

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT APO, ABUJA**

ON THURSDAY, 17TH DAY OF JUNE, 2021

BEFORE HON. JUSTICE SYLVANUS C. ORIJI

CHARGE NO. FCT/HC/CR/299/2017

BETWEEN

FEDERAL REPUBLIC OF NIGERIA --- COMPLAINANT

AND

EZENWAKA JOHNBOSCO --- DEFENDANT

JUDGMENT

On 13/9/2017, National Agency For The Prohibition of Traffic In Persons And Other Related Matters [NAPTIP] filed a charge against the defendant. When the defendant was arraigned before the Court on 8/1/2018, he pleaded not guilty to the one-count charge.

The charge reads:

That you Ezenwaka]ohnbosco [M], 42 years old, of 16^cJahi, Behind Next, Cash and Carry, Abuja, sometimes in October, 2016, at 16^cJahi, Behind Next, Cash and Carry, Abuja, within the jurisdiction of this Honourable Court raped one EbereEluede [F], 15 years, at 16^cJahi, Behind Next, Cash and Carry, Abuja, by

using your fingers to penetrate her vagina and thereby committed an offence punishable under Section 1 of the Violence Against Persons [Prohibition] Act, 2015.

In proof of the charge, the prosecution called 3 witnesses i.e. EbereOluede [PW1], Mrs.IfeomaNgoziOkoli[PW2] and AbimbolaAbolarin [PW3]. The defendant testified in his defence as DW1 and called 2 other witnesses i.e. Mrs.ChinasaAmadi [DW2] and Dr. Mary Samuel Ebong [DW3].

Evidence of EbereOluede[PW1]:

The evidence of EbereOluede on 8/2/2018 is that she is 16 years old. The defendant is her cousin's husband. She started living with the defendant when she was 9 years old. In 2011, the defendant started abusing her by pressing her breasts and putting his hand inside her vagina. They were living in Onitsha, Anambra State when he started it. Her Auntie was not around; she was doing her Youth Service in Awka, Anambra State. The PW1 narrated that one night, the defendant returned from work and told her to sleep in his room; at that time, she was sleeping in the kitchen. She refused. Defendant asked her to do what he told her to do. She then went inside the room with him and they slept together. Early the next day, the defendant carried her on his body and said she should suck his breast. She said no. He slapped her and threatened to stop paying her school fees. She agreed and sucked his breast. He started pressing her breasts and also put his hand inside her vagina.

In 2013, the defendant got a job in Next Cash and Carry, Abuja. Her Auntie, the children and herself later joined him in Abuja. The defendant continued to touch her breasts and put his hand inside her vagina. She told defendant that she did not like what he was doing to her and that she bled whenever he put his hand inside her vagina. The defendant said as long as she is in his house, he will continue to do it because he cannot go outside to do it to another girl. She told the defendant that she will report him. The defendant threatened to kill her or send her to the village and she will marry the old people that push wheel-barrows in the village. The defendant then asked her if she will do what he said; and she said yes. In 2013, defendant's wife had mental problem; she was not normal. Defendant told her not to tell his wife.

The defendant continued putting his hand inside her vagina and pressing her breasts till the Saturday she went to Church for confession in 2014; she is a Catholic and a Communicant. She told the Reverend Father everything. The Reverend Father said he wanted to see the defendant. When she went home, she delivered the message to the defendant. The defendant asked her if she told the Reverend Father what he was doing to her. She lied to him that she did not tell the Reverend Father anything. The defendant continued to press her breasts and put his hand inside her vagina. PW1 said there was a day the defendant *"wanted to sleep with me. I started shouting and crying and he left. Sleeping with me means that the defendant removed his clothes and wanted to remove my clothes. I then started shouting. He covered my mouth and said: what will I tell people if they ask me why I was shouting?"*

EbereOluedefurther narrated how SOAR Initiative came to their school [i.e. KadoKuchi Secondary School] in October 2016 to open Girl's Club. Mrs.ChinyereEyoh of SOAR Initiative said she had passed through so many abuses and said they could open up to her.Mrs.ChinyereEyohsaid she has a way she could help them so that they can be free from the abuse. Sheand some other girls went toMrs.Eyohand told her everything. When she told Mrs.Eyoh, the School Councillor [IfeomaNgozi] was there.

