

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/240/2018

DATE: :TUESDAY 14TH DECEMBER, 2021

BETWEEN:

INSPECTOR GENERAL OF POLICE..... COMPLAINANT

AND

1. CAPT. ABBA S. MAIGIDA

2. ALH. ALIYU MOHAMMED HADEJA

DEFENDANTS

RULING

The Defendants herein were charged with the criminal offences contrary to Sections 97, 312, 322, 317 and 177 of the Penal Code Act.

The Defendants were arraigned on the 15th day of November, 2018 on the following count charges.

COUNT 1

That you Capt. Abba S. Maigida, 'M', 41 years, Male & Alh. Aliyu Mohammed, 'M', 67 years. All of Abuja, on or at about sometime in 2008 in Abuja within the jurisdiction of this Hon. Court, did conspire with each other to commit an offence to wit: Criminal Breach of Trust and Cheating and thereby committed an offence punishable under Section 97 of the Penal Code Law of the Northern Nigeria.

COUNT 2

That you Capt. Abba S. Maigida, 'M', 41 years, Male of Abuja, on or at about sometime in 2008 in Abuja within the jurisdiction of this Hon. Court, being entrusted with land documents which includes documents of Plot CD 32, Zone A, GidanMangoro, Karshi-Abuja with File No. MISC 98856 & 85615 by one Halima Njobdi, fraudulently & internationally disposed of it, without the consent of the said Halima Njobdi and thereby committed an offence punishable under Section 312 Penal Code of the Northern Nigeria.

COUNT 3

That you Capt. Abba S. Maigida, 'M', 41 years, Male of Abuja, on or at about sometime in 2008 in Abuja within the jurisdiction of this Hon. Court,

fraudulently & dishonestly converted the proceeds of the sales of landed property known as Plot CD 32, Zone A, GidanMangoro, Karshi Abuja belonging to one Halima Njobdi& thereby committed an offence punishable under Section 322 Penal Code of the Northern Nigeria.

COUNT 4

That you Alh. Aliyu Mohammed, 'M', 67 years of Abuja, on or at about sometime in 2008 in Abuja within the jurisdiction of this Hon. Court, dishonestly received & paid for a stolen property to wit: Plot CD 32, Zone A, GidanMangoro, Karshi, Abuja belonging to one Halima Njobdi even when you have reason to believe that the documents were fraudulently obtained & used and thereby committed

an offence punishable under Section 317 of the Penal Code of the Northern Nigeria.

COUNT 5

That you Capt. Abba S. Maigida, 'M' 41 years, Male of Abuja, on or at about sometime in 2008 in Abuja within the jurisdiction of this Hon. Court, fraudulently & dishonestly sold Plot CD 32, Zone A, GidanMangoro, Karshi Abuja belonging to one Halima Njobdi using the documents entrusted to you by the said Halima Njobdi and you thereby committed an offence punishable under Section 177 Penal Code of the Northern Nigeria.

The Defendants pleaded not guilty to all the Count Charges.

Two witnesses were called by Prosecution and they both gave evidence as follows;

PW1 (Halima Njobdi) gave evidence that she was to act as Client Manager for the land allocated to her colleagues expatriates at GidanMangoro, Pegi Village and Idu.. she gave evidence on how she gave photocopies of the said land allocation papers to the 1st Defendant and how 1st Defendant requested for the original allocation papers from her and how he said one of the land was not in the system and advised that payment be made for application to which he was given N100, 000.00 (Hundred Thousand Naira).

She gave evidence on how 1st Defendant informed her that the two Plots at Pegi was going to be used as Widows Quarters and that alternative land would be given.

Concern was later raised when the vegetable land at Idu was sold by an unknown person for N130,000,000.00 (One Hundred and Thirty Million Naira). PW1 said being expatriates Plots, she was then being threatened with court by them. PW1 said 1st Defendant later informed her that he have found papers of land they have forgotten about.

PW1 also stated in her evidence how the same land 1st Defendant informed her was not in the system was later presented to her for sale when her colleague wanted to buy land to build IDP home to accommodate the North East. The 2nd Defendant was then introduced as the owner of the land, and upon presentation of the original allocation papers for signing, she then saw her address.

