

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT JABI ABUJA

DATE: 16TH DAY OF JULY, 2020
BEFORE: HON. JUSTICE M. A. NASIR
COURT NO: 10
SUIT NO: CR/107/2010

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA
PROSECUTION/RESPONDENT

AND

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

RULING

The instant application for no case to answer is filed on behalf of the 3rd Defendant, Mrs. Evelyn A. Ajamah. The prosecution filed a four Counts charge against all the Defendants wherein the 3rd Defendant was charged in Counts 1,2 and 4 of the charge sheet. The 3rd Defendant

pleaded not guilty to the Counts charge against her 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 Vihimnga (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 Vihimnga (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.

COUNT 4:

That you Mr. Ohieku Ibrahim being the Chairman and National Coordinator and Mrs. Evelyn Ajamah being the Account Officer of African Golfers Magazine Limited sometimes in 2009 in Abuja within the Abuja Judicial Division of the Federal Capital Territory did with the knowledge that you had insufficient funds in your company (African Golfers Magazine Limited) account issued one Mr. Bola Ogunjimi of Bolton Nigeria Limited with a United Bank for Africa Plc. Cheque No: 17919536 dated 7th May, 2009 for the sum of N10, Million Naira which said cheque when presented for payment within three months of issuance was dishonored due to insufficient funds in your account and thereby committed an offence contrary to Section 1(1)(b) of the Dishonored Cheques (Offences) Act Cap D11 Laws of

the Federation of Nigeria 2004 and Punishable under Section 1(1)(b)(i) and (ii) of the same Act.”

P.F. Joseph Esq. Counsel for the 3rd Defendant/Applicant filed a no case submission on behalf of the Applicant. Learned Counsel raised two issues for determination as follows:

“1. Whether the prosecution has failed to establish the essential ingredients of the offences of conspiracy, obtaining property by false pretense and issuance of dishonored cheque against the 3rd Defendant to warrant the Court to call upon the 3rd Defendant to answer the charges against her?

2. If the first issue is answered in the affirmative, whether the Court can uphold a no case submission in favour of the 3rd Defendant in the circumstance?”

Learned Counsel submitted that the law is trite, in criminal proceedings, that the burden of proof rest on the

prosecution to prove the culpability of the accused person in the crime. He cited Sections 132, 136(1) and 139(3) of the Evidence Act, 2011 (As amended), Usufu vs. State (2007)1 NWLR (Part 1020) page 93 at 112. Counsel went ahead and submitted that the prosecution failed to prove the essential ingredients of the offences of conspiracy and obtaining property by false pretense. He further submitted that the evidence of PW1 (Bola Ogunjimi) who is the nominal complainant in this case clearly narrated how the business that gave rise to counts 1 and 2 was entered into. That PW1 entered into a contract to supply 12 Toyota Hilux vehicles with the 1st and 2nd Defendants and was issued a postdated cheque of N28.8 Million dated 28th April, 2009. Counsel submitted further that the totality of the evidence of PW1 – PW6 is that the 3rd Defendant was never part of the business that gave rise to this case. The 3rd Defendant only came into the picture when the PW1 was directed by the 3rd Defendant to go to Lokoja and collect a cheque of N10: Million dated 7th May, 2009.

Counsel went on to submit that a person who was not part of a business transaction cannot be said to have conspired to obtain property by false pretense in the event, the transaction turns out to be fraudulent.

On the fourth count for issuance of dishonored cheque, Learned Counsel submitted that the prosecution has also failed to establish the ingredients of the offence of issuance of dishonored cheques under Section 1(1)(b) of the Dishonored Cheques (offences) Act.

Counsel cited and made reference to the Supreme Court Case of Abeke vs State (2007) LPELR – 31 (SC) where the Apex Court stated the duty of the prosecution in proving the guilt of accused person under Section 1 (1)(b) of the Dishonored Cheques (offence) Act, CAP 102 LFN (1990). The Court held:

“The duty on the prosecution under Section 1(1)(b) of the Dishonored Cheques (offences) Act is to prove:

- (a) That the Appellant obtained credit by herself;*
- (b) That the cheque was presented within three months of the date thereon; and*
- (c) That on presentation, the cheque was dishonored on the grounds that there was no sufficient funds or insufficient funds standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn.”*

Per Onnoghen JSC. (As he then was).

Counsel submitted that from the evidence on record before this Court, the 3rd Defendant did not obtain any credit by herself based on the issuance of exhibit A1. That 3rd Defendant was only directed by a superior in person of 1st Defendant to issue exhibit A1.

Learned Counsel finally urged this Court to hold that the prosecution has failed to prove the ingredient in all the three counts charges against the 3rd defendant and discharge her accordingly. It should be noted that the

prosecution despite being served with the 3rd Defendants no case submission, chose not to file any response.

It has been held in plethora of judicial decisions that a no case submission means that there is nothing in the evidence adduced by the prosecution that would persuade the Court to compel the accused to put up his defence. The essence of a no case submission lies in the contention that the evidence the prosecution tendered in the discharge of the burden of proof places on them by law, has failed to establish the ingredients of the offences' against the accused to make it imperative for Court to call upon the accused to open his defence. See: Usman & Ors. vs. FRN (2017) LPELR - 43016 (CA), Tongo vs. C.O.P. (2007)4 SCNJ 221.