Based on the School Councillor's advice, she got the phone number of her mother and that of her Auntie's mother from her Auntie's phone. She gave the numbers to the School Councillor. The School Councillor called her Auntie's mother and her mother. She [the PW1] then spoke with her mother and told her everything. When SOAR Initiative came back to their school, Mrs.ChinyereEyoh came with Mrs. Bimbo and the Councillor. They took her to NAPTIP office. They told her to write everything that the defendant was doing to her, which she did.

During cross examination, the PW1 stated that she started living with the defendant early 2010. On the day defendant started abusing her in Onitsha in 2011, she did not tell anyone. She admitted that when she started living with defendant, she had some rashes on her body and sometimes, the defendant did bath her and scratched her body very well. That was the same period he was abusing her. The mental problem of defendant's wife started in 2013 and continued till date. She had wound in her vagina and there was blood. The

defendant also noticed the blood. She did not see a doctor. She started receiving Communion in Church in 2014. When thePW1 was shown her baptismal card, she confirmed that the year written on it [i.e. 2015] was the first time she received Holy Communion.

PW1 further stated under cross examination that when she told her Auntie in school what was happening to her, they did not take her to the doctor. It is correct that the defendant's wife did not want her to stay with them any longer. Since then, she has been planning one way or the other to leave the defendant's house. It is true that the Councillor promised her a better place if she leaves defendant's house. It is not true that she lied against the defendant because of the better place she was promised. When asked whether she is still a virgin, she said no. When asked if she has a boyfriend now, she said no. When asked if she has been to a doctor since she lost her virginity, the PW1 said: *"I do not even know how virginity is lost."*

Evidence of IfeomaNgoziOkoli [PW2]:

In her evidence, PW2 stated that she is a teacher in Junior Secondary School, Kado-Kuchi, Abuja; she is the Guidance Councillor of the School. The first day she met the defendant was the day the principal invited him to the school regarding the case of Ebere Juliet; the case was on sexual abuse. On 8/3/2016, an NGO called SOAR [Sexual Offence Awareness and Victims Rehabilitation Initiative] came to the school. The director of SOAR, Mrs. Chinyere Eyoh, came to introduce Girls' Club in the school. After the

introduction, Ebere met the director and told her that the uncle she is living with has been abusing her since 2011. Ebere said the uncle [i.e. the defendant] touches her breasts and fingers her; and threatened to take her back home if she told anyone about it. SOAR Initiative then called her [PW2] attention.

When she [PW2] called Ebere, Ebere repeated the same thing she had told the director of SOAR. She and the director of SOAR went to the office of the principal and Ebere repeated the same story. Later, she asked Ebere if her mother was aware of these things and she said no. She asked Ebere if she would like to talk to her mother and she said yes. Ebere brought her mother's phone number and Ebere spoke to her mother through her [PW2] phone. After the resumption of the school in April, 2016, whenever she called Ebere in the presence of the principal, Eberesaid the defendant was still abusing her. In September when they resumed from the long vacation, Ebere said the defendant was still abusing her and that she did not want to stay in his house. The abuse is by touching her breasts and putting his hand into her vagina.

IfeomaNgoziOkoli further stated that when all these things were going on, she asked Ebere if she cannot tell her Auntie i.e. the defendant's wife. Ebere said the defendant's wife had a mental problem; that is why she cannot tell her. When the director of SOAR came to the school, the Principal called the head office i.e. Universal Basic Education for directive on what to do. She [the Principal] was given approval to take the necessary steps with SOAR. They called Ebere and she told her [PW2], the Principal and the director of SOAR

that she was no longer comfortable in the defendant's house and that if she goes to stay with her mother, she will not be able to take care of her. The school management and SOAR then took Ebere to NAPTIP.

When PW2 was cross examined on 23/4/2018, she stated that Ebere reported the abuse to SOAR in March, 2016. The principal called the defendant and told him what Ebere said. The principal informed her [PW2] that defendant denied the allegation. She did not visit a doctor with Ebere because she was not raped.

Evidence of AbimbolaAbolarin [PW3]:

The evidence of the PW3 is that she works with NAPTIP as an investigator. NAPTIP received a letter of complaint from SOAR and she was directed to investigate the case. She "rescued" the victim, OluedeEbere Mary Juliet, from her school at Government Junior Secondary School KadoKuchi, Jahi, Abuja. She invited defendant to their office. She also invited the School Councillor [Mrs.IfeomaNgoziOkoli] to their office. When the defendant came to their office, she informed him of the allegation made by the victim that she has been sexually harassed by the defendant; that "the defendant used to finger her vagina and caress her breasts." Defendant wrote his statement. The statement of OluedeEbere Mary Juliet dated 20/10/2016 is Exhibit B; the statement of Mrs.IfeomaNgoziOkoli dated 20/10/2016 is Exhibit C; and the statement of the defendant dated 21/10/2016 is Exhibit D.

