

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON THURSDAY THE 14<sup>TH</sup> DAY OF MARCH, 2024**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/CR/003/2020**

**BETWEEN:**

**COMMISSIONER OF POLICE       -----       COMPLAINANT**

**AND**

- 1. NASIRU JIBRIN**
- 2. LAWAL HAMZA**
- 3. KAMALU YUSUF**

**}**

**DEFENDANTS**

## **JUDGMENT**

The real enforcement of justice or justice delivery starts from proper and diligent prosecution of cases especially in criminal matters. Where the Prosecution files a case in Court and literally abandon the case by not ensuring that it diligently prosecute same, it is not proper and it is anti-justice and all justice stands for. It is also a disobedient and breach of the Right of the Defendant who is presumed innocent until properly proven otherwise before the Court.

The habit of the Prosecution by rushing to file a Charge in Court and after arraignment disappears is bad for quick and proper dispensation of justice. It is equally unlawful also bearing in mind that the Constitution and ACJA provides that criminal matter should be heard on daily basis and dispensed as soon as possible. Oftentimes the Defendants in some cases stay so long in the Correctional Facilities, longer than the term of the offence they have allegedly committed. It is imperative to restate that every Defendant, no matter the nature of the crime, is innocent until proven guilty by the Prosecution before the Court.

In this case the 3<sup>rd</sup> Defendant – Kamalu Yusuf and 2 others – Lawal Hamza and Nasiru Jibrin were brought before this Court on a 3 Count Charge which is on conspiracy to commit offence of armed robbery and culpable homicide in that they conspired among themselves together with Bashiru, Yarobaba and Mai-kabusa now at large, had robbed and caused the death of one Miss. Chidinma Precious Nwangwu aged 25 years of Airport Road, Abuja an offence under S. 6(b) Robbery and Fire Arms (Special Provision) Act LFN 2004, armed with machete and other weapons.

That the Defendants actually robbed the said late Chidinma Precious Nwangwu on the said 7<sup>th</sup> October, 2019 at 12 midnight taking her handbag, 2 phones, Zenith Bank ATM Card and other valuable items, an offence under S. 1(2) of the same Fire Arms Act.

Again the Defendants were also charged with offence of Culpable Homicide punishable with death in that they caused the death of the same Chidinma Precious Nwangwu, knowing that death is the probable consequence of their action which is an offence punishable under S. 221(b) of the Penal Code Law.

On the 19<sup>th</sup> July, 2021 the Defendants were arraigned before this Court. They pleaded not Guilty to the 3 Count Charge. The Prosecution opened its case and called some Witnesses. All the Defendants had Counsel Representations. After some time in October 2022 the Prosecution stopped showing face in Court. There were several adjournments at their instance. Along the line also 2 of the Defendants – the 1<sup>st</sup> & 2<sup>nd</sup> Defendants disappeared into thin air and were nowhere to be found. The Court continued to wait for the Prosecution. The Court had ordered that the Counsel to the 3<sup>rd</sup> Defendant who is the only person among the 3 Defendants that has diligently come to Court to go to Police and find out what is happening

There was change of batten from the Prosecution – from Noel Omeji to Stanley. The Court has waited and sent messages but no reply. The Court ordered the 3<sup>rd</sup> Defendant Counsel to find out and reach out to the Police to find out who the matter is now assigned to. She reported to the Court that it was assigned to O.C. Stanley and that she reached out to the said Stanley up till yesterday 13<sup>th</sup> March, 2024 and Stanley told her that he will send a

lawyer to Court today. But there is no lawyer from the Prosecution's office representing the Prosecution today.

The 3<sup>rd</sup> Defendant Counsel had applied for Court to discharge and acquit the 3<sup>rd</sup> Defendant, the only Defendant standing. She cited **S. 351 ACJA** and also the case of:

**Banana V. Tele Power Nig. Ltd Supra**

She submitted that the Prosecution have not been diligent in prosecuting the case since 2022 and that based on the decision of the Supreme Court in that case and the provision of **S. 351 ACJA** in which is provided that:

**“Where a case is called and the Defendant appears voluntarily ... and the complaint ... has due notification of time & place ... does not appear ... the Court may dismiss the complaint.”**

In this case it is glaringly clear that the Prosecution has been absent for close to 2 years. The Court had ensured that they were served Hearing Notices.

The 3<sup>rd</sup> Defendant Counsel had reached out to one O.C. Stanley up to yesterday. He promised to be in Court today or send someone. But he did not live up to that promise. This Court had indulged the Prosecution for a very long time and does not feel it can continue to do so. As it stands the Prosecution has abandoned the case. Besides, the other 2 Defendants are now at large. Their Counsel had stopped appearing before this Court for quite sometime now.

Going by what has transpired so far, this Court feels and is humbly of the view too that the application by the 3<sup>rd</sup> Defendant Counsel is apt as Court cannot wait for the Prosecution in perpetuity. After all, it is the Prosecution that is supposed to be pushing hard and fast to ensure that this matter is done speedily. But they have failed to do so.

Based on **S. 351 (1) ACJA** and the decision of Court in the case of:

**Banana V. Tele Power Nig. Ltd Supra**

This Court dismisses the case against the 3<sup>rd</sup> Defendant who had since 5<sup>th</sup> November, 2020 diligently appeared before this Court everyday this matter was scheduled to be heard. The said Defendant is discharged and perpetually acquitted. He is free to go home from here.

**This is the Bench Judgment of this Court.**

**Delivered today the \_\_\_ day of \_\_\_\_\_ 2024 by me.**

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**K.N. OGBONNAYA**  
HON. JUDGE