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 (JUDGE)

APPEAL NO FCT/HC/CRA/69/11

BETWEEN:

1. **OBU MICHAEL**
2. **OGALLA ABDULLAHI.....APPELLANTS**

AND

COMMISSIONER OF POLICE……RESPONDENT

JUDGMENT

This is an appeal arising from the ruling of His worship Aliyu Yunusa Shafa Senior Magistrate II sitting at Wuse zone 2 of the Federal Capital Territory Abuja, overruling the No Case Submission of the two Accused persons made after the close of the prosecution's case. The ruling was delivered on the 5th of October, 2011.

The grounds of the appeal are:

Ground 1

The learned trial Magistrate erred in law and facts when he held that the persecutor had made out a prima facie case against the accused person.

Particulars of error

1. No evidence before the Court to suggest that a crime was committed by the accused
2. Prosecution witness could not establish that there were infact stolen items traceable to an identified owner in court

Ground 2

The learned trial Magistrate erred in law when he preferred charges against the appellants at the conclusion of his ruling on no case submission

Particulars of error

The trial magistrate in preferring his charge relied on none existing evidence before it.

The reliefs sought are:

1.) Allow the appeal
2.) Set aside the ruling of the learned trial magistrate His worship Aliyu Yunusa Shafa dated 5th October 2011

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

The two accused persons /appellants were arraigned on a First Information Report dated 4th May 2011 for an offence of Joint act and theft by servant contrary to Section 79 and 289 of the Penal Code Law.

The prosecution in proof of their case called three (3) witnesses Chinazor Onaogo-PW1 a hotel manager with Lake Chad palace Hotel, Ijiomah Amarachi-PW2 a receptionist at Lake Chad Palace Hotel Maitama and CPC Elizabeth Okpe-PW3 with Force No. 019663 Nigeria Police attached to Maitama division as an Investigating Police Officer. PW1 and PW2 testified on oath while PW3 affirmed to speak the truth and in the course of his evidence tendered Exhibits as follows:

i. The general master card alleged to have been used in opening the guest room with exhibit No. 70/011 dated the 4th of May 2011- Exhibit A,

ii. The photocopy of the printout titled smart hotel lock system given to the IPO for investigation signed by the IPO dated the 29th of April 2011- Exhibit B,

iii. The statement of the accused persons dated 20th of April 2011 recorded by themselves and counter signed by the IPO- Exhibit C and C1.

The case of the Prosecution is that the two Accused persons on the 29th of April 2011 at about 10pm conspired and used the general master card with No. 866307 in their possession to open room No 0213 and made away with one laptop computer-toshiba portage R705; power pack for the laptop and one pair of sandal all belonging to one Tahiru Okhafe a guest in Room No. 0213.

At close of prosecution's case, defence counsel made a "No Case Submission" on behalf of the accused persons, which the trial court overruled, and then went ahead to prefer the charge against the accused persons, wherein the charge was read to them in English language they said they understood and pleaded not guilty to both counts.

Both counsel to the Accused persons/Appellants and Respondent filed and exchanged their brief of arguments in this Appeal.

On the 16th of September 2015 counsel to the accused persons/Appellants adopted his brief of argument filed 3rd December 2014.

The counsel to the Accused persons/Appellants in his brief of argument raised the following issues for determination:

a. Whether from the testimonies of prosecution witnesses a prima facie case had been made out against the appellants in this case.
b. Whether the learned trial magistrate was right in preferring charges against the appellant in the absence of any evidence to justify same?

On the 1st issue raised, whether from the testimonies of prosecution witnesses a prima facie case had been made out against the appellants in this case, counsel submitted that there is nothing on record and before the court to show that a crime was committed except the contents of the First Information Report and the

hearsay evidence of PW1, PW2 and PW3. That the duty manager never received direct complaint from the guest. The testimony from the record are unspecific, unclear and not direct. That in Section 286 of the Penal Code Act, there must be the element of taking without consent and dishonesty. That the prosecutions' case was initiated by hearsay evidence.

That for the purposes of a No Case Submission prima facie case is said to be disclosed when there is admissible evidence sufficient enough to support the offences as contained in the FIR which raises a presumption of guilt. Counsel referred to

IGABELE V. STATE (2004) 15 NWLR (PT 896) 314; STATES V. NWACHINEKE (2008) ALL FWLR PT 398 PG 207.

