

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE ABAKALIKI JUDICIAL DIVISION

HOLDEN AT ABAKALIKI

ON THE 11TH DAY OF APRIL 2016

BEFORE THE HON. JUSTICE MAUREEN ADAOBI ONETENU
JUDGE

SUIT NO: FHC/AI/28C/2012

BETWEEN:-

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

ALI ARINZE - ACCUSED

JUDGEMENT

The Accused Person is standing trial on a one-count charge of knowingly possessing 3.8kg of cannabis sativa without lawful authority contrary to and punishable under S. 19 of the National Drug Law Enforcement Agency Cap N30 Laws of the Federation of Nigeria 2004.

To prove its case against the Accused Person the Prosecution called 4 witnesses while the Accused Person

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testified in his own defence and called a witness. In all 9 exhibits were tendered to wit.

Exhibit A Certificate of Test Analysis

Exhibit A1 Packing of Substance Form

Exhibit A2 Request for Scientific Aid Test

Exhibit B Large Brown Envelope

Exhibit B1 Drug analysis Report

Exhibit B2 Transparent Evidence Pouch

Exhibit C Bulk Exhibit white sack containing suspected substance

Exhibit D Statement of the Accused in Igbo language

Exhibit D1 statement of the accused translated into English language

Briefly stated the case for the prosecution is that on 30/7/12 a team of NDLEA agents led by 2nd p.w. went to the house of the accused on assignment. There they found him in his shop putting substances suspected to be indian hemp in sachets. He was there and then arrested. A search of his premises revealed a white sack containing the said substances. The accused was then brought before the Exhibit officer p.w.1. before when he admitted the substance as his. P.w.1 field-tested the substance and it proved positive to be cannabis sativa and weighed 3.8 kg.

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A bit of the substance was then taken to the forensic laboratory Lagos which confirmed it to be cannabis sativa Exhibit B1.

Before then the 1st p.w. issued Exhibit A to A2 Exhibit forms which was signed by him the accused and the 2nd and 4th p.w.s.

The accused made a confessional statement written down by 3rd p.w. after which he was charged to this court.

In his defence the accused denied the charge stating that Exhibit B the substance in question was not found on him. His witness D.w. 2 who claimed to have gone to a shop opposite that of the accused during this incident testified that he saw the NDLEA officers arrest the accused and that they did not recover any substance from the accused person.

In his written address counsel to the accused person gave a sole issue for determination to wit whether the prosecution has proved its case against the accused person beyond reasonable doubt as required by law.

Counsel submitted that for the prosecution to succeed in this charge they must prove

- (a) That the substance in question is indian hemp
- (b) That it was found in possession of the accused

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(c) That the possession was to the knowledge of the Accused.

(d) That the possession was without lawful authority citing CHUKWUDI UGWUANYI vs FRN 2010 MSCJ 1 at 132.

Counsel submitted that P. W. 2 told the court that he saw the Accused with the substance during his evidence in chief but in his cross-examination, he told the court he only saw the substance in the Accused Person's shop.

Counsel also submitted that the Accused is a trader who trades on provisions and foodstuff and that the Accused evidence was neither challenged nor debunked by the Prosecuting citing

NWAKANObI & ORS vs UDOWA & ORS MSCJ 3 p. 134.

Rather that the evidence of the Accused was corroborated by his witness D. W. 2.

Counsel further submitted that P. W. 1 was not an expert witness and he was not present when the test was conducted in the forensic laboratory and it is for an expert from the laboratory to testify in court citing

CHUKWUDI UGWUANYI vs FRN. (Supra)

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And that such report ought to be given to the Accused 10 days before the hearing of the matter and that the non calling of the forensic expert to testify offends S. 36 (6) (d) of the 1999 Constitution and that S. 55 of the Evidence Act does not override the provision of the constitution referring S. 1 (3) of the 1999 Constitution (As Amended).

Counsel finally submitted that an Accused will not be convicted of a crime unless the case has been proved beyond reasonable doubt and that such doubt ought to be resolved in favour of the Accused Person citing

BELLO vs STATE 2013 8 NWLR pt 1114 at 597;

FRN vs IWEKA 2013 3 NWLR p 285.

