

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT NO. 4, MAITAMA ON THE**  
**9<sup>TH</sup> DAY OF DECEMBER, 2021**

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

**CHARGE NO. FCT/HC/CR/149/2018**

**COURT CLERKS:** *JOSEPH ISHAKU BALAMI & ORS.*

**BETWEEN:**

**COMMISSIONER OF POLICE ..... PROSECUTION**

**AND**

**1. NELSON ONWUEMEODO**  
**2. EZELIORA JOSEPH**  
**3. FELIX NWEZE**  
**4. EMEKA OKAH**  
**5. ZAINAB NWAORGWU**  
**6. IGWERNA ALE**  
**7. ICHIA MICHAEL NDU**  
**8. MRS. MORONKE AFOLABI**  
**9. MUAZU HAMZA**

**..... DEFENDANTS**

**JUDGMENT**

The Defendants are charged before this Court vide a Charge dated the 9<sup>th</sup> day of March, 2018 but filed on the 14<sup>th</sup> of March, 2018 but amended vide an Amended Charge dated 18/06/2018 but filed on 22/06/2018.

It states:

### **COUNT 1**

That you Nelson Onwuemeodo 'M' aged 49 years, Ezeliora Joseph 'M' aged 45 years, Felix Nweze 'M' aged 43 years, Emeka Okah 'M' aged 42 years, Zainab Nwaorgwu 'F' aged 42 years, Igwerna Ale 'M' aged 52 years, Ichia Michael Ndu 'M' aged 52 years, Mrs. Moronke Afolabi 'F' aged 62 years, Muazu Hamza 'M' aged 38 years and others at large on 14/12/2017 at about 11:00hrs a.m., at the High Court Jabi of the FCT within the Abuja Judicial Division did conspire among yourselves to commit an offence to wit: culpable homicide and same act was carried out pursuant to your agreement.

### **COUNT 2**

That you Nelson Onwuemeodo 'M' aged 49 years, Ezeliora Joseph 'M' aged 45 years, Felix Nweze 'M' aged 43 years, Emeka Okah 'M' aged 42 years, Zainab Nwaorgwu 'F' aged 42 years, Igwerna Ale 'M' aged 52 years, Ichia Michael Ndu 'M' aged 52 years, Mrs. Moronke Afolabi 'F' aged 62 years, Muazu Hamza 'M' aged 38 years and others at large on 14/12/2017 at about 11.00 a.m. at the High Court of the FCT, Jabi within the Abuja Judicial Division did attempt to commit culpable homicide on the lives of Chief Denis Nweke and Nasiru Adamu by beating them mercilessly to a coma with iron rod and chairs, and you thereby committed an offence punishable under Sections 95 and 229 of the Penal Code.

### **COUNT 3**

That you Nelson Onwuemeodo 'M' aged 49 years, Ezeliora Joseph 'M' aged 45 years, Felix Nweze 'M' aged 43 years, Emeka Okah 'M' aged 42 years, Zainab Nwaorgwu 'F' aged 42 years, Igwerna Ale 'M' aged 52 years, Ichia Michael Ndu 'M' aged 52 years, Mrs. Moronke Afolabi 'F' aged 62 years, Muazu Hamza 'M' aged 38 years and others at large on or about 14/12/2017 at about 11.00 a.m. with intention to cause grievous bodily harm on the person of Chief Denis Nweke and Nasiru Adamu beat them with iron rod and chairs on their head as a result of which Chief Denis Nweke sustained grievous bodily injury on his head, and you thereby committed an offence punishable under Section 246 of the Penal Code.

The Defendants were arraigned on 17/05/2018 and they all pleaded Not Guilty.

The Prosecution opened its case and called four (4) witnesses in proof of same while the Defendants called eight (8) witnesses in defence of the charge.

The evidence of the Prosecution and the Defence are on record. The evidence of PW1, the Nominal Complainant, Chief Denis Nweke is that being the Chairman of the Board of Trustees of the Utako Market Shop Owners/Traders Association, he learnt that the 4<sup>th</sup> Defendant took Abuja Municipal Area Council (AMAC) the developer of the

market and FCT to Court over the proposed remodeling of the market without their consent.

That on 14<sup>th</sup> December 2017 around 11.00 a.m., he went to the Court in the company of Alhaji Nasiru who is also a Trustee. He saw a crowd outside the Court being addressed by the 7<sup>th</sup> Defendant. On citing them, they started shouting "thief", "thief", "look at them, betrayals, kill them." They managed to walk into the Court premises.