OLADEJO V. STATE (1994) 6 NWLR PT 348 RATIO 6 PAGE 124;

UGBAKA V. STATE (1994) NWLR APT 364 PAGE 586 PARA E.

Counsel urged the court to resolve issue 1 in their favour.

On the 2nd issue raised, whether the learned trial magistrate was right in preferring charges against the appellant in the absence of any evidence to justify same, counsel submitted that it was wrong of the magistrate to have preferred a charge against the appellant and he did not evaluate properly the evidence as was led by the prosecution before it proffered charges against the appellant.

In conclusion Appellant's counsel urged the Court to allow this appeal in its entirety and set aside the ruling of trial Magistrate.

The respondent's counsel in response to the Accused persons/Appellant's brief of argument submitted that:

> At the stage of No Case Submission the prosecution is only expected to make out a prima facie case against the accused and not proof beyond reasonable doubt. Counsel referred the court to
>
> SULIEMAN V. STATE (2011) 6 NCC PAGE 220 AT 222 RATIO 1 & 2.
>
> That what is expected of the court at this stage is to find out from the evidence adduced whether there is admissible evidence linking the

accused persons with the offence with which he is charged. Counsel referred the court to

EMEBO V. STATE (2002) 15 NWLR (PART 789) PAGE 196 AT 198 RATIO 2.

In conclusion counsel submitted that from the totality of the evidence adduced by the prosecution through PW1, PW2 and PW3 and the Exhibits tendered, there were facts linking the appellants with the offence, therefore constituting a prima facie case of joint act and theft requiring them to be called upon to enter a defense.

Counsel therefore urged this court to dismiss the appeal and uphold the ruling of the trial magistrate dismissing the no case submission made on behalf of the appellants.

From the entirety of the case placed before this court, we find that the issues araising for determination are as formulated by the appellant in their brief of arguement.

Issue No1 is, whether from the testimonies of prosecution witnesses a prima facie case had been made out against the appellants in this case.

This appeal to our minds is simple and straight forward to the effect that, the law with regards to no case submission is not complicated and is also well settled.

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 Appellants 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 first and foremost to take steps 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.

In essence, a no case submission is only available to an accused person(s) if at the close of the prosecution's case, the evidence led failed to meet the essential requirements or elements of the offence charged. See

IGABELE V. STATE (2004) 15 NWLR (PRT 896) 314 AT 330 PARA H

In addition, as adumbrated by the Supreme Court in DABOH V. STATE (SUPRA), the case of the prosecution may fail at this stage of No Case Submission, if the evidence is so manifestly unreliable having been destroyed by cross-examination of the prosecution's witness that no reasonable tribunal or Court will convict on that evidence as having established criminal guilt of the accused person(s) concerned. See

IGP & ANOR V. UBAH & ORS (2014) LPELR-23968(CA) P. 26, PARAS. D-F

AIJUMA V. STATE (2007) 5 NWLR (PT 1028) 466 PP 479 PARAS D-F; 485-486 PARAS G-B

AMINA V. STATE (2005) 2 NWLR (PT 909) 180 AT 190-191 PARAS G-A

IGABELE V. STATE (2004) 15 NWLR (PT 896) 314 AT 331 PARAS A-B

We must note at this point that the credibility of the prosecution's witness(es) is not what the Court looks out for at the stage of a no case submission. But what is in issue rather is the availability of evidence pointing to or attaching to all the ingredients of the offence(s) alleged against the accused person(s). See

AGBO V. THE STATE (2010) LPELR-4989(CA) PP.15-16, PARAS. G-B Where TSAMIYA, J.C.A. adumbrated viz:

> *"The meaning of a submission that there is no case for an accused person to answer is that there is no evidence on which even if the court believes it, it could convict. The question whether the Court does believe the evidence does not arise nor is the credibility for the witness the issue at this stage."*

See

AIJUMA V.STATE (SUPRA) AND IGABELE V.STATE (SUPRA)

ALSO SEE NIGERIAN CRIMINAL TRIAL PROCEDURE BY OLANREWAJU ADESOLA ONADEKO, FIRST EDITION, (1998)

From the above findings, it is clear that the submission of counsel to the appellants in his brief; that it is difficult to decipher from the testimonies of the prosecution's witnesses, that either of the above components (ie the existence of an offence being committed, an intention to commit the offence and an agreement reached by the offenders) ever occurred between the appellants, is not necessary at this stage of a no case submission.

