IN THE MAGISTRATE COURT: DELTA STATE OF NIGERIA
IN THE EFFURUN MAGISTERIAL DISTRICT
HOLDEN AT EFFURUN

BEFORE HIS WORSHIP E.A. ODJUGO ESQ., CHIEF MAGISTRATE (SPECIAL GRADE)
ON WEDNESDAY THE 12TH DAY OF JULY, 2023.

SUIT NO: ME/297C/2017

BETWEEN:-

COMMISSIONER OF POLICE ... ... COMPLAINANT

AND

1. **ELOHOR IFIEMOR**
2. **LUCKY ESEMUZE**
3. **JOSEPH OBI** **DEFENDANTS**
4. **OBIORAH NNAJIOFOR**
5. **ELOCHUKWU RICHARD**

JUDGMENT

The six Defendants were charged before this Court for offences ranging from Conspiracy to Commit a felony to wit, warehouse breaking, stealing, breaking in and out of Warri Refining and Petrochemical Company Warehouse at night respectively with intent to commit felony, stealing, and receiving stolen property, contrary to Sections 516, 413, 390(4) (f) (g) and 427 of the Criminal Code Law, Cap. C21, Vol. I, Laws of Delta State, 2006.

These offences as stated in the charge were allegedly stated to have been committed on or before the 6th day of June, 2017. The Defendants pleaded NOT GUILTY to the said charge. From the records, the charge was amended on the 4th of August, 2020, by the striking out of the name of the 6th Defendant who died while the trial was on.

Now, before this Court, fresh plea was taken by the 1st – 5th Defendants, on the 10th of February, 2021, and all the Defendants pleaded NOT GUILTY to the aforementioned offences as contained in the charge. The Prosecution called two witnesses, and, closed their case on the 13th of September, 2022, while the 1st – 5th Defendants testified as DW1 – DW5, respectively in their Defence.

PW1 testified on the 26th of August, 2021 – He was duly cross-examined on the same day. There was no re-examination. It is necessary to point out that this Court granted leave to the Prosecution to commence hearing of this matter despite the absence of the 2nd Defendant, who stopped trial then. This leave was granted pursuant to Section 350(4) of the then Administration of Criminal Justice

Law, Delta State, and for which the Learned Counsel to the Defendant Sanchez Agumor, Esq. had no objection.

PW1 is Udu Moses Okpako, a public Servant with WRPC and subsidiary of NNPC. He stated that he knows the 1st Defendant. He testified that on the 6th of June, 2017, when he came to work, he was informed that the previous night, some persons were seen stealing certain items from the NNPC Warehouse, and, that when accosted, they ran away, leaving behind some materials and a vehicle.

According to PW1, he went and saw the said materials to be some of the electrical materials, which were stored in one of the caravans in the Warehouse. He listed the different types of electrical materials to include (1) Main control switch (Eighteen pieces), (2) smaller control switches with ammeter (nine pieces) (3) Control switches without ammeter (one piece) (4) Low Voltage socket (twenty pieces (5) Plug wall sockets (twenty pieces) with a total value of N17,205,054.70K (Seventeen million, Two Hundred and Five Thousand Fifty Four Naira, Seventy kobo).

He also informed this Court that there had been a previous incident of stealing of materials worth N14,904,643= (Fourteen Million, Nine Hundred and Four Thousand, Six Hundred and Forty Three Naira), which had also been reported to management. PW1 stated further that he could identify materials said to have been stolen if seen. He stated further that the security men on duty told him that the said materials were being carted away over the fence from the Warehouse area.

He said that he mentioned a vehicle in his statement, but, did not know the owner of the said vehicle in his statement to the police. He made a statement.

Under Cross-examination, he said that in relation to the previous incident, he would not know if the management reported the matter to the police. He stated further that he was not on duty on the night of 6th of June, 2017, but, resumed work on the 7th of June, in the morning at 7.30am.

PW1 further stated that the items which he listed previous are in the premises of WRPC, and, so in the possession of WRPC. He stated that he is not the CSO of WRPC, but soldiers, police officers and other security personnel are there in WRPC. He stated that the materials were removed from a caravan that is being used in WRPC Warehouse. He said that the premises of WRPC is fenced, and, that by the side of the caravan is a wall fence separating WRPC from PPMC.

