IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT GWAGWALADA

THIS WEDNESDAY, THE 15TH DAY OF JULY 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CR/327/18

BETWEEN:

COMMISSIONER OF POLICE.....COMPLAINANT

AND

1. ABDUL USMAN
2. VINCENT BASSEY }.....**DEFENDANTS**
3. ALANANA JOSEPH

JUDGMENT

The Defendants were arraigned on a three counts charge of conspiracy to commit armed robbery and culpable homicide and culpable homicide punishable with death under the provisions of **Sections 6(b), 1(2)(a) and 5(b) of the Robbery and Firearms (Special Provision) Act and Section 221 of the Penal Code Law.**

The Defendants pleaded not guilty to the charge on 15th November, 2018. The matter then proceeded to trial on 28th May, 2019 when the prosecution called its first witness **Sgt Timothy Ojebe**, as PW1. He is a police officer attached to SARS office, FCT Police Command.

His evidence is that on 7th June, 2018, at about 17.00Hrs, a case of criminal conspiracy, armed robbery and culpable homicide was transferred from Gwagwalada Divisional Headquarters to Commissioner of Police FCT command for discrete investigation alongside the three Defendants and two exhibits (knives) and one fabricated pistol.

The defendants were taken before their commander and they were interviewed and their statement taken voluntarily after words of caution along with that of the complainant.

That the **complainant** in his statement stated that on 30th May, 2018 at about 22.00 hours, some gang of people unknown to him and armed with guns broke into his hotel Galaxy Hotel in Gwagwalada. That they shot sporadically into the air and some of his customers sustained gunshot wounds and one of the occupants, a female was shot dead and that the gang made away with hotel properties.

PW1 stated that the case was reported to Gwagwalada police station and during their course of investigations as the police were going round to observe the scene, a neck chain said to belong to the manager of the hotel was recovered. The manager of the hotel also had his money, documents and other valuables stolen along with his bag which he kept in his office during the robbery attack. That through the neck chain, 1st Defendant was traced along with 2nd and 3rd Defendants.

PW1 stated that 1st and 2nd Defendant in their statements confessed to have broken into the hotel led by the cult group leader, one Muazu also known as (aka) Oxy. That the name of the group is Vikings. He stated that 1st and 2nd Defendants said they were up to 20 in number and cannot say who was armed or not. That they said they were not armed but looted the hotel after breaking into it through the back door. That they went away with fans, televisions and so many other properties alongside the junior brother of 3rd Defendant.

PW1 stated that the 1st and 2nd Defendants in their statements confessed to having broken into the hotel led by their cult group leader, one Muazu A.K.A. Oxy. That the name of their cult group is the Vikings. He further stated that 1st and 2nd defendants informed them that they were up to twenty (20) in number but that they cannot say who was armed. He said the 1st and 2nd defendants said they were not

armed but looted the hotel after breaking into it through the back door. That they went away with fans, televisions and so many other hotel properties. That the junior brother of 3rd defendant was with them.

PW1 further stated that the 1st and 2nd defendants said that they took refuge in the house of 3rd Defendant that night where they kept the robbed items. That they then informed them that 3rd Defendant was not part of the robbery gang.

PW1 said that during the course of the investigation, a search was conducted and a fabricated gun was discovered in the house of 3rd Defendant with the two knives. He said that 3rd Defendant stated that the knives was for his self defence and that the fabricated gun belongs to a friend and also that he is not a member of any cult.

PW1 further gave evidence that during the investigations, he discovered that all the Defendants were cultist and that they cannot operate without arms. He stated that they all denied the allegation of culpable homicide but confessed to the offence of robbery and belonging to an unlawful society. That 3rd Defendant confessed to receiving stolen properties. He stated that the gun and the knives are registered with the Exhibits keeper but does not know where the neck chain is.

PW1 added that the statements of the Defendants were recorded. Further that some of the properties recovered by the initial I.P.O from the house of 3rd Defendant were handed over to the **nominal complainant**. That the 2nd and 3rd Defendants took them to the house of 3rd Defendant. That they also took them to recover stolen properties from houses of their other members who had by then run away. He stated that the name of the norminal complainant is Anslem Odo.