He also saw another crowd inside the premises. The crowd inside started approaching them while the one outside started coming in. Before they knew it, they started attacking them. He ran into the Legal Department of the Court. They followed him. The beating continued.

He saw all the Defendants. The 5<sup>th</sup> Defendant was part of the crowd inside. The 7<sup>th</sup> Defendant was part of the crowd outside. The 2<sup>nd</sup> Defendant was part of the crowd inside. He was one of those who followed him to the Legal Department.

They beat him with iron rod. The 2<sup>nd</sup> Defendant used iron instrument to hit him on the head. He later ran away. The 8<sup>th</sup> Defendant now said he should go and die like Judas. He fell down and lost consciousness. He found himself in Wuse Hospital. The scar is still on his forehead.

The newspaper publication of the event is Exhibits A & A1. He made a complaint at Utako Police Station and it was later transferred to Life  
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Camp Police Station and FCT Police Command. The statement of the witness is Exhibit B.

Under Cross-Examination, he said he did not take note of armed security men in the premises. He admitted writing that Policemen rescued Adamu Nasiru when he was being beaten inside the Court.

That he knows all the Defendants and they all know him. That he has not been suspended by the Association. That he formed the Association. That they stitched the wound and he paid the bill.

He later said Nasiru Adamu did not say he was beaten. That it is not true that he made statement one month after the event.

The iron with which he was beaten will be produced. That he knows the Defendants. They have been holding meeting to deal with him.

The PW2 is Nasiru Adamu. He said he knows all the Defendants. That on 14/12/2017 he came to Court with PW1 at about 11.00 a.m. because of the Court case. They parked their car. As they were about going into the Court, he saw 2<sup>nd</sup>, 7<sup>th</sup>, 1<sup>st</sup>, 5<sup>th</sup>, 4<sup>th</sup> and 6<sup>th</sup> Defendant and others. They started shouting, thief, thief, AMAC Collaborators, FCDA agents. They divided themselves into groups.

The 7<sup>th</sup> Defendant followed them and they started beating them. The others inside the Court started advancing. They put them in the centre and started beating them. They started running, looking for a way to escape.

A mobile policeman told him to enter the courtroom while the PW1 went the other way. They gathered around the Court waiting. He later saw PW1 in the pool of his blood. The Legal Officer made a distress call. The Police came and dispersed them. The Police conveyed them to Utako Police Station. They were given papers for treatment at Wuse General Hospital.

The case was transferred to Life Camp Police Station and later FCT Police Command.

Under Cross-Examination, he confirmed that there was a crowd outside the gate. That 7<sup>th</sup> Defendant was addressing the crowd. That some of the members in the crowd are not traders. He does not know how the 7<sup>th</sup> Defendant got there.

He further confirmed that the second crowd was inside the Court. He followed the PW1 to Wuse General Hospital. He was admitted in emergency. They left the hospital together. He did not know why they want to kill them.

The 3<sup>rd</sup> Prosecution Witness is Dr. Aigbe Josephine. She is a medical practitioner working in Wuse General Hospital. That on 14/12/2017,

she was on duty. That the PW1 came in company of friends and Police Officer from Utako Police Station on account of an injury on his forehead.

She treated him and stitched the laceration. He was placed on medication. An X-ray of the skull was requested for and a further appointment booked. The medical report is Exhibit C.

Under Cross-Examination, she said he was not brought unconscious. The PW1 who was the patient requested for the medical report. She did not know whether he was looking like a person beaten by a mob.

The 4<sup>th</sup> Prosecution Witness is Abdullazeez Garba, an IPO attached to Area Command Crime Office. He had a signal to investigate a case of causing hurt, criminal intimidation and attempt to commit culpable homicide reported by one Denis Nweke and Alhaji Adamu Nasiru against the Defendants.

The case file and 1<sup>st</sup>, 2<sup>nd</sup> and 7<sup>th</sup> Defendants were transferred. After taking the statement of the PW1, the 5<sup>th</sup> Defendant and others were arraigned.

That investigation revealed that the Complainant was attacked. That serious injury was inflicted on him before he was rushed to the hospital.

The photograph of the victim taken before and after treatment.

The statement of the Defendants are Exhibit D – D8. They all admitted going to High Court, Utako for a matter against AMAC.

