

FEDERAL COURT OF APPEAL, ENUGU
5TH AUGUST, 1980. FCA/E/161/79
CORAM: J. A. PHIL-EBOSIE, A. ASEME, A. BELGORE, JJCA

FOLA AKINRINSOLA	APPELLANT
V.		
THE ATTORNEY-GENERAL OF ANAMBRA STATE OF NIGERIA	RESPONDENT

CRIMINAL LAW - Jurisdiction of state courts - In criminal matters - Is territorial - Present case does not fall within conditions that grant jurisdiction to Anambra State High Court.

CRIMINAL LAW - Contempt of court - Publication likely to prejudice fair trial - Persons who may be liable for contempt - Does not include the appellant.

CRIMINAL LAW - Prejudicial Publication - Of pending Judicial proceeding - Article relied upon in convicting the appellant - Is not contemptuous.

CRIMINAL LAW - Prejudicial Publication - Where the trial is by a Judge alone - Such publication will rarely constitute a contempt - In view of strong judicial opinions on the issue.

FACTS

The appellant who was residing at Lagos, wrote an article which he forwarded to the Sunday Punch Newspaper. The press published the article in their issue of Sunday Punch May 13, 1979, without any evidence of appellant inducing, aiding or abetting the press. The learned Chief Judge of Anambra State considered the article to be contemptuous of his court. Appellant was therefore, summarily tried and convicted.

He appealed to the Court of Appeal against his conviction and his counsel canvassed two points for determination.

ISSUES FOR DETERMINATION

(1) Whether the learned Chief Judge of Anambra State had the jurisdiction to try the appellant.

(2) Whether the article in question is contemptuous.

HELD (Unanimously allowing the appeal per judgment of **PHIL-EBOSIE JCA**)

Jurisdiction of state courts - In criminal matters

1. Section 12A of the Criminal Code which was enacted as Amendment to the Code in 1955 (See L.N. 47 of 1955) made the criminal jurisdiction of State Courts territorial. This arose from the division of powers under the Federal Constitution. By that section, a person can only be tried for an offence against a State law under the following conditions:-

(i) If the person was in the state at the time of his doing the act or making the omission that constituted the offence;

(ii) Where the act or omission which is the initial element of the offence which is of a continuing nature occurred partly in one place and partly in another (See *Okoro vs Attorney-General, Western Nigeria* (1966) NMLR. 13) where the Supreme Court held that the High Court of Western Nigeria had jurisdiction to convict the appellant on a charge of false pretences, although the appellant lived in Port Harcourt and obtained property in Eastern Nigeria by means of false pretences, made in a letter posted in Eastern Nigeria to an address in Western Nigeria where it was received;

(iii) Where the offence is the composite one of doing the act or making the omission elsewhere and the offender afterwards coming into the State. There is yet no Nigerian case on this last arm of Section 12A but again the Australian case of P. & O. Steam Navigation Company vs Kingston (1903) A.C. 471 affords an example.

We do not think that the present case fails within any of the above provisions so as to enable the learned Chief Judge to try the appellant. (p. 1520 A)

Publication likely to prejudice fair trial

2. It is trite law that where a publication is made which is intended or

likely to prejudice a fair trial or conduct of proceeding, a contempt may be committed by any person responsible for the publication of the matter which complaint is made. Thus it is said the following persons may be held liable for contempt; Editors, Newspaper Proprietors, Publishers, Printers, Distributors and in certain circumstances Reporters. (See para. 24 of Hallsbury's Laws of England 4th Edition vol. 9 at page 20). That being the law, we think that the wrong person was proceeded against by the learned Chief Judge and we accordingly agree with the submissions of the learned S.A.N. The position however is different where the writer of the article wrote and published his article himself in the State as in the case of Obiekwe Aniweta vs the State decided in this court on 31st May, 1978 in Suit No. FCA/E/47/78. (p. 1521 D)

