

**IN THE HIGH COURT OF THE FEDERAL
CAPITAL TERRITORY, ABUJA
HOLDEN AT ABUJA**

ON WEDNESDAY, 6TH DAY OF MAY, 2020

BEFORE HON. JUSTICE SYLVANUS C. ORIJ

CHARGE NO. FCT/HC/CR/230/2016

BETWEEN

INSPECTOR GENERAL OF POLICE --- COMPLAINANT

AND

PRINCE JOSHUA ONYEMAUCHE --- DEFENDANT

RULING ON NO CASE SUBMISSION

On 4/7/2016, the defendant was arraigned on the 7-count charge filed against him on 21/6/2016. On 25/6/2019, the Court granted leave to the prosecution to amend the charge. The amended charge filed on 10/4/2018 was deemed as properly filed and served. On that day, the defendant pleaded not guilty to the 7 counts in the amended charge.

In count 1, the defendant is charged with the offence of being in unlawful possession of one black Lugar pistol on 17/2/2016 at Gwagwalada Military Check-Point, Abuja. In count 2, it is alleged that the defendant on the same date and place, unlawfully had in his possession one AK 47 rifle with Reg. No.

3290. In count 3, the prosecution alleged that defendant on the same date and place unlawfully had in his possession 21 rounds of 9mm parabellium ammunition without a valid licence. In count 4, defendant is charged with the offence of being in possession of one AK 47 rifle with registration No. 3290 on the same date and place without a valid licence granted to him by the President of the Federal Republic of Nigeria.

In count 5, it is alleged that the defendant on the same date and place, had in his possession one C99 black Lugar Pistol without a licence issued to him by the President of the Federal Republic of Nigeria. The defendant is charged in count 6 with the offence of being in possession of 42 rounds of 7.62m ammunition on the same date and place without a valid licence. In count 7, it is alleged that on the same date and place, the defendant *“falsely presented yourself as an Army Officer, serving in the Nigerian Army when you introduced yourself as Colonel Okoro, and so attempted to evade being searched by Military officers on duty at the check point”*.

In proof of the charge, the prosecution called 7 witnesses and closed its case on 25/6/2019. The details of the testimonies of the witnesses are in the record of proceedings. However, it is necessary to refer to parts of the evidence of the witnesses for the purpose of this ruling.

Sgt. Tukur Isaac [the PW1] testified that sometime in February 2016 at Abaji check point at night, his Platoon Commander [Captain Abbah] called him and

told him that the man inside the vehicle wanted to see the Guard Commander. He narrated how he walked to the man in the car, which is the defendant, and how the defendant said he is Colonel Okoro. When he [PW1] asked the defendant of his identity card, he replied: *"Do we have Sector Commander here?"* He [PW1] said no and asked the defendant again for his identity card. The defendant drove out his vehicle [i.e. Tundra vehicle ash colour with amber light] with speed. Captain Abbah entered his Hilux and followed the defendant.

The evidence of Corporal Ogunbiyi Adayemi [PW2] is that in February 2016, he was at Gwagwalada check point when his Platoon Commander [Captain Abbah] called him on phone and informed him that there is a Tundra ash colour with amber light coming from Abaji to Gwagwalada; and that there is a man inside the vehicle wearing Army uniform [tatrion]. Captain Abbah asked him to go and block him along the road. He went there with 4 soldiers. He saw the Tundra vehicle and stopped it. He asked the 2 occupants of the car, i.e. the defendant and the Staff Sergeant, to come down from the vehicle. All of them including the Tundra, defendant, the Staff Sergeant and Captain Abbah moved to the barracks. They handed defendant and the Staff Sergeant to their Commanding Officer, Lt. Colonel Onasanya.

Corporal Philip Jacob [PW3] narrated how he accompanied the defendant to travel from Lagos to Abuja on 16/2/2016. At Gwagwalada, Abuja they were stopped by Military men. At that time, he was a Staff Sergeant before he was

demoted to Lance Corporal. At the time of their arrest, the military men searched the vehicle and found nothing. He and the defendant were taken to 176 Guards Battalion. He said he and the defendant were tortured from Gwagwalada check point to the Battalion Headquarters. In the morning, they paraded him and the defendant that they saw AK 47 rifle, one Lugar pistol and some ammunition. The Commanding Officer handed over the Lugar pistol to him to hold and handed over the AK 47 to the defendant to hold; they took a snap shot of both of them. He was forced to write his statement that day because he told them he did not know anything about the items.

