

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE M. S. IDRIS

COURT: 28

DATE: 22ND MAY, 2023

FCT/HC/CR/661/2021

BETWEEN:

INSPECTOR GENERAL OF POLICE -----

COMPLAINANT

AND

TOM DAVID -----

DEFENDANT

JUDGMENT

The Defendant was initially charged with three offences contained on the charge while the prosecution with the leave of this Court amended the charge. While on the amended charge the Defendant was now charged with the Count contained on the charge namely: -

COUNT ONE

That you Tom David 'M' of Plot Gesse Street Mabushi Abuja, on or about the 3rd day of March, 2018, within the jurisdiction of this Honourable Court knowingly and having in your possession and control a BMW car 125i Coupe with Chassis No. WBAUL91050VU27752 which was reasonably suspected of having been obtained by means of armed robbery and thereby committed an offence punishable under section 5 of Robbery and Fire Arms (Special Provision)

COUNT TWO

That you Tom David 'M' of Plot Gesse Street Mabushi Abuja, on or about the 3rd day of March, 2018, within the jurisdiction of this

Honourable Court knowingly and having in your possession and control a BMW car 125i Coupe with Chassis No. WBAUL91050VU27752 which was reasonably suspected of having been obtained by means of armed robbery in Lagos and thereby committed an offence punishable under section 319A of the Penal Code.

Immediately after the arraignment the Defendant pleaded not guilty to the two counts on the charge. Prosecution called PW1 A.K Ogochukwu he told the Court he went to Glarrian Estate in Lagos State on 3rd March, 2018 where he was robbed by three men one was holding a gun, the other was holding a cutlass. The armed robbers took away the company's car belong to Coscharis company. PW1 said the make of the vehicle is one series BMW convertible they also went away with his wallet, and ATM card Voters card, driver's license NIN card, they also went away with both foreign and local currency owned by PW1 and also his house key was inside the car. Also, they went away with his iPhone and Samsung note 8 PW1 said he was bullied laid on the floor and the gun was cocked it was pointed at his back they also went with one apple wrist watch and other items inside the vehicle. PW1 reported the matter to the security at the entrance of the Estate afterword's he made similar report at the Jakande police station where he was told to write down his complaint so also PW1 reported the incident to his place of work about the robbery incidence. PW1 went on and said the same vehicle was brought to their office at Enugu State Coscharis motors for repair. That was how the vehicle was apprehended by the police. the colour of the vehicle is black and red, under cross examination. The PW1 said he could not able to identify the robbers because the incidence took place in the night. PW1 said when he was attacked he was on his way to his friendshouse. PW2 Giwa Ibrahim told the Court that he know the Defendant that sometimes in 2019 that his former neighbor introduced the Defendant to him that they have a contract job with

FRSC to work on their Website. They requested for 3 to 5 Million and they would refund same within 2 weeks. They also promised to give him some percentage upon the refund of the money which he decline PW2 asked for the collateral of his money which the Defendant offered to give his car the BMW. The Defendant claimed to have purchased same from Coscharis motors that the car is a brand new one and same is worth millions more than amount they requested from PW2. PW2 now took the car to Coscharis motors where he was advised not to give them more than N2,000,000.00. the car was actually from Coscharis motors and same was serviced there. Once and that the spare key is in Lagos also the tyres were fixed and also there are some problem associated with the vehicle. Based on the advised of Coscharis motors PW2 only gave the sum of N2,000,000.00 to the Defendant. We signed an agreement to the effect and the car was packed at the premises of PW2 at Zone 4. After 3 months when PW2 came back from Niger Republic whenever he called the Defendant to demand for his refund of his money the Defendant would not pick his call PW2 now reported the Defendant Sam. who initially introduced the Defendant to PW2. SAM apologies to PW2 and told him that they were paid for the contract two weeks after they collected his N2,000,000.00 and Sam advised the Defendant that they should refund the amount to PW2 borrowed but the Defendant refused and said he would use the said amount for another business. The defendant invested in bit coin business that was how he lost the whole money. Based on the agreement PW2 now called Mr. Yunusu a car dealer who inspected the vehicle and said the net worth of the car was N1,500,000.00. He now allowed Mr. Yunusa to take the vehicle to his car stand and also informed him that the vehicle should only be sold above N2,000,000.00 and that whatever realized after the deduction of his N2,000,000.00 whatever remains shall be given to the Defendant when Sam indicated his interest Yunusa told him that he would only sell the vehicle at N2,500,000.00 Yunusa told Sam that he has spend some money in repairing the vehicle therefore there is

