

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE AWKA JUDICIAL DIVISION
HOLDEN AT AWKA
ON WEDNESDAY THE 13TH DAY OF FEBRUARY, 2018
BEFORE THE HONOURABLE JUSTICE I. N. OWEIBO
JUDGE**

CHARGE NO:FHC/AWK/76C/2017

BETWEEN:

**FEDERAL REPUBLIC OF NIGERIA ::: :: COMPLAINTANT
AND**

**1. OGOCHUKWU ONWUKA
2. IGWILLO CHUKWUNONSO } DEFENDANTS**

JUDGEMENT

On 12th October 2017, the two Defendants were arraigned before this Court on the following charges:

"COUNT 1

That you Ogochukwu Onwuka, female, 22 years old of Christopher Onwuka's compound, by St. Philip Anglican Church and St. Vincent Catholic Church, Ikenga, Ogidi, Anambra State sometime in the month of August, 2017, harboured one Chinecherem Nwokoye, female, 14 years of Ogidi Ani Etit-Ogidi, Idemili North, L.G.A., Anambra State in your house at Christopher Onwuka's compound by St. Philip Anglican Church and St. Vincent Catholic Church Ikenga, Ogidi, Anambra State being within the jurisdiction of this Honourable Court, having reason to know that she would be likely to be induced into

prostitution in Libya and thereby committed an offence under section 15 (b) of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 and punishable under the same section of the Act.

COUNT 2

That you Ogochukwu Onwuka, female, 22 years old of Christopher Onwuka's compound, by St. Philip Anglican Church and St. Vincent Catholic Church, Ikenga, Ogidi, Anambra State sometime in the month of August, 2017, harboured one Chinaza Okaro, female, 15 years of Umuru Ogidi, Idemili North L.G.A., Anambra State in your house at Christopher Onwuka's compound by St. Philip Anglican Church and St. Vincent Catholic Church Ikenga, Ogidi, Anambra State being within the jurisdiction of this Honourable Court, having reason to know that she would be likely to be induced into prostitution in Libya and thereby committed an offence under section 15 (b) of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 and punishable under the same section of the Act.

COUNT 3

That you Ogochukwu Onwuka, female, 22 years old of Christopher Onwuka's compound, by St. Philip Anglican Church and St. Vincent Catholic Church, Ikenga, Ogidi, Anambra State sometime in the month of August, 2017, procured one Chinecherem Nwokoye, female, 14 years of Ogidi Ani Etti-Ogidi, Idemili North, L.G.A., Anambra State in your house at Christopher Onwuka's compound by St. Philip Anglican Church and St. Vincent Catholic Church Ikenga, Ogidi, Anambra State being within the

jurisdiction of this Honourable Court, to be conveyed from her usual place of abode having reason to know that she would be likely to be induced into prostitution in Libya and thereby committed an offence under section 16 (2) of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 and punishable under the same section of the Act.

COUNT 4

That you Ogochukwu Onwuka, female, 22 years old of Christopher Onwuka's compound, by St. Philip Anglican Church and St. Vincent Catholic Church, Ikenga, Ogidi, Anambra State sometime in the month of August, 2017, procured one Chinaza Okaro, female, 15 years of Umuru Ogidi, Idemili North L.G.A., Anambra State in your house at Christopher Onwuka's compound by St. Philip Anglican Church and St. Vincent Catholic Church Ikenga, Ogidi, Anambra State being within the jurisdiction of this Honourable Court, to be conveyed from her usual place of abode having reason to know that she would be likely to be induced into prostitution in Libya and thereby committed an offence under section 16 (2) of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 and punishable under the same section of the Act.

COUNT 5

That you Chukwunonso Igwilllo, male, 33 years old of No. 9 Jude Onyekwere Street Awada Obosi, Anambra State sometime in the month of August, 2017, exported one Chinecherem Nwokoye, female, 14 years of Ogidi Ani Etiti-Ogidi, Idemili North, L.G.A.,

Anambra State from Ontisha motor park, Anambra State being within the jurisdiction of this Honourable Court to Libya having reason to know that she would be likely to be induced into prostitution in Libya and thereby committed an offence under section 14 (b) of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 and punishable under the same section of the Act.