During cross examination, PW3 stated that the defendant did not confess to the alleged crime. There was no doctor's report and she [PW3] did not go to any doctor.

Evidence of the defendant [DW1]:

The evidence of the defendant is that the allegation against him is not true as nothing of such happened. Ebere started living with him late December, 2009. His wife, himself and Eberewere living in a 3-bedroom flat in Onitsha. Eber had a room to herself; she was not sleeping in the kitchen. When she started living with him, she was a child and he took her as his first daughter. Eber had rashes on her body and he took care of her. He scratched her body after bathing her and applied medical ointment for the rashes. Ebere was 9 years when she started living with me. A child of 9 years has not developed breast. At that time, they took pictures; the pictures can show that Ebere was a child.

The evidence of Ebere that he continued to penetrate her with his finger when they came to Abuja is not true. DW1 explained that in November 2012, he got a job as an accountant in Next Cash and Carry in Abuja. He left them at Onitsha and came to Abuja in 2013. On 14/2/2013, his wife gave birth to his second child. On 28/2/2013, Ebere burnt his first child with fire; she put a match on the child's body. His wife called him on phone and told him that Ebere burnt the child. He asked his wife to take the child to the pharmacy because he thought it was a small thing. In the evening, his father called him

and asked him to come to Onitsha. When he went to Onitsha, his daughter was in the hospital; her body was burnt. He asked Ebere what happened and she said they were playing. All the people in their area including people from Ebere's village said she should go. Only his father said he should leave her.

The defendant further stated that he took Ebere to a church called Adoration Ministry for divine intervention. Thereafter, all of them came to Abuja due to his father's advice. In Abuja, he still took Ebere as his daughter. The evidence of Ebere that she confessed to Reverend Father in 2014 and when she told him that the Reverend Father wanted to see him, he asked her if she told the Reverend Father what he was doing to her is not true. The DW1 said Ebere started receiving Holy Communion in May, 2015. As a Catholic, you cannot go for confession until you start receiving Holy Communion. The Reverend Father did not invite him because he participated well in the church. If there was such a thing, the Reverend Father would have called him personally.

Mrs. Ngozi Ifeoma Okoli [PW2] did not say the truth when she said she saw him when the Principal invited him. The Principal never invited him; rather, when he and his wife were looking for Ebere, they went to the school to ask of her and the Principal denied knowing anything about Ebere. He told the Principal that he received a call from one Mrs. Bimbo from NAPTIP that their daughter is with them. The principal said he should go to NAPTIP first; and if Ebere is not there, he can come back to the school. He saw Mrs. Ifeoma Ngozi Okoli for the first time in Court. When he went to NAPTIP

with his wife, he was referred to Mrs. Bimbo. Mrs. Bimbo narrated the allegation. In his statement, he said he will prefer that they go for medical test first. He told them that the medical test will show the level of damage he had done to Ebere or his innocence.

The further evidence of Ezenwaka Johnbosco is that they detained him and he was taken on bail by his wife. They said he should be reporting every week to their office; which he did for one year and four weeks. Since Ebere was with them, he kept demanding that they should go to the laboratory. He offered to finance it. This is because he knew Ebere was still a virgin then and the allegation against him never happened. He never penetrated Ebere's vagina with any part of his body. By the time Ebere started staying with him in 2010, his wife had finished her NYSC. He has a tenancy agreement with the landlord [Emeka] in Onitsha and receipts of payment of rent.

Defendant tendered the following documents: [i] tenancy agreement dated 1/3/2011 between Achusim Emeka Chris and the defendant: Exhibit E; [ii] receipt dated 7/3/2011 for N180,000: Exhibit F; [iii] Certificate of National Service of Ezenwaka Adaobi Evangeline dated 2/11/2010: Exhibit G; [iv] Catholic Testimonial of Mary Juliet Ebelechukwu: Exhibit H; [v] 4 pictures: Exhibits J1-J4 respectively; and [vi] Certificate of Compliance with section 84[2] of the Evidence Act signed by DW1 on 24/1/2020: Exhibit J5.

