IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: **JAMILA OMEKE & ORS**

COURT NUMBER: **HIGH COURT NO. 24**

CASE NUMBER: **SUIT NO. FCT/HC/CR/1066/2020**

DATE: **27/10/2022**

BETWEEN:

COMMISSIONER OF POLICE……APPLICANT

AND

KINGSLEY MADUABUCHI NWOBODO……RESPONDENT
APPEARANCE:

Maxwell OkparaEsqfo the Defendant. Defendant in Court.

Prosecution absent.

RULING

This Ruling is sequel to a no case submission made on behalf of the Defendant by his CounselMr. Evans DuropEsq.

The address of no case to answer was filed on 13/7/2022.

The Defendant Kingsley MaduabuchiNwobodo was arraigned before this Court on 18/03/2021 on a four Count charge of Criminal Conspiracy and Armed Robbery punishable under Sections 6(b) and 1 (2) (a) and (b) of the Robbery and Firearms special provisions Act, CAPRII LFN, 2004.

The charges were read to the hearing of the Defendant and he pleaded not guilty to each of the charges framed against him by the Prosecution in this case.

In a bid to establish its case against the Defendant on the four count charge, the Prosecution herein called one witness Inspector Abubakar IsaAsokoro FCT Police Division as PW1 and tendered some Exhibits namely:-

1) Statement of the alleged Victim one Bilkisu Mustapha marked Exhibit A.
2) Statement of one Temuru Gabriel marked Exhibit B.
3) Statement of the Defendant recorded on 23/09/2020 marked Exhibit C.

At the close of the Prosecution's case which was on 30/6/2022, a no case submission was subsequently filed and adopted by the defence on 22/9/2022.

Now, although the prosecution was aware of the no case submission and duly served with the written address of no case to answer filed by Learned defence Counsel, the Prosecution did not file any response and also did not put up any appearance on the day fixed for hearing of the no case submission.

In fact, from the record, the Learned defence Counsel before applying to move his no case submission, informed the Court that the Prosecuting Counsel had informed him that he had a matter before another Court on the same day, and had no intension to file a response to the defence's address.

In the address filed by the Learned defence Counsel, it is submitted among other things that the Prosecution closed its case without furnishing the Court with any of the stolen items or evidence of any complainants that made statements in writing at the Police station.

Submitted in that regard that this is a Lacuna and a heavy doubt about the Defendant's participation in the alleged Crime. That such a doubt is always resolved in favour of a Defendant bearing in mind the Constitutional

provisions of Chapter 4 of the CFRN 1999(as amended) reliance was equally placed on Sections 131, 135 and 140 of the Evidence Act 2011.

Submits further that the Prosecution is required to establish a Prima facie case to warrant the Defendant entering into his defence. Reliance was placed on the cases of **FIDELIS UBANATU V. C. O. P (2000) FWLR (PT. 1) P 38 @ 140. TULU V. BAUCHI NATIVE AUTHORITY (1965) NMLR.343; SANGBEDO V. THE STATE (1989)4 NWLR (PT.57 at 83; AMADI V. STATE (1993) SCNJ 68; SHANDE V. STATE (2005) FWLR (PT 279) 1342.**

On when a submission of a no case to answer may properly be made and upheld, Learned Counsel cited the case of **SUBERU V. STATE (2010) ALL FWLR (PT. 520) @1264.**

Learned Counsel in the address drew the Court's attention to what he called Blunders made by the prosecution with particular reference to the statement of Bilkisu Mustapha the alleged Victim on the circumstances leading to the arrest of the defendant by some AbokiRiders on the day of the incident while postulating the question thus:-

Can the Defendant who was arrested/nabbed by the Aboki Riders who are not professional security Agents be the alleged Criminal?

Learned Counsel answered in the negative. Some reasons cited by Counsel include that it was late at night everywhere was rowdy and there was no description of the car or any person involved in the act. Moreso, Counsel argued that Bilkisu's statement states that the incident occurred on the 15th day of September, 2020 at about 8pm, but she was called for identification and statement on the 22nd day of September, 2020.

