IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS MONDAY, THE 12TH DAY OF JULY, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CR/154/17

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA …COMPLAINANT/RESPONDENT

AND

ALIYU JIWO NDALOLO ….……DEFENDANT/APPLICANT

RULING

By an Amended information dated 22nd March, 2021 and filed on 23rd March, 2021, the defendant was arraigned on a single count of offence of culpable homicide not punishable with death contrary to Section 224 of the Penal Code. The defendant pleaded not guilty.

In proof of the case, the Prosecution called five (5) witnesses and tendered documentary Exhibits P1 – P6 in evidence and closed its case on 23rd March, 2021.

At the close of prosecution's case, counsel to the defendant elected to file a no case to answer submission and in furtherance of the election of counsel on both side of the aisle, the Court ordered for the filing of written addresses.

The written address of defendant is dated 1st April, 2021 and filed same date at the Court's Registry. In the address, one issue was raised as arising for determination to wit:

"Whether the Prosecution has made out a prima facie case against the defendant to justify the call on defendant to enter his defence."

The prosecution on the other side of the aisle and in response filed a written address dated 15th June, 2021 and filed same date at the Court's Registry. They equally raised one issue as arising for determination:

"Whether the prosecution has made out a case which will require the defendant to enter his defence."

I have carefully considered the one count charge, the evidence led by the prosecution witness and the Exhibits tendered along with the submissions of counsel to the defendant and prosecution herein to which I may refer to in the course of this Ruling, where necessary. It appears to me as succinctly captured by both parties that the issue to be resolved is whether the prosecution has made out a prima facie case against the defendant sufficient for the court to call on him to enter a defence to the charge.

The principles that guides the court in either upholding or dismissing a no case to answer submission are now fairly well settled and this have been properly set out in the addresses of the respective learned counsel. The court in exercising its statutory powers must exercise utmost circumspection in this delicate judicial exercise. The court must necessarily play its part in ridding the society of crimes and related vices, but it must also ensure at the same time that the defendants are not made to face the rigors of a criminal trial without some justification or basis.

Now the meaning of a submission that there is no case for the defendant to answer is that there is no evidence on which even if the court believes it, it could convict. The question whether or not the court does not believe the **evidence does not arise**, nor is the **credibility** of the witness is in issue at this stage. **R V. Coker & Ors 20 NLR 62.**

As rightly submitted by all the counsel in this matter, a no case to answer submission may properly be made and upheld when there has been no evidence to prove an essential element of the alleged offence(s) or when the evidence adduced by the prosecution has been so discredited under the force of cross-examination or is manifestly unreliable that no reasonable tribunal could safely convict on it. See

Ibeziako V. C.O.P (1963) 1 SCNLR 99, Ekpo V. State (2001) FWLR (pt.55) 454 and State V Emedo (2001) 12 NWLR (pt.726) 131.

All that the law requires a court to determine at this stage is whether the prosecution had made out a prima-facie case, it is not to evaluate evidence or consider the credibility of witnesses. See **Daboh V State (1977) 11 NSCC 309 at 315 and State V Emedo (supra). In Tongo V C.O.P (2007) 12 NWLR (pt.1049) 523,** the Supreme Court stated as follows:

"Therefore, when a submission of no prima facie case is made on behalf of an accused person, the trial court is not thereby called upon at that stage to express any opinion on the evidence before it. The court is only called upon to take note and to rule accordingly that there is before the court no legally admissible evidence linking the accused person with the commission of the offence with which he is charged. If the submission is based on discredited evidence, such discredit must be apparent on the face of the record. If such is not the case, then the submission is bound to fail."

