

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE .H. MU’AZU
SUIT NO: FCT/HC/CR/218/2021
DELIVERED ON THE 6TH MAY, 2024**

BETWEEN:

INSPECTOR-GENERAL OF POLICE.....COMPLAINANT

AND

JOSEPH IDAKWO.....DEFENDANT

RULING/JUDGMENT

This “No Case Submission” is brought pursuant to the provision of section 302, 303 and 357 of the Administration of Criminal Justice Act, 2015. The submission is predicated upon the Defendants believe that prosecution has not made out a case to justify the continuation of this trial.

The Defendant herein is standing trial on a 2 count charge dated 6th July, 2021 filed by the Complainant and upon which the Defendant was arraigned on the 8th of July, 2021. The Defendant at the Arraignment pleaded not guilty to the two counts charges, which read as:

Count 1: That you, Joseph Idakwo, Male, 33 years Old of No. 25, Dambe Street, Maitama FCT Abuja, sometimes in the year 2019, at Abuja within the Jurisdiction of this Honourable Court,

committed a criminal offence to wit: commit the offence of criminal breach of trust, in that on the said period, you informed one Mr Ahmed Mohamed Indimi that you want to sell a house in Maitama valued 86 Million Naira (Eight six Million Naira) and he paid the total sum as agreed and to his surprise instead for you to handover the property to him you sold the house to another person without giving explanation to your action. You thereby committed an offence punishable under Section 312 of the penal code.

Count 2: That you, Joseph Idakwo, Male, 33 years Old of No. 25, Dambe Street, Maitama FCT Abuja, sometimes in the year 2019, at Abuja within the Jurisdiction of this Honourable Court, committed a criminal offence to wit: commit the offence of cheating, in that on the said period, you informed one Mr Ahmed Mohamed Indimi that you want to sell a house in Maitama valued 86 Million Naira (Eight six Million Naira) and he paid the total sum as agreed and he spent additional 30 million Naira (Thirty Million Naira) to improve the house by contracting Julius Berger to furnish the property, but to his surprise instead for you to handover the house to him you sold same property to another person without giving explanation to your action. You thereby committed an offence punishable under Section 322 of the penal code.

In its quest to prove the counts against the Defendant, the Complainant called two witnesses. **Pw1** was the Nominal Complainant Mr. Ahmed Indimi and **pw2** is Mr. Ayodeji Olowe (the I.P.O). The following documents were tendered and admitted in evidence:

1. Invoice for payment of **₦86,000,000.00** dated 26th May, 2016 to the Defendant- Exhibit P1.
2. Nominal Complainant statement of 20/01/2021- Exhibit P2.
3. Email print out-Exhibit P3.
4. Repayment Plan-Exhibit P4.
5. Defendant statement of 10/01/2020-Exhibit P5.
6. Letter of undertaking by the Defendant dated 14/01/2020- Exhibit P6.

It is important to note that during the course of trial of the case on the 1st of March, 2022, the Defendant, through his Counsel, objected to the Admissibility of a statement and an undertaken both made at the Complainant office, which the Complainant sought to tendered through Pw2. The undertaking is dated 14th January, 2020 and the statement was made on the 12th of June, 2021 by the Defendant. Both, the Learned Counsel contended were made under the Coercive watch and supervision of the 2nd prosecution witness at the Complainant office.

In the Ruling of this Court, the undertaking of 14/01/2020 was provisionally admitted in evidence while Court order a trial within trial in respect of the statement made by the Defendant on

the 12th June, 2021 to determine the voluntariness of the said statement of the Defendant.

Upon the close of the Defence in trial within trial, this Court ordered parties to file their Final Written Address in trial within trial. The prosecution failed to file a Final Written Address and after consideration of the evidence before the court and the argument of the Defence, this Court rejected the statement of the Defendant dated 12/06/2021.

Trial was continued after the trial within trial with the Cross Examination of **Pw2**, but this was not because the Complainant failed, repeatedly thereafter to appear before the court or produce **Pw2** for Cross Examination. The prosecution was absent on the 2nd November, 2023, 12th December, 2023 and 8th February, 2024 even though Hearing Notices was served on it on each occasion. Accordingly, Counsel to the Defendant, relying on the authority in *ISIKA V. THE STATE (2011) ALL FWLR (pt. 583) 1966 at 1983* prayed the Court to foreclose the case of the prosecution and expunge the evidences of Pw2. court granted the Application to foreclose the case of the Complainant on the 08/02/2024.

Following the closure of the prosecution case, the Defence sought for a date to file a no case submission. The Defendant filed the Defendant “No case submission” on the 21/02/2024 to which the prosecution did not respond to.

In the Address of the Defendant, Counsel submitted a sole issue for determination, to wit:

“Whether having regards to the evidence of the prosecution against the Defendant coupled with totality of the materials before the court, a prima facie case is made out against the Defendant to justify the continuation of the trial and calling on the Defendant to enter their Defence”

I have appraised the facts and evidence adduced by the prosecution. I will be very brief at this point in arriving at my decision on whether or not the prosecution has made out a case against the Defendant to warrant any defence or discharge at this point in time.