During cross examination of DW1, he stated that Ebere started staying with him in November or December 2010. Ebere was not living with him from 3/11/2009 to 2/11/2010, the period stated in his wife's NYSC Discharge Certificate [Exhibit G]. His wife's mother and Ebere's mother did not call him but they sent his wife's sister [ChinasaNwude] to come and take Ebere and to know what actually happened. When Chinansa came and told him her mission, he told her that they must go for medical test before Ebere will leave his house. In the process, Ebere said she will not leave his house any longer. When he told his wife, she did not believe them. His wife said they were looking for a way to take Ebere away from them. Ebere then said it was one auntie who told her that she would take her [Ebere] abroad; a better place than his house.

The defendant further stated under cross examination that before the tenancy agreement [Exhibit E], Ebere had been living with him. He did not have any tenancy agreement for the period when his wife went for NYSC programme. When asked if there was any time he and Ebere were alone, DW1 said no. He explained that in Abuja, his brother in-law and his children were always at home when he and Ebere were at home. His brother in-law was above 20 years then and he was not working. The time his brother in-law was in his house was the period his wife was not feeling well.

During re-examination, the defendant said in 2010, he left Abakiliki to Awka and he was living in a 4-bedroom flat with his father. From there, he got a house in Onitsha.

Evidence of Mrs.ChinasaAmadi [DW2]:

Her evidence is that the defendant is the husband to her elder sister.Ebere is her maternal cousin.Ebere's mother called her parents and informed them that a call came from Ebere's school that she is being molested by defendant.Ebere's mother told her parents that she wanted her daughter [Ebere] back. She [DW2] was sent to Abuja by her parents to bring Ebereback.When she came to Abuja in March 2016, she took Ebere outside to ask her about the issue. Before then, she had asked defendant and he said there was nothing like that. The defendant insisted that before we take Ebere back, she must go for test to ascertain the truth. When she talked with Ebere, she said her uncle [i.e. the defendant] never touched or molested her in any way and that she will not go with her. When she asked Eberethe reason for the report from the school, she said one of her aunties in school told her that she will be taken abroad; that was why she said what she said.

DW2 further testified that she called her parents and told them what Ebere said. They said she should call Ebere's mother. She called Ebere's mother and she said since Ebere said the uncle did nothing to her and that she was not coming home, she should leave her and come back. The next day, she went back. She was surprised to hear that the matter has been taken to Court; the

defendant called to inform her. To the best of her knowledge, Ebere did not go for any test because Ebere never admitted that she was molested.

Evidence of Dr. Mary Samuel Ebong [DW3]:

Dr. Mary Samuel Ebong testified pursuant to a *subpoena* issued by the Court on 13/10/2020. She stated that she was the Principal of Junior Secondary School KadoKuchi. She had seen the defendant once. There was no time she invited the defendant to her school for a discussion. The first time she saw the defendant was the day he came to her school asking about Ebere. The FCT Universal Basic Education Board had domiciled an instrument on access to justice for sexually abused students in FCT; the instrument was domiciled in the schools. She knows Mrs. Ifeoma Okoli.

When DW3 was cross examined, she stated that the instrument on access to justice for sexually abused students was domiciled in the schools before the defendant's case.

Issues for determination:

At the conclusion of trial, the parties filed their respective final addresses as directed by the Court. Festus A. Osimhen Esq. filed defendant's final address on 13/1/2021. Ja'afaru A. Ayitogo Esq. filed the prosecution's final address on

27/1/2021. Festus A. OsimhenEsq. filed the defendant's reply on points of law on 4/2/2021. The final addresses of the parties were adopted on 9/2/2021.

In the defendant's final address, Festus A. OsimhenEsq. formulated three issues for determination. These are:

1. Whether from the entire evidence before the Court, the prosecutor has been able to establish a *prima facie* case of rape against the defendant.
2. Whether the evidence of the PW2 and PW3 does not amount to hearsay evidence.
3. Whether the exhibit/evidence of the DW2 and DW3 have not contradicted with the evidence of the prosecutor which is before the Court.

In the final address of the prosecution, Ja'afaru A. AyitogoEsq. adopted the issues formulated by Festus A. OsimhenEsq.

Section 36[5] of the Constitution of the Federal Republic of Nigeria 1999 [as amended] provides that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. By reason of the presumption of innocence of an accused person [or defendant], prosecution has the burden to prove the guilt of a person alleged to have committed an offence beyond reasonable doubt. Thus, the issue for determination in this case is whether the prosecution has proved the charge against the defendant beyond reasonable doubt.

