IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE SOKOTO JUDICIAL DIVISION
HOLDEN AT SOKOTO
ON THE 21ST DAY OF JULY, 2022
BEFORE HIS LORDSHIP THE HONOURABLE
JUSTICE AHMAD G. MAHMUD
(JUDGE)

SUIT NO: FHC/S/16C/2022

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ..... COMPLAINANT
AND
1. SANUSI BELLO
2 RAHUSA MOTORS SOKOTO .....DEFENDANT

JUDGMENT

1st and 2nd Defendants were arraigned before this court on one count charge dated 7/3/2022 and filed on 23/3/2022 for the offence contrary to section 5(1-5) of the Money Laundering (Prohibition) Act 2011 as amended in 2012. The Defendants were allegedly failed to submit a declaration of customer identification and returns on transactions to the Special Control Unit against Money Laundering (SCUML) in contravention of section 5(1) –(5) of the Money Laundering (Prohibition) Act 2011 as amended in 2012 and punishable under section 5(6)a of the same Act.

Initially, Defendants were arraigned on 4/04/2022 before my learned brother, Justice J.K. Omotosho and pleaded guilty. The matter was adjourned for review of fact. On 20th June, 2022, Defendants were re-arraigned before me. 1st Defendant pleaded guilty on his behalf and on behalf of the 2nd Defendant. Consequently, the prosecution called one witness to review the fact of the case and tendered the following exhibits, thus:

1. Exhibit A –a three sheet statement of the Defendant dated 9/11/2021, and
2. Exhibit B-B1–Cash Receipt Booklet and Cash Sale Invoice

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PW One, Aminu Ahmad, an officer of the EFCC gave evidence on oath that on 29/10/2021, there was a nationwide inspection and examination of designated non-financial business and profession. The Defendant was also visited and the examination on the 2nd Defendant revealed that the Company is not rendering cash business transaction report to Special Control Unit against Money Laundering SCUML, and the company is not complying with Know Your Customer Policy and Customer Due Diligence. On further investigation, the 1st Defendant was interviewed and made voluntary statements i.e Exhibit A. PW1 also stated in evidence that he recovered one receipt booklet and one invoice booklet (i.e Exhibit B-B1). Examining the Exhibit B-B1, PW1 identified cash transactions of N3,500,000; N3,200,000 and N3,000,000 which were above reportable threshold of USD 1,000 and supposed to be reported to Special Control Unit against Money Laundering (SCUML) within 7 days of transaction had never been reported.

The Defence did not present any witness, instead they relied on the Prosecution case.

The Prosecution Counsel filed his Final Written Address dated 24/06/2022 but filed on 27/6/2022. The Prosecution Counsel, M. M. Gwani Esq., formulates one issue for determination, thus:

Whether the Prosecution has proved its case beyond reasonable doubt pursuant to section 135 of the Evidence Act, 2011

The learned counsel contended that the guilty of the Defendants may be proved by a confessional Statement; circumstantial evidence or by a testimony of an eye witness relying on the authority of **Emeka Vs. The State (2001) 14 NWR (PT. 734) 666 AT 683 F-G.**

He submitted that Exhibits B-B1 shown that the Defendant had clearly transacted in an amount exceeding USD 1,000. He also submitted that the Defendants qualified as non-financial institution as defined by section 25 of the Money Laundering (Prohibition) Act, 2011 as amended in 2012; that the Defendants' plea of guilty upon reading and explaining the charge, signified that the Defendants committed the offence as charged; and that the defendant confessed the commission of the offence in exhibit A. He humbly urged the court to convict the Defendant having pleaded guilty to the charge as there is no any gab in the evidence of the prosecution.

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Counsel to the Defendants, Ibrahim Hussaini Esq., filed a Final Written Address dated 27/6/2022. He formulated one issue for determination thus:

Whether having pleaded guilty, the Defendant must be convicted with offence charged, even where the facts and evidence presented by the prosecution did not support the ingredients of the offence.

