

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

BEFORE THEIR LORDSHIP: JUSTICE SALISU GARBA (PRESIDING JUDGE)
JUSTICE V.B. ASHI (HON. JUDGE)

COURT CLERKS: AMINU ZAKARI & ANOR.

DATE: FRIDAY 10TH APRIL, 2015

BETWEEN:

VICTOR ABEKWARE - ACCUSED/APPELLANT

AND

COMMISSIONER OF POLICE FCT - RESPONDENT

JUDGMENT

This is an appeal by the Appellant who was the Accused at the Senior Magistrate Court Karu, Abuja against the judgment of the Senior Magistrate delivered on 9/10/13 wherein the learned trial Magistrate held that the offence of criminal breach of trust was proved beyond reasonable doubt by the prosecution against the Appellant.

Dissatisfied with the decision of the court, the Appellant lodged this appeal by virtue of a Notice of Appeal filed on 11/10/2013; the said Notice of Appeal contains two grounds of appeal. The Appellant sought for the following reliefs:

1. An order setting aside the judgment of the Magistrate Court.
2. An order discharging and acquitting the Appellant.

In compliance with the relevant laws, the Appellant filed a 13-page Appellant's Brief dated 2/12/2013 wherein counsel distilled two issues for determination:

1. Whether the learned trial magistrate was correct when ~~she~~^{he} held that the Respondent proved the case of criminal breach of trust against the Appellant beyond reasonable doubt.
2. Whether the trial magistrate properly evaluated the evidence adduced before the trial court.

On Issue 1, it is the submission that the trial Respondent bears the onus of proving all the ingredients of the offence beyond reasonable doubt. See UGBAKA v STATE (1994) 8 NWLR (Pt 364) 568 at 582.

It is submitted that from the evidence at the trial court, other than the fact that the Appellant had the machine at his site which he did out of his affection for the PW1, there is no other evidence to show that the Appellant acted dishonestly or misappropriated the property or the proceeds therefrom.

It is submitted that the trial magistrate cannot argue the case of the Respondent and that she must only act on evidence placed before the court. Court is referred to Page 87 of the Record of Proceedings.

That the trial magistrate is duty bound to make specific findings on whether the ice block making machine was put to commercial use and that the proceeds amounting to N600,000.00 (Six Hundred Thousand Naira) as claimed by the Respondent was realized therefrom but the Appellant misappropriated same and the subject matter of the charge to his own use before the issue of whether he did so can be decided. See *UGBAKA v STATE (Supra)*. That the Respondent did not adduce any evidence to show that the Appellant actually put the subject of the charge for use and that the sum of N600,000.00 was realised as proceed therefrom which the Appellant misappropriated. The trial magistrate did not also specifically make any finding that the machine was actually put to use.

It is the submission that the Appellant cannot commit the offence of criminal breach of trust against his own property. It is in evidence that the Appellant tendered his receipt of ownership over the subject matter of the charge which was admitted and

marked Exhibit D1. (see Page 52 of the Records) and Section 143 of the Evidence Act.

Submitted that the trial magistrate erred in law when ~~he~~^{he} failed to make specific findings when the issue of the discrepancies as regards the capacity and nature of the subject matter of the charge. Court is referred to Page 4 paragraph 40 and Page 15 of the Record of Proceedings. Court is urged to hold that the trial magistrate erred in law in holding that the prosecution proved the case of criminal breach of trust beyond reasonable doubt against the Appellant.

On Issue 2, it is the submission that the trial magistrate relied strongly on Exhibit C which is an undertaking extracted from the Appellant by the police during his detention at the police station. However, it is evidence that the Appellant signed that undertaking because he wanted to leave the police cell after having been detained for five (5) days without bail.

That the finding by the trial magistrate in her judgment that the accused person at the time of this undertaking was surrounded by people who are incapable of misleading him. (See Page 88 of the Record of Proceedings) is not known to any law in Nigeria.

It is submitted that the trial magistrate failed to dispassionately evaluate and appraise the case presented by the Respondent and the Appellant meant there was no foundation on which the trial court could form proper opinion or draw reasonable inference. Therefore the trial court's failure to so properly evaluate the evidence adduced before it will affect its conclusion. See *AMALA v STATE* (2004) 12 nwlr (Pt 888) 520.

That the trial magistrate based ~~her~~^{his} findings and decisions mainly on Exhibit A, B and C and P1 which are the Appellant's Statement and an undertaking obtained by the Police and concluded that since the Appellant's counsel did not object to their admissibility meant they were true; whereas the Appellant stated that he did not make Exhibit A and B, he only made Exhibit C because he wanted to leave the police cell. See IGRI v STATE (2012) 16 NWLR Pg 529.

