

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT NYANYA- ABUJA

THIS TUESDAY THE 24TH DAY OF OCTOBER, 2024

BEFORE HIS LORDSHIP: HON. JUSTICE ALIYU YUNUSA SHAFI

SUIT NO: FCT/HC/GWD/CR/342/2022

BETWEEN:

INSPECTOR GENERAL OF POLICE.....COMPLAINANT

AND

SUNDAY DANIEL.....DEFENDANT

RULING

This ruling is on an application made by the defence counsel to the defendant for the court to discharge the defendant for non appearance of the prosecution severally despite hearing notices and messages sent through whatsapp. The said application was made pursuant to the provision of Section 351 (1) of the ACJA 2015. The Section provides thus:

“Where the case is called, the defendant appears voluntarily in obedience to the summons or is brought before the court under a warrant and the complainant having to the satisfaction of the court had one notice of the time and place of hearing, does not appear in court or in the manner authorized by a written law, the court may dismiss the complaint”

On this it is the submission of the defence counsel to the defendant one Barr. Anthony O. that the prosecution is frustrating the successful prosecution of the matter and the name of the prosecutor is one V. N. Ezeala, furthermore stated that

they have severally sent messages to the prosecutor together with hearing notices since on the 20/10/2024, the prosecutor never replied nor responded to them. The messages sent was presented to the court. That the said messages which copies were made through his phone and the printer. That the copies were made in black and white of which the said messages were to the prosecutor intimating her of today's date and she never responded to those messages.

He Furthermore submits that, as at the time of printing the messages both the phone and the computer were working properly, that the original are printed in white and pray the court to tender same in evidence in compliance with Section 84 of the evidence Act. That this was done to bring it to the notice of the prosecutor and that hearing notice was also served on her.

That on the real occasion where the prosecutor managed to pick up the call or phone, the moment he introduced himself as a counsel trying to inform her of the hearing date in this matter, the next thing she does is to put the call on busy and she will never return the calls. That in their humble opinion, the prosecution has no respect for this court and severally she has been served with hearing notice but yet refused to attend court on this submitted that in their opinion that the prosecutor is not interested in prosecuting this matter and apply that the defendant be discharge on the ground that the prosecution has failed to appear in court for more than 5 times and also that the defendant have been in custody both that of the police and Correctional Centre for over three years without any meaningful progress in the prosecution of this matter.

Furthermore submitted that it is their humble submission that the prosecutor shows that they don't have any meaningful evidence with which to prosecute the defendant.

On this we invite the court to have a look at the statement of the witness before the court and that the only evidence is that of one Enofiong Job whom they said to have confessed and that the said Enofiong Job died in custody and also the statement of other witness before instituted by the police (prosecution) none of the witness that came to the police station ever made the statement concerning the defendant to the alleged crime. That one of the witness is the sister to the defendant who was coerced under threat to write down a statement (Grace Chioma) dated the 03/01/2022.

That the prosecution knew that there is no case at hand and the only way is to punish an innocent person and to allow him (defendant) rot in detention without trial.

On all this, we urge this court to discharge the defendant with compensation because of the attitude of the prosecution and the spirit of the law reference to Section 351 (1) of the ACJA 2015.

I have carefully listened to the submission of the learned counsel to the defendant, the Section 351 (1) of the ACJA, 2015, the exhibit tendered in the whatsapp messages and the hearing notices sent to the prosecution with statement of the witness before the court.

Before proceeding I will first of all go through the charge.

Therein this case the defendant was charged for alleging to have committed an offence contrary to Section 96, 97, 296, 298, 300 and 220 & 221 of the penal code law respectively.

1. ***Criminal Conspiracy Section 98 of the penal code.***
2. ***Robbery Section 296 which is punishable under Section 298.***
3. ***Voluntarily causing hurt in committing robbery Section 300 which is punishable for 14 years and liable for fine***
4. ***Section 220 capital homicide punishable under Section 221 of the penal code.***

From the foregoing listed offences, most of the offences are capital offences which needs the seriousness of the prosecution to prosecute same. Also wish to referred to the history of this case.

This matter was first mentioned by this court on the 6th December, 2022 where one C.P C. Blessing appears for the prosecution the complainant in this case, she informed the court that the defendant is in Keffi Correctional Centre, the matter was adjourned to 25/01/2023. On the 25/01/2023 one V. N, Ezeala appeared for the prosecution. On this date the defendant was not represented but the prosecution pleaded with the court to take the plea of the defendant. This was done and the defendant denied all the charges and the matter was adjourned to 22/03/2023 the defendant was present in court and one Adamu David Arika appear for the first time for the defendant on this date the prosecution called the court clerk that she

was engaged at the election. The matter was again adjourned to 19/04/2023 for hearing.

