

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LOKOJA JUDICIAL DIVISION
HOLDEN AT LOKOJA
ON MONDAY, THE 14TH DAY OF DECEMBER, 2015
BEFORE HIS LORDSHIP, HON. JUSTICE PHOEBE M. AYUA

JUDGE

BETWEEN

CHARGE NO: FHC/LKJ/32C /2015

FEDERAL REPUBLIC OF NIGERIA -----COMPLAINANT

AND

UMORU MUSA-----DEFENDANT

JUDGMENT

This judgment relates to the two-count charge preferred against the Defendant herein, whereby the Defendant, on arraignment, pleaded guilty to the charge in count 1 and count II as read to him in English language and interpreted and explained to him in Hausa language.

The charge, dated the 17/03/2015, was filed on the same date. The charge was signed by T. E. Oteme, Esq., O/C Legal and Prosecution/Human Rights, the Nigeria Police, Criminal Investigation and Intelligence Department, Lokoja.

The charge reads as follows:

Count 1

That you Umoru Musa, Male, 18 years on 06/02/15, at Gidan Bassa in Ajaokuta Local Government Area of Kogi

State within the jurisdiction of this Honourable Court, illegally had in your possession one cut-to-size single barrel gun and thereby committed an offence contrary to Section 4 and punishable under Section 27(1)(b)(i) of the Firearms Act, Cap. F.28, Laws of the Federation of Nigeria, 2004.

Count II

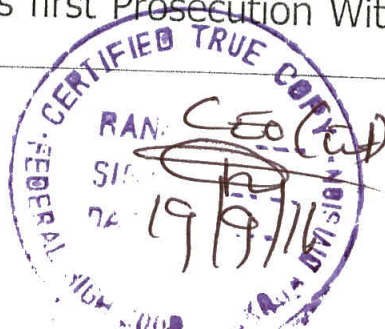
That you Umoru Musa, Male, 18 years old, on 6/2/15 at Gidan Bassa in Ajaokuta Local Government Area of Kogi State within the jurisdiction of this Honourable Court illegally had in your possession one live cartridge and thereby, committed an offence contrary to Section 8 and punishable under Section 27(1)(b)(ii) of the Firearms Act, Cap. F.28, Laws of the Federation of Nigeria, 2004.

The history of this case is such that on the 30/04/15, the Defendant was arraigned before this Court. The two-count charge, herein, was read over to him in English and interpreted and explained to him in Hausa language. He said he understood the charge and in the presence of his Counsel, O. E. Amoke, Esq., (with P. A. Nwosu, Mrs), the Defendant pleaded not guilty to Count 1 and Count II of the charge, respectively.

The Prosecuting Counsel, Otowu, G. O. Esq., then applied for an adjournment to enable him summon his witnesses and return to commence the trial of the Defendant.

On the 08/5/15, the Defendant's Counsel moved the application for the release of the Defendant on bail. The application was not opposed by the Prosecution and the same was granted on terms.

On the 17/06/2015, trial of the Defendant commenced before this Court. The Prosecution, through its first Prosecution Witness (PW11),



Force No: 264483 CPI. Musa Jacob, of the Nigeria Police Force, attached to the State Criminal Investigation and Intelligence Department (State CIID), Lokoja, Kogi State Police Command, gave evidence in chief. He testified that he knew the Defendant in connection with the case the Defendant was involved in, which case was transferred from the Ajaokuta Divisional Police Headquarters to the State CIID, Lokoja, on the 26/02/2015. That he, PW1 and his Team mates, comprising Inspector Ejeh Yakubu as Team Leader, Sgt. Aboh Onuh, Cpl. Danjuma Attah and PW1, Cpl. Musa Jacob were at their office at the State CIID Lokoja on that said date, 26/02/2015 and the Defendant was brought to their office along with one locally-made single barrel gun and one cartridge, on transfer and handed over to them for discreet investigation on a charge of unlawful possession of the gun and cartridge. He further testified that, he, PW1, was detailed to take the statement of the Defendant. That he gave the Defendant the earliest opportunity to write his statement by himself but that the Defendant confided in him that he could not write and that he understands and speaks only Hausa language. That the Defendant then gave him, PW1, the permission to record his statement on his behalf on the grounds that he, PW1 understands English language and Hausa language very well.

