

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE

13TH DAY OF JULY, 2023

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

CHARGE NO. FCT/HC/CR/328/2016

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA PROSECUTION

AND

1. JUSTIN ITEMOAGBO
2. DAYO USMAN ALIYU
3. OJEIFO ROBERT SYLVANUS
4. DYANG JACOB

} DEFENDANTS

RULING

The Prosecution filed an Information against the Defendants on the 21/10/2016. It is of 14 Counts dated 20th of September 2016.

The Information was subsequently amended on 17/06/2022 with a 32-Count Charge bordering on conspiracy and theft contrary to Section 96, Section 286 and Section 17 (a) of the EFCC Act.

The Defendants pleaded Not Guilty to all the Counts. The Prosecution called 14 witnesses in proof of its case. At the end of the Prosecution's case, the 4th Defendant made a No-Case Submission.

Learned Counsel to the 4th Defendant adopted his Written Address in support of his No-Case Submission dated 13/03/2023 but filed on the 14th of March 2023.

He posited an issue for determination, which is: *Whether the Prosecution has made out a case against the 4th Defendant.*

Learned Counsel argues that the Prosecution failed to prove the essential ingredients of the offence of conspiracy against the 4th Defendant.

That PW13's evidence is not corroborated. That PW13's evidence has no evidential value. That PW14's evidence is hearsay. That the evidence is not admissible.

He contends that for the Prosecution to succeed in proving his case, he must prove all the essential elements of the offence for which the Defendants have been charged, which is theft in this instance.

That there is no evidence to show that the 4th Defendant moved any of the monies referred to in the various Counts of the Information.

That the evidence of PW2 did not cast any aspersion or lay any accusation on the 4th Defendant with respect to the offence of theft hence the 4th Defendant should not be called upon to enter his defence.

That none of Exhibits E - O which are basically Account Statements link the 4th Defendant directly or remotely.

He contends that the implication of PW13 saying on Cross-Examination that he could not remember giving a piece of evidence is a retraction in itself.

That throughout proceedings, the 4th Defendant's account was not tendered. That the allegation that money was paid to the 4th Defendant by the 1st Defendant was not substantiated.

That Prosecution failed to establish a *prima facie* case of theft against the 4th Defendant. That the Prosecution failed to link Exhibits D, D1 - D4 to the 4th Defendant.

That there is no evidence in the entirety of the case of the Prosecution that has established a *prima facie* case of theft against the 4th Defendant.

He finally urges the Court to uphold the 4th Defendant's No-Case Submission.

The Prosecution also adopted its Written Address in opposition to the No-Case Submission.

Learned Counsel to the Prosecution canvasses that the evidence discloses a *prima facie* case. That a *prima facie*

case is not proof beyond reasonable doubt as canvassed by the 4th Defendant. That the evidence of PW1, PW2, PW13 and PW14 were not challenged or contradicted.

That the Prosecution has adduced sufficient evidence and also established a *prima facie* case linking the 4th Defendant with the said offence to warrant him to be called upon to enter his defence.

That 4th Defendant admitted that 1st Defendant brought the names of the retired and dead staff to him which he asked him to retain in the Nominal Roll of the Ministry of Works, and that salaries be paid to the ghost workers, which shall be shared amongst members.

The Prosecution made reference to all the evidence of the Prosecution witnesses and exhibits and submits that the Prosecution has established a *prima facie* case as regards Counts 2 to 23 to enable this Court call on the 4th Defendant to enter his defence.

That the evidence adduced linked the 4th Defendant. That the evidence of 13th and 14th Prosecution witnesses are not hearsay but were extracted directly from the Defendants in the course of investigation. That there is enough evidence linking him to the offence for which he is standing trial. That there is nexus between the criminal conduct of the 4th Defendant and the offence for which he is charged.

That Exhibits D, D1 - D4 contained the names of retired and dead staff of Federal Ministry of Works which ought to have been removed from the Nominal Roll. The names were retained in the Nominal Roll based on agreement between 1st and 4th Defendants for the purpose of continuous payment of salaries to those names.

That the Prosecution has established a *prima facie* case in Counts 2 - 23 to enable the Court call on the 4th Defendant to enter his defence. The evidence of the Prosecution was not discredited during Cross-Examination. The 4th Defendant is amongst others mentioned in Counts No. 1 - 23.

