

SUPREME COURT OF NIGERIA
FRIDAY 12TH JULY, 2013. SC. 361/2009
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-
ENEH, O. ARIWOOLA, C. B. OGUNBIYI,
K. B. AKA'AH, JJSC**

OLISAEMEKA IGBOKWE APPELLANT
V.
THE STATE RESPONDENT

EDITOR'S NOTE

The facts and record of proceedings of this appeal are the same with Appeal No. SC. 254/2007 - NNAKWE v. STATE reported in (2013) 7 KLR (pt. 333). Please refer to the appeal for the same ratio decidendi as applicable to the instant appeal.

REPRESENTATION

Matthew Ojua with Max Ogar, Dominic Onyiador, Sunny Tabi, Vincent Etta, Benard Onigah, Emmanuel Abang and Oka Okamgbe (Miss), for Appellant

B. J. Alomolafe with S. N. Biki, S. A. Oyekunle and D. A. Olowonuwa, for Respondent

LEAD JUDGMENT BY OGUNBIYI JSC

The facts of this appeal are on all fours with the sister case in Appeal No. SC. 254/2007. The record of proceedings is also the same as it proceeded from the same trial and resulting in the same ruling from whence the interlocutory appeal emerged. With the issues raised the same, the outcome of one judgment automatically binds the other.

On a community reading of Section 4(2)(b) of the Penal Code Act read along with Section 134(a)(b)(c) and (d) of the Criminal Procedure Code Act as well as Section 301 of the Constitution of the Federal Republic of Nigeria 1999, the Attorney General of the Federation is competent to issue a fiat for the prosecution of the charge inclusive of counts 3 and 4.

This is especially with the offences having, by operation of law, automatically become those that were committed within the FCT

upon the entry of the appellant into the Federal Capital Territory. As a consequence therefore, counts 1, 2, 3 and 4 are offences committed in the course of the same transaction.

In the result, and contrary to the contention held by the learned appellant's counsel, the Attorney General of the Federation has the competence in law and therefore did validly issue the fiat in respect of the offences contained in the charge thereof. On the totality of this appeal therefore, same is devoid of any merit and is hereby dismissed.

I make an order affirming the judgment of the lower court that the Federal Capital Territory High Court Abuja has jurisdiction to entertain counts 3 and 4 of the charge and it should proceed to conclude the case on the merit.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother OGUNBIYI, JSC, just delivered.

I agree with his reasoning and conclusion that the appeal is without merit and should consequently be dismissed.

My learned brother has dealt exhaustively with thereby leaving me with nothing useful to add.

I therefore dismissed the appeal for lack of merit.

Appeal dismissed.

CHUKWUMA-ENEH JSC

I read the lead judgment of my learned brother Ogunbiyi JSC in this matter with which I entirely agree. All the issues raised for determination have been rightly resolved against the Appellant. The appeal has no merit whatsoever and should be dismissed. I endorse all the consequential orders contained therein.

Appeal dismissed.

ARIWOOLA JSC

My learned brother, Ogunbiyi, JSC obliged me with the draft of the lead judgment just delivered. I agree entirely with the reasoning therein and the conclusion arrived thereat.

The facts of the appeal are indeed on all fours with the sister case in appeal No.254/2007 Marcel Nnakwe v. The State.

The FIAT that was issued by the Attorney General of the Federation in favour of Chief Afe Babalola SAN & Co. firm of Legal Practitioners to prosecute the appellant was validly and properly issued. The trial High Court of the Federal Capital Territory Abuja, therefore has jurisdiction to adjudicate on the matter.

In sum, the appeal for being devoid of any merit and substance is liable to dismissal. Accordingly, it is dismissed. I abide by the consequential order in the said lead judgment.

AKA'AH'S JSC

The appellant, Olisaemeka Igbokwe (a.k.a. Holy War) was the 6th accused in charge CR/28/2004. The lone issue he has raised for determination before this Court is:

Whether the Court of Appeal was right in the holding that the High Court of the Federal Capital Territory, Abuja has jurisdiction to entertain the offences alleged in counts 3 and 4 of the charge preferred against the appellant.

In the judgment read a while ago by my learned brother, Ogunbiyi JSC in appeal No. SC.254/2007: MARCEL NNAKWE v. THE STATE, the issue was resolved in the affirmative. Although the shooting and consequent death of Emeka Onuekutu took place in Agulu in Anambra State, the conspiracy to carry out the shooting is traceable to Abuja. This gave the Attorney-General of the Federation the power to issue the fiat for the prosecution of accused. I entirely agree with my learned brother, Ogunbiyi JSC in resolving the issue against the appellant. The appeal lacks merit and it is accordingly dismissed.