COUNT 6

That you Chukwunonso Igwilllo, male, 33 years old of No. 9 Jude Onyekwere Street Awada Obosi, Anambra State sometime in the month of August, 2017, exported one Chinaza Okaro, female, 15 years of Umuru Ogidi, Idemili North L.G.A., Anambra State from Ontisha motor park, Anambra State being within the jurisdiction of this Honourable Court to Libya having reason to know that she would be likely to be induced into prostitution in Libya and thereby committed an offence under section 14 (b) of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 and punishable under the same section of the Act.

COUNT 7

That you Chukwunonso Igwilllo, male, 33 years old of No. 9 Jude Onyekwere Street Awada Obosi, Anambra State sometime in the month of August, 2017, facilitated foreign travel that promotes prostitution for one Chinecherem Nwokoye, female, 14 years of Ogidi Ani Etiti-Ogidi, Idemili North, L.G.A., Anambra State from Ontisha motor park, Anambra State being within the jurisdiction of this Honourable Court to

Libya and thereby committed an offence under section 18 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 and punishable under the same section of the Act.

COUNT 8

That you Chukwunonso Igwillo, male, 33 years old of No. 9 Jude Onyekwere Street Awada Obosi, Anambra State sometime in the month of August, 2017, facilitated foreign travel that promotes prostitution for one Chinaza Okaro, female, 15 years of Umuru Ogidi, Idemili North L.G.A., Anambra State from Ontisha motor park, Anambra State from Ontisha motor park, Anambra State being within the jurisdiction of this Honourable Court to Libya and thereby committed an offence under section 18 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 and punishable under the same section of the Act."

The Defendants both pleaded not guilty. In proof of its case the Prosecution called 6 witnesses. The Defendants also testified in their defence and called one witness.

The PW1 is Chinecherem Charity Nwokoye from Ogidi town in Anamabra State. She gave her age as 15 years. The PW2 is Chinaza Cynthia Okaro also from Ogidi town of Anambra State. She said she is 15 years old but said that as at 6/8/2017 she was 17 years old. The PW3 is Chinenye Ikedinma, also from Ogidi town, aged 18 years.

The PW1 met the PW2 who told her about her intention to travel to Libya. The PW1 said she would also go with her. PW1 went to her house and packed her cloths for the journey. As she came out she saw Chinaza and Chinenye. Chinenye told the PW1 that she would be going to Libya for the purpose of prostitution and that she was too young for it. She decided she would still go. They then went to the house of the 1st Defendant. PW1 said she and Chinaza slept in 1st Defendant's house that night. In the morning, Chinenye who had earlier said she would not go, came and joined them. The three of them stayed in 1st Defendant's house until One O'clock when the 1st Defendant's husband took them to the Motor Park. At the park 2nd Defendant bought tickets for them for their journey to Kano. In the course of the journey to Kano, the 1st Defendant sent them the phone number of one Amaka who lives in Libya so as to get directions. The said Amaka called them and gave them the phone number of a man in Kano. The man wanted to talk to the driver of the vehicle but because he was driving they could not talk. An Igbo man sitting beside them took the phone from them and talked to the man calling from Kano. The Igbo man told them the man in Kano was asking him to tell the driver not to take them to the motor park in Kano but to drop them along the road. The driver however took them to the park in Kano. The Igbo man bought food for

them and left promising to visit them the next day. As they were eating, two policemen met them and started questioning them. The policemen took them to the police station where they told the police everything about their movement.

The man in Kano whom the PW1 referred to as an Hausa man called and asked them to take a tricycle to a certain place. The Police encouraged them. They took the tricycle with the police following behind. When they got to the place, a man came to pay off the tricycle driver and in the process the police arrested him. The police then contacted the NAPTIP office in Kano whose officers went to the police and took into their custody the three of them and the Hausa man.

From Kano, the NAPTIP officers brought them to Ogidi and Chinenye (PW3) went and identified the 1st Defendant and she was arrested. From 1st Defendant they were able to arrest the 2nd Defendant.

Under cross examination, the PW1 said she wanted to go to Libya on her own; that she did not tell her parents about it; that the 2nd Defendant only gave them tickets to travel to Kano and no other travel documents. She further said that they did not sleep in the house of 1st defendant because some boys came and took them out. They came back in the morning.