It is trite that Section 303 (3) of Administration of criminal Justice Act, 2015 set up the criteria which this Hon. Court is expected to consider in respect of a no case to answer.

Section 303 provides:

(1) 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. ”

(2) The defendant or his legal practitioner has the right to reply to any new point of law raised by the prosecutor after which the Court shall give its ruling. ”

(3) In considering the application of the defendant under Section 303 the Court shall in the 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 prima facie case has not been made out against the defendant for him to be called upon to answer.

Section 357 provides:

"Where at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the defendant sufficiently to require him to make a defence, the court shall, as to that particular Charge, discharge him being guided by the provisions of Section 302 of this Act."

A ***no case submission***, simply put, is a submission that there is no case for an accused person to answer in that there is no evidence on which even if the court believes it, it could convict.

Indeed, a **no** case submission may properly be made and upheld when there has **been** no evidence to **prove** an essential element of the alleged offence or 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 ***IBEZIAKO v. C.O.P (1963)1 SCNLR 99. In TONGO v. C.O.P (2007) 12 N.W.L.R (PT.1049) 523***; the Supreme Court stated as follows:

"Therefore, when a submission of no prima-facie case is made on behalf of an accused person, the trial court is not thereby called upon at that stage to express any opinion on the evidence before it. The court is only called upon to take note and to rule accordingly that there is before the court no legally admissible evidence linking the accused person with the commission of the offence with which he is charge."

Therefore, the basic responsibility or focus of the Court now is to examine the evidence led by the prosecution witnesses in the light of the critical elements required to sustain the offences for which the Defendant was charged and in doing so, determine whether the evidence has failed to link the Defendant with the commission of the offences alleged against him so as not to require him to enter defence.

I shall now proceed to examine the evidence as adduced by the prosecution to support or establish the 2-Count charge as it relates to the Defendant in this case.

Count 1

On count 1, the Defendant is charged under Section 312 of the Penal Code which is the punishment section for Criminal Breach of Trust. The offence of criminal breach of trust is however defined under Section 311 as follows:

"Whoever, *being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of trust.*"

It is evident from the above provision that for the Complainant to succeed on the allegation of criminal breach of trust, he must adduce evidence to the effect that there was a trust relationship between the nominal complainant and the Defendant and that Defendant was entrusted with the property and that the Defendant in fact dishonestly misappropriated or converted the property to his own Use or disposes the property in violation of

any law. See the case of *F.R.N V. MARTINS (2012) 14 NWLR (PT.364) PG. 582, PARAS. A-E*. I have carefully considered the evidence in this case, it is my finding that there is no evidence placed before this Court by the Complainant to prove the ingredients in the alleged offence of Criminal Breach of Trust against the Defendant. It is in evidence that the sum of **₦86,000,000.00** (Eighty Six Million Naira) paid to the Defendant as part-payment for the property in question in this matter and same was fully refunded. The facts elicited through Cross-examination are instructive here, I shall reproduce part of it. In it PW1 stated thus:

"Q: How much did you pay from the Property?

A: It is ₦86,000,000.00

Q: It is Terrace of about 4 Units?

A: Yes.

Q: Which of the 4 was allocated to you?

A: One on the left.

Q: Do you have any proof that it was the one on the left?

A: I don't.

Q: Do you do business with the Defendant?

A: No.

Q: You Paid him ₦86M?

A: Yes he has refunded the ₦86,000,000.00."

Therefore, it is a fact that no particular Property was held in trust by the Defendant for the PW1. It is at best a case of breach of contract and not a case of criminal breach of trust. The distinction was made by the Supreme Court in the case of **EDUN v. FEDERAL REPUBLIC OF NIGERIA (2019) 13 NWLR (Pt. 1689) 326 (Pp. 351-352, paras. G-B)**, where the Apex Court *per* EJEMBI EKO, JSC held thus:

"A breach of contract, on one hand, is a violation of a contractual obligation by failing to perform one's own promise under the contract by repudiation of the contract agreement. A breach of contract may be by non-performance, or by repudiation, or both. Each case gives rise to a civil claim either for damages, or some other remedies including specific performance. A breach of trust, on the other hand, occurs with the trustee's violation of either the trust terms or the trustee's fiduciary obligations. In the instant case, the appellants were not charged with the offence of criminal breach of trust which would have attracted a criminal sanction by virtue of section 311 of the Penal Code."

In the instant case, the evidence so far led, and the testimony of PW1 in his evidence-in-chief and under cross-examination supports that this case clearly centers on a yet to be concluded

contract, which breaches (if any), entirely remains in the realm of civil procedure as no crime was committed or proved by the Complainant.

