

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE MUHAMMAD S. IDRIS

COURT: 28

DATE: 16TH FEBRUARY, 2023

FCT/HC/CR/079/2021

BETWEEN:-

FEDERAL REPUBLIC-----

COMPLAINANT

AND

1. PAULINA OKERE

2. ANNE EMUZIE

3. GLORY CHIKAODILI OKAFOR

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}

DEFENDANTS

RULING

The prosecution called 12 witnesses tendered 5 exhibit and closed its case. The defence has brought this no case submission on the ground generally that no prima facie case has been made out against the 1st Defendant/Applicant. The submission on no case submission was dated some times in July, 2022. Where Counsel to the 1st Defendant raised a sole issue for determination to wit: "Whether from the evidence adduced so far in this case, the prosecution made out a prima facie case against the 1st Defendant to warrant being called upon to enter her defence"

Counsel in his legal argument stated that the principle of no case submission is statutorily recognized by section 302 of the Administration of Criminal Justice Act(ACJA) 2015. According to the learned Counsel he further asserted that instructively the Administration of Criminal Justice Act(ACJA) 2015 has also encapsulated what a defence making a no case submission shall

show and what the Court should look out for Counsel referred the Court to section 303 of Administration of Criminal Justice Act(ACJA) 2015. In **SHATTA VS FRN (2009) 10 NWLR (pt 1149) 403 Q 413 CA.** held that a no case submission may properly be made where all or any of the following circumstances exist.

- a. Where there has been no evidence to prove an essential element of the alleged offence.
- b. Where the evidence adduced by the prosecution has been so discredited as a result of cross examination.
- c. Where evidence adduced by the prosecution is so manifestly unreliable that no reasonable tribunal could safely convict on it. See also **IBEZIALED VS COP (1963) 1 SCNLR 99 ATAWO VS A.G BENDEL STATE (1998) 2 NWLR (pt75) 2001, SULIMAN VS STATE (2009) 15 NWLR (PT 1164) 2582 279, AITUMA VS STATE(2007) 5 NWLR (pt1028)466.ONAGORUWA VS STATE(1993) 7 NWLR (Pt303) 49 Q82-83.** It must be noted that for a no case submission to succeed only one of the above conditions need to be established see **ONAGORUWA VS STATE(supra)** Counsel also define what a prima facie literally mean ground to proceed see **AJIDAGBA VS I.G.P (1958) 3 FSC5** Counsel maintained that prima facie must however cover all the essential elements of the offence with no need for an explanation from the Defendant. where a prima facie case has been made out, the other party in a criminal trial i.e the accuse must then adduce such evidence as would displaced their

prima facie see **ONAFOWOKAN VS STATE (1987) 3 NWLR (pt 61) 538.** But where a prima facie case has not been made out, a trial Court that continues to try the case is acting without jurisdiction see **OLUKA VS STATE (NO2) 1988 NWLR (PT86) 36 (1988)7 SC (Pt 11) 25.** Counsel in his written submission on no case tackle the charges against the 1st Defendant seriatim. In relation to the section under

which they were brought. In this regards count 1,4,5 and 6 are allegations against the 1st Defendant which purportedly contravened section 21 of the NAPTIP Act, 2015.

Section 25 of the Act provides as follows:-

“Any person who buy sells lives, let or otherwise obtain the possession or disposal of any person with intent, knowing it is to be likely or having reasons to know that such a person will be subjected to exploitation commits an offence and is liable on conviction to imprisonment for a term of not less than 5 years and fine of N2, 000,000.00 it is therefore clear that the ingredient of the offence to be under section 21 are self explanatory name”

1. That the accused procured the possession or disposal of a person.
2. That the possession or disposal was with the knowledge (intent) that the person will be subjected to exploitation.