PW1 tendered the statements of 1st Defendant as **Exhibit P1a,** that of 2nd Defendant (two statements as **Exhibits 1b and c)** and the statement of 3rd Defendant as **Exhibit P1d.**

Under cross-examination, PW1 said that it is not all he said under examination in chief that he was told by the norminal complainant. That the norminal complainant told him that they were attacked by an unknown gang, his properties stolen and a lady killed. PW1 stated he was not at the hotel on 30th May, 2018 when the incident happened. He agreed that 3rd Defendant was exonerated but that he was still in the dock.

He stated that he recorded only one of the statement of Defendants; that of 2nd Defendant because he said he could not spell correctly. That other officers took the remaining statements and he was there. He said he did not investigate the whereabout of the missing neck chain said to belong to 1st Defendant. That he also investigated the source of the gun found in 3rd Defendant's house but could not find the friend who 3rd Defendant said owns the gun.

PW2 is Corporal Iorshembe Tersoo attached to the FCT Command, Gwagwalada Division. That on 30th May, 2018, at about 22.00hours, a case of armed robbery and culpable homicide was reported at the police station by the Director (Anslem Odo) of Galaxy Hotel alongside his manager (Anthony Hillary). He was then detailed to investigate the case.

He said that the complainant, **Mr. Odo** informed him that at about 21.30Hours, armed men entered his hotel and were shooting sporadically and in the process, one of his guests was shot dead. He then visited the scene and saw her lying down dead in her pool of blood. She was rushed to the hospital and later confirmed dead. That the robbers stole a lot of properties of the hotel and that of the guests. That the bag of the manager containing valuables was also stolen.

On 31st May, 2018, PW2 said that as investigations were going on, that the manager identified 1st Defendant with a "Dog chain" which he said belonged to him and which was taken during the robbery operation and he rushed to the station to report.

That 1st Defendant was then arrested, brought to the station and his statement taken under words of cautions. That a search warrant was executed in his house and one ox-fan belonging to the manager of the hotel was recovered. That 1st Defendant led them to the house of 2nd Defendant who was also arrested, his statement taken under words of caution and a search warrant was executed in his house were a car battery unit set belonging to the nominal complaint was recovered.

That they were then taken to the 3rd Defendant were a search warrant was also executed in his house and various properties were recovered including two (2)

knives and a **toy gun**. He was similarly brought to the station and his statement taken under words of caution.

PW2 further stated that 1st and 2nd Defendant said 3rd Defendant did not accompany them to the robbery scene but his younger brother who is now at large was with them. That the stolen items were however found in the house of 3rd Defendant. That the case was later transferred to the State C.I.D for further investigations.

PW2 further testified that the recovered items were released on bond to the norminal complainant and that the toy gun is with the State C.I.D. He said that the Defendants denied shooting and killing the deceased. The "dog chain" was admitted in evidence as **Exhibit P2.**

Under cross-examination, he agreed that there is nothing on the chain to show it belongs to the norminal complainant. That the "toy gun" found in 3rd Defendant's house cannot kill anybody and that he was not at the scene on the day the incident happened. Further that a fabricated gun is only used to scare people; that it does not kill.

With the evidence of PW2, learned counsel to the prosecution sought for adjournment to call his other witnesses. The matter was then adjourned to **27th June, 2019** for continuation of hearing. On the said day, neither the prosecution or his remaining witness were in court and the matter was adjourned to **8th October, 2019**. On the said date, the prosecution was again not in court. His witnesses were also not in court. The court in the overall interest of justice granted an adjournment to **30th October, 2019**.

When the matter came up on 30th October, 2019, the prosecuting counsel informed court that his remaining **two important witnesses** indicated to him that they were not interested in the case. That the **norminal complainant** informed him that he has relocated to his village in Imo State and will not come to Abuja because of the case. That the 2nd important witness, the **manager of the hotel** told him on phone not to call him again over the case. In the circumstances, learned counsel then applied to close the case of the prosecution.

The defence counsel **elected to** make a no case to answer submissions in the circumstances and the court with agreement of all counsel ordered for parties to file written addresses within a defined time line and the matter adjourned for adoption. From the records, that was the last time learned counsel to the prosecution appeared in court. He equally did not file any written address as agreed and despite the service of the written address of the Defendants on them which they acknowledged receipt of on 31st January, 2020, he again did not file a response.

