

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL
TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA -ABUJA

ON TUESDAY THE 2ND DAY OF APRIL, 2019

BEFORE HIS LORDSHIP, HONOURABLE JUSTICE I.U. BELLO

CHIEF JUDGE

SUIT NO: FCT/HC/CR/50/2006

FEDERAL REPUBLIC OF NIGERIA. PLAINTIFF

VS

1. IKECHUKWU OBIDIKE

2. EDWIN IGWEONU

3. REBECCA OBIDIKE

4. PASTOR SUNDAY EBUBECHI

5. OSITA DONATUSTHE

..... DEFENDANTS

COURT : Appearances.

The Accused in court.

Ndidi G.E Okoha Esq from the office of the Attorney
General of the Federation for the Prosecution.

Dr. Nnanna Ewa for the Defendants in court.

JUDGMENT

The defendants were on 25/5/6 charged before this court on a four count charge which were subsequently amended by the prosecution to eight count charge pursuant to section 208 CPC. However only the 1st, 2nd and 3rd defendants were arraigned as 4th and 5th remain at large. The charge for which the defendants stood trial are therefore as follows:

COUNT 1:

That you Ikechukwu Obidike, Edwin Igweonu and Pastor Sunday Ebubechi, Osita Donatus now at large on or about the 17th day of December, 2003 at Jikwoyi Division agreed to do an illegal act, to wit abduction and killed one Mr Anayo Eze "male" and that the same act was done pursuance of the agreement and you thereby committed an offence punishable under section 97 of the Penal Code.

COUNT II:

That you Ikechukwu Obidike, Edwin Igweonu and Pastor Sunday Ebubechi, Osita Donatus now at large on or about the 17th day of December, 2003 at Jikwoyi via Karu FCT with the Abuja Judicial Division did commit culpable homicide punishable with death in that you caused the death of one Mr. Anayo Eze by Abducting, beating him to death with the intention of causing his death thereby

committed an offence punishable under section 221 of the Penal Code.

COUNT III:

That you Ikechukwu Obidike, Edwin Igweonu, Pastor Sunday Ebubechi and Osita Donatus now at large or on about the 22nd day of November, 2005 at Jikwoyi via Karu FCT within the Abuja Judicial Division agreed to do an act to wit to intimidate and extort Three Million Naira from Mrs. Bibian Anayo Eze and that the same act was done in pursuance of the agreement and you thereby committed an offence punishable under section 97 of the Penal Code.

COUNT IV:

That you Ikechukwu Obidike, Edwin Igweonu, Pastor Sunday Ebubechi and Osita Donatus now at large on or about the 22nd of November, 200.. at Jikwoyi via Karu with Abuja Judicial Division committed extortion by putting Mrs. Bibian Anayo Eze in fear and thereby dishonestly induced the said Mrs Bibian Anayo Eze to deliver to you the sum of Three Million Naira and you thereby committed an offence punishable under section 294 of the Penal Code.

COUNT V:

That you Ikechukwu Obidike, Edwin Igweonu, Pastor Sunday Ebubechi and Osita Donatus now at large on or about the 26th day of January, 2006 at Jikwoyi via Karu FCT within Abuja Judicial Division Agreed to do an illegal act to wit: to intimidate and extort the sum of One Million, Five Hundred Naira from one Mrs. Bibian Anayo Eze and that the same act was done in pursuance of the agreement and you thereby committed an offence punishable under section 97 of the Penal Code.

COUNT VI:

That you Ikechukwu Obidike, Edwin Igweonu, Pastor Sunday Ebubechi and Osita Donatus (now at large) on or about the 26th Day of January 2006 at Jikwoyi via Karu FCT within Abuja Judicial Division committed extortion by putting Mrs. Bibian Anayo Eze in fear of death and thereby dishonestly induced the said Mrs Bibian Anayo Eze to deliver to you the sum of one Million Naira and you thereby committed an offence punishable under section 294 of the Penal Code.

COUNT VII: That you Rebecca Obidike on or about the 22nd day of November, 2005 at Jikwoyi via Karu FCT within the Abuja Judicial Division abetted the commission of the offence of extortion by threat of death by Ikechukwu Obidike, Edwin Igweonu, Osita Donatus and Pastor Sunday Ebubechi which offence was committed in consequence of your abetment and you thereby committed an offence under section 85 of the Penal Code.

COUNT VIII:

That you Rebecca Obidike on or about the 4th day of January 2006 at Jikwoyi via Karu FCT within the Abuja Judicial Division abetted the commission of the offence of extortion by treat of death by Ikechukwu Obidike, Edwin Igwonu, Osita Donatus and Pastor Sunday Ebubechi which offence was committed in consequence of your abetment and you thereby committed an offence punishable under section 85 of the Penal Code.