The PW2, Chinaza, said, on a particular day in August 2017 she was doing some laundering at Chinenye's house, and Chinenye told her how the 1st Defendant took her and her friend Amaka to Libya. She told her friend Chinenye she would also like to go to Libya. When she went with PW1, Chinenye told them they would be going to Libya for prostitution and that the PW1 was too small for that. In the evening Chinenye took them to 1st Defendant's house and left, but joined them the next morning. She then went on to narrate how the 1st Defendant's husband took them to the motor park and how the 2nd Defendant bought tickets for them and also gave them some money. She also narrated how they travelled to Kano, their arrest by the police in Kano and their subsequent handover to NAPTIP, and the arrest of the Defendants at Ogidi.

Under cross examination, Chinaza said that prior to 6/8/17 she did not know the 2nd Defendant; that before meeting him she had on her own agreed to go to Libya; that even after she was told she would be doing prostitution in Libya, she did not change her mind; that they tried to stop the PW1 because she was too small but PW1 did not agree; that she did not tell her parents about the journey, that she had told her mother she was going to spend her holiday with her brother at Umuoji.

The PW3, Chinenye Ikedinma said that sometime in January 2017, the 1st Defendant had sent her and her friend Amaka to Libya; that they took different vehicles; that while back to Nigeria; that since she got back she has been receiving threats from the 1st Defendant that if she does not go to Libya she should take anything that happens to her.

PW3 further said that Chinaza told her that her brother's wife was maltreating her and so she would like to leave Ogidi, that she would also like to travel to Libya. She took Chinaza to the 1st Defendant's house and Chinaza and 1st Defendant agreed on when to make the journey. PW2 said she decided not to travel because of her previous experience; that Chinaza told her about the PW1; that she told PW1 she was too small but PW1 told her she could do anything, that she escorted them to 1st Defendant's house and left, but because of the continues threat of the 1st Defendant, she had to join the PW1 and PW2 at 1st Defendant's house. She also gave evidence as to how 1st Defendant's husband took them to the motor park where the 2nd Defendant handed them the tickets for the fare to Kano and how they were subsequently arrested by the police in Kano and handed over to the NAPTIP officials in Kano.

Under cross examination, PW3 said that she was living with her parents before this second journey; that she was

avoiding being seen with the PW1 because she was too small and did not want to be held responsible should anything happen to her; that she does not have any international passport or given any by the Defendants; that she does not have anything to show that she was issued tickets to travel from Onitsha to Kano.

The PW4, Christiana Nwokoye, is the mother of Chinecherem Nwokoye (PW1). She said PW1 was born on 14/3/2002; that PW1 went for a night vigil one Friday night and did not come back the following morning; that they started looking for her all over the village. There was an announcement made by the President-General of Ogidi Community that three girls who were missing were being brought back home. They went to the President General's house and the three girls were brought; that one of the girls is her daughter.

Under cross examination, PW4 said that she was looking for the PW1 before the announcement; that they did not make any report of her missing daughter except at the house of their President General; that PW1 usually went for night vigils; that she does not have anything to support her claim that PW1 was born on 14/3/2002; that the only statement she made in this case was the one she made on 29/1/2018.

The PW5 is Mrs. Augustina Okaro, mother of PW2. She said PW2 Chinaza Okaro, was born on 10th September, 1999. She said that one day her dad returned from Lagos and asked her to go and meet him to collect what he brought for them. She sent PW2 to go and meet her dad to collect the things. What happened next, was that the Igwe of the Community summoned a meeting of the whole community and he informed them that three girls from Ogidi were being brought from Kano and that one of them was Chinaza Okaro and he wanted to know whether the parents of the girls knew they were travelling out of Ogidi town. They were told to go to the President-General's house to meet with the girls and she went there.

Under cross examination PW5 said that the distance between Ogidi and Umuoji, her father's place was tractable as they have common boundary; that she came to know about the missing girls after the announcement was made. She denied telling the Court lies; that what she said in her statement to NAPTIP and what she told the Court are the same thing.

