

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI

ON WEDNESDAY THE 1ST DAY OF FEBRUARY, 2017
BEFORE HIS LORDSHIP HONOURABLE JUSTICE A. ALUKO
(JUDGE)

CHARGE NO: FHC/AI/50C/2015

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

1. AJAH MOSES NKEMJIKA

2. AJAH OSETE IFEANYICHUKWU

DEFENDANTS

RULING

This is a ruling on a no-case submission made by the defendants through their Counsel.

The prosecution after commencement of trial opened its case on the 17th day of February 2016 and closed same on the 25th day of October 2016 after calling 3 witnesses.



Upon the close of prosecution's case, the defendants opted to make a no-case submission.

On the order of the court, both parties filed their written addresses which they duly adopted and rendered additional submissions by way of adumbrations on the 16th day of January 2017.

By the charge initiated against the defendants dated 19th day of November 2015, the 3 count charge against the defendants state as follows:

Count 1:

That you, Ajah Moses Nkemjika (m) and Ajah Osete Ifeanyichukwu (m) with others at large on or about 7th November 2015 at Amaonye village Ishiagu, in Ivo Local Government Area of Ebonyi State within Ebonyi Judicial Division of the Federal High Court of Nigeria conspired to commit a felony to wit: to tamper with oil pipeline at kilometre 143.5, Amaonye village Ishiagu, in Ivo Local Government Area of Ebonyi State and thereby committed an offence punishable under section 516 of the Criminal Code, Cap 77, Laws of the Federation, 2004.

Count 2:

That you, Ajah Moses Nkemjika (m) and Ajah Osete Ifeanyichukwu (m) with others at large on or about the 7th of November 2015 at Amaonye village, Ishiagu in Ivo Local Government Area of Ebonyi State within the Ebonyi Judicial Division of the Federal High Court of Nigeria tampered with oil pipeline at kilometer 143.5, Amaonye village Ishiagu, in Ivo Local Government Area of Ebonyi State and thereby committed an offence punishable under section 1(7) of the Miscellaneous Offences Act. Cap M17, Laws of the Federation, 2004.

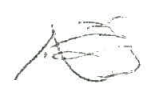
Count 3:

That you, Ajah Moses Nkemjika (m) and Ajah Osete Ifeanyichukwu (m) with others at large on or about the 17th of

November 2015 at Amaonye village, Ishiagu in Ivo Local Government Area of Ebonyi State within the Ebonyi Judicial Division of the Federal High Court of Nigeria were caught dealing in petroleum product (AGO) without lawful authority or an appropriate licence and thereby committed an offence punishable under section 1(17), of the Miscellaneous Offences Act. Cap M 17, Laws of the Federation, 2004.

In proof of the three count charge and the allegations contained therein, the prosecution called three witnesses namely PW1, PW2 and PW3 respectively. They are Michael Nwankwo Odili as PW1, Aliaka Moses Chukwuma as PW2 and Agwu Augustine Iruka as PW3.

PW1 in summary gave evidence as follows:


He is a public servant attached to the Nigeria Security and Civil Defence Corps, Ebonyi State Command. On the 17th day of November 2015, his office, NSCDC detailed its men of anti-vandalism unit to monitor and patrol NNPC pipeline at Ishiagu, Ivo Local Government Area of the State due to reports of acts of vandalism in the Area. He was among a six man team of the anti-vandalism unit of the corps who went on the routine patrol at Ishiagu. They got an information that vandals were operating at the NNPC pipeline at Amaonye village Ishiagu, Ivo Local Government Area of Ebonyi State.

Whilst laying ambush around the area from 12 midnight till about 3 am they cited two motorcycles coming out from the road leading to

✓ NNPC pipeline at Amaonye village, they arrested the riders of the motorcycles who happened to be the defendants.

The 2nd defendant, Ifeanyichukwu Ajah was riding a red Kaseo motorcycle carrying a 50 litre keg filled with AGO, automated Gasolin Oil in front of the motorcycle while he was carrying two 25 litre kegs at the back of the motorcycle. The 1st defendant, Nkemjika Moses was caught riding the other motorcycle, black Kymco motorcycle carrying 50 litre AGO in front of his motorcycle and another 50 litre filled with AGO at the back. The defendants were taken to the department of intelligence unit of Civil Defence headquarters at Abakaliki for investigation. The following were tendered in evidence through PW1 and accordingly admitted and marked as follows:

(1) One Kaseo motorcycle as exhibit A.