Counsel then submitted that in this case the doubt that has been raised should be resolved in favour of the Accused and that suspicion no matter how well placed does not amount to evidence citing

ABACHA vs STATE 2002 7 SCNJ 35

He therefore urged this court to discharge and acquit the Accused Person.

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The prosecution in their own written address submitted that the accused made a confessional statement in this case.

Prosecution submitted that for the charge to succeed against the accused it must be proved that

- (a) The accused was found in physical or constructive possession of 3.8 kg of cannabis sativa found in his shop
- (b) That the substance seized was tested and proved to be cannabis sativa
- (c) That the accused has no lawful authority to possess the said drug

Counsel submitted that the evidence of p.w.2 and p.w.4 show that the accused was found with 3.8 kg of cannabis sativa in his shop. That the evidence of p.w.1 and Exhibits A to A2 and B show that the substance in question is cannabis sativa.

That Exhibit B1 is a government certificate which is neither challenged nor controverted by the defence referring to S. 55 of the Evidence Act and that by virtue of S. 139 (1) of the Evidence Act the accused did not lead any evidence to show that he has lawful authority to possess the said cannabis sativa.

M. A. Dyer

Moreover that the confessional statement of the accused was not objected to by him or his counsel when it was tendered and thus full weight should be attached to it and this court can convict the accused solely on his confessional statement as it is voluntary, direct and positive citing

KAREEM V. THE FEDERAL REPUBLIC OF NIGERIA
2002 FWLR Pt 104 at 555 SC.

He urged this court to hold that the prosecution has proved the guilt of the accused person beyond reasonable doubt and to convict the accused as charged.

In his reply on point of law counsel to the accused submitted that S. 55 of the Evidence Act does not apply in this case as the provision is not mandatory because of the word "May" stated in it and that the use of the word "shall" and the protest of the defence counsel the maker of Exhibit B1 the drug analysis report ought to have been called referring to

S. 55 (3) of the Evidence Act and S. 36 (6) of the 1999 Constitution citing

ISIEKWE V. STATE

1999 9 NWLR Pt 617 at 43

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Counsel then submitted that the accused and his witnesses testified that the accused was not around when the officers came to his shop and that the accused stated he saw the Exhibit for the 1st time in the office of the NDLEA and this has not been challenged or controverted by the prosecution hence the accused has discharged the burden placed on him by S. 137 of the Evidence Act which is on balance of probability and not proof beyond reasonable doubt.

Counsel again submitted that in considering the extra judicial statement of the accused the court is guided by 6 principles to wit

- (1) Is there anything outside the statement that shows it may be true
- (2) Is it corroborated
- (3) Are there relevant statement of fact made in it that is true as far as has been tested
- (4) Was the accused the one who had opportunity to commit the said offence
- (5) Is the confession possible
- (6) Is it consistent with other facts which had been ascertained citing

OKO V. STATE

M-A Oyjetem

2009 ALL FWLR pt 1217 – 1412 at 1358

UBIERHO vs. STATE 2005 ALL FWLR pt 254 at 501.

Referring to the medical request attached to the motion on bail as this court can look into its record citing

OKAFOR vs OKAFOR 2000 FWLR pt 1 17 at 19.

Counsel answered all the above issues in the negative. He again urged this court to discharge and acquit the Accused Person.

I have carefully considered the evidence adduced against the Accused Person in this case by the Prosecution.

I have also considered the defence of the Accused Person as well as addresses of both Counsel in this case.

The sole issue for determination in my humble view is whether the Prosecution has proved the guilt of the Accused Person beyond reasonable doubt in this case.

I agree with both Counsel that for the Prosecution to prove the guilt of the Accused Person it must prove:

1. That the substance in question is Indian hemp.
2. That it was found in the physical or constructive possession of the Accused

M-A Oyelusi

(3) That the accused has no lawful authority to possess the said indian hemp

On the 1st ingredient the 1st prosecution witness testified that he did a field test on the substance and it proved positive to be cannabis sativa. He went on to state that the substance was taken to the forensic laboratory and tendered the Drug Analysis Report Exhibit B1 which stated the substance was indian hemp.

Counsel to the accused has objected to Exhibit B1 the certificate from government forensic analyst stating that the analyst ought to have been called as a witness.

