

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU**  
**COURT CLERKS : JANET O. ODAH & ORS**  
**COURT NUMBER : HIGH COURT NO. 23**  
**CASE NUMBER : CHARGE NO: CR/199/2016**  
**DATE: : MONDAY 22<sup>ND</sup> JUNE, 2020**

**BETWEEN:**

**COMMISSIONER OF POLICE..... COMPLAINANT**

**AND**

**ABUBAKAR ABDULKADIRI ..... DEFENDANT**

# JUDGMENT

The Defendant herein is standing trial for offence bothering on Criminal conspiracy, armed robbery and unlawful possession of firearm punishable under sections 6 (3), 1 (2) (a) and (5) of the Robbery and Firearm (special provision) Act, LFN 2004 and section 3(1) of the firearms (special provision) Act, LFN 2004.

On the 3<sup>rd</sup> of June, 2016 the Defendant was arraigned on the following three count charge to wit;

## COUNT 1

That you AbubakarAbdulkadiri, male, 27 years of Byzahin Market, Kubwa, FCT Abuja on or about the 14<sup>th</sup> day of March, 2016 at about 14:00 hours at Nadrem Supermarket, Kubwa, FCT Abuja within the jurisdiction of this Honourable Court, conspired and agreed with one **Benjamin Ogbuhu**, who is now at large, to and indeed robbed CalistaOkafor the cashier of NadremSupermarket,

while armed with a locally made pistol, held her at gun point and dispossessed her of the Sum of Two Million, Six Hundred Thousand Naira (N2,600,000.00), property of Nadrem Supermarket. You thereby committed an offence punishable under section 6 (b) of the Firearms (Special Provisions) Act, LFN 2004.

## **COUNT 2**

That you AbubakarAbdulkadiri, Male, 27 years of Byzahin Market, Kubwa, FCT Abuja on or about the 14<sup>th</sup> day of March, 2016 at about 14:00 hours at Nandrem Supermarket, Kubwa, FCT – Abuja within the jurisdiction of this Honourable Court, while armed with a locally made pistol held CalistaOkafor, the cashier of Nandrem Supermarket at gun point and dispossessed her of the sum of Two Million, Six Hundred Thousand Naira (N2,600,000.00), property of Nandrem Supermarket. You thereby committed an offence punishable under section

1(2) (a) and (b) of the Robbery and Firearms (Special Provisions) Act, LFN 2004.

### **COUNT 3**

That you AbubakarAbdulkadiri, Male, 27 years of Byzahin Market, Kubwa, FCT Abuja on or about the 14<sup>th</sup> day of March, 2016 at about 14:00 hours at Nandream Supermarket, Kubwa, FCT Abuja within the jurisdiction of this Honourable Court, was arrested for illegal possession of one locally made pistol with rounds of live cartridge. You thereby committed an offence punishable under section 3 (1) of the Firearms (Special Provisions) Act, LFN 2004.

The Defendant pleaded not guilty to all the counts charge and the case proceeded into hearing.

PW1 (CalistaOkafor) in her evidence before the court narrated her ordeal in the hands of the Defendant on the 14<sup>th</sup> of March, 2016. She stated that two men with guns

attacked her on that faithful day about 2pm when she came out with a bag from the Supermarket where she work on her way to the bank.

She stated that she stopped the first motorcycle to take her to the bank and he said he was not going. The bike man then got to the traffic light and stopped. That she stopped the second motorcycle man and told him she was going to the Bank as they were talking, two men approached her and demanded for her bag and she refused. Two of the men pulled out guns and threatened to shoot.

That she gave them the bag and began to shout, people then ran after them. And that the Defendant is one of the armed robber.

PW1 stated that the Defendant had gun and he was the one that collected her bag and that the bag contained N2,600,000.00 (Two Million, Six Hundred Thousand Naira).

The two men were later arrested and taken to Kubwa Police Station.

Under cross – examination she stated that she made statement to the police in this case, the statement was tendered and admitted as Exhibit “A” rejected.

