

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/471/19

DATE: :WEDNESDAY 16TH JUNE, 2021

BETWEEN

FEDERAL REPUBLIC OF NIGERIA ... COMPLAINANT

AND

1. FELIX ADE OLADELE

2. ESTHER ONYEABOR



DEFENDANTS

RULING

The Defendants were arraigned before this Honourable Court on a three (3) count charge dated 21st May, 2019 but filed on 28th August, 2019 which read as follows:

COUNT 1

That you, Felix Ade Oladele “M” 39 years old Apo behind Jonathan Estate, Abuja and Esther Onyeabor, “F” 50 years of Lugbe Zone 5, Phase 2, Off Airport Road, Abuja on or about the 11th of March, 2019, in Abuja, within the jurisdiction of this Honourable Court conspired among yourselves to obtain possession of an infant baby of about 4 days old, from one Hanatu Sunday “F” 22 years for the purpose of exploiting the said Hanatu Sunday and thereby committed an offence contrary to section 27

of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 and punishable under Section 21 of the same Act.

COUNT 2

That you, Felix Ade Oladele “M” 39 years old of Apo behind Jonathan Estate, Abuja on or about the 11th of march, 2019, in Abuja, within the jurisdiction of this Honourable Court obtained possession of an infant baby of about 4 days old from one Hanatu Sunday, “F” 22 years old biological mother knowing that she will be subjected to exploitation and thereby committed an offence punishable under section 21 of the Trafficking in Persons (Prohibition) enforcement and Administration Act, 2015 and punishable under section 21 of the same Act.

COUNT 3

That you, Esther Onyeabor, “F” 50 years of Lugbe Zone 5, Phase 2, Off Airport Road, Abuja on or about the 11th of March, 2019, in Abuja, within the jurisdiction of this Honourable Court obtained possession of an infant baby of about 4 days old from one Hanatu Sunday, “F” 22 years old biological mother knowing that she will be subjected to exploitation and thereby committed an offence punishable under section 21 of the Trafficking in persons (Prohibition) Enforcement and Administration Act, 2015 and punishable under section 21 of the same Act.

The Defendants pleaded not guilty to the said counts, and this Honourable court upon an

application from the Defence counsel admitted the Defendants to bail.

The Prosecution opened its case on 22nd June 2020 calling the Investigating Officer, Mr. Geoffrey Okwuigwe as PW1. On 23rd June 2020, Lazarus Joshua testified as PW2, and formally closed its case. Thereupon, the Defendants elected to file a no – case submission.

The case of the Prosecution as testified by the Prosecution witnesses is that one Hanatu Sunday was in a relationship with Joshua Lazarus (PW2) which resulted to a pregnancy. At the early stage of the pregnancy, Hanatu Sunday travelled back to her home state of Gombe State.

In January 2019, Hanatu Sunday called PW2 to inform him of her decision to return to Abuja as she

has been experiencing some difficulties with the pregnancy. PW2 agreed with her and sent her money to enable her transport herself to Abuja. Upon her arrival in Abuja, PW2 approached the 1st Defendant and explained the situation at hand to him. PW2 thereafter took Hanatu Sunday to the 1st Defendant's place at Waru, Apo, Abuja and upon demand, he paid the 1st Defendant the sum N20,000.00 to help the situation.

The 1st Defendant during that period kept Hanatu Sunday at another woman's place whom he claimed was his sister. After a while, the 1st Defendant called PW2 to inform him that Hanatu Sunday will not be able to deliver the baby by herself due to toilet infection, and that an operation was the only option left, which he informed the PW2 that it will cost him

the sum of N120,000.00 (One Hundred and Twenty Thousand Naira).

The 1st Defendant took Hanatu Sunday for operation, and after the operation, he called PW2 to inform him that the baby was bleeding. Before PW2 would get to the hospital, the baby was gone and the 1st Defendant told him that he has given the baby to another woman and told him to not worry about that as the baby would be well taken care of by the said woman. PW2 complained why the 1st Defendant will take such a decision without his consent, and demanded that he should be taken to the said woman, but the 1st Defendant did not take him there. After a while, the 1st Defendant told PW2 that the baby was dead.

PW2 found it difficult to believe that his baby was dead. He informed Hanatu Sunday of the development. PW2 requested the 1st Defendant to take him and Hanatu Sunday to their baby so they can take custody of the corpse, but the 1st Defendant kept on bringing different excuses.

The case was then reported to a Radio Station by Hanatu Sunday's cousin, who in turn wrote a complaint letter to NAPTIP. In the course of investigation, NAPTIP used the 1st Defendant to track and arrest the 2nd Defendant who was handed the baby.

In the course of the prosecution's case, the following documents were tendered in evidence:

1. Statement of Hanatu Sunday – Exhibit “A”
2. Statement of Esther Onyeabor – Exhibit “B”

3. Statement of Lazarus Joshua – Exhibit “C”
4. Statement of Felix Oladele – Exhibit “D”

At the close of the Prosecution’s case, the Defendant opted for No. case submission.

The Defendant formulated the following issues for determination to wit;

- a. Whether the Prosecution has established all the essential elements of the offence of conspiracy to obtain possession of an infant baby for the purpose of exploitation, and/or established all the essential elements of the offence of obtaining possession of an infant baby for the purpose of exploitation, all as provided under section 27 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 and punishable under section 21 of the same Act.