On the 19/04/2023 defendant was present in court and one Adamu David Arika counsel to the defendant was absent in court while the prosecution was absent. The matter was again adjourned to 07/06/2023 for hearing.

On the 03/05/2024 this matter came up for hearing still the prosecution was absent while one Ademmu David Arika for the defendant was present, the defence counsel who applied that the court struck out this matter due to the absence of the prosecution. This application was refused by the court and the matter adjourned to 23/04/2024 for hearing.

On the 23/04/2024 the defendant was in court and represented by one Anthony O. Utuagha. The prosecution was still absent. On this date the defendant's counsel who filed motion for the bail of the defendant urge same but refused by this court instead the court granted accelerated hearing. The matter was adjourned to 13/06/2024 for hearing.

On this date the defendant was in court with the counsel Anthony O. Utuagha the prosecution absent as usual and the matter adjourned to 04/07/2024 for hearing.

On the 04/07/2024 the prosecution not in court while the defendant and the defence counsel were in court. The matter was again adjourned to 26/09/2024 for hearing.

On the 26/07/2024 the defendant who is in the correctional Centre was in court but the defence counsel to the defendant was represented in court made an oral application for the discharge of the defendant reason being that the defendant has never been diligent In prosecuting this matter hence apply that the defendant be discharged and the charge be dismiss. Then the court refused in the interest of justice and the matter adjourned to 09/10/2024 for hearing.

On the 09/10/2024 defendant was present in court and the defence counsel on this, the defence counsel informed this court that the prosecution has failed to appear in court today. Hence the matter was adjourned to 06/11/2024. These are the story of the proceedings in this court.

Now from the facts of this case and the position of the ACJA Section 396 (1) provide thus:

“The defendant to be tried on an information or charge shall be arraigned in accordance with the provision of the Act relating to the taking of pleas and the procedure on it”

This has been complied with by the prosecution dated 25/01/2022. Section 396 (3) provides thus:

“Upon arraignment, the trial of the defendant shall proceed from day to day until the conclusion of the trial”.

This section has not been complied with by the prosecution, the facts as stated speaks for itself.

Section 396 (4) provides thus:

“Where day to day trial is impracticable after arraignment no party shall be entitled to more than five adjournment from arraignment to final judgment provided that the interval between each adjournment shall not exceed 14 working days”.

The facts as stated speaks for itself. This has also not been complied with by the prosecution in the instant suit.

Section 396 (5) provides

“Where it is impracticable to conclude a criminal proceedings of its, the parties have exhausted than five adjournment each, the interval between the adjournment to another shall not exceed seven days inclusive weekends”.

Section 396 (6) ***“In all circumstance, the court may award reasonable costs in order to discharge frivolous adjournment”***

It is based on the provision of the sections stated above that the defence applied that the prosecution has no respect for this court and have not shown any seriousness in prosecuting this case, as the defendant having spent over three years in both the police detention and the correctional centres without trial which to his view shows that the prosecution is not diligent enough to prosecute this matter to its logical conclusion.

On this I have to agree with the defence counsel's submission having shown the industry and seriousness to prosecute this matter, by the exhibit before this court and the hearing notices before this court messages through Whatsapp which was exhibited before this court shows clearly that the prosecution is not ready to properly prosecute this matter to its logical conclusion there must be an end to litigation.

How long will the court wait for the prosecution? This is so sad indeed. As the aim of the ACJA has been defeated by the attitude of the prosecution in prosecuting this matter.

It is my opinion that the section of this act is observed more in breach than compliance. The trial of the criminal cases suffered intermittent without any regard for 14 days gap of adjournment for a normal criminal trial.

This court is overloaded with cases and cannot be waiting for the unwilling prosecution, how long will the court wait? The defendant has been in detention for more than 3 years if not more, the presumption of innocence is still in favour of the defendant, hence in view of the non-challenge attitude of the prosecuting officer to diligently prosecute this matter to its logical conclusion, this court won't hesitate to discharge the defendant.

Accordingly the defendant is hereby discharged. This is my ruling.

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Hon Justice A. Y. Shafa

Appearance:

1. Anthony O. Otuagha for the defendant.
2. Prosecution not in court.