

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LOKOJA JUDICIAL DIVISION
HOLDEN AT LOKOJA
ON TUESDAY, THE 11TH DAY OF OCTOBER, 2016
BEFORE HIS LORDSHIP, THE HON. JUSTICE PHOEBE M. AYUA
JUDGE

CHARGE NO: FHC/LKJ/28C/2014

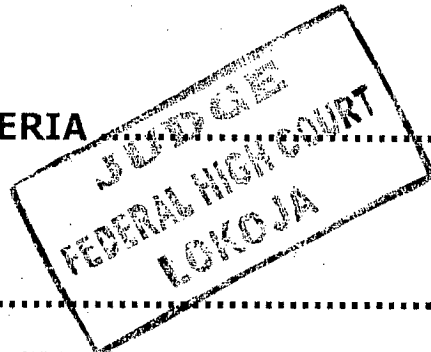
BETWEEN

FEDERAL REPUBLIC NIGERIA.....COMPLAINANT

VS

AHMED SHAIBU.....DEFENDANT

JUDGEMENT

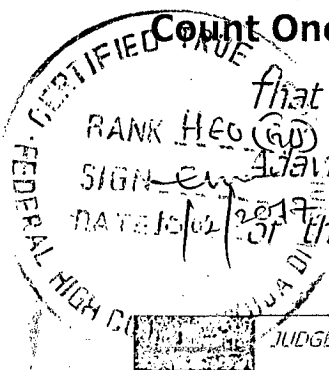


This Judgement relates to the criminal trial of the Defendant, herein, Ahmed Shaibu, who was arraigned before this Court on a two-count charge, on the 23/06/2014.

The charge was read over to the Defendant in English language. He said he understood the count 1 and count II of the charge, in the presence of his Counsel, A. B. Aliu, Esq. He pleaded not guilty to each count of the charge. In summary the charge against the Defendant was that he illegally had in his possession one locally-made pistol and one cartridge contrary to and punishable under the Firearms Act. To be precise, the charge reads as follows:

Count One

That you Ahmed Shaibu, 'M', 29 years, on 13/03/2014 at Osara in Adavi Local Government Area of Kogi State within the jurisdiction of this Honourable Court illegally had in your possession one



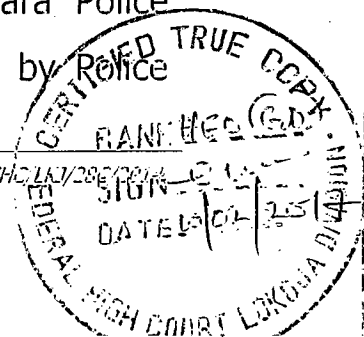
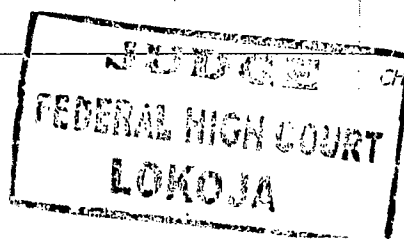
locally-made pistol and thereby committed an offence contrary to section 3 and punishable under section 27(1)(a)(i) of the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004.

Count Two

That you Ahmed Shaibu, 'M', 29 years, on 13/03/2014 at Osara in Adavi Local Government Area of Kogi State within the jurisdiction of this Honourable Court illegally had in your possession one cartridge and thereby committed an offence contrary to section 8 and punishable under section 27(1)(b)(ii) of the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004.

On the same 23/06/2014, trial of the Defendant commenced. The Prosecuting Counsel, G. O. Otowu, Esq., called its first Prosecution witness, PW1, ASP Ali Ocheja.

The PW1 testified that on the 14/03/2014, a Community Chairman by name Gabriel James came to the Osara Police Station and reported to the Divisional Police Officer (DPO), Michael Abattam, that the Defendant was found in possession of a locally-made pistol. That the Defendant was then arrested by the Vigilante Group of that area and that the Defendant then handed over the locally-made pistol to the Police at the Osara Police Station. That he, PW1 and his Team of investigators then re-arrested the Defendant at the Osara Police Station. PW1 Stated also that he then prepared a Search Warrant and that he went with his Team of Policemen and searched the Defendant's house but that nothing incriminating was found in the house of the Defendant or the premises thereof. That the Defendant was brought back to the Osara Police Station. That in the course of the investigation, carried out by Police



Constable (now a Corporal) Rufus Emmanuel, the Defendant informed the Police that he found the locally made pistol in his farmland while he was clearing the farmland. That he did not hand over the gun to the Police then because he was afraid that the Police would not believe his story that he had found the gun on his farmland. PW1 further testified that the Defendant had informed the Police also that he found one cartridge with the gun but that he used the cartridge to scare animals from his farmland. PW1 also stated that the Defendant did not give the Police the expended or empty shell of the cartridge. PW1 stated that the Defendant and the case file together with the gun were transferred from the Osara Police Division in Adavi Local Government Area of Kogi State to the State Criminal Investigation Department, Lokoja. PW1 stated that at the State CID, Lokoja, he (PW1) handed over the case to the Assistant Commissioner of Police, CID, and that the case was accepted.

Cross-examination of the PW1 was adjourned to the 11/07/2014, but the Prison Authority at Koton Karfe Prison failed to bring the Defendant to Court on that said date. The trial was stalled. At the next adjourned date, being the 15/10/2014, trial could not also go on because the Judge was attending the Opening Ceremony of this Court's New Legal Year/Conference from October, 12 – October, 17, 2014 at Owerri, Imo State. The matter was adjourned to the 03/11/2014. On that said date, the Defendant was absent from Court and the Prosecuting Counsel informed the Court that there was a jail break at the Federal Prison, Koton/Karfe, on the 02/11/2014, wherein all the Prison in-mates escaped except one and that the Defendant had also fled.

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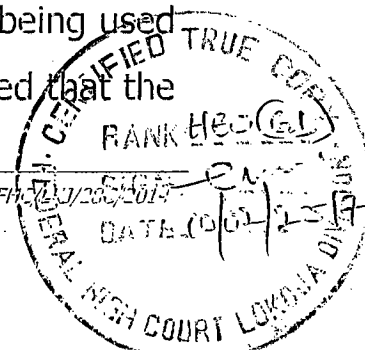
On the 04/12/2014, the Defendant was, however, present in Court. The Court was informed that the Defendant had voluntarily returned to the Prison yard to await the conclusion of his trial. The Defence Counsel, A.B. Aliu, Esq., applied, viva voce, for variation of the bail terms in respect of the Defendant who, though had been granted bail since the 14/04/2014, could not perfect the bail and had remained in Prison custody. The application was not opposed by the prosecuting Counsel, Otowu, G. O. Esq., who instead commended the Defendant for having chosen to return to the prison yard after the jail break even though many other inmates had seized the opportunity and fled. The Court varied the bail terms accordingly.

