**IN THE HIGH COURT OF JUSTICE**

**EDO STATE OF NIGERIA**

**IN THE BENIN JUDICIAL DIVISION**

**HOLDEN AT BENIN CITY**

**BEFORE HIS LORDSHIP THE HONOURABLE JUSTICE J. I. ACHA, JUDGE, ON THURSDAY THE 8TH DAY OF OCTOBER, 2020**

B E T W E E N: CHARGE NO. B/CD/127C/2017:

THE STATE … … … … … … … COMPLAINANT

 VS

DAVID IKEM … … … … … … … DEFENDANT

**RULING**

 The Defendant – David Ikem is arraigned on a two count Amended Charge of Armed Robbery as follows:-

“COUNT I:

That you David Ikem (m) on or about the 29th day of February, 2016 at back of Aunty Maria School, Ogida Quarters, Benin City in the Benin Judicial Division did rob one Odiase David of his Techno handset and a cash sum of N2,000.00 (Two Thousand Naira) and at the time of the said robbery, you were armed with a weapon to wit: gun and thereby committed an offence punishable under Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act, Cap RII, Laws of the Federation of Nigeria 2004.

COUNT II

That you David Ikem (m) on or about the 29th day of February 2016 at back of Aunty Maria School, Ogida Quarters, Benin City in the Benin Judicial Division did rob one Mogekwu Peter of his handset and a cash sum of N30,000.00 (Thirty Thousand Naira) and at the time of the said robbery, you were armed with a weapon to wit; gun and thereby committed an offence punishable under Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act, Cap RII, Laws of the Federation of Nigeria 2004.”

The Defendant pleaded not guilty to the two counts Amended Charge and at the trial, the Prosecution called a sole witness in proving its case against the Defendant

The sole witness for the Prosecution testified as PW1 and gave his name as Jatto Oni, a Police Inspector attached to Ogida Police Division, Benin City.

The extra judicial statement of the Defendant made to the Police and dated the 25th day of March, 2016 was admitted in evidence through this witness as Exhibit ‘A’ while an iron object molded in the form of a gun was admitted as Exhibit ‘B’.

PW1 was cross examined by the Defence Counsel. In his answer, PW1 stated that Exhibit ‘B’ is a make belief gun and that he arrested the Defendant. That nothing was recovered from the Defendant at the point of his arrest but that when he was taken to his house Exhibit ‘B’ was recovered. That Defendant was arrested on a Street, Off Obayuwana, Ogida Quarters, Benin City. That upon robbing the Complainant (Victim) and he (Defendant was walking along the Street, the victim raised alarm and called the Police which led to the arrest of the Defendant. That he investigated a case of robbery and not stealing and that he put up a report after his investigation. That he did not recover any money or Samsung Galaxy from the Defendant. That he took the statement of the Complainant before that of the Defendant and that the Defendant volunteered his statement. That the Defendant claimed to be 18 (Eighteen) years old as at when he made his statement.

At the close of the Prosecution’s case, the Defence Counsel opted for a No Case Submission.

G. J. Akoh, Esq. of Counsel for the Defendant referred to the written address on a No Case Submission filed on the 20th day of January, 2020 and adopted same as his argument on the No Case Submission. He urged on Court to discharge and acquit the Defendant.

Mrs. I. Omokhua (Senior State Counsel) of Counsel for the State relied on the records of Court as her response and urged on Court to call on the Defendant to enter his defence.

Counsel’s submissions were adopted by Court.

**Section 303(3) of the Administration of Criminal Justice Law of Edo State 2018** provides thus:-

“(3) In considering the application of the defendant under Section 303, the Court shall in the exercise of its discretion, have regard to the following:

(a) whether an essential element of the offence has been proved;

(b) whether there is evidence linking the defendant with the commission of the offence with which he is charged;

(c) whether the evidence so far led is such that no reasonable court or tribunal would convict on it; and

(d) any other ground on which the court may find that a prima facie case has not been made out against the defendant for him to be called upon to answer.”

 As can be amassed from the charge, the Defendant is arraigned on a two count charge of Armed Robbery under **Section 1(2)(a) of the Robbery and Firearms (Special Provisions) Act Cap RII, Laws of the Federation of Nigeria 2004**.

 On the charge of Armed Robbery, the apex Court had in a plethora of decided cases set out the essential ingredients which the Prosecution must prove in order to secure the conviction of the Defendant to include:

 “1. That there was robbery or series of robberies;

2. That the robbery or each robbery was an armed robbery or robberies;

3. That the Defendant took part in the robbery or was one of those who robbed.”

See the following cases – **Afolalu V. The State (2012) Vol. 10 LRCNCC 30 at 52** and **Bozin V. The State (1985) 2 NWLR (Pt. 8) 465 at 469**.

 To establish the offence of armed robbery in the instant case against the Defendant, the Prosecution relied mainly on the evidence of PW1, a Police Officer who is the sole witness and Exhibit ‘A’ (the extra judicial statement of the Defendant).

 PW1 in his evidence stated that a case of stealing of handset was reported at the Charge Room by one David Odiase. That the case was referred to him for his investigation. That the Defendant who was earlier arrested was handed over to him and that the Defendant made statement. That he went to the house of the Defendant in company of the Complainant with a Search Warrant and in the process, an object which looked like a gun and tied was recovered in his room. That he also visited the scene of crime.

 Flowing from the evidence of the prosecution’s sole witness, it is clear that PW1 did not witness the alleged Armed Robbery incident. According to him, a case of stealing of handset was reported at the Charge Room by one David Odiase. The said David Odiase who PW1 alleged reported a case of stealing of handset against the Defendant did not testify in this case.

 In any case, the line of evidence given by PW1 as it relates to proving the ingredients of the offence of Armed Robbery in Counts I and II is inadmissible under **Section 126 of the Evidence Act 2011**. The evidence at best amount to hearsay evidence.

 What is more? Exhibit ‘A’ which is said to be the Defendant’s extra judicial statement did not disclose any of the ingredients for the offence of Armed Robbery as reflected in Counts I and II of the charge. There is also no available evidence from the Prosecution which corroborated Exhibit ‘A’ that the Defendant stole or robbed any handset. PW1 only stated that he was told by one David Odiase who was not called as a witness, though a vital and material witness in this case. See **Section 167(d) of the Evidence Act 2011** and the case of **Amadi V. Attorney-General of Imo State (2017) 11 NWLR (Pt. 1575) 92 at 110**.

 In the light of the above and in line with the provisions of **Section 303(3)(a)(b)(c)** and **(d)** **of the Administration of Criminal Justice Law of Edo State 2018**, I find and I hold that the prosecution has not made out a ***prima facie*** case against the Defendant in respect of the two counts charge to warrant this Court to call on the Defendant to enter his defence. To call on the Defendant to enter his defence will not only be unconstitutional but waste of the precious time of this Court. See **Section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria** and **Section 303(3)(d) of the Administration of Criminal Justice Law of Edo State 2018**.

Consequently, the charge is dismissed and the Defendant – David Ikem is accordingly discharged and acquitted.

Charge dismissed.

J. I. ACHA

(JUDGE).

8TH OCTOBER, 2020.

**COUNSEL**:

PROSECUTION … … Mrs. I. Omokhua (SSC)

And with her Mrs. R. E. Alari (SSC),

DEFENDANT … … G. J. Akoh, Esq.