need for him to recover his money Mr. Yunusa transferred the sum of N1,000,000.00 and promised to balance him N1,000,000.00 Yunusa agreed to purchase the vehicle in the sum of N2,000,000.00 later Yunusa paid another N500,000.00 to him he never paid the balance while PW2 was at the Anambra State Airport PW2 was called and told that the car was a stolen vehicle. He now told Mr. Sam about the development he now invited the Defendant to the car stand of Yunusa on reaching there the Defendant was then arrested under cross examination PW2 answered that the car was brought to Coscharis motors. PW2 also told the Court that it was the advise given to him by a staff of Coscharis motors of the value of the vehicle PW3 Yuunusa Mohammed while given evidence in- Chief also corroborated the evidence of PW2 and also add that they operate the same office with one by name Mohammed IsahWase. PW3 further told this Court that one Colonial J.B Adams indicated his interest on the car. But requested to see the owner of the vehicle which is Ibrahim Giwa. When the interested purchaser became satisfied with explanation of PW2 regarding the vehicle he now decided to buy it. After some day the car started given Colonial J.B Adams problem he now decided to return the vehicle to PW3. PW3 promised to refund him his money whenever the sold the car. It was after sometime a lady brought the vehicle after PW3 had repaired the car fully. Later PW3 was informed in Enugu State that same is a stolen vehicle. PW3 contacted PW1 and told him about the whole incident PW1 now gave detail account of the whole deal between himself and the Defendant. Now PW3 wrote a petition against the Defendant. That was how the Police came to the matter. The Defendant change the colour of the vehicle to a grey colour BMW convertible the vehicle has a licence proof of ownership Insurance Road worthiness but no title document.

During cross examination said he did change the colour of the vehicle when same was given to him by PW1 PW3 said before the arrest of the Defendant he has never seen him before.

PW4 Wase gave detail account of his testimony like PW3 and also informed the Court that the woman who purchased the vehicle was arrested when she took the car to Coscharis motors for repair she was told the car was a stolen vehicle that was how finally the Defendant was arrested by the police. PW5 Edwin Thomas an investigator and team leader that investigated this case. Same told this Court that he knows the Defendant based on a written petition written to the Inspector General of Police by one Alhaji- IsahWase. The Complainant was minuted to their Department for investigation that was how the statement of the Defendant was recorded. The complainant was shown to the Defendant. the content of the complaint consist of two offences namely conspiracy and robbery when a convertible first series black in colour was recovered at Coscharis office Enugu from one Hon. Oreagu Zenith the complainant who gave account on how she purchased the vehicle from the complainant PW3. And PW5 further told the Court how the vehicle was identified by the officials of Coscharis motors Enugu office that it was the same vehicle that was involved in Armed robbery in Lagos Island. PW5 extended their investigation to the office of PW3. On reaching there PW3 also led the team to PW4 and PW4 told the team of investigation that it was PW2 that gave him the vehicle to sell. PW2 was also question about the vehicle who also gave account on how he became the owner of the vehicle as can be seen in his testimony above. The team now went further to asked the Defendant how he got the vehicle. The Defendant said it was one Mr. Jeku that advertised the vehicle on his Instagram page when the Defendant indicated his interest Mr. Jeku now told the Defendant that the owner of the vehicle is based in Lagos by name Mr. James Uchenna and same was preparing to travel out of the country with his family and he is in need of money so the car was sold to him for a consideration N6,000,000.00. Coscharis motors issued him with a receipt and also Mr. Jeku claimed that he was the first person to register the vehicle. The team also invited Uchenna who happened to be the victim. He told the team that the car was given to

him by the owner of Coscharis motors and the car has a registration No. FC1 29 EQ.

