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/145/2012

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA……COMPLAINANT

AND

REV. PASTOR EMMANUEL O. MATTHEW……DEFENDANT

RULING

The Defendant, **Reverend Pastor Emmanuel Matthew**, was arraigned before this Honourable Court on a six count charge made up of three counts of rape allegedly committed on minors, contrary to Section 283 of the Penal Code and three counts of gross indecency committed on the same minors contrary to Section 285 of the same law.

He pleaded not guilty to the charges and the matter went on to trial. The prosecution called six witnesses which comprised two of the minors and four others made up of their mothers, a Medical Doctor and the police who investigated the case.

At the end of the case for the prosecution, the learned counsel to the Defendant filed a **"NO CASE SUBMISSION"** where it was impressed

upon the Court that a prima facie case had not been made out against the Defendant in respect of the offences charged, and that he should be discharged.

The learned prosecutor filed a written address in opposition to this application. He is of the view that the prosecution had implicated the Defendant through the evidence led at the trial, and that I should overrule the submission of the learned counsel to the Defendant. The learned counsel to the defence also filed a reply address. These addresses were adopted before this Court at the plenary on the 09/07/2020.

Under Section 302 of the Administration of Criminal Justice Act 2015, the Court may on its own or on the application by the Defendant after hearing the evidence for the prosecution, where it considers that the evidence against the Defendant is not sufficient to justify the continuation of the trial, record a finding of not guilty in respect of the Defendant without calling on him to enter his defence, and the Defendant shall accordingly be discharged. Thus, Section 303 (3) of the Act provides:

> **"In considering the application of the Defendant under Section 303, the Court shall, in exercise of its discretion have regard to the following;**
>
> **(a) Whether an essential element of the offence has been proved.**

(b) Whether there is evidence linking the Defendant with the commission of the offence with which he is charged.

(c) Whether the evidence so far led is such that no reasonable Court or Tribunal would convict on it; and

(d) any other ground on which the Court may find that prima facie case has not been made out against the Defendant for him to be called upon to answer."

A similar provision to the above is to be found in Section 159 (1) of the Criminal Procedure Code, the adjectival law regulating criminal practice in this part of the Country before 2015. The position of the law is that where there is no sufficient evidence against the Defendant at the end of the prosecution's case, the Court is under a legal duty to discharge and acquit him at that stage for, to do otherwise would amount to placing upon him the burden of establishing his innocence contrary to Section 36 (5) of the 1999 Constitution (as amended).

Flowing from the above, it is clear that a submission that there is no case to answer is properly made and upheld by the Court;

(a) When at the close of the case for the prosecution, the essential elements of the offence has not been established; or

(b) When the evidence led by the prosecution is so manifestly unreliable that no reasonable Tribunal would rely to convict upon it.

(c) When the evidence led by the prosecution has been so discredited as a result of cross examination.

The authorities on this principle of law are legion, but I would cite a few of them:

(1) ATOYEBI VS FRN (2017) LPELR 4383 1 SC

(2) IBEZIAKO VS COP (1963) 1 SCNLR 99;

(3) ADEYEMI VS STATE 91992) 6 NWLR (PT. 195);

(4) QWONIKOKO VS STATE (1990) 7 NWLR (PT. 162) 38.

(5) SARAKI VS FRN (2018) 16 NWLR (PT. 1646) 405; and

(6) OKOLO VS STATE (2018) LPELR 44485.

At the point where the Court is called to determine a no case submission, it is not the business of the Court to consider whether or not the Court believes the evidence led on behalf of the prosecution, neither is it called upon to consider the credibility of the witnesses and the weight to be attached to the evidence led at this stage.

In **ATOYEBI VS FRN** (**Supra),** the Supreme Court held:

"Section 285 of the Criminal Procedure Act states that If 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. After the prosecution closes his case, the Defendant has two options: (a) to open his defence or (b) submit that there is no case to answer." At the close of the Respondent's (prosecution) case in the trial Court, learned counsel for the Appellant exercised the 2nd option i.e. (b) above. A submission that there is no case to answer is properly made and upheld by the trial Court:

(1) Where there is no evidence to prove the essential elements of the offence,

(2) Where the evidence adduced by the prosecution has been so discredited as a result of the cross examination or is so manifestly unreliable that no reasonable Court could convict upon it. Whether or not the Court believes the evidence does not arise neither is the credibility of the witnesses in issue at this stage."

See also **EMEDO VS THE STATE (2002) 7 SCNJ 226; BELLO VS THE STATE (1967) NMLR 1 and FAGORIOLA VS FRN (2013) 35 WRN page 1** ably cited by counsel to the prosecution.

When therefore it is said that a prima facie case is or is not made out, what is meant is whether or not there is a ground for proceeding.

