IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO – ABUJA
ON, 26TH DAY OF JANUARY, 2023.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

CHARGE NO.:-FCT/HC/GWD/CR/14/2017

BETWEEN:

COMMISSIONER OF POLICE, FCT:…...COMPLAINANT

AND

IBRAHIM MUSA:……..…DEFENDANT

Terka J. Aondo with C.J. Odom and Usman Mohammed for the Prosecution.
Adeyemi Pitan for the Defendant.

JUDGMENT.

The Defendant was on the 11th day of March, 2021 arraigned before this Court on a Four Counts Further Amended Charge as follows:

Count 1:

That you, Ibrahim Musa 'M', 22 years of Pasali Kuje, FCT-Abuja and two others still at large on 18th day of January, 2017 at about 0230 hours at Kuchiaku-Kuje FCT-Abuja, within the jurisdiction of this honourable Court conspired to commit an offence to wit: criminal conspiracy to commit Armed Robbery, in that on the said date, time and place both you and two others agreed and conspired together with gun and robbed Joseph Agenyi and other family members of the following properties; (1) two plasma television sets:51 inches LG and 31 sharp products respectively, (2) two mobile phone MTN customized phone and Infinix S respectively; (3) N25,000.00 (Twenty Five

Thousand Naira) only and other valuables; and thereby committed an offence under Section 97 of the Penal Code Laws of Northern Nigeria.

Count 2:

That you Ibrahim Musa 'M' 22 years of Pasali, Kuje FCT-Abuja and two others still at large, on 18th day of January, 2017 at about 0230 hours, at Kuchiaku-Kuje, FCT-Abuja, within the jurisdiction of this honourable Court, while armed with gun, robbed Joseph Agenyi and other family members of the following properties; (1) two plasma television sets: 51 inches LG and 31 Sharp products, respectively; (2) two mobile phone MTN customised phone and Infinix S respectively, (3) N25,000.00 (Twenty Five Thousand Naira) only, and other valuables; and thereby committed an offence under Section 1(1) & (2a) and Punishable under Section 6(6) of the Robbery and Forearms as (Special provisions) Act, Laws of the Federation of Nigeria, 2004.

Count 3:

That you Ibrahim Musa 'M' 22 years of Pasali, Kuje FCT-Abuja and two others still at large, on 18th January, 2017 at about 0230 hours at Kuchiaku-Kuje, FCT-Abuja, within the jurisdiction of this honourable Court, committed felony, to wit; house trespass. That you broke into the house of Mr. Joseph Agenyi without his consent and knowledge and you vandalize (sic) his window, shot him with gun on his arm, thereby causing him hurt. You thereby committed an offence contrary to Section 248 and Punishable under Section 249 of the Penal Code, Laws of Northern Nigeria.

Count 4:

That you Ibrahim Musa 'M' 22 years of Pasali, Kuje, FCT-Abuja and two others still at large, on 18th January, 2017 at about 0230 hours at Kuchiaku-Kuje, FCT-Abuja judicial division, committed felony, to wit; House Trespass. That you broke into the house of Mr. Joseph Agenyi illegal(sic) without his consent and knowledge and you vandalize(sic) his window shot him with gun on his arm, thereby causing him hurt. You thereby committed an offence contrary to Section 343 of the Penal Code Laws of Northern Nigeria.

Upon his arraignment, the Defendant pleaded 'not guilty' to the charges preferred against him. The matter thus proceeded to trial.

The prosecution opened its case on the 11th of March, 2021 with the evidence of one Sarkinfada Magaji, an Assistant Superintendent of Police. Testifying as PW1 he told the Court in his evidence in chief that a case of a robbery incident that took place on 18/1/2017 was reported to him, which led to a team of investigators being sent to the crime scene. That on arrival, they snapped the broken window and the Highlander Jeep packed outside that was also vandalized. Thereafter, one of the nominal complainant's brothers, Joseph Agenyi who was shot by the robbers, was taken to the General Hospital, Kuje where he was treated.

On how the Defendant was arrested; the PW1 stated that they tracked one of the handsets that was stolen by the robbers and used it to arrest the Defendant on 21/1/2017.

He stated that upon the Defendant's arrest, they took him to the Police Station where he made statement, to the effect that the said handset was sold to him by one Babanaga.

The PW1 told the Court that all effort made to arrest the said Babanaga, was abortive. He stated that being a case of armed robbery, the matter was later transferred to the state CID for further investigation.

