

Effect of the Absence of NBA Seal and Stamp of a Law Officer on Processes

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 19th Day of July, 2024

Before Their Lordships
Adamu Jauro
Jummai Hannatu Sankey
Obande Festus Ogbuinya
Habeeb Adewale Olumuyiwa Abiru
Mohammed Baba Idris
Justices, Supreme Court

SC.853/2018

BETWEEN

MOHAMMED DOGONYARO AUDU

APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA

RESPONDENT

(Lead judgement delivered by Honourable Jummai Hannatu Sankey, JSC)

Facts

The Appellant was arraigned along with one Yahaya Ayodeji (2nd accused) before the trial court on a 10-count Amended Charge bordering on offences of criminal conspiracy and deriving benefit from contracts emanating from their place of employment, contrary to Sections 12 and 26 of the Independent Corrupt Practices and Other Related Offences Commission Act, 2000. The charge was preferred by the Economic and Financial Crimes Commission.

The Appellant was the Procurement Officer of a World Bank Project known as Economic Reform and Governance Project (ERGP) domiciled in the office of the

Accountant-General of the Federation. While occupying the office, contracts relating to the project were awarded to two companies, namely AY-Quest Worldwide Ltd (where one Abdullahi Dogonyaro Mohammed, found to be the same person as the Appellant, as well as the 2nd Defendant had interests as directors and shareholders) and Q-Bridgers Worldwide Synergy Ltd, Where the said Abdullahi Dogonyaro Mohammed was a shareholder and director.

At the conclusion of trial, the court found the Appellant and the co-accused guilty of counts 1, 3, 4, 5 and 9 of the charge and sentenced them to 7 years imprisonment each; while on Counts 2, 6, 7, 8 and 10, the Appellant alone was convicted and sentenced to 7 years imprisonment. Both sentences to run concurrently. Dissatisfied with Judgement of the trial court, the Appellant appealed to the Court of Appeal. At the close of hearing, the Court of Appeal dismissed the appeal for lacking in merit and affirmed the conviction and sentence of the Appellant. Displeased, the Appellant appealed to the Supreme Court.

Issue for Determination

The Supreme Court considered the following issues for determination of the appeal:

- i. Whether the Lower Court was wrong to hold that the absence of counsel's stamp and seal on the amended 10 count charge preferred against the Appellant by the Prosecution did not rob the trial Court of jurisdiction to determine the charge.
- ii. Whether the lower Court was right in holding that the Prosecution proved the charge against the Appellant beyond reasonable doubt?

Arguments

Arguing the first issue, counsel for the Appellant submitted that the Amended 10-count charge charged was incurably defective and robbed the trial court of jurisdiction since the charge was not signed and sealed in accordance to the provisions of Rule 10(1), (2) and (3) of the Rules of Professional Conduct, 2007 ("RPC"). Counsel submitted further that C.O. Ugwu Esq. who signed the Amended Charge did not affix his seal, that the seal on the charge is that of another lawyer, Sylvanus Tahir and that it is not the intent of the drafters of Section 2(1) and 24 of the Legal Practitioners Act and Rule 10(1) and (2) of the RPC for a court process to be signed by one lawyer a seal affixed by another lawyer. Finally, under this issue, counsel argued that the court below misconceived the intent of

Section 3 of the Law Officers Act when it held that it was applicable to the EFCC. He argued that the provision does not cure defect in the charge and urged the court to resolve issue one in favour of the Appellant.

In response, counsel for the Respondent argued that the absence of counsel's seal on the amended charge rendered it irregular, but not void the charge; and that the irregularity of the process does not affect the jurisdiction of the court. In addition, counsel submitted that by Section 3 of the Law Officers Act, the Respondent's counsel does not need the stamp and seal of the NBA to identify and authenticate him as a barrister, advocate and solicitor of the Supreme Court. Counsel posited that by the definition of a Law Officer in the Administration of Criminal Justice Act, 2015 (ACJA), Law Officers also include officers of the EFCC and other such agencies.

On issue two, counsel for the Appellant argued that the court below was wrong to have affirmed the conviction of the Appellant based on the evidence on record. Counsel contended that the court below and the trial court both erred when they held that the Respondent had discharged the burden of proof placed on it by law. Specifically, that for count one, Exhibit G being the statement of a co-accused, cannot be used to establish the offence of conspiracy as the statement of a co-accused, except adopted, cannot be used against an accused. Counsel submitted further that (i) the Respondent failed to prove the identity of the Appellant and that the evidence of PW3, a Forensic Examiner with the Respondent, who examined the specimen signatures of the Appellant, did not establish the identity of the Appellant; (ii) the Court of Appeal was wrong to have refused to expunge Exhibits A-H which were erroneously admitted in evidence.

