

**IN THE HIGH COURT OF THE FEDERAL CAPITAL
TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
17TH DAY OF FEBRUARY, 2022**

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

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

COURT CLERKS: JOSEPH ISHAKU BALAMI & ORS.

BETWEEN:

COMMISSIONER OF POLICE
PROSECUTION

AND

1. EJEH JAMES }
DEFENDANTS }
2. ABRAHAM SIMON

JUDGMENT

The Charge against the Defendants by the Commissioner of Police, FCT Police Command dated 20th day of October, 2017 is as follows:

COUNT 1

That you, Ejeh James 'M' 36 years old dismissed Police Officer of Kuje FCT Abuja and you, Abraham Simon 'M' 36 years old dismissed Police Officer of Kuje FCT Abuja on or about 18th January, 2017 at about 0100hrs within the jurisdiction of this Honourable Court did conspire among (sic) yourselves to commit an offence to wit: Armed robbery. You thereby committed an offence punishable under Section 6 of the Robbery and Fire Arms (Special Provisions) Act, 2004.

COUNT 2

That you, Ejeh James 'M' 36 years old dismissed Police Officer of Kuje FCT Abuja and you, Abraham Simon 'M' 36 years old dismissed Police Officer of Kuje FCT Abuja on or about 18th January, 2017 at about 0100hrs, at Bill Clinton Junction, FCT, within the jurisdiction of this Honourable Court did commit an offence of armed robbery while you were armed with two AK-47 riffles with three magazines and 80 rounds of live ammunitions and one knife, robbed one Christie Makar and her driver the following items: Three bags containing personal wears; (2) Two ATM Cards of First and FCM Banks; (3) One Airtel SIM Card; (4) Mazda 626 with Reg. No. RSH 530 RD, ash colour,

etc. You thereby committed an offence punishable under Section 1 (2) of Robbery and Firearms (Special Provisions) Act, 2004.

The Charge was read to the Defendants and they pleaded Not Guilty. In proof of the case, the Prosecution called four (4) witnesses.

Succinctly, the first Prosecution witness is Christie Makar, a Legal Practitioner. She states that she knows the Defendants. That on 18/01/2017, she was on her way from the airport. She was picked by the driver called Olu, who she had earlier called around 11.45 p.m. About thirty minutes after which was then 18/01/2017, he picked her.

On the way at the airport junction, they saw two Policemen. They flagged the car down and the driver stopped. She was sitting in front with the driver. They asked where they were coming from. The driver responded from the airport. They asked why at this time and he further responded that he came to pick her.

The driver was asked to come down to open the boot of the car. They saw the bags and asked of the contents. She came out of the car, went to the boot and said they contain personal belongs. The fair one (1st Defendant) got around the driver's side while the short one (2nd Defendant) said she should enter the car with the bag. The fair one sat on the driver's seat.

He collected the key from the driver and drove away at a top speed leaving the driver behind. The short one (2nd Defendant) asked her what was in the bag. She replied that there was money.

In the process, they spoke Idoma Language. She told them they are her brothers and they want to kill her. They now told her to go down. She opened the door and fell down on her left leg. Got up again and fell down.

She ran further inside the bush, after a while she heard another vehicle coming with a top speed. She remained in the bush while she makes calls with her phone which was in her jacket. Rescue came after a while.

The Defendants were not covering their faces. The head lamps were on. The light in the boot also showed their faces. It is the 1st and 2nd Defendants that flagged them down.

She went to Idu Police Station. She made statement to the Police. The statements of the witness both at Idu Station and FCT Command are Exhibits A and A1.

Early in the morning, after her rescue, she was called that they had arrested the 1st Defendant and that she should come and identify the items.

She checked and discovered that some of the items were missing. A substantial part of the items were recovered.

She was taken to the Idu Barracks, the house of the 2nd Defendant, where more of her items were recovered. She was also taken to the house of the 1st Defendant where she recovered one of her blouse and one roll-on. She was also called for orderly room trial.

Under cross-examination by 1st Defendant's Counsel, she said it was the two defendants that flagged them down. The said Policemen are the 1st and 2nd Defendants who were tried and dismissed. She does not speak Idoma but Tiv Language.

Under cross-examination by the 2nd Defendant's Counsel, she answered that she was coming from Istanbul when they sped off, they are going towards Giri. It was one Mr. James, Policeman, that called her to say the items were recovered.

