

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 17TH NOVEMBER, 2022.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.
CHARGE NO.: -FCT/HC/CR/151/17

BETWEEN:

COMMISSIONER OF POLICE:.....COMPLAINANT

AND

1) ABDULLAHI AHMED
2) AUGUSTINE OLIVER
3) HARUNA LABARAN }DEFENDANTS

John Ijagbemi for the Prosecution.
Ibrahim I. Etsulolo for all the Defendants.

JUDGMENT.

The Defendants, on the 22nd day of February, 2018, were arraigned on a two count charge as follows;

COUNT 1:

That you, Abdullahi Ahmed, male, Augustine Oliver, male, HarunaLabaran, male, and others at large on or about 9/8/2016 at Lubell Nig. Ltd, Idu Industrial Estate, Airport Road, Abuja, within the Abuja judicial division, did conspire among yourselves to commit a felony to wit; theft and you indeed carried out same act pursuant to your agreement and you thereby committed an offence punishable under Section 97 of the penal code.

COUNT 2:

That you, Abdullahi Ahmed, male, Augustine Oliver, male, HarunaLabaran, male, and others at large on or about 9/8/2016 at Lubell Nig. Ltd, Idu Industrial Estate, Airport Road, Abuja, did steal 510 coils of Electrical cable, valued about N12,774,078.00 (Twelve Million, Seven Hundred and Seventy Four Thousand and Seventy-Eight Naira), property of Lubell Nig. Ltd, and you thereby committed an offence punishable under Section 289 of the Penal Code.

The charge was however, amended at the end of the prosecution's evidence to include a 3rd count as follows:

COUNT 3:

That you, Abdullahi Ahmed, male, Augustine Oliver, male, HarunaLabaran, male, on or about 9/8/16, at Lubell Nig. Ltd, Idu Industrial Estate, Airport Road, Abuja, within the Abuja Judicial Division, being the security guards employed to protect the properties of Lubell Nig. Ltd, negligently omitted to secure the properties and allowed 510 coils of Electrical Cable valued about N12,774,078.00 (Twelve Million, Seven Hundred and Seventy Four Thousand and Seventy-Eight Naira), to be stolen away under your watch and control, and deliberately omit (sic) to take such order to guard same, and you committed an offence punishable under Section 196 of the Penal Code.

Upon arraignment, the Defendants pleaded not guilty to the charge and the case proceeded to trial.

One SaniAdamu, a staff of Lubell Nig. Ltd gave evidence for the prosecution on the 17th day of April, 2018. Testifying as PW1, he told the Court that on the 9th day of August, 2016, he was summoned, along with other senior members of staff, by their General manager, Finance, who informed them that some cables were lost, totalling 510 pieces of assorted sizes, all

valued at the sum of N12,774,78k. He stated that the store keeper told them that he was suspecting his own brother who was a cleaner in the store and had access to every nook and cranny of the store.

The PW1 told the Court that at the direction of his General Manager, Finance, he reported the theft to Police, who came and arrested Mohammed Bakura, the cleaner (now at large). He stated that the said Mohammed Bakura confessed to the Police that he stole the cables, and that he bought a truck and was building a house at Maiduguri from the proceeds of sale of the cables.

He stated that Mohammed Bakura confessed to having a spare key to the container housing the cables and that he used his car to move the cables at night. That he connived with the security guards of the company (the defendants) whose duty it was to check the contents of car boots at the gate, but who would open his boot and close same, pretending not to know what was inside.

The PW1 further stated that the Police in the course of their investigation, arrested one Kingsley (aka AnayoOkafor), who confessed to have bought the stolen cables from Mohammed Bakuri. That the truck purchased by Mohammed Bakura with the proceeds of the stolen cable as well as the afore said building, were confiscated, with the truck retrieved and parked at the premises of the company.

An application to the Police to release the truck and a Police Bond to produce same, were tendered in evidence by the PW1 as Exhibits PW1A and PW1B respectively.

Under cross examination, the PW1 told the Court that the company has eight (8) security guards, who run shift of four (4)

members in a shift. He stated that he could not confirm if the Defendants belong to the same shift as he is not in the security department. He stated however, that the cables were not stolen all at once.

