IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON THURSDAY THE 10TH DAY OF NOVEMBER, 2020.

BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CR/221/2018

COMMISSIONER OF POLICE ---------- COMPLAINANT

FCT COMMAND

AND

PAUL JIMOH ---------- DEFENDANT

RULING

The Defendant was charged for two (2) count charge as follows;

COUNT ONE:

You Paul Jimoh on or about 10th February, 2018 around Diamond Bank opposite Chelsea Hotel Garki Abuja within the jurisdiction of this Honourable Court did commit illegal act to wit: Criminal Conspiracy when you armed yourself with Gun attacked and robbed one Christian Eko Onoja with one James Jimoh (now late) of his Itel phone valued Fifteen Thousand Naira (15,000.00) and the sum of Nine Thousand Naira cash (N9,000.00) you thereby committed an offence contrary to and punishable under section 6(b) of the Robbery and Firearms (Special Provisions) Act Cap. R. 11 LFN 2004.

COUNT TWO:

You Paul Jimoh on or about 10th February, 2018 around Diamond Bank opposite Chelsea Hotel Garki Abuja within the jurisdiction of this

Honourable Court did commit illegal act to wit: Armed Robbery when you armed yourself with Gun and other dangerous weapons and attacked one Christian Eko Onoja of his Itel phone valued Fifteen Thousand Naira (N15,000.00) and the sum of Nine Thousand Naira cash (N9,000.00) you thereby committed an offence contrary to and punishable under section 1 (2) (a) and (b) of the Robbery and Firearms (Special Provisions) Act Cap. R. 11 LFN 2004.

Arraignment and plea was taken on the 20th of June, 2019 and Defendant pleaded not guilty to the charges against him. Trial commenced on 11th December, 2019 with the Prosecution opening its case and calling three witnesses (PW1, PW2 and PW3) who gave evidence in chief. Two (2) documents Exhibits PJ 1 (statement of Paul Jimoh) and PJ 2 (statement of James Jimoh) were admitted in evidence through PW3 Asp Mathias Auta attached to the Nigerian Police FCT command SARS (Investigation department).

PW1 – testified that she received a call that her son got shot by a gun and rushed National Hospital Abuja. The son explained to her that he boarded a vehicle and on reaching Abuja late in the night. That he had gone to Diamond Bank Automated Teller Machine (ATM) that night to withdraw N10, 000.00 (Ten Thousand Naira) only that after withdrawal he saw 3boys approaching him. That two (2) of them were of the same height but the one that attacked him wore a sleeveless shirt with tattoo and earrings. On the 3rd day when the son was to be discharged, the son told PW1 that he saw one of the boys that attacked him and that the said boy

had rushed his friend who was stabbed to the same National hospital. On hearing that she got close to the James Jimoh and actually saw tattoo and earrings with trousers and sleeveless shirt just the way her son had described him. That in pretending to sympathize with him, she asked what he had come to do in the hospital and he confirmed that he had brought his friend who was stabbed. That immediately she invited the police who arrested James Jimoh. That at the Police station James Jimoh confirmed that indeed her son (PW2) was shot but the gun was owned by his elder brother the Defendant in court. That the person in hospital was also his brother.

The PW2 testified that he does not know the Defendant but that Defendant's brother James Jimoh tried to kill him on the 10th of February, 2018 after he had withdrawn N10, 000.00 (Ten Thousand Naira) only from the Automated Teller Machine (ATM). PW2 said 3guys approached him but said it was only one of the guys that attacked him and the person that attacked him is James Jimoh. That a fight ensued between them and that he heard the sound of a gunshot which hit him at the back of his head. That he thereafter blanked out. PW2 also confirmed that Defendant was not amongst the 3 guys that shot but only got to know of the Defendant at the Police station. At the Police Station, PW2 positively identified James Jimoh as the person that shot him.

The PW3 who is the IPO gave court his testimony under examination in chief but failed to attend court for cross examination. After series of adjournments, this court had no option than to foreclose PW3 from cross examination and thereafter close the case of the Prosecution on the

application of the defence counsel. Prosecution was in court and did not object to closing its case despite PW3 not having been cross examined.

