406

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE BAUCHI JUDICIAL DIVISION

HOLDEN AT BAUCHI ON 9TH MAY, 2023

BEFORE HIS LORDSHIP

HONOURABLE JUSTICE HASSAN DIKKO

JUDGE

CHARGE NO: FHC/BAU/CR/16/2018

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

1. GARBA DAHIRU
2. HALIRU ABDULLAHI.....DEFENDANTS

LEGAL REPRESENTATION:

ABUBAKAR ALIYU, ESQ, for the Complainant

NASIR B. MALAN, ESQ, for the Defendants

JUDGMENT

The Defendants were arraigned on a 2-count charge dated 4th June, 2018 and it reads thus:

FEDERAL HIGH COURT BAUCHI
UMAR AHMED ILIYASU
REGISTRAR
05 FEB 2024

UMAR I. IBRAHIM
S. E. O. (LIT)
FED. HIGH COURT BAUCHI
26 JAN 2024

FHC/BAU/CR/16/2018/ FRN VS GARBA DAHIRU & 1 ORD

COUNT ONE: 407

That you GARBA DAHIRU and HALLIRU ABDULLAHI, all members of Finance and Funds Disbursement Committee of Peoples' Democratic Party (PDP) 2015 General Elections, and in such capacities sometimes in March, 2015 in Bauchi State within the jurisdiction of this Honourable Court did agree among(sic) yourselves to commit an offence, to wit; Conspiracy to accept cash payment exceeding the threshold provided by law, thereby committed an offence contrary to Section 18(a) and punishable under Section 16(2)(b) of the Money Laundering (Prohibition) Act, 2011 (as amended) now No.1, 2012.

COUNT TWO:

That you GARBA DAHIRU and HALLIRU ABDULLAHI, all members of Finance and Funds Disbursement Committee of Peoples' Democratic Party (PDP) 2015 General Elections, and in such capacities sometimes in March, 2015 in Bauchi State within the jurisdiction of this Honourable Court did accept cash payment of N172,310, 000. 00 (One Hundred and Seventy-Two Million, Three Hundred and Ten Thousand Naira) from the Directorate of Finance, Bauchi State PDP Campaign Organization exceeding the required threshold of cash payment, thereby committed an offence contrary to Section 1, 16(1)(d) and punishable under Section 16(2)(b) of the Money Laundering (Prohibition) Act, 2011 (as amended) now No.1, 2012.

FEDERAL HIGH COURT, BAUCHI
UMAR AHMED ILIYASU
REGISTRAR

UMAR I. IBRAHIM
S.E.O. (LD)
FEDERAL HIGH COURT BAUCHI

The charge is accompanied by an affidavit of investigation, brief facts of the case, list of witnesses and Certificates of Payment and written statements of the defendants. Re-arraigned on the 14th November, 2018, the Defendants pleaded not guilty to the charge. Trial commenced and the prosecution presented a lone witness that is PW1 who testified as to how investigations revealed that the Defendants did commit the offence, and through whom Exhibits A1, A2 and A3 were tendered and admitted in evidence while the extra-judicial statements of the defendants were rejected after a mini-trial. In defence, the 1st and 2nd defendants testified as DW1 and DW2 respectively wherein they denied any wrongdoing and the authorship of Exhibit A Series.

At the close of evidence, final written addresses were filed, exchanged and adopted on the 17th February, 2023. The lone issue formulated for determination in the joint final address for the defendants is "Whether in considering the evidence adduced by the prosecution, there is any credible and tangible evidence that will warrant the conviction of the defendants". In his submissions, learned counsel for the defendants NasiruBalanmalam Esq. urged the Court to resolve the issue in favour of the defendants, discharge and acquit them accordingly.

The prosecution also crafted a lone issue for determination to wit: "Whether based on the facts and circumstances of this case, the prosecution has proved its case (two count charges) against the defendants beyond

409

reasonable doubt". In his submissions, learned counsel for the prosecution invited the Court to convict the defendants as charged.