PW1 stated that he then administered the words of caution to the Defendant in English language and then interpreted the caution to the Defendant in Hausa language. That the Defendant said he understood the caution and then thumbprinted it. That after the word of caution, the Defendant then volunteered his statement freely in Hausa language. The PW1 testified that he recorded the statement in English language by direct translation, That after recording the Defendant's statement over to the Defendant in English language, he then interpreted the statement in Hausa language to the understanding of



the Defendant who admitted it to be his true statement and thumb printed it. PW1 stated that he also countersigned the statement as the recorder. That he, PW1 noticed that the statement volunteered by the Defendant was confessional and so he took the Defendant to a Superior Police Officer, ASP Saidi Jimoh, the 2i/C Anti-Robbery Section (SARS). That ASP Saidi Jimoh read the statement to the Defendant in English language and the PW1 interpreted the statement in Hausa language to the Defendant. The Defendant admitted that he understood the statement and confirmed so to the ASP Saidi Jimoh. That the ASP Saidi Jimoh then endorsed the statement in red-ink and signed the attestation. That the Defendant also thumbprinted the attestation while the PW1 signed the attestation also as the IPO and recorder. The PW1 then identified the statement by his handwriting and signature as well as by the attestation done at the tail end of the statement in red ink.

The Prosecution applied to tender the statement. The Defence Counsel with the permission of the Court showed the statement to the Defendant who was sitting in the dock and then submitted that they were opposing the admissibility of the statement on the grounds that the Defendant told him that he was not the maker of that statement and that he was ignorant of the content of the document shown to him.

Learned Counsel for the Defendant submitted that the Defendant volunteered his statement in Hausa language and that by the testimony of PW1 that he understands English language and Hausa language very well, it means that the PW1 can read and write in English language and Hausa language. That since the Defendant volunteered his statement in Hausa language, the PW1 ought to have written the statement in Hausa language and then interpreted it and written the English version of it separately. That since the PW1 did



not follow that procedure, they were objecting to the admissibility of the statement, more so that the Defendant had told the Counsel that he the Defendant, was merely instructed to thumbprint a document already made by the PW1.

Learned Counsel therefore submitted that that was the statement of the PW1 and not that of the Defendant. That since the statement does not represent what the Defendant said, the statement be regarded as hearsay which amounts to no evidence. Learned Counsel also objected that there was no *jurat* embodied in the said statement against the thumbprint of the Defendant. He urged the Court to reject the statement and mark it as tendered but rejected.

The Prosecuting Counsel, on his part urged the Court to admit the statement as it was the law that when a Defendant denies making a statement, the statement said to have been recorded on his behalf should be admitted and that it is the weight to be attached to the statement during evaluation of the probative value of the statement that should be an issue.

The Court looked at the position of the Law and the cases of ***AJIDAHUN v THE STATE (1991) 9 NWLR (Pt.213) 33 AT 35***; a text book titled ***PRACTICE AND PROCEDURE OF CRIMINAL LITIGATION IN NIGERIA BY Y. D. U. Hambali at page 86***; the case of ***AHMED v STATE (1999) 5 SCNJ 223 per Kalgo, JSC, Sections 37, 38 of the Evidence Act, 2011, BLACK'S LAW DICTIONARY, Eighth Edition, Bryan A. Garner (Editor-in-Chief) page 866; EZEIGWE v AWUDU (2008) 11 NWLR159 at 177 -178, Ratio 5; KUTI v ALASHE (2008) ALL FWLR Page 373 at 385 F – H.*** and overruled the objection of the Defence and instead admitted the statement in evidence and marked it **Exhibit P1**.



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The Ruling was delivered on the 30/0/15. The case was adjourned for continuation of trial on the 08/12/2015, when the Prosecution told the Court that they were ready to proceed. The Defence Counsel, however, submitted that the Defendant had confided in him that he had something to tell the Court. On being granted audience by this Court the Defendant told the Court that he would like to change his plea.

The Charge was read over to him in English language. The same was interpreted to him in Hausa language by the Court interpreter, Nuhu Jedna Emmanuel, the Court Registrar. The Defendant said he understood the charge as interpreted to him in Hausa language. He then pleaded guilty to the charge in **Count 1** and **Count II**, respectively.

