IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 9TH DAY OF JUNE, 2020
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 10
SUIT NO: CR/107/2010

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ---- PETITIONER

AND

1. MR. OHIEKWU IBRAHIM ---- 1ST DEFENDANT
2. DR. ADAM ALI BIU ---- 2ND DEFENDANT
3. MRS. EVELYN A. AJAMAH ---- 3RD DEFENDANT
4. AFRICAN GOLFERS MAGAZINE LIMITED ---- 4TH DEFENDANT
5. AFRICAN GOLFERS DEVELOPERS AND ENGINEERING SERVICES LTD ---- 5TH DEFENDANT

RULING

Before this Court is a submission of no case to answer made on behalf of the 2nd Defendant, Dr. Adam Ali Biu.

The four counts charge against the Defendants was filed on the 20th September, 2010. Specifically, the 2nd Defendant was charged in counts 1 and 2 of the charge

sheet. The 2nd Defendant pleaded not guilty to the first two counts charge against him as follows:

COUNT 1:

That you Mr. Ohieku Ibrahim being the National Coordinator of African International Golfers Academy, Dr. Adam Ali Biu being the Vice-Chairman of African International Golfers Academy, Mrs. Evelyn Ajamah, Terwase Vihimga (now at large) and one Ismaila (now at large) sometimes in 2009 in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory did conspire among yourselves to commit an illegal act to wit: obtaining property by false pretense from one Mr. Bola Ogunjinmi of Bolton Nigeria Ltd in the sum of Seventy-Two Million Naira (N72,000,000.00) for the supply of 12 units of Toyota Hilux vehicles to African International Golfers Academy and thereby committed an offence contrary to Section 8(a) and (b) punishable under Section 1(3) of the

Advance Fee Fraud and other Fraud Related Offences Act, 2006.

COUNT 2:

That you Mr. Ohieku Ibrahim being the National Coordinator of African International Golfers Academy, Dr. Adam Ali Biu being the Vice-Chairman of African International Golfers Academy, Mrs. Evelyn Ajamah, Terwase Vihimga (now at large) and one Ismaila (now at large) sometimes in 2009 in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory did with intent to defraud obtained property by false pretense in the sum of Seventy-Two Million Naira (N72,000,000.00) from one Mr. Bola Ogunjinmi of Bolton Nigeria Ltd. purportedly for the supply of 12 Units of Toyota Hilux vehicles of African International Golfers Academy which you knew was false and thereby committed an offence contrary to Section 1(1) and punishable under

Section 1(3) of the Advance Fee Fraud and Other Related Offences Act, 2006.

The prosecution in discharging its duty of proving the alleged offences against the defendants called a total of six witnesses as follows:

1. Mr. Bola Ogunjinmi who testified as PW1;
2. Mr. Ibrahim Shugaba as PW2
3. Mr. Ibrahim Mohammed as PW3
4. Mr. Andrew Odeh as PW4
5. Mr. Bright Okenzua as PW5
6. Arokoyo Ketura Duzod as PW6.

Through these witnesses several documents were tendered and admitted in evidence.

On the 7th February, 2017, the prosecution closed its case and the matter was then adjourned for the defendants to open their defence. The 2nd Defendant opted to file a no case submission instead of entering his defence.

Adewole Adebayo Esq. on behalf of the 2nd Defendant filed a no case submission and same was adopted by **G.O. Zakka (Mrs.)** on the 6th February, 2020. In his submission, learned counsel formulated a sole issue for determination as follows:

> *"Whether the prosecution has by evidence adduced before this court prove the essential elements of the offences of conspiracy and obtaining property by false pretense against the 2nd Defendant, the evidence of the prosecution against the 2nd Defendant having been discredited by cross examination and thereby making it unnecessary to call the 2nd Defendant to enter a defence in this action."*

Learned Counsel submitted that the prosecution, at the close of its case has failed to establish a prima facie case against the 2nd Defendant in respect of the charges of conspiracy and obtaining property by false pretense as

there is no evidence against the 2nd Defendant before this Court upon which the Court could call the 2nd Defendant to enter his defence. That the prosecution has failed to prove the essential elements of conspiracy and receiving property by false pretense against the 2nd Defendant more so as the evidence of the prosecution against the 2nd Defendant has been discredited by Cross-examination.