PW1 said that one George Douglas Ibiemayu is a security staff of WRPC, and, would not know if one Engineer Fortune, his boss, made a statement to the police. He said that he is the Warehouse officer in charge of that Warehouse. Furthermore, in the refinery complex, there is entrance and exit.

There was no re-examination.

PW2 is Godwin Ihenkwumene, a security personnel attached to WRPC. He stated that he knows the 1st and 4th Defendants. He stated that he was on duty on the night of 6th of June, 2017, when at about 22.07 hours, while on patrol at the car park within the WRPC warehouse, he sighted some people, and, so

pointed his torch, and, then raised an alarm. He stated that the said people were moving things across the fence, and, so he called his superior officer, Chief George Douglas, who then came to the scene with other security personnel to the scene of crime.

He stated that there was a Toyota Highlander, with Reg. No. DSZ 199 DG with its headlights on. According to PW2, Mr. George Douglas directed that a thorough search of the car be made, and therein, it was discovered, there were two wallets, national ID card bearing the name of one Elohor, Drivers License, some clothes, and other items. He stated that he knows the items said to have been stolen. He stated that he knows Elohor who owns the ID card, who is the 1st Defendant. He made a statement to the Police.

Under Cross-examination, he stated that the Toyota Highlander was at the car park, and, that all the items he mentioned was in the said car which was not locked. Furthermore, that he had no search warrant to search the car. The statement of PW2 made to the police is Exhibit A.

He stated that the items said to have been stolen are still in the possession of WRPC. He stated that on the day of the incident, he sighted two hoodlums, but, could not apprehend them. He stated that there are police officers, military officers and DSS officers working there, and, that there is heavy security presence there.

PW2 further stated that visitors to the premises must be checked first, and have a prior appointment, before they can go in. Also, that after 5pm, non-staff are not allowed to go in. He stated that there was no check to determine whether the vehicle had an electrical or mechanical fault. He stated that no one was seen that night.

There was no re-examination, and that was the case for the prosecution.

In his defence, the 1st Defendant testified as DW1, and, he stated that he is a civil servant attached to Delta State Fire Services. He re-iterated his plea of NOT GUILTY in respect of all the counts in the charge pertaining to him.

Under Cross-examination, he stated that he was neither invited by the police, nor, make a statement to the police. He stated that he went to WRPC with an electrician to collect his vehicle, where, he was then arrested by the police. There was no re-examination.

DW2 is Lucky Esemuze, the 2nd Defendant who lives opposite the Primary School at Jeddo. He is a welder. He also re-iterated his plea of NOT GUILTY by indicating that he did not steal anything belonging to the nominal complainant. Under cross-examination, he stated that he does not know the other Defendants. He also stated that he was forced to sign, and, that his left leg was injured.

There was no re-examiantion.

DW3 is Joseph Obi, the 3rd Defendant. He lives at Cross & Stop at Ekete Inland, Udu Local Government Area. He is a business man engaged in sand blasting and painting. He denied committing any offences as contained in the charge.

Under Cross-examination, he stated that he does not know the 1st and 4th Defendant. There was no re-examination.

DW4 is Obiorah Nnajiofor, the 4th Defendant. He lives at No. 10, Leo Emeitu Street, Off Shaguolo, Ekpan, Uvwie Local Government Area. He is a Businessman, and he denied committing any offence as contained in the charge. Under cross-examination, he stated that he does not know the 1st and 2nd defendants. He stated that he did not make a statement to the police.

There was no re-examination.

DW5 is the 5th Defendant. He is Elochukwu Richard, who lives at No. 5 McDermott Road, Warri. He denied committing any offence as contained in the charge, pertaining to him. Under cross-examination, he stated that he deals in plumbing materials, and that he does not know the 1st and 2nd Defendants. He informed this Court that he did not make a statement to the police. There was no re-examination, and that was the case for the Defence. The Court was also urged to discharge and acquit the Defendants. There was a written Address filed by the learned Counsel to the Defendant. In criminal trials, it is incumbent upon the prosecution to prove it's case beyond reasonable doubt. See Section 135 (1) of the Evidence Act, 2011 as amended. See the case of John Ogbubunjo & Anor. (2001) 2 ACLR 527 at 588. Certainly, the presumption of innocence as enshrined and encapsulated in Section 36 (5) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, ensures in the favour of a Defendant.

Undoubtedly, the Prosecution has the duty to prove the essential ingredients if an offence as contained in the charge. See the case of Adejobi. V. The State (2011) All FWLR (Pt. 588) 850 Ratio 6.

