IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU

COURT CLERKS : JANET O. ODAH & ORS

COURT NUMBER : HIGH COURT NO. 24

CASE NUMBER : CHARGE NO: CR/368/17

DATE: : TUESDAY 17TH MARCH, 2020

BETWEEN:

COMMISSIONER OF POLICE …….. COMPLAINANT

AND

1. KAMARU MOHAMMED } **DEFENDANTS**

2. BASHIR MOHAMMED

RULING

The Defendants were arraigned on the following counts charge, to wit;

COUNT 1

That you Kamaru Mohammed, Male, 25 years old of Dei – Dei, FCT Abuja and you Bashir Mohammed, Male, 22 years old of Dakwa Area, FCT – Abuja on or about the 13th day of June 2017 at about 21:45 hours, at Saburi Estate, Dei – Dei, Abuja within the jurisdiction of this Honourable court agreed and conspired together to commit a criminal offence to wit: Armed Robbery. In that on the said date, time and place, while arms with cutlass and other dangerous weapons robbed one Mr. Innocent Iloama of No. 16 Ojukwu Street, Saburi, Dei – Dei, Abuja of the following items: one Infinix GSM Phone, one Gionee GSM Phone and a cash sum of Sixty Five

Thousand Naira (N65,000.00). You thereby committed an offence punishable under section 79 of the Penal Code Law.

COUNT 2

That you Kamaru Mohammed, male 25 years old of Dei – Dei FCT, Abuja and you Bashir Mohammed, male, 22 years old of Dakwa Area, FCT – Abuja on or about the 13th day of June 2017 at about 21:45 hours, at Saburi Estate, Dei – Dei, Abuja within the jurisdiction of this Honourable Court committed a criminal offence to wit: Armed Robbery. In that on the said date, time and place, while armed with one cutlass and other dangerous weapons robbed one Mr. Innocent Iloama of No. 16 Ojukwu Street, Saburi, Dei – Dei, Abuja of the following items: one Infinix GSM Phone, one Gionee GSM Phone and a cash sum of Sixty Five Thousand Naira (N65,000.00). you thereby committed an offence punishable under section 298 of the Penal Code Law.

COUNT 3

That you Kamaru Mohammed, Male 22 years old of Dei – Dei, FCT – Abuja on or about the 13th day of June 2017 at about 21:45 hours, at Saburi Estate, Dei – Dei, Abuja within the jurisdiction of this Honourabe court committed criminal offence to wit: Causing Grievous Hurt. In that on the said date, time and place, you voluntarily caused hurt on the body of one Mr. Innocent Iloama of No. 16 Ojukwu Street, Saburi, Dei – Dei, Abuja for the purpose of extorting following items from him: one Infinix GSM Phone, one Gionee GSM Phone and a cash sum of Sixty Five Thousand Naira (N65,000.00). You thereby committed an offence punishable under section 250 (1) and (2) of the Penal Code Law.

Trial commenced on 10th October, 2018. In the course of the trial, the prosecution called one (1) witness i.e Inspector Auta Matthias (PW1) and tendered two

statements which were rejected ad marked Exhibit “A”. PW1 also tendered one cutlass, which was admitted in evidence as Exhibit “B”. On the 7th of February, 2019, prosecution closed its case and the matter was adjourned for defence.

PW1’s evidence was that on the 19th of June, 2017, a case of criminal conspiracy and armed robbery was transferred from Gwagwa Police Station to SARS (Federal) FCT Abuja, where he was stationed at the time. His evidence was that alongside the case of criminal conspiracy and armed robbery, one Innocent Iloama, Kamaru Mohammed, Bashir Mohammed and one machete as exhibit were transferred.

PW1’s further evidence was that the complainant i.e Innocent Iloama narrated that on 13th of June, 2017 at about 9.45pm (that is, in the night) he (i.e Innocent Iloama) was returning home from Apostolic Church Saburi when he was accosted by four (4) men that

attacked and snatched his infinix GSM phone valued at N105,000 and a cash sum of Sixty – Five Thousand Naira (N65,000.00). The said Innocent Iloama further narrated that he summoned courage and held on to Kamaru Mohammed shouting for help. One of the four men inflicted an injury on his hand with a machete. He (The said Innocent Iloama) held on to the said Kamaru Mohammed and took him to the Gwagwa Police Station who thereafter transferred him to Special Anti Robbery Squad (SARS).

PW1 gave further evidence to the effect that at Special Anti Robbery Squad (SARS), the Defendants were cautioned and thereafter interviewed in Hausa. Following this caution, the Defendants confessed to the crime stating that they were four (4) in number who attacked the complainant. These four being the Defendants herein one Baba Gwari and one BeriHayatu; both of whom are at large. PW1 stated that the machete which was transferred

to Special Anti Robbery Squad (SARS) on 19th June, 2017 was registered with the Special Anti Robbery Squad (SARS) Exhibits keeper.