- b. Whether the failure of the prosecution to tender the investigation Report prominently featured in the testimony of PW1 has created a lacuna that negatively affected the evidence of the Prosecution and to the extent that the Prosecution has not established the essential elements of the offences charged in this case.
- c. Whether the alleged evidence by the Prosecution in this case has been so discredited as a result of cross – examination and/or so manifestly unreliable that no reasonable tribunal (including this Honourable Court) can safely convict on it.

On issue one, whether the Prosecution has established all the essential elements of the offence of conspiracy to obtain possession of an infant baby for the purpose of exploitation, and/or established all

the essential elements of the offence of obtaining possession of an infant baby for the purpose of exploitation, all as provided under section 27 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 and punishable under section 21 of the same Act; learned counsel submit that the Prosecution has not established all the essential elements of the offence of conspiracy to obtain possession of an infant baby for the purpose of exploitation, nor established all the essential elements of the offence of obtaining possession of an infant baby for the purpose of exploitation, as provided under section 27 of the Trafficking in persons (Prohibition Enforcement and Administration Act, 2015) and punishable under section 21 of the same Act. Counsel cited and relied

on ***GABRIEL TAYO AITUMA & ANOR VS STATE (2007) 5 NWLR (Pt. 1028) page 466 at 486.***

Counsel contended further that a submission that there is no case to answer may properly be made and upheld;

- i. When there has been no evidence to prove an essential element in the alleged offence,
- ii. 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.

Counsel argued that the Prosecution has not established any of the elements as contained in the charge to warrant the Defendant to enter their defence. The case of ***GABRIEL TAYO AITUMA***

&ANOR VS THE STATE (2007) 5 NWLR (Pt. 1028) page 466 at pages 485.

Learned counsel submit further that alleged statement obtained from Hanatu Sunday Exhibit “A” on record goes to no issue as the said Hanatu Sunday never came to this court to testify.

It is further the argument of counsel that PW2 told this Honourable Court under cross – examination that all that he told the court concerning the baby is what people told him and not what he saw with his eyes.

On issue two, whether the failure of the prosecution to tender the investigation Report prominently featured in the testimony of PW1 has created a lacuna that negatively affected the evidence of the Prosecution and to the extent that the Prosecution

has not established the essential elements of the offences charged in this case.

It is the submission of counsel that the failure of the Prosecution to tender the investigation report prominently featured in the testimony of PW1 has created a lacuna that negatively affected the evidence of the prosecution. The case of ***AKIN JEGEDE & ANOR VS FRN (2013) ALL FWLR (Pt. 666) page 594 at 603 was cited and relied upon.***

On issue three, whether the alleged evidence by the Prosecution in this case has been so discredited as a result of cross – examination and/or so manifestly unreliable that no reasonable tribunal (including this Honourable Court) can safely convict on it.

Learned counsel submit that the alleged evidence by the Prosecution has been so discredited as a result of cross – examination and same is manifestly unreliable that no reasonable tribunal can safely convict on it.

Counsel submit that, PW1 told the court under cross – examination that he never mentioned the name of the Radio station that brought the complaint. And that the report was against Elizabeth Onyeabor and the name of the 2nd Defendant was never mentioned as Elizabeth.

Court was finally urged to uphold the no case submission.

Upon service, the Prosecution file it reply wherein a lone issue to wit; whether the Prosecution has made

out a prima facie case necessitating the Defendants to enter their defence.

Arguing on the above, learned counsel submit that a careful perusal of the evidence adduced by the Prosecution witness in this case, it is without doubt that a prima facie case has been established against the Defendants necessitating this Honourable Court to call them to enter their defence.

Counsel contended that the factors to be considered when upholding a no case submission has been outlined in section 303 (3) of the Administration of Criminal Justice Act 2015 to includes;

1. Whether an essential element of the offence has been proved.

2. Whether there is evidence linking the Defendant with the commission of the offence with which he is charged.
3. Whether the evidence so far led is such that no reasonable court or tribunal would convict on it and
4. 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.

Counsel maintained that at this stage, the court is not expected to determine the guilt or innocence of the Defendant. *DEBOH VS STATE (1977) NSCC VOL.* was cited and relied upon.

On conspiracy, counsel submits that the actual commission of the offence is not necessary, but

rather the agreement to commit the offence and conspiracy can be proved by inference. *AKWUOBI VS STATE (2017) 2 NWLR (pt. 1550) 421* was cited by learned counsel.

Counsel submit that there is unchallenged evidence of the prosecution that the newly born baby delivered by Hanatu Sunday was obtained from her without her consent not that of PW2 who is the father of the baby. And that from Exhibit “B” and “D” before the court, it is obvious that there was conspiracy.

On count 2 and 3, learned counsel contended that at this stage, to established prima facie case is to proof that;

- a. The Defendants were in possession of the child who is not their and do not share any

relationship (b) the parents of the said child or the said child will be subjected to exploitation. And that the Prosecution has proved this ingredient.

Court was finally urged to dismiss this no case submission.

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.

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

APPEARANCE

Defendants in court.

RemigusAni – for the Defendants.

Prosecution not in court.