In the light of the above ingredient x- rayed what evidence did the prosecution proffer to link the Defendant with the offence charge in Counts 1,4,5 and 6 of the charge Counsel also argued that the evidence of PW5 Bitrus Solomon who was called to specifically ventilate the critical evidence in prove of count 1 Counsel submits that the evidence of this witness failed woefully to establish that the 1st Defendant sold Favour David as alleged in Count 1 or that the said Favour David was subjected to exploitation of any kind. Favour David, the alleged victim in this case even though said to have been recovered was never called to testify as to the manner of exploitation she was subjected to. In furtherance of his legal argument on no case submission Counsel referred also to count 4 and 6 which relates to allegation that the 1st Defendant sold *Sharwanl Irinza and Shekwolo Emmanuel Zakaria respectively to*

Nwala Loveth. Nwala Loveth was called as PW1. In proof of evidence Nwala loveth was listed to testify that she paid the sum of N900,000.00 in cash to the 1st Defendant in order to obtain possession of the two children. However her evidence in Court was a direct opposite of what she was called to prove i.e that the 1st Defendant sold the children to her for exploitation purpose. Under cross examination PW12 in respect of count 4 and 6 made the following exonerative testimony in favour of the 1st Defendant to wit Counsel is it true that for 2 years the children were with you, you enslaved them PW11 No I love them like my children because I was told they are orphans believing they have never been loved by anybody to the extent of giving them out to the orphanage home.

1st Defendant's Counsel:-Did you purchase these children

PW11:- No

The evidence of PW12 became barren in this regard because PW1 denied buying any child from the 1st Defendant as alleged therefore a critical ingredient to be proved under section 21 (supra) was never made out or ventilated by evidence against the 1st Defendant by either PW11 and PW12 or any prosecution witness at all. As it were none of the children the subject matter in count 4 and 6 who were said to have been recovered" testified before the Court as to what manner of exploitation if any, they were subject to. Count 5 in relation to the sister count above was not made out by the prosecution PW3 Mr. Irimiya Tinada called to ventilate the allegation of certain Destiny Dogara by the 1st Defendant to an unknown person for purpose of "exploitation"

Not a shred of evidence was introduced into evidence by PW3 or any prosecution witness to prove the vital ingredient of exploitation or its purpose of buying, selling or letting or otherwise obtaining possession or disposing of any person. The prosecution

failed to prove the ingredient of the offence under section 21 and so the 1st Defendant is to be discharge and acquitted on count 1,4,5 and 6 see **UCHENNA AFRED VS STATE (2017)LCN/1016/CA/UBANI VS STATE (2003)16 NSAR 265 OMOUGA VS STATE (2006) 14 NWLR (PT 1000)532**. Counsel urge the Court to discharge and acquit the 1st Defendant.

Submission relating to count 7-62 no criminal law of civilized legal system ever practice or premises its crimes detective on mere moral speculation or suspicious see **ABIELEE VS STATE (1975) 9-11 SC 97, AMKW VS STATE (1976) 9-10 SC 255 BABLOLA VS STATE (1989) 4 NWLR (pt115) 264**. Counsel in his argument referred the Court to section 13(2) trafficking in person Act supra provides:-“ All acts of human trafficking are prohibited in Nigeria any person who recruits, transport, transfers, harbors or receives another person by means of threat or use of force or other form of coercion, abduction, fraud, deception, abuse of power or position of vulnerability or giving receiving payment or benefits to achieve the consent of a person having control over another person for the purposes of exploitation of that person commits an offence and is liable on conviction to imprisonment for a term of not less than 2 years and a fine of not less than ₦250,000.00 from the above section to which counts 7 to 62 relates no evidence from any of the PW1 verified on oath that the 1st Defendant procured any of the victims reference to count 7- 62 by means of threat, use of force or coercion howsoever all the above ingredient of the offence cannot be a matter of special or inference or suspicion. They are matters of strict prove which in the instant case is lacking PW1 Habila Mathew was the liaison or link person between the 1st Defendant the village heads and parent or guidance of the children taken to the orphanage. Even after admitting full knowledge and list of the children taken to the orphanage numbers of those retrieved and number of those outstanding. PW1 failed to tender this list in evidence. Neither PW1 nor any of the PW's gave

direct evidence of the nature or manner of the exploitation suffered by the victims. PW2 who served as an investigator he said he has comprehensively investigated the matter that he has officially recovered children and those outstanding yet no such record was placed before the it Counsel asserted that evidence of PW4,5,6,7,8,9 and 10 in Court has no correlation with all the charge contained in count 7-62

