

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI
ON THURSDAY THE 14TH DAY OF APRIL, 2016
BEFORE THE HON. JUSTICE MAUREEN ADAOBI ONETENU
JUDGE

SUIT NO: FHC/AI/48C/2012

BETWEEN:-

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

OMOKWE IFEANYI - ACCUSED

JUDGEMENT

The Accused Person is standing trial on a one count charge of unlawful possession of 400 grammes of cannabis sativa contrary to and punishable under S. 19 of the National Drug Law Enforcement Agency Act 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 gave evidence on his own behalf and called 2 witnesses.

In all, 9 exhibits were tendered to wit:

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- Exhibit A: Certificate of Test Analysis
- Exhibit A1: Request for Scientific Aid Test
- Exhibit A2: Packing of Substance form
- Exhibit B: Large brown Envelope
- Exhibit B1: Drug Analysis Report
- Exhibit B2: Transparent Evidence pouch containing analysed substance
- Exhibit C: Bulk substance found with the Accused
- Exhibit D: Statement of the Accused person in Igbo Language
- Exhibit D1: Translation of accused person statement in English language.

Briefly stated the case for the prosecution is that the NDLEA office received information that the accused deals on Indian Hemp hence a team of NDLEA officials were sent to search his house. On searching of the room of the accused, the 3rd P.W. discovered some substances in a black nylon bag on a hanger in the accused person's room. He asked the accused what it was and he told him Indian Hemp. He asked the accused the owner and he stated it was his hence he arrested the accused, brought him to the exhibit officer in their office who also asked the accused the owner of the substance. The accused admitted the

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substance as well. The said substance was field tested and proved positive to be Indian hemp. It was also weighed and found to be 400 grams. Exhibit forms were issued to this effect and a bit of the substance taken to the Forensic Laboratory in Lagos where it was confirmed as Indian hemp. The Accused also made a confessional statement after which he was charged to this court.

In his defence the Accused denied the charge stating that indeed NDLEAQ officials came to search his house but nothing was found and they then took him to the house of the 2nd D.W. his inlaw asking him to produce the Indian hemp. They also searched the house of 2nd D.W. but nothing was found. They then took both of them to Enugu where they arrested one man Samson Mba and then impounded his after which they took the 3 of them to their office at Ntezi. The 2nd and 3rd Defendant Witnesses stated that they did not see anything with the Accused Person on the day of question.

In his final address, Counsel to the Accused Person gave the ingredient of this offence as stated in the case of CHUKWUDI UGWANYI vs FRN. 2012 MSCJ 1 at 134.

M. A. Oyelewa

This case also stated what the prosecution must prove and held that any doubt in the prosecution case must be resolved in favour of the accused person citing:

Udosen v. The State

2007 4 NWLR Pt 1073 125.

Counsel submitted that the expert that conducted the test on the substance never testified in court and the prosecution offered no explanation for this failure.

Counsel then submitted that there is contradiction in the sequence of events leading to the arrest and prosecution of the accused person.

First that the P.W3 stated that he saw a polytene bag with the accused but PW4 stated he saw PW3 discover a black leather bag.

That while the PW4 admitted that the accused was arrested in the presence of his wife the other witnesses failed to mention the wife of the accused the DW3 in their evidence and this is fatal to the prosecution case citing:

Ogudo v. The State

2011 18 NWLR Pt 1278 1 at 31 and referred to

S. 43, 68 and 126 of the Evidence Act

Counsel submitted again that the laboratory report lacks evidential value in law citing

M. A. Oyejolu

Igwediba v. Igwedibia

2013 34 WRN P. 177

as it is hearsay evidence citing

Subramaroan v. D.P.P

1956 1 WLR 965

Counsel submitted that the sequence of events narrated by the defence witness is more probable than that offered by the prosecution in that

- 1) It explains why the DW1 was taken to the home of DW2
- 2) It explains why the DW1 and DW2 were taken to Amaechi Idodo in Enugu State in search for cannabis sativa
- 3) It explains why the expert witness was not called
- 4) It explains the evidence of the PW2 who obtained 2 statements from the accused and choose to tender one withholding the other
- 5) It gives credence that PW3 and P.W.4 acted based on information of a person who tried to frame the DW1.

Counsel then submitted that the evidence of the accused be preferred by this court as it is consistent with the evidence of DW2 and DW3. Moreover that the prosecution did not call the alleged informant hence the evidence of the defence remains unchallenged and uncontradicted citing

M. A. Oyeleke

UBA v. Chris Ekemezie

12 NWLR pt. 1130 at 326

Magaji v. Nigerian Army

2008 NWLR PT 1059 at 338

Counsel therefore urged this court to discharge and acquit the accused person.

In his own final address the prosecution adopted the same issues raised for determination by the defence.

Counsel submitted that proof beyond reasonable doubt does not mean proof beyond the shadow of doubt citing

Ogunbanjo v. State

2003 FWLR Pt 157 at 103

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

- (1) That the accused was found in physical or constructive possession of 400 grams of cannabis sativa
- (2) That the substance is indeed cannabis sativa
- (3) That the accused person had no lawful authority to possess the said drug.

