IN THE HIGH COURT OF JUSTICE OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI HIGH COURT NO.5
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I. BANJOKO-JUDGE
DELIVERED ON THE 8TH OF DECEMBER 2020

CHARGE NO: CR/62/16

BETWEEN:
COMMISSIONER OF POLICE…… COMPLAINANT

AND
1. **TEMITOPE ABIOLA**
2. **EMMANUEL EBUKA…… DEFENDANTS**

- **J.O OLADIPO ESQ., CALEB ECHOGU ESQ., AND EZINNE NNADI FOR THE PROSECUTION**
- **L.O. FAGBEMI ESQ., A.I. OBANIYI ESQ. FOR THE 1ST DEFENDANT**
- **OMASANYA POPOOLA, B.A. OYIN ESQ, MAJEED BALOGUN ESQ, SADIQ AHMED ESQ AND T.K. OYEDEJI FOR THE 2ND DEFENDANT.**

JUDGMENT

This is a transferred Case from Hon. Justice A.S. UMAR's Court. Before this Court is a **Two Count (2)** Count Charge bothering on the Offences of **Conspiracy and Armed Robbery**, punishable under to **Section 97 and 289 of the Penal Code Law** brought against Two Male Defendants; Temitope Abiola and Emmanuel Ebuka.

The Charges are hereby set out as follows:

COUNT ONE:
That you Temitope Abiola Male of No. 21 Bazango Village Abuja, Emmanuel Ebuka Male of 3rd Avenue Gwarimpa and others now

at large on or about 27th of January, 2016 at about 0400hrs, at Kano State Liaison Staff Quarters Gwarimpa Abuja within the Abuja Judicial Division, did conspire among yourselves to commit an offence to wit: Armed Robbery; you thereby committed an offence punishable under Section 97 of the Penal Code Law.

COUNT TWO:
That you Temitope Abiola Male of No. 21 Bazango village Abuja, Emmanuel Ebuka Male of 3rd Avenue Gwarimpa and others now at large on or about 27th of January, 2016 at about 0400hrs, at Kano State Liaison Staff Quarters Gwarimpa Abuja within the Abuja Judicial Division, did commit an offence of Armed Robbery, in that while you were armed with guns and other offensive weapons, robbed one Mukhtar Suleiman Male of one Samsung and Motorola phones, Two Jean Trousers, DVD Machine, Wall Clock, Wrist-Watch, Travel Bag, Creams, Perfumes value yet to be estimated and the sum of Nine Thousand Naira (N9,000.00) Cash; you thereby committed an offence punishable under section 298 of the Penal Code.

Upon Arraignment on the 6th of February 2020, the Charge was read over to the 1st Defendant via an Interpreter, in the Yoruba Language, and he pleaded Not Guilty.
The Charge was read over to the 2nd Defendant in English Language and he pleaded Not Guilty.

The Trial commenced on the 17th of September 2020, with the Complainant Mukhtar Suleiman Yola testifying as the Sole Witness for the Prosecution. He was sworn to on the Holy Quran and tendered his Statement, which was admitted into evidence without any Objection as**Exhibit A**.

Under Cross Examination by Counselto the 1st Defendant, PW1 testified that he made his Statement the next day after the incident, when it was still very fresh in his memory, and before the incident he had never encountered the Defendants.

According to him, the Robbery incident took place around 4.am and it lasted 10minutes.

Under Cross Examination by Counsel to the 2nd Defendant, PW1 claimed Three Persons robbed him, with one Person on his left and the other on his right, and the Third Person was outside. When shown**Exhibit A**, he confirmed that it was his experience on that day, and that the Robbers were armed.He further stated that two of them spoke in English, the Person behind him carried a Sharp Iron Stick, and the Second Person, they called killer carried a Cutlass. The name "killer" was the only name he heard, and no other name, and he does not know anyone within his vicinity bearing the name Killer. PW1 confirmed that he made another Statement at the Special Anti-Robbery Squad Office,

Under Re Examination, PW1 stated that he made the Statement on the same date.

At the close of the Prosecution's Case, **the 1st Defendant** informed the Court that he shall be **RESTING ON THE CASE OF THE PROSECTION**, and will not be calling any Witnesses.

On the part of the 2nd Defendant, he chose to enter his Defence, and the 2nd Defendant testified as the Sole Witness in support of his Defence. DW1, Mr. Ani Chukwuebuka was sworn to on the Holy Bible and testified in English Language. He stated that he lives in Aso B, Mararaba, Nassarawa State, and works at a Car Wash at Gudu.