On the 03/03/2015, under cross-examination, the PW1 ASP Ali Ocheja, said he was still the Divisional Crime Officer at Osara Divisional Police Headquarters, Adavi LGA, Kogi State. The PW1 also answered that he had been at the Osara Police Station as the DCO for two years as at then and that that year was the 33rd year of his service in the Nigeria Police and that he would be due to retire from the service after 35 years of service.

The PW1 reiterated that the Defendant was reported at the Osara Police Station on the 14/03/2014 and that as stated in his evidence in chief, the Defendant was found with a locally-made pistol and not an automatic rifle. PW1 also testified that he knows the difference between a locally-made pistol and an automatic pistol. PW1 stated that a locally-made pistol is the one made by local people while the pistols being used by the Police and the Army are automatic pistols. PW1 admitted that the



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pistol recovered from the Defendant was a locally-made pistol and that it looked very old. PW1 testified again that as the DCO, his work at Osara Police Station entailed that the registered Vigilante Groups support the work of the Police in terms of patrol and crime prevention which support has been very encouraging. PW1, however, stated that the Vigilante group members only carry weapons such as guns if they have written permission. PW1 denied that all he said during his examination-in-chief was hearsay. He insisted that when the Defendant was arrested by the Vigilante group members with the pistol and was handed over to the community Chairman, he brought the Defendant to the DPO and that the DPO called him, the PW1 as the DCO, to investigate the matter with his Team. PW1 stated that he interviewed the Defendant while the IPO who investigated the matter at the Osara Police Station recorded the statement of the Defendant.

The Defence Counsel put it to the PW1 that as a member of the Vigilante Group, the Defendant helped the Police in Osara in stemming the tide of crime and the PW1 answered that the Defendant was not the only person. That the Vigilante group helps the Police but that no member of the Vigilante group is entitled to carry a gun. That it is only Policemen and Police Officers that are authorised to carry guns and go with the Vigilante members where crime is alleged to have been committed.

The cross-examination of PW1 was over. The PW1 was discharged from the witness box.

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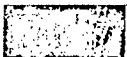
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The Prosecution called its second witness, PW2, on the 16/06/2016. The PW2 introduced himself as Sergeant Aboh Onuh of the Nigeria Police Force, attached to the State Criminal Investigation and Intelligence Department, Lokoja, Kogi State. He said he knew the Defendant in connection with the case of unlawful possession of Firearm. PW2 testified that on the 15/03/2014, at about 5.00pm, the Defendant was transferred from the Osara Divisional Police Headquarters with one locally-made pistol as Exhibit. That the case was handed over to Corporal Akinniyi Adeoye (now a Sergeant) and his Team for investigation. PW2 testified that Sgt. Akinniyi Adeoye and he, PW2, asked the Defendant whether he had a licence authorising him to be in possession of the locally-made pistol and that the Defendant answered in the negative. PW2 testified that he was in the company of Sergeant Akinniyi Adeoye when he cautioned the Defendant in English language and interpreted the caution to the Defendant in Pidgin English language. That the Defendant said he understood the caution and signed it. That he, PW2 was still with the Defendant and Sgt. Akinniyi Adeoye when the Defendant volunteered his statement in English language and that Sgt. Akinniyi Adeoye recorded the Defendant's statement in English language. That the statement was interpreted to the Defendant in Pidgin English and that he said it was his statement and signed it. That Sgt. Akinniyi Adeoye and he, PW2, noted that the Defendant's statement was confessional in nature and that they, therefore, took him before a Superior Police Officer, ASP Saidi Jimoh, for attestation. That the Defendant's statement was read over to him in English language and the same was interpreted to him in Pidgin English in the presence of the Senior Superior Officer, which he said he understood. That the

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Defendant confirmed it to be his statement and that the ASP Saidi Jimoh attested to the statement and signed the attestation. That Sgt. Akinniyi Adeoye also signed the attestation as the recorder of the statement. PW2 testified also that he took the locally-made pistol to the Exhibit Keeper at the State CIID, Lokoja, who registered it and gave it Registration Number CEP/089/2014. The PW2 said he went to the Exhibit Keeper on the morning he came to Court to testify to collect the Exhibit, locally-made pistol and brought it to Court for the purpose of tendering it before the Court. PW2 also said he was in Court to tender the Defendant's statement which had been recorded on his behalf by Sgt. Akinniyi Adeoye because the statement was recorded in his presence. That Sgt. Akinniyi Adeoye who ought to have come to Court to tender the statement was on transfer to Lagos State, and that he was in Court to tender the statement in order to curtail trial delay. The PW2 said he had worked with Sgt. Akinniyi Adeoye at the State CIID, for over five years and so was conversant with his handwriting and signature. The PW2 said he would be able to identify the Defendant's statement by the handwriting and signature of Sgt. Akinniyi Adeoye. PW2 was shown the said statement and he identified it. The Prosecution sought to tender the Defendant's statement in evidence. The Defence objected to the admissibility of the statement on the grounds that the recorder of the Defendant's statement ought to have been called to tender the statement and not the PW2, who did not record the statement. The Prosecution urged the Court to disregard the objection of the Defence and to admit the Defendant's statement as the same was relevant to the trial and that the statement was being tendered by PW2 who was with the recorder of the statement when it was being recorded. He argued



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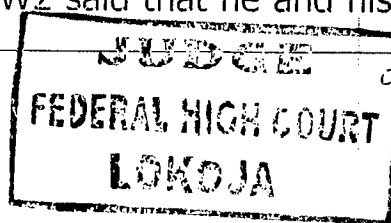
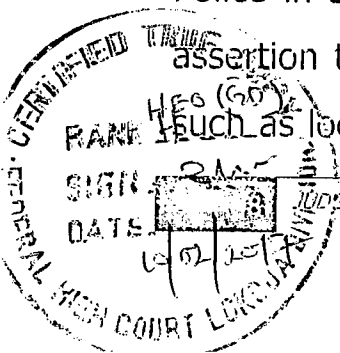
that a proper foundation had been laid as to the inability of the recorder to be in Court to tender it and urged the Court to admit it.

The Court was satisfied that a proper foundation had been laid to the tendering of the statement by PW2 and relying on the provisions of section 83(2) of the Evidence Act, 2011 the Court admitted the statement and marked it as Exhibit P1.