One Fidelis Omini, a Police officer attached to the Special Anti-Robbery Squad (SARS), testified as PW2. He told the Court that on the 9th of August, 2016, a case of conspiracy and theft was reported to the Police by Mustapha Ahmed and SaniAdamu, workers of Lubell Nig. Ltd. That the case was referred for investigation and they visited the scene of crime after recording the statement of Mustapha Ahmed.

He stated that one Mohammed Bakura was brought to their office where he made confessional statement under caution, admitting to committing the offence.

That Mohammed Bakura confessed to using his gulf car to steal the cables from the store room. That after his daily work, he would drive out his car, loaded with cables and the security manned by the three Defendants would not search his car. That he carried out the theft about ten (10) times, and that he gave the three Defendants N150,000.00 each as their share of the loot.

The PW2 further stated that Mohammed Bakura confessed to have used the money realised from the loot to buy a truck at N1.1m and a plot of land in Maiduguri, Borno State for N850,000.00.

He stated that in the course of the investigation, the three Defendants were arrested in Lafia, Nasarawa State. That the 1st Defendant, Abdullahi Ahmed, confessed that he was aware of the stealing of the cables but denied being given N150,000.00. That he admitted receiving N30,000.00.

That the 2nd Defendant also confessed to having knowledge of the stolen items and admitted receiving N30,000.00; while he denied receiving N150,000.00.

He stated that the 3rd Defendant, who confessed to having knowledge of the stolen cables, denied receiving N150,000.00 from Mohammed Bakura, but confessed to have collected N30,000.00.

Testifying further, the PW2 told the Court that in the course of investigation, they recovered a laptop, land documents and Mack truck vehicle from Mohammed Bakura.

The following documents were tendered in evidence by the PW2;

1. Photograph of a truck with certificate of compliance – Exhibits PW2A-“A1.
2. Statement of Mustapha Shettima Ahmed – Exh PW2B.
3. Statement of Mohammed Bakura – Exh PW2C.
4. Statement of Abdullahi Ahmed – Exh PW2D.
5. Statement of Augustine Oliver – Exhibit PW2E.
6. Statement of Haruna Labaran – Exh PW2F.

The PW2 was duly cross examined by the defence counsel during which he stated that his investigation revealed that the company, Lubell Nig. Ltd, has six internal security guards in addition to the Defendants who are external security guards; that before materials leave the company, they must first be cleared by the internal security guards.

One Mustapha Shettima, testified as PW3. He told the Court that he is the store keeper to Lubell Nigeria Ltd. That the company has several stores and that all keys to the stores are kept in the store keys compartment/box, with only him and Mohammed Bakura, the cleaner, having access to the keys.

He stated that in the course of doing his daily job, Mohammed Bakura took the keys to one of the store and collaborated with the three security guards to move materials to his Volkswagen car at nights. That during closing time, Mohammed Bakura will leave his car in the office and go home with the staff bus, thereby giving the security guards the opportunity to open the store and load his car with electrical cables after other workers had all gone home. Then, on resumption the following morning, Mohammed Bakura will take the car with its contents to the buyer, AnayoOkafor, and come back later to share the proceeds with the security guards.

The PW3 stated that Lubell Nig. Ltd has security standard requiring everybody coming in or exiting the company to be checked, but that in the case of Mohammed Bakura, the security guards do not check his car.

He told the Court that as the store keeper, it was when it was time for him to issue out materials as the need for them arose, that he discovered that 510 coils, valued at N12,774,078 were missing. Consequently, he reported the matter to their General Manager, Finance, who in turn, reported to the Police. He stated that Police investigation led to the arrest of Mohammed Bakura, who confessed to stealing the materials, and from whom a Mack truck and land documents were recovered.

A bundle of Waybills for the purchase of coils was tendered in evidence by the PW3 and same marked as Exhibit PW3A.

Under cross examination, the PW3 told the Court that he brought Mohammed Bakura, who is his first cousin, to work with the company. He admitted that he neither saw Mohammed Bakura take the key to the store, nor the Defendants load cables into Mohammed Bakura's car.

He told the Court that the company has six security men; three internal, and three external, and that they run shift.

The PW3 further admitted that the company has a security man who resides within the company premises with his family, and who is responsible for checking all materials going in and out of the company. He stated however, that when the said security man, Adamu Ali (aka, DanBornu), is not on sit, the other security men will do the checking.

