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. 14**
CASE NUMBER	**:**	**CHARGE NO: CR/30/2017**
DATE:	**:**	**THURSDAY 25TH NOVEMBER, 2021**

BETWEEN:

COMMISSIONER OF POLICE …. COMPLAINANT

AND

1. SAOOR LIAM
2. MICHAEL JOSEPH
3. BABANGIDA MADAKI

DEFENDANTS/ APPLICANTS

RULING

This is a consolidated ruling predicated upon the defence of No Case to Answer filed by 1st and 2nd Defendants' counsel, on the one hand, and 3rd Defendant's counsel on the other hand.

The 1st and 2nd Defendants herein were charged with the criminal offence of armed robbery contrary to Sections 132 and 364 of the Robbery and firearms (Special Provisions) Act, R11 Laws of the Federation 2004 (as amended).

The 1st and 2nd Defendants were arraigned on the 12th day of February, 2018 and they pleaded to the count charges.

To establish the allegation against the Defendants, the Prosecution called in one witness to give evidence in chief and thereafter closed his case.

At the close of the Prosecution case, the Defendants filed their no case submission dated the 5th day of October, 2021 and filed on same day.

In his application, learned counsel for the 1st and 2nd Defendants raised four (4) issues for determination before this Honourable Court to wit;

1. ***Whether there has been evidence to prove the essential elements of the alleged offences and 1st and 2nd Defendants have been charged with***
2. ***Whether a prima facie case have been made against the 1st and 2nd Defendants to warrant the 1st and 2nd Defendants to defend themselves.***
3. ***Whether there was correct and admissible identification of the 1st and 2nd Defendants by***

PW1 through a thorough identification parade conducted by the Police.

4. ***Whether or not this Honourable Court has the inherent power to award cost in favour of the 1st and 2nd Defendants against the Nominal Complainant.***

On issue one, ***whether there has been evidence to prove the essential elements of the alleged offences and 1st and 2nd Defendants have been charged with.***Learned counsel humbly submits that the Prosecution has not established prima facie case against the 1st and 2nd Defendants as there is no evidence upon which the Court can safely convict the 1st and 2nd Defendants; as such, the 1st and 2nd Defendants are entitled to an Order of discharge and acquittal as well as cost in their favour. The law is

well settled that where the Prosecution failed to prove an essential element of the alleged offence (that is, the actusreus and/or mensrea) or the evidence adduced by the Prosecution has been so discredited as a result of cross-examination or the evidence adduced by the Prosecution is so manifestly unreliable, the accused person shall be entitled to an Order of discharge as the court cannot safely convict in those circumstances even if the Defendants failed to offer any defence at all. It is also trite, that burden of proof is on the prosecution and the standard required, in criminal matters, is proof beyond reasonable doubt.

SECTIONS 131(1) & (2), 132 AND 135(1) OF THE EVIDENCE ACT, 2011; FRN VS. KENNY MARTIN (2012) NWLR (Pt. 1320) 287 were cited.

LADELE VS. NIGERIAN ARMY (2004) 6 NWLR (Pt. 868) 166.

Learned counsel submits that proof beyond reasonable doubt does not mean proof beyond all iota of doubt, but proof as to convince any reasonable man that no one else, except the 1st and 2nd Defendants committed the act. It means establishing the guilt of the 1st and 2nd Defendants with compelling and conclusive evidence to a degree of compulsion which is consistent with a high degree of probability.

SABI VS. STATE (2011) 14 NWLR (Pt. 1268).

On issue two, ***whether a prima facie case have been made against the 1st and 2nd Defendants to warrant the 1st and 2nd Defendants to defend themselves,*** learned counsel submits that with the failure of the

Prosecution to adduce evidence in this case, it is very clear that the Prosecution has not proved the essential elements of the alleged offences the 1st and 2nd Defendants have been charged with and, that prima facie case has not been made against the 1st and 2nd Defendants to warrant the 1st and 2nd Defendants to defend themselves. The presumption of innocence of the 1st and 2nd Defendants, as per the provisions of the Constitution of Federal Republic of Nigeria, has not been rebutted by the Prosecution.

ADEKOYA VS. STATE (2013) ALL FWLR (Pt. 662) 1632 1650.

Learned counsel further submits that if at the close of the evidence in support of the charge appears to the court that a case is not made out against the 1st and 2nd Defendants sufficiently to require him to

make a defense (i.e a prima facie case) the court shall, as to the particular charge(s), acquit him.

NWALI VS. INSPECTOR GENERAL OF POLICE (1956)1 ERMLR1.

