

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT ABUJA
BEFORE THEIR LORDSHIPS: HON JUSTICE SALISU GARBA (PRESIDING)
HON JUSTICE VALENTINE B. ASHI (JUDGE)
THIS 24th DAY OF APRIL, 2015

APPEAL NO. CRA/42/2011

1. REV JOHN SARAOKE ADEOYE
2. ABRAHAM OJO

Between:
.....APPELLANT

And

C.O.PRESPONDENT

JUDGMENT

This is an appeal against the decision of the Senior Magistrate court, Wuse Zone 2 delivered on the 7th of October, 2011. The Appellants as accused in the court below were brought before the court on FIR on the allegation that sometime in 2005 the two accused persons who are both members of “C & C Unity Church of Zion, Abuja” conspired and agreed to sell a plot of land situate along Airport Road, property of the Church for N7.5 million without the consent of the elders in the church and converted the money to their own use and thereby committed the offences of criminal conspiracy, criminal breach of trust and theft, contrary to Sections 97, 312 and 287 of the Penal Code. After taking evidence from the prosecution, the defence entered a plea of “no case”. But the learned trial magistrate over ruled the submission and proceeded to charge the accused persons with the offence of committing an illegal act. The grounds of appeal before us, shorn of their particulars, may be paraphrased as follows:

1. The learned trial magistrate erred in law, which led to a miscarriage of justice when he proceeded to charge the accused person with the offence of committing an illegal Act, after holding that the prosecution failed to establish a *prima facie* case of criminal conspiracy and theft punishable under Sections 97 and 287, respectively of the Penal Code
2. The learned trial Magistrate erred in law when he held that the accused had a case to answer for criminal breach of trust punishable under Section 312 of the Penal Code, when there was no evidence of a trust created capable of being breached

In his Brief of argument, learned counsel to the Appellant formulated two issues (as arising from the above grounds) for determination, namely:

1. Whether, from the totality of the testimonies of the prosecution witnesses a *prima facie* case was made out for the offences of conspiracy and theft;
2. Whether the prosecution was able to establish a *prima facie* case of criminal breach of trust against the accused

In arguing the first issue, especially in connection with the offence of criminal conspiracy, learned counsel submitted that the ingredients of proof of the offence must tend towards establishing the existence of an agreement between two or more persons to commit an illegal act or to commit a legal act by illegal means. And, in regard to the offence of theft under Section 286 of the Penal Code, he further submitted, the prosecution must lead evidence to show distinctly and discretely that:

- a. There is a moveable property
- b. That accused intended to take dishonestly;
- c. That the property was in the possession of someone
- d. Accused moved it without the person who is in possession of it,
- e. Accused took it with the aim of causing wrongful loss to the owner or wrongful gain to himself

He submitted further that none of the foregoing ingredients were proved. In particular, that no conspiracy was proved and no moveable property was proved to be the object of the purported theft. As such, no illegality was established and therefore the charge for the offence of committing an illegal act cannot be supported. He urged us to resolve the first issue in favour of the Appellant.

On issue Number 2, learned counsel to the Appellants drew our attention to what he termed material contradictions in the testimonies of PW2, PW3, PW4, PW2 and PW 5 such that the court below ought to have come to definite decision that the accused had no case to answer. Arguing further, he submitted that in the absence of or upon the failure to:

- a. Tender in evidence the land documents of title to prove in what name the land was allocated;
- b. Call as witness any of the trustees of the C & S Unity Church of Zion which is alleged to have entrusted the land to the accused person;
- c. Tender any document to show that the accused carried out the land transaction with a criminal intent

d. Tender the Church's statement of account of the UBA to show how accused dishonestly managed the account

The learned trial magistrate could not have rightly come to the conclusion as he did that the accused had a case to answer.

In order to succeed in a charge of criminal breach of trust, he submitted, the prosecution must prove, among others that property was entrusted to someone who dishonestly mismanaged same in breach of the directions governing the trust. He submitted that these ingredients were not proved and went ahead to illustrate from the record of proceedings how the prosecution failed in discharging the burden placed on them. In conclusion, he urged us to resolve the second issue in favour of the Appellant.

In their Response, learned counsel to the Appellant equally formulated two issues for determination, namely,

(i) Whether from the totality of the prosecution's evidence before the lower court, a *prima facie* case was made out against the Appellants or the prosecution is required to prove the guilt of the accused/ appellants beyond reasonable doubt

(ii) Whether a trust must be formally created before they are binding on persons entrusted with money and property belonging to a church

In advancing arguments in support of the two issues above Respondents have urged us to dismiss the appeal in that the lower court was right in

holding that the Appellants have a case to answer. Our attention is specifically drawn to Exhibits ZZ, ZZ1, ZZ2, ZZ3 and M, respectively. These are all extra-judicial statements made by the nominal complainant, Mr. Stephen A. Omomebi and the accused persons as well as a Power of Attorney relating to the transaction by the accused with a 3rd party, purportedly on behalf of the land owner/allottee, the Cherubim and Seraphim Unity Church of Zion. Learned counsel to the Respondent has urged us to uphold the ruling of the court below and also hold that the contents of these exhibits are sufficient to warrant calling on the accused person to enter upon a defence to the charge of committing and illegal act.