In all Learned Counsel submitted that there are contradictions in the statements of the Prosecution witness in particular, it is argued among others that PW1 contradicted the statement of Bilkisu when he said that she went after the robbers because in her statement she states that they left in a car and no description of what or who they are was given to the Aboki Riders.

Counsel submitted, that one Temeru Gabriel whose statement was tendered and admitted as Exhibit B, alleged that he was Robbed on the day in question. But that according to PW1, the said Temeru Gabriel did not identify the Defendant as one of his attackers.

Further submits that no item was recovered by the Police except the one that was later produced by the Aboki. Learned Counsel humbly prayed this Honourable Court to resolve all these issues in favour of the Defendant since the Defendant was straight in his statement when he indicated that during the hours when the alleged crime was possibly happening he was nowhere close to the scene as he was coming from church.

Therefore, Learned Counsel formulated the following issue for the Court's determination thus:-

> ***"Whether from the totality of the Evidence adduced by the Prosecution, a prima facie case has been made out against the Defendant in this case to warrant them calling evidence in their own defence."***

Arguing the sole issue, Learned Counsel submitted that the Prosecution herein has failed to establish any prima facie case on all the Counts in the charge framed by the Prosecution in this case.

Therefore, Learned Counsel argued that the Court in the instant case, cannot safely convict on the evidence led by the prosecution.

Learned Counsel relied on the cases of **ADESINA KAYODE V. STATE (2016) LPELR-40028 (SC); SHANDE V. THE STATE (Supra); SMART V. STATE (2016) LPELR-40827 (SC); AJULUCHUKWU V. STATE (2014) LPELR-23024(SC); EZE V. FRN (2017) LPELR-42097 (SC); OFORLETE V. THE STATE (2000) 12 NWLR (PT. 681) 415.**

It is further argued that no weapons or knives were recovered in this case nor were any recovered from the Defendant.

Moreso, Counsel argued that the burden is on the Prosecution to prove the offence against an accused person and it does not shift because to hold otherwise will run foul of the presumption of innocence of the accused guaranteed, under the Constitution Counsel cited the case of**MAGAJI V.**

ODOFIN (1978) 4 SC 91; AMADI V. STATE (SUPRA) in support of the argument.

The Court was also referred to Sections 1 and 6 of the Robbery and Firearms (Special Provisions) Act CAP R11 LFN 2004, vis-à-vis the evidence of the Prosecution, as well as Section 38 of the Evidence Act 2011 on hearsay evidence.

Counsel further relied on the cases of **OLADELE V. STATE (2021) LPELR-54413 (CA); AFOLABI V. STATE (2021)LPELR – 53501 of 26 TO 27.**

In conclusion, learned defence Counsel urged the Court to discharge and acquit the Defendant based on the failure to establish a prima facie case.

Now, Section 303 of the Administration of Criminal Justice Act, 2015makes provision for a no case submission after the close of the prosecution's. Case.

When on a no case submission may properly be madeand upheld, the Court held in the case of **FRN V. SARAKI (2017)LPELR-43392 (CA), PER Akomolake Wilson, JCA, (PP 35-36 paras D-E,** as follows:-

> ***".....a no case submission can be made and upheld in a Criminal proceeding in any of these situations:-***
>
> 1. ***Where there is no evidence to prove the essential elements of the offence charged.***
> 2. ***Where there is no legally admissible evidence to prove an essential ingredient of the offence.***
> 3. ***The evidence of the material witness has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal or Court can rely on it as establishing the guilt of the accused person.....″***

In this case, it is alleged by the prosecution that on 15/9/2020 at about 20: 30 hours the two complainants in this case ran to the trade mall Police Division and reported to the Police that they were robbed at gunpoint and with some other dangerous weapons.

It is further alleged that the Defendant was one of the Armed Robbers who carted away several items including cash, phones and laptops.

According to PW1, the I. P. O who investigated this case, after the Armed Robbers were chased by some Aboki Riders, the Defendant was apprehended and a DELL Laptop and Itel Phone belonging to the 2nd Complainant were found in his possession.

