

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT KUBWA, ABUJA**

**ON FRI DAY THE 13<sup>TH</sup> DAY OF APRIL, 2022**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**

**JUDGE**

**SUIT NO.: FCT/HC/CR/245/18**

**BETWEEN:**

COMMISSIONER OF POLICE	----- }	PROSECUTION
<b>AND</b>		
1. ESSE PIUS EVANS 2. KELVIN T. JAMES	----- }	DEFENDANTS

**BENCH JUDGMENT**

This matter was filed 21<sup>st</sup> June, 2018. On 31<sup>st</sup> October, 2018 the Defendants were arraigned and they pleaded NOT GUILTY to the offence of Armed Robbery. The matter was heard at the High Court Maitama by Justice V.V.M. Venda who retired in 2020. The matter was assigned to this Court in 2021.

On the 22<sup>nd</sup> February, 2021 the Defendants were brought before this Court for arraignment. The Prosecution was not in Court. It has been from one checkened story to the other as the Prosecution was never in Court. But on the 10<sup>th</sup> February, 2022 the Prosecution was in Court but Defendants were not in Court. The Court adjourned the

matter for arraignment and trial. The Prosecution Counsel had informed Court that day that the next adjourned date(s) are convenient to him. The three (3) days were 11<sup>th</sup> – 13<sup>th</sup> April, 2022. The Court had ordered the Prosecution Counsel to ensure that the Defendants and their respective Counsels were duly notified.

On 11<sup>th</sup> April, 2022 the Defendants and Defendants' Counsels were in Court. The Prosecution Counsel was not in Court. The Court had asked the Defendants' Counsels to ensure that they put a call across to the Prosecution Counsel so he should be in Court. The 1<sup>st</sup> Defendant Counsel did but he said the Prosecution Counsel told him that he is attending a matter in another Court. That he will not be coming. So Court adjourned to 12<sup>th</sup> April, 2022 and still ordered the Defendants' Counsels to reach out to Prosecution Counsel and the story was the same – that he has no chance to attend Court today – 13<sup>th</sup> April, 2022.

Today, the same Prosecution Counsel is not in Court. He did not even write to Court to state why he has not been to Court after he had agreed to be in Court to prosecute the matter.

Today, the 1<sup>st</sup> & 2<sup>nd</sup> Defendants' Counsels had in unison applied that the matter be struck out, lamenting that the 1<sup>st</sup> & 2<sup>nd</sup> Defendants had been attending Court since the day they were arraigned at the High Court before Justice V.V.M. Venda in 2018.

I took a peep at what had transpired in this Suit before Justice V.V.M. Venda I realized that the Prosecution were always absent. This was corroborated by the 1<sup>st</sup> Defendant

Counsel. I also realized that the Prosecution never opened its case after the Defendants were arraigned on the 31<sup>st</sup> October, 2018 till the matter was transferred to this Court.

As I write this, the Defendants had not even been arraigned in this Court. The delay to arraign them has been as a result of the absence of the Prosecution Counsel.

It is the law that once a matter is transferred from one Court to another it starts de novo. That means that any arraignment done before the transfer comes to nothing after the transfer. In this case as it stands the Defendants are not yet arraigned before me. They have not taken a plea too. But they have been coming to Court every day the matter is scheduled for arraignment. But the Prosecution Counsel had been absent ever since.

This Court feels that since the Court is one, there is no really need to “re-arraign” as it were the Defendants in this Suit. But on abundance of caution, this Court will suo motu Order that the Charge be read to the Defendants for them to take their plea before this Court. After the Court can consider the application made by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants’ Counsels.

Clerk, read the Charge to the 1<sup>st</sup> & 2<sup>nd</sup> Defendants so they can take their plea. The above Order is given in exercise of the discretionary power of Court to do justice.

### COUNT 1

Question: Guilty or Not Guilty?

Answer: Both Defendants pleads Not Guilty.

COUNT 2

Question: Guilty or Not Guilty?

Answer: Both Defendants pleads Not Guilty.

COURT:

The Defendants has pleaded Not Guilty to the two (2) Count Charge.

It is evidently clear that the Prosecution Counsel for reason known only to it is not diligent in the prosecution of this case. They have delayed the opening the trial since 30<sup>th</sup> October, 2018 when the Defendants took their plea of Not Guilty. They have equally delayed in the arraignment of the Defendants since this matter was transferred to this Court.

Today the Prosecution Counsel is not in Court as promised. He was in Court the day the Court adjourned this matter for three (3) days, 11<sup>th</sup> – 13<sup>th</sup> April, 2022. He had not even given the simple courtesy of writing to Court or calling the Court Registrar to explain or state why he has been absent for these three (3) days.

The 1<sup>st</sup> Defendant Counsel had reported that he obeyed the Order of Court by calling the Prosecution Counsel to remind him that the matter is ongoing but he refused to be in Court.

It is on record that the Defendants had been in custody since 2018. Bail was not granted to them. The record shows that they had diligently attended Court every day

the matter was scheduled except on the 10<sup>th</sup> February, 2022.

It is the law that no Defendant is guilty until proven guilty before a Court of competent jurisdiction. In this case, the Prosecution has delayed the case. The Defendants have pleaded Not Guilty. The 1<sup>st</sup> & 2<sup>nd</sup> Defendants' Counsels had applied for matter to be struck out relying on S. 351 and 392 of the ACJA. They have also relied on the provision of S. 36 (6) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

Given the scenario stated above, the question is should this Court grant the application and strike the matter out and allow the Defendants who have been in custody since May 2018 till date to go and wait for the day the Prosecution will have chance to do what they have not been able to do since 2018 bearing in mind that there has been inordinate delay by Prosecution and that the attitude of the Prosecution is contrary to S. 36 (6) CFRN 1999 as amended which provides that trial of a case should not be delayed but shall be within a reasonable time frame? Will doing so be in the interest of justice of this case?

It is the humble view of this Court that this case should be dismissed and rather than struck out. Rather than continue to keep the Defendants in custody. This is because given the antecedent of the Prosecution they are not ready to prosecute this matter. After all, the time they have in custody should have been part of sentence if they were found Guilty of the offenses. But in this case the Prosecution has not even proven and established the case against them.

This Court therefore DISMISSES this case and DISCHARGES and ACQUITS the Defendants – Esse Pius Evans and Kelvin T. James.

This Court Order that the Defendants should from this Court go back to their respective homes.

**This is the Judgment of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2020 by me.**

---

**K.N. OGBONNAYA  
HON. JUDGE**