



IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY,
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON THURSDAY, 30TH NOVEMBER, 2023
BEFORE HON. JUSTICE NJIDEKA K. NWOSU-IHEME

CHARGE NO: FCT/HC/CR/408/2022

BETWEEN:

COMMISSIONER OF POLICE PROSECUTION

VS

DR AYANLOLA A. M.... .. DEFENDANT

RULING ON NO CASE SUBMISSION

On 23/02/2023, the Defendant was arraigned on a 3 count charge filed on 22/08/2022 and he pleaded not guilty to all 3 counts in the charge.

In count one; the defendant Dr Ayanlola A. M. and others now at large between the year 2019 and 2021 at Lugbe East Extension, FCT Abuja within the Abuja Judicial Division conspired among yourselves to commit an offence to wit: Criminal Trespass and Criminal Intimidation and said act was carried out pursuant to their agreement thereby committing an offence punishable under section 97 of the Penal Code.

In Count two; the defendant Dr Ayanlola A. M. and others now at large between year 2019 and 2021 at lugbe East Extension, FCT Abuja within the Abuja Judicial Division with intent to intimidate, annoy and insult one UWEM OWEMS MANAGING DIRECTOR OF DIVIEN KIDDIES AND LADIES RENDEVOU criminally trespassed into plot of land number 2165 situated at Lugbe East Extension which plot of land has been in his

peaceful possession since 2011 and thereby committed an offence contrary to section 342 and punishable under section 348 of the Penal Code.

In Count three; the defendant Dr Ayanlola A. M. and others now at large between the year 2019 and 2021 at Lugbe East Extension, FCT Abuja within the jurisdiction of this honourable court with intent to cause alarm to the person of one Mr MfonEbong (M) threaten to deal with him if he does not steer clear of plot of land No 2165 which interest he is legally bound to protect and thereby committed an offence contrary to section 396 and punishable under section 397 of the penal code.

The prosecution called four [4] witnesses. UgochukwuNwafortestified as PW1 and tendered Exhibit P1, Monday Johnson gave evidence as PW2 and tendered Exhibits P2&P3. PW3 was Usman Tasiu the Investigating Police OfficerPW3 tendered ExhibitsP4 to P10. UwemEdetOwemsthe nominal complainant testified as PW4 and tendered ExhibitP11& P12

At the close of the case of the prosecution on 27/6/2023, the learned counsel for the defendant expressed his intention to make a no case submission on behalf of his client. The following written addresseswere filed in respect of the no case submission:

1. Defendants written address dated 22nd September, 2023 by Mamfe I. Iorun Esq.
2. Prosecution's reply filed on 29th September, 2023 by Okokon Udo Esq.

On 5th October, 2023 M. IorunEsq. adopted the defendants written address while Okokon Udo Esq. adopted the prosecutions reply to the no case submission.

The law is trite that a submission that there is no case to answer may properly be made and upheld: [a] when there has been no evidence to prove an essential element of the alleged offence; and [b] when the evidence adduced by the prosecution has been so discredited as a result of cross examination or is manifestly unreliable that no reasonable

tribunal could safely convict on it. See **Ekpo v. The State [2001] 7 NWLR [Pt. 712] 292.** The grounds upon which a no case submission could be upheld by the Court have been codified in section 303[3] of the Administration of Criminal Justice Act, 2015.