The PW6, Ezejiegu Tochukwu is a Principal Investigation Officer with NAPTIP Enugu zonal office. He said that on 16/8/17 a case of human trafficking involving the two

Defendants and three victims- PW1, PW2 and PW3 was transferred from the Kano zonal office to the Enugu zonal office on 17/8/17, he interviewed the three victims who made statements. He tendered the Letter of Transfer- Exhibit A. He also obtained the Statements of the Defendants which he tendered in evidence. The statement of 1st Defendant dated 18/8/17 is Exhibit B. The Statement of 2nd Defendant dated 21/8/17 is Exhibit C.

PW6 said that his investigation revealed that the 1st Defendant procured the PW1, PW2 and PW3 and harboured them in preparation for travel to Libya for prostitution; that the PW1, PW2 and PW3 were aware that they were going to Libya for prostitution; that the husband of 1st Defendant who is still at large took them to the motor park while the 2nd Defendant paid their transport fair enroute to Libya.

Under cross examination the PW6 said that apart from Exhibit A no investigation report was transferred to the Enugu Zonal Office; that he did not bring in the persons that were arrested along with the victims because he restricted his investigations to the Enugu Zonal Command; that the victims, except PW3, passed the night in 1st Defendant's house; that the statement of 2nd Defendant was taken 4 days after his arrest because the 19th and 20th August 2017 fell on weekend;

that no International Passports were recovered from the victims because they usually travel illegally; that he took the statements of the parents after the Defendants had been arraigned to confirm the ages of the victims; that he is not aware that the PW2 is facing a charge of cultism in the Magistrate Court.

The 2nd Defendant testified first as the DW1. He said he is a Technician by occupation; that one day his fiancée Ukamaka who lives in Libya called him and asked him to go to the motor park and buy ticket for the PW1 and PW2. He went to the park, bought the tickets for them and then went back to his workshop.

Under cross examination DW1 said Ukamaka told him to buy tickets for those travelling to Kano. He said he knew they were travelling to Libya; that the girls told him they were going to Libya to help Ukamaka in her restaurant business.

The 1st Defendant testified as DW2. She said that a friend of hers came back from abroad and asked her to find someone who will go and assist her in her shop in Libya. She told PW3 about it. The PW3 went to her house with PW1 and PW2 one evening; that later three boys came and took the girls out; that the girls did not sleep in her house or left their bags in her house. She said she only knows the PW3.

Under cross examination DW2 said that she did not connect PW1 and PW2 to her friend abroad; that she only connected the PW3; that Amaka does restaurant business in Libya.

The DW3 is Amarachi Okafor. She does not know the PW1. She knows the PW2 as a cultist and one who likes to travel from one place to another. She also knows the PW3 as a public fighter and a member of various Queen Cult Groups.

Under cross examination she said that she was present when the 1st Defendant, PW2 and PW3 planned to travel to Libya; that at a point they could not embark on the journey but on a particular day a man took them to Kano.

Learned defence Counsel N.W. Elechi Esq. in his final address raised three issues for determination.

1. The weight to be attached to the evidence of PW4, PW5 and the extra judicial statement of DW1.
2. Whether the prosecution has proved her case beyond reasonable doubt as per the charge.
3. Whether the court can safely found the defendants guilty of the offences as per the charge.

On issue one counsel referred to the testimonies of the PW4 and PW5 as to the missing of their children

and how they were invited to give their statements after the defendants had been arraigned and their trial commenced. Counsel submitted that the prosecution's investigatory powers ends once the suspect is arraigned before the court; that it is the duty of the Court to protect an accused from prejudice or perceived prejudice, citing in support the case of **Akinta Vs F.R.N. (2010) NWLR Pt.1191.**

Counsel contended that the testimonies of the PW4 and PW5 are contradictory and so should not be accepted, referring to **Ago vs. State (2006) NWLR (Pt.35) 348.**

Counsel also urged the court not to attach any value to Exhibit C the statement of the 2nd defendant in that it was not made by him but recorded for him because he could not write. Counsel submitted that for the court to attach any value to the extra judicial statement of a defendant made in a language other than English, the original version must be tendered along side the translated version and where the records is different from the person who translated, the translator must be called as a witness. Counsel **Oluwatimi Faramoye Vs. State (2017) LPELR**

42031 (SC). Aliu Vs. State (2015)2 NWLR (Pt. 1442) 51 at 60, FRN Vs. Usman (2012)8 NWLR (Pt 1301)141.

