IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT JABI –ABUJA

HIS LORDSHIP: HON.JUSTICE M.S. IDRIS

COURT NUMBER: 28

DATE:25TH MAY,2023

FCT/HC/CR/09/2021

BETWEEN:

COMMISSIONER OF POLICE---------- COMPLAINANT

AND

1. ALLAHANAN GAMBO
2. GIDEON ADAGA
3. GODWIN JUDE **DEFENDANTS**
4. FRIDAY ADAMU
5. GAMBO DANJUMA

JUDGMENT

That on19th January, 2012 at about 22:00am, one Queen Okorie, was accosted on the road by all the Defendants after the nominal complainant finished from shop and was on her way home. The prosecution then alleged that it was the Defendants that attacked Queen Okorie, stole the proceeds of business sale and her itel phone,

(b) That one witness, PWI by the name Sgt. James Audu-the officer from the SARS office who stated that he did not arrest the

Defendants from the scene of crime. But the matter was referred to them by the Kwall Divisional Police Station who also got the Defendants from the Vigilantes InKwall Area Council.

In proof of the Prosecution's case, the sole witness of the Prosecution was Sgt. James Audu, who testified on the 27" of October, 2021 and the confessional Statement of the Defendants and the extra judicial statement of the victim were sought to be tendered along with a bond, in which the Defendants objected to the admissibility of the Defendants' Confessional Statements on the ground that they were not made voluntarily. However, the prosecution, rather than proceed to trial within trial in order to ascertain the voluntariness of the Defendants Confessional Statement, the Prosecution failed to do the same since then. The Prosecution then on the 24th of February, 2023 informed the court that they will close their case if he is unable to procure the witnesses to the Court on the next adjourned date. The next adjourned date was on the 14th of March, 2023 and the Prosecution could not still prove the voluntariness of the Defendant's confessional statement by way of trial within trial. Having close the Prosecution's case, the Defendants choseto make a no-case submission on the ground that the Prosecution has failed to make out a prima facie case against the Defendants.

ISSUE FOR DETERMINATION

The Defendants have raised a sole issue for determination and same is as follows:-

Whether based on the evidence adduced by the Prosecution, the Prosecution has made out a prima facie case against the accused persons to require them to make a defence to the charge?

ARGUMENT

Before saying whether or not a prima facie case has been made out against the Defendants to require them to enter defence, it is appropriate to define the term prima facie case.

The legal concept, "*Prima Facie Case"* can be defined as a case in which there is evidence which will suffice to support the allegation made in it, and which will stand unless there is evidence to rebut the allegation. See Osborn's Concise Law Dictionary, Eighth Edition, at page 259. This definition has received judicial acclamation in a plethora of judicial authorities, in the case of ***AJIDAGBA VS. IGP (1958) S.C.N.L.R. 60*** (*a locus classicus*) the Learned Justices of the Apex Court had this to say.

> *"That decision to discharge an accused on the ground that a prima facie case has not been made out against him must be a decision upon a calm view of the whole evidence offered by the Prosecution a rational understanding will suggest the conscientious hesitation of a mind that is not influenced by party preoccupied by prejudice on (sic) subdued by fear".*

This judicial poise was re-echoed in the case of ***IGWE VS. STATE (2022) 1 NWLR (PT. 1810) 111 (PP. 154, PARAS. 8-D)*** in which it was stated inter alia thus:-

"*A prima facie case means that there is ground for proceeding with the case. But a prima facie case is not the same as proof. which comes later when the court has to find whether the accused person is guilty or not guilty. Evidence discloses a prima facie case when it is such that if uncontradicted and if believed it will be sufficient to prove the CASE against the accused person*"

The Defendants were brought before this Honourable Court to stand trial for the offences of conspiracy under Section 97 and armed robbery under Section 298(a) of the Penal Code Law. The law is trite, that

the burden of proof in criminal cases is on the Prosecution which must prove its case beyond reasonable doubt. The burden does not shift. As a matter of fact, the Defendants need not to do or say anything, and where the Prosecution fails to prove its case beyond reasonable doubt, the Defendants must be discharged. On this proposition of the law, Counsel rely on the case of ***EGWUMI V. STATE (2013) 13 NWLR (PT. 1372) 525 (P. 562, PARAS. F-G)***where the Court held as follows:-

"The General principle of law which is settled and well founded in our judicial system is, the Prosecution, in a criminal matter has the onus always to prove the accused guilty beyond reasonable doubt before his conviction can be sustained. This burden as a General rule does not shift. The reason behind this proposition is very well founded in our constitutional provision of presumption of innocence of the accused until proved otherwise"

It is further important to state that before the prosecution can establish a prima facie case against the Defendants, the Prosecution will have to show that the ingredients of the offences are proved or as in this case, there are evidence to substantiate the ingredients of the offence. In the case of conspiracy, the Prosecution must show that there are two (2) or more persons who came together to commit a crime. On this, Counsel rely on the case *of* ***PETER V. STATE (2018)13 NWLR (PT. 1635) 1 (P. 15, PARAS. E-F)***

