IN THE SUPREME COURT OF NIGERIA

Suit No: SC428/1974

Petitioner: Abdul Majeed Nasiru
And
Respondent: Commissioner of Police

Date Delivered: 1980-02-01

Judge(s): George Sodeinde Sowemimo, Chukwunweike Idigbe, Andrews Otutu Obaseki, Augustine Nnamani , Muhammad

Judgment Delivered

The appellant Abdul Majeed Naisiru was on the 18th March. 1974 convicted by the Magistrate First Grade Jos on 2 counts of theft of 3 bags of guinea corn belonging to his employers contrary to Section 29 of the Penal Code. He was sentenced to a fine of N120 or six months imprisonment in default. The fine has since been paid. The appellant appealed to the High Court of the Northern States of Nigeria, Benue/Plateau Judicial division which on 20th September, 1974 dismissed his appeal. It is from that judgment that appeal is now made to this Court. It is pertinent to add that the appeal to this Court was filed on 1st March, 1976. It was struck out on 1/6/78 as conditions of appeal were not completed but was on the application of the appellant relisted on 6/12/79 for hearing by this Court. Briefly the facts of this case as disclosed by the prosecution and defence were as follows '

On 14th September 1973 the appellant who works with the Nigerian Livestock and Meat Authority as a Senior Poultry Development Assistant removed 3 bags of guinea corn from the store of the Nigerian Livestock and Meat Authority Poultry Unit Jos. He ordered one Monday Dashal PW3 to bring out the 3 bags from the store and to put them inside a Land Rover driven by Aliyu Burtai PW4. Aliyu Burtai was to call Ibrahim Magaji PW5 who was to show him where to deliver the bags. Ibrahim Magaji directed Aliyu Burtai to Anglo Jos Market where the bags of corn were delivered to one Audu Ali 2nd accused in the case. Ibrahim Magaji himself claimed that on 13th September the appellant requested him to find someone to buy some guinea corn and that he got 2nd accused. He claimed that the 2nd accused deposited N10 with him and he informed the appellant about this. He further said later the 2nd accused gave him another N12 as part payment which he took to the appellant but appellant told him to keep both the N10 and the N12. The events were reported to Mr. Eniola who is the project manager in-charge of Nigerian Livestock and Meat Authority who lodged a complaint to the Police. The 3 bags of guinea corn were recovered. The appellant denied the charges and claimed rather that on 5/9/73 Solomon Akume the storekeeper PW2 and Ibrahim Magaji approached him and said they had a problem. Solomon Akume told him that Ibrahim Magaji\'s wife had put to bed. He said they needed money for naming ceremony. Solomon Akume, he said, suggested that they could help Ibrahim Magaji by taking out 4 bags of guinea corn from the Poultry Store on loan. The appellant said he agreed to 3 bags. He said he told the storekeeper to be patient until he saw Mr. Eniola who would authorise the loan. He had not obtained approval from Mr. Eniola because he was on sick-leave. Appellant stated that if Mr. Eniola was not available he could approve the loan. On 14/9/73 Solomon Akume and Ibrahim Magaji came to his office and said they wanted to take out the 3 bags. They all went to the store and in the presence of all of them the 3 bags of guinea corn were loaded into the Landrover. Appellant claimed he did not want any benefit for himself but was only helping Magaji get a loan which if it was not paid he would pay. At the close of the evidence of the prosecution, the Magistrate exercising his powers under section 172 of the Criminal Procedure Code Cap. 30 Laws of Northern Nigeria, framed the following charge against the appellant:

That you - Abdul Majeed Nasiru, on or about the 14th day of September 1973, at the Poultry Unit Jos within the Benue Plateau Magisterial District being a servant employed in the capacity of a Senior Poultry Development Assistant by the Nigerian Livestock and Meat Authority, committed theft by stealing property, to wit: you stole 3 bags of guinea corn then in the possession of the said Nigerian Livestock and Meat Authority and you thereby committed an offence punishable under section 289 of the Penal Code and triable by this Court '"

The learned trial Magistrate in his judgment after carefully reviewing the evidence stated '

In respect of Magaji and Akume . . .1 have no doubt in my mind that the 1st accused removed the 3 bags from the store in order to help Ibrahim Magaji out of a financial embarrassment connected with a naming ceremony he wanted to organise. In this connection I believe that the statement made by Ibrahim Magaji marked Exhibit 8 shows exactly what happened that day. It appears to me that Ibrahim Magaji is disowning the statement because he wanted to save himself from criminal prosecution. If it is true that Ibrahim Magaji were merely acting as an innocent agent of the 1st accused he would not have hesitated to reveal that he received N22 from the 2nd accused for the 1st accused. The investigator PW7 told the court that Ibrahim Magaji did not mention anything about the N22 when he recorded a statement from him. Both Solomon Akume and Ibrahim Magaji lied to the Court when they said that they did not go to the 1st accused and request him for a loan of 3 bags of guinea corn for Ibrahim Magaji.

