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/9C/2022

BETWEEN

THE FEDERAL REPUBLIC OF NIGERIA --- COMPLAINANT

AND

SHEHU MAIRIGA ---- DEFENDANT

(TRADING UNDER THE NAME

AND STYLE OF GAMJI 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

The following exhibits were admitted in evidence:

1. Inspection visit report - Exhibit A
2. Notification for registration dated 14/11/2017 -Exhibit B
3. Report on onsite examination -Exhibit C
4. Statement of the Defendant dated 9/11/2021- Exhibit D
5. One duplicate receipt with No. 0126 - Exhibit E

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 some EFCC officers where the Defendant's business was identified as non-financial institution. A letter of notification for registration was served on the Defendant which was acknowledged. An observation letter was also served on the Defendant. PW1 continued in his evidence that in November 2021, an examination/inspection was carried out at the premises of the Defendant's place of business. They got evidence of transactions carried out that failed to comply with the law through the receipts recovered.

Counsel to the Defence, in his written address dated and filed 9th May, 2022 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 MATERIALLY SUPPORT THE INGREDIENTS OF THE OFFENCE**

Learned Counsel submitted that the fact that the Defendant pleaded guilty to the charge does not absolve the Prosecution of proving the charge against the Defendant beyond reasonable doubt. Counsel relied on **UMMARU VS F.R.N (2013) LPELR-20203 CA.** On the instant charge, Learned Counsel submitted that the charge is likely to fail as the Defendant being a natural person cannot be held to be a designated non-financial institution. That only an organized entity can be called a designated non-financial institution. Learned Counsel submitted further that the evidence led by PW1 is filled with a lot of holes. He argued that the report made by PW1 showed that the Defendant did not understand the risk in his business and that in Exhibit E bears the name of Gamji Motors Nig. Ltd rather than Gamji Motors where he carries on his business. He also pointed out that the address stated on the receipts is different from the one on the charge. Also that there is no evidence that the millions of Naira transactions carried out exceeds the $1000 as stated in the Act. He urged the Court to resolve these discrepancies in favour of 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-**

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."*

The Defendant is charged under Section 5 of the Money Laundering (Prohibition) Act, 2011 (as amended) 2012 which 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.
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 Gamji motors. The argument by Defence Counsel that the Defendant is a natural person and not an artificial person to be 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:

> *"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:

> *"Our customers are individuals who can come to our car stand and check the car if they like it they will buy, we did not have a corporate account. Whoever bought a car from us he paid us cash. I'm not aware that if we make a*

transaction which amount to Five Million Naira we must report to Economic and Financial Crimes Commission until now as I was informed by the Commission officials. I did not know also that if we make any sales which is equivalent to $1000 One Thousand Dollars we must also report. Truly we have been receiving cash equivalent to above mentioned cash without reporting because we did not know."

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 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 **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 tare 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 (2001) 11 SCM 66; [2001] 15 NWLR (Pt. 737) 745; (2001) 7 SC (Pt. 1) 124; Nwachukwu 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 neither was it registered with the Corporate Affairs Commission. 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 statement of the Defendant that he did not know that he ought to register the business holds no weight. Firstly, ignorance of the law is not an excuse

under our criminal laws. This principle of law is expressed in the latin maxim *ignorantia legis non excusat* which has been codified in section 22 of the Criminal Code. The principle is to the effect that ignorance of a law will not be a good defence except knowledge is a crucial element of such offence.

The Supreme Court in **THE STATE v. SQUADRON LEADER S.I OLATUNJI (2003) LPELR- 3227 (SC) held:**

> *"It is an established principle of criminal law that, an honest and reasonable belief in the existence of circumstances, which if true, would make the act for which the accused is charged an innocent act, has always been held to be a good defense. This is because of the state of his or her mind at the time of the commission or omission of the act which must not be only honest but must also be reasonable in the circumstances."*

In **OSAREMWINDAM AIGUOKHIAN V. THE STATE (2004) LPELR-269 (SC).** Pats-Acholonu JSC (as he then was) held thus:

> *"It is the law that where an accused acted under an honest and reasonable belief in a given state of situation which if true would have justified the act, he may set up such a credible defense..."*

Secondly, the PW1 and his team paid the business a visit and explained their mission to the Defendant yet, he failed to carry out the directive of registering the business. I find it unconscionable that a person who was warned severally and given ample opportunity to correct his wrong would turn around to say he did not know. Although I notice that the level of illiteracy of the defendant is very high.

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.

Another argument fronted by Defence Counsel is that the Prosecution failed to show that the Defendant carried out transactions above $1000 as no evidence of the exchange rate was presented by the Prosecution. The statement of the Defendant established this point beyond doubt when he said they carried out transactions above $1000. The Defendant has incriminated himself in his statement and it is sufficient to support the charge against him.

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, the court having observed that the level of the illiteracy of the defendant is high shall consider same in sentencing.

J.K OMOTOSHO

Judge

30/6/2022

Appearances:

S.H. Sa'ad Esq - **For the Prosecution**

Ibrahim Hussaini - **For the Defendant**