IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION HOLDEN AT ABUJA F.C.T.
ON THE 12TH DAY OF OCTOBER, 2015
DELIVERED BY HON. JUSTICE M.E ANENIH (PRESIDING JUDGE) AND
HON.JUSTICE O. A. MUSA (HON. JUDGE)

APPEAL NO FCT/HC/CRA/11/15

BETWEEN:

COMMISSIONER OF POLICE.....APPELLANT

AND

ENGINEER AKIN OLUSINA……..….RESPONDENT

JUDGEMENT

This is an appeal arising from the ruling of His worship Usman A. Shuaibu, Magistrate sitting at wuse zone 2 of the Federal Capital Territory Abuja, upholding the No Case Submission of the accused/ respondent made after the close of the prosecution's case. The ruling was delivered on the 20th of February 2015.

The grounds of the appeal are:

1. The Honourable Court erred in law when it failed and/or neglected to appreciate that the evidence led by the prosecution made out a prima facie case against the Respondent.
2. It is wrong in law for the learned magistrate to have discharged and acquitted the Respondent on the ground that only High Court can try the offence of issuance of dud cheque when the proper verdict should have been discharge only.
3. It is wrong in law for the Honourable Court to raise *suo motu* the issue of dud cheque being an offence triable by the High Court without giving the parties especially the appellant an opportunity to address him on that.

The facts of the case before the Magistrate Court in summary goes as follows:

> The accused/respondent was arraigned on a First Information Report for an offence of Criminal breach of trust and cheating contrary to Section 312 and 320 of the Penal Code.
>
> The prosecution in proof of their case called two (2) witness; George Obidiaso Esq-PW1, Nura Bello-PW2, a sergeant with Force CID Anti Fraud Section Area 10 Abuja as IPO and Bulus Kwedau-PW3 an Exhibit Keeper attached to Force CID Area 10 Garki Abuja. PW1, PW2 and PW3 affirmed to speak the truth and in the course of their evidence they tendered Exhibits as follows:

PW1 Exhibits:

1. The power of Attorney donated to PW1 by Mr Chineme Edwin Ume-Ezeoke dated 20th April 2011- Exhibit A
2. The tenancy Agreement dated 14th January, 2012 between George Obidiaso & Associates and Engr. Akin Olusina- Exhibit B
3. The statement of the PW1 to police dated 13th June 2013-Exhibit C
4. The three memorandum of understanding variously dated 15th August 2013, 20th June 2013 and 11th October, 2013- Exhibits D1, D2 and D3 respectively.

5. The Stanbic IBTC Bank No. 06581831 dated the 17th February 2013 issued by the Accused to PW1- Exhibit E

PW2 Exhibits:

1. The statement of the Accused to police dated 19th June 2013- Exhibit E(sic)
2. The letter on FISECO Consultant Limited written to the Honourable Minister of Environment by the Accused person dated the 25th July 2013 and 16th December 2012 and one written to Honourable Minister of works dated the 11th February, 2013- Exhibit F1, F2 and F3 respectively.

PW3 Exhibits:

1. The sum of ₦250, 000.00 in 1000 denomination in evidence as Exhibit G.

At close of prosecution's case counsel to the accused made a "no case submission" on behalf of the accused person, which the prosecution responded to and the trial court in his ruling of 20th day of February 2015, held that, "…if the issuance of Exhibit E is an offence, then it can fall under the offence of issuance of a Dud cheque which this court is lacking the jurisdiction to try." And the court went further to uphold the submission that the prosecution failed to establish a prima facie case of criminal breach of trust and cheating against the accused person, then discharged and acquitted the accused person.

Both counsel to the Complainant/Appellant and Accused person/Respondent filed and exchanged their brief of arguments. On the 22nd of September 2015 both counsels adopted briefs of argument before this Court.

Counsel to the Appellant in his brief of argument formulated one issue for determination.

Whether the prosecution has made out *prima facie* case against the accused so as to require him to enter his defence in this case.

On the sole issue raised, Counsel submitted that no case to answer may be appropriately made when there has been no evidence to prove an essential element in the alleged offence and the evidence adduced by the prosecution has been so discredited as a result of cross examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it. He referred the court to SUBERU V. STATE (2010) 1 NWLR (PT 1176) 494 Ratio 1.