The Locally-made pistol with Registration Number CER/089/2014 was also tendered in evidence by the PW2. The Defence had no objection. The locally-made pistol was admitted in evidence and marked as Exhibit P2.

PW2 also testified that Sgt. Akinniyi Adeoye and he, PW2, booked at the State CIID, Lokoja and left for the scene of the crime at Osara where the Defendant had been arrested with the locally-made pistol. That the Divisional Investigating Police Officer at Osara Police Station volunteered his statement to the Sgt. Akinniyi Adeoye and the PW2.

The Defence Counsel cross-examined the PW2 on the same date. Under cross-examination, the PW2 said he had been an Investigating Police Officer (IPO) for the past ten (10) years. PW2 maintained that the item handed over to him at the State CIID from Osara Police Station was one locally-made pistol. He testified that Vigilante group members help the Police in stemming criminality in the Osara Community but denied the assertion that Vigilante group members sometimes carry light weapons such as locally-made pistols. PW2 said that he and his Team carried out



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thorough investigation into the allegation against the Defendant but that he was not part of those who drafted the charge against the Defendant. The Defence Counsel sought and obtained permission to show the two count charge to the PW2. PW2 looked at the charge and admitted that count II of the charge against the Defendant herein involved allegation of illegal possession of one cartridge. PW2, however, denied that he was given any cartridge and that he did not see any cartridge when the Defendant was brought to them at State CIID, Lokoja from Osara Division.

The Prosecution applied to close their case. The Defence did not object and also applied for another date to enable them open their defence. The applications were granted.

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THE CASE OF THE DEFENCE

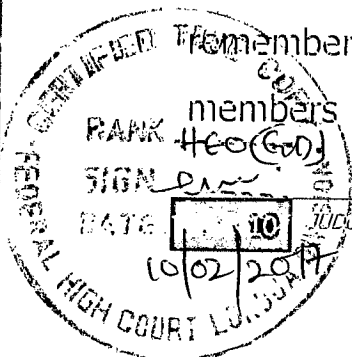
On the 17/11/2015, the Defence called the Defendant, Ahmed Shaibu, as the 1st Defence witness (DW1). The DW1 testified in Ebira language and the proceedings were interpreted from Ebira language to English language and vice versa by the Court interpreter in Ebira, Mrs. Precious Ajagun, who, earlier, affirmed to interpret the proceedings, truthfully. The DW1 introduced himself to the Court as a farmer, electrician and a member of the Vigilante group in Osara in Adavi L.G.A. of Kogi State. He said he attended School and stopped at JSS3 because his mother who paid his school fees died and his aged father could not afford to pay the three girl children. That on one occasion, he went to his farm and that

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as he was cultivating the ground with a hoe, he brought out some rusted iron which was a gun. That he kept the gun with him because he was a member of the Vigilante group and that his fellow Vigilante members also used to carry gun-like items carved from wood. He stated that some of the Vigilante members in his group also have Dane guns. That the DPO in Osara at one occasion summoned all Vigilante members and asked them to surrender their guns to the Police Authority for registration. The DW1 said he took the rusty gun to the Vigilante Group Chairman to help him to hand over the same to the DPO, which he did. DW1 testified that he was on his farm on the following day after the surrender of the gun and then the Vigilante Group Chairman called him and told him that the DPO wanted to see him. DW1 said he went to the Police Station to see the DPO and that when asked, he told the DPO that he found the rusty gun on his farmland while tilling the soil for cultivation. That the DPO then ordered his arrest and that the Vigilante Chairman was not happy over the arrest order but that the DPO insisted that he, the DW1, be locked up in the Police cell. DW1 testified that he was born in Osara Community and that he has been a law-abiding member of the Community.

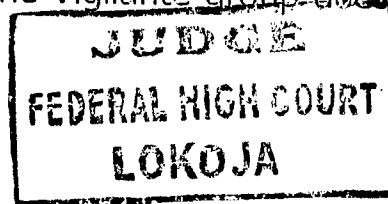
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Under cross-examination, the DW1 said he is a law-abiding citizen and sincere person, who speaks the truth always. He said he was a member of the Vigilante group in Osara and that his group members are Pius, Itopa, Taraku and Usman, whose surnames he said he could not remember. That he was not aware whether any of the Vigilante members had a licence to possess firearms. That he, DW1, also had no

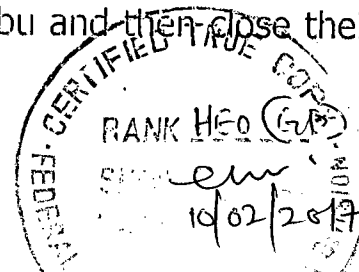


licence to possess firearms and that he did not have a licence for the gun he found on his farmland and later handed over to the Police through their Vigilante Chairman on the 14/03/2014.

DW1 further stated under cross-examination that he made a statement to the Police which was admitted in evidence. DW1 stated that all he stated and was recorded in his statement is the same thing as what he told the Court in his evidence-in-chief. He said if a gun was pointed at him, he would not be able to tell whether the gun was functioning or not since the gun is not in his hand. DW1 also stated that he knows that it is not right to possess a gun without a licence and that was why he submitted the gun he found on his farm to the Police. DW1 also admitted that being a member of the Vigilante group does not give him the power to possess a gun.



On the 16/03/2016, the Defence Counsel said he had intended to call two more witnesses, but that one of the witnesses, Chief Sunday, Chairman of Vigilante Group in Osara had an accident and was being treated in far away Lagos so could not be brought to Court. He decided to call only one more witness by name Yahaya Abu and then close their Defence.

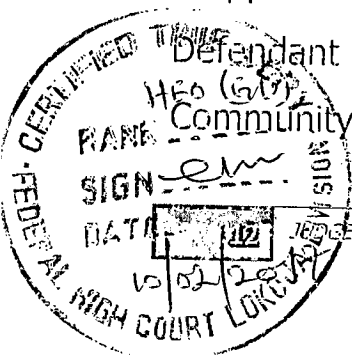


The second Defence witness, DW2, Abu Yahaya, gave evidence in Epira language and the same was interpreted in English language by Mrs. Precious Ajagun. While testifying, DW2 stated that he was a Vigilante member but that as at the time of testifying in Court, he was engaged in

tiling buildings as a tiler. That he lives at Lokongoma, Lokoja. That he knows the Defendant who was with him as a member of Vigilante Group in Osara. That before the Vigilante Group was constituted, thieves used to attack the Osara Community and that the Chairman of their group then summoned them to be members of the Vigilante Group and to be responsible for maintaining the security of the Community as it was obvious that the Police could not cope with the high level of criminality in that Community. That the Vigilante members were allowed to carry weapons such as sticks, cutlasses and carved toy guns. That the Defendant went to the bush and found one rusty iron which looked like a gun and decided to keep it and was using it as a weapon for Vigilante Operations. That on one occasion, the Chairman of the Vigilante Group summoned the members and told them that the DPO had ordered all Vigilante members to submit the weapons they had in their possession, like guns or incriminating items. That it was only the Defendant that took the rusty iron that looked like a gun to the Chairman who then took it to the Police. DW2 also testified that after the arrest of the Defendant, the Vigilante Group members said they would not participate in Vigilante duties any longer, for fear that what happened to the Defendant might also happen to them.