The submissions of appellants counsel that the prosecution's case was initiated by hearsay evidence cannot be correct. The evidence of PW2 that she checked in a guest at 8:03 and that he dropped his key at 10:00pm cannot be hearsay, it is direct and sufficient for this stage.

The road map now shifts to the offence of joint act and theft. These are the offences alleged in the First Information Report against the accused persons/appellants. These offences are codified under Sections 79 and 289 of the Penal Code.

Section 79 provides-

> *"When criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone"*

Section 289 provides-

> *"Whoever, being a clerk or servant or being employed in the capacity of a clerk or servant, commits theft in respect of any property in possession of his master or employer, shall be punished with imprisonment for term which may extend to seven years or with fine or with both."*

In a concise determination of this appeal on a No Case Submission, this Court in making its findings as to whether or not a No Case Submission has been successfully made out by the Accused persons/ Appellants, has to examine the offences alleged against the accused persons vis-à-vis the evidence adduced by

the prosecution to decipher whether or not the essential elements of the offence was established by the totality of the evidence adduced.

Under the criminal procedure code, the following ingredients must be established before an accused can be said to have committed the offence of stealing or theft as in this case:

1. Dishonesty.
2. Appropriation.
3. Property belonging to another, and
4. The intention of permanently depriving the owner of it.

Also in addition that the thing stolen is capable of being stolen. See on this

ONWUDIWE V. FEDERAL REPUBLIC OF NIGERIA (2006) ALL FWLR PT. 774 AT 810

In MICHAEL ALAKE & ANOR V. THE STATE (1991) 7 NWLR PT. 205 PAGE 567 AT 590. Niki Tobi JCA (as he then was) said of the ingredients of the offence of stealing thus:-

> *"For the offence of stealing to be proved, the thing alleged to have been stolen must be capable of being stolen. To constitute stealing, the taking must be fraudulent and with an intention to deprive the person his permanent ownership of the thing. In a charge of stealing, proof that the goods stolen belong to some person is an essential ingredient of the offence and it is the duty of the prosecution to adduce that evidence.*

COMMISSIONER OF POLICE V. DONATUS UDE (2010) LPELR-8599(CA)PP. 30-31, PARAS. A-D

From the proceedings in the trial court the following facts were adduced by the prosecution witnesses:

1. That there was a guest in room 0213 that complained of his missing items while he was out of his room.
2. That the key in custody of the appellants opened the door to room 0213 at the relevant period

A determination of whether a prima facie case has been made out is one which is made after or in the course trial of the prosecution of the case. To this end, it is necessary, I think to refer to a relevant case on the meaning of 'prima facie case'. In the case of Rex Vs. Coker & Ors 20 N.L.R. 62. Hubbard .J had this to say on prima facie case:

> *"But a 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 of the prosecution 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."*

The Supreme Court, in the case of AJIDAGBA V. I.G.P. (1958) 3 F.S.C. 5 cited the same holding with approval. Evidence, however, slight implicating the accused requires some explanation on his part. The proof at that stage is not beyond reasonable doubt. Neither does it involve the determination of the appellant's guilt nor innocence. See

DABOH V. THE STATE (SUPRA)

FIDELIS UBANATU V. COMMISSIONER OF POLICE (1999) LPELR-5635(CA) PP. 21-22, PARAS. C-B

In the case of DABOR & ANOR V. STATE (1977) 5 SC P.187 AT 209, the Supreme Court per Udoma JSC postulated thus:-

> *"… if in a criminal trial at the close of the case for the prosecution, a submission of a prima facie case to answer made on behalf of an accused person postulates one of two things or both of them at once. Firstly, such a submission postulates that there has been throughout the trial no legally admissible evidence at all against the accused person on behalf of whom the submission has been made linking him in any way with the commission of the offence with which he has been charged, which would necessitate his being called upon for his defence. Secondly, as has been so eloquently submitted by Chief Awolowo, that whatever evidence there was which might have linked the accused person with the offence has been so*

discredited that no reasonable court can be called upon to act on it as establishing criminal guilt in the accused person concerned…."