On Count One, counsel submitted that the prosecution at the lower court led cogent and credible evidence to establish that the tenancy of No. 4 Oliver Thambo street Asokoro, Abuja was entrusted to the accused now the Respondent, who dishonestly betrayed that trust by issuing a dud cheque in respect theeof.

On Count two at the lower court, he submitted that the prosecution has not only established a prima facie case of cheating against the accused now respondent but has proved it beyond reasonable doubt.

In conclusion, he submitted that a *prima facie* case has been made out against the accused person/Respondent and as such as requiring him to enter his defence and make some explanations. And that the prosecution is not required to prove the guilt of the accused but merely to convince the court that there is a ground for proceeding with the action.

He urged the court to set aside the ruling of the lower court on the No Case Submission and order the Accused/Respondent to enter his defence.

The counsel to the Accused person/Respondent in his brief of argument filed on the 17th of September 2015 raised the following issues for determination:

1. Whether the Appellant had proved all the ingredients of the offences against the Respondent that will warrant the Respondent to enter his defence.

2. Whether the lower court (Magistrate Court) have jurisdiction to try the offence of Issuance of Dud Cheque.

On both issues raised, Counsel to the Respondent submittted that the law is common place that for the Respondent to succeed on a No Case Submission, he has to show that one or all the ingredients of the offence(s) he has been charged with had not been established from the totality of the evidence adduced. He referred the court to the case of AITUMA V. STATE (2006) 10 NWLR (Pt. 989) pg. 452 at 462, Paras B-F.

On count one, he submitted that for the Appellant to succeed on the offence of breach of trust, he must adduce that the respondent was entrusted with the property and that the Respondent in fact dishonestly misappropriated or converted the property to his own use. He referred the court to F.R.N V. MARTINS (2012) 14 NWLR (Pt.364) Pg. 582, Paras. A-E.

He submitted that there is no evidence placed before this court by the Appellant to prove, even one, of the ingredients in the alleged offence of breach of trust against the Respondent.

On offence 2, he submittted that issuance of a Dud Cheque cannot be substituted for the offence of cheating contrary to section 320 of the Penal Code. And that the Appellant cannot use the evidence of the Issuance of a Dud Cheque as proof of Cheating because the issuance of a Cheque is an offence itself which is only triable by the High Court of Justice and not Magistrate Court.

In conclusion, he submitted that the No Case Submission was properly made out by the Respondent and asking him to answer the charge against him where there is no evidence to support same will be a reversal of the constitutional provision of innocence by asking him to establish his innocence.

He urged the court to dismiss this appeal.

From the entirety of the case before this Court, we are of view that the issue araising for determination is that formulated by the Appellant's counsel in his brief of argument as follows:

> Whether the prosecution has made out *prima facie* case against the accused so as to require him to enter his defence in this case.

The first question that comes to mind is what is a *prima facie* case? The expression *prima facie* is not defined anywhere in our Nigerian Laws, as such it received numerous definition by our courts. It simply means that there is a ground for proceeding. See

UBANATU V. COP (2000) 2 NWLR (PT.643)115 OR (2000) LPELR-3280(SC) P. 11, PARAS. A-C And

In the case of DURU V. NWOSU (1989) NWLR (PT.113) 24 AT 43, Nnamani J.S.C. (of blessed Memory) adumbrated thus:

> *"It seems to me the simple definition is that which says that, 'there is ground for proceedings.' In other words, that something has been produced to make it worthwhile to continue with the proceeding. On the face of it, "suggests that the evidence produced so far indicates that there is something worth looking at."*

See also

AGBO V. THE STATE (2010) LPELR-4989(CA)PP. 17-18, PARAS. B-E

Where an accused person at the close of the prosecutions' case raises a no case submission, what the court looks out for is to see whether or not the evidence of the prosecution has disclosed a *prima facie* case, such that if uncontradicted and if believed it will be sufficient to prove the case against the accused. See

OHWOVORIOLE V. F.R.N & ORS (2003) 2 NWLR (PT.803)176 OR (2003) LPELR-2364(SC) PP. 31-32, PARAS. G-A

The procedure for a 'No Case Submission' is prescribed under Section 191(1)-(5) of the Criminal Procedure Code. However, Section 191 (3) of the

Criminal Procedure Code, the adjectival law that provides the framework and steps for the trial of appellant provides that:

> *"notwithstanding the provisions of subsection (2) of the same Section 191, the Court may after hearing the evidence for 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 and the Court shall then call upon the remaining accused, if any, to enter upon the defence."*