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Under cross-examination, DW2 stated that he completed his Primary School Education and that he has a Certificate for that but that he dropped out of School in Secondary School. DW2 said he knew the Defendant when they were in the same Vigilante Group in Osara Community. That while performing vigilante duties, the group members



were not given any licence or authority by the Commissioner of Police to bear arms. DW2 also said he was aware that a rusty gun was recovered from the Defendant but that he did not know whether the Defendant had a licence for the gun or not. The DW2 also admitted that he was aware that it was the Chairman of their Community, whose name he said he did not know, but was referred to as "Action" that reported to the Police that the Defendant had a gun in his possession before the Defendant was arrested. DW2 said he was not aware that for any person to have in his possession a gun, whether carved or not, he must obtain a licence. The DW2 also stated that he would not be happy to see the Defendant sent to jail, that is why he came to testify about what happened.

The Defence did not re-examine the DW2. The Counsel applied to close the case of the Defence. The application was granted.

On the 22/06/2016, this case came up for adoption. Before the adoption of written addresses, learned Counsel for the prosecution, S. I. Ikutanwa, Esq., applied to amend the charge against the Defendant by deleting count II which had to do with illegal possession of a cartridge. The application was not opposed. The same was granted by this Court, pursuant to section 216(1) of the Administration of Criminal Justice Act, 2015. The Defence Counsel, A.B. Aliu, Esq., then adopted the written address of Counsel, dated the 20/05/2016, as their argument in support of the Defence in the charge against him. He urged this Court to rely, particularly, on the reasoning of Fabiyi, JCA, (as he then was) in the case of **Nwosu v. The State (1986) 4 NWLR (Pt. 35) 348 at 359**.

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and to discharge and acquit the Defendant on the one-count charge against him.

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On his part, the Prosecuting Counsel, S. I. Ikutanwa, Esq., adopted their written address, dated the 13/06/2016 and filed on the 14/06/2016, as their submission and argument in this case. He urged this court to convict the Defendant, accordingly, while disregarding the judicial authority cited by the Defence counsel stating that the same was cited out of context.

LEGAL ARGUMENT BY THE DEFENCE COUNSEL

In the written address of the learned Counsel for the Defendant, a summary of the history of the case as well as a summary of the testimony of the Prosecution witnesses and Defence witnesses were given.

The learned Counsel then raised a lone issue for determination, to wit:

Whether the Prosecutions (sic) has established the case against the Respondent beyond reasonable doubt

The Defence Counsel answered the lone issue in the negative. He argued that the rotten and rusty so called locally-made pistol is unserviceable and does not fall within the purview of the definition of Firearm as stated in section 2 of the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004. It was argued that the Prosecution had failed to make allusions to the state of the weapon but that the Defendant as DW1 and the second Defence witness, DW2 both testified

that the so called locally-made pistol was just being carried along for the sake of it assisting the Police, Community and the society at large to stem criminality. That the Prosecution did not examine the Defence on that and had refused to give evidence in Court as to the true capability state of the locally-made pistol. The Defence Counsel argued that a doubt has been created in the mind of the Court as to the true state of the weapon and whether it falls within the Firearms Act. That the Prosecution had therefore failed to prove its case beyond reasonable doubt on count 1 of the charge. He urged the Court to discharge and acquit the Defendant. He relied on the cases of *Aikhaduek v. State (2014) 9-11 KLR (Pt. 353)* and *Nwosu v. The State (1986) 4 NWLR (pt. 35) 348 at 359.*

ARGUMENT OF THE PROSECUTION IN SUPPORT OF THE CHARGE

In his final written address, the learned Counsel, S. I. Ikutanwa, Esq., stated that the Defendant was standing trial on a one-count charge that he illegally had in his possession one locally-made pistol. That the two Prosecution witnesses called by the Prosecution, ASP Ali Ocheja, as PW1 and Cpl. Aboh Onuh, as PW2, both testified to the effect that the Defendant was found in possession of a locally-made pistol and was arrested and that the Defendant admitted that he had no licence authorising him to bear the firearm.

The Counsel then formulated a lone issue for the determination of the Court, to wit:

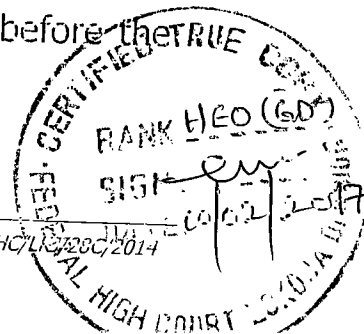
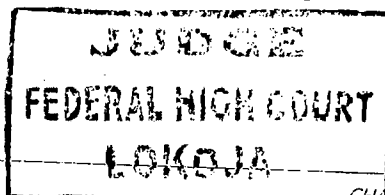
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Whether the prosecution has proved the case of illegally had in (sic) possession of one locally-made pistol against the Defendant beyond reasonable doubt.

Learned Counsel for the Prosecution answered the issue in the affirmative. He submitted that once the ingredients of an offence have been established evidentially, the offence is said to have been proved beyond reasonable doubt. He further submitted that the Prosecution had proved the ingredients of the present case beyond reasonable doubt. He relied on the Court of Appeal decision in the case of **Akinyemi v. State (2001) ACCLR 32 at 36 and also on the English case of Miller v. Minister of Pension (1947) ALL ER 372.**

The learned Prosecuting Counsel argued that the first Prosecution witness, PW1, gave evidence, which was corroborated by the evidence of the second Prosecution witness, PW2, that one locally-made pistol was recovered from the Defendant and the Defendant also did not deny that allegation but, only stated that he found the locally-made pistol on the ground. Learned Counsel argued that the Defendant did not have a licence to bear the firearm. That the claim of the Defendant that he was a member of the Vigilante Group of his Osara Community is of no moment as he is not entitled by his membership of the Vigilante Group to bear a firearm without a licence. Learned Counsel urged this Court to resolve the lone issue in favour of the Prosecution and to thereby convict the Defendant based on the overwhelming evidence before the Court.