The following documents were tendered in evidence by the PW1:

1. Statement of Insp. Sarkinpada Magaji – Exh. PW1A.
2. Statement of Joseph Agenyi – Exh. PW1B.
3. Statement of Solomon Agenyi – Exh. PW1C.
4. Police wireless Message – Exh. PW1D.
5. CTC of Hospital Receipts and Card – Exh. PW1E-E2.
6. CTC of MTN Starter Pack – Exh. PW1F-F1.
7. Photographs of the Crime Scene – Exh. PW1G-G7.
8. Certificate of Compliance – Exh. PW1G8.
9. Statement of Defendant – Exh. PW1H.

Under cross examination, the PW1 admitted that the only connection of the Defendant with crime is that he was found with the handset. He further confirmed that there was no identification parade to identify the Defendant.

On whether there was a medical certificate confirming that the wound on one of the victims was a gunshot wound, the PW1 stated that what they obtained from the hospital was a receipt and not a medical certificate.

On 30th November, 2021, one Insp. Awofisayo Tunde gave evidence for the prosecution as PW2. He stated in his evidence in chief, that this case was transferred to the State CID from Kuje Division, from where it was then referred to SARS. He told the Court that himself with two other officers investigated the matter, in the course of which the Defendant wrote a statement in which he confessed to the offence.

Also, that the complainants, Joseph and Solomon Agenyi came to their office to identify the Defendant.

He told the Court further, that the nominal complainant pointed to the Defendant, saying that he was the one that demanded for money. Also, that the nominal complainant made a statement in which he stated that the Defendant made away with two Plasma televisions and two mobile phones – Infinix and customised Nokia, white in colour.

The PW2 stated that they used the Nokia to track the Defendant.

The said Nokia phone was tendered and admitted in Evidence as Exhibit PW2A.

Under cross examination, the PW2 stated that he was not present during the commission of the crime and as such, cannot tell whether there was light in the house at the time of the crime.

At the close of the case of the prosecution, the defence opened its case on the 17th day of March, 2022 with the Defendant testifying as DW1. He told the Court in his evidence in chief, that before his arrest, he was a 200 level student of English/History at College of Education, Minna.

He stated that at about 5pm on the 21st day of January, 2021, he was at his family house when he received a call from his friend who requested that he should meet him at a garden called Dazzy Point, in Kuje. That he left for the said Dazzy Point in company of his girlfriend, Aisha who was with him and that when he got there, two strange men attacked him saying that he was under arrest.

The DW1 stated that he tried to resist the arrest, and the men started beating him with the butt of their guns and that because he was all alone, he could not withstand them, and they threw him into their car and took him to Kuje Police Division where they detained him and Aisha.

He stated that few days later, they brought him and Aisha out, and the IPO both questioned him and also wrote the statement at the same time. That he was shocked by certain question from the IPO, such as “where are the rest of the people?” “Where are the things you took from the house?”

He told the Court that one of the men who arrested him came and said that he did not want to tell the truth, and they started beating him. That he was forced under duress to say what he did not do, and that after torturing him, he was brought to the office of the Inspector Crime to sign a statement and when he refused to sign, they started beating him again, after which they took him back to the cell and asked Aisha to call her people.

The DW1 told the Court that two weeks later, they transferred him to SARS. That at SARS, they took him to a place called Theatre to write statement. That he saw the way they hanged two people there, and that the IPO brought out a bamboo stick and started beating saying that he should tell him the truth, otherwise, he would do the same thing they did to the people hanging there, to him.

The DW1 stated that he told the IPO what happened, how he was at home and got a call to Dazzy Point, but the IPO insisted that it was a lie, and told him that what happened to a suspect whom the IPO shot would happened to him. That he consequently began to write another statement because he was scared and did not want to die.

The DW1 told the Court that on the day of the incident, that he slept in his house and that his mother can vouch for that. That the phone he was arrested with was a HTC phone with a SIM card. That he is surprised that they brought an MTN phone. That he insisted on taking the investigators to where he bought the phone, but neither the Police nor SARS took him to where he bought the phone.

Under cross examination, the DW1 admitted that he was served a summons at Nigeria correctional centre after he jumped bail and that his father, Inspector Adam Umar surteed him.

At the close of evidence, the parties filed and served their respective final written addresses which they adopted on the 1st day of November, 2022.