Now in the address of Defendant's dated 23rd December, 2019 and filed on 28th January, 2010, one issue was raised as arising for determination as follows:

"Whether the prosecution has made out a prime facie case against the Defendants?"

The address of defendant dealt at length with the settled principles that guides the making of a no case to answer submission and it was submitted that the evidence led by the prosecution do not disclose any iota of prima facie case against the defendant to justify the continuation of this trial.

The oral submissions of counsel to the prosecution is equally to the effect that on the principles governing the making of a no case to answer submission, they have on the evidence disclosed a prima facie case against the defendants requiring that they put in their defence.

I have carefully considered the evidence of the prosecution witness who testified on record, the two counts charge and Exhibits together with the submissions of learned counsel to the defendants herein to which I may refer to in the course of this Judgment where necessary.

It appears to me that the sole issue to be resolved is **whether the prosecution has made out a prima facie case against the defendants sufficient for t he court to call on them to enter their defence.**

As rightly submitted, it is trite principle in criminal jurisprudence that the court is empowered after hearing the evidence for the prosecution and where it considers that such evidence is not sufficient to justify the continuation of trial, record a

finding of **"Not Guilty"** in respect of the accused person(s) without calling on them to enter their defence and such accused person(s) shall there upon be discharged.

In other words, the court is under a duty to discharge an accused person if it finds that no prima facie case has been established or made out against him at the close of the prosecution's case. See **Ajidagba V. I.G.P (1958) 3 FSC 5 at 6.**

The intendment of the law maker, in enacting these statutory provisions, in my view, is so as to prevent protracted and futile trial of frivolous charges brought by complainants against accused persons and to further safeguard the accused person's fundamental right to personal liberty and the presumption of his innocence guaranteed by **Section 36 (5) of the Constitution**. As such, the court is so empowered, nay mandated, after taking a proper look at the evidence led by the prosecution witnesses, to determine whether such evidence is cogent enough to cast some reasonable doubts on the innocence of the accused person and thus to necessitate him to enter into his defence to disprove the reasonable doubts. See **Section 135 (3) of the Evidence Act (as amended).**

The age long general principles that guide the court in determining whether or not an accused person should be discharged and a verdict of "not guilty" be entered in his favour at the close of the prosecution's case, have been properly set out in the written address of learned counsel to the defendants. These parameters were also properly captured by the Supreme Court in **Daboh & Anor V State (1977) 5 SC. 197 at 209**, where it was held, per Udo Odoma, JSC (of blessed memory), as follows:

"Before, however, embarking upon such an exercise, it is perhaps expedient here to observe that it is a well known rule of criminal practice, 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 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…"

In **Tongo V C.O.P (2007) 12 NWLR (pt.1049) 525 (also reported in (2007) All FWLR (pt. 376) 636; and (2007) 4 S.C (pt.111) 1),** Oguntade, JSC (now retired), also cautioned the court before which a no case submission has been made, on the approach it should adopt in the determination thereof, when he held the position as follows:

"Therefore, when a submission of no prima facie case is made on behalf of an accused person, the trial court is not thereby called upon at that stage 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. If the submission is based on discredited evidence, such discredit must be apparent on the face of the record. If such is not the case, then the submission is bound to fail." (At page 15).

Therefore, the duty of the court at this stage is not to evaluate and weigh the evidence adduced by the prosecution in order to determine the cogency thereof or the credibility of the witnesses; but to take a panoramic overview of the entirety of the evidence on record to see whether indeed the prosecution has made out a prima facie case against the accused persons. See also **Bello V. State (1967) NMLR 1; R V Baker (1977) 65 CAR (Criminal Appeal Report) 287; Onagoruwa V State (1993) 7 NWLR (pt.303) 49 at 82-83.**

It would thus seem to me that 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 them by law, has failed to establish the essential ingredients of the stated offence to make it imperative for the court to call upon the accused person to defend himself or answer to the charge or open his defence or enter his defence.

