

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT NO. 4, MAITAMA

ON THE 23RD DAY OF APRIL, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

CHARGE NO. FCT/HC/NY/CR/93/2020

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

COMMISSIONER OF POLICE PROSECUTION

AND

BENJAMIN NONGU DEFENDANT

J U D G M E N T

The Charge against the Defendant by the Prosecution is a two-count Charge of conspiracy and robbery. It states:

COUNT 1

That you Benjamin Nongu “M” 38 years on or about the 7/09/2020 at Life Camp, Abuja within the jurisdiction of this Honourable Court did commit an illegal act to wit: criminal conspiracy when you conspired with one Lugard Kure (at large) and robbed one Udueni Celina ‘F’ and her nephew Awaritefe Rukeuwe ‘M’ of their properties an act done in pursuance of your agreement and you thereby committed an offence contrary to Section 6 (b) and punishable under Section 1 (1), (2) (a) & (b) of the Robbery and Firearms (Special Provisions) Act Cap R11, 2004.

COUNT 2

That you Benjamin Nongu 'M' 38 years on or about the 07/09/2020 at Life Camp Abuja within the jurisdiction of this Court did commit an illegal act to wit: robbery when you and one Lugard Kure (now at large) robbed one Udueni Celina and her newpnew, one Awaritefe Rukeuwe 'm' in their house at Paradise Estate, Life Camp, Abuja of the following properties:

(1) 1 iPhone 7 valued ~~N~~540,000. (2) one Samsung phone valued ~~N~~250,000. (3) Perfume valued ~~N~~60,000. (4) two wrist watches valued \$850,000 (eight hundred and fifty thousand pounds) and ~~N~~100,000 respectively. (5) three hundred dollars. (6) cash of ~~N~~10,000. (7) Techno Camon II valued about ~~N~~63,000. (8) HP Laptop model 218 valued about ~~N~~100,000 and (9) Itel cell phone valued ~~N~~3,500, an

act done in pursuance of your agreement and thereby committed an offence contrary to and punishable under Section 1 (1), (2) (a) & (b) of the Robbery and Firearms (Special Provisions) Act.

The Defendant was arraigned on the 19th day of January 2021. He pleaded Not Guilty.

The Prosecution opened its case and called four (4) Prosecution Witnesses in proof of its case.

The 1st Prosecution Witness is the Nominal Complainant, Celina Udueni Omejevwe. She said she lives at Paradise Estate, Life Camp. She was a public servant. She knows the Defendant.

That her neighbour and her needed to employ a security guard. They got across to a security company which was in-charge of the Estate.

The Defendant was one out of two that was employed. That on 7/09/2020, she drove in, opened the door not knowing there was an armed robber already waiting for her.

As she entered, the armed robber came and pointed a gun at her. He said she should cooperate that he was sent to come and assassinate her.

When she asked who sent him he said her friends. She told him she does not know such friends and he later said it was her place of work.

He told her to go upstairs and as they were going, she noticed he had already tied her nephew. He told her to bring money. she told him she does not keep money in the house.

She brought out \$300.00. The little Naira she had she also gave him. He said those who sent him were outside. He said what she gave him was not enough.

He took perfumes and wrist watches, jewelleries. He dragged them to the bathroom and closed the windows of the bathroom. He said he will not kill them.

He took her nephew's laptop, shirts, shoes and money. he cellotaped their mouth. They loosed themselves. She came out to meet her neighbour.

When she met the neighbour, the Defendant was already there saying armed robber just attacked him. That they took his phone and small money he had on him.

Her other neighbour also came. They contacted their Estate Police who searched everywhere but could not find him. They were directed to Life Camp Police Station.

They wrote their Statement. The Defendant also wrote his Statement. The Defendant was not in his duty post when the armed robber came.

Their neighbour played the footage of the CCTV in the presence of the Defendant. It showed that the Defendant brought the armed robber. He fell down and started crying. He begged and said she should forgive him.

He was taken back to Life Camp and later transferred to SARS after about two weeks. A Policeman at SARS identified the Defendant as a notorious armed criminal.

The person he sent is still on the run. She made a Statement at SARS. The matter was eventually charged to Court.

Exhibit A is the Statement of the witness at FCT CID.

Under Cross-Examination by Defence Counsel, she answered as follows:

That she was a former public servant. That the robber said he was sent to kill her but did not mention the name of the person. He said those who sent him are around.