On a further question, she answered that she was traumatized. The 2nd Defendant was pointing a gun at her when he was asking the questions. She was able to know that they were speaking Idoma because she is from that area.

The 2nd Prosecution Witness is Olusegun Idowu. He is a taxi man. He identifies the two Defendants. They are the two Policemen who used gun to rob him and madam Christie.

He remembers the late hours of 17/01/2017 and early hours of 18/01/2017, the PW1 called him to pick her at the airport around 11.45 p.m. He picked her and on his way coming back, at the airport junction, he saw two Policemen with torchlight and gun. They stopped him. He was told to put on the inner light and he obeyed. He was also told to open his boot. They asked who owned the bags and I said PW1. They told him to open the bags. Then PW1 came down. She opened the small bag which was in her hand. They faced her with the guns. They collected his key, phone and his money. They told him to enter inside the bush and he ran into the bush. He said the two Policemen are the 1st and 2nd Defendants.

The 1st Defendant collected his key and gave the 2nd Defendant. They pushed PW1 inside the car and drove away following one way.

He came out of the bush and started begging people to help. A man stopped and carried him to the Police Station (Idu Police Station).

The Police followed him to the scene where the incident happened. They entered the bush but could not find madam but they saw one Golf car. They could not open it until the IPO forced it open. They saw ATM (Card), a Police beret cap and a MOPOL bag.

They started investigation, towed the vehicle to the Station. He followed them to the Station. The Defendants were eventually arrested. He wrote his statement. The Statement of the PW2 is Exhibit B.

It was the 2nd Defendant who showed him and the Police where his car was, inside a big hole. They used a towing vehicle to bring it out. He has been given his car.

Under cross-examination by 1st Defendant's Counsel, he answered that he got to the airport around 12.20 a.m. They stopped him at the airport junction at about 12.30 a.m. – 1.00 a.m. He stopped because they were Policemen.

That as soon as he ran into the bush they took one way. He saw them. They also stopped another jeep after him which had light.

On being cross-examined by the 2nd Defendant's Counsel, he said that it was the 2nd Defendant that was arrested. That it was the 2nd Defendant that drove the car. They carried the PW1 and the car inside the bush. The car was abandoned in a place where sand was excavated to fill the road.

The PW3 is Kelvin Ejembi. He is a Policeman formerly attached to Iddo Division but now at CID FCT Police Command. He knows both Defendants.

The 2nd Defendant mentioned and showed him the address of the 1st Defendant. He stated that on 18th day of January, 2017, he was on duty at Iddo Police Station when one Idowu Olusegun, PW2, a cab driver ran to the Station around 12 midnight that on his way from airport with a female passenger, one Mrs. Christie around Bill Clinton Junction, they were stopped by two armed men,

half-dressed on Police uniform. He was asked to come out and he left the passenger inside.

One of the armed men entered the driver's seat and the other followed and zoomed out of the scene leaving the driver standing at the junction.

He was helpless. He stopped a vehicle which took him to Iddo Police Station. The Patrol Team followed them to the scene. They searched round the bush with their search light. They discovered a car parked inside the bush. It was a Golf 3, oxblood in colour with the doors locked. They used their flash light to check inside the vehicle and discovered the following items: (1) ATM Card (2) SIM Card (3) Jungle bag that can take the size of an AK-47 and (4) Red beret.

They opened the car and discovered that the ATM Card bears the name of the 2nd Defendant. They employed the services of a towing van to tow same to the Station. They came out of the bush. A senior Police Officer named James Vandes met them. He said he received a phone call from a woman who was just robbed.

Some Policemen were attached to a vehicle to locate the woman. She was found between Iddo and the University of Abuja. She was brought to the spot where they incident happened. The victim was released to the senior Police Officer.

They proceeded to the Kuje Barracks based on the red beret they saw there. It is worn by a branch of the Police called CTU which office is situate at Kuje Police Barracks. They met with the Provost. He said 2nd Defendant should be in the house. That he is on Team B duty schedule for the following day. He showed them their Weekly Posting on the Notice Board. He took them to his house. They met him absent. The wife and children were kept with the Provost.

The 2nd Defendant came back after two hours. The Provost halted him and he answered that he was Abraham Simon and he was arrested. They asked of his second. He showed them the house of the 1st Defendant. He was not at home. They went back to the station with 2nd Defendant.