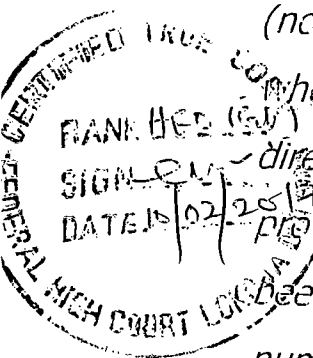


RESOLUTION OF THE LONE ISSUE FOR DETERMINATION

I have carefully reviewed the testimony of the two Prosecution witnesses, PW1, ASP Ali Ocheja and PW2, Corporal Abloh Onuh (now a Sergeant) as well as the submissions of Counsel on both sides. It is trite that in a criminal trial such as this present case, the burden of proving that the Defendant committed the offence with which he is charged lies on the Prosecution. It is not for the Defendant to prove his innocence. See the case of **Akinyemi v. State (2001)(supra)**, also cited by the learned Prosecuting Counsel in his written address. See also section 135 of the Evidence Act, 2011.

I also agree with counsel on both sides that the standard of proof where there is allegation of commission of a crime whether in civil or criminal cases, is proof beyond reasonable doubt. See the case of **Amusa v. State (2002) FWLR (Pt. 85) 382**, where the Court of Appeal held, per Adekeye, JCA that:

On the issue of standard of proof in criminal cases, what is proof beyond reasonable doubt? The phrase, which is of Common Law origin and also re-enacted in section 138(1) of the Evidence Act (now section 135(1) of the Evidence Act, 2011), provides that whenever the commission of a crime by a party or person is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt. Superior Courts of record have been faced with the duty of interpreting it and they have held in a number of cases that the expression "proof beyond reasonable doubt" does not mean proof beyond all shadow of doubt. Thus, if the evidence is so strong against a man as to leave only a remote

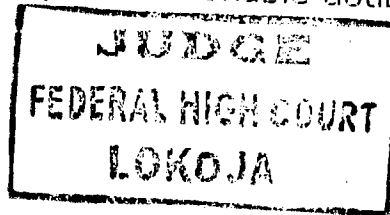


possibility in his favour which can be dismissed with the sentence "of course it is possible but not in the least probable", the case is said to be proved beyond reasonable doubt.

The offence with which the Defendant is charged is that he illegally had in his possession one locally-made pistol contrary to section 3 and punishable under section 27(1)(a)(i) of the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004.

It is settled law that in order to establish that a person accused of illegally having in his possession a firearm did commit the offence, the Prosecution must prove beyond reasonable doubt, each of the following ingredients:

The ingredients are:



1. That the Defendant was in possession of the firearm.
2. That the firearm falls within the definition of firearm given in the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004.
3. That the Defendant has no licence to bear or possess the firearm.

The relevant issue, for determination, therefore, as clearly stated by Counsel on both sides in their respective written addresses is:

WHETHER THE PROSECUTION HAS PROVED BEYOND REASONABLE DOUBT THAT THE DEFENDANT HEREIN ILLEGALLY HAD IN HIS POSSESSION A FIREARM WITHOUT LICENCE

Chairman of the Vigilante Group in their Community, of which the Defendant and he, the DW2 were members, that told the DPO of the Osara Police Station that the Defendant had a pistol in his possession before the Defendant was arrested by the Police.

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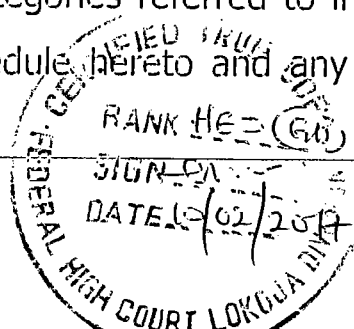
In a nutshell, it is also glaring from the evidence of the Defendant himself as DW1 and the DW2 that the Defendant had possession of a locally-made pistol which he later handed over to the Police, through the Chairman of the Vigilante Group when the DPO of the Osara Police Station gave the order that members of the community who possessed weapons should surrender the same to the Police.

To my mind, therefore, the Prosecution has proved beyond reasonable doubt, and the same has been admitted by the Defendant, that the Defendant possessed a locally-made pistol.

The next issue to consider is whether the locally-made pistol, Exhibit P2 in this case falls within the definition of firearm as given under the Firearms Act, 2004.

Now, section 2 of the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004 defines firearm as follows:

Any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged and includes a prohibited Firearm, a personal firearm and a muzzle loading firearm of any of the categories referred to in Part I, II, and III, respectively, of the Schedule hereto and any component part of any such firearm.



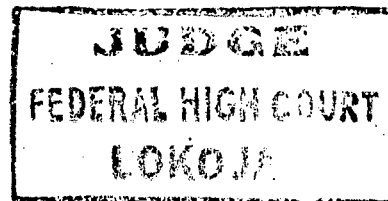
The categories of firearm given in Part I, II, and III of the Schedule to this Firearms Act are as follows:

SCHEDULE

PART 1

Prohibited Firearms

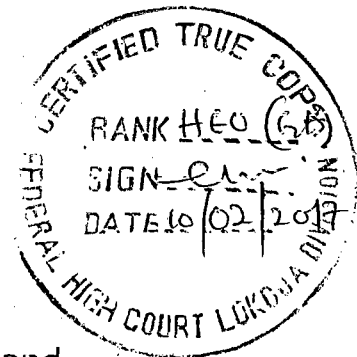
1. Artillery.
2. Apparatus for the discharge of any explosive or gas diffusing projectile.
3. Rocket weapons.
4. Bombs and grenade.
5. Machine guns and machine pistols.
6. Military rifles, namely, those of calibres 7.62, 9mm, .300 inches and .303 inches.
7. Revolvers and pistols, whether rifled or unrifled (including flint-lock pistols and cap pistols).
8. Any other firearm not specified in Part III of this Schedule.



