

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION (APPELLATE DIVISION)
HOLDEN AT COURT NO. 20 GUDU-ABUJA
ON THE 1ST DAY OF JUNE, 2022

BEFORE THEIR LORDSHIP:

HON. JUSTICE MODUPE OSHO -ADEBIYI (PRESIDING JUDGE)
HON. JUSTICE A.A. FASHOLA (HON. JUDGE)

APPEAL NO: CRI/16/2021
CHARGE NO: CR/017/2020

BETWEEN

EZINNE AWA -----APPELLANT

AND

1. INSPECTOR GENERAL OF POLICE----- RESPONDENTS
2.OBINNA ODUAH

RULING

By an Amended Notice of Appeal, appellant is seeking to appeal the ruling of the Lower Court. The grounds of error as alleged by the appellant are as follows:

1. That the Lower Court erred in law when he held that prosecution had made out a case warranting an answer from the appellant in spite of the fact that the offences of wit jointact, aiding and abetting a crime theft by the servant and theft in a dwelling house contrary to S.79, 88,288 and 289 alleged against the appellant had not been proved.
2. That a prima facie case had not been made out against defendant contrary to the court ruling
3. That there was no sufficient evidence before the trial court to warrant the trial court charge the defendant.
4. The Learned Trial Judge erred in law when he charged the Appellant and the 2nd Respondent as follows:

“And that you EzinneAwah (2nd Defendant) in conjunction with Martins Mbaka now at large entered the construction yard of Chioma Nwakor at Bende, Abia State and stole six Hiluxes, and a Tundra Jeep and you thereby committed the offences of joint act, theft by a servant and theft in a dwelling house contrary to Section 79,288 and 289 of the Penal Code Law.”

5. The Leaned Trial erred in law when he failed to give any or due consideration to and to resolve issues raised by the Appellant in her no case submission thereby occasioning a failure both of duty and of jurisdiction the consequences of which are fatal.

PARTICULARS OF ERROR AS STATED ON THE FACE OF THE NOTICE OF APPEAL ARE.

GROUND ONE:

PARTICULARS OF ERROR

- i. The Appellant was charged alongside the 2nd Respondent and one **Martins Mbaka** for offences predicated on alleged unlawful entry **into** the House of the nominal complainant, one **Mrs. Chioma Nwakor** at No.4 G.G; Ganaka Close 3rd Avenue Gwarimpa, Abuja and **Mr. Martins Mbaka** residence at Bende Umuahia Abia State and stole the following vehicles Four registered new Toyota Hilux and Two Range Rovers SUV with Reg. No. ABC 113PH and ABC 642 PK one Toyota Camry Sedan Reg. No:RSH 256 MW and one Toyota Tundra Jeep and her two containers of Balustrade railings worth millions of Naira was also stolen and during the course of investigation one container containing the railing that was stolen was found in their possession.
- ii. It is a cardinal principle of law that the elements of the alleged offences must first be proved by the Prosecutor before the trial court will prefer a charge against the Appellant.
- iii. The Prosecutor failed to proof the element of the alleged offences before the trial court preferred a charge against the Appellant.

- iv. The Prosecutor failed to proof that No.4 G.G. Ganaka Close 3rd Avenue Gwarinpa Abuja belonged to the nominal complainant.
- v. The Prosecutor failed to proof that the Appellant is a servant of the nominal compliant.
- vi. The prosecutor failed to proof that the four registered new Toyota Hilux and two Range Rovers SUV with Reg. No. ABC 113PH and ABC 642 PK one Toyota Camry Sedan Reg. No: RSH 256 MW and one Toyota Tundra Jeep belonged to the nominal complainants.
- vii. The prosecutor failed to proof that the Appellant travelled to Mr. Martins Mbaka residence at Bende Umuahia Abia State and stole four registered new Toyota Hilux.
- viii. The prosecutor failed to proof that two containers of Balustrade railings worth millions of Naira was taking No. 4 G.G. Ganaka close 3rd Avenue Gwarinpa Abuja.
- ix. The prosecutor failed to proof that the nominal complainant is the owner of the container of Balustrade railings worth millions of Naira found at No. 4 G.G. Ganaka close 3rd Avenue Gwarinpa Abuja.
- x. The prosecutor failed to proof the essential elements of the offences contained in the FIR.
- xi. The prosecutor also failed to proof that the Appellant committed any crime.
- xii. The evidence adduced by the prosecutor at trial is such that no reasonable court would convict on it.
- xiii. The prosecutor failed to make out any prima facie case against the Appellant to warrant her being called upon by the trial court to enter her defence.