In **Fidelis Ubanatu v. C.O.P. [2000] 2 NWLR [Pt. 643] 115,** it was held that *prima facie* case means that there is a ground for proceeding. In other words, that something has been produced to make it worthwhile to continue with the proceedings. It is not the same as proof, which comes later when the Court has to find whether the accused person [or defendant] is guilty or not guilty. The evidence of the prosecution is said to disclose a *prima facie* case when it is such that if uncontradicted and if believed, it will be sufficient to prove the case against the accused person [or defendant]. See also the case of **Duru v. Nwosu [1989] 1 NWLR [Pt. 113] 24.**

In **Ajisogun v. State [1998] 13 NWLR [Pt. 581] 236 @ 257,** the Court of Appeal [*per Nsofor, JCA*] aptly stated the essence of no case submission. It was held that in a no case submission, what the accused person is saying is to this effect: "*Accept all that the prosecution has said through its witnesses, yet it [the prosecution] cannot secure a conviction either of the offence charged or any other alternative offence of which I may possibly be convicted, upon the evidence...*" It was further held that at the stage of no case submission, there ought to be some evidence direct or indirect against the accused person, which evidence, unless and until it be displaced or explained off, would be enough to support a conviction either of the offence charged or of any other alternative offence the accused person may possibly be convicted of.

In a nutshell, the case of the prosecution as narrated by PW1 UgochukwuNwaforis thathe is into production of blocks and is a business man and when he discovered that someone had trespassed on the property they went to the divisional police station, Lugbe and made report,the police gave appointment to go and see the property. He knows the defendant Mr Owens as the owner of the property Plot 2165 Sabon, Lugbe (the property)he does not reside in Abuja one Mr

BathramEzechi introduced him to the Mr Owens to look after the property he was given particulars of the property which he used to run a search at AMAC and the said search confirmed the plot. PW1 got a surveyor who took him to identify the property and they beacons it. Periodically they would go to the property because the place is still bushy with no development. Sometime last year they went to check the property and discovered that somebody had placed a beacon. They went to the police station and made a report. On the day they went to see the property with the police, the trespasser came with some thugs and hoodlums doing all manner of things and they went back. Trespasser was invited to make statement he said his daughter was sick but he finally showed up. PW1 made statement at police station. At the property, the thugs were armed with all manner of cutlasses but they were not harmed.

Under cross-examination of PW1, he admitted that he was appointed by the owner of the property to take care of the property. They went to the property and found out place was cleared and they made a report to the station.

Document tendered through PW1

1. UgochukwuNwafor statement dated 14/3/2023 Exhibit P1

PW2 Monday Johnson is a business man who works with a surveycompany, Mr Owens owns the property in dispute and he gave the PW2 the property to put up a fence after locating it. On getting to the property, they were confronted by some group of boys who told them the property belongs to them and they are the ones taking charge of the property. They went to the police station and laid a formal complaint the police gave them police coverage to go back to the property. On the day fixed to go back to the property, they went with 2 policemen from the Lugbe police station and when they got to the property, they were once again confronted by the boys who became so hostile some were with cutlasses and sticks and they were stringing something that looked like charm rolling it ready to fight with them even in the presence of the policemen who were dressed in 'mufty' but identified

themselves as officers. The response of the police aggravated the whole situation and they became more hostile the whole place was tensed up and they were ready to fight anybody, it was at that point the police said "who are you people representing"? they said DR AYANLOLA the defendant. police asked for his number and they said no so the police told them to use their number to call him which they did and informed him that there is a case at his site and he should come down so they hear from him he said he was busy where he was and far away and arrived in 20/30mins. When he arrived police explained to him why they were at the property and the tension they experienced and that they wanted him to follow them to the station so matter can be looked into. In his response, he asked if he was being arrested and they said no that it was an invitation. He called his own police people who spoke to the police men at the site and they told the police to go back to the station that the defendant will come with them. On getting to lugbe station they waited for defendant he did not come and they were asked to come another day. On date fixed at the police station, the police said they should present documents and collected from them and said they will investigate from the issuing authority of the land AMAC the outcome of the investigation led to the police report. After the incident he did not go back to the site but PW1 went to site and saw that DPC had been erected on site. Which was not there at the time of the incident that gave the impression that despite the police advice, they were still operating at site.

