

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

COURT CLERKS: T. P. SALLAH & ORS

COURT NUMBER: HIGH COURT NO. 12

DATE: 15/10/2020

FCT/HC/CR/73/2018

BETWEEN:

COMMISSIONER OF POLICE----- COMPLAINANT/RESPONDENT

AND

1. ALFRED LEONARD DEFENDANTS/ APPLICANTS

2. SAMSON AGBOR

RULING

The Defendants/Applicants by a motion on notice dated and filed on the 7th October, 2020 is brought pursuant to sections 6(6), 36 (6) (b) and (d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 256 of the Administration of Criminal Justice Act, 2015 and under the inherent jurisdiction of this Honourable Court Praying the Court for the following:-

1. An order of this Honourable Court granting leave to the Defendants/Applicants to recall Blessing Iorkohol (PW2) for the purpose of tendering her statement made on the 16th and 20th July, 2018 before the investigation police officers and for further cross examination regarding her testimony before the Court.
2. An order of this Honourable Court granting leave to the Defendants/Applicants to recall Mr. Paul Chape (PW6) for the purpose of

tendering the forensic report of phone call analysis of phone number 08036354843 and for further cross examination regarding his testimony before the Court.

3. And for such further order(s) as this Honourable Court may deem fit to make in the circumstance.

In support of application is a 5 paragraph affidavit sworn to by Peter Agu, a Litigation secretary in the Law Firm of Abdulaziz Ibrahim and company of NO. 37A T.Y Danjuma Street, Asokoro-Abuja. Attached to the affidavit in support of application are three exhibits marked A, B and C respectively.

The Defendants/Applicants Counsel in compliance with the rules of this Court, filed a written address. The application of the Defendants/Applicants was served on the complainant/Respondent. However the Complainant/Respondent did not file any Response but the learned prosecuting Counsel sought for leave of this Honourable Court to reply on points of law and same was granted.

In the written address of Counsel to the Defendants/Applicants a sole issue was formulated for determination of the instant application as follows:-

"Whether in the circumstances of this application the Defendants/Applicants are entitled to order (s) as prayed on the face of the motion paper."

In proffering argument on the above issue learned Counsel to the Defendants/Applicants submitted that by a combined reading of section 36 (6) (b) and (d) of the 1999 Constitution and section 256 of the Administration of Criminal Justice Act 2015, the Defendants/Applicants are entitled to be given adequate time and facilities to prepare for their defence and are also entitled to recall and re-examine any witness where such evidence appears to the Court to be essential to the just decision of the case.

The complainant/Respondent on the otherhand submitted to the effect that the right to call or recall a witness pursuant to section 256 Administration of Criminal Justice Act 2015, in the instant case, the procedure adopted amounts to an abuse or misuse of judicial process because the prosecution has closed its case and that assuming but not conceding that the witnesses are recalled who will lead them in evidence?

Firstly, let me say from the onset that the objection of the learned prosecution on points of law is misconceived and that is not the proper intention of section 256 of the Administration of Criminal Justice Act 2015.

A close look or perusal of the reliefs sought by the Defendants/Applicants is for an order granting leave to recall the two witnesses i.e PWS 2 and 6 for the purpose of tendering certain documents and for further cross examination. The Application does not require the prosecution to lead the witness but the prosecution have a right to re-examine the witnesses if the application succeeds. In respect of tendering documents in evidence, documents can be tendered and admitted through a witness of an adversary as long as the document is admissible in law.

Having said the above, to now determine the instant application, I hereby adopt the sole issue distilled for determination by the Defendants/Applicants Counsel. The issue is hereunder reproduced once again thus:-

"Whether in the circumstance of this application the Defendants Applicants are entitled to order (s) as prayed on the face of the motion papers."

The Defendants/Applicants anchored the present application on sections 36 (6)(b) and (d) of the Constitution, 1999 (as amended) and section 256 of the Administration of Criminal Justice Act 2015. For the purpose of clarity the said provisions provide as follows:-

"36(6) Every person who is charged with a criminal offence shall be entitled to

(b) Be given adequate time and facilities for the preparation of his defence;

(d) Examine in person or his legal practitioner the witnesses called by the prosecution before any Court or tribunal and obtain the attendance and carryout the examination of witnesses to testify on his behalf before the Court or tribunal on the same conditions as those applying to the witnesses called by the prosecutions.