That she made her statement in Kubwa Police station, that the incident happened March 14<sup>th</sup>, 2014.

That SARS did not invite her during investigation of the case. That when the accused accosted her and demanded for her bag she did not shout because she was afraid. That she lodged money severally for her management, and that she usually tells her manager whenever she is going to the bank and that she was never robbed.

That it is impossible for her and the manager to plan to take away the money.

PW1 was discharged after cross – examination.

PW2 (Mr. Williams Aniukwu) was led in evidence.

It is his testimony that he is the manager of Nadrem Supermarket and that on the 14<sup>th</sup> March, 2016, he was in his office when he started hearing noise outside the building.

That he saw some of his staff run inside the supermarket and told him that his accountant's bag (PW1) which contained money to be deposited in the bank was snatched. That the accountant was crying, he then called the D.P.O of Kubwa Division who responded immediately. The D.P.O alerted the policemen who chased the Okada Motorcycle the armed robber and caught up with the armed robber, arrested him, brought the bag and also found pistol on the armed robber. That he saw the robber after the arrest and that is why he can recognise him.

PW2 was not cross – examined by the Defendant, so discharged after examination – in – chief.

PW3 (Inspector Ikagiva Simon) testified that on the 14<sup>th</sup> March, 2016, he was on duty when he received a distressed call from Nadrem Supermarket Kubwa, Abuja. The Patrol team which was at the police station for another assignment were moved to the supermarket.

On their way to the supermarket, they saw two persons on the motorcycle shooting in the air and who were being chased by Okada riders and they equally joined them in the chase. On sighting the police vehicle, the armed robber shot at their vehicle and they responded. That they eventually got to a carnal and the exchanged fire with the armed robbers on the process they shot one of them and arrested the accused person in the dock.

That they recovered the sum of N2,600,000.00(Two Million, Six Hundred Thousand Naira) from the accused person being the sum snatched from the cashier of Nandrem Supermarket with a locally made pistol with two live cartridges. They returned with the armed robber



shot to the Hospital who was confirmed death. The accused was then taken to the office for investigation and who after being cautioned, made voluntary statement to the police, he admitted the crime.

The accused person statement was tendered as Exhibit “B”.

PW3 was cross – examined, during cross – examination PW3 stated that Exhibit “A” was tendered through him. That he recorded Exhibit “A”, that investigation was not concluded in Kubwa before transferred to CID. That he made a written statement to CID the statement was tendered as Exhibit “C”. That he was present when Defendant was arrested and that he was there when the gun exchanged happened. PW3 was discharged.

PW4 (DSP EnecheOkwoli) was led in evidence as the next witness.

It is his evidence that on the 4<sup>th</sup> March, 2016 Defendant was brought from Kubwa Division of the police along with Exhibit of locally made pistol, one expanded cartridge and three live cartridge in connection with a case of criminal conspiracy and armed robbery. Defendant and his cohort accosted the cashier of NandremSuppermarket in Kubwa. The case was transferred for further investigation. The Exhibit was recorded with Exhibit keeper and they proceeded to the scene of the crime.

One locally made pistol, one expanded and three live cartridges were tendered as Exhibit “D”.

PW4 was cross – examined and he stated that he was not the one that arrested the Defendant, that he is not the one that recovered Exhibit “D” and that he did not recover money. That he has nothing to show the court that he is a police officer. That does not know any David Adamu in respect of this case. That he was the IPO assigned to

investigate this matter. That the gun he tendered was not sent for ballistic test.

PW4 was discharged after cross – examination.

The Prosecution closed its case to pave way for Defence.

The Defendant (AbdulkadirAbubakar) himself testified as DW1.