Under cross examination of PW2 he admitted that the defendant was not there when they were challenged by the boys but when he came they acted on. The boys did not fight them. Nominal complaint and defendant submitted their documents and the police have come up with a report from their investigation

Documents tendered through PW2

1. Nigeria police statement of witness Monday Johnson 13/3/23 Exhibit P2
2. Pictures of site and certificate of compliance Exhibit P3

PW3 Usman Tasiu attached to the Lugbe Divisional Crime Branch (DCB) testified that sometime in February, 2021 one Mr Jacob Mfon came to the station and complained on behalf of his brother Mr UwemEdet that Mr Uwem bought a plot of land in the year 2011 at Lugbe East layout and he was assigned to locate the land and possibly fence the property. On his arrival the defendant and some other unknown persons stopped them on doing anything on the land claiming ownership of the land and to avoid any breach of law and order, he went to the station and reported. His colleague Sgt. Idi Sepa who has now been transferred to Lagos was detailed to investigate. The nominal complainant wrote his statement as well as the defendant and both of them were asked to bring their title documents for the plot they were contesting. On 22nd February, PW3 was assigned the matter and the copies of the title documents were submitted. He studied the documents carefully and marked them as appendix A (nominal complainant) and B (defendant). He discovered that the 2 documents have the same plot no 2165, 1 hectare. Nominal complainants offer of allocation was bearing name of Dvieu kiddies and ladies as a changed offer. While defendant document was bearing Diamond associate later changed to Peemon Nig. Ltd. He extended the investigation to director of lands, AGIS on 22nd February, and attached the 2 documents A and B for verification and he got reply sometime in month of August, 2021 he compiled and put up report and invited the parties to explain content of report from AGIS unfortunately defendant was not present but nominal complainant was present. Thereafter the report and original case file was forwarded to officer in charge of legal section FCT command for necessary action.

Under cross-examination, PW3 admitted that Jacob Mfon came to police station to report on behalf of Mr UwemEdet and he made the statement that he is not the owner of the property. But Uwem made statement to police in March, 2023. No court of law has confirmed the complainant as owner of the property.

Documents tendered through PW3

1. FCTA letter to Divisional Police headquarters dated 6/8/21 Exhibit P4

2. Diamond Associates Plot 2165 Exhibit P5
3. Monaco ventures Plot 2165 Exhibit P6
4. Statement of Defendant at police station dated 11/2/21 Exhibit P7
5. Statement of Jacob MfonEbong dated 11/2/21 Exhibit P8
6. Letter to director land AGIS dated 22/2/21 Exhibit P9
7. Police investigation report 13/2/21 Exhibit P10

PW4 UWEM EDET OWENS testified to being the owner of the property and he sought services of his family friend to get him a property in Abuja and she came to him with a property in SabonLugbe East extension for estate development. He agreed to the price of N4,800,000 and a cheque was issued on 30/7/2011 same was cashed and she bought the property and confirmed the documents. He got a caretaker PW2 UgochukwuNwafor whom he gave right to look after the property since he was not available to look at it. He checked the place and confirmed the economic trees and bushes. Sometime around ending of 2020 he received a call from PW2informinghimthat he had gone to check the place and it had been cleared of the economic treesby an unknown person. He had surveyed the property and when he got to the land to look at it he met one man who said he knew the person clearing the property he went and called defendant who told him he paid and removed the economic trees. The matter became a police matter because sometime in February, 2021 he mobilized a caretaker to get to site to fix beacon, stones, and demarcate the plot to where survey plan was when they got there they called him that defendant came with thugs and all sorts of weapons and charms, trying to stop them from entering the land that he would kill them, maim them and he told them to keep calm and report to police.

Under cross examination he testified that the matter was reported to him in 2020. Both himself and defendant are laying claim to same plot of land.

Document tendered through PW4

1. Statement of UwemEdet Owens Exhibit P11& P12

Learned counsel for the Defendant Mamfe M. Iorun Esq. distilled a sole issue for determination, which is:

Whether from the evidence adduced so far in the case, the prosecution made out a prima facie case against the Defendant to warrant him being called upon to enter his defence.

