

**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: 16<sup>TH</sup> January, 2023**

**FCT/HC/GWD/CR/03/2021**

**BETWEEN:-**

**INSPECTOR GENERAL OF POLICE-----**

**COMPLAINANT**

**AND**

**DARLINGTON CHILE OWHOJI -----**

**DEFENDANT**

**RULING**

The Defendant addressed on no case submission was dated the 21<sup>st</sup> November,2022. The prosecution prepared a 4 count charge against the Defendant. Same are contained in the charge filed on 2<sup>nd</sup> February,2021. The prosecution called three witnesses, tendered documents in evidence and the Defendant during cross examination of the prosecution witnesses tendered documents. At the close of the prosecution case, the Defendant contends that the prosecution has not made out a case for him (Defendant)to enter any defense hence this address. The law is trite that where the evidence at the close of the prosecution case in a criminal trial is strongly weak that the prosecution has not made out any case from the evidence and facts adduced before the Court, the Defendant shall be discharge and acquitted see ***SUBARU VS***

**STATE (2010) CPCR. 3120SC** also the CA on the same position of the law in **AGATA VS OGUNYOUN (2020) LPELR 52399** reiterated its position on the same issue. From the above case the prosecution must as a matter of law prove:-

- (a) All the essential elements of the offence charged.
- (b) Proffer evidence that must not be so discredited during cross examination and
- (c) Proffer evidence that must not be manifestly unreliable that a reasonable tribunal or Court could not safely convict on it.

### **COUNT ONE**

The essential ingredients of count one of the charge are thus set out that the Defendant fraudulently obtained the original copies of the documents to land in the false pretence that he is acting on the authority and directives of the said Chief Ambrose Nwagu” count one is rested on the two criminal allegation viz:-

- (a) Fraudulent obtaining the original copies of title documents to land and
- (b) False pretence that the defendant was acting on the authority and direction of PW1 on this see **NWABA VS IGP**

**(2019) LPELR 4704CA. IKAPA VS STATE (2017) LPELR 4259SC** and **ABATAN OLUWASHEHEM VS FRN (2016) LPELR 40768**. The prosecution evidence must show that:-

- (a) The Defendant knowingly obtained the property by way of false misrepresentation.
- (b) The Defendant induced PW1 to part with his property.
- (c) The Defendant deliberately or in any form legally acceptable misrepresented facts to the PW1 with intention to defraud him.

Counts 2,3 and 4. The offences as contained in counts 2,3 & 4 are brought under the PC (Northern Nigeria State) Federal Provision Act Cap P3 LFN 2004. The said section are not provided therein. However by sec. 32 of the Act Cap I to VI of the Penal Code of the Northern Nigeria, they are made to apply to the Act. Any reference therefore shall not be made to the PC Cap 105. The ward **‘entrusted’** is the common factor connecting counts 2,3&4 it is the breach of which the prosecution alleges in his case. Entrusted therefore falls within the offence of breach of trust and of which ingredients the prosecution must establish before the

Court see ***ADENEJI VS FRN (2021) LPELR 52818 KURE VS COP (2020) ALL FWLR (PR1056) PG 615 Paragraph A-B.***

The evidential burden the prosecution is saddled with at the stage of the trial is to ensure that the evidence adduced before the trial Court are cogent stream lined, uncontradicted in material terms and are not hereby discredited under cross examination **see *NOBO VS STATE (2012) ALL FWLR (PT 621) PG 1564, UWAGBO VS STATE (2007) ALL FWLR (PT.350) page 1323 FAGRORIALA VSFRN (2013) LPSCR 20896 see page 32-33 page 3.***

*Issues for determination in the light of the offence of forgery the Court is therefore invited to determine thus:-*

*"Whether the prosecution had made out a prima facie case to warrant this Court calling the Defendant to enter a defense."*