Under Cross-Examination, he said the case came by way of a petition to the Commissioner of Police. It is his colleagues who took the PW1 to the hospital. He is not aware of any medical report submitted to this Court. He did not submit any medical report to the Prosecution. The PW1 applied for the medical report. The application was made in the name of PW1.

The Defendants opened their defence and eight (8) witnesses gave evidence in their defence.

DW1 is the 1<sup>st</sup> Defendant. He denied beating the PW1 and PW2. He said he was in the Court with other members of the Executive. That he was told by the Court Clerk that the case would not be going on.

They all left the Court premises around 9 O'clock. Some of them went to the National Assembly while others went to the market. He denied knowing if PW1 sustained injury through Defendants' actions.

The DW2 is the 2<sup>nd</sup> Defendant. He denied being in Court. That he was with his travelling agent between 10.00 – 11.00 a.m. after which he went to the market.

He did not go to the Court because he was not a member of the Executive as it is the Executive that the Town-Crier said should be in the Court. The receipt of payment made at the travel agent's office is Exhibit F.

The 3<sup>rd</sup> Defendant witness is the 7<sup>th</sup> Defendant. He stated he is a member of the Executive of Utako Market Shop Owners' Association. He was in Court. They were told the Court will not sit. They went downstairs and left for the National Assembly as directed by their Counsel. He is not aware that PW1 sustained injury. He did not participate in beating PW1.

DW4 is the 3<sup>rd</sup> Defendant himself. He said his mum was admitted in the hospital before 14/12/2021. That he was shuttling between the hospital and the market. He however got to the Court when his members were already coming out because the Court was not sitting. He went back to his car, bought the drugs of his mum and drove back.

The DW5 is the 5<sup>th</sup> Defendant herself. She was in the Court. Their lawyer addressed them outside. She followed the other members to the National Assembly.

Under Cross-Examination, she said she heard that there was a fight at the High Court, Jabi when she was in the National Assembly. She was new in the Executive. She saw him only once in her life. That there was no crisis in the Court.

The DW6 is the 4<sup>th</sup> Defendant. The DW6 evidence corroborated the others. The Court did not sit. They proceeded to the National Assembly.

The evidence of the 8<sup>th</sup> Defendant's witness is not different.

Learned Counsel to the Defendants adopted his Written Address dated 23<sup>rd</sup> of June 2021 and filed on the 24<sup>th</sup>. The Prosecuting Counsel's Written Address is dated 17/08/2021. He also adopted same as his final oral argument.

I have read and considered the Written Addresses of Counsel. The germane issue for determination as raised by both Counsel are:

1. Whether the Prosecution has proved its case against the Defendants beyond reasonable doubt.
2. Whether the failure of the Prosecution to call Mr. James Chudume or the Mobile Policeman who allegedly rescued the PW2 or Mrs. Kemi Ogedengbe and any of the Private Guards on duty at the gate of Jabi High Court on 14/12/2017 as eye-witnesses was fatal to the Prosecution.

3. Whether the presence of some Defendants at Jabi High Court on 14/12/2017 amount to participation in crime.

The last two issues are subsumed in Issue One. I shall deal with them first before going to the main one, which is Issue No. 1.

*On Issue 2, whether the failure of the Prosecution to call Mr. James Chudume or the Mobile Policeman who allegedly rescued the PW2 or Mrs. Kemi Ogedengbe and any of the Private Guards on duty at the gate of Jabi High Court on 14/12/2017 as eye-witness is fatal to the Prosecution.*

I have looked at the proof of evidence. The Prosecution named six (6) witnesses and any other relevant witness. The names of Kemi Ogedengbe is not on the list while that of Mr. James Chudume is on the List of Witnesses. His statement is not in the proof of evidence.

The said Kemi Ogedengbe made a statement to the Police from the Proof of Evidence but she was not called as a witness neither was the statement tendered.

It is now trite that the law imposes no obligation on the Prosecution to call a host of witnesses to prove its case. All it needs to do is to call enough material witnesses to prove its case. It does not lie in the mouth of the defence to urge the Prosecution to call a particular witness.

See **OLAYINKA vs. STATE (2007) 9 NWLR (PT. 1040) 561 SC.**

**IMHAURIA vs. NIGERIAN ARMY (2007) 14 NWLR (PT. 1053) 76.**

The evidence of a single witness, if believed by the Court can establish a criminal case even if it is murder.

