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 ELEREWE**
2. **ADEGBUYI AYODELE** } **DEFENDANTS**

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

This Ruling concerns a No case submission made by the 1st Defendant's Counsel wherein he prayed for the following reliefs:

(1) An Order of this Honourable Court discharging and acquitting the 1st Defendant of all the offences preferred against him in Counts 1, 2, 3, 4 and 5 of Charge No. CR/176/13 as no prima facie case has been made out against him.

(2) Such further or other order(s) as this Honourable Court may deem fit to make in the circumstances.

Grounds for the application

i. The 1st Defendant pleaded not guilty to the offences charged.

ii. There was no evidence at the close of the prosecution's case to prove the essential elements of the offence alleged against the 1st Defendant.
iii. Evidence called by the Prosecution was not sufficient, at the close of its case, to justify continuation of the trial
iv. The evidence adduced by the Prosecution against the 1st Defendant is manifestly unreliable and has been discredited by cross-examination such that this Honourable Court cannot safely convict on it.

Brief Statement of facts

The two defendants, Timothy Elerewe and ADegbuyi Ayodele are former executive committee members of Correspondents Chapel, FCT Chapter, Abuja, Nigeria Union of Journalists (NUJ). The first defendant was the Chairman while the second defendant was the Secretary. The Economic and Financial Crimes Commission (EFCC) is prosecuting the matter on behalf of the Federal Republic of Nigeria. The Charge contains five counts. Counts 1-4 are against the two defendants, while Count 5 is against the first defendants alone. Count 1 is on conspiracy to commit criminal breach of trust.
Count 2, 3, 4 and 5 is on criminal breach of trust.

The matter commenced in 2013. The Prosecution closed its case on 7/7/2021. The first defendant has decided to make a no case submission.

The Prosecution called 8 witnesses in support of their case, to wit-

1. PW1 – Christoper Yahaya, Land Surveyor
2. PW2 – Mustapha Mohammed, AIT Staff
3. PW3 – Osisam Ede, Media Relation Manager at Geometric Power Ltd

4. PW4 – Mustapha Suleiman, EFCC Operative
5. PW5 – Gbemiga Olamikan, former Financial Secretary of Correspondence Chapel, FCT
6. PW6 – Sera Edet, Relationship Manager at EcoBank Nig. Ltd.
7. PW7 – Olusegun Omotosho Seun, UBA Staff
8. PW8 – Oriko Bridget, EFCC Investigator

Exhibits tendered are as follows:

A1, A2, A3, A4, B1, B2, B3, C, D1, D2, D3, E, F1, F2, G1, G2, G3, G4, H, H1, H3, H4, H5, H6, H7.

1. Exhibits A1 – 4 (K. K. Surveys receipts) tendered by PW1.
2. Exhibits B1-3 (Statements of PW1 at EFCC on 12/2/13) tendered by PW1.
3. Exhibit C (letter dated 10/7/06 addressed to the Chairman, NUJ Correspondents Chapel, No. 20, Mombasa Street, FCT Chapter Abuja and signed by Surv. C. K. Yayah) tendered by PW1.
4. Exhibit D (3 letters dated 20/10/06, 23/10/07, and 6/11/07 all addressed to the Chairman NUJ Correspondents Chapel, FCT Chapter Abuja) tendered by PW1.
5. Exhibit E (A bundle of photocopied receipts dated 2/2/09, 19/6/09, 19/6/09, 20/2/09, and 08/07/09 numbers 113, 119, 118, 112 and 120) tendered by PW2.
6. Exhibits F1-2 (Statement of the 1st and 2nd Defendants) tendered by PW4.
7. Exhibits G1-2 (2 letters with various attachments headed different as "Re: Investigation activities – account name: NUJ Correspondent Chapel, FCT Chapter; Account No. 103170170011" and "Re: Investigation activities – account name: Timothy Elerewe; account No. 1001005311" dated 12/2/13 and 7/3/13 respectively) tendered by PW6.