Relying on the provisions of Administration of Criminal Justice, Act, 2015, Defendant Counsel submitted that where a defendant pleads guilty, and the prosecution presents facts or evidence in support of the charge, the fact and evidence must all fours support the case of the prosecution. He cited the cases of **Nkie v. FRN (2014) 13 NWLR PT. 1424 p305; Abele v. TIV N.A. (1965) NMLR 425**. He further argued that in determining whether to convict the Defendant who pleads guilty to an offence, the court is expected to have regard to facts and evidence presented by prosecution in support. He submitted that the facts and evidence in the instant case did not support the offence in which the Defendant was charged. In order to successfully secure the conviction under section 5(1-5) of the Money Laundering (Prohibition) Act 2011 as amended, the ingredients of the offence must be established altogether and cumulatively. He argued that the prosecution failed to prove the ingredients of the offence. He concluded that the Prosecution has failed to discharge his duty of proving all the ingredients of the offence beyond reasonable doubt. He urged the court to discharge and acquit the Defendants.

Resolution

Having read and comprehended the respective Final Written Addresses of both counsel, the court settle for a lone issue for determination thus:

Whether the Prosecution has discharge its duty in proving the ingredients of the offence charged against the Defendants

Law is settled that the burden of proof in criminal cases is rested on the Prosecution to prove beyond reasonable doubt. It does not shift and remains on the prosecution until satisfactorily discharge. See **State v. Azeez (2008) 14 NWLR Pt. 1108 p.439 @469 A-B**.

Where the Defendant has pleaded guilty as in the instant case, the law still requires the prosecution to state the facts against the Defendant and the court must satisfy that the Defendant intends to admit all the facts alleged by the prosecution against him before his conviction. See **Uche v. FRN (2021)4 NWLR Pt. 1765 p. 64 at pp95-96 G-A**

Now, what ingredients required to be proved by the Prosecution to establish the offence against the Defendants? The elements of the offence can be drawn from Section 5 of the Money Laundering (Prohibition) Act 2011, as amended in 2012 which is the provisions that established the offence. The section provides thus:
Section 5 (1): A Designated Non-Financial Institution whose business involves the one of cash transaction shall –
(a) In the case of –
(i) a new business, before commencement of the business,
(ii) 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;
(c) record all transaction under this section in chronological order, indicating each customers surname, forenames and address in a register numbered and forwarded to the Ministry.
(2) The Ministry shall forward the information received pursuant to subsection (1) of this section to the Commission within 7 days of its receipt.
(3) A register kept under subsection (1) of this section 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 directly from Designated Non-Financial Institutions.

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A close reading of the above provisions, following ingredients can be discerned namely:

1. The Defendant must be a designated non-Financial Institution
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 transaction exceeding USD1,000 or its equivalent without customer identification
5. The Defendant must have failed to record transaction and the details of customer in accordance with the law

In any criminal case, like the one at hand, the onerous burden of proving the ingredients of offence beyond reasonable doubt lies on the prosecution. How this is discharged depends largely on the nature of or type of the offence involved, and given set of facts and circumstance of each case. **see Ugwanyi v. State (2010) 14 NMWLR Pt.1213 p.397@ 409 A-B.**

Generally, Prosecution can discharge this burden in any of the three ways:

1. Confessional statement of the Defendant;
2. Circumstantial evidence
3. Evidence of eye witness

In attempt to prove the above ingredients, the Prosecution called one witness.

PW1 testified that, in the course of their examination and inspection, the Defendant was found not rendering cash business transaction to SCUML, and the company is not complying with Know your Customer Policy and Customer Due Diligence. PW1 tendered exhibit A, an extra judicial statement of the 1st Defendant, therein, the Defendant stated thus in the first sheet of the Statement: **the head of SCUML Sokoto Zonal Command has sensitized us on some necessary things to do as the company should appoint a compliance officer to be reporting on monthly basis. And the Director, SCUML Abuja has invited the Association of motors dealers Association of Nigeria that all transaction that is up to 5 million we have to report to EFCC. We don't know that if we collect one thousand Dollar or its equivalent, we ought to report**

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to EFCC. We have never reported our transactions to EFCC, since we collected the SCUML Certificate. We have never reported any report because we were told that we should only report transaction above 5million naira.

1st Defendant further stated in third sheet of his statement that: **all these ten transaction explained above were not reported to the Economic and Financial Crimes Commission because we did know that even transactions below five million naira must be reported the commission. We were made to understand that only transactions of five million naira and above are reported to the Economic and Financial Crimes Commission. We were made to understand this by the Economic and Financial Crimes Commission when we attended a meeting at the commission's headquarter in November, 2020 at Abuja.**

PW1 also tendered exhibit B-B1and he identified some cash transactions of N3.5m; N3.2m and N3m which he said were above reportable threshold of USD 1,000 and supposed to be reported to Special Control Unit against Money Laundering (SCUML) within 7 days of transaction had never been reported.