In his final written address, learned counsel for the Defendant, Adeyemi Pitan, Esq, raised two issues for determination, namely;

1. Whether having regards to the facts and the evidence adduced during trial, the prosecution has proved the offences of armed robbery?
2. Whether the prosecution can be said to have proved its case when the complainant was not called to testify in the course of the trial?

Proffering arguments on issue one, learned counsel posited that the prosecution has failed to establish the commission of the offences(sic) of armed robbery, having regard to the evidence before this Court.

He submitted, relying on Section 36(5) of the Constitution of the Federal Republic of Nigeria, that every person who has been charged with an offence in a Court of law, must be presumed

innocent until he has been proven guilty. He relied on **Taiye v. State (2018)17 NWLR (PT.1647)115 SC,** to further submit that in order to displace this presumption, it is incumbent on the prosecution to adduce credible evidence targeted at the standard of proof beyond reasonable doubt.

He referred to **Nwaturuocha v. State (2011) 6 NWLR (Pt.1242) 170 at 186** and **Chukwuma v. FRN (2011) 13 NWLR (Pt.1264)** on what constitutes proof beyond reasonable doubt.

Placing reliance on **Bozin v. State (1988) 2 NWLR (Pt.8) 465,** inter alia, he posited that for the prosecution to establish the offence of armed robbery, it must prove the following essential elements beyond reasonable doubt:

a. That there was in fact a robbery or series of robberies.
b. That the robbers were armed with dangerous weapons.
c. That the accused person was the armed robber or one of the armed robbers.

He contended that all the foregoing three essential ingredient must co-exist for the offence to be well-founded and be said to have be established or proved.

Learned counsel argued that the instant case is one of mistaken identity as the Defendant herein was not the robber that was at the scene of the crime.

He posited that one of the most crucial issues in a robbery or an armed robbery case is the identity of the person that perpetrated the crime. That the identity of the person must be proved beyond reasonable doubt through identification evidence which must be strong and compelling.

He posited further, that there is serious doubt as to the identity of the accused person herein, given that, from the evidence of

PW1, the nominal complainant had never met the accused person before the robbery which took place in the middle of the night. That the circumstances made it imperative for identification parade to have been conducted, but that the PW1 told the Court in very clear terms, that no identification parade was conducted.

Learned counsel argued that "the sinking evidence of PW2" that the nominal complainant pointed to the Defendant, was indeed an afterthought and an attempt to change the explicit testimony of PW1 that no identification parade was conducted. He referred to **Okeke v. State (2016) LPELR-40024(CA)** on the proper procedure in identification parade.

He submitted, with reliance on **Ebenezer v. State (2020) 8 NWLR (Pt.1727) 392 SC,** that any weakness discovered with respect to the failure of identification evidence, must lead to giving the defendant benefit of the doubt.

Learned counsel further argued that it is not enough for the prosecution to have concluded that the Defendant was one of the robbers who went to the house of the nominal complainant on the date of the alleged robbery just because a purported Nokia customised phone was purportedly found on him. That in any event, the Defendant has indeed shifted the burden back to the prosecution in the course of his defence; when he stated that the phone he was with at the time of his arrest was a HTC phone with an etisalat line.

He argued that the prosecution has not discharged that evidence. That the said piece of evidence was not rebutted by the prosecution.

It was further argued by the learned defence counsel to the effect that the doctrine of recent possession does not apply in

this case. He contended that this doctrine cannot be used to resolve the identify question which is critical to determine if the offence of armed robbery has been proved.

He posited that the presumption stipulated in Section 167(a) of the Evidence Act, has been vehemently rebutted by the Defendant when he stated in his statement tendered as PW1C, that he bought the phone from one Baba Ruga. That the Defendant further amplified this evidence in his viva voce evidence to the effect that he insisted on taking the Police to where he bought the phone from, but they declined to take him there.

He concluded on issue one, that the prosecution has failed woefully to establish that the Defendant was the robber or part of the armed robbery gang that carried out operation at the residence of the nominal complainant. He thus urged the Court to discharge and acquit the Defendant as the prosecution has failed to prove the offence of armed robbery beyond reasonable doubt.

On issue two, learned counsel contended that the failure of the prosecution to call the complainant as a witness, or any eye witness during the trial, is fatal to the case of the prosecution.