In the light of **S. 36 (1) of the 1999 Constitution (as amended)** which provides for fair hearing, Fair hearing requires that a person must be given not only an opportunity but a fair opportunity to cross-examine his accusers. The concept of **"AUDI ALTEREM PARTEM"** calls to play in this circumstances and the principle it propounds is "hear the other party". Consequently in a situation as played out in this case where the Defendant counsel is not given the opportunity to cross examine PW3, this court is left with no option than to fall in line with the principle of **"AUDI ALTEREM PARTEM"** and discountenance the evidence of PW3. It is also noteworthy that there are two exhibits tendered so far by the prosecution which also doubles as the two exhibits on which the case of the Prosecution stands are Exhibit PJ1 – Statement of the Defendant dated 17/02/18 and Exhibit PJ 2 – Statement of James Jimoh (deceased brother of the Defendant who allegedly shot PW2) dated 16/02/2018these exhibits (PJ1 & PJ2) were tendered through PW3 and therefore forms part of the evidence-in-chief of PW3. The court would discountenance the evidence of PW3; it therefore follows that all exhibits tendered through PW3 would follow suit. Consequently, I am of the view and I so hold that this court will not only discountenance the evidence of PW3 but also expunge same for reasons adduced above and I so hold.

Counsel to the Defendant adopted his written address filed 28th August, 2020 in support of his submission of no case to answer. The prosecution although served did not file any response thereto nor did they appear on

the date fixed for the hearing of the no case submission. Counsel to the Defendants submitted three (3) issues before this Court for determination of his no case submission as follows;

1. Whether a prima facie case has been established against the Defendant, Paul Jimoh in all or any of the two (2) Counts charges to warrant the Defendant to enter his defence;
2. Whether there is evidence linking the Defendant with the commission of the offence with which he was charged; and.
3. Whether all the evidence led by the Complainant is of such a nature that no reasonable court or tribunal would convict on it.

On these issues, learned Counsel to the Defendant submitted that the Complainant has failed to lead credible evidence that would establish a prima facie case against the Defendant; hence, the Defendant is entitled to be discharged and acquitted on all the counts of the charge against him. Counsel further submitted that the failure of the Complainant to provide reliable evidence to establish the ingredients of the offence of conspiracy to commit armed robbery and armed robbery is fatal to their case and in view the Defendant is entitled to be discharged and acquitted and urged the court to so hold. Learned counsel also submitted that the Complainant has failed to lead any evidence establishing the culpability of the Defendant in this case as there is no evidence linking the Defendant to the crime alleged. Counsel submitted that the evidence led by the Complainant is indeed of such a nature that no reasonable court or tribunal would convict on it. The Defendant Counsel submitted that there is no case made out by the Prosecution for them to answer (by way of entering their defence). Finally, counsel submitted that the onus is on the

Complainant to establish each element constituting the ingredient of the offence charged and where the Complainant fails, the Defendant is entitled to be discharged and acquitted. He urged the court to discharge and acquit the Defendant Paul Jimoh on all counts. Learned counsel relied on the following authorities;

i. Section 302, 303 (3) (a) (b) and (c) of Administration of Criminal Justice Act, 2015
ii. Section 36 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)
iii. Section 1(1), (2)(b) and Section 6(b) of the Robbery and Firearms (Special Provisions) Act.
iv. Sections 37 and 38 of the Evidence Act 2011.
v. Onagoruwa v. the State (1993) 7 NWLR (Part 303) 49 at 82, paragraphs E-F.
vi. FRN V. Oladimeji Bankole (2012) All FWLR (Part 629) 1150 at 1172.
vii. Musa Ikaria v. state (2011) 19 WRN 64
viii. Kayode v. the state (2016) LPELR-40028 (SC)
ix. Sowemimo v. state (2012) 2 NWLR (Pt. 1284) 382
x. Ikuforiji v. FRN (2018) LPELR-43884 (SC)
xi. Agbo v. the State (2013) LPELR-20388 (SC)
xii. C.O.P. v. Amuta (2017) LPELR-41386 (SC) etc.

It is trite law that the essence of a submission of a "no case to answer" lies in the contention that the evidence of the prosecution called in the discharge of the burden of proof placed on them by law has failed to

establish a prima facie case or establish the ingredients of the offence against the accused, to make it imperative for the court to call upon the accused to defend himself or answer to the charge or open his defence or enter his defence. – see **TONGO V. C.O.P. (2007) 12 NWLR (pt 1049) P. 525.** It was further held that where a 'no case submission' is made, what is to be considered by the court is not whether the evidence produced by the prosecution against the accused is sufficient to justify conviction but whether the prosecution has made out a prima facie case requiring, at least, some explanation from the accused person as regard his conduct or otherwise.

