IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI-ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE BABANGIDA HASSAN
SUIT NO: CV/940/2020

BETWEEN:

COMMISSIONER OF POLICE_____COMPLAINANT
AND
MOHAMMED BASHIR ABDULLAHI_____DEFENDANT

RULING

The defendant is standing trial for the offence of culpable homicide not punishable with death and in the course of the hearing the prosecution called one witness, the investigating police officer, who testified that they got a call from the office of Dawaki Divisional Police Officer (Apo) through the monitoring unit of the collapsed building within the jurisdiction. Based on the information, PW1 and his team were dispatched to the scene of the incident and when they got there, they were shown the defendant, two persons who sustained injuries in the collapsed building and the lifeless body of the deceased person and they were all rushed to Dawaki Hospital where all of the mentioned persons, including the defendant and two of his family members were treated and one person was confirmed dead.

After they were treated, the defendant was taken to police custody where he was questioned and voluntarily gave his statement on the 25th and 26th July, 2020. The statement of the defendant was said to have been recorded by one Inspector Mustapha and Sergeant Sylvanus under his supervision. The defendant was said to have stated that he engaged the services of one engineer Shagara and during the incident, the defendant and his family members were also victims of the incident.

The position of the defendant's counsel is that the PW1 under cross examination confirmed that he did not counter sign the statement of the defendant because he acted in the capacity of a supervisor and that he was not the recorder of the defendant's statement. The counsel also submitted that the witness also testified that no autopsy was done on the deceased person in order to ascertain the cause of death because the family of the deceased requested for the body for burial in line with Islamic rite so there was no autopsy report. The counsel submitted that the PW1 was also testified under cross examination that he did not know any of the victims of the incident so he would not know their medical history.

The counsel formulated sole issue for determination, to wit:

> **Whether the prosecution has made out a prima facie case or established any ingredients of the case sufficient for this Honourable Court to invite the defendant to enter his defence?**

The counsel submitted that the general rule is that a submission that there is no case to answer may be properly made and upheld in two instances.

a. When there has been no evidence to prove the alleged offence;
b. 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.

The counsel submitted that the defendant is facing trial for the offence of causing death of Dauda Abubakar by inviting the deceased into a two storey building being built by the defendant and the said building collapsed on the victim causing the victim severe injury which led to the death of such victim which is an offence under section 220(c) and punishable under section 224 of the Penal Code Law and also for causing hurt one Mukhtar Nasiru and one Suleiman Mohammed and being negligent in the construction of a two storey building

leading to the collapse of the building under section 253 of the Penal Code Law.

The counsel opined that the pertinent question at this juncture is: **what are the ingredients of the offence of culpable homicide under section 224 of the Penal Code Law?**

The counsel submitted that for ingredients of the offence of culpable homicide punishable with death to be established, the prosecution must prove that:

a. **That the death of a human being has actually taken place;**
b. **That the death was a probable result of the action;**
c. **That the act was done with the intention of causing death.**

The counsel cited the cases of **John V. State (2011) 46 WRN vol. 46 p. 135 at 137 Maiyaki V. State (2008) 35 NSCQR 679 and Sule V. The State (2009) 29 WRN P.T.**

It is the contention of the counsel that the prosecution has failed woefully to adduce any evidence at law to prove any of the essential ingredients of the offence of culpable homicide whereas all that defence is required to show for a no case submission to be upheld is that an essential element of the offence has not been proved and in this particular case, there is no evidence at all that has been led by the prosecution establishing that was a probable result of the defendant's action or that the action of the defendant was done with the intention of causing death and he cited the case of **Madu V. State (2012) 51 NWLR (pt 1324) pg. 405 and 417 where the Supreme Court per Ariwola JSC held thus:**

An offence of murder is committed when a person unlawfully kills another under any of the following circumstances:

a. **If the offender intend to cause the death of the person killed or that some other person;**
b. **If the offender intends to do to the person killed or some other persons grievous harm;**

c. **If the act is caused by means of anact done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;**
d. **If the offender intends to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant or for the purpose of facilitating the flight of an offender who has committed or attempted to commit such an offence.**
e. **If death is caused by administering any stupefying or overpowering things to either of the purposes last aforesaid;**
f. **If death is caused by willfully stopping the death of any person for either of such purpose.**