The Court in a considered ruling however, dismissed the Defendants' no case submission and ordered the Defendants to enter their defence.

Consequent upon the amendment of the Charge by the Prosecution, the Defendants upon being ordered to enter their defence, applied and recalled the PW2 for further cross examination.

Under further cross examination, the PW2 admitted that he is aware that the company, Lubell Nig. Ltd had internal security personnel other than the Defendants who were from Silver Shadow Ltd. He stated that he does not know the number of personnel in the company's security unit as he only worked with the information given to him by the company and the Defendants.

He further stated that the information at his disposal is that the 3 Defendants in Court were the only security personnel on duty as at the time the offence was committed.

On 17th March, 2021, the defence opened its case with the evidence of the 1st Defendant who testified as DW1.

In his evidence in chief, the DW1 stated that he worked as a contract security staff with one Silver Shadow Security System

from where he was posted along with three others, to Lubell Nig. Ltd.

He told the Court that they were divided into two groups and that the two groups alternate on weekly basis.

He stated that on a certain day he was off duty, his supervisor, one Suleiman, called him to report to work. That when he got to his work place, he was arrested and taken to SARS where he was asked about missing cables. That when he told them that he knew nothing about missing cables, they told him that he connived with one Bakura, who worked as a cleaner in the company, and took some cables.

The DW1 stated that he told them at SARS that he did not connive with Bakura. That on the contrary, Bakura only told him to help him load some cables into his (Bakura's) car, saying that Mustapha (PW3) directed him to take the cables to the site where they were needed for work. That that was all he knew about the missing cables.

Testifying further, the DW1 told the Court that his duty as a Security guard at the company was to open and close gate. Also, that the company has its own internal security officer, called Adamu Dan Bornu, who stays in the company premises with his family and who has as his duty, the checking of cars going out of the company.

Regarding the group or section that he worked in, the DW1 stated that he worked in Section 'A', which was comprised of four members namely Bulus, Inno, Emmanuel and himself. He stated that he only knew two persons in the 2nd Section, namely; Haruna and Augustine – restating that each Section or group worked one week on and one week off.

The DW1 admitted that Mohammed Bakura gave him money, saying that he was told by the said Mohammed that it was Mustapha, the Store Keeper (PW3) that gave him the money for helping him to load the cables into his car.

He stated that when Mohammed asked him to load the cables, he was told that they were being taken to site, where they were working. That he did not know that the cables were stolen until he got to SARS and was told that the cables were stolen.

The DW1 told the Court that he is not aware if Mohammed called any other person to assist in loading the cables apart from himself.

He also stated that he never excused himself on any day he was supposed to be on duty to go somewhere else.

Under cross examination, the DW1 stated that the vehicle into which Mohammed invited him to help load the cables, was Mohammed's personal vehicle and not company vehicle.

The 2nd Defendant testified as DW2 on 17th November, 2021. In his evidence in chief, he told the Court that he was in his house when he got a call that he should come for a meeting at the company, Lubell Nig. Ltd where he worked and that when he got there, he was arrested. Then when he was taken to the Police Station, he was told there that one Mohammed Bakura said that he stole wire.

The DW2 stated that he worked as a security man at Lubell Nig. Ltd and that they work weekly in two sets. That in his section, he worked with Haruna (3rd Defendant) Usman and Sirajo.

He stated that their duty was to open gate for vehicles coming in and going out. That there is a Chief Security man, DanBornu, who checks vehicles.

On the allegation that he connived with Mohammed Bakura to steal wires, the DW2 told the Court that the said Mohammed and the Storekeeper (PW3) are brothers. That at times, when they carry wires, they would ask them (gatemen) to sign so that they can carry the wires.

He stated that he did not know that the cables Mohammed and PW3 were carrying were stolen. He also told the Court that as a security man, he was not in custody of the keys to the store. That it was the PW3 who holds the keys as the Storekeeper.

Under cross examination, the DW2 maintained that his schedule of duty as a security worker at the company, was to open and close gate for vehicles to come in and go out, and that he did his work very well.

On 28th April, 2022, the 3rd Defendant testified as DW3. He told the Court in his evidence in chief that he was employed as a security gateman by Sylver Shadow security System and attached to Lubell Nig. Ltd where his duty was the opening and closing of the main gate.