Learned counsel for the Prosecution Okokon Udo Esq. distilled the following issue for determination to wit;

Whether the prosecution has made out a prima facie case of criminal intimidation, criminal trespass and mischief against the defendant to warrant the defendant being called upon to enter his defense.

It is trite law that a submission that there is no case to answer may properly be made and upheld: [i] when there has been no evidence to prove an essential element of the alleged offence; and [ii] when the evidence adduced by the prosecution has been so discredited as a result of cross examination or is manifestly unreliable that no reasonable tribunal could safely convict on it. See Ekpo v. The State [2001] 7 NWLR [Pt. 712] 292 and Ricky Tarfa Mustapha, SAN v. FRN [2019] LPELR-50662 [CA]. The grounds upon which a no case submission could be upheld by the Court have been codified in section 303[3] of the Administration of Criminal Justice Act, 2015.

The submission of the prosecution is that in the instant case the evidence of the prosecution which has not been discredited during cross-examination is that it is the defendant and cohorts while armed with dangerous weapons to wit gun and machetes criminally trespassed into the property of PW3, attacked and intimidated those in occupation and also caused mischief to the parameter fence and other economic crops which conduct constitutes a breach of the penal code which also attracts some imprisonment terms on conviction. The prosecution has successfully established a prima facie case of criminal intimidation, criminal trespass and mischief against the defendant sufficiently to

warrant the defendant being called upon to enter his defense.

The submission of the defendant counsel is that no essential element of the offences of conspiracy, criminal trespass and criminal intimidation has been proved by prosecution through any of the prosecution witnesses.

On the allegation of criminal conspiracy, the law is that there must be an established crime before the offence of conspiracy can be maintained. In proving the offence of conspiracy, the prosecution is required to lead evidence from which the court can deduce inference of a meeting of the minds of conspirators and a common goal to achieve an act which is criminal in nature. See ***OFFOR V THE STATE (2021) 18 NWLR (PART 1807) 31 @ 57-58 PARAS G-C.***

IorunEsq. argued further that for conspiracy to be proven, it must be shown to be a consensus or criminal design between the persons involved to achieve an act which is criminal in nature. Relying on ***INDIYEL V THE STATE (2021) 1 NWLR (PART 1788) 458, PARAS E-F.***

The prosecution failed to link the defendant with a co-conspirator(s) with whom the defendant allegedly conspired with to commit the alleged offences. None of the prosecution witnesses made any reference to an accomplice or co-conspirator in connection with any of the alleged offences. They also failed to establish a consensus or criminal design between the defendant and other persons involved to achieve an act which is criminal in nature. Counsel submitted that the prosecution has failed to establish a prima facie case of the offence of conspiracy against the defendant that will require him to enter a defence.

On criminal trespass IorunEsq. submitted that where a complainant alleges trespass and the defendant asserts ownership, the title to the land has been put in dispute thereby placing the burden on the complainant to establish a better title first. A defendant's denial of trespass puts the complainant's title in issue. Relying on ***AKIBU V AZEEZ (2003) 22 WRN 96 SC; ADERIGBE V OBI (1971) 1 ALL***

NLR 116, 121-122, UFOMBA V AHUCHAOGU (2003) 30 WRN 1 SC PER EDOZIE JSC @36.

Counsel submitted that since the prosecution has failed to establish that the nominal complainant owns or holds a better title than the defendant with respect to the property in dispute in this case, the nominal complainant cannot be seen as the one in possession of the property in dispute and such the prosecution cannot maintain or sustain a case of criminal trespass against the defendant.

On criminal intimidation, IorunEsq. argued that for a person to be guilty of this charge, it must be established that he threatens another with an injury to his person, reputation or property or to the person reputation. Referring to section 342 of the penal code.

