

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT 9, AREA 11, GARKI, ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE S. B. BELGORE**

SUIT NO: FCT/HC/CR/176/2013

DATE: 9/12/2024

BETWEEN

FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

1. TIMOTHY ELEREW 2. ADEGBUYI AYODELE	}	DEFENDANTS
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RULING

(DELIVERED BY HON. JUSTICE S. B. BELGORE)

The 2nd Defendant was originally arraigned for a four count charge pursuant to section 185(b) of the criminal procedure code to wit: criminal breach of trust and offence punishable under section 97 of the penal code; dishonest conversion, an offence contrary to section 311 and punishable under section 312 of the penal code.

The prosecution opened its case on the 1st day of July, 2014 and closed its case on the 7th day of July 2021. Thereafter the 2nd Defendant informed the Court through Counsel of his intention to make a no case submission upon the prosecution closing its case.

BRIEF STATEMENT OF FACTS

The trial commenced on the 1st day of July, 2014 and ended up calling eight witnesses as follows:

1. Christopher K. Yayah, Land Surveyor, PW1
2. Mohammed Mustapha, Journalist, Staff of AIT, PW2
3. Osisam Ede, Journalist, NUJ Union Leader, PW3
4. Mustapha I. Suleiman, EFCC Operative PW4
5. Gbemiga Olamikan, Journalist, Financial Secretary, PW5
6. Sera Edet, EcoBank Nig. Ltd. A Staff, PW6
7. Olusegun Omotosho Seun, A Staff of UBA, PW7
8. Oriko Bridget, EFCC Investigator, PW8

EXHIBITS TENDERED

- a. 4 receipts issued by PW1 to the 1st Defendant marked Exhibit A1-4
- b. Statement made by PW1 marked Exhibit B1-3
- c. Job proposal by PW1 marked Exhibit C
- d. Letter from PW1 marked Exhibit D1-3
- e. Receipts of deposits by PW2 marked Exhibit E
- f. Statement of the defendants under caution marked Exhibit F1 & F2 tendered by PW4 who was never available for cross-examination.
- g. 2 EFCC letters written to Eco Bank Nig. Ltd. Marked Exhibit G1-2
- h. 1st Defendant status report from UBA Marked Exhibit H
- i. Letter from EFCC dated 4th February, 2013 and UBA response marked Exhibit H-1-2
- j. Petition written by a lawyer on behalf of the complaints against the defendant marked Exhibit H3.
- k. EFCC letter to NSUDB dated 22 February, 2013 marked Exhibit H4

- l. Bank response/instruments of withdrawal signed by the defendants marked Exhibit H5
- m. Additional statement of second defendant dated 3rd April, 2013 marked Exhibit H6.

The position of case law and statutes

The essence of a submission of no case to answer lies in the contention that the evidence of the prosecution in the discharge of the burden of proof placed on them by law has failed to establish a prima facie, see **SUNNY TONGO & ANOR V. C. O. P. (2007) 4 SCNJ 221.**

In **FIDELIS UBANATU VS. COMMISSIONER OF POLICE (2000) 2 NWLR P. T. 643 P. 115 AT 128 – 129 PARAS G**, the Supreme Court, after a comprehensive review of case law and relevant authorities, defined “prima facie” case, inter alia as “a case in which there is evidence which will suffice to support the allegation made in it and which will stand” unless there is evidence to rebut the allegation...

Similarly, in **AITUMA V. THE STATE (2007) 5 NWLR PT. 1028 PAGE 466 AT 485**, the Court of Appeal held that:

“it has long been entrenched in the corpus of our criminal jurisprudence that a submission that there is no case to answer may properly be made and upheld when:

- a. There has been no evidence to prove an essential element in the alleged offence.
- b. When the evidence 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 upon it.