It is the evidence of Defendant that he is a graphic designer and that on the 14<sup>th</sup> March, 2016 at about 3 – 4pm his mum called him to say she was sick and on admission and that he should come. On his way, he saw police who arrested him, they asked where he was going and what he does. He told them at the station, the police then brought out somebody from the cell and asked if he knew him of which he said no. that he was then put inside cell on the 18<sup>th</sup> March, 2016 and that he was brought out of the cell at midnight and asked to endorse a book to which he told the police he was educated and could read

and write and cannot sign what he did not write. That he refused to sign and was subjected to torture. That he fainted due to torture on the 16<sup>th</sup> March, 2016. When he regained consciousness he found himself in the cell. At about 4pm of the same 16<sup>th</sup> March, 2016 three men came to his cell and picked him up and put him in the boot of Hyundai Jeep and took him to SARS cell where he was detained for two months, two weeks, and on the 14<sup>th</sup> June, 2016 he was brought to court.

DW1 was then cross – examined and he stated that the men that picked him on 14<sup>th</sup> March, 2016 were armed policemen. That he did not ask them why he was arrested and he was not told. That he was arrested on 14<sup>th</sup> March, 2016 at junction of Byazhin market where he was about taking a bike. That Benjamin Ogboku was not there when he was arrested and that the bike man he stopped left. That he does not know NadremSupermarket at Kubwa. That prior to his arrest, he lives in Kubwa for the past 26

years. That he was stopped from calling his mother. That he does not know the police that arrested him and that he did not take any step to challenge his arrest. That he fainted and regained consciousness in Kubwa. That he was not aware of any robbery in Kubwa on the 14<sup>th</sup> March, 2016. That he does not know why he is in court. Defendant specimen signature was tendered as Exhibit “E”. That the signature in Exhibits “B” and “E” were not the same. That he is from Edo State and first son of his parent. That his mother name is Maryam Kadir and that he did not attend Federal Poly Auchi.

DW1 was discharged after cross – examination. The Defendant closed it case and same was adjourned for filing and adoption of written address.

Learned counsel for the Defendant adopted his final written address and formulated a sole issue for determination to wit;Whether the Prosecution has proved

the case against the Defendant beyond reasonable doubt as required by law.

Arguing on the sole issue, learned counsel submit that it is trite that an accused person shall be presumed innocent until the contrary is proved by the Prosecution. Section 36(5) of the 1999 Constitution was cited and relied upon.

Counsel submit that the burden of proof is on the prosecution and the standard required in criminal matters is proof beyond reasonable doubt. Section 131 of the Evidence Act 2011 and case of *NNACHI VS IBOM (2004) 16 NWLR (Pt. 900) 614 was relied upon.*

Learned counsel contended further that for every offence there are two fundamental elements that must be proved. The mens Rea and the Actus Reus, and that for the offence of Armed Robbery, the following ingredients must be proved;

- a. There was infact a robbery attack on some persons.

- b. That robbery attack was an armed robbery, that is offensive and dangerous weapons were use in the execution of the robbery, and
- c. That the accused person was the armed robber.

Learned counsel Momoh, Esq. contended that the Prosecution has failed to establish the guilt of the accused person beyond reasonable doubt and therefore court should discharge and acquit the accused person.

The Prosecution on their part, raised a sole issue for determination to wit; whether the Prosecution has proved beyond reasonable doubt the three counts charge herein against the Defendant.

It is submission of the Prosecution counsel that the Prosecution has proved reasonable doubt, all the ingredients/elements required to proof this offence of armed robbery have been established.

Learned counsel submit that the law is trite that to secure a conviction in a charge of armed robbery against an accused person, the prosecution must prove that;

1. There was a robber or series of robberies
2. That the accused person or persons were armed with offensive weapon.
3. That the accused person participated or was one of the robbers.

It is the submission of counsel for the prosecution that the above ingredient were established beyond reasonable doubt and therefore court should convict the accused person.

Learned counsel argued further that there is no contradiction in the case of the prosecution sufficient enough to warrant throw away of the case of the Prosecution. ***MATI MUSA VS THE STATE (2019) LPELR 46 350 SC at rations.***



Learned counsel contended further that, the court can safely convict the Defendant upon Exhibit “B” which is the confessional statement of the Defendant.