The counsel submitted further that the case of the defendant does not fall under any of the conditions listed above and as such the defendant should be discharged and acquitted. It is his contention that the defendant engaged the services of a professional to do the construction for him and as such the defendant could not have foreseen or intended any other thing that having an upstairs at the conclusion of the construction, work by the engineer that he engaged for that purpose. He argued that the collapsing of the structure that was under construction was not any act of the defendant but rather the fault of the engineer engaged by the defendant to do the construction work for him. He argued that the defendant is not an engineer and does not know anything about building or construction work to enable him determine the nature and strength of the work that the engineer is doing for him and as such the collapse of the building cannot be seen or assumed to be his intentional or careless act or that he knows or foresaw such thing happening, and he argued that the defendant was even in the building with some members of his family when the

incident happened which show that he did not envisage any of the event happening.

The counsel submitted further in a criminal case, it is the duty of the prosecution to prove the charge against the defendant beyond reasonable doubt by placing before the court all available relevant evidence, if there is a vital witness whose evidence could settle the point in one way or another, the evidence ought to be adduced in clear terms devoid of any doubt, and he cited the case of **Adesoye V. State (2011) 46 WRN P. 37 at 41.** He argued that it is when the prosecution discharges this burden, that the evidential burden then shifts to the accused person to adduce evidence of other facts which may raise reasonable doubt on the case of the prosecution, and he cited the provision of section 128 (3) of the Evidence Act.

The counsel submitted further that there are plethora of authorities of the decision of the Supreme Court affirming that it is the duty of the prosecution to prove the charge against the defendant beyond reasonable doubt as was held in the case of **Idemudia V. State (2015) 46 WRN p. 1 of 12.** He cited the decision of the Supreme Court which the law places on the shoulder of the prosecution to establish in proving the charge against the defendant, where it was held thus:

> **"The rudiments, factors, ingredients or elements which the law places on the shoulder of the prosecution to so prove are as follows:**
>
> **a. That death of a human being had actually taken place;**
>
> **b. Such death was caused by the defendant;**
>
> **and c. The act was done with the intention of causing death or that it was done with the intention of causing such bodily injury as:**
>
> **(i) The accused knew or had reason to know that death would be the probable and that such likely consequence of this act, or**

(ii) The accused knew or had reason to know that death would be the probable and not only the likely consequence of any bodily injury which the act was intended to cause.

It is the submission of the counsel that the prosecution has failed to establish any of the essentials or ingredients of the offences that the defendant is charged with, the prosecution failed to establish that the death of the deceased was caused by the defendant or act of the defendant or establish that the building was being constructed with the intention of causing death or causing bodily harm to anyone. He submitted that the prosecution in this investigation, did not arrest and interrogate the engineer, Mr. Shagara who did the construction for the defendant and the defendant who is not an engineer could not have in any way known the strength of the work that the engineer is doing for him. He also emphasized that the prosecution failed to apprehend engineer Shagara for interrogation or arraign the engineer who was building the house of the defendant. The defendant believing that he engaged an engineer to build the house for him cannot in any way be assumed to have known "that the death of a person was a probable result of the action" let alone of the fact "that the act was done with the intention of causing death".

It is further the submission of the counsel that the ingredients of culpable homicide which must be establish by the prosecution is absent, and he cited the case of **Haruna V. A.G. Federation (2012) 32 WRN p. 1 at 8** where the Supreme Court per Adekeye JSC held inter alia:

"The ingredients of culpable homicide are:

a. The death of a human being took place;

b. That such death was caused by the accused;

c. That act of the accused that caused death was done with the intention of causing death or that the accused knew that death would be the probable consequence of his act.

All these ingredients must co-exist before a conviction could be secured. It is indisputable that the prosecution must prove all these ingredients of the offence of culpable homicide against the appellant beyond reasonable doubt.

Counsel argued that calling the defendant to enter his defence based on the evidence before the court will amount to speculation because the prosecution has not in any way established any of the ingredients of the charges against the defendant, and he also relied on the principle of criminal law that every doubt or contradiction created by the evidence of the prosecution or his witness should be resolved in favour of the defendant, and he cited the cases of **Nwocha V. State (2012) 17 WRN P. 131 at 140** where the Supreme Court per Mohammed JSC hold that the law is that any doubt must be resolved in favour of the accused person and he urged the court to resolve the doubt as to the cause of death of the deceased in favour of the defendant and discharged and acquit him of the charges against him.