He stated that they were 8 in number and that they work in shifts alongside the internal Chief Security Officer, AdamuDanBornu. That they operate based on the directives/instructions of the said Chief Security Officer. That in his team were himself, Usman, 2nd Defendant and one Surajo.

The DW3 told the Court that it was the responsibility of the Chief Security Officer to check goods coming in or going out of the office premises and that before any goods are taken out, the Storekeeper would issue a gate pass which the driver

would give to the Chief Security Officer at the gate and he would let the driver pass with the goods. That the Chief Security Officer would sign the gate pass if satisfied, and give back the original copies to the driver while he keeps the photocopy.

He told the Court that in August, 2016, he was off duty on the day he received call from SARS to report to their office and answer one or two questions.

That when he got there, they interrogated him, asking him if he knew the other Defendants; which he answered in the affirmative, and about anything happening in the company; which he answered in the negative.

He stated that the investigator then brought statement form and instructed him to write what they would tell him to write and that he refused, based on the ground that his lawyer or relatives must be present. That they then abandoned him for a while but later came back and threatened him to cooperate with them or he would rot in custody. That they intimidated him by saying that there are people they have wasted, and because they left him with no option, he obeyed and they told him what to write.

The DW3 told the Court that the investigators told him to include N30,000.00 which he collected from Mohammed Bakura.

He denied conspiring with the other Defendants and stated that he did not steal any cables.

Under cross examination, the DW3 maintained that his job only entailed opening and closing of gates. That the Chief Security Officer was the only person responsible for checking of vehicles coming in and going out and that they were not allowed to do so.

At the close of evidence, the parties filed and exchanged final written addresses which they adopted on the 5th day of October, 2022.

The learned Defendants' counsel, M.M. Gumsuri, Esq, in his final written address, raised two issues for determination, namely;

1. Whether the prosecution proved the allegation of criminal conspiracy and theft against the Defendants beyond reasonable doubt?
2. Whether the provision of ACJA was duly complied with in taking the Defendants' confessional statement?

Proffering arguments on issue one, learned counsel posited that the law is that the onus to prove the guilt of the accused person rests squarely on the prosecution. He submitted that under the accusatorial system of criminal justice as applicable in this country, the onus is on prosecution to prove the guilt of the defendant beyond reasonable doubt and not otherwise; that the defendant is not expected to prove his innocence, and that this burden is static.

He referred to Section 36(5) of the CFRN, 1999 (as amended), Sections 135 (1) & (2) and 138 (1) of the Evidence Act, Cap 112, LFN, 1990; **Asake v. Nigeria Army Council (2007)4 J.N.S.C. (Pt.42) 705 at 716** and **Adekunle v. State (2006)3 J.N.S.C. (Pt.10)366 at 381.**

In respect of Count 1, learned counsel contended that from the evidence on record, the prosecution has failed to prove the ingredients of criminal conspiracy, and that failure to prove one of the elements and or ingredients is fatal to the case of the prosecution.

He posited that criminal conspiracy arises when two or more persons agree to do or cause to be done:

- a. an illegal act;
- b. an act which is not illegal by illegal means.

He argued that in this case, none of the prosecution witnesses was able to link or connect the said act of conspiracy to the Defendants. That all that the prosecution witnesses told the Court is what they were all told by the General Manager, Finance, which amounts to hearsay evidence and that the Court cannot rely on mere speculation or hearsay.

Learned counsel argued to the effect that the fact that the store was not burgled and that only the PW3 and Mohammed Bakura had the keys to the store, casts doubt on the case of the prosecution that the said Mohammed Bakura is at large and that the Defendants conspired with him to fraudulently move the wire cables.

He contended that the stance of the prosecution that Mohammed Bakura is at large, is an attempt to withhold evidence. Also, that the fact that Inspector Ngozi Duru who allegedly extended investigation to Lafia, Nasarawa State where the three Defendants were arrested, was not in Court to testify on the investigation carried out by her team, goes to show that there was no investigation carried out. That if there was, that it is Inspector Ngozi Duru who should come to testify to that fact and not PW2.

He therefore submitted that the evidence of PW2 amounts to hearsay evidence as he was not part of the team that conducted the alleged investigation. That the above situation casts doubt on the prosecution's case and that where there is doubt, it is resolved in favour of the Defendant(s).