CONSPIRACY

In consideration of the above offence Counsel argued that count 63 and 65 brought under section 27 of the Trafficking in person Act against the 1st Defendant. In count 63 1st Defendant was alleged to have conspired with the 2nd Defendant to sell Favour David while in Count 65 1st Defendant was alleged to have conspired with the 3rd Defendant to sell promise Jonathan section 27 provides any person who conspires to with another to commit an offence under this act is liable.

- a) Where the offence is committed to the punishment provided for the commission of the offence.
- b) Where the offence is not committed, to a punishment which is half the punishment of the offence in **OFORDIKE VS STATE (2019) LPELR 46411 SC** when the section defines what conspiracy is all about. Counsel went ahead to highlight the essential ingredients that the prosecution must prove to secure conviction. See **AYINDE VS STATE (2019) LPELR 47835 SC**.

The entire evidence of the PW did not link the 1st Defendant with the offence of conspiracy. Only PW12 made a desperate but failed attempt to suggest the crime of conspiracy when he suggested without proof that ₦4,000,000.00 was paid by the 3rd Defendant to the 1st Defendant based on a purported report that was not tendered in Court. The purported list of 43 children recovered from

1st, 2nd and 3rd Defendant which will have given an insight of the complicity of the Defendant in conspiring was never tendered by PW12 but secreted from the Court. None of the trafficked victim who were purportedly recovered by PW12 gave evidence as to the complicity of the 1st Defendant in concert with the 2nd and 3rd Defendant no case of conspiracy was made out against the 1st Defendant juxtaposed to the 2nd and 3rd Defendants as agreement between Defendants to commit the offence was never shown to exist. Counsel urge the Court to discharge and acquit the 1st Defendant.

A.A Ibrahim holding the brief of Mr. Yusuf Ail for the 2nd Defendant told the Court that the later had not file any written address on no case submission nevertheless same invoke the provision of section 302 of the Administration of Criminal Justice Act, (ACJA) 2015 and urge the Court to discharge and acquit the 2nd defendant. While in respect of the 3rd Defendant the said Counsel filed their no case submission which is dated 28th June, 2022 and is brought pursuant to section 303 (1) and section 357 of Administration of Criminal Justice Act, 2015 (ACJA).

In his written address Counsel raised three issues for determination thus:-

1. Whether an essential element of the offences has been established.
2. Whether there is evidence linking the 3rd Defendant with the commission of the offence which she is charged.
3. Whether any other ground on which the Court may find that a prima facie case has not been made out against the 3rd Defendant for her to be called upon to answer.

Counsel argued that from the evidence of PW1 – PW12 and exhibits tendered in this trial the prosecution has not proved an essential

element of the offence punishable under section 21 and 27 of the Trafficking in Person (Prohibition) Enforcement and Administration Act, 2015 or provides any evidence linking the 3rd Defendant with the commission of the offence or any case made out against the 3rd Defendant Counsel urged the Court to record a finding of not guilty without the Court calling on the 3rd Defendant to enter her defence and same to be discharged in line with section 357 of Administration of Criminal Justice Act, 2015 (ACJA) Counsel further argued that the standard which the Court uses to determine whether a case should be dismissed on the ground of no case submission is not one of beyond reasonable doubt, the Court when determining this has to decide whether a prima facie case has been made by the prosecution. In his written submission on this subject said the Court will hold that a no case submission be sustained in any of the following instances:-

1. Where the prosecution fails to prove the ingredients or some or one of the ingredients of the offence charged.
2. Where the evidence adduced by the prosecution has been thoroughly discredited by cross examination .
3. Where the evidence adduced by the prosecution is so manifestly unreliable that no reasonable tribunal or Court could convict on its, or
4. Any other ground upon which the Court may find that a prima facie case has not been made out against the Defendant for him or her to be called to answer see section 303 (3) of the Administration of Criminal Justice Act, 2015 (ACJA) see also the case of **SARKI VS FRN (2018) LPELR 43884(SC) 20 F- 213.**