According to DW1, on the 5th of February 2015, which happened to be a Friday, he was on his way back from work when he got arrested at Mararaba, Nassarawa State by Officer of the Special Anti-Robbery Squad. He stated that his Work Tool (Motor Tire Brush) were in his Bag he carried. He was then asked to open the Bag and show the contents, which included his Phone, Wallet, Passports and ID Card, which he did.

He was then handcuffed and taken away in their Vehicle to their office. When they arrived, he was ushered into a hall and the Handcuff was removed. He was told to take off his Clothes, and then he asked the Officers what his Offence was. They hit him with a Stick, and accused him of being difficult, but he kept pleading that he be told what his Offence was before he takes off his clothes. At that point, they began to hit him, and thereafter put him in a Cell Room with more than Fifty Persons, and he was there for Seven Months, till the 27th of September 2015.

On the 27th of September 2015, he heard that someone was looking for him, but mistook my name for Emmanuel Ebuka instead of Ani Chukwuebuka, so he informed the Police at the Cell that his name is Ani Chukwuebuka and not Emmanuel Ebuka. A Policeman then came to the Cell and ask who is Emmanuel Ebuka, and he replied that his name is Ani Chukwuebuka, and the Policeman began to scold him that he ought to know that since there is no Emmanuel Ebuka, he was the one they were referring to. They began to hit him, and thereafter Three Officers came and took him to Prison.

Under Cross Examination by Counsel to the Prosecution, DW1 stated that he did not know the Man who took him to Prison. At the Prison, about Seven of them were joined together under a Charge and brought before Justice Talba at High Court 9. Later on, they were brought before a Maitama High Court, High Court 7 where he was shown a Man he did not know, and who also did not know him.

When asked if he knew the 1st Defendant, DW1 stated that he only just met him in Prison.

He stated that he has been in the FCT since 2007, and did not patronize the Nightclubs because he does not have the Money.He stated that his name is Ani Chukwuebuka, and if his ID is checked it will confirm this fact, but it was not before the Court.

Finally, he stated that he did not know why he was arrested, or why he was before the Court. He stated that at the time he was arrested he was trying to negotiating with a Bike Man, which happened in 2015, and he has been in Prison Custody ever since. When asked, he did not know where Gwarinpa is located and stated that he had never been there.

No Re Examination was done for this Witness, and the 2nd Defendant closed his Case.

Parties were then ordered to file their respective Written Addresses.

The 2nd Defendant filed his Final Written Address dated and filed on the 11th of November 2020. In it he formulated a Sole Issue for Determination, namely: -

1. Whether the Prosecution has proved beyond a Reasonable Doubt the Culpability and/or Guilt of the Defendants, for the Offences of Conspiracy to commit Armed Robbery and Armed Robbery in Counts 1 and 2 of the Charge, having regard to the Quantity and Quality of Evidence adduced by the Prosecution, the Evidence elicited from the Prosecution's Sole Witness under Cross-Examination, and the Evidence led by the 2nd Defendant in his Defence to the Charge.

The 1st Defendant also filed a Final Written Address dated and filed on the 11th of November 2020, and formulated a Sole Issue for Determination, namely: -

1. Whether having regard to the Circumstance of this Case and the Totality of Evidence adduced by the Prosecution, the Prosecution has proved beyond Reasonable Doubt the Two Count Charge filed against the 1st Defendant as required by Law.

In response, the Prosecution filed their Final Written Address dated and filed on the 17th of November 2020, and formulated a Sole Issue for determination, namely: -

1. Whether from the Circumstance of this Case, the Prosecution has proved the Case of Conspiracy and Armed Robbery against the Defendants to warrant their conviction.

All Arguments of Learned Counsel across the divide are duly noted on the Record.

After a careful consideration, the Court finds a Sole Issue for Determination, which is: -

1. Whether the Prosecution has proved its Case against the Defendants beyond a Reasonable Doubt.

As regards the 1st Defendant who rested his case on that of the Prosecution**, RHODES-VIVOUR JSC,** in **BELLO SHURUMO VS THE STATE (2010) NSCQR VOLUME 44, PAGE 135** held at Pages 176-177 that "Resting the Defendant's case on the Prosecution's case is only appropriate where the case of the Prosecution is weak, and has been so discredited by Cross-Examination to such an extent that the innocence of the Defendant is obvious. Resting Defendant's case on the Prosecution's case means that the Defendant accepts the Prosecution's case completely and would not testify or call evidence in his Defence."