PART II

Personal Firearms

1. Shotguns other than:
 - (a) Automatic and semi-automatic shotguns, and

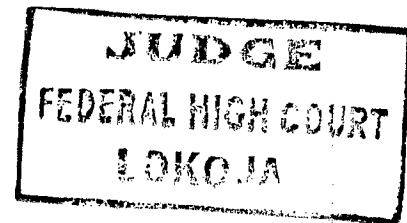
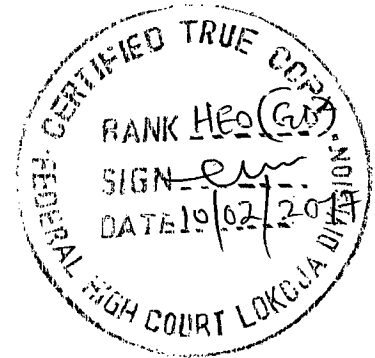


- (b) Shotguns provided with any kind of mechanical reloading device.
2. Sporting rifles, namely, rifles of calibres other than those specified in item 6 of Part I.
 3. Air-guns, air-rifles or air-pistols.
 4. Humane killers of the captives bolt type.

PART III

Muzzle-Loading Firearms

1. Dane-gun - all being unrifled and muzzle-loading
2. Flint-lock guns-all being unrifled and muzzle-loading
3. Cap-guns-all being unrifled and muzzle-loading.



Well, the locally-made pistol, Exhibit P2, herein, which was recovered from the Defendant, is a pistol, though locally-made. I believe the locally-made pistol satisfies the definition of Firearm as given under the interpretation of section 2 of the Firearms Act, 2004. See Part 1 of the Schedule to the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004, whereby item 7 of the Schedule mentions revolvers and pistols of different descriptions as being prohibited firearms.

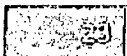
I find support to my belief that the locally-made pistol falls under the definition of prohibited firearms as stated in item 7 of Part 1 of the

Schedule to the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004, in the Supreme Court case of **Omoshola v. COP (1977) N.S.C.C. 158 S.C.**, where it was held as follows:

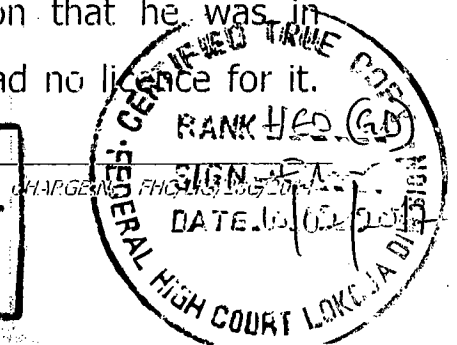
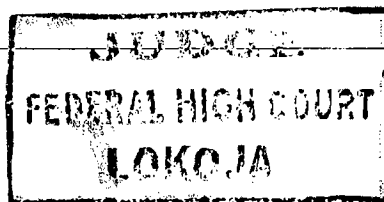
In the light of the evidence of the Appellant that the sub-machine gun was his gun and that he was in possession of it as well as the ammunition, it is hair-splitting to contend that a sub-machine gun is not a gun prohibited under Part 1 of the Schedule to the Firearms Act. In this respect, a sub-machine gun is only a type of machine-gun which is prohibited under the Act and that in any event, the Appellant was caught by item 8 of the Schedule to the Act – usually described as the dragnet item which prohibits "Any other firearm not specified in Part II or part III of this Schedule including automatic or semi-automatic shotguns.

I, therefore, find that the locally-made pistol recovered from the Defendant and tendered in evidence by the Prosecution and admitted and marked as Exhibit P2, is a firearm within the contemplation of section 2 and item 7 of Part 1 of the Schedule to the Firearms Act and I so hold.

The Prosecution, also, has proved that the Defendant had no licence permitting him to be in possession of the firearm in that the Defendant when asked whether he had a licence for the locally-made pistol, he answered in the negative. The Defendant did not also produce any licence for the locally-made pistol. The Defendant admitted in his evidence before the Court under cross-examination that he was in possession of the locally-made pistol and that he had no licence for it.



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The defence of the Defendant for the charge preferred against him is that he found the locally-made pistol on the ground in his farm while tilling the soil. That he was using the rusty locally-made pistol to scare robbers who were harassing the Osara community, he being a member of the Vigilante Group in that community. The Defendant's Counsel also argued that the pistol was rusty and unserviceable and was more or less like a toy gun.

I do not, however, believe that going by the definition of "firearm" as stated in section 2 of the Firearms Act (supra), and the specific mention of the different types of firearm in Part 1, Part II, and Part III of the Schedule to the Act, the Prosecution is required to also go ahead and establish whether a firearm was serviceable or unserviceable. Moreover, the concluding part of the definition of "Firearm" in section 2 of the Firearms Act (supra), it is stated that "...and any component part of any such firearms." This last part of the definition of "Firearm" is like an omnibus clause which includes even a part of a firearm that is, it need not even be a complete piece of firearm.

In the present case, the Defendant admitted that he was in possession of the locally-made pistol. In his evidence-in-chief on the 17/11/2015, the Defendant, as DW1, stated as follows:

I am a farmer and vigilante member and on one day, I went to the farm which is close to the Fulani Settlement Camp because of the manure from the cattle dung. So, when I was trying to cultivate the ground, I brought out the gun from the ground with sand. I was using my hoe to cultivate. The gun was buried in the ground.

I then brought the gun to the house since I am a vigilante group member. Yes, when I saw it, I knew it was a gun. I can describe what I brought out from the ground with a hoe as it looked a badly rusted iron. Yes, some of the Vigilante Group members have Dane guns.

Later, the Divisional Police Officer (DPO) in our area summoned the Vigilante Group members to the Police Station and asked us to submit our guns to the Police Authority so that they would be registered. I also took the rusted gun to the Vigilante Group Chairman to help me hand it over to the Police, DPO, so that if anything comes up in future about persons who have guns, I will be exonerated, more so that the gun looked non-functional. The following day, I was at my farm working, when the Vigilante Chairman called me and told me that he submitted the gun to the DPO and that the DPO wanted to see me. I left the farm immediately and went over to see the DPO....The DPO then ordered my arrest..."

Under cross-examination on the same day, the Defendant responded to questions put to him by the Prosecution, inter alia, as follows:

I am a member of the Vigilante Group and I know all the members of the Vigilante Group in Osara...

I don't know any of the members of our vigilante group who has a licence to possess firearms. I too have no licence to possess firearms. No, I do not have a licence for the gun I found and handed over to the Vigilante Chairman.....on the 14/03/2014.....Yes, I now know that it is not right to possess a gun

without a licence, that was why I submitted the gun I found on my farm to the Police. Being a vigilante member does not give me the power to possess a gun and that is why I submitted the one I found to the Police.