ISSUE 2

Counsel referred to section 135 Evidence Act, 2011 setting out the standard of proof in criminal cases as one beyond reasonable doubt, citing in support **Ikaria vs. State (2014)1 NWLR (Pt.1389)639; Okoh Vs. State (2014)8 NWLR (Pt. 1410) 502.**

Learned counsel contended that the evidence in support of the case, when put side by side with the elements of the offences, it is clear that the prosecution did not satisfy the standard of proof: counsel called in aid the case, of **Edamine vs State (1996)3 NWLR (Pt.438)530 at 536 Adeniji Vs. State (2001)12 NWLR (Pt. 730)**

On the 3rd issue, learned Counsel submitted that there is no known law that permits a court of law to decide on issues based on intuition, that the evidence advanced before the court is the bedrock of their decisions.

Counsel submitted that the prosecution failed to link the defendants to the offence through evidence; that it is not the duty of the court to go on a voyage of speculation on behalf of the prosecution, relying on **Ogunye Vs State (1999) is NWLR (Pt.604)518.**

Counsel submitted that there is nothing in the evidence pointing to the fact that the PW1 and PW2 were actually transported to Libya for prostitution or any other trade; that there is no evidence that the victims were harboured by the 1st defendant; that the Court is bound to enquire into the means rea and actus reus of the persons brought before it to safely convict them. Counsel cited in support **Akpa vs. State (2008)14 NWLR (Pt.1106).**

On the above counsel urged the Court to discharge and acquit the defendants.

The prosecution counsel identified one issue for determination-

"whether the prosecution has proved her case beyond reasonable doubt to warrant the conviction of the defendants".

Learned Counsel prosecuting, V.U. Okey Ngene submitted that the witnesses fielded by the prosecution

and all the Exhibits tendered before the Court is proof beyond reasonable doubt that each of the defendants is guilty as charged. Learned Counsel then took each of the counts of the charge highlighting the elements to be proved.

With respect to counts 1 and 2, learned counsel referred to the testimonies of PW1 and PW2 and submitted that the ingredient that the PW1 and PW2 were harboured by the 1st defendant was established; that the 1st defendant had reason to know that the PW1 and PW2 were going to Libya for prostitution. Counsel referred to the testimony of PW3 as to what 1st defendant told her and her friend Chiamaka that she would take them to Libya. Counsel submitted that, what the prosecution is required to prove is that the 1st defendant had reason to know that the trip to Libya was for the purpose of prostitution. Counsel referred to the testimony of PW3 as to her first journey to Libya that was aborted mid way, and contended that the circumstantial evidence point to the fact that the 1st defendant had reason to know that the PW1 & PW2 were being taken to Libya for the purpose of prostitution. Counsel relied on **Emeka Vs. State (2001)14, NWLR (Pt.734)666, Shehu Vs. State**

**(2010)8 NWLR (Pt.1195)112; State Vs. Njoku
(2010) (Pt.1175)243.**

For counts 3 & 4 of the charge, learned prosecuting counsel submitted firstly that the PW1 and PW2 were below the age of 18 years. Counsel referred to the testimonies of PW4 and PW5 the mothers of the PW1 and PW2 respectively as to the age of the PW1 & PW2; that the evidence before the court established that the 1st defendant procured the PW1 & PW2 and that she had reasons to know that the PW1 and PW2 would be induced into prostitution in Libya.

For counts 5 & 6, after setting out the elements to be proved, counsel submitted that the word "export" comes with a varied meaning apart from its ordinary parlance. Counsel referred to section 82 of the Act on the definition of the word "export". Counsel contended that having paid the fare for PW1 – PW3 to Kano in transit to Libya, even though they did not leave the shores of Nigeria, the 2nd defendant had caused them to be taken out of Nigeria (save for the interception of the victims by the police).

Counsel submitted that the final destination of the PW1 & PW2 remained Libya; that the overt act of the

Administration) Act, 2015. The section provides as follows:

"15. Any person who –

(b) Keeps, detains or harbours any other person with intent knowing or having reasons to know that such a person is likely to be forced or induced into prostitution or other forms of sexual exploitation with or by any person or animal, commits an offenceetc."

