IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE DUTSE JUDICIAL DIVISION
HOLDEN AT DUTSE
ON THURSDAY DAY THE 13TH DAY OF OCTOBER, 2022
BEFORE HIS LORDSHIP HON. JUSTICE HASSAN DIKKO
JUDGE

SUIT NO: FHC/DT/CR/09/2019

BETWEEN:
FEDERAL REPUBLIC OF NIGERIA .....COMPLAINANT
AND
1. IBRAHIM SAMINU TURAKI
2. I.N.C.NATURAL RESOURCES L.T.D
3. ARKEL CONSTRUCTION NIG.L.T.D
4. WILDCAT CONSTRUCTION L.T.D
.....DEFENDANTS

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FEDERAL HIGH COURT DUTSE
NAME - A. SANUSI
RANK - D.C.D.C.J
SIGN - 31/10/22

RULING

This case slated for hearing today at the instance of the prosecution, but the prosecution through A. B. Umar Esq. who held brief for the learned principal counsel Rotimi Jacobs SAN informed this Honourable Court that he had earlier today filed their letter applying for adjournment on the basis of ill health of the supposed witness who couldn't testify on the earlier date as he was not listed among witnesses in the proof of evidence.

This application was vehemently opposed by learned silk M.K. Aondoakaa SAN, by drawing the attention of the court to section 396 ACJA 2015, that the prosecution had exhausted their time to bring any application for further adjournment, from the background, the prosecution have 16 witnesses, they claimed one of the witnesses have died, they have 15 witnesses, now they brought in one witness from the GTB PLC to make it 16 witnesses and from their letter of adjournment it seems they have only one witness forgetting the other witnesses listed.

The learned counsel further submit that, the said medical report is not admissible in law as it does not come from the government hospital, and it's not a medical

test but simply a laboratory test report which was not signed, it is a computer printout and is without a certificate of compliance.

That having exhausted their opportunity on adjournment under the law, the only thing this court can do is to strike out the charge, let the prosecution put themselves in order.

The learned silk further submit that after arraignment, you cannot continue investigation, he referred to NKEJIRIKA V I.G.P (2019) LPELR- 47786 (CA), that you can't arraign and continue investigation, see UNOERA V C.O.P (1977) LPELR-3371 (SC) that it is only when the Police concludes investigation, they can decide to prosecute or not, that investigation stop moment you arraigned because there will be no fair hearing.

The learned Senior Advocate stressed that there is no medical report before the court, there is no reasons why the other witnesses consistently failed to come to court. The court is urged to strikeout the charge and discharge the defendant, when the prosecution is ready they can arraign the defendant.

In reply, counsel on behalf of the prosecution submits, that he agree with the submissions of the learned SAN, however, this is a court of justice, and urged the court to grant their application for adjournment for the prosecution to put their house in order.

On points of law, the learned Senior Advocate on behalf of the defendant state that, justice is when you come to court with clean hands, the prosecution has not settled the cost against them, and the court should look at the letter seeking adjournment to determine our application.

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COURT.

On whether a medical report must come from a Government Hospital for it to be admitted in trial, I disagree with the learned Senior Counsel, the position of the law is that as long as the person who signed the report is a qualified medical doctor, such medical report is admissible in judicial proceeding, see case of IVWIGHRE V. STATE (2018) LPELR-44862(CA), so submission by the counsel in that regard is discountenance.

I closely scrutinized the said document, and found it to be a laboratory report, not medical report, it can't pass the test or qualify as a medical report to enable this court make reasonable judicial conclusion without an input of a medical xpert, thus, I totally agree with the learned silk.

I also found the said document to be unsigned, and the effect of an unsigned document is that it is worthless, it can't fly in the judicial determination of this matter, see case of OKEKE V. STATE(2019) LPELR-47781(CA), I also agree with the learned Senior Counsel.

This letter of adjournment I found is a computer printout, under section 84 of the Evidence Act 2011, it is a precondition in law that such document must be annexed with a certificate of compliance, see case of Kubor v. Dickson (2013) 4 NWLR (pt 1345) page 534 at 577 to 578. Failure to accompany the document with certificate of compliance the adjournment letter in issue becomes inadmissible, I so hold.

On the issue of investigation before or after arraignment, the general position of the law espoused in NKEMJIRIKA V. IGP (2019) LPELR-47786(CA) is that sufficient investigation must have been gathered before arraignment based on the strength of the information available at the particular time.