Counsel further submits that going by section 21 Trafficking in Person (Prohibition) Enforcement and Administration Act, 2015 the key element to be considered for an act to consider trafficking in person are:-

1. Movement of a person i.e either by recruitment transportation transfer harboring or receipt
2. Means either by (threats, force, abduction fraud, coercion, deception, abuse of power or position of vulnerability, sales etc.
3. Purpose/motive i.e either to sexual exploitation, force labour or service, slavery, servitude or removal of organs.

According to the Counsel to the 3rd Defendant none of the 12 witnesses called and the exhibits 1-5 established any evidence that these is in existence, a person with the name of Stephen Tester male 6 years old and or provided any evidence that linked the 3rd Defendant with the movement of a person (Stephen Tester) by the means of buying of any such male child Stephen Tester from the 1st Defendant with the purpose of exploitation howsoever, the existence of a human being a person bought or sold is an essential element of the offence under the law section 21 in question. No evidence at the close of the prosecution case to support this count 2 of the charge against the 3rd Defendant. So also exhibit 1-5 are not evidence of the existence of any Stephen Tester, or of any human trafficking transaction between 1st Defendant and 3rd Defendant for the buying or selling as the case may be of Stephen Tester for exploitation of any kind or any person. No case is made out against the 3rd Defendant on count 2 of the charge sufficiently to require her to make a defence and to discharge her as provided under section 302 Administration of Criminal Justice Act, 2015 (ACJA)

Count 64 of the charge is to the effect that the 3rd Defendant conspired with the 1st Defendant to buy Favour David for the purpose of exploitation which is an offence punishable under section 27 of the Administration of Criminal Justice Act, 2015 (ACJA)

CONSPIRACY

PW5 did not give any evidence to support the charge that the 3rd Defendant conspired with the 1st Defendant to buy Favour David or that Favour David was

recovered from the 3rd Defendant. The evidence of Bitrus Solomon PW5 has not proved the essential element of the offence of conspiracy there is no evidence before the Court linking the 3rd Defendant with the 1st Defendant or any agreement between the 3rd Defendant as to the 1st Defendant to buy and or sell Favour David or any human being as charged under section 27 of the Act. PW12 claimed he has a comprehensive list of 43 children recovered from the 1st, 2nd and 3rd Defendant's yet he did not produce the list before the Court. PW12 said 10 children were recovered from the 3rd Defendant no evidence of the children were produced or any of the 10 children called before the Court as recline of the trafficking and no reason was given by the prosecution for not providing any evidence of the 10 alleged victims while PW12 under cross examination admitted that there is nowhere in exhibit 1 where the 1st Defendant stated that she gave 17 children to the 3rd Defendant. Further PW12 said he ran a financial investigation which revealed that the 3rd Defendant paid the sum of N4,000,000.00 to the 1st Defendant although the purpose of the payment was not stated by him and PW12 did not produce any financial report before the Court and no reason was given for not producing the financial report. The prosecution has withheld evidence in respect of the named victims, the 43 alleged recovered children, 10 children recovered and the financial investigation report which has not been produced; these evidence would have been against the case of the prosecution see section 167 of the Evidence Act. See **SUNDAY VS STATE (2010) ALLFWLR (PT 548) at page 874** held

"Where an eye witness ought to be called by the prosecution was not called, there is a presumption of withholding evidence against the prosecution as such evidence will be unfavorable to them"

IRIRI VS STATE (2018) LPELR 45043.

