

IN THE SUPREME COURT OF NIGERIA

Suit No: SC139/2006

Petitioner: Nigeria Navy

And

Respondent: Lt. Commander S. A. Ibe-Lambert

Date Delivered: 2007-09-23

Judge(s): Aloysius Iyorgyer Katsina-Alu, George Adesola Oguntade, Mahmud Mohammed, Francis Fedode Tabai, Christoph

Judgment Delivered

The respondent, Lt. Commander S. A. Ibe-Lambert was an officer in the Nigerian Navy. She was arraigned before a General Court Martial (hereinafter referred to as 'the trial tribunal) on 09-07-97 on a five count charge. At the conclusion of trial, she was discharged and acquitted on four of the five counts but found guilty on the 3rd count which reads:

"Disobedience to correct standing orders contrary to Section 57(1) of the Armed Forces Decree No 103 of 1993 as amended."

Dissatisfied with her conviction, she appealed before the Court of Appeal, Lagos (hereinafter referred to as 'the court below). The court below on 06-12-2005 allowed her appeal and the respondent was discharged and acquitted. The appellants have come on a final appeal against the judgment of the court below. In their appellants' brief, the two issues identified for determination in the appeal read:

- "1. Was the Court of Appeal right to find that there was no credible evidence upon which the conviction was based.
2. Whether the court below was right in law in holding that exhibit 4 tendered by the appellants is a public document that needs to be certified."

The respondent formulated two alternative issues. The said issues would appear ex facie to be similar to the appellants' issues. A close scrutiny of them however appears to project the standpoint of the respondent on the issues whilst at the same time encompassing the appellant's issues. I shall be guided in this judgment by the respondent's issues which read:

"(1) Whether Exhibit 1, that is to say, the extra-judicial statement made by the respondent is a confessional statement; and if not so, whether the Court of Appeal was not correct in law to hold that in the absence of any credible evidence, count 3 as charged was not proved against the respondent.

(2) Whether the statement by the Court of Appeal that Exhibit 4 among others tendered by the appellants is a public document that needed certification weighed in the mind of the court and/or affected its judgment."

Now, Section 57(1) and (2) of the Armed Forces Decree No. 105 of 1993 as amended under which the respondent was charged provides:

"(1) A person subject to service law under this Act who contravenes or fails to comply with a provision of an order to which this section applies, being a provision known to him or which he might reasonably be expected to know, is guilty of an offence under this section and liable, on conviction for a term not exceeding two years or any less punishment provided by this Act.

(2) This section applies to standing orders and other routine orders of a continuing nature made for any formation, unit or body of troops or for any area, garrison or place or for any ship, train or aircraft."

The standing order which the respondent was alleged to have contravened or failed to comply with was tendered in evidence before the trial tribunal as exhibit 4. The said exhibit reads:

"Standing Order No. NHQ/015/93/Ph/Vol.I/44 "VISIT TO FOREIGN MISSION Reference

A. DHQ/401/13/ADM/dated 03 July, 95

1. Ref. I observed that military officer usually pay unauthorized visit to Foreign Missions. This is unethical and embarrassing.
2. I am therefore directed to state that henceforth contact with Embassies/High Commission by NN Personnel are to be made through NHQ for necessary action.
3. Please disseminate (emphasis added)

Signed

I. Ogohi

CDRE

(For Chief of Naval Staff)"

When exhibit 4 above is related to Section 57(1) of Decree No. 105 of 1993 as amended which is reproduced above, it is seen that the naval authorities by Exhibit 4 were trying to prevent military personnel from paying unauthorized visits to Foreign Missions. It was to criminalize such visits or practice that the standing order which was tendered in evidence as exhibit 4 was made. At the respondent's trial, no person who had seen the respondent pay a visit to any foreign mission was called as a witness. The only evidence available was the respondent's statement in the course of investigation which the appellants' relied upon as confessional. The said statement Exhibit 1 reads:

"Sometime in August, 1996 about the 22nd of August, I travelled with my son Tobi to London on holidays to Euro-Disney. My older son had earlier travelled to USA to join us in London, so we can proceed to France from the Euro Disney.