At paragraph 4.6 – 4.10 of his submission, Learned Counsel for the 2nd Defendant submitted to the effect that the prosecution failed to prove beyond reasonable doubt the ingredients constituting the offence of conspiracy. Counsel further submitted that the totality of the documentary and oral evidence presented by the prosecution witnesses did not establish the case as charged against the 2nd Defendant. That from the oral testimony and documentary evidence tendered there was no agreement to prosecute an unlawful act that can be directly,

circumstantially or inferentially deduced amongst the defendants which could have amounted to conspiracy.

Counsel submitted further that 2nd Defendant although a Director in the Company African International Golfers Academy was not a signatory to any of the accounts to which cheques were issued. Prosecution witnesses 4,5 and 6 testified that they do not know the 2nd Defendant. Counsel went on to submit that the fact that the 1st Defendant is known to the 2nd Defendant is not sufficient to lead to an inference of conspiracy. That a mere association of a person with another is not sufficient to lead to an inference of conspiracy. There is no evidence before this Court showing a common concerted plan between the 1st, 2nd and 3rd Defendants. Counsel referred to the case of Adebayo vs. State (1998)2 NWLR (Part 57) 468 at 470 ratio 8.

Learned Counsel finally submitted that the prosecution has failed to prove the common intention to commit a

crime which is an important ingredient of the offence of conspiracy and urged this Court to discharge and acquit the 2nd Defendant. He made reference to the case of Onyenye vs. State (2012) 15 NWLR (Part 1324) 586 at 594 ratio 10.

On the offence of obtaining property by false pretence, Learned Counsel submitted that the initial element of the offence of obtaining property by false pretense is the making of false representation, and the accused must have made the false representation to some other person other than himself.

Learned Counsel submitted that the prosecution has failed to adduce credible evidence against the 2nd Defendant that, he obtained any property or the Hilux vehicles by false pretense as the 2nd Defendant did not issue any cheque to the complainant, nor was the 2nd Defendant signatory to the accounts upon which the cheques were drawn. That the 2nd Defendant does not even have the authority or vires to issue any cheque in the name

of that account. The prosecution has therefore failed to prove by evidence that the 2nd Defendant induced the complainant by a false conduct, word or contract to part with his property.

Counsel finally submitted that no prime facie case of conspiracy and obtaining property by false pretense has been established against the 2nd Defendant to warrant his being called upon to enter this defence. He therefore urged this Court to invoke its powers under Section 303 of the Administration of Criminal Justice Act, 2015 to discharge and acquit the 2nd Defendant of the charge of conspiracy and obtaining property by false pretense.

Now, it is pertinent to state at this juncture that the prosecution chose not to file any response to the submission of no case by the 2nd defendant.

Generally, the essence of a no case submission to answer lies in the contention that the evidence of the

prosecution called in the discharge of the burden of proof on them by law, has failed to establish a prima facie case. By a no case submission, the defendant submits that the prosecution has not made a prima facie case and should not therefore be called upon to face the ordeal of defending himself. See: Sunny Tongo & Anor. vs. C.O.P. (2007) LPELR – 3257 (SC), Ibrahim & Ors. vs. C.O.P. (2010) LPELR – 89884 (CA).

Furthermore, a no case also means that there is no evidence on which the Court or Tribunal could reasonably base a conviction even if the evidence was believed by the Court or Tribunal. See: State vs. Nwachineke (2008) ALL FWLR (Part 398) page 204 at 230.

It is trite that a submission of no case to answer may be properly upheld where the following scenarios exist:

a. When there has been no evidence to prove an essential element in the alleged offence;

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. See: Oluka vs. State (1998) 4 NWLR (Part 86) 36, Ibrahim vs. COP (supra).