Learned counsel contended that the case of the prosecution is that the Defendants were given money not to search Mohammed Bakura's car. He argued that this assertion has been contradicted by PW3 whose testimony corroborates the Defendants' testimony that they were not responsible for searching vehicles and cannot be held responsible for the missing cables on the grounds that they were given money not to conduct the required search.

He contended that these contradictions are not mere contradictions but material contradictions. He posited that where there are material contradictions, the only option for the Court is not to act on it. – **Agu v. State (2017)15 WRN SC 1 at 47-48.**

Arguing further, learned counsel contended that the Defendants' confessional statements were obtained under duress, intimidation, threat, and without following the due process of the law in recording the statements. He referred to **Owhoruke v. Commissioner of Police (2015) 15 NWLR (pt.1483)556 at 576.**

He contended that the requirements of Section 17(1-5) of the Administration of Criminal Justice Act, 2015 were not complied with, and posited, relying on **Okwuosa v. Gomwalk (2017)18 WRN 27 @ 44-45,** that when the law provides a way of doing a thing, anything done outside of it amounts to a nullity.

He urged the Court, in the light of the above, to expunge the confessional statements of the Defendants wrongly admitted into evidence, for their non-conformity with the extant laws. He referred to **Onochie v. Odogwu (2006)1 J.N.S.C. (Pt.3) 410 @ 440.**

He urged the Court to discharge and acquit the Defendants of Count 1, particularly as none of the prosecution witnesses was able to prove conspiracy, either among the Defendants or with Mohammed Bakura, or with any other person.

In respect of Count 2, learned counsel contended that the prosecution could not establish any theft. He argued that there is no evidence of the fact that there was any wire cable in the possession of the nominal complainant which was wrongfully or fraudulently moved by the Defendants to cause the nominal complainant wrongful loss. That none of the prosecution witnesses saw the Defendants move or remove the wire cables, neither was any wire cables found in their possession. Also, that the Police investigation did not link the theft to the Defendants but to Mohammed Bakura and Anayo Kingsley who was arrested for buying wire cables.

He relied on **Chianugo v. State (2002)2 NWLR (Pt 750)225 @ 235-236**, to submit that it is only when a person fraudulently moves a moveable thing in the possession of another with the intent of permanently dispossessing the owner, that he becomes guilty of theft.

Learned counsel contended that to prove beyond reasonable doubt, the prosecution must show by evidence that no other person other than the Defendants standing trial had the opportunity of committing the offence and actually committed the offence.

He argued that from the testimonies of the prosecution witnesses and the Police investigations, the Defendants were not the ones that fraudulently moved the property, if actually the property was moved. That it is on record that the fraudulent movement of the property was never linked to the Defendants but to Mohammed Bakura, according to the evidence of PW1.

He posited that for a Court to convict a defendant for the offence of theft, the fraudulent moving of the property must be linked to the defendant. He contended that in the present circumstance, there is nothing linking the Defendants to the fraudulent moving of the property.

He urged the Court to discharge and acquit the Defendants of Count 2, and to dismiss the entire case.

In his own final written address, the learned prosecution counsel, John Ijagbemi, Esq, raised a sole issue for determination, to wit;

“Whether by virtue of evidence before this Honourable Court, both oral and documentary, the prosecution has proved his(sic) case beyond reasonable doubt against the defendants to enable the Court convict and sentence them accordingly.”

In attempting to proffer arguments on the issue so raised, learned prosecution counsel first went on a florid of his own as he argued about certain three defendants who assembled at the premises of the FCT High Court, Jabi, Abuja “not only for the purpose of attending a case instituted by their Incorporated Trustees against FCT Minister and others but to lynch or outrightly kill the victim of this case, Chief Denis Nweke...”.

For all intents and purposes, the case before this Court is not one of murder, or manslaughter. Therefore, the submissions made by the learned prosecution counsel in paragraphs 3.6-3.17 of his final written address could not have been intended for this Court or in respect of this case.

However, from paragraphs 3.18 forward of his said address, learned counsel argued that considering the ingredients of the offence of theft for which the Defendants are charged, that

there is no doubt that the properties stolen, which were 510 pieces of different sizes of cables valued at N12,744,074.00 were moveable properties of Lubell Nigeria Limited with office at Abuja where the stolen properties were kept and under the control and possession of PW3, Mustapha Shettima Ahmed, the store keeper.

