IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS WEDNESDAY, THE 17TH DAY OF NOVEMBER, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CR/325/19

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ……………..…COMPLAINANT

AND

FRANCIS NDIDI ONUEGBU ……………..…………….DEFENDANT

RULING

By an information dated 7th May, 2019 and filed on 8th May, 2019, the defendant was arraigned on three (3) Counts charge bordering on attempt to obtain property by false pretence contrary to **Section 8 (b) of the Advance Fee Fraud Act**; forgery and using as genuine a forged document contrary to **Sections 363 and 366 of the Penal Code Law**. The defendant pleaded not guilty.

In proof of its case, the Prosecution called three (3) witnesses and tendered documentary **Exhibits P1 – P7** in evidence and closed its case on 3rd March, 2021.

At the close of prosecution's case, counsel to the defendant elected to file a no case to answer submission and in furtherance of the election of counsel on both side of the aisle, the Court ordered for the filing of written addresses.

The written address of defendant is dated 16th March, 2021 and filed same date at the Court's Registry. In the address, two issues were raised as arising for determination to wit:

"1. Whether the prosecution has made out a prima facie case against the defendant that requires the defendant to enter in his defence.

2. Whether the Court can uphold a no case submission in favour of the defendant."

The prosecution on the other side of the aisle and in response filed a written address dated 25th March, 2021 and filed same date at the Court's Registry. They raised only one issue as arising for determination:

"Whether from the overwhelming oral and documentary evidence presented by the Prosecution, the Prosecution has been able to establish a prima facie case of attempt to obtain property by false pretence and forgery against the Defendant to warrant this Honourable Court to call upon the Defendant to enter his defence?"

I have carefully considered the three counts charge, the evidence led by the prosecution witnesses and the Exhibits tendered along with the submissions of counsel to the defendant and prosecution herein to which I may refer to in the course of this Ruling, where necessary. It appears to me that the issue to be resolved is whether the prosecution has made out a prima facie case against the defendant sufficient for the court to call on him to enter a defence to the charge.

The principles that guides the court in either upholding or dismissing a no case to answer submission are now fairly well settled and this have been properly set out in the addresses of the respective learned counsel. The court in exercising its statutory powers must exercise utmost circumspection in this delicate judicial exercise. The court must necessarily play its part in ridding the society of crimes and related vices, but it must also ensure at the same time that the defendant is not made to face the rigors of a criminal trial without some justification or basis.

Now the meaning of a submission that there is no case for the defendant to answer is that there is no evidence on which even if the court believes it, it could convict. The question whether or not the court does not believe the **evidence does not arise**, nor is the **credibility** of the witness in issue at this stage. **R V. Coker & Ors 20 NLR 62.**

As rightly submitted by all the counsel in this matter, a no case to answer submission may properly be made and upheld when there has been no evidence

to prove an essential element of the alleged offence(s) or when the evidence adduced by the prosecution has been so discredited under the force of cross-examination or is manifestly unreliable that no reasonable tribunal could safely convict on it. See **Ibeziako V. C.O.P (1963) 1 SCNLR 99, Ekpo V. State (2001) FWLR (pt.55) 454 and State V Emedo (2001) 12 NWLR (pt.726) 131.**

All that the law requires a court to determine at this stage is whether the prosecution had made out a prima-facie case; it is not to evaluate evidence or consider the credibility of witnesses. See **Daboh V State (1977) 11 NSCC 309 at 315 and State V Emedo (supra). In Tongo V C.O.P (2007) 12 NWLR (pt.1049) 523,** the Supreme Court stated as follows:

"Therefore, when a submission of no prima facie case is made on behalf of an accused person, the trial court is not thereby called upon at that stage to express any opinion on the evidence before it. The court is only called upon to take note and to rule accordingly that there is before the court no legally admissible evidence linking the accused person with the commission of the offence with which he is charged. If the submission is based on discredited evidence, such discredit must be apparent on the face of the record. If such is not the case, then the submission is bound to fail."

For the sake of clarity, a prima facie case is not the same as proof, which comes later when the court is to make finding of guilt of the accused. It is evidence which if believed and un-contradicted, will be sufficient to prove the guilt of the accused. See **Ajidagba V I.G.P (1958) SCNLR 60 and Emedo V State (supra) at 151-152.**

May I also say at this stage that in a no case to answer submission, a defence counsel relying on the absence of evidence to prove an essential ingredient of the alleged offence stands on a surer footing than one relying on the unreliability or lack of credibility of the prosecution's witnesses. This is mainly because at the stage of no case to answer submission only one side of the case has been heard and it would be premature and prejudicial to comment on the evidence or facts of the case at that stage. See **Criminal Procedure in Nigeria, Law and Practice by Oluwatoyin Doherty (of blessed memory) at 272-273; R V. Coker (supra).**

The above clarification must be underscored especially because of the rather elaborate submissions of counsel on both sides on the testimonies of the prosecution witnesses and here the wise counsel of the Apex Court in situations such as this readily comes to mind. The court stated as follow:

"At the stage of no case submission, trial is not yet concluded and the court should not concern itself with the credibility of witnesses or the weight to be attached to their evidence even if they are accomplices. The court should also at this stage be brief in its ruling as too much might be said which at the end of the case might fetter the court's discretion. The court should at this stage make no observation on the facts."