See **EFFIONG vs. STATE (1998) 8 NWLR (PT. 562) P. 360 SC.**

The right of the Prosecution to call witnesses required to prove its case is not a mere privilege but a prerogative, accordingly it is not bound to call a host of witnesses. All it needs to do is to call enough material witnesses. It has a discretion in the mater.

In the circumstance of this case, it is my view and I so hold that failure of the Prosecution to call James Chudume and Kemi Ogendengbe is not fatal to the case of the Prosecution.

On the 3<sup>rd</sup> Issue – *whether the presence of some Defendants at the Jabi High Court on 14/12/2017 amounts to participation in crime.*

The evidence of the Prosecution is clear. The charge before this Court is also clear. The Defendants were not charged before this Court as onlookers but as persons who participated in the commission of the crimes alleged.

The evidence of PW1 and PW2 contained in the Defendants' Counsel's Written Address in paragraph 4.1 shows clearly that the Defendants were alleged to have participated actively in the commission of the crime. The issue is not borne out of evidence. It therefore fails. It is accordingly resolved in favour of the Prosecution against the Defendants.

On the last and main issue, which is ***whether from the totality of evidence before the Court, the Prosecution has proved its case against the Defendants beyond reasonable doubt;***

The burden of proof in a criminal case is on the Prosecution to prove the guilt of the Defendant beyond reasonable doubt. The burden lies on the Prosecution throughout the trial and never shifts.

See **OKOLO vs. C.O.P (1977) NCLR 1 CA**

**OKAFOR vs. STATE (2006) 4 NWLR (PT. 969) 1 CA.**

The guilt of a defendant can be proved by:

- (1) Confessional statement.
- (2) Circumstantial evidence.
- (3) Evidence of eye-witness.

Consequently, the Prosecution does not always need an eye-witness account to convict a Defendant if the charge can otherwise be proved contrary to the assertion of Defendant's Counsel in his Final Written Address.

The case against the Defendants is three count charge of (1) Conspiracy, under s-97(1) of the penal code (2) Attempt to commit culpable homicide under Section 95 and Section 229 of the Penal Code and (3) Assault occasioning serious bodily harm contrary to Section 246 of the Penal Code.

Criminal conspiracy is defined in Section 96 (1) of the Penal Code. It states:

*"When two or more persons agree to do or cause to be done  
(a) an illegal act, or  
(b) an act which is not illegal by illegal means, such an agreement is called criminal conspiracy."*

By subsection 2(1), no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act beside the agreement is done by one or more parties to such agreement in pursuance thereof.

The ingredients of the offence of conspiracy under Section 97 of the Penal Code are:

- (1) An agreement between two or more people to do or cause to be done some illegal acts or some act which are not illegal by illegal means.

- (2) Where the agreement is other than an agreement to commit an offence, some acts beside the agreement was done by one or more of the parties in furtherance of the agreement; and
- (3) That each of the Defendants individually participated in the conspiracy.

The 1<sup>st</sup> Prosecution witness' evidence has earlier been summarised. The evidence is that a crowd was outside. That on sighting him and PW2, they started shouting, "Thief" "Thief." "Look at them." "Betrayers" "Kill them."

On getting inside, he saw another crowd. He specifically mentioned the 5<sup>th</sup>, 7<sup>th</sup> and 2<sup>nd</sup> Defendants as being part of the crowd. The PW2 mentioned 7<sup>th</sup>, 2<sup>nd</sup>, 5<sup>th</sup>, 1<sup>st</sup>, 4<sup>th</sup> and 6<sup>th</sup> Defendants specifically and then others as people who shouted "Thief" "Thief." "AMAC collaborators" and "FCDA agents." Their evidence is that they assaulted them.

From the evidence, it is shown that the criminal design alleged is common to all the Defendants mentioned and others in the crowd. The conspirators from the evidence did not start the conspiracy at the same time. There was a crowd outside. There was another crowd inside.

The PW1 and PW2 were put in the middle as the crowd from outside advanced the same time the crowd from inside advanced towards them. In my view, there was the meeting of mind of the conspirators.

See **NWOSU vs. STATE (2004) 15 NWLR (PT. 897) 466.**

Conspiracy is a matter of inference from the acts of the parties. The meeting of the mind needs not be physical. From the evidence before me, the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants were specifically mentioned as part of the crowd which attacked PW1 and PW2. The 2<sup>nd</sup> Defendant in his extra-judicial statement evidence said he was not in the Court.

The alibi was not investigated but he was unequivocally pinned to the locus in quo by PW1 and PW2, while the evidence of 3<sup>rd</sup> Defendant and his statement is consistent with his innocence.