The Defendant who claimed to have been the first to register the vehicle when asked to produce the document of the vehicle and evidence of change of ownership could not produce anything. The defendant who claimed to have made payment of the said vehicle with his UBA account on further investigation there was no such transaction. The Defendant appealed to PW5 that they should check his account with FCMB where the sum of N500,000.00 was discovered and a transfer of the sum to that account different from Uchenna James the owner of the vehicle. The Defendant now told the team that his brain is not working properly and that he made some payment in dollars currency. The team also extended their investigation to Jeku who advertised the vehicle in his Instagram page who is currently serving life sentence at KUJE Correctional Centre . at KujeCorrectional Centre Mr. Jeku denied ever meeting the Defendant neither does he ever advertised the sale of the vehicle in his Instagram page . PW5 also discovered in the course of the investigation that there was no any transaction between Uchenna James and the Defendant. The Defendant was also unable to produce any document to be verified by the team. PW5 said they now forwarded their report to the legal section. The team extended their investigation to AjasaPolice Division Lagos where the DPO confirmed about the report of the incident to his division PW5 further gave detail account on how the colour of the vehicle was changed. The prosecution applied to tender all the statements in evidence when the defence Counsel did not object.

Statement by the Defendant dated 6th July, 2021 with additional statement dated 4th August, 2021 exhibit 1

Statement made by Yunusa dated 6th July, 2021 with additional one dated 8th October, 2021 is exhibit 2

Statement made by PW1 dated 3rd August, 2021 is exhibit 4

Statement dated 6th July, 2021 made by Ale Isah is exhibit 5

And also made by the same date 6th July, 2021 is exhibit 6 and the one made by Paul dated 4th August, 2007 exhibit 7 EditEzeni dated 8th July, 2021 is exhibit 8

Sale agreement between PW2 and the defendant dated 29th November, 2019 exhibit 9

Loan agreement between PW2 and the Defendant exhibit 10

Petition addressed to the Inspector General of Police 6th July, 2021 is exhibit 11

Two statements of account belonging to the defendant dated 30th November, 2018 exhibit 12.

pW5 while given evidence also told the Court that there was a police report of the incident reported at Ajasa police division. Also the registration of the vehicle to Coscharis motors. Prosecution applied to tender same in evidence. The Defendants Counsel did not object.

Therefore, photocopies of vehicle particulars dated May 2021 exhibit 13A and the one dated December, 2021 exhibit 13B particulars of motor vehicle from Coscharis motors 8 copies with attached affidavit exhibit 14 police investigation report exhibit 15 BMW black in colour exhibit 16. Under cross examination PW5 answered that the suspect was brought to Court in 2021 December as against April, 2021. PW5 further answered that the Defendant did not supply them with the comprehensive address of Uchenna James in Lagos where the transaction took place. PW5 also answered that there was no direct payment from the Defendant to Uchenna James in any of the transaction as claimed by the Defendants from his two accounts UBA and FCMB.

On the issue of robbery that took place at the house of the Defendant and the suspect report of same to the Mabushi police was brought to the knowledge of PW5 after the arrest for the first time when the Defendant said he can now remember that there was a robbery that took place in his apartment the team went to Mabushi police division to verify . The S.O Mabushi Police Station said there was a robbery incident that affected several occupant of where the Defendant stayed. PW5 said their major issue is the receipt of purchase which the defendant claimed to have been issued to him by Coscharis motors. PW5 said they handed over the file to him. Legal search and that there was not such police extract. It was the Defendant that wrote his statement by himself.

At this juncture the prosecution applied to close their case. The defendant entered his defence on the 30th June, 2021. That in March, 2018 he saw on line Instagram advertisement of a vehicle by one Paul Ojelewuhe indicated interest he was introduced to James Uchenna on phone. Who told him to make some commitment so that the car may be brought to him or he can come and negotiate and buy since Paul Ojelewu was a trusted person by him. Defendant made commitment it was Uchenna James that gave Paul Ojelewu account number to send to him. Paul Ojelewu said he prepared the cheque to send the money to him as he just came back from Ghana. That he is yet to open an account.