See

SUNNY TONGO & ANOR V. COP (2007) LPELR-3257 (SC) PP. 14-15

AGBOOLA V. FRN (2014) LPELR-22932(CA) PP. 50-51, PARAS. D-D

The First Information Report mentioned that the two accused persons conspired and used the general master card with No. 866307 in their possession to open room 0213 and made away with items belonging to the guest in the room.

From the record of proceedings of the trial court the evidence of the prosecution's witnesses speaks for itself.

PW1 testified while being examined that:

> On the 28th of April 2011 after he got the report from the front desk of the complaint made by a guest, he went downstairs, "called all the staff to the reception area, the hotel uses computerized system that records all the entries for every room. He then went to put the records at the room 02/13 occupied by the guest, one Mr Attahiru, on inspecting the record, it was seen that the general master card assigned to the housekeepers was used to enter the guest room at 10:00pm while the guest was away. He then searched the staff to see who was in possession of the general master card belonging to the house keeper and the recovered it from the 1st accused person. He confirmed the serial number of the general keys belonging to the house keeper with serial number of the general keys the computer had recorded for unauthorized entry of room 02/13 at 10:00pm…. He printed out the record from the computer and took it with him to the police station where he reported the case."

PW2 testified while being examined that:

> "…On the 28th of April 2011 we had a guest by name Attahiru, I checked him in on the same date by 8:03, within 30minutes he dropped up his keys, came back at about 10:53pm and called from his room that somebody entered his room and made away with his laptop, recharge and palm

slippers. I then reported the case to the night duty manager then checked the system through there (sic) to check on the card that made access to room 02/13. That from the system he was able to dictate that the master card are with the house keeper who opened the door by 10:00pm and the card were still in possession of the house keeper that is the accused persons. The serial number of the said card with the accused person is number 866307…."

From the above evidence of PW1 and PW2 in the record of proceeding from the trial court, it is crystal clear that there is evidence, before the Court, linking the accused persons to offences against them.

Now many questions will naturally spring up as to whether there is any evidence that the items reported missing was seen in the possession accused persons? Does the fact that the general master card in their possession opened the room 0213 at the relevant period amount to the same being done by the accused person just because the general master card was in their possession?

This is however, not the stage of the proceedings for such answers. See on this position

FAGORIOLA V. FEDERAL REPUBLIC OF NIGERIA (SUPRA) to answer any of these questions that would naturally come to mind, where it was held thus:

> *"…Therefore when a submission of no case is made, the trial court is not hereby called upon, at that stage of proceeding, to express any opinion on the evidence before it. The court is only called upon to take note and to rule accordingly that there is, before the court, no legally admissible evidence linking the accused person with the commission of the offence with which he is charge or that there is evidence before it linking the accused person with the offence charged."*

In the light of the foregoing, we are of the view that a prima facie case has been made out against the accused persons requiring them to defend themselves.

Issue No. 2 is, whether the learned trial magistrate was right in preferring charges against the appellant in the absence of any evidence to justify same?

We are of the view that proffering charges against the Accused persons was a step in the right direction. Appellants counsel's submission however, that the magistrate did not evaluate properly the evidence led by the prosecution before it proffered charges against the appellant is certainly out of place.

We have gone through the evidence led by the prosecution vis-à-vis the offence charged, and we are of the opinion that there is a nexus between the Accused persons/ Appellants and the offences charged, as the essential ingredients the offence of joint act and theft at this stage has been made out before the lower court. Thus the trial Magistrate was therefore right in preferring charges against the accused persons/appellant.

In conclusion, we find that a prima facie case has been made out against the Accused persons/Appellants. We therefore find no merit in this appeal, it is hereby dismissed. The ruling of the learned Senior Magistrate is hereby upheld and the Accused persons/Appellants are hereby called upon to enter their defence.

Signed:

HON JUSTICE M.E. ANENIH

(Presiding Judge)

Signed:

HON JUSTICE O.A. MUSA

(Hon. Judge)

Goddey Edeache Esq., for Appellants

Simon Lough Esq., for Respondent