In conclusion, he urged the court to be persuaded by the decision of **Okoro V. The State (1988) 5 NWLR (pt 94) 225** where it was held per Karibi Whyte, JSC that:

> **"An accused should not be asked to defend himself if the evidence is so mostly unreliable having been destroyed by cross-examination of the witness that no reasonable tribunal will convict on that evidence".**

The prosecution in his written address stated that the defendant is standing trial for the offence of culpable homicide nor punishable with death and causing grievous hurt punishable under sections 224 and 253 of the Penal Code Law. The counsel submitted that the prosecution during trial opened its case by calling one prosecution witness, Abel Eyube, who is one of his Police Investigating Officers in this case and attached to the monitoring and mentoring unit of the FCT Police Command.

He submitted that the witness gave evidence which he gathered during the investigation of the matter that:

(1) The defendant erected a storey building almost to completion stage without the necessary approval from the relevant government authority;

(2) The said building collapsed and injured two persons whose legs were severed.

(3) One of the victims of the building collapse lost his life.

(4) That during the cause to the Police investigation, the defendant made a voluntary statement to the police, though he is not the recorder of the statement it was recorded by his colleague in his presence.

It was confirmed that there was no autopsy conducted on the corpse due to the fact that, the family of the deceased were Muslims who refused autopsy. A total of three (3) exhibits marked as EXH. 'A1', 'A2' and 'A3' were tendered in evidence by the PW1, after which he was cross-examined.

The counsel submitted that the testimony of PW1 was not in any way discredited by the defence such that would make the testimony unreliable and that the testimony of the defendant strongly linked the defendant to the commission of the alleged crime, and unfortunately the prosecution closed its case after the testimony of PW1 due to the unavailability of the victims to testify.

The counsel formulated lone issue for determination, thus:

Whether the prosecution has made out a prima facie case against the defendant to warrant him entering his defence?

On the principal of no case submission, the counsel cited the case of **Tongo V. C.O.P (2007) 12 NWLR (pt 1049) pg. 525 and State V. Usman (2004) LPELR – 7438 (CA).**

The counsel submitted that the prosecution has proved all the ingredients as provided for in section 224 of the Penal Code through its witness and the exhibits tendered. He opined that it is a common knowledge that the act of erecting a storey building

without approval for the relevant authority and an approved supervisor can lead to collapse and injury to workers.

The prosecuting counsel submitted further that the argument of the learned defence counsel as contained in paragraph 4.4 to 4:20 would not avail them on this instance because the prosecution is expected to establish a prima facie case against the defendant upon which he should be called upon to enter the defence and not proof beyond reasonable doubt as canvassed by the learned counsel to the defendant, and he cited the case of **Omueda V. F.R.N. (2018) LPELR – 46592 (CA)** where it was held that in considering a no case submission, the court's duty is simple. It is only to determine whether the prosecution has made out a prima facie case; that is, whether there is admissible evidence linking the defendant with the offence with which he is charged and the counsel urged the court to hold that the prosecution has made out a prima facie case against the defendant and as such he should be called to enter his defence.

Now, the issue for determination in this case is:

> **Whether the prosecution has established a prima facie case against the defendant?**

Thus, section 301 of the Administration of Criminal Justice Act provides that:

> **"After the case of the prosecution is concluded, the defendant or the legal practitioner representing him, if any, is entitled to address the court to present his case and to adduce evidence where so required"**

It is against this backdrop the counsel to the defendant filed this submission of no case to answer.

Also, section 303(1) of the same Act provides:

> **"Where the defendant or his legal practitioner makes a no case submission in accordance with the provisions of this Act, the court shall call on the prosecutor to reply"**

It is on the above provision, the prosecuting counsel was allowed to reply to the submission of no case to answer of the defence counsel.