The 2nd Prosecution Witness is Awaritefe Rukevwe. He also lives at Paradise Estate, Life Camp, Abuja.

He knows the Defendant as their former security. He was at home on 7/09/2020 when he heard the continuous ringing of the bell.

He came around to peep through but could not see anyone. He continued to ring the bell until he opened the door.

He opened the door and Defendant pointed a gun at him and pushed him aside. He used tape to tie his hands behind. He said he was sent to kill his aunty.

That the person who sent him is around. That if he did not kill her they will kill him. That he needs money to run away.

After a moment he received a call which asked whether he was inside and he said yes. He said it was the people who sent him that was asking.

He entered with a Bible and quoted that those whose kill by the sword will die by the sword. That he needed money to run.

He heard the sound of a vehicle. He told him to hide by the dinning after removing the key from the mouth of the door.

His aunty entered the house and he pointed a gun at her that she should not shout. He took them to her room. He collected their phones, perfumes, wrist watches and money. He tied his legs and hands.

He collected other valuables. He went to his room, carried his Ipad, two phones, shoes and some clothing, palm and money in his wallet after which he left.

They stayed in the bathroom for about thirty minutes. They eventually came out to narrate the story to their neighbours.

They saw the Defendant in the house of their neighbour saying he was attacked by armed robbers.

The Estate security came and took them to the Police. The Defendant was detained. Their neighbour's CCTV camera shows that the armed robber went to the security house.

The Statements of the witness are Exhibits B and B1.

Under Cross-Examination by Defendant's Counsel, he said he started living with his aunty since 2019. He is 23 years.

He met the Defendant working with her. They have no house-help. That the armed robber spend up to 4 hours in the house.

He was wearing facemask. He will not be able to recognise him. He saw the CCTV footage showing when the robber exited the house and went to the security man's house. He stayed for some time.

The PW3 is Aneke Akim Okey of S.911, Unit 2, Paradise Estate, Life Camp. The Defendant used to be their security man in the Close.

On 7/09/2020 about 7.00 p.m., he came to knock at his door. He opened the door and he told him an armed robber just robbed him. He was shocked. He asked how many they were. He said one person. That the robber robbed him. Of his phone and money.

As he was talking, his neighbours, PW1 and PW3 came out of their house and started telling him the same thing. That armed robber came to their house and robbed them.

She said she came from work and an armed robber who was already in her house bailed her up with a gun as she entered the house. She became confused.

They called their next neighbour. He came and suggested they call the Estate Police. They came and they went to the Life Camp Police Station.

The PW1 and PW2 made Statements. The Defendant was invited. The same day at about 12 midnight, their opposite neighbour called him and PW1 and said she checked the CCTV. They watched it. The CCTV shows the communication with the robber.

In the morning, they were planning to go to the Police with the discovery when the Police said Defendant has confessed to the crime.

A Police Officer at SARS recognised him. He also made Statement. That efforts were being made to arrest the other robber when SARS was dissolved. His Statement is Exhibit C.

Under Cross-Examination, he said all he said was what he was told. That he did not see the Defendant with Lugard in the CCTV.

The 4th Prosecution Witness is Inspector Abulu Godday attached to CID FCT Command, Anti Violence Crime Section. He knows the Defendant.

That a case of criminal conspiracy and armed robbery was transferred to the CID from Life Camp along with the Defendant with exhibits CCTV footage clip and a raw cellotape, which appeared to have been used to tie something.

On receipt, the Defendant was interviewed. He confessed verbally to the crime on being identified by Lawrence Ayeni who had earlier investigated him on a similar crime.

He interrogated Defendant under the camera in video and audio using Light Tech TV and Win Possee recording machine.

After the recording, the scene of crime was visited on the 12th of September 2020 at about 09.30 hrs.

He took them to a bush road few metres to the Estate entrance gate. He and Lugard took that road. The Estate was still undergoing construction.

He saw Lugard who is at large in the footage when he came to the residence of the Nominal Complainant's flat which the Defendants used as security post.

That Lugard went to the security post and moment later the nephew to Complainant named Awaritefe drove in.

The Defendant's Confessional Statement confirmed their investigation. The Disk, Flash Drive, and Certificate of Compliance are Exhibits D, D1 and D2.

Under Cross-Examination, he answered that he does not have control of the CCTV. That the recording was done by those in-charge.

He does not know what is called deep fake technology.

They have a recording room.

That several calls were made to family members but they refused to come.

The above is the case of the Prosecution.

