

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP: HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 22
CASE NUMBER : CHARGE NO: CR/791/20
DATE: : WEDNESDAY 16TH JUNE, 2021

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA...COMPLAINANT

AND

HON. CHUMA NZERIBEDEFENDANT

RULING

The Defendant is standing trial before this Honourable Court on three (3) count charge which relate to the alleged false pretences or forgery of Certificate of Occupancy in respect of Plot 1306 Cadastral Zone, A05, Maitama District, Abuja.

The Prosecution in proving its case, called five (5) witnesses to wit; Ishaya M. Baba, Olowo A. Daniel, RamatuAlhassan, JatauBarde and Agboola Joseph as PW1 to PW5 respectively.

At the close of the Prosecution case, the Defendant Pursuant to Section 303 of the Administration of Criminal Justice Act, 2015 make a no case submission.

The case of the Prosecution as testified by its witnesses is as thus;

PW1 (Ishaya M. Baba) testify that in 2009 he was not in the country and someone called him to say his land was being developed by another person. He rushed down to Abuja and went to his Plot and discovered that the accused person has already began developing his land. He now contacted his friend who was a member of the House of Representative where the accused person then was by name Hon. Albert Atoricha who said he'll talk to the accused person to stop developing his land. That he equally approached development control to report to them.. Few days later, accused pleaded with his colleague (Albert) who came to say accused wanted to have meeting with him in his office.

That he went to the accused office along with the photocopy of his Certificate of Occupancy signed by the FCT Minister. On getting to accused office, he received them and that he told him he was going to ask him few question which he expected to be answered honestly so he could assist the accused. He asked him to proceed. He asked how he got to develop his property. He said he got the property from someone bearing RamatuAlhassan. On request to see the search report conducted, he said he did a window search to which he said he did what he did because he was member House of Representative and Chairman Committee on Works. He asked him to pack his block work on his property. Accused person offered him N50Million after pleading with him, to which he refused and walked out from his office.

That he reported the encroachment to FCDA Lands Department and Committee was set up in view of the fact that there were other contestants (4 people), and all were asked to come with their original title documents – including the accused person. They all appeared before the committee except the accused with their title documents. A letter was written to him confirming the plot to be his with genuine title documents by the committee.

PW1 stated that, almost four people were allocated the same land. When they appeared before the committee set up by Lands Department, his document was certified genuine. Two other contestants who appeared before the committee were also screamed.

Accused person did not appear before the committee. After the committee findings, a letter of resolution was conveyed to him and on that basis, he paid for the Certificate of Occupancy and collected same.

PW1 was cross-examined and discharged.

PW2 (Oluwu A. Daniel) testify that he did not know the accused in person but his name featured in their correspondence on a matter with regards to plot 1306 Cadastral Zone 305 Maitama District, Abuja. That he was invited to EFCC to represent the Director of Lands.

PW2 stated that Plot No. 1306 had case of multiple allocation and the case of forgery on it.. the officer had settled the matter of double allocation and closed that of forgery. The double allocation is

between file numbers AD10652, KD11213, BN11187 whereas forgery is on file number FCT/10156 and the file had been closed because the matter had been resolved by the officer. The officer had communicated with all the parties in the matter. The names of Applicants are Ishaya M. Baba (AD 10652) Tijjani (KD 11213), Asamao (BN 11187) while FCT 10156 (RamatuAlhassan).

That the First time he went to the EFCC with the policy files (CTC) and in another time a letter was sent to the commission. Application form, recertification letter, copies of Right of Occupancy, ministerial approval of the plot in question, stop work order, payments receipts, memos from Desk officers to the Director and memos from the Director to the Minster, searchlight images of the plot in

question were all part of the document sent to the EFCC upon their request.

PW2 stated further that there was a memo generated by a land officer called Nnamdi Akubozue which was transmitted to the minister where the issue of forgery was mentioned between AD 10652 and FCT 10156.

The issue raised there was that the plot in question was allocated to Salisu K. Garba as a replacement for an initial grant to his i.e plot 719 Gwagwalada/Giri District vide a ministerial approval dated 27th March, 1999. It was replaced with plot No. 1306 Maitama, Abuja. Alh. Salisu G. Garba donated the plot vide Power of Attorney to Ishaya M. Baba for Ramatu Alhassan in FCT 10156, the initial allocation was for plot No. LD2

GaabeExtension District vide a ministerial approval dated 7th April, 2003. The said Plot was replace with plot 1306 Maitama District. The offer letter presented for recertification by RamatuAlhassan, the Ministerial Approval could not be seen on their records. The character of the typing is different from the usual replacement letters on our record upon comparison.

The logo on the replacement letter is different from those on their replacement letter.. the date on the replacement letter is suspected as forged as the FCT Minister (El-Rufai) had barely resumed work and hadn't allocated any land until about 1^{1/2} years later. The memo from the company secretary/legal adviser department of Land Administration to the Director of land stating that the allocation letter presented by the accused has been confirmed to be fake. In the

letter Accused person admitted signing a memo of understanding with allottee of file number AD 10652/KB 577.