It is also trite that where a prima facie case has not been made against a Defendants, failure of the court to discharge and acquit such as accused person or Defendants, on a no case submission, would amount to breach of his fundamental human right of presumption of Innocence under Section 36(5) of the Constitution of the Federal Republic of Nigeria (1999) (as amended).

On issue three, ***whether there was correct and admissible identification of the 1st and 2nd Defendants by PW1 thorough a through identification parade conducted by the Police,***

learned counsel submits that since PW1 did not identify 1st and 2nd Defendants to the Police immediately the offence was committed or disclose in her statement the description of any outstanding features of any of the armed robbers that robbed them nor did she participate in the arrest, but was informed by a Police Officer in Kuje Prison, through her father to come with her siblings to identify the Defendants. There was need for an identification parade especially as PW1 did not state in her evidence before this Honourable Court that she knew the 1st and 2nd Defendants until she got to the Police Station after the stolen car had been found, and 1st and 2nd Defendants arrested on identification parade.

IKEMSON VS. STATE (1989) 1 CRN 183; SUNDAY NDIDI VS. THE STATE (2007) ALL FWLR Pt.381 Page 1617 were cited.

Learned counsel further submits that Prosecution by failing to produce PW1 for cross examination to enable this Honourable Court determine how PW1 recognized and identified the 1st and 2nd Defendants as the armed robbers who robbed her and her siblings has no evidence before this Honourable Court linking up the commission of the offence and the ingredient of the offence to the 1st and 2nd Defendants.

On issue four,***whether or not this Honourable Court has the inherent power to award cost in favour of the 1st and 2nd Defendants against the Nominal Complainant.*** It is the submission of

learned counsel, that this Honourable Court has the inherent jurisdiction to make Order as to cost in favour of the 1st and 2nd Defendants against the nominal complainant. Section 353(2) of the Administration of Criminal Justice Act (ACJA) 2015 was cited.

Learned counsel submits further that on several occasions, the case before this Honourable Court has been recalled, the 1st and 2nd Defendants and counsel had always been present. Whereas, the Nominal Complainant had on several occasions been served with due notices as to the time, place and date of hearing but inspite of that, had defaulted in appearance without giving any credible reason or excuse for a matter which they on their own brought before this Honourable Court.

Learned counsel concludes, by urging this erudite noble lord, in his respected and usual wisdom, to discharge and acquit the 1st and 2nd Defendants. Learned counsel prays his lordship to award substantial cost even up to N2,000,000.00 (Two Million Naira) against the Nominal Complainant and in favour of the 1st and 2nd Defendants as encouraged under Section 353(2) of Administration of Criminal Justice Act, (ACJA), 2015. Learned counsel also prays this Honourable Court to discharge and acquit the 1st and 2nd Defendants. The above submission is in defence of truth and justice.

On their part, the 3rd Defendant's counsel filed **No Case Submission** dated the 21st of November, 2021 and filed on same day.

In his application, learned counsel for the 3rd Defendant raised a lone issue for determination before this Honourable Court to wit;

> ***Whether by the totality of evidence before this Court, the Prosecution made out a prima facie case sufficient to call upon the 3rd Defendant to put up his defence on the charges against him.***

Learned counsel begins by assessing the charges against the 3rd Defendant. It is the submission of learned counsel that the Prosecution did not produce before this court, any scintilla of evidence to tie the 3rd Defendant to the material ingredient(s) of the charges to wit: "meeting of 2 or more person..(Conspiracy)"and/or "accused person was the armed robber or one of those who took part in the robbery (Armed Robbery)". It was maintained

throughout the Prosecution witness's testimony that it was the 1st and 2nd Defendants who came and entered their house on 23rd August, 2017. Suffice to state that throughout the testimony in-chief of PW1, she never mentioned the 3rd Defendant.

Learned Counsel contends that the lead by Prosecution counsel of PW1 to "answer that the 3 people in the dock are the Defendants in this case" is an ambiguous contradict of PW1's conscientious expression and identification of 1st and 2nd Defendants' to the exclusion of the 3rd Defendant.

Learned counsel urged this Court to take judicial notice of this ambiguity which was left unclear due to no cross-examination or re-examination of the witness and to resolve same in favour of the 3rd Defendant.

Learned counsel further submits that the second and third grounds of upholding No Case Submission do not apply in the circumstance since the PW1 was not cross-examined by the 3rd Defendant. It is also inferred from every indication that the Prosecution as well as from the body language of the Nominal Complainants of refusing to come to Court after several adjournments, that the case (charges) against the 3rd Defendant has long been abandoned.

