

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT HIGH COURT 28 GUDU - ABUJA
ON WEDNESDAY THE 21ST DAY OF OCTOBER 2020.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R. OSHO -ADEBIYI

SUIT NO. CR/266/2019

BETWEEN

FEDERAL REPUBLIC OF NIGERIA -----COMPLAINANT

AND

CHUKWUJEKWU AKUNNE-----DEFENDANT

RULING

The Defendant, by a charge sheet filed 13th September 2020 was charged before this Court on a two-count charge of rape of two minors namely, Wisdom Uche (14yrs)(F) and Mba Precious Ifebebuchi (15yrs) (F). The Prosecution opened its case and called its sole witness, the Investigating Police officer as PW1 who tendered 3 Exhibits thus;

1. The confessional statement of the Defendant admitted as Exhibit A.
2. The statement of Wisdom Uche admitted as Exhibit A3.
3. The statement of Mba precious Ifebuche admitted as Exhibit A4

The prosecution closed its case and the Defendant has now filed a no case submission pursuant to Section 302 of the Administration of Criminal Justice Act 2015 and Section 36 of the 1999 Constitution of the Federal Republic of Nigeria, praying the Court for;

1. An Order discharging and acquitting the Defendant/Applicant of the offence alleged in the two-count charge proffered against him

by the Prosecution on the ground that the Prosecution has failed to disclose a prima facie case against the Defendant.

In support of the application is an affidavit of 5 paragraphs deposed to by Ekene Henry Nwodo, the brother of the Defendant and a written address. The Defence Counsel raised three issues and the summary of the argument is that there is nothing in the Prosecution's evidence that requires the Defendant to put up a Defence. Submitted that the evidence adduced by the prosecution is manifestly unreliable and sufficient to continue the trial and by Section 302 of the Administration of Criminal Justice Act 2015, this Court is entitled to enter a finding of not guilty in respect of the Defendant. Counsel relied on an array of authorities which this Court has taken into consideration in this ruling.

On the other hand, the Prosecution/Respondent filed a counter affidavit to the Defendant's application of no case submission, with an affidavit of 4 paragraphs deposed to by Kehinde Lawal, a NAPTIP Intelligence officer. Also filed is a written address as argument wherein the Prosecution Counsel submitted that from the totality of the evidence led by the Prosecution, there is a prima facie case established against the Defendant that requires some explanations from the Defendant by way of Defence. Counsel submitted further that from the totality of the evidence led by the prosecution, there is evidence linking the Defendant to the offence charged. I have considered the processes filed, the evidence of the prosecution witness, that is, the Investigating Police Officer as well as the written address as argument of respective Counsel in this case.

The purport of a no case submission is that the Court is not called upon at this 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 Defendant with the commission of the offence charged. But if there is a legally admissible evidence, however slight, the matter should proceed as there is something

to look at. It is the contention of Defence counsel that the evidence of the prosecution is not sufficient, unreliable and has been discredited by the Defence on cross examination that this Court cannot safely convict the Defendant on and this Court should discharge and acquit the Defendant on the charge preferred against him by the prosecution.

From the principles guiding the responsibility of Courts in cases of no case submission as stated above, the focus of this Court at this point should not be to evaluate the evidence of the prosecution but to understand whether the elements required to sustain the offence for which the Defendant has been charged and whether the evidence failed to link the defendant to the commission of the offence charged to require the defendant to enter his defence.

The court in the case of *FRN V. NUHU & ANOR (2015) LPELR- 26013 (CA)* the Court held,

"The principles that a trial Court should take into consideration in deciding whether or not to uphold a no case submission have been stated and restated many times over the years. It is settled law that in a criminal trial, at the close of the case for the prosecution, a submission of no prima facie case to answer made on behalf of a defendant postulates one of two things or both of them at once. Firstly, that there has been throughout the trial no legally admissible evidence at all against the defendant, on behalf of whom the submission of no prima facie case 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, 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 the criminal guilt in the defendant concerned.

Apart from these two situations, a tribunal or Court should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it - Suberu Vs State (2010) 1 NWLR (Pt 1176) 494. The essence of a submission of a no case to answer lies in the contention that the evidence of the prosecution called in the discharge of the burden of proof placed on it by law has failed to establish a prima facie case or establish the ingredients of the offence against the defendant, to make it imperative for the Court to call upon the defendant to defend himself or answer to the charge or open his defence or enter his defence. Where a no case submission is made, what is to be considered by the Court is not whether the evidence produced by the prosecution against the defendant is sufficient to justify conviction but whether the prosecution has made out a prima facie case requiring, at least, some explanation from the defendant as regard his conduct or otherwise."

The question that needs to be answered at this point is whether there is any evidence before this Court linking the Defendant to offence charged.

The Defendant has been charged before this Court on a two-count charge of rape contrary to Section 1(1) of the Violence Against Persons (Prohibition) Act, 2015. Now considering the evidence of the prosecution without delving into details, it is the evidence of the PW1 that,

*"..... I had earlier investigated a case of rape involving one Ibrahim Yaw and three other victims of rape. **In the statement of the victims, they said one Mr. Chukwujekwu who sells drinks at Area One Garage raped them.** Their names are wisdom Uche and Ifebuchi Precious Mba. At that point, we went for the arrest of the Defendant **the two victims led the operations of***

NATIP to the Defendant's shop at Area 1 and pointed at Defendant as having raped them.....

From the evidence adduced by the PW1, it is really difficult to agree with the contention of the learned defence counsel that a prima facie case has not been established linking the Defendant to the offence thereby requiring some explanation from the Defendant with respect to the circumstances relating to the events stated by the PW1. More so as the Defence Counsel all through cross examination did not touch on this or pose any question to discredit that said by the PW1.

Also, it is learned Defence Counsel's contention that the evidence adduced by the prosecution, particularly Exhibits A3 and A4 is unreliable and has been discredited and that there is no corroboration of the Prosecution's case, this Court will decline to comment on the submission of the of the Learned defence Counsel as to the use and status of the Exhibits A3 and A4 tendered by the prosecution and failure to call the victims to give evidence and or identify the Defendant in Court, as that would drive the Court to comment on the facts of this case and evaluate the evidence already before the Court.

The argument of the Defence Counsel that the prosecution's evidence is manifestly flawed, discredited and unreliable is premature at this point as it can only be properly dealt with at the substantive trial when the Court has concluded the hearing of the Defendant's case.

At this juncture, all this Court should concern itself with is whether the evidence of the Prosecution discloses a prima facie case, even if weak that requires some form of explanation from the Defence.

Prima facie case has been aptly stated by the Supreme Court in the case of UDEOGU V. FRN & ORS (2016) LPELR 40102 (SC) pp. 8-9, para C-B where Per Galadima J. S.C held,

" I had found that the term prima facie case only means that there is ground for proceeding. It is not the same as proof which comes later when the Court

has to find whether the accused is guilty or not. It is sufficient once it is shown that there are facts which reveal commission of a crime and show that the accused person is linked with same.....”

Going by the above cited case as well as the evidence of the Chief Intelligence Officer, the PW1, particularly the excerpt as stated above, it is my view and I so Hold that the prosecution has made out a prima facie case against the Defendant that necessitates an explanation from the Defendant. Accordingly, this no case submission is hereby overruled, and it is hereby ordered that Defendant opens his Defence.

Parties: Defendant absent.

Appearances: C. P. Ugodulum, Esq., for the Prosecution. Justice Christopher, Esq., for the Defendant.

HON. JUSTICE M. R. OSHO-ADEBIYI

JUDGE

21STOCTOBER 2020