

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABAKALIKI JUDICIAL DIVISION
HOLDEN AT ABAKALIKI
ON TUESDAY THE 17TH DAY OF NOVEMBER, 2015
BEFORE HIS LORDSHIP
HONOURABLE JUSTICE M.A. ONYETENU
JUDGE

SUIT NO: FHC/AI/9C/2009

BETWEEN

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

EMEKA ARISA UKPABI ACCUSED

JUDGMENT

The Defendant is standing trial on a one count charge of knowingly dealing in 5.7 kilogrammes of cannabis sativa without lawful authority contrary to and punishable under **S. 11(c) of the National Drug Law Enforcement Act cap N30 Laws of the Federation of Nigeria 2004.**

To prove its case against the Defendant the Prosecution called 4 witnesses while the Defendant gave evidence on his own behalf and did not call any witness.

M.A. Onyetenu

In all 7 Exhibits were tendered to wit:

- Exhibit A- Certificate of Test Analysis Form.
- Exhibit B- Packing of Substance Form.
- Exhibit C- Request for Scientific Aid Test Form.
- Exhibit D- Large brown envelope.
- Exhibit D1- Drug Analysis Report.
- Exhibit D2- Transparent Evidence Pouch containing analyzed drug.
- Exhibit E- Statement of the Defendant.

Briefly stated, the case for the Prosecution is that on 2/2/9 NDLEA officers upon information received conducted a search in the house of the Defendant at Mgbede Akaeze Ebonyi State and during the search, the 2nd PW found a bag containing weeds suspected to be cannabis sativa. The Defendant was then arrested and taken to the NDLEA office where the suspected drug was tested, weighed, and found to be cannabis sativa and also weighed 5.7 kilogrammes. A small portion of it was taken to Lagos for laboratory test and through Exhibit D1, it was confirmed as cannabis sativa. This matter was investigated by the 4th PW who

M. A. Oyetunji

confirmed the evidence of PW. 2 and PW 3, the Defendant was then charged to this court.

The Defendant on his own part denied the charge and stated that on the day in question about 5 or 6 NDLEA officials came to his house and executed a search on his home and that of his neighbour but nothing was found and he and neighbour were arrested and taken to the NDLEA office. There he was asked whether he can read and write and he said no, so his neighbor who can understand Hausa, read over the statement to him and he told them it was not his statement whereupon they hung him on the pillar and started to beat him. He then accepted. That they took him to their command in Abakaliki and also beat him and he accepted the statement. He denied making any statement.

In his written address, Counsel to the Defendant gave a sole issue for determination by this court to wit:

Whether the Prosecution has proved the case beyond reasonable doubt as to get conviction against the Defendant.

Counsel submitted that the alleged 5.7kg of cannabis sativa was not tendered and that the alleged officer PW. 1 said to have discovered

the alleged substance did not say so in his evidence before the court citing:

FATAI OLAYINKA vs THE STATE 2007 ICLR 4 pt 234 at 1813.

Counsel also submitted that the 4th Prosecution Witness stated he was not aware that any substance was discovered at the Defendant's home, hence it is the 2nd PW that placed the substance at the home of the Defendant.

Again Counsel submitted that suspicion no matter how strong cannot convict a Defendant citing

AMADI vs THE STATE 1993 8 NWLR pt 314 at 44; and that in the present case the Prosecution did not tender the alleged bag containing cannabis sativa in court. He therefore urged this court to discharge and acquit the Defendant as the evidence against him is speculative and a mere suspicion.

In his own address, Prosecuting Counsel submitted that for the Prosecution to succeed in this charge they must prove:

- a. That the Defendant was found in physical or constructive possession of 5.7kg of cannabis sativa found in his room.
- b. That the substance was tested and proved positive to be cannabis sativa.

c. That the Defendant has no lawful authority to possess and deal with the said 5.7kgs of cannabis sativa.

On the 1st ingredient, the Prosecuting Counsel submitted that the evidence of PW.1, PW.2 and PW.3 prove that the Defendant possessed 5.7kgs of cannabis sativa found in his room.

On the 2nd ingredient that the PW. 1 testified that he did a preliminary test on the said drug and it proved positive for Indian hemp and the Defendant witnessed this as he thumb printed the Exhibit forms A, B and C which were prepared following that test.

Moreover Prosecuting Counsel submitted that the Drug Analysis Report Exhibit D1, proves that the substance in question is cannabis sativa referring to **S. 55 (1) of Evidence Act 2011** and that this certificate was not challenged by the Defendant or his Counsel.

On the last ingredient of the charge, the Prosecution submitted that the onus is for the Defendant to prove that he had lawful authority to possess and deal in the said Indian hemp referring to **S. 139 (1) of the Evidence Act** and the case of **OGOALA vs THE STATE** 1991 3SCNJ 61 at 64 and this the Defendant has failed to do.

M.A. Onyiah

Furthermore Prosecuting Counsel submitted that this court can on the strength of Exhibit E the Confessional Statement of the Defendant alone convict the Defendant citing;

AKPAN vs THE STATE 1990 7 NWLR pt 101 at 103;

ONWUMERE vs THE STATE 1991 4 NWLR pt 186 at 430.

