

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT MAITAMA

BEFORE THEIR LORDSHIP: HON. JUSTICE M.E. ANENIH (PRESIDING
JUDGE)
HON. JUSTICE S.B. BELGORE (HON. JUDGE)

SUIT NO: FCT/HC/CRA/13/2011

DATE: 11-12-14.

BETWEEN:

SMITH O. EBOH.....APPELLANT

AND

COMMISSIONER OF POLICERESPONDENT

(JUDGMENT)

This is an appeal from the Judgment of Magistrate Court No.2 of Federal Capital Territory.

In the Chief Magistrate Court No. 2, Wuse Zone 2, presided over by His Worship, Hafsat Soso, one Mr. Smith O. Eboh was arraigned on a First Information Report that reads Criminal Intimidation, Cheating and Criminal breach of trust contrary to **Sections 397,322 and 312 of the Penal Code.**

At the end of the presentation of the prosecution's case, the appellant made a no case submission pursuant to **Section 191 (3) of**

the Criminal Procedure Code and Section 159(2) of the same Criminal Procedure Code.

In a ruling delivered on the 11th of February 2011, the learned trial Chief Magistrate overruled the submission. He framed two count charges of cheating and criminal breach of trust contrary to **section 322 and 312 of the Penal Code** against the appellant.

Dissatisfied with the ruling of the lower court coram, Chief Magistrate Hafsat Soso (Mrs.), the appellant has appealed to this court. In the amended notice of appeal filed, five (5) grounds of appeals were enumerated to wit:

Ground 1:

“The Ruling of the Honourable Court below on the 11th of February 2011, rejecting the no case submission of the Accused/Appellant and holding that a prima facie case has been established against the Accused/Appellant cannot be supported having regard to the evidence adduced before the court.”

Ground 2:

“The Honourable trial Magistrate erred in law when he held that the Accused/Appellant has some explanation to make.”

PARTICULARS OF ERROR

Discharging the Accused/Appellant of the offence of Criminal intimidation, the Honourable trial Magistrate ruled that the prosecution is proof of the offences of cheating and criminal breach of trust, called four witnesses and tendered exhibits A – 1.

The Honourable trial magistrate relied on exhibits which had no link to the Accused/Appellant as well as testimonies of PW1 TO 4, which were totally discredited under cross-examination, to rule that the

accused/appellant has some explanation to make when he ought to have discharged the Accused/Appellant for want of evidence.

Ground 3:

“The Ruling of the Honourable trial Magistrate failed the test of logical and legal reasoning as he failed to advert his mind on the deducible inferences from the prosecution witnesses’ illogical and unreasonable testimonies.”

Ground 4:

“The Honourable trial Magistrate erred in law when he failed to advert his mind on the contradictions and inconsistencies in the testimonies of the prosecution witnesses.

PARTICULARS OF ERROR

- (a) The requirement of the law as to the weight required to be attached to inaccurate statements was not considered by the trial court.
- (b) The learned trial Magistrate dismissed the no case submission of the Accused/Appellant despite the fact that the testimonies of the prosecution witness had been so discredited under cross-examination.

Ground 5:

“The learned trial Magistrate misdirected himself.”

PARTICULARS OF MISDIRECTION

The learned trial Magistrate, upon the close of the case for the prosecution, directed the parties in a criminal matter to civil Alternative Dispute Resolution (ADR) upon finding out that the offences of cheating and criminal breach of trust which the

accused/appellant was charged could not be sustained by the available evidence adduced in support of the charges, when the learned Honourable Magistrate ought to have discharged the Accused/Appellant for want of evidence.

Pursuant to this appeal, the appellant and the Respondent that is Smith O. Eboh and the Commissioner of Police filed brief of argument. Mr. C. S. Ebonugwo, learned counsel to the Appellant on the 30/4/12 merely adopted his brief of argument as his argument in this appeal. P. H. Ogbole Esq. for the Respondent adopted the same approach. They preferred no oral argument in court. Mr. Ebonugwo urged the court to allow the appeal while Mr. Ogbole urged us to dismiss the appeal.

Learned counsel to the appellant in his brief of argument framed five (5) issues for determination. They are:

1. Whether the ruling of the court below on the 11th of February 2011 can be supported having regard to the evidence adduced before the court.
2. Whether the learned trial Magistrate erred in law when he held that the accused/appellant has some explanation to make.
3. Whether the ruling of the learned trial Magistrate satisfied the test of logical and legal reasoning.
4. Whether the Honourable trial Magistrate complied with the requirement of the law as to the weight to be attached to contradictions and inconsistencies in evidence of witnesses.
5. Whether the learned trial Magistrate properly directed himself when he referred parties in a criminal matter to civil Alternative Dispute Resolutions (ADR).

With due respect to the appellant's learned counsel, there is no need for proliferation of issues. In fact, the four issues listed above are one

and the same but differently framed. It is a question of legal gymnastics or semantics.