In this trial, the first three counts of offences preferred against the Defendant is **Rape** contrary to Section 283 of the Penal Code. The essential elements of rape are:

(a) That the Defendant had sexual intercourse with the prosecutrix in any of the circumstance in Section 282 (1),

(b) That the sexual intercourse was done without the consent of the prosecutrix;

(c) That the prosecutrix was not the wife of the Defendant or that if she was his wife, that she had not attained the age of puberty,

(d) That there was penetration.

I have carefully read and considered the evidence led by the prosecution in respect of those counts in the light of the principles highlighted in the case above, and I am satisfied that evidence has

been led linking the Defendant to the offences which requires him to defend himself.

The argument of the learned counsel to the defence which tends to show that the evidence of the prosecutrics were not corroborated, is thoroughly misconceived. Corroboration would be required when the consideration is whether the offences charged has been proved beyond reasonable doubt. This exercise comes up at the close of the case for both sides and the Court is called upon to render Judgment. By implication, Section 209 of the Administration of Criminal Justice Act relied upon by the learned counsel to the Defendant does not apply and has been cited out of context.

Similarly, on page 16 of his written address, the learned counsel to the defence submitted thus:

> **"The prosecution's witnesses showed flawed and unreliable testimonies to this Honourable Court. This being the case, it is unsafe to continue trial in the face of these contradictions."**

Now the question of evidence being unreliable cannot arise at this stage, as the Court is not called upon at this stage to believe or disbelieve the evidence led. I have also considered the discrepancies talked about and highlighted in the address of the learned counsel to

the defence, and it is my humble view that they are not as grievous and sufficient to preclude the Court from proceeding.

I have equally considered the second set of charges for the offence of gross indecency contrary to Section 285 of Penal Code, and it is my humble view that a prima facie case has also been disclosed. In coming to this conclusion, I need to cite the case of **ALEX VS FRN (2018) LPELR 43709** to support my reasoning. In that case, **NWEZE JSC** stated thus:

> **"Learned counsel for the Appellant would appear to rate two dissimilar concepts in our accusatorial jurisprudence namely, "Prima Facie Case" and "Prove beyond Reasonable Doubt" equiponderantly." With profound respect, this sort of fallacious obfuscation of settled concepts must be dissipated without much ado. Ever since Abbot FJ, in AJIDAGBA VS POLICE (1958) FSC 5, approvingly adopted the definition of the phrase "Prima Facie Case" from the Indian decision in Sher Singy Vs Jitendranathsen (1931) 1 LR 59 CAK 275, subsequent decision have consistently endorsed it. It simply comes to this: evidence discloses prima facie case if it is such that if uncontradicted and if believed would be sufficient to**

prove the case against the Defendant. See the cases of OHWOVORIOLE VS FRN (2003) 2 NWLR (PT. 803) 176; AJIBOYE VS THE STATE (1994) 8 NWLR (PT. 364) 587; EKWUNUGO VS FRN (2009) 15 NWLR (PT. 1111) 36; ABACHA VS THE STATE (2001) 3 NWLR (PT. 699) 35; and DABOH VS THE STATE (1977) 5 SC 197."

The problem with the learned counsel to the Defendant is that he kept on emphasizing on the weight to be attached to the evidence of a minor and the credibility of the witnesses for the prosecution in disregard to the principle on which application for no case submission is granted. Such issues as has already been emphasized earlier in this Ruling, is reserved till the stage when evidence for both sides have gone in and the matter is at the Judgment stage.

I have also painstakingly gone through the reply address filed by the learned counsel to the Defendant, and it would appear that he merely represented or tried to reemphasize his argument in the written address. It was not a reply to a new issue that was raised in the prosecution's address. This shouldn't be so. In **REV. KING VS THE STATE (2016) LPELR 40046,** the Supreme Court stated the purpose of a reply address thus:

"A reply brief is not a forum for emphasizing the argument in the Applicant's brief, it is not a forum for

presenting a new and better Applicant's brief or repeating arguments already in the said brief, neither is it meant to represent the issues joined either by emphasis or by explanation. See OCHEMAJE VS THE STATE (2008) 8-7 SC (PT. 11) 1. A reply brief as the name implies ought to be confined to new issues or points of law in the Respondent's brief. Applicant's reply brief is not one properly so called. It is a supplementary brief which has no place in our appellate practice and it is therefore discountenanced in the determination of the appeal. See EHOT VS THE STATE (1993) 4 NWLR (PT. 290) 644."

As a matter of fact, the main function of a reply address is to refute the new arguments in the opponent's address. See the cases of **KALU VS THE STATE (2017) LPELR 42101; LONGE VS FBN PLC (2010) 2-3 SC 1; and GODSGIFT VS THE STATE (2016) LPELR 40540.**

On the account of the above cited authorities, the reply address filed by the learned counsel to the Defendant which did not comply with the above principles is accordingly ignored.

In the final analysis, I am unable to be persuaded by the arguments of the learned counsel to the Defendant in his **NO CASE SUBMISSION,** which I hereby overrule. As a consequence, the Defendant is hereby directed to enter his defence, if he so wish.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
14/07/2020