IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

COURT CLERKS: T. P. SALLAH & ORS

COURT NUMBER: HIGH COURT NO. 12

DATE: 23/11/2020 **FCT/HC/CR/73/2018**

BETWEEN:

COMMISSIONER OF POLICE FCT COMMAND----- COMPLAINANT

AND

1.ALFRED LEONARD **DEFENDANTS**

2. SAMSON AGBOR

RULING

The Defendants in this case were arraigned on 27th February,2019 on a two-count Amended Charge No. CR/208/2019 dated 27th February,2019bordering on the offences of criminal conspiracy and culpable homicide punishable by sections 97 and 221of the Penal Code. Both Defendants pleaded 'not guilty' to the amended charge against them. At the trial of the Defendants, six (6) witnesses (i.e. PW1 – PW6) were called by the Prosecution to testify in proof of the amended charge while documents and other items were tendered and admitted in evidence as exhibits through the Prosecution Witnesses. These witnesses were cross-examined by Counsel to the Defendants. At the end of the evidence of its witnesses, the Prosecution closed its case and the matter was adjourned for defence.

Counsel to the 1st and 2nd Defendants has however now made a 'no case' submission in support of which he filed a written address dated and filed on 20th October,2020 which he adopted as his oral submission.

In response to the no case submission, learned Prosecution Counsel filed his reply address on 26th October,2020. The Defendants' Counsel filed his Reply on Points of law on 30th October,2020 to the prosecutions response filed on 26th October,2020.

ISSUES FOR DETERMINATION:

Counsel to the 1st and 2nd Defendants formulated a sole issue for the determination of the 'no case' submission, to wit:-

> *"Whether from the totality of the evidence led and exhibits tendered, the prosecution has made out a prima facie case of conspiracy and culpable homicide against the 1st and 2nd Defendants to warrant the Defendants being called upon to open their defence."*

For his part, learned Counsel to the Prosecution distilled the issue for determination to be as follows:-

> *"Whether from the totality of real, documentary and oral evidence led, the Prosecution has established a prima facie case against the Defendants."*

Both issues are practically the same. I shall therefore adopt the issue as formulated by the Defendants in the determination of the no case submission. The issue for determination is there thus:-

> ***"Whether from the totality of the evidence led and exhibits tendered, the prosecution has made***

out a prima facie case of conspiracy and culpable homicide against the 1st and 2nd Defendants to warrant the Defendants being called upon to open their defence."

In his address, learned Counsel to the 1st and 2nd Defendants gave a summary of the evidence of all the six prosecution witnesses and proceeded to analyse same vis-à-vis the exhibits admitted in evidence through them. Proffering legal argument in respect of his sole issue, Counsel submitted that the law is settled that at a stage of a no case submission what is material is whether the prosecution had made out a prima facie case requiring the accused to put up a defence by way of explanation. He relied on the case of ***FRN V. MARTINS (2012) 14 NWLR (PT. 1320)***. He posited that a no case submission may be properly upheld where essential elements of the alleged offence has not been proved, or the evidence of the prosecution has been discredited under cross-examination or it is manifestly unreliable. He cited the case of ***MOHAMMED V. STATE (2007) 7 NWLR (PT. 1032) P. 152*.** He argued that the onus rests on the prosecution to make a prima facie case against an accused person and it is not for the court to wait and see if an accused person will fill in the gaps or provide the missing links in the case of the prosecution. On the charge of conspiracy, Counsel submitted that there is nowhere in the totality of the testimonies of PW1, PW2, PW3, PW4 and PW5 where they gave any evidence regarding agreement between the 1st and 2nd Defendants to do an unlawful act. He said PW6 for his part completely exonerated the Defendants of any conspiracy when he stated under cross-examination that he cannot remember whether there was any communication between both Defendants. He argued that there is no single evidence direct or circumstantial that establishes that the 1st and 2nd Defendants conceived a common intention or agreed to do an unlawful act. Counsel submitted that the Prosecution thus failed in its duty to establish the vital ingredient of the offence of conspiracy and this count is liable to be dismissed.