The defendants as arraigned denied the allegation in the charge as read and explained to each of them and that is to say a plea of not guilty was accordingly recorded in respect of the defendants respectively. In such

circumstances, it became imperative that the prosecution must prove beyond reasonable doubt the guilt of the defendants, through establishing the necessary ingredients that constitute the charge for which they were arraigned. In other words, the burden of the proof which lies on the prosecution must be proved beyond reasonable doubt in order for the prosecution to secure conviction otherwise, the defendants would be entitled to a discharge section 139(2) Evidence Act 2011.

In their endeavour to discharge such burden the prosecution called three witnesses. Thereafter, the defence opened their defence upon the overruling of their "No case Submission".

Three witnesses were fielded by the defence and these there after their testimonies and cross examination as was the case with prosecution witness, counsel filed their respective final addresses.

The prosecution final address raised an issue for determination:

- 1) Whether the prosecution has proved his case beyond reasonable doubt in respect of the offence of (1) Criminal Conspiracy (2) Culpable homicide, (3) Extortion and abetment contrary to sections 97,294 and 5 of the Penal Code respectively.

- 2) Similarly, the defence a lone issue was submitted in their final address for determination by this court. It is (1) whether the eight count charge as presently constituted can sustain a conviction.
- 3) The prosecution and the defence made strenuous efforts to answer the question or address the issue as formulated through their submissions and arguments. And I now consider such submissions and arguments in the light of the evidence addressed by either side.
- 4) On the charge of Conspiracy (count 1) both the defence and the prosecution are agreed as to what constitute the offence of conspiracy as provided under section 97 of the Penal Code. And I agree with the defence counsel, the charge on conspiracy was brought under the punishment section and in my view the prosecution has rightly acted. It is in accord with procedural requirement to bring a charge under the punishment section not under the definition section of the offence. It is however settled that conspiracy is an agreement between two or more persons to engage in act which is illegal or a lawful act through an illegal means. The of Sule vs State 2009 vol 17 NWLR pt 1169 per Ogbuagu JSC as invoked by the prosecution in trying to

define the offence of conspiracy is apt. The learned Jurist stated that on conspiracy;

- 5) "....An offence of conspiracy can be committed where persons here acted either by an agreement or in consent. A bare agreement to commit an offence is not necessary. Though conspiracy to commit an offence is a separate and distinct offence and independent of the actual commission of the same offence to which the conspiracy is related..."

Cases of DPP VS Bhagwan 1972 ACR VS Reed (1982) SCLR Oduneye vs The State (2001) vol 2 NWLR pt 697 and many others cases cited and relied upon have adequately defined the offence of conspiracy.

What are therefore the constituents of the offence of conspiracy? The learned defence counsel at page 24 of their written address provides for three ingredients as sated under section 96 of the Penal Code viz-

1. An Agreement to do
2. An illegal act or
3. A legal act through illegal means

I have considered the evidence of the both the prosecution and that of the defence including documentary exhibits before the court, I have not been able to find any evidence either directly or by prevailing circumstances showing any act Agreement or

concert amongst the defendants to do an act that is illegal or a legal act by an illegal means.

This is to say I agree with the defence in their submissions at page 28 of the final address when it was submitted for the defendants as follows.

".....under the root of charges filed by the prosecution there is nothing that shows that there was any agreement to kill or extort by the defendants or that there was some act besides the defendants in pursuance of the agreement"

While agreeing with the defence counsel on count one, that is the offence of conspiracy which stands alone even without further action, to insist that there must be testimony of execution of agreement is the requirement of the law of conspiracy which on its own can be punished. Looking again at the said count 1 of the charge regarding offence of conspiracy, I do agree with the defence counsel that it is bad for duplicity, indeed vague. For ease of reference it is here under reproduced;

COUNT I:

That you Ikechukwu Obidike, Edwin Igweonu and Pastor Sunday Ebubechi and Osita Donatus now at large, on or about the 17th day of December, 2003 at Jikwoyi via Karu FCT within the Abuja Judicial Division agreed to do an

illegal act to wit abduction and killed one Mr Anayo Eze (male)and that the same act was done in pursuance of the Agreement and you thereby committed offence punishable under section 97 of the Penal Code.

The charge for the offence of conspiracy should simply address the fact of the agreement to do an illegal act or legal act but by illegal means, the specific act of the crime in furtherance of the Agreement should not form part of the charge to that offence, thus the offences of Abduction and killing ought not have appeared within the charge for the offence of conspiracy. This makes the charge bad for duplicity, apart from the fact that no such offence was established by the prosecution's evidence through the gamut of the evidence led by the prosecution. By the foregoing analysis the count one charge is hereby quashed for been bad on ground of duplicity.