The Defendant entered his defence and gave evidence for himself. He is a security guard. He has a family with two daughters.

On 7/09/2020 at about 5.30 p.m. at Life Camp, he was on duty, suddenly somebody came to point a gun on him, dragged him to the room, collected his money and phones.

He asked him to lie down. He locked the door and left.

After 20 minutes, a heavy rain started. It fell for a long time. Nobody came and open the doors.

He later went to a neighbour to narrate his ordeal. As he was telling his story, PW1 came out and told them of how she was robbed.

The eventually went to Life Camp Police Station to write Statement. The IPO started beating him.

When the beating was too much, he confessed to the crime. He stopped beating him as soon as he confessed.

He was in custody for eight weeks. He was transferred to SARS. That he also confessed since he had already confessed in Life Camp.

He was there for 2 months. It was during the EndSARS period. He was in prison for 9 months.

He did not commit the offence alleged. He does not know the armed robber that robbed the house. That the armed robber that came was not wearing mask. He was also robbed that day.

Under Cross-Examination, he said on that fateful day, at 5.00 p.m. he was in his duty post. He does not know Mr. Lugard.

He made Statement at Life Camp Police Station. He did not say it is Lugard that robbed the house in his Statement.

He cannot remember what he said in SARS. He watched the clip of his oral Statement. He heard himself speak in the clip. He cannot recall what he said.

He cannot identify Exhibit E. he was tortured to write Exhibit E. The stories contained in Exhibit E are his.

Parties were ordered to file Final Written Addresses. The Prosecution's Final Written Address is dated 27/11/2023.

Prosecuting Counsel raised two (2) issues for determination:

(1) Whether the Prosecution has successfully proved beyond reasonable doubt the essential elements of the aforesaid offences against the Defendant.

(2) Whether the Defendant can be convicted on his Confessional Statements.

He canvassed that the evidence against the Defendant is credible and sufficient enough to justify the conviction of conspiracy and robbery.

That the Prosecution has proved the essential elements of the offences charged.

The Defendant's Final Written Address is dated 30/06/2023. The sole issue posited by the Defendant's Counsel for determination is:

Whether or not the Prosecution has proved its case against the Defendant beyond reasonable doubt.

He argued that the offence of conspiracy was not proved from the evidence of PW1 and PW2. That the Defendant was not mentioned as a co-conspirator.

The Prosecution failed to prove that Defendant was part of the robbery as per the evidence of PW1 and PW2.

That the Confessional Statement of the Defendant was not corroborated neither is it consistent with other facts.

That the Confessional Statement was obtained under brutish conditions.

That the Prosecution failed to prove the guilt of the Defendant beyond reasonable doubt because the evidence led cannot lead to an irresistible conclusion of guilt.

I have read the evidence of the Prosecution and the Defence. I have also considered the Written Addresses of Counsel.

The issue borne out from the Addresses of parties is:
Whether the Prosecution has proved its case beyond

reasonable doubt so as to enable the Court convict the Defendant.

In a criminal trial such as this, the onus lies throughout upon the Prosecution to establish the guilt of the Defendant beyond reasonable doubt. The burden does not shift.

See *AKINFE vs. STATE* (1988) 3 NWLR (PT. 85) 729 SC.

IGABELE vs. STATE (2006) 6 NWLR (PT. 975) 100 SC.

The standard of proof is 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 of

with the offence and that it was his act which caused the offence.

See *AKINYEMI vs. STATE* (1999) 6 NWLR (PT. 607) 449.

The Prosecution in a bid to prove the offence charged under **Section 6 (1) (b)** and Section 1 (1), (2) (a) & (b) of the Robbery and Firearms (Special Provisions) Act called four (4) witnesses. PW1 and PW2 are eye-witnesses.

Count I states:

“Any person who aids, counsels, abets or procures any person to commit an offence under Sections 1, 2, 3 or 4 of this Act, or

(b) conspires with any person to commit such an offence

(c) supplies, procures or provides any person with firearms for use to commit an offence under Section 1 & 2 of this Act

whether or not he is present when the offence is committed or attempted to be committed shall be deemed to be guilty of the offence as a principal offender and shall be liable to be proceeded against and punished accordingly under this Act.”

Count II

1 (1) “Any person who commits the offence of robbery shall upon trial and conviction under this Act be sentenced to imprisonment for not less than 21 years.

