

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

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CR/347/2018
DATE: 1ST JUNE, 2020**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

HASSANA IDRIS DANJUMA - DEFENDANT

Defendant in court.

Yetunde Alabi for the prosecution.

Emmanuel Okani appearing with Chioma Ezewigbo (Mrs) for the Defendant.

Prosecution's Counsel – The matter is for judgment and we are ready to take same.

J U D G M E N T

The Defendant was charged with a one count charge for the offence of wilfully obstructing the commission or any authorized officer of the commission in the exercise of any of the powers conferred on the commission contrary to Section 38(2) of the Economic & Financial Crime Act 2004 and punishable under Section 38(2) (b) of the same Act.

For want of doubt the said charge is herein reproduced as follows:

“That you Hassana Idris Danjuma on or about the 4th Day of August, 2017, within the jurisdiction of the High Court of the Federal Capital Territory, did wilfully obstruct the Economic and Financial Crimes Commission in the exercise of its powers to prosecute one Emege Shehu Aminu by entering a bond for the sum of N6,000,000.00 (Six Million Naira) to produce him before the Commission on every date that he may be required to be produced, till the case against him is finally disposed of; and failing to do so when called upon by the Commission, and you thereby committed an offence contrary to Section 38(2) of the Economic and Financial Crimes (Establishment) Act, 2004 and punishable under Section 38(2) (b) of the same Act”

In establishing the crime against the Defendant, the prosecution called a sole witness, one Abdulraham M. Arabo, who testified as PW1.

In his evidence-in-chief, the PW1 stated that he is an Operative attached to the Bank Fraud Section of the EFCC.

It is the evidence of PW1 that sometimes in August, 2017 in the cause of investigation a case one Aminu Emeje was arrested and was granted an administrative bail by the EFCC. That one of the conditions for the grant of the bail was for him to provide 2 civil servants; one of the civil servants that he provided happened to be the Defendant in this case. The defendant also procured the services of one Hashim Suleiman who works with FCT State Universal Education Board who stood as the 2nd surety; the said

Aminu Emege was released to the Defendant and Hashim Suleman upon making an application and entering a bond of the sum of N6 Million. That the said Aminu Emeje was asked to report back within one week of his release but he jumped bail. Consequent upon that, the Defendant was contacted to produce Aminu Emege as undertook by her but she never did.

It is the evidence of the PW1 that several invitations were sent to the defendant but she never showed up, hence the arrest of the Defendant in her office at the National Assembly; she was subsequently granted an administrative bail and giving sometime to produce the said Aminu Emeje. She was equally requested to be reporting on a weekly basis at the EFCC Office or produce the said Aminu Emeje.

After about 3 months, the Defendant was re-arrested at her office at the National Assembly. She volunteered her statement and was released again on bail.

In the cause of PW1's evidence, the application and the bail bond with some attachment were admitted in evidence and marked Exhibit A & B respectively. The defendant's statement to the EFCC dated 24/9/18 was also admitted and marked Exhibit C.

Under cross-examination of the PW1 by the defence counsel, the PW1 stated that the Defendant look for Aminu Emeje sometimes in August 2017. Exhibit A and B were made in respect of that bail application. Exhibit B is a Bond entered by the Defendant. The amount in the bond is Six Million Naira (N6 Million). The

Commission did not ask the Defendant to redeem the bond. The witness further stated that there was official correspondence between the commission and the Defendant inviting her to report to the office but he cannot remember the date the letter was sent to the Defendant and also he did not have a copy of the invitation letter.

The PW1 further stated that Exhibit C was the statement the Defendant made after her re-arrest but was not the only statement she made. The witness also stated that the commission did not charge the 2nd surety Hashim Suleman to any court of law. That Aminu Emege's phone number is on the bond. The PW1 tried contacting Aminu through the number but it was not going through. That the Defendant never physically obstructed the commission from re-arresting Aminu Emeje. The witness further stated that he cannot remember whether the defendant gave false information in the cause of investigating this case.

No re-examination, PW1 was discharged and that is the case for the prosecution.

In defence of this matter the Defendant called two witnesses.

One Alhaji Idris Danjuma (the husband to the Defendant) testified as DW1. In his evidence-in-chief, the DW1 stated that the Defendant is his wife and she volunteered to be one of the sureties to Aminu Emege who is her cousin brother. That before the said Aminu was granted bail, officials of the EFCC followed him to his house; they were communicating with Aminu from

August 2017 – August 2018. When the EFCC couldn't see Aminu, they arrested the defendant.