For the sake of clarity, a prima facie case is not the same as proof, which comes later when the court is to make finding of guilt of the accused. It is evidence which if believed and un-contradicted, will be sufficient to prove the guilt of the accused. See **Ajidagba V I.G.P (1958) SCNLR 60 and Emedo V State (supra) at 151-152.**

May I also say at this stage that in a no case to answer submission, a defence counsel relying on the absence of evidence to prove an essential ingredient of the alleged offence stands on a surer footing than one relying on the unreliability or lack of credibility of the prosecution's witnesses. This is mainly because at the stage of no case to answer submission only one side of the case has been heard and it would be premature and prejudicial to comment on the evidence or facts of the case at that stage. See **Criminal Procedure in Nigeria, Law and Practice by Oluwatoyin Doherty (of blessed memory) at 272-273; R V. Coker (supra).**

The above clarification must be underscored especially because of the rather elaborate submissions of counsel on both sides on the testimonies of the

prosecution witnesses and here the wise counsel of the Apex Court in situations such as this readily comes to mind. The court stated as follow:

"At the stage of no case submission, trial is not yet concluded and the court should not concern itself with the credibility of witnesses or the weight to be attached to their evidence even if they are accomplices. The court should also at this stage be brief in its ruling as too much might be said which at the end of the case might fetter the court's discretion. The court should at this stage make no observation on the facts."

Per Kutigi JSC (as he then was and of blessed memory) in **Ajiboye V State (1995) 8 NWLR (pt.414) 408 at 413** relying on **Chief Odofin Bello V The State (1967) NWLR 1 at 3** where Ademola CJN stated as follows:

"Whilst it is not the aim of this court to discourage a judge from discussing matters of interest in his Judgment, we would like to warn against any ruling of inordinate length in a submission of no case to answer, as too much might be said, as was done in this case, which at the end of the case might fetter the judge's discretion… It is wiser to be brief and make no observation on the facts."

It was even suggested by Oputa JSC (of blessed memory) that a ruling on a no case submission should be couched in a simple statement upholding or rejecting the submission. See **Atano V A.G. Bendel State (1988) 2 NWLR (pt.75) 201.**

Bearing these in mind, to avoid prejudice at this interlocutory stage, I shall decline in this ruling from commenting on issues raised concerning supposed contradictions in the testimonies of the prosecution witnesses or relating to the credibility of witnesses generally as that would involve evaluation of evidence adduced.

Having set out the above guiding principles, the basic responsibility or focus of court now is to examine the evidence led by the prosecution witnesses in the light of the critical elements required to sustain the offences for which the defendants were charged and in doing so determine whether the evidence has failed to link the defendants with the commission of the offences alleged against them so as not to require them to put in a defence.

In doing so, I shall proceed to examine the evidence as adduced by the prosecution to support or establish the two (2) Counts charge as it relates to the defendants.

As stated at the beginning of this Ruling, the defendant is charged under **Section 224 of the Penal Code** for the offence of Culpable Homicide not punishable with death.

As rightly pointed out by the prosecution, the elements or ingredients of the offence under Section 224 are as follows:

1. That the death of the deceased had occurred.

2. That the death of the deceased was caused by the act of defendant.

3. That the act of the defendant resulting in the death of the deceased was unlawful, rash or negligent; and

4. That in the circumstances of the case, the act of the defendant was not such as would amount to culpable homicide punishable with death.

I have here carefully appraised the evidence on record and the Exhibits tendered vis-à-vis the elements of the one count charge as streamlined above. As stated earlier, the duty of court is circumscribed at this point and is to ascertain whether a prima facie case has been made out requiring the defendant to put in a defence.

Now the evidence of the prosecution witnesses PW1 – PW4 and the confessional statement of the defendant vide Exhibit P6, situates the death of the deceased, Maryam Ndalolo. The photograph vide Exhibit P5b and the application for release of her body for burial by her family members vide Exhibit P1 situates that the death of the deceased occurred.

Again the evidence of PW1, PW3, PW4, PW5 and no less significant the confessional statement of defendant vide Exhibit P6 where he himself alluded to "murdering" the deceased, his mother places the defendant in the mix or trajectory of the circumstances relating to the unfortunate death or demise of the deceased requiring further explanation. I am in no doubt that on the evidence led by the prosecution, the exhibits tendered vis-à-vis the elements situating the offence was

charged that the prosecution has made out a prima facie case requiring the defendant to offer some explanation with respect to the extant charge.

