye witness tendered by the prosecution in this trial is the Pw1 (Dr Esomonu Nneka) who is the victim of the alleged armed robbery incident. In Exhibit C which is the Statement of Pw1 to the police at Awada Police Station on 10/2/2015 and Exhibit A which is the statement of the said Pw1 at SARS Unit . Onitsha on 11/02/2015, the witness did not specifically indentify the defendants as to the ones that robbed her. There is no evidence before this court showing that the Pw1 knew the defendants or have met them before the incident and identified them on seeing them at the scene during the said incident. The question then is how did the Pw1 identify the defendants as the people who robbed her on 8/2/2015? There is no such evidence led by the prosecution in chief through any of the prosecution witnesses.

Under cross – examination on 30/6/2016 Pw1 in that respect testified thus:

Q. How did you identify the defendants at the police station?

Ans. That night when the passengers wanted to come down there was light and I saw them at the police station I identified them.

Q. How did the police introduce them to you that made you able to identify them to the police?

Ans. When I was called I went to the police and the police followed me to the vigilante office where we picked the defendants. The vigilante said they were caught robbing someone.

Q. It was vigilante men that showed you these two people as the persons who robbed you?

Ans. It is not the vigilante that showed me the defendants. I saw them that night and when I got to the vigilante they said they are the ones with my card and I said yes they are the ones that robbed me.

The circumstance of the Pw1 being robbed while on transit by people she never testified in her extra – judicial statement to the police to have known prior to the incident demands that proper identification be conducted by the police or the vigilante men to see if the Pw1 would identify the defendants as among the people that robbed. The

identification of the defendants by Pw1 after being told by vigilante men that the defendants were the ones caught with her stolen drivers licence left much to be desire and is not acceptable. There is doubt in the mind of this court that the Pw1 would not ordinarily have identified the defendants if she was not earlier told that they were the people caught with her drivers licence. The need for identification in cases where unfamiliar person are alleged to have participated in crimes of this nature is explained in the case of BALOGUN V. A. G. OGUN STATE (2202) 6 NWLR (pt 763) 512.

The learned prosecution counsel seems to have appreciated the fact of improper mode of identification or lack of identification of the defendants by the Pw1 in course of investigation of this case and did not make issue of it in course of her submission in this case. It is even noted that without cross – examination of the Pw1 by M. C. Ezeh Esq. of counsel to the 1st defendant in that respect the Pw1 would not be said that she identified the defendants.

In the absence of eye witness evidence against the defendants, the learned prosecution counsel as seen from her submissions anchored her case substantially on the alleged confessional statements of the defendants and made copious submissions thereto.

The prosecution relied on the alleged confessional statement made on 10/02/2015 by the 1st defendant Ifeanyi Uzor to SARS Unit Onitsha tendered on 27/9/2016 as Exhibit G and the alleged confessional statement made by the 2nd defendant on 10/2/2015 tendered on 27/9/2016 as Exhibit H also made to SARS Unit Onitsha.

The record of this honourable court shows that the 1st defendant denied making the said statement to the police.

The 1st and 2nd defendants in defence of this case tendered their statements to the police at Awada Police Station dated 10/2/2015 as exhibits J2 and J3 on 28/9/2016. In both statements tendered as Exhibits J2 and J3 made by 1st and 2nd defendants respectively both defendants denied being involved in the said armed robbery on the 8/2/2015.

In Exhibit J2 the 1st defendant stated with respect to the driver's licence of Pw1 thus:

"The security man now took us to their office, searched us and recovered a driver's license belong to one Mrs. Dr. Esomonu Nnukwu Theodora. It happens on Sunday being 8th January 2015 I went to centre park Owerri Road and picked a driver's licence. My aim of picking the licence was to called the owner on phone to come and collect it. I was not aware that robbers made away with people's properties or robbed with arms. I have never steal before. It was yesterday night my friend Oyam told me to accompany him to ever Joy bread Industry to stolen fire wood. I don't have a gang, am only a Job man".