In response, counsel for the Respondent submitted that both the trial court and the Court of Appeal were right in holding that the Respondent proved the elements of the offences for which the Appellant stood trial. He therefore urged the court not to interfere with the concurrent findings of the lower courts; more so, that the Appellant did not show how the concurrent findings were perverse. Counsel also argued that the statement of the co-accused - Exhibit G, was not a confessional statement. To amount to a confession, it must be positive, direct and infer that the maker committed the offence. On the identity of the Appellant, counsel submitted that the exhibits on record, among others, contain the name, picture, signature and address of the Appellant and all point to the Appellant. Finally, counsel urged the court to hold that the Respondent proved the private interest of the Appellant in the contracts and contrary to the submission of the Appellant, all the Exhibits tendered were admissible in law.

Court's Judgement and Rationale

Deciding the first issue, Their Lordships held that, the Amended Charge was not defective for the reason canvassed by the Appellant and even in the total absence of the

stamp and seal of counsel, it was still a competent charge, as such an omission only rendered the charge irregular and thus voidable, and not void. The Supreme Court was also in total agreement with the Court of Appeal that *Counsel from the EFCC who prosecuted the case were Law Officers covered by Section 3 of the Law Officers Act, Laws of the Federation, 2014 and by this, they are deemed to be barristers, solicitors and advocates of the Supreme Court of Nigeria. That being the case, affixing the stamp and seal on the charge as required becomes superfluous in the case of law officers who are deemed by law to be solicitors and advocates of the Supreme Court. Thus, a Law Officer already deemed by Law/Statute to be a genuine Legal Practitioner/Lawyer, cannot be disqualified for neglecting, omitting or failing to affix his stamp and seal on a court process. More so, it is settled law that the absence of the seal and stamp of counsel renders a process filed in court irregular, and is not capable of affecting the jurisdiction of the court. - YAKI v BAGUDU (2015) ALL FWLR (PT. 810) 1026.* Issue one was therefore resolved against the Appellant.

Deciding the second issue, the apex court held that contrary to the description ascribed to Exhibit G by the Appellant, the statement of the co-accused was certainly not a confession as it was not direct, positive and unequivocal. Rather, it greatly equivocated, in that the co-accused, while admitting to having a joint interest with the Appellant in the company, AY Quest Ltd, denied using the company to execute any contract with the World-Bank Project in the Accountant General's office as stated in the charge for conspiracy. Secondly, that there were numerous other independent pieces of evidence, outside Exhibit G, presented by the prosecution in proof of the offence of conspiracy against the Appellant. Thus the offence of conspiracy against the Appellant was established by credible evidence, even without Exhibit G, the statement of the co-accused.

Furthermore, resolving the argument on the failure to prove the Appellant's identity, the Supreme Court held that from the Record of Appeal, the identity of the Appellant was clearly established through credible evidence presented by the Respondent such as Exhibits A and B, the account opening package and statements of account of the two companies in question and the CAC documents showing the ownership of both companies respectively – which all had the Appellant's real name, signature, photograph and address. Additionally, PW3 who established his credentials as a highly trained and experienced Forensics Examiner analysed five sets of signatures signed by the Appellant in open court and showed that they all belonged to the same person, notwithstanding the slight variation in the names on some of the documents.

On the argument about admissibility of Exhibits D and E, the Supreme Court held that the proceedings of the trial court, as contained in the record of appeal, disclose that the Appellant did not object to the admissibility of the documents when tendered by the Respondent. Thus, the Appellant waived the right to challenge these documents and cannot purport to do so on appeal before the Court of Appeal or the Supreme Court –

JOHN v THE STATE (2011) LPELR-8152(SC) 17-19. The apex court also agreed with the Respondent that both documents were duly certified by the 2nd accused person, from whose custody it emanated and acting as a public officer, in satisfaction of Section 104(1) and (2) of the Evidence Act, 2011. Regarding the contention that no legal fees was paid for the certification, the court held that it was not shown that legal fees were prescribed for certification of documents from the office of the Accountant-General. Distinguishing the provisions of Section 104 of the Evidence Act, 2011 from the provisions of Section 111(1) of the Evidence Act, 1990 (which was interpreted in **TABIK INVESTMENT LTD v GTB PLC (2011) 17 NWLR (PT. 1276) 240**), the Supreme Court held that while the provisions are similar on requirement for payment of legal fees for certification, Section 104 qualifies the requirement with the words - "*prescribed in that respect*". This refers to legal fees laid down by the body, organisation or person in the custody of a public document and on whom a demand is made for a certified true copy of that document. Thus, *where the body, organisation or person in the custody of a public document and on whom a demand is made for a certified true copy does not have a prescribed legal fee for the issuance of a certified true copy of the document, then the payment of legal fees cannot be a mandatory requirement for the certification of a document.* It is not compulsory or obligatory otherwise. Issue two was therefore resolved against the Appellant.

In conclusion, the Supreme Court held that the Appellant had failed to fulfill any of the conditions that would warrant the court to interfere with the findings of fact of the Lower Courts.

Appeal Dismissed.

Representation

E. O. Adekwu, Esq. with C. Atakpa, Esq. for the Appellant.

C. O. Ugwu, Esq. for the Respondent.

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