

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT WUSE ZONE 2
ON TUESDAY THE 30TH DAY OF OCTOBER, 2018

BEFORE THEIR LORDSHIPS:

HON. JUSTICE A. S ADEPOJU	-	PRESIDING
HON. JUSTICE Y. HALILU	-	MEMBER

APPEAL NO. CA/A/28/18
PLAINT NO: CV/12217

BETWEEN

MR. MADUKA NWANKWO	APPELLANT
AND		
COMMISSIONER OF POLICE, FCT ABUJA	RESPONDENT

JUDGMENT

This is an appeal against the Judgment of his worship Mimi Katsina Alu sitting at the senior Magistrate Court, Kubwa of Federal Capital Territory Abuja delivered on the 1st day of March, 2017.

The Appellant dissatisfied with the decision of the lower court appealed against same. The Appellant in this appeal formulated the following issues for determination to wit:-

1. Whether or not the Magistrate was right in refusing to uphold the no case submission made by the Appellant based on the evidence of the prosecution against the Appellant before the Magistrate Court.

Respondent who was duly served Appellant's brief of argument, failed and or ignored to file Respondent brief.

For the purposes of clarity and lucidity we are minded to state in summary the case of the Appellant before the lower court.

The Respondent's case before the Lower Court as contained in the Record of Proceedings in page 2 is founded on the offences of Criminal Breach of Trust, Cheating and Misappropriation contrary to sections 312, 322 and 308 of the Penal Code Law.

It is the averment of the Respondent as contained in page 2 of the Record of Proceedings that on the 20th day of November, 2011, at about 1600hrs, one **Francis Ekene Udeh** of D3/D4 International Building Material Market

Dei-Dei Abuja came to the Area Command Kubwa, Abuja and made a report against one **Mr. Maduka Nwankwo** of First ECWA Church Agwan Pama, Kaduna State, that on the 28th day of June, 2014, that he came and deceived him into entrusting iron rods to him worth N4 Million which he said he will sell and thereafter bring the proceeds within two weeks upon taking possession of the items. That he has not seen nor heard from the said Mr. Maduka Nwankwo. That the Appellant therefore sold it and converted the money to his own use and thereby committed the above mentioned offence.

Having summarized the case of the Respondent we shall now take a look and consider the arguments as canvassed in the Appellant's brief of argument.

In his issue for determination i.e whether or not the Magistrate was right in refusing to uphold the no case submission made by the Appellant based on the evidence

of the prosecution against the Appellant before the Magistrate Court.

The learned counsel for the Appellant submit that by no case submission made by the counsel for the Appellant on the 31st day of August, 2016 before the Magistrate Court as shown on pages 23 – 25 of the records of this appeal and the Respondent reply on pages 31-32, clearly established before the Magistrate Court that no prima facie case was established against the Appellant for the Magistrate Court to call on the Appellant to enter defence.

Learned counsel for the Appellant states that a clear look at the said complaint at page 1 of the records of this appeal shows the fact that the said complaint discloses only demand for payment of debt and not commission of any crime as argued by the Appellant counsel before the Magistrate Court even though the complaint is headed as criminal breach of trust, cheating and misappropriation.

Learned counsel for the Appellant states that by his no case submission before the Magistrate Court, the Appellant was able to establish that the entire evidence of the prosecution as shown on pages 7 to 22 of the records of this appeal did not establish any ingredients of the offences which the Appellant was arraigned before the Magistrate Court and no single admissible evidence was lead to establish even one element of the offence against the Appellant.

We have abbraised ourselves with the facts and evidence adduced by the prosecution at the trial court, we will be very brief at this point in arriving at decision of whether or not the prosecution has made out a case against the Defendant at the trial court to warrant any defence or discharge at the trial court.

No case to answer or submission is one of the defences opened to an Accused Person standing criminal trial in court.

The purport of a No case to answer or No case submission is that the court is not called upon at that stage to express any opinion on the evidence before it.

The court is only called upon to take note and rule accordingly that there is before the court no legally admissible evidence linking the Accused person with the commitment of the offence.

But if there is legally admissible evidence, however slight, the matter should proceed as there is something to look at... ***AGBO AND ORS VS STATE (2013) LPELR – 20388 (SC)***.

Put in another way, no case submission means that there is no evidence on which the court or Tribunal could reasonably base a conviction even if the evidence was believed by the court or Tribunal.

From what has played out in the trial court particularly pages 1 of the record of proceedings i.e the direct criminal

complaint, it is obvious that the nominal complainant had a business with the accused person (the Appellant).

For avoidance of doubt, the said direct criminal complaint is hereby reproduced.

“With humility I forward the above name subject matter against the above name suspect.

The said Mr. Maduka Nwankwo purchase building materials worth the sum of N4,000,000.00 with a promise and undertaking to pay within two weeks on 28th June, 2014.

The said suspect have not paid the said money.

I therefore filed this complaint to enable me get the said money from him.

Attached is the duplicate copies of the said invoices for your perusal and necessary action, please.”

From above therefore, we find merit in the appeal, this is in view of the facts that all that transpired between the

appellant and the nominal complainant was purely business transaction without any element of crime.

We therefore allow this appeal. Consequently, the appellant is hereby discharged and acquitted.

Justice A.S Adepoju
(Hon. Judge)
(Presiding)

Justice Y. Halilu
(Hon. Judge)
(Member)