Section 256, Administration of Criminal Justice Act 2015, on the otherhand provides:-

"The Court may, at any stage of trial, inquiry or other proceedings under this Act either of its own motion or application of either party to the proceeding, call a person as a witness and re-examine a person already examined where his evidence appears to the Court to be essential to the just determination of the case."

Pursuant to the above provisions, I have perused the records and indeed the proceedings in this case. Firstly, the Defendants/Applicants were arraigned before this Court on 19th February, 2019. The learned Counsel to the Defendants/Applicants on the same date informed the Court that the Defendants were not served with the charge sheet. On the basis of the objection or observation of the defendants Counsel, this Court held as follows:-

"In this regard therefore, the charge be served on the Defendants and time be given to them to study same with their Counsel and then the charge be read once again to them. A stand down to 12:-30pm is hereby granted for both the prosecution and the defence Counsel to do the needful."

The Court resumes at 1:25pm. However arraignment and obtaining the plea of the Defendants could not take place. The case was then adjourned to 28th February, 2019 for arraignment. On 28th February, 2019 Counsel to the Defendants informed the Court that they have been served with the amended charge and thereafter the plea of the Defendants were taken. In other words, the Defendants were served with the charge sheet including proof of evidence by the prosecution and the case commenced trial on 10th April, 2019. Blessing Iorkohol (PW2) testified on 10th April, 2019 and she was cross examined by the Defendants Counsel and later discharged without objection. The PW6, Mr Paul Chape testified on 12th February, 2020. After PW6's examination in chief, he was cross examined on 17th September, 2020 and subsequently the prosecution closed its case and the case was adjourned for defence on 12th October, 2020.

Instead of the Defendants to enter their defence the Defendants/Applicants Counsel filed the instant motion. And a close perusal of the affidavit in support of its application, the Defendants/Applicants at paragraphs 3(b)(c)(d)(e)(f) and (g) aver to the effect that the statements of PW2 attached to the affidavit as exhibits A and B needed to be tendered in evidence and for PW2 to be further cross examined and prepare for their defence and or make a no case submission. They further aver that PW6 is required to be recalled for further cross examination as exhibit 15 is different from what was frontloaded and the frontloaded forensic report is attached to the affidavit as exhibit C.

On the recall of PW2, as I said, the prosecution duly served the Defendants/Applicants proof of evidence which the prosecution filed at the trial of the case including the statements exhibits A and B of PW2. In other words, even at the time PW2 testified on 10th April, 2019 and was cross examined by the Defendants/Applicants Counsel, exhibit A and B were in their possession and in other words they refused to tender the statements, exhibits A and B in evidence through PW2. In other words they

refused to tender the statements, exhibits A and B through PW2 until the prosecution closed its case and the case adjourned for defence and then filed the instant application. Instead of the Defendants/Applicants to proceed to enter their defence, as I said before, the instant motion was filed in order to frustrate or truncate the Defendants/Applicants from entering their defence.

Thus, the purpose to recall PW2 in order to tender the statements exhibits A and B is an afterthought and the sole aim is to frustrate the case from final determination. Secondly, I have perused the affidavit of the Defendants/Applicants and they failed to disclose the facts in the testimony of the witness PW2 that they want to further cross examine the witness that is essential to their case.

In respect of PW6, exhibit 15, was tendered and admitted through PW6. The Defendants/Applicants themselves aver as follows:-

"That the prosecution also tendered exhibit 15 i.e forensic report and call analysis of phone number 09060359704"

The Defendants then aver to the effect that exhibit 15 is different from what was frontloaded.