On the second count of culpable homicide, learned Defence Counsel submitted that the ingredients to establish are that the deceased died, the death was as a result of the accused's act and it was caused intentionally by the accused. He relied on the case of ***ISAH V. STATE (2017) LPELR-43472(SC***). Learned counsel to the Defendants submitted that from the evidence and exhibits tendered before this Honourable Court, the actual date of the death of the deceased has not been established. He further submitted that from the evidence, the Prosecution has not convinced this Court that the alleged deceased actually died, and on what date death occurred. He argued that the evidence of the Prosecution Witnesses is at variance on how items were discovered on the decomposed body of the deceased. On what is to be done by the court where there are contradictions in testimonies of prosecution witnesses, Counselto the Defendants relied on the case of ***ONUBOGU & ANOR. V. QUEEN (1974) 9 SC 1***. He submitted that no identifiable dead body has been linked to the 1st and 2nd Defendants. He said that the Prosecution did not establish the actual cause of death of the deceased. He argued that the purported confessional statement is nothing short of a laughable story as the Prosecution failed to establish any chain of communication between the Defendants. Counsel submitted that the Prosecution did not establish certain facts in the confessional statements. He said the 2nd Defendant's confessional statement is suspicious and calls for serious caution. Relying on the case *of* ***ADAMU V. STATE (2019) LPELR-46902(SC****),* Counsel posited that it is settled law that where a court relies on a confessional statement, it ought to subject the statement to some tests to satisfy itself that the alleged confession is true. He submitted that where there is doubt, such doubt should be resolved in favour of the accused. Counsel thus urged this Court to resolve doubts in this case in favour of the Defendants. He finally submitted that from the totality of the evidence adduced by the prosecution at the trial of this case, it is unnecessary to call upon the 1st and 2nd Defendants to enter their defence as no prima facie case has been made out against them.

He urged this Court to uphold the 'no case' submission and discharge the 1st and 2nd Defendants.

On the otherhand, in his written address, learned Prosecution Counsel gave his own version of a summary of evidence adduced by the Prosecution at trial. Counsel submitted in his address that a 'prima facie' case is different from 'proof beyond reasonable doubt' and as such, at this stage, what this Court is required to do is consider the facts of the case and determine whether the Defendants have any explanation to make. He relied on the case of ***TONGO V. COP (2007) 2 NCC 529*** and a host of other cases. He submitted that, taking into consideration the Defendants' extrajudicial statements, the Prosecution witnesses' testimonies, the documentary and real evidence, the Defendants have a lot to explain to this Court in respect of the charges against them. Relying on the case of ***ABOGEDE V. THE STATE (1996) 5 NWLR P. 118 P. 270.***The learned prosecuting Counsel then contended that courts have been enjoined not to delve into the merit of the matter in considering a no case submission. He posited that the issue raised by Defence Counsel as to whether the Defendants were guided to say things can only be addressed where the Defendants put in their defence. He argued that there are no contradictions in the case put forth by the Prosecution in this case and even if there is, it is immaterial. He submitted that there is no hearsay in the evidence of the Prosecution and further contended that culpable homicide could be proved without autopsy report. It is Prosecution Counsel's final submission that the Prosecution has established a prima facie case against the Defendants in this case and he further urged this Court to dismiss their 'no case' submission and order them to open their defence.

In his Reply on Points of Law, learned Counsel to the Defendants submitted that the record of this Court is binding on all parties and the submissions of Counsel cannot overshadow same. He reiterated that the evidence of the prosecution witnesses is laced with contradictions. He contended that the hallmark of cross-examination is to test the accuracy, veracity or credibility of a witness.

Now having set out in brief the arguments of the respective Counsel to the parties in this case for the record, in the resolution of the issue at hand, it is imperative to consider the nature of a 'no case' submission.