They took his statement. He admitted the crime. A search warrant was issued. They recovered an AK-47 Rifle with 30 rounds of ammunition in the house of 2nd Defendant.

The 1st Defendant was not at home. The door was open. In the presence of the DPO and 4 others and in the presence of 2nd Defendant, they discovered one AK-47 Rifle with 60 rounds of live ammunition, double magazine with 3 travelling bags with airport tag.

On the same day the DPO ordered the transfer of the suspects and exhibits to State CID for more investigation since one of the suspects was still at large.

The 2nd Defendant confessed to the DCP that he committed the crime. The case was transferred to SARS. They were also accompanied by the PW2 and PW1 (driver and passenger) which identified the suspects.

Their findings:

- (1) The two Defendants were involved in armed robbery.

- (2) The ATM Card bears 2nd Defendant's name.
- (3) The vehicle parked in the bush belonged to 2nd Defendant.
- (4) The 2nd Defendant kept the stolen properties in the house of 1st Defendant.

The 2nd Defendant later showed them where they kept the snatched vehicle between Iddo and the University. It was a Mazda 323, ash colour, owned by PW2, Olusegun Idowu.

The Statements of the IPO and 2nd Defendant are admitted as Exhibit C and C1.

Under cross-examination by 1st Defendant's Counsel, he said 2nd Defendant showed him the picture of 1st Defendant when they went to conduct a search. He saw him at SARS and compared the photograph with the 1st Defendant.

The PW4 is Inspector Auta Mathias attached to SARS (State CID). He states that he knows the Defendants. That he investigated their case.

On 18/01/2017, a case of criminal conspiracy and armed robbery was transferred from Iddo Police Station to CID (SARS) for investigation alongside with the 2nd Defendant, Abraham Simon, two (2) AK-47 Rifles, 80 rounds of live ammunition, three (3) magazine, three (3) bags containing personal wears, one (1) Golf 3 red in colour, one (1) Mazda 626 car ash in colour, Counter Terrorism beret, one (1) knife, two (2) ATM Cards bearing the name of 2nd Defendant.

On receipt of the case, the 2nd Defendant was cautioned and he volunteered a statement.

On the 30/03/2017, the 1st Defendant was sighted at Force Headquarters, Louis Edet House where he was arrested and brought to SARS for investigation. He was on the run.

His statement was recorded. He confessed to have been part of the crime along with the 2nd Defendant. They were tried in the Orderly Room and dismissed.

The ash colour Mazda 626 was released to the owner while the Golf 3 is still in Police custody, registered as exhibit. The bags were released to the victim, Christie Maka.

The bonds releasing the items to the owners as above is Exhibits D and D1.

The mazda 626 was abandoned in the ditch. The beret, ATM Card and Golf are all registered with the Exhibit Keeper. The AK-47 Rifle and ammunition are official rifles attached to the Counter Terrorism Unit. They were released to their Commander.

The ATM Cards of First Bank and FCMB belonging to 2nd Defendant are Exhibits E and E1.

Police Beret (red in colour) is Exhibit F.

Two numbers of Rifle and thirty rounds of ammunition (in two magazines) are Exhibits G, G1, G2 and G3.

Commercial Plate Number LKJ 720 XH with a jack knife are Exhibits H and H1.

The Statement of the 1st and 2nd Defendants made at SARS are Exhibits I and I1.

The witness said during the course of investigation, he found that 1st and 2nd Defenants were Policemen who attacked and robbed the PW1 of her belongings, using the Madza 626. That her belongings were recovered from the custody of the 1st Defendant. They confessed to the crime. The nominal Complainant's properties were released to her on bond.

Under cross-examination by the 2nd Defendant's Counsel he said the nominal Complaint was returning from abroad. The 1st Defendant drove the vehicle when it was snatched. The items were found in the house of the 1st Defendant. The AK-47 was recovered from 2nd Defendant. It was used for the robbery. That his Counter Terrorism Unit (CTU) beret was recovered from the car which he drove to the scene.

Immediately the case was reported, the 2nd Defendant absconded. There was no electronic recording during interrogation. The Defendants abandoned their own vehicle at the scene of the robbery.

The above is the case of the Prosecution.