I made arrangement to travel through my husband who was able to develop a passport for me in his name. He was able to secure a visa for us, through his business partners in VI. We left for Paris late August 96 through a travel package for a one week holiday by British Airways. We arrived Paris and were taken to hotel booked by the Tours in Paris within the Euro Disney.

The children and myself stayed for one week at the Chinoy's Hotel and were visiting Euro Disney everyday till we came back through London to Nigeria.

I travelled under the name of Mrs. Arinola Adunni Motaku which is a family name of Gbenga.

I did travel with the children on holidays and will provide to the NN the copies of the ticket and package of the tours."

In convicting the respondent on the basis of the above statement, the trial tribunal observed:

"8. The prosecution was to prove the following:

- a. That the accused was Staff Officer II (Accts).
- b. That the accused made contact with the Embassy.
- c. That it is an offence to do so.

- d. That she knew or reasonably expected to know that it is an offence to have contact with the foreign embassies.
- e. That the accused made contact without NHQ approval.

9. It was established that the accused received a letter from the French Embassy which she tore. She later received Exhibit 6, another letter from the French Embassy which she turned into the DNI during interrogations. Exhibit 6 is equivocal evidence of response to an earlier supposed Request. This incontrovertibly establishes contact between the Embassy and the accused.

FINDINGS

10. The accused is thus found guilty on count three."

The court below on the other hand was of the view that the evidence available against the respondent did not establish her guilt. It said:

"The crucial evidence to sustain Appellant's conviction under the 3rd head of charge are Ex. 2, the petition against the Appellant, Ex.6 a letter purportedly addressed to the Appellant from the French Embassy and authored by one GerardBvivieneu, the Minister Counsellor. These exhibits cannot by themselves establish any fact beyond their being made. If the intention of the prosecution in tendering the two through PW1 and PW2 was to establish the truth contained in the two documents, they have failed and woefully too. See Awuse Odili (2005) 1.6 NWLR [Pt.952] 416 at 509 and UBN Plc. v. Ishola (2001) 15 NWLR [Pt. 735] 47. In effect, the two documents cannot establish the fact of contact with the French Embassy by the Appellant which Ex.4, the standing order, prohibited the Appellant to make.

Respondent's argument also it was that Ex.1, the Appellant's confessional statement could sustain the conviction. What was it that appellant confessed to in Ex.1? Appellant stated in Ex.1 that she travelled to Paris with her children and husband; that it was her husband who acquired her entry visa through his business partners and that she travelled under her husband's family name. Mrs. Arinola Adunni Motaku. It is no wonder that even the Court Martial called this much statement as being 'equivocal'. This statement does not supply the ingredients under the head of charge Appellant was convicted. It does not show that the Appellant in person had had a 'contact' with a foreign embassy, a conduct Ex.4 the standing order had prohibited."

The important question to answer is whether the court below was wrong to have come to the conclusion that the guilt of the respondent was not established. It would seem that the trial tribunal accepted the respondent's statement Exhibit 1 as an admission of the requisite ingredients of the offence brought against her. The court below thought that the respondent did not make any admission in the said statement.

Appellants' counsel in his brief has argued that an accused may be convicted on her confession alone provided the said confession is voluntary. Okeke v. State [2003] 15 NWLR (Part 842) 112. It was further argued that the contents of exhibit 1 showed that the respondent had made a contact with a Foreign Mission, an act which exhibit 4 prohibited. He relies on Kitchen v. Douglas 85 LJ KB 462 at 463. Counsel finally argued that in order to amount to an offence under Section 57(1) of Decree No. 10 of 1993, contact with a Foreign Mission does not have to be personal. Smith v. Hughes [1960] 1 All ER 830 at 832. Counsel argued that by her statement in Exhibit 1, the respondent had admitted that she had a contact with a foreign mission even if it was not a personal one. He relied on Miller v. Mimoki of Pension [1947] 2 All ER 3762; Akaleze v. State [1993] 2 NWLR (Part 273)1 at 13 and Clara v. State [1996] 6 NWLR 455 at 465.

Respondent's counsel submitted that the respondent in her statement had not admitted the essential ingredients of the offence brought against her. He relied on Daniels v. State [1991] 8 NWLR (Pt.212) 715 at 730 and Akpan v. State [1992] 6 NWLR (Pt.248) 439 at 467.