The prosecution restricted the action of the 1st defendant to that of harbouring. Both counsel are agreed that the ingredients the prosecution must prove are –

1. That the 1st defendant harboured the Pw1 and Pw2;
2. That the 1st defendant knew or had reasons to know that the Pw1 and Pw2 were likely to be induced into prostitution.

The Act does not define the word 'harbour'. I have resorted to dictionary definitions. Dictionary.Cambridge.com defines it to mean "to protect someone or something bad, especially by hiding that person or thing when the Police are looking for him, her or it."

The evidence before the court is that the Pw1 and Pw2, after making up their minds to travel to Libya, were

taken to the 1st defendant's house by the Pw3. The 1st defendant neither called nor invited them. There is evidence which was elicited from the Pw1 under cross examination that the {w1 and Pw2 did not sleep the 1st defendant's house, because they went out with some boys. This suggests that the Pw1 and Pw2 were freely moving in and out of the 1st defendant's house. They were not restricted or hidden. This in my view does not accord with the definition of 'harbouring' which is in fact the sense in which it is used in the Act.

On the second ingredient, there is satisfactory evidence that the 1st defendant knew that the Pw1 and Pw2 would eventually go to Libya for the purpose of prostitution. However, the fact that they would be forced or induced into prostitution does not arise, because even before they met the 1st defendant, the Pw1 and Pw2 had known and decided that they would go to Libya for prostitution.

It is my view that the evidence is not in support of the ingredients of the offence under section 15(b) of the Act. The prosecution therefore failed to prove counts 1 and 2 of the charge against the 1st defendant.

The offences in counts 3 and 4 of the charge are punishable under section 16(2) of the Act, which provides as follows –

"16(2) any person who procures or recruits any person under the age of 18 years to be conveyed from his usual place of abode, knowing of having reasons to know that such a person may be subjected or induced into prostitution or other forms of sexual exploitation in any place outside Nigeria, commits an offence.....etc."

In these counts, what the prosecution must prove are –

1. That the Pw1 and Pw2 are under the age of 18 years;
2. That the 1st defendant procured the Pw1 and Pw2 to be conveyed from their usual place of abode;
3. That the 1st defendant knew or had reasons to know that the Pw1 and Pw2 would be induced into prostitution in Libya.

As to the age of the Pw1 and Pw2, there is evidence as can be gathered from the testimonies of the Pw1, Pw2, Pw4 and Pw5, that they were below the age of 18 years as at August 2017 when the offences were allegedly committed. The arguments of learned defence counsel on the nature of the evidence adduced

in proof of the age of the Pw1 and Pw2 does not hold water.

In the case of ***Mukoro-Mowoe vs. State (1973) LPELR 1925 (SC)***, the court defines the phrase "to procure" to mean "effort, care management, or contrivance towards obtaining of a desired result." Was there any effort on the part of the 1st defendant to procure or recruit the Pw1 and Pw2? I think not. The Pw1 and Pw2 discussed between themselves and agreed that they would go to Libya; they then told their parents lies and went to the 1st defendant's house. In the circumstances of this case it cannot be said that the 1st defendant procured the Pw1 and Pw2 and conveyed them out of their parents' house. That ingredient having not been proved, the prosecution must fail.

In counts 5 and 6 the offences are punishable under section 14(b) of the Act. The section provides as follows –

14. Any person who –

(b) exports another person from Nigeria, knowing or having reason to know that the person will be forced or induced into prostitution or other sexual exploitation in the

country to which the person is expected or while in transit, commits an offence ...etc.

In section 82 of the Act the word "export" is defined to mean "to take or cause to be taken out of Nigeria".

Two of the major ingredients the prosecution needed to prove are, that the Pw1 and Pw2 went out of Nigeria and that it was the 2nd defendant who took them out or caused them to be taken out. The evidence is clear that the Pw1 and Pw2 never left the shores of Nigeria: they were intercepted in Kano by the Police. So the act of exporting did not take place.

Learned counsel for the prosecution conceded to this fact. Counsel, however, argued that the fact that the 2nd defendant paid for the transport fare of the Pw1 and Pw2 to Kano and his admission that he knew that the girls were on their way to Libya, he should be taken as having caused them to be taken out of Nigeria. I think that argument does not represent the clear provisions of the law. Whether the 2nd defendant personally took the Pw1 and Pw2 out of Nigeria or through some other means made them to leave the country, the first thing to determine is whether they in

fact left the country. Only after then can it be considered by whom or by what means they went out of the country.