The second defence witness testified under cross-examination on the 16/03/2016, inter alia, as follows:

My name is Abu Yahaya. Yes, I know the Defendant very well because of the vigilante work we were doing together. The full name of the Defendant is Ahmed Shaibu.....We worked together as vigilante group members about three (3) months before the Defendant was arrested.....I don't know whether the Defendant has a licence for the rusty gun or not. Yes, I am aware that the rusty gun was recovered from the Defendant. Yes, I know that it was the Chairman of our community that reported to DPO that the Defendant had a pistol in his possession before he was arrested. I am not aware that for any person to have in his possession a gun, whether carved or not, he must have a licence. In my own case, I was carrying a stick....

From the evidence of the two Defence Witnesses, with the Defendant himself as the first Defence witness, it is clear that the Defendant was aware that what he found in the ground on his farm was a locally-made pistol which he described as a "rusty non-functional gun." The weight of the evidence adduced by the Prosecution in support of the charge against the Defendant as well as the evidence of the Defendant himself is in support of proof of the charge against the Defendant beyond

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reasonable doubt. The defence by the Defendant that the "rusty gun" was non-functional or unserviceable goes to no issue and I so hold.

In the result, it is the finding of this Court that the Prosecution has proved the essential ingredients of the offence with which the Defendant is charged beyond reasonable doubt when the Defendant found the locally-made pistol on the ground in his farm and rather than hand it over to the Police, knowing that he had no licence for it, he kept it in his possession and under his control. He may have acted out of ignorance, but it is trite that ignorance of the law is not an excuse.

It is obvious from the totality of the facts and evidence before this court that the Defendant acted in breach of section 3 of the Firearms Act, (supra).

Now, section 3 of the Firearms Act, (supra), provides as follows:

3 Prohibited Firearms

No person shall have in his possession or under his control any firearm of one of the categories specified in Part 1 of the Schedule to this Act (in this Act referred to as a 'prohibited firearm') except in accordance with a licence granted by the President acting in his discretion.

Having found that the Defendant was in possession of a firearm without a licence and has thereby breached section 3 of the Firearms Act, (supra), I, accordingly, hold that the Defendant is found guilty of having committed the offence with which he is charged. The Defendant, Ahmed Shaibu, is hereby convicted of the said offence as charged. He is liable

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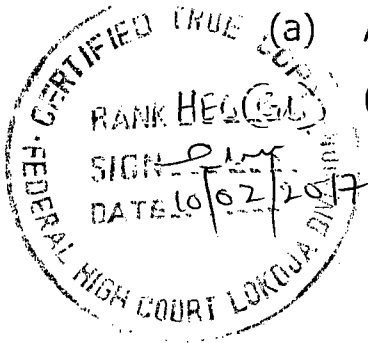
to be sentenced as prescribed under section 27(1)(a)(i) of the Firearms Act, which provides thus:

27 Penalties

(1) Any person who contravenes any of the provisions of this Act specified in paragraphs (a),(b), and (c) of this section is guilty of an offence and liable on conviction:

(a) As to any offences under any of the following:

(i) Section 3 of this Act, (which prohibits the possession or control of firearms of certain categories);..... to a minimum sentence of ten years.

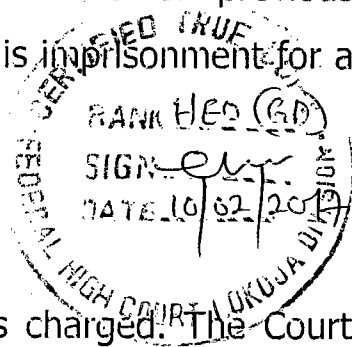


Allocution by H. O. Abass, Esq., (acting *probono* in the absence of the Defence Counsel).

On behalf of the Convict, I plead for leniency in passing sentence on him. The Convict is a first time offender. He is happily married with three children. He is the bread winner of the family. By virtue of the provisions of section 416(2)(b)(d)(e)(i) and (k), the whole essence of punishment is to reform a Convict. The Court is enjoined to have that notion in mind when sentencing the Convict. The Convict has been very remorseful throughout the trial. We urge your Lordship not to impose even the minimum sentence. My Lord, the Defendant by virtue of his conviction is already a sinner, your Lordship may wish to forgive him and ask him to go home and sin no more. I urge your Lordship to, in the alternative, give him an option of fine as he has learnt his lesson. I rely strongly on section 416(2)(k) and plead with your Lordship, that there is nothing on the record to show that this Convict is one that should be

isolated from society. Since he is a first offender, there is also no evidence that other forms of punishment are likely to fail in his respect. The fact that he has been convicted is enough stigma on him. We most sincerely plead that the Convict be given a second chance to change for the better; that he be allowed to go back and be reintegrated in society, take care of his lovely wife and children.

Ikutanwa, Esq: My Lord, the Convict has no record of previous conviction. The minimum sentence for the offence is imprisonment for a term of 10 years. There is no option of fine.



Sentencing

The Convict has been convicted of the offence as charged. The Court has listened carefully to the plea of the Convict's Counsel for leniency in passing sentence on him. The Court has taken into consideration the mitigating factors in favour of the Convict. This Court has noted for instance, that the Convict is a first offender. The Convict is a young person who ought to be given a chance to change for the better and be reintegrated in society and go back and take care of his wife and children. As a matter of fact, the Convict had been a law-abiding citizen of his community. He belonged to the Vigilante Group whose members were helping the Police to stem the rising tide of crime in Osara Community. This much was testified by the PW1.

Furthermore, the Convict while on remand at the Federal Prison, Koton/Karfe, awaiting his trial, showed his exemplary behaviour by being among the very few in-mates that willingly returned to the Prison

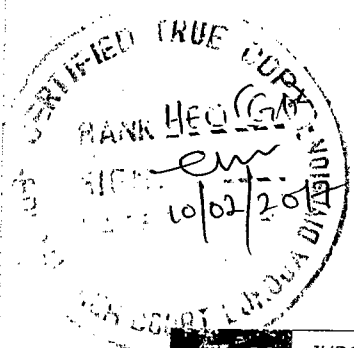
after there was a jail break on the 02/11/2014. See section 416(2)(f) of the Administration of Criminal Justice Act, 2015, which enjoins the Court to conduct an inquiry into the Convict's antecedents before sentencing. This good conduct on the part of the Convict was commended in open Court by the Prosecuting Counsel, Otowu, G. O., Esq., on the 04/12/2014. The Prosecution, on account of that, did not also oppose the application of the Defence Counsel for a review of the conditions of bail earlier granted the Convict. The Court reviewed the terms of the bail order on two occasions to ensure that the Convict was afforded the opportunity of being released, so he could prepare and make himself available to stand his trial. While on bail, the Convict then as Defendant, never failed to attend Court to stand his trial.