GROUND TWO:
PARTICULARS OF ERROR

- i. Evidence before the court is that MR. MARTIN MBAKA is the Husband to Mrs. Chioma Nwakor.
- ii. MR. MARTIN MBAKA lived at No. 4 G.G. Ganaka close 3rd Avenue Gwarinpa Abuja, before the marriage between him and the nominal complainant.
- iii. The testimonies of the Prosecution Witnesses are that the Appellant is the Secretary to MR. MARTIN MBAKA.
- iv. The testimonies of the prosecution witness is that four(4) cars were taking from No. 4 G.G. Ganaka close 3rd Avenue Gwarinpa Abuja which include (a) 4 Hilux from MR. MARTIN MBAKA Bende residence in Abia State.
- v. No Toyota Tundra was taking from any of the location.
- vi. The evidence before the court is that the Defendants acted on the instructions of MR. MARTIN MBAKA the Appellant's employer.
- vii. The evidence before the trial court is that the Posh Panamera and the Toyota Camry belongs to Mr. Martin Mbaka.
- viii. The nominal complainant testified at PW4 and told the court that she invested 180,000.00 dollars in railing and grills Ltd a company owned by MR. MARTIN MBAKA.
- ix. That it was because MR. MARTIN MBAKA refused to return her investment in the business that she petitioned the police to help her recover her investment.
- x. The railings were kept at No. 4 G.G; Ganaka close 3rd Avenue Gwarimpa, Abuja.
- xi. The Police took away the railings from No. 4 G.G; Ganaka close 3rd Avenue Gwarimpa, Abuja.
- xii. The testimony of PW7 is that the Appellant was not at Bende.
- xiii. PW7 did not see the Appellant take possession of any Hilux vehicle.

- xiv. PW7 is not aware whether the 4 Hilux vehicles were handed over to the Appellant or not.
- xv. PW4 the nominal complainant did not see the Appellant take delivery of the 4 Hilux vehicles.
- xvi. PW4 was only told by someone that MR. MARTIN MBAKA instructed the drivers of the Hilux to take them to the Appellant.
- xvii. The Prosecution did not tender any proof of ownership for any of cars to proof that they belonged to the nominal complainant.
- xviii. The documents tendered in evidence by the prosecution are all inadmissible in evidence.
- xix. PW6 the Police Investigation Officer failed to tender the petition of the nominal complainant.
- xx. PW6 also failed to tender police report.
- xxi. PW6 also failed to tender the court order from the lower court which they relied on to carry out their investigation.
- xxii. PW7 told the court that only 4 Hilux were moved out of Bende and no Toyota Tundra Jeep was moved out of Bende.
- xxiii. PW7 also told the court he did not see the drivers of the car hand them over to the Appellant.

GROUND THREE:
PARTICULARS OF ERROR

- i. The Prosecution failed to proof that the Appellant is a servant of the nominal complainant.
- ii. The evidence before the trial court is that the Appellant is the secretary to MR. MARTIN MBAKA.
- iii. That No. 4 G.G; Ganaka close 3rd Avenue Gwarimpa, Abuja is not the house of the nominal complainant but that of MR. MARTIN MBAKA where he lived before the marriage between him and the nominalcomplainant.
- iv. That the evidence before the court is that the Camry and the Posh Panamera Car are the properties of MR. MARTIN MBAKA.
- v. That no evidence was given at trial of the Appellant or the 2ndRespondent taking away any Lexus 570 SUV as contained in the Charge preferred by the trial court.

- vi. That the Prosecution failed to produce proof of ownership particulars of the said cars to show that they belong to the nominal complainant.
- vii. That the proof of ownership for the cars admitted in evidence shows that the cars belong to MR. MARTIN MBAKA.
- viii. That no evidence was adduced at trial to show that the nominal complainant is the owner of the railings.
- ix. That the nominal complainant admitted that she is an investor in railings and grills Ltd that purchased the rail.
- x. She admitted that she requested for return of investment and when it was not given to her that she petitioned the Police to help her recover the property.
- xi. That no evidence was adduced at trial that the railings were ever stolen nor found in the possession of the Appellant. Rather the railings were kept at No. 4 G.G; Ganaka Close 3rd Avenue Gwarimpa, Abuja MR. MARTIN MBAKA house before the Police took them away.

