Letter Convening a General Court Martial – Whether Must be Signed Solely by the Commanding Officer

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 4th Day of July 2025

Before Their Lordships

John Inyang Okoro
Tijjani Abubakar
Habeeb Adewale Olumuyiwa Abiru
Jamilu Yammama Tukur
Mohammed Baba Idris
Justices, Supreme Court

SC/897/2014

BETWEEN

LT. CDR M.C. ABUBAKAR **APPELLANT**

AND

THE NIGERIAN NAVY **RESPONDENT**

(Lead judgement delivered by Honourable Tijjani Abubakar, JSC)

Facts

the Appellant, a commissioned officer of the Nigerian Navy, was assigned to maintain security over the MT AFRICAN PRIDE, a vessel arrested in October 2003 for transporting stolen crude oil belonging to the Federal Government of Nigeria. During his duty period of 29th October to 4th November 2003, the Appellant allegedly connived with unknown persons to facilitate the unlawful trans-shipment of the cargo in the vessel and its replacement with sea water. Upon discovery, an internal investigation was conducted, leading to the convening of a General Court Martial under the Armed Forces Decree No. 105 of 1993 (as amended). The Appellant was arraigned on a three-count charge of stealing and conduct prejudicial to service discipline, convicted on counts 1 and 3, and sentenced to terms of imprisonment and dismissal from service.

Dissatisfied by the decision of the General Court Martial, the Appellant unsuccessfully appealed to the Court of Appeal, which court affirmed the conviction and sentence. Nettled by the decision of the Court of Appeal, the Appellant further appealed to the Supreme Court.

Issues for Determination:

The following issues were raised in the Appellant's Brief of Argument:

i. **WERE** the learned justices of the Court of Appeal right to affirm the conviction and sentence of the Appellant of the alleged offences when Exhibits 3 and 5 (report of investigation and result analysis of the vessel) taken together with the evidence of PW5, PW6 and PW7 clearly shows that the alleged stealing did not take place at the time the appellant was on duty of the vessel?

ii. **WERE** the learned justices of the Court of Appeal right to affirm the conviction and sentence of the Appellant on the sole evidence of PW1, PW2 and PW3 who were accomplices and whose evidence were substantially hearsay, contradictory, irreconcilable and uncorroborated?

iii. **WERE** the learned justices of the Court of Appeal right to hold that the Naval Court Martial Rules 3 of BR 11 could override the provisions of Section 123 of the Armed Forces Act, Laws of the Federation 2004, which makes conduct of investigation by an accused commanding officer and signing of the report mandatory before a court martial may be convened?

iv. **WERE** the learned justices of the Court of Appeal right to hold that the circumstantial letter recommending the convocation of a court to try the Appellant was valid when it was not signed by the Appellant's commanding officer?

Arguments

Arguing the first issue, the Appellant submitted that the standard of proof in trials before the Court Martial under Section 143(1) of the Armed Forces Act (the "*Act*") must be proof beyond reasonable doubt, relying on **AFOLALU v**

STATE (2010) 18 NWLR (Pt. 1220) 584. He contended that the lower court erred in failing to properly evaluate Exhibit 3, the investigation report tendered through PW5, which showed that the Appellant had handed over duty on the 4th November 2003 while the sample analysis indicating loss was dated the 5th December 2003, well outside the Appellant's duty period. He argued that the exclusion of Exhibit 3 amounted to improper "picking and dropping" of evidence as condemned in **OLOWOYO v STATE (2012) 17 NWLR (Pt. 1329) 346**. He emphasized that PW5 acknowledged the Appellant was not on board when the incident allegedly occurred, that material contradictions existed between the evidence of PW6 and PW7's scientific reports, and that PW1 to PW3 were accomplices whose uncorroborated testimony should have been treated with caution. In response to issue one, the Respondent submitted that the attack by the Appellant on evidence of the prosecution lacked merit. Relying on **NWANKOALA v STATE (2006) 14 NWLR (Pt. 100) 286**, it was argued that the unchallenged testimony of PW4 regarding the deviation by the Board of Inquiry from its mandate sufficiently undermined the credibility of the findings of the Board, which the Appellant failed to rebut. That the original NNS Beecroft test result was unsworn hearsay and inadmissible, and there was no material contradiction between the evidence of PW6 and PW7 since PW7 personally extracted the sample and his evidence was inherently more reliable. The Respondent posited that the lower courts were entitled to rely on the collective and corroborative weight of the evidence and that the Appellant's challenge should be dismissed.

