

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT COURT NO. 4, MAITAMA

ON THE 19TH DAY OF FEBRUARY, 2024

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

CHARGE NO. FCT/HC/NY/CR/67/2020

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

COMMISSIONER OF POLICE PROSECUTION

AND

EX-SGT. ZAKARI MOHAMMED DEFENDANT

J U D G M E N T

The two-count Charge against the Defendant dated 7th

October 2020 but filed on the 8/10/2020 is as follows:

Count 1

That you, Ex-Sgt. Zakari Mohammed 'M' and others now at large on or about 20/08/2019 at about 23.00 hrs around Bluefill Medical Centre Jahi, FCT, Abuja, within the Abuja Judicial Division did conspire among yourselves to commit a felony to wit: armed robbery and same act was carried out pursuant to your agreement and you thereby committed an offence punishable under Section 6 (a) and (c) of the Robbery and Firearms (Special Provision) Act Cap R11 LFN 2004.

Count 2

That you, Ex-Sgt. Zakari Mohammed 'M' and others now at large on or about 20/08/2019 at about 23.00hrs around

Bluefill Medical Centre, Jahi, Abuja, FCT within the Abuja Judicial Division while armed (yourself) with gun and gun powder did attack and rob one Mr. Ashiru Sani 'M' of his Techno handset valued ₦17,000 and cash of ₦84,500 and you thereby committed an offence of armed robbery punishable under Section 1 (2) (b) of the Robbery and Firearms (Special Provision) Act Cap R11 LFN 2004.

The Defendant was arraigned on 5/11/2020. He pleaded Not Guilty to the two-count Charge.

The Prosecution opened its case and called two (2) witnesses in proof thereof.

The first Prosecution witness is Offor Jonah of Special Anti-Robbery Squad, FCT Command.

He stated that this case was transferred from Mabushi to SARS on 30/08/2019. It was handed over to him for investigation.

They obtained Statement from the Defendant and others. The Defendant denied the allegation.

They visited the scene of crime. The place is called Dustbin or Dunghill. The Defendant's Statement is Exhibit A.

Under Cross-Examination by the Defendant's Counsel, he answered that he is aware that on the day of the incident he was on duty.

That the Defendant signed for a gun. He was posted to be on guard duty but he went to do stop and search.

He could not remember the name of the victim. He cannot remember that victim said it was Friday Idakwo that attacked him but victim said it was Defendant who collected his bag, searched it, collected his money and made away with his property.

To a question, he said he does not know if the victim is a scavenger. The incident happened late hours in the night.

The phone was recovered from the Defendant. That there was no injury on the Nominal Complainant.

He does not remember the actual amount stolen. He could also not remember the time of posting.

That Friday Idakwo was a private security man while the Defendant was a Police Officer. That Friday was also arrested but the authorities asked that Friday be released because he was a private security man and that the Defendant asked him to escort him to buy cigarette.

The Defendant collected the handbag and handed over same to him.

To a further question, he answered that he does not have any witness to corroborate the fact that he asked Friday to escort him to buy cigarette.

The second Prosecution witness is another Policeman, Inspector Fidelis Saidu, of the Mabushi Police Station.

That on 22/08/2019, a case was reported at the Counter and referred to him for investigation as an Investigating Police Officer.

The Complainant was one Ashiru Sani 'M' of Mabushi Dumping Ground. The Nominal Complainant said on

23.00hrs, he left the Dumping Ground to defecate in a nearby bush.

He was accosted by the Defendant and one other. He was beaten up by them. They collected his Techno Handset and the sum of N84,500.

He obtained his Statement. The Statements of the Defendant and the Nominal Complainant are Exhibits B and B1 while the Statement of Idakwo Friday is Exhibit C.

He recovered the stolen Handset from Idawko Friday.

Under Cross-Examination, he answered that he also visited the scene of the incident. That it was a dump site.

He did not know the Defendant's schedule of duty.

To a further question, he said there was no street light in the environment as at then. He answered that the Nominal Complainant knows the Defendant physically.

He is not aware of the fact that Nominal Complainant said those who attacked him ran into the bush.

That one Mustapha came across them when the Defendant and Idakwo were going back to their duty post.

The Defendant went through Orderly Room trial.

To a question, he said he did not know if the DPO had a running battle with the Defendant.

He confirmed that the phone was recovered from Friday Idakwo.

The above is the case of the Prosecution.

The Defendant's Counsel filed a No-Case Submission dated 8/08/2023. He adopted same as his oral argument.

He argued that the Prosecution has not made out a prima facie case against the Defendant warranting him to enter his defence.

The allegation is that the Defendant used gun and gun powder. No evidence that the Defendant possessed a gun that used gun powder.

No Techno phone or any phone at all was produced and tendered before this Court. No ~~N~~84,500 or any amount was tendered.

He argued that there was no evidence to prove all the essential elements of the alleged offence.

He urges the Court to discharge and acquit the Defendant.

I have read the evidence and the No-Case Submission made on behalf of the Defendant.

The Nominal Complainant who was allegedly robbed did not give evidence.

I note that the evidence of PW1 and PW2 are Investigating Police Officers who were not there when the incident happened.

At best, their evidence is the story told them by the Nominal Complainant.

I also note that the phone allegedly recovered is not tendered before this Court. The Mustapha that came across them shortly after the robbery was not called.

The PW1 said the said Techno phone was recovered from the Defendant while PW2 said it was recovered from Idakwo.

Friday Idakwo, the private guard who was released would have given a great insight to the event that happened that day. He was not called to testify.

The offence for which the Defendant is charged is a capital offence.

A very vital ingredient of the offence of conspiracy under Robbery and Firearms (Special Provision) Act Cap R11 LFN 2004 is agreement while the elements of the offence of armed robbery are:

(1) There was armed robbery

(2) The Defendant was armed

(3) While with the arms participated in the robbery.

No primary evidence linking the Defendant. There is no evidence to prove the essential element of the alleged offences.

I also note that there is inconsistency as to where the phone was recovered, from the Defendant or Friday Idakwo.

The second count refers to the Defendant being armed with gun and gun powder.

There is no evidence of the Defendant being armed with a dane gun or gun powder. The evidence adduced by the two Investigating Officers is unreliable. I cannot safely convict on it.

In the circumstance of this case, it is my view that the Prosecution has not made out a case against the Defendant to enable me call upon him to enter his defence and I so hold.

The No-Case Submission succeeds. The Defendant is hereby discharged.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
19/02/2024

Defendant present.

COURT: Judgment delivered.

(Signed)

HON. JUDGE

19/02/2024