In the entire evidence the failure on the part of the prosecution to do the needful by calling essential witness and the evidence adduced by PW5 made the case of the prosecution to have failed woefully see **STATE VS AZEEZ (2008)14 NWLR (pt 11080)439,**

OLAWATOYIN VS STATE 92018) LPELR 44441 CA. see also section 63 (a)(b) of the Trafficking in Person (Prohibition) Enforcement and Administration Act, 2015, particularly section 63 (b). The above section gave detail account on how to get details information of the trafficking. Counsel urge the Court based on count 2 and 64 brought against the 3rd Defendant on charge that there is no sufficient evidence to justify the continual of the trial and same urge the Court to record the finding of any guilty in respect of the 3rd Defendant. The prosecutions' response to the 1st and 3rd Defendants no case submission dated 8th November, 2022. In proving its case against the Defendants the prosecution called a total of number 12 witnesses and tendered documents to support its case against the Defendants. The evidence adduced by the prosecution wherein in his response succeed in reproducing the evidence of those witness which clearly demonstrated the involvement of each Defendant's according to him, the prosecution raised a sole issue for determination to wit:-

“Whether the prosecution has made out a prima facie case against the Defendants to require them to put up a defence”

According to the prosecution Counsel the requirements of credible evidence to proof a commission of a crime is by evidence proved beyond reasonable doubt see **ETIM AKPAN VS STATE (2016) 1-2 SC (Pt 111) 93 Q 103 paragraph 25-35**. Counsel further cited section 27 of the Trafficking in Person (Prohibition) Enforcement and Administration Act, 2015. The prosecution has through direct evidence of witness and circumstances leading to recovery of children in their custody, proved that the 1st, 2nd and 3rd Defendants has a case to answer.

It must be pointed out that the standard whether the case has been proved beyond reasonable doubt could only be determined at the

ending of the case and not by a no case submission. No case submission relates to both question of facts and not law alone. It is the facts that will determines whether the principle of law will be apply or not see **TANYO VS STATE (2000)2 NWLR (pt 645) CA at 492**. The term No Case was considered to mean “on the face of it and to conclude that something has been produced to make it worthwhile to continue with the proceedings what is all required according to the Prosecution Counsel is whether at least some explanation from the Defendant as regards her conduct or otherwise in relation to the charge see **SONG TANGO & ANOR VS COP (2007) LPELR 3257 SC**. In his response the prosecution asserted that the evidence before the Court link through direct testimonies of witness and circumstantial evidence, the Defendants to have obtained possession of children from the parents and some of the children were recovered from them while some are yet to be recovered. Confronted with this kind of situation the Court is to consider the evidence placed before it by the prosecution see **MOH VS STATE(2007)7 NWLR (PT1032) Q162 paragraphs F-H**. This piece of evidence was not challenged by the Defendants Counsel. From the above Counsel submits that the 1st, 2nd and 3rd Defendant’s have some explanations to make before the Court in the witness box, hence the need to call on them to **enter their defence and be cross examined accordingly see SUNDAY CHINYERE AGBO & ORS VS STATE (2013)LPELR (20388)SC**. Counsel fully urge the Court to invite the Defendant for some explanations in defence as regards the charge preferred against them. I have reproduced substantially the position of the witnesses on no case submission filed by Counsel to the 1st and 3rd Defendant and the response made by the prosecution Counsel in this case. The issue raised by the Defendant's Counsel were all regarded by the Court in this ruling. Although I have not dwelt much on this issues raised nonetheless the analysis made by Counsel to the 1st and 3rd Defendant are well considered in this ruling. The 1st Defendant

