

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THURSDAY THE 30TH DAY OF JUNE, 2022
BEFORE HIS LORDSHIP HON. JUSTICE J.K. OMOTOSHO
JUDGE

CHARGE NO.FHC/ S/6C/2022

BETWEEN

THE FEDERAL REPUBLIC OF NIGERIA --- COMPLAINANT

AND

ALIYU DAUDA ----- DEFENDANT

(TRADING UNDER THE NAME

AND STYLE OF JANGWARZO GENERAL MOTORS)

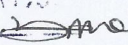
JUDGMENT

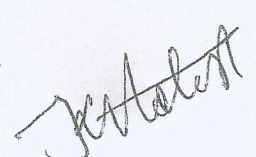
By a one count Amended Charge, the Defendant was arraigned before this Court on a charge of contravening sections 3, 5 (1) (2) (3) (4) and (5) of the Money Laundering (Prohibition) Act, 2011 (as amended) in 2012 by failing to submit a declaration of activities to wit: requirements of Customer identification and the submission of returns on transaction to the Special Control Unit against Money Laundering thereby committing an offence punishable under section 5 (6) (a) of the Money Laundering (Prohibition) Act, 2011 (as amended) in 2012.

In discharging its burden of proving the charge beyond reasonable doubt, the Prosecution called the one witness:

Ahmadu Bello

PW1

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SENIOR REGISTRAR
FEDERAL HIGH COURT
DATE 1-3-2023 



The following exhibits were admitted in evidence:

1. Inspection visit report dated 15/11/2017 - Exhibit A
2. Letter of notification for registration dated 14/9/2017
- Exhibit B
3. Letter of notification registration dated 23/9/2021- Exhibit C
4. Report on onsite examination -Exhibit D
5. 4 duplicate receipt booklets - Exhibit E-E3
6. Statement of the Defendant dated 10/11/2021- Exhibit F
7. Statement of the Defendant dated 17/11/2021- Exhibit G

PW1, Ahmadu Bello is an investigator with the Economic and Financial Crimes Commission in charge of non-compliance of non financial institutions.

According to him, sometime in 2017 there was a visit to the Defendant's premises by officers of the Special Unit of Money Laundering where the Defendant's business was identified as non-financial institution. A letter of notification was served on the Defendant. In November, 2017 an observation letter was served on the Defendant which was acknowledged. PW1 continued in his evidence that in late 2021, an examination was carried out at the premises of the Defendant's place of business. Records of transactions were recovered and an examination report was written. They then invited the Defendant to their Sokoto office where he reported in November, 2021 and he volunteered a statement which his counsel Aliu Saad wrote for him.

Counsel to the Defence, in his written address dated 9th May, 2022 but filed 10th May, 2022 formulated one issued for determination thus:

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WHETHER OR NOT THE PROSECUTION HAD DISCHARGED THE BURDEN PLACED ON IT BY LAW IN PROVING ITS CASE AGAINST THE DEFENDANT BEYOND REASONABLE DOUBT.

Learned Counsel submitted that the even though the Defendant pleaded guilty to the charge, the Prosecution is still expected to state the case against the Defendant. Counsel relied on section 273 of the Administration of Criminal Justice Act, 2015. Counsel argued that the Defendant in his statements explained why he failed to register his business with the SCUML which was the discrepancy in the name on the certificate of registration of business name given to him by Corporate Affairs Commission blocked him from opening a bank account. Further that the Defendant never admitted any transaction above the threshold of N5,000,000.00 as the said transactions in Exhibits E – E2 did not emanate from him. Learned Counsel urged the Court to note the discrepancies in the exhibits and hold that the Prosecution has been unable to prove the charge beyond reasonable doubt. He urged the Court to discharge and acquit the Defendant.

The Court formulates one issue for determination thus:

WHETHER IN THE CIRCUMSTANCES THE PROSECUTION HAS PROVED THE ONE COUNT CHARGE AGAINST THE DEFENDANT BEYOND REASONABLE DOUBT

It is trite law that the burden of proof in criminal cases is settled and it rests on the Prosecution from start to finish in a criminal trial. It does not shift and the standard is proof beyond reasonable doubt. Kindly see **AKINLOLU V. STATE (2015)LPELR – 25986 (SC) Pages 19-21 Paras E-C; OSETOLA & ANOR. V. THE STATE (2012) LPELR – 9348 (SC) Pages 39-40 Paras E-**

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A; OLADIMEJI KAYODE V. FEDERAL REPUBLIC OF NIGERIA
(2014)LPELR – 24418 (CA) Pages 23-24 Paras F-G.