Prosecution then submitted that the Defendant did not object to the tendering of this statement and that the confessional statement was free, voluntary and positive and the court ought to rely on it, more so when it is corroborated by the other evidence of PW. 2 who seized the drug and PW. 3 who witnessed or who was present during the seizure of the 5.7kgs of cannabis sativa. He therefore urged this court to convict the Defendant.

Now I have carefully considered the evidence adduced by the Prosecution in this case. I have also considered the defence of the Defendant 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 Defendant beyond reasonable doubt in this case.

M. A. Onyiah

For the Prosecution to do this, they must prove:

1. That the Defendant was found in actual or constructive possession of the said drug.
2. That the said drug is cannabis sativa.
3. That the Defendant knowingly dealt in the said drug.
4. That the Defendant had no lawful authority to deal in the said drug.

On the 1st ingredient of the offence, the Prosecution submitted that the evidence of 2nd, 3rd and 4th PW proved that the Defendant was in actual possession of the said drug.

Counsel to the Defendant stated that the evidence of PW. 2 is contradictory to that of PW. 3 and PW.4 , that while the latter stated that it was PW. 2 that discovered the said drug in the Defendant's home, the PW. 2 did not himself say so in his own evidence.

However I have studied the evidence in chief of the PW. 2 Victor Ajakaiye in this court on 1/4/14 and he stated thus:

...I discovered some quantity of dried weeds suspected to be cannabis sativa...

M. A. Ouyetun

It is therefore clear that there is no contradiction in the evidence of the Prosecution on this issue. I agree with the Prosecution that the evidence of PW. 2 to PW. 4 proved this ingredient.

There is also the statement of the Defendant himself Exhibit E which was tendered and admitted as Exhibit by this court.

That statement Exhibit E the Defendant denied making in his defence. He stated he was hung on a pillar and beaten hence he accepted the statement as his.

First as I stated earlier he did not state this when this statement was being tendered in court meaning that this is an afterthought.

Secondly in his statement he admitted he was asked whether he can read or write and he stated no. He then stated and I quote

...“it was then that my neighbor who can understand Hausa read over the statement to me”...

But then the pertinent question is, was this statement made in Hausa? The answer is a resounding no. Moreover the Defendant has not bothered to call this his neighbour who is a vital witness on this issue to give evidence

S. 167 (d) of the Evidence Act provides that evidence which should be and is not produced would produced be unfavoured to the person who withholds it, so that I will not invoke this provision against the Defendant.

Finally on that statement, I have perused that statement and it is too detailed to have been put up by NDLEA officials. The personal details there could not have been known by them.

I am therefore satisfied that Exhibit E is the actual statement of the Defendant.

The 1st ingredient has therefore been proved by the Prosecution.

On the 2nd ingredient, the 2nd to 4th Prosecution witnesses testified that they witnessed the preliminary testing of the suspected drugs by the PW. 1 and it tested positive to cannabis sativa. The laboratory result Exhibit D1 further confirms this. I am therefore satisfied that the 2nd ingredient has been proved by the Prosecution.

On the 3rd ingredient all the Prosecution witnesses testified that the cannabis sativa was found in the home of the Defendant and he owned up to being the owner.

M. A. Deyter

Even though the Defendant in court denied this, I do not believe him as his confessional statement shows otherwise.

For the 4th ingredient of this offence, I agree with the Prosecution that it is for the Defendant to show that he has lawful authority to possess the said drug and this he has not done so that all the ingredient of this offence have been proved by the Prosecution.

The Counsel to the Defendant has submitted that the bulk substance was not tendered in court and that this is fatal to the Prosecution case.

First, this bulk exhibit was tendered in the former proceedings of this case by my learned brother Justice Saidu and in the custody of the court.

It is trite law that a court can look into its own records.

Secondly I have studied the case of

FRIDAY OLAYINKA vs THE STATE (Supra) and the issue was the statement of the Defendant, not a bulk substance which was already in custody of the court so that that case is quite different from the present and easily distinguishable.

M. A. Oyelana

Counsel also submitted that 4th Prosecution witness stated that he was not aware that any substance was found in the Defendant's house.

I have gone through the evidence of the 4th Prosecution witness in this case and what he stated under cross-examination is:

I am the Witnessing Officer. I saw the bag too when the 2nd Prosecution witness picked it. It is not true that 2nd PW and I came with the bag and planted it.

It is thus clear that this witness did not say he is not aware that any substance was found in the Defendant's home.

From the foregoing therefore I find on the totality of the evidence before me that the Prosecution has proved the guilt of the Defendant beyond reasonable doubt and I so hold.

The Defendant is therefore found guilty as charged.

M. A. Onyetenu
M. A. ONYETENU
JUDGE
17/11/15

M. A. Onyetenu

Accused Person present.

M. C. Onyiaji for the Prosecution.

Chief Eziaku Eze for the Accused Person.

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M-A Onyiaji