Learned counsel also submits that it is settled that where the Prosecution failed to prove an essential element of the alleged offence or the evidence adduced by the Prosecution has been so discredited as a result of cross-examination or the evidence adduced by the Prosecution is so manifestly unreliable, the Accused person shall be entitled to an Order of discharge as the Court cannot safely

convict in those circumstances even if the Defendant failed to offer any defence at all.

F.R.N VS. KENNY MARTIN (2012) NWLR (Pt. 1320) 287; IBEZIAKO VS. POLICE (1963) 1 ASSI NLR 60 were cited.

Learned counsel concludes by making reference to the case of ***STATE VS. NWACHINEKE (2008) ALL FWLR (Pt. 398) 204 at 230.***

In light of the above submissions that this Court is urged to hold that the Prosecution failed to make out a prima facie case against the 3rd Defendant in this suit, sufficient to call upon him to enter defence on the charges brought against him.

This Court is urged to discharge and acquit the 3rd Defendant on the charges accordingly.

COURT:-

I have considered the defence of No case to answer made by the learned counsel for the 1st and 2nd Defendants.

Indeed, I have assimilated the facts and evidence adduced by the Prosecution. Therefore, I will be concise in arriving at my decision whether or not the Prosecution has made out a case against the Defendants to warrant any defence or discharge at this point in time.

May I state at this point that Prosecution did not file any reply to the Defence of No case to answer filed by Evelyn Enenyi, Mrs., Esq., for the 1st and 2nd Defendants, nor that of the 3rd Defendant.

The Defendants were charged for Armed Robbery under the Armed Robbery and Firearm Act. The ingredients meant to be established are;

1. That there was Robbery
2. That the Accused participated in the Robbery, and
3. That the Accused was armed or was in company of those who were armed with offensive weapons.

See ***ISA VS. STATE (2014) LPELR – 23627 (CA).***

It is settled law that No Case to answer or No Case Submission is one of the defences opened to an Accused person standing criminal trial in Court. 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.

It is settled by a legion of judicial authorities that in determining a defence of No case to answer, a Judge shall avoid writing inordinately thereby making observation on the facts of the case which at the end of the case fetter the discretion of the Judge.

I rely on the case of ***BELLO VS. STATE (1967) NWLR.***

OJO & ANOR VS. F.R.N (2005) LPELR – 10828 (CA).

Prosecution only called one witness who gave evidence as PW1. He was temporarily discharged to return back to Court on the 6th June, 2018 for cross – examination by learned counsel for the Defendants

who was not in Court on the day PW1 gave evidence.

PW1 never returned to Court and no other witness was called.

In the absence of PW1 to be cross-examined, and cross-examination being an integral part of evidence in Court, PW1 cannot be said to have given any evidence that this Court can rely on.

The facts relating to the plight of 1st and 2nd Defendants' case is same, hook, line and sinker with that of the 3rd Defendant.

Prosecution equally never filed any response to the Defence of No Case to answer filed in the case of the 3rd Defendant.

Prosecution closed its case, paving the way for the instant defence of No Case to answer filed by 1st and 2nd Defendants' Counsel, Evelyn Enenyi, Esq. the 3rd Defendant's counsel also filed their No case to Answer.

The law is equally settled peradventure that an Accused Person is presumed innocent until the contrary is established.

See. Section 36(5) of the 1999 Constitution as amended.

A Defence of No Case to Answer would be upheld where;

1. There has been no evidence to prove an essential element to the alleged offence; or

2. The evidence adduced by the Prosecution has been so discredited as a result of cross – examination or is so unreliable that no reasonable Court or Tribunal Court safely convict on it.

See ***ONAGORUWWA VS. STATE (1993) 7 NWLR (Pt. 303) at 83.***

MOORE VS. STATE (2012) LPELR – 19663 (CA).

From the totality of what has played-out in this case; Prosecution has not just failed, it has woefully failed to place any reason before the Court cogent enough to warrant this Court calling upon the 1st, 2nd and 3rd Defendants to enter their Defence, as the evidence, so called led, is not swaying enough for the Court to call upon the Defendants who are both

presumed innocent as said, to enter any such defence over what has not been proven.

See ***IKUFORIJI VS. F.R.N (2018) LPELR – 43884 SC. (Paras 20F – 21B).***

The Defence of No Case to Answer is hereby consequently upheld.

Accordingly, 1st, 2nd and 3rdDefendants are hereby discharged and acquitted.

Justice Y. Halilu
Hon. Judge
25thNovember, 2021

<u>APPEARANCES</u>

Evelyn Enenyi, Esq. – for the 1st and 2nd Defendants.

Chukwu N. Augustine Esq. – for the 3rd Defendant.