

LJP/HOM/2021/165/17

4th January, 2022

The Deputy Commissioner of Police,
The Nigeria Police,
S.C.I.D.
M.A.K. Smith Street,
Yaba
Lagos State.

LEGAL ADVICE

COMMISSIONER OF POLICE

Vs.

FAVOUR BENJAMIN	'M'	16 YEARS
MICHEAL KASHAMU	'M'	15 YEARS
EDWARD BEGUE	'M'	16 YEARS
ANSEL TEMILE	'M'	14 YEARS
KENNETH INYANG	'M'	15 YEARS

CR/3956/2020

I am directed to acknowledge receipt of your letter with Reference No. CB: 3514/LSX/D4/Vol.6/27 and dated December, 2021 and the accompanying duplicate case file forwarded to this office for Legal Advice.

2. After carefully considering the facts available in the duplicate case file, more particularly the interim and final Autopsy Reports issued by Lagos State University Teaching Hospital dated 21st and 31st December 2021 respectively, Report of Medical Practitioner issued by Central Hospital Warri dated 30th December 2021 and Toxicology Report of Post-Mortem samples dated 24th December, 2021 carried out on **Late Sylvester Oromoni "Deceased"** which revealed the cause of death as Septicaemia, Lobar Pneumonia with Acute Pyelonephritis, Pyomyositis of the right ankle and Acute Bacteria Pneumonia due to severe Sepsis, this Office is of the view that there is no prima facie case of Murder, Involuntary Manslaughter and or Malicious Administering of Poison with Intent to Harm against **Page B1 - KENNETH INYANG, Page B2- ANSEL ORITSEBEMIGHO TEMILE, Page B3- EDWARD BEGUE, Page B4-MICHAEL KASHAMU and Page B5- BENJAMIN FAVOUR IKECHUKWU** contrary to sections 223, 224 and 243 of the Criminal Law, Laws of Lagos State 2015 respectively.

3. The facts as contained in the duplicate case file reveal that on the 20th and 21st November, 2021, the Deceased, a student of **DOWEN COLLEGE LAGOS** allegedly suffered injuries while playing football with his friends, causing him to limp. It was alleged that as a result of the discomfort from the injuries sustained, the Deceased was taken to the school's sickbay. He was later released to his family on the 23rd of November 2021 for further medical attention. Whilst in Lagos, an x-ray was conducted when the Deceased was complaining of pains in his legs.

4. Further facts in the duplicate casefile reveal that the father of the Deceased took him to Warri on the 26th of November 2021. Whilst in Warri, the Deceased was treated at home by a family doctor. While receiving treatment at home, the Deceased was alleged to have revealed to a family friend, the names of some senior students who beat him for refusing to join a secret group and that the said seniors forcefully administered obnoxious substance into his system through the mouth. The Deceased was taken to a Diagnostic Centre in Warri for a scan on the 29th of November 2021 and the result revealed hepatomegaly possibly due to acute viral hepatitis. On the 7th day (30th of November 2021) of the Deceased returning to Warri when his condition deteriorated, the Deceased was rushed to a Hospital and allegedly died while being rushed to the Hospital.

5. Consequently, two (2) post-mortem examinations were carried out on the Deceased, the first at the Central Hospital, Warri on the 2nd of December 2021 (with only the Investigating Police Officer and representatives of the family in attendance) and an interim report dated 10th December 2021 was issued by the Pathologist pending the result of Toxicology screen. Following results of Toxicology, a final Report dated 30th December 2021 was issued and revealed cause of death as Acute Bacteria Pneumonia due to severe Sepsis.

6. On the 13th of December, 2021, the body of the Deceased was brought to Lagos for a second post-mortem examination with the consent of the Deceased's family. The second post-mortem was carried out by a Pathologist in the Department of Forensic Pathology, Lagos State University Teaching Hospital (LASUTH) on the 14th of December 2021 in the presence of the seven (7) Pathologists (the Pathologist who performed the first autopsy from Central Hospital, Warri representing the family of the Deceased, four (4) other Pathologists representing the family of the suspects and two (2) other Pathologists from LASUTH) and three (3) Police Officers. The interim and full Autopsy Reports of the Pathologist dated 21st

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and 31st December 2021 revealed cause of death as Septicaemia, Lobar Pneumonia with Acute Pyelonephritis, Pyomyositis of the right ankle.

