

IN THE FEDERAL COURT OF APPEAL
BENIN JUDICIAL DIVISION
26TH APRIL, 1979. FCA/B/65/78

CORAM:- O. EBOH, S. J. ETE, A. G. O. AGBAJE, JJCA.

I. A. UJENE	APPELLANT
AND	
THE ATTORNEY GENERAL BENDEL	
STATE OF NIGERIA	RESPONDENT

CONTEMPT OF COURT - Abuse of process - Where the appellant's conduct did not come within any of the categories of contempt - But would at worst amount to an abuse of the process of court - The course open to the court was to strike out the case - And not to commit him for contempt of court

CONTEMPT OF COURT - Specific nature of Contempt - In face of the court - Where the appellant was not informed of the specific nature of the contempt - For which he was ultimately punished - His constitutional right had been infringed.

CRIMINALPROCEDURE - Sentence - Where the court did not record a conviction - The Sentence will not be allowed to stand.

FACTS

The appellant herein as plaintiff had sued two defendants for defamation before the Sapele High Court. The judge seised of the case could not proceed with it on grounds of ill-health. As a result of which the case was listed before another judge of the same court. The appellant for personal reasons declined to go on with the case before the said judge. The judge gave him a piece of paper to write his reasons but he refused to do so. The judge made the observation that the plaintiff is only interested in involving the defendants in unnecessary journeys to

Sapele and that he really has no intention of going on with the case. The appellant was then asked to go into the dock to show cause why he should not be punished for contempt of court. He had nothing to say and was sentenced to 6 months imprisonment with hard labour.

Aggrieved, he appealed to the Court of Appeal, Benin Division. He attacked the contempt of court proceedings and the sentence of imprisonment passed on a number of grounds of appeal.

ISSUE FOR DETERMINATION

Whether the learned trial judge was right to have sentenced the appellant to a term of imprisonment when the appellant was not called to defend himself or found guilty of any offence.

HELD (Unanimously allowing the appeal per judgment of the court delivered by **AGBAJE JCA**)

Criminal procedure - Sentence

1. It is apparent that the learned trial judge did not record a conviction against the appellant before sentencing him to punishment of 6 months' imprisonment with hard labour. That a sentence of a court in such circumstances is bad and will not be allowed to stand is clear from the following passage in the judgment of the Supreme Court in Samson Okoruwa & Anor. Vs. The State (1975) 5 S.C. 23 at 27:

"We are also of the opinion that the judgment in the present case does not record a formal conviction of the appellant and his co-accused, but only the punishment on one of the two counts with which they were both charged. On this ground also, we think that the judgment cannot stand." (p. 659 A)

Contempt of court - Abuse of process

2. We would in our consideration of this ground of appeal recall the three different sorts of contempt as per Lord Hardwicke LC in The St. James Evening Post Case (1942) 2 Atk. 469 at 470, 471.

"There are three different sorts of contempt. One kind of contempt is, scandalizing the court itself. There may be likewise a contempt of this court, in abusing parties who are concerned in cause here. There

may be also a contempt of this court, in prejudicing mankind against persons before the cause is heard."

What the appellant did, did not in our view come within any of the categories of contempt which we have listed above. At worst the conduct of the appellant would amount to an abuse of the process of court. The latter is implicit in the following observation of the learned trial Judge himself: "The plaintiff is only interested in involving the defendants in unnecessary journeys to Sapele and that he really has no intention of going on with the case. That is not the way to obtain justice in a court of law." If that were so, the course open to the court was to strike out the case by virtue of its inherent jurisdiction as an abuse of the process of court, but not to commit the appellant for contempt of court. (p. 659 F)

Specific nature of contempt

3. It is clear to us that at no time, before the learned trial judge sentenced the appellant to 6 months' imprisonment with hard labour did he inform him of the specific nature of the contempt for which he was ultimately punished. So we are satisfied that the appellant's constitutional right to be informed in detail of the nature of the offence alleged against him had been infringed. It is true that the criminal proceedings in the instant case arose from what was alleged to be contempt in face of court. The case of Maharaji V.A. Attorney-General for Trinidad & Tobago (1977) 1 All E.R. 471 makes it clear that even in such a situation it is the duty of a court to make it plain to the alleged contemnor, the specific nature of the alleged contempt. (p. 660 E)