In **FRN V. HON. OLADIMEJI BANKOLE & ANOR (in a reported) Suit No. FCT/HC/CR/1000/2011**, the Federal Capital Territory High Court delivered a ruling dated 31st January, 2012 where Belgore J. clearly

defined the extent of the constitutional principles governing an application for no case submission, in the following terms:

“The principle behind a no case submission is that an accused should be relieved of responsibility of defending himself when there is no evidence upon which a trial judge could convict, That is the first principle. The other principle is that a no case submission essentially postulate that whatever evidence there was, which the offence had been so discredited that no reasonable Court can act on it as to pronounce the guilt of the accused. See ONAGORUWA VS. STATE (1993) 7 NWLR (PT. 303) 49; STATE VS. AUDU J. (1972) 6 SC 28; ADEYEMI B. VS. STATE (1991) 6 NWLR (PT. 1951) 35.

The inherent logic or force behind this principle is that constitutional provision of presumption of innocence. By virtue of Section 36 of the 1999 Constitution (as amended) every person charged with a criminal offence is presumed to be innocent until he is pronounced guilty.

It is therefore the duty of the prosecution to rebut the presumption of innocence Constitutionally guaranteed to the accused person. So where a no case had been made out at the end of the presentation of the prosecution’s case, it would amount to asking him to establish his innocence if he is called upon to enter an answer or defense to the charge. See NUMUNI VS. STATE (1975) 6 SC 79; DEBOH VS. STATE (1979) 5 SC 197.

In essence, a no case submission is available to the accused if at the close of the case for the prosecution of the evidence led fails to meet the essential requirement or elements of the offence charged.

In addition as pointed out by the Supreme Court in DABOH VS. STATE (Supra), the case of the prosecution may fail at this stage if the evidence is so manifestly unreliable having been destroyed by cross-examination of the witness that no reasonable tribunal or court will convict on the evidence.”

SECTION 302 AND 303 (3) a – e OF THE ADMINISTRATION OF CRIMINAL JUSTICE ACT 2015

302 – The Court may, on its own motion or on application by the Defendant after hearing the evidence for the prosecution, where it considers that the evidence against the defendant and or any of several defendants is not sufficient to justify the continuation of the trials, record a finding not guilty in respect to enter his or their defense and the defendant shall accordingly be discharged and the Court shall then call on the remaining defendants if any to enter his defense.”

303 (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 a prima facie case has been made out against the defendant for him to be called upon to answer.

THE PETITION/THE FOUNDATION UPON WHICH INVESTIGATION, CHARGE AND THE VERIFYING AFFIDAVIT WAS FOUNDED

The investigation giving rise to these charges was precipitated allegedly so by a petition dated **10th Day of February, 2013** (Exhibit H3) that petition, it is said, alleged wrong doing against the first Defendant and one Awassam Bassey, the second Defendant was not mentioned at all in that petition. Now EFCC Investigation activities letter in respect of this purported petition was dated **5th Day of February, 2013**. This EFCC letter forms part of Exhibit H3. It now appears that EFCC commenced investigation activities longtime before the so called petition or in anticipation of a petition alleging a fraud. It is therefore submitted that the whole exercise is premeditated towards persecution rather than prosecution.

The petition alleges a fraud in the region of N57M. There is no evidence before this honourable court supporting this amount or half of the amount. The attention of the second Defendant was never drawn to this petition when he was invited by the EFCC contrary to the lies told by PW8. That the Defendants “were arrested” even though she changed her story under cross-examination that the second Defendant was invited.

Another contradiction in the evidence before this Honourable Court is the UBA response letter to EFCC letter of “Investigation” dated February 14th, 2013 and ECOBANK Nigeria Ltd response letter to EFCC letter of “Investigation” dated February 04th, 2013, ECOBANK Nigeria Ltd refers to EFCC letter dated 23rd January, 2013. These two letters contradict the facts stated in the Paragraph 3 of the verifying affidavit in support of the charge preferred affidavit the defendants. These 2 contradicting letters form part of Exhibit H3 before the court. It is also pertinent to submit that these dates in the EFCC letters of “Investigation activities” Preceded the so called petition dated 10th February, 2013 upon which the charge is preferred. Indeed, a case **‘the cart before the horse’**. The so called investigation activities commenced before EFCC received the petition. We humbly submit that document speaks for itself as we humbly request this

Honourable court to perused the documentary evidence tendered by the prosecution.