From the above, the question that begs for an answer is whether from the submission of the 2nd Defendant, it has been established that the prosecution failed to adduce evidence to prove an essential element of the alleged offence or the evidence has been discredited as a result of cross-examination that no reasonable Court or tribunal could safely convict on the evidence adduced?

However, it should be noted that when a submission of a no case is made on behalf of the defendant, 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 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 standing trial. See State vs. Okoye (2007) 16 NWLR (Part 1061) page 607 at 666.

Since at the stage of a no case submission, the trial of the case is not yet concluded, a Court should not concern itself with the credibility of witnesses, nor the weight of the evidence even if they are accomplices. The trial judge should not say too much to avoid a situation whereby the discretion of the Court might be fettered, and no observation should be made on the facts presented before the Court. See: Aituma vs. State (2007) ALL FWLR (Part 381) pages 1798 at 1814.

In Emedo & Ors. vs. The State (2002) LPELR – 1123 (SC), the apex Court held thus:

> *"In considering a submission of no case, the correct procedure is to write a brief ruling and make no observation on the facts."*

Bearing in mind the above highlighted principles guiding the grant or otherwise of a no case submission, the 2nd Defendant in the instant case is charged with two offences which are conspiracy and obtaining property by false pretense punishable under Section 1(3) of the Advance Fee Fraud and other Related Offences Act, 2006.

The first count of conspiracy is provided under Section 8(a)(b) and (c) of the Advance Fee Fraud and other Fraud Related Offence Act, 2006 – and the Section provides thus:

"8. Conspiracy, aiding etc.

A person who:

a. Conspires with, aids, abets or counsels any other person to commit an offence; or

b. Attempts to commit or is an accessory to an act or offence; or

c. Incites, procures or induces any other person by any means whatsoever to commit an offence,"

under this Act, is guilty of the offence and liable on conviction to the same punishment as is prescribed for that offence under this Act.

On the other hand, the second count on the charge sheet which is obtaining property by false pretense is created under Section 1(1) of the Advance Fee Fraud and other Fraud Related Offence Act, 2006 as follows:

"1. Obtaining property by false pretense, etc.

(1) Not withstanding anything contained in any other enactment or law, any person who by any false pretense, and with intent to defraud:-

(a) obtains, from any other person, in Nigeria or in any other country, for himself or any other person;

(b) Induces any other person, in Nigeria or in any other country, to deliver to any person, or

(c) Obtains any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretense,

is guilty of an offence under this Act."

The punishment for both offences of conspiracy and obtaining property by false pretense is provided under Section 1(3) of Advance Fee Fraud and other Fraud Related offences Act, as follows:

(3) "A person who is guilty of an offence under subsection (1) or (2) of this Section is liable on conviction to imprisonment for a term of not less than ten years without the option of a fine."

In discharging the onus placed by law to prove the charge against the Defendant, the prosecution called a total of six witnesses who testified as PW1 – PW6 respectively. It is on record that prosecution witnesses 4,5 and 6 who were

all bank officials testified that they do not know the 2nd Defendant, because he is not a signatory to the account of the association and his picture did not appear in any of the mandate cards with the banks.

However, PW1, one Mr. Bola Ogunjimi, who is the complainant testified to the effect that sometimes in 2009 while in Abuja attending a World Bank Assisted Project, he was introduced to a company by a lady called Desola who claimed to be a business consultant. The contract to purchase 12 Hilux vehicles was originally between Atlantic Motors and African Golfers, but Airen, Manager of Atlantic Motors who got the order to supply the vehicles and Desola approached PW1 to do the job for them. PW1 further stated that he agreed to do the job after he met with 1st Defendant and he was convinced to carry on with the contract based on the prominent names he saw on the letter headed paper of the African Golfers including the name of the 2nd Defendant (Dr. Ali Biu).

Under Cross-examination PW1 stated that *"although I requested to see Dr. Ali Biu when the contract was entered, but before I could make delivery I was not particular about seeing the 2nd Defendant"*.