Resolution of the Issue:

Section 1 of the Violence Against Persons [Prohibition] Act, 2015, under which the defendant was charged provides:

A person commits the offence of rape if –

- [a] he or she intentionally penetrates the vagina, anus or mouth of another person with any other part of his or her body or anything else;
- [b] the other person does not consent to the penetration; or
- [c] the consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance of additive capable of taking the will of such person or in the case of a married person by impersonating his or her spouse.

From the charge against the defendant and the provisions of section 1[1] of the Violence Against Persons [Prohibition] Act, the prosecution must prove beyond reasonable doubt that: [i] the defendant “*raped one EbereEluede [F], 15 years ... by using your fingers to penetrate her vagina*”; and [ii] the penetration of EbereOluede’s vagina by the defendant was without her consent.

Learned defence counsel referred to the following pieces of evidence of PW1: [i] she was 9 years old when she started living with the defendant; [ii] when the wife of the defendant went for NYSC in 2011, the defendant started abusing her; [iii] at that time, they were living in one-bedroom and she slept in the kitchen; and [iv] that she confessed to the Reverend Father in 2014. Festus A. Osimhen Esq. submitted that the evidence and exhibits before the Court contradict the evidence of the PW1. Firstly, the baptismal card of PW1 [Exhibit H] shows that she first received Communion in 2015 and the only time a Catholic starts going for confession is when he/she starts receiving Communion.

Secondly, the NYSC certificate of the defendant's wife [Exhibit G] shows that she served her NYSC in 2010 and not in 2011. Thirdly, Exhibit E [i.e. the tenancy agreement dated 1/3/2011 between Achusim Emeka Chris and the defendant] shows that in 2011, DW1 was living in 3-bedroom flat. Fourthly, Exhibits J1-J4 show that PW1 had no breasts as at the time she alleged that the defendant molested her. The defence counsel also referred to the evidence of DW2 that Ebere told her that the defendant never molested her; and that one of her aunties in school promised to take her abroad.

Based on the foregoing, Mr. Osimhen submitted that the evidence of PW1 cannot be relied upon since it has been contradicted by exhibits tendered and other witnesses. He also stated that the evidence of PW1 cannot be relied on as it was not corroborated. In the defendant's reply on points of law, the

defendant's counsel stressed that the offence of rape requires evidence of corroboration tending to show that the story of the prosecutrix is true. The cases of Posu v. State [2011] 3 NWLR [Pt. 1234] 393 and Sambo v. State [1993] 6 NWLR [Pt. 300] 399 were cited in support.

The further submission of Festus A. OsimhenEsq. is that the testimonies of PW2 & PW3 are hearsay evidence and cannot be relied on. Also, there is nothing to show that there was penetration or that the hymen of PW1 was broken. Failure of the prosecution to visit a doctor or medical expert raises a doubt in the mind of the Court as to the veracity of the alleged crime. Such doubt should be resolved by the Court in favour of the defendant. He pointed out that the defendant requested DW2 to carry out a medical test which was not done. The defendant also requested PW3 to carry out a medical test, which was ignored. Mr.Osimhen concluded that the prosecution has failed to prove the alleged offence against the defendant.

For his part, learned counsel for the prosecution argued that the prosecution in discharging the onus of proof, relied on the direct, clear, uncontroverted and credible testimony of PW1, the victim in this case. PW1 testified how the defendant *"sexually raped her by penetrating her vagina with his finger, caressing her breast and asking her to suck his breast without her consent."* Learned counsel stated that the evidence of PW1 is consistent with the earlier statement she made to the complainant [i.e. NAPTIP] and the evidence of the PW1 was not discredited during cross examination. Ja-afaru A. AyitogoEsq. cited the cases

of Alonge v. The State [2019] LPELR-46844 [CA] and Sunday Effiong v. State [1998] 8 NWLR [Pt. 562] 362 to support the principle that the evidence of a single witness, if believed by the court, can establish a case.

Learned prosecuting counsel further submitted that: [i]the PW1 *“had lived with the defendant [DW1] for a period of time, giving him the time and opportunity to commit the act, coupled with the fact that DW1 admitted that he bathes her [PW1] to remove rashes from her body”*; and [ii] the evidence of DW2 is mere hearsay and was never tested under cross examination. He concluded by referring to the case of Isa v. State [2016] 6 NWLR [Pt. 1508] 243 where the Supreme Court described a rapist as worse than an animal and has no moral rectitude.