The Defendants gave evidence for themselves. The 1st Defendant is the DW1. He is Ejeh James. He gave evidence of his trainings as a Police Officer and as a Sniper. He denied knowing the 2nd Defendant.

On 18/01/2017, he was off duty while working at NNPC Towers. He travelled to his hometown when Provost called him in the morning around 9 O'clock asking him to confirm his location. He told him he was at Lafiya travelling home. He was asked to come back to base that the Commander want to see him. He made a U-turn and started coming back. He kept calling him.

He got to the barracks around 1 to 2.00 p.m. He met with him. He went to his apartment and discovered all his things are burgled. The door was removed. They also made away with his rifle and savings. He asked the Provost why his room was burgled. He was informed the Order was from above. He was surprised.

The Commander was not coming so he left and travelled home. He explained to his uncle. After two or three weeks he came back to Abuja. He got the Provost who said the matter was now in the Police Headquarters.

He reported at the office of A. I. G Bature (Head of CTU). He asked him many questions. He told him he knew nothing. He told him to report to SARS so that they can take his statement. He was taken to SARS.

He was slapped and tortured. They took bamboo and plank to beat him. They tied his hands. They tied him. They also put a block on his back. He was crying and shouting but no help. He was bleeding from his fingers and nostrils.

They brought a document out. He narrated his ordeal. He signed a statement under duress.

He was travelling to his hometown because his father was not well. That inside his routine diary, he booked that he was going to a nearby clinic. He does not know PW1.

Under cross-examination by the Prosecution, he stated he is Idoma by tribe. He was in Counter Terrorism Unit. He denied knowing the 2nd Defendant. He admitted going to the Force Headquarters to report himself. They have no armory in their base. They have to be with their rifle until the end of the month.

His Colleague was aware of his journey. He booked that he was going to a nearby clinic and travelled home. The wound healed on its own. That Sgt. Ade hit him with the butt of his rifle and broke his teeth. He showed his family members the injury.

The original Statement he wrote was torn by the IPO. He did not know PW1 and PW2. He had a clash with PW3 during fuel scarcity.

To a question he answered that all the witnesses conspired against him.

The above is the defence of the 1st Defendant.

The 2nd Defendant's witness is the 2nd Defendant himself. He is Abraham Simon. He was working in the Counter Terrorism Unit.

On 18/01/2017, he was inside the barrack. He knows the 1st Defendant as his colleague. They also live in the same barracks. They have been working together.

On 17/01/2017, he was in his house with his wife and children. At about 7.15 p.m. the 1st Defendant came to his house half dressed in uniform with a white T-shirt on top saying he was coming from his duty post in NNPC. He told him that on his way coming, his vehicle developed a mechanical fault which resulted in overheating. That he parked his car around army observation point at City Gate.

He told him his mother was admitted in Kwali hospital. That he should borrow him his Golf 3 salon car, red in colour. That he wanted to use it to go home to see his mother. He gave him the key. His wife and two children were there. He promised to return the vehicle before he would go to work the following day.

At about 18/01/2017, he called hm. His phone was switched off. As he was preparing to go to work, he saw three Policemen. They asked of his name. They told him his attention was needed at Iddo Police Station. Their Provost also came. He asked him to follow them. They took his wife and kids out of the room and searched the house. They saw AK-47 rifle in the house. It belongs to Peter Robison who was his Guard Commander in his duty post. They also recovered one knife and his Police beret.

He followed them to Iddo Police Station. He saw his Golf 3 parked in front of the Police Station with one Madza 626. They asked which of the two cars belongs to him. He identified the Golf 3 as his own. They paraded five of them. The woman identified the PW3, Sgt. Ejembi. The woman did not point at him. They were transferred to SARS. He recorded the conversation in a cell phone.

The IPO collected two ATM Cards from the car. He handed same over to Inspector Auta. They tortured him, beat him up. Nobody was allowed to visit him.

On 18/02/2017, the Police told him to sell his Golf 3 to secure his bail. That the Police went to the bank to check his account with the ATM Card. They discovered that there was no money there.

They brought him out of the cell after three (3) days and showed him two travelling bags and two (2) AK-47 rifles. He was snapped with the items.

On 28/02/2017, the saw the 1st Defendant in the OC SARS Office. He asked 1st Defendant why he ran away. He said he did not run. He said he also asked him why he abandoned his motor, he answered that it was a long story. He persisted and he said he should not ask him.