From testimony of PW1 and PW2, the Defendant did not shoot nor attack Pw2 neither was Defendant present at the scene of the crime. PW2 in his evidence said he was able to identify the person who shot him. That while on admission in the hospital after surgery had been performed on him to extract the bullet from the back of his head he saw the man that shot him and told his mother (PW1) that the man that shot him is called James Jimoh. That he was also in the same National hospital with him and had rushed a victim with stab wound to the hospital. He described James Jimoh as the man that shot and robbed him as wearing a sleeveless shirt with tattoo on his body and an earring. That PW1 had hastened to the bed side where the man who shot her son was and she discovered that indeed he was wearing a sleeveless shirt, had a tattoo on his body and was wearing earring. That she (PW1) had in pretence enquired what happened to the victim whom James Jimoh had rushed to the hospital and he explained that the victim was stabbed. PW1 after satisfying her curiosity was convinced that her son (PW2) had gotten the description of

the shooter right and had made a positive identification of James Jimoh as the shooter. That she (PW1) had immediately contacted the Police and both PW1 and James Jimoh were subsequently driven to the Police station by the Police. That at the Police station she got to know that the name of the shooter was James Jimoh and James Jimoh confirmed the incident and confessed to shooting her son (PW2). That James Jimoh further confessed that the gun used for the robbery belonged to the Defendant who happened to be his elder brother. PW2 testified that he only got to know the Defendant at the Police station and Defendant was not amongst those who attacked him. PW2 in his testimony never mentioned the Defendant as the one who owned the gun used in the attack nor did PW2 corroborate his mother's testimony that James Jimoh confessed at the Police station that the gun used in the attack belonged to his brother, the Defendant.

From evidence before me, it is only the PW1 (mother to PW2) who testified that she witnessed James Jimoh confirm to the Police that the gun was owned by his brother the Defendant. As earlier said, there is no evidence from the Police establishing that indeed the Defendant owned the gun used in the shooting. From the two (2) count charge duplicated above, Defendant is being charged with criminal conspiracy to commit armed robbery punishable under **Section 6 (b) of the Robbery and Firearms (Special Provision) Act Cap R11 LFN 2004** and Armed Robbery punishable under **Section 1 (2) (a) & (b) of the Robbery and Firearms (Special Provision) Act Cap R11 LFN 2004**.

Section 303 (3) of the Administration and Criminal Justice Act 2015 provides:-

"(3) In considering the application of the defendant under section 303, the court shall in the exercise of its discretion, have regard to whether:

(a) an essential element of the offence has been proved;

(b) there is evidence linking the defendant with the commission of the offence with which he is charged;

(c) 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 a prima facie case has not been made out against the defendant for him to be called upon to answer.

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

The preponderance of judicial opinion is that however slight the evidence linking the accused with the commission of the offence charged, the case ought to proceed to trial for the Defendant to explain his side of the story. In essence, a no-case submission may properly be made and upheld in any of the following circumstances:-

a. When there has been no evidence to prove an essential element in the alleged offence.
b. Where the evidence adduced by the prosecution has been so discredited as a result of cross examination or
c. The evidence is so manifestly unreliable that no reasonable tribunal could safely convict on it.

See EMEDO V. STATE (2000) FWLR (Pt. 130) 1654, EDAKA RABOR V. C.O.P. (2008) ALL FWLR (Pt. 428) 333.

Although the general rule before upholding a no case submission is that if ANY of the above listed three (3) circumstances can be proved then a no case submission would be upheld. I would rather take each of the three (3) grounds viz-a-viz the charge against the Defendant.

On whether there has been no evidence to prove the essential element in the alleged offence. As earlier stated Defendant was charged before this Court with conspiracy to commit armed robbery and Armed Robbery contrary to **Sections 1 (2) and 6 (b) of the Robbery and Firearms (Special Provision) Act Cap R11 LFN 2004**. Conspiracy is defined according to **MUHAMMED JSC in STATE V. SALAWU (2011) LPELR 8252 (SC) PP. 38-39. Paragraph E-A** as

> *"an agreement by two or more persons acting in concert or in combination to accomplish or commit an unlawful/illegal act, coupled with an intent to achieve the agreements objective".*

With regard to the charge of conspiracy, the essential ingredient of the offence of conspiracy lies in the bare agreement and association to do an unlawful thing which is contrary to or forbidden by law, whether that thing be criminal or not and whether or not the accused persons had knowledge of its unlawfulness. Evidence of conspiracy is usually a matter of inference from surrounding facts and circumstances. The trial court may infer conspiracy from the fact of doing things towards a common purpose. **See CLARK V. THE STATE (1986) 4 NWLR (35) 381**. In essence conspiracy is an agreement by two or more persons to do or cause to be done an illegal act or an act which is legal but by illegal means. The mere

agreement alone constitutes the offence of conspiracy and it is immaterial to prove that the offence of armed robbery was actually committed; hence the offence of conspiracy to commit armed robbery may be committed even if the offence of armed robbery was aborted. **PER SANUSI JSC in TAIYE V. STATE (2018) LPELR-44466 (SC)**