Per Kutigi JSC (as he then was and of blessed memory) in **Ajiboye V State (1995) 8 NWLR (pt.414) 408 at 413** relying on **Chief Odofin Bello V The State (1967) NWLR 1 at 3** where Ademola CJN stated as follows:

"Whilst it is not the aim of this court to discourage a judge from discussing matters of interest in his Judgment, we would like to warn against any ruling of inordinate length in a submission of no case to answer, as too much might be said, as was done in this case, which at the end of the case might fetter the judge's discretion… It is wiser to be brief and make no observation on the facts."

It was even suggested by Oputa JSC (of blessed memory) that a ruling on a no case submission should be couched in a simple statement upholding or rejecting the submission. See **Atano V A.G. Bendel State (1988) 2 NWLR (pt.75) 201.**

Bearing these in mind, to avoid prejudice at this interlocutory stage, I shall decline in this ruling from commenting on issues raised concerning supposed contradictions in the testimonies of the prosecution witnesses or relating to the credibility of witnesses generally as that would involve evaluation of evidence adduced.

Having set out the above guiding principles, the basic responsibility or focus of court now is to examine the evidence led by the prosecution witnesses in the light of the critical elements required to sustain the offences for which the defendant is charged and in doing so determine whether the evidence has failed to link the defendants with the commission of the offences alleged against him so as not to require him to put in a defence.

In doing so, I shall proceed to examine the evidence as adduced by the prosecution to support or establish the three (3) Counts charge as it relates to the defendant.

Now under **Count 1**, the defendant is charged with obtaining property by false pretence contrary to **Section 8(b) of the Advance Fee Fraud and Related Act 2006** and punishable under **Section 1 (3)** of the same Act.

Section 8(b) provides that **"A person who attempts to commit or is an accessory to an act or offence;… commits the offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act"**

This section does not say anything in significant terms with respect to obtaining property by false pretence. Indeed, the marginal note to this count talks about "conspiracy, aiding" e.t.c.

The particulars of **count 1** however states that sometimes in 2003, the defendant with intent to defraud attempted to obtain the property known as **plot 390** Cadastral Zone 319 Katampe Extension under false pretence from the Department of Land Administration and Resettlement MFCT.

If the **Count 1** clearly relates to obtaining property by false pretence, then it is an offence more properly covered and or captured by the provision of **Section 1 (1)** and **(2)** of the Act which streamlines the elements or ingredients of the offence in the following terms:

"1. (1) Notwithstanding anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud –

(a) Obtains, from any other person, in Nigeria or in any other country, for himself or any other person, or

(b) Induces any other person, in Nigeria or in any other country, to deliver to any person, any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence, commits an offence under this Act.

(2) A person who by false pretence, and with the intent to defraud, induces any other person, in Nigeria or in any other country, to confer a benefit on him or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for commits an office under this act."

Since it would appear that no issue was made of the provision on which the offence was anchored particularly by the defendant which meant or indicated that the defendant was not confused by the Count, I shall keep my peace. **False pretence** is however defined under **Section 20 of the Act** to mean a **representation, whether deliberate or reckless, made by word, in writing or by conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true.**

Now on the Count 1, I have carefully related the ingredients of obtaining property by false pretence to the evidence of the three prosecution witnesses on the record.

The case of the prosecution from the witnesses and the Exhibits vide **Exhibit P6 a and b** are very clear with respect to the disputed plot 390. The evidence of PW2 and PW3 in particular situates that the purported allocation to one **Oluwatosin Olowu** was forged and was never issued by the Federal Capital Territory Administration.

Now this **Oluwatosin Olowu** was never brought to court. The land file belonging to the said Oluwatosin Olowu with the Department of Land Administration was tendered as Exhibit P3. This file among others shows the land application form filed by Oluwatosin Olowu containing his/her particulars; his/her income tax clearance certificate, the offer of grant/conveyance of approval and the acceptance on his/her behalf by one Mr. Akinwale O; Statutory Right of Occupancy bill by FCTA and demand for ground rent by FCTA among other documents. No where does the name of the defendant feature in the entire land file. On the evidence, the defendant never dealt with the FCTA or Amina Bala Zakari, PW1 at anytime in respect of the said Plot 390. They equally never dealt or engaged in any transaction with him over the said plot. Again the documents tendered by FCTA vide **Exhibit P6(a)** which is essentially the contents of the file vide **Exhibit P3** all do not bear the name of defendant or allude to his name in relation to any dealings with the FCTA over

any land or plot 390. There is therefore on the evidence nothing to situate any representation, whether deliberate or reckless made either by word, conduct or writing of a matter of fact or law which representation is false and which the person making it knows to be false within the purview of **Section 20** of the Act.