He wrote his statement three times. They were torn by Inspector Auta. The statements that were tendered were not written by him.

The 1st Defendant has been begging him every day to forgive him. He has already forgiven him. That the AK-47 was given to him by Robinson for safe keeping.

Under cross-examination, he answered that no identification parade was conducted. That it was alleged that a vehicle was used in carrying out the robbery. He is the owner of the vehicle. He never had any problem with 1st Defendant before the incident.

Under cross-examination by the Prosecution, he answered that he was serving before the incident. He knows the 1st Defendant. That they served together at the same Counter Terrorism Unit. They also live in the same barracks. That 1st Defendant collected the vehicle on 17/01/2017.

That he knew him for about two (2) months before he came to borrow the car. He denied making the statement that they went to visit the mother together.

He denied taken Police to the place where the Madza car robbed was recovered. He also denied taken the Police to the house of 1st Defendant. He did not see the items credited to him until he got to SARS i.e. the travelling bags.

He never saw PW1 before. He answered that PW1 pointed at him. He denied knowing PW2. He remembers that PW1 pointed at him as one of the persons that robbed him. The 1st Defendant told him he was going to Kwali hospital.

The above is the case of the 2nd Defendant.

The 1st Defendant's Final Written Address is dated 18/10/2021. He posited two (2) issues for determination:

- (1) Whether the Prosecution has proved its case beyond reasonable doubt.
- (2) Whether the extra-judicial statement written by PW4 whereof the 1st Defendant was forced to sign qualify as a confessional statement.

The issues formulated for determination is in all foreshadowed with the Issue 1 formulated by the 1st Defendant's Counsel.

The Prosecution's Final Written argument also postulated the same issue for determination.

The second issue formulated by the 1st Defendant's Counsel is of no moment.

On 8/11/2018, the Defendants objected to the admissibility of the statements on the ground that they are forced and or induced to sign the said statements. A trial-within-trial was conducted and a considered Ruling delivered on 21/09/2020. The trial-within-trial took about two years to conclude.

That Ruling settled the issue of admissibility of the Defendants' Statements. It was not appealed against. It stands therefore.

The common issue for determination is **whether the Prosecution has proved its case against the Defendants to enable the Court convict them.**

The Charges against the Defendants are brought under Section 6 and Section 1 (2) of Robbery and Firearms (Special Provisions) Act, 2004.

Section 6 of the Robbery and Firearms (Special Provisions) Act, 2004 states:

Any person who

- (a) aids, counsels, abets or procures any person to commit an offence under Sections 1, 2, 3 or 4 of this Act, or*
- (b) conspires with any person to commit such an offence, or*
- (c) supplies, procures or provides any person with firearms for use to commit an offence under Sections 1 or 2 of this Act.*

Whether or not he is present when the offence is committed or attempted to be committed shall be deemed to be guilty of the offence as a principal offender and shall be liable to be proceeded against and punished accordingly under the Act.

Section 1 (2) of the Robbery and Firearms (Special Provisions) Act, 2004 states:

Any person who commits the offence of robbery shall upon trial and conviction under this Act be sentenced to imprisonment for not less than 21 years.

2(a) If any offender mentioned in sub-section 1 of this Section is armed with any firearms or any offensive weapons or is in company with a person so armed,

(b) at or immediately before or immediately after the time of robbery the said offender wounds or uses any personal violence to any person,

the offender shall be liable upon conviction under this Act to be sentenced to death.

It is on record that the offences for which the Defendants are charged is conspiracy and armed robbery. In a criminal trial, such as this, the burden of proof lies, throughout upon the Prosecution to establish the guilt of the Defendants beyond reasonable doubt.

See **IGABELE vs. STATE (2006) 6 NWLR (PT. 975) 100 SC.**

OCHE vs. STATE (2007) 5 NWLR (PT. 593) 59.

The 1st Count is conspiracy. Conspiracy is an agreement of two or more persons to do an act which it is an offence to agree to do.

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

AMACHREE vs. NIGERIAN ARMY (2004) 3 NWLR (PT. 807) 256.

The offence of conspiracy is tackled as a matter of inference to be deduced from certain criminal acts or inactions of the parties concerned.

See **ODUNEYE vs. STATE (2001) 13 WRN 88 SC.**

The ingredients of the offence of conspiracy are:

- (a) An agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal by illegal means.

