

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE AWKA JUDICIAL DIVISION

HOLDEN AT AWKA

ON THURSDAY THE 1ST DAY OF NOVEMBER 2018
BEFORE THE HON. JUSTICE I.N. OWEIBO, JUDGE

CHARGE NO. FHC/AWK/C/81/2017

BETWEEN

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

1. NWEKE NNAMDI

2. OKAFOR IKECHUKWU

} DEFENDANTS

JUDGMENT

On the 4th day of October, 2016 the defendants were arraigned before this court on a single count charge for an offence punishable under section 1(3)(b) of the Miscellaneous Offences Act Laws of the Federation of Nigeria, 2004. The charge filed on the 29th day of September, 2016 reads as follows –

"That you Nweke Nnamdi 'M' 20 years old of Umueri, Awka South, Anambra State, Nigeria and you, Okafor Ikechukwu of Achalla in Awka South Local Government area of Anambra State on or about the 19th day of September 2016 at

Agu-Awka, Awka South Local Government Area of Anambra State within the jurisdiction of this honourable court did commit an offence to wit: vandalize electrical cable, property of Transmitting company of Nigeria meant for connection and distribution of electricity in Anambra State and thereby committed an offence contrary to S. 1(3)(b) of the Miscellaneous Offences Act Laws of the Federation of Nigeria 2004 and punishable under same."

The defendants pleaded not guilty to the charge, whereupon the prosecution called 4 witnesses. The defendants also testified in their own defence and called two witnesses.

The Pw1 is one Chukwudi Nwonu, a security man with News Engineering Company Ltd. He said that he was in his house when between 12 midnight and 12.30am, one of the security guards of the company's site called and told him that they have caught someone vandalising the armoured cables at the site. He rushed down to the site and he saw his security guards struggling with someone who was on the ground. He

helped his men to arrest the person. Upon interrogation the person gave his name as Chibuzo Motu from Eziaka Village, Awka. They took Chibuzo to their office and alerted the men of the Nigeria Security and Civil defence Corps close to the office.

Pw1 said that upon further interrogation Chibuzo said that they were five in number that went to vandalise the cables; that their leader was one Ezike. He said that the Civil Defence officers took the suspect to their office; that he accompanied them and volunteered a statement. Later the officers of the Civil Defence went to the company's office with two additional suspects; then they all went into the bush where the vandalism took place and there they recovered pieces of armoured cables, saw blade, slippers and sack bags.

Under cross examination, Pw1 said that two days earlier, that is on the 19/09/2016, the cables at the site had been vandalized; that the said Chibuzo who was arrested by his men is not one of the defendants now standing trial. He said that he could not tell the quantity of the cable at the site as he is not the Store Keeper. He could not also tell the quantity of cable that was

vandalised. He did not report the first vandalism to the Police. He admitted he was not there when the vandalism took place, that when Chibuzo Motu was caught, a saw blade was found in his possession.

The Pw2 is one John Tishe, the Store Officer of News Engineering Company Ltd. He said that on 19/9/16, the security men of the company alerted him that a thief was caught at about 12.30am vandalising the company's armoured cables; that later two more of the thieves were arrested. He said that he went to the site on routine check-up and discovered that 1446 meters of 10 by 500mm and 36 meters of 40 by 150mm cable were missing from the drum of cables.

Under cross examination, Pw2 said that he was not aware of the earlier vandalism; that the cable were cut out from drums; that two of the drums were completely vandalised; that he carries out the routine check twice a month and twice a year for general check, that the store is an open place fenced in with wire and a gate.

Pw3, Ifeaghandu Samuel is an Officer of the Nigeria Security and Civil Defence Corps. He was the leader of

the Patrol Team that was called by the security men of News Engineering Company Ltd on the 19/9/16. He said that when they got to the company, he saw that the security men had already arrested one suspect. They took the suspect to their State Headquarters and handed him over to the Station Officer.

Pw3 said that during the suspect's interrogation, the suspect gave them vital information. Their investigation took them to Eziaka village and as they approached the Secondary School, the defendants cited them and ran away. They pursued them and caught them. They took the suspects to the scene of the crime and the suspects confirmed that they committed the offence. The suspects took them into the bush where wire and the cables were removed. They recovered sack bags, the peeled off cables, Saw Clippers and Cloths which they handed over to the Intelligence Department for further investigations.

