

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE AWKA JUDICIAL DIVISION  
HOLDEN AT AWKA  
ON WEDNESDAY THE 22<sup>ND</sup> DAY OF NOVEMBER 2017  
BEFORE THE HONOURABLE JUSTICE I.N. OWEIBO  
JUDGE

**SUIT NO:FHC/AWK/29C/2017**

**BETWEEN:**

FEDERAL REPUBLIC OF NIGERIA

..... COMPLAINANT

**A N D**

PATIENCE OFOBUIKE

..... ACCUSED

Defendant is in court

Japhet Okafor Esq for prosecution

S.A. Okorie Esq (with M.E. Ndubuisi Esq) holding the brief of J.R. Nduka for the defence.

**JUDGMENT**

On the 2<sup>nd</sup> day of May, 2017, the accused person was arraigned in this court on a single count charge as follows-

That you, Patience Ofobuike, adult female, 46 years and one other, at large on or about the 2<sup>nd</sup> of February, 2017 at about 18:30hrs at Ofobuike Filling Station along Onitsha/Owerri road Oba in Idemili South Local Government Area within the jurisdiction of the Federal High Court of Nigeria, did use one White Mack Truck with registration number MMA 203 XB boldly written on the body and also in possession of multiple plate numbers; MBA 371 XA and XC 876 FKJ to convey, distribute and otherwise dealt in Eleven thousand litres (11,000) of adulterated AGO Petroleum Product and thereby committed an offence contrary to and punishable under section 18(a) (i) and (ii) of the Miscellaneous Offence Act, Cap M17 LFN, 2004.

Upon the plea of not guilty, the prosecution called two witnesses, both of them officers of the Nigerian Security and Civil Defence Corps. The PW1 is Nweze Anthony Nduchie. On 2/2/17 he was on routine patrol of Onitsha with his team. They got intelligence report that a truck suspected to be carrying adulterated products was somewhere at Oba. They went to Oba and sighted the truck at Ofobuiké Filling Station. When the driver of the truck sighted them he ran away abandoning the truck. When they got closer to the truck they saw a hose connecting the truck to a pumping machine. PW1 asked the pump attendant and a customer at the filling station to give him a sample of the product. The truck was loaded with about 11,000 litres of suspected adulterated AGO. He carried out a field test with an hydrometer and saw that the density was high. When he called for the way bill nobody was there to give it to him. He opened the truck to see if he would find it but he did not. He rather saw two different plate members, both of them different from the Registration number boldly written on the truck – MMA 203 XB. He and his colleagues waited for about three hours to see whether the driver of the truck would return. The driver did not, so they had to tow the truck to their office and also went with the pump attendant and the customer. He handed them over to the officer at the command. He also handed over the pumping machine, the hose and the two number plates.

The PW2 is Okafor Temple Ikenna. He is the investigating officer in this case. He recorded the statement of the accused – Exhibit A. He later took a sample of the product from the truck in the presence of the accused and took same to the PPMC depot at Enugu with a request to analyse the product to ascertain whether it was genuine or fake. The letter of request is exhibit B. The analysis report is exhibit C.



In her defence the accused person said that on 2/2/17, she had a phone call from someone called Solomon. He told accused that he had 11,000 litres of AGO to sell and whether she would be interested. They bargained the price and she told him where to take the product to, to her Filling Station. She later got a call from the pump attendant that the diesel had arrived, that they wished to off load it. As she was going to the filling station to the diesel, she met the NSCDC officers. The officers told her the diesel was not trusted and that they would go with it. The officers went with the truck, the pump attendant and one of her customers. They also went away with the pumping machine. She said she was not able to test the product before it was taken away. She said that the PPMC is not the only distributor of the product; that the product could be bought from other private distributors.

In his final submissions, learned counsel for the accused person, J.R. Nduka raised one issue for determination –

“Whether the prosecution has proved beyond reasonable doubt that the defendant committed the offence created by section 18(a) (i) & (ii) of the miscellaneous offences Act Cap M17 LFN 2004”.

Learned counsel submitted that the prosecution was unable to prove the physical and mental elements of the offence; that to prove adulteration there must be Scientific proof that the substance is actually adulterated, and that there must be integrity of the entire process of analysing the substance; that taking the sample from the truck for analysis after it has been exposed to the elements of weather for 18 days does not guarantee the integrity of the process; that the witness who presented the report was not in a position to answer questions on it or to explain the contents; that for these reasons the report – Exhibit C has no probative value. Counsel relied on *Adelarin Lateef vs. FRN (2010) LPELR – 9144*.

On the mental element learned counsel submitted that the prosecution has to prove that the accused person had an intention to sell the adulterated product as petroleum product without notice to the purchaser and knowing same will be sold as petroleum product; that none of these elements was proved; that on the contrary, the evidence before the court completely exculpated the accused person from any blame; that there is no evidence on which the court could convict.

Finally learned counsel for the accused person submitted that the burden of proof on the prosecution is to prove the entire case including to relative the defences which are in issue, counsel referred to the case of *State vs. Azeez (2008) 14 NWLR (Pt.1108) 439*.

Counsel urged the court to hold that the prosecution failed to discharge the burden placed on it; and to discharge and acquit the defendant.

Learned counsel for the prosecution, Japhet Okafor Esq, submitted that the fact that a truck loaded with 11,00 litres of diesel was found at Ofobuiké filling station proves the physical element of the offence. He submitted that the fact that the truck was connected to a generator with a hose ready for discharge proves that the accused person had the intention to discharge the product i.e. the mental element of the offence. Counsel submitted that the claim of the accused person that she wanted to test the product is neither here nor there as she did not even know the name of the instrument for the test.