According to the sole witness for the Prosecution, when the 1st Complainant came to the Police Station, she identified the Defendant herein as one of those who Robbed her in her shop.

However, during Cross-Examination, PW1 stated that he investigated this case and that according to the Defendant when he gave his statement to the Police, on the day of the alleged incident, he attended a Church Programme at Lugbe area by 18:00 hours and that at the time of the alleged incident he was in the Church. PW1 admitted that the Defendant even went ahead to mention the Church and the location of the Church in his statement. And although PW1 stated under Cross-Examination that he extended his investigation by visiting the Church, he informed the Court that he didnot meet the Pastor, but met only the Security but he did not obtain his statement.

When asked about his findings on the investigation, the witness still under cross-examination, stated that according to the security there was no Church Programme on the day of the incident and that the Defendant is not their Church member and they do not know him.But refused to give his statement to the Police on what he said he does not know.

At this juncture it is noteworthy to point out that the alleged Victims i.e the two complainants did not testify in this trial.Neither was the said Church security called as a witness, nor his statement obtained by the prosecution.

It is trite law that in every Criminal case, it is the duty of the Prosecution to prove its case beyond reasonable doubt.

See Section 139(1) of the evidence Act, 2011.

At this stage of the trial, what the prosecution is required to do is to establish a prima facie case against the defendant.

On when a prima facie case will be said to have been made out againstan accused, I refer to the case of **YUSUF V. STATE (2019) LPELR-4794 (CA), the Court per OJO, JCA held at pp 9-18, para C-A,** as follows:-

> ***"The Fundamental Right of an accused person entrenched in section 36 (5) of the Constitution (as Amended) is the presumption of innocence until proven guilty.Section 139(1) of the Evidence Act 2011, confers the burden of proving the ingredients of an offence beyond reasonable doubt on the prosecution. Therefore, where a plea to "no case submission" is raised at the close of the prosecution's case, the defence is stating that the prosecution has not adduced sufficient evidence on which the Court may convict the accused person……".***

In this case, undoubtedly, the two alleged victimsi.eBilkisu Mustapha and Temuru Gabriel are the Prosecution's vital witnesses.Particularly Bilkisu Mustapha who is said to have identified the defendant as one of the Robbers who attacked her along with others with guns and other offensive weapons on the day in question.

It must be borne in mind that the prosecution has the duty of proving all the essential elements of the alleged offences.

In the instant case, precisely on 30/6/2022, the Learned prosecuting Counsel B. G. Emenike Esq, informed the Court that all efforts to persuade the nominal complainants to come and testify has proved abortive.That in order not to waste the time of the Court, he closed the Prosecution's case.

Now, while the prosecution is not duty bound to call a host of witnesses, the prosecution is duty bound to call vital witnesses to prove the charges against a Defendant see: **AYOOLA V. STATE OF LAGOS (2009) LPELR-49246 (CA); OGUNEYE V. STATE (2001) LPELR- 2245 (SC) NWAMBE V. STATE (1995) LPELR-2100 (SC).**

The CFRN 1999 (as amended) guarantees to every person accused of a Crime the right to cross-examine witnesses for the prosecution. See Section 36(6) (d) CFRN 1999 (as amended).

In this case, since the vital witnesses did not testify in this trial, the Defendant has been deprived of the Constitutional right to face his accusers and cross-examine them on their allegations.

Therefore, considering the nature and gravity of the alleged offences in this case, the requirement of proof of all the essential elements of the alleged offences in this case vis-à-vis the evidence led, it is my humble opinion that the evidence adduced by the prosecution is insufficient to prove the charges against the Defendant.Failure of which this Court cannot safely convict. I so hold.

Therefore, there is no basis to ask the Defendant to enter into his defence.

Consequently therefore, the no case submission made on behalf of the Defendant is hereby upheld. The Defendant has no case to answer and he is accordingly discharged and acquittedfor the offences alleged on the 4 Count charge framed by the prosecution in accordance with Section 309 of the Administration of Criminal Justice Act, 2015.

Signed:

Hon. Justice S. U. Bature
27/10/2022.