PW3 testified that after he met with the 1st Defendant they drove to the office of the 2nd Defendant and carried the 6 Hilux vehicles. And during Cross-examination, PW3 was categorical when he said that he cannot remember the office of the 2nd Defendant and denied going to the office of the 2nd Defendant prior and after this transaction.

Now, it is pertinent to state at this point that the fact that the 1st Defendant is known to the 2nd Defendant and both were Directors with African Golfers is not sufficient to lead to an inference of conspiracy.

It has been reiterated in a plethora of judicial decisions that the essential element of the offence of conspiracy lies in the bare agreement and association to do an unlawful

thing, which is contrary to or forbidden by law, whether that thing be criminal or not and whether or not the accused persons had knowledge of its unlawfulness. Evidence of conspiracy is usually a matter of inference from surrounding facts and circumstance. See: Okoh vs. State (2014) LPELR 22589 (SC), Aje vs. State (2006)8 NWLR (Part 982) 345 at 363 , A – C.

Thus, on the ingredient of count one of the offence of conspiracy which the 2nd defendant is standing trial, the prosecution has the duty of proving the following ingredients.

i. There must be an agreement of two or more persons.
ii. The persons must plan to carry out an unlawful or illegal act which is an offence,
iii. Bare agreement to commit an offence is sufficient.
iv. An agreement to commit a civil wrong does not give rise to the offence.

See: Kaza vs. State (2008) LPELR – 1683 (SC). Similarly, on the second count charge of the offence of obtaining property by false pretense, the prosecution ought to prove the following ingredients:

a. That there is a pretense;
b. That the pretense emanated from the accused person,
c. That it was fake,
d. That the accused person knew its falsity, and
e. That there was an intention to defraud. See: FRN vs. Frank Amah & 1 Or. (2017)3 NWLR (Part 1551) 139 at 162 – 163, Obikeze vs. FRN (2017) LPELR – 43240 (CA).

The prosecution that alleges the commission of a crime has the burden of proving the crime beyond reasonable doubt. That is the only thing that will revert the presumption of innocence enjoyed by the defendant as provided by the Constitution. Let me add that, it has never been for the accused person to prove their innocence but

for the prosecution to prove their fault. Even where the prosecution adduces evidence, a prima facie case must be made against the accused person before he could be called upon to enter defence. The burden of the prosecution is so mighty. It is to prove the fault of the accused person. That cannot be done without adducing prima facie evidence. See Generally, Ajayi vs. The State (2011) LPELR – 4682, Idow vs. The State (2000) LPELR – 1492 (SC) and Bakare vs. The State (1987) LPELR – 714 (SC).

Not too long ago, the Supreme Court per Galadima, JSC in CPL Aikhadueri vs. The State (2013) LPELR – 20806 (SC) held that the two fold aim of criminal justice is that the guilty shall be exposed, on the other hand, the innocent cannot be allowed to suffer injustice.

From the available evidence adduced by the prosecution, it is clear that the 2nd Defendant did not appear in the centre of the transaction and there is nothing showing that the 2nd Defendant planned or agreed with any

person/s to do an unlawful or illegal act. 2nd defendant did not sign any document directing or authorizing the supply of the Hilux vehicles on behalf of the African Golfers, neither did he partake in defrauding African Golfers. No essential element of the offences has been proved and not evidence linking the 2nd defendant with the commission of the offence with which he is charged.

I hold that there is no prima facie case established against the 2nd defendant. By Section 357 of the Administration of Criminal Justice Act (ACJA) 2015;

> *"Where at the close of 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."*

For the reasons given, I hold that the 2nd defendant Dr. Adam Ali Biu is not guilty of the offences with which he was charged and he is hereby discharged.

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Hon. Justice M.A. Nasir

Appearances:

Eunice Dalop Esq – for the prosecution

Vitalis Eruo Esq – for the 1st defendant

Adewale Adebayo Esq with G.O. Zakka (Mrs.) and Taiwo Onifade Esq – for the 2nd defendant

P.F. Joseph – for the 3rd defendant – for the 3rd defendant