At the risk of sounding prolix, if the defendant never dealt with Amina Bala Zakari, PW1 and on the evidence she does not even know him and also he never dealt with FCTA, then it is difficult to situate intent to defraud or any attempt to obtain plot 390 under false pretence. In the entire trajectory of the narrative of the prosecution witnesses with respect to this count, the name of defendant hardly features. His statement vide Exhibit P7 may have been tendered by PW3 but according to PW3, it was his written response when he was invited to the EFCC office for his reaction to the petition of PW1. Nothing was made of this statement by any of the prosecution witnesses. As much as I have sought to be persuaded, I am not persuaded that there is any shred of evidence that established critical elements of the offence requiring a response from Defendant. My finding with respect to Count 1 is simply that the prosecution has failed to establish a prima facie against defendant with respect to count 1 and he is accordingly discharged.

Now on **Counts 2 and 3**, the defendant was charged with forgery contrary to **Section 363** and using as genuine a forged document contrary to **Section 366** both of the Penal Code and punishable under **Section 364**.

Forgery and forged document are defined under **Section 363 of the Penal Code** as follows:

"Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that may be committed, commits forgery; and a false document made wholly or in part by forgery is called a forged document."

The import of using as genuine a forged document is defined under **Section 366** as follows:

"Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forge document, shall be punished in the same manner as if he had forged such document."

For purposes of **Section 360**, it appears apt to situate the definition of dishonesty under Section 16 of the Penal Code thus:

"A person is said to do a thing "dishonesty" who does that thing with the intention of causing a wrongful gain to himself or another or of causing loss to any other person."

Under **Count 2** and relating the elements of forgery to the evidence led by the prosecution, the trajectory of the narrative of the prosecution witnesses and the case they have sought to make is that the title documents of Oluwatosin Olowu vide **Exhibits P3** and **P6a** is a product of forgery but there is absolutely nothing in evidence of all **three prosecution witnesses** situating that the defendant forged any document and or participated in the forgery of any document related to plot 390 or that he procured any person to forge the document to be used for his benefit and to the detriment of another person who is induced by the forgery to act on the forged document as genuine.

Again at the risk of prolixity, none of the prosecuting witnesses mentioned the name of the defendant in the entire narrative relating to the disputed plot 390. On the evidence, the defendant never directly had any hand in the procurement of the land documents vide **Exhibits P2**, **P3** and **P6a** which all bear the name of **Oluwatosin Olowu**. PW2 in evidence stated clearly he does not know the defendant and whether he is Oluwatosin Olowu. He stated that the investigation carried out by the defendant ministerial committee on forgery and falsification of land title documents in the FCT was in relation to subject title of Oluwatosin Olowu. Indeed by the evidence of PW2 he stated unequivocally that "the forged file of **Oluwatosin Olowu** purportedly opened in 2001 was signed for by the **Akinwale O**." There is nothing in evidence before court situating who is this **Akinwale O**. and if he has any link with defendant.

Indeed from the evidence of **PW2** who was part of the Ministerial Committee on forgery and falsification of land titled documents in Abuja, there is no **finding** and this is critical that the defendant forged or had any hand in the forgery of the title documents bearing **Oluwatosin Olowu**. He did not equally state or say in evidence that the defendant forged or played any role in the forgery of the land application he tendered vide Exhibit P2. Indeed when asked

whether there was anything in evidence showing that defendant participated in any forgery of documents, PW2 candidly and admirably answered thus:

"I won't know; that is why we are here."

PW3, the I.P.O. in her evidence equally stated candidly that it is not there place to identify forged documents and that is why they wrote to the Department of Lands FCTA which responded vide **Exhibit P6a** that the land documents bearing **Oluwatosin Olowu** were forged. She equally candidly asserted that there is nothing before them showing that defendant forged any document.

As stated earlier, the statement of defendant may have been tendered but nobody spoke to the document and nobody made anything of it in evidence. Out of abundance of caution, I read the contents of Exhibit P7. In the statement **Exhibit P7**, the defendant stated that after he bought the land for consideration from one Oluwatosin Olowu; he got statutory approvals and started erecting a structure and when the Development Control wanted to demolish same, he filed a **Civil action** in **Court**. PW1 herself admitted that she was served with the **Court papers** and has filed a defence and that the civil case is pending. This civil case will perhaps determine as between PW1 (nominal complainant) and defendant who has a better title. I leave it at that. With respect to count 2, the conclusion I must necessarily come to again is that from the evidence, on record, the prosecution has not made out any case by any means against defendant requiring him to enter a defence. Accordingly I hereby discharge him of **Count 2**.