The prosecution called PW1, 2&3 documents were tendered the PW1 were also cross examined by the Defendant's Counsel. The prosecution witness failure becomes manifest as to whether the

Defendant was a Counsel in the defence of PW2. In exhibits 1,2,7 8 & 8 (i) tendered by the Defendant the prosecution witnesses were so discredited in the narrative by exhibits 1,2,7,8 and 8(i). That this Court can never believe their narrative which they lend to imply that the Defendant was merely "invited" into in exhibit 1. All the stories by the 3 PW were all discredited by exhibits 1,2,7,8 and 8(i) see also section 148 of the Evidence Act and also section 122(2) (i) (m) of the Evidence Act. The purport of this laborious testimony only demonstrated the prosecution intention to disconnect the Defendant from any legal relationship with PW1 and to prove criminal intention on the Defendants part in obtaining the so called "title documents to land" The PW were never ad idem.

In the testimonies. The prosecutions lack of evidential directives became manifest while trying to lay evidence in proof of count 1 of the charge see ***IKPA VS STATE (2012) LPSLR 4259(SC)***. The testimonies of PW1 and three are clear as to how the Defendant obtained exhibit 12 mentioned in exhibits 4. He was

authorized through a telephone call by PW1 to retrieve the title document” deposited by PW1 for the bail of PW2 from the Federal High Court. That instruction validly gave rise to exhibit 4. A duty carried out in pursuance to a valid authorization cannot amount to a criminal act of false pretence or any fraud by any legal standard there is no evidence before the Court capable of establishing the fact that the Defendant made any request or representation that is adjudged fraudulent to PW1 or other reason as can be seen enumerated by the Defendants Counsel. The totality of the prosecution’s evidence as seen in exhibits 4,6 & 12 only demonstrated legal service was rendered by the Defendant to PW1 that was not paid. Exhibits 4 is an official documents and the Court must presume the correctness of the endorsement made thereon as being in substantial compliance as stated in ***GAMBO VS STATE (2011) ALL FWLR (PT 602) page1609***. So also the evidence of PW3 is unreasonable for the prosecution to established an offence of fraudulently obtaining and false pretence, the prosecution must by way of evidence show the Defendant had the necessary intention to bring the offence to

bear and further actualise that intention see **AFOLABI VS STATE (2018) ALL FWLR (PT.955) PG 452 R 6 SC.**

**ONWUDIVE VS FRW (2006) ALL FWLR (PT 319) page 774&812 Paragraph C&D.** Defines what false pretence is. Exhibit 6 prima facie proof that physical contact was made between PW1 and the Defendant see **UMAIN BALA VS ONWUKWE (2017) CPECR 43279 ESSIEN VS ETUKANDO (Supra).**

The totality of the prosecution evidence therefore is so highly discredited that this Court cannot rely on any piece of it and invariably count I of this charge falls by all legal standard.

Counts 2,3&4. The foundation of these counts rests on the offence of breach of trust, for there to be a trust alleged to have been beached therefore such trust must have been validly created in the 1<sup>st</sup> instance. See **KURE VS COP (2020)ALL FWLR (PT1058) page 598 & 618 paragraph E-F.** this is a fiduciary relationship regarding property and charging the person with title to the property with equitable duties to deal with it for another benefits see also **KWARA STATE POLY MULTI PURPOSE**

**COOPERATIVE SOCIETY VS ABDULLAHI & ANODO (2021)**

**LPECR 56356** there is no shared of evidence before the Court to the effect that any form of trust was created by PW1 that was capable of being *breached*. See **ONUOLA VS STATE(1988) LPECR 2706SC page 32-33 paragraph B**. Where the ingredients of breach of trust were listed by the Supreme Court. From the cases cited above the prosecution is saddled with the task of proving every and all the essential ingredients of the offences as charged before a Defendant would be required to enter a defence see **FRCN VS ISEGHOMI (2020) ALL FWLR (PT1034) PAGE 960 & 911 Paragraph D-G ADEBAYO VS STATE (1999) LPECR 172 SC, IBEJIAKO VS COP (1958)3 FSCS** failure on the part of the prosecution to proof the ingredient goes to the benefit of the Defendant and same be acquitted **BELLO VS STATE (2020) LPECR 50287 CA PAGE 49-50 paragraph F**. The Supreme Court stated aptly in **KURE VS COP** (supra) for a trust to be valid it must involve a specific property from the elaboration as can be seen above this Court in this circumstances is left with no option but to invoke the



