NIGERIAN COURT OF APPEAL'S CASE JUDGMENT ANALYSIS: PRIVATE HARUNA INUSA V NIGERIAN ARMY APPEAL NO. CA/K/467/C/2018

Written By ***Emmanuel Ugwu***

FSS MSS pscBA (1st Class Hons) MIRSS LL.B (Hons) LL.M Ph.D Law Lecturer, Philomath University, Abuja Adjunct Lecturer, Defense Institute of International Legal Studies (DIILS) Rhode Island, USA

ABSTRACT

The Armed Forces Act, Chapter A20 Laws of the Federation of Nigeria 2004, is an Act of the National Assembly that encompasses Laws that guide members of the Armed Forces of Nigeria, made up of the Nigerian Army, Nigerian Navy and Nigerian Air Force. It forms the major part of military law in Nigeria. Though members of the Armed Forces are bound by the doctrine of compact which makes them to be bound by both civil and military laws, they are usually prosecuted in courts martial when they commit offences, relying mainly on the Armed Forces Act. Unlike other laws in Nigeria, the Armed Forces Act in Section 169 provides for limitation of trial of other offences after three years of commission except for mutiny, failure to suppress mutiny or desertion. This became a problem as some accused persons who committed some grievous offences like murder tried to frustrate trial until after three years and when brought to court martial, such accused persons would simply plead time bar and cite Section 169 of the Act and they would be discharged and acquitted as the court martial would not have jurisdiction in that situation. That is the problem that brought about this article. 1 Division of the Nigerian Army Legal Services thought outside the box in this case and charged the accused outside the Act, using Penal Code Law instead and in a move that changed the Law, Court of Appeal confirmed the judgment of the court martial and retained the conviction and sentence of the accused which has now opened a new chapter of Military Law in Nigeria. Doctrinal and teleological research methods were used in this work. Doctrinal by referring to the law report and teleological as the writer supervised this particular prosecution at the court martial. The work found that thinking outside the box brought about the success and that there

ISSN 2581 3382

are other parts of the Armed Forces Act that need to be amended either through the legislature or through the courts. The article recommends that prosecutors in military courts should embrace the method of finding new ways to solve these kinds of problems and that some sections of the Armed Forces Act should be amended.

Keywords**:** Armed Forces Act, Court martial, Nigerian Army, Military law in Nigeria, Pte Haruna Inusa.

INTRODUCTION

This case was an appeal against the judgment of the 1 Division General Court Martial (GCM) of the Nigerian Army, Kaduna, delivered on 1 April 2015. The Appellant was found guilty of culpable homicide pursuant to Section 220 of the Penal Code Law and punishable with death under Section 221 of the Penal Code Law.[i] The soldier who was alleged to have killed a civilian in a market was prosecuted more than three years after the offence was committed and as usual with such cases, he pleaded time bar in line with Section 169 of the Armed Forces Act (AFA). The prosecution team, instead of accepting the status quo, decided to do something relatively new by charging the accused under the Penal Code which does not have such time bar for culpable homicide like the AFA. The Penal Code is a law operational in Northern Nigeria. The defence team did not believe that it was going to work but surprisingly to the defence, the GCM went ahead with the trial, convicted the soldier and sentenced him accordingly. Not being satisfied, the accused soldier appealed the judgment at the Court of Appeal which confirmed the finding and sentence of the GCM thereby creating a new way to prosecute service personnel after three years in this kind of offence. It is a landmark case that has indirectly amended Section 169 of the AFA without the normal legislative procedure. This work will not delve into other grounds of appeal but will mainly concentrate on the issue of jurisdiction and how the charging of the Appellant under Penal Code Law without recourse to the AFA sustained the trial even when the Appellant's counsel posited that the charge was faulty and robbed the GCM of its jurisdiction to try the Appellant.

ISSN 2581 3382

FACTS OF THE CASE

The Appellant, who, on 11 October 2011 when the offence was committed, was a soldier serving in North Eastern Nigeria allegedly lost his laptop and went to the GSM Market in Maiduguri where he suspected that whoever stole his laptop must have taken it to. According to PW4, BabaganaGoni, who sold phones in the market where the deceased was the Chairman, the Appellant came to the market, searching from shop to shop searching for his laptop, which he said was stolen while he was taking his bath.[ii] He stated further that the Appellant was opening the safes as he entered each shop and that he, PW4 was following him as he searched. At a point, he got angry and pointed his gun at PW4 and threatened to shoot him. PW4 said that he pleaded with him to wait for their Chairman and that at that moment, the Chairman of the traders' association there came in and the Appellant also threatened to shoot him. The Chairman was said to have pleaded with him to explain what the problem was. The Appellant said that he was not going to listen to the Chairman and that he was going to fire him. Like in a movie, he shot the Chairman dead while still furious.[iii]PW3, Lt Commander Oguse, the Sector Commander testified that he got to the scene of the crime and arrested the Appellant while the traders were about to lynch him. It was clear from the testimonies of eye witnesses that the Appellant committed the crime.