And for the same reason of duplicity I find no difficulty in quashing count II of the charge, thus agreeing with the defence counsel on their submissions. The charge is hereby reproduced.

COUNT II

That you Ikechukwu Obidike, Edwin Igweonu and Pastor Sunday Ebubechi, Osita Donatus now at large on or about the 17th day of December 2003 at Jikwoyi via Karu FCT

within the Abuja Judicial Division did commit culpable homicide punishable with death in that you caused the death of one Mr Anayo Eze by Abducting and beating him to death thereby committed an offence punishable under section 221 of the Penal Code.

It is patently clear that Abduction is a distinct offence which ought not have been brought within the charge relating to culpable homicide punishable with death. And for this reason the defendant counsel prayed this court to quash the charge on grounds of duplicity and I agree to do just that. The count II charge is accordingly quashed for duplicity.

Even before the quashing of the charge I have considered the evidence of the prosecution vis-avis the evidence adduced by the defence regarding the offence of culpable homicide punishable with death.

The ingredients for such offence under section 220a-c of the Penal Code Law 1.

1. That the death of a human being has actually taken place.
2. That such death has been caused by the accused.
3. That the act was done with the intention of causing bodily injury.

4. That the accused person knew or had reason to know that death would be the probable and not only the likely consequence of his action.

By the foregoing it is manifest that for an offence of culpable homicide to be constituted, those ingredients as shown (a-d) must co-exist but even where such offence is constituted, the prosecution must show as by evidence that the accused person(s) have been linked with the offence PW1 (Mrs. Bibian Anayo Eze) widow of the alleged murder by name Sunday Anayo Eze stated in her evidence in chief as follows on 20/9/2007 and 31/1/2008, indeed, in her cross examination on 31/12/2008 and 9/7/2008 that the defendants did on 17/12/2003 kidnapped and killed her husband and that she got such information from the police investigating officer sometimes in the month of March, 2006. PW1 while under cross examination stated that the defendants were not around when her husband was killed.

Similarly, PW2 gave evidence for the prosecution and stated that it was PW1 who reported at the police station a case of kidnapping and killing of her husband, Mr Anayo Eze on 17/12/2003-approximately 25 months after the alleged killing took place.

According to PW2, stated that the only involvement of second defendant Edwin Igweonu is that the 1st Defendant confessed that the second defendant was part of the syndicate that collected the N3, 000,000.00k and N1, 500,000.00k from the PW1, while under cross examination PW2 in response to question by defence counsel stated that he was not there when defendant killed the victim of the alleged murder on 17/12/2003 that he also did not see any of the five defendants receive either N3,000,000.00k or N1,500,000.00k from the Pw1 that he did not see the PW1 give any of the sums of monies to any of the defendants, that the defendants did not see any of the defendants kill Mr. Anayo Eze.

The PW2 further stated that he has no evidence that second defendant rented a house and that he did not produce the four cars impounded by him at the police station because the court did not request for their production.

PW3 is next and gave evidence in chief and stated that he never knew anything about culpable homicide and that all the information he provided in this case were given to him by the PW2 the IPO.

(b) That second defendant was arrested and charged because the first defendant confessed that second defendant was part of the conspiracy.

(b) That all the information he parades in this court was given to him by the PW1.

I have considered the submissions by the learned prosecution regarding the standard on the requirement for proof of evidence reliance has been placed on the case of Okene vs Tha Stae (2001) 2 NWLR (pt 697) at 415-416 paragraphs H-A pc CA. Which is to the effect that proof beyond reasonable doubt depends on the quality of evidence and not by the number of witnesses. I totally agree with that position. Also , proof beyond reasonable doubt does not mean beyond any shadows of doubt per the Supreme Court in the case of Dibia vs The State(2007) 9NWLR (PT 1038) 30 AT 56-57 Paragraphs H-C. And finally it was submitted by the prosecution that the evidence of PW1, PW2 and PW3 inclusive of their exhibits A, B and C have proven beyond reasonable doubt the case for the prosecution against the accused persons, hence the prosecution submitted that they had discharged the burden of proof per section 138 (3) of the Evidence Act LPELR 941. Accordingly, the prosecution urged this court to convict the accused persons as charged.

In assessing the evidence of both the prosecution and the defence, further it is clear that in the death of human person (Anayo Eze-Deceased), however there is no evidence as to direct evidence pointing at any of the Accused as responsible for the death of the deceased. The evidence of PW1 wife to the deceased is entirely premised on what PW2 told her in relation to the charge on culpable homicide, this therefore cannot and has not attracted any credibility or probative value and this is therefore discountenanced as mere bundle of hear say evidence. Similarly the piece of evidence by PW2 the IPO, that the deceased was last seen with the 1st defendant. There was no clarity as to date, where and time and this statement alone by the IPO (PW2) is not collaborated by any evidence cannot on its own stand; support any suggestion or the charge of culpable homicide. As such this piece of evidence is discountenanced.