Before going further let me consider issues raised by the Defendants' Counsel.

Firstly, whether an individual natural person can be considered as 'a designated non-financial institution within the meaning of Section 25 of the Money Laundering (Prohibition) Act, 2011 as amended'? In other words, as the Defendants' counsel submitted, whether the Defendant who carried out business as individual (not as a corporate body) can be regarded as an institution? He submitted that Institution is defined by Black Law Dictionary, 9th Edition at p. 869 to means established organisation. In his own conclusion, Institution simply means organisation dealing with non-financial matter.

Looking at evidence before me, it is disclosed in Exhibit A first Sheet thus '**I was a driver before I engage in selling vehicles. I used to travel to Lagos state and Cotonou, Benin Republic to purchase second hand vehicles. I incorporated my company named Alhaji Sanusi Rahusa International Motors Ltd. on the 30th September, 2015. My registered address is located at No. 14, Maiduguri Road,**

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Sokoto. I registered with Federal Inland Revenue Service'. By this evidence, the 2nd Defendant is a corporate body.

Furthermore, Section 25 of the amended Act, 2012 defines non-financial Institution thus:

> **Dealers in jewellery, cars and luxury goods chartered accountants, audit 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 authority may time to time designate**

The intention of the lawmakers is to include corporate and non corporate bodies and individuals, and what the prosecution need to prove is the Defendant is a dealer in cars trading, the evidence of which clearly established to qualify the defendants as non-financial Institution under the Act. Where a word or expression in provisions of a status have been legally or judicially defined or determined, their ordinary meanings will definitely give way to their legal and judicial meanings. **See the case of Dapianlong V. Dariye II (2007) 8NWLR Pt.1036. p. 332@447 F.** Therefore, the definition given by the Defence Counsel citing Black Law Dictionary could not help.

Defence Counsel's argument that PW1 referred to 1st and 2nd Defendants in his testimony while there was only one Defendant in the case could not sustained. On the face of all processes filed in this case, including that of the Defence Counsel, it shows that there are two Defendants namely Sanusi Bello and Rahusa Motors Sokoto. 2nd Defendant is also charged and named in the one Count charge.

The argument of the learned counsel to the Defendant referring this court to the finding and recommendation of the examination report goes without any value of judicial examination. Counsel submitted that the document is tendered in evidence, but from the record, I have not seen any such document. It has never been tendered in evidence for the court to seize the opportunity of examining same.

The Defendants counsel also argued that the evidence presented by Prosecution did not show that the Defendant has not made the necessary declaration to the Federal Ministry of Trade and Investment as required by law; and no request was made to the Defendant as to that fact. This court had a careful look at the provision of section 5 of

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the Money Laundering (Prohibition) Act 2011 as amended in 2012. Subsection (5) of the same Section in particular would be of necessary assistance:

Section 5 (5) 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 above provision is clear that the Commission can dispense with the proof of reporting to the ministry as it equally has powers to demand and receive such report directly from the Defendants.

The last and indeed not the least, the Defendants' Counsel argued that the Defendant has carried out same transactions in million of naira but no evidence were called to show the amount reflected in the receipt exceeded USD 1,000.

I carefully examine the evidence before me, the testimony of the PW1 and compare with Exhibit A. PW1 in evidence in chief informed the court that: **In the course of investigation, one receipt booklet and one invoice booklet were recovered from the Defendant. The receipt and invoice booklet with serial No. 00005 carries the transaction of N3.5m while serial No. 00006 carries the transaction of N3.2m. the last transaction with serial No. 00007 which carries the transaction of N3m. The three transactions are above threshold of USD1,000 which is to be reported to Special Control Unit against Money Laundering within 7days of transaction had never been reported.**

In the first sheet of the Exhibit A, Defendant stated that: **we normally collect money from seven hundred thousand naira to one million naira from our customers. The head of SCUML Sokoto Zonal Command has sensitized us on some necessary things to do as the company should appoint a compliance officer to be reporting on monthly basis. And the Director, SCUML Abuja has invited the Association of motors dealers Association of Nigeria that all transactions that is up to 5 million we have to report to EFCC. We don't know that if we collect one thousand Dollar or its equivalent, we ought to report to EFCC. We have never reported our transactions to EFCCS,. since we collected the SCUML**