Under cross – examination, PW1 stated he did not have any report to show that Exhibit "B" was used by the Defendants.

He also gave evidence that he was not the one that took the report in Gwarinpa Police station and that no forensic investigation was done at the scene when Exhibit "B" was recorded.

At the close of cross – examination, Prosecution who did not re- examine the witness closed its case to pave way for defence.

Defendants filed a no case submission and formulated a lone issue for determination to wit;

Whether the Defendants are not entitled to be discharged of all the counts contained in the charge, prosecution having failed to establish a prima facie case against them.

Arguing on the above issue, learned counsel contended that where a prosecution in a trialfailsto lead any credible prima facie evidence linking an accused person with the commission of the offence in the charge or where any such evidence has been so discredited that no reasonable court can be called upon to act on such evidence as establishing criminal guilt, an accused person is entitled to a discharge on the affected count. ***AJULUCHUKWU VS STATE (2014) 13 NWLR (Pt. 1425) 641 at pages 653 – 654.***

Learned counsel argued that for Defendants to be obligated to enter a defence on count 1, PW1 evidence must prima facie establish, through credible and acceptable evidence that the Defendants agreed and thereafter acted in furtherance of the common intention of

all,and that from the evidence available such evidence was not provided.

On count two, learned counsel also contended that PW1 never gave evidence of any investigation which he conducted to confirm whether an armed robbery did in fact occur as was alleged in count 2 against the Defendants.

Learned counsel further argued that court do not act on rumours or suspicion but on credible evidence and that from available evidence as testified by PW1, the element of offence of robbery has not been establish against the Defendant.

On count 3, learned counsel argued that count 3 is imprecise, bad in material particulars and a product of obvious gambling on the part of the prosecution.

Counsel contended that, where a charge lacks precision and embarrass an accused person a conviction thereunder will be quashed.

Learned counsel then urge the court to discharge the Defendants.

On it part, learned counsel for the prosecution contended that by the evidence before the court, Defendants be asked to enter defence, Defendants having admitted committing the offence.

Court:-I have considered the available evidence adduced by Prosecution vide PW1, on the one hand and the defence cross – examination by the learned counsel for the Defendants that Defendants have no case to answer on the other hand.

The rationale behind the submission of a no case to answer is that the Prosecution has not made out a Prima facie case against a named Defendant or Defendants.

In consequence, asking such a Defendant to enter upon his defence would be requiring him to prove his innocence which will indeed be contrary to the presumption of innocence contained in section 36 (5) of the 1999 Constitution of Federal Republic of Nigeria as altered.

Above principle was applied by the Court of Appeal in the case of ***EGBINE VS STATE (2015) LPELR 25303.***

A submission of no case to answer may be properly made and upheld when:-

a. There has been no evidence to prove an essential element in the alleged offence,

b. When the evidence adduced by the Prosecution has been so discredited as result of cross – examination

or is so manifestly unreliable that no reasonable court or tribunal could safely convict on it.

Apart from the two situations aforestated, a court should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before the court. if however a submission is made that there is no case to answer, the decision would not so much depend on whether the adjudicating court or tribunal (if compelled to do so) would at this stage convict or acquit but on whether the evidence is such that a reasonable tribunal or court might convict.

If a reasonable tribunal might convict on the evidence so far laid before it, there is indeed a case to answer.

Ademola, CJN, as he then was (of blessed memory) applied above principle in the case of ***IBEZIAKO VS COMMISSIONER OF POLICE (1963) 1 ALL NL. R. 61.***

It is trite law that strictly speaking that ruling on a No Case to answer should be limited to law which though is

very impossible not to make reference to the facts of the case if indeed law and facts are to be discussed. I am very aware then that this ruling ought to be very short and brief from the evidence adduced by the prosecution.

All Prosecution has done was to put PW1 (IPO) and tender the statements of the Defendants and a machete..clearly the evidence of the Prosecution witness relates to what the nominal complainant told him which within the province of the law remain hearsay and very unreliable without corroboration from the nominal complainant.

Even though prosecution is not under any obligation to call a host of witnesses as listed in its prove of evidence, the evidence as it relates to the Defendants in this circumstanceis such that this court cannot rely on same to convict the Defendants.

I have no doubt in my mind that it would be just and fair to uphold the Defence of no case to answer put forward by Defence counsel.Same is hereby upheld.

In consequence therefore, Defendants are hereby discharged and acquitted.

Justice Y. Halilu
Hon. Judge
17th March, 2020

APPEARANCE

Defendants in court.

D.F ABAH – for the Prosecution.

OLUWADEMI B. – for the Defendants.