The 2nd defendant in Exhibit J3 stated thus:

"Later in the night I and my friend whose name is unknown, both of us went to ever joy bread industry and stolen fire wood. As we are coming out from there

one security stopped us and started questioning us over the firewood. I and my friend took the security man to No. 7 Isiokpo Street Awada meanwhile it was not the place we stolen the firewood. Later we took the security man to ever joy bakery while the owner of the bakery identify us as people that used to steal his firewood. From there the security man took us to their office, searched us and discovered one driver's licence belonging to Mrs. Dr. Esomonu Nneka Theodora from my friend. On that faithful Sunday 8th February 2015 I was not at Onitsha. I travelled to Ozubulu. I am not aware that robbers robbed at Centre Park Owerri Road. Why I stolen the firewood is to sell it and make a little money for myself".

As can be seen from the evidence of Pw1, and Pw3, the statements of the defendants in Exhibits J2 and J3 made at Awada Police Station which were not confessional as to the alleged robbery for which the defendants were charged in this case were first made to police before the alleged confessional statement made by the defendant to SAR Unit Onitsha.

The statements of the defendants in Exhibits J2 and J3 seems to cast doubt on the alleged confessional statements of the defendants in Exhibits G and H. In Exhibit J3 the 2nd defendants stated that he is a native of Eziora Ozubulu in Ekwusigo Local Government Area and went further to state that he was at Ozubulu on the 8/2/2015 when the incident of armed robbery took place. Having raised the defence of alibi at the time of investigation and given particulars of it the onus rest on

the prosecution to disprove the alibi. See OGOALA V. STATE (1991) 2 NWLR (pt 175) 509. In IBRAHIM V. STATE (1991) 4 NWLR (pt 186) 399 at 415 Belgore J. S.C (as he then was) stated the law as it appertains to alibi:

"When an accused person raises the defence of alibi in his statement to the police, it must be investigated. The burden of disproving the alibi is immediately on the prosecution, once the accused has indicated that at the material period of the crime, he was not the one that committed the crime because he was somewhere other than the "locus delicti". Then it is incumbent on the prosecution to rebut by investigating the alibi and failure to investigate may be fatal to the prosecution".

There is no evidence that the alibi set up by the 2nd defendant was investigated by the police. The prosecution rather relied on the subsequent alleged confessional statement made by the defendants the circumstance of which they were made remain doubtful.

A look at Exhibit J3 made by the 2nd defendant on 10/2/2015, which is the same day the alleged confessional statement of the 2nd defendant was allegedly made at SARS Onitsha, shows that Exhibit J3 was signed by the defendant by writing his name thereon while in Exhibit H allegedly made by the same 2nd defendant shows that it was signed and dated differently creating doubt in the mind of this court as to whether the 2nd defendant made the alleged confessional statement.

Apart from the above finding with respect to the alleged confessional statements of the 2nd defendant, as can be seen also in the

alleged confessional statement of the 1st defendant tendered as Exhibit G the said 1st defendant is alleged to have stated that:

"On 8/02/2015 being Sunday at about 21.00 hrs I and five other boys by name Micheal Ifenetu 'M', Aka Mazi, Aka Azonto, Aka Small and Aka Kwansia ----- used wood design like gun and used robber to round it to look like real gun and robbed people at Upper Iweka axis".

In the police investigation report tendered as Exhibit F at page 4 it shows that Chubuike Nwaogwu known as Azonto stated that he was at Aba in Abia State on that 08/02/2015, Arinze Amaro was also interrogated and he denied with Chukwujekwu Ezeh. At page 5 of the report the police stated thus:

- 4.7 *The two suspects led the investigating team to the new park market at Owerri/Onitsha where Chubuike Uwaogu m, Arinze Amaro m, and Chukwujekwu Eze "aka" Azonto were arrested.*
- 4.8 *That both Chibuike Uwaogwu m, Arinze Amaro m and Chukwujekwu Eze m denied knowledge of the crime.*
- 4.9 *That there was no sufficient evidence to link Chubuike Uwaogwu "m", Arinze Amaro "m" and Chukwujekwu Eze with the crime.*

The above finding of the police no doubt seems to rob the alleged confessional statement of the 1st defendant with credence as to the

truth of it. Adding the above finding to the earlier finding that the 1st defendant had in his statement to the police at Awada Police Station in Exhibit J2 stated that he picked the driver's licence at the Centre Park where he sleeps and being that apart from the 1st defendant being found to be in possession of the alleged driving licence there is no other evidence linking the defendants to the crime, this court seems to be of view that there is no prove beyond reasonable doubt that the defendants infact committed the offence of armed robbery.

