

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

BEFORE HIS LORDSHIP, HON, JUSTICE D. C. MADUECHESI
ON THE 16TH DAY OF FEBRUARY 2016.

APPEAL NO.A/9CA/2013
SUIT NO.MAW/ 238C /2013

BETWEEN:

COMMISSIONER OF POLICE --- APPELLANT

AND

CYPRAIN IZUOGU --- RESPONDENT

JUDGMENT

This is a sister appeal to Appeal No. A/CA/2013 – C.O.P. Vs. Cyprian Izuogu. Both appeals germinated from the same set of facts in a criminal proceedings before His Worship, L. C. Okoye Esq. sitting as a learned magistrate at Awka Magisterial District holden at Amawbia.

The crux of this appeal was the refusal of the learned trial magistrate to allow a question posed by the appellant's counsel in the re-examination

of the appellant's prosecution witness number one (hereinafter called the PW1). For proper understanding, let me briefly state the facts leading to this appeal.

The pw1 is the complainant in charge No. MAW/28c/2009 – C. O. P. .V. Cyprian Izuogu. On the 2/11/2009, he gave his evidence in chief and was partly cross examined by the defence counsel. The case was adjourned to 7/12/12. (See pages 5 – 10 of the record). Nothing was shown on the record to explain what transpired in court on that 7/12/12. However, what followed in the record are the proceedings of 30/1/13.

Nonetheless, on the 30/1/13, the defence counsel continued the cross examination of PW1. It must be noted that G. U. Muoneke Esq, was recorded as prosecuting with the Attorney – General's fiat whilst Amaka Ezeno, Esq was defending in all the proceedings aforementioned.

Yet, the said defence counsel, could not finish the cross examination the learned trial magistrate "reluctantly" adjourned the case to 1/3/13 and 15/3/13 for continuation of hearing.

On the 1/3/15, the prosecuting counsel was recorded to be absent in court but the defence counsel and her team of lawyers were in attendance. Amongst several other reasons the learned trial magistrate adjourned the case to 15/3/13 for continuation of hearing.

On the 15/3/13, both counsel were recorded to be present. The defence counsel continued the cross examination; yet again, the cross – examination was not concluded. The learned trial magistrate adjourned the case to the following dates: 12/4/13, 28/4/13 and 3/5/13 for continuation. (See pages 16 – 24 of the record).

For inexplicable reasons, at least from the record, there were no records of what transpired on 12/4/13. I cannot see in the record why the case was heard on 26/4/13 instead of 28/4/13 earlier indicated. On that 26/3/13, the prosecuting counsel appeared not to be in attendance. However, one Mr. M. I. Anushiem, informed the learned trial magistrate that his principal prayed the court to allow the cross examination of PW1 to continue. The learned trial magistrate acceded to this prayer. The defence counsel thereafter continued and concluded the cross – examination of PW1.

The particular ruling that gave rise to this appeal was delivered by His Worship L. C. Okoye Esq. on the 5th day of July 2013. The ruling was with regard to Exhibits “C1” and “C2”. The two exhibits are receipts issued by Niger Optical in the name of PW1. The prosecuting counsel had asked PW1 in re examination to explain why the exhibits bear PW1’s name when he had told the court that it was the defendant that paid for his drugs at Niger Optical. The defence took objection that that such question cannot be raised in re-examination because it would amount to re-opening the case of the prosecution. To this the prosecution contended that the question was meant to explain the discrepancy. The learned trial magistrate took argument from both counsel; and sustained the objection. This appeal is against that ruling.

The prosecution raised a lone ground of appeal vide Notice of Appeal dated 15/7/2013 and filed on the 16/7/2013.

The ground of Appeal is as follows:

ERROR IN LAW

“The learned trial magistrate erred in law when he held that the prosecution witness number 1 should not answer a question put to him in re-examination by the appellant’s counsel which is aimed at explaining the contradictions elicited during his cross examination by the respondent’s counsel.”



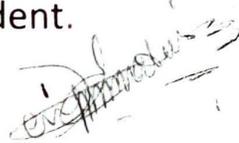
The prosecution went on to formulate the following issue for determination in its brief of argument dated 23rd day of December 2013 and filed on the same day.

“whether the trial chief magistrate court (sic) was right in upholding the submission of the defence counsel and ruled that P.W.1 should not answer a question put to him in re-examination which was aimed at resolving a contradiction elicited during his cross examination.”

In response, the respondent formulated the following issue for determination:

“whether the trial magistrate erred in law when she uphold the submissions of the defence counsel and disallowed the question put by the prosecuting counsel to p.W.1 in re-examination on the ground that the question was not directed at clearing ambiguity but rather seeks to reopen the evidence of PW1 and to give oral evidence of the document which is already an exhibit before the court?”

The two issues raised by the parties appear to be similar. However, I would resolve this appeal on the issue formulated by the respondent.



Before I do that, I must emphasize the point that this appeal was consolidated with Appeal No A/8CA/2013 – C.O.P. Vs. Cyprian Izuogu. Despite this, I decided to deliver their judgments separately. They share the same facts and the same principles of law apply to each of them.