8. Exhibit G3-4 (2 letters dated 28/1/13 and 12/2/13 respectively) tendered by PW6.
9. Exhibit H (A letter Ref: UBA/CG/EFCC/AS/SA/21/02/13/3247 dated 21/2/13 made attention Akaninyene Ezima with some attachments as listed on it) tendered by PW7.
10. Exhibit H1 (A letter from EFCC Reference No.: CR/3000/EFCC/ABJ/AFF.4/VOL.7/271 dated 4/2/2013) tendered by PW7.
11. Exhibit H3 (A letter headed "N57M petition on behalf of Abuja Based Journalists against Messrs. Timothy Elerewe and Awassam Bassey" dated 10/2/13 and to which 3 documents were attached to wit: (1) an undated and unaddressed (not addressed to anybody) letter headed "NUJ Correspondents Chapel Journalists' Estate, New Karu, Nasarawa State" signed by Timothy Elerewe and Awassam Bassey; (2) a letter headed "Conveyance of Allocation of Plot" dated 16/3/06 signed by one Ja'afaru Ango and (3) undated and unsigned document titled "List of Members interested in New Karu Land, Nasarawa State" with names of 84 persons) tendered by PW8.
12. Exhibit H4 (A letter written to the Executive Chairman EFCC and signed by one TPL Samuel Galadima on the letter headed paper of Nasarawa State Urban Development Board (NUDB) dated 22/2/2013 to which is attached (1) a letter dated 21/2/2013 headed "Re: Investigation Activities NUJ Correspondents Chapel, FCT Chapter", (2) a letter dated 30/11/200…headed "Request for Journalists Village" (3) a letter dated 16/3/2006 headed "Conveyance of Allocation of Plot" (4) Official receipt dated 18/3/08 in the sum of 2 Million Naira, (5) A letter dated 26/5/2010 headed "Approval to Develop NUJ Correspondents Chapel plot (33,32 Hectres *(sic)*) into a Residential Estate", (6) a letter dated 5/7/2010 headed "Re: Approval to Develop NUJ Correspondents Chapel's plot and (7) a letter dated 6/10/2011 headed "Re: NUJ Correspondents Chapels's Plot Covering 33.32 Hectares

Adjacent Peninsular Estate, New Karu, Nasarawa State; Notice of NUJ Correspondents Chapel, Abuja/AIS Integrated Company Nigeria Ltd Partnership Agreement to develop the Plot into estate tendered by PW8.

13. Exhibit H5 (A letter dated 28/5/2013 addressed to the Director of Operations of EFCC made attention: Akaninyene Ezima and to which is attached 30 pages of Certified True Copy of Oceanic Bank Cheques) tendered by PW8.
14. Exhibit H6 (One of the Statements obtained from 2nd Defendant at EFCC) tendered by PW8.
15. Exhibit H7 (Statement of PW8 at EFCC) tendered by PW8.

The Laws under which the 1st Defendant was Charged

1. Section 97 of the Penal Code

"97. (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death or with imprisonment shall, where no express provision is made in this Penal Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted that offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment for a term not exceeding six months or with fine or with both……"

Ingredients of the Offence

In **Aliyu Yahaya v. State (2017) 14 NCC 394** on the ingredients of Conspiracy and when said to be complete, the Court held that-

Section 97(1) of the Penal Code provides the ingredient of conspiracy as follows:

i. ***An agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal by illegal means.***
ii. ***Where the agreement is other than an agreement to commit an offence, that some act besides the agreement was done by one or more of the parties in the furtherance of the agreement.***
iii. ***Specifically that each of the accused participated in the conspiracy.***

From the above ingredients it means that conspiracy is complete when two or more persons agree to do an unlawful act or to do a lawful act by unlawful means. Concluded agreement can also be inferred by what each person does in furtherance of the offence of conspiracy. **T. Y. Hassan JCA at pages 420-421.**

2. **Section 311 of the Penal Code**

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

Ingredients of the Offence
In **Ibrahim & Ors v. C.O.P (2010) LPELR-8984 (CA),** on ingredients the prosecution is required to prove where there is an allegation of criminal breach of trust the Court held that-

"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 (i) misappropriated the property; (ii) converted such property to his own use; (iii) disposed of it (c) that he did so in violation of:- (i) any direction of law prescribing the mode in which such trust was to be discharge; or (ii) any legal contract expressed or implied which he had made concerning the trust; or (iii) he intentionally allowed some other persons to do or commit the above stated, (d) that the acted dishonestly as in (b) above. See Onuoha v. the Tate (1988) 3 NWLR (Pt. 83) 460 (SC). In considering the word 'dishonestly' in Section 311 of the Penal Code, it will be sufficient if one confuses it in its natural meaning i.e. Intended to cheat, deceive or mislead. Onuoha v. State (1988) 3 NWLR (Pt. 83) 460. Where a person is charged under Section 315 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 offence in his capacity as a public servant or in the way of his business as a banker, factor, broker, legal practitioner or agent. Onuoha v. The State (1988) 3 NWLR (83) 460." Per **Mary Ukaego Peter-Odili, JCA (Pp 14 – 15 Paras C – E).**

ISSUE FOR DETERMINATION

Whether the applicant has made out a case for grant of the reliefs sought in the application.