It was alleged that defendant intimidated a named person MfonEbong but neither the MfonEbong nor any of the prosecution witnesses was ever called to give evidence in support of the allegation of criminal intimidation. Assuming that prosecution witnesses led evidence to prove Mfon was intimidated such evidence will amount to hearsay same not coming from the alleged victim. It is hearsay and inadmissible. Relying on Section 38 of Evidence act and ***DHL INT'L NIG LTD V EZE UZOAMAKA (2020) 16 NWLR (PT 1751) @ 488-489 PARAS F-E.***

I will resolve this no-case on the issue as formulated by the defendant counsel which is:

Whether from the evidence adduced so far in the case, the prosecution made out a prima facie case against the Defendant to warrant him being called upon to enter his defence.

I shall determine the charge of criminal trespass first. On criminal trespass charge:

"Section 342 of the Penal Code

"Whoever enters into or upon property in the possession of another with INTENT to commit an offence OR to INTIMIDATE, INSULT OR ANNOY any person in possession of such property or having lawfully entered

into or upon such property, **unlawful** remains there with INTENT thereby to INTIMIDATE, INSULT OR ANNOY such person or with INTENT to commit an offence is said to commit CRIMINAL TRESPASS".

In a book "Notes on the Penal Code", 4th Edition, in which was annotated by Prof. S. S. Richardson, one time the Director of Institute of Administration, Ahmadu Bello University Zaria, the learned author on page 266 of the book listed the followings as the ingredients of the offence of criminal trespass, under Section 342 of the Penal Code, which must be prove by the prosecution in order to obtain conviction. These ingredients are:

That there must be:-

"(a)(i) Unlawful entry into or upon a property in the possession of another;

(ii) Unlawfully remaining there

(b) An intention

(i) To commit an offence; or

(ii) To intimidate, insult or annoy the person in possession of the property"

The learned author went ahead to opine that the existence of bona fide claim of right ordinarily excludes the presumption of criminal intent but a person may attempt to enforce his right in a wrong way, e.g. by using unnecessary force or intending to wrongfully restrain the person in possession. He went further to define the word "ANNOY" to mean annoyance which would reasonably affect an ordinary person not what would specifically and exclusively annoy a particular individual." Per SANUSI, J.S.C in ***SPIESS V. ONI (2016) LPELR-40502(SC) (PP. 53-54 PARAS. C)***

Now the case of the nominal complainant is that he is the owner of the property from his testimony in court and **Exhibit P11** statement at the police station and defendant is also claiming ownership going by his **Exhibit P7** statement at the police station. From the exhibits P5 and P6 which are the respective title documents each party is holding onto to lay claim to the property, the PW3 the IPO began an investigation into the case of alleged criminal trespass and a letter was written to AGIS

attaching the 2 allocation papers for confirmation of genuineness of the allocation papers Exhibit P9.

The Director of lands, FCT responded via Exhibit P4 revealing thus;

"a) Plot No. 2165 measuring about 1000sqm within SabonLugbe East Extension Layout, AMAC was submitted for the Area Council Title Regularization by Peemon Nigeria Limited and acknowledged with File No. MISC 2833/MISC 32345 dated 2/18/2016

b) Plot No. 2165 measuring about 1000sqm within SabonLugbe East Extension Layout, AMAC was submitted for the Area Council Title Regularization by Dvieu kiddies and ladies Rendevous and acknowledged with File No. MISC 50593/MISC 91631 dated 12/31/2009

c) further investigation revealed that Plot No 2165 within SabonLugbe East Extension Layout, AMAC is not on the lists of allocation forwarded by AMAC Zonal planning office to the department

3. However, until the process of Area Councils Title Regularization is concluded, we will not be able to confirm the authenticity of the title document forwarded especially that it never emanated from the lands department.

From the police investigation report Exhibit P10;

"CONCLUSION/RECOMMENDATION: in view of the above facts and findings, a prima facie case of criminal trespass could not be substantiated against the accused Doctor AyanlolaA.M , also the ownership of the plot could not be established at the moment until the above process of the Area Council Title Regularisation is concluded."