At this point in the proceedings on 25/1/2017, learned counsel for prosecution [O. M. Atoyebi Esq., now Senior Advocate of Nigeria] sought leave of the Court to declare the PW3 a hostile witness under section 230 of the Evidence Act, 2011 because he has given evidence against the interest of prosecution. Learned senior defence counsel [Gordy Uche, SAN] opposed the application. In a Bench Ruling, the Court granted the application. Mr. Atoyebi then cross examined the PW3. The statement of PW3 dated 17/2/2016 made at the Nigeria Army Corps of Military Police was admitted as Exhibit D; his statement to the Nigeria Police dated 29/4/2016 was admitted as Exhibit E; and his statement at SIB dated 24/3/2016 was admitted as Exhibit F.

During the cross examination of PW3, he stated that on the day he and the defendant were arrested, he was not present when the vehicle was searched. The statements he was tortured to make were to implicate the defendant.

Captain NaseerIliyasuAbbah [the PW4], the Platoon Commander at Abaji Military check point, narrated how the defendant came to the check point at about mid-night on 17/2/2016 with a Staff Sergeant in his vehicle; his encounter with the defendant; how the defendant told Sergeant Tukur in his presence that he is Colonel Okoro; and how the defendant sped off when he[PW4] insisted to see his identity card. PW4 also explained how a snap check point was established on the road before the bridge at Gwagwalada while he pursued the defendant.

PW4 further narrated how he met the defendant and the Staff Sergeant when they were stopped at the snap check point; and how they were taken to the Barracks. At the Barracks, the Commanding Officer directed them to search the defendant's vehicle. They searched the vehicle and saw phones, 1 Ipad, plenty cheque books, money [i.e. a million plus] and drugs. They opened the glove compartment [i.e. pigeon hole] and saw a Lugar pistol 2015 model, extra rounds of 9mm parabelium [i.e. the caliber of the ammunition]. When they opened under the seat, they saw AK 47 weapon and 4 magazines.

The testimony of Lieutenant Colonel Adebisi Onasanya[PW5] is that he is the Commanding Officer of 176 Guards Battalion, Gwagwalada, Abuja. In the early hours of 17/2/2016, he was called by Captain Abbah, his Platoon Commander deployed at Abaji check point, that they just recorded a case of someone evading their check point and impersonating as a Colonel in the Nigerian Army. He approved the request of Captain Abbah to order the

troops at Gwagwalada check point to arrest the person by establishing a snap road block. When he was informed that the man and his accomplice have been arrested, he ordered them to bring the people to the Barracks. When they got to the Barracks, the defendant confessed to him that he actually impersonated as Colonel Okoro and pleaded for mercy.

PW5 further stated that he directed that the vehicle be searched. During the search, a pistol was recovered from the glove compartment [or pigeon hole] of the defendant's vehicle. When the back seat of the vehicle was forced open, one AK 47 rifle with some magazines and some rounds of ammunition were found. During the search, there were other items recovered from the car; there was the sum of about N1,011,000.00, some cheque books and handsets. He directed his 2^{1/c} to prepare a handover note detailing all the items recovered from the defendant Hilux. Subsequently, he sent the defendant and the soldier that was with him to the Guards Brigade Headquarters for further investigation by the Military Police.

During cross examination, PW5 stated that the soldier and the defendant were not tortured to make any statement. He cannot remember the defendant signing any inventory of what was recovered on his body or from his vehicle.

Lieutenant Colonel Ismail Abdullahi [PW6] testified that he was formerly a Major commanding the Presidential Guards Brigade Provost Company when the defendant and Staff Sergeant Philip were brought to him for investigation

of alleged case of impersonation as an Army officer, illegal possession of arms and ammunitions and absence without official leave against the soldier. He took over the items the defendant was found with and documented them. He interviewed defendant and he confessed to the crimes.

ASPOgunmuyiwa Saburi [the PW7] was the Police officer who investigated the case when it was transferred from Military Intelligence to the office of the Inspector General of Police. He said the defendant was handed over to them along with some exhibits. The defendant was alleged to be a suspected kidnapper and armed robber. He tendered the items he received when the case was transferred as Exhibits O1-05.