PW1 later reported to the Police and when 2nd Defendant was arrested, he said 1st Defendant said he bought from PW1.

Inspector Desmond Abella gave evidence as PW2 and stated how he investigated the petition written by PW1 against the 1st and 2nd Defendants. PW2 narrated how 1st Defendant received the allocation letter of land allocated to the PW1 in the name of her company and sold same without the knowledge of PW1 to 2nd Defendant.. PW2 stated how both Defendants admitted having had dealings with the allocation paper and that the allocation paper was recovered from the 2nd Defendant but returned to him on BOND.

At the close of the Prosecution case, the Defendants filed their no case submission dated the 9th day of

September, 2021 and filed on same day, wherein learned counsel argued that Prosecution has not made-out any case against the Defendants to warrant being called-upon to enter defence.

Learned counsel submits that in the course of the trial the Prosecution called two witnesses PW1 and PW2. The charge itself under Counts 2, 3, 4 & 5 mentioned that 1st Defendant stole and converted property belonging to PW1, however PW1 evidence contradicts the charge when in her evidence, she told the court that the property alleged to have been stolen or converted and indeed, the property which forms the crux of this charge belongs to her expatriate colleagues. On the other hand the only available document tendered indicates that the land belongs to a company called Marriotti Industries Limited. It is worthy of note; that neither the

expatriate owners, (according to PW1) nor Marriott Industries Limited were called as witnesses in this case.

It is the contention of counsel that the statutory basis for a submission that no case has been made out is found in sections 302 and 303 of the Administration of Criminal Justice Act, 2015 (ACJA). The evidence adduced by the Prosecution is manifestly unreliable, premised on speculation. When a no case submission is adjudged to be successful, an accused person is no longer regarded as being charged with that offence of which he was arraigned and he must therefore, be discharged on the merit.

IGABELE VS. THE STATE (2004)15 NWLR (Pt. 896) 314 CA. was cited.

Learned counsel further submits, that the evidence adduced by the Prosecution witnesses shows a fundamental irreconcilable conflict and contradictions between the evidence of the witnesses. It is trite, that where there are contradictions in the evidence of Prosecution witnesses on a material fact as seen in the instant case, such contradictions ought to be explained to the satisfaction of the court by the Prosecution. In the absence of such explanation by the Prosecution, the court cannot and should not speculate or imagine an explanation for such contradictions, and proceed to choose which of the Prosecution witnesses to believe.

PRINCEWILL VS. THE STATE (1994)6 NWLR (Pt. 353) 703 at 714 Para D – E was cited.

The evidence led by the Prosecution in the course of the trial does not support the charge. In view of the sharp discrepancy between the information contained in the charge and the testimonies of Prosecution witnesses as to person against whom the offences were committed against as described in the charge sheet, the discrepancy could not have been eventuated from clerical errors, or illiteracy of the witnesses: The obvious reason for the discrepancy is because the charge was emotionally and maliciously motivated. *BELLO VS. COP (2018)2 NWLR (Pt. 1603) 267 SC.* was cited.

Learned counsel urge the court to hold that the charge against the Defendants as far as it is related to the missing land allocation papers is not proved beyond reasonable doubt as required by law. The Defendants are entitled to benefit from the doubt

created and, be discharged and acquitted. Calling the Defendants to enter a defence in the circumstance has the implication of calling them to prove their innocence. Although the Prosecution need not call a community of witnesses to prove its case against the Defendants as the choice of witnesses to be called is entirely at the discretion of the Prosecution. However, the need to call vital witnesses arises from the onus placed on shoulder of the Prosecution to prove all the allegations against the Defendants in any given issue. In the instant case, the Expatriates Saminu, and the Land Agent were prominently mentioned in the statements and testimonies of witnesses, yet prosecutions failed to list or call any of them. The effect of failure of the Prosecution to call a vital witness was captured in *OMOTAYO VS STATE (2013) 2 NWLR (Pt. 1338) at 235*.