Under cross examination, Pw3 said the two defendants were not arrested that night; that he did not investigate the case; that he did not invite the two defendants or arrested them in their house; that before

the arrest he had had not known or seen the defendants or seen their photographs. That his patrol team was on patrol when the defendants were arrested; that on their arrest nothing like knife or razor was found on them.

Pw4, Victor Okafor Ikechukwu of the Nigeria Security and Civil Defence Corps, investigated this case. He said that on 19/9/16 the Pw3 brought a case of vandalism against the defendants and in the course investigations he recorded statement from the arresting officer; that the defendants admitted committing the crimes and they made voluntary statements. He tendered the statements, which were objected to, but they were admitted in evidence as Exhibits A and B respectively.

Pw4 said his investigation took him to the scene of the crime and the security men of the company took him round. He saw the cable drums, two of which had been completely vandalised and the third vandalised to half. Pw4 tendered in evidence a heap of armoured cables with the copper wire cut out – Exhibit C, two cutters – Exhibit D and D1 and two sack bags Exhibit E. He said

he also took statements from both the Store Keeper and Leader of the security men of the company.

Under cross examination, Pw4 said that he was aware that there had been previous vandalism at the site, but he did not know the number of times. He did not get the inventory of the company on the cables; that four security men were there when the incident took place; that he did not investigate these four security men; that he only invited their leader who was not present at the scene at the time of the arrest. He said that the defendants were not arrested at the scene of crime that night. He did not visit the houses of the defendants; that nothing was found on the defendants when they were arrested.

In his defence, the 1st accused testified as Dw1. He said that on 20/09/16, he was going to work when he met his friend, the 2nd accused at Obodoezi. The 2nd accused was going to the market to collect something from his mother. They decided to go together as they were going in the same direction. At Eziaka village they entered a restaurant and ate. As they were coming out of the restaurant they met some Civil Defence Officers

who asked them to enter their vehicle. The officers told them someone mentioned their names. When they got to the office, the officer showed them a guy and asked whether they knew him. They did not know him but the guy said he knew them. The officers took them into the bush where they saw rubber and iron that looked like wire. The officers told them to pick the wire and as they were doing so, the officers were taking photographs of them.

He said that when they got back to the office, the officers started interrogating them about the rubbers and wire; they were flogged and tortured to make them concede. After they had been locked up for three days they were brought out and given a piece of paper to copy what the officers had already written, and because of the torture, he copied what was given to him. He said that in the night of 19/09/16, he was in his house with three of his family members whose names he gave.

Under cross examination, Dw1 said that he is an apprentice under one Mr. Chika Eze of No. 21 Obuzoba Street, Nkwelle. He denied knowing Ezike Nnebe or Chibuzo Motu; that he stopped at Primary 3; that he can

neither read nor write; that while copying the statement he made many mistakes and spoiled 5 sheets of paper.

One Obioma Nweke, sister of the 1st accused testified as the Dw4. She testified to the effect that on 18/9/16, being a Sunday, she, the 1st defendant and their elder sister went for the New Yam Festival and returned at 6.30pm; that after dinner they all went to sleep. In the morning she woke the 1st accused for him to go to work and they went out. In the evening they waited for him to return home but he did not. While they were looking for him and were on their way to the police station to report, her elder sister got a call that their brother was in the custody of the Civil Defence. She went to the office of the Civil Defence and she was told that someone who was caught tampering with cables mentioned the name of the 1st defendant.

Under cross examination, Dw4 said that on the night of the crime, the 1st defendant, their elder sister and her slept in one room: they slept on the floor while the elder sister on the bed.

The 2nd defendant testified as the Dw2. He said that on the night of 18/09/16, he slept in the house with his sister. The following morning, he was going to the market and he met the 1st defendant; they went together to eat and as they came out of the restaurant they met officers of the Civil Defence Corps who approached them and at gun point asked them to enter the vehicle. The officers told them someone mentioned their names. He narrated what happened in the office and at the scene of crime, the same story told by the 1st defendant.