The offences range from:

- (a) Conspiracy to commit an illegal act.
- (b) Theft of ₦1,089,277.50k in the name of Dunta Pius.
- (c) ₦1,871,460.58k in the name of Dunka Pius.
- (d) Theft of ₦946,356.65k in the name of Mama Odoja.
- (e) ₦1,643,445.44k in the name of Mama Odoja.
- (f) Theft of ₦942,056 out of the possession of the Federal Government in the name of Omotunde Aderuogba Aremu.
- (g) Theft of ₦492,199.60k in the name of Engineer Daddy.
- (h) Theft of ₦1,226,542.26k in the name of Pius Dunta.
- (i) ₦1,608,773 in the name of Pius Dunta.
- (j) Theft of ₦922,638.44k in the name of **Wey** Vincent Olajide.
- (k) Theft of ₦378,625,000 in the name of **Wey** Vincent Olajide.
- (l) Theft of ₦2,030,929.06k in the name of Mama Odoja.
- (m) Theft of ₦489,020.49k out of the FGN in the name of Obinna Chinedum John.
- (n) Theft of ₦782,155.29k in the name of John Obinna.

- (o) Theft of ₦928,160.39k in the name of Bisi Roso Akande.
- (p) Theft of ₦778,446.06k in the name of Iroso Aminu Bisi.
- (q) Theft of ₦1,185,800.67k in the name of Iroso Aminu Bisi.
- (r) Theft of ₦1,276,029.16k in the name of Sadiq Lawal Mohammed.
- (s) Theft of ₦849,423.37k from the FGN in the name of Jimmy Nse Essien.
- (t) Theft of ₦833,432.37k out of the possession of FGN in the name of Ini Akpan Effiong.
- (u) Theft of ₦1,071,177.71k out of the possession of the FGN in the name of Igunnu Jonathan.
- (v) Theft of ₦619,482.22k out of the possession of the FGN in the name of Igunnu Jonathan.
- (w) Theft of ₦619,482.22k in the name of Igunnu Jonathan.

In a criminal trial such as this, a submission of no *prima facie* case to answer made on behalf of a Defendant and in this instance, the 4th Defendant postulates one or two things:

- (1) That there has been no legally admissible evidence of which the submission has been made linking him in any way with the commission of the offence with which he had been charged which would necessitate his being called upon for his defence.

- (2) That whatever evidence there was, which ought to have linked the 4th Defendant with the offence has been so discredited that no reasonable Court can be called upon to act on it as establishing criminal guilt of the 4th Defendant.

At his stage, the Court is only called upon to take note and rule accordingly. The Court cannot express any opinion on the evidence. The burden of proof on the Prosecution is not proof beyond reasonable doubt, but whether a *prima facie* case has been made out against the 4th Defendant warranting him to enter his defence.

It is now trite that the essential elements in the offence of conspiracy are:

- (1) An agreement to do or cause to do an illegal act in this case, theft.
- (2) That some acts beside the agreement were done by one or more of the Defendants in furtherance of the agreement.
- (3) That each person individually participated in the conspiracy.

Under Section 286 of the Penal Code, i.e. theft, the ingredients of the offence are:

- (1) The property in question is movable.
- (2) That the property was in possession of a person.
- (3) That the property was moved while in possession of the person.
- (4) That it was done without the consent of the person.
- (5) That it is with the intention of permanently depriving that person of the said property.

I have perused the evidence of the Prosecution vide the 1st - 14th witnesses. I have also noted the exhibits. I have noted the evidence of the PW13 and PW14 wherein they said the Defendants both agreed that 40% will go to the

2nd Defendant, 60% to be shared between 1st and 4th Defendant.

I also note the evidence that 1st Defendant paid money into 4th Defendant's account and that 1st and 4th Defendants work in the same Ministry.

I have also noted the evidence that the names of dead and or retired employees whose accounts were changed and used were not removed from the Nominal Roll by the 4th Defendant. That the 1st and 2nd Defendants used the said names to commit the theft.

In my view, a *prima facie* case is made out against the 4th Defendant sufficiently to require him to make an explanation as to his role in the case.

In the circumstance, the No-Case Submission fails and it is dismissed.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
13/07/2023

Defendants present.

T. N. Ndifon, Esq. for the Prosecution.

J. D. Musa, Esq. for the 1st and 3rd Defendants.

C. M. Chikwe, Esq. for the 2nd Defendant.

S. T. Momoh, Esq. for the 4th Defendant.

COURT: Ruling delivered.

(Signed)
HON. JUDGE
13/07/2023