During cross examination, PW7 stated that from his investigation, he did not confirm that the defendant was a kidnapper or an armed robber. He stated that the rifle tendered as Exhibit 01 is actually AK 49 rifle; and that the rifle [Exhibit 01] has a serial number.

At the close of prosecution's case, Kolawole Olowookere Esq. filed a written address on 18/9/2019 in support of the defendant's no case submission. The written address of the prosecution was filed by O. M. Atoyebi, SAN on 30/10/2019. Mr. Olowookere filed a reply on points of law on 6/12/2019. On 17/2/2020, Chief Gordy Uche, SAN adopted the defendant's written addresses while O. M. Atoyebi, SAN adopted the written address he filed on behalf of the prosecution.

The law is well established that a submission that there is no case to answer may properly be made and upheld: [a] when there has been no evidence to prove an essential element of the alleged offence; and [b] when the evidence adduced by the prosecution has been so discredited as a result of cross examination or is manifestly unreliable that no reasonable tribunal could safely convict on it. See section 303[3] of the Administration of Criminal Justice Act, 2015; and **Ekpo v. The State [2001] 7 NWLR [Pt. 712] 292.**

In considering a no case submission, the credibility of witnesses and the weight to be attached to their testimonies do not arise. In **Fidelis Ubanatu v. C.O.P. [2000] 2 NWLR [Pt. 643] 115,** cited by learned senior counsel for the prosecution, it was held that *prima facie* case means that there is a ground for proceeding. In other words, that something has been produced to make it worthwhile to continue with the proceedings. It is not the same as proof which comes later when the court has to find whether the accused person is guilty or not guilty. The evidence of the prosecution is said to disclose a *prima facie* case when it is such that if uncontradicted and if believed, it will be sufficient to prove the case against the accused person. See also the case of **Duru v. Nwosu [1989] 1 NWLR [Pt. 113] 24.**

In **Ajisogun v. State [1998] 13 NWLR [Pt. 581] 236, @ 257** cited by the learned defence counsel, the Court of Appeal [*per ...Nsofor, JCA*] aptly stated the essence of no case submission. It was held that in a no case submission, what the accused person is saying is to this effect: “Accept all that the prosecution has

said through its witnesses, yet it [the prosecution] cannot secure a conviction either of the offence charged or any other alternative offence of which I may possibly be convicted, upon the evidence..."It was further held that at the stage of no case submission, there ought to be some evidence direct or indirect against the accused, which evidence, unless and until it be displaced or explained off, would be enough to support a conviction either of the offence charged or of any other alternative offence the accused may possibly be convicted of.

In counts 1 & 2, the prosecution alleged that the defendant unlawful had in his possession "one black Lugar pistol" and "one AK.47 rifle with Reg No. 3290" respectively and thereby committed an offence punishable under section 2[3] of the Robbery and Firearms [Special Provisions] Act. Section 2[3] of the said Act reads:

"Any person found in any public place in possession of any firearms whether real or imitation and in circumstances reasonably indicating that the possession of the firearms is with intent to the immediate or eventual commission by that person or any other person of any offence under section 1 of this Act or under the foregoing provisions of this section shall upon conviction under this Act be sentenced to imprisonment for not less than fourteen years but not more than twenty years."

The essential elements of the offence under the above section are: [i] a person is found in a public place with firearm; and [ii] the possession of the firearm by that person is reasonably indicative that he or another person intended to

carry out an offence under section 1 or section 2 of the said Act. See Azogor v. State [2014] LPELR-24414 [CA]. The evidence of the prosecution through the PW4 & PW5 is that the vehicle of the defendant was searched and one Lugar pistol and one AK 47 were found in his vehicle. At page 1242 of the Seventh Edition of Black's Law Dictionary, the word "*public*" is defined as "*Open or available for all to use, share, or enjoy*"; or "*A place open or visible to the public*". Clearly, the defendant's vehicle is not a public place. Thus, the prosecution failed to prove that the defendant was found with firearms in a public place.

Also, there is no evidence that the possession of the firearms by the defendant was reasonably indicative that he or any other person intended to carry out an offence under section 1 or section 2 of the Robbery and Firearms [Special Provisions] Act. Prosecution did not adduce any evidence to prove this element of the offence. I hold that prosecution failed to prove the elements of the charges in counts 1 & 2. In the circumstance, I hold that the defendant's no case submission in respect of counts 1 & 2 has merit and is hereby upheld.