On the 1st ingredient prosecution submitted that the house of the accused was never invaded by the NDLEA officials but that the accused allowed the NDLEA officials to

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search his room and admitted in Exhibit D and D1 that he was in possession of the prohibited drug. That this corroborates the evidence of PW2 to PW4 and even at that that this court can convict the accused based on this confessional statement alone citing

Oche v. State

2007 5 NWLR Pt 1027 at 214

Kareem v. FRN 2002 FWLR Pt. 104 55SC

and this belies the evidence of the accused in court and that of his 2 witnesses DW2 and DW3.

On the 2nd ingredient prosecution submitted that 1st PW testified that he tested the substance and it proved to be cannabis sativa and this is corroborated by the exhibit forms he issued Exhibit A to A2 which the accused signed. That the NDLEA forensic laboratory also in Exhibit B1 confirmed that the substance was cannabis sativa citing

S. 55 of the Evidence Act

and that Exhibit B1 was not contradicted or challenged by the defence.

On the issue that the expert witness was not called by the prosecution, the prosecuting counsel cited the case of

Nwachukwu v. State

2002 12 NWLR Pt.78 at 43

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where the Supreme Court stated that it is not mandatory.

On the 3rd ingredient the prosecution referred to S. 135 of the Evidence Act submitting that the accused did not adduce any evidence to show that he had lawful authority to possess the said drugs.

Prosecution urged this court to convict the accused as charged.

I have carefully considered the charge against the accused and the evidence adduced in proof thereof by the prosecution. I have also considered the defence of the accused person as well as the address of both counsel in this matter.

I will adopt as issue for determination that raised by counsel to the accused to wit:-

Whether the prosecution has proved the guilt of the accused person beyond reasonable doubt in this case.

I agree with the prosecuting counsel that for the prosecution to succeed in this charge it must prove

- 1) That the substance is Indian Hemp
- 2) That the substance was in possession of the accused
- 3) That the substance was in the accused possession to his knowledge and without lawful authority

See Chukwudi Ugwuanyi v. FRN (supra)

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On the 1st ingredient the 1st prosecution witness stated that he field tested the substance and it proved positive to be Indian Hemp. The drug Analysis Report Exh B1 showed that the substance is Indian hemp.

Counsel to the accused has argued that the expert witness that produced Exh B1 was not called to give evidence. But then by virtue of S.55 of the Evidence Act this court can dispense with the presence of such expert witness. That section also gives the defence right to apply for the expert witness to appear to give evidence which they have not done in this case. They therefore cannot be heard to complain.

See *Nwachukwu v. State* (supra).

I am thus satisfied that the substance in this case is Indian Hemp.

On whether the accused was found in physical possession of the said Indian Hemp PW3 and PW4 testified that the substance was found in the room of the accused person.

Counsel to the accused submitted that there is contradiction in the prosecution case as PW3 stated the substance was found in a nylon bag and PW4 stated it was a leather bag but the evidence of PW1 clears this PW1

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stated that the substance was found in a bag of nylon in a leather bag and that the nylon bag contained the said substance.

Even at that any such contradiction is not enough to vitiate this charge.

Of greater strength is the confessional statement of the accused person Exh D which the accused denied knowing anything about. That statement was attested to by a senior officer and the signature of the accused on it is virtually the same as in Exhibits A to A2 the Exhibit forms issued by the 1st prosecution witness which the accused did not object to. The accused did not deny nor object to Exhibits A to A2 which shows his culpability.

I am therefore satisfied that Exhibit D is the confessional statement of the accused.

The law is quite clear that an accused person can be convicted on his confessional statement alone.

See *Oche v. State* (supra)

There is the evidence of DW2 the brother in law of the accused and D.W3 his wife. They are both his relatives and they therefore have interest in this matter. Moreover the wife of the accused the DW3 was in court throughout the trial of this case. I thus do not accept their testimony.

M. A. Dujelen

On the 3rd ingredient that is whether the Accused has lawful authority to possess the said substance, it is quite clear that by the provisions of **S. 139 of the Evidence Act** where a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from the operation, the law creating the offence is upon such a person.

It is therefore for the Accused to adduce evidence or proof of his having lawful authority to possess the said drug which he has failed to do so.

I am therefore satisfied that the Prosecution has proved the guilt of the Accused Person beyond reasonable doubt in this case and I so hold.

The Accused is therefore found guilty as charge.

M.A. Onyetenu
M. A. ONYETENU
JUDGE
14/4/16

Record: Prosecution absent.

Allocutus: The Accused Person pleads for leniency.

M.A. Onyetenu

Sentence: The Accused Person is a 1st offender as Prosecution is absent. He appears sober and repentant and is still in prison custody. The Accused is to serve a jail term of 12 months I. H. L. considering the fact that he has been in custody since 2014.

M. A. Onyetenu
M. A. ONYETENU
JUDGE
14/4/16

Order as to Exhibit:

Exhibit C to be returned to the Prosecution for destruction.

M. A. Onyetenu
M. A. ONYETENU
JUDGE
14/4/16

APPEARANCES

Accused Person present.

M. C. Onyiaji for the Prosecution absent.

Accused Persons' Counsel absent.

M. A. Onyetenu