Later on in his judgment the learned trial Magistrate recommended -

that both Solomon Akume and Ibrahim Magaji be charged for abetting the offence committed by the 1st accused.

It is against the conviction that the appellant appealed to the High Court and to this Court. Before the High Court the appellant filed 2 grounds of appeal, ground 2 of which stated:

The Magistrate erred in law in proceeding with the case at the end of the evidence for the prosecution when the said evidence disclosed a case of conspiracy between some of the witnesses and the appellant to which the said Magistrate had no jurisdiction.

The High Court, in hearing the appeal, embarked on a lengthy review of the evidence before the Magistrate. While this may have been necessary in evaluating the weight of evidence, it can hardly have been so in respect of ground 2 and in the face of clear findings of fact by the trial Magistrate. The High Court, at the end of its review, set aside the findings of fact of the Magistrate in respect of Solomon Akume and Ibrahim Magaji. In the case of the former they said '

The evidence of Solomon Akume PW2 is clear that the bags were removed without his consent and in his absence, and that when he saw them out of the store he protested to the appellant but the appellant used his authority over the storekeeper and caused them to be dispatched. PW2 reported the incident to their superior office PW1. The evidence of the storekeeper was substantially corroborated by PW3 who testified that the storekeeper refused to the removal of the bags and by PW4 who stated that when he was going to report to PW1 he met the storekeeper who informed the witness that he the storekeeper had already reported to PW1. It is clear from the evidence that Solomon Akume is no abetter.

And on the latter the High Court held:

In the absence of evidence to the contrary, it is reasonable to infer that Ibrahim Magaji presumed that the appellant had obtained the loan under the established procedure. There is no evidence that he knew that procedure had not been followed. On the contrary the statement of Ibrahim Magaji Exhibit 8 which the Magistrate believed shows that the appellant indicated to Ibrahim Magaji that he the appellant would first obtain the permission of their superior officer before selling the bags. From the foregoing it is reasonable to find that Ibrahim Magaji being a junior officer might have acted in the removal and disposal of the bags under a bona fide belief that the appellant had the proper authority to give the loan .....

Later in their judgment they held that '

Had the Magistrate properly assessed the evidence he would have found no evidence of conspiracy '..

Before us learned counsel for the appellant abandoned ground 1 and argued only one ground of appeal which stated

The appellate court also erred in law in holding that the case of conspiracy was not made out as to oust the jurisdiction of the learned trial Magistrate when there was ample evidence on this and this error occasioned miscarriage of justice.

Learned counsel for the appellant referred us to the findings of fact by the trial Magistrate in respect of Magaji and Akume (already quoted above) as well as to the recommendation and contended that if at the end of the case of the prosecution the Magistrate found evidence of conspiracy he should have referred the case to the High Court. He argued that the recommendation of the Magistrate that Akume and Magaji be tried as abetters was a finding of fact of conspiracy on the evidence. He claimed that there was a miscarriage of justice because the trial by the Magistrate was a nullity. He referred the Court to the case of Omale Ogwale vs Commissioner of Police 1969 N.M.L.R. 125 and to Appendix A of the Criminal Procedure Code Chapter 7. I agree with the submission of learned counsel for the appellant that at the close of the prosecution there was evidence of conspiracy which was clearly evident in the findings of the Magistrate. The High Court, with all due respect, erred in my view when it proceeded in effect to substitute its own findings of fact for those of the Magistrate. This Court has repeatedly stated that the appellate court should not substitute its own views of the facts for those of the lower court when it is clear that that lower court has arrived at its findings after a proper appraisal of the evidence.

In A. M. Akinloye andAnother vs Bello Eyiyola and Others (1968) N. M.L. R. 92 Coker J. S.C. delivering the judgment of the Court stated at p.95 -

where a court of trial unquestionably evaluates the evidence and appraises the facts it is not the business of a court of appeal to substitute its own views for the views of the trial Court.