On issue two, the Appellant submitted that the lower court failed to properly evaluate the entire evidence, particularly that of PW4 to PW7 and Exhibits 3 and 5 and instead relied unduly on the inconsistent and unreliable testimonies of PW1, PW2 and PW3. Counsel argued that PW1, PW2 and PW3 were accomplices whose evidence required corroboration by independent and credible evidence before it could ground a conviction, in line with the decision in **ISHOLA v STATE (1978) 9-12 SC 81** and maintained that no such corroboration existed. He contended further that the testimony of PW1 was hearsay, the evidence of PW2 was riddled with contradictions regarding the switching-off of lights and the alleged bribe, and the evidence of PW5 merely repeated what he heard from PW1 to PW3 and lacked probative value. He urged this court to hold that the failure to seek independent corroboration was a fundamental misdirection fatal to the case of the prosecution, warranting the setting aside of the conviction and sentence. Reacting to the submission, the

Respondent countered the argument on corroboration of the evidence of an accomplice, relying on Section 198(1) of the Evidence Act 2011, which permits conviction on uncorroborated evidence of an accomplice provided the court directs itself on the inherent risk. It argued that PW1 was not in fact an accomplice since he was serving punishment on board and only became aware of the theft after the event, making his evidence corroborative rather than tainted.

Regarding the third issue, the Appellant argued that the pre-court-martial investigation procedure under Section 123 of the Act is mandatory, not discretionary, and that the investigation in this case was fundamentally flawed because the Appellant was neither afforded a fair hearing nor given the opportunity to confront adverse witnesses before the report was finalised. He contended that the investigator failed to obtain the statement of the Appellant or visit the scene prior to concluding the report, and that cross-examination at trial cannot cure defects in the preliminary inquiry. The Respondent, on its part, submitted that the investigation and trial stages are legally distinct, and that the investigative phase does not attract the same fair hearing requirements as a trial. It pointed out that the witnesses the Appellant claimed he could not confront did testify and were cross-examined at trial, and that the Appellant was invited to make a statement during investigation but declined to do so, which cannot constitute a breach of fair hearing.

On the fourth issue, the Appellant challenged the validity of the circumstantial letter recommending the court-martial, arguing that it was signed by Commodore M. Ajadi (Chief Staff Officer) rather than the Appellant's Commanding Officer as required by Section 123 of the Act. That the Act contemplates a single chain of responsibility from investigation to recommendation, and that the substitution of another officer rendered the circumstantial letter a nullity, depriving the court-martial of jurisdiction. In response, the Respondent submitted that Section 123 of the Act merely requires that a Charge be reported to the Commanding Officer for investigation, and nowhere mandates that the circumstantial letter be signed solely by the Appellant's Commanding Officer. Counsel argued that the circumstantial letter was validly signed by Commodore M. Ajadi, whose rank carried the requisite authority under Section 131(1)(d) of the Act.