It is stated in the said memo that to stop work notice were given to the accused person which accused failed to obey. In this regard the file for Ramatui.e FCT10156 was closed to the suspected forgery.

The office on the double allocation on Plot 1306 went ahead to give Ishaya M. Baba the title document and copied AsamauTijjani with File No. BN 11187 and KD 11213 respectively.

Defendant wrote a letter to the Minister alluding fraudulent conversion/development on his land.

Defendant also wrote to FCT Minister letter alleging he bought the land from RamatuAlhassan and her

agent in 2005 and that he had been in possession till date without any interference.

PW2 was cross examined and discharged.

PW3 (RamatuAlhassan) stated that she do not know the accused person. That she was called by EFCC to submit her international passport and the said international passport bore her name.

She stated that she had never applied for Land in FCT but her Husband did for her but was not given. That she did not sign any Power of Attorney and that the signature on Exhibit 'D' (Power of Attorney is not her own).

PW3 was cross-examined and discharged.

PW4 (Jatau B. Jatau) stated that he know the accused in the cause of an investigation of a case

reported to EFCC by One Ishaya M. Baba. The commission received a petition in December, 2016 bothering on criminal conspiracy, using false document to be genuine. The petition was written against the Defendant in the Dock, Christian Mba and One Alhassan. The petition was referred to his Team with BasseyEffiong, Philemon Lawrence, BilkisuIdris, Omale Sunday. They are about six in the team.

They worked together as a team. They invited the Petitioner to come over and adopt his Petition by making statement to them with document collected from the Petitioner. Letter of invitation activities were written to the Department of Lands FCDA, Mapping and Survey Department, FCDA, FCT High Court Maitama. All responses received were duly analyzed.

That they invited One EffiomaMba, Alex O. from FCDA lands, the Defendant was also invited, RamatuAlhassan, JatauBamide was released from the Department of Mapping and Survey FCDA.

In the course of investigation the Petitioner alleged that he bought land from Salisu K. Garba who donated Power of Attorney to him which he registered with AGIS and Certificate of Occupancy signed in his favour but was not conveyed to him due to a case of multiple allocation of the land.. they investigated the matter and discovered that the document relied upon by RamatuAlhassan was forged and the allocation to the said Ramatu was revoked as same was forged. The file was closed. The said Ramatu said she was not aware of any land even though her husband applied for land using her

details. She produced her international passport to them to show that she was RamatuAlhassan.

That the Christian Mba went to his last address but could not get him. Defendant could not also get the Christian Mba. When they invited the Defendant, to their office, he came and made statement to them. He wrote the statement himself and witnessed by one of his friend (Harrison Hussaini). The statement was taken on EFCC Statement form, in an opened office which is well ventilated with Air Conditioning System, Ten other operatives were there going about their business. Basseffiong took part of the statement of the Defendant and he took some of the statements himself.

That the Defendant did not produce any Power of Attorney. He only produced a sales agreement. They

further requested to know from the Defendant if he conducted any search to which he said no. On whether he met the original allottee of the land, he said no. When they requested to know how he paid for the land, he said he paid cash of N5 Million in two tranches i.e N3 Million and N2 Million.. When they ask for evidence of payment, he could not and unable to produce the Christian Mba. When they requested for the Power of Attorney between RamatuAlhassan and Christian Mba which permitted Christian Mba to deal on the property, he could not when they requested for the original title document handed over to the Defendant by Christian Mba, Defendant said he handed over to his Lawyer who said he had filed a Civil matter in court as per Exhibit 'H'.

That he came across the name Charles Chudi during the investigation of this case. In response of FCDA to EFCC, they saw one Charles Chudi who received a letter on behalf of the Defendant who was invited to a meeting at FCDA.. In the course of investigation they demanded to know if the Defendant knew the said Charles Chudi to which he said yes and that he was his neighbor.

That they received report from FCDA suggesting that the said allocation to RamatuAlhassan was closed. But Defendant still presented the same allocation paper with application for building approval which was approved. But when the Department discovered that the allocation was forged, a stop work notice and quit notice was issued thereby withdrawing the approval.

PW4 was cross-examined and discharged.

The Defendant at the close of the Prosecution case filed a no case submission and formulated a sole issue for determination to wit;

Whether given the evidence produced by the Prosecution, this Court ought to discharge and acquit the Defendant on a no case submission.

It is the submission of learned counsel that in considering no case submission, the Court shall 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.
- d. Any other ground on which the Court may find a prima facie case has not been made out against the Defendant for him to be called upon to answer.

SUNDAY VS. FRN (2019) LPELR 48275 (CA) was cited by Counsel.

Learned Counsel submit that the Prosecution has failed to prove the offence of false pretences which the element includes; (a) a pretence was made by the accused person (b) the pretence was false (c) the accused knew the pretence to be false and did not believe it to be true (d) the pretence operated on the mind of the person from whom the property was

obtained and (e) some property must have been obtained as a result of the pretence. ***CONFIDO CONSULT SERVICES LTD. VS F.R.N (2018) LPELR 43676 (CA).***

Counsel submit that, the Prosecution has failed woefully to produce the Certificate of Occupancy the subject of **Count 1** and the burden rest on the Prosecution to so produce.