On 24/9/2018, the Defendant was humiliated, arrested and detained for 14 days by the EFCC.

The DW1 stated that they tried to get Aminu but could not. The DW1 engaged the police to track Aminu phone numbers but that did not yield fruitful result.

Under cross-examination of DW1 by the prosecution's counsel, the DW1 stated that he was not present when the Defendant took Aminu Shehu on bail. He is also aware that the EFCC Operatives went to Aminu's house; that the defendant was not given any letter of invitation.

No re-examination, DW1 was discharged.

The Defendant herself testified as the DW2. In her evidence-in-chief, she stated that in August 2017, she was called by Aminu Emeje, who was in the custody of the EFCC. She went there and she was asked to produce her identify card for his bail which she did.

In August 2018 she was arrested from her office; that the EFCC were not reaching Aminu again. She spent 4 days in detention and later granted bail. That she kept reporting to the EFCC office until her husband's illness and she took him home with the permission of her office.

It is the evidence of DW2 that when she came back to her office on 24/9/2018 and she was arrested by the EFCC the same day. She was humiliated and spent 14 days in detention.

That Aminu ran away from his house and all his numbers were not reachable till date. All effort to trace him has proved abortive.

The DW2 further stated that before Aminu ran away, the EFCC went to the house where he lives with one woman.

Under cross-examination of the DW2 by the prosecution's counsel, the DW2 stated that in August 2017, she took Aminu Emeje on bail under a written application for bail. That she also entered into a bail bond of N6 Million to produce Aminu whenever needed by EFCC.

She further stated that she is not aware that if Aminu fails to appear she will pay the sum of N6 Million to Federal Government of Nigeria.

The witness further stated that during the husband's illness they stayed in the village for 2 weeks or thereabout.

That she did not see any letter of invitation from the EFCC. That letters addressed to her office are only received by the Clerk of the National Assembly with his stamp on it. Two letters of invitation dated 17/1/2018 and 9/3/2018 addressed to the Clerk to the National Assembly were admitted in evidence and marked Exhibits D1 and D2 respectively.

Under re-examination, the DW2 stated that she is not working in the Office of the Clerk to the National Assembly and that she did not receive Exhibit D1 and D2. She is seeing them for the first time in court.

DW2 was discharged and that is the case for the Defence.

The Defendant's counsel filed a 12-page final written address dated 12/12/2019 wherein counsel formulated a sole issue for determination, to wit:

“Whether the prosecution has proved her case against the Defendant to warrant the court to convict the Defendant”

On this sole issue, it is the submission that in any criminal proceedings, the prosecution has the burden of establishing the guilt of the Accused/Defendant beyond reasonable doubt. Court is referred to Section 135(1) Evidence Act and the case of JATO v STATE (2019) 24 WRN 64 at 73.

It is submitted that the prosecution must prove all elements of the offence charged in order to secure the conviction of the accused person. See Section 138(1) Evidence Act and the case of AMADI v FRN (2008) 12 SC (Pt 111) 55.

It is further submitted that the prosecution has failed to establish the necessary ingredient of the offence in Section 38 (2) of the EFCC Act. That the ingredients needed to prove the offence of screening an offender under Section 167 of the Penal Code Act which is equivalent to Section 38(2) EFCC Act is as follows:

- (1) That an offence has actually been committed.
- (2) That the accused knew or had reason to believe that the offence has been committed.
- (3) That the accused caused evidence of the commission of the offence to disappear, or gave false information about the offence, knowing or having reason to believe that the information was false.
- (4) That the accused did so with the intention of screening the offender from punishment.

It is the contention that the above ingredients have not been proved before this Honourable Court to enable the court convict and sentence the Defendant.

It is the submission that wilful obstruction in Section 38(2) EFCC Act connotes intentional. See the case of *NWOKEARU v THE STATE* (2013) NSCQR VOL 54 Pg 398.

It is submitted that the prosecution throughout the trial failed to put any evidence before this court to establish that the Defendant obstructed the commission with the intention of obstructing justice or that the Defendant overtly or covertly and intentionally stopped the commission from exercising any of its powers. There is even no evidence before this court requesting the Defendant to redeem the bond of N6,000,000.00 (Six Million Naira). Court is urged to place reliance on the testimony from the PW1 wherein he admitted during cross-examination that the defendant did not obstruct the commission in carrying out its duties under the Act.