It is trite, as rightly submitted by Learned Counsel to the Applicant, 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 during cross-examination. See: Ibrahim vs. C.O.P. (2010) LPELR - 89884 (CA).

In the instant case the only question is whether the 3rd Defendant from her no case submission established the fact that no prima facie case is established against the Applicant or the evidence adduced by the prosecution has been discredited during Cross-examination that no reasonable Court or tribunal could safely convict on the said evidence.

It is important to state at this juncture that when a submission of no case to answer is made on behalf of an accused person, the trial Court is not thereby called upon at that stage to express any opinion on the evidence already before the Court. The Court at that stage is only called upon to merely take note and write a ruling accordingly,

that there is before the Court no legally admissible evidence to link the Defendant with the commission of the offence he is standing trial. See: Fogoriola vs. FRN (2013) LPELR – 20896 (SC), Emedo & Ors. vs. The State (2002) LPELR – 1123 (SC).

The 3rd Defendant in this instance is charged in three counts as stated earlier, for the offences of conspiracy, obtaining property by false pretense and issuance of dishonored cheque respectively.

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.

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 Offences Act, 2006 as follows:

“1. Obtaining property by false pretense, etc.

(1) Notwithstanding 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.”

Lastly, the fourth count is for the offence of issuance of dishonored cheque under Section 1(1)(b) of the

Dishonored Cheques (Offences) Act. For clarity the Section states as follows:

“1(1) any person who –

(b) obtains credit for himself or any other person, by means of a cheque, that when presented for payment not later than three months after the date of the cheque, is dishonored on the ground that no funds or insufficient funds were standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn, shall be guilty of an offence and on conviction Shall–(i) in the case of an individual be sentenced to imprisonment for two years, without the opinion of a fine, and (ii) in the case of a body corporate, be sentenced to a fine of not less than N5, 000: (Five Thousand Naira).”

As observed earlier in this ruling, the prosecution in discharging the onus of proving the charge against the 3rd

Defendant called a total of six witnesses who testified as PW1 to PW6 respectively. On the first two counts charge which are conspiracy and obtaining of property by false pretense to which the 3rd Defendant alongside other Defendants are standing trial, PW1, one Mr. Bola Ogunjimi who is also the complainant in this case, has stated during his testimony how he entered into a contract for the supply of 12 Hilux vehicles to the African Golfers.

The contract was concluded between PW1 and the 1st Defendant in Abuja. From the evidence of the PW1, the 3rd Defendant did not feature in the whole transaction that gave rise to this case. However, PW1 was categorical during cross-examination when he stated that his first contact with the 3rd Defendant was when he was instructed by the 1st Defendant to go and meet her at Lokoja to collect N10, Million Naira cheque.

Now, in order to prove the offences of conspiracy and obtaining property by false pretense, 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).

From the entire evidence adduced by the prosecution and particularly from the evidence of PW1 and Exhibit C2, the 3rd Defendant was not in any way part of the negotiation and transaction that led to counts one and two. This is because the 3rd Defendant who was at Lokoja could not be made to account on the transaction that took place in Abuja.

On the fourth count for the issuance of dishonored cheque, the prosecution ought to prove the following ingredients:

1. That the Defendant obtained credit for himself,
2. That the cheque was presented within three months of the date thereon,

3. That on presentation, the cheque was dishonored on the grounds that there was no sufficient funds or insufficient funds standing to the credit of the drawer of the cheque in the bank on which the cheque was drawn. See: Suleiman vs. FRN (2018) LPELR - 46667 (CA).

From the above, the prosecution has the duty of establishing that the 3rd Defendant actually obtained the credit leading to this case by herself. The available evidence before this Court point to the fact that the 3rd Defendant only acted on the direction of her superior (1st Defendant) to sign and issue exhibit A1.

The Constitutional Provision on the presumption on innocence of an accused person is sacrosanct and settled. The burden is always on the prosecution to prove the guilt of the accused and not his business to prove his innocence. This has been the position of the law ever since, and through the ages. See: Chianugo vs. State (2002)2 NWLR

(Part 750) 225, Hamzat vs. State (2019) LPELR - 47606 (CA).

The law is settled that 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 his Defence. See: Idow vs. The State (2000) LPELR - 1492 (SC).

From the entire evidence adduced by the prosecution, it has not established the liability of the 3rd Defendant in the whole transaction. The essential ingredients of the offences charged against the 3rd Defendant has not been proved.

Thus, I hold that there is no prime facie case established against the 3rd Defendant (Mrs. Evelyn A. Ajamah) and I therefore invoke the provision of Section 357 of the Administration of Criminal Justice Act, 2015 and discharge her from the charges accordingly.

Signed

Honourable Judge

Appearances:

Eunice Dalop Esq – for the prosecution

Vitalis Eruo Esq – for the 1st defendant

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