Now under **Sections 302, 303 and 357 of the Administration of Criminal Justice Act 2015**, after the hearing of the evidence of the prosecution, if the court considers that the evidence against the defendant is not sufficient to justify the continuation of the trial, the court will record a finding of not guilty without calling upon the defendant to enter upon his defence and such defendant shall thereupon be discharged. The Court may come to this conclusion *suomotu* or upon submissions of the Defendant or his Counsel.

In the instant case, it is the Defendants' Counsel that has made a submission to this Court that there is no case made out by the Prosecution for the 1st and 2nd Defendants to answer by way of entering their defence.

It has been held by the Supreme Court 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 a *prima facie* case or establish the ingredients of the offence against the accused, to make it imperative for the court to call upon the accused to defend himself or answer to the charge or open his defence or enter his defence. See the case of ***TONGO V. C.O.P. (2007) (supra) CHYFRANK (NIG)V FRN, (2019) LPELR 4640 (SC) AJIBOYE & ANOR V STATE, (1995) 8 NWLR (pt 414) page 408***. It was further held that 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 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 regard his conduct or otherwise. In the case of ***GEOFREY V STATE, (2019) LPELR***

46867**, the Court of Appeal held thus:- " the duty of the trial Court faced with a submission of no case to answer is as clearly set out in the case of **DABOH V STATE, (1977) ALLNLR 146, whether UdoUdoma JSC articulated that,"*When a submission of no prima facie case is 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 unlike the accused person with the commission of the offence with which he is charged. 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."*

The following are to be considered by a Court before whom a no case submission has been made by a defendant or his Counsel:-

(a) Whether an essential element of the offence has been proved;
(b) Whether there is evidence linking the defendant with the commission of the offence with which he is charged;
(c) Whether the evidence so far led is such that no reasonable court or tribunal would convict on it; and
(d) Whether any other ground on which the court may find that a prima facie case has not been made out against the defendant for him to be called upon to answer.

See **Section 303(3) of the Administration of Criminal Justice Act 2015**.

The following have also been held to be grounds upon which a submission that there is no case to answer may properly be made and upheld:-

(1) when there has been no evidence to prove an essential element in the alleged offence;

(2) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

See the cases of ***IBEZIAKO V. COP (1963) 1 SCNLR 99***, ***AITUMA V. STATE (2007) 5 NWLR (PT. 1028) P. 466,UBANATU V C.O.P. (2000) 2 NWLR (PT. 643) P. 115*** *and* ***OMUEDA V. FRN (2018) LPELR-46592(CA) and OSUNDE V. FRN (2018) LPELR-43859(CA)***.

It is trite position of the law that the decision to uphold or reject the submission of no case to answer should not depend upon whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit, but upon whether the evidence is such that a reasonable tribunal can convict. See the Supreme Court's decision in ***MOHAMMED V. STATE (2007) 11 NWLR (PT. 1045) P. 303***. What has to be considered in a no case submission is not whether the evidence 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.See the apex Court's decision in the case of ***AJIBOYE V. STATE (1995) 8 NWLR (PT. 414) P. 408***.

It must be noted that establishment of a '*prima facie*' case means no more than that the evidence adduced through the prosecution witnesses if unchallenged, uncontradicted and is believed, will be sufficient to prove the case against the defendant. In other words, it is something that if produced is sufficient to convince the court to proceed with the trial. It must be differentiated from 'proof beyond reasonable doubt' which is not the requirement for the determination of a submission of no case to answer. Proof beyond reasonable doubt comes later and is concerned with the determination of the defendant's guilt or innocence. Proof beyond reasonable doubt is not the standard required at the stage of 'no case to answer' – see the case of ***CHIANUGO V. STATE (2002) 2 NWLR PT. 750 P. 225***.