(b) Where the agreement is other than an agreement to commit an offence, that same acts besides the agreement was done by one or more of the parties in furtherance of the agreement, and

(c) Specifically that each of the Defendants individually participated in the conspiracy.

See **ABACHA vs. F.R.N (2006) 4 NWLR (PT. 970) 239.**

AITUMA vs. STATE (2006) 10 NWLR (PT. 989) 452.

I have earlier reproduced the evidence of the Prosecution. The PW1 in her evidence said on 18/01/2017, on her way from the airport, her car was flagged down by two Policemen who are the 1st and 2nd Defendants. She graphically narrated the incident involving the two Defendants, who later allegedly pushed her inside the car and drove away leaving the driver that came to pick her.

Both of them spoke Idoma Language while they were in flight with her goods. When she heard them and said they are her brothers, they told her to open the door and go down. She opened the door and fell on her left leg.

The PW2 was the driver of the said car that was robbed. He said he was flagged down by the Policemen who had guns and torchlight. They collected his key, money and phone. The 1st Defendant collected the key and gave to the 2nd Defendant.

I have read Exhibits A and A1 and Exhibit B, the Statements of the PW1 and PW2. They all corroborated their oral evidence.

Exhibit C is the Statement of PW3. I have also read Exhibits I and I₁, the Confessional Statements of the 1st and 2nd Defendants.

From the actions and inactions of the 1st and 2nd Defendants as narrated by PW1, PW2 and PW3, I can deduce that the 1st and 2nd Defendants agreed to do or caused to be done an illegal act viz armed robbery by

mounting an illegal roadblock to rob with their official rifles. The 1st and 2nd Defendants' confessional statements, Exhibit I and I₁, which were admitted after a trial-within-trial also buttresses my conclusion.

In the circumstances of this case, it is my view and I so hold that the 1st and 2nd Defendants are found guilty in Count 1 as charged.

In relation to the 2nd Count, the PW1 and PW2 gave evidence of how they were robbed by the 1st and 2nd Defendants while armed at an illegal roadblock. Three (3) bags containing personal belongings were taken from her with some money inside it. More of the items robbed were discovered in the house of 1st Defendant.

In the house of 2nd Defendant, she said her blouse and roll-on were found. The bags and the bond releasing the car snatched by the 1st and 2nd Defendants are Exhibits D and D1.

Under cross-examination by the 2nd Defendant's Counsel, she said the 1st and 2nd Defendants carried guns. That the

2nd Defendant was pointing the gun at her when he was asking where the money was. That she was traumatized.

The PW2's evidence is that the 1st and 2nd Defendants used their gun to face her. They collected his key, phone and money and ordered him to enter the bush. The rifles and ammunition are Exhibit G. Exhibit G1, G2 and G3 are belongings used by the two Defendants.

The two ATM Cards recovered in the car parked in the bush near the scene of crime is Exhibit E and E1. They are in the name of the 2nd Defendant. The beret in the Golf car bearing plate number LKJ 720 XA belongs to the 2nd Defendant.

The PW4 said in evidence that the victim's properties were conveyed to the house of the 1st Defendant.

He found out during investigation that the 1st and 2nd Defendants were Policemen who attacked and robbed the nominal Complainant, Christie Maka of her properties using the Mazda 626.

The 3rd Prosecution witness said the 2nd Defendant showed the Police where they kept the snatched vehicle between Iddo and the University of Abuja.

From the testimony of PW1, PW2, PW3 and PW4 as summarized above, it is clear:

- (1) That there was a robbery.
- (2) The Defendants were armed.
- (3) That the Defendants while with the arms participated in the robbery.

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

OKOSI vs. A-G BENDEL STATE (1989) 1 NWLR (PT. 110) 642 SC.

MARTINS vs. STATE (1997) 1 NWLR (PT. 481) 355.

The testimony of PW1 and PW2 is the testimony of eye witnesses. The 1st and 2nd Defendants also confessed to the crime. The Confessional Statements are Exhibits C1, I and I₁.

The law is that there is no evidence stronger than a person's own admission or confession. A defendant can be convicted with his own confession, however, it is desirable to have some evidence outside the confession, which will make it probable that the confession is true.

See **DIBIE vs. STATE (2007) 9 NWLR (PT. 1038) 30 SC.**

NWAEBONYI vs. STATE (1994) 5 NWLR (PT. 343) 130 SC.