(2) One Kymco motorcycle as exhibit B.



(3) Three 50 litre kegs filled with AGO as exhibits C, C1 and C2.

(4) Two 25 litre kegs filled with AGO as exhibits D and D1.

PW2, Aliaka Moses Chukwuma gave evidence in summary as follows;

He lives at Amoebo, Amaonye, Ishiagu, Ivo Local Government Area of Ebonyi State. He is a photographer and he said he knew the defendants. He and one Chief Samuel Ajah Okoro were on the 10th

day of August 2015 appointed by the NNPC to keep surveillance on the pipeline that pass on through Amaonye Community, Ishiagu, Ivo Local Government Area of Ebonyi State at km 143 – 146.5.

They commenced their surveillance on the 11th day of August 2015 when they sensitized the villagers by telling the youth of the area to keep off from pipeline vandalisation. He said on the 5th day of November 2015, they found out that km 143.5 had been broken again and they called on those who were incharge of its maintenance and they maintained it.



On the 17th day of November 2015, at 7.30 am he received a call from one Mr Chukwu Samson, a member of Nigeria Security and Civil Defence Corps. He met Chukwu Samson and others at Avoso Ogbo Ishiagu with the civil Defence patrol vehicle and he saw the defendants. He was asked if he knew them which he answered in the affirmative. He was told they were arrested with AGO and motorcycles. He said he wanted to ask them if they were responsible for it, but the Civil Defence Corps told him they were going for search and they drove off. He then went to the family of the defendants to tell them what happened. His letter of appointment and engagement as NNPC/PPMC surveillance contractor dated 7/8/2015 was tendered and admitted in evidence as exhibit E.

Under cross examination, PW2 said he knew nothing about the issues of vandalism, he said he knew the 1st defendant as a farmer.

The summary of the evidence of PW3, Agwu Augustine Iruka, a public servant with the Nigeria Security and Civil Defence Corps attached to its department of intelligence and investigation is as follows:




The defendants were on the 17th November, 2015 arrested by the anti-vandalism unit of the Corps of Ebonyi State Command on the charges of conspiracy, vandalism of NNPC Oil pipeline and illegal dealing in petroleum products. The defendants were brought to the State Command of the Corps in Abakaliki and their case was assigned to him for further investigation. He obtained their statements under caution. His investigation took him to the scene of the crime. He stated that he stopped at the track road leading to Ogwunkwu stream where the defendants confessed they streamed oil from. He went to the NNPC pipeline that was vandalized.

According to PW3, further investigation revealed that Ajah Moses Nkemjika was arrested while conveying on Kymco motorcycle the 2 black 50 litre jerricans filled with oil and that Ajah Osete Ifeanyichukwu was equally arrested while carrying a 50 litre black color jerrycans filled with the oil and another two 25 litre jerrycans

filled with oil on a kaseo motorcycle with registration No. AFK544QD. Upon conclusion of his investigation he handed over the case to his superior Officer for further directives.

The statements of the defendants were admitted in evidence after their voluntariness was tested following the objection from the Defence Counsel. Their statements were admitted in evidence as exhibits F and G respectively.

It was after the close of prosecution's case and on the basis of the evidence of PW1, PW2 and PW3 including the exhibits tendered by the prosecution that the defendants decided to make a no-case submission.


From their written submissions and oral adumbrations, the Defence Counsel submitted that the evidence of the prosecution witnesses namely PW1, PW2 and PW3 are largely hearsay and that same are replete with contradictions leading to the failure of the prosecution to prove the essential elements or ingredients of the offences with which the defendants were charged beyond reasonable doubt. The Defence Counsel referred the court to areas of the prosecution's testimony which he believes contain contradictions and which also amount to hearsay. Counsel submitted that the prosecution failed to adduce any evidence to prove a prima-facie case

against the defendants regarding the offences of conspiracy to tamper with oil pipeline, tampering with oil pipeline and dealing in petroleum product (AGO) without lawful authority or an appropriate licence.

The Defence Counsel cited and relied on many judicial and statutory authorities in urging the court to up hold their no-case submission and consequently urge the court to discharge and acquit the defendants.