We have taken note of all the foregoing submissions of learned counsel for the respective parties in support of the issues raised. However we are of the view that the single issue for determination properly arising from the grounds of appeal is whether, having regard to the evidence led by the prosecution the accused persons could rightly be considered completely blameless in relation to the allegations against them as contained in the FIR. If the answer to this question is negative then the learned trial magistrate was right to have over ruled the plea of no case to answer.

To begin, it is important to keep in mind that at the stage of ruling on a plea of no case to answer, the trial court is not called upon to evaluate evidence as is erroneously conceived by learned counsel for the respective parties, going by their submissions in their briefs of argument. See,

Ekwunugo v FRN (2009) All FWLR (Pt. 450)614. “Evaluation” is the value a court will attach to a piece of evidence when compared with other evidence “led by both parties”. See, *Onwuka vs. Ediala* (1989) 1 NWLR (pt.96) 18 at 208; *Chief Niyi Akintola v. Buraimoh L. Balogun & Ors* (2000) 1 NWLR (pt. 642) 532 at 549.

Since at the stage of a plea of “no case” only the prosecution’s evidence is available and in focus, it will be preposterous to talk about “evaluation”. Thus, at this stage the court is only being invited to hold that in view of the evidence led by the prosecution, against the background of the allegations contained in the FIR the prosecution has failed to establish a *prima facie* case against the accused to warrant his making a defence. In other words, given that in criminal trials, since the accused has no obligation to even say anything but remain in the dock, keeping mute, the evidence led by the prosecution, left alone as it is, will be inadequate to rely upon and convict the accused person. This becomes obvious when:

- a. An important ingredient of the offence has not been proved; or
- b. The testimonies of the witnesses called by the prosecution are grossly unreliable due to:
 - i. Internal conflicts or contradictions; or
 - ii. That they have been terribly disparaged or discredited and grossly weakened through cross examination

See, *Igebele v. The State* (2006) 5 LRCN 30

In dealing with this issue it is important to constantly keep in mind the admonition of the Supreme Court in *Daboh & Anor v State* (1977) 5 SC 197 that however slight the evidence linking the accused person with the commission of the offence charged might be, the case ought to be allowed to go to trial. We are also not unmindful of the principle that where the trial court decides to uphold a no case plea, it ought to be as terse and brief as possible, since to do otherwise may unwittingly drag him into touching upon aspects of the substantive case in respect of which only the prosecution's evidence is available. On the other hand, it is only when the judge decides to uphold the submission that he can afford to be exhaustive in its consideration of the evidence adduced by the prosecution. See *Ekanem v R* (1950) 13 WACA 108

The allegation against the accused persons before the lower court is that the accused sold a plot of land situate within jurisdiction without authorization from the church. Among the witnesses called by the prosecution are PW1 (Sampson Samabeyi) and PW2 (Stephen Amomobi, erroneously described as "PW1 at page 11 of the records). They both testified that they were church elders as well as the 1st and 2nd accused, but asserted that the latter sold church land without authorization or consent by church elders. It is common ground between as reflected in the court record that the Church (C & S Unity Church of Zion World Wide) is a registered trust. See also pages 8 and 9, and also page 14, where in answer to a cross-examination question PW2 admitted that he was aware that the C & S Unity Church of

Zion is a corporate entity. See also paragraph 3 (h) of a counter-affidavit in Suit No. FCT/HC/M/878/2007 admitted as Exhibit "M" at page pages 16-17 of the records to show that the Church is a registered trust. However, as is ordinarily supposed to be legally speaking, there was no evidence before the lower court to show that the transaction was sanctioned by the board of trustees. Thirdly, even though the 2 accused were the authorised signatories to the UBA PLC account into which the proceeds of the sale of land were deposited, there is no explanation as to how the money was spent

In view of all the forgoing, indices, we are of the view that the lower court was right to have held the accused persons liable to enter upon a defence to the charge of committing an illegal act. And, in regard to the complaint by the Appellant in Ground 1 of the Notice of Appeal that the lower court erred in framing a charge different from that contained in the FIR, we are inclined to reason that the lower court acted within the law because such an option is permitted under the provision of Section 160 (1) of the Criminal Procedure Code. On the whole, in view of all that has been said so far, we find no merit in this appeal, as such it is hereby dismissed. The decision of the lower court is hereby affirmed and the charge framed against the accused persons subsist. Accused are ordered to hereby ordered to proceed enter upon their defence in the lower court if they so desire it as an option.

**HON JUSTICE V. B. ASHI
(JUDGE)**

**HON JUSTICE S. GARBA
(PRESIDING)**

Appearance:

Sambo I. Vongjen, Esq for Appellant

Prince Olu Mefo, Esq, for Respondent