Paul Ojelewu told the Defendant that he need some money since he is going to deliver the vehicle to him by road the Defendant now handed over his ATM card and also instructed him to withdraw the sum of N700,000.00 to N750,000.00 for the initial deposit. Paul Ojelewu withdraw the said sum sometime in 2018 Paul did not bring the car. James Uchenna told Paul Ojelewu that the money the Defendant sent to him was not enough to release the car to him for onward delivery to the Defendant house in Abuja. The Defendant now sent N500,000.00 on 26th March, 2018 to the account sent to him by

James Uchenna through Paul Ojelewuthe car was not brought also Paul requested for another N100,000.00 which the Defendant gave so that same should be handed over to James Uchenna.

The Defendant went to Lagos by himself in April, 2018 since the vehicle was not sent to him while in Lagos the Defendant met both James Uchenna and Paul Ojelewu and made a deposit of \$13,100.00 for the car after sending same into the domiciliary account of Uchenna James. Later on sales agreement was prepared by a lawyer to Uchenna, Defendant now proceeded back to Abuja with the said vehicle. Defendant registered the vehicle at Vio's office Mabushi, Abuja with Registration No, RBC 18 MY.

The Defendant claimed to have been using the car from April 2018-2019 November when the Defendants business was about to crash the Defendant seeks for a loan of N3,000,000.00 from his friend Ibrahim Giwa Pw2 but same gave the Defendant N2,000,000.00. I could not be able to pay the loan as agreed. After all effort to refund the loan failed, I let the car go. After signing the sale agreement between the Defendant and PW2 suddenly police arrived and instructed the Defendant to follow them to Force CID at Garki, Area 10. On 6th July, 2021 I was told that the vehicle I purchased in 2018 4 years ago was a stolen vehicle the defendant wrote his statement on 6th July, 2021. The Defendant also wrote how he was robbed in April, 2021 in Mabushi, Defendant also told PW5 how he reported the matter at Mabushi Police Station. He also gave the number of the IPO. The Defendant provided detail account of the whole transaction and also detail information on how to get to James Uchenna and gave phone number of the same. The Defendant said despite the information he gave to the police nothing was done at all. All the important document was not there. The Defendant when they went to Kuje Correctional Centre Paul Ojelewu said he did not know the Defendant and that there was nothing like advertising that the Defendant should be taken away from him otherwise he would attack

him. The Defendant said he did not at any point in time temper with the colour of the vehicle neither did he temper with the chassis number of the vehicle or engine number of the vehicle. Defendant said he posted in his Instagram page, WhatsApp his pictures with the vehicle freely.

The Defendant said when he reported the issue of robbery that took place in his apartment, he was given a sheet of paper to list those items taken away from his house also he was issued with police extract in respect of the missing items. The extract was admitted in evidence and marked as Exhibit DW1 under cross examination Defendant said he purchased the vehicle from James Uchenna. He also answered that he does not know the whereabouts of UchennaJames. The subpoenaed witness DW2 tender the statement of account No.2078590265 for the period from February- March 2018 belonging to the Defendant Exhibit DW2 after the close of the Defendant defence the matter was subsequently adjourned for adoption of final written address on the 28th March, 2023. Before the above date fixed for adoption matter suffered two adjournment at the instance of the defence. Before adopting the final written address on the 28th March, 2023. The Defendant's Counsel raised two issue for determination to wit: -

1. Whether the charge No. CR/661/2021 is competent as presently constituted and
Whether this Court has jurisdiction to entertain same.
2. Whether the prosecution has prosecuted his case beyond reasonable doubt to entitle him to a conviction of the Defendant. On the two-count charge preferred.

ARGUMENT ISSUE

On count one Defendant's Counsel refer the Court to Section 25 of the Interpretation Act Cap 192 LFN 1990 as provided

“Where an act constitutes an offence under two or more enactments or under an enactment and at common law the alleged offender shall be liable to be prosecuted and on conviction punished under any one of the enactments or as the case may be, either under the enactment or at common law but shall not be liable to be punished twice for the same offence. based on the above counsel urge the Court to dismiss this charge because same is incompetent see also **NWEDE VS FRN (2016) 5 NWLR (PT 150)**

ARGUMENT ON ISSUE

On count two counsel referred the Court to the entire evidence adduced by the prosecution witnesses.