He contended that it is in evidence before this Court that the three Defendants, including Mohammed Bakura now at large, conspired together to remove and sell those cables and share the proceeds among themselves, and that there was no contradiction that all the Defendants jointly moved the cables out of the possession of PW3 and the Company.

He thus, urged the Court to hold that the ingredients of the offence have been established.

Learned counsel argued to the effect that the totality of the contents of the extra judicial statements of the Defendants, coupled with the evidence of PW2, go to establish criminal conspiracy among the Defendants. That in all the statements of the Defendants, they each linked themselves with Mohammed Bakura's act, thus establishing criminal conspiracy.

He referred to **Gbadamosi v. State (1991)6 NWLR (Pt.196)182 at 204** on the meaning of criminal conspiracy.

He argued that from the statements of the 1st, 2nd and 3rd Defendants as well as the evidence of PW1, PW2 and PW3, a meeting of the minds can easily be inferred. That it could easily be inferred that all the Defendants, including Mohammed Bakura who is at large, had agreed to carry out the theft and to share the proceeds of the theft. He referred to Section 81 of the Penal Code.

In respect of the charge for criminal negligence (Count 3), learned counsel argued that the Defendants as security guards were expected to guard the company and search boot of each and every vehicle that drives in and out of the company in order to protect the property of the company from being stolen. He contended that the Defendants not only failed at their expected duties but also, conspired with Mohammed Bakura (now at large) to use his vehicle to convey the stolen cables out of the premises of the company.

Learned counsel referred to **Chukwuma&Ors v. Awoh (2018) LPELR-44830(CA)** and further contended that the Defendants being security guards attached to the company to protect the properties of the company had acted negligently by omitting to take proper measures sufficiently to avoid unnecessary/wrongful loss to the company. That they rather aided Mohammed Bakura, to steal the company's property for selfish and wrongful gain.

He urged the Court in conclusion, to convict and sentence the Defendants as charged.

It is a fundamental principle of the adversary adjudicatory system of our criminal jurisprudence that a person who is charged with a criminal offence shall be presumed innocent until he is proven guilty.- see Section 36(5) of the Constitution of the Federal republic of Nigeria 1999 (as amended).

The burden of proving the guilt of the defendant rests squarely on the prosecution who must discharge same beyond reasonable doubt by credible evidence.

The law is however trite that proof beyond reasonable doubt, is not proof beyond a shadow of doubt.

The foregoing principle of law was aptly postulated by the eminent jurist (of blessed memory) Honourable Justice C. Oputa, JSC in the case of **Mustapha Bakare v. The State (1987)LPLR-714(SC)** thus;

“Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace this presumption, the evidence of the prosecution must prove beyond reasonable doubt, not beyond a shadow of any doubt, that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure including the administration of criminal justice. Proof beyond reasonable doubt means just what it says. It does not admit of plausible and fanciful possibilities, but it does admit of a high degree of cogency, consistent with an equally high degree of probability.”

What this entails in concrete terms, is that the prosecution must establish with credible evidence, the essential ingredients of the offence with which a defendant is charged in order to secure the conviction of the defendant on the said offence.

In this particular case the Defendant have been jointly charged with three counts of criminal conspiracy, theft and criminal negligence respectively.

The offence of criminal conspiracy is provided for in Section 96(1) of the Penal Code thus;

“96(1). 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 a criminal conspiracy.”

On what the prosecution must show on the basis of the above law, to establish the offence of criminal conspiracy, the Court of Appeal, per Garba, JCA, held in **Osho v. The State (2011)LPELR-4804(CA)**, that;

“... for the offence of criminal conspiracy to be proved beyond reasonable doubt, as required by law, the prosecution must adduce evidence to establish the following:-

- (i) that two or more persons have entered into an agreement freely to do or commit an illegal act, or***
- (ii) the two or more persons have agreed to cause to be done, an illegal act, or***
- (iii) the two or more persons have agreed freely to do or cause to be done, an act which is not illegal but by illegal means.***

The above requirements clearly show that it is the agreement itself and nothing more, that constitutes the offence of criminal conspiracy and once the existence of such an agreement between two or more persons in any of the above situations is established, the offence of criminal conspiracy would have been committed under the provisions of Section 96(1).”