The evidence of PW1 and PW3 which is a graphic narration of the incident corroborates the Confessional Statements. The confessions which are free and voluntary are direct and positive. They are properly proved vide a trial-within-trial that spanned about two years. I have also examined the said confessions in the light of other credible evidence.

See **AKINMOJU vs. STATE (2000) 4 SC (PT. 1) 64.**

The Learned Senior Counsel to the 1st Defendant had argued that the 1st Defendant raised a question of alibi when he said he was on duty at NNPC Towers. The 1st

Defendant in his statement (Exhibit G) made at Iddo Police Station at the earliest opportunity stated that he was attached to ATS Unit, Kuje at Kuje Branch Office. He said "we left Kuje Barracks heading for Kwali Area Council.

On our personal interest, we got to Bill Clinton Junction and discovered that the car ran out of fuel, we now (choice) sic choose to carry out stop and search by the U-turn of Bill Clinton Junction.

In his statement made at SARS, he stated that at about 12.00hrs on 16/01/2017 the 2nd Defendant called him on phone to help him to Kwali to see his family. He saw he was on duty and the call ended.

On 17/01/2017 at about 22.00hrs the same colleague called him to help him to Kwali as he will be leaving for work the next day, 18/01/2017. He agreed to take him to Kwali. The 2nd Defendant asked him to carry his rifle..."

There is nowhere in his Statements the 1st Defendant raised an alibi. An alibi is a defence which seeks to

persuade the Court that the Defendant could not possibly be at the scene of the crime as he was somewhere else, where most probably there were people who could testify that at the time of the alleged incident or act, he was not at the scene of the crime.

The 1st Defendant did not call such witnesses. The law is that the Defendants must at the earliest opportunity furnish the Police with full details of the alibi to enable the Police check the details. Failure of the Defendant to furnish the particulars of the alibi weakens the defence.

See SOWEMIMO vs. STATE (2004) 11 NWLR (PT. 885) 515.

NSOFOR vs. STATE (2003) 10 NWLR (PT. 775) 274 CA.

However, in this case, the 1st and 2nd Defendants are equivocally pinned to the *locus in quo* as the ones committing the offence, the defence of alibi no more avails them. The unequivocal evidence of the PW1, PW2 and PW3 destroyed such defence.

Furthermore, on the issue of conspiracy, the 1st Defendant denied knowing the 2nd Defendant in his testimony. In his written testimony, he admitted they are friends. The 2nd Defendant's oral testimony before the Court, he said he knows the 1st Defendant as his colleague. That they live in the same barracks.

Learned Senior Counsel also raised the issue of identification because the issue occurred in the night. The evidence of PW1 and PW2 are lucid on the above issue. The PW1 said in his evidence, *"I know the Defendants, they were not covering their faces. The headlamp was on. The light in the boot was also such that showed their faces."*

She identified 1st and 2nd Defendants as the Policemen who flagged her down. She came down from the car to identify her bags in the boot. She also vividly described the structure and built of the Defendants referring to the 2nd Defendant as the short one and 1st Defendant as the fair one.

The 2nd Prosecution witness said he had a full light. He saw them. He identified the said two Policemen as 1st and 2nd Defendants. The PW3 stated in evidence that the PW1 and the PW2 identified the Defendants.

The law is that it is not in every case that identification parade is necessary. Where the Prosecution witnesses have knowledge of the Defendants, identification parade is not necessary.

See **ARCHIBONG vs. STATE (2004) 1 NWLR (PT. 855) 488.**

IGBI vs. STATE (2000) 2 SC 67.

Identification parade is not the only way of establishing the identification of a defendant in relation to the offence charged. Whereas in this case, the witness has ample opportunity to identify the Defendants, a parade is not necessary. Recognition of a defendant is more reliable than identification.

See **EYISI vs. STATE (2001) 8 WRN 1 at 9 & 10 SC.**

In the circumstance of this case, it is my view and I so hold that identification parade was not necessary in this case.

I have also read and considered the Written Address of 2nd Defendant. There are no material contradictions in the evidence of Prosecution to warrant casting a doubt in the evidence of Prosecution witnesses.