S. 55 (1) of the Evidence Act provides Either partly to the proceedings in any Criminal case may produce a Certificate signed by a Forensic Chemist ... and the production of any such certificate may be taken as a sufficient evidence for the facts stated therein.

It is not in dispute that Exhibit B1 is a certificate issued by a government forensic analyst. The word "may" gives the court discretion as to its acceptance. The certificate was not challenged by the defence and there is no doubt to its authenticity.

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Counsel has submitted that subsection 3 of that section means that the analyst should come for cross examination but that subsection states

“The court shall have power on application of either party or its own motion to direct that any such officer be summoned to give evidence.

None of the parties made any application that the analyst be summoned. I have not seen any reason to summon him.

Counsel to the Accused Person has referred to S. 36 (d) of the 1999 Constitution but then Accused was granted ample opportunity to apply for the analyst to be summoned for cross-examination which he did not make use of. He therefore cannot be heard to complain.

See the case of NWACHUKWU vs. THE STATE 2002 12 NWLR pt 75 at 543.

I am therefore satisfied that the substance in question is cannabis sativa.

On the 2nd ingredient of this charge the 2nd and 4th Prosecution Witnesses that the Accused was found in possession of the said drug.

Under cross-examination the 2nd p.w. stated that he caught the Accused red handed while he was tying up the

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bag which contained the drug. The 4th p.w. stated the accused was putting the indian hemp into sachets and he apprehended him while he was holding the substance.

The 2 witnesses evidence was not contradicted by the defence. The 1st p.w. also testified that the accused admitted to him that he was the owner of the said indian hemp.

The accused also signed the Exhibit forms certificate of Test Analysis, Packing of Substance Forms and Request for Scientific Aid Test Exhibit A to A2 which all stated that the drugs were found in possession of the accused persons.

There is also Exhibit D the confessional statement of the accused person.

Here counsel to the accused had submitted that it was not a voluntary statement that the accused person was pressurized and referred to the medical report of the prison doctor. First the defence did not raise the issue of voluntariness of the accused statement when it was sought to be tendered in court. Indeed the learned counsel to the accused had no objection to it. It is indeed too late in the day to contend that the statement is not voluntary. In my humble view it is an afterthought.

M. A. Dyer

I have also examined the said medical report Exhibit B attached to the accused person's affidavit in support of motion for bail. The medical report did not state anything whatsoever about the cause of the trauma to the ear of the accused person. I am therefore satisfied that the prosecution has established the accused possession of the said substance.

On the last ingredient I agree with the prosecuting counsel that by virtue of S. 139 (1) of the Evidence Act as amended where a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any exception or exemption to the operation of the law creating the offence with which he is charged is upon such accused person.

In the present case the accused has not adduced any evidence to show that he has lawful authority to possess the said indian hemp.

Rather his defence is a denial that no such drug was found on him. Even though he called a sole witness D.w.2 he made a confessional statement which was not objected to. Even if it is accepted that he was beaten to make a statement he did not also object to the exhibit forms. He did not even state that he did not thumbprint the forms. He did

M. A. Oyetun

not deny the evidence of 3rd P.W. that he admitted to him that he was the owner of the drugs.

On the whole I find the evidence of the prosecution against the Accused overwhelming and I find no difficulty in finding him guilty of this offence. I therefore hold that this action must succeed against the Accused and I find him guilty as charged.

M.A. Onyetenu
M. A. ONYETENU
JUDGE
11/4/16

Record: Nil

Allocutus: Counsel to the Accused Person states that the Accused is a 1st offender. He is a father of many children.

Sentence: The Accused Person is a 1st offender and appears sober and repentant. He is to serve a jail term of 2 years I. H. L.

M.A. Onyetenu
M. A. ONYETENU
JUDGE
11/4/16

M.A. Onyetenu

Order as to Exhibit

Exhibit C to be returned to the Prosecution for destruction.

M. A. Onyetenu
M. A. ONYETENU
JUDGE
11/4/16

APPEARANCES

Accused Person present.

M. C. Onyiaji for the Prosecution.

Silas I. Nwonyese for M. E. Nwode for the Accused Person.

M. A. Onyetenu