LEGAL ARGUMENTS

The Appellant set out five issues for determination namely; "whether the trial GCMhad jurisdiction to try the Appellant; whether the trial GCM was right when it admitted Exhibit P1A and P1B without trial within trial; whether the trial GCM properly evaluated the evidence before it and before arriving at its verdict of guilty against the Appellant. The other ones are whether the trial GCM did not delve into the realm of speculation in arriving at its conclusion and whether the charge against the Appellant was proved beyond reasonable doubt.[iv] The Appellant's Counsel argued that the charge upon which the Appellant was arraigned, tried and convicted by the GCM was incurably defective, same being in contravention of Section 114(1), 130(1) and 169(1) of the AFA and Rules 15(1) and (4) of the Rules of Procedure (Army) 1972 and to that extent, rendering the trial a nullity and liable to be set aside.[v]

He argued further that Section 220 of the Penal Code Law under which the Appellant was tried is mandatorily required to be brought pursuant to the provisions of Section 114(1) of the AFA,

ISSN 2581 3382

the enabling provision by which a court martial shall have jurisdiction to try such a civil offence, which was not complied with, thereby divesting the trial GCM of jurisdiction to try the charge. According to the Appellant's counsel, the charge should be held to be statute barred, having been brought three years after the commission of the alleged offence. Citing Section 169(1) of AFA, he submitted that the offence of murder under Section 106 of AFA is subject to statutory limitation of three years pointing out that the offence was committed on 11 October 2011 while he was arraigned before the trial GCM on 11 March 2015, outside the three-year statutory limitation period.[vi] He cited the case of *State v Squadron Leader O.T. Onyeukwu (2004) LPER 3116 (SC) at page 5 paragraph A,* for specimen on how to draft a civil offence charge under the military law.[vii]He urged the court to hold that the charge on which the Appellant was tried was incompetent.

On the part of the Respondent, its counsel submitted that the charge against the Appellant was proper in law and that the trial GCM correctly exercised jurisdiction in the trial of the Appellant on the charge. He argued that there is no law or rule of procedure that mandates that a charge sheet must state the law that empowered the trial court to confer jurisdiction on a trial court to try the offence, before the court can exercise jurisdiction in respect of the case.[viii] The main purpose of a charge, he averred, is to give the accused person notice of the case against him. Once the charge discloses an offence known to law and triable by the court, together with necessary particulars that should be brought to the attention of the accused person to avoid the accused being taken by surprise or be prejudiced, such a charge is good in law.[ix] He cited the case of *Ifeanyi v State (2018) 12 NWLR (Pt 1632) 164 @ 195 para-B-C.*

It was the counsel's further submission that the offence for which the Appellant was charged is an offence known to know and undisputed by the Appellant. It was not also disputed that by virtue of Section 114(1) and (2) a GCM has jurisdiction to try a person subject to service law for the offence. It was not also the contention of the Appellant that he was misled by the charge. He argued that the Appellant's contention that the trial court has no jurisdiction is thus not correct and should be discountenanced.[x] On the issue of specimen charge referred to by the Appellant, the counsel submitted that it was a mere specimen and guide and not a mandatory requirement of law. On the issue of statutory limitation, the counsel submitted that the Appellant was charged with culpable homicide punishable with death under the Penal Code Law and not murder under Section 106 of the AFA and that no such period of limitation exists

ISSN 2581 3382

in this case, submitting that the GCM had jurisdiction over the Appellant in respect of the charge and properly exercised the same. He urged the court to so hold.[xi]

JUDGMENT OF THE COURT OF APPEAL IN THE MATTER

Three justices of the Court of Appeal, Kaduna Division, Nigeria, sat on the panel and the judgment was unanimous. Justice Oludotun Adebola Adefope-Okojie who delivered the leading judgment began by elucidating on Section 130(1) of the AFA which provides that a GCM tries a person subject to service law and can award punishment authorized by the Act except that where the court martial consists of less than seven members it shall not impose a sentence of death.[xii] She also explained that Section 114 of the Act authorizes courts martial to try civil offences from where she drew the conclusion that a GCM has jurisdiction to try persons subject to service law for offences under Penal Code Law, under which the Appellant was charged or any other penal law. She highlighted the charge as "Statement of Offence: Culpable Homicide contrary to Section 220 and punishable under Section 221(b) of the Penal Code Law, Cap A69 Laws of Northern Nigeria, 1963."[xiii] She held that the offence as charged qualifies as a civil offence triable by GCM by virtue of Section 114 of AFA. She further held that no law or rule of procedure was cited that mandates that for a charge by the GCM to be competent, it must state the enabling law of the AFA.