In evaluating the evidence before me in relation to the offence of conspiracy, Defendant under count 1 is charged with conspiracy to commit armed robbery. From the evidence, the said armed robbery was allegedly carried out by the Defendant's brother James Jimoh (deceased) PW2 who was the victim that was shot and robbed was emphatic in his evidence and said that Defendant was not part of the three (3) men who robbed him. PW2 also gave evidence that he only saw Defendant for the first time at the Police station. PW2 said he was told that the robbery was committed by James Jimoh, Defendant's brother. Nowhere in the evidence of PW2 did he testify that he heard or was told that the gun used in shooting him belonged to the Defendant. Nowhere in the evidence of PW2 did he testify that he heard or witnessed or was told either by the Police or any other person that Defendant and his brother James Jimoh belonged to the some robbery gang. PW1 who's the mother of the victim (PW2) more or less gave the same testimony as PW2 but with a new twist to her testimony. PW1 stated that at the Police station: -

> "I was invited to come in and James Jimoh confirmed that indeed my son was shot but the gun was owned by his elder brother the Defendant in court".

At this stage, it is surprising that PW1 and PW2 who had visited the Police station, written their statements and co-operated with the police

during investigation would diverge on the participation of the Defendant in the alleged crime. That it was only PW1 that heard James Jimoh say in the presence of the police that Defendant owned the gun used in shooting PW2 whilst Pw2 in his testimony did not incriminate nor mention that the gun belonged to the Defendant is definitely not the type of evidence a reasonable tribunal would convict on such. As earlier stated, the testimony of the IPO (PW3) who would have had the opportunity to confirm or debunk any of these testimonies has been expunged. The question that arises at this point is "Has the ingredient of conspiracy been proved"? It is my humble view that the ingredient of "agreement between Defendant and James Jimoh" to commit robbery has definitely not been proved.

Would a reasonable tribunal convict the Defendant on the testimony so far adduced by the prosecution in respect of conspiracy? The obvious answer is in the negative as prosecution evidence is not only shoddy but Defendant cannot be called upon to defend himself against the charge of conspiracy as there is no iota of prove of any of the ingredient not even a watery link or connection of the Defendant to the alleged crime of conspiracy . Moreover the evidence adduced so far is so manifestly unreliable that no reasonable tribunal would safely convict on it and I therefore hold that Defendant does not have a case to answer as regards the charge of conspiracy.

On the charge of Armed Robbery, the essential ingredients required to prove the offence of armed robbery have been laid down in a plethora of cases such as **SANI V. STATE (2018) LPELR-44715 (CA); DAWAI V. STATE (2017) LPELR-43835 (SC); ADEYEMO V. STATE (2015) LPELR-**

24688 (SC); PIUS V. STATE (2016) LPELR-40657 (SC). The essential ingredients are as follows:

a. That there was a robbery or series of robberies
b. That the robbery or each of the robberies was an armed robbery
c. That the accused person was either the robber or one of the persons that committed the robbery.

From the evidence before me it was established from evidence of PW1 and PW2 that there was indeed a robbery where PW2 was shot and robbed of the sum of N10, 000.00, that a gun was used and in fact PW2 was shot in the robbery. Unfortunately for the prosecution, both PW1 and PW2 were emphatic in their evidence and cross-examination that Defendant did not partake in the robbery. PW2 testified that he was able to identify the person who shot and robbed him and in fact he sighted him at the hospital and positively identified him. That he later learnt that the person that shot him was James Jimoh (deceased). That the said James Jimoh confessed to his hearing and to the hearing of his mother PW1 that he was the one who shot and robbed PW2. That Defendant did not partake in the robbery is unchallenged and uncontroverted by both the PW1 and PW2 in line with the "NOT GUILTY" plea of the Defendant. There is no link whatsoever of the Defendant with the incident of armed robbery neither did PW1 or PW2 linked the defendant to one of the persons that committed the armed robbery. Under cross-examination PW1 said:-

"Question: who is the first Defendant; who do you mean?

Answer: The one that attacked him

Question: Where is he now?

Answer: I cannot see him in court"

PW2 in his examination-in-chief testified:

> "I am 24years old. I was 22years old at the time of the incident. I don't know him (Defendant), I only heard about him when his brother was caught as the one who tried to kill me".

Under cross-examination PW2 testified:

> "Question: you just confirmed to this court that you don't know the Defendant?
>
> Answer: Yes.

From the above, there is no link not even the remotest link of the Defendant to the charge of armed robbery.

Consequently, I hold the view that the prosecution has not made out a case against the Defendant sufficiently to require him to make a defence for the offences for which he is being charged and I therefore uphold Defendant's no case submission.

Accordingly the Defendant Paul Jimoh is hereby discharged in accordance with **Sections 302 and 357 of the Administration of Criminal Justice Act 2015.**

Parties: Defendant is present.

Appearance: G. C. Eze for the Defendant appearing with Abigail Zeblon. Prosecution is absent.

HON. JUSTICE M. OSHO-ADEBIYI

JUDGE

10TH NOVEMBER, 2020