Under cross examination, Dw2 denied knowing Ezeike Nnebe; that the bush they were taken to is close to Agu Awka roundabout.

The Dw3 is Ejike Comfort, a cousin of the 2nd defendant. She said that on a particular day, before she went to work she gave the 2nd defendant the sum of N200.00 with which to barb his hair. When her mum came back from market without the 2nd defendant, she asked her of his whereabouts. Her mum said she had sent him home earlier to dry some ground nuts. They waited for the 2nd defendant till nightfall, they did not

see him. Supposing that he had gone to attend the New Yam Festival, she called the village but the phone was switched off. In the afternoon of the next day she got a phone call that her brother was with the Civil Defence. She went there and saw him.

Under cross examination, Dw3 said that she could not remember the date she returned from work and did not see the 2nd defendant; that he was still in the house when she left for work. She does not know his actual age.

Learned counsel for the defence, Eziaba Enwedo, Esq., in his final submissions raised three issues for determination –

1. Considering the totality of the evidence before the honourable court, whether the onus of proof upon the prosecution to prove its case beyond reasonable doubt generally as a matter of fundamental principle has been discharged by the prosecution.
2. Whether the default by the prosecution to properly investigate the alibi raised by the defendants with sufficient particulars thereto was fatal to the charge

3. Whether a statement of witness written by the prosecution and forced to be copied by the defendants without been read over to the defendants and explained to them amount to valid confessional witness statement.

On issue No. 1 Mr. Enwedo submitted that the prosecution was not able to prove their case beyond reasonable doubt as to tie the defendants to the crime of vandalism. Counsel referred to the testimony of the Pw1 and contended that the suspect handed over to the Pw1 is totally different from the defendants, and that the Pw1 only testified as to what the other security men of News Engineering Nig. Ltd told him; that the said Chibuzo Muotoh and the supposed leader of the thieves, Ezike were never investigated.

Counsel submitted that where there is no direct eye witness evidence available, the court may infer from the facts proved by other facts that may logically tend to prove the guilt of the defendant; that such circumstantial evidence must be narrowly examined, and to be relied upon it must clearly and forcibly suggest that the defendant was the person who committed the

offence and no one else. Counsel referred to ***Fatoyinbo vs. A.G. Western Nigeria (1966) WNLR 4 at 7; Udedibia vs. State (1976) 11 SC 133; Adie vs. State (1980) 1-2 SC 116; Omogodo vs. State (1981) 5 SC 5.***

Learned counsel further contended that before the prosecution can be said to have proved its case beyond reasonable doubt, every ingredient of the offence charged must be established, referring to ***Bozin vs. State (1985) 2 NWLR (Pt 8) 465.***

Still on this issue learned counsel submitted that as the defendants were not arrested at the scene, there was need for an identification parade, referring to ***Madagwa vs. State (1988) 5 NWLR (92) 60.***

On issues No. 2 counsel submitted that the prosecution woefully failed to rebut the claim of the defendants that they were never at the scene of the crime; that the prosecution failed to verify the whereabouts of the defendants. Counsel submitted that when the sole defence of an accused is one of *alibi*, identification of the defendants by a single witness must be conducted with great care, and the summing up in the judgment must deal with the facts of identification

of the accused at the scene; that once a defendant has presented particulars of his *alibi*, the prosecution must investigate same to confirm or disprove it. Counsel referred to a number of authorities including ***Ukwunnenyi vs. State (1987) 4 NWLR (Pt 114) 131; Onofowokan vs. State (1989) 3 NWLR (Pt 61) 538.***

On issue No. 3, counsel submitted that the prosecution failed to prove the statement of the defendants tendered in court to be those of the defendant; that from the examination in chief of the defendants, it is clear that they were not authors of the statements but were forced to recopy the statements made by the officers of the NSCDC.

Mr. Enwedo further submitted that a confession freely and voluntarily made is sufficient to sustain a conviction, but it is desirable to have some corroborative evidence no matter how slight as the courts are not generally disposed to act on a confession without testing the truth thereof. Counsel referred to ***Onochie vs. The Republic (1966) NMLR 307; R vs. Obiaso (1962) 1 ALL NLR 65; Akpan vs. State (1992) 6 NWLR (Pt 248) 439.***

Counsel urged the court to hold that the prosecution failed woefully to prove and tie the crime to the defendant. He further urged the court to resolve the issues in favour of the defendants and to discharge and acquit them.

