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Nigeria, Pius Nwaoga v. The State

N.B. As per the disclaimer [1]**, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents.** Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[**Source**: ILR, 1972, pp. 494-497]

PIUS NWAOGA v. THE STATE

Nigeria, Supreme Court

March 3, 1972

[...]

The appellant was charged with another, for the murder on 20th day of July, 1969, at Ibagwa Nike, of Robert Ngwu. He was convicted and sentenced to death whilst the 2nd accused was discharged. This is an appeal from the conviction.

The incident which led up to the killing of the deceased happened during the civil war in the country. The appellant joined the rebel forces known as Biafran Army. He joined as a private and later became a lieutenant. He was attached to the BOFF (Biafran Organisation of Freedom Fighters). He was deployed to Nike and at the time Nike was in the hands of the Federal troops.

The deceased was also a soldier in the rebel forces; he and the appellant were both natives of Ibagwa Nike and well-known to each other. Before July 1969, the appellant was posted in command of a rebel company to a town called Olo, near Ibagwa Nike, with the operational headquarters of his brigade at Atta. In July 1969, the appellant was summoned to Atta. There he was instructed to lead Lieutenant Ngwu and Lieutenant Ndu to Ibagwa Nike and to point out the deceased to them. He was told that as he knew the area well and also knew the deceased, his duty was to identify the deceased to the two lieutenants who would eliminate him. His offence was that the deceased was given £800 to re-open and operate the Day Spring Hotel in Enugu for the benefit of the members of the BOFF, but he had diverted the money to the operation of his contract business and had indeed undertaken a contract with the Federal Government to carry out repairs to the Enugu Airfield which had been damaged by rebel aircraft. [...]

[...] [W]e direct our minds to the following facts.

1. That the appellant and those with him were rebel officers.

2. That they were operating inside the Federal Territory as the evidence shows that the area

was in the hands of the Federal Government and Federal Army.

3. That the appellant and those with him were operating in disguise in the Federal Territory, as saboteurs.

4. That the appellant and those with him were not in the rebel army uniform but were in plain clothes, appearing to be members of the peaceful private population.

On these facts, if any of these rebel officers, as indeed the appellant did, commits an act which is an offence under the Criminal Code, he is liable for punishment, just like any civilian would be, whether or not he is acting under orders.

We are fortified in this view by a passage from Oppenheim's *International Law*, 7th Edition, Volume II, at page 575, dealing with War Treason, which says:

> "Enemy soldiers – in contradistinction to private enemy individuals – may only be punished for such acts when they have committed them during their stay within a belligerent's lines under disguise. If, for instance, two soldiers in uniform are sent to the rear of the enemy to destroy a bridge, they may not, when caught, be punished for 'war treason', because their act was one of legitimate warfare. But if they exchanged their uniforms for plain clothes, and thereby appear to be members of the peaceful private population, they are liable to punishment."

In the footnote under this paragraph, Oppenheim refers to a remarkable case during the Russo-Japanese War in 1904, where two Japanese officers disguised in Chinese clothes were caught attempting to destroy with dynamite a railway bridge in Manchuria. They were tried, found guilty and shot.

We apply the above case to the matter before us. To our mind, deliberate and intentional killing of an unarmed person living peacefully inside the Federal Territory as in this case is a crime against humanity, and even if committed during a civil war is in violation of the domestic law of the country, and must be punished.

In the event, the conviction of the appellant is upheld and this appeal is dismissed.

[Report: [1972] 1 All Nigeria Law Reports (Part 1), p. 149.]

Discussion

1. Does the court qualify the civil war in Nigeria? Does it apply the IHL of international armed conflict to the case?

2. Did the order to execute the deceased, and its carrying out by the accused, as such violate the IHL of non-international armed conflicts? The IHL of international armed conflicts? (HR, Art. 23(b) [2]; GC I-IV, common Art. 3(1) [3]; P I, Art. 51(2) [4]; CIHL, Rules 1 [5], 5 [6]-6 [7])

3. Did the way the execution was carried out violate the IHL of international armed conflicts? The IHL of non-international armed conflicts? Would your answer be different if the execution had been carried out in rebel-controlled territory? If the accused had worn a uniform? (HR, Art. 1 [8]; GC III, Art. 4(A) [9]; P I, Arts 43 [10], 44 [11] and 46 [12])

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