

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON THURSDAY THE 24TH DAY OF FEBRUARY, 2022.

BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CR/158/2021

COMMISSIONER OF POLICE ----- COMPLAINANT

AND

YUSHAU SALISU "M" AGED 19 YEARS ----- DEFENDANT

RULING

The Defendant was charged for one (1) count charge as follows;

COUNT ONE:

That you Yushau Salisu On about the 5th day of March 2021, at Nyanya village, FCT Abuja. Within the jurisdiction of this Honourable Court, did commit an illegal act to wit; Culpable Homicide, when on same date you deliberately caused the death of one Mudasiru Danjuma 'm' (deceased) by stabbing him with a scissor on his chest. An act you know will cause him death. You thereby committed an offence punishable under section 221 of the Penal Code Laws.

Arraignment and plea were taken on the 24th of February, 2022 and Defendant pleaded not guilty to the charges against him. Trial commenced immediately with the Prosecution opening its case and calling one witness (the IPO, Kingsley Oniola) attached to the State criminal Investigation department who gave evidence in chief.

The IPO gave his testimony under examination in chief that the Defendant has been in their custody since march 2021. That they have not been able to make conclusive investigation. That they went to the scene of the crime and witnesses refused to cooperate nor give their statement to the Police in furtherance of investigation. That no member of the deceased/victim's family visited their office since last year. That investigation has been frustrated as no autopsy was conducted on the deceased. That he tried several times to call witnesses but between the

time the Defendant was arrested and when he was arraigned in court there has not been any new development. That in process of taking the Defendant's statement Defendant said the deceased was the one who brought him to Abuja. That Defendant took a substance which made him angry and stabbed the deceased with a scissors. That the Defendant is a scavenger and has no viable means of livelihood. Prosecution did not tender any evidence.

Under cross-examination the IPO stated as follows;

Q – Do you have anything to show to court that the witness made that confession.

A – His statement

Q – Was his lawyer present at the taking of the statement

A – No

Prosecution thereafter closed their case. Although Defendant did not have a lawyer, a certain C. J. DIMGBA from the office of “Legal Access Foundation” stood up in open court and represented Defendant pro bono. Counsel to the Defendant opted to address the court on no case submission, prosecution did not object. Counsel submitted that the prosecution in proof of case of homicide must show that the deceased was dead and that Defendant committed an act with intention to cause the death of the deceased. That there is no direct evidence before the court showing that Defendant caused the death of the deceased. That there is no circumstantial evidence linking the Defendant with this death and prayed the court to uphold their no case submission.

The Prosecution in response simply cited **Section 303 of the Administration of Criminal Justice Act 2015** and implore the court to weigh the testimonies of the parties and do the needful.

It is trite law that the essence of a submission of a “no case to answer” lies in the contention that the evidence of the prosecution called in the discharge of the burden of proof placed on them by law has failed to establish a prima facie case or establish the ingredients of the offence against the accused, to make it imperative for the court to call upon the accused to defend himself or answer to the charge or open his defence or

enter his defence. – see **TONGO V. C.O.P. (2007) 12 NWLR (pt 1049) P. 525**. It was further held that where a ‘no case submission’ is made, what is to be considered by the court is not whether the evidence produced by the prosecution against the accused is sufficient to justify conviction but whether the prosecution has made out a prima facie case requiring, at least, some explanation from the accused person as regard his conduct or otherwise.

The Complainant relied on **Section 303 (3) of the Administration and Criminal Justice Act 2015** which provides:-

“(3) In considering the application of the defendant under section 303, the court shall in the exercise of its discretion, 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; and
- (d) 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.
- (e) 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”.

The preponderance of judicial opinion is that however slight the evidence linking the accused with the commission of the offence charged, the case ought to proceed to trial for the Defendant to explain his side of the story. In essence, a no-case submission may properly be made and upheld in any of the following circumstances: -

- a. When there has been no evidence to prove an essential element in the alleged offence.
- b. Where the evidence adduced by the prosecution has been so discredited as a result of cross examination or

c. The evidence is so manifestly unreliable that no reasonable tribunal could safely convict on it.

See **EMEDO V. STATE (2000) FWLR (Pt. 130) 1654, EDAKA RABOR V. C.O.P. (2008) ALL FWLR (Pt. 428) 333.**

Prosecution in this case failed to link the Defendant with the commission of the crime. Prosecution failed to tender the statement of Defendant; prosecution also failed to tender statement of witness and this is made worse by the testimony of PW1 (investigation police officer) that when police investigators visited the scene of crime the witnesses refused to co-operate with the police neither did witnesses honour the invitation of the police. There is no circumstantial evidence before this court as even the scissors used in committing the crime was not tendered and there is no autopsy report wherein cause of death could be confirmed and linked to the Defendant.

In all, case of Prosecution is not only watery going by the testimony of PW1 that the investigation was frustrated as no autopsy was done, neither was any witness willing to co-operate with police nor give his statement to the police. PW1's testimony that Defendant told him while taking his statement that Defendant killed the deceased with a scissors is made unreliable as no statement was tendered to that effect nor was the scissors tendered. Consequently, a prima facie case has not been made out against the Defendant and I hereby uphold the no-case submission of the Defendant as no reasonable tribunal would safely convict on the Prosecution's case. Defendant is consequently discharged and acquitted.

Parties: Defendant is present.

Appearance: O. Udoh appearing for the Prosecution. C. J. Dimgba appearing for the Defendant

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE**

24TH FEBRUARY, 2022

