

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE PORT-HARCOURT JUDICIAL DIVISION
HOLDEN AT PORT-HARCOURT
ON MONDAY THE 27TH DAY OF JUNE 2016
BEFORE HIS LORDSHIP
HON. JUSTICE M.A. ONYETENU
JUDGE

CHARGE NO: FHC/PH/08C/11

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

BASIL ANOLIEFO ACCUSED

JUDGEMENT

The accused person was charged along with one Ndubisi Okeke with a 2 count charge of conspiracy and dealing in petroleum product without appropriate licence contrary to S. 3(6) and 1 (17) (9) of the miscellaneous offences Act Cap M17 law of the Federation of Nigeria 2007.

On 17/3/11 the name of the 2nd accused person was struck out as he could not be found and this court continued with the trial of the accused person alone.

M. A. Onyetenu

In proof of its case the prosecution called 3 witnesses and tendered 12 exhibits to wit:-

Exhibit A: Additional Statement of the accused

Exhibit A1: Additional Statement of the accused

Exhibit A2: 2nd additional statement of the accused

Exhibit A3: 3rd additional statement of the accused

Exhibit A4: 4th additional statement of the accused

Exhibit B: Letter requesting for Scientific Aid dated
9/3/09

Exhibit B1: Request for Scientific Aid Test

Exhibit B2: Scientific Analysis Report

Exhibit C: Mercedes Benz Truck with Registration No.
XA 342 AKU DELTA STATE

Exhibit C1: Contents of the said Truck

Exhibit D: Search Warrant executed in the premises of
the accused

Exhibit E: Invoices of Banoil Group of Companies

At close of case for the prosecution counsel to the accused made a submission that the accused person has no case to answer which was overruled by this court.

The prosecution then amended the charge after which the accused gave evidence in his own defence.

M A Oyelami

This court then adjourned 4 consecutive times for the accused to bring his witnesses which he failed to do and offered no reasonable excuse for his inability to do so hence this court foreclosed ^{him} hearing and ordered the defence to file its final address which they still failed to do hence the court directed the prosecution to do so.

Briefly stated the case for the prosecution is that 3 persons namely Ndubisi Okeke (now at large) Mary Gibson (deceased) and Ngozi Okwu were handed over to EFCC along with a tanker registration No. XA 342 AKU loaded with 33,000 litres of petroleum product suspected to be crude oil and a Nissan car with registration No. AV 848 APP by men of the Nigerian Security and Civil Defence Corps.

On interrogation by the EFCC Mary mentioned the accused person as the one who asked them to come and take possession of the petroleum product and that they agreed to pay him the sum of N100,000. Ndubisi Okeke stated he will take men of the EFCC to accused person's residence which he did but the accused was not there. After some surveillance the accused was arrested and he made various statements Exhibit A to A5. The accused then stated that one Bestman asked him to get a buyer for the product and a tanker to load it hence he contacted Mary

M. A. Oyetun

Gibson. The EFCC officials searched his house and discovered Banoil invoices and a waybill from Oando. The accused stated that Banoil is his company which is not registered with Corporate Affairs Commission, and that the waybill is not his. Oando Company confirmed that the Waybill was not genuine. The product in the tanker was sent to the laboratory for scientific analysis which confirmed it to be crude oil. The accused could not produce his licence to deal in petroleum product.

In his defence the accused stated that one Bestman asked him to look for a buyer for his petroleum product and told him that he had licence from NNPC hence he contacted Mary Gibson and Ngozi to meet with Bestman and that is all he did. He admitted making Exhibit A to A5 statements to EFCC and denied being the owner of the products.

In his written address the prosecuting counsel gave a sole issue for determination to wit: Whether the prosecution has proved its case beyond reasonable doubt.

On count one prosecuting counsel gave the definition of the offence of conspiracy from Archbold (37th Edition) 405 and gave the essential ingredients of that offence as given in the cases of:

Haruna v. The State 1972 8/9 SC

M. A. Oyetunji

Oyediran V. Republic 1967 NMLC 122 at 1271

Clark v. State 1986 4 NWLR Pt 35 381

Erin v. The State 1994 5 NWLR Pt.364 525

Onochie v. Republic 1966 all NWLR 85

Aituma v. State 2007 all FWLR Pt. 381 at 1298

Counsel then submitted that the testimonies of PW1 and PW2 showed that 3 persons were arrested and 2 charged before the court and that the accused persons in Exhibit A - A4 admitted dealing with Late Mary Gibson, Ndubisi Okeke at large and Ngozi Okwu (at large) that he called Mary Gibson to come and buy the petroleum product and also Ndubisi Okeke to bring the tanker to load Exhibit G hence it is clear that there was agreement between the accused persons and three others to do an unlawful act of dealing in petroleum product citing *Aituma v. State (supra)* *Omotola v. State* 2009 203 MJSC at 76.