Section 302 of the Administration of Criminal Justice Act, 2015 provides:

> ***"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 or any of several defendants is not sufficient to justify 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 defence and the defendant shall accordingly be discharged and the Court shall then call on the remaining defendant, if any, to enter his defence."

5.2 Section 303 of the Administration of Criminal Justice Act, 2015 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 a prima facie case has not been made out against the defendant for him to be called upon to answer.***

(e) Any other ground on which the Court may find that a prima facie case has not been made out against the defendant for him to be called upon to answer."

From our Procedural Law, the defendant has a right to make a no case submission if at the end of the prosecution's case, he is of the opinion that the prosecution has failed to establish a prima facie case. The Court suo motu has a right to make a ruling of no case submission.

What is the purport of a no case submission?

The purport of a no case submission was brought to bear in the case of **Suberu v. State (2010) LPELR-3120 (SC); (2010) 8 NWLR (PT. 1197) 586** where the Court held that –

"At the close of a case for the prosecution, a submission of a no prima facie case to answer made on behalf of the accused person postulates one or two things or both of them namely:-
(a) that there is no legally admissible evidence linking an accused with the commission of the offence with which he had been charge which would necessitate his being called upon for his defence. (b) that the evidence adduced has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable court or tribunal can act on it as establishing the criminal guilt in the accused person concerned. The purport of a no case submission when made on behalf of an accused person is that the trial court is not 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 charged."
Per O. O. Adekeye, JSC.

On when a no case submission is upheld, the Court stated in **Ekwunugo v. FRN (2008) 7 S. C. 196-**
"A submission of no case to answer could therefore only be properly made and upheld when – (a) there has been no evidence to prove an essential element in the alleged offence; and/or (b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it." Per Akintan, J.S.C.

At the close of their case, the Prosecution has made no case submission.

A person cannot lose what they never had.

From the Charge Sheet, it was stated that the monies dishonestly converted was the property of ***"Nigerian Union of Journalist Correspondent*** *(sic)* ***Chapel, FCT".*** Throughout the case of the Prosecution, the owners of the monies in question, to wit-Nigeria Union of Journalists (NUJ), Correspondents Chapel, FCT Chapter never came forward to say that yes, their monies were dishonestly converted. They never came forward either by themselves or through their representatives. This is because they are not looking for their money. 1st Defendant served them meritoriously and they are satisfied with his service. Otherwise, they would have come forward to say so.

8 witnesses testified for the Prosecution, but neither of these witnesses testified as a representative of NUJ, Correspondents Chapel, FCT Chapter. At best 3 individual journalist (PW2, PW3, PW5) gave their testimony of what happened, they never stated or implied that they were sent as representatives of (NUJ), Correspondents Chapel, FCT Chapter.

Even from Exhibit H3 (the Petition that instigated investigation and then led to trial), the heading reads – ***"N57M PETITION ON BEHALF OF 111 ABUJA BASED JOURNALISTS AGAINST MESSRS. TIMOTHY ELEREWE AND AWASSAM BASSEY,"*** *(emphasis not mine).*
No where did the author of the Petition state that he is acting for NUJ Correspondents Chapel, FCT Chapter. The list of names attached to the Petition is unsigned and undated. Moreover, during cross examination of PW8 by 1st Defendant's Counsel, she stated – ***"I have seen Exhibit H3 (petition by Wadata Chambers). The names we marked are the ones that paid money and they are the one*** *(sic)* ***who came when called for investigation or interview."*** There is no evidence before the Court that the owners of the money in question came forward to allege that 1st Defendant dishonestly converted their money, or that they entrusted any money to him in the first place, these are vital ingredients of the offence charged.