It is a apposite that it is imperative to recall what took place on the 15/3/2013 with respect to exhibits C1 and C2. Let me quote the excerpts of the proceedings that day. I quote verbatim:

Q: How many times did you go to Niger Optical to buy drugs?

A. I went on Saturday 21st. I went back on Monday morning the Niger Optical informed me that the defendant paid no other money that the treatment they gave me only covered only the N1000 the defendant paid, so I was not entitled to any drugs.

Q. How much were you charged on the day you went to Niger Optical for the drugs?

A. I cannot remember.

Q. put: you went back to that Niger Optical on the 23rd of February 2009 and paid for drugs and you were given drugs?

A. it is not true.

Q. Look at this receipts, look at them well and read out the dates and the amounts

A. The date there is 21st February 2009 and the amount is N1000 for drugs, the 2nd receipt is 23rd February 2009 and the amount is N2,800:00 the amount is N2,700 (sic).

Q. The two receipts were issued to you by Niger Optical

A. The receipts were given to the defendant because he paid for the drugs.

Q. Tell the court the name written on the receipts

A. It is my name that is written on them.

Ezeno: I seek to tender the receipts dated 21st February 2009 and 23rd February 2009 are admitted and marked as exch. C1 and C2 respectively."

Generally see pages 20 – 21 of the record.

On the 14th June 2013, Mr. Moneke who is prosecuting with A. G. 's fiat asked PW1 the following question in re-examination.

Mr Moneke: On the 15/3/2013 you told the court that the defendant paid for your treatment: Exh C1 and C2 the receipts tendered by the defence counsel issued by Niger Optical bears (sic) your name, explain this to the court

Ezeno: I object to this question and adopt in its totality my earlier argument, the document referred to is already before the court, the PW1 cannot give explanation of document before the court.

Moneke: I adopt me argument my earlier argument (sic) in identity (sic) and urge the court to allow the question (sic) answer my question.

(See page 33 of the record).

On the 5th day of July 2013, the learned trial magistrate delivered its ruling and held inter alia:

“it is elementary law that oral evidence cannot be given of contents of documentary evidence. The receipts referred to by the prosecuting counsel are exhibits before the court Exhs “C1” and “C2” and thus section 129 (3) EA 2011 applies here, particularly where the question asked the witness is to give an explanation why his name is on Exh C1 and C2. Section 129(3) excludes oral evidence to explain the reason or intention of the maker or another of that document. The question as asked by the counsel, seems in my considered opinion to be calling on the witness to interpret or explain the Exhibits and on these grounds I

uphold the objection of the defence counsel and direct the witness not to answer the question. The prosecuting counsel statement (sic) rephrase his question.”

It is the above ruling that brought about this appeal.

I must state right away that the ruling of the learned trial magistrate court is a clear statement of the law. It stands. I need only to say that re-examination is not an opportunity to reopen a party's evidence. It is certainly not an opportunity to any witness to attempt to interpret or explain the content of a document which has been received in evidence and marked as an exhibit. The age long legal aphorism is that document speaks for itself. For emphasis sake, oral evidence is inadmissible either to add to or to substrate from the contents of a document. See *Berende .V. Usman* (2005) 14 NWLR (pt 944) 1; also *Bongo .V. Govt. of Adamawa State & Ors* (2013) 2 NWLR (pt 1339) 403.



From the trend of questions and answers, it is clear that the PW! admitted that Exhs “C1” and “C2” were made in his name. PW1 even tried to offer explanation that though the documents were in his name but that it was the defendant that paid for the drugs. That is clear implication of his answer when he said that:

“The receipts were given to the defendant because he paid for the drugs.

It is my name that is written on them.”

(see pages 20 – 21 of the record).

I then ask: what ambiguity that need to be explained in the above assertions? I took judicial notice of the fact that Niger Optical is a hospital that treated PW1 of his injuries. How could the names written on exhibits "C1" and "C2" change these facts. To me, I believe that it would not accord to common sense if the defendant's name is written on the exhibits. Of course, the defendant never contended that he was ever a patient of the said Niger Optical to warrant his name to be written on the said exhibits.

Handwritten signature: J. C. Williams

I must stress this point at this stage. The defendant, I assume, is facing trial for assault occasioning harm and stealing. What is the essence of the name written on receipts have on these offences.

I am really at lost over the significance of this storm in a tea cup scenario. I am of the firm view that this appeal is not even necessary. The prosecutor should have seized the opportunity offered by the learned trial magistrate court to rephrase the question. Probably, PW1 could have adduced evidence or explained why his name is written on exhibits "C1" and "C2". I believe that embarking on this appeal is not necessary at all. I say no more.

In the main, this appeal lacks merit and it is hereby dismissed. The decision of the learned trial magistrate is hereby upheld. The

appellant's counsel is hereby directed to reframe his question or call his next witness.

I make no order as to cost.

A handwritten signature in black ink, appearing to read "Jus. D. C. Maduechesi", written over a horizontal dotted line.

Hon. Jus. D. C. Maduechesi

Judge

APPEARANCES:

CHIEF G. U. MUONEKE: PROSECUTING WITH A. G.'S FIAT FOR THE APPELLANT

AMAKA EZENO ESQ. FOR THE RESPONDENT