The Prosecuting Counsel, Otowu, G. O. Esq., then sought the permission of the Court to adopt the evidence so far given by the PW1 in this case as part of the review of the facts in this case. The Defence Counsel did not object. The application was granted. The PW1 was then put to the witness box to continue with and completed the review of facts with further evidence. PW1, in furtherance of that, testified that on the 17/6/15 when he gave evidence before this Court, in this case, he told the Court that he recovered a cut-to-size locally-made single barrel gun and one live cartridge from the Defendant.

PW1 said he would recognize and identify the gun and the cartridge by the Exhibit number written on each item in red to wit: CER/038/2015, written on a paper cellotape and pasted on the gun and on the cartridge, respectively. PW1 was shown the gun and the cartridge and he identified them accordingly. The cut-to-size single barrel gun and the one cartridge were tendered in evidence. The

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Defence did not object and the gun and the cartridge were admitted in evidence and marked as Exhibit P2 and Exhibit P3, respectively. PW1 said that he and his Team then visited the point where the Defendant was arrested at Gidan Bassa, along Lokoja – Ajaokuta Road, Kogi State. That no Exhibit was recovered at the scene of the crime where they visited.

Under cross examination PW1 admitted that he was not the person that arrested the PW1 and recovered the gun and the cartridge from him but that it was Inspector Abdullahi Yusuf who had arrested the Defendant and that it was inspector Abdullahi Yusuf who also recovered the gun and cartridge from the Defendant and then the case was transferred to the State CIID, Lokoja for discreet investigation.

The Prosecution said they did not have any questions in cross-examination of the PW1 and they closed their case. On application by the Prosecution, the PW1 was discharged from the witness box.

Learned Counsel for the Prosecution then applied that the Defendant be convicted on the basis of his plea of guilty and the strength of the evidence placed before the Court.

In the instant case, the Defendant was arraigned on a two-count charge which has been reproduced above in this judgment. The Defendant, upon the charge being read over to him in English language and interpreted and explained to him in Hausa language, pleaded not guilty to the charge. See Section 271 of the Administration of Criminal Justice Act, 2015.

The trial of the Defendant commenced accordingly and the Prosecution called the first Prosecution Witness, PW1, Cpl. Musa Jacob, who testified on 17/6/15.



Thereafter, PW1 was to continue with his evidence under examination-in-Chief on the 08/12/15 when the Defendant indicated to the Court that he would want to change his plea from "not guilty" to "guilty". The charge was read over to him in English language and interpreted to him in Hausa language. The Defendant then pleaded guilty to the charge in the presence of his Counsel. The Prosecution, with the leave of Court, adopted its evidence through PW1 earlier given as part of the review of the facts and called its PW1 to continue with his evidence to conclude the review of facts, which he did. Two Exhibits were tendered through PW1, the cut-to-size single barrel gun and one cartridge, that is Exhibit P2 and Exhibit P3, respectively. Earlier on the Court admitted the statement of the Defendant and marked it as Exhibit P1.

In the instant case, the Prosecution had followed the procedure in arraigning the Defendant before a Court of competent jurisdiction as per the two-count charge preferred against him. See Section 271 of the Administration of Criminal Justice Act, (ACJA) 2015. Section 271 of the ACJA provides as follows:

Section 271(1)

Before a defendant takes his plea, the Court shall inform him of his rights under the provisions of Section 269 of this Act (i.e to stand or sit in the dock).

(2) The Defendant to be tried on a charge or information shall be:



- (a) brought before the Court unfettered unless the Court sees cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the Court by the Registrar or other officer of the Court; and
- (b) called upon to plead instantly unless, where the person is entitled to service of the information, he objects to the non-service and where the Court finds that he has not been duly served.
- (3) The Court shall record the fact that it is satisfied that the defendant understands the charge or information read over and explained to him in the language he understands and shall record the plea of the Defendant to the charge or information as nearly as possible in the words used by him.

Again, this Court followed the procedure prescribed in Section 273 of the ACJA 2015 when it permitted the Prosecution to commence the trial of the Defendant on his plea of "not guilty" to the two-count charge on 17/6/15. Section 273 provides thus:

A defendant who pleads not guilty shall be deemed to have put himself to trial.