I stated earlier in this judgment that the clear intendment of Exhibit 4 was to prohibit personal visits by military personnel to foreign missions. It is such visits that Exhibit 4 expressed to be "unethical and embarrassing." The respondent did

not admit in Exhibit 1 that she made personal visits to any foreign mission. She said:

"I made arrangement to travel through my husband who was able to develop a passport for me in his name. He was able to secure a visa for us through his business partners in VI."

The respondent did not even admit that her husband visited any foreign mission much less herself. In order to amount to a confession, the statement of an accused must be direct, positive and not equivocal. See *Raimi Afolabi v. Commissioner of Police* [1961] AH NLR 654. Nor can a statement amounting to only an implication in a crime be regarded as a confession. See *R v. Phillip Jonah & Ors.* [1934] 2 W.A.C.A. 120 and *R. v. Akpan Udo Essien* [1939] 5 W.A.C.A.

In the instant case, an essential element in the case against the respondent was that she personally visited foreign missions. The statement by her that her husband obtained the visas with which she travelled could not be relied upon by the appellants as evidence that she had herself visited any foreign mission: See *Edet Obosi v. State* [1965] N.M.L.R. 119.

The court below was therefore correct in its view that the offence against the respondent was not established.

With respect to appellants' issue No 2, it is my view that as the Court of Appeal did not decide against the appellants on the admissibility of Exhibit 4, it could not be an issue for decision in this appeal as to whether or not the said exhibit was properly rejected in evidence. At page 451 of the record of proceedings, the court below said:

"It is not the law that the Exhibits admitted which Appellant is now complaining of are inadmissible in any and all circumstances. No. The exhibits are relevant and therefore admissible, but needed to satisfy certain condition, certification, before they are admitted. In this situation unlike where the exhibits are completely inadmissible, the Court of Appeal is not in the position to entertain Appellant's complaints by ensuring that the exhibits are not acted upon. Appellant is right however to question the value which the lower Court attached to the exhibits having been tendered and admitted through witnesses who could not have been helpful under cross examination. See *Owonin v. Omotosho* (1961) 1 All NLR 304 at 308; *Chukwurah Ekunne v. Mathias Ekwunno & Ors.* 14 WACA 59 and *Yassin v. Barclays Bank DCO* (1968) 1 A11 NLR 171 at 179"

What the court below concluded in the above passage was not that Exhibits 1, 2, 4,5,6,7 and 8 were inadmissible but that they could not be relied upon to sustain the conclusion which the trial tribunal arrived at. That being the position, appellants' issue 2 does not arise in this appeal.

In the final conclusion, I would dismiss this appeal as unmeritorious.

Judgment delivered by
Aloysius Iyorgyer Katsina-Alu. J.S.C.

I have had the advantage of reading in draft the judgment delivered by my learned brother Oguntade, J.S.C. in this appeal. I agree with it and, for the reasons given by him I also dismiss the appeal as lacking in merit.

Judgment delivered by
Mahmud Mohammed. J.S.C.

This appeal is from the judgment of the Court of Appeal (Lagos Division) delivered on 6th December, 2006 allowing the Respondent's appeal against her conviction and sentence by the General Court Martial for the offence of Disobedience to correct standing orders contrary to action 57(1) of the Armed Forces Decree No. 105 of 1993 as amended. In that

judgment, the Court of Appeal set aside the conviction and sentence of the Respondent and discharged and acquitted her.

The two issues raised from the grounds of appeal filed by the Appellants in their brief of argument are '

- "1. Was the Court of Appeal right to find that there was no credible evidence upon which the conviction was based.
2. Whether the Court below was right in law in holding that exhibit 4, tendered by the Appellants, is a public document that needs to be certified."

It was submitted for the Appellants that the Court below was in error in setting aside the conviction of the Respondent which was fully supported by evidence, particularly the confessional statement of the Respondent. Although indeed there is evidence that the Respondent travelled to France during her vacation, there is no evidence whatsoever, it she had made any personal contact with the French Embassy before embarking on the journey. There is therefore no evidence that the Respondent in her position as a Naval Officer had violated any provisions of the Standing Order Exhibit 4, to warrant her conviction and sentence by the General Court Martial.