COURT

I think the issue upon which this charge can be determined is that formulated by the prosecution and I adopt same for this purpose, that is, "*Whether based on the facts and circumstances of this case, the prosecution has proved its case (two count charges) against the defendants beyond reasonable doubt".*

Section 138 (1) of the Evidence Act states that: "If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal it must be proved beyond reasonable doubt." It must be said however that proof beyond reasonable doubt is not synonymous with proof beyond all shadow of doubt. It means the prosecution must establish the guilt of the accused person with compelling evidence which is conclusive. It means a degree of compulsion which is consistent with a high degree of probability. Proof beyond reasonable doubt is not achieved by the prosecution calling several witnesses to testify, rather the Court is only interested in the testimony of a quality witness. See BASSEY V. STATE (2012) LPELR-7813(SC).

Before a trial Court concludes that an offence has been committed by an accused person, the Court must look for the ingredients of the offence and ascertain critically that acts of the accused come within the confines of the

offence charged. See SIMON V. STATE (2013) LPELR-21953(CA); IGABELE V. THE STATE (2006) 6 NWLR (Pt. 975) 100; AGBO V. THE STATE (2006) (Pt. 977) 5456.

Section 1(1) of the Money Laundering Act, 2012 states that "*No person or body corporate shall, except in a transaction through a financial institution, make or accept cash payment of a sum exceeding- (a) ₦5,000,000.00 or its equivalent , in the case of an individual; or (b) ₦10,000,000.00 or its equivalent in the case of a body corporate".*

Section 16(2)(b) of the Act reads: "*A person who commits an offence under subsection (1) ... paragraph (b)-(f), is liable to imprisonment for a term of not less than 3 years or a fine of N10,000,000 or to both, in the case of an individual and N25,000,000, in the case of a body corporate".*

Section 18(a) provides that "A person who conspires with, aids, abets or counsels any other person to commit an offence...is liable on conviction to the same punishment as is prescribed for that offence under this Act".

COUNT ONE

The law is firmly settled that where a person is charged with criminal conspiracy, the elements of conspiracy as disclosed in the charge must be proved and it must be established against the person or persons so charged that he or they have engaged in it. The ingredients of the offenc

of conspiracy were itemized by the Supreme Court in the case of KAZA V. STATE (2008) LPELR-1683(SC) as follows:

"From the above, I sift the following ingredients of the offence of conspiracy: (i) There must be an agreement of two or more persons. In other words, there must be a meeting of two or more minds. (ii) The persons must plan to carry out an unlawful or illegal act, which is an offence. (iii) Bare agreement to commit an offence is sufficient. (iv) An agreement to commit a civil wrong does not give rise to the offence, as Section 97(1) of the Penal Code provides only for criminal conspiracy. (v) One person cannot commit the offence of conspiracy because he cannot be convicted as a conspirator. (vi) A conspiracy is complete if there are acts on the part of an accused person which lead the trial Court to the conclusion that he and others were engaged in accomplishing a common object or objective." Per TOBI, J.S.C.

Having enumerated the ingredients to prove the offence of conspiracy, it is argued for the defendants thus: "In contrast to the testimony of PW1, the defendants testified as DW1 & DW2 and stated that they were individually called by two different persons to help in identifying the persons to collect or accept disbursement. This piece of evidence has not been challenged, denied or controverted. My lord has no option but to accept this fact as true..." The Court is therefore urged to hold that the prosecution has failed to prove the offence of conspiracy against the defendants. Reliance is

placed on the cases of GBADAMOSI V. THE STATE (1991) 6 NWLR (Pt. 196) 182; UKO V. STATE (2019) LPELR-48770(CA); EBINWE V. THE STATE (2011) 201 LRCN 220.

The prosecution's case on the other hand is that, "the defendants undeniably signed off and received those payments of monies, for whatever reasons the payments were made and received and the monies is(sic) above the threshold provided and prohibited by Section 1 of the Money Laundering Act", and that the conclusion of the offence of conspiracy can be drawn from the exhibits before the Court on the strength of AWOSIKE V. STATE (2018) LPELR-44351(SC); OKASHETU V. STATE (2016) LPELR-40611(SC); OSETOLA & ANOR V. STATE (2012) LPELR-9348(SC).