Counsel submitted that the accused person made confessional statement and that this court can convict him based on the confessional statements alone citing *Samuel Ayo Omolu v. Federal Republic of Nigeria* 2008 11 MJSC 156 at 174 hence the offence of conspiracy has been proved against the accused person as the confessional statements

M. A. Oyediran

of the accused had been corroborated in evidence citing **Bature v. State 1994 1 NWLR Pt. 320.**

Thus the prosecution has established that the accused acted with one or more persons to do an unlawful act citing

Ikemson v. State 1989 3 NWLR Pt 10 455 at 477

Erin v. The State (supra)

Omotola v. The State 2009 Vol 2-3 MJSC P 76

Njoven & Ors v. The State 1973 NSCC 257

Oduneye v. The State 2001 2NWLR Pt. 697 at 311.

He further submitted that the law does not require the prosecution to prove conspiracy beyond all iota of doubt citing

Bennafe v. State 1987 1 NWLR pt 52 579

IGP v. Oguntade

1987 1 NWLR Pt 51 579

He therefore urged this court to convict the accused person citing:

Tanko v. State 2008 16 NWLR Pt 114 at 591.

On count 2 prosecuting counsel submitted that for this offence to be proved it must be shown

- (1) That the accused person imports, exports, sells, offers for sale, distributes or otherwise deals with crude oil or any petroleum product in Nigeria.

M. A. Oyetemi

(2) That the accused did the above without lawful authority or appropriate licence.

Counsel then submitted that from evidence of 1st to 3rd P.W. it is clear that the accused and his cohorts were dealing with petroleum products without licence and that this evidence was not challenged during cross-examination citing

Babalola v. State 1989 4 NWLR Pt 115 at 264

Daggash v. Bulema 2004 14 NWLR Pt 892 at 144.

That the evidence of P.W.3 shows that Exhibit C1 is petroleum product (crude oil) and this evidence was not impeached by the defence.

Moreover the accused has not shown that he has licence to deal in the product and admitted same under cross-examination and there is no need for proof of this as facts admitted need no further proof referring to S. 123 of the Evidence Act.

That the prosecution has shown that the accused even though he has no license has a company Banoil Group of companies which deals in petroleum product hence the prosecution has discharged the duty placed on it by S. 135 (1) of the Evidence Act and that by virtue of subsection 3 of the Act the burden shifts on the accused person.

Prosecuting counsel submitted that the accused on the other hand stated he was not the owner of the product but one Bestman who could not be found and that the entire evidence of the defence is in tandem with that of the prosecution and that the statements made by the accused Exhibits A – A4 have been shown to be voluntary citing

Gbadamosi & Anor v. The State 1992 NWLR Pt 266 466.

Counsel also submitted that even if the accused was only acting on the instruction of the alleged Bestman he is still criminally liable by virtue of S.7 of the criminal Code citing the cases of:

Basil Akpa v. the State 2008 14 NWLR Pt 110 S. 72,

Tesco Supermarkets Ltd. v. Nattras 1971 2 All FR 127.

Counsel again submitted that the issue of Bestman is knowledge peculiar to the accused and the burden of proving it is on him citing

Odu v. State 2000 7 NWLR Pt 664 283

Idowu v. State 1998 11 NWLR Pt 574 at 354

Walaka v. State 1991 8 NWLR Pt 211 at 552.

On the issue of the accused person's name not being on the scientific Aid Test form sent to NNPC for expert analysis and that of the sample being taken in the absence of the accused the prosecuting counsel stated that this was

M. A. Oyetunji

because by then the accused had not been arrested and that it had the name of the truck driver Ndubisi Okeke and it was this Ndubisi Okeke that gave the information leading to the arrest of the accused person.

Counsel then urged this court to find the accused guilty on each count and to make an order for the forfeiture of the truck with Registration No. XA 342 AKU Delta State being the medium used to convey the crude oil used to commit the said offences.

I have carefully considered the evidence adduced by the prosecution in this case. I have also considered the defence of the accused person as well as the address of the prosecuting counsel.

The sole issue for determination in my humble view is whether the prosecution has proved the guilt of the accused person beyond reasonable doubt.