On **Count 2**, learned counsel submit that the Prosecution has failed to prove forgery under Section 363 of the penal code.

Counsel contended that non production of the document alleged to have been forged by the Defendant and/or its original is fatal to the case of the Prosecution.

MOHAMMED VS. WAMMAKO & ORS (2017) LPELR 42667 SC. was cited by counsel.

It is further the submission of counsel that failure by the Prosecution to prove the ingredients of forgery and/or to link the Defendant to the Commission of the offence is fatal as in charge of forgery the Prosecution must prove that it was the accused person that did the forgery.

AITUMA VS THE STATE (2007)5 NWLR (Pt. 1028) 466 was cited by learned counsel.

Counsel submit that from the evidence of witnesses, PW3 and PW4 did not make any reference to forged documents as only PW1 made mention of forgery.

Learned counsel submit that even if the Defendant is charged for allegedly forging or using Right of Occupancy, the Allocation Letter or the

Replacement Letter, there is no legal evidence to sustain his conviction on the said Count as evidence based on suspicion is worthless and cannot take the place of legal proof in criminal trials.

Counsel submit that there is no legally admissible evidence linking the accused person with the Commission of the offence with which he is charged and that there is indeed no case made by the Prosecution for which the Defendant should be called upon to make his defence.

Upon service, the Prosecution filed its written address in opposition to no case submission and formulated a lone issue for determination to wit;

Whether the Prosecution has made out a case as required by law to justify refusing the no

case submission and calling upon the Defendant to put up his defence.

Arguing on the above issue, learned counsel submit that this Honourable Court has the duty under the law to look into evidence led by the Prosecution to determine whether or not a prima facie case has been made out against the Defendant so as to decide whether or not to make him open his defence.

Counsel submit that the principle which guides the court in **No Cases** submission is that it is when all the ingredients of an offence have been laid out in evidence by the Prosecution and the evidence so adduced has been so discredited as a result of cross examination or is so manifestly unreliable that no reasonable Tribunal can safely convict on it.

OKORO VS STATE (1988)5 NWLR (Pt. 94) 255.

Counsel submit, the Prosecution evidence before this Honourable Court discloses a prima facie case before the Court as the Prosecution proved through 5 reliable witnesses how the Defendant obtained the documents of Plot, the subject matter of litigation by forgery.

FRN VS ADAMU NUHU (2015) LPELR 26013 (CA) was cited by counsel.

Learned counsel submit that the Defendant confess by Exhibit 'H' before the court that quit and stop work notices was given to him but that he was still in possession of the land. And that a prima facie case was established against the Defendant and therefore he should be called upon to enter his defence.

COURT:-

I have considered the defence of **NO CASE TO ANSWER** made by learned counsel for the Accused person and the response filed and adopted by the prosecution.

I have abbraised myself with the facts and evidence adduced by the prosecution. I will be very brief at this point in arriving at my decision on whether or not the prosecution has made out a case against the Defendant to warrant any defence or discharge at this point in time.

NO CASE TO ANSWER or submission is one of the defences opened to an Accused Person standing criminal trial in court.

The purport of a **NO CASE TO ANSWER** or no case submission is that the court is not called upon at

that stage to express any opinion on the evidence before it.

The court is only called upon to take note and rule accordingly that there is before the court no legally admissible evidence linking the Accused person with the commission of the offence.

But if there is legally admissible evidence, however slight, the matter should proceed as there is something to look at..***AGBO AND ORS VS STATE (2013) LPELR – 20388 (SC).***

Put in another way, no case submission means that there is no evidence on which the court or Tribunal could reasonably base a conviction even if the evidence was believed by the court or Tribunal.

PW2, who is an officer from the Land Department in his testimony stated that Plot No. 1306 the subject

matter of litigation had case of multiple allocation and the case of forgery on it.

That the plot in the name of RamatuAlhassan was forged as the Ministerial Approval could not be seen on their records. That the character of the typing is different from the usual replacement letter on their record and the logo on the replacement letter is different from those on their replacement letter.

On her part, PW3 (RamatuAlhassan) whom the Defendant claimed to have bought the land from, stated that she had never applied for Land in FCT but her Husband did for her but was not given. That she did not sign any Power of Attorney and that the signature on Exhibit 'D' (Power of Attorney) claimed by the Defendant is not her own.

PW3 and PW4 both corroborated the issues of forgery in their respective testimony.

From the totality of what the prosecution has done before me, it is my considered ruling that there is a need for the Defendant to enter defence.

Accordingly, the said defence of **NO CASE TO ANSWER** fails and is dismissed in that order.

Justice Y. Halilu
Hon. Judge
16th June, 2021

APPEARANCES

Defendant in court.

Maryam A. – for the Prosecution.

Charles N. – for the Defendant.