REPRESENTATION

Mr. J. Y. Odebala for the Appellant

Mr. R. O. Omuoreh for the Respondent

CASES REFERRED TO

Okoruwa v. The State (1975) 5 S.C. 23 at 27

Maharaji v. Attorney-General for Trinidad & Tobago (1977) 1 ALL E.R. 471

JUDGMENT DELIVERED BY AGBAJE JCA

By his notice of appeal, the appellant Prince I. A.. Ujene, appeals from the sentence of 6 months imprisonment with hard labour passed on him by R.A.I. Ogbobine J., on 18th October, 1977 at the Sapele High Court for contempt of court. The contempt of court proceedings arose when a Sapele High Court presided over by Ogbobine J., was about to embark on the trial of a civil case to wit Suit No. S/7/77 between I. A.. Ujene (Appellant in this case) Plaintiff and (1) Capt. H. S.. Goraya and (2) Patrick Okudika, Defendants on 18th October, 1977. In the civil case Mr. Ujene the appellant was claiming from the defendants in the case N100,000 as damages for defamation. The following passages in the record of proceedings of the court for the day in question will tell us what gave rise to the contempt of court proceedings and how the court dealt with the matter which culminated in the sentence of 6 months 'imprisonment passed on the appellant against which he has now appealed to this court:

"ODEBALA: My application is to withdraw from the case as the Plaintiff says that he does not want the case to be heard in this court. I am prepared to go on and since he does not want this court to hear it I apply to withdraw from it. He gave me no reason for saying that this Court should not hear the matter.

PLAINTIFF: The reasons are personal to me

COURT: You should write out the personal reasons why you do not want the court to hear the case It is not enough for you to come to court to say that you do not want a court to hear your case. You should be able to give your reasons to the court to enable the court to examine its conscience and decide whether or not on the explanation, given, it would be proper for the court to hear the case.

PLAINTIFF: I am not prepared to give any reason.

COURT Do you want Mr. Justice Akpovi in particular to take it, or any other Judge who may be transferred to Sapele in future?

PLAINTIFF: It could be any Judge.

COURT TO ODEBALA: You are discharged from this case.

COURT TO PLAINTIFF: Have you anything to say in reply to

the statements made by the two defence counsel?

PLAINTIFF: *My case will not go on in this court.*

COURT: *This case was originally in Court No. 2 before Mr. Justice Akpovi who adjourned it to 20/9/77 for mention. Before that date, Mr. Justice Akpovi was involved in an accident and could not attend to duty. In that circumstance the case was listed before me for mentioning.*

When the parties and their counsel appeared in this Court on 20/9/77 they expressed the desire that as it was not known how soon Mr. Justice Akpovi would resume work I should list the case for hearing. Both counsel prevailed on me to hear the case, especially as the 1st Defendant had to be brought from the United States of America where he was captaining a sea vessel for the Nigerian National Shipping Lines. He was to stay in Nigeria until the case was heard today. Plaintiff agreed with the suggestions and conclusions arrived at on that day.

When this case was mentioned today, Plaintiff stated that he would not go on with the case in this court for personal reasons. I gave him a piece of paper on which to write his reasons and promised him that he would no be held for contempt and that he should be free to express his opinion to enable me decide, as a matter of conscience whether or not I would proceed with the case or transfer it, but he refused to say anything.

Every Court has an inherent duty to maintain its prestige and to see that it is not ridiculed. It is ridiculous for a party to a case to come to court to say that he does not want the particular court to hear his case without giving any reasons why he would not want the court to transfer the case to another court.

If this position is allowed sooner or later, every litigant would come into a court and order the Judge to transfer his case and thus the reputation which is attached to the court will cease to be of any value.

I believe the statement made from the Bar by Mr. C.N. Okolo Counsel for the 2nd defendant that the plaintiff is only interested in involving the defendants on unnecessary journeys to Sapele and that he really has no intention of going on with the case. That is not the way to

obtain justice in a court of law.

The plaintiff has committed a fragrant contempt of this court, and I shall certainly deal with him under section 6 of the Criminal Code, Laws of Western Nigeria 1958, still applicable in Bendel State for the
B *conduct.*

In the circumstance, he is to show cause why he should not be punished for the contempt.

COURT: *Plaintiff goes into the dock to show cause why he should*
C *not be punished for the contempt of this court.*

PLAINTIFF *Nothing to say.*

COURT: *The Plaintiff is sentenced to 6 months' imprisonment with Hard*
labour."