It is not enough that because a Defendant has unequivocally pleaded guilty to the charge the Prosecution is then absolved of the duty placed on it by the law to prove the case beyond reasonable doubt. The Prosecution is still required to state the facts against the Defendant and the Court must be satisfied that the Defendant intends to admit all the facts alleged by the Prosecution against him before he can be convicted. See Section 274(1) Administration of Criminal Justice Act, 2015. Kindly see JOSEPH DANIEL Vs. FEDERAL REPUBLIC OF NIGERIA (2015)LPELR – 24733 (SC). Page 22, Paras A-D.

In MABA VS THE STATE (2020) LPELR-52017 (SC), the apex Court held thus:

“The burden placed on the prosecution in a criminal charge is a heavy one. It must establish the guilt of the accused beyond reasonable doubt. See ...Section 135 of the Evidence Act, 2011. It was held in Nwaturuocha v. State (2011) 6 NWLR (Pt.1242) 170 at 193 D-E, (2011) LPELR-SC 197/2010 that: Proof beyond reasonable doubt does not mean proof beyond all doubt or all shadow of doubt. It simply means establishing the guilt of the accused person with compelling and conclusive evidence, a degree of compulsion which is consistent with a high degree of probability. at 186 E-G (supra): It is not proof beyond all iota of doubt. One thing certain is that where all the essential ingredients of the offence charged have been proved or established by the prosecution...the charge is proved beyond reasonable doubt. Proof beyond reasonable doubt should not be stretched beyond reasonable limit.”

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The Defendant is charged for Money Laundering offence especially contravening sections 3, 5 (1) (2) (3) (4) (5) of the Money Laundering (Prohibition) Act 2011 (as amended) 2012.

Section 3 provides thus:

—(1) *A financial institution and a designated non-financial business and profession shall—*

(a) identify a customer, whether permanent or occasional, natural or legal person or any other form of legal arrangements, using identification documents as may be prescribed in any relevant regulation ;

(b) verify the identity of that customer using reliable, independent source documents, data or information ;

(c) identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution or the designated non- financial business and profession is satisfied that it knows who the beneficial owner is ; and

(2) Financial institutions and designated non-financial businesses and professions shall undertake customer due diligence measures when

(a) establishing business relationships ;

(b) carrying out occasional transactions above the applicable designated threshold prescribed by relevant regulations, including transactions carried out in a single operation or in several operations that appear to be linked ;

(c) carrying out occasional transactions that are wire transfers ;

(d) there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds ; or

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(e) the financial institution or designated non-financial business and profession has doubts about the veracity or adequacy of previously obtained customer identification data.

(3) Financial institutions or designated non-financial businesses and professions shall—

(a) conduct ongoing due diligence on a business relationship ;

(b) scrutinise transactions undertaken during the course of the relationship to ensure that the transactions are consistent with the institution's knowledge of the customer, their business and risk profile and where necessary, the source of funds ; and

(c) ensure that documents, data or information collected under the customer due diligence process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

(4) Financial institutions and designated non-financial businesses and professions shall take appropriate measures to manage and mitigate the risks and—

(a) where higher risks are identified, apply enhanced measures to manage and mitigate the risk;

(b) where lower risks are identified, take simplified measures to manage and mitigate the risks, provided that simplified customer due diligent measures are not permitted whenever there is suspicion of money laundering or terrorist financing ; and

(c) in the case of cross-border correspondent banking and other similar relationships and in addition to carrying out customer due diligence measures—

(i) gather sufficient information about a respondent institution,

(ii) assess the respondent institution's anti-money laundering and combating the financing of terrorism controls,

(iii) document respective responsibilities of each institution in this regard; and

(iv) obtain management approval before establishing new correspondent relationships.

(5) A casual customer shall comply with the provisions of subsection (2) for any number or manner of transactions including wire transfer involving a sum exceeding US\$1,000 or its equivalent if the total amount is known at the commencement of the transaction or as soon as it is known to exceed the sum of US\$1,000 or its equivalent.

(6) Where a financial institution or designated non-financial business and profession suspects or has reasonable grounds to suspect that the amount involved in a transaction is the proceeds of a crime or an illegal act, it shall require identification of the customer notwithstanding that the amount involved in the transaction is less than US\$1,000 or its equivalent.

(7) Where the customer is a politically exposed person, the Financial Institution or Designated Non-Financial Institution shall in addition to the requirements of subsection (1) and (2) of this section-

(a) put in place appropriate risk management systems; and

(b) obtain senior management approval before establishing and during any business relationship with the politically exposed person.

