

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 5, MAITAMA ON THE
7TH DAY OF OCTOBER, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

CHARGE NO. FCT/HC/CR/362/2017

MOTION NO. FCT/HC/M/2759/2021

COURT CLERKS: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

COMMISSIONER OF POLICECOMPLAINANT

AND

1. EJEH JAMES.....DEFENDANT/APPLICANT

2. ABRAHAM SIMON.....DEFENDANT

RULING

The 1st Defendant/Applicant's application is dated 18/03/2021. It is brought pursuant to Section 256 of the Administration of Criminal Justice Act (ACJA), 2015 and Section 6(6)(a) and Section 36(5) of the Constitution of the Federal Republic of Nigeria.

It prays the Court for the following:

- (1) An Order of Court granting leave to the 1st Defendant/Applicant to reopen his defence in this trial.
- (2) An Order of Court recalling PW1, PW2, PW3 and PW4 for the purpose of being reexamined.

And for such Order or further Orders as the Court may deem fit to make in the circumstance.

The Defendant/Applicant's Counsel relies on the grounds for the application and the Affidavit filed in support thereon.

Succinctly, the Defendant/Applicant's deposition is that he engaged a new Counsel who came in after the previous Counsel had cross-examined PW1, PW2, PW3 and PW4.

That the new Counsel discovered some loopholes in the evidence of the said witnesses which he wants to cross-examine the witnesses upon.

The Prosecution also rely on his Counter Affidavit of 8 paragraphs filed on 28/06/2021. He deposes that all Prosecution witnesses were cross-examined by the 1st

Defendant's Counsel and re-examined before they were discharged.

That the 1st Defendant was legally represented in all sittings and hearings. The 1st Defendant has also given evidence in defence and has also been cross-examined by the Prosecution. That the Prosecution will be prejudiced.

The issue for determination is whether the Defendant/Applicant has made out a case to enable the Court grant the reliefs sought.

S. 256 of ACJA, 2015 states:

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

The Affidavit evidence of the Defendant/Applicant is that the evidence of PW1, PW2, PW3 and PW4 are essential to arriving at a just decision in this case. The particulars of

the evidence the Defendant intends to lay before the Court is not availed the Court.

There is no way this Court can determine whether the evidence of the witness will be essential to the just decision of the case without supplying the particulars of the facts intended to be given.

It does appear that the 1st Defendant's Counsel wants the 1st Defendant to have a second bite on the cherry just because he was not the Counsel who conducted the cross-examination of the Prosecution witnesses.

In **SALAWU vs. STATE (1970) LPELR-2990 (SC)**, the Supreme Court held disagreeing with the Court of Appeal that in the circumstance of that case the question as to whether or not the Appellant was at the material time enjoying good health was irrelevant to a just decision of the case. It would appear that the Court of Appeal did not adequately direct its mind to the point of non decision on the part of the trial Judge when he stated that from his observation, *"the Appellant gave evidence before him in a rational manner..."*

It was not open to the trial Judge, and least of all, the Court of Appeal to have presumed without having heard the

witness sought to be recalled that his evidence would not be essential to a just decision in the instant case.”

In the instant case, the 1st Defendant/Applicant failed to put before this Court material particulars of the further evidence to enable the Court exercise its discretion in his favour. This Court has listened to the PW1, PW2, PW3 and P4. They have been cross-examined. The application fails and it is dismissed.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
07/10/2021

Defendants present.

O. C. Adama, Esq. for the 2nd Defendant.

(Signed)

HON. JUDGE

07/10/2021