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 or, the evidence adduced is manifestly unreliable that no reasonable tribunal or Court can safely convict on it. See

FAGORIOLA V. FRN (2013) LPELR-20896 (SC) Pp. 13-14, PARAS. A-A

TONGO V. C.O.P. (2007) ALL FWLR (PT. 376) 636 AT 646-647,PARAS. E -C & G - H (SC)

ONAGORUWA V. STATE (1993) 7 NWLR (PT 303) 49

The inherent logic behind this principle is the Constitutional provision for presumption of innocence, by virtue of **Section 36 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)**, which provides thus:

> *"Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty:*

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts"

See also

UBANATU V. COMMISSIONER OF POLICE (1999) 7 NWLR (PT.611) OR (1999) LPELR-5635(CA) P. 16, PARAS. E-F

It is therefore the duty of the prosecution to rebut the presumption of innocence Constitutionally guaranteed to the accused persons herein for any court with competent jurisdiction to thereafter call on the accused persons to enter their defence. In any case, where a no case had been made out at the end of the presentation of the prosecution's case, it would amount to asking the accused persons to establish their innocence, if they are called upon to enter an answer or a defence to the charge. See

DABOH V. STATE (1979) 5 SC 197.

The offence alleged against the accused/respondent in the First Information Report is Criminal Breach of Trust and Cheating. These are codified under Section 312 and 320 of the Penal Code as follows:

Section 312 provides:

> Whoever commits criminal breach of trust shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

Section 320 provides:

> Whoever by deceiving any person-
>
> (a) Fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property;
> (b) Intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to 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.

It is the ingredients of the offences codified in Sections 312 and 320 that the Court is expected to find a nexus between the acts of the accused as led in Evidence and the said ingredients of the offences and not the ingredients of offence of Issuance of Dud Cheque which is not before this Court.

Under our criminal laws, one of the ingredients/ elements that must be established before an accused can be said to have committed the offence of criminal breach of trust and cheating as in this case is dishonesty. See

SECTION 311 OF THE PENAL CODE.

A submission that there is no case to answer may properly be made and upheld when there has been no evidence to prove an essential element in the alleged offence charged.

In order to determine whether a No Case Submission has been successfully made out in favour of the accused person, the trial Court has to examine the offences charged vis-à-vis the evidence adduced by the prosecution to see whether one or all of the essential ingredients/ elements of the offence was established by the totality of the prosecution against the accused person.

In other words, can the Court safely convict based on the evidence of the prosecution if no defence is preferred?

The learned magistrate in his ruling on No Case Submission deliberated on the propriety of the prosecution submitting that the accused dishonestly betrayed the tenancy of the premises entrusted to him by Issuance of a Dud Cheque in respect thereof.

He went further to canvass that Issuance of Dud Cheque in itself is an offence triable only by the High Court and on that basis that the offence of Criminal Breach of Trust cannot be sustained.

With due respect to the learned Senior Magistrate, we are of the view that he was completely off tangent by the above conclusion. The issue arising for determination at the relevant stage of the proceeding is whether a prima facie case has been made out against the accused in respect of the offence alleged against him by the First Information Report and the evidence of the prosecution. A cursory look at the First Information Report does not reveal any offence of issuance of Dud Cheque against the accused person. The offences reflected therein are Criminal Breach of Trust and Cheating.

The evidence of the three prosecution witnesses is clear and unambiguous to the extent that the cheque issued by the accused for payment of his rent was returned unpaid and that the said rent sum remained unpaid. The allegation by the evidence before the court is apparently not one for mere issuance of Dud Cheque but rather for neglect to pay rent and issuance of a post dated Cheque to back up promise to pay which was not fulfilled. That is the substance of evidence currently before the Court. And that the Accused remained in the property after issuance of the Post dated Cheque for payment of the rent.

Neither the offences charged nor the evidence led so far border on the offence of issuance of Dud Cheque *per se*, but issuance of a post dated cheque as a means of payment of accrued rent.