The questions of assertion or how the death of deceased occurred; whether by "stabbing" or "strangulation"; the evaluation of the contents of Exhibits P6 in relation to the post mortem and coroners forms would involve evaluation of evidence as it cannot be devoid of comments on facts of the case. Again the question of whether the confession Exhibit P6 is the truth direct, positive, unequivocal and satisfactory proved cannot be meaningfully inquired into at this stage as urged on by the defendant as this exercise cannot be devoid of evaluation of the evidence on record and comments on facts.

These are all issues, that God willing, I shall consider at the appropriate stage.

As much as I have sought to be persuaded, that on the evidence and materials supplied by the prosecution, that a no case submission can be availing. I observe that in the written address of counsel to the defendant, extensive analysis and evaluation of the evidence was carried out and impressively too, if I may add, but the court enjoys no such luxury and must therefore be circumspect and deliberate at this point to avoid going beyond the jurisdictional scope or ambit of what it is required to do at this stage. I cannot unfortunately see my way through how it can be argued with any conviction that legitimate questions in the context of the charge have not been raised requiring a response from the defendant. The rather subtle contention by learned counsel to the defendant in the manner he prepared his written address that the threshold of proof at this stage of a no-case submission is one beyond reasonable doubt is with respect completely misconceived and erroneous. It *ab-inito* flies in the face of all the cases we have cited including those even cited by learned counsel to the defendant on the principles governing a no-case submission.

At the risk of sounding prolix, when a no-case submission is made, what is being advanced is that no prima facie case has been made out against the Accused. The trial court is not been called to evaluate, weigh or to at that stage express any opinion on the evidence before it or to determine its cogency thereof. See **Bello V. State (1967) N.M.L.R 1; R. V. Baker (1977)65 CAR (Criminal Appeal Report)**

287; Onagoruwa V. State (1993)7 N.W.L.R (pt.303)49 at 82-83; Tongo V. C.O.P (2007)12 N.W.L.R (pt.1049)525.

I am therefore not persuaded to go into any evaluation beyond what is legally imperative as cautioned by our superior courts. The wise exhortations of the superior courts which I alluded to earlier is for a court to avoid making observations of facts of the case in its ruling. At this stage, the Accused Person or defendant it must be emphasised has not led evidence in his defence; as it obvious the case has not been concluded. The court should therefore express no opinion on aspects of the case to which the accused person has not replied or rebutted in order not to fetter its discretion. See **Emedo V. State (2002)7 SC (pt.2)162 at 204-205; Ajiboye V. State (1997)8 N.W.L.R (pt.414)408 at 413; Odofin Bello V. State (1967)1 N.W.L.R 1.**

The point to reiterate as ably canvassed by learned counsel to the prosecution is that at this point, the issue is not whether the evidence is sufficient to ground a conviction. This can only properly come about at the substantive hearing when the court has had the invaluable opportunity of hearing and testing their own version of the incident. All that is necessary is whether the evidence discloses a *prima-facie* case, even if weak requiring some explanation. *Prima-facie* and conclusive evidence were instructively defined by the *Supreme Court in* **Ikomi V. State (1986)3 N.W.L.R (pt.28)340 at 385 -386** *per the respected and noble Kawu JSC (of blessed memory) as follows:*

"That which, not being inconsistent with the falsity of the hypothesis, nevertheless raises such a degree of probability in its favour that it must prevail if believed by the jury unless rebutted or the contrary proved; conclusive evidence, on the other hand, is that which excludes or at least tends to exclude the possibility of the truth of any other hypothesis than the one attempted to be established."

In summation and for the avoidance of doubt, I hold that from the evidence so far adduced, that the Prosecution has made out a *prima-facie* case against the defendant in respect of all the counts requiring explanations from him. The no case submission is accordingly overruled. In the circumstances and in accordance

with the provision of **Section 303 of the Administration of Criminal Justice Act (ACJA) 2015,** the defendant is called upon to enter his defence.

_____

Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. ***Y.A. Cole (Mrs.) with N.O. Ezea for the Prosecution.***

2. ***Mohammed Ndayako, Esq., with I.C. Onyezubelu, Esq., for the Defendant.***