In counts 3, 4, 5 & 6, it is alleged that the defendant had in his possession twenty one rounds of 9mm parabellium ammunition without a valid licence; one AK 47 rifle with registration No. 3290 without a valid licence; one C99 Black Lugar pistol without a licence; and forty two rounds of 7.62m ammunition without a valid licence respectively. In count 7, the defendant is charged with the offence of impersonation contrary to section 132 of the Penal Code. I have taken note of the ingredients of the offences in counts 3-7.

The summary of the arguments of learned counsel for defendant in respect of counts 3-6 is that there are contradictions and/or inconsistencies in the testimonies of the prosecution witnesses. For example, it was argued that: [i] the evidence of PW7 contradicted the evidence of PW6 in that the PW7 said the rifle tendered as Exhibit O1 is AK 49 and has a serial number contrary to the evidence of PW6; and [ii] the extra-judicial statements of PW4 [Exhibits G & H] materially contradicted his evidence in Court and therefore render the evidence of PW4 doubtful and unreliable. In paragraph 7.45 at pages 23&24 of his written address, the learned counsel listed 10 *“particulars of doubt and contradictions which becloud the evidence of the prosecution”* to support his submission that the prosecution has not made out a *prima facie* case.

Mr. Olowookere also argued that no inventory was signed by the defendant to show that the items mentioned in counts 3-6 were recovered from him. He referred to section 149[4] & [5] of the Administration of Criminal Justice Act, 2015, which laid down the procedure for conducting a credible search. In paragraph 7.50 at page 25 of his written address, the defence counsel posited that *“beyond its claim of recovery of arms and ammunition from the Defendant’s vehicle, there is nothing to show prima facie that the items were indeed recovered from the Defendant. Has the prosecution prepared an inventory containing the items duly signed by the Defendant, it would lend more credence to their allegation.”*

In respect of count 7, it was submitted on behalf of the defendant that no *prima facie* case of impersonation has been made out against the defendant

because the PW1 did not give any evidence to show that the defendant did, or attempted to do, anything under the cover of an Army Colonel. Therefore, an essential element of the offence under section 132 of the Penal Code was not established by the prosecution.

It appears to me that the above submissions amount to an invitation to the Court to: [i] evaluate the testimonies of prosecution witnesses; [ii] consider the credibility of the witnesses; and [iii] determine the evidential weight or value to attach to the testimonies of the witnesses. I must reiterate that at the stage of no case submission, what is critical is not whether the evidence in support of the charges is sufficient to justify conviction of the defendant but whether prosecution has made out a *prima facie* case requiring the defendant to make some explanations. Also, the question whether or not the court believes the evidence adduced; or the credibility of witnesses; or weight to attach to the evidence does not also arise. See the case of **F.R.N. v. Kenny Martins & Ors. [2012] 14 NWLR [Pt. 1320] 287.**

I agree with the learned senior counsel for prosecution that if the testimonies of prosecution through the PW4, PW5 & PW6 are not contradicted and if believed by the Court, the evidence may be sufficient to prove the allegations in counts 3-6. I also agree with Mr. Atoyebi, SAN that if the testimonies of PW1, PW4 & PW6 are not contradicted and if believed, they may be sufficient to prove the offence in count 7. The decision of the Court is that prosecution has adduced *prima facie* evidence in support of the allegations in counts 3, 4, 5,

6 & 7 of the amended charge, which requires explanation from the defendant. Put in another way, in the light of the evidence of the prosecution, there is need for the defendant to explain his own side of the matter.

CONCLUSION

Kolawole Olowookere Esq. and O. M. Atoyebi, SAN canvassed arguments on whether counts 1, 2, 3, 4, 5 & 6 of the amended charge are competent and capable of establishing a *prima facie* case against the defendant. It seems to me that the decisions of the Court on these counts render the consideration of the arguments on this issue unnecessary.

I uphold the defendant's no case submission in respect of counts 1 & 2 of the amended charge. The defendant is discharged on counts 1 & 2.

The no case submission of the defendant on counts 3, 4, 5, 6 & 7 of the amended charge is overruled. The defendant is called upon to enter his defence in respect of these counts.

**HON. JUSTICE S. C. ORIJI
(JUDGE)**

Appearance of counsel:

1. O. M. Atoyebi, SAN for the prosecution; with L. B. Tairu Esq.
2. M. A. Awuru Esq. for the defendant; with Blessing Elem Esq. and J. I. Aheruboh Esq.