Also see Lucy Onowan and Others vs. J. J. L Iserhie Vol.1(1976) N.M.R. 263 at p.265; Bakare Folorunso vs L A. Adeyemi (1975) N.M.L.R. 128 (a judgment of the Western Court of Appeal).

In Fabumiyi & Others vs Obaje & Others (1968) N.M.L.R. 242 this Court amplified this principle of law when it stated at p.247

A court of appeal should not easily disturb the findings of facts of a trial Judge who had the singular opportunity of listening to the witnesses and watching their performances. It is settled law, however, that such findings of facts or the inferences from them may be questioned in certain circumstances.

See Beumax vs Austin Motor Co. Ltd. (3) also Akinola & Others vs Fatoymbo Oluwo & Others vs Seliatu Abike Williams. The result of the authorities is simply this, that where the facts found by the Court of trial are wrongly applied to the circumstances of the case or where the inferences drawn from those facts are erroneous or indeed where the findings of fact are not reasonably justified or supported by the credible evidence given in the case, a Court of Appeal is in as much a good position to deal with the facts and findings as the Court of trial.

In the instant case I do not find that those \"certain circumstances\" which would justify interference exist. The only question left to be dealt with is whether on finding evidence of conspiracy the trial Magistrate ought to have transferred the case to the High Court, his jurisdiction having been ousted. In Ogwale\'s case referred to supra, the evidence before the Chief Magistrate revealed a prime facie case of rape contrary to Section 282(1)(a) and 283 of the penal Code Cap. 89 Laws of Northern Nigeria 1963 which the Chief Magistrate had no jurisdiction to try. The Chief Magistrate tried the appellant for offences under Sections 349 and 268 of the Penal Code and convicted him. On the question whether it was proper for the Chief Magistrate to try the appellant for a lesser offence which he had jurisdiction to try when the evidence disclosed a more serious offence which he had no power to try, the High Court of the North Central State Bello Ag. C.J. (as he then was) and wheeler J. (as he then was) held that the trial of the appellant has not only occasioned grave miscarriage of justice but was void by virtue of section 380 subsection (h) of the Criminal Procedure Code.

Chapter VII Appendix A of the Criminal Procedure Code Cap. 30 Laws of Northern Nigeria deals with conspiracy to commit offences. Under the first column therein criminal conspiracy to commit an offence punishable with death or imprisonment (italics mine) is triable in the High Court while criminal conspiracy \"in any other case\" is triable by a Magistrate of the First Grade and is punishable with imprisonment for six months or fine or both. Also in the punishment column for criminal conspiracy to commit an offence punishable with death or imprisonment the provision is \"the same punishment as for abetment of offence\". However, it was conceded by learned counsel for the appellant that the

conspiracy, such as I find arises from the evidence, can only be conspiracy to commit theft. This in my judgment falls within section 97 sub-section 1 of the Penal Code since that offence is clearly punishable with imprisonment. In this I agree with the court below. Section 289 of the Penal Code which deals with theft by clerk or servant of property in possession of master or employer prescribed a punishment of imprisonment for 7 years or a fine or both. The Magistrate First Grade has no jurisdiction to try an offence under section 97(1)ofthe Penal Code. He should have complied with section 160(2) of the Criminal Procedure Code Cap. 30 Laws of Northern Nigeria and transferred the case to the High Court. Sub-section 2 of section 160 provides '

If in proceedings in a Magistrates Court, at any stage before the signing of judgment in the trial of a case under this chapter it appears to the Magistrate that the case is one which ought to be tried by the High Court, he shall in like manner frame a charge against the accused and in so far as he has not already done so shall complete the procedure laid down in Chapter XVII for inquiry into cases triable by the High Court down to the framing of the charge.

Accordingly, I hold that the proceedings in which the appellant was tried for theft under section 289 of the Penal Code was a nullity: and therefore void and of no effect.

Judgment delivered by
George Sodehinde Sowemimo. J.S.C.

This appeal is allowed. The conviction and sentence of the appellant by the Magistrate (First Grade) Jos on 18th March, 1974 as well as the judgment of the Jos Judicial Division of the Benue/Plateau State dated 2Oth September, 1974 are hereby set aside. Having decided that the trial in the Magistrate Court was a nullity it is open to us to order a trial de novo of the appellant, see '

(1.) Sele Eyorokoroyo
(2) Fresh Ebikem V. The State - S.C. 2/1979 reported in volumes 6 to 9 S.C. 3 but not one of acquittal. However, it is evident from the proceeding that the appellant has paid the fine imposed on him in 1974 in the abortive trial; and the Director of Public Prosecutions (Plateau State) does not press for a retrial. In the circumstances we refrain from making an order for re-trail, he is hereby discharged. The fine paid by him should be refunded to him.