He argued that the evidence of PW1 and PW2, who were not eye witnesses, are hearsay evidence which is not admissible to substantiate the charge. Relying on **Christopher Idahosa v. Sgt. Stephen Idahosa (2010)LPELR-9072 (CA),** he submitted that it is well settled that the evidence of a statement made to a witness by a person who is not himself called as a witness, is hearsay, if the object of such evidence is to establish the truth of what is contained in the statement.

He referred to **Akono v. Nigerian Army (2000)14 NWLR (Pt.687)318 at 331** on the effect failure to call a vital witness.

He argued that there was no direct oral evidence from the prosecution to establish the ingredients of the offence of armed robbery for which the Defendant is standing trial before this Court. Also, that there is no concrete evidence before this Court to convict the Defendant, most especially in a case of armed robbery which carries the penalty of death by hanging.

He submitted in conclusion, that the prosecution has woefully failed to discharge the burden of proof required by law in criminal trials.

He further urged the Court, on this premise, to discharge and acquit the Defendant.

The learned prosecution counsel, Terkaa J. Aondo, Esq, in his own final written address, raised a sole issue for determination, to wit;

> ***"Whether from the evidence so far led in this matter, the prosecution has not discharged the onus of proof of the four counts charge preferred against the Defendant beyond reasonable doubt to secure conviction for same?***

Proffering arguments on the issue so raised, learned counsel posited, in respect of Count 1 of the charge, that a cursory look at Exhibt PW1H (Defendant's statement), as well as Exhibit PW2A (MTN customized phone) shows clearly, that an inference of conspiracy to commit the offence charged, is the only possible conclusion that can be drawn in the circumstance.

He argued that the Defendant was tracked through Exhibit PW2A, being one of the items he and his co-conspirators made

away with in the day of the armed robbery incident, and that he was arrested in possession of same.

Learned counsel submitted that the agreement to commit an unlawful act need not be express; that it can be implied. He referred to **Ismail v. FRN (2020)2 NWLR (Pt.1707)85 at 109.**

He contended that the prosecution has by the foregoing pieces of evidence, established conspiracy against the Defendant, and urged the Court to so hold and to convict the Defendant of Count one accordingly.

In respect of Count 2; on the offence of armed robbery, learned counsel referred to Section 1(1) and (2) of the Robbery and Firearms (Special Provisions) Act, Cap R11, Laws of the Federation of Nigeria, 2004, and posited that the evidence adduced by the prosecution is positive, cogent and compelling in establishing the charge of armed robbery against the Defendant.

He referred to **Okeke v. State (2020)12 NWLR (Pt.17370 178 at 195** on the essential ingredients which the prosecution needs to prove to secure a conviction for the offence of armed robbery, to wit;

a. That there was a robbery.
b. That the robbers were armed with dangerous weapons, and
c. The accused was one of the robbers.

He contended that all the above ingredients have been established and proved beyond reasonable doubt by the prosecution in this case.

Learned counsel argued that the onus was on the Defendant who failed to call his friend Baba Ruga who is at large, to discharge the burden placed on him.

He submitted that the law is trite that the Court may presume the existence of any fact which it deems likely to have happened regard being had to the common cause of natural events, human conduct and public and private business, in their relationship to the facts of the particular matter.

That the Court may presume that a man who is in possession of stolen goods soon after the theft, is either the thief or had received the goods knowing them to be stolen, unless he can account for his possession.

He referred to Section 167 of the Evidence Act; **Okunade Kolawole v. The State (2015) 8 NWLR (Pt.1460) 134** and **Makanjuola v. State (2018)LPELR.**

The learned counsel argued further, that it is not in every case that identification parade is necessarily conducted. That the Defendant having been unmistakably identified by the victims of the robbery, the need for an identification parade, therefore is rendered academic and unimportant.

He posited with reliance on **Jiya v. State (2020)13 NWLR (Pt.1740) 159 SC,** that the facts and circumstances of a given case are factors to consider in the decision, either to empanel an identification parade or to dispense with it.

He submitted that the prosecution has proved the charge of armed robbery beyond reasonable doubt, and urged the Court to so hold and to convict the Defendant accordingly.

In respect of Count 3, which borders on causing of grievous hurt; learned counsel referred to **Bille v. State (2016)15 NWLR**

(Pt.1536)363 on the ingredients of the offence of causing grievous hurt, to wit;

a. That the accused by his act caused bodily pain, disease or infirmity to the complainant and;
b. That he did so intentionally with the knowledge that it was likely to cause the harm or hurt.