The prosecution's arraignment of the 2nd defendant and indeed prosecution is rather curious and out rightly strange, the only basis of so doing is the fact there was a confessional statement of the 1st defendant. This couldn't have been in the place, it is in evidence that the 2nd defendant only acted as a Good Samaritan by picking the 1st defendant who he saw in pool of blood under a bridge, took him to his house and had him treated. This position has not been debunked or controverted by the prosecution by any evidence outside the confessional statement which was not made in the presence of the 2nd defendant and without rebuttal on his part. That would have made him to be bound by the terms of the confession. In this circumstance therefore, such confessional statement is in

applicable to the 2nd defendant who, I now have reason as in the analysis above, to discharge and he is hereby so discharged on the charge of culpable homicide.

The confessional statement to the maker of same that is the 1st defendant is the next to consider. There is no doubt, a retraction of the said statement was made and a trial within trial was conducted before this court in both evidence in chief and under cross examination that PW1 stated that he was tortured, broom stick used through his penis though this court has admitted the said confessional statement as extracted, there is a duty to weigh such statement against whether or not there was opportunity to commit the alleged offence by the 1st defendant, the author of the confessional statement. In the realm of the evidence even the IPOS, did state having not seen the 1st defendant commit such offence. It is settled, that the prosecution has a duty to adduce evidence that will exclude all possibilities of the commission of the alleged offence by any other person than the accused, see *Anekwe vs The State* (1998) 1 ACLR P.428 per Supreme Court from the facts of this case, the alleged crime took place in the year 2003 but until 3 years (2006) when the police came into the matter, no autopsy or any form of medical examination was conducted and report of same tendered before this court, even the bandage which the prosecution (PW1) mentioned in relation to the 1st defendant alleged fake story that he had injury over his head, hence used same to cover his head, was not tendered before this court, according to the PW2(IPO) it was left at the police station, neither was the prosecution evidence able to show that the evidence of 2nd defendant that it was he who found the 1st defendant in pool of blood, took him home and had him treated. All these lapses make for uncertainties which in turn creates doubt as to liability on the part of not only the 1st defendant but all the defendants that stood trial in this case. And for these lapses that have brought in serious doubt as to culpability of the defendant and for such reasons of doubt I hereby discharge the said defendants for the charge of culpable homicide as charged under section 221 of the Penal Code.

The prosecution has failed to prove such charge. The confessional statement is uncorroborated and is discountenanced.

On the issue of intimidation and extortion. I observed that documentary evidence sought to be tendered, were never admitted in evidence, they were in essence only admitted for identification and that is not synonymous to admittance in evidence. Accordingly, I am unable to come to conclusion that the prosecution has proved the charge of any threat, intimidation, and extortion especially as there is no further supportive evidence.

It is interesting to note and with concern the prosecution has failed to realise the need for due diligence in handling matters of weighty importance, looking at the issue of extortion, the prosecution has failed to debunk the evidence of DW2 (Rebecca) wife to the 1st defendant, that the police demanded N100, 000.00k and which she provided for bail of her husband, yet on one hand the prosecution submitted that the N100,000.00k was part of extortion money that was collected or extorted by defendants from PW1. The result is that this court is faced with two positions and which was fortified by exhibit (4) where the document described as 'Bond to produce exhibit in police station/court.'

It is incredible that the police could release N100, 000.00k being monetary exhibit to the DW2 (Rebecca) wife to the 1st defendant to produce whenever required. In my view, this only goes to show that there was a calculated desire to conceal the fact of having demanded such money from DW1 and which they found rather unwise to hold onto and hence, had to return same to the DW2. This further compounded the prosecution's case on the issue of extortion. There is no proof whatsoever and, I accordingly discharge the defendant on that count of charge of abetment and extortion as well.

The entire prosecution case and on all the 8 count charge, has failed, standard of proof has not been met. The Accused persons are hereby discharged and acquitted on all the count charge.

I must take time to state that this case has indeed suffered a protracted period of delay principally due to the absence of one of the prosecution's witnesses who was said to be on international assignment at Darfur. The matter kept on dragging awaiting his arrival for protracted period of time before any meaningful progress could be made. This is not good for our judicial system and indeed the entire administration of justice; it is an attitude that must be avoided if the integrity of the system is to be sustained in the eyes of the public.

DEFENCE COUNSEL: I want to thank this honourable court the hope of the common man for showing that no matter what happen the court is still the right place to run to.

PROSECUTION COUNSEL: We really appreciate my lord for that erudite decision because justice is a two way traffic. We appreciate that.