ON COUNT ONE

Section 5 of the Robbery and Fire Arm (Special Provision) Act provided

“Any person who received anything which has been obtained by means of any act constitute an offence under the Act shall be guilty of an offence under this Act and shall be liable upon conviction to be sentenced to imprisonment for life

COURT TWO

Section 319 APCL

“Whoever knowingly has in possession of anything reasonably suspected of having been stolen or unlawfully obtained and who does not give an account to the satisfaction of a Court of justice, as to how he came by the same shall be punished with imprisonment which may extend to two years or with fine or with both.”

Counsel to the Defendant argued that the evidence adduced by the Defendant on how he came about the BMW have not been impeached controverted by the prosecution or discredited in any

way whatsoever. This can be seen from the entire evidence adduced by the Defendant. Counsel went on to say evidence of PW1 does not in anyway incriminate the Defendant because when asked whether the Defendant was among those that attacked him he said no he cannot identify those that attacked him. Prosecution fail to prove count one, under the same count one there was no evidence on the part of the prosecution disclosing beyond that the Defendant received anything which has been obtained by means of any act as defined by section 5 of the said Act under which Count one of the charge is brought.

See *BUSARI VS STATE (2015) NWLR (PT1452) page 378 SC whether Robbery of BMW 1251 series was proved by the prosecution see BUSARI VS STATE(supra). TANKO VS STATE (2008) 16 NWLR (pt 114) page 597 Q 639 P. D-E.* from exhibit PW12,13 and 16 there is no direct evidence positive and compelling to show that indeed and fact there was a robbery the place and time as alleged by PW1.

On whether the prosecution has proved that the Defendant have in his possession BMW reasonably suspected to have been stolen Counsel argued that at the material time when the said BMW car was allegedly found to have been robbed the Defendant was not in possession of exhibit 16 but one Ejenni who was not called as a witness to testify how she got possession of the exhibit 16. The entire evidence of the same is crucial in the determination of Count two. The evidence of PW and the failure to call vital witness left this Court with no option than to discharge and acquit the Defendant for want of evidence. In respond to the final written address filed by the defendant prosecution filed theirs and also raised a sole issue for determination.

“Whether the prosecution has established a case of receiving stolen property as contained in the charge against the Defendant.

LEGAL ARGUMENT ON ISSUE ONE

Counsel submit that it is the submission of the Court to the Defendant that the ingredients of the offence contained in the charge involving receiving of stolen property acquired at gun point of armed robbery must include.

- a. Proof that armed robbery took place
- b. Proof that the Defendant was involved
- c. Proof that the Defendants vehicle is indeed the stolen vehicle that was recovered.

From the entire evidence of the PW more particularly PW5 whosaid they visited in Lagos in connection with the BMW is sufficient enough to establish that the Defendant can be said to have been in possession of an item received illegally see exhibit 15. On proof that the Defendant was involved in the armed robbery counsel referred the Court the *OLUWASHEY VS STATE(2018) LPELR 46359 SC. OLLORAJI VS STATE (2002) 5 NWLR (PT759) 21948 paragraph D-C ELEPO VS STATE (2003) 17 NWLR (PT849)392.*

On proof that the Defendants vehicle is indeed the stolen vehicle that was recover Counsel referred the Court to exhibit 13A, 13B and exhibit 14. The Defendant was unable to produce counter or particulars for the car in question Coscharis company confirmed that the vehicle was stolen in Lagos and they have it in their record. Counsel finally urge the Court to do the needful the interpretation Act does not preclude the Court from exercising its powers accordingly.