At the no case submission stage, it is not for the trial court to go into a consideration of the issue of credibility of the witnesses. See ***EKWUNUGO V. FRN (2008) 15 NWLR(PT. 1111) P. 630***.The position has also been held by the Supreme Court that on a submission of 'no case to answer' it is wiser for a judge to be brief in his ruling and make no remarks or observations on the facts.This is because in a ruling of an inordinate length too much might be said which at the end of the case might fetter the discretion of the judge.See ***UBANATU V C.O.P. (supra)****. See also* ***AITUMA V. STATE (supra)andAJIBOYE V. STATE (supra)****.*

Now, Counts No. 1 and 2 of the Amended Charge dated 27th February,2019 against the 1st and 2nd Defendants read as follows:-

COUNT ONE

That you Alfred Leonard, male of NKA junction, Kurudu FCT Abuja; and Samson Agbor, male of Abuja on or about the 16th of July, 2018 at Pyanko village (Bush) Karshi Abuja within the Judicial Division of the Honourable Court did conspire between yourselves to commit an offence to wit; Culpable Homicide by causing the death of one Michael Iorkohol, male; you thereby committed an offence punishable under Section 97 of the Penal Code.

COUNT TWO

That you Alfred Leonard, male of NKA junction, Kurudu FCT Abuja; and Samson Agbor, male of Abuja on or about the 16th of July, 2018 at Pyanko village (Bush) Karshi-Abuja within the Judicial Division of the Honourable Court did commit the offence of culpable homicide punishable with death, in that you deceived one Michael Iorkshol, male to Pyanko bush and hit him with an Iron bar on the head which caused his death with the knowledge that death would be the probable and not likely consequence of your act; you thereby committed an offence punishable under Section 221 of the Penal Code.

Section 97 of the Penal Code provides for the punishment for the offence of criminal conspiracy. **Section 220** provides for the offence of culpable homicide while **Section 221** provides for circumstances under which the offence of culpable homicide shall be punishable with death.

The ingredients for the offence of criminal conspiracy are as follows:-

(i) There must be two or more persons,
(ii) They must form a common intention,
(iii) The common intention must be toward prosecuting an unlawful purpose,
(iv) An offence must be committed in the process; and
(v) The offence must be of such a nature that its commission was a probable consequence.

See the cases of ***LEKAN SODIYA V. THE STATE (2009) LPELR-4430(CA)***, ***AKINWUNMI V. THE STATE (1987) 1 NWLR (PT. 52) P. 608*** *and* ***KAZA V. STATE (2008) 7 NWLR (PT. 1085) P. 125***.

The ingredients to be proved to establish a charge of culpable homicide punishable by death are as follows:-

(a) That the deceased died,
(b) That the death of the deceased was caused by the act of the Defendant,
(c) That the killing was unlawful, and
(d) That the act or omission of the defendant which caused the death of the deceased was intentional or done with the knowledge that death or grievous bodily harm was its probable consequence.

See the cases of ***SILAS SULE V. THE STATE (2007) LPELR-8901(CA)***,***ABUBAKAR P. DAJO V. THE STATE (2012) LPELR-22104(CA)*** *and* ***ALHAJI MUAZU ALI V. THE STATE (2015) LPELR-24711(SC)***.

I have taken the pains to set out all the foregoing so as to demonstrate an appreciation of the applicable principles and what is expected of the Prosecution to establish the charges against the 1st and 2nd Defendants in this case.

Now the charges against both Defendants are to the effect that they conspired to and did cause the death of one Michael Iorkohol by hitting him on the head with an iron bar. The pertinent question is; is there any evidence produced by the prosecution linking the Defendants to the offence charged or establishing the ingredients of the offences?