In **Godwin Igabele II v. State (2007) 2 NCC 125,** the Court held – ***"This Court has decided that it is trite law that Court should not speculate on evidence but decide on the evidence presented before it. See Okoko v. State (1964) 1 All NLR 4213 at 428. The Court is only entitled to rely on the evidence before it and not on speculations. See Seismograph Service (Nigeria) Ltd v. Ogbeni (1976) 4 S.C at 101." Per S. U. Onu, JSC at page 138.***

I hold that this is most fatal to the case of the Prosecution, because if the owner of the monies never came forward to inform the Honourable Court that indeed their monies were dishonestly converted contrary to **Section 311 of the Penal Code,** then there is no point continuing with the trial, because from the look of things nothing is missing. More so, this is intrinsic to establishing the ingredients of the offence.

Failure to prove elements of the offences alleged

The elements of the offences alleged have been reproduced in preceding paragraph 4 above.

Conspiracy

From the elements of the crime of conspiracy reproduced earlier, it is germane that there must be a meeting of mind, an agreement to commit an illegal purpose or to do a legal thing in an illegal manner and there alike. From the case of the Prosecution, we submit that no evidence was adduced in prove of the offence conspiracy. There is nothing to infer from that indeed the 1st and 2nd Defendant agreed to commit the offences alleged. The best evidence presented by the Prosecution was that each time money was paid into G1, 1st Defendant will fill a cheque, sign and the 2nd Defendant would co-sign H5 and the money would be paid into his UBA account, see the testimony of PW8 especially. However, PW6 and PW7 earlier testified that the withdrawal mandates were always complied with. PW6 testified that she is not aware that the 2 accounts were used for any illegal purpose. PW7 testified that they never flagged nor noticed any unusual entry in the account.

I hold that the act of signing the withdrawal instruments together by 1st and 2nd Defendant, was ordinarily expected of them. More than one signatory was needed to withdraw money from the account, and these actions were regular as testified by the bank staff.

A careful perusal of the documents attached to Exhibit H5, it is difficult to ascertain if the 1st and 2nd Defendants were the only ones who signed the withdrawal instruments as some of the withdrawal instruments are very faint. In the cheque of Two Million Three Hundred Thousand Naira (N2,300,000.00) dated 19/07/2006 attached to Exhibit H5, it appears that another signature was found on that

cheque, different from the 2 usual signatures found on most of the other cheques. This different signature could be the signature of the third signatory to the account, who was petitioned against in the Petition but is not on trial with the 1st and 2nd Defendants (the other signatories). Be that as it may, Prosecution never led evidence on the signature of the Defendants and above all the Bank who had custody of the account, money, said all mandate was complied with.

From the exposition above, it is difficult to infer the commission of a crime or even that there was a conspiracy to commit crime.

Criminal Breach of Trust

The elements of the crime of conspiracy as annunciated in the case of **Ibrahim & Ors. V. C.O.P (Supra)** have been reproduced earlier in paragraph 4 above. For clarity's sake, I reproduce same again, to wit-

> ***"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 (i) misappropriated the property; (ii) converted such property to his own use; (iii) disposed of it (c) that he did so in violation of:- (i) any direction of law prescribing the mode in which such trust was to be discharge; or (ii) any legal contract expressed or implied which he had made concerning the trust; or (iii) he intentionally allowed some other persons to do or commit the above stated, (d) that he acted dishonestly as in (b) above. See Onuoha v. The State (1988) 3 NWLR (Pt. 83) 460 (SC). In considering the word 'dishonestly' in Section 311 of the Penal Code, it will be sufficient if one confuses it in its natural meaning i.e. Intended to cheat, deceive or mislead. Onuoha v. State (1988) 3 NWLR (Pt. 83) 460. Where a person is charged under Section 315 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 offence in his capacity as a public servant or in the way of his business as a banker, factor, broker, legal practioner or agent. Onuoha v. The State (1988) 3 NWLR (83) 460. "Per Mary Ukaego Peter-Odili, JCA (Pp 14 – 15 C – E).

Furthermore, NUJ Correspondents Chapel, FCT Chapter, FCT Chapter did not come forward to say that it entrusted the 1st Defendant with the monies in question or that he had dominion over it. the monies in question was at all times in the custody and dominion of the NUJ Correspondents Chapel, FCT Chapter domiciled in their account G1. From Exhibit E tendered by PW2, it shows that PW2 made payments to NUJ Correspondents Chapel, FCT Chapter, hence his money was entrusted to NUJ Correspondents Chapel, FCT Chapter and not to the 1st Defendant. Hence, the first ingredient of the offence stated above is missing.

