



**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDING AT MAITAMA  
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF**



**CHARGE NO: FCT/HC/CR/42/2012**

**BETWEEN:**

COMMISSIONER OF POLICE.....COMPLAINANT

**AND**

1. CHIWENDU HART AMANYA )  
2. KENNETH EMELE CHIGOZIE ).....DEFENDANTS

**AND**

3. EJIKE IGBO.....DEFENDANT/APPLICANT

**JUDGMENT**

The Applicant as 3<sup>rd</sup> Defendant was arraigned before this Court along with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants for the offence of conspiracy to commit culpable homicide and conspiracy to commit theft, contrary to Section 97 of the Penal Code Law. He was also accused of attempt to commit theft contrary to Section 95 of the Penal Code. He pleaded guilty to this count and was summarily convicted. In respect of counts 1 and 4 to which he did not admit, the Prosecution during trial called 4 witnesses and tendered some exhibits.

At the end of the testimonies of the witnesses for the Prosecution, Learned counsel to the 3<sup>rd</sup> Defendant/Applicant filed an application

for a no case submission in which he has argued that the Prosecution has not established a prima facie case against the Applicant. He has urged me to discharge the 3<sup>rd</sup> Defendant/Applicant upon the two counts.

In his written response, the learned prosecutor Mr. Simon Lough while agreeing that the evidence led by the witnesses for the Prosecution has not disclosed a prima facie case against the Applicant in respect of the first count has argued that the evidence led has disclosed a prima facie case in respect of count 4 of conspiracy to commit theft. He urged me to overrule the submission of the learned counsel to the Defendant in respect of count 4 and direct the Applicant as 3<sup>rd</sup> Defendant to defend himself upon the count.

The effect of the admission made by the learned prosecutor, that no prima facie case was disclosed in respect of the first count is that the 1<sup>st</sup> count of the charge ceases to be an issue in the consideration of this application. I agree with the learned counsel to the 3<sup>rd</sup> Defendant/Applicant that where there is no prima facie evidence in respect of an offence, the Court shall as regards the particular charge discharge him. **See FRN Vs. AMAH (2017) 3 NWLR (PT.1551) 139 at 164 G-H** cited by Counsel to the 3<sup>rd</sup> Defendant and Section 303 of the Administration of Criminal Justice Act 2015.

Accordingly the 3<sup>rd</sup> Defendant is discharged upon the 1<sup>st</sup> count charge.

The question for determination now is whether the evidence led by the Prosecutor has disclosed a prima facie case in respect of the 4<sup>th</sup> count charge. The offence charged therein is conspiracy to commit theft contrary to Section 97 of the Penal Code. It reads:

**COUNT 4**

**“That you Chinwendu Amanyama Male, 21 years of Okwuzi Ogba Egbuma, River State, Kenneth Amele Chigozie Male, 18 years of Police Station Road, Okwuzi, River State, Ejike Igbo on or about 5<sup>th</sup> November, 2011 at Block 3, Bade Close, Garki II, Abuja within the Abuja Judicial Division did conspired (sic - conspire) to commit felony, to wit, theft, you thereby committed an offence contrary to Section 97 of the Penal code.”**

At this point, I must observe at the threshold that the charge does not state the object which the 3<sup>rd</sup> Defendant/Applicant conspired with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to steal. However, the Law is so trite, that in a criminal trial at the close of the case for the Prosecution, a submission of no prima facie case to answer made on behalf of the accused person postulates one or two things or both of them at once:

**(a) Such a submission postulates that there is no evidence to prove the essential elements of the offence charged.**

**(b) That the evidence adduced has been discredited as a result of cross examination or the evidence is so manifestly unreliable that no reasonable Tribunal or Court can safely convict upon it.**

**See IGABELE VS. THE STATE 2004 15 NWLR (PT. 896) 314.**

My task in this application is to consider the evidence led in this trial by the prosecution witnesses for the purpose of determining, if any of the conditions stipulated above exist. If it does, then I must arrive at a conclusion that no prima facie case has been established and proceed as a consequence to discharge. If the condition do not exist, then am bound to overrule the submission of the Defence Counsel and put the 3<sup>rd</sup> Defendant to his defence.

In the consideration of the application, I must bear in mind that the Court is not called upon at this stage to express any opinion on the credibility or the weight of the evidence led. All that the Court is called upon to rule upon at this stage is simply whether there exist legally admissible evidence linking the accused person with the commission of the offence charged, and that there is need to seek some explanation from the Defendant.

See the case of **AGBO & ORS. Vs THE STATE (2003) 11 NWLR (PT. 1365) 377.**

I have read and considered the testimonies of the prosecution witnesses and the only reference to the 3<sup>rd</sup> Defendant is the discovery of a cheque leaflet belonging to the deceased with him. There is no evidence by any of the witnesses that the 3<sup>rd</sup> Defendant was connected with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants who have admitted removing and stealing properties belonging to the deceased before or during the commission of the offence.

The learned Prosecutor has argued in his written address that because the cheque which was part of the properties stolen from the deceased house was admittedly discovered with the 3<sup>rd</sup> Defendant/Applicant, he should be put to his defence to explain how he got the cheque. He made references to the discrepancy in the 3<sup>rd</sup> defendant's statements to the Police at different time.

This submission is not correct. It does not reflect the position of the Law. The learned Prosecutor has forgotten that the 3<sup>rd</sup> Defendant is not charged for stealing, whatever item that may have been removed from the deceased house neither is he charged for receiving stolen property which the Police could have preferred in the circumstances of this case, but the Prosecutor choose not to. If he was, perhaps the argument of the Learned Prosecutor would

have impressed me. He is merely charged for conspiracy to commit theft. The evidence needed to establish the essential elements of the offence is that there was an agreement between the Applicant i.e. the 3<sup>rd</sup> Defendant and the other Defendants to commit an unlawful. It is now trite that the proof of conspiracy is generally a matter of inference derived from the commission of the substantive offence. In the case of **DABOH V. THE STATE (1977) 5 S.C. 122** His Lordship **Udo Udoma, JSC** aptly stated the Law thus:

**"It may be stated that where persons are charged with criminal conspiracy, it is usually required that the conspiracy as laid in the charge be proved, and that the persons charged be also proved to have been engaged in it. On the other hand, as it is not always easy to prove the actual agreement, Courts usually consider it sufficient if it be established by evidence the circumstances from which the Court would consider it safe and reasonable to infer or presume the conspiracy."**

**See DR. SEGUN OGUNEYE V. THE STATE (2001) 2 NWLR (PT.697) 311.**

Throughout the testimonies of the prosecution witnesses, there was no evidence of a direct communication between the Defendants, or anything from which the Court could infer an agreement between them to commit a crime. Similarly, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants never

state anything in their extra judicial statements before the Police that they had any form of contact with the 3<sup>rd</sup> Defendant/Applicant, prior or after they stole properties from the deceased house.

I think that putting the 3<sup>rd</sup> Defendant to his defence on count 4 will be an unprofitable venture, as it is likely not to produce any desirable outcome.

On the account of this, I agree with the learned Counsel to the 3<sup>rd</sup> Defendant that there is merit in this application, and it is hereby upheld. The 3<sup>rd</sup> Defendant is also discharged on count four.

In all, the no case submission is successful and the 3<sup>rd</sup> Defendant is discharged on the two counts and set to his liberty, pursuant to Section 357 of the Administration of Criminal Justice Act 2015.

**SIGNED**  
**HON. JUSTICE HUSSEINI B. YUSUF**  
**(PRESIDING JUDGE)**  
**25/09/2020**