

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE AWKA JUDICIAL DIVISION
HOLDEN AT AWKA
ON TUESDAY THE 24TH DAY OF OCTOBER, 2017
BEFORE HIS LORDSHIP
HON JUSTICE M. L. ABUBAKAR
JUDGE

SUIT NO. FHC/AWK/40C/2012

BETWEEN

FEDERAL REPUBLIC OF NIGERIA = = COMPLAINANT

AND

CHUKWUDULUO EZEZIDU & 2 ORS = = =DEFENDANTS/APPLICANTS

APPEARANCE

Defendant present

E. E. Nwokoro - Prosecution

C. M. Obiajagon - Defendant

JUDGMENT

The defendants stand charged of three further amended charge of conspiracy, unlawful tempering and removal of intermediate cable wires for transmitting electricity from a power holding Company Nigeria's transformer contrary to sections 3(6) and 1(9) of the Miscellaneous offences Acts Cap M 17 Laws of the Federation of Nigeria 2 2004. The charge was filed on 21/8/13 and the matter started denovo on 28/10/14 before this court. On 2/12/2014, the prosecution opened his case by calling prosecution witness I, one Opala Emeka, (PW 1), PW 2, one Nathen Ezejiofor, PW 3, one Eric Okoye, PW 4

JUDGE
FEDERAL HIGH COURT
AWKA

one Moses Okeke, PW 5 one Innocent Okafor, PW 6 one Chief Godwin Okeke, PW 7, one Corporal Christopher Ude and finally PW 8 one Inspector Agbo Godwin.

The prosecution also tendered 13 Exhibits in evidence through PW 7 and 8 respectively as follows:-

1. Exhibit 1 - Is a written statement made by the PW 7 himself
2. Exhibit 2 - Is the written statement of the 1st Defendant
3. Exhibit 3 - Is the written statement of the 2nd Defendant
4. Exhibit 4 - Is the written statement of the 3rd Defendant
5. Exhibit 5 - Is an application by the 1st Defendant to the Commissioner of police for the release of a cheque & cash to him
6. Exhibit 6 - Is a bail bond in favour of the 1st Defendant
7. Exhibit 7 - Is a search Warrant
8. Exhibit 8 - Is a safety Belt or Climbing rope
9. Exhibit 9 - Is a roll of armored cable
10. Exhibit 10 - Is a change over switch
11. Exhibit 11 - Is another statement of the 1st Defendant
12. Exhibit 12 & 13 are other statements of the 2nd and 3rd Defendants.

In their testimonies in court, the PW 1 to PW 5 who are indigenes of Obe and Okwankwo village narrated how on 15/5/2012 at 7 pm their communities were flunged unto darkness by lack of light from power Holding Company of Nigeria.

On further investigations, they found out that their transformers have been tampered with by some unknown persons. They reported the matter to the Power Holding Company and the police. It was discovered that intermediate cables were removed and taken away.

The said witnesses and the police suspected the 1st Defendant because there were stories that the 3rd Defendant brought some transformer cables to the 1st Defendant house the previous day. They went to the 1st Defendant house but met his absence. They saw some vehicle tyre marks and the marks of the cables on the house because it rained the previous night and the marks were visible. The mother of the 1st Defendant confirmed to them that it was the 3rd Defendant who brought the said cables on 14/5/12. The 1st Defendant was later arrested by the police and a cheque of 103,000 issued by the 2nd Defendant were recovered from him together with some cash.

On Cross Examination by the Defendants counsel the witness stated that they did not see the Defendants vandalized the transformers and that the transformers house were fenced and locked with keys. They added that the village vigilantes were not interviewed by the police.

Similarly P W 7 & 8 who are police officers and who recorded the statements of the Defendants, narrated how that matter was reported to them and later transferred to state C.I.D. Awka for further investigation. They added that at the time there were security in the 2 villages but did not interview any of them and that they found out that the Defendants deals in electrical goods/parts. This is the case for the prosecution.

On the other hand, the Defendants opened their defence on 29/2/16 by calling 5 (four) witnesses including the Defendants themselves. D W 1 is one Ifekangu Ezedo a brother to the 1st Defendant who narrated that there is a long standing dispute between the PW 1 to PW 5 and his brother pertaining to payment of NEPA bills in the village and they promised to deal with his brother. It is the main reason why they roped him in this case. However on cross-examination he admitted that he

never complains to the police or their village head about the dispute between his brother and the said witnesses.

The DW 2 who is the 1st Defendant confirmed the presence of a dispute over NEPA Bills between him and the witnesses mentioned earlier. He stated that he sells electrical parts at New Market, Owerri, Imo State. On 12/5/12 he went to the 2nd Defendants store at Electrical market, Obosi and brought 25mm armored cable at the cost of N100,000 and 800 Naira. He pleaded with him to waybill the cable to Neni village which he did. The 1st Defendant also requested the 3rd Defendant to go to the Neni Motor Park and collect the cable for him and take it to his (1st Defendant) house. He added that he later called the 2nd Defendant and told him to come and collect his cable because the person he brought the cable for had refused to pay him back. The 2nd Defendant carried back the cable and paid him N100, 000 and 800 Naira in cheque as he did not have cash. Later on he heard from his mother that police and vigilante were in his house on allegations that the cable is a stolen one. He added that he denied the allegation and the police D.P.O advised the complainants to go and settle the matter. On Cross Examination, he denied the allegation of conspiracy with the other Defendants and insisted on his innocence.