The burden of proof rests with the Prosecution in this instant case, and, it will not shift like in respect of this instant case except for a defence of insanity. See the case of Obriki Kingsley V. The state (2012) 6 NWLR (Pt. 1191) 593 at 601 – 610. See further the case of Lawal V. The State (2016) 14 NWLR (Pt. 1531) 69 at 85. Also, Udo V. State (2016) 12 NWLR (Pt. 1525) 1 at 32 – 33.

The Learned Counsel to the Defendants presented a lone issue for determination which is whether the prosecution has been able to discharge the onerous legal burden placed on it? The Learned Counsel to the Defendant in the Written Address, submitted that the prosecution has failed to discharge it's burden, and in details with various legal authorities tackled the said issue presented in relation to each count of the charge.

Count I of the charge deals with conspiracy. Learned Counsel to the Defendants cited the case of Indyel V. The State (2021) 11 NWLR (Pt. 1788) 458 at 472, to buttress the point that conspiracy being an offence hatched in secrecy, it can only be inferred from the facts and circumstances of the case. This Court agrees, and, cites in addition, the often cited case of Patrick Njovens & 3 Ors. V. The State, a case decided by the Supreme Court on Thursday, the 3rd of May, 1973, and, now reported as (1998) 1 ACLR 224 AT 263 – 264, more particularly on the nature and guilt of the offence of conspiracy, and, the duty of courts in every case of conspiracy to ascertain as best as it could the evidence of the

compliantly of any of those charged with the said offence with themselves or others.

In order to prove conspiracy, the case of Martins V. The State (2020) 5 NWLR (Pt. 1716) 58 at 78 – 79, necessarily becomes relevant. The Prosecution must prove:

(i) There must be an agreement of two or more persons.
(ii) The persons must have plain mind to carry out an unlawful or illegal act or a crime.
(iii) Bare agreement to commit an offence constitutes the offence.
(iv) An agreement to carry out a civil wrong does not constitute the offence.
(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 the accused person (Defendant) which had the trial court to the conclusion that he and others were engaged in accomplishing a common object or objective.

There is nothing for this Court to infer pointing to the conflincty of any of the Defendants either by themselves or with others to commit any offence as contained in the charge. The basic elements or ingredients which point as a beacon, the prosecution has not established, to enable the Court to carry out it's burden duty to infer whether from the facts or surrounding circumstances, a conspiracy was so hatched by the Defendants.

There is no evidence from the prosecution linking any of the Defendants with regards to conspiracy among themselves. The failure of the prosecution to call the IPO to testify and therefore proffer before this Court the vital evidence of investigation and verification of facts before this Court has now sounded the death knell in the case of the Prosecution.

The IPO is a vital witness. The investigation of this case was not brought before this Court. Vital documents such as statements of the Defendants are not before the Court. Vital evidence linking the Defendants together is now sorely lacking in this case. So, the Court is left in a quandary between and betwixt. A sorely impasse with bare evidence for the Court to act upon.

The cases of Okolo V. FRN (2019) 7 NWLR (Pt. 1671) 348 at 363 and Omotayo V. The State (2013) 2 NWLR (Pt. 1338) 235 at 255, cited by the Learned Defendants' Counsel on the necessity to call vital witnesses in a case to prove vital points, provide necessary evidence to establish ingredients of the offences as charged, and, the consequent fatality of failure to call such witnesses therefore becomes relevant, germane and important to this case.

PW1'S evidence is clearly hearsay evidence. He was not at the scene of crime. He told this Court that his evidence was based on what other told him. Hearsay evidence, being secondary evidence of an oral statement necessarily becomes inadmissible. See the case of Iferamoye V. State (2017) 8 NWLR (Pt.

1568) 457 at 484 – 485 on hearsay evidence. See generally SS 37 and 38 of the Evidence Act, 2011 as amended.

Indeed, in the locus classier case of Subramaniam V. Police Prosecutor (1956) 1 WLR 965 at 969 PC (Privy Council), the Privy Council states:

"Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contains in the statement. It is not hearsay and not admissible when it is proposed to establish by the evidence not the truth of the statement, but the fact that it was made".