Let me rely and adopt the opinion of the Court of Appeal in PETER V. IGP (2021) LPELR-54189(CA), that:

"The offence of conspiracy is not one that can be proved by direct evidence; the agreement to commit a crime cannot be expected to have minutes of meeting as proof. Conspiracy is simply the meeting of the minds and since the mind is not a tangible thing to be tendered as hard evidence in Court, conspiracy is predicated on circumstantial evidence, which is evidence from which the fact in issue can be inferred. Usually, it is the totality of the conduct of the parties in hatching and carrying out the agreement to commit a crime. The parties do not have to be together in a

particular place for the offence to be said to have been committed." *Per NIMPAR, J.C.A.*

Also, in the case of JOSEPH V. STATE (2022) LPELR-58122(CA), it was held as follows:

"*It is trite that conspiracy to commit an offence, is a separate and distinct offence independent of the actual offence to which the conspiracy is related. An offence of conspiracy is committed where persons have acted either by an agreement or in concert. Bare agreement to commit an offence is sufficient. However, it must be noted that it is not always easy to prove the actual agreement. The Court can however infer the agreement from the surrounding circumstance of each given case and from those inferred circumstances, it can safely presume the conspiracy. See GREGORY GODWIN DABOH & ANOR V. THE STATE (1977) ALL NLR 148, (1977) LPELR-904, EGBA VS STATE (2019) 15 NWLR (PT. 1695) 201 and YUSUF VS. FEDERAL REPUBLIC OF NIGERIA (2018) 8 (PT. 1622) 502. Therefore, the fact that the Appellant and other passengers attacked PW1 and dispossessed him of his motorcycle, is a clear evidence from which conspiracy can be inferred.*" Per NIMPAR, J.C.A

I carefully scrutinized Exhibits A 1, A2 and A3, and from the contents therein, I hold a humble view that the fact that the 2nd defendant have signed the documents to witness the receipt of money by the 1st defendant does not perse create a direct or circumstantialinference to engage in a

common intent (design) and purpose that is conclusive and irresistible to persuade a reasonable tribunal, that any or all of the ingredients of the offence of criminal conspiracy contemplated in KAZA V. STATE (2008) LPELR-1683(SC) supra, are actually grounded, and I so hold. Hence, I am not persuaded with the position of the prosecution counsel to rely wholly on the exhibits in issue to find the defendants guilty of the offence of conspiracy as charged, the prosecution must therefore, directly or by irresistible circumstantial evidence satisfy this Honourable Court that the 1st and 2nd defendants have actually worked in concert to advance a common purpose to achieve their aims. Apart from Exhibits A1, A2 and A3 there is no evidence direct or reliable circumstantial before this court to link the conduct of defendants with criminal conspiracy, it is trite that a court of law only work with constructive evidence that is conclusive, irresistible and persuasive but inferable conjectures in the determination of judicial process, Thus, I hold a firmed view that the prosecution has not proved beyond reasonable doubt as required by law under section 138 Evidence Act, 2011 on the 1st count charge, and in this circumstance the 1st and 2nd defendants ought to be and are hereby discharged and acquitted.

COUNT TWO

On this count, it is submitted for the defendants that the evidence of PW 1 is a hearsay evidence premised on information the investigation team received from Alhaji Aminu Hamayo, and from whom the defendants are

said to have received the money in issue and who was not called to testify in the case to enable cross examination by the defendants, the learned counsel for the 1st and 2nd defendants cited case of UKO V. STATE (2019) LPELR-48770 (CA)

It is also submitted for the defendants that they have not received the alleged monies in cash and have not signed exhibits A1, A2 and A3.

Reacting, the prosecution counsel submitted that the argument by thedefence counsel on PW1's evidence being hearsay is a misconception of the law, that the PW1 did not give evidence from a recorded statement but tied his evidence to events and being an investigation officer who reports to the court, his investigative journey and findings is a direct evidence, learned counsel supported his assertion with case of OLAOYE V. STATE (2008) LPELR-43601(pp.42-43, paras. D-A) per-PETER-ODILI, J.S.C where it was held;

"it has to be said that it is erroneous for the Appellant to posit that the evidence of PW3 should be discountenanced being hearsay evidence. That submission is a misconception since PW3 is the investigating police officer who has to narrate to the court what transpired in the course of his investigation. In the process of stating what he found out in carrying out his inquiries, would be pieces of evidence which with another witness would be considered hearsay but from him since the court has to know the synopsis

of his investigative journey, it is direct evidence. See OBOT V. STATE (2004) LPELR-23130".