On the other hand, learned counsel to the Respondent submitted only one issue for determination. It gives thus: “Whether in the light of evidence led by the prosecution, the lower court has any justification in overruling the no case submission and calling upon the appellant to enter his defence”?

We are of the view that there is just one issue for determination in this appeal. And the all encompassing issue is the one framed by the respondent’s learned counsel which is context is the same with that of learned counsel to the appellant. The issue is;

Whether in the light of evidence led by the prosecution, the lower court has any justification in overruling the no case submission and calling upon the appellant to enter his defence?”

Let us summarily at this juncture, advert to the arguments of both counsels in support of their contentions.

Mr. Ebonugwu submitted that there is no evidence both oral and documentary before the court establishing cheating and criminal breach of trust as there is no link between exhibit A which is the photocopy of the allocation paper the appellant gave to the nominal complainant when he bought the land for her and the appellant. The same thing goes to all other documents tendered. He referred the court to Section 6 (a) of the Evidence Act 2004 in submitting that for the said exhibits to be relevant and attached any weight, they must undoubtedly and uncontrovertibly relate to or point towards the accused/appellant and not too remote to be material. He concluded that the prosecution failed woefully to meet the standard of proof placed on them by the law which is to prove the case beyond reasonable doubt. He cited **Section 138 of Evidence Act**, the cases of **IBRAHIM VS STATE (1995) 3 NWLR (PT 381) 35; ALABI VS THE STATE (1993)7 NWLR (PT 307) 511.**

He submitted further that the prosecution did not think the ruling of the Learned trial Magistrate could Stand. He called in the authorities of **EKUNUGO VS FRN (2008) 15 NWLR (PT 1111) 630;** **Section 36 (5) of the 1999 constitution** in submitting that the lower court is calling upon the appellant to enter his defence, prove his innocence.

As for the Respondent's counsel, he argued that prima facie case has been made against the appellant as enunciated in the case of **AJIDAGBA VS IGP (1958)3 FSC 5,** adopting the definition of the expression "prima facie case" in **SHERSINGH VS JITENDRANALHSEN (1931) ILR 50 CALE 275** as;

"It only means that there is a ground for proceeding ... But prima facie case is not the same as proof which comes later when the court has to find whether the accused is guilty or not guilty ... the evidence discloses a prima facie case when it is such that if uncontradicted and if believed, it will be sufficient to prove the case against the accused."

He submitted further that the question of the prosecution making out a prima facie case requiring at least some explanation from the accused/appellant are issues of fact to be borne out by the evidence led by the prosecution. It is copiously in evidence that the nominal complainant advanced some amount of money to the appellant for the purchase of land for her. And that the land was actually purchased by the appellant, built up wherein the appellant occupies same as his property. To that extent, according to Mr. Ogbole, the lower court was right in ruling that the prosecution has made out a prima facie case of cheating and criminal breach of trust against the appellant. He urged us to dismiss the appeal. He relied

inter-alia on the cases of **DURU VS NWOSU (1989)1 NWLR (PT 113) 24; AJIBOYE VS THE STATE (1995)8 NWLR (PT 414) 408.**

This appeal to our minds is simple. The law in this area of no case submission is not complex and also well settled.

Section 191 (3) of the criminal procedure code, the adjectival law that provides the framework and steps for the trial of the appellant provides that:

“notwithstanding the provisions of subsection (2) of the same Section 191, the court may after hearing the evidence for the prosecution, if it considers that the evidence against the accused is not sufficient to justify proceeding further with the trial, record a finding of not guilty in respect of such accused without calling upon him to enter his defence. And such an accused shall be discharged.”

The principle behind a no case submission is that an accused should be relieved of the responsibility of defending himself when there is no evidence upon which a trial Judge could convict. That is the first principle. The other principle is that a no case submission essentially postulates that whatever evidence there was, which might have linked the accused person with the offence had been so discredited that no reasonable court can act on it as to pronounce the guilt of the accused see **ONAGORUWA VS STATE (1993) 7 NWLR (PT 303)49; FAGORIOLA VS FRN (2013) LPELR – 20896 (SC)**; or, the evidence adduced is manifestly unreliable that no reasonable tribunal or court can safely convict on it.

The inherent logic or force behind this principle is the constitutional provision of presumption of innocence. By virtue of

Section 36 of the 1999 constitution (as amended) every person charged with a criminal offence is presumed to be innocent until he is proved guilty. It is therefore the duty of the prosecution to rebut the presumption of innocence constitutionally guaranteed to the accused person. So where a no case had been made out at the end of the presentation of the prosecution's case, it would amount to asking him to establish his innocence if he is called upon to enter an answer or defence to the charge. See **MUMUNI VS STATE (1975)6 SC 79; DABOH VS STATE (1979)5 SC 197.**

In essence, a no case submission is available to the accused if at the close of the case for the prosecution, the evidence led failed to meet the essential requirements or elements of the offence charged.