Although the learned counsel to the Appellant in the Appellants' brief of argument has described the statement of the Respondent given in the course of the investigation of the offences against her as 'confessional statement', was that statement really a confessional statement under the law' Section 27(1) and (2) can answer the question. The Section reads '

"27(1) Confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime.

- (2) Confessions, if voluntary are deemed to be relevant facts as against the persons who make them only."

The law is well settled that the guilt of an accused person may be proved by a confessional statement, circumstantial evidence or direct evidence from eye witnesses to the commission of the offence. See *Emeka v. State* (2001) 14 N.W.L.R. (PT.734) 666 at 683 and *Lori & Anor. v. State* (1980) 8-11 S.C. 81. What calls for determination in this appeal under the first issue for determination is whether the statement of the Respondent relied upon by the trial General Court Martial in convicting her on the third count was really an admission by her stating or suggesting even by inference that she committed the offence with which she was charged. The answer is clearly in the negative as rightly analysed and found by the Court below in its judgment.

With the foregoing comments and the full reasons given by my learned brother Oguntade, J.S.C. in his leading judgment just delivered dismissing this appeal, I also dismiss the appeal.

Judgment delivered by
Francis Fedode Tabai. J.S.C.

The respondent was, at the time of her trial at a General Court-Martial in 1997, a Lieutenant Commander in the Nigerian Navy. She was tried in a five count charge. At the end of the trial, she was discharged and acquitted in counts 1, 2, 4 and 5 but was found guilty, and convicted in count 3. The decision of the General Court Martial was on the 12/7/1997.

It was alleged in the said count 3 that, between August 1996 and March 1997 she, as Staff Officer II (Accounts) at Fleet Maintenance Corps, 23 Marina Lagos made contact with Embassy/High Commission without going through Naval Headquarters Lagos contrary to the provision of NHQ 015/85/93/PL/VOL.1/44 which were known to her or she was reasonably expected to know.

Dissatisfied, she appealed to the court below against her conviction and sentence in the said third count. By its judgment

on the 6th of December 2005, the appeal was allowed and a verdict of discharge and acquittal also entered for her in the 3rd count.

Aggrieved by the said decision the Appellants have come on appeal to this Court. The issues and arguments of the parties are comprehensively set out in the lead judgment of my learned brother Oguntade, J.S.C. and I need not repeat them.

This appeal turns mainly on the interpretation of section 57 of the Armed Forces Decree No. 105 of 1993 and Exhibit 4, the standing Order No. NHQ/015/93/PL/Vol.I/44 made pursuant thereto. Section 57(1) of the Armed Forces Decree No. 105 of 1993 as amended provides as follows:

"A person subject to service law under this Act who contravenes or fails to comply with a provision of an Order to which this section applies, being a provision known to him or which he might reasonably be expected to know, is guilty of an offence under this section and liable on conviction by a court-martial, to imprisonment for a term not exceeding two years or any less punishment provided by this Act."

(2) "This section applies to standing orders or other routine orders of continuing nature made for any formation, unit or body of troops or for any area, garrison or place or for any ship train or aircraft."

And the standing order (Exhibit 4) which she was alleged to have contravened states thus:

"STANDING ORDER NO. NHQ/015/93/PL/VOL.1/44 VISIT TO FOREIGN MISSION

Reference

A. DHQ/401/13/ADM/dated 03 July '95

1. Ref. A observed that Military Officers usually pay unauthorised visit to foreign mission. This is unethical and embarrassing.
2. I am therefore directed to state that henceforth contact with Embassies/High Commission by N.N. Personnel are to be made through NHQ for necessary action.
3. Please disseminate.

Signed

I. Ogohi

Cdre

(For Chief of the Naval Staff) \"

Learned counsel for the Appellants Mr. Chiesonu I. Okpoko referred to Exhibit 1 the statement of the Respondent and the provisions of the Standing Order No. NHQ/015/93/PL/Vol.I/44 (Exhibit 4) and submitted that the Statement constitutes the Respondent's admission of contact with foreign Embassies/High Commissions by Nigerian Navy personnel within the provisions of Exhibit 4. He relied on the English cases of Kitchen v. Douglas 85 LJ KB P.462, Smith v. Hughes (1960) 1 All E.R. P.830 at p.832. He also relied on Chia v. State (1996) 6 NWLR (Part 455) at 465. It was his submission therefore that there was evidence strong enough to sustain the conviction. Learned counsel for the Respondent, Akin Kejawa, submitted, amongst others, that criminal statutes are to be strictly interpreted and that where a criminal statute is capable of two interpretations, the one favourable to the accused is to be preferred. It was his argument that to constitute a breach of the Standing Order, Exhibit 4, there must be personal contact with the foreign Embassy or High Commission.