Let me make it expressly clear that there is no doubt that the admissions of the defendants that they were caught for stealing fire woods seems to put the defendant in picture as criminals with possibility of being the armed robbers that attacked and robbed the Pw1 on the 8/2/2015, but our criminal jurisprudence placed a burden of proof beyond reasonable doubt on the prosecution of the guilty of the defendants and not burden of proof possibility or being more probable as it is in civil matters.

I think it must be further made clear that the evidence of 1st defendant in this court on 26/10/2016 on how he was arrested by the police is totally inconsistent with his statements to the police in Exhibit J2 and even Exhibit G. I find the 1st defendant to have lied in his evidence before this court. However, the fact that a defendant lied is not a proof of his guilt. The fact that defendant's lied does not also discharge the prosecution of the onerous/burden of proof beyond reasonable doubt that defendant committed the alleged offence.

Nnamani J. S. C in OMOGODO V. THE STATE (1981) 12 NSCC 119 at 126 stated the law aptly thus:

"It (the Robbery and Firearms Tribunal) was also of the view that catalogue of lies presented by the accused coupled with his betrayed demeanour point to only one conclusion – guilt. But having regard to the circumstance of this case, these conflicts, discrepancies in the appellant's evidence by themselves are not enough, in my view, to establish his guilt with reasonable degree of certainty. As was conceded by the Tribunal, a person may lie though innocent, such lies may be as a result of fear or stupidity or indeed anxiety on the part of the accused to save himself. The fact that an accused lied has never been accepted as proof of his guilt".

See further the decisions in DURUWODE V. STATE (2000) NWLR (pt 645) 392 and OGIDI V. STATE (2005) 5 NWLR (pt 918) 286 SC.

Based on the totality of the findings made above it is the considered view of this honourable court that the prosecution failed to prove beyond reasonable doubt that the defendants infact committed the offence of armed robbery.

One may think that since the defendants admitted that they stole fire wood on the 10/2/2015 in their statements to the police at Awada Police Station which they both admitted making that this court is well placed to convict both defendants with the lesser offence of stealing. Considered as it may seem being that the lesser offence of stealing of fire wood on 10/2/2015 is not part of the offence of armed robbery and conspiracy to commit armed robbery on 8/2/2015 for which the defendants are charged before this court, I find it wrong to convict the

defendants for such offence for which there is no charge or related charge before this court.

In totality the defendants are hereby discharged and acquitted.

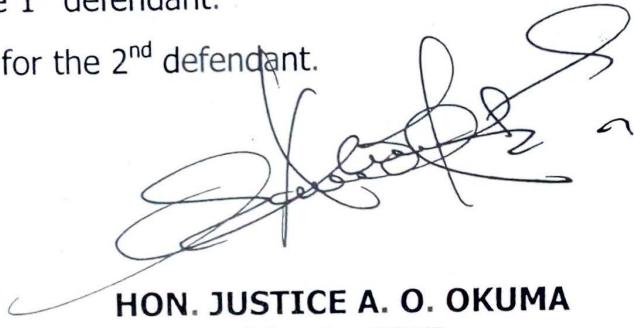
APPEARANCE:

Defendants in court.

R. C. Aganama – Onyeze Mrs. Senior State counsel appears for the state.

M. C. Ezeh Esq. appears for the 1st defendant.

B. I. Nkemenena Esq. appears for the 2nd defendant.



HON. JUSTICE A. O. OKUMA

24 - 4 - 2017