It is clear from the prosecution's case that both parties are disputing/challenging ownership of the property and neither the FCTA or the police report could conclusively state who owned the property between the Nominal Complainant and the defendant.

It is interesting to also note that during trial the witnesses confirmed that the issue of ownership was yet to be determined by a court of law

Under Cross-Examination PW1 stated:

Ques.: the nominal complainant and defendant are laying claim of ownership?
Ans: yes
Ques.: it was last year you noticed trespass?
Ans: last year
Ques.: you are aware that defendant made statement to police ?
Ans: he made a statement
Ques.: are you aware police investigation into matter report is out?
Ans: I am aware
Ques.: that report does not affirm that nominal complainant is owner of property?
Ans: I have not seen report
Ques.: are you aware that any court has declared Owen as owner of property?
Ans: I am not aware

Under Cross examination PW2 stated;

Ques.: I am correct to say both nominal complainant and defendant are laying claim to subject matter of property?
Ans: yes
Ques.: you said nominal complainant submitted and defendant submitted documents?
Ans: yes
Ques.: the document of nominal complainant were submitted to police and police have frontloaded it in this matter?
Ans: yes
Ques.: police conducted investigation in 2021 and came up with report that same report is put forward in this matter?
Ans: I have not seen it they only told us
Ques.: the report is with police and you have not seen it ?
Ans: the police said report is classified and if at all they will make it available it is to nominal complainant
Ques.: to best of your knowledge it never confirmed nominal complainant as owner of property?

Ans: I have not seen report
Ques.: no court of competent jurisdiction has confirmed nominal complainant as true owner of land ?
Ans: I don't have an idea

Under Cross examination of PW4 he said;

Ques.: when did they report to you of trespass on your property?
Ans: 2020
Ques.: you are laying claim to ownership and defendant is laying claim to a larger portion?
Ans: yes
Ques.: which means portion you are laying claim is only a small portion of what defendant is laying claim to?
Ans: according to my survey plan
Ques.: the report to police you made formed basis of this trial?
Ans: yes
Ques.: your aware police have concluded investigated and tendered the report in this matter are you aware?
Ans: yes
Ques.: no court of law have confirmed your owner of property?
ANS: yes

The law is clear that not tendering an investigation report is not fatal to the case ***FAWEHINMI V IGP (2002) 7 NWLR PART 767 P. 606 @PAGE 680*** however, it is just to guide the Court that there is prima facie evidence to support the charge before the Court. See ***UZOR V. STATE (2016) LPELR-40809(CA) (PP. 27 PARAS. B).***

The police report Exhibit P10 actually concluded thus:

'CONCLUSION/RECCOMENDATION: In view of the above Facts and findings, a prima facie case criminal Trespass could not be substantiated against the accused Doctor Ayanlola A.M, also the ownership of the plot could not be established at the moment until the above process of Area COuncil Title Regularization is concluded'

It is confusing that after the above the report, THE DEFENDANT was still charged to this court for criminal trespass. The report clearly exonerated

DrAyanlola but the authorities still went ahead to charge the defendant to court.

From the evidence before this court, the prosecution failed to establish that the nominal complainant was in possession of the land because if he were, he would have been alerted once the defendant went into the land to clear the economic trees and place beacons on the land see the testimonies of prosecution witnesses. The prosecution also failed to establish that defendant intended to commit an offence or intimidate, annoy or insult the nominal complainant as it is clear from the evidence that the nominal complainant had no personnel permanently placed on the land.