Court was finally urged to convict the accused person.

Defence counsel upon service, replied on points of law wherein he argued that the evidence of PW2 was hearsay and court cannot rely on same.

Counsel equally maintained that Prosecution having admitted the fact that there are contradictions in the evidence of its witness, Defendant should be discharged and acquitted.

**COURT:-**I have gone through the oral and documentary evidence of the Prosecution witnesses as ably reproduced in the body of this judgment, on the one hand and the evidence of Defendant in defence of the allegation of Criminal Conspiracy and armed robbery preferred against him.

The law is settled per – adventure that the required proof for conviction to be secured with respect to armed robbery shall be beyond reasonable doubt.

The following ingredients ought to be proved, as follows:-

1. That there was armed or series of armed robberies
2. That each of the robberies was an armed robbery
3. That the accused person was one of those who took part in the armed robbery.

I find solace in the cases of ***BABAKINDE & ORS VS STATE (2013) LPELR – 21896 (SC), BELLO VS STATE (2007) 10 NWLR (Pt. 1043) 564.***

Above ingredients can be proved by direct evidence, circumstantial evidence and or confessional evidence. I rely on ***EMEKA VS STATE (2002) 14 NWLR (Pt. 734) 666 at 683.***

It is indeed a notorious fact that the burden of proof is always on the prosecution to establish the guilt of a named accused person if conviction is to be secured.

This has become so important and necessary because such an accused person is presumed to be innocent under the Constitution of FRN 1999 as amended. Section 36(5) of 1999 Constitution and the case of *AL-HASSAN VS THE STATE (2010) LPELR 8674 (CA)* support above proposition.

Burden of proof has three meanings, to wit:-

- a. The persuasive burden
- b. The evidential burden
- c. And the burden of establishing the admissibility of evidence.

The burden vests squarely on the prosecution and does not shift. I rely on sections 138 (1) of Evidence Act and

36 (5) of the 1999 Constitution of FRN 1999 as amended,  
***EZE VS STATE (2015) LPELR 24556 (CA)***.

In an attempt to establish the guilt of the accused person, D.FAbah, Esq, for the Prosecution, called a total number of four witnesses whose respective evidence has already been reproduced in the preceeding part of this judgment.

I shall revisit the said evidence of the witnesses of the Prosecution and that of the accused person where necessary to be able to resolve this case.

I shall take the first charge of criminal conspiracy and resolve same before proceeding to the other counts.

I am not unaware that criminal conspiracy is hatched in secrecyconspirators and conspiracy is always concealed. It is therefore almost near impossible to give direct evidence on how persons conspired and that is why courts are allowed to draw reasonable inference as to whether there was conspiracy at all.

What then is criminal conspiracy and what are its ingredients?

Conspiracy is defined as when two or more persons agree to do or caused to be done, an illegal act, or an act which is not illegal by illegal means.

I rely on section 96 of the Penal Code and the case of ***YAKUBU VS STATE (2014) LPELR – 22401 (SC)***.

For there to be conspiracy, the following ingredients ought to be present;

- i. There must be an agreement of two or more persons.
- ii. The person must plan to carry out an unlawful or illegal act which is an offence.
- iii. One person cannot commit the offence of criminal conspiracy because he cannot be counted as a comparator.
- iv. Bare agreement to commit an offence is sufficient.

- v. A conspiracy is complete if there are acts on the part of an accused person which lead the trial court to the conclusion that he and others were engaged in accomplishing common object or objective.

The authorities of *AFOLAHAN VS STATE (2012) LPELR 7063 (CA) AND KAZA VS STATE (2008) 7 NWLR (Pt. 1085) at 176 where Niki Tobi JSC (blessed memory)* listed above ingredient of conspiracy.