Section 5 then provides:

5—(1) A designated non-financial business and profession whose business involves cash transaction shall—

(a) in the case of—

(i) a new business, before commencement of the business ; and

(ii) an existing business, within 3 months from the commencement of this Act, submit to the Ministry, a declaration of its activities ;

- (b) Prior to any transaction involving a sum exceeding US\$1,000 or its equivalent, identify the customer by requiring him to fill a standard data form and present his international passport, driving license, national identity card or such other document bearing his photograph as may be prescribed by the Ministry; and
- (c) Record all transaction under this section in chronological order, indicating each customer's surname, forenames and address in a registered number and forwarded to the Ministry.
- (2) The Ministry shall forward the information received pursuant subsection (1) of this section to the Commission within 7 days of its receipts.
- (3) A register kept under subsection (1) shall be preserved for at least 5 years after the last transaction recorded in the register.
- (4) The Minister may make regulations for guiding the operations of Designated Non-Financial Institutions under this Section.
- (5) Notwithstanding the provisions of subsection (2) of this Section, the Commission shall have powers to demand and receive reports from Designated Non-Financial Institutions.
- (6) A designated non-financial business that fails to comply with the requirements of customer identification and the submission of returns on such transaction as specified in this Act within 7 days from the date of such transaction commits an offence and is liable to-
- (a) a fine of N250,000 for each day during which the offence continues ; and
- (b) suspension, revocation or withdrawal of license by the appropriate licensing authority as the circumstances may demand.

The purport of these provisions is to mandate financial and non designated financial institutions to keep records of customers and the transactions made.

The ingredients of the offence are:

1. The Defendant must be a designated non-financial institution.

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2. The business of the Defendant must involve cash.
3. The Defendant must have failed to register his business with the Ministry of Trade and Investment.
4. The Defendant must have been involved in transactions exceeding \$1000 or its equivalent without customer identification.
5. The Defendant must have failed to record transactions and the details of customers in accordance with the law.

The evidence led by the Prosecution on the first ingredient is that the Defendant is a designated non-financial institution. Section 25 of the Money Laundering (Prohibition) Act 2011 (as amended) 2012 the Act defines Designated Non-Financial Institution to mean:

“Dealers in jewellery, cars and luxury goods chartered accounts, audits firms, tax consultants, clearing and settlement companies, legal practitioners, hotels, casinos, supermarkets and other business as the Federal Ministry of Industry, Trade and Investment or appropriate regulatory authorities may from time to time designate”

The Defendant has been shown to be a dealer in cars trading under the name and style of Jangwarzo motors. The Defendant is a natural person but he is caught under this definition holds no water in the light of section 25 of the Act. The interpretation section purposely covered natural persons as if it were not so, it would have defined Designated Non-Financial Institution to be a firm dealing in jewellery, cars etc. The literal rule which is a canon of interpretation in Nigeria is to the effect that laws should be given their ordinary meaning as much as possible. In *OUR LINE LTD V. S.C.C (NIG) LTD (2009) LPELR 2833 SC*, the Supreme Court stated that:

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"The literal rule is that in construing a written instruments, the grammatical and ordinary sense of the words should be adhered to unless that would lead to some absurdity or some inconsistency with the rest of the instrument."

Kindly see also GANA VS. SDP & ORS (2019) LPELR-47153 (SC); ABEGUNDE VS. ONDO STATE HOUSE OF ASSEMBLY & ORS (2015) 8 NWLR (PT. 1461) 314; PDP VS. INEC & ORS (2014) 9 SC 141.

There is no ambiguity in the meaning of designated non-financial institution consequently, the first element of the offence is resolved in favour of the Prosecution.

On the second to fifth elements of the offence, the evidence of PW1 showed that the Defendant is a car dealer and the statement of the Defendant admitted in evidence without objection shows that the business of the Defendant involved receiving money in cash. The Defendant in the statement thus:

"all my customers pay me cash when they bought a car from me. I am aware of that whenever there is a business transaction which the amount is up to Five Million Naira and the amount passé through an account, the Economic and Financial Crimes Commission must be informed and that is why I am desperate to open the company account. I am not aware that a business transaction of One Thousand Dollars or equivalent must be reported to the Commission if it was paid cash"

The Defendant went ahead to state the different transaction involving millions of Naira he carried out.

The statement of the Defendant clearly established that transactions had been carried out by cash without going through a financial institution. The cash transactions were also carried out without taking down the details of the

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customers or informing the Commission of transactions above \$1000 or its equivalent.

The law is well established, that in criminal trial, proof of commission of a crime by an accused person can be established in any of the following ways or methods, namely:-

1. Through the testimony of an eyewitness or witnesses who witnessed the act of the commission of the offence, by the accused person; or
2. By confessional statement made voluntarily by the person accused of the commission of the offence, or
3. By circumstantial evidence.