It is my humble view that the law does not envisaged foreclosing any further discovery made before the finality of a case before the court of law, hence a window of amendment is always available to the parties with leave of court sought and granted and where such process would not affect or undermine the fair administration of justice, I so hold.

On the non payment of cost by the prosecution, the learned counsel have ways of enforcing orders or judgments of court, such ways can be explored in the circumstance of this case.

Therefore, the letter for adjournment of today's preceding lacks merit, it is hereby discountenance.

It is trite that criminal trials on subject matters relating to EFCC, ICPC and State Security Service are accorded priority before the Federal High Court with aim to cure the unwarranted delays in the administration of criminal justice in Nigeria

thereby derive public confidence in the system, see part 6 (a) and (b) to the Federal High Court (criminal trials) Practice Direction, 2013 which provides;

(a) Hearing of Economic and Financial Crimes Commission, Independent Corrupt Practices Commission and State Security Services cases shall be given priority to hold day to day basis as the schedule of the court may permit until judgment.

(b) Court and parties must prevent unwarranted and unnecessary delays, accordingly, no more than 2 adjournments shall be granted to any party on an action covered by the provisions of this practice direction.

In the same spirit, Administration of Criminal Justice Act, 2015 came into being, section 396 (4) of same law regulate the number of adjournments allowed to each of the parties in a criminal proceeding.

On record, arraignment on this matter was on the 31/3/2022, case was adjourned to 9/5/22, 10/5/22 and 11/5/ for hearing, on the 9/5/22 the prosecution filed a letter for adjournment dated 6/5/22 because their witnesses were indisposed, hence, this court vacated the order of adjournment on the other days in the instance of the prosecution, adjournment was granted to 6th, 7th and 8th July, 2022,

On 6th July, 2022 A T Habib Esq. counsel for the prosecution prayed for adjournment on the ground that the learned lead counsel could not get flight to Kano due to Sallah break, the prayer was refused by this court, on the next adjourned dated being 7th July, 2022. O A .Atolagbe Esq. counsel for the prosecution applied for adjournment in the interest of fair hearing for the defence to study the additional proof of evidence served on them that morning, thus, the case was further adjourned to 12th and 13th of October, 2022 in the instance of the Prosecution.

On the 12/10/2022, this case could not go on in the instance of the prosecution, and today being the 13th /10/ 2022, there is no appearance for the prosecution in court, and no reason was recorded.

From the foregoing analysis, it is apparent that adjournments granted by this court on behalf of the prosecution are more than 5 and clearly exceeds the limit provided under the extant law that is Section 396(4) ACJA 2015.

It seems clearly that the prosecution in this case is using unnecessary delay tactics to stultify proceeding and truncate the smooth conduct of this trial to the detriment of the defendant, the victim and against the interest of the society at large, this reckless disposition is against the spirit of administration of criminal justice of Act, 2015, see Section 1 which provides;

The purpose of this Act is to ensure that the system of Administration of Criminal Justice in Nigeria promotes efficient management of Criminal Justice institutions, speedy dispensation of justice, protection of society from crime and the protection of rights and interests of the suspect, the defendant and the victim"

See FRN V. LAWAN (2018) LPELR- 43973 (CA), NNAJIOFOR V. FRN (2018) LPELR-43925 (CA), LAMINO (SHETTIMA) V FRN & Ors (2019)-49341).

Finally I hold the view that the prosecution is not ready to prosecute their case, and this court cannot allow this matter to be on its docket indefinitely, which will also infringe on the constitutional right of the defendants under section 36 CFRN 1999 (as amended), I am persuaded by the submissions of the learned Senior Counsel, therefore charge number FHC/DT/CR/09/2019 between the Federal Republic of Nigeria and Ibrahim Saminu Turaki and 3 Others, is hereby struck out, the defendants are discharged, the prosecution can do the needful, when they are ready to prosecute.

Hon. Justice Hassan Dikko
Presiding Judge.

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Michael SAN: We apply for an order, that the prosecution can only re arrest the defendant after seeking the order of this Hon. Court, and that all items of the 1st defendant held and kept in court be released to the 1st defendant (i.e. International Passport).

Court: Order for the complainant to apply for the leave of the court before they can re arrest the 1st defendant's is refused.

Release of the international passport of the 1st defendant is granted.

It be released immediately to the 1st defendant.

JUDGE
13/10/2022.

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