In addition same urge the Court to convict the Defendant accordingly. In consideration of the above generally for and against I deem it just and in line with principle of justice and fair play to

streamline the issues raised by the two learned gentlemen for and against by introducing a sole issue for determination to wit:-

“ Whether the prosecution has establish a case against the Defendant beyond reasonable doubt this is trite I must state in the judgment the issue raised by the Defendants Counsel on the issue of double jeopardy is well considered by this Court this can be seen from the case cited supra by the defence Counsel and section 21 of the Interpretation Act. Based on the above two principle of law I deem it just without any hesitation do dismiss count one. However, with regards to the 2nd count the reasons advance by the Defendants Counsel cannot be sustained. Back to the issue therefore I have taken into account the evidence led by the prosecution and that of the defence. See section 135 of the Evidence Act. The five prosecution witness called by the prosecution gave full account of the role played by each of them and also the exhibit tendered 1-15 led this Court to believe that the prosecution has proof its case beyond reasonable doubt. It is pertinent to state also in this judgment the failure on the part of the defence not to object to same incriminating evidence which were ultimately admitted in evidence made me to so hold. Those exhibits are essentially vital. It is trite when document admitted in evidence without objection from the opposite side amount to admission. The Defendant while giving evidence in his defence failed to substantially prove his innocence since the burden has shifted from the prosecution. Although in his written address the defence Counsel made reference to some exhibits admitted in evidence e.g exhibit 13A, 13B and 14 of their contradictory nature that alone cannot effect the prosecution case admissibility of a document in every trial is one thing which is relevancy and weight to be attained to it is another. I found it worthy of consideration by relying heavily based on the prosecution testimonies and the exhibit attached. All the defence raised orally and the

defence exhibit tendered and the final written address of the same cannot and has not in anyway avail the Defendant from criminal liability. The Defendant was given full opportunity willfully same was unable to prove his innocence.

I have taken the pain to critically looked at essences of the exhibits tendered I now finally become convince that the Defendant actually committed the said offence contained on the charge. Being in possession of property suspected to be a stolen one is a strictly liability offence found in a possession of suspect like in this case.

It is the argument of the Defendant Counsel that stolen vehicle could have been misconceived for the Defendants. However the Defendants vehicle tendered as exhibit 16 was indeed confirmed by the Coscharis company that they have it in their record that it was stolen in Lagos before recovering same from EdohEzein. The true title documents and particulars of the said vehicle were produced tendered by PW1 and tendered through PW5 which was admitted in exhibit 13A, 13B and 14.

While investigation revealed that the Defendant could not produce a counter or corresponding particular for the car in question either before taking the vehicle to PW2 for loan or in his dealing with PW3 for loan or in his dealing with PW3 for the subsequent sale. The best he could furnish was the report to the police that his house was robbed and all documents about the car was carted away but till date, no investigation report regarding the incidence was produced before the Court by the Defendant. He could also not produce credible information about the identity of the person he purchased the vehicle from nor the person whereabouts to assist the investigating team to extend their inquiry further. There was also no evidence to show that he transferred money from his account to James Uchenna that he claimed he bought the vehicle from under cross examination the Defendant said he purchased the vehicle in a residential house in Lagos. When asked about the

working place of the vendor the Defendant could not give satisfactory account. It is apparent that the ingredient of the offence of receiving stolen property as contained in the charge has been established against the Defendant. It is in fact the Supreme Court decision that even his plea of alibi no matter how credible and convincing it is, cannot excuse a Defendant from allegation of receiving stolen property if the product of the illegally obtained item is found in the possession of the Defendant after the commission of the said incidence of the illegal act see *AYEFIGO VS STATE (2018) LPELR. OLUWASHIYI VS STATE (supra)* in *MUSA VS STATE (2023) LPELR 59876 (SC)*.

Consequently, in view of the above judicial authorities and other authorities cited in this judgment and the case law cited above made me to convincingly convict the Defendant. Accordingly the Defendant is hereby convicted as charge. This is in line with to section 319A of the Penal Code Law.

SENTENCE

In the interest of justice and the plea of allocutus made on behalf of the convict. Accordingly, you Mr. Tom Davis male is hereby sentence to one year imprisonment with an option of fine in the sum of N100,000.00 sentence shall start running from today 2nd May, 2023.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Defendant in Court

A.J Obigha:- For the prosecution

Daniel Alumun:- The matter is for judgment subject to Court
Convenience we are ready.