Court's Judgement and Rationale

The Supreme Court considered and resolved the first and second issues together. The court emphasized that findings of guilt must rest on legally admissible evidence, rationally evaluated, and not upon speculation or suspicion. Their Lordships examined Exhibit 3, the investigative report authored by PW5, and held that although PW5 did not personally witness the trans-shipment, the report distilled accounts and observations of witnesses, reconciled physical and forensic evidence, and traced a clear chain of events surrounding the vessel ***MT AFRICAN PRIDE***. The report narrated that under the Appellant's watch, the vessel departed its lawful anchorage on 31st October 2003, was steered to an unauthorized rendezvous where crude oil was pumped for approximately six hours, after which ₦250,000 was disbursed among the Appellant and three ratings, none of which was logged or reported officially. The Supreme Court held that these assertions were grounded in the consistent, clear, and unshaken testimonies of PW1, PW2, and PW3, crew ratings who served on board the vessel. On the Appellant's contention that Exhibit 5 (the crude sample analysis) fell beyond his period of command, the court held the argument disingenuous, noting that "*a forensic sample taken at a later date does not dilute the evidentiary value of earlier acts*". As to the alleged inconsistency between the scientific findings of PW6 and PW7, the Supreme Court held that this concerned weight and not admissibility of the evidence, relying on the authority of **NEPA v ROLE (2000) 7 NWLR (Pt. 663) 69**. On the testimony of an accomplice, the court noted that Section 198(1) of the Evidence Act 2011 permits conviction on uncorroborated accomplice testimony provided the court appreciates its susceptibilities - **ILOUNO v STATE (2023) LPELR-59882 (SC)**. The Supreme Court concluded that there was no justification to interfere with the concurrent findings of the trial and the appellate courts as the findings on evidence adduced were properly evaluated. The first and second issues were resolved in favour of the Respondent.

Deciding the third and fourth issues, the apex court examined whether the pre-court-martial investigation procedure under Section 123 of the Act was complied with and whether the Appellant was denied fair hearing at the investigation stage. Section 123 of the Act provides that allegation against a person subject to service law *"shall be reported to the Commanding Officer in the form of a charge."* The court acknowledged that the use of *"shall"* is mandatory, relying on **S.P.D.C.N. v EKWEMS (2023) 4 NWLR (Pt. 1874) 213**, but held that delegation within the command structure was permissible under Section 181(1) of the Act and Chapter 150 NCMR 3 of the Royal Navy's BR 11 Manual of Naval

Law, particularly where the accused is an officer or the matter is sufficiently complex. *It is not obligatory for the Commanding Officer to personally conduct the investigation. It suffices that the accused is informed of the nature of the allegation and that appropriate steps are taken to initiate disciplinary proceedings. Thus, the requirement of investigation "in the prescribed manner" must be construed in the light of the procedural instruments of the military, which the Armed Forces Act recognizes and adopts. The law must be interpreted purposively and contextually.* The maxim - *generalia specialibus non derogant,* applies here.

On fair hearing, the Supreme Court reiterated the distinction between investigation and trial, holding that "*the investigative stage is merely inquisitorial and preparatory; it does not, by law or nature or logical deduction, attract the same constitutional rigours of fair hearing as a trial. An investigation is not a trial and does not attract the full panoply of rights available to an accused during trial* - **F.B.N. PLC v MAINASARA (2005) 2 NWLR (Pt. 909) 42.** More so, the evidence shows that the Appellant was afforded an opportunity to make a statement but exercised his right not to do so. This decision by the Appellant cannot be turned into a sword to impugn the process.

The On the circumstantial letter, the court held that ***Section 123 Act makes no reference to a circumstantial letter, nor does it prescribe that a Commanding Officer may issue one.*** *It is clear from the records that the circumstantial letter was signed by Commodore M. Ajadi, the Chief of Staff to the Flag Officer Commanding (Western Naval Command), who under Section 131(1)(d) of the Armed Forces Act, possessed the statutory authority to convene a General Court Martial. There is no statutory requirement that the circumstantial letter must emanate from the Commanding Officer of the accused.* ***To insist on such requirement would be to judicially legislate where the law is clear, explicit and unambiguous. It is the duty of the judge to declare the law, not to make it – judicis est jus dicere, non dare.*** The third and fourth issues were resolved against the Appellant. The court, thereby, affirmed the decision of the Court of Appeal.

Appeal dismissed.

Representation

M. Adekola, SAN with A. Kilani, Esq., A.A. Agoroi, Esq. and A.R Ajibade, Esq. for the Appellant

J.A. Adamu, Esq. with N. Nnanta, Esq. and G.A. Sadiq, Esq., for the Respondent.

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