I find that the essential ingredients of trespass have not been established by the prosecution more so the effect that trespass to land is actionable at the suit of the person in possession of the land. That person can sue for trespass even if he is neither the owner nor a privy of the owner. This is because exclusive possession of the land gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrong doers except a person who could establish a better title. Again, I cannot but reiterate that the nominal complainant has not demonstrated in this suit that they proved their title to the land in dispute as pleaded by them to take benefit of the position of the law that by the better title they have to the land in dispute, they have a right to exclusive possession of the same and that their claims for trespass and injunction must by law be granted; with the overwhelming evidence that the defendant is challenging the ownership of the property and a court of competent jurisdiction has not found for either party. The prosecution has not established a prima facie case against the defendant on this charge and I so hold.

On charge of criminal intimidation:

Section 396 of the penal code provides:

Whoever threatens another with an injury

"In order to prove the offence of criminal intimidation punishable under Section 397 of the Penal Code the prosecution must prove the following ingredients:

(1) That the accused threatened the complainant or some other persons.

(2) That the threat was of some injury to him.

(3) That it was given to cause alarm to him or to cause him not to do or to omit to do any act which he is legally entitled to or not bound to do."

Per BADA,J.C.A in ***CHIDOZIE V. C.O.P & ORS (2012) LPELR-14835(CA) (PP. 6 PARAS. B)***

The prosecution's case in a nutshell is that the defendant and some unknown persons threatened the nominal complainant and his caretakers when they went to the property.

According to PW1, on the day they went to see the property with the police, the trespasser came with some thugs, hoodlums doing all manner of things and they went back. Trespasser was invited to make statement he said his daughter was sick until he finally came. PW1 made statement at police station. At the property the thugs were armed with all manner of cutlasses but they were not harmed.

Examination in Chief of PW1;

Ques.: when you went to property in question and saw defendant did they harm you?

Ans: they were armed with all manner of cutlasses but we were not harmed.

Cross-examination of PW2;

Ques.: by testimony when you were purportedly challenged by boys you met on site defendant was not there

Ans: he was not there when they started confrontation but acted on when he came

Ques.: the acting was that they were ready to fight you?

Ans: not only me

Ques.: they were ready to fight you

Ans: they didn't fight us

The IPO PW3 was informed by MfonEbong via his statement exhibit P8 thus;

"on reaching there we meet the doctor with plenty men well-armed with

matchet local gun, koboko (juju) and every other dangerous weapons at the site of the land”

This MfonEbong was never brought during trial.

I find that the account of events by PW1 and PW2 contradicted each other materially. As one says the doctor was not at the scene while the other says the doctor was at the scene. One cannot approbate and reprobate at the same time. Substantial contradiction in the evidence of the accused person just as in the prosecution's, is liable to affect the case of the accused person to make it unreliable and untenable. See also Per CHIMA CENTUS NWEZE, JSC, in ***ETIM V. AKPAN & ORS (2023) LPELR-44904(SC) (PP. 35-37, PARAS. C-B)***. "Per ABBA AJI, J.S.C in ***SAMAILA v. STATE (2023) LPELR-61132(SC) (Pp. 11 paras. D)***.

In order to prove the ingredients it has to be shown that the doctor himself along with others intimidated the nominal complainant and some other persons this the prosecution has been unable to establish neither were any of the thugs called as witnesses. It is trite that prosecution need not call a certain number of witnesses to prove its case, "The burden of establishing proof beyond reasonable doubt is not merely attained by number of witnesses fielded by the prosecution. Indeed, it depends fundamentally on the quality of the evidence adduced at the trial by the prosecution. Per SAULAWA, J.S.C in ***SAMAILA v. STATE (2023) LPELR-61132(SC) (Pp. 23 paras. A)***, therefore, it is the quality of the witnesses called that matters and in this case not calling any of the thugs is detrimental to the case of the prosecution and I so hold. I find that the prosecution has failed to prove the essential ingredients of count 3.

On count of Criminal Conspiracy contrary to section 97 of the penal code;

"Although Section 97 is the punishment Section it is really Section 96 that explicates the import of criminal conspiracy. It is Section 96 of the Penal Code that conceptualises the import of criminal conspiracy and for ease of reference it provides that:

"96(1) When two or more persons agree to do or cause to be done -
(a) an illegal act, or
(b) an act which is not illegal by illegal means, such an agreement is called a criminal conspiracy.