The inference I could deduce is that the PW1 and PW2 who are portrayed as AMAC collaborators and FCDA agents should be taught a lesson by assaulting them. The intention therefore was not to kill but to assault them.

Judas Iscariot was not killed by anyone as alluded to by PW1, he committed suicide. That statement allegedly made by 8<sup>th</sup> Defendant does not amount to an offence.

In my humble view, the Prosecution proved beyond reasonable doubt that the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants conspired together to inflict hurt on the PW1 and PW2 and I so hold.

The second count is an attempt to commit culpable homicide under Section 229 of the Penal Code. It provides for the punishment. It states:

*"Whoever does any act not resulting in death with such intention or knowledge and in such circumstances that if he by that act caused death, he would be guilty of culpable homicide punishable with death, shall be punished with imprisonment for life or for any less term or with fine or with both."*

In the circumstance, Section 95 of the Penal Code needs not apply. The ingredients of the offence of attempted homicide are:

- (1) The death of a human-being was attempted.
- (2) That such attempt was the act of the Defendants.
- (3) It is done with the intention of causing death or that the Defendants knew death would be the probable consequence.

I have reproduced the evidence earlier in this Judgment. I have also read the Exhibits, particularly Exhibit A, the photograph of the PW1 with blood running down his forehead. Exhibit C is medical report.

In my view, the Prosecution was not able to prove the first and third ingredient beyond reasonable doubt. In the circumstance, the Defendants are not found guilty of Count 2 and I so hold.

In respect of Count 3, it is punishable under Section 246 of the Penal Code. It states:

*"Whoever except in the case provided for by Section 244, voluntarily cause hurt shall be punished with imprisonment for a term which may extend to one (1) year or with fine which may extend to twenty pounds."*

The PW1 and PW2 stated in evidence that they were beaten and hit with chairs and iron by the Defendants and specifically 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants.

A specific mention of the above Defendants in my humble view excludes the other Defendants. Exhibit A1 is a publication of the Daily Trust reporting the said incident. The picture of the 1<sup>st</sup> Defendant showed blood running down his forehead.

Exhibit C is the medical report. The diagnosis made was "a scalp laceration secondary to assault."

I find as a fact that:

- (1) The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants assaulted the PW1 and PW2.

- (2) That the said assault occasioned grievous hurt.
- (3) That the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants intended to cause the said Nominal Complainant grievous bodily hurt.

I do not believe the evidence of the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants. It is a ruse crafted to deceive the Court. In my humble view, the Prosecution has proved this Count against the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants beyond reasonable doubt and I so hold.

The Prosecution, however, failed to prove the third Count against the 3<sup>rd</sup> and 8<sup>th</sup> Defendants beyond reasonable doubt. They are found Not Guilty. They are accordingly discharged and acquitted on Counts 1, 2 and 3.

In totality the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants are found guilty in Counts 1 and 3 and they are accordingly convicted.

### **SENTENCE**

I have taken into consideration the plea of allocutus and the fact that the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants have no previous criminal record. The aforesaid Defendants desecrated the hallowed chambers of the High Court of the FCT, Jabi with impunity. It is an affront on

the sanctity of the judicial sanctuary. It is an audacity that needs to be nipped.

However, to err is human and to forgive is divine. I shall therefore be lenient.

The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants are hereby sentenced as follows.

**1<sup>st</sup> Count:**

Six months imprisonment each or N200,000 fine.

**2<sup>nd</sup> Count:**

Six months imprisonment each or N200,000 fine.

Sentence to run concurrently while the fine is cumulative.

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**HON. JUSTICE U. P. KEKEMEKE**  
(HON. JUDGE)  
09/12/2021

**DEFENDANTS' COUNSEL:** We intend to call evidence about their good character to ameliorate punishment.

**PROSECUTION:** It is the prerogative of the Defendants. We are not standing on their way.

**COURT:** The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants are already convicts. They are hereby remanded in Prison custody while the case is adjourned to 2/02/2022 for Sentencing Proceedings.

(Signed)

**Hon. Judge**

07/12/2021

Defendants present.

John Ijagbemi, Esq. with G. A. Adeosun, Esq. for the Prosecution.

Chuks M. Mpama, Esq. for the Defendants.

**COURT:** Judgment delivered.

(Signed)

**Hon. Judge**

07/12/2021