D Counsel for the appellant, Mr. Y.L. Odebala, has attacked the contempt of court proceedings and the sentence passed on the appellant on a number of grounds of appeal. The main grounds of appeal are as follows, the others being merely variants of these grounds of appeal:

E *"4. The Learned trial Judge erred in law in sentencing the Appellant to a term of imprisonment when the Appellant had not been convicted and or found guilty of any offence.*

5. The leaned trial Judge erred in law in sentencing the Appellant to a term of imprisonment when the Judge had previously found that
F *the aim of the Appellant in wanting the case to be heard by another Judge was to involve the Defendant in unnecessary journeys to Sapele.*

7. The learned trial Judge erred in law in sentencing or convicting the appellant when the learned Judge did not first in clear terms call
G *on the appellant to the dock and explain to the appellant to show cause why he should not be punished for contempt i.e. he did not call on the appellant to defend himself.*

We are of the clear view that the complaint in each of the above grounds of appeal is justified in law and infact. So we shall now proceed
H to consider them one by one.

Counsel for the appellant in the first of the grounds of appeal complained that the learned trial Judge erred in law in sentencing the appellant without first convicting or finding him guilty of any offence.

From the relevant portion of the record or proceedings which we have quoted above it is apparent that the learned trial judge did not record a conviction against the appellant before sentencing him to punishment of 6 months' imprisonment with hard labour. That a sentence of a court in such circumstances is bad and will not be allowed to stand is clear from the following passage in the judgment of the Supreme Court in Samson Okoruwa & Anor. Vs. The State (1975) 5 S.C. 23 at 27:

"We are also of the opinion that the judgment in the present case does not record a formal conviction of the appellant and his co-accused, but only the punishment on one of the two counts with which they were both charged. On this ground also, we think that the judgment cannot stand."

What counsel for the appellant was saying in ground 5 of the appellant's ground of appeal is this: that the conduct of the appellant could not and did not amount to contempt of court; and that this is all the more so when the learned trial judge himself held as follows:-

"I believe the statement from the Bar by Mr. C.N. Okolo Counsel for the 2nd defendant that the plaintiff is only interested in involving the defendant on unnecessary journeys to Sapele and that he really has no intention if going on with the case. That is not the way to obtain justice in a court of law."

We would in our consideration of this ground of appeal recall the three different sorts of contempt as per Lord Hardwicke LC in The St. James Evening Post Case (1942) 2 Atk. 469 at 470, 471.

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What the appellant did, did not in our view come within any of the categories of contempt which we have listed above. At worst the conduct of the appellant would amount to an abuse of the process of court. The latter is implicit in the following observation of the

learned trial Judge himself: "The plaintiff is only interested in involving the defendants in unnecessary journeys to Sapele and that he really has no intention of going on with the case. That is not the way to obtain justice in a court of law." If that were so, the course open to the court was to strike out the case by virtue of its inherent jurisdiction as an abuse of the process of court, but not to commit the appellant for contempt of court.

Lastly, in support of ground 7 of the appellant's grounds of appeal Mr. Odebala his counsel submitted that it was the duty of the learned trial judge to make it plain to the appellant the specific nature of the words or conduct which constituted the alleged contempt and that this the learned trial judge failed to do. For this submission of his, counsel placed reliance on Section 22 (5) (a) of the Constitution of the Federal Republic of Nigeria which says:

"(5) Every person who is charged with a criminal offence shall be entitled -

(a) to be informed promptly, in language that he understands and in detail, of the nature of the offence;"

It is clear to us that at no time, before the learned trial judge sentenced the appellant to 6 months' imprisonment with hard labour did he inform him of the specific nature of the contempt for which he was ultimately punished. So we are satisfied that the appellant's constitutional right to be informed in detail of the nature of the offence alleged against him had been infringed. It is true that the criminal proceedings in the instant case arose from what was alleged to be contempt in face of court. The case of Maharaji V. Attorney-General for Trinidad & Tobago (1977) 1 All E.R. 471 makes it clear that even in such a situation it is the duty of a court to make it plain to the alleged contemnor, the specific nature of the alleged contempt.

In the result, the appellant's appeal is allowed. The sentence of 6 months' imprisonment passed on him is hereby quashed.