Learned prosecuting counsel, Okafor Japhet, Esq. also submitted three issues for determination –

1. Whether the prosecution has proved its case beyond reasonable doubt.
2. Whether from the totality of the evidence adduced by prosecution if (sic) the defendants could be convicted by the court.
3. Whether prosecution must call all witnesses in a matter.

In answer to issue No. 1 learned counsel submitted that the prosecution has been able to prove the case beyond reasonable doubt; that the defendants were mentioned by another suspect in the crime; that the prosecution did not just arrest any person but the defendants mentioned by the suspect.

Counsel submitted that the prosecution was able to prove both the physical and mental elements of the offence as required to prove a case beyond reasonable

doubt. Counsel argued that where the evidence is strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course it is possible but not in the least possible (sic)" the case is said to be proved beyond reasonable doubt. Counsel cited in support the case of ***Amusa vs. State (2002) FWLR (Pt 85) 302***; section 135 Evidence Act, 2011.

On the second issue Mr. Okafor submitted that having proved the involvement of the defendants in the matter, they ought to be convicted by the court and they having confessed to the crime. Counsel argued that the defendants' claim of being illiterate is unfounded in that instead of thumb printing, they signed their statements; that their denial is to frustrate the prosecution.

On the third issue, counsel submitted that the prosecution has the discretion to call any witness it considers necessary; that the defence cannot force the prosecution to invite any witness; that to prove a case beyond reasonable doubt does not mean calling a plethora of witnesses; that once the evidence of a witness is reliable and credible, the court may convict.

Learned counsel urged the court to convict the defendants.

RESOLUTION

From the charge, the evidence before the court and the submissions of learned counsel, I am of the view that the following issues arise for determination –

1. Whether the defendants properly raised the defence of *alibi*.
2. Whether the defendants confessed to the crimes they are charged with.
3. Whether the prosecution was able to prove its case against the defendants beyond reasonable doubt.

ISSUE NO. 1

When a person accused of a crime raises the defence of *alibi*, he is simply saying that at the time of the commission of the crime, he was somewhere else, and therefore could not have committed the offence he is accused of: see ***Umani vs. State (2005) 4 ACLR 67 at 77; Udo vs. State (2016) LPELR-40721***. However, in putting up the defence, the defendant has a duty to do so at the earliest time, preferably at the time of making his statement, and provide enough particulars

of his whereabouts, at the time of the crime to enable the police investigate same if they wish to: see ***Halilu vs. State (2016) LPELR-40269 (CA)***;

In this case the defendants only raised the defence for the first time while testifying in their defence. I hold that the defendants did not properly raise the defence, and so the Police cannot be said to have failed to investigate the *alibi*: see ***AREMU vs. State (1991) 7 NWLR (Pt 201) 1***.

ISSUE NO. 2

A confession is an admission by a defendant that he committed the offence for which he is charged. For a statement to amount to confession, it must be clear and unqualified: see *section 28 Evidence Act, 2011*; ***Uweh vs. State (2012) LPELR-19996 (CA)***. The defendant who is alleged to have made the statement must admit or agree clearly, precisely and unequivocally in the statement that he committed the offence he is charged with: see ***Fatilewa vs. State (2007) 5 ACLR 607, 622; Dogo vs. State (2013) LPELR-20175 (SC)***.

In this case, the defendants are accused of vandalizing electrical cable. To vandalize means to destroy. Did the defendants confess to destroying the

cables? Hear what they told the police in their extra judicial statements. The 1st defendant stated as follows

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"that I was in my house when Ezike Nnebe came in the company of three other boys, that I asked him whether we will still go the same day or the following day and he replied me that we will still go that night, that he told me that he had finished picking the scrap at Agu-Awka, that our job is just to go and convey the scrap to the person whom the scraps will be sold to, that as five of us were approaching the place where he said the scrap were packed, we saw two men coming towards our direction with cutlass in their hands, Ezike Nnebe ask us to run away, that before we know what was happening Ezike Nnebe took to his heels while we followed suit..."