It is the contention that the unavailability of Aminu Emege to appear before the commission was not caused by the positive actions or inactions of the Defendant.

It is submitted that failure by a surety to produce someone on administrative bail by the commission does not fall under Section 38(2) of EFCC Act. See *FRN v ALH. ABUBAKAR MAISHANU & 2 ORS* (2019) 36 WRN 1.

It is trite law that a surety who took somebody on bail and the suspect jumped bail the only thing the court can do in that circumstances is to order for forfeiture of the bail bond. See *JOHN & ANOR v COP* (2001) 2 ACLR 495; *AMADU TEA v COP* (1963) ANLR 502.

It is the submission that the PW1 in his evidence that Exhibit C was not the only statement made by the defendant before the commission. The prosecution refused to bring before this court all the statement made by the defendant to the commission which would have exonerated the Defendant. Court is urged to hold that the prosecution withheld the other statement of the Defendant because tendering them before this court would have exonerated the Defendant. See *AREMU v STATE* (1991) 7 NWLR (Pt 201) Pg. 1.

It is submitted that the prosecution has failed to put anything or evidence before this Honourable Court that will enable the court to convict the Defendant. Court is urged to discharge and acquit the Defendant.

The prosecution's counsel filed a 15-page final written address dated 15/1/2019 wherein counsel submitted a lone issue for determination, to wit:

“Whether from the quantum of evidence adduced by the prosecution, it could be said that it has discharged the burden on it by proving the offence of wilful obstruction for which the Defendant is charged beyond reasonable doubt”

On this singular issue, it is the submission of the prosecution that the guilt of an accused person may be proved by:

- (a) The confessional statement of the accused; or
- (b) Circumstantial evidence; or
- (c) Evidence of eye witnesses.

See the case of EMEKA v STATE (2001) 14 NWLR Pt 736 Pg 666 at 683.

It is also submitted that in a criminal case, the prosecution must prove the allegation against the accused person beyond reasonable doubt as required by Section 135 Evidence Act. See the case of PETER ADEWUNMI v STATE (2016) 2151 SC Pg 1.

It is the submission that from the totality of evidence adduced at trial and the exhibits tendered, the prosecution has proved the ingredients of the offence as contained in the charge against the Defendant beyond reasonable doubt as required by law.

It is submitted that Exhibit A which is the bail bond states that the surety is bound to forfeit to the FRN the sum of N6,000,000.00 if the

principal party fails to appear to the EFCC on the 7th of August, 2017 and every other subsequent date as may be required till the case against him is disposed off. In the instant case, the Defendant failed to produce Aminu Emeje and as such is liable to forfeit the bail bond to the FRN and not to the EFCC and as such it is court of competent jurisdiction that can make such order of forfeiture.

It is submitted that PW1 not remembering the dates the invitation were sent to the Defendant does not mean that the prosecution has not proved its case. See MOSES ABELEGAH v THE STATE (2015) LPELR – 24793 (CA).

In response to issues raised by the Defence in their final written address, submitted that the Defendant's counsel was misconceived to have likened the offence of wilful obstruction as provided for in Section 38 of the EFCC Act with the offence of screening of offenders as provided for in Section 167 Penal Code. This is because the elements of both offences differ.

That the Defendant raised heavy weather on the issue that PW1 was asked during cross-examination if the Defendant physically obstructed the commission to which he answered in the negative. The law says wilful obstruction not physical obstruction. The fact that the Defendant did not honour the invitations sent out to her until her arrest shows that she was deliberately being evasive and shielding her cousin (Aminu Emege).

It is further submitted that contrary to the submission of the Defendant in paragraph 3.22 and 3.23 of the Defendant's written address, DW1 never testified that she informed the IPO before travelling. Court is referred to its record of 30/9/2019. Furthermore, the prosecution never refused to bring before the Honourable Court the statement made by the Defendant. If the Defendant had need of any document from the prosecution they should have requested for a notice for the prosecution to produce same. See the case of EGWUCHE v STATE (2018) LPELR – 43975 (CA).

It is submitted that the prosecution has discharged the burden placed on it by proving its case beyond reasonable doubt.