In the case of **Queen V Oguche (1959) 4 FSC 64 (also reported in (1959) SCNLR 154),** the Supreme Court again postulated that at the stage where a no case submission is made, particularly where learned counsel indicates intention to rely on same, what is to be considered by the court is not whether the evidence produced by the prosecution against the accused is sufficient to justify conviction but whether the prosecution has made out a prima facie case requiring, at least, some explanation from the accused person as regards his conduct or otherwise. See also **Duru V. Nwosu (1989) 4 NWLR (pt.113) 24 at 31; Ikomi V. State (1986) 3 NWLR (pt.28) 340 at 366; Onagoruwa V. State (supra) at 80.**

In other words, at this stage of the proceedings, the court is not to seek out whether the prosecution has proved the guilt of the accused person beyond reasonable doubt as required by the provision of **Section 135(1) of the Evidence Act**, but merely, as the meaning of prima facie postulates, to see whether there is a ground for proceeding further with the case.

Thus the focus of the court at this stage should be on the quality of evidence tendered by the prosecution witnesses and not necessarily whether or not the court believed such evidence.

Having therefore properly set out at length the guiding principles in the determination of the issue at hand, the simple albeit, delicate task the court is to undertake now, is to examine the evidence led by the prosecution, if any, in the light of the legal ingredients required to establish the offences for which the accused persons were charged and to determine whether such evidence has failed to link the accused persons with the commission of the offences so as not to require them to enter into their defence.

In doing this, the bounden duty of court is to examine the evidence provided by the prosecution to support or establish each of the counts of the charge as it affects or relates to each of the Defendants. The emphasis is on **"examination of the evidence"** proffered by the prosecution.

As stated earlier, the defendants are facing a two (2) counts charge of conspiracy and culpable homicide punishable with death. Learned counsel to the defendants

has elaborately and sufficiently set out, with and of case law, the salient ingredients or elements constituting both offences.

Let us take the counts seriatim. Under count 1, the Defendants are charged with criminal conspiracy to commit the offence of armed robbery and culpable homicide under **Section 6b of the Robbery and Firearms (Special Provisions) Act, 2004.**

Now no where in the Act was conspiracy defined or the elements constituting the offence streamlined but on the authorities, the vital elements constituting the offence of criminal conspiracy includes:

1. That there must be an agreement of two or more persons to do an unlawful or a lawful act by unlawful means;

2. That the actual agreement alone constitutes the offence and it is not necessary to prove that the act has in fact been committed;

3. That the external or overt act of the crime of conspiracy is the concert by which mutual consent to a common purpose is exchanged; and

4. That the agreement is an advancement of an intention conceived secretly in the mind of each person. The overt act is the proof of the intention, mutual consultation and agreement.

See the cases of **Obiakor V State (2002) 1 NWLR (pt.776) 612; Gbadamasi V State (1991) 6 NWLR (pt.196) 182; Njovens V The State (1973) NSCC 257.**

I must also point out even if briefly that the offence of conspiracy is rarely or seldom proved by direct evidence but by circumstantial evidence and inferences drawn from certain proved acts or through inferences drawn from surrounding circumstances. See **Obiakor V State (2002) 36 WRN 1 and State V Osoba (2004) 21 WRN 131.**

I have here carefully related these ingredients to the evidence of the two (2) prosecution witnesses which I had earlier and in detail provided. I cannot but agree with the submissions of learned counsel to the Defendants that there is no

shred of evidence that establishes any of the above elements. There is nothing on record to show or that suggested how in what manner, by what means, under what circumstances whatsoever where and when the alleged conspiracy or agreement to commit the offences took place. There is also no portion of the evidence of any of the prosecution witnesses, by my calm-examination, from where the court can make a clear inference as to where the court can make a clear inference as to where any plot, scheme, strategy or concerted calculations as between any two or more of the defendants to commit the alleged offences in these counts were present or established. In my considered opinion, any narrative or evidence of conspiracy that on the surface does not show these key elements is flawed.

The evidence of the two witnesses without going into unnecessary details, simply point to the fact that there was an armed robbery incident which led to the death of a young lady at a hotel in Gwagwalada. The direct witnesses to the incident, the owner of the hotel (and norminal complainant) and his manager both chose not to give evidence. The court therefore lost the benefit of material witnesses whose evidence would have had direct bearing with the elements showing whether there was an agreement to do or an attempt to do an illegal act of armed robbery and culpable homicide as in this case.