Counsel argued that there was no any evidence linking the 1st Defendant with the alleged offence as contained on the charge sheet and also the exhibits does not show the involvement on the 1st Defendant that evidence was wholly discredited during cross examination by the same Counsel made some reference to some of the PW evidence in his written submission and therefore he urge the Court to discharge the 1st Defendant having not satisfied the essential element of the offence alleged to have been committed by the 1st Defendant while A.A Ibrahim holding the brief of Yusuf Ali same refer the Court to section 303 (2) of the Administration of Criminal Justice Act, 2015 (ACJA) and urge the Court to discharge the 2nd Defendant while in respect of the 3rd Defendant Counsel to the 3rd Defendant in his written address on no case submission by making reference to some of the instance adduced by the prosecution witness maintained that the prosecution failed to establish the element of offence charge against the 3rd Defendant and that the evidence of PW was discredited during cross examination in that there is no any legally admissible evidence linking the 3rd Defendant with the offence brought against same particularly count 2 and count 64 on the charge. He maintained that there is no sufficient evidence that would warrant the 3rd Defendant to enter her defence and that is the duty of the prosecution is to proof the case beyond reasonable doubt. While in his response the prosecution raised a sole issue for determination to wit whether the prosecution has made out a prima facie case against the Defendants to require them to put up a defence. Prosecution Counsel went ahead and cited some judicial authorities same insisted that what is required by the Defendant is to make some explanation to the Court and that they have by direct or credible evidence provides evidence to the Court that would warrant the Defendant made same explanation to the Court. The argument of the 3rd Defendant as per his written submission on no

case is not the position of the law that is to say issues of sufficiency of evidence or the prosecution has failed to prove its case beyond reasonable doubt. The position here is whether the prosecution has established a *prima facie* against the Defendant. The issue of insufficiency of evidence is immaterial. In **DABOH & ANOR VS STATE (1977) 5 SC 197**. The Supreme Court held that how slightly the evidence linking the accused person with the offence charged might be the case ought to be allowed to go to trial it held further that where the submission is based on discredited evidence such discredited evidence must be apparent on the face of the record if such is not the case then the submission is bound to fail. Also in **ODOFIN BELLO VS STATE (1967) NLCR 1** the SC admonished that to avoid fettering his discretion the trial Judge should refrain from writing a lengthy ruling so that he does not veer off with discussing facts in his ruling as to do so would amount to denial of fair hearing. The Supreme Court held further that the question whether or not the Court believed the evidence led does not arise at this stage of the proceedings and credibility of the witness does not also arise at that stage. In his contribution Oputa JSC opined that the ruling on a no case submission should be limited to a one sentence thus;

“ I over rule the submission and will give my reasons in my judgment” In **AMAH VS FRN (2020) (pt1031) ALL FWLR page 456 particularly at page 467 paragraph 8**. The purpose of a no case submission is that in law there is no evidence on which even if believed the court could convict the question whether or not the evidence is believed is immaterial and does not arise. Furthermore the credibility of the witness is not in issue it is also important to note that at this stage of a no case submission the Court is not required to express opinion on the evidence before it the reason is at that stage the trial has not been concluded See **IBEZEAHO VS COP (1963) ALL NCR 61 TANGO VS COP (2007) ALL FWLR (PT376)636 FAGROLIA VS FRN (2013) ALL FWL (PT1383)322 ADEYEMI VS STATE(2013) ALL FWLR**

(PT708)89 ALTUMA VS STATE(2006) ALL FWLR (PT318)67 UFOR KALU VS FRN & ZORTA (2020) ALL FWLR PART 1043 page 459 at 466 page 6.

From the record it can be visibly seen that what the defense did in their written address on no case submission was to elaborate on the evidence adduced by the prosecution witness and to also relied on some judicial authorities and statutory position of the law. I considered all the position above and equally on the part of the prosecution, he equally response to the same by citing judicial authorities. It is my view from the authorities cited above by the Counsel for and against, it is imperative to note that at this stage what is important is that does the prosecution establish a prime facie case against the Defendant? In my opinion the answer is in the affirmative. Prima facie simply means ground to proceeds. The Defendant in my opinion need to make further explanation to the Court in short the Defendant is now expected to make some explanation. Also the Court is not expected to evaluate the evidence adduced before it and not to make any observation. In the circumstances of the case. I can safely conclude that no case submission filed by the defense is accordingly over rule. Reason can be seeing from the judicial authorities cited above by the Court.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance

1st Defendant in Court

2nd Defendant in Court

3rd Defendant in Court

C.P Ogochukwu:- For the Prosecution

Elizabeth Adodo :- Holding the brief of Sir O.J Onyemah for the 1st

Defendant

S.T Modamori :- Holding brief for G.N company.