The Court below reasoned that the crucial evidence, Exhibits 1, 2 and Exhibit 6 did not establish the accused person's contact with the French Embassy prohibited by the Standing Order, Exhibit 4, and that to warrant her conviction there

must be proof of her personal contact with the French Embassy. I am persuaded by this reasoning of the Court below. The Standing Order, Exhibit '4' is headed "visit to foreign mission". And it is "visits to foreign missions" that are stated in (1) to be unethical and embarrassing. In (2) however it is contact with Embassies/High Commission by NN Personnel that is prohibited. It is contact simpliciter. While the heading and paragraph (1) speak of visit and personal contact with foreign Embassies and Missions, paragraphs (2) simply speak of contact.

It is settled law that Penal Statutes are to be construed strictly to the benefit of the accused person and that where there is a reasonable construction that avoids the penalty in any particular case, the Court must adopt that construction. And if there are two possible constructions the court must adopt the more lenient one. See *Ananaba Ohuka & Ors v. The State* (1988) 1 NWLR (Part 72) 539 at 556; *Tucks & Sons v. Priester* (1887) 19 B.B.D. 629. In *Attorney-General of Bendel State v. Wilson* (1985) 1 N.W.L.R. (Part 4) 572 at 589 this Court restated the principle thus:

"If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one."

See also *Attorney-General Cross River State and Anor v. Esin* (1991) 6 NWLR (Part 197) 365.

Similarly in the interpretation of statutes which restrict the citizen's rights, any doubt, gap duplicity or ambiguity as to the meaning of words used in the enactment should be resolved in favour of the person who would be liable to the penalty or a deprivation of his right. See *Nwosu v Imo State Environmental Sanitation Authority & Ors* (1990) 2 NWLR (Part 135) 688 at 723; *London And Country Commenercial Investment Properties Ltd v. Attorney-General* (1953) 1 ALL E.R. 436 at 441 - 442; *Peenok Investment Ltd v. Hotel Presidential Ltd* (1982) 12 SC 1 at 25.

In the instant case there is no doubt that section 57 of the Armed Forces Decree No. 105 of 1993 with the Standing Order (Exh.4) made thereunder constitutes a Penal Enactment. It is also an enactment which restricts rights otherwise open to the Accused/Respondent. In the light of authorities which I have examined above, the court must, of necessity adopt a strict interpretation beneficial to the Accused/Respondent. The head note of the Standing Order (Exhibit 4) which reads. "Visit to foreign mission" read together with paragraph (1) which speaks of "unauthorised visits to foreign missions" show clearly that what is sought to be prohibited is the officer's personal visit or contact with foreign embassies/missions and the provision must be strictly so construed. It is my view therefore that to sustain the Accused/Respondent's conviction under the third head of charge, the prosecution had a duty to strictly establish her personal visit or contact with the French Embassy. Mere proof of her contact with the French Embassy either through her husband or a third party would not suffice.

Even if the Standing Order admits of two possible interpretations and thus leaves a doubt as to its correct interpretation the court has to adopt a construction with a leaning in favour of the Accused/Respondent.

In view of the foregoing considerations, I have no reason to fault the reasoning and conclusion of the court below. And for the foregoing and the fuller reasons contained in the leading judgment of my learned brother Oguntade, J.S.C. I also dismiss the appeal for lack of merit.

Judgment delivered by
Christopher Mitchel Chukwuma-Eneh. J.S.C.

I have had the privilege of reading before now the judgment prepared by my learned brother Oguntade, J.S.C. and I agree with him that there is no merit whatsoever in this appeal. I adopt his reasoning and conclusion as mine. I also dismiss the appeal and abide by the orders contained in the lead judgment.