The summary of the argument and submission of the Prosecution Counsel is that by the evidence before the court as rendered by PW1, PW2 and PW3, the exhibits tendered through the prosecution witnesses which include the confessional statements of the defendants, the motorcycles and jerrycans filled with petroleum products arrested with the defendants, prima-facie case has been made against the defendants demanding them to enter their defence.

Prosecution Counsel submitted that prima-facie case can be made out by the circumstances surrounding the case leading to the arrest of the defendants. Counsel submitted that by exhibits F and G, the statements of the defendants, the 1st defendant admitted scooping AGO from Ogwunkwu stream and that there was evidence that they were arrested with motorcycles while carrying petroleum products in jerrycans.

On the submission of the Defence Counsel that circumstantial evidence must be indisputable, cogent, positive and irresistible before court can act on same, Prosecution Counsel submitted that at this stage i.e where a defendant makes no-case submission, what the court does or looks out to find out is whether there is a prima-facie case.


Counsel submitted that it is not yet time to insist that the prosecution must prove its case beyond reasonable doubt.

On the submission of the Defence Counsel that with the contradictions in the evidence of prosecution which the prosecution Counsel did not react to, pointing to the fact that the prosecution has failed to prove its case beyond reasonable doubt; Prosecution Counsel submitted that the totality of the whole evidence of both parties would have to be placed before the court before arriving at that.

Counsel finally submitted that all the argument and submission of the Defence Counsel were not appropriate under no-case submission but would have been appropriate after full hearing and during final address. Counsel maintained that the prosecution has made out prima-facie case against the defendants necessitating calling on them to enter their defence.

I have gone through the charge before the court and the written submissions of both Counsel. I have gone through the evidence adduced by the prosecution both oral and documentary including the statements of the defendants, the motorcycles and kegs of petroleum products tendered and admitted in evidence.

It is on record that the prosecution tendered the following in evidence namely;

- (1) One Kaseo motorcycle with reg. no. AFK544QD = Exhibit A.
- (2) One Kymco motorcycle = Exhibit B. 
- (3) Three 50 litre jerrycans filled with automated Gasoline Oil = Exhibits C, C1 and C2.
- (4) Two 25 litre jerrycans filled with AGO = Exhibits D and D1.
- (5) The statements of the defendants = Exhibits F and G.

From the issues raised in their written submissions, counts in the charge and based on the prosecution evidence before the court, the relevant issue for determination can be put thus;

“Whether the prosecution has made out a case for the defendants to be called upon to give an answer to”.

When a no-case submission is made by a defendant in a criminal matter, the court is enjoined to consider the following:

- (i) *Whether an essential element of the offence has been proved by the prosecution;*

- (ii) *Whether there is evidence linking the defendant with the commission of the alleged offence;*
- (iii) *Whether the evidence led so far is such that no reasonable court or tribunal would convict on it;*
- (iv) *Whether there is any other ground on which the court may find that a prima-facie case has not been made out against the defendant for him to be called upon to answer.*

See the provisions of sections 302 and 303 of the Administration of Criminal Justice Act 2015.



Upon the close of the case for the prosecution, it is true that the defendants have three options which they can elect to make. They can rest their case on the prosecution's case and then proceed to address the court; they can decide to go into trial by calling or giving evidence in their defence; or they can decide to make a no-case submission. It is to be noted that every option the defendants decide to make has its legal implications and consequences.

In the present case, having chosen and elected to make a no-case submission, the court is only enjoined to examine the charge and see if the evidence led by the prosecution establishes a prima-facie case, and to know whether the evidence adduced by the prosecution links the defendants no matter how slight with the commission of the alleged offence.

The court is not at this stage bothered about whether it believes the evidence already led by the prosecution or the credibility of prosecution witnesses.

The way to go is that if the evidence led by the prosecution links the defendants with the commission of the offence, there is a case to answer and no-case submission would be overruled. The defendant would then be called upon to explain and lead evidence to show that he is not guilty of the offence. But if on the other hand, the prosecution failed to lead evidence to prove an essential element of the offence or if the evidence adduced through its witnesses has been so discredited as a result of cross examination or is so manifestly unreliable, the no-case submission would be upheld and the defendants would be acquitted of the charge(s) and discharged.

As I have warned earlier, at the stage of no- case submission, it is not yet over, trial is only kept on hold, it has not yet been concluded. At this stage, this court is not concerned with the credibility of the witnesses called by the prosecution or the weight and probative value to be attached or given to their evidence. See Uzoagba vs. COP (2014) 5 NWLR (Pt 1401) P. 441 PP 464 – 465, paragraphs C – D.