The Appellate Court in the foregoing case, made it very clear that it is an agreement between two or more persons to commit an illegal act, or an act which is not illegal, but by an illegal means, and nothing more, that constitutes the offence of criminal conspiracy. The prosecution therefore, has the burden

of establishing by credible evidence, the existence of such agreement between the Defendants, to be able to prove the offence of criminal conspiracy.

It is however, recognised that proof of actual agreement is not easy, thus, the Courts usually consider it sufficient if it be established by evidence, the circumstances from which the Court would consider it safe and reasonable to infer or presume the conspiracy. See **Dabor&Anor v. The State (1977)LPELR-904(SC).**

The question then, is: **has the prosecution made out sufficient evidence on which this Court can safely infer or presume criminal conspiracy by the Defendants?**

One SaniAdamu who testified as PW1, told the Court that he became aware of the loss of cables by the company when he was so informed by their General Manager, Finance, and that following the information by the store keeper, that he suspected his cousin, one Mohammed Bakura of having stolen the cables, the said Mohammed Bakura was arrested.

He stated that the said Mohammed Bakura confessed to the theft, stating that he connived with the Defendants who would open his boot and close it, pretending not to know what was inside.

The said evidence of PW1 relating to the theft of the cables was therefore, essentially hearsay evidence and cannot be relied on by this Court. See **Kasa v. The State (1994) LPELR-1671 (SC).**

Moreover, the evidence of PW1 that Mohammed Bakura confessed to have connived with the Defendants, contradicts the confessional statement of the said Mohammed Bakura, admitted in evidence as Exhibit PW2C where he merely stated

that he used to give the security men (Defendants) money. Nowhere did he state in the said confessional statement that he connived or conspired with the Defendants to commit the theft.

The PW2 was the IPO who investigated the case. His only testimony linking the Defendants to the case is that they confessed that they were aware of the stealing of the cables and each admitted to have received, N30,000 from Mohammed Bakura. That, to my mind, is not sufficient to infer criminal conspiracy as it is not sufficient to show that there was a prior agreement between the Defendants and Mohammed Bakura, to commit the theft.

The store keeper, the last witness of the prosecution who testified as PW3, told the Court that during closing time, Mohammed Bakura usually leaves his car in the office and go home with the staff bus, thereby giving opportunity to the security guards to open the store and load his car with electrical cables after other workers had all gone home. He did not tell the Court the source of his information, even as the evidence of the IPO did not reveal such modus operandi.

I therefore, find the said testimony of the PW3 unreliable, much more so when under cross examination, he admitted not to have seen the Defendants load the cables into Mohammed Bakura's car.

Even from the Defendants' extra judicial statements, Exhibits PW2D, PW2E and PW2F, the Defendants did not confess to any acts or circumstance from which this Court could safely infer or presume conspiracy.

It is thus my finding from the totality of evidence adduced by the prosecution, that the prosecution has not established

circumstances from which this Court may safely infer conspiracy by the Defendants.

I therefore find that Count one of the charge is not proved.

In respect of Count 2, which is the offence of theft by Clerk or Servant, the ingredients which the prosecution must prove to establish the commission of the said offence have been laid down by the Courts in a plethora of cases. The prosecution is thus required to prove the following:

- (a) That the accused was at the time of the offence a committed clerk or servant and was employed in that capacity by the person in whose possession the stolen property was.
- (b) That the property in question is moveable property.
- (c) That the property was in possession of the employer.
- (d) That the accused moved property whilst in the possession of that employer.
- (e) That he did so without the consent of the employer.
- (f) That he did so in order to take the property out of the possession of his employer.
- (g) That he did so with intent to cause wrongful gain to himself or wrongful loss to the employer.

See **Ajiboye v. FRN (2014)LPELR-24325(CA).**

The question in respect of Count 2, is: **Whether the prosecution established the ingredients of the offence against the Defendants?**

From the evidence adduced by the prosecution in this case, the above ingredients of the offence of theft were all established only against one Mohammed Bakura. The snag however, is that the said Mohammed Bakura is not one of the Defendants standing trial in this case before this Court.