2. If

- (a) any offender mentioned in subsection (1) of this Section is armed with any firearms or any offensive weapon or is in company with any person so armed or*
- (b) at or immediately before or immediately after the time of the robbery the said offender wounds or uses any personal violence to any person, the offender shall be sentenced to death.”*

In Count 1, the ingredients or elements of the offence are:

- (1) A person who aids, counsels, abets or procures a person
- (2) The person who conspires
- (3) supplies, procures or provides the firearms.

It should be noted that the offence created in Section 1 (1), (2), 2 (a) & (b) of the Robbery and Firearms (Special Provisions) Act is wider than the offence of conspiracy under Section 96 of the Penal code.

While agreement is a cardinal ingredient of the offence of conspiracy under Section 96 of the Penal Code, it is not necessarily so under the Robbery and Firearms (Special Provisions) Act.

Conspiracy is a part of the elements of the offence under consideration. However, the Count 1 states that the Defendant and the person at large conspired.

Count 2 of the Charge is robbery.

Robbery is defined in Section 11 of the Act as stealing anything and at or immediately before or after the time of stealing it, using or threatening to use actual violence to any person or property in order to obtain or retain the thing stolen or to prevent or overcome resistance to it being stolen or retained while stealing or to steal is to take or covert to ones use or the use of any other person anything other than an immovable property depriving the owner of it.

The ingredients or elements of the offence are:

- (1) There was a robbery
- (2) The Defendant participated in the robbery

(3) That violence or threat of violence was applied to obtain the properties.

The guilt of a Defendant charged with a criminal offence can be proved by

- (a) the Confessional Statement of the Defendant
- (b) circumstantial evidence
- (c) evidence of eyewitnesses

The Prosecution does not always need an eyewitness account to convict a Defendant, if the Charge can otherwise be proved.

The Prosecution called PW1 and PW2 who were eyewitnesses to the alleged crime. I have earlier summarised their evidence.

Succinctly, an armed robber invaded their house, tied the PW2 and in the process PW1 drove in, as she entered the house the armed robber pointed a gun at her dragged her upstairs to meet the PW2. They were robbed of money, wrist watches, jewelleryes and phones.

The robber was always saying those who sent him were outside. They subsequently met the Defendant, their security guard outside who was also telling their neighbour that he was also robbed by an armed robber.

The evidence is that a CCTV footage showed that the robber entered the security post severally. The Defendant confessed to the crime.

I have also read the Confessional Statement of the Defendant, Exhibit B and Exhibit C, the Statement of PW3, Akim Okey Aneke, the owner of the CCTV and his evidence.

Let it be noted that it is not a requirement of the law that a Confessional Statement must be brought before a superior Police Officer to endorse in order to ensure voluntariness and or fairness.

Confessional Statement such as Exhibit B that is not endorsed by a superior Police Officer cannot therefore be viewed with suspicion.

The Defendant confessed to committing the crime.

See **DIBIE vs. STATE (2007) 9 NWLR (PT. 1038) 30 SC**

KIM vs. STATE (1992) 4 NWLR (PT. 233) 17 SC.

I have also watched over and over again the CCTV clip. It is very clear, explicit and graphic. The Defendant and the said accomplice, Lugard were ad idem. It was well planned and orchestrated.

The Defendant, the security guard even ensured the environment was safe for his accomplice who was already in the house of the Nominal Complainant.

There is no evidence stronger than a person's own admission or confession.

A Defendant can be convicted solely on his Confessional Statement.

See **NWAEBONYI vs. STATE (1994) 5 NWLR (PT. 343) 130**

DIBIE vs. STATE (2007) 9 NWLR (PT. 1038) 30 SC.

It is my view that the Confessional Statement of the Defendant, Exhibit B is free and voluntary. It is direct and positive.

He named the accomplice, Lugard. He gave evidence of how he met him in the Correctional Centre. I am satisfied of its truth.

The CCTV clip further corroborates the Confessional Statement. The evidence of PW1 is that as soon as the CCTV clip was played, the Defendant broke down and confessed to conspiring with the Lugard to commit the crime charged.

In the circumstance of this case, the truth of the Confessional Statement is sacrosanct.

In totality, I find the Defendant guilty as charged in Counts
1 & 2, and I so hold.

HON. JUSTICE U. P. KEKEMEKE, ACIArb (UK), FICMC
(HON. JUDGE)
23/04/2024

O. A. Okeke, Esq. holding the brief of S. I. Nwafoaku, Esq.
for the Prosecution.

O. J. Odah, Esq. holding Watching Brief.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

23/04/2024