7. The outcome of both post-mortem examinations conducted were in agreement as to the cause of death namely: Septicaemia, Lobar Pneumonia with Acute Pyelonephritis, Pyomyositis of the right ankle and Acute Bacteria Pneumonia due to severe Sepsis. The result of the Toxicology is also not indicative of any toxic or poisonous substance in the body of the Deceased.

Allegations of Murder, Involuntary Manslaughter and Maliciously Administering Poison with Intent to Harm

8. It is trite law that for the prosecution to successfully prove the offence of Murder, the following must be established:

- i. That the accused caused the death of the deceased;
- ii. That the act or omission of the accused caused the death; and
- iii. That the act or omission of the accused was intentional with the knowledge that the death or grievous bodily harm was its probable consequence.

See Edoho vs. The State (2010) 14 NWLR (Pt. 214) 651. SC and Paul .v. State (2019) LPELR-47366 (SC).

9. In the same vein, the Prosecution must prove the following ingredients to establish the offence of Involuntary Manslaughter:

- i. That the death of the deceased was by the involuntary but negligent act of the accused; and
- ii. That there is absence of intent to cause such death or grievous bodily harm due to the circumstance of the act.

See the case of Ajisogun vs. State (1998) 13 NWLR (Pt. 581) 238 @253, Olabode vs. State (2008) WRN (Vol.2) 167 at 177, P. 194.

10. Furthermore, to prove the offence of Maliciously Administering Poison with Intent to Harm, section 243 of the Criminal Law of Lagos State 2015 provides that:

“Any person who unlawfully, and with intent to harm or annoy another, causes any poison or other noxious thing to be administered to, or taken by any person, and as such endangers his life, or does him

some grievous harm commits a felony and is liable on conviction to imprisonment for fourteen (14) years."

11. From the above ingredients of Murder, Involuntary Manslaughter and Maliciously Administering Poison with Intent to Harm, there are no facts available linking the suspects to the alleged offences. It is clear from the interim and final Autopsy Reports dated 21st and 31st of December, 2021 that the Deceased died as a result of: (i) Septicaemia, (ii) Lobar Pneumonia and (iii) Acute Pyelonephritis, Pyomyositis of the right ankle, meaning severe generalized infections involving the lungs and kidneys arising from an ankle ulcer. More importantly, the final Report of the Medical Practitioner issued by Central Hospital Warri dated 30th December 2021 and the attached Toxicology Report of the post-mortem samples from the Deceased dated 24th December, 2021 revealed cause of death as Acute Bacteria Pneumonia due to severe Sepsis. Furthermore, the said Toxicology Report is not indicative of any toxic or poisonous substance in the body of the Deceased.

12. Following the above Expert Reports, this Office is of the view that the facts available are insufficient to establish any of the offences alleged above against **PAGE BI - KENNETH INYANG, PAGE B2- ANSEL ORITSEBEMIGHO TEMILE, PAGE B3 - EDWARD BEGUE, PAGE B4- MICHEAL KASHAMU and PAGE B5- BENJAMIN FAVOUR IKECHUKWU.**

Allegation of Membership of Unlawful Society

13. As it relates to allegations of Membership of Unlawful Society, this Office is also of the view that the available facts are insufficient to establish the offence of **Membership of Unlawful Society** contrary to **Section 2 of the Unlawful Societies and Cultism (Prohibition) Law Ch. C133, Laws of Lagos State 2021** against suspects **PAGE BI - KENNETH INYANG; PAGE B2 -ANSEL ORITSEBEMIGHO TEMILE, PAGE B3 -EDWARD BEGUE, PAGE B4 -MICHEAL KASHAMU and PAGE B5 -BENJAMIN FAVOUR IKECHUKWU.**

14. Section 2 of the Unlawful Societies and Cultism (Prohibition) Law 2021 unequivocally specifically states the kind of society or group and activity that constitutes a secret society and/or cult group and these are expressly prohibited in the State. The Section provides thus:

"

(1) As from the commencement of this law, a person shall not form, organise or belong to any named, unnamed or yet to be named

group or society within the State whose object is illegal, destructive, unlawful or contrary to public policy, safety and peace of members of the public.