On the issue of the PW2 not being the maker of Exhibit C (the analysis report), learned counsel referred to section 55(1) Evidence Act which empowers the defence to request the maker of the document to be called for examination; that as the defence did not do so they have waived



their right and cannot be heard to complain about the absence of the maker of Exhibit C; that the fact that the truck had two other plate numbers the accused intended to deceive or cheat the general public. Counsel submitted that there is a nexus between the petrol tanker and Ofobuike filling station as it was found at the station.

Counsel submitted that the prosecution was able to show that the accused person actually adulterated the petroleum product. He urged the court to hold same.

Considering the charge against the accused person, the evidence and submissions of learned counsel on both sides, I think that the single issue put forward by the learned defence counsel is sufficient, which is "whether the prosecution has proved the offence against the accused person beyond reasonable doubt".

Before going into that issue I would like to comment on certain aspects of the charge. In the first place the charge is not properly drafted. It is as though two offences have been joined together.

Secondly there is no section 18 in the Miscellaneous Offences Act. Section 1 subsection 18 seems to create offences akin to the charge against the accused person. Section 1(18) (a) (i) & (ii) of the Act provides as follows –

"a) Any person who

(i) adulterates any petroleum, petroleum product, food, drink, drug, medical preparation or any manufactured or processed product whatsoever so as to affect or change materially the quality, substance, nature or efficacy of such petroleum, petroleum product ..... Intending to sell same as petroleum, petroleum product ..... without notice to the purchaser

product..... shall be guilty of an offence.....”

ii) deals in, sells, offers for sale or otherwise exposes for sale any petroleum, petroleum product..... which is not of the quality substance, nature or efficacy expected of the product or preparation or is not of the quality, substance, nature or efficacy which the seller represents it to be or has in any way been rendered or has become noxious, dangerous or unfit shall be guilty of an offence”.

I have earlier reproduced the charge. Reading the charge along with the above reproduced law under which the accused is charged, it is very clear that the accused is not alleged to have adulterated the petroleum product contrary to paragraph (i). The accused is said to have used the truck “to convey, distribute and otherwise dealt in Eleven thousand litres (11,000) of adulterated AGO petroleum product” contrary to paragraph (ii) of section 1(18) (a) of the Act. The final submissions of counsel for the prosecution that the prosecution has shown that the accused person actually adulterated the petroleum product has no relevance to the charge before the court.

In the same vein, the allegation that the accused person was in possession of multiple number plates has nothing to do with the offence.

Now to the issue. For the prosecution to succeed it must prove –

1. That the accused used the truck to convey, distribute or deal in 11,000 litres of AGO petroleum product.
2. That the quality of the AGO did not meet the required standard.
3. That the defendant knew that it was adulterated.



accused conveyed or distributed the AGO petroleum product. However there is evidence, which is in my view sufficient to prove that the accused dealt in the said 11,000 litres of AGO. There was a truck loaded with 11,000 litres of AGO connected to a pumping machine ready to be discharged is sufficient to bring the accused within the sphere of dealing in petroleum products.

With respect to whether or not the product was adulterated the prosecution tendered exhibit C, the analysis report. In his testimony in court, the PW2 said that he collected sample from a 33,000 litres capacity truck which had about 11,000 litres in one of its compartments. In Exhibit B – Application for Forensic Test, the truck from which the sample for the analysis was taken is described as a “45,000 litres capacity”. This raises doubt as to whether the sample for analysis was taken from the same truck seized from the filling station of the accused person.

One Sehinde Oyegbata, MNIM is indicated as the maker of Exhibit C. He did not testify in court. There is nothing in the report to indicate the qualification of the maker. Section 55 of the Evidence Act cited by counsel for the prosecution does not in my view cover the report exhibit C. As the head note of the section indicates; it relates to certificates issued by Specified Government Officials. I agree with counsel for the defendant that no probative value should be attached to Exhibit C. On the above I find that the prosecution was unable to prove that the petroleum product which the accused person dealt in is adulterated.

Section 1(18) (b) (i) of the miscellaneous offences Act provides as follows-

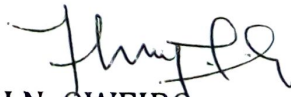
“(b)(i) whenever any person is charged with committing any offence under the preceding paragraph (a)(ii) it shall be a defence if he can

“(b)(i) whenever any person is charged with committing any offence under the preceding paragraph (a)(ii) it shall be a defence if he can establish that he did not know or had reason to know or believe that the petroleum, petroleum product..... has been adulterated or otherwise rendered noxious, dangerous or unfit”

In her extra-judicial statement – Exhibit A, the accused said she was in the process of testing the product to see if it is good before offloading it into their tank, that the NSCDC officers got to the station. However in her testimony in court the accused said the NSCDC officers were already there at the filling station when she got there to see the diesel Mr. Solomon had brought. This inconsistency notwithstanding, the evidence suggests that the accused did not see the quality of diesel being supplied to her. The PW1 had also confirmed that when they got to the station the accused was not there.

On a holistic consideration of the evidence before the court I hold the view that the prosecution failed to prove beyond reasonable doubt that the accused person committed the offence she is charged with. I accordingly enter a verdict of not guilty for the accused. She is hereby discharged and acquitted.

I hereby order that if no appeal is filed within 30 days from now, the white Mack Truck with Registration No.MMA203XB along with the 11,000 litres of AGO, the two number plates, the pumping machine and the long hose now in the custody of the prosecution be released to the owner.

  
I.N. OWEIBO  
JUDGE  
22/11/2017