When on the 08/12/15, the Defendant changed his plea from "not guilty" to "guilty" this Court again followed the procedure in Section 274 and recorded the plea of the Defendant clearly, and invited the Prosecution to state the facts of the case and enquired from the Defendant whether his plea of guilty was to the fact as stated by the Prosecution. The Court also reviewed the evidence placed before it by the Prosecution to see whether the defendant intended to admit the

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truth of all the essential elements of the offence to which he had pleaded guilty.

Section 274 of the ACJA, 2015, provides, as follows

S.274 (1): Where a defendant pleads guilty to an offence with which he is charged, the Court shall:

- (a) record his plea as nearly as possible;
 - (b) invite the Prosecution to state the fact of the case and
 - (c) enquire from the Defendant whether his plea of guilty is to the fact as stated by the Prosecution;
- (2) Where the Court is satisfied that the Defendant intends to admit the truth of all the essential elements of the offence for which he has pleaded guilty, the Court shall convict and sentence him or make such order as may be necessary, unless there shall appear sufficient reason to the contrary;
- (3) Where the Defendant pleads guilty to a capital offence, a plea of not guilty shall be recorded for him.

In the instant case, the Defendant pleaded guilty to the charge, midway into trial. That implies that the Defendant understood what he was doing. The Court was satisfied that the Defendant intended to admit the truth of all the ingredients of the offence for which he had pleaded guilty. The Court took into consideration the fact that by pleading guilty to the charge, it meant that:



1. The Defendant was found in possession of the firearms in question and the one-cartridge ammunition on the date of his arrest and was arrested with them in his hand, and
2. That the firearms and ammunition, Exhibit P2 and Exhibit P3 are within the definition of firearms and ammunition within the contemplation of the Firearms Act, Cap. F28, Laws of the Federation of Nigeria, 2004, and
3. That the Defendant had no licence authorizing him to possess Exhibit P2 and Exhibit P3.

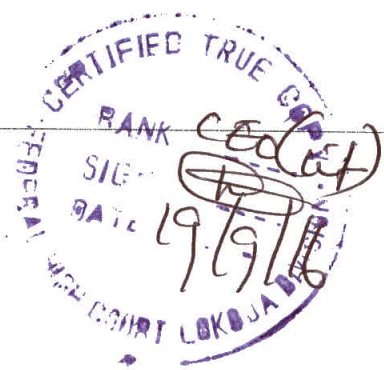
The totality of the circumstances of the plea of guilty by the Defendant and the review of facts by the Prosecution through PW1, point to the fact that the Defendant committed the offence as charged. In the case of *NWOSU v STATE* (2004) 15 NWLR (Pt. 579) 466 at 489, the Court held that there can be no greater evidence to prove a charge against the Defendant than the admission of guilt by the Defendant himself before the Court when he enters a plea of guilty.

In the case in hand, the Defendant had pleaded not guilty initially but changed his plea to, guilty, midway in the trial.

In the confessional statement of the Defendant, Exhibit P1, the Defendant confessed that he had the gun, Exhibit P2 and the cartridge, Exhibit P3 in his possession when he was arrested at Gidan Bassa.

In Section 28 of the Evidence Act, 2011, it is provided that

A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime.



In the case of *DELE v STATE (2011) 1 NWLR (Pt. 1229) 508*, it was held that a confessional statement, so long as it is free and voluntary and if it is direct, positive and properly proved, is enough to sustain a conviction. See also the cases of *ALARAPE v STATE (2001) FWLR (Pt. 41) 1872 SC* and *SOLOLA v STATE (2005) 11 NWLR (Pt. 937) 460 S.C.*

In the case of *DIBIE v STATE (2007) 9 NWLR (Pt. 1038) 30* the Supreme Court held that even though a Court can convict a Defendant on the basis of his confessional statement, which is direct, positive and properly proved to be his admission of guilt to the offences charged it is desirable that evidence be adduced by the Prosecution outside of the confessional statement which would make it probable that the Defendant's confession was true.

In the present case, the Defendant eventually pleaded guilty to the offences as charged in **Count 1** and **Count II** of the charge sheet. The Defendant's confessional statement made to the Police, Exhibit P1 also point to the fact that the Defendant committed the offences.

Furthermore, the Prosecution adduced evidence through PW1 and Exhibits P2 and P3 to show that the Defendant committed the offences as charged in Counts 1 and II, respectively.