From the evidence of the Prosecution i.e PW1, CalistaOkafor, accused person and one other person armed with guns approached her whilst she was standing in front of Nadrem Supermarket waiting for motorcycle to convey her to the bank and demanded for her bag which she said had the sum of N2.6Million, to which she obliged because the two armed men threatened to shoot her. She said the two armed robbers later fled on motorcycles and left her shouting, whilst the crowd chase the men. On the part of PW3, he gave evidence on how he received a

distressed call from Nadrem Supermarket Kubwa and how he mobilized patrol team and drove out to the Supermarket and how they joined in the chase of people on a motorcycles whom they saw shooting on the air and who were being chased by Okada riders.

PW3 also said in his evidence that they were shot at by the armed robbers. He also gave evidence on how the police also shot one of the armed robbers and arrested the accused but that the shot and injured armed robber was confirmed death at the hospital.

PW3 also said the amount of N2.6 Million was recovered from the accused person also with a locally made pistol with two live cartridges.

It is further the evidence of the prosecution that the recovered sum i.e N2.6Million was released on bond by the police to the owner of the money.

I will like the Prosecution to answer the following questions;

- a. Who is the second armed robber that was allegedly shot?
- b. Where is his death body?
- c. Which hospital was he taken to after he sustained the alleged bullet injury?
- d. What is the name of the hospital?
- e. Where is his medical report?
- f. Where is his certificate of death?

How is the court expected to arrive at a decision touching on conspiracy without evidence that there was ever another person, apart from the accused person before me?

The accused person couldn't have conspired with himself.



There has to be a co-conspirator as emphasized by Tobi, JSC in *KAZA VS STATE (2008) LPELR 1683 (SC)*.

Clearly, Prosecution has failed with its face flat to the ground, to establish the offence of criminal conspiracy... were dealing with an issue of life and death here.

PW1 said two people were killed. Where are their bodies?

The Prosecution is in a better position to appreciate the gravity of the offence upon conviction.. Above therefore underscores the importance of ensuring no stone is left unturned to avoid attack on their evidence. Learned counsel for the accused person has made heavy weather with respect to the Prosecution's uncoordinated evidence.

The tardy and untidy manner with which Prosecution addressed the issue of conspiracy is so wishy – washy and unbelievably embarrassing. I make bold to say that Prosecution on the face of the afore asked questions has

not failed, but monumentally failed to establish the offence of criminal conspiracy.

Count 1 fails and same is accordingly dismissed for want of evidence.

On Count 2, it is the evidence of the Prosecution that accused robbed PW1 of the sum of N2.6Million while armed with a locally made pistol..from the evidence of PW1, PW2 and PW3, it is safe to conclude that the said accused person was not arrested at the scene of the crime. On his part, the accused said he was on his way to visit his sick mother in the hospital when the bike he was riding on was double – crossed by some men in Audi 80 who later turned out to be Policemen who arrested him and took him to Kubwa Police division where he was detained.

Accused further gave evidence on how another person was brought from the cell and sought to know if he knew the person to which he denied.

Accused person further gave evidence on how he was eventually transferred to Special Anti Robbery Squad (SARS) and eventually arraigned before this court.

From the evidence of the Prosecution witnesses, I will like again to ask the following question:-

1. How many cartridge did police recover on the accused person?

I ask this question because of the nature of the offence and the eventual punishment according to our laws.

PW3 gave evidence on how they recovered a locally made pistol with two live cartridges. On the part of PW4, he said when the accused was transferred to the Special Anti Robbery Squad (SARS) he was brought with a locally made pistol, one expended cartridge and three live cartridges.

Inconsistencies or contradiction in the evidence of the Prosecution are fatal if they are material and they are

material if they are likely to create doubt in the mind of the court. See ***GABRIEL VS STATE (1989) 5 NWLR (Pt. 122) 457.*** Only the discrepancy in the evidence of PW3 and PW4 with respect to cartridges found on the accused person.?

I must resolve that though there are inconsistencies in the evidence of PW3 and PW4, it is not sufficient to raise any doubt in the mind of the court in view of the fact that it is only the number of cartridges that is in issue and not the fact that cartridges were not found.

