

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE NYANYA JUDICIAL DIVISION
HOLDEN AT COURT 7 NYANYA ON THE 25TH DAY OF FEBRUARY,
2021
BEFORE HIS LORDSHIP: HON. JUSTICE U.P. KEKEMEKE
SUIT NO. FCT/HC/CR/72/18

COURT CLERKS: JOSEPH B. ISHAKU & ORS.
BETWEEN:
FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT
AND
MUHAMMED MOMOH.....DEFENDANT

RULING

The Applicant's Motion dated 6/01/20 is brought pursuant to Section 35(1) and (2), of the Constitution, 356 5(a) of the Administration of Criminal Justice Act and under the inherent jurisdiction of the Court.

The Motion prays the Court for:

1. An Order reopening the case of the Prosecution which was closed on the 8/10/19 in the absence of the Prosecuting Counsel.
2. And for such order or Further Orders as the Court may deem fit to make in the circumstance.

The application is supported by a 5 paragraph Affidavit.

Learned Prosecuting Counsel rely on same.

He deposed that the matter was transferred to Fast Track for hearing.

That the matter came up on 22/10/19 for continuation of hearing. That a letter for adjournment was sent to the Court.

That the Court foreclosed the Cross-examination of the 1st Prosecution Witness and adjourned the matter to 19/11/19 for continuation of hearing.

That Prosecuting Counsel was in Court with its 2nd Witness on 19/11/19 at about 12 o'clock only to be told that the Court sat about 11 o'clock and that the case of the Prosecution was closed and the matter consequently adjourned to 13/02/20 and transferred to the general cause list The Prosecution is not

aware that the matter was adjourned to 11 o'clock
on 19/11/2019

That the inadvertence of Prosecuting Counsel to
appear in Court on 19/11/19 is not intentional
disrespect. That Applicant is now ready and desirous
in prosecuting the Charge.

That it is in the interest of justice to grant the
application.

Learned Counsel to the Defendant/Respondent relied
on his Counter Affidavit deposed to by one
Mohammed Momoh, the Defendant himself sworn to
on 11/02/20.

He deposed that the deposition as contained in
paragraph 4 are not correct.

That it is only PW1 who gave his testimony since
3/05/18 and the case adjourned for Cross-
examination.

That the Court endured several adjournments at the instance of the Prosecution to produce PW1 for Cross-examination but to no avail.

That in the absence of PW1 to present himself for Cross-examination, the Court foreclosed the Prosecution on the application of Defence Counsel.

That on a further adjourned date for continuation, neither the Prosecution nor Witnesses showed up.

The Defence further applied for the foreclosure of the Prosecution's case which was granted.

The case was adjourned till 6/02/20 for a No case Submission. That the Prosecution did not show any diligence. That the Applicant is not ready and willing to prosecute its case.

That Prosecution Witnesses were also not in Court.

That the application is brought malafide.

Learned Prosecuting Counsel canvassed that the Court has power under Section 351 1(2) of the ACJA to reopen the case. That it is at the discretion of the Court pursuant to Section 6(6)(b) of the 1999 Constitution.

That it is in the interest of justice to hear the substantial charge.

He finally urges the Court to find for the Applicant by granting the relief.

Learned Counsel to the Defendant on the other hand argued in his Address that Section 35 1(1) ACJA and 35 (2) of the 1999 Constitution do not apply in this case.

That the Prosecution has not shown any convincing reason for the reopening of the case.

That leave of Court ought to be sought and obtained.

That Applicant did not seek leave. That the

application is incompetent. He finally urges the Court to refuse the application.

I have read the record of proceedings.

Both the Defendant and the Prosecution have been absent in Court on several occasions leading to the delay in the trial of this cause. The decision to reopen a case foreclosed is at the discretion of the Court.

The reasons given by the Prosecution for being absent during the trial are not cogent and correct.

On the 22/10/19, the Prosecuting Counsel was in Court when the matter was adjourned to 19/11/19 by 11 a.m for continuation of hearing. It is on record.

It is therefore worrisome that Prosecuting Counsel is stating that it was adjourned till 12 noon and that he was in Court by 12 noon when he discovered that the case has been foreclosed by 11 a.m.

This is a deliberate falsehood.

The conduct of the Prosecution is not worthy of sympathetic consideration. The Prosecution's case was foreclosed on 19/11/19. He said he was in Court on that date but failed, refused and or neglected to file a Motion to relist till 9/01/2020. There has been undue delay in bringing this application.

In the circumstance of this case, the Prosecution does not deserve the exercise of my discretion in its favour, however in the larger interest of justice, I shall grant the relief sought.

Order is granted as prayed.

Case is adjourned to 19/05/21 for continuation of hearing.

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HON. JUSTICE U.P. KEKEMEKE
(HON. JUDGE)

25/02/21

Defendant present.

D.N. Nkwap for the Prosecution.

Godwin Omagbogu for the Defendant.