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Certificate. We have never reported any report because we were told that we should only report transaction above 5million naira.
The question is what the equivalent to USD1000 as required by law is. Is it N5m the Defendants were required to report or N3.5m, N3.2m and N3m as proved in exhibit B they transacted. Since the Defendant was required to report transaction above N5m, it assumed to me that was threshold at the time of sensitisation of the Defendant by the Economic and Financial Crimes Commission. So how would N5m threshold in 2019 or there about becomes within the range of N3.5m to N3m. Is the US Dollar depreciated which I doubt. In my opinion, the prosecution has a duty to clarify why the Defendant was required to report N5m and above at that time and why the threshold became N3m. Since the Defendant has raised that issue, the Prosecution need to prove the value of US Dollar to Naira at the time of transaction as mentioned in Exhibit B-B1, that is the receipt and invoice booklets. On this point, I agree with Counsel to the Defendant's submission that evidence need to be shown that the amount reflected in Exhibit B-B1 exceeded the USD1,000 as required by law. The evidence of PW1 that '**the three transactions are above threshold of USD1,000'** would not be enough bearing in mind the Defendant statement in Exhibit A to report N5m and above transactions. The statement was not rebutted by the Prosecution or countered. This raises a very big doubt in my mind that the Defendants have committed the offence.
Consequence to the foregoing analysis, I disagree with argument of the Prosecution that the Defendants have confessed the commission of the offence in exhibit A. Exhibit A does not satisfy the requirements of confessional statement as defined by law.
Confession is defined by Section 28 of the Evidence Act, 2011 as: **"an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime"**
Therefore, a confession must either admit the elements of the offence or all facts which constitute the offence. **See FRN v. Barminas (2017) 15NWLR PT. 1588, p.177 at 214 paraF; Afolabi v. State (2013) 13NWLR PT. 1371 p.292**
In the case of **Solola v. State (2005) 11NWLR Pt. 937 p460 @498 parsB-D, Supreme Court held thus:**

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A confessional Statement must be unequivocal in the sense that it leads to the guilt of the maker before it can result in the conviction of the accused. Where a so-called confessional statement is capable of two interpretations in the realm of guilt and non-guilt, a trial court will not convict the accused but give him the benefit of doubt. But where a confessional statement is unequivocal, as in the instance case, a trial court can convict on it. Therefore, if the accused says that he committed the offence and comes to conclusion that he made in a stable mind and not under duress, the accused must be convicted

In **Paul v. State (2019) 12NWLR Pt.1685 p.54 at pp.75-76 paraG-A**, the Supreme Court held as follows:

To constitute a confession, a statement must admit or acknowledge that the maker thereof committed the offence for which he was charged. It must in so doing be clear, precise and unequivocal. In the instant case, exhibit AP1 fell short of the requirement of a confessional statement. The statement of Appellant did not clearly, precisely and unequivocally that he killed his wife[Gbdamosi v. State(1992) 9NWLR Pt.266 p. 465]

Exhibit A is not clear, precise, and unequivocal that the Defendant failed to report transaction above USD 1,000. In the contrary, the Defendant is shown to be a good fellow citizen by his registration with SCUML, and his payment of tax to the Federal Inland Revenue Service, the facts which were not denied by prosecution.

I take into consideration that the Defendants have pleaded guilty to the offence. The procedure to be adopted by the court where the Defendant pleaded guilty as in this instant case is provided by Section 274(1)&(2) of the Administration of Criminal Justice Act, 2015. The provisions require the court to invite the prosecution to state the fact of the case and thereafter enquire from the Defendant whether his plea of guilty is to the fact as stated by the prosecution. The court if satisfied, that the Defendant intends to admit the truth of the essential elements of the offence to which he pleaded guilty, convict and sentence him or make such order(s) as may be necessary, unless there appears sufficient reasons to the contrary

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In the instant case, it appears a sufficient reason that the Defendants intends not to admit all the essential elements of the offence.

I hold that the Prosecution have failed to prove all the essential elements of the offence. Consequently, the Defendants are hereby discharged and acquitted.

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Ahmad G. Mahmud
Judge
21/07/2022

Appearance
M. M. Gwani Esq — **for the Prosecution**

Ibrahim Hussaini — **for the Defendants**

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