NUJ Correspondents Chapel, FCT Chapter never came forward to say that they entrusted monies to 1st Defendant not that 1st Defendant dishonestly converted any monies which was entrusted to him. Hence, the second element stated above is also absent.

The Prosecution failed to tender evidence of any law or byelaw governing the activities of NUJ Correspondents Chapel, FCT Chapter. They failed to lead evidence as to any contract the basis of which members paid money. If this had been done, it would have helped the Honourable to know the powers, authority of the 1st Defendant and in turn aid its finding as to whether or not the third element – ***that he did so in violation of:- (i) any direction of law prescribing the mode in which such trust was to be discharge; or (ii) any legal contract expressed or implied which he had made concerning the trust;*** was founded.

During cross examination of PW8 by 1st Defendant's Counsel, she stated that does not know the powers of the 1st Defendant as chairman. The Prosecution failed to prove the third element of the offence of criminal breach of trust. They also failed to prove that he acted dishonestly, because from the evidence before the Court, the land was indeed allocated but they could not complete payment see Exhibit H4 with all it's attachments.

It is trite that it is only where the ingredients of an offence have been established that the Court will determine if any defence has been set up and established by the defendant. See **Hassan Jimoh v. State (2014) 9 NCC 465.** I hold that no ingredients of the offences were established by the Prosecution. It is always the duty of the Prosecution to establish the guilt of the defendant beyond reasonable doubt.

Also, in **Federal Republic of Nigeria v. Rt. Hon. Oladimeji Saburi Bankole, CFR & 1 Or. All FWLR, part 629 (2012) [P. 1172, paras. A – B]**, the Court held:

> ***"The principle behind a no case submission is that an accused should be relieved of the responsibility of defending himself when there is no evidence upon which a trial judge could convict. A no case submission essentially postulates that whatever evidence there was, which might have linked the accused person with the offence had been so discredited that no reasonable court can act on it as to pronounce the guilt of the accused. [Onagoruwa v. State (1993) 7 NWLR (Pt. 303) 49; State v. Audu (1972) 6 SC 28; Adeyemi v. State (1991) 6 NWLR (Pt. 195) 1 referred to]" Per Hon. Justice Suleiman B. Belgore.***

I hold that the 1st Defendant has no case to answer and I grant the application of the 1st Defendant.

Contradictions in Testimony of Prosecution's Witnesses

There were contradictions in the case of the Prosecution. For example, PW1 stated during cross examination that he saw the original letter of allocation, PW2 stated that he confirmed the offer for land was genuine but later withdrawn. Under cross examination by 1st Defendant's Counsel, even after reading Exhibit H4, PW8 insisted that from Exhibit H4, no allocation was made. She also read out the title ***"Conveyance of allocation of plot".*** Exhibit H4 with all its attachments further confirms the fact that land was indeed allocated. These contradictions are vital and go to the material substance of this case. The evidence of PW8 was thoroughly discredited in cross examination.

In **Egwumi v. The State (2013) 13 NWLR Pt. 1372 PG. 525 @553 Paras E-F,** on when evidence can be said to be contradictory, the Court held – ***"A piece of evidence contradicts another when it affirms the opposite of what that other evidence has stated, not when there is just a minor discrepancy between them. Two pieces of evidence contradicts one another when they are by themselves in-consistent. A discrepancy may occur when a piece of evidence stops short of our contains a little more than, what the other evidence says or contains some differences in details. See; Gabriel v. State 1989 5 NWLR Pt. 122 p. 460." Per Rhodes-Vivour, J.S.C.***

On the issue of contradictions in the evidence of the prosecution's witnesses on material facts, the Court held in **Princewill v. State (1994) 6 NWLR (Part 353) 703 @ 714 Paras D-E.**

