

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT NO.4, MAITAMA-ABUJA

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

SUIT NO. FCT/HC/CR/155/17

COURTCLERKS: JOSEPH ISHAKU BALAMI & ORS.

DATE: 22/02/22

BETWEEN:

INSPECTOR GENERAL OF POLICE.....COMPLAINANT

AND

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

.. DEFENDANTS

RULING

The 10th Defendant/Applicant's application dated 6/09/21 but filed on the 9th of September 2021 is brought pursuant to Order 6 (6), 36(5) and (6) and Section 331(1) of the Administration of Criminal Justice Act 2015.

It prays this Court for:

1. An Order directing the Complainant/Respondent either by himself or through the Commander of the Defunct Special Anti-Robbery Squad (SARS) or DSP Esele Erioje or such other officers that investigated the case against the Applicant or such other competent officer or staff of the Complainant/Respondent to release to the Applicant his 80KVA Marapco Sound Proof Generator seized from the Applicant by the investigating team of Police Officers which is in Complainant/Respondent's custody.
2. And for such Order or Further Orders as the Court may deem fit to make in the circumstance.

Learned Counsel to the Applicant rely on the 5 grounds upon which the application was brought. He also rely on the 13 paragraph Affidavit sworn to in support of the application deposed to by the 10th Defendant/Applicant. He deposed that he was

arrested by Officers of the Complainant/Respondent attached to F-SARS on the allegation that he conspired with one Geoffrey Ozomabu (the 11th Defendant in the main case) amongst others to receive stolen property.

That he went through trial spanning over 3 years. That while he was in custody at Kuje Custodial Centre, his Generator was seized, taken and kept at the F-SARS premises at Guzape.

That he was discharged and acquitted.

That there is no appeal against the Judgment.

That there is no finding to the effect that the Generator was indeed stolen property.

There is also no Order of Court seizing the property or disposing it off and or giving its possession to anyone.

That he wrote to the Complainant requesting for the release of the said Generator to him but the Complainant/Respondent refused and or neglected to do so. That the Court has power to order its release.

That it will depreciate in value.

That it is in the interest of justice to grant the application. The application was served on all the Respondents but they failed to respond.

The Applicant's Counsel adopted his written argument dated 6/9/21 but filed on the 9th.

He relies on Section 331 of the Administration of Criminal Justice Act. He posits that the Applicant has placed sufficient materials before this Court to enable it grant the relief sought.

That the Generator was not tendered during trial. That it was seized from the Applicant in connection with a crime.

I have read Section 331(1) of ACJA.

There is no doubt this Court has power to make an order for the disposal, confiscation or delivery to a person appearing to be entitled to the possession or otherwise of any movable property or document

produced before it or in its custody regarding which an offence appears to have been committed.

For an Applicant such as in this case to succeed, he must prove the following:

1. He must appear to the Court to be entitled to the property.
2. The property in question must be a movable property or a document.
3. It must have been produced before the Court or it is in its custody in relation to the offence charged.

I have gone through the Affidavit which is uncontroverted. The Applicant has not tendered any document in the form of a receipt of purchase or otherwise to authenticate his ownership of the said Generator. He who asserts must prove. He has not sufficiently proved his entitlement to the Generator he seeks to possess.

On whether the Generator was produced before the Court, from the record of Court, on 25/01/19 PW3 gave evidence, Alhaji Isiaku Seidu, the person who runs the NNPC Filling Station, Karshi the scene of robbery said when he visited the scene of robbery, he discovered his Generator was taken away. He identified the Generator as a 65 KVA Generator. He gave the Police the receipts at F-SARS who went to Mararaba to recover same.

He further said the Generator was released to him He stated emphatically that the Generator's name is J.M.G.

The Applicant was in Court and represented when the receipt and bond releasing same to the Nominal Complainant was tendered. He had no objection to the tendering of the documents. The Bond and Receipt were admitted as Exhibits D and E. Therefore, the Generator seized by the Complainant/Respondent which was released to PW2 and which receipts were

tendered before the Court is a J.M.G Generator which is 65 KVA.

No other Generator was referred to at the trial of this case. The 10th Defendant/Applicant refused and or failed to give evidence in the substantive mater.

The Generator the Applicant referred to in his application is an 80 KVA Marrapco Sound-proof Generator.

No such Generator was produced before this Court or referred to in the trial. The only Generator referred to is the J.M.G Generator 65 KVA released on bond to the 3rd Prosecution Witness. The bond is before the Court. It is that regarding which an offence of receiving stolen property was alleged to have been committed.

In the circumstance the Applicants 80 KVA Marrapco Sound Proof Generator is not in the custody of the Court. It is not produced before the Court neither is it connected to the offence charged or used for the commission of offence.

The fact that the 10th Defendant/Applicant was discharged and acquitted does not entitle him to the 65 KVA J.M.G Generator. He failed to give evidence of his entitlement to the Generator at the trial. He relied on the evidence in the Prosecution. He has also not proven same in this application.

It is my view and I so hold the PW3 the Nominal Complainant by Exhibits A and E tendered during trial (receipt of purchase and service agreement) has sufficiently proved his entitlement to the said Generator. He already has possession of same by virtue of the bond.

In the circumstance of the case, the application lacks merit, it is gold digging and it is accordingly dismissed.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)
22/02/22.

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 5, MAITAMA-ABUJA
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SUIT NO. FCT/HC/CR/155/17

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DEFENDANTS

Parties absent.

No legal representation.

Court: Ruling delivered

Signed.

Hon. Judge.

22/02/22