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/280/17

BETWEEN:

COMMISSIONER OF POLICE……..PROSECUTION

AND

1. BETTY HAYAB)
2. GREG FRANCIS)……..DEFENDANTS/APPLICANTS

RULING

The Defendants were arraigned on a three count charge of conspiracy to commit armed robbery, armed robbery and theft contrary to and punishable under Sections 97, 298(b) and 288 of the Penal Code. They both pleaded not guilty to the alleged crime.

At plenary, the prosecution called two witnesses, tendered documents and closed its case. As a matter of fact, the nominal complainant, Mr. Jude Kyeremeh was the PW1, while one Sgt. Kumode Ozovehe, an Investigator attached to the Dutse Divisional Police Station, testified as PW2. The two witnesses were duly cross-examined by the learned counsel to the Defendants whereupon the

prosecution closed its case and the Defence elected to address the Court on a *No Case Submission.*

The learned counsel to the Defendants filed a 19-pages written address where he urged me to hold that no prima facie case has been made out against the Defendants. The learned prosecutor filed a written address in opposition to this application. He is of the view that the prosecution had implicated the Defendants through the evidence led at the trial and that I should overrule the submission of the learned counsel to the Defendants. The learned counsel to the defence also filed a reply address. These addresses were duly adopted by parties in the open Court.

In his written address, Mr. Ocholi Okutepa Esq, of Counsel for the Defendants formulated a lone issue for the resolution of this application. The issue is:

> **"Whether from the totality of the evidence before this Honourable Court, the Prosecution has made out a prima facie case against the Defendants upon which this Honourable Court can call on the Defendants to enter a defence."**

I have painstakingly peruse the processes filed by parties and the point must be made at this point, that the legal import of a *No Case Submission* has been defined with utmost clarity on a long line of

judicial authority to the effect that the submission can only be successfully made where at the close of the case for the prosecution, there is nothing to implicate the Defendant. On this point of Law, I take the liberty to refer to the case of **CHYFRANK NIGERIA Vs FRN (2019) LPELR-46401-SC** where Nweze, JSC held as follows:

> "**As it is well-known, a submission that there is no case to answer may be properly made and upheld in the following circumstances: (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 as a result of cross-examination or is so manifestly unreliable that no reasonable Tribunal could safely convict on it. See IBEZIAKO VS COMMISSIONER OF POLICE (1963) 1 All NLR 61; (1963) NNLR 88 [1963] 1 SCNLR 99; AJIDAGBA AND ORS VS I.G.P. (1958) 3 FSC 5 [1958] SCNLR 60; OKORO VS THE STATE [1988] 5 NWLR (PT. 94) 255 and ADEYEMI VS THE STATE [1991] 6 NWLR (PT. 195) 1.**

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."**

The position of the law as captured above 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, 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).

In this case, it would appear to me that Mr. Ocholi Okutepa of Counsel to the Defendants dwelt extensively on the merit of the case of the prosecution as opposed to whether a prima facie case has been established against the Defendants. He attacked the testimony of the prosecution witnesses on the ground that their evidence is riddled with contradictions. For the avoidance of doubt, a few examples from learned Counsel's address will suffice:

1. **That the PW1 in his extra judicial statement stated that it was the gateman in the next compound that effected the arrest of the Defendants, whereas in his testimony before the Court he stated that it was the people who responded to his distress call that helped to arrest the Defendants.**
2. **That the PW2 further contradicted the PW1 when he testified before the Court that he was the one in the company of another Police Officer who effected the arrest of the Defendants at the scene of crime.**
3. **That the PW1 testified that the Defendants were taken to the Police Station on a Motor Cycle which belonged to the Security man next door to the PW1, whereas the PW2**

testified that the Defendants were driven to the Police Station in a chartered vehicle.

4. **That in his extrajudicial statement of 15/06/2017 the PW1 stated that the Defendants were taken to the Police Station by 8:30am while in another statement made by the selfsame PW1 on 12/06/2017 he stated that the time was 7:00am.**
5. **That the PW1 in his evidence-in-chief stated that he had transferred monies to the 1st Defendant's account in time past but denied this point under cross-examination.**

It is clear from the above extract that learned counsel to the Defendants is not guided by the need to restrict himself to whether or not a prima facie case has been made out against the Defendants. What the learned counsel has done is to invite the Court to evaluate and ascribe probative value to the testimonies of the prosecution witnesses. It is premature at this stage of trial to look into the merit of the case of the prosecution. I refer to **CHYFRANK NIGERIA Vs FRN (Supra)** where Augie, JSC in her contributory Judgment held thus:

> **"The question that comes up where a no-case submission is made by an Accused Person is whether the Prosecution made out a prima facie case requiring,**

at least, some explanation from an Accused - see TONGO VS C. O. P (2007) 72 NWLR (PT. 1049) 525 SC . Thus, a prima facie case simply means that there is ground for proceeding with the case against the Accused Person; it is not the same as proof, which comes later, when the Court or Tribunal has to find whether the person charged with an offence is guilty or not. So, the evidence discloses 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 ABACHA V, STATE (2002) 11 NWLR (PT. 779) 437 SC, AND AJIDAGBA V. I.G.P. (1958) SCNLR 60."

I have carefully considered the evidence led by the prosecution, and I form the view that a prima facie case has been made out against the Defendants to warrant an explanation from them. For avoidance of doubt, the PW1 in his evidence-in-chief testified inter alia as follows:

"I locked my door and I slept. Around 4:00am the 1st Defendant knocked and came into my room. She told me the girl had escaped from police custody. I was sitting on my bed and trying to call the police station. In the process the 2nd Defendant came in and held my two hands at the

back and demanded for all the money I had. In the process the 1st Defendant started searching everywhere. The 2nd Defendant directed the 1st Defendant to go and get masking tape to gag my mouth and a knife. The 1st Defendant brought the items and when I saw these I pushed with my legs and she fell down. I directed the 1st Defendant to open a drawer to take the money in it. She did. The money was N35,000.00. The 1st Defendant took my phone and demanded for information on my money in the Bank. I told them there was N37,000.00 and she forcefully transferred N30,000.00 into a UBA Account."

In the final analysis, I have come to the inevitable conclusion that the Prosecution has made out a prima facie case against the Defendants to warrant an explanation from them. Accordingly, the *No Case Submission* filed on their behalf is hereby overruled. The Defendants are hereby directed to enter their defence, if they so desire.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
07/10/2020