Learned counsel also submits that the duty to prove all the allegations as contained on the charge rests on the shoulders of the Prosecution. Where the Prosecution fails to prove all the essential ingredients of the offence as charged beyond reasonable doubt, its case would collapse. In the instant case, from the totality of the case of the Prosecution, a reasonable doubt was created on the evidence of the Prosecution witnesses regarding the owner of the victim of the allegations contained on the charge. Even worse, the failure of the Prosecution to establish in evidence a nexus between the Expatriates and Halima Njobdi or between and Marriott Industries Limited, the obvious implication is that the Prosecution has not proved the case against the Defendants beyond reasonable doubt. This failure or neglect means that a doubt was

created in the Prosecution's case. This doubt should eventuate a discharge and acquittal of the Defendants. *AWOSIKE VS. STATE (2010) 9 NWLR (Pt. 1198) 49* was cited.

Learned counsel submits, that a court of law cannot speculate or presume the existence of what is not before it. The requirement of proof beyond reasonable doubt in criminal cases loses its essence if persons accused of crime are convicted on mere suspicion or speculation.

See *AHMED VS. STATE (2001) 18 NWLR (Pt. 746) 672 SC. Page 650, Paras C – E* was cited.

In the course of this proceedings, PW2 testified and tendered exhibits which include Exhibits 'D', 'E' & 'F'. These exhibits did not form part of the proof of evidence of the Prosecution against the Defendants

that were served on the Defendants as required by law. Suffice to say that, admissibility is a matter of law. Therefore, when a piece of evidence is admissible, the evidence is relevant and can be admitted in a judicial proceeding because it does not offend any provision of the law. On the other hand, a piece of evidence which is relevant may nonetheless be rejected as inadmissible if it fails to satisfy the conditions for its admissibility under the law. Section 1(b) of Evidence Act and Section 379(1&3) of Administration of Criminal Justice Act, 2015 were cited. Thus, it would be against the intendment of the clear provision of Section 379(1&3) of ACJA for the Court to consider or admit in evidence, any document or exhibit that formed part of the proof of evidence without such proof of evidence duly served on the Defendants. It is settled law, that where

statute prescribed the mode of doing a thing, only that mode is acceptable, and any derogation from the prescribed mode renders the exercise a nullity.

OJUKWU VS. KAINED (2000) 15 NWLR (Pt. 691) 516, 523 E – F was cited.

Learned counsel concludes, that the evidence of the Prosecution witnesses and the exhibits tendered taken at its highest, established no case against the Defendants. The case of the Prosecution is manifestly unreliable, speculative and may be premised on malice. This Honourable Court is urged to discharge and acquit the Defendants.

The Prosecution on their part, filed a response to the no case submission by the Defendants.

In his response dated 14th September, 2021 and filed 15th September, 2021, the Prosecution formulated the following issue for determination to wit;

Whether the evidence led by the Prosecution has linked the Defendants to the commission of the offence.

Prosecution submits that from the evidence of PW1 to PW2, and the exhibit tendered in court including his extra judicial statement of the Defendants, the Prosecution linked the Defendants with the allegation as contained in the charge before this Court. It is in evidence that after the allocation was made, the 1st Defendant in breach of trust repose in him sold the land to the 2nd Defendant, 2nd Defendant who is aware the land in a bid to assist the 1st Defendant in concealing or disposing of the

land and after the sale, the 1st Defendant converted the money into his own personal use in breach of the trust reposed in him. ***GWADABE VS. F.R.N (2016) LPELR – 41267 (CA) and ONUOHA VS. STATE (1988) LPELR 2706 (SC)*** were cited; to lay emphasis on the elements of breach of trust.

With respect to the offence of receiving stolen property, Prosecution submits that the property is in the custody of the 2nd Defendant who is not legally entitled to the possession of the property.

BOGOBIRI VS. STATE (2013) LPELR – 20170 (CA) CRIMINAL LAW AND PROCEDURE – OFFENCE OF RECEIVING STOLEN GOODS/ PROPERTY, Section 167 of the Evidence Act, Laws of the Federation, 2011 and Section 316 Penal Code were cited.

Learned counsel further submits that the 1st Defendant has some explanations to make before the Court as to where he derived the powers in which they sold Plot CD 32 to the 2nd Defendant who is also aware that the 1st Defendant did not own the land in question, sold the land without the consent of the owner, converted the money into his own personal use. The evidence of PW1 to PW2 called by the Prosecution is very enlightening, stating specifically how the Defendants committed the offences. Witness' testimony was never discredited under cross-examination by the Defendants.