Kindly see *OMOREGIE V. THE STATE*: LOR(2/6/2017); *BELLO OKASHETU V THE STATE* (2016) LPELR -40611 (SC), *STEPHEN V THE STATE* (2013) 8 NWLR (PT.1355) 153, *OGUONZEE V THE STATE* (1998) 5 NWLR (PT.551) 521, *AKWUOBI V THE STATE* (2017) 2 NWLR (PT.1556) 421. A confessional statement has been held to the best evidence against an accused person as it is essentially the Defendant implicating himself.

Section 28 of the Evidence Act, 2011 defines a confession as “*an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime*”.

Section 29 (1) and (2) of the Act provides inter-alia that a confession is relevant and admissible in evidence so long as it is voluntarily made and not as a result of threat or inducement. Where a Court is satisfied that a confession was freely and voluntarily made and that it is direct, positive and unequivocal as to the Defendant’s participation in the crime alleged, it may rely solely on the confession to ground a conviction. Kindly see

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ADEYEMI VS STATE (2014) 13 NWLR (PT 1423) 132; OMOJU VS FEDERAL REPUBLIC OF NIGERIA (2008) 2 SCN 164 AT 177.

In relying on a confessional statement, it must pass these further tests viz:

- (i) Whether there is anything outside the confessional statement to show that it is true.
- (ii) Whether the facts stated in the confessional statement is consistent with other facts which have been ascertained and proved.
- (iii) Whether it is corroborated.
- (iv) Whether the Defendant had the opportunity of committing the offence?
- (v) Whether the confession is possible?
- (vi) Whether the facts stated therein are true as far as can be tested?

GOLDEN BIEBE V. THE STATE (2007)1 ALL FWLR (part 362)83 at 114- 113.
OLAYINKA V. STATE (2007)85 SCM (part 2)347

In NWEZE V. THE STATE: LOR(5/5/2017) the Supreme Court of Nigeria held:

"Suffice it, however, to observe that the logic of the reasoning in all cases this point is that a free and voluntary confession of guilt, whether judicial or extrajudicial, if it direct and positive and properly established, is sufficient proof of guilt. In effect, it is enough to sustain a conviction so long as the Court is satisfied with the truth thereof (that is, the truth of the confession), Adebayo v. The State (2014) LPELR-22988 (SC) 40-41; Akpan v. State

J. Motutu

(2001) 11 SCM 66; [2001] 15 NWLR (Pt. 737) 745; (2001) 7 SC (Pt. 1) 124;

Nwachiukwu v. State (2002) 12 SCM 143

The Defendant also mentioned in his statement that the business was not registered with the Special Control Unit Against Money Laundering. The statement of the Defendant establishes his liability to the charge as he did not comply with the Money Laundering (Prohibition) Act regarding a cash business such as his own. PW1 in his evidence in chief also said that inspection visit was made to the premises of the Defendant to verify if it was registered but it was not. They also notified the Defendant of this fact and were lenient with him for about 5 years since 2017 when they paid him the first visit. The evidence of PW1 was not challenged by the Defence and same is deemed admitted against the Defendant.

The argument that the Prosecution failed to show that the Defendant did not register with the Ministry of Trade and Investment will not fly as the Act also vests powers to demand and investigate on the Economic and Financial Crimes Commission. Section 5 (5) of the Money Laundering (Prohibition) Act 2011 (as amended) 2012 provides:

“Notwithstanding the provisions of subsection (2) of this section, the Commission shall have powers to demand and receive reports directly from Designated Non-Financial Institutions.”

The import of this section is to vest the Commission with the powers of the Ministry to demand and receive reports. In addition, the Commission is the body vested with the Prosecutorial powers to try offending parties.

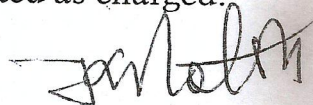
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Confessional statements can be relied on solely by a court to convict a Defendant if the confessions are direct and positive. In the case of **ADOGA v. FRN (2019) LPELR-46931(CA)** it was clearly stated as follows;

“Where a Court is satisfied that a confessional statement was made voluntarily and it is clear, positive and unequivocal as to the accused person’s participation in a crime, it is sufficient without more to ground a conviction. It is trite that, an accused person can be convicted on his confessional statement, if properly proved and circumstances make it probable. In criminal procedure, such confessional statement, like admission in civil procedure is the best and strongest evidence of guilt on the part of an accused person. Indeed stronger than the evidence of eye witness.”

Kindly see also **ADEBAYO OJO VS THE STATE (2018) LPELR 44699 (SC); RABI ISMAIL VS THE STATE (2011) LPELR-9350 (SC)**

In final analysis, the statement of the Defendant together with the evidence of PW1 has established the offence against the Defendant beyond reasonable doubt. Consequently, the Defendant is hereby convicted as charged.



J.K. OMOTOSHO

Judge

30/6/2022

Appearances

S.H. SA'AD ESQ

F.M. MADA ESQ

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