(2) Notwithstanding the provisions of Subsection (1); no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to that agreement in pursuance thereof."

The import of the provisions of Section 96 supra has been considered in a long line of cases including Chianugo v. The State (2002) 2 NWLR (pt.750) 225 at 236 para.A.; Obiakor v. The State (2002) 10 NWLR (pt.776) 612 at 628 Upahar v. The State (2003) 6 NWLR (pt.816) 23 at 262 and Idi v. Yau (2001) 10 NWLR (pt.722) 640 at 651 and 658. These cases in summary establish that to secure the conviction of an accused on a charge of conspiracy it must be proved beyond reasonable doubt that: (1) The agreement to commit an offence - an illegal act is between two or more persons.

(2) That the said act apart from the agreement itself must be express in furtherance of the agreement.

However, authorities abound to the effect that agreements under Section 96 of the Penal Code can be inferred from circumstantial evidence." Per CHUKWUMA-ENEH, J.S.C in ***KAZA V. STATE (2008) LPELR-1683(SC) (PP. 11-13 PARAS. D)***

The case of the prosecution is that the defendant conspired with other persons now at large to commit an offence of criminal trespass and criminal intimidation.

I have reproduced the ingredients of the offence as there must be an agreement to commit an illegal act and the agreement must be express or can be inferred from circumstantial evidence.

From the case put forward by the prosecution;

PW1: On the day they went to see the property with the police, the

trespasser came with some thugs, hoodlums doing all manner of things and they went back. Trespasser was invited to make statement he said his daughter was sick until he finally came. PW1 made statement at police station. At the property the thugs were armed with all manner of cutlasses but they were not harmed.

PW2: On the day fixed to go back to the property, they went with 2 policemen from the Lugbe police station and when they got to the property, they were once again confronted by the boys who became so hostile some were with cutlasses and sticks and they were stringing something that looks like charm rolling it ready to fight with them even in the presence of the policemen who were dressed in 'mufty' but identified themselves as officers. The response of the police aggravated the whole situation and they became more hostile the whole place was tensed up and they were ready to fight anybody that made attempt, it was that point the police said "who are you people representing"? they said DR AYANLOLA the defendant. police asked for his number and they said no so the police told them to use their number to call him which they did and informed him that there is a case at his site and he should come down so they hear from him he said he was busy where he was and far away and arrived in 20/30mins. When he arrived police explained to him why they were at the property and what they saw that is the tension and that they wanted him to follow them to the station so matter can be looked into. In his own response he asked if he was being arrested and they said no that it was an invitation. He called his own police people who spoke to the police men at the site and they told the police to go back to the station that the defendant will come with them. PW3 testified as the IPO that he received a report from one MfonEbong but the said Mfon did not testify in court. PW4 the nominal complainant testified of what occurred that he was informed by his caretaker.

Having painstakingly reproduced the events as recounted by the witnesses brought before this court, I agree with the defendant counsel that there is no nexus linking the defendant with other persons at large to prove the offence of criminal conspiracy even from the surrounding circumstances I cannot find the nexus and I hold that the prosecution has not established the essential ingredients to warrant the defendant

putting in a defence.

In the light of the foregoing, the Court is of the considered view that the main issue for determination is whether the prosecution has made out a prima facie case against the defendants in respect of the offences charged and I am of the view that the Prosecution has not made out a prima facie case against the Defendant. The no case submission on all 3 counts succeed and the Defendant is discharged on all 3 counts.

**HON. JUSTICE NJIDEKA K. NWOSU-HEME
[JUDGE]**

APPEARANCE

1. O. UDO ESQ. FOR PROSECUTION

2. O. M AKPITAYI ESQ , M. M. IORUN ESQ. FOR THE DEFENDANT