I rely on ***ADMIN. GEN. DELTA STATE VS OGOGO (2006) 2 NWLR (Pt. 964) 366.***

Momoh, Esq. for the accused person argued extensively on the issue of identification parade.

I hereby make the following observation;

I will like to observe that from the evidence of PW1, there wasn't a description of how the two armed men looked, their physique, type of clothes, etcetera – etcetera.

Coupled with the fact that the two men were not arrested at the scene of crime, was identification parade then not necessary?

The essence of identification parade is to enable an eye witness to the commission of the crime to identify such perpetrator of crime from amongst a host of other people on parade. Even though I am not oblivious of the fact that a criminal would always deny his involvement in commission of crime, it is my considered judgment that the police ought to carry out a water tight investigation so as to make the job of a prosecuting counsel a lot easier in court.

Defendant said in his evidence that he was going to the hospital to visit his sick mother. Why did the police investigation Officer not investigate the fact? Why did the

Investigating Police Officer (IPO) not carry out a forensic examination of the finger print on the pistol to tie same to the accused person?

Forensic medicine is a branch of medicine concerned with law, especially criminal law..the forensic scientist use laboratory methods to study body fluids. They are also trained in ballistics and identification of genetic finger prints in legal investigation. Above was considered in the case of ***SHONUBU VS PEOPLE OF LAGOS STATE 2015 LPELR 24807 (CA)***.

Was any bullet ever fired from the said pistol?

Where is the ballistic report?

These questions beg for answer in view of the nature of this case.

I have seen the said locally made pistol and cartridges, i.e Exhibit “D”..aside the fact that it looked rusty and

derelicted, I may be wrong, PW3 and PW4 gave varying evidence with respect to used and unused cartridge.

I am in agreement with N.A Momoh Esq on the fact that identification parade ought to have been carried in view of the fact that the said accused person denied robbing PW1, Coupled with the fact that there has not been any forensic evidence linking the accused to Exhibit “D”.

Where then lies the case of the Prosecution?

Prosecution in its evidence said the money allegedly robbed from PW1 was released on Bond to the owner.. The said bond was not tendered in court to buttress the said evidence.. Was any money ever stolen?

Is the court meant to speculate?

I have seen Exhibits “B” and “E” which are confessional statement of the accused person and his specimen signature.

I have attempted to compare the two signatures.

Even though I'm not a signature expert, as judge, I have the liberty to make such comparisons. The specimen signature accused gave in court is different by far from what is contained in Exhibit "B" i.e the alleged confessional statement.

In the said statement, accused who was said to have attended Auchu Polytechnic, denied attending such school..Who then told the IPO accused attended Auchu Polytechnic?

I have further read the said statement which has been credited as confessional.

The details therein are not noble as to sway this court into ascribing true meaning of confessional statement to Exhibit "B". The said exhibit has fallen short of what is termed confessional statement.

On the whole, it is my judgment that **Counts 2 and 3** also suffer the same fate as **Count 1**... same are hereby



dismissed. Accused is consequently discharged and acquitted.

Before I put a full stop to this judgment, I'll like to commend Abah Esq for the Prosecution who though has argued effectively on the need to convict the accused based on Exhibit "B" i.e confessional statement.

I am afraid, the IPO did not justify the Jumbo pay he is receiving as police officer.

The investigation has fallen short of the international best practices as far as criminal investigation is concerned..Abah Esq, being a Prosecutor cannot work miracle.

This court cannot speculate.. Courts only work and act on evidence, very convincing evidence.

There is no miracle in court. Police men have a chequered history of arresting people unconnected to crime only to end up torturing such people who are often forced to

admit what they know not.. all these is done to please their bosses. This has to stop.

I also wish to commend Defence counsel, N.A Momoh Esq. for his untiring determination and commitment.

God bless you both.

*Justice Y. Halilu*  
*Hon. Judge*  
*22<sup>nd</sup> June, 2020*

### ***APPEARANCES***

Defendant in court

D.F ABAH – for the Prosecution.

N.A MOMOH – for the Defendant.