It is my view that the prosecution failed to prove the offence in counts 5 and 6 of the charge against the 2nd defendant.

Learned counsel for the prosecution had argued that even if the 2nd defendant is not found guilty of the full offence, he could be convicted for attempting to commit the offence. Counsel relied on section 224 ACJA and the case of ***Sann vs. State (1993) 4 NWLR (Pt 285) 99 at 122.***

I do not, with due respect, agree with this submission. The evidence shows that the 2nd defendant did not provide International Passports and Visas for the Pw1 and Pw2. All that the evidence shows is that he bought transport tickets to enable them get to Kano. That in my view is not enough overt act which clearly manifest the intention of the 2nd defendant to export the Pw1 and Pw2 out of the country. See ***Ahmed vs. Nigerian Army (2010) LPELR- 8969 (CA).***

2nd defendant paying for their transport to Kano had set in motion the export of the victims outside Nigeria; that bearing in mind the meaning of export, the 2nd defendant had caused the victims to be taken outside Nigeria.

Relying on section 224 ACJA, learned prosecution urged the court to convict 2nd defendant for the offence of attempt, if the full offence was not proved.

In respect of counts 7 and 8 of the charge counsel referred to the testimonies of the PW1 – PW3 and submitted that there is uncontroverted evidence that the 2nd defendant paid for the transport fare of the victims to Kano, and that he was aware of the final destination to be Libya and so he facilitated the foreign travel of PW1 and PW2.

Counsel contended that the prosecution has shown that the 2nd defendant was part of a syndicate whose plans were to take these unfortunate and "willing" victims outside the country knowing they will be induced into prostitution. Counsel urged the court to find the defendants guilty in their respective charges.

I have considered the evidence before the court and the submissions of learned counsel, and I am of the

view that the lone issue formulated by the learned prosecuting counsel covers the three issues set out by the defence counsel, and is sufficient to determine this case. The issue is –

“Whether the prosecution has proved her case beyond reasonable doubt to warrant the conviction of the defendants.”

It is trite that proof beyond reasonable doubt as required of the prosecution is not proof beyond every iota of doubt, but “proof that has attained that level of certainty, credibility and assuredness that leaves the court without any vestige of lingering doubt regarding the culpability or otherwise of the person and with regard to the particular offence with which he has been charged”: see ***Ugwuanyi vs. FRN (2010) LPELR-5050*** (CA). “It means the establishment of all the ingredients of the offence charged in tandem with the dictates of section 138 Evidence Act”: see *Ajayi vs. State (2013) LPELR-19941* (CA).

I will now consider this charge on count by count basis.

Counts 1 and 2 of the charge which are against the 1st defendant only, are brought under section 15(b) of the Trafficking in Persons (Prohibition, Enforcement and

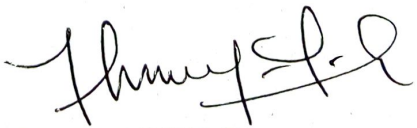
Counts 7 and 8 of the charge are brought under section 18 of the Act. It provides as follows –

"18. Any person who organises, facilitates or promotes foreign travels which promote prostitution or other forms of exploitation of any person or encourages such activity, commits an offence....etc."

The evidence against the 2nd defendant is that he gave the Pw1 – Pw3 transport tickets that will take them to Kano and also gave them some money. He knew that they were going to Libya. In his extra judicial statement, Exhibit C, the 2nd defendant said that the Pw1-Pw3 discussed details of the travel to Libya with the 1st defendant. The 2nd defendant did not procure any documents related to foreign travel for the Pw1 and Pw2. The evidence that he bought tickets for the girls to travel to Kano is, in my view not sufficient to prove that he facilitated foreign travel for the Pw1 and Pw2 as alleged in the charge.

On the evidence before the court, I hold that it does not meet the standard of proof as required in criminal trials, hence the prosecution must fail.

I accordingly find each of the defendants not guilty in the charges against each of them. Each defendant is hereby discharged and acquitted.


I.N. OWEIBO
JUDGE