

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI –ABUJA**

HIS LORDSHIP: HON.JUSTICE M.S. IDRIS

COURT NUMBER: 28

DATE:25TH MAY,2023

FCT/HC/CR/08/2021

BETWEEN:

COMMISSIONER OF POLICE----- COMPLAINANT

AND

ALLAHANAN GAMBO----- DEFENDANT

JUDGMENT

The Defendant was arraigned on 13th September, 2021 on a charge of being in possession of locally made pistol contrary to section 3 (1) of the Robbery and Fire Arm (Special Provision) Act 2004. same pleaded not guilty. Matter was fixed for 7th October. 2021 for hearing. On that neither the Defendant Counsel applied for facilities from the prosecution to enable them prepare their defence. Accordingly the matter was adjourned to the 14th October, 2021 for hearing.

The Application for facilities is brought under section 36 (6) of the 1999 Constitution. The matter could not go on same was adjourned to 27th October, 2021 for hearing on 27th October, 2021 PW1 Sergeant James Ameh testified before the Court and told the Court how the case of

robbery was referred to their team for investigation. He graphically gave account of the role he played as an investigator. While in the possession of the Defendant a local made pistol was recovered itel phone was also recovered and a sum of N24,000.00 was also recovered. A bag was also recovered. During the trial the prosecution tendered their statement made by the complainant in evidence and same was admitted accordingly while the confessional statement and the bond to produce was objected by Defendant Counsel forsame to be admitted in evidence. In other words the alleged confessional statement was obtain in voluntarily. See the case of **ISAH VS STATE (2016) 16 NWLR (PT1218) at page 132** particularly at page 158 paragraphs B and C. Counsel urge the Court to order that trial within trial be conducted. On 12th November, 2021 the prosecution Counsel was not in Court therefore the mini trial could not proceed the matter was subsequently adjourned to 16th November, 2021 during trial within trial prosecution Counsel called two witness and the defendant called one witness in addition to his evidence. Consequently, the confessional statement of the Defendant was admitted in evidence and received as an exhibit.

On 1st April, 2022 application was moved by the defence Counsel. Without cross examiningPW1 the defence Counsel applied that the evidence of the 2nd witness be taking so that he can cross examine the witness at later date. That was done PW2 DSP OboliAzuka gave account

of how the statement of the Defendant was obtained. He equally gave account on how he counter signed the confessional statement made by the defendant. The matter was adjourned for ruling on trial within trial and cross examination. 9th June, 2022 ruling was delivered by the Court on 27th September, 2022 prosecution was absent on 23rd November, 2022 the lead defence Counsel gave account of series of adjournments all at the instance of the prosecution. At this junction the defence Counsel applied that the Defendant be discharge.

This Court decline to discharge the Defendant instead fixed the matter to the 8th December, 2022 for cross examination. On 8th December, 2022 PW1 was in Court for cross examination Mr. Ayodeji for the Defendant extensively cross examined PW1. The basic question asked is whether PW1 was around when the incident took place and he answered no. Was the locally made pistol found in the possession of the Defendant PW1 yes. In the cause of cross examination.PW1 continued to give detail account on how the Defendant was brought to his office how he also visited the scene.

In the cause of cross examination PW1 agreed that no lawyer No any member of the Defendant family was present during the recording of the statement of the Defendant. The prosecution Counsel inform the Court there was no any re-examination. The matter was adjourned to the 20th and 23 of January, 2023 for cross examination. On resumption the prosecution was not in

Court accordingly the matter was adjourned to the 23rd January, 2023 for cross examination.

Hearing notice to be served on the prosecution. On 23rd January, 2023 prosecution Counsel applied for another date for continuation of hearing. The matter was further adjourned to the 22nd and 23rd February, 2023 for continuation of hearing. on 22nd February, 2023 C.J Odan. Urge the Court to adopt the evidence of PW1 in the case Counsel apply under section 241 of administration of Criminal Justice Act, 2015 for a summons to be issued to PW2 if same fail to appear he would be left with no other option than to apply to the Court for the evidence of PW2 be expunge and they would close their case. Matter was subsequently adjourned to the 14th March, 2023 for continuation of hearing. on the 14th March, 2023 Counsel to the defendant urge the Court to adopt the proceedings in the case No. CR/09/2021 to this case.

I have carefully reproduced in part the position of both side in this case. I have equally and critically relied on the evidence adduced by the prosecution witness who was extensively cross examined by the defence Counsel. During the mini trial. However, during the substantive trial the prosecution severally failed or neglected to produce the witness for the purpose of cross examination more importantly based on the application made by the prosecution precisely that if same fail to produce he would be left with no option than to apply to the Court for the

evidence of PW2 to be expunged. From the entire evidence adduced before the Court it is my firm view that the prosecution failed to establish a prima facie case against the Defendant which may require him to make some explanation to the Court. I have carefully gone through the evidence the subject matter alleged to have been found in the possession of the Defendant was not tendered at all during the trial. Although in some cases a case can be established without tendering the evidence used in the commission of crime this is trite however, the case at hand therefore the tendering of the weapon used in this trial becomes imperative on the part of the prosecution.

This case had suffered a series of adjournments substantially at the instance of the prosecution from the evaluation of the evidence it is my view that the Defendant has not made out a case against the defendant. I would also add in this judgement that the essential element of the offence has not been established against the Defendant. Neither does the prosecution sufficiently produce evidence that would warrant the Defendant to enter his defence see ***NYONY VS STATE (2020) 8 NWLR (PT 1727) 5080***. Having not tendered the purported gun used I consider it necessary to invoke the provision of section 167 of the Evidence Act and the case of ***SMART VS STATE (2016) 9 NWLR (pt1518) 441***. I therefore discharge the Defendant for want of evidence. I so hold.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

1st Defendant In Court

2nd Defendant In court

3rd Defendant in Court

E.W Aiyudubin:- For the Defendant

Z.E Bashir:- Holding the brief of TJ Aonda for the prosecution.