It is not the attitude of Appellate Courts to normally interfere with the findings of a lower Court unless they are perverse or unsupported by evidence or there is a miscarriage of justice or a violation of some principles of law or procedure on consideration of a No Case Submission. See

MAGDALENE ONOGWU V. THE STATE (1995) LPELR-2691(SC) PP.33-34, PARAS.G-A OR ONOGWU V. STATE (1995) 6 NWLR (PT.401)276

In the case of AJISOGUN VS. STATE (1998) 13 NWLR (PT. 581) 205 AT 262, it was held that:

"What the trial Court should consider at this stage is threefold- 1) Whether an essential ingredient of the offence has or has not been so proved; 2) Whether the evidence of the prosecution witnesses have been so discredited and rendered unreliable by cross-examination that it will be unsafe to convict such evidence. 3) Whether the evidence so far led is such that a reasonable Tribunal would convict on it in which case there is a case to answer. See also the following cases: Aituma vs. State (2007) 5 NWLR (Pt. 1028) 466; Ibeziako vs. C.O.P. (1963) 1 ALL NLR 61."

See

IFEANYI v. FEDERAL REPUBLIC OF NIGERIA (2014) LPELR-22984(CA) Pp. 28-29, paras. E-A

A thorough examination of the offence of Criminal Breach of Trust in Section 312 as defined in Section 311 of the Penal Code clearly shows that the evidence so far adduced by the prosecution has established the essential elements of the offence of Criminal Breach of Trust. Accordingly also an examination of Section 320 of the Penal Code also clearly reveals that the evidence so far adduced by the prosecution reveals the essential elements of the offence of cheating. See Evidence of PW1 on pages 41-42 of the Record of Appeal which is reproduced hereunder for the nexus between the Accused person and offences referred to in Section 312 and 320 of the Penal Code.

"…The Accused is my tenant at No. 4 Oliver Tambo Street Asokoro… we entered into a tenancy agreement which both of us signed, the tenancy agreement said his tenancy expires every 15th November every year. Prior to the expiration of his tenancy… I wrote him a demand notice for his rent and service charge unfortunately he did not renew his rent on 15th November, 2012 he credited my account… he explained that he didn't have enough money but will pay me on 17th February 2013, I declined to accept the cheque but he assured me, that I will get the money on that date. I told him I do not collect split rent it is not our practice… I presented the cheque which I paid

into my account and it was returned and my (sic) debited, I wrote a letter to the accused person in March, 2013 asking him to redeem the cheque and that I was under pressure from the Donor of the power of Attorney to remit his rent, but this was (sic) no avail he neither paid me on 7th of May, 2013. … he made another undertaking to pay the balance which both of us signed he reneged and made a third undertaking and never paid up till this moment under pressure from my Donor, I am frustrated I went back to the police I told them to accelerate my matter and that is why we ended up in court. "

Upon thorough examination of the offences on the First Information Report vis-à-vis the evidence adduced by the Prosecution, we find that the essential ingredients/ elements of the offence of Criminal Breach of Trust and Cheating was made out by the totality of the prosecution's case against the Accused person. Thus a *prima facie* case appears to have been made out against the accused person.

Having held that a *prima facie* case has been made out against the accused person, the 2nd and 3rd grounds of appeal have been rendered irrelevant for consideration and determination under the circumstance. As the issues relating to the understanding between parties upon issuance of the Cheque alleged by Respondents counsel in itself appears to be explanations by the respondents for defence.

Suffice to say that we find that the charge being one for an offence of Criminal Breach of Trust and cheating and not an offence of issuance of Dud Cheque per se as suggested by the trial court, the trial Magistrate Court has the jurisdiction to adjudicate on same.

The issue as to the propriety of issuance of Dud Cheque raised by His worship at the lower Court and argued by the parties in their respective brief becomes premature for deliberation at this stage, this Court having held that a prima facie case has been made out against the accused person in respect of the alleged offences in the First Information Report.

Consequently therefore, this appeal succeeds and the ruling of His worship Usman A. Shuaibu delivered on 20th of February, 2015 upholding the No Case Submission is hereby set aside.

It is therefore hereby accordingly ordered that the trial Court drafts the Charge against the Accused person/Respondent in line with the Offences reflected in the First Information Report (of Criminal Breach of Trust and Cheating) for which this Court has held that a prima facie case has been made out against him. And the Accused person is to thereafter proceed to his defence.

Signed:

HON JUSTICE M.E. ANENIH

(Presiding Judge)

Signed:

HON JUSTICE O.A. MUSA

(Hon. Judge)

Fatima Akwuchi MS Esq., for Appellants/Applicant

Ebhodaghe Jatto Esq., S. A. Ilenlanye Esq., for Respondent