Prejudicial Publication - Of pending Judicial proceeding

3. The other point which the learned Counsel for the appellant argued was that the article itself was in no way contemptuous. We think that this ground is indisputable after reading the article itself. Section (d) of the Criminal Code as earlier set out expressly enacts the nature of the publication that amount to contempt of court. First there must be a judicial proceeding pending, next offender makes use of any speech or writing, misrepresenting such proceeding or capable of prejudicing any person in favour or against any party to such proceeding or calculated to lower the authority of any person before whom such proceeding is being had or taken. It is undoubtedly clear from the provisions of that subsection that the speech or writing must be referable to the pending proceeding and was intended or likely to prejudice any person to the proceeding or conduct to the proceedings or prejudice the issues in the proceedings. With respect to the learned Chief Judge, we do not find any passage in the appellant's article with any of these effects in relation to the case before him. (p. 1521 G)

Prejudicial Publication - Where the trial is by a Judge alone

4. This apart, Judicial opinions are that in a case of a trial by a judge alone as in this case it is only rare that a publication will be held to constitute a

contempt under this head as it is accepted that Judges are capable of guarding against allowing any prejudicial matter to influence them in deciding a case unless there is a campaign of pressure (which is not the case here) that is so great that even a Judge could not be safely assumed to be unaffected (see para. 16 Hallsbury's Laws of England 4th Edition vol. 9. page 14). In the final analysis we find that the article is not contemptuous (p. 1522 D)

C REPRESENTATION

Chief Rotimi Williams SAN, for appellant
Amaefuna G. I. Principal State Counsel for respondent

D CASES REFERRED TO

P.& O. Steam Navigation Company vs Kingston (1903) A.C. 47
Macleod vs Attorney-General for New South Wales. (1891) 1 A.C. 455

E REASONS FOR THE DECISION BY PHIL-EBOSIE JCA

This appeal had been allowed on the 7th May, 1980 and we reserved our reasons for doing so. We now give our reasons.

The appellant who is the author of an article published in the issue of the Sunday Punch Newspaper of Sunday May 13, 1979, the contents of which the learned Chief Judge of Anambra State considered contemptuous of his Court, was summarily tried and convicted. Against that conviction the appellant appealed.

The points were canvassed in this appeal for our decision by the learned counsel for the appellant, Chief Rotimi Williams SAN. The first was that the learned Chief Judge of Anambra State who tried the appellant had no jurisdiction to try him. His argument was that although the appellant wrote and forwarded the article to the Press for Publication, he has not committed any offence within the territorial jurisdiction of Anambra State Court as all acts were done in Lagos outside the State. For this submission the learned SAN relied on Section 12A of the Criminal Code Cap. 30 of the Laws of Eastern Nigeria 1963 which provides

thus:-

"(1) Where by the provisions of any law of Eastern Nigeria the doing of any act or the making of any omission is constituted an offence, those provisions shall apply to every person who is in the Region at the time of his doing the act or making the omission.

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(2) With regard to any such offence which is of such a nature that it comprises several elements, if they all occurred in the region, would constitute an offence, and any of such acts or omissions or events occur in the Region although all or some of the other acts or omission or events which, if they occurred in the Region, would be elements of the offence occur elsewhere than in the Region then -

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(a) If the act or omission, which in the case of an offence committed wholly in the Region would be the initial element of the offence, occurs in the Region, the person who does that act or makes that omission is guilty of an offence of the same kind and is liable to the same punishment as if all the subsequent elements of the offence had occurred in the Region; and

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(b) If that act or omission occurs elsewhere than in the Region, and the person who does that act or makes that omission afterwards comes into the Region, he is by such coming into the Region guilty of an offence of the same kind and is liable to the same punishment, as if that act or omission had occurred in the Region and he had been in the Region when it occurred.

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But in any such case it is a defence to the charge to prove that the accused person did not intend that the act or omission should have effect in the Region. This subsection does not extend to a case in which the only material event that occurs in the Region is the death in the Region of a person whose death is caused by an act, done or omitted to be done, at a place not in the Region and at a time when he was not in the Region."

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(Region will now read State)

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Learned Counsel also relied on the Australian case of Macleod vs Attorney-General for New South Wales. (1891) 1 A.C. 455 where the privy Council held that the Australian High Court had no jurisdiction to try the

appellant for bigamy committed in the United States of America.

The learned State Counsel for respondent conceded this argument and we are of the opinion that he was right in doing so.