The Defence Counsel filed a 4-page Reply on Points of law dated 20/1/2020 wherein counsel submitted that the prosecution cannot shift the burden of proving the guilt of the Defendant on the Defendant in the manner done in the final written address of the prosecution. See Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended); Case of DANIEL ITODO v STATE (2019) 43 WRN 84 at -104 – 105 Line 45 – 10.

It is submitted that the PW1 has put nothing before this court that can lead to the conviction of the Defendant.

It is submitted that standing as a surety is not an offence known to law. What the Defendant has done by Exhibit A is merely standing as a surety. It is purely contractual, the only punishment the defendant can be put to, is to forfeit the sum of N6,000,000.00 (Six Million Naira) only.

There is no evidence before this court that the Defendant has been called upon to forfeit the bail bond. It will only become an offence when called upon to forfeit the sum of N6 Million bail bond and the Defendant fails or neglect to do so. See *FRN v ALH. ABUBAKAR MAISHANU (2019) 36 WRN 1*. Court is urged to hold that the prosecution has failed to discharge the burden placed on them by law and to discharge and acquit the Defendant.

I have carefully considered the processes filed, evidence adduced and submission of learned counsel on both sides and I come to hold that the sole issue that beg for determination is whether the prosecution has proved her case against the Defendant beyond reasonable doubt to warrant the court to convict the Defendant?

It is trite law that the standard of proof in a criminal trial is proof beyond reasonable doubt. This means 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, and that it was his act, which caused the offence. See *ABADOM v STATE (2000) 4 SC (Pt 1) at 15*.

However, proof beyond reasonable doubt does not mean proof beyond shadow of doubt. Thus, if the evidence adduced by the prosecution is so strong against an accused as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course it is possible, but not in the least probable", the case is proved beyond reasonable doubt, but nothing short of that will suffice. See *AGBO v STATE (2006) 6 NWLR (Pt 977/545 SC*.

In the instant case, the defendant is standing trial on a one count charge contrary to Section 38(2) of the EFCC Act, 2004 which provides as follows:

“A person who:

- (a) Wilfully obstructs the commission or any authorized officer of commission in the exercise of any of the powers conferred on the commission by this Act;**
- (b) Fails to comply with any lawful enquiry or requirement, made by any authorized officer in accordance with the provisions of this Act commits an offence under this Act and is liable on conviction to imprisonment for a term not exceeding five years or to a fine not below the sum of N500,000.00 or to both such imprisonment and fine”**

Now a critical examination of the one count charge against the Defendant clearly shows that the “operating word” therein is that the Defendant “did wilfully obstruct” the EFCC in the exercise of its powers to prosecute one Emeje Shehu Aminu”.

The Oxford Advanced Learner's Dictionary 9th Edition defines the word “obstruct” as follows:

“... to prevent somebody/something from doing something or making progress, especially when this is done deliberately”

The Black's Law Dictionary 7th Edition defines the word “wilful” as follows:

“”...Voluntary and intentional but not necessary malicious”

The Supreme Court in the case of PRINCE EYANADE OJO & 3 ORS v THE GOVERNOR OF OYO STATE & 1 OR (2008) 15 NWLR (Pt 110) 577 define the word “Wilful” when it held as follows:

“The other word which it is sought to be defined is wilful. That is a word of familiar use in every branch of law, and although in some branches of the law it may have a special meaning it is generally, as used in courts of law implies nothing blameable, but merely that the person of whose action or default the expression is used, is a free agent, and that what has been done arises from spontaneous action of his will. It amount to nothing more than this, that he knows what he is doing and intends to do what he is doing and is a free agent”

In the light of the above, it is clear that “wilful” as used in Section 38(2) EFCC Act connotes intentional.

The Apex court in the case of HENRY NWOKEARU v THE STATE (2013) NSCQR VOL. 54 Pg 398 defines intention as:

“The purpose or design with which an act is designed. It is the fore knowledge of the act coupled with the desire to do the act. The foreknowledge and desire form the case of the act in so far as they fulfil themselves through the operation of the will”

In criminal law, it involve guilt, accused must have done or omitted something contrary to the law as criminal responsibility for conduct depends on intention. See QUINN v LETHEM (1901) AC 471, 533”

In the instant case, it is the evidence-in-chief of PW1 the prosecution sole witness that in August, 2017 in the cause of investigating a case one Aminu Emeje was arrested and the Defendant stood as surety for him entered a bond of the sum of N6 Million. The said Aminu Emeje was released and was asked to report back within one week of his release but he jumped bail.