It is also important to note that on the evidence, there is no dispute at all that the 3rd Defendant had no hand at all in the robbery which led to the death of the deceased. PW1 and PW2 unequivocally acknowledged this point and this was the position of 1st and 2nd Defendants and this then begs the question as to why he was made a party under count 1 and indeed the other counts if it is accepted he played no role in the robbery operation and the death of the deceased. The prosecution witnesses also in their evidence stated that the 1st and 2nd Defendant denied killing anybody as alleged.

The point to perhaps underscore is that the complainant of criminal conspiracy to commit armed robbery and culpable homicide is predicated on the fact that the three Defendants conspired. In evidence, as already demonstrated, the 3rd Defendant had no hand at all in the act of robbery and culpable homicide. This then is a clear indication that a major plank or basis of the allegation of conspiracy is compromised. 1f 3rd Defendant had no hand in the alleged robbery and the

culpable homicide product of the robbery, then how he could have conspired with 1st and 2nd Defendant to commit those same offences?

I have also carefully read the statements of the Defendants vide **Exhibits P1 a, b, c and d.** Counsel to the Defendants on the address contended that the statements were not voluntarily obtained and as such the court should dispense with same. I am not enthused by these submissions. Now when then statements were tendered by the prosecution, learned counsel to the Defendants did not object to the admissibility of the statements or any ground at all. In law, it is at the point of the tendering of the documents that any objection may be raised to the admissibility of such documents. In this case, if the objection relating to the fact that the statements were not voluntarily obtained had been raised, the court would have ordered for the conduct of a trial within a trial to determine the voluntariness or otherwise of the statements. Having not raised any objection at the material time, it is now too late in the day to use the medium of an address to raise the issue of the voluntariness or otherwise of statements obtained from Defendants. The belated complaint now does not fly and is accordingly discountenanced. Now back to the statements.

As stated earlier, I have read the statements of Defendants. In their statements, all the Defendants each stated that they did not participate in the armed robbery or the killing of the deceased young lady or anybody. Indeed from their statements, each was at different locations when they heard of the attack on Galaxy Hotel. The 1st Defendant, Abdul Usman in **Exhibit P2** said he was at home when he was informed that there was a gunshot at the Hotel. The 2nd Defendant in **Exhibit P1a** said he was at Gwagwalada close to the Galaxy Hotel when he heard gunshots which he later understood came from an armed robbery operation in the Hotel and that he later saw policemen going into the Hotel. On the part of the 3rd Defendant vide **Exhibit P1d** he equally said he was at home on the date of the incident and that he had no hand at all in what happened and was wrongly implicated.

On the evidence, there is no clarity with respect to where the Defendants conspired to commit the acts subject of Count 1.

The bottom line is that under count 1, there is nothing on the evidence of PW1 and PW2 providing basis to draw inferences that there was an agreement between

the three Defendants to commit the alleged offence of criminal conspiracy to commit the offence of armed robbery and culpable homicide.

My finding with respect to count 1 is that the prosecution has failed to establish a prime facie case against the Defendants with respect to the alleged offences of conspiracy to commit armed robbery and culpable homicide.

Count 2 charges the Defendants with the offence of criminal conspiracy to commit the offence of armed robbery. This count in substance appears to be a repetition of count 1 and thus compromised. If it was meant to be a substantive offence of armed robbery, this was not properly defined or streamlined and the court cannot on its own and at this late stage alter or amend the charge to the disadvantage of the Defendants.

The final count 3 charges the three Defendants with the offence of culpable homicide punishable with death.

Again learned counsel for the Defendants has elaborately and sufficiently set out, with the aid of case law, the salient ingredients or elements constituting the offence of culpable homicide under **Section 221 of the Penal Code**. They are:

1. That the death of a human took place.
2. That such death was caused by the accused.
3. That the act of the accused that caused the death was done with the intention of causing death or that the accused know that death would be the probable consequence of his act.

All these ingredients must co-exist or be proved before a conviction can be secured. Failure to establish any of the ingredients within the required legal threshold would result in an acquittal. The onus of proof is on the prosecution throughout and does not shift. See **Adawa V State (2006) 9 NWLR (pt.984) 152 at 167 SC, Akpa V State (2007) 2 NWLR (pt.1019) 500 CA, Uwagboe V State (2007) 6 NWLR (pt.1031) 606 CA.**

The next task is to relate these ingredients to the evidence on record. I have here carefully appraised the evidence of both PW1 and PW2. PW1 and in particular PW2 may have alluded to the death of the deceased and tendered **Exhibit P3**

showing that a lady was confirmed death in a hospital but in reality there is neither physical evidence of death of anybody and even the report **Exhibit P3** did not say how the alleged victim or deceased died and how her death was caused by actions of defendant. I shall return to this point later on.