The offence for which the Convict was charged and now has been convicted is more or less a strict liability offence.

The good news for the Convict, however, is that, section 416(1) of the Administration of Criminal Justice Act, 2015, (The ACJA) which empowers a Court to, on conviction, sentence the Convict to a term of imprisonment as prescribed by law, has also enjoined the Court in subsection (2) of section 416, which the Counsel has copiously referred to in pleading with the Court for leniency in sentencing the Convict, as follows:

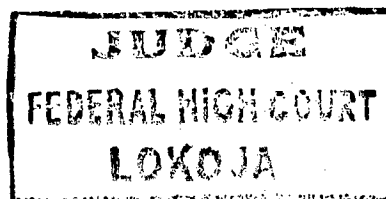
(2) In exercising its discretion of sentencing or review of sentence, the Court shall take into consideration the following factors, in addition to the provisions of section 401 of this Act:

(a) Each case should be treated on its own merit;

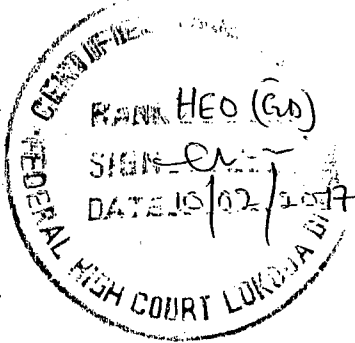


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- (b) The objectives of sentencing, including the principles of reformation should be borne in mind in sentencing a Convict;
- (c) An Appeal Court may in a proper case reduce the sentence imposed by the trial Court, especially where it is excessive or based on wrong principles; or an appeal Court may increase the sentence imposed by the trial Court, especially, where it is inadequate;
- (d) A trial Court shall not pass the maximum sentence on a first offender.
- (e) The period spent in Prison custody awaiting or undergoing trial shall be considered and computed in sentencing a Convict.
- (f) Trial Court shall conduct an inquiry into the Convict's antecedent, before sentencing;
- (g) It may be desirable to adjourn for sentencing in order to have time to consider any evidence adduced at the sentencing hearing in accordance with section 311 of this Act;



- (h) Where there is doubt as to whether the Defendant or Convict has attained the age of eighteen, the Court should resolve the doubt in his favour.
- (i) A Defendant may not be given consecutive sentences for two or more offences committed in the same transaction;
- (j) An appeal Court may not increase the sentence of a lower Court beyond the maximum number of years the lower Court has power to impose; and
- (k) Sentencing to a term of imprisonment shall apply only to those offenders who should be isolated from society and with whom other forms of punishment have failed or are likely to fail.



As a matter of fact, the Convict's antecedents show that he had joined the Vigilante Group of his Community as a member and had helped the Police in fighting crime in Osara Community. The Convict voluntarily returned to the Federal Prison, Koton/Karfe after there was an attack on that Prison and many of the in-mates escaped; the Convict is married with three young children and the Convict is a first offender as confirmed by the Prosecution. The Convict found an old rusty locally-made pistol and out of ignorance, he kept it to be using it, as a member of the Vigilante group, to scare robbers terrorising the community and thereby became culpable for the offence as charged. The Convict, to my

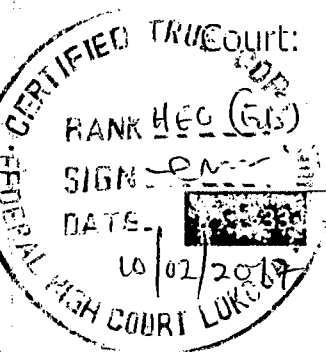
mind, does not cut out a picture of an offender who should be isolated from society and with whom other forms of punishment are likely to fail.

It is, therefore, my considered view that the Convict ought not to be sentenced to a term of imprisonment. On the other hand, I do not think it will be appropriate to merely caution the Convict and ask him to go home and sin no more. This is because, the offence of possession of firearms is prevalent in society. There is every need to work towards preventing the Convict from committing a similar offence in the future. Passing sentence on the Convict, regardless of how light it might be, would also satisfy the deterrence objective of sentencing with a view to warning others not to commit offences in like manner. Moreover, sentencing the Convict in consequence of his conviction would also achieve the education objective of sentencing, whereby a clear distinction would be made between good and bad conduct, by punishing bad conduct. See section 401(1) and (2)(a),(d), and (e) as well as section 416(1),(2)(a)(b)(d)(e)(f) and (k) of the Administration of Criminal Justice Act, 2015.

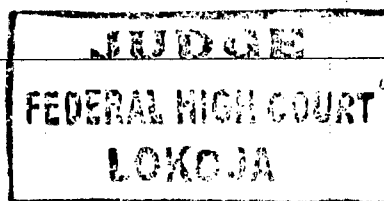
Accordingly, I make an order sentencing the Convict to fine in the sum of Thirty Thousand Naira (₦30,000.00) only.

The Convict shall be remanded at the Federal Prison, Koton/Karfe, until he pays the said fine.

The locally-made pistol, Exhibit P2, shall be handed over to the State Criminal Investigation and Intelligence Department



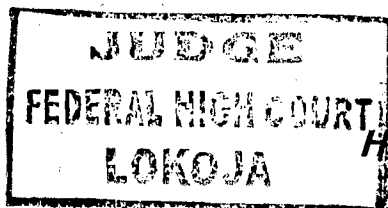
JUDGEMENT IN FRN v. AHMED SHAIBU



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of the Nigeria Police Force, Kogi State Command, Lokoja, for destruction, if there is no appeal against the Judgement of this Court in this case, thirty (30) days from today.

This shall be the Judgement of this Court in this case.

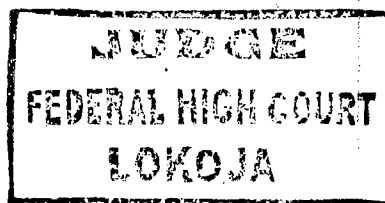


[Handwritten Signature]
Hon. Justice Phoebe Msuean Ayua
Judge

11th day of October, 2016

Parties: The Defendant is present in Court.

Appearances: S. I. Ikutanwa, Esq., for the Prosecution and the Defendant's Counsel, A. B. Aliu, Esq., wrote a letter asking for adjournment on grounds of pressing family issues outside Kogi State.



[Handwritten Signature]
Hon. Justice Phoebe Msuean Ayua
Judge

11th day of October, 2016