The sum total of the 1st Defendant accounts' turnover before this Honourable Court did not support the alleged fraud sum in the petition (in the region N57M).

DEFECTS IN THE FOUR COUNT-CHARGE AGAINST THE SECOND DEFENDANT

The second Defendant is charged in four counts all of which are defective and fail to meet the requirements all of which are defective and fail to meet the requirements of the law. They are bad from lack of the requisite/essential elements prescribed in the statute creating the offences.

Count One: The second defendant is charge to wit: that he did agree with the first Defendant to commit the offence of criminal breach of trust; an offence punishable under Section 97 of the penal code. There was not a single shred of evidence that the Defendants did agree to do an illegal act. On the contrary, from the evidence of withdrawal of funds from the chapel's accounts, no proceeds of the withdrawal was traced to second defendant's account. The evidence of PW8 against the second defendants that he counter signed all the instruments of withdrawal were false. For instance OCEANIC BANK cheque dated 19/07/2006 in the sum of N2.3M was not signed by the second defendant; neither the OCEANIC BANK cheque dated 02/08/2009 in the sum of N400,000.00 was never signed by the second defendant. These instruments were counter signed by the 3rd signatory to the OCEANIC BANK account of the NUJ Correspondent Chapel, Abuja. I peruse the "mandate card" of the bank showing the photographs of the 3 signatories and their 'sample signatures' respectively. All these documents are in Exhibit H5. There is therefore nothing before the court evidencing agreement.

Count two: The second defendant is charged here with joint act “Dishonesty convert the sum of (N2,850,000.00) only being property of NUJ correspondent Chapel, FCT on the contrary money traced to the 1st Defendant account contrary to the Prosecution testimony that money from members were traced to “their personal accounts”. Under Cross-Examination, PW8 was asked how much were traced to the second defendant? They said none. Also on Cross-Examination, PW8 said they did not tender the second Defendant’s account for the purpose of tracing the proceeds of withdrawal, where then is the evidence of “Joint Act” and criminal conversion here?

On Count three and four: Everything I said in Count 1 and 2 applies.

An essential elements of the four Count-Charge is the “evidence of agreement” which is totally lacking in the evidence before this Honourable Court. Evidence of money traced to the 1st Defendants account only (Contrary to the testimony of the PW8, that money were traced to “their accounts”) cannot support the counts as charged.

There is also no evidence of criminal breach of trust neither criminal conversion against the second defendant when the prosecution woefully fail to prove. It is shocking to note/hear from PW8 that they did not call for the bank account of the second defendant for the purpose of tracing the proceeds of withdrawal from the UNION ACCOUNT into “Their accounts” as testified. An Essential element of criminal breach of trust is missing in that whereas Section 311 of the penal code Act specifies a dishonest intent, the charge does not.

An essential element of “Dishonest Convert” is also lacking here as there was no evidence of conversion established against the second defendant. There was no evidence of tracing any amount to the second defendant.

Another element of the offence in the breach of criminal breach of trust is that the action of the defendant should be in violation of any direction of law prescribing the mode in which such trust is to be discharged. The law is not specified as charged. The precise regulation that was allegedly violated ought to have been specified.

The “To your own use”. The personal use alleged should have been specified but is not. To that extent, the charge is bad for vagueness.

The evidence here is that money charged in these count was paid into the account of the UNION contrary to the allegation in the charge that it was entrusted to the defendants in their capacity as chairman and Vice-Chairman of the NUJ Correspondent Chapel, FCT.

There is before this honourable Court the evidence of allocation of Plots of land by the Agency of Nasarawa State Government to the UNION. What is left is the payment of the sum of N83M Naira by the UNION as compensation to the indigenous owners of the land. This is a process and the procedure was on-going when some disgruntled elements amongst the UNION decides to sponsor this trump up charge. The weight of evidence adduced so far by the Prosecution did not support the essential/an-essential element of “Dishonest Convert”.