It is submitted that there are no other facts consistent with the Exhibit A and B. However, it is in evidence at Page 39 of the Records that the PW3 wrote Exhibit A and B as at the time the Appellant had lost composure and was asked to sign.

Submitted that the findings of the trial magistrate were perverse. Court is urged to interfere in the findings of the trial court. Court is referred to the case of BORISHADE v F.R.N. (2012) NWLR Pg 376 ratio 35. Court is urged to allow the appeal.

The Respondent on their part was duly served with the processes of this court i.e. Notice of Appeal, Record of Proceedings, Appellant Brief of Argument and hearing notices. Reaffirming the position of this court on its ruling of 18/3/15, we are satisfied that the Respondent is aware of this appeal but elect in their wisdom not to contest same. The law is settled that where a Respondent to an appeal fails to file his brief of argument, he will be deemed to have admitted the truth of everything stated in the appellant's brief in so far as such is borne out by the records. See LAGRICOM CO. LTD v. U.B.N. LTD (1996) 4 NWLR (Pt 441) 185.

From the circumstances of this case, it is without doubt that this appeal stands unchallenged and uncontroverted. It is trite law that where the evidence before the court is neither challenged nor contradicted and not rendered inadmissible by the provisions of any enactment, the court would be right and justified in relying on such evidence in arriving at its decision. See APPROFIM ENG. CONST. LTD v SIDOV LTD (2006) 13 NWLR (Pt 996) 73.

The fact of this case is that the Appellant was arraigned by the Respondent vide a F.I.R. on 16/2/12. The Appellant was arraigned for the offence of joint Act, criminal breach of trust and cheating. See Page 1 of the Record of Appeal.

In proving the allegation against the Appellant, the Respondent called three (3) witnesses, PW1, PW2 and PW3. See Pages 30 to 42 of the Records.

The case of the Respondent is that the Appellant introduced the PW1 to the business of Ice Block Production and that the PW1 gave the Appellant the sum of N500,000.00 to construct the said ice block production machine and that the Appellant volunteered to manage the business for PW1 at his (Appellant's/Site and that the appellant would be giving her the sum of N25,000.00 weekly.

At the close of the Respondent's case, the Appellant entered a No Case Submission and the Respondent filed a Reply upon which the trial magistrate ruled and preferred a charge of criminal breach of trust against the Appellant.

The Appellant called four (4) witnesses in his defence, DW1, DW2, DW3 and DW4.

It is the case of the Appellant that he was in a relationship with the PW1 and that due to the financial challenges of taking care of the PW1, he conceived the idea of an ice block making machine and provided the sum of N300,000.00 which he paid DW4 for the construction of the said machine so that the proceeds therefrom would be used to maintain the PW1. See Pages 51 to 71 of the Records.

The Appellant's case was also that the said business could not proceed as planned due to electrical problems and the time of season when the machine was completed.

At the close of the Appellant's case, final addresses were filed and adopted. The trial magistrate after considering the respective contentions of the parties found the Appellant guilty, hence this appeal.

We have carefully considered the processes filed especially the Record of Proceedings. We find it difficult to be in one with the trial magistrate that the Appellant acted dishonestly or misappropriated the property or the proceeds therefrom.

Section 16 of the Penal Code Law Cap 89 L.N.N. defined the word "dishonestly" who does that thing with the intention of causing a wrongful gain to himself or another or of causing wrongful loss to any other person".

In the light of the above definition, we are of the view that there is no evidence on record adduced by the Respondent to show that the Appellant was dishonest. We hold that the trial magistrate erred when ~~she~~^{he} concluded in her judgment that because the Appellant opted to keep the subject of the charge at his site and

that the maker of the ice block machine, DW4 said that he re-filled the gas once at the earlier stage meant that the Appellant was dishonest in his dealings.

It is clear from the records that the Respondent did not adduce any evidence to show that the Appellant actually put the subject of the charge to use and that the sum of N600,000.00 was realized as proceed therefrom which the Appellant misappropriated. The trial magistrate did not also specifically make any findings that the machine was actually put to use.

As stated earlier in this judgment, the Respondent in their wisdom elect not to challenge this appeal, this court in line with the case of LAGRICOM CO. LTD v U.B.N. (Supra) holds that the Respondent is deemed to have admitted the truth of everything stated in the Appellant's brief.

This appeal is therefore allowed. We accordingly make the following orders:

1. The Judgment of His Worship Chinyere Nwucheonwu Senior Magistrate court, Karu FCT Abuja dated 9/10/2013 is hereby set aside. *in the case of Cap. V. Victor Ibeff we*
2. The Appellant is accordingly discharged and acquitted. *N.O. CR/2/12*

JUSTICE V.B. ASHI
(JUDGE)

[Signature]
JUSTICE SALISU GARBA
(PRESIDING JUDGE)

15/4/15