In his testimony the DW 3, who happened to be the 2nd Defendant confirmed what the 1st Defendant stated in his evidence and Exhibit 14 which is a photocopy of the waybill receipt was tendered in evidence through him. The DW 4 i.e. the 3rd Defendant also confirmed the testimony of the 1st Defendant. The DW 5, one chartered engineer, Ogbe Blessing Omowodu, a staff with National Engineering design, Nnewi also testified and explained the functions of Exhibits 8, 9 and 10. He added that Exhibit 9 which is the armored cable looks old and has some injuries and can be use by Generator or under the roads etc. But cannot be used on 500 KVA Generator.

On 28/9/2017, both Prosecution and the Defendant's counsel adopted their written addresses filed before this court. The Defendant counsel submitted that they have filed their own on 9/3/2013 where a sole issue

was raised for determination i.e. whether the prosecutor has proved his case beyond reasonable doubt to ground conviction of the Defendants. He argued that for the prosecution to succeed he must prove the following:

1. That the Obe and Akwankwo village transformers were vandalized.
2. That it is the Defendant who vandalized the transformers.
3. That the Defendants conspired among themselves to vandalize the transformers.

The counsel submitted that all the evidence of the prosecution witnesses are here say evidence there is nothing to show that the said transformers were vandalized and that it was the Defendants who did it. He added that he whoever assert must prove and that mere suspicious of commission of a crime cannot ground conviction. It must be based on credible or reasonable inference and will not amount to proof. *He cited the case of AMADI V STATE (1993) 8 NWLR (pt 314)644, and IKO V. STATE (2001) 35 NWLR 1.* He argued that all the evidences of the prosecution witnesses did not in any way impinge on the innocence of the Defendants as none of them say they saw the Defendants vandalize the transformers except that armored cable was dropped at the compound of the 1st Defendant by the 3rd Defendants, who testified on how and where he brought the cable from.

He added further that all doubts must be resolved in favour of the Defendants. *He cited the case of ADEKOYA V STATE (2011) 12 NWLR 127 AND NWEKE V STATE (2001) 4 NWLR (pt 704) 588.* He argued further that the prosecution has failed to prove or establish any ingredient of the offences the Defendants were charge with and urged the court to discharge and acquit them.

On the other hand, the prosecution filed his own written address on 25/4/2017 where a sole issue is raised for determination .i.e. whether the prosecution has been able to prove all the counts in the charge against

the Defendants. He submitted that the transformers in Obe and Akwankwo villages were actually vandalized as the fences surrounding them are usually of dwarf nature and can easily be jumped into as testified by the PW 1. He argued that the 1st Defendant is from Obe village and know the terrain of the two villages mentioned above.

Moverover, he is a longtime, friend of the 3rd Defendant. *He cited the case of AGBO V STATE (2006) 6 NWLR (PT 977) 545 SC and the case of UWAGBO V THE STATE (2007) 6 NWLR (1031) 2006 CA &* argued that there is enough "Circumstantial evidence to ground conviction on the Defendants. He referred to the testimonies of the Defendants and argued that there is a lot of inconsistencies that shows that they want to cover their tracks. *He cited the case of ABDULLAHI V NIG. ARMY (2010) 18 W.R.N. Ratio 5* and urged the court to convict the Defendants.

It should be noted that the defendants counsel also filed a reply on point of law on 10/5/2017 and urged the court to dismiss this case as none of the ingredient for the alleged offences were established or proved by the prosecution.

These are the case for both prosecution and the Defendant. The next question is whether the prosecution has proved his case beyond any reasonable doubt. Failure to do so will automatically lead to the discharge of the defendants. Where there is doubt in the evidence led or adduced by the prosecution, then obviously doubt will be created in the mind of the trial court, hence such doubt will be beneficial to the accused in which case, the court should discharge the accused person. See the case of *SAMBO GALADIMA V STATE (2017) VOL. 69 PT 2 NSCQLR per A sanusi JSC* at pg 718 and the case of *SHURUMO V THE STATE (2010) 44 NSCQLR per A.M. MUKTAR JSC AT PAGE 158*.

Similarly, it is trite law that suspicion no matter how strong cannot replace facts or ground a conviction. See the case of *IGBIKIS V STATE (2017) VOL. 69 PART 1 per M.D. MUHAMMED JSC AT*

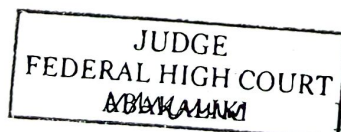
PAGES 297 -298. In the same vein, the Supreme Court has laid down principle of law that would prove whether an accused person is guilty or not. It could be any or all of the following ways:-

- (1) Confessional statement of the Accused or Defendants.
- (2) Circumstantial evidence, and
- (3) Evidence of an Eye witness.

See the case of **IGBIKIS V STATE (SUPRA) PER C. B. OGUNBIYI JSC AT PAGE 301.**

In view of the above authorities I have carefully considered the evidence before me, and found that the prosecution has failed to prove his case beyond reasonable doubt. All the evidence presented by the prosecution are based on here-say or rather suspicious that it was the Defendants who vandalized the transformers at Obe and Akwanko village. In the absence of any concrete and compelling evidence, this court has no option other than to discharge and acquit the defendants. The prosecution in his submissions made mentioned of circumstantial evidence against the Defendants. But the law is clear as to what amount to circumstantial evidence. It must point to only one conclusion, namely that the offence had been committed and that it was the accused person or defendants who committed it. **See the case of IGBIKIS V STATE (SUPRA) per C. C. NWEZE JSC at pages 307 -308**

I hold that based on the available evidence before the court there is no circumstantial evidence or otherwise against the Defendants. Accordingly, they are discharged and acquitted. I so hold.



M. L. ABUBAKAR
JUDGE
24/10/2017