> ***"……where, as in the present case, there are contradictions in the evidence of the prosecution witnesses on material facts 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. See: State v. Ibong Udo Okoko & Anor (1964) 1 All NLR 423; R. v. Gabriel Adagu Wilcox (1961) 1 All NLR 631; (1961) 2 SCNLR 296 and Iteshi Onwe v. State (1975) 9-11 SC. 23 at 31. See too Arehia v. State (1982) 4 SC. 78 at 88-89; Boy Muka & Ors. V. State (1976) 9-10 SC. 305; Onubogu v. State (1974) 9 SC. 1 at 23-24 and Akosile v. State (1972) 5 S.C. 332 at 333." Per* Iguh, J.S.C., cited from **Agbai Iro Ogbuabia, Esq., *Quick Reference Criminal Trials and Procedure in Nigeria,* 2nd Ed., Lagos, Logicgate Media Ltd, 2019, 462.**

Also, on when a contradiction in the evidence of the prosecution determine the guilt of an accused, the Court held in **Awopejo v. State (2001) 18 NWLR (Pt. 745) Pg. 430@442-443 Paras H-A; (2001) 12 S.C 9 (Pt. 1) 168:**

"For a contradiction to be essential and affect the decision of a trial Court such contradictions must be material and fundamental in the determination of the guilt of the accused. The contradictions must create doubt in the mind of the Court to such a degree that the Court believes that the doubt must be resolved in favour of the accused." Per **Mohammed, J. S. C.,** cited from **Agbai Iro Ogbuabia, Esq., *op. cit, 465.***

On the face of it Exhibit H3 contains manifest contradictions that make PW4 and PW8 look like perjurers. This is because on the face ot it, the document bears different dates. The Prosecution never bothered to elucidate on the different dates, they left it hanging for the Honourable Court. The author of the Petition dated it 10th February, 2013, going by this date, it means investigations commenced before the Petition was received. Exhibits G3 and H1

EFCC letters of investigation are dated 28th January, 2013 and 4th February, 2013 respectively. While in their testimonies before the Court PW4 and PW8 (especially) testified that they received a petition then commenced investigation.

From the evidence of the witnesses, see PW8 especially, the best case the Prosecution has against the 1st Defendant was that money was being withdrawn from G1 and the deposits of money was being made into the personal account of the defendants, brief excerpt of her testimony, to wit- ***"….We requested for their account statements, they gave us. We wrote UBA and Ecobank to see inflow of movement of money into the account. Investigation revealed that the 1st and 2nd Defendants were taking money from the account the members paid in money to and put in their own personal account…."*** I hold that all these amount to mere suspicion. There is no evidence before the Court that the accounts involved were audited. The credits and debits made on the accounts involved are not connected to constitute a money trail. There was no evidence that the money deposited into one account bore the same serial number as money withdrawn from another account, and so on.

On the issue of suspicion, the Court held in **Grange v. Federal Republic of Nigeria (2011) 6 NCC 393 – 394:**

> ***"Clearly the proof of evidence before the learned trial Judge was nothing other than materials in support of suspicion without linking as required by law the Accused / Appellant with the alleged offences. It is now trite that suspicion no matter how strong will not amount to proof and since that was all the learned trial Judge had to go on with the proper decision ought to have been striking out or dismissal of the charge." Mary Peter Odili, JCA.***

Also, in **Abubakar Tijani Shehu v. The State (2010) 5 NCC 40,** the Court held that:

> ***"It is now firmly settled that it is elementary proposition, that suspicion however strong, will not found or lead to a conviction, in other words, it cannot take the place of legal proof.***
> ***It is better for ten guilty persons to escape than one innocent person to or should suffer. In other words, it is better to acquit ten guilty men, than to convict an innocent man." I. F. Ogbuagu, JSC.***

Conclusion:

It is trite that a defendant is entitled to an acquittal once an essential ingredient of an offence is not proved. The Prosecution has failed to prove the essential ingredients of the offences charged, even from their evidence no crime was committed.

In **Saidu v. State (2011) 6 NCC 134,** the Court held – ***"The law is that (sic) an accused person is entitled to an acquittal once an essential ingredient of an offence is not proved. See the decision of this Court is the case of Shande v. The State (supra) at page 1969. The Appellant is therefore entitled to be acquitted given the failure of the prosecution to prove that he stabbed the deceased." A. O. Lokulo Sodipe, JCA.***

For the reasons adduced above, I humbly grant the 1st Defendant's prayer for no case submission, and to discharge and acquit the 1st Defendant.

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 these 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 it 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 if 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 perngwuat, 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.

……..
S. B. Belgore
(Judge) 9/12/2024