In totality I find as follows:

- 1) That on the wee hours of 18/01/2017 there was a robbery at Bill Clinton Junction, Airport Road, Abuja.
- 2) The 1st and 2nd Defendants who were Policemen of Counter Terrorism Unit mounted an illegal roadblock at Bill Clinton Junction, Airport Road, Abuja.
- 3) They were armed with Ak-47 Rifle each being their official Rifles and ammunitions.
- 4) The 1st and 2nd Defendants flagged down the vehicle of PW2 with PW1 inside.

- 5) Having asked and was sure of the properties inside snatched the PW2's vehicle, Madza 626 with the PW1 and her bags.
- 6) The phone, money and key of PW1 were also robbed.
- 7) The PW1 was also told to move out of the vehicle without her bags when they thought she is from their tribe and speak the same language.
- 8) They abandoned the car in a ditch and took the bags to the 1st Defendant's house.
- 9) The 1st Defendant absconded as soon as he realized that the bubble had burst.
- 10) They confessed to the crime.
- 11) Their statements were voluntary as PW3 is from the same local government/tribe with the Defendants. They were also Policemen like him.
- 12) The 1st and 2nd Defendants while armed robbed the PW1 and PW2 at the aforesaid roadblock.

In the circumstance of this case, it is my view that the Prosecution has proved the charge against the 1st and 2nd Defendants, and I so hold.

The 1st and 2nd Defendants are therefore found guilty in Count 2. They are accordingly convicted.

PROSECUTION: We urge the Court to take cognizance of Section 401 and Section 416 of Administration of Criminal Justice Act (ACJA) and sentence them accordingly.

**SENTENCING PROCEEDINGS IN ACCORDANCE
WITH ACJA**

1ST DEFENDANT'S COUNSEL: I intend to do *allocutus*. I do not wish to call evidence. The 1st Defendant is a married man. This is the first time he is being charged with a criminal offence. We urge the Court to be mild.

2ND DEFENDANT'S COUNSEL: We pray the Court to tamper justice with mercy. The 2nd Defendant is a victim of circumstance. He is a first offender. He is a father of three. His family has scattered. The wife is disable as at now. I pray the Court to tamper justice with mercy.

SENTENCE

It is pathetic that I am handing down this sentence. If it were about me, I would have gladly forgiven them as enjoined by the Scriptures.

However, it is about the law and society. The law and society have imposed a duty on me and I do not wish to fail.

Hapless citizens of this country are under a siege by a few bad eggs in the security agencies *a fortiori* the Nigeria Police whose men daily turn their guns (bought by tax payers money) against Nigerians extorting them with impunity.

Citizens daily agonise and denounce this dangerous trend as those paid to protect them are daily doing the exact opposite.

It is therefore imperative to make Orders that will serve as deterrence to others who are of the same tendencies. They deserve no pity.

In any case, I have no choice/opinion in the matter as the law has tied my hands to impose the only sentence prescribed by law.

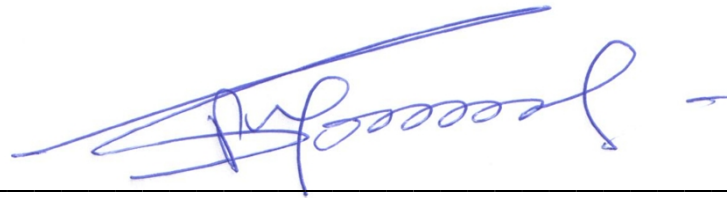
The 1st and 2nd Counts carry the same punishment. The 1st and 2nd Defendants are therefore hereby sentenced to death.

Exhibits E and E1 are hereby ordered to be returned to the 2nd Defendant.

Exhibit F – Red Beret and Exhibit H1 – the Jack Knife shall be forfeited to the Federal Government of Nigeria.

Exhibits G, G1, G2 and G3 which are the two AK-47 Rifles and thirty (30) rounds of ammunition are released to the

Commander of the Counter Terrorism Unit of the Nigeria
Police Force.

A handwritten signature in blue ink, appearing to read 'U. P. Kekemeke', written over a horizontal line.

HON. JUSTICE U. P. KEKEMEKE

(HON. JUDGE)

17/02/2022

Defendants present.

K. P. Ebong, Esq. for the Prosecution.

Francisca E. Agada (Mrs.) holding the brief of
Prof. Agbo J. Madaki for the 1st Defendant.

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

COURT: Judgment delivered.

(Signed)

Hon. Judge

17/02/2022