He contended that the prosecution has established reliably through the evidence of PW1 and PW2, the existence of the above ingredients.

He argued that Exhibit PW2A in the custody of the Defendant, links him successfully to the crime of causing grievous hurt with the use of gun on the 18th of January, 2017.

He urged the Court to convict the Defendant on this count of causing grievous hurt and to sentence him accordingly.

On Count 4; which is criminal trespass; learned counsel argued that the ingredients of this offence have all been proven beyond reasonable doubt by the prosecution in this case, to wit;

a. Unlawful entry into or upon a property in the possession of another, or unlawfully remaining there; and;
b. An intention to commit an offence or to intimidate, insult or annoy the person in possession of the property.

He posited that the case of the prosecution is compelling, cogent and credible, and successfully links the Defendant to the crime or offence charged. That the prosecution has duly discharged the onus on them, of proving beyond reasonable doubt, the guilt of the Defendant in this matter. He thus urged the Court to convict the Defendant accordingly.

From the nature of the charge preferred against the Defendant, vis-à-vis the evidence adduced by the prosecution in proof of

the charge, I am of the considered view, that the issue that is germane in the determination of this case is; **whether the Defendant herein has been successfully linked to the offences charged?**

This is particularly so, given the fact that the Defendant was not arrested, either at the scene of crime, or in the course of the police's pursuit of the armed robbers after the commission of the crime.

From the testimonies of the prosecution witnesses, the Defendant was arrested some days after the robbery incident, by tracking one of the phones allegedly stolen by the robbers.

The prosecution thus relies on Section 167(a) of the Evidence Act, 2011 to assert that the Defendant was one of the robbers who robbed the house of the nominal complainant on the 18th day of January, 2017. The said Section provides that the Court may presume that;

> ***"(a) a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession."***

While the crimes in issue here were committed on the 18th day of January, 2017; the Defendant was arrested, purportedly in possession of the stolen phone on the 21st day of January, 2017. The Defendant can therefore, properly be said to have been in possession of the stolen phone "soon after the theft."

There is however, an exception to the general rule as provided by Section 176(a) of the Evidence Act, 2011, which is where the person can give account of how he came into possession of the stolen goods.

In this case, the prosecution witnesses made it clear, that upon his arrest, the Defendant informed the Police that he purchased the phone from one Baba Ruga. The PW1 even testified that they made efforts to arrest the said Baba Ruga but that their efforts were unsuccessful.

I am of the firm view that the Defendant has accounted for his possession of the phone with which he was arrested, and the fact that the Police were unable to succeed in their efforts to arrest the person from whom the Defendant purchased the phone, is not sufficient to conclude that the Defendant was one of the robbers who stole the phone.

The duty of the prosecution in a criminal trial is not only to prove that a crime was committed, but also that it was the defendant(s) who committed the crime. In doing this the prosecution must be able, with cogent and credible evidence, to situate the Defendant at the scene of the crime.

In **Nwaturuocha v. The State (2011)LPELR-8119 (SC),** the Supreme Court, per Adekeye, JSC, held inter alia, that:

> ***"It is not enough for the prosecution to suspect a person of having committed a criminal offence, there must be evidence which identified the person accused with the offence."***

Going further, the Court held that:

> ***"In the process of establishing the guilt of an accused, the prosecution has to prove all the essential elements of the offence as contained in the charge. While discharging the responsibility of proving all the ingredients of the offence, vital witnesses must be called to testify during the proceedings. Before a trial Court comes to the***

conclusion that an offence had been committed by an accused person, the Court must look for the ingredients of the offence and ascertain critically that acts of the accused comes within the confines of the particulars of the offence charged."

In considering the particulars of the offence charged in this case, vis-à-vis the above stated position of the law;

Count 1, deals with criminal conspiracy to commit armed robbery.

By Section 96(1) of the Penal Code:

"(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.

For the prosecution to prove the offence of criminal conspiracy, it must establish that there was an agreement between two or more persons to do an illegal act or an act which is otherwise legal, but by an illegal means. The accused person must therefore, be shown to have had a meeting of the mind with other person(s) in furtherance of the offence charged; in this case armed robbery. See **Osho v. The State (2011) LPELR-4804(CA).**

The defendant, where one person is charged, must therefore be clearly linked with another person in respect of the crime, as one person alone cannot commit the offence of criminal conspiracy.