The 2nd defendant stated as follows -

"that we all agreed that on Sept 18, 2016 at about 09.00pm we are going to the bush where the cables were packed to cut the cables and sell, that I and chibuzo Moattoh, and Nweke Nnamdi assembled that evening and proceeded for the operation, that we reached the place where the cables was at about 12.00, that on

reaching the site, we had not touched the cables, two men suspected to be security men started pursuing us with machetes and I and Nnamdi Nweke escaped Chibuzo Mouttoh was arrested".

The defendants did not say they cut the cables or vandalized them: they had not even attempted to, they had only got to the place where the cables were when they were chased by the security men. Considering the above, I hold that the defendants did not confess to committing the crime.

ISSUE 3

It is trite that the prosecution at all times has the burden of proving the guilt of the defendant beyond reasonable doubt: see ***Onianwa vs. State (2015) LPELR-24517 (CA); Maigari vs State (2010) LPELR-4457 (CA).***

The section of the Act under which the defendants are charged, which is section 1(3)(b) of the Miscellaneous Offences Act Cap Laws of the Federation 2004, provides as follows:

"(3) Any person who unlawfully or with intent to destroy or damage any public property removes,

defaces or damages any public property shall be guilty of an offence and liable on conviction –

(b) if the property in question is a railway line, electric power line, telephone line or a demarcation line on a public high way, and the property is damaged or rendered dangerous or impassable or non-functional, to imprisonment for a term not exceeding 21 years without the option of a fine”

The offence created in the above section of the Act is to protect public property. It is my view that to succeed in this case the prosecution has to prove beyond reasonable doubt that –

1. The property damaged is a public property;
2. The property damaged or destroyed is an electrical power line or railway line or telephone line or a demarcation line on a high way;
3. That by the act of destruction the property had been rendered dangerous or non-functional.

Section 4 of the Miscellaneous Offences Act defines "public property" as follows:

"public building" means any building, structure, or edifice belonging to, or occupied by or operated on behalf of the Government of the Federation or of a State or any department or statutory corporation thereof; and "**public property**" shall be construed accordingly".

The charge states that the electric cable vandalised was the property of the Transmission Company of Nigeria meant for connection and distribution of electricity in Anambra State. Throughout the testimonies of the prosecution witnesses there was no mention of the ownership of the electric cable. If anything can be deduced from the evidence presented by the prosecution, it is that the cables were at the working site of News Engineering Nig. Ltd, a private company. There is no evidence as to the connection between News Engineering Nig. Ltd and the Transmission Company of Nigeria. In my humble view, the prosecution failed to prove that the electric cables vandalised were public property.

As to the second ingredient, the evidence is that what was vandalised were armoured cables that were on three drums. There is no evidence that the cables were part of an electric power line. The second ingredient was also not proved.

There is some argument in respect of the failure of the prosecution to call Chibuzo Muotoh, the person who was caught by the security men of News Engineering Nig. Ltd or any of the security men who actually caught the suspect. It is trite that the prosecution is not under any obligation to call a host of witnesses to prove a point, but the prosecution is bound to call material witnesses. Failure to call such witness is fatal to the prosecution's case: see ***Kolawole vs. State (2015) LPELR-24400(SC); Edet vs. State (2014) LPELR23124 (CA).***

The basis for arresting the accused persons in the first place was the supposed mentioning of their names by the said Chibuzo Muotoh who was said to have been caught that night of the incident. The prosecution neither charged him nor called him as a witness.

There is also a question the prosecution did not answer. The Pw3 who led the patrol team that arrested the defendants said under cross examination that he neither knew the defendants nor had photographs of the defendants before the date of arrest. There was also no identification parade. So how did he identify the defendants as the persons mentioned by Chibuzo Moutoh?

Besides not proving the elements of the offence against the defendants, the evidence linking them to the commission of the offence falls short of the required standard.

On the above I hold that the prosecution failed to prove the charge against the defendants. I find each of the defendants not guilty of the offence vandalizing electric cable belonging to the Transmission Company of Nigeria. Each defendant is accordingly discharged and acquitted.



I.N. OWEIBO

JUDGE

01/11/2018

JUDGE
FEDERAL HIGH COURT 24