Judgment delivered by
Chukwunweike Idigbe. J.S.C.

My Lords, I have had the advantage of reading in draft the judgment just delivered by my learned brother, My Lord, Nnamani J.S.C. I agree with its reasoning and conclusions. I also would allow the appeal and I agree with the order proposed by my learned brother, My Lord, Sowemimo J.S.C.

Judgment delivered by
Andrews Otutu Obaseki. J.S.C.

This appeal is against the judgment of the High Court of Justice of Benue/Plateau State sitting in Jos as an Appellate Court over a case tried by the Magistrate Court in Jos. I have had the privilege of reading in advance the judgment of my learned brother the Hon. Justice Nnamani, J.S.C. delivered a short while ago and I hereby express my full concurrence with the opinions expressed therein on the issues raised before us in this appeal. I shall not go into the facts in any detail as they were fully set out in the judgment of Nnamani, J.S.C.

The offence with which the appellant was charged in the Magistrate\'s Court Jos, tried and convicted thereon was a simple one. It was one of theft of 3 bags of guinea corn, the property of his employers, the Nigerian Livestock and Meat Authority punishable under section 289 of the Penal Code. The appellant was the Senior Poultry Development Assistant. The charge was framed by the Magistrate of the first Grade after hearing evidence and the main ground of complaint

was that the evidence adduced before the Magistrate during the trial sufficiently disclosed the offence of conspiracy (a charge triable by the High Court) to oust the jurisdiction of the Magistrate and cause a transfer of the case to the High Court for trial on the pro p er charge as directed by the provisions of section 160(2) of the Criminal Procedure Code. That Section reads:

If in proceedings in a Magistrate\'s Court at any stage before signing of judgment in the trial of a case under this chapter, it appears to the Magistrate that the case is one which ought to be tried by the High Court, he shall in like manner frame a charge against the accused and in so far as he has not already done so shall complete the procedure laid down in Chapter XVII for inquiry into cases triable by the High Court down to the framing of the charge.

Criminal conspiracy to commit theft is an offence under the provisions of section 97(1) of the Penal Code punishable with imprisonment and the court with least power by which it is triable is stated in Appendix A to the Criminal procedure Code Cap. 30 Laws of Northern Nigeria 1963 to be the High Court.

The appellant was an offender tried by the Magistrate of First Grade for a case, which disclosed the offence of both conspiracy to commit theft under section 97(1) and an offence of theft under section 289 of the Penal Code Cap. 89 Laws of Northern Nigeria.

The effect of assuming jurisdiction to try the appellant is provided by section 380(h) of the Criminal Procedure Code which reads:

If any court or Justice of the Peace not being empowered by law in this behalf does any of the following: (a) to (g) not relevant (h) tries an offender such proceedings shall be void.\" (Italics for emphasis).

In the course of his argument, counsel for the appellant cited to us two cases in support of his submission. These two cases are:

(1) Omale Ogwale V. Commissioner of Police (1969) N.M.L.R. 125;

(2) Sule Buba V. Commissioner of Police (1974) N.M.L.R. 139.

These two cases were decisions of the High Court dealing with the issue of jurisdiction raised in the instant appeal. The earlier case of Omale Ogwale was considered and followed in the latter case of Sule Buba the short facts of which, according to the head note in the N.M.L.R., reads:

The appellant was charged by the Chief Magistrate under the Penal Code s.250(1) with causing voluntary hurt to extort property. When the charge was framed there was evidence that the appellant had voluntarily caused grievous hurt. This was an offence under s.250(2) and was outside the jurisdiction of a Chief Magistrate.
Held: The proceedings in the trial court were void by reason of s.380(h) of the Criminal Procedure Code.

It does appear that section 160(2) of the Criminal Procedure Code imposes a strict statutory duty on the Magistrate investigating any complaint to have regard to the facts deposed to before him and the court having jurisdiction to try the most serious offence or the most serious of the offences which the facts disclosed constitute before framing the charge and committing the suspect for trial. A Magistrate is not empowered to pick and choose the charges he has jurisdiction to try from a number of charges the facts of the case gave rise to and suppress the other charges, which are outside his jurisdiction.

His first duty after hearing the evidence is to frame the proper possible charges. The next duty is, if the charges are not within his jurisdiction to try, to complete the procedure for enquiry into cases triable by the High Court down to the framing of the charge. If the charges are triable by the Magistrate, his duty then is to try the case.