In addition, as pointed out by the Supreme Court in **DABOH VS STATE** (Supra), the case of the prosecution may fail at this stage if the evidence is so manifestly unreliable having been destroyed by cross-examination of the witness that no reasonable tribunal or court will convict on that evidence. See **AIJUMA VS STATE (2007)5 NWLR (PT 1028)466; AMINA VS STATE (2005)2 NWLR (PT 909)108; IGABELE VS STATE (2004)15 NWLR (PT 896)314.**

We must state here very quickly that at the point of no case submission, the credibility of the prosecution witnesses is not really in issue. See **AWKA VS COP (2003)4 NWLR (PT 811) 461; AIJUMA'S CASE** (Supra) and **IGABELE'S CASE** (Supra). What is in issue is the availability of what evidence is pointing to or attaching to all the ingredients of the offence(s) alleged against the accused person. (See Nigerian Criminal Trial Procedure by Olanrewaju Adesola Onadeko, First Edition, (1998).

It is the above narrated principles and provision of **Section 191 (3) of the Criminal Procedure Code (CPC)** that the defence counsel has relied upon in making his application at the lower court. He relied wholly on all the principles in this appeal.

The road map now shifts to the offences of Cheating and Criminal breach of Trust.

These are the offences alleged in the First Information Report against the accused/appellant. These offences are codified under Sections 322 and 311 of the Panel Code.

Section 320 provides:

*“Whoever by deceiving a person
(a) Fraudulently or dishonestly induces the person so deceived to deliver any property to a person or to consent that any person shall retain any property; or
(b) Intentionally induces the person so deceived to do or not to do anything which he would not do if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.”*

Section 311 provides:

“Whoever, being in any manner entrusted with property or with a dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which that is to be discharged or of a legal contract express or implied, which he has made touching the discharge of the trust, or wilfully suffers any other person so to do, commits criminal breach of trust.”

From the above quoted provision, the offence of cheating is manifested when;

- (a) There is a fraudulent or dishonest inducement from a person to deliver property of another and
- (b) There is intentional inducement from a person to do or omit to do anything for another.

Whereas the ingredients of the criminal breach of trust are:

- (a) Dishonest misappropriation or conversion of entrusted property.
- (b) Dishonest use or disposal of property.

See the cases of **MARTINS VS COP (2012) LPELR – 9821(SC); COP VS UZOAGBA & ANO; DAURA VS DANHAUWA (2009) LPELR – 3714 (CA)**.

So, clearly for the offence of cheating and criminal breach of trust to be sustained there must be:

- (a) Fraudulent or dishonest inducement from the accused advanced to the nominal complainant.
- (b) Intentional inducement from the accused to the complainant to do or not to do.
- (c) Misappropriation or conversion of entrusted property dishonestly and;
- (d) Dishonest use of the property.

We now search the record of the lower court. The First Information Report mentioned that one Miss Chika Sybilla Ibe, female of No. 10 Gongola Street Area 11 Garki, Abuja reported at police station that one Smith Onyebuchi Eboh (male) induced her to buy land which he

bought for her and developed and that when he finished he dishonestly converted it to his own.

Now, many questions will naturally spring up. Is there any evidence of inducement? Does moving into the property when completed without the knowledge or handing over of the property to the owner amount to conversion or dishonest misappropriation? Did the appellant deny or confess to the crime?

However, it is copiously adduced in evidence that the appellant collected some amount of money from the nominal complainant which evidence the appellant has not denied. See the evidence of PW1 and PW2.

PW1 at page 6 of the record of proceedings of the lower court said thus:

'.....he showed me the particular place on our way coming back I asked him how much is the land, he said it is N120,000.00 that if I am buying the money I should bring it along with N10,000.00 with the building of the foundation on the 5-4-1999 I took the money to his shop and I gave it to him on the 6-4-1999 he started the house, he purchased the document by himself in my name being my instructor in my church I did not border to go into agreement with him. I picked interest and I trusted him. Each day he wants to buy the materials he will now come to my house to collect the money or if he is busy he will tell me to bring the money to the site which I have always done.....'

PW2 at the pages 28 and 29 of the record said:

'.....when I came to Abuja to come and visit my sister Chika one day I saw the accused in my house and my sister was giving the accused money, the accused and my sister left. I was asking my sister who is this Onyebuchi, she said he is her contractor that helped her bought a land to her.....my sister was at the site and she sent the accused to come and collect money from me. He came and said I should open her wardrobe and said I should bring N50,000.00 for her. He collected it from my hand and he went back to go and meet my sister.....'

For the appellant to deny this allegation of cheating and criminal breach of trust, he has to enter his defence for him to call evidence in that regard. When he bought the land and from who? When he started development of the plot and more importantly to prove his root of title. All these are some of the questions begging for answers. And unless and until the appellant enters his defence, the position will remain the same.

In conclusion, we find no considerable merit in this appeal. A prima facie case has been made out against the appellant. The ruling of the learned Chief Magistrate is hereby upheld. The appellant is called upon to enter his defence.

HON. JUSTICE M.E. ANENIH
(Presiding Judge)

HON. JUSTICE S.B BELGORE
(Hon. Judge)