See ***ESSIEN VS. THE STATE (2017) LPELR 41912 (SC) also reported in (2017) 2 – 3 SC. (Pt. 111) 101 and OLAWOLE AJIBOYE & ANOR VS. THE STATE (Supra) P. 418 Paras D – E*** were cited.

Learned counsel also submits, that the evidence of the Prosecution was not contradicted in any way that may create doubt in the mind of the court as such, in the absence of such contradictions, the Prosecution urge the Court to rule in favour of the Prosecution and Order the Defendants to enter his defence.

ATTAH VS. STATE (2010) 10 NWLR (Pt. 1201)

Paras B – G was cited.

Learned counsel urge this Honourable Court, to hold that a prima facie case has been established against the Defendants necessitating them entering their defence. It is trite that address of counsel no matter how alluring it is, cannot take the place of evidence before the court.

SEGUN OGUNSANYA VS. THE STATE (2011)

VOL. 46 P. 1083 at 1183.

Counsel submits that the testimony of PW1 to PW2 and the entire exhibit tendered in this case including but not limited to the testimony of the defendants linked them to the offences. Counsel urged the court to hold that a prima facie case has been established against the defendants necessitating them entering their defence.

On their part, the Defendants filed reply on points of law to the Prosecution's written address in reaction to the submission made on behalf of the 1st and 2nd Defendants that the Prosecution has not made out a case warranting an answer from them.

Learned counsel submits, that the failure of the Prosecution to offer response to these issues affirms the Defendants' contention that the Prosecution has not made out a case warranting an answer from the

Defendants. The law is trite that where an opponent fails or neglects to counter any argument on issues validly raised in a Brief of Argument or address, the issue not so contested is deemed conceded by the defaulting opponent.

NWANKWO VS. YAR'ADUA (2010) ALL FWLR Pt. 534 Page 1 was cited.

Learned counsel further submits, that relevancy is not the only yardstick or test for admissibility in a judicial proceeding. A piece of evidence may be relevant to a fact in issue, yet would not be admissible if the admissibility of same offends any provision of the law.

SUBERU VS. STATE (2010) ALL FWLR (Pt. 520) 1263 was cited. The law mandates Prosecution to serve the exhibits on the Defendants alongside other

proof of evidence at the commencement of trial. The exhibits were never served on the Defendants. The express provision of the law was not complied with and renders the exhibits though relevant, but inadmissible. Section 2 Evidence Act, Section 36 of the Constitution of Nigeria 1999 (as amended) and Section 379 of ACJA were cited.

In light of the above submission, learned counsel urged the Court to discountenance the arguments canvassed and legal authorities cited and mis-applied by the Prosecution in his reply to the Defendants' no case submission and to hold that the Prosecution has made out no case against the accused persons warranting them to enter upon their defence.

COURT:-

I have considered the defence of No Case to answer made by learned counsel for the Defendants 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 brief at this point in arriving at my decision on whether or not the Prosecution has made out a case against the Defendants to warrant any defence or discharge at this point in time.

There is no doubt that no case submission is one of the defenses opened to an accused person standing criminal trial in court.

The essence of a No Case submission cannot be over emphasized...It is suggestive of the fact that

Prosecution has not made a case against Defendants to warrant any Defence.

At the stage of raising such Defence, the Court shall refrain from expressing any opinion on the evidence so led.

Thus, 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.

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

Simply 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.

Could it be said that the Prosecution has failed to link the accused with the offence charged in the present case to warrant the court to uphold this application?

A careful perusal of the testimony of PW1 and PW2 called by the Prosecution, is very enlightening, stating specifically how Defendants were linked to the land in question... It is not for the Court to say at this stage that Defendants have No Case against them.

It will be in the interest of justice to allow Defendants to give account of their relationship with the said land in issue.

I am most satisfied that dismissing the Defence of No Case to answer so Defendants would state their side of the story shall represent the justice of this case.

The said Defence is hereby dismissed... I rely on the case of *OJO & ANOR VS. F.R.N (2005) LPELR – 10828 (CA)*.

Justice Y. Halilu
Hon. Judge
14th December, 2021

APPEARANCES

A.S Uguanyi, Esq. – for the Prosecution.

Innocent Ewa, Esq. with **Friday Ewa** – for the Defendant.