In **ALI AND ANOR VS THE STATE (1988) LPELR-421 (SC)**
It was held that the legal effect of that is this, that if in the course of the hearing, Prosecution Witnesses had given evidence which called for rebuttal or some explanation from the Appellants, and that rebuttal and/or explanation was not forthcoming, then the Court would be free to accept the uncontradicted evidence of the Prosecution Witnesses. See the Cases of **THE STATE V. NAFIU RABIU (1980) 1 N.C.R.47, IGBO VS THE STATE (1978) 3 S.C.87**where**Craig JSC** held that it means no more than that the Accused does not wish to place any facts before the Court other

than those, which the Prosecution had presented in evidence. It also signifies that the Accused is satisfied with the evidence given and does not wish to explain any fact or rebut any allegations made against him. This of course does not prevent the accused (or his Counsel) from making legal submissions on the evidence before the Court. He could for instance, say that even if all the evidence were believed, it would not support the charge before the Court, he could submit that the evidence was so conflicting or had been so discredited that it is not credit-worthy. **Per Oputa JSC.**

Therefore, based on the 1st Defendant's Choice to rest, this Court finds that in regard to the 1st Defendant's Case, all that is left before the Court is the Case of the Prosecution.

The Question therefore to be asked is whether the Prosecution proved his case against the Defendants beyond a reasonable doubt?

On the Offence of Conspiracy brought pursuant to**Section 97 of the Penal Code Act** provides thus: *(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death or with imprisonment shall, where no express provision is made in this Penal Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted that offence.*
(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment for a term not exceeding six months or with fine or with both.

On the Offence of Conspiracy, the following are attendant ingredients: -

a. There must be two or more persons;
b. Who agree or cause to do or to be done
c. An illegal act or
d. An act which is not illegal by illegal means

e. No overt act in pursuance of the conspiracy is necessary. Where the agreement is other than an agreement to commit an offence, that some act beside the agreement was done by one or more of the parties in furtherance of the agreement.

The Prosecution must establish that each of the Defendants individually participated in the Conspiracy.

The Nature of Proof required to establish Criminal Conspiracy, **Achike, JSC** had this to say in **ODUNEYE VS THE STATE (2001) 1 SC (PART I) 1 @ 6 - 7**: A Conviction for Conspiracy is not without its inherent difficulties. ... A Successful Conviction for Conspiracy is one of those Offences predicated on Circumstantial-Evidence which is "Evidence not of the Fact in Issue but of other Facts from which the Fact in Issue can be inferred. ...Evidence in this connection must be of such Quality that irresistibly compels the Court to make an inference as to the Guilt of the Accused."See also: **PATRICK NJOVENS VS THE STATE (1973) 5 SC 17; DABO & ANOR VS THE STATE (1977) 5 SC 22; KAZA VS THE STATE (2008) 1 - 2 SC 151 @ 164 - 165; ONYENYE VS THE STATE (2012) ALL FWLR (PT.643) 1810**.

In order to establish conspiracy therefore it is not necessary that the Conspirators should know each other. They do not have to know each other so long as they know of the existence and the intention or purpose of the Conspiracy. Conspiracy is complete upon an Agreement by the Conspirators and in most Cases Agreement is inferred or presumed. In all Cases of Conspiracy, the Court must be satisfied with Evidence of Complicity of the Accused Person in the offence.**PER BODE RHODES-VIVOUR J.S.C**See: **STATE V. SALAWU VOL. 48 NSCQLR P.290, ERIN V. STATE 1994 5 NWLR PT.346 P.522, OLADEJO V. STATE 1994 6 NWLR PT. 348 P.101**

The Prosecution had stated through its Witness Mr. Muhktar Suleiman Yola of 14 Road, by 1st Avenue Gwarinpa, Kano State Staff Quarters, that he was robbed in his apartment at 4am in the morning by a group of Three People. Under Cross Examination he

only heard the name killer and noticed two of them spoke in English.

On the part of the Defence, the 2nd Defendant testified under Cross-Examination that he had never met the 1st Defendant, until he was remanded at the Kuje Prison, and subsequently when he was brought before the Court. This testimony was not controverted.

From the totality of the Evidence adduced by the Prosecution, which in essenceis **Exhibit A,** the Statement of the Nominal Complainant, Mukhtar Suleiman Yola and his Oral Testimony before the Court, there is nothing before the Court, which is suggestive of any Agreement between the Defendants. There is no established Communication, Meetings, Correspondence or other Acts between the Defendant or those at large, to show whether by direct or circumstantial evidence that they conspired amongst themselves. The Court cannot see a meeting of the minds of the Defendants to commit an Offence.

The Prosecution was expected to have gone a step further in proof of this Count of Offence, which they failed to do. Based on this, the Court finds that the Prosecution failed to prove this Count beyond a reasonable doubt.