Section 12A of the Criminal Code which was enacted as Amendment to the Code in 1955 (See L.N. 47 of 1955) made the criminal jurisdiction of State Courts territorial. This arose from the division of powers under the Federal Constitution. By that section, a person can only be tried for an offence against a State law under the following conditions:-

(i) If the person was in the state at the time of his doing the act or making the omission that constituted the offence;

(ii) Where the act or omission which is the initial element of the offence which is of a continuing nature occurred partly in one place and partly in another (See Okoro vs Attorney-General, Western Nigeria (1966) NMLR. 13) where the Supreme Court held that the High Court of Western Nigeria had jurisdiction to convict the appellant on a charge of false pretences, although the appellant lived in Port Harcourt and obtained property in Eastern Nigeria by means of false pretences, made in a letter posted in Eastern Nigeria to an address in Western Nigeria where it was received;

(iii) Where the offence is the composite one of doing the act or making the omission elsewhere and the offender afterwards coming into the State. There is yet no Nigerian case on this last arm of Section 12A but again the Australian case of P. & O. Steam Navigation Company vs Kingston (1903) A.C. 471 affords an example.

We do not think that the present case fails within any of the above provisions so as to enable the learned Chief Judge to try the appellant. The acts or omissions that constitute an offence of contempt of court in Anambra State are clearly set out in section 133 of the Criminal Vol. 11 1963. The provisions in subsection (d) of that Section is the relevant section in the instant case. That section reads:

"Any person who:

(d) While a judicial proceeding is pending, makes use of any

speech or writing, misrepresenting such proceeding, or capable of prejudicing any person in favour of or against any party to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being had or taken; or is guilty of a simple offence and liable to imprisonment for three months.

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The question for our consideration therefore in view of subsection (d) of section 133 of the code is whether the appellant made use of any speech or writing in Anambra State in the manner as provided in the above section. It is agreed that the appellant did nothing more than to write the article which he sent to the Press for publication. The press within their discretion however published it but there is no evidence that the appellant either induced, aided or abetted the press to publish or to circulate the paper containing his article in the Anambra State.

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It is trite law that where a publication is made which is intended or likely to prejudice a fair trial or conduct of proceeding, a contempt may be committed by any person responsible for the publication of the matter which complaint is made. Thus it is said the following persons may be held liable for contempt; Editors, Newspaper Proprietors, Publishers, Printers, Distributors and in certain circumstances Reporters. (See para. 24 of Hallsbury's Laws of England 4th Edition vol. 9 at page 20). That being the law, we think that the wrong person was proceeded against by the learned Chief Judge and we accordingly agree with the submissions of the learned S.A.N. The position however is different where the writer of the article wrote and published his article himself in the State as in the case of Obiekwe Aniweta vs the State decided in this court on 31st May, 1978 in Suit No. FCA/E/47/78.

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The other point which the learned Counsel for the appellant argued was that the article itself was in no way contemptuous. We think that this ground is indisputable after reading the article itself. Section (d) of the Criminal Code as earlier set out expressly enacts the nature of the publication that amount to contempt of court. First there must be a judicial proceeding pending, next offender makes use of any speech or writing, misrepresenting such

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proceeding or capable of prejudicing any person in favour or against any party to such proceeding or calculated to lower the authority of any person before whom such proceeding is being had or taken. It is undoubtedly clear from the provisions of that subsection that the speech or writing must be referable to the pending proceeding and was intended or likely to prejudice any person to the proceeding or conduct to the proceedings or prejudice the issues in the proceedings.

With respect to the learned Chief Judge, we do not find any passage in the appellant's article with any of these effects in relation to the case before him. It is our view as learned appellant's counsel rightly pointed out that the article was no more than a comment or rather a suggestion on how the Federal Electoral Decree with particular reference to non-clearance of candidates for election for failure to pay tax. It was a general comment and in fact it seems to favour the plaintiff in the case before the learned Chief Judge, whose counsel caused the proceeding against the appellant. **This apart, Judicial opinions are that in a case of a trial by a judge alone as in this case it is only rare that a publication will be held to constitute a contempt under this head as it is accepted that Judges are capable of guarding against allowing any prejudicial matter to influence them in deciding a case unless there is a campaign of pressure (which is not the case here) that is so great that even a Judge could not be safely assumed to be unaffected (see para. 16 Hallsbury's Laws of England 4th Edition vol. 9. page 14).**

In the final analysis we find that the article is not contemptuous and the learned SAN's submissions were upheld. It was for all the above reasons we allowed the appeal.

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