As shown from the charge containing the counts of allegations made against the defendants, they were alleged to have been involved in conspiracy to tamper with oil pipeline, tampering with oil pipeline and dealing in petroleum product (AGO) without lawful authority or an appropriate licence at kilometer 143.5, Amaonye village, Ishiagu in Ivo Local Government area of the State.



In an attempt to establish or prove the above allegations as contained in the counts making the charge, the prosecution called three witnesses. Through the witnesses the prosecution tendered in evidence exhibits A, B, C, C1, C2, D, D1, E, F and G. They are Kaseo motorcycle (exhibit A), kymco motorcycle (exhibit B), three 50 litre jerrycans of automated gasoline oil (exhibits C, C1 and C2), two 25 litre jerrycans filled with automated gasoline oil (exhibits D and D1) and the statements of the defendants (exhibits F and G)

The prosecution witnesses, in particular PW1 and PW3 gave evidence that the defendants admitted committing the offence in their statements. PW1 gave evidence that the defendants were arrested at night between 12 midnight and 3 am on the road that lead to NNPC pipeline at Amaonye village with jerrycans filled with automated gasoline oil. PW3 gave evidence that the defendants confessed and

admitted that they committed the offence and thereon made statements tendered as exhibits F and G.

While the court is not at this stage concerned with the credibility of these witnesses or the weight to be attached to their testimony as time has not yet ripe for that, there is no gain-saying the fact that the prosecution by the evidence of its witnesses has raised some serious questions which the defendants must necessarily give explanation to and which only the defendants themselves can give or explain. There is issue of arresting the defendants at the dead of the night between 12 midnight and 3am with motorcycles carrying AGO on the road that lead to the NNPC pipeline, there is issue of admission of commission of the offences by the defendants and there is issue of confessional statements.

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These and other evidence before the court has made it necessary for the defendants to take part in the trial to the fullest by entering their defence in order to give explanations to most of the issues raised concerning their alleged roles in the case. See Uzoagba vs. COP (supra) at pp 455 – 456, paragraphs G-D.

With the evidence of the prosecution witnesses tendered viva-voce and the exhibits already tendered, it cannot be safely said that there is no legally admissible evidence before the court necessitating

calling on the defendants to put up their defence. See Suberu vs. The State (2010) 8 NWLR (pt. 1197) 586 SC.

Since the court is not at this stage called upon to express an opinion on the evidence of the prosecution or giving or attaching probative value to the testimony of its witnesses, the arguments of the defence Counsel on the credibility of the prosecution witnesses and probative value to accord their evidence have to wait until the end of full trial when the defendants have been given the opportunity to state their own side of the case. That is the time the onus of proof beyond reasonable doubt will be well placed on the shoulders of the prosecution.



With the evidence of prosecution witnesses and the exhibits before the court, there is prima-facie case already established which the defendants will be required to give explanations to in order to assist the court in achieving the interest of justice in this case, see Daboh & Anor vs. The State (1977) LPELR -904 (SC)/(1977) 5 SC 122.

In conclusion, most of the judicial authorities cited and relied upon by the defence Counsel will be much relevant after the defence must have presented their own side of the case and the court is presented with the opportunity of dealing with the case wholly in the interest of all parties.

It must be noted and emphasized that the meaning and import of a no-case submission is that the defence is saying that there is no evidence on which the court would convict them even if the court believed the evidence adduced by the prosecution. See Fagoriola vs. FRN (2013) LPELR – 20896 (SC) pages 29 – 30, paragraphs E – C.

It should not be forgotten that several exhibits including the statements of the defendants have been tendered in evidence. The interest of justice demands that the defendants are called upon to enter their defence in this case.

For the above reasons, I am of the considered view that the prosecution in this case has made out a prima-facie case in this case necessitating the defendants to be called upon to give an answer to.

The no-case submission of the defendants is hereby overruled. The defendants are therefore called upon to enter their defence.



HON. JUSTICE AKINTAYO ALUKO
PRESIDING JUDGE
01 – 02 – 2017

NDORSEMENT

NO-CASE SUBMISSION ARGUED BY;

- (1) D.J. Anyim Esq
for the Defendants
- (2) Oliver C. Eze Esq
with L. N. Akam (Mrs)
for the Prosecution