Now, the question before this court is whether the testimony of PW1 is a hearsay in the circumstance of this case, I find that PW1 is a member of investigation team which handled the case, he therefore is an investigation officer who is bound to lay the outcome of the investigation before this court by which he will tender some documents and exhibits obtained during his investigation, the IPO thereforegives direct evidence as to what he has done during investigation of the crime, therefore his evidence is not by any standard a hearsay evidence, this clear position of law is supported by number of judicial authorities, see FRN V. ABUBAKAR (2020) LPELR-52291(CA), OLADELE V. STATE (2021) LPELR-54413(CA), ADERINKOMI V. STATE (2021) LPELR-56340(CA), TANKO BAMAIYI v. THE STATE (2021) LPELR-56435(CA), ABDULMUMINI V. STATE (2021) LPELR-56438(CA), in a more recent case of ABAH V. FRN (2022) LPELR-56738(CA), the Court of Appeal held;

"The rule against hearsay does not apply to the evidence of an investigator, see ANYASODOR V. STATE (2018) LPELR-43720(SC) wherein the apex Court held thus:

"On the appellant's counsel's submission that the testimony of PW3 was hearsay, I am also at one with the lower Court's conclusion that such testimony as given by the PW3 was not and cannot be described as

hearsay evidence. To my mind, all that the PW3 (IPO) did was to give evidence on what he actually saw or had witnessed, or discovered in the course of his work as an investigator. His testimony on what the appellant told him was positive and direct which was narrated to him by the appellant and other witnesses he came into contract with in the course of his investigation of the case. Evidence of an IPO is never to be tagged as hearsay. This Court in a plethora of its decided authorities had adjudged such evidence as direct and positive evidence and therefore not hearsay evidence. See Arogundade vs. The State (2009) All FWLR (pt. 469) (SC) 423." Per SANUSI, J.S.C. As long as the basis for the argument by the Appellant is founded or based on the evidence of an investigator, it will fail,the basis upon which to consider the statement as documentary hearsay must arise from within the statement itself and not from an investigator's evidence." Per NIMPAR ,J.C.A in abah v. frn (Pp. 49-50 paras. B)

Following the law supra, efforts to resolve the question in issue must focus on 2 perspectives, firstly, where the argument is based on evidence of an investigation officer, the law is firmly settled that an investigation officer who has a duty before the court to lay the synopsis of his investigation, and where the report is direct and positive such report cannot be faulted as hearsay evidence, **secondly**, where the argument is based on the evidence or document itself, a court of law base on peculiarities of a given

Again, I carefully examined exhibit A series and found them to be certificates of payments each bearing letter head captioned BAUCHI STATE P.D.P CAMPAIGN ORGANISATION (DIRECTORATE OF FINANCE) which is a committee chaired by AlhajiAminuHamayo according to the evidence of PW1.

From the foregoing evidence, it is glaring that PW1 who is narrating the outcome of his investigation to this court seems not to have personal knowledge of documents tendered through him, rather he made inference to connect evidence to the factin issue, to wit; he was informed of the disbursement of the money in issue by AlhajiAminuHamayo, he was not privy and was not the author of exhibits A1, A2, and A3 which suggest explicitly the fact that this relevant information is not personal to the PW1 who testified about it, but had only received same from a prospective witness AlhAminuHamayo, thus, clearly the evidence of PW1 cannot be said to be direct evidence, see case of NASIRU V. STATE(2021) LPELR-55637(SC) where it was held;

"Direct evidence establishes a fact without making any inference to connect the evidence to the fact. In effect, direct evidence proves or disproves a fact directly." Per AUGIE ,J.S.C in nasiru v. state (Pp. 23 paras. C)

By legal standard established above, the evidence of PW1 pertaining to exhibits A1, A2 and A3 had failed the basic test of being direct evidence, but properly qualifies as hearsay evidence, I so hold.

Evidence is direct where an investigator testifies as to what he saw, observed and actually did in the course of his investigation.

I also hold a firm view that, AlhajiAminuHamayowho having chaired the disbursement committee which shared the alleged money to the defendants'is the supposed author of exhibits A1, A2 and A3 respectivelyand who is a critical witness to testify, I so hold.

Further, it is the law that documentary evidence, no matter its relevance, cannot on its own speak for itself without the aid of an explanation relating its existence which can only be by the authors, as testimony of the maker of a document during trial is generally indispensable in law, especially where the document is a fact in issue, see case of ONYEKWULUJE & ANOR V. ANIMASHAUN & ANOR (2019) LPELR-46528(SC).

