IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS
COURT: 28

DATE: 17TH MAY, 2022 **FCT/HC/GWD/CR/03/2021**

BETWEEN:-

INSPECTOR GENERAL OF POLICE------- COMPLAINANT

AND

DARLINGTON CHILE OWHOJI ---------- DEFENDANT

RULING

On the 4th day of March, 2022, the prosecution Abdulrasheed Isiyaku applied to the Court to foreclose a witness Leko Okoi (PW3) earlier presented. Counsel then sought to call Igbokwe Titus to give evidence. This is the spirit of justice and fair play.

Defence Counsel Adefoun Akerele opposed the application, claiming it to be an infringement of the right of the Defendant, the right to fair hearing. He also argued that it was a calculated attempt to ambush the defence, and cited sections 397,398 and 247 of the Administration of Criminal Justice Act 2015; and also section 50 of the Evidence Act.

Prosecuting Counsel on the other hand, argued that where a witness gives his testimony half way for reason best known to the witness, it is the law that he has abandoned his testimony and that the Court cannot rely on his testimony. He cited the case of ***OLOMO V STATE (2014) LPELR 22517 CA***. He claimed PW3 has abandoned his testimony and urged the Court to so hold. Defence Counsel had cited sections of the Administration of Criminal Justice Act 2015 (ACJA) which are as follows:-

Section 247 provides that a witness who is present when the hearing or further hearing of a case is adjourned, or who has been duly notified of the time and place to which the hearing or further hearing is so adjourned, shall attend any subsequent hearing and if he defaults, he may be dealt with in the same manner as if he has refused or neglected to attend the Court in obedience to a witness summons.

Similarly, section 397 provides that a person who is summoned as a witness, whether for the prosecution or for the defence, shall be bound to attend the Court on the day fixed for the trial of the case and on subsequent date until the conclusion of the case until he has been discharged by the Court from further attendance. Section 398 then provides that a warrant for arrest may be issued on a witness not attending in recognizance. ***JOHN OLOMO V STATE (20140 LPELR 22517 (CA)***. However, it was held that the evidence of a witness who abandons his testimony has no evidential value. Such evidence is irrelevant and of no evidential value and should be discountenanced by the Court in the assessment and evaluation of evidence. See also ***YUSUF VS OBASANJO (2005) 18 NWLR (Pt 956) P. 96 at 132 paragraph H and 216-217 paragraphs H-A. from*** the objection raised by the learned defence Counsel that what the prosecution is trying to do is to ambush the defence and that action is a clear violation of the right of fair hearing accorded to the defence by the constitution. From my humble view the defence Counsel failed to understand what amount to infringement of right of fair hearing in any trial be it civil or criminal case. I have gone through the objection raised by the defence but I completely disagree with the objection raised by the defence Counsel. It is the duty of the prosecution to assemble all his witness before the Court. Similarly it is the duty on the part of the prosecution to chose who to call as a witness. It is not the duty of the Court and it has never been the duty of the Court to chose who shall be call as a witness in order for the prosecution to establish its case beyond reasonable doubt. As in this case since the prosecution witness have not concluded his testimony but midway the

prosecution applied to abandon the witness and instead called another witness even though the witness have given part of the evidence that does not amount to infringement of the right of fair hearing neither does it amount to ambushing the defence when Plaintiff witness adduced evidence before the Court wholly and same failed to appear so that he can be cross examined the Court has the power to either expunge the evidence from its record or alternatively the Court should not attach any probative value to it as can be seen from this case. The prosecutary power of the prosecution in this issue cannot be challenged either by the defence or the Court itself what the Court can only do is not to attached any value to it as if the evidence does not exist at all. Essentially the duty of the prosecution is to proof its case beyond reasonable doubt no more no less. Therefore it function lies on the prosecution strictly. See the case of ***ABOLORE ISAIAKA VS THE STATE (2010) LPELR 11864 CA.*** convincingly I would like to add by the provision of section 36 (6) (d) of the 1999 Constitution as amended which provides that " every person who is charged with the criminal offence shall be entitled to:- examine in person or by his legal practitioners the witness called by the prosecution before any Court or tribunal" and section 189 of the Evidence Act which provides thus" witness shall first be examined in chief then if any either party so desire cross examined" then section 190 of the Evidence Act in criminal proceedings where more than one accused charged at the same time, each accused shall be allowed to cross examined a witness called by the prosecution before the witness is re- examined. A Court or tribunal should never act on the evidence of a witness when the other part want to cross examined, but the witness cannot be reproduced or located for same to be cross examined in chief. The mosts hard thing the Court can do is to expunge from the record of the Court or the lower Court should not have attached any weight to it because the essence of cross examination is to test the tenacity and accuracy of the witness and not just a jamboree or merry making. A witness who fails to make himself available for cross examination should know that all his evidence goes to naught. In view of the above reasoning there is nothing before the Court to act in this

proceedings in respect of the evidence of PW3 who was partly given by the same even if the witness gave full evidence and same do not appear to be cross examined such testimony goes to no issue and the Court would not ascribe any value to it I so hold. Upon the careful assessment of the objection raised by the defence or to breach of fair hearing meted on the defence. There is no such breach. In the celebrated cases of ***NEWSWATER COMMUNICATION LTD VS ATTA (2006) 11 ALLWLR (pt1) 211 at 224 and ORUGBO VS UNA (2002) 16 NWLR (pt 792) 195 at 200 paragraph P.***

The same case (Niki Tobi JSC). In his immortal words had admonished both legal practitioners and the Courts on the limits of the fair hearing principle and the need for caution in its applicability thus:-

"Counsel quite a legion find fair hearing principle duly entrenched in the constitution as a pathway to success whenever they are in trouble on the merit of the litigation. A good number of Counsel resort to the principle even when it is in applicable in the case "see also ***MPAMA VS FBN PLC (2013) 5 NWLR (pt1346) 175*** on the right of fair hearing as guarantee by section 36 of the 1999 Constitution of the Federal Republic of Nigeria to the effect that in the determination of her civil right and obligation fair hearing is not a cut and dry principle which parties can in the abstract always apply to their comfort and convenience . it is a principle which is based and must be based on the facts of the case before the Court only the facts of the case can influence and determine the application or applicability of the principle. The principle of fair hearing is helpless or completely dead outside the facts of the case. By and large from the above judicial authorities I found it easy to conclude that the objection cannot hold water I therefore over rule the objection. Accordingly allow the application made by the prosecution.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Defendant:- In Court.

Abdulrasheed I. Sidi:- For the prosecution

Adetoun Akerele:- The Defendant.