Now, as regards the Offence of Armed Robbery brought pursuant to**Section 298 of the Penal Code provides: -**

Whoever commits Robbery shall be punished –

a) With Imprisonment for a Term which may extend to Ten (10) Years and shall also be liable to Fine;

b) If the Robbery is committed –

(i) Between sunset and sunrise on the Highway; or

(ii) Between Sunset and Sunrise from a Person sleeping or having lain down to sleep in the open air, with Imprisonment for a Term which may extend to Fourteen (14) Years and shall also be liable to Fine; and

c) *If the Robbery is committed by any Person armed with any Dangerous or Offensive Weapon or Instrument toImprisonment for Life or any less Term and shall also be liable to Fine*.

A Robbery may be defined, as a felonious taking from the Person of another, or in his presence and against his will, by violence or putting him in some form of injury. Before a charge of robbery, there must be present the element of Stealing, and at the time of the Commission of the Robbery, the Accused is proved to have been armed with Firearms or offensive Weapons within the meaning of **Section 9 of the Robbery and Firearms Special Provisions Act No. 47 of 1970.**

In the Case of **ISAH V. THE STATE (2007) 12 NWLR (Pt.1049) 582** it was held that an Offence of Robbery is committed when a Person charged is armed with a dangerous or offensive weapon or instrument at the time of commission of the offence of stealing by using threat or violence and the threat must be immediately before or after the stealing while the purpose must be to obtain or retain the stolen property. See also the Cases of **MARTINS V. THE STATE 1997 1 NWLR PT 481 PG 355; BOZIN VS THE STATE (1998) ACLR 1 AT 11 SC AND ADEYEMI VS THE STATE (1991) 1 NWLR 689-690 AND NWACHUKWU VS THE STATE (1986) 2 NWLR PT 25, 765 SC.**

In the Case of **EKEv. THE STATE (2011) 3 NWLR 589** PER FABIYI. J.S.C held that the essential ingredients of the offence of Armed Robbery, as listed in the case **OF BELLO V. THE STATE (2007) 10 NWLR (PT. 1043) 564** are as follows-
(a) That there was a Robbery or series of Robbery.
(b) That each of the Robbery was an Armed Robbery.
(c) That the Accused was one of those who Robbed"

From the above definition it is clear that for there to be a commission of Armed Robbery, the above ingredients must be proved. What is important to discover from the evidence led by

the Prosecution are that there was a taking away from another permanently, with established intent to do so, and forcibly taken with threat or actual violence at the time of the taking or with threat or actual violence to retain or prevent or overcome the resistance to the taking or retention of the thing so taken

Now, from **Exhibit A**, the Court that there was a Robbery, which occurred at the residence of the Complainant, at about 4am in morning, when he was asleep. According to him, the Robbers were armed with Knives, Cutlasses and an Iron Stick like an Arrow. They succeeded in making away with his Personal Effects as well his Nine Thousand Naira (N9, 000. 00), and tied him up with his Bed sheet.

The Question now before this Court is whether the Defendants were the perpetrators of the Crime they are charged with?

There was no shred of Evidence that they carried any of the Weapons described, and there was no Positive Identification of their Persons by the Prosecution's Witness to even gain an inch on the threshold of proof.

There was the most important fact that Ani Chukwuebuka is NOT charged with any Offence before this Court. The illiteracy or otherwise of the Police Officer who told him that any reference to Emmanuel Ebuka was a reference to him is beyond belief. An ordinary Citizen has the inherent right guaranteed under the 1999 Constitution of Freedom of Movement, and to be accosted on the way home from work with no ground of suspicion of a Crime is at best the lowest of all atrocities committed by the defunct Special Anti-Robbery Squad. Ani Chukwuebuka has spent over Five Years in Custody for a Crime he did not commit, and he alongside the 1st Defendant have a Huge Claim to make under the Fundamental Human Rights Procedure of any Court.

Since Ani Chukwuebuka is not formally before this Court, the Court has no hesitation in Ordering for his immediate Release from Custody. No Offence and No Crime has been proven against him, and No Criminal Record can be written against his Name and Person.

As regards the 1st Defendant, he was completely on the right wicket to rest his case on the hopelessly and useless presented Evidence led by the Prosecution, and all the Elements of the Offence of Conspiracy and Armed Robbery were certainly not proved by the Prosecution in any material particular. He is accordingly discharged and acquitted.

In conclusion, the Court cannot fail to condemn the Criminal Actions of the Police in apprehending Individuals off the Street without any basis, suspicions or proof. This is what happens in a Banana Republic and Nigeria is certainly not a Banana Republic.

The Defendants are accordingly discharged and acquitted.

HON. JUSTICE A.A.I. BANJOKO
JUDGE