In this case, the contents of exhibits A1, A2 and A3 are physical facts directly in issue which in law require proof beyond reasonable doubt, see case of OSIBAKORO D.OTUEDON (1995) LPELR-1506(SC)

However, where as in this case, the maker of the exhibits in issue AlhAminuHamayo who has the personal knowledge of the contents of the documents was not called to testify and give life to the exhibits, to enable cross examination as to test the veracity of the exhibits, such failure by the prosecution in law is fatal to the case of the prosecution, see ITANYI & ANOR V. BAGUDU & ORS (2018) LPELR-46984(CA), and IN RE:

ONWUBUARIRI (2019) LPELR-49121(CA), where the Court of Appeal held;

"The mere fact of tendering these documents does not guarantee any value being ascribed to them. There must be witnesses who qualify as either their maker or persons who has personal knowledge of their contents. The witnesses must avail themselves of cross-examination. AREGBESOLA v. OYINLOLA (2015) 9 NWLR (PT. 1253) 458 @ 580, NYESOM v. PETERSIDE (2011) 7 NWLR (PT. 1572) 452 @ 522 - 523, 9-a; BELGORE v. AHMED (2013) 8 NWLR (PT. 1355) 60 at 100. All the authorities point to the fact that documents tendered and admitted in evidence would not be of assistance to the Court in the absence of admissible oral evidence by persons who can explain their purposes" - GOYOL v. INEC (NO 2) 2012) 11 NWLR (PT. 1311) 218 at 253 b-c." Per PEMU, J.C.A

Again, see in INYANG V. CCECC (2020) LPELR-49694(CA) where the Court of Appeal held;

"In any case, it is not every document admitted in evidence that has evidential value. The case of Abubakar vs. E. I. Chuks (2007) LPELR - 52 (SC) is apt.

"The fact that the document has been admitted in evidence, with or without objection, does not necessarily mean that the document has established or made out the evidence contained therein and must be accepted by the trial

judge. It is not automatic. Admissibility of a document is one thing and the weight the Court will attach to it is another. The weight the Court will attach to it will depend on the circumstances of the case as contained or portrayed in the evidence." Per BARKA ,J.C.A

From the foregoing law, it is settled that failure to call the maker of the document who is conversant with the contents of the document will render the document valueless. In other words, the Courts will not accord such documents any probative value, what then are the legal effects of exhibits A1, A2, and A3 in the proceeding of this case?

The status of exhibits A1, A2 and A3 being relevant and admissible is notwithstanding as no probative value or no weight would be ascribed to such documents private or public that were not tendered by the maker, this is because a consistent and immutable position of the law now is that the maker of a document(s) must be called to testify on such documents before the Court can accord the documents any probative value, because evidential weight can hardly be attached to a document tendered in evidence by a witness who cannot be in a position to answer questions under cross examination, the law regards him (PW1) properly as *"ignorant witness" on the document, and I so hold.*

In law, there is dichotomy between admissibility of documents and the probative value to be ascribed on them. While admissibility is based on relevance, probative value depends not only on relevance but also on

proof, in effect, evidence has probative value or weight only if it tends to prove or establish an issue dully submitted for adjudication, and where a witness is adjudged ignorant of the contents of document as in this case, both his oral testimony and exhibits tendered through him cannot acquire and assume the status of probative value as no reasonable tribunal would place reliance on same, I so hold.

In the light of the facts and law under reference, I have no reason to disbelief with the testimonies of the DW1 and DW2 to the effect that they did not received the alleged monies and they did not signed exhibits A1, A2 and A3 which is the subject matter of this case, because the prosecution from my view had failed to discharge the burden of proof beyond reasonable doubt in accordance with law in SANI V. STATE (2020) LPELR-53905(SC) where it was held;

"In Nwaturuocha v. State (2011) 6 NWLR (Pt.1242) p.170, I explained proof beyond reasonable doubt. I said that:

"Proof beyond reasonable doubt does not mean proof beyond all doubts 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. See Section 135 of the Evidence Act 2011.' Per RHODES-VIVOUR ,J.S.C

Consequently, it is very clear at this stage that prosecution's case lacked substance and merit, and the 1st and 2nd defendants ought to be and are hereby discharged and acquitted on the 2nd count charge.

There is right of appeal.

Hon. Justice Hassan Dikko.