The evidence before this Court did not link any of the Defendants to the act of moving the property. The evidence established that Mohammed Bakura moved the property which he sold to one Kingsley and used the proceeds thereof to purchase land and build a house and also purchased a truck, all of which were recovered and confiscated by the Police. The prosecution also did not establish a common intent between the Defendants herein and the said Mohammed Bakura to steal the cables. The ever abiding burden on the prosecution to prove the essential ingredients of the offence of theft against the Defendants has therefore, not been discharged by the prosecution. Accordingly, it is my finding that Count two was not proved by the prosecution against the Defendants. See **Abiodun v. Federal Republic of Nigeria (2008) LPELR-8574(CA)**.

The Defendants were further charged in Count 3, with the offence of negligence under Section 196 of the Penal Code which provides thus:

“196. Whoever does any act in a manner so rash or negligent as to endanger human life to be likely to cause hurt or injury to any person or property, or knowingly or negligently omits to take such order with any property or substance in his possession or under his control or with any operations under his control as is sufficient to guard against probable danger to human life from such property, substance or operations, shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to one hundred naira or both.”

In respect of this Count, the Prosecution contended that the Defendants were negligent in their duties by failing to search

the boot of each and every vehicle that drove in and out of the company in order to protect the properties of the company from being stolen.

Even though this contention by the prosecution does not come within the contemplation of Section 196 of the Penal Code, for the prosecution to succeed on this count, it must first prove that the duties of the Defendants included checking of car boots, and then, that the Defendants were negligent in performing the said duty.

In this connection, the PW1 in his evidence in chief, told the Court that it was the duty of the Defendants to check the car boots at the gate. On the other hand, the PW3 stated under cross examination that it was the responsibility of the company's internal security, manned by one Adamu Ali, to check all materials going in and out of the company. The said evidence of the PW3 corroborates the evidence of the Defendants in their defence to the effect that the said Adamu Ali who resides within the premises of the company, was responsible for checking of vehicles going in and out of the company while the Defendants were responsible for opening and closing of the gate.

I am therefore, inclined to believe the evidence of the Defendants in this regard given that same was corroborated by the company's storekeeper, the PW3.

The contradiction between the evidence of PW1 and PW2 regarding the schedule of duty of the Defendants, has created a doubt, which in the circumstances, must be resolved in favour of the Defendants. See **Uche v. The State (2013)LPELR-20164(CA).**

I therefore, find that Count three is also not proved against the Defendants.

Before concluding this judgment, it is pertinent to make some comments on the confessional “statement” of the Defendants tendered in this case. It is imperative to state that beyond the admission of receiving some monies from Mohammed Bakura, none of the Defendants “confessed” to have committed or participated in the commission of the crimes charged.

While the 2nd Defendant in his statement, Exhibit PW2E, stated that it was Mohammed Bakura and the 3rd Defendant that carried the cables from the store, the 3rd Defendant in his own statement, Exhibit PW2F, stated that it was the 2nd Defendant that helped Mohammed Bakura to load the cables in his car. The law however, is that the confessional statement of a co-accused is no evidence against the other accused person, unless he adopted the confession by word or conduct. See **Danlami Ozaki & Anor v. The State (1990)1 NWLR (Pt.124)92 at 127-8.**

The purported confession of the 2nd Defendant in this case is therefore no evidence against the 3rd Defendant who did not adopt same neither is the purported confession of the 3rd Defendant an evidence against the 2nd Defendant as he also did not adopt same.

In the same vein, the confessional statement of Mohammed Bakura, Exhibit PW2C will be no evidence against the Defendants, even if he was charged along with the Defendants.

In this instance where the said Mohammed Bakura was not charged with the Defendants, and was also not called to testify before the Court and adopt the said statement, the statement, Exhibit PW2C is therefore nothing more than hearsay evidence.

From the totality of the foregoing, it is my finding that the prosecution failed to prove its case against the Defendants beyond reasonable doubt.

Consequently, in respect of the three Counts charge, this Court finds the Defendants, Abdullahi Ahmed, Augustine Oliver and HarunaLabaran, Not Guilty.

The said Defendants are accordingly discharged and acquitted on all the three Counts of the charge.

HON. JUSTICE A. O. OTALUKA
17/11/2022.