Failure to commit the accused for trial in the court having jurisdiction to try the case, and trying the accused whose acts or omissions constitute an offence outside the court\'s jurisdiction is a denial and a miscarriage of justice and a

conviction in such circumstances cannot be allowed to stand.

If the offender is not charged to the competent court having jurisdiction to try him from any motive whatsoever, there is a denial of justice. If he is tried by incompetent court there is a miscarriage of justice. No incompetent court is tolerated by the Criminal Procedure Code. Since the appellant was tried by an incompetent court, the trial is a nullity. The only ground of appeal is made out and the appeal succeeds.

In concurrence with my learned brothers, Sowemimo, J.S.C., Idigbe, J.S.C. and Nnamani, J.S.C. who have just delivered their judgments, I hereby allow the appeal and declare the whole proceedings before the Magistrate\'s Court, Jos and the High Court which heard the appeal from the Magistrate\'s Court in this case null and void.

The appellant is accordingly discharged. In concurrence with my learned brothers, I make no order for a new trial. The fine of N120.00, if already paid, is hereby ordered to be refunded.

Judgment delivered by
Muhammadu Lawal Uwais. J.S.C.

I agree that this appeal should be allowed. I have had the opportunity of reading the judgment delivered by my learned brother Nnamani, J.S.C. and I am in full agreement with the reasons he gave. However I would like to add the following observation on the question of jurisdiction.

In considering the submission made by counsel for the appellant to the effect that the trial magistrate had no jurisdiction since he found two others as participes criminis, the High Court sitting as an appeal court stated:

The learned counsel refers us to the recommendation made by the magistrate in his judgment for the prosecution of Solomon Akume - the store keeper - and Ibrahim Magaji - the beneficiary of the offence - as abettors of the appellant. The counsel contends that this recommendation amounts to a finding that Solomon Akume and Ibrahim Magaji acted with appellant in conspiracy to commit theft under s.97(1) of the Penal Code and the offence is punishable by imprisonment, the magistrate has no jurisdiction to try it by virtue of Appendix A of the C.P.C. He submits that the trial of the appellant for the offence under s.289 was a nullity '..

and it went on to state further:

We agree with the submission of the learned counsel that a Magistrate of the First Grade has no jurisdiction to try the offence of conspiracy to commit theft under s.97(1) of the Penal Code. With all due respect, however, we do not think that the recommendation of the Magistrate was supported by the evidence. (Italics for emphasis).

It is obviously erroneous of the High Court to disagree with the finding of fact in this and other respects made by the trial magistrate. As this point has been fully considered by my learned brother Nnamani, J S. C. in his judgment I need not say more. The issue as to whether the Magistrate had jurisdiction or not to try the case was a matter for him (the Magistrate) to consider and in making up his mind it was sufficient in the words of s.160(1) of the Criminal Procedure Code Cap. 30 Laws of Northern Nigeria 1963, if he \"... is of opinion that there is ground for presuming that the accused committed an offence . . .\" So that it was not necessary for him to be conclusively sure before making the recommendation as the judgment of the High Court seems to imply.

By making the recommendation the Magistrate was of the opinion that Solomon Akume and Ibrahim Magaji were, together with the appellant, accomplices in the commission of the offence. It is clear therefore that he must have presumed them to have criminally conspired to commit theft of the guinea corn, as was submitted by learned counsel for the appellant. On reaching that conclusion he ought to have transformed the proceedings into a preliminary inquiry in accordance with s.160(2) of the Criminal Procedure Code, since he had no jurisdiction; and then committed the appellant, Solomon Akume and Thrahim Magaji to the High Court to stand trial for conspiracy under section 97(1) read with s.289 of the Penal Code. This point has been stated severally by the High Court: Omale Ogwale V. Commissioner

of Police (1969) N.M.L.R. 125, Adamu Bako V. Commissioner of Police (1971) N.M.L.R. 150 and Sule Buba V. Commissioner of Police (1974) N.M.L.R. 139 and was approved by the Federal Court of Appeal in Joseph Aransiola V. The State FCAIK/68/78 (unreported) judgment delivered on 16th February, 1979\".

It follows therefore that the trial magistrate had no jurisdiction to try the offence when he did so and by virtue of section 380(h) of the Criminal Procedure Code the trial was a nullity. The appeal accordingly succeeds. The conviction and sentence are set-aside the fine imposed if already paid by the appellant should be refunded.