The Defendant was neither intended to, nor did he ever hold himself out or act as Trustee of PW1. The relationship between the parties was purely contractual and the same was accordingly terminated by PW1 when he demanded and received his part-payment. Accordingly, an alleged breach of trust could not occur where no trust was created between the parties. See ***FRN V. WALBE (2021) LPELR-55158(CA)***, where the Court of Appeal per M.N. ONIYANGI, JCA held (at Pp 57 - 58 Paras C-B), thus:

"In all the cases given in illustration of Section 311 of the Penal Code in which a person is said to have committed criminal breach of trust, the property misappropriated is the property of another person or property of which the offender was not the beneficial owner. For a criminal breach of trust to occur there must be evidence of trust. A trust arises as a result of a manifestation to create it. It is a fiduciary relationship regarding property and charging the person with title to the property with equitable duties to deal with it for another's benefit. The prosecution in the instant case failed to establish that the accused was entrusted with the property and that he has any specific instruction as to how to deal with such trust property if at all he is trusted with the properties in issue. i.e. NATCO

properties, see S.A. AKINOLA AND ANOR V WEMA BANK PLC (2014) LPELR - 24132. Nothing to show that the properties in issue are vested in the Respondent. See GORDON TON IWOK & ORS V UNIVERSITY OF UYO AND ANOR (2010) LPELR - 4345."

Count 2

Under count 2 of the Charge, the Defendant is charged with cheating under Section 322 of the Penal Code which is the punishment section for Cheating. The offence of Cheating is however defined under Section 320 as follows:

320. Whoever by deceiving any person-

(a) fraudulently or *dishonestly* induces the person so deceived to deliver any property to any person or to consent that any *person* shall retain any *property*; or

(b) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

The application of the above provision to the instant case shows clearly, that there is no evidence that PW1 was cheated in any

way by the Defendant. Indeed, to prove the offence of cheating, there must be evidence that someone has been fraudulently deceived into certain belief upon which he acted or omitted to act in a certain way. That there must be evidence of deception, and none of the evidence led so far shows that PW1 was induced into delivering his property (money) to the Defendant. Similarly, nowhere in the testimony of PW1 did he show that he had been deceived into making payments for the property he initially paid for. There is also no evidence at all that he was deceived as to the state, pricing and/or development of the property until he decided to request for refund once the Development Control Issues started. PW1 was also clear that what he paid for the property before changing his mind, ~~₦86,000,000~~ (Eighty-Six Million Naira) was fully refunded by the Defendant. It leaves me wondering where then is the cheating in a transaction where a buyer to repudiate the contract for which he had not fully paid. The Seller did not withhold any charges from the paid sum but indeed fully refunded the Buyer the full sum, which the Buyer acknowledges. Where exactly is the cheating??? It is instructive to note that upon also affirming positively that he was fully refunded, PW1 acknowledged that he did not enter into any business deal with the Defendant, thus could not be lawfully requesting for a return in a business he did not partake.

Finally, the attitude of the prosecution failing to produce PW2 for cross-examination and their absence in court to prosecute the case is telling. In the case of **FRN V. CHIBUIKE (2019)**

LPELR-51056(CA), the Court of Appeal *Per* EBIOWEI TOBI, JCA (at Pp 14-16 PARAS A - E) held thus:

"It is trite law that the Court will not act on an evidence where the witness cannot be found or presented for cross examination. See Major Hamza Al-Mustapha vs. The State (2013) LPELR-20995 (CA), where the Court held thus: "Obviously, the evidence of PW4 also amounts to nothing because it is settled law that a Court cannot act on the evidence of a witness that cannot be produced or located for cross-examination after he had been examined in chief - see Isiaka v. The State (2011) All FWLR (pt. 583) 1966, wherein it was held, "...The platform on which the lower Court placed his reasoning for the conviction is weak and unjustifiable. A Court or Tribunal should never act on the evidence of a witness whom the other party wants to cross-examine, but cannot be reproduced or located for cross-examination after he must have been examined-in-chief. The most honourable thing for the lower Court would have been that the evidence of PW3, who tendered Exhibit 5 should have been expunged from the record of the Court or the lower Court should not have attached any weight to it because the essence of cross- examination is to test the veracity and accuracy of the witness and not just a jamboree or merry making. A witness who fails to make himself available for cross-examination should know that all his evidence goes to naught."

What is then left before the court is evidence of PW1 alone and Exhibit P1 which is merely the invoice for the sum of **₦86,000,000.00** (Eighty Six Million Naira) which was fully refunded to **PW1**. The Complainant's case therefore is bereft of evidence capable of disclosing a *prima facie* case against the Defendant on the alleged offences and I so hold.

This court therefore finds that, in the case at hand, the Prosecution has failed woefully to make out a *prima facie* case against the Defendant. The *no case submission* is upheld and the Defendant is accordingly discharged and acquitted.

SIGNED:
HON. JUDGE
06/05/2023.

Appearance:

Samuel Oguntuyi, Esq. holding the brief of Mohammed Adelodun, Esq. with Abduljelil Egbewole, Esq. and M.K. Umar, Esq. for the Defendant.

No appearance for the Complainant.