It is settled law that the prosecution can prove culpable homicide either by direct eye witness account or by circumstantial evidence from which the guilt of a Defendant can be inferred or by a free and voluntary confessional statement of guilt which is direct and positive. – see the cases of ***TAJUDEEN ILIYASU V. THE STATE (2013) LPELR-20766(CA)*** *and* ***USMAN MAIGARI V. THE STATE (2010) LPELR-4457(CA)***.A conviction for murder or culpable homicide punishable with death can even be secured in the absence of *corpus delicti* (the dead body) where there is positive evidence that the victim had died. See the cases of ***MANASSEH JAPHET & ANOR V. THE STATE & ORS (2010) LPELR-4471(CA)*** *and* ***USMAN MAIGARI V. THE STATE (supra).***

I have combed through the oral testimonies on record of all the prosecution witnesses i.e. PW1, PW2, PW3, PW4, PW5 and PW6 given under examination-in-chief and cross-examination. I have looked at all the exhibits before this Court particularly Exhibits 4 and 5 i.e. the confessional statements of the 1st and 2nd Defendants respectively. I do not hesitate to say that the Prosecution has established a prima facie case against both Defendants in respect of the charges against them. There is sufficient evidence on the ingredients required to be proved to establish each of the offences. Though the learned Counsel to the Defendants talks about prima facie case, from the

argumentscanvassed in the no case submission, Counsel to the Defendants, it appears his expectation from this Court is to consider whether the prosecution has proved their case beyond reasonable doubt at this stage. It must be borne in mind that at this stage (i.e. consideration of no case submission) the guilt of the Defendants is not in issue and they are presumed innocent, as such, proof beyond reasonable doubt is not the standard required of the Prosecution at this stage but the establishment of a prima facie case. In the case of***UFOEGBUNAM & ORS V FRN, (2019) LPELR 47163****, the Court of Appeal held:-*

"I bear in mind that at the stage of a no case submission, the Court is not called upon to express any opinion on the evidence before it or determine the credibility of the prosecution witnesses as to their probative value. The Court is only required to sieve through the evidence of the prosecution to determine if same links the accused person to the commission of the crime in issue" see also ***HON. IKUFORIJI V FRN, (2018) LPELR*** **43884 (SC)**In other words, the consideration is not whether there is sufficient evidence produced by the Prosecution to link the Defendants to the offences for which they have been charged. See the case of **OSUNDE V. FRN (supra)**. I have said earlier that there is. Consequently, I disagree with the Defendants' Counsel's submission that the 1st and 2nd Defendants' have no case to answer in this matter. From the evidence available to this Court I hold the view that the 1st and 2nd Defendants have some explanation to make in respect of the criminal charges against them in view of the testimonies of the prosecution witnesses documents admitted in evidence and statements of the Defendants and I so hold.

In any event, had this Court come to a different conclusion that the 1st and 2nd Defendants have no case to answer, this Court would have been under obligation to give elaborate reasons for its conclusion based on the evidence before it. Having however found that the Defendants have a case to answer, this Court is obliged at this stage not to make elaborate findings of facts which would pre-determine issues upon which the substantive matter before this Court is based. – see again the cases of ***UBANATU V C.O.P. (supra)****,* ***AITUMA V. STATE (SUPRA)*** *and* ***AJIBOYE V.***

STATE (supra). In the instant case I will therefore refrain from addressing the evidence before this Court at this stage of no case submission to answer.

In conclusion, I hold the view that the Prosecution has made out a *prima facie* case against the 1st and 2nd Defendants in respect of the charges against them in this caseand I so hold. The sole issue for determination is hereby resolved against the 1st and 2nd Defendants and in favour of the Prosecution. Defendants' Counsel's 'no case' submission is hereby overruled. The 1st and 2nd Defendants' are hereby called upon to proceed with their defence in this case against them by the Prosecution in accordance with **Section 358 of the Administration of Criminal Justice Act 2015**.

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HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
23/11/2020

Defendants:- Present in Court.
Joy Esaba:- For the prosecution holding the brief of Chinyeremomoment.
Abduazeez Ibrahim:-With me are NasiruSaidu Esq, and Samson Okpetu for the Defendants.
J. K Akerigba:- Watching the brief of the nominal complainant .

Sign
Judge
23/11/2020