

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/15^C/2022

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT
AND
1. NASIRU MUHAMMAD DANYARO
2 NAGARTA MOTORS INVESTMENT
NIGERIA LTD 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 15th 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:


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1. Exhibit A –a Letter of Notification for Registration dated 14/9/2017
2. Exhibit B-B1–two statements of the 1st Defendant dated 16/11/21 and that of 2/3/2022
3. Exhibit C-C1 –Two Booklet Invoices of 2019 and 2021

PW One, Aminu Ahmad, an officer of the EFCC gave evidence on oath that sometimes in October, 2021, there was a nationwide inspection and examination of designated non-financial business and profession by Special Control Unit against Money Laundering. On 30/10/2021, a team of EFCC Officials visited the Defendant at his company, and it was found that the Defendant was not registered with Special Control Unit against Money Laundering SCUML though a notice of registration had been served on him. On further investigation, the Defendant's statement was recorded and some invoice booklets were recovered from the Defendant. It was found out that some transactions that were above reportable threshold have been traced which were not reported to the SCUML within the required 7 days. PW1 stated in evidence that the Defendant violated reportable threshold as indicated in exhibits C-C1, two invoice booklets. He identified cash transactions of N5,600,000, N5,000,000, N100,000,000, and N32,000,000 which are all above the reportable threshold.

The Defence did not present any witness. 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., formulated one issue for determination, thus:

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

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 C to C1 shown that the Defendant had clearly transacted in cash 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 his statement. He cited case of **Lekan Olaoye v. The State (2018)1 S.C.N.J 307@314; Akibu Hassan v. The State (2001) 7SCNJ p.120; and Section 28 of the Evidence Act, 2011**

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.

On the part of the Defence, Counsel to the Defendants, Ibrahim Hussaini Esq., filed a Final Written Address dated 27/6/2022 and filed same date. 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.

Counsel submitted that going by the provisions of Administration of Criminal Justice, Act, 2015, 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) 13NWLR PT. 1424 .305; 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

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presented by prosecution in support. He submitted that the facts and evidence in the instant case did not support the offence in which the Defendants were 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

Before going further into crux of this case, I think it is necessary to correct some anomalies here. The Prosecution counsel made reference to Exhibits A-E while on record I have only exhibit A-C1 as earlier mentioned in this judgment. Prosecution counsel also made reference to exhibit A as the Statements of the Defendant but on record I have exhibit B-B1 as such. I also take note of a quote of the Defendant's statement on page of the prosecution written address which could not be found in the statement tendered in this case. These anomalies may mislead the court and should be avoided with all sense of responsibility. I think this anomalies occurred by the practice of copy and paste situation, forgetting that cases are different and treated differently. I notice this anomaly in quite number of addresses filed by counsel and I feel it is desirable to interject at this point.

Coming back to issues at hand, I have read the respective Final Written Addresses of both counsel, and I 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

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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.

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(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.

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

The evidence led by the prosecution on the first ingredient is that the Defendant is a designated non-financial institution. Section 2 of the amended Act, 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

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Industry, Trade and Investment or appropriate regulatory authority may time to time designate

It is clear from evidence adduced particularly Exhibit B, the Defendant is a cars dealer who trade under the name Nagarta Motors, and maintained an account Number with Account name 'Nagartar Automobile and Investment Limited.

The Defendants' Counsel raised an issue as to whether the defendant 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.

In my opinion, 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. 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 matters. After all, Defendant stated in Exhibit B that the 2nd defendant is registered with Corporate Affairs Commission (CAC) on 25/05/2016 and the registration RC 1338078.

On the second to fifth ingredients of the offence, the evidence of PW1 established that the Defendant involved in cash transactions, the fact of which is admitted even by the counsel to the Defendant in his address. The Defendant stated in exhibit B thus:

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I operate my business in such a way that, if a customer comes to buy car we will give him an open deal, either to buy and pay cash or he will come with his vehicle, all of us the dealers will value both cars and the customer will complete the remaining balance of the money. Some customers do bring cash at hand while purchasing the vehicle, while some transfer money into personal account of the vehicle owner. Yes we do accept cash.

It is also clear that the Defendant was found not registered with Special Control Unit against Money Laundering (SCUML) though a notice of registration has been served on the defendants sometimes in 2017. On further investigation, some invoice booklets, i.e Exhibits C-C1, were recovered and transactions above reportable threshold were traced which were supposed to be reported to SCUML within 7 days had never being reported. In Exhibits B-B1 and C-C1, transaction of N5.6m, N5m, N100m, and N32m which were all above threshold have been established. All established cash transactions were not reported as required by law.

Exhibits B and B1 are statements of the 1st Defendant. The Prosecution counsel submitted that the Defendant have categorically confessed the commission of the offence charged and urged the court to hold so.

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”**

Section 29 (1) and(2) of the Act provide 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 prove commission of the crime by the Defendant, is sufficient to warrant conviction.


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In the case of Solola v. State (2005) 11NWLR Pt. 937 p460 @498 parsB-D, Supreme Court held thus:

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

The Defendant mentioned in exhibits B and B1 that he did not register with the Special Control Unit against Money Laundering. The statement also has established the Defendant failure to comply with section 5 of the Money Laundering (Prohibition) Act regarding his transaction in cash.

The argument of the Defendants' counsel 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 cannot be sustain. This is because a careful look at the provision of section 5 of the Money Laundering (Prohibition) Act 2011 as amended in 2012, particularly Subsection (5) points to the contrary

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 Defendant

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In conclusion, the guilty plea and the statement of the Defendant in exhibits B-B1 alongside the testimony of PW1 the offence against the Defendant beyond reasonable doubt has been established, and consequently, the 1st and 2nd defendants are hereby convicted as charged.


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Ahmad G. Mahmud

Judge

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Appearance

M. M. Gwani Esq

for the Prosecution

Ibrahim Hussaini

for the Defendants

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