In **YAKUBU IBRAHIM VS. COP (2010) LPELR (CA)** The essential elements of the offence under section 311 of the penal code was stated as follows by the Court of Appeal:

“For our purpose here and now and the offences charged, it is necessary to state the ingredients of those offences and what should apply. The ingredients of the offence of criminal breach of trust Contained in Section 311 of the penal code and which must be proved before a charge for same can be sustained are:

- (a) That the accused was entrusted with property; or with dominion over it;**
- (b) That he misappropriated the property;**
- (c) That he converted such property to his own use;**
- (d) That he disposed of it;**
- (e) That he did so in violation of any direction of law prescribing the mode in which such trust was to be discharged; or any legal contract expressed or implied which he had made concern the trust; or**
- (f) That he intentionally allowed some other persons to do or commit the above stated;**
- (g) That he acted dishonestly.”**

In **ONUOHA VS. THE STATE (1999) 3 NWLR (83) 460**, where a person is charged under section 215 of the penal code (CAP. 89) for the offence of criminal breach of trust the prosecution must establish in addition to the ingredients stated in (i) above that such person so charged committed the offense in his capacity as a public servant or in the way of his capacity as a public servant or in the way of his business as a banker, factor, broker, legal practitioner or agent.

In **CAPTAIN ABIDOYE VS. FRN (2013) 12 SC (Pt. 1) 99 @Page 119, Paragraph 25-20**, the Supreme Court per ngwuat, JSC held that:

“Any mistake in the particulars of offence in a charge shall lead any conviction based on such charge to be quashed on appeal. See OKEKE VS. IGP (1965) 2 ALL NLR 81; QUEEN VS. GBADAMOSI (1959) 4 FSC 181. The elements or ingredients which constitute the offence charge must be explicit and not left to speculation or Inference. The requirements that essential elements be disclosed implies that non-essential ingredients be excluded from the particulars of the offence with which anybody is charged”.

I hold that mere counter signing some instruments of withdrawal by the second Defendant in the paying of the land surveyors who was contracted to demarcate allotted Plot of land (i.e. PW1) or in his capacity as the vice-chairman in the furtherance of the union activities does not amount to Joint act to commit criminal breach of trust and dishonest conversion of same to the use of the defendant as charged. See also **MAFA VS. STATE (2013) 3 NWLR (PT. 1342) 607 @619, Paragraph A-C.**

BELGORE J. In his ruling in F.R.N. V. Bankole & Anor delivered on 31st January, 2012 while presiding over the High Court of the Federal Capital Territory clearly highlighted the ingredients or elements of section 215 of the penal code as follows:

“I hereby set out in earnest, the ingredients of criminal breach of trust under section 315 which the evidence of the prosecution must make reference to however faint, before the accused can be called upon to answer to it. They are:

- (a) That the accused was a public servant***
- (b) That in such a capacity, he had been entrusted with money in issue in that case.***
- (c) That he had committed a breach of trust in respect of the money i.e.***
 - i. He misappropriated it, or;***
 - ii. Converted it to his own use;***
 - iii. In any way whatsoever disposed of it fraudulently and in a manner contrary to the directive given him.***

I humbly hold that count 1, of the charge must fail, similarly since the essential ingredients of count 2, 3 and 4 were not proved, they must also fail woefully.

Mary Peter-Odili JCA, (as she then was) was straight on point in **IBRAHIM VS. COP. (2010) 23 WRRN, 170 @183-184** when she said as follows:

“If there is no sufficient evidence linking the accused with the statutory elements and ingredients of the offence with which he is charged, a court trial must as a matter of law, discharge him and it has no business searching and scouting for evidence that is nowhere and therefore cannot be found. That will not be consistent with our adversary system of administration of Justice. It is inquisitional in design and execution.”