The first count is that of conspiracy to deal in petroleum products. The gist of the offence of conspiracy is an agreement to carry out an unlawful purpose. That agreement can be express or implied from the facts of accused persons doing things towards a common purpose. See *Njovens & Ors v. The State* (Supra)

Ikemson v. State (Supra)

M. A. Oyeleke

Onochie v. Republic (Supra).

In the present case the accused admitted in Exhibit A – A4 his various statements that he was the one that procured late Mary Gubson (deceased) and Ngozi Okwu (now at large) to come and buy the petroleum product and he also asked Ndubisi Okeke (now at large) to bring the tanker Exhibit C to load the petroleum product and that one Bestman asked him to do so.

It is thus clear that all the above persons were in an agreement to purchase petroleum product and load the same i.e. dealing with the product.

A necessary ingredient of this offence is that their agreement must be to carry out an unlawful purpose. In the present case, what the accused and his co-accused sought to do was to deal with petroleum product without license. The issue then for consideration is whether the contents of Exhibit C, is petroleum product. This was confirmed by the expert witness P.W.3 whose evidence was not impeached by the defence.

Thus the prosecution proved that the product in question was crude oil petroleum product. The defence had argued that the accused was not present when the product

M. A. Oyetem

sample was taken and that the name of the accused is not on Exhibit B the Scientific Aid Form.

This was answered fully by the prosecution that the accused had not been arrested at the time of taking the product and that the co-accused was present and his name was on the form Exhibit B.

I am therefore satisfied that the product in question is petroleum product.

See S. 55 of the Evidence Act.

It is also clear to me that the accused person together with others agreed to an unlawful act to wit dealing with crude oil without license. I am therefore satisfied that the 1st count of this charge has been proved against the accused person.

On the 2nd count that of dealing with petroleum product without license.

The prosecution led evidence to show that the accused person procured late Mary Gibson and Ngozi Okwu (now at large) to buy petroleum product (dealing).

The accused story is that one Bestman asked him to source for a buyer but he could not produce the said Bestman.

M. A. Ojete

I agree with the prosecution that when any fact is expressly within the knowledge of any person the burden of proving that fact is on that person. See S. 140 of the Evidence Act 2011 (as amended). Odu v. State (supra).

In this case the knowledge of this Bestman comes from the accused and it is for him to produce him. Even at that the accused admitted in Exhibits A to A4 his various statements that he procured a buyer for the product and a tanker to load the petroleum product. These statements he did not object to when they were tendered in court. He has not denied their voluntariness.

The law is quite clear that when an accused person makes an extra judicial statement voluntarily which is unequivocal and positive it will ground a finding of guilt. See Samuel Ayo Omolu v. F.R.N (supra), Bature v. State (supra).

In the present case the accused made his statement voluntarily. In that statement he stated that he called all the co-conspirators to partake in this deal. He even invited the driver of the tanker Ndubisi Okeke (now at large) to load the 33,000 litres howbeit on the invitation of one Bestman.

But it is evident that he was part of the whole deal. Dealing involves the act of buying and selling as defined by the Black law Dictionary referred to by the prosecuting

M. A. Oryetun

counsel and the accused person admitted participating in this.

I also agree with the prosecuting counsel that the fact that the accused alleged that he acted on the invitation of one Bestman does not absolve him of criminal liability. See S.7 of the Criminal Code. See also the case of Basil Akpa v. The State (supra).

These statements of the accused has been corroborated by Exhibit D the search warrant which shows that the complimentary cards bearing Banoil Group of Companies Exhibit E1 letter headed invoices bearing the name of same company were covered in the house of the accused.

Exhibit E1 the accused person's complimentary card not only states his name but states that he is the Managing Director of Banoil Group of Companies which supplies all types of petroleum products.

Exhibit E also describes Banoil Group of Companies as being into petroleum production and chemicals marketing.

The said Banoil is not registered with the corporate Affairs Commission. Even though the accused states he is about to register the company, I do not believe him as he did not produce any documents to that effect.

M. A. Oryetear

The accused has also not been able to show to the court that he has the appropriate licence to deal in crude oil.

Indeed the prosecution case against him is overwhelming and I find no difficulty finding him guilty on this 2nd count.

In conclusion therefore I find that the prosecution has proved the guilt of the accused person beyond reasonable doubt on the 2 counts. He is therefore found guilty on both counts.

M.A. Onyetenu
M.A. ONYETENU
JUDGE
21/3/2016

M. A. Onyetenu