In this case, there is no evidence linking the Defendant with any of the persons who robbed the nominal complainant save the

fact that he was arrested in possession of the alleged stolen phone. I have found in this judgment, that this sole link is not strong enough to discharge the burden of proof beyond reasonable doubt given that the Defendant, from the evidence before this Court, duly gave account as to his possession of the said phone.

It is thus, my finding and I so hold, that the offence of criminal conspiracy to commit armed robbery, was not established beyond reasonable doubt against the Defendant herein.

Count 2 of the charge borders on armed robbery. The ingredients of the offence of armed robbery as correctly stated by both the prosecution and defence counsel in their respective final written addresses, are:

(a) That there was a robbery,
(b) That the robbers were armed with dangerous weapons; and
(c) That the defendant was one of the robbers.

See **Oshim v. State (2014) LPELR-23142(CA).**

It is not sufficient to establish that there was a robbery which was carried out with dangerous weapons. The prosecution must prove beyond reasonable doubt, that the defendant took part in the robbery. This is because it is not the duty of the defendant to prove his innocence as the law presumes him innocent until proven guilty. See **Orungua & Ors v. The State (1970) LPELR-2780 (SC).**

The instant case is one which required the calling of at least one vital witness as stipulated by the Apex Court in **Nwaturuocha v. The State (supra).**

However, I agree with the learned defence counsel that the prosecution failed in this regard.

The Police investigator, PW2, told the Court that one of the nominal complainants pointed at the Defendant, identifying him as one of the robbers, when he went to their station to make statement. The prosecution however, failed to call the said nominal complainant to testify and confirm the identity of the Defendant before this Court, as one of the person who robbed him.

Also, in their statements tendered before this Court as Exhibits PW1B and PW1C, the nominal complainants did not state that they saw the features of any of the robbers, or that they recognised the Defendant as one of the robbers when they went to make the statements at the Police station.

The evidence of PW2 as to the identification of the Defendant is therefore not cogent, particularly given the fact that PW1 had testified that the robbery took place at about 2:30 in the night and that no identification parade was carried out.

In **Ikaria v. State (2012)LPELR-15533(SC),** the Supreme Court, held per Muhammad J.S.C. thus:

> ***"The principle must be restated here that where the quality of the evidence of identification of the accused in the commission of the offence with which he is charged is poor, the accused on the authorities should be acquitted unless other evidence abounds in support of the identification."***

The evidence on the basis of which the Defendant herein, is being linked to the commission of the offence charged, is in my considered view, very poor. The circumstances therefore, calls

for caution, lest an innocent person is convicted of an offence he did not commit.

Thus in **Orji v. The State (2008) LPELR-2767(SC),** the Supreme Court held, per Onu, J.S.C. that;

> ***"Circumstantial evidence must always be narrowly examined as that type of evidence may be fabricated to cast suspicion on innocent persons. Accordingly, before circumstantial evidence can form the basis of conviction, the circumstances must clearly and forcibly suggest that the accused committed the offence."***

From the foregoing, it is my finding that the prosecution failed to prove beyond reasonable doubt that the Defendant herein was one of the robbers, and therefore, the offence of armed robbery in Count 2 was not proved against the Defendant.

The prosecution from the totality of the foregoing was not able, with cogent and compelling evidence, to place the Defendant at the scene of the crime.

Consequently, Counts 3 and 4 of the charge also stand not proved against the Defendant herein.

On the whole, it is my finding that the prosecution failed to prove the guilt of the Defendant beyond reasonable doubt in respect of the four counts of the charge herein.

It is pertinent to state, before the conclusion of this judgment, that the prosecution failed to rebut the claim by the Defendant that he purchased the phone in his possession at the time of his arrest from one Baba Ruga, and that the phone in his possession was a HTC phone, contrary to the evidence of the

prosecution that he was arrested with an MTN customised Nokia phone.

The Police did not investigate the statement that he bought the HTC phone from somebody neither did the prosecution cross examine the Defendant on these exculpating claims.

In the circumstances therefore, this Court cannot safely have any recourse to the provisions of Section 223 of the Administration of Criminal Justice Act, 2015.

Having made a finding that the prosecution failed to prove the guilt of the Defendant beyond reasonable doubt as required by law, this Court accordingly in respect of Counts 1, 2, 3 and 4 – finds Defendant not guilty.

The Defendant therefore, is hereby discharged and acquitted of all the counts of the charge herein.

HON. JUSTICE A. O. OTALUKA
26/1/2023.