provision of see 302, 303 (3) (9) (c) and d. and section 357 Administration of Criminal Justice Act (ACJA) 2015 and enter and a no case submission in favour of the Defendant in this case. In his response the prosecution filed same on the 7<sup>th</sup> December,2022 same rise a sole issue for determination to wit:-

Whether the evidence led by the prosecution has linked the Defendant with the commission of the offence.

The prosecution Counsel maintained this from the evidence of PW1 to PW3 the prosecution had linked the Defendant with the allegation contained on the charge see **AJULUCHIKUW VS STATE (2014) 13 NWCR (PT1425) P641**. The Defendant has some explanation to make as to where he derived the power to sell the land, who authorized him to sell the land and whether the right of lien validly exercised by the Defendant can be done without Court order. See **NYAME VS FRN (2010)4SCN at page 65 Holder 4** see also **LGABELE VS STATE (2004) 15NWLR (PT 896) PG 314**. From the evidence adduced before the Court legally admissable had link the Defendant with the said offences

in view of the trust reposed on him, which he breached the evidence of PW3 PW1 & 2 was so graphic that need far explaining of same by the Defendant. In **TANGO VS COP (2007) 12 NWLR (PT1049) page 525 & 539** the Court held at this stage the act is not coordinating the issue of sufficiency of evidence for conviction but rather the prosecution has made out a prima facie case requiring at least some explanation from the account. In **ATTAH VS STATE (2010) 10NWCR (2010) paragraphs B-G.**

*"The Court held but the point must be made clear it is not every tripling inconsistency in the evidence of the PW that is fatal to the case. It is only when such contradiction inconsistencies or conflict are substantial critical and fundamental to the main issue in question which therefore necessarily creates doubts in the mind of the trial judge an accused may be entitled to the benefit therefore. See also section 223 of the Administration of Criminal Justice Act (ACJA) 2015*

*“where a Defendant is charge with one offence and it appears in evidence that he committed a similar offence which he might be have charged under the provision of this Act he may be convicted of the offence which he is show to have committed even though he was not charged with it”*

The above position is supported by the Supreme Court in ***BABALOLA VS STATE (1989) 4NWLR (PT115) P. 264***. In conclusion the testimonies of PW1-3 and the entire exhibits tendered in this case required same explanation to be made by the defendant see ***EZEL VS STATE (2022) LPELR 57671CA***. ***SEE ALSO ABRU VS STATE (2011) 17 NWLR (PT1275)***. In his reply on point of law the Defendant’s Counsel referred also to the case of ***AJULUKWUHU VS STATE (2014) LPELR 23024*** and also the case of ***KURE VS STATE*** (supra) the prosecution failed to establish all the ingredient of the offence contained on the charge thereof. The Defendant cannot be call to make any explanation. Defendant’s Counsel prayed that the Court should

grant their application on a no case submission. Having reproduced the position of both sides above substantially the issue raised by the defence Counsel in this written address for the determination, and the subsequent response filed by the prosecution and the reply on point of law filed by the defence are all considered in this ruling. 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 J should reframe 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 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 over ruling 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 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 writing 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.

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**HON. JUSTICE M.S IDRIS**  
**(Presiding Judge)**

APPEARANCE

Defendant:- In Court

Addulrashid Ishaku Sid1:- For the prosecution.

Adetoun A. Aberere:- For the Defendant