Consequent upon that, the defendant was contacted to make the Aminu Emeje available as undertook by her but she never did.

Going by the content of Exhibit B, the bail bond, the Defendant was to forfeit to the FRN the sum of N6 Million for failing to produce Aminu Emeje. However, under cross-examination of the PW1 he stated inter alia:

“The amount in the bond is Six Million Naira (N6,000,000.00). The Commission didn’t ask the Defendant to redeem the bond”

The witness further stated thus:

“Aminu Emeje’s phone number is on the bond. I tried contacting Aminu through the number but it is not going through.

The Defendant never physically obstructed us from re-arresting Aminu Emeje”

From the foregoing, it is clear that the prosecution failed to put any evidence before this court to establish that the Defendant obstructed the commission with the intention to obstructing justice

or that the Defendant overtly or covertly and intentionally stopped the commission from exercising any of its powers. There is also no evidence before this court requesting the defendant to redeem the bond of N6,000,000.00.

It is further the evidence of PW1-in-chief that the Defendant was contacted to make the Aminu Emeje available but she never did. The prosecution tendered Exhibit D1 and D2 respectively which are purported invitation letter to the Defendant.

A cursory look at the said exhibits reveals that it was addressed to the Clerk to the National Assembly and was duly acknowledged by the office of the Clerk National Assembly.

However, there is no evidence before this court that the said invitation letter actually got to the Defendant. The Defendant who testified as DW2 under cross-examination stated that she did not see any letter of invitation from the EFCC.

Accordingly, the prosecution is expected to show proof that the said letters of invitation got to the Defendant.

The PW1 having admitted under cross-examination to the effect that the Defendant did not obstruct the commission in carrying out its duties under the Act. And that no demand was made on the Defendant to redeem the bail bond on Aminu Emeje. One begins to wonder in what way then did the Defendant obstructed the commission from carrying out its lawful duties?

Section 38(2) (b) the foundation for the one count charge reads:

“A person who:

Fails to comply with any lawful enquiry or requirements made by any authorized officer in accordance with the provisions of this Act”

In the instant case there is no evidence that the defendant refused a lawful enquiry made by the commission. There is also no evidence that any authorized officer of the commission demanded for an act which the Defendant intentionally failed to comply with. From the evidence adduced by the prosecution, there is no where it was mentioned that the unavailability of Aminu Emeje to appear before the commission was caused by the positive actions or inactions of the Defendant. The DW1 in his evidence-in-chief stated that before Aminu was granted bail, officials of the EFCC followed him to his house. They were communicating with Aminu from August 2017 – August, 2018. This piece of evidence was never challenged nor controverted in any positive way.

The DW1 further stated that effort made by the family of the Defendant to secure the capture of Aminu Emeje who the Defendant took on bail, by engaging the police to track Aminu's phone number but it did not yield fruitful result. This act shows that the Defendant has put in so much to bring Aminu Emeje who she took on bail and on bond before the commission.

On the issue of failure by a surety to produce someone on administrative bail, the Supreme Court in the case of FRN v ALH.

ABUBAKAR MAISHANU & ORS (2019) 36 WRN 1 stated that the proper step to take by the prosecution was to ask the surety to forfeit the bail bond and to take steps to enforce same.

In the light of the above decision, the commission ought to have requested the Defendant to forfeit the bail bond, I so hold.

As stated earlier in this judgment, the Defendant was charged for obstructing the commission from carrying its lawful duties. However, the PW1 Under cross-examination stated that the defendant never obstructed the commission from carrying out their lawful duties. Also the DW1 in his evidence-in-chief stated that officials of the EFCC were communicating with Aminu from August 2017 when he was granted bail to August 2018.

In the light of the above, I am of the considered view that the prosecution has failed to prove beyond reasonable doubt that the Defendant did obstructed the EFCC from prosecuting Aminu Emeje.

Accordingly I find it difficult to convict the Defendant. The defendant is hereby discharged and acquitted for failure of the prosecution to establish any crime against the Defendant as contained in Section 38(2) of the EFCC Act 2004.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
01/06/2020

Prosecution's Counsel – We thank the court for the judgment.

Defendant's Counsel – We also thank the court for the judgment.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
01/06/2020