This Court is accordingly satisfied that the Defendant herein committed the offences in Count 1 and Count II of the charge. The Defendant is, therefore, found guilty of the offences. He is hereby convicted of the said offences in Count 1 and count II of the charge, respectively. See Section 274 (2) of the ACJA.



ALLOCATION

Upon his conviction, the Convict was asked whether he had any cause to show why he should not be sentenced as prescribed by the relevant law. The Convict pleaded for mercy. The Defendant's Counsel also, on behalf of the Convict pleaded with the Court to show mercy in sentencing the Convict. Learned Counsel submitted that the convict had been in detention since the date of his arrest on 6/02/15. That the Convict is a young man of tender years who might have a bright future if given a lenient sentence.

Learned Counsel again submitted that it appeared the long stay of the Convict in custody has reformed him and that reformation is the main aim of criminal justice administration. Learned Counsel then submitted that he was relying on the provisions of Section 416(2)(b)(d)(e) and (k) of the ACJA, 2015, in making the humble appeal that this Court tempers justice with mercy in sentencing the Convict.

When asked, the Prosecution answered that the Convict was a first offender as there is no record of his previous conviction.

SENTENCING

In my effort to determine the appropriate sentence to pass on the convict, I have taken into consideration the following factors:

1. The Convict is of a very young age, 18 years old and if given a second chance, he might change for the better and become a responsible citizen.
2. The Convict is a first offender as there is no record of his previous conviction.
3. The Convict pleaded guilty to the offences midway into the trial with which he is charged in Count 1 and Count II,

- thereby saving the precious time and resources of the Court and the State if the trial was allowed to go the full length.
4. The Convict showed remorse throughout his trial and while he was standing in the dock. The Convict had started to show the signs of having been reformed.
 5. The Convict has stayed long in incarceration while awaiting trial and even when trial commenced because even though granted bail, the convict could not perfect the conditions of bail.
 6. The Convict does not appear like a person who should be kept away or isolated from society.
 7. The deterrence objective of sentencing.

These factors were placed side-by-side with the provisions of Section 416 of the ACJA, 2015 which provide as follows:

Section 416(1)

On conviction, a Court may sentence the Convict to a term of imprisonment as prescribed by the law

(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.
- (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 principle, 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 waiting or undergoing trial shall be considered and computed in sentencing a convict.
- (f) Trial Court shall conduct an inquiry into the convict's antecedents 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 is (sic: are) likely to fail.

In similar vein, I have perused the provisions of Section 426 of the ACJA, 2015 which provides as follows:

Section 426: A commitment for non-payment of fine shall not be for a longer period than two years except where the law under which the conviction has taken place prescribed or allows a longer period.



Having taken into consideration the allocution of the Convict's Counsel for leniency in sentencing the Convict and the provision of section 416 and 426 of the ACJA, 2015, now therefore, I make an order sentencing the convict, as follows:

1. **On Count 1** of the charge, herein, the Convict is sentenced to a fine of ₦50,000.00 (Fifty Thousand Naira) only or in default of such payment of fine, a term of imprisonment for two (2) years, to commence from the date of his arrest, being, the 06/2/15.
2. **On Count II** the Convict is sentenced to a fine of Ten Thousand Naira (₦10,000,00) only or in default of payment of such fine, a term of imprisonment for one(1) year, to commence from the date of his arrest, being the 6/2/15.
3. The terms of imprisonment shall run concurrently, where applicable.

Court: The one cut-to-size single barrel gun, Exhibit P2 and the one cartridge, Exhibit P3, shall be handed over to the Nigeria Police Force through the Prosecuting Counsel, Otowu, G. O. Esq., to be destroyed if there is no appeal against the judgment of this Court, in this case, thirty (30) days from today, being the 14/12/2015.

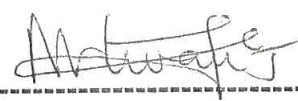
This shall be the Judgment of this Court, in this case.

HON. JUSTICE PHOEBE M. AYUA
(JUDGE)
14TH DAY OF DECEMBER, 2015

JUDGE
FEDERAL HIGH COURT
LOKOJA

PARTIES: The Convict was present in the Court.

APPEARANCES: Otowu, G. O. Esq., for the Prosecution and the Convict was not represented in Court by Counsel.



HON. JUSTICE PHOEBE M. AYUA
(JUDGE)
14TH DAY OF DECEMBER, 2015

JUDGE
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