

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT COURT NO. 8, NYANYA-ABUJA ON THE 14TH DAY OF
JANUARY, 2020
BEFORE HIS LORDSHIP: HON. JUSTICE. U.P KEKEMEKE

SUIT NO. FCT/HC/CR/155/17
COURTCLERKS: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:
INSPECTOR GENERAL OF POLICE.....COMPLAINANT

AND

- 1. SANI MOHAMMED**
- 2. GODWIN OKAGBUE**
- 3. BABYARO MUSA AYUBA**
- 4. EMEKA OKOLI (a.k.a Okoronto)**
- 5. EMMANUEL CHIJOKE OKWO (aka Parapara)**
- 6. ELENDU OKORIE**
- 7. JUSTIN ANORUE**
- 8. UCHE CHUKUKA**
- 9. JACK OMELINUNIRU**
- 10. CHUKWUDI KINGSLEY OKAFOR**
- 11. GEOFFREY OZOMABU**

DEFENDANTS

R U L I N G

The Prosecution's application is dated 28/10/19 and filed the same date.

It prays the Court for an Order reopening the case of the Prosecution which was closed on the application of Defendants' Counsel.

It is supported by a 37 paragraph Affidavit.

I have read same.

I have also read the Counter Affidavit and Written Addresses of the defence.

The grounds for the Prosecution's application in my view can be garnered from paragraph 27, 29, 30, 31, 32 and 33.

I shall reproduce them.

- “27. That of the 22 adjournments this case suffered, fifteen were at the instance of the Defendants as deposed above, two at the instance of the Court, four were for trial and three at the instance of the Prosecution.**
- 29. That from the facts deposed above and the record of the Court, the case suffered 15 adjournments at the instance of the Defendants while the Prosecution has not exhausted his mandatory five adjournments.**
- 30. That the failure of the Court to take the Witnesses of the Prosecution each time the case comes up for hearing cannot be blamed on the Prosecution.**
- 31. The Prosecution Witnesses who were victim of the robbery have testified and identified the Defendants as those that robbed them and some of the robbed items tendered.**
- 32. That fair hearing presupposed that all the parties to a case must be given equal opportunity to present his case as provided by law.”**

I have again and again perused the file and the record of proceedings. This case was initiated by a Charge filed on the 5th day of April, 2017. It was a Four Count Charge which was placed on the list for the 1st time on the 13/04/17.

The Prosecution was foreclosed on 23/10/19.

From the 13/04/17 to the date the Prosecution was foreclosed, the case suffered twenty three (23) adjournments.

The Prosecution cleverly I will say attached proceedings of eight dates. It must be noted that trial commenced on 28/11/18.

The CTC of proceedings attached to the Prosecution’s Further and Better Affidavit marked ‘IGP 1’ are for the following dates i.e

(1)5/07/17, (2)6/07/17, (3)19/10/17, (4)17/01/18, (5)8/3/18, (6)18/04/18, (7)30/05/18 and (8)11/06/18.

All the proceedings mentioned by the Prosecution as contained in Exhibit IGP I, are proceedings when trial had not commenced.

From 28/11/18 when trial commenced to the date the Prosecution was foreclosed 23/10/19, we had nine (9) adjournments.

This Court delivered a considered ruling on 23/10/19.

I shall reiterate same.

The Prosecution sought for and was granted adjournments on more than 5 occasions when trial had commenced.

It is easy to point out the assertions that Prosecution's Witnesses are in Court but the reasons for the adjournments should be the acid test.

For example, the Prosecution claimed that he had Witnesses in Court on 17/05/17, but the Prosecution filed and served its Counter Affidavit to the bail applications the same date the case was coming up.

On 8/03/18, the case was for hearing. It could not go on partly because the Prosecution brought an application to amend the Charge. The Prosecution applied for adjournment.

On 18/04/18, although the Prosecution stated that its Witnesses were in Court, the Amended Charge and the Motion had not been served on the 2nd, 4th and 8th Defendants.

The reason for the adjournment was because the Charge had not been served on some of the Defendants.

On 30/05/18, there was a Motion for yet another amendment. The case could not proceed.

On 19/09/18, the Prosecution was absent.

On 16/10/18, the Prosecution said his four Witnesses were not in Court.

On 1/11/18, the Prosecution was absent in Court.

On 7/12/18, the Counsel holding brief for the Prosecution did not have the case file with him.

The Court asked if the Witnesses were in Court but there was none. The case was therefore further adjourned at the instance of the Prosecution.

On 12/03/19, the Prosecution was not in Court. He sought for an adjournment to that date. He later walked in and stated that three of his Witnesses are on Promotion Course for one month while the other had travelled for burial. He therefore asked for a date in a case that has been placed under the fast track list. This Court delivered a considered ruling on that date foreclosing the Prosecution.

The above are the records of the Court.

Any attempt therefore to twist the records and blackmail the Court is clearly unfortunate.

The insinuations in Prosecution's Affidavit that various adjournments were granted to the Defendants on flimsy excuses is the figment of the Prosecution's imagination. Adjournments are granted at the discretion of the Court acting judicially and

judiciously. On three occasions, adjournments were granted at the instance of the Defendants while the Prosecution sought for and obtained adjournment more than five times from arraignment to the date it was foreclosed. The ruling of this Court on 23/10/19 refers. The Prosecution is at liberty to appeal against the ruling if it feels bruised.

The Prosecution was given all the opportunities to prosecute its case but it failed to take advantage of the opportunity. The Prosecution was foreclosed after it had called five Witnesses.

On 11/10/19, he sought for an adjournment to call his last Witness. The Court reluctantly granted the adjournment sought only for the Prosecution to recant. From the record of the Court, the only reason why the Prosecution could not call further Witnesses was because his remaining Witnesses were Police men who had gone for Promotion Examinations for a whole month and the other for burial but failed to return after two weeks. The depositions contained in the Prosecution's Affidavit particularly paragraphs 30, 33 and 34 are not correct. This Court did not deny the Prosecution fair hearing. The business of this Court will not be dictated by the whims and caprices of the Prosecution.

In paragraph 31 of the Prosecution's Affidavit, it stated that all the Prosecution's Witnesses who were victims of the crime had all testified. The Defence has now called nine witnesses.

The Prosecution has not placed any material before me to enable me exercise my discretion in its favour. The application therefore lacks merit and it is accordingly dismissed.

.....

HON. JUSTICE U.P. KEKEMEKE

(HON. JUDGE)

14/01/20