She held that once the GCM acts under and within the confines of enabling statute, the charge cannot be rendered defective. She also held that the main purpose of a charge is to give the accused person sufficient notice of the case against him and that once the charge discloses an offence known to law and is triable by the court and gives the necessary particulars, to avoid prejudicing the accused or taking him by surprise that such a charge will be held to be good in law. She cited the case of *Ifeanyi v State (2018) 12 NWLR (Pt 1632) 164 at 195 para B-C* and *Akinola Olatunbosun v State (2013) 17 NWLR Part 1382 page 167* to buttress her point. She pointed out that it is not disputed that by virtue of Section 114(1) and (2) of AFA that a GCM has jurisdiction to try a person subject to service law for the offence of culpable homicide which is a civil offence.[xiv]She held further that the specimen charge the Appellant's lawyer referred to is a mere specimen and not mandatory to be followed strictly. The Justice accordingly resolved the first issue which is on jurisdiction in favour of the Defendant.[xv] As earlier pointed out, this work will concentrate on the first issue for determination which is on jurisdiction. The three justices dismissed the appeal. Out of the five issues for determination however, the only

ISSN 2581 3382

one resolved in favour of the Appellant is the issue of the GCM not conducting trial within trial before admitting the confessional statement of the Appellant. Though the court resolved it in favour of the Appellant, it held further that aside from the statement, there were other compelling evidence to show that the Appellant committed the offence hence the dismissal of the entire appeal.

ANALYSIS OF THE JUDGEMENT

This matter is probably the first of its kind wherein a service personnel was charged and tried in a court martial directly through another law, not the Armed Forces Act. The provision of AFA on the time bar for such a case was a major loophole that made accused persons who committed offences as serious as murder sometimes in cold blood like the case in question to escape justice. There are certain situations like the case in point that the accused should not be allowed to go scot free when there are other laws in the land that can be used to ensure that justice is served. The implication of letting such accused persons off the hook is that there could be more murders in cold blood when the perpetrators know that all they can do is to frustrate the long arm of justice until a day after three years that the offence was committed and he would be a free man. Already, the outcome of this Court of Appeal judgment has been circulated to the Nigerian Army Headquarters, all Nigerian Army Divisions and to all legal officers that are in charge of legal affairs in different formations. In addition, the Nigerian Navy and the Nigerian Airforce Legal Services were provided with copies of the judgement. Except the judgment is upturned by the Supreme Court, it remains the law and it is very good to ensure that justice in this kind of case is done to the victim, to the service and society where both the accused and victim belong and to the accused himself. It will help in reducing killing of innocent persons by military personnel with weapons purchased with tax payers' money, which are meant to be used to protect them.

There are some other sections of the AFA that need either a legislative amendment or judicial amendments like the case being analysed. One good example is the provision of Section 124 on offences not triable summarily. This Section provides that certain offences in the AFA cannot be tried summarily. Curiously, the offences of murder, manslaughter, arson, rape and robbery are not included.[xvi] This means that a commanding officer may try such offences summarily if not properly advised or if he refuses to take legal advice and award minor

ISSN 2581 3382

punishments that are not commensurate with such offences. The Section obviously requires amendment to bring it in consonance with reality and with other laws in the country.

CONCLUSION

This matter wherein a GCM in Nigeria tried a service personnel outside the sections of the AFA was new and was done to correct the anomaly of having a statute bar of three years on a service personnel who committed an offence as serious as murder or culpable homicide. Accused persons used the provisions of Section 169 of AFA which limited the time for trial of offences under the Act to three years after the commission of the offence except for mutiny, failure to suppress mutiny and desertion. This case of culpable homicide which is equivalent of murder in other laws, tried under Penal Code which has no limitation for the crime opened a new legal page in the Nigerian Armed Forces and is encouraged. For now, this judgment has whittled down the time limitation of three years for murder cases committed by service personnel in Nigeria as this decision of the Court of Appeal is the new law.

This work found that accused persons used this statute bar window to escape justice after committing such a serious crime as murder but not any longer except the judgment is upturned at the Supreme Court. The work equally found that some other sections of the AFA like Section 124 that lists offences that cannot be tried summarily and left out serious offences like murder, manslaughter, rape, arson and robbery needs to be amended to include those offences. The work therefore recommends that this decision of the Court of Appeal in this case of Pte Isah Haruna v The Nigerian Army should be used by the Armed Forces of Nigeria in trying culpable homicide or murder cases. Criminal Code Act is to be used where Penal Code is not applicable in similar cases. In addition, Section 124 of the AFA like some other outdated sections should be amended either through legislative means or through judicial means like the case in point, to include other serious offences that cannot be tried summarily

ISSN 2581 3382

REFERENCES

- Armed Forces Act CAP A20 The Laws of the Federation of Nigeria 2004.
- Pte Haruna Inusa v Nigerian Army Appeal No. CA/K/467/C/2018 Nigerian Court of Appeal Kaduna Division Judgment delivered on 3 December 2020.

ENDNOTES

[i] Appeal No. CA/K/467/C/2018 (Unreported) p.1. Court of Appeal, Kaduna Division, Nigeria.
[ii] Ibid.p.19.
[iii] Ibid.p.20
[iv] Ibid.p.2.
[v] Ibid.p.3.
[vi] Ibid.
[vii] Ibid.p.4.
[viii] Ibid.
[ix] Ibid.
[x]Ibid.p.5
[xi] Ibid.
[xii] Ibid.p5.
[xiii] Ibid.p.6.
[xiv] Ibid.p.10.
[xv] Ibid.p.11.
[xvi] Section 124 (6) (a) Armed Forces Act, CAP A20 Laws of the Federation of Nigeria 2004.

ISSN 2581 3382