Finally on **Count 3** and flowing from my consideration of Count 2, I have examined the evidence on record, and again it is difficult to situate on the evidence where defendant fraudulently or dishonestly used any document as genuine which he knows or has reason to believe to be forged.

At the risk of prolixity, the defendant on the evidence never used the title documents (which from Exhibit P7 he said he purchased from one Oluwatosin Olowu) as genuine and knowing them to be forged for any transaction either with the nominal complainant (PW1) or anybody. Indeed when the structure he built on the plot was to be demolished by the Department of Development Control, he quickly and promptly submitted the dispute to a Court of competent jurisdiction. As earlier stated, the norminal complainant, PW1 is a defendant in the said case which is pending. It is interesting that on the evidence PW2 for

the prosecution stated that the defendant would not know that the Right of Occupancy subject of Plot 390 was **forged** if he was not told or informed.

It is therefore really difficult under the circumstances to situate the intention of defendant to cause a wrongful gain to himself or another or causing loss to any other person particularly in the context of the submission of the issue of title to the High Court to determine the lawful owner of the disputed plot. The submission of this dispute over ownership to a court of competent jurisdiction in my view strikes a fatal blow at the bonafide of this charge in addition to the evidence which I have analysed which do not disclose any prima facie offence against the defendant.

It is again apparent from the evidence adduced by the prosecution on record that there is no link between Count 3 of the charge and defendant to warrant him to offer any explanation in defence. I hold that the defendant has no case to answer with respect to this Count. He is accordingly discharged. Mere allegations no matter how weighty does not translate to presenting facts and evidence that will at least raise a prima facie case even if weak, to necessitate a response from the defendant.

Before I conclude, it appears to me imperative to call on learned prosecuting counsel to show more circumspection in filing charges of this nature, if the evidence on record is all they have. Filing of criminal charges in court which involves the liberty of individual(s) is a delicate exercise that must be carried out with a huge sence of responsibility dictated solely by the quality of the facts and or evidence and the ultimate cause of truth and justice.

A charge must therefore not be filed for the simple sake of doing so or to soothe the ego of any person no matter how influential. A prosecuting counsel must in the exercise of his or her duties bear this principle in mind. He or she must be firm and courageous and not allow or give room for unhealthy influences that betrays the cause of justice. A futile trial predicated on frivolous charges does a lot of incalculable damage to the criminal justice system in terms of time and resources spent which could have been better utilised in more productive courses.

The case presented here by the prosecution appears to seek to turn upside down the cherished constitutional presumption of innocence in favour of the defendant by tending to suppose that it is for the defendant to prove his innocence rather than for the prosecution to present at this stage a prima facie

case requiring the defendant to put up a response. The key witnesses for the prosecution themselves stated that they have nothing situating the defendant to the three (3) Counts charge. The totality of the case put up by the prosecution unfortunately is not worth the time and resources wasted in going through these proceedings for nearly three years.

On the whole, the prosecution has failed to prove the essential elements of the offences for which the defendant was charged and accordingly the no case submission has considerable merit and must be sustained.

To allow these proceedings to continue, having regard to the totality of the evidence laid bare on the record by the prosecution, is to inflict undue hardship and injustice on the defendant. He ought not have stood this trial in the first place, if the evidence on record was all the prosecution had to offer. I am minded to further say that if the circumstances have been appropriate, considering the weight or lack of weight of the evidence alluded, this court would not have hesitated in awarding heavy costs and damages in his favour. Nevertheless, I believe he will be assuaged by a discharge which amounts to an acquittal.

The legal consequence of a successful submission of no case to answer is that such a discharge is equivalent to an acquittal and a dismissal of the charge on the merits. See **Ibeziako V. State (1989) 1 CLRN 123; Nwali V. IGP (1956) 1 ERMLR; Mohammed V. The State 29 NSCQR 634 at 640.**

In the final analysis, and for the avoidance of doubts, my firm decision, on the basis of the provision of **Section 302 of ACJA 2015** is that the evidence adduced by the prosecution on record is not sufficient to justify the continuation of this trial. In other words, the prosecution has failed to make out a prima facie case against the defendant, in that they have failed to tender required minimum evidence to establish the essential elements of all the Counts of the offences that he has been charged with respectively. For this reason I hereby preclude him from entering upon his defence and accordingly, I hereby discharge the defendant of the entirety of the charge preferred against him.

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Hon. Justice A.I Kutigi

Appearances:

1. **Yetunde Alabi (Mrs.) for the Prosecution.**

2. **Eucharia Nwankpa for the Defendant.**