

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: FIDELIS T. AAYONGO & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/M/7831/2020
DATE: 17TH SEPTEMBER, 2020**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

OLAKUNDE BAMIDELE HERITAGE - DEFENDANT

Defendant in court.

E.O. Akponimisingha (Senior Legal Officer ICPC) for the prosecution.

B.O. Olugbemi for the Defendant.

Prosecution's Counsel – The matter is for ruling on the Defendant's No-Case-Submission.

R U L I N G

This ruling is predicated on a Motion on Notice dated 19/6/2020 brought pursuant to Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Section 302 and 303 ACJA 2015 and under the inherent jurisdiction of this Honourable Court.

In the motion, the Defendant/Applicant seeks for the following:

1. An Order of this Honourable Court discharging and acquitting the Defendant/Applicant of the offence of making false statement and forgery preferred against him by the prosecution in Charge No. FCT/HC/CR/76/15 as no *prima facie* case has been made out against him.
2. And such further order or orders as this Honourable Court may deem fit to make in the circumstance.

The application is premised on the following grounds:

1. The Defendant/Applicant pleaded not guilty to all the nine counts of offences charged.
2. There was no evidence at the case of the prosecutor's case to prove the essential elements of the offences alleged against the Defendant/Applicant.
3. Evidence called by the prosecution was not sufficient at the case of its case to justify the continuation of the trial.
4. The evidence adduced by the prosecution against the Defendant/Applicant is manifestly unreliable and has been discredited by cross-examination that this Honourable Court cannot safely convict on it.

The said motion was not accompanied with an affidavit as same is strictly on points of law. Ordinarily, learned counsel to the Defendant/Applicant would have just filed his written address on a No-Case-Submission without more.

Accordingly, I hold that the contention of learned prosecution's counsel that the motion having no affidavit to it is dead on arrival is of no moment, I so hold.

Learned counsel to the Defendant/Applicant filed a written address on a No-Case-Submission dated 19/6/2020 wherein counsel formulated an issue for determination, thus:

“Whether from the evidence adduced so far in the case, the prosecution made out a prima facie case against the Defendant to warrant him being called upon to enter his defence”

On this singular issue, it is the submission that the prosecution has not made out a prima facie case against the Defendant. Consequently, to ask the Defendant to enter into his defence will be tantamount to requiring him to establish his innocence and this is contrary to the presumption of innocence as provide in Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). See SHATTA v FRN (2009) 10 NWLR (Pt 1149) 403 at 413.

It is submitted that going through the evidence of the prosecution witnesses, the prosecution's case is full with material contradictions, manifest inconsistencies and uncertainties that no reasonable court or tribunal can proceed with the case beyond the instant stage. See case of AITUMA v STATE (2006) 10 NWLR (Pt 989) 452 at 458.

Having presented piles of documents said to have been recovered from the defendant's premises, the prosecution failed from the totality of the evidence to establish that the Defendant made any false statement to officers of ICPC which is inconsistent with any previously made statement which is done with intent to mislead. The prosecution also failed to establish the essential ingredients of forgery and link same to the defendant at the close of its case. Consequently, there is no prima facie case upon which the Defendant could be called upon to enter a defence.

It is further submitted that the signatory of the alleged forged documents particularly Exhibits C and D2 – D8 was not called as a material witness; this is fatal to the case of the prosecution. See *AITUMA v STATE* (Supra). Court is urged to hold that no prima facie case has been made out against the Defendant in the instant case and to discharge and acquit him.

In response to this application, the prosecution counsel filed a written address dated 23/6/2020 wherein counsel formulated an issue for determination to wit:

“Whether the prosecution has made out a prima facie case against the Defendant to warrant him enter his defence in view of the evidence adduced”

On this issue, it is the submission that the prosecution has made out a prima facie case against the Defendant from the totality of the evidence adduced at the trial. See the case of *OHWOVORIOLE v F.R.N.* (2003) 2 NWLR (Pt 803) 176.

It is further submitted that in the light of the evidence before this court, there is legally admissible evidence linking the Defendant to the commission of the offences he is being charged and there is no where in the record before this court that the prosecution witnesses were discredited during cross-examination. See *DABOH & ANOR v THE STATE* (1977) LPELR – 904 (SC).

It is the submission that from the evidence adduced before the court, the prosecution has established that the Defendant made the alleged false documents; therefore a prima facie case is made against the Defendant to tell his own side of the story as to how he came about the alleged forged documents. See the case of *AKINBISADE v STATE* (2006) 17 NWLR (Pt 1007) 184. Court is urged to hold that the Defendant's no case to answer is unnecessary and lacking in merit and should be dismissed and that the Defendant be called to enter his defence.

I have carefully considered the submission of learned counsel on both side, it is pertinent to state that at this stage of the proceedings evaluation of evidence and assessment of credibility of witnesses is not allowed at the stage of no case submission rather, what the court is called upon to determine is strictly whether from the evidence adduced, the prosecution has made out a prima facie case against the Defendant to warrant him being called upon to enter his defence. See the case of *OKO v STATE* (2017) 17 NWLR (Pt 1593) 24 (SC).

A prima facie case means that the prosecution's case against a Defendant has raised some serious questions linking the

Defendant to the crime and so calling for some explanation from the Defendant and which only the Defendant from his knowledge can give. See the case of UZOAGBA v C.O.P. (2014) 5 NWLR (Pt 1401) 441 at 461.

It is also important to state that a prima facie case only means that there is ground for proceeding. But a prima facie case is not the same as proof which comes later when the court has to find whether the Defendant is guilty or not guilty.

From the evidence adduced, the alleged forged documents were seen in the possession of the Defendant and there is need for some explanation on how he came across the said documents which are already tendered as exhibits in this case.

In the light of the evidence adduced by the prosecution witnesses, I am of the considered view that the prosecution has made out a prima facie case to warrant the Defendant to make some explanations.

Accordingly, I hold that the no-case-submission filed by the Defendant is lacking in merit is hereby overruled; the Defendant is ordered to enter his defence.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
17/09/2020

Prosecution's Counsel – We thank the court for the ruling.

Defendant's Counsel – We are grateful for the ruling. We seek for a date for the Defendant to open his defence.

Court – Case adjourned to 19/10/2020 for defence.

Bail of the Defendant continues.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
17/09/2020