I humbly hold that this Honourable Court is empowered to discharge the defendant on its own motion or on application by the Second Defendant under the administration of Criminal Justice Act, 2015 for want of sufficient evidence. For the avoidance of doubt, we shall recite below the provision of Section 302 of the ACJA 2015, thus;

“The Court may, on his own motion or on application by the defendant after hearing the evidence for the Prosecution, where it considers that the evidence against the Defendant or any of the several Defendants is not sufficient to satisfy the continuation of the trial, record a finding of not guilty in respect of the defendant without calling on him or them to enter his or their Defense and the Defendant without calling on him or them to enter his or their Defense and the Defendant shall accordingly be discharged and the court shall then call on the remaining Defendant if any, to enter his Defense”.

ONUS ON THE PROSECUTION TO PROVE EVERY INGREDIENT OF THE OFFENCE CHARGED.

In a criminal trial, the burden of proof is always on the prosecution to prove guilt of the accused person beyond reasonable doubt. Before

the prosecution can secure a conviction for a criminal offence which it alleges against any person, it must lead credible and cogent evidence establishing every element or ingredient of the offence charged. Thus, before a trial court can arrive at a decision to convict, or that an offence had indeed been committed by an accused person, it must look for the ingredients of the offence and ascertain critically that the acts or omissions of the offence comes within the confines of the particulars of the offense charged. **AMADI VS. STATE (1993) 8 NWLR (PT. 315) 644 P. 270, Parag. E. G-H. TIMOTHY VS. FRN (2013) 4 NWLR, PT. 1344, 213.**

WHERE THERE ARE CONTRADICTIONS IN THE EVIDENCE OF THE PROSECUTION

Where there are contradiction in the evidence of prosecution witness on a material fact, such contradictions ought to be explained by the Prosecution. In the absence of such explanation by the prosecution, as in the instant case, the court cannot speculate on imagined explanation for such contradictions and proceed to choose which prosecution witnesses to believe. This was the decision of the Supreme Court in **PRINCEWILL VS. STATE (1994) 6 NWLR (PT. 353) 703 at 714, Parag. D-E Per. Igu JSC** that:

“Where, as in this case, there are contradictions in the evidence of the prosecution witnesses on material fact as pointed out above, such contradictions ought to be explained to the satisfaction of the court by the Prosecution in default of which the court cannot speculate on possible explanations which are not supported by an evidence”.

The oral evidence by PW1, PW2, PW3, PW4, PW5, PW6, PW7, and PW8, Exhibits H5 taken at its highest, establish no personal use of funds/property by the second Defendants. On the contrary, what it

does is that it establishes the fact that monies/instrument of withdrawals counter-signed by the Second Defendant were to carry out the mandate in furtherance of the activities of the NUJ CORRESPONDENT CHAPEL, FCT. The question therefore is, if the prosecution has not established the essential Actus Res, can it be said that the evidence led by prosecution is sufficient to justify calling the Second Defendant to enter into a Defense? Can it be said that there is evidence linking the Second Defendant with the commission of the offence? Can it be said that the evidence so far led is such that no reasonable court or tribunal would convict? Is there any other ground on which this Honourable Court may find that a Prima facie case has been made out against the Second Defendant for him to be called upon to answer? It is respectfully submitted that, the only irresistible answer to the above question must be in the negative. In the case of **AGIDAGBA VS. IGP (Supra), Ubanatu Pt. 1197, Pg 586 @ 602, Parag. A-B**, where the Supreme Court Per Fabiyi JSC stated:

“A no case submission only means that there is nothing in the evidence adduced by the prosecution that would persuade the Court to compel the accused put off his defense”.

In conclusion, I must point that out of 8 prosecution witnesses only (PW8) testified against the Second Defendant and the testimony has been discredited under cross-examination.

- i. The evidence adduced by the prosecution has been so discredited as a result of Cross-Examination that warrants doubt in the mind of this honourable Court.
- ii. The evidence adduced by the prosecution is manifestly unreliable and tainted that no reasonable tribunal or court can safely convict on it.

- iii. The second Defendant is therefore entitled to an order of this Honourable Court discharging him Forth with of any criminal culpability.

I therefore uphold this No Case Submission and discharge and acquit the Second Defendant.

Signed
S. B. Belgore
(Judge) 9/12/2024