I am a bit worried with the position of the Defendants/Applicants Counsel and the facts averred in their affidavit supporting the application. Section 379 (1)(a) of the Administration of Criminal Justice Act 2015, practically deals with what the proof of evidence consist. Section 379 (1) (a) provides:-

" An information shall be filed in the registry of the High Court before which the prosecution seeks to prosecute the offence, and shall include:-

- (a) The proof of evidence, consisting of
 - (i) The list of witness
 - (ii) The list of exhibit to be tendered

- (iii) Summary of statement of the witnesses
- (iv) Copies of statement of the Defendant
- (v) Any other document, reports or material that the prosecution intends to use in support of its case at the trial.”

It is on record that before arraignment and taking the plea of the Defendants/Applicants, Counsel to the Defendants admitted on record that the Defendants/Applicants were served with the charge sheet and the charge sheet was availed to him by the Defendants/Applicants. Further by the affidavit evidence supporting the application, exhibits A, B and C were among the documents contained in the proof of evidence and served on the Defendants/Applicants. On the 17th day of September, 2020 the Defendants/Applicants Counsel exhaustively cross examined PW6 on exhibit 15. In fact Counsel to the Defendants/Applicants took almost about 2 hours cross examining PW6 and a level playing ground was created for Counsel to tender any document through PW6 including playing in open Court a video clip. In any event if the Counsel to the Defendants/Applicants was purportedly served with a frontloaded forensic report different from exhibit 15, the best time he ought to have raised it was during the exhaustive cross examination of PW6. Counsel ought to have confronted PW6 with the purported frontloaded document as well as exhibit 15. In any event, the Defendants Counsel failed to show what is different from exhibit 15. Counsel to the Defendants/Applicants attached a copy of the frontloaded document as exhibit C without drawing the attention of the Court to the discrepancy if any and then show how essential the evidence is to their defence.

In other words, from the facts and circumstances of the instant application and the proceedings on record, the prosecution has complied with section 379 (1) (a) of the Administration of Criminal Justice Act 2015, and by extension section 36 (6)(b) and (d) of the 1999 Constitution. Furthermore, the Defendants/Applicants failed to show to the Court the facts or issues they intend to further, cross examine PWs 2 and 6 from their testimony, for the Court to determine whether it is essential or not.

Hence, therefore I hold the view that the filing of the instant application is for the sole aim of frustrating or truncating the process of final determination of this case and I so hold.

Apart from the Defendants/Applicants failing in providing and disclosing good reasons for this Court to exercise its discretion of recall, I have closely perused the reliefs sought by the Applicants. As I said earlier PWs2 and 6 testified, cross examined and the prosecution applied for an order discharging the witnesses and the order of discharge was granted without objection from the Defendants/Applicants Counsel.

The Defendants/Applicants did not seek for an order vacating the orders made on 10th April, 2019 and 17th September, 2020 discharging the witnesses i.e PWs2 and 6 respectively.

In otherword, the orders of 10th April, 2019 and 17th September, 2020 discharging the PW2 and PW6 are still subsisting.

In the whole, the application for recall has no merit. The sole issue for determination is hereby resolved against the Defendants/Applicants and in favour of the Complainant/Respondent. Thus, therefore the application is hereby refused and accordingly dismissed. The Defendants to proceed to testify in their defence.

HON. JUSTICE D. Z. SENCHI
(Presiding Judge)
15/10/2020

1st and 2nd Defendants present in Court

P.A Ogele:-For the prosecution.

Samson Okpetu:- For the 1st and 2nd Defendants.

J.K Akerigba:-Watching the brief of the nominal complainant.

Samson:- In the circumstance of the ruling, I apply for another date for defence.

Ogele:-We vehemently oppose the application for adjournment.

The prosecution closed its case on 17th September, 2020 and the defence did not tell the Court that they intend to file a no case submission. On the 12th October, 2020 the Counsel to the Defendants informed the Court that the case is for defence.

Samson:- The provision of section 302 of the Administration of Criminal Justice Act 2015, is clear.

Court:- The Defendants Counsel have 5 days from today to file and serve the no case submission and on service on the prosecution the prosecution has two days to file its reply and if the Defendant Counsel intend to file a reply on points of law, he has two days to do so. Case adjourned to 29th October, 2020 for the no case submission. The Defendants be further remanded in the correctional centre.

**Sign
Judge
15/10/2020**