Now of immediate relevance is the important questions relating to the 2nd and 3rd elements above relating to whether the unfortunate death of the young lady was caused by the Defendants and that it was done with the intention of causing death or that they knew that death would be the probable consequence of their actions.

Let me quickly underscore the point that cause of death can be established either by direct evidence or circumstantial evidence that created no room for doubt or speculation. See **Akpan V State (1992) 7 SCNJ 32.**

On the evidence, it is not in dispute that both PW1 and PW2 were not at the scene when the alleged robbery and murder were committed. The main and critical witnesses, the **owner** and **manager** of the hotel who claimed they saw Defendants and made the serious allegations against them chose not to give evidence for reasons that are not clear.

There is therefore no direct and critical evidence to support the claims that the Defendants killed the deceased. Indeed there is equally no circumstantial evidence of such quality leading to the irresistible conclusion that the Defendants caused the death of the deceased. As already alluded to, if 3rd Defendant had no hand at all in the specific act of armed robbery and he was said not to be even at scene of the incident, at Galaxy Hotel Gwagwalada, it is difficult to situate the basis and validity of the charge against him that while armed with guns, he jointly with the other Defendants caused the death of Miss Regina Keroniah through gunshots at Galaxy Hotel.

Now it is true that as a general rule, if the circumstances of attack on the deceased person are crystal clear (such as where the victim died on the spot), or the cause of death is obvious (such as where fatal injuries inflicted on the deceased by the accused person are graphically described to lead to no other inference than that the deceased died as a result of the attack and those injuries), medical evidence ceases to be of practical legal necessity and the court can convict even where there is no

medical evidence, and even if the body of the deceased is not recovered or found. See the cases of **Babuga V. State (1996) 7 NWLR (pt.460) 279; Uluebuka V State (2000) 7 NWLR (pt.665) 404 and Enewoh V State (1989) 4 NWLR (pt.119) 98.** This is however not the case here.

In this case, no credible evidence was preferred showing that bullets or gun shots were fired by the Defendants on anybody. No spent bullet shell or casing that should be at the alleged shooting location was analysed or presented. Similarly no bullet residue or evidence of the type of bullet fired was produced. There was equally no ballistician evidence or forensic report on these critical aspects of the case. To further accentuate the complete dearth of evidence to establish the key ingredients of the offence against defendants, no forensic examination was equally done to link or show that if any spent ammunition was found at the Hotel or residue of any bullet was found on the deceased, it was fired from the fabricated gun which was not even tendered by PW1 who said that the said gun was found with 3rd Defendant who did not participate in the robbery and who was not even at the scene of the crime. Even on the issue of the alleged fabricated gun PW1 said was found in the house of 3rd Defendant, PW2 contradicted PW1 on material terms when he said that what was found in the house of 3rd Defendant was a "toy gun" which cannot kill anybody. A material contradiction of this nature between the evidence of the only two (2) prosecution witness serves to undermine completely the case of the prosecution on this count.

Even in the statements of Defendants tendered as **Exhibits P1a - d,** they categorically denied that they killed anybody. **PW1** in his evidence stated that the Defendants maintained this position all through the investigations. The point perhaps to again underscore at the risk of sounding prolix, but for purposes of clarity is that there is no medical evidence or autopsy report of any kind showing or disclosing that the deceased or indeed anybody died as a result of gunshot injuries said to have been fired by Defendants at **Galaxy Hotel** in Gwagwalada and this is fatal.

On the whole, there is nothing on the evidence of the prosecution showing that the acts of the Defendants actually caused the unfortunate death of the deceased or that the death of the deceased was caused by injuries sustained through the acts of the Defendants. In such unclear and fluid circumstances, it is difficult if not

impossible to hold the Defendants criminally responsible in a charge of culpable homicide and calling on them to enter their defence.