GROUND FOUR:
PARTICULARS OF ERROR

- i. The trial court lacked the jurisdiction to entertain any act of the Appellant that took place in Abia State outside the jurisdiction of the trial court.
- ii. Only 4 Hilux was alleged to have been taking from Abia State.
- iii. No Tundra Jeep was taking from Abia State.
- iv. PW7 who was present in Abia State admitted that the Appellant did not visit Abia State.
- v. He admitted that he did not see the Appellant being given possession of the 4 Hilux vehicles.
- vi. He admitted that he only heard MR. MARTIN MBAKA telling the Appellant on Phone that the vehicles will be handed over to her in Abuja.
- vii. The nominal complainant did not see the Appellant take delivery of the vehicles.
- viii. The nominal complainant admitted that she was told that MR. MARTIN MBAKA directed the drivers of the Hilux to deliver them to the Appellant in Abuja.

- ix. No evidence was adduced at trial of any person who saw the Appellant take delivery of the 4 Hilux vehicles.

GROUND FIVE:

PARTICULARS OF ERROR

- i. The Court failed to make pronouncement of vital issues raised by the Appellant in her No Case Submission. He said nothing on the following issues raised by the Appellant in her no case submission that;
 - a. The documents tendered in evidence by PW4 are not admissible in evidence;
 - b. Failure to proof allegation of joint act, aiding and abetting a crime, theft by servant and theft in a dwelling house contrary to section 79, 88, 288 and 289 preferred against the Appellant.
 - c. Failure to proof ownership of the vehicles.
 - d. Failure to proof allegation of entering MARTIN MBAKA house at Bende Umuahia Abia State to steal four unregistered new Toyota Hilux.
 - e. Failure to proof allegation of stealing of two containers of balustrade railing worth millions of naira.
 - f. Failure to proof allegation of theft by servant and theft in a dwelling house.
 - g. Allegations were made against MR. MARTIN MBAKA who were not charged;

Summarily, Appellant is appealing against the ruling of the trial court ordering appellant to enter his defence. Appellant contention is that prosecution failed to prove the ingredients of the offence charged and the trial court ought to uphold a no-case submission. I have gone through the written submission of the learned counsel to the Appellant and it is worthy to note that counsel evaluated evidence so far led by the prosecution and concluded that prosecution has failed to prove the ingredients of the offence hence that the trial court ought to have upheld a no-case submission.

Contrary to submission of leaned counsel to the Appellant, the court is not called upon to express any opinion on the evidence before it at the stage of no-case submission;also, the court is not to evaluate evidence before it in

proof of the guilt of the defendant at the stage of no-case submission. The court is only called upon to take note and rule accordingly that there is, before the court, no legally admissible evidence linking the defendant with the commission of the offence charged. If there is any evidence, however slight the matter ought to proceed to defence. In other words, it is the duty of the court to determine if a prima facie evidence has been established against a defendant. A prima facie case is established where evidence as laid down by prosecution links the defendant to the offence charged even if it is minimal. See **UDE OGU VS FRN & ORS (2016) LPELR 40102 (SC) Pp8-9 Para C-B** where Galadima JSC held:

“I had found that the term prima facie case only means that there is ground for proceeding. It is not the same as proof which comes later when the court has to find whether the accused is guilty or not. It is sufficient once it is shown that there are facts which reveal commission of a crime and show that the accused is linked with same.

The trial court in its ruling had stated that from the testimonies of the prosecution witness and cross examination, and exhibit tendered, plus written submission of counsels the prosecution has made out a prima facie case against the defendant to warrant defendant enter his defence.

As rightly stated by Galadima JSC in **UDE OGU VS FRN (Supra)** a prima facie evidence is not proof beyond reasonable doubt. Rather it is simply that there are grounds for proceeding and defendant should proceed with his defence.

Proof of the offence comes up later after defendant has entered his defence and at the point the court has to determine whether defendant is guilty or not guilty. Once a court is able to determine that there is a ground to proceed, a prima facie case has been established no matter how slight. It is at this stage that the defendant is called upon to open his defence.

Having gone through processes filed, Appellant counsel has evaluated evidence viz-a-viz exhibit tendered by prosecution against the background of proof beyond reasonable doubt which is contrary to principle of no-case submission. At the stage of no-case submission the court is only concerned with whether a prima facie evidence has been established against the defendant as against proof beyond reasonable doubt.

We are of the view that a prima facie case has been established against the defendant and therefore uphold the ruling of the trial court. Defendant is hereby ordered to proceed to the trial court to enter his defence.

Hon. Justice Modupe Osho -Adebiyi
(Presiding Judge)
01/06/2022 01/06/2022

Hon. Justice A.A. Fashola
(Hon. Judge)

Parties:Absent.

Appearances: Samuel Ogala for the Applicant. Respondent is not represented.