Now, the fundamental ingredient of the offence of rape is proof beyond reasonable doubt that the defendant penetrated the vagina of the prosecutrix or victim of the alleged rape. In Jegede v. State [2001] 14 NWLR [Pt. 733] 264, it was held that whether the prosecutrix is a minor or an adult, to secure a conviction for rape, there must first be proof of penetration of the vagina and the penetration must be linked with the accused person. In this case, PW1 gave evidence of how the defendant regularly touched her breasts and put his hand inside her vagina. The defendant denied the allegation.

The position of the law is that the evidence of the prosecutrix in a charge of rape requires corroboration or independent evidence. In the case of Natsaha v. State [2017] LPELR-42359 [SC], it was restated that with regards to the

offence of rape, the courts have always looked for some independent evidence to show that the account of the prosecutrix is true i.e. that the offence was committed and that it was committed by the accused person. The Supreme Court further held that depending on the facts of the case, where the accused person denies the charge, some of the corroborative evidence may include: [i] medical evidence showing injury to the private part or other parts of the prosecutrix's body which may have been occasioned in a struggle; or [b] semen stains on her clothes or the clothes of the accused or on the place where the offence is alleged to have been committed. The Court referred to the case **Posu v. The State [supra]** and others.

In the instant case, some independent or corroborative evidence such as medical evidence was necessary to show that the account or evidence of PW1 is true. I note the evidence of the PW1 during cross examination that as a result of the act of the defendant i.e. putting his hand inside her vagina, she had wound in her vagina and there was blood. However, there is no medical evidence or any other independent evidence to corroborate the evidence of PW1. PW2 said Ebere was not taken to a doctor because she was not raped. Let me also refer to the unchallenged evidence of the defendant that when he went to NAPTIP, he requested that a medical examination should be carried out but this was ignored. He also made the same request to DW2.

Further, the Court agrees with learned counsel for the defendant that the evidence of PW1 was discredited by other pieces of oral and documentary evidence before the Court.

Firstly, the PW1, in support of her evidence, stated that in 2014, she went for confession and told the Reverend Father of her church what the defendant was doing to her i.e. putting his hand inside her vagina and touching her breasts. The unchallenged evidence of the defendant is that as a Catholic, you cannot go for confession until you start receiving Holy Communion. During cross examination, PW1 confirmed that from her baptismal card [i.e. Exhibit H], the year written on it [i.e. 2015] was the first time she received Holy Communion. The Court is of the view that Exhibit H renders unreliable the evidence of PW1 that in 2014, she told the Reverend Father about the alleged acts of the defendant and casts serious doubt on the veracity of the allegation against the defendant.

Secondly, the evidence of PW1 is that in 2011, the defendant started abusing her by pressing her breasts and putting his hand inside her vagina; they were living in Onitsha, Anambra State when he started it. At that time, defendant's wife was not around; she was doing her Youth Service in Awka, Anambra State. The Certificate of National Service of Ezenwaka Adaobi Evangeline, the defendant's wife [Exhibit G], shows that her one year of national service was from 3/11/2009 to 2/11/2010. The Court is also of the view that Exhibit G renders unreliable the evidence of PW1 that defendant started abusing her in

2011 when his wife went for national service and casts serious doubt on the veracity of the allegation against the defendant.

Thirdly, Mrs. Chinasa Amadi [DW2], the maternal cousin of PW1, testified that when she came to Abuja in March 2016, she talked with Ebere. Ebere told her that her uncle [i.e. the defendant] never molested her in any way. When she asked Ebere the reason for the report from the school, she said one of her aunties in school told her that she will be taken abroad. That was why she made the allegation against the defendant. Learned prosecuting counsel argued that the evidence of DW2 is hearsay. The Court rejects this argument as there is no basis for it; DW2 told the Court what Ebere told her. DW2 was not cross examined. The Court accepts the unchallenged evidence of DW2 as true. Her evidence renders the evidence of PW1 that the defendant put his hand inside her vagina and touched her breasts unreliable.

Conclusion:

In the light of all that I have said, the decision of the Court is that prosecution failed to prove the charge against the defendant beyond reasonable doubt. The Court's verdict is that defendant is not guilty of the charge. Therefore, the defendant, Ezenwaka Johnbosco, is discharged and acquitted.

**HON. JUSTICE S. C. ORIJI
[JUDGE]**

Appearance of Counsel:

1. C. Y. Dabiet Esq. for the prosecution.
2. Festus A. Osimhen Esq. for the defendant.