The section goes further in subsection (3) of the Act to say that:

> **"In considering the application of the defendant under section 303, the court shall, in exercise of its discretion have regard to whether:**
>
> **(a) an essential element of the offence has been proved;**
>
> **(b) there is evidence linking the defendant with the commission of the offence with which he is charged;**
>
> **(c) the evidence so far led is such that no reasonable court or tribunal would convict on it, and**
>
> **(d) 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 the case of **Moore V. FRN (2014) All FWLR (pt 712) p. 1776 at 1783, paras. F-H** and **pp. 1789 – 1790, paras. H-A** where the Court of Appeal, Lagos Division held that the principles upon which a no-case submission will be upheld are when:

a. there has been no evidence to provide essential ingredient in the alleged offence. This means the evidence, even if believed, cannot grand a conviction;

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

The court went further to hold that a trial court is competent to rule that an accused has no case to answer if only one of the conditions enumerated is satisfied.

It is well established principle of law that at this stage of a no-case submission, the trial of the case is not yet concluded, a court should not concern itself with the credibility of the witnesses nor the weight of evidence even if they are accomplices. See the case of **Aituma v. State (2006) All FWLR (pt 318) p. 677 at pp. 687 – 688, paras. H-B.**

It is also the law that when a no-case submission is made, the court is not at that stage called upon to evaluate the evidence adduced but to consider whether there is any admissible evidence before it to warrant the accused person to be called upon to answer to the charges and to enter a defence. As a result, it is not proper and right for the court to consider the credibility of witnesses for the purposes of deciding whether there is a case to answer. All that is required at that stage is for the court to look at the evidence adduced by the prosecution in support of the charges and then find out if a prima facie case appears that the accused person would be called upon to explain their own side of the matter in the absence of which a conviction could safely be entered. See the case of **State V. Nwachineke (2008) All FWLR (pt 398) p. 306 at p. 230, paras. D-H.**

It is incumbent at this juncture to look at the evidence that adduced by the prosecution and put it side by side with the ingredients of the alleged offences with a view to see whether the prosecution has made out a prima facie case against the defendant. The defendant was arraigned before the court for the offences of culpable homicide not punishable with death punishable under section 224 of the Penal, causing hurt by way of doing any act so rashly or negligently punishable under section 253 of the Penal Codes.

The ingredients required for the proof of the offence of culpable homicide not punishable with death under section 224 of the penal code are:

a. the death of the person in question;

b. that such death was caused by the act of the accused

c. That the accused intended by such act to cause death or that he knew that such act to cause bodily injury as was likely to cause death or that he knew that such act would likely to cause death or that he caused death by a rash or negligent act.

The PW1 testified and told the court that the defendant in his statement to the police at the police station stated that he was asked by the Development Control, an authority responsible for giving building approval, to stop work but he continued.

The statements of the defendant made at the police station was admitted by this court and was marked as EXH. 'A1' and 'A2' respectively.

I looked at the statement made on the 25th July, 2020 wherein the defendant stated that "Before the incident on Monday Development Control wrote to me that I should not added structure on top. After the building collapse, one person according to the carpenter working one of them was missing.

Before this I had called my friend and look for assistant for excavator to check the place if anybody was trapped inside. On the process I was informed via phone call that one person who I don't know was found dead. That is all I know".

Now putting the statement of the defendant side by side with the ingredients of the offence of culpable homicide not punishable with death punishable under section 224 of the Penal Code, it appears that the ingredient in paragraph (a) exist.

The defendant stated also in his statement that "I called one of my carpenter Mike that to completed the roof of the building and also called other carpenter which I don't know their names to go and removed the wooding used on the decking and leave the one others for the Brim. But the carpenter went and removed the Brim wood and building collapse. "By the above statement, the ingredient in paragraph (b) exist. For the fact that the Development Control had asked

the defendant wrote to him that he should not add any structure on top, and that the ingredient in paragraph (c) also exist.

The ingredients that are required for the proof of causing hurt under section 253 are as follows:

(a) That the accused did the act in question;
(b) That it was done rashly or negligently; and
(c) That it was as to endanger life or personal safety of others.

By the ingredients to be put side by side with the evidence, it can be inferred that the ingredient exist and I therefore so hold from the above consideration, it can be inferred that the ingredients of the two offences co-exist and to that there is something worthwhile for the defendant to offer as an explanation, and to this I so hold.

I therefore uphold that the prosecution has established a prima facie case against the defendant making the defendant worthwhile to enter into the defence.

Hon. Judge
Signed
15/7/2024

Appearances:

Oliver Eya Esq appeared for the defendant.

CT: The matter is adjourned to 21st November, 2024 for defence.

Hon. Judge
Signed
15/7/2024