(2) A society shall be regarded as unlawful if the members of the society carry out any of the acts prohibited under subsection (1) of this Section and the Regulations made under it or any other Law.

(3) Any person who-

a) is a member of an unlawful society or cult;

b) identifies as a member or solicits for members of an unlawful society or cult;

c) induces a person to become a member of an unlawful society or cult;

d) attends a meeting of an unlawful society or cult whether as a member or an intending member; does any illegal act which may probably cause a breach of peace, disturb the public peace or conducts activities in such a manner as to pose a threat to life and property;

commits an offence and is liable on conviction to twenty-one (21) years imprisonment."

15. From available facts in the duplicate casefile, the investigation carried out by the Police did not reveal that any secret society name, tattoo or insignia of any unlawful society was found in the possession of any of the suspects during the investigation carried out by the Police.

16. From the above ingredients, this Office is of the view that there are insufficient facts to establish the offence of Membership of Unlawful Society against **PAGE BI -KENNETH INYANG, PAGE B2- ANSEL ORITSEBEMIGHO TEMILE, PAGE B3- EDWARD BEGUE, PAGE B4- MICHEAL KASHAMU and PAGE B5- BENJAMIN FAVOUR IKECHUKWU.**

17. To hold otherwise would amount to sniffing for an offence and a speculative act which is not permitted in law. It is trite law that suspicion no matter how grave cannot be a ground for conviction. See **DANIEL NSOFOR & 1 OR V. THE STATE (2004) Vol. 20 NSCQLR pg. 74, (2004) 18 NWLR (pt. 905), Per Kalgo, JSC (as he then was), See also OLAYINKA AYENI vs. PEOPLE OF LAGOS STATE (2016) LPELR-41440(CA) per GEORGEWILL, J.C.A.**

18. In light of the foregoing and based on available evidence in the duplicate casefile, there is no prima facie case established and this Office cannot prosecute the suspects **PAGE BI -KENNETH INYANG, PAGE B2-**

ANSEL ORITSEBEMIGHO TEMILE, PAGE B3- EDWARD BEGUE, PAGE B4- MICHEAL KASHAMU and PAGE B5- BENJAMIN FAVOUR IKECHUKWU for the offence of Murder, Involuntary Manslaughter and or Malicious Administering of Poison with Intent to Harm contrary to **sections 223, 224 and 243 of the Criminal Law, Laws of Lagos State 2015 respectively.** The suspects should be released if still in custody.

19. In the same vein, this Office has insufficient evidence based on available facts in the duplicate casefile to prosecute the suspects **Page A23- MISS CELINA UDUAK, B7- VALENTINE IGBOEKWEZE, PAGE B8- HAMMED AYOMO BARIYU, PAGE B9 - ADESANYA OLUSESAN OLUSEGUN, MR ADEYEMI and DOWEN COLLEGE LAGOS** for the offence of **Negligent Act Causing Harm** contrary to section 252 of the **Criminal Law Ch. C17, Vol.3, Laws of Lagos State 2015.** The suspects should be released if still in custody.

20. Your duplicate case file is hereby returned.

21. An extra copy of this Legal Advice is attached for service on the suspects in line with the provisions of Section 74 (5) and (6) of the Administration of Criminal Justice (Amendment) Law, 2021.



ADETUTU OSHINUSI (MS)

DIRECTOR

DIRECTORATE OF PUBLIC PROSECUTIONS

FOR: HON. ATTORNEY-GENERAL AND

COMMISSIONER FOR JUSTICE


LAGOS STATE

CC:

The Presiding Magistrate
Chief Magistrate O. Adeola
Magistrate Court 1.
Yaba.

The overleaf is for your information and further action vide Charge No:

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ADETUTU OSHINUSI (MS)

DIRECTOR

**DIRECTORATE OF PUBLIC PROSECUTIONS
FOR: HON. ATTORNEY-GENERAL AND
COMMISSIONER FOR JUSTICE
LAGOS STATE**