PW2 who was at the scene of crime, did not irreversibly link or fix firmly and affirmatively any of the Defendants at the scene. So, from which evidence should the Court infer from? None. PW2 stated that the car a Toyota highlander Jeep was found at the scene. He himself stated that there is always a very heavy security presence with soldiers, police officers and DSS officials, and that visitors and vehicles are thoroughly checked before they can gain entrance to the premises, and that after 5pm, non-staff are not allowed in the premises. So, the inference here is that the said Toyota Highlander Jeep passed through those security check before 5pm and was thoroughly checked before entry. Furthermore, there was a valid ID Card belonging to the 1st Defendant found herein to enable him get entrance too. Now, where is the Toyota Highlander Jeep? Nowhere to. Not tendered before the Court. DW1, the 1st Defendant said he came with an electrician to recover his car when he was arrested by the police. No statement from the 1st Defendant before this Court. There is nothing to infer.

Count I of the charge which dealing with conspiracy falls squarely like a pack of cards. It fails. That is the finding of this Court, and I so hold.

Count II of the charge deals with breaking in and out of WRPC company warehouse at night. There is no evidence by the Prosecution witnesses linking any of the Defendants to the commission of this offence as contained in the charge. No evidence fixes any of them at the scene of crime at night time on the said day as indicated in the charge. No statements made by them to the police shown to the Court, whether confessional or not, for the Court to have necessary material to work on. No investigation or poor investigation is the definite impression in the mind of this Court. So Count II fails. That is the finding of this Court, and I so hold.

Count III of the charge deals with stealing. The Prosecution has failed to prove the essential ingredients of stealing. The cases of Chyfrank Nig. Ltd. V. F.R.N. (2019) 6 NWLR (PT. 1667) 143 at 154, Oyebanji V. The State (2015) 14 NWLR (Pt. 1479) 270 at 289, cited by the Learned Counsel on what the Prosecution should prove and establish in a case of stealing are relevant and germane. This Court also cites the case of Dr. Olu Onagoruwa V. The State (1995) 1 ACLR 435 at 469 on the essential element of stealing.

None of the Defendants was fixed at the scene of crime. None of them was mentioned by any of the Prosecution witnesses stating that any of the

Defendants stole anything from WRPC on that fateful day. Nothing was recovered from them. No exhibits in Court tendered in Court suggests that. No statements tendered in Court to that effect.

The properties alleged to have been stolen, from the evidence, PW1 and PW2 inform the Court are still in the possession and custody of WRPC. They were not tendered in Court or linked to the Defendants to have stolen them.

In sum, Count III fails. That is my finding, and I so hold.

Counts IV, V and VI of the charge deal with stolen property found in possession of the Defendants. Section 427 of the Criminal Code necessarily comes to play. So, too the doctrine of recent possession which comes to play.

Now in this instant case, the alleged properties belonging to WRPC are comfortably with the WRPC officials in the WRPC custody and possession. Now, there is no scintilla or iota of evidence suggesting or proving that the Defendants were found with the said stolen properties, and, that, they could not give a satisfactory account of how such properties came into their possession, thus triggering the doctrine of recent possession to come into play. In this connection with relation to the presumption of recent possession", the case of Eze V. The State (1985) 3 NWLR (Pt. 13) 429 at 436 – 437 becomes relevant.

The 3rd, 4th and 5th Defendants from the flow of evidence were not found in possession of the said items allegedly stolen. Neither from the flow of evidence was there a suggestion that they could not give a satisfactory account of how they came into possession of such goods allegedly stolen when the goods were not found with their in the first place?

Counts IV, V and VI crash. No. basis to sustain them. The said Counts fail as a result.

The Prosecution has failed to prove it's case beyond reasonable doubt. The yawning gap or hole in the case of the prosecution by failing to call vital witnesses or tender crucial evidence as exhibits speak volumes. Such gaps cannot be filled by this Court. It is incumbent upon the prosecution to do it's duty. That is, prove it's case beyond reasonable doubt and prove the essential ingredients of the offences as contained in the charge.

It is the duty of this Court to make a pronouncement of the prosecution fails to do so. The clear, calm and express finding of this Court is that the five Defendants are found NOT GUILTY in respect of any of the Counts as contained in the Charge. The Charge is dismissed. All the Defendants are discharged and acquitted in the circumstances.

That is my finding and I so hold.

Dated at Effurun, this 12th day of July 2023.

MAGISTRATE COURT DELTA STATE NIGERIA

MAGISTRATE COURT DELTA STATE NIGERIA DATE: EFFURUN

E.A. ODJUGO, ESQ.