As a logical corollary the prosecution has clearly not placed before the court evidence which establishes a prima facie against the defendant requiring them to enter a defence. Under Count 3, the prosecution here has not only failed to prove the essential ingredients of the offence as charged, but the evidence so far adduced is manifestly unreliable that no reasonable tribunal can convict on it.

Before I finally conclude, let me make one or two salient points. (1) It appears to me imperative to call on learned prosecuting counsel to show more circumspection in filing charges of this nature, if the evidence on record is all they have. Filing of criminal charges in court which involves the liberty of individual(s) is a delicate exercise that must be carried out with a huge sence of responsibility dictated solely by the facts and the ultimate cause of truth and justice. (2) The owner of the **Galaxy Hotel** and the manager chose not to give evidence for what happened in their hotel premises and this no doubt negatively impacted the case. I won't say anything on their unfortunate conduct. It is a matter for individual conscience. We cannot however lose sight of the fact that a young lady lost her life at the hotel. If for nothing, the fact that a young lady that could be a daughter or sister lost her life in such unfortunate and tragic circumstances should have propelled them to give evidence and ensure that justice is done to her. Unfortunately their attitude and the cavalier manner this case was conducted unequivocally shows that justice has not been done to her person.

Indeed can justice be said to have been served in this case? I just wonder. Cases of this nature are entirely evidence driven. Without forensic evidence of probative quality, methodically gathered and presented in court, such a case is fundamentally undermined, abinitio. I say no more.

A charge must however not be filed for the simple sake of doing so. Justice it has been said is a three way traffic. Justice to the deceased, the accused and the society at large. A prosecuting counsel must in the exercise of his duties bear this principle in mind. He must be firm and courageous and not allow or give room for unhealthy influences that betrays the course of justice. A futile trial predicated on frivolous charges or perfunctory or half hearted prosecution does a lot of

incalculable damage to the criminal justice system in terms of time and resources spent which could have been better utilised in more productive courses.

The case presented here by the prosecution appears to seek to turn upside down the cherished constitutional presumption of innocence in favour of the defendants by tending to suppose that it is for the defendants to prove their innocence rather than for the prosecution to present at this stage a prima facie case requiring the defendants to put up a response. The totality of the case put up by the prosecution unfortunately is not worth the time and resources wasted in going through these proceedings for nearly three years.

On the whole, the prosecution has failed to prove the essential elements of the offences for which the defendants were charged and accordingly the no case submission has considerable merit and must be sustained. To allow these proceedings to continue, having regard to the totality of the evidence laid bare on the record by the prosecution, is to inflict undue hardship and injustice on the defendants. They ought not have stood this trial in the first place, if the evidence on record was all the prosecution had to offer.

As I round up, it is important to also sound a note of warning to the young Defendants. They will be set free largely on the basis of the poor prosecution of this case and absence of evidence of quality and probative value linking them with the offences they were charged. From their statements, they claim to belong to a certain cult. Their freedom now gives them another opportunity to free themselves from this cult and all negative activities and tendencies. They have now been presented again with an invaluable opportunity to seek the face of Almighty God, seek repentance, pray for forgiveness and to conduct their lives properly, work hard and engage in productive endeavours with the fear of God guiding their actions. If they however choose to go back to their "old" ways of life, then they may end up here again and then there may not be an escape route. That however is not our prayer for them. I leave it at that. A word is enough for the wise.

The legal consequences of a successful submission of no case to answer is that such a discharge is equivalent to an acquittal and a dismissal of the charge on the merits. See **Ibeziako V. State (1989) 1 CLRN 123; Nwali V. IGP (1956) 1 ERMLR; Mohammed V. The State 29 NSCQR 634 at 640.**

In the final analysis, and for the avoidance of doubts, my firm decision, on the basis of the provision of **Section 302 of ACJA 2015** is that the evidence adduced by the prosecution on record is not sufficient to justify the continuation of this trial. In other words, the prosecution has failed to make out a prima facie case against the defendants in that they have failed to tender required minimum evidence to establish the essential elements of all the counts of the offences that the defendants have been charged with respectively. For these reason(s) I hereby preclude them from entering upon their defence and accordingly, I hereby discharge the defendants of the entirety of the charge preferred against them.

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Hon. Justice A.I Kutigi

Appearances:

1. **D.F. Abah, Esq., for the Prosecution**

2. **John Godwin Esq., for the Defendants**