> *"The essential ingredients of the offence of conspiracy lies in the bare agreement and association to do or commit an unlawful act, or do or commit a lawful act by unlawful/illegal means"*

See also the case of ***JIBRIN V. STATE (2022) 4 NWLR (PT. 1820) 269 (P. 327. PARAS. D-F)***

> *"To successfully prove the offence of CONSPIRACY, the INGREDIENTS which the prosecution must prove are as follows: (a) the agreement: (b) the unlawful act: (c) knowledge of the unlawful object; and (d) knowledge of other parties"*

So also, in a charge of robbery, the prosecution must prove that: (a) There was robbery or series of robberies. (b) robbery. That the accused was one of those who took part in the robbery (c) that the Defendants conscientiously understands that they were going for an act of robbery, All these conditions can only be established by credible evidence. The Supreme Court in the case

of ***EMEKA V. CHUBA IKPEAZU (2017) 15 NWLR (PT. 1589) 345 (P. 379, PARAS. E-F)*** has defined credible evidence as follows:-

> "*credible evidence is evidence which must be worthy of belief and credible in itself in the sense that it should be natural. reasonable and probable in view of the entire circumstances. [**AGBI V. OGBEH (2006) 11 NWLR (P1 990) 65 referred to.]"***

In the same vein, the evidence of the prosecution must be subjected to cross-examination. Where that is not done the Court can not attach any value to the evidence. As in, same amounts to no evidence. On this Counsel heavily rely on the case of ***STATE V. IBRAHIM (2019) 9 NWLR (PT. 1676) 137 (P. 159, PARAS. A-B)*** where the Court held as follows:

> *"Court cannot act on the evidence of a witness who was not cross examined by the defence. This is because an accused's right of fair hearing is sacrosanct and to ensure that the right is protected, he must be given an opportunity to cross examine a witness, whose evidence is sought to be relied upon."*
> [***ISIAKA V. STATE (2011) ALL FWER (P1. 583) 1966***referred to.]

See also the case of ***ESEU V. THE PEOPLE OF LAGOS STATE (2014)2 NWLR (PT. 1390) 190 (P. 138. PARAS. D-F***) the court held as follows:-

> "*The reliance of court on the evidence of a witness whom the accused has no opportunity to cross-examine is in*

*breach of his constitutional right. The legal effect of the breach of the said Constitutional right is that the entire proceeding before the trial Court were all a nullity, no matter how well conducted. [**OKAFOR V. A.-G., ANAMBRA STATE (1991) 6 NWLR (PT 2001 652 ADIGUN V A-G.. OYO STATE (NO. 11(1987) 1 NWLR (PT. 531 678 OBODO V. OLOMU (1987) 3 NWLR (PT 591 111 R**eferred to.]"*

In the instant case Counsel to the PW1 commenced testimony, and at the point of objecting to the confessional statement, the PW1 failed to come to court to prove that the alleged confessional statements were voluntarily made. So also, even the evidence of the nominal complainant that was admitted by cannot also be relied upon against the Defendants because the extra judicial statement is not credible as same has not gone through the rigour of cross examination. As a matter of fact. This cannot give weight to the statement as the evidence of the Nominal Complainant in support of her extra judicial statement will give the statement credibility. The effect of the Complainant not called to testify is to the effect that she exists only in the imagination of the Prosecution as the complaint cannot be substantiated. See the case of ***AMACHREE V. NIGERIAN ARMY (2003)3 NWLR (PT. 807) 256*** where His Lordship Per CHUKWUMA-ENEH. J.C.A. at page 277, paras. F-G state thus:

"There can be no gainsaying that based on the facts of this matter Mr. Jude looked every inch a crucial witness for the prosecution but he was not called to testify. In my view his

evidence is so critical to the prosecution's case particularly as the appellant opposed vehemently exhibit A2" -the accused's confessional statement on grounds of duress. There is therefore strong basis for contending that Mr. Jude existed in the imagination of the prosecution as it were moreso as no statement was obtained from him in the first place."

Although Counsel admit that an Investigating Police Officer can testify as regards the conduct of his investigations and the discoveries arrived at during the investigation. However, the Investigating Police Officer cannot give evidence as the act of the robbery because he was not there. Any attempt to give evidence on same will amount to hearsay evidence which is inadmissible in the court of law. On this, Counsel refer the Court to the case of ***EKPO V. STATE (2001)7 NWLR (PT. 712)292 (P 304, PARAS. D-E)***

*"Evidence of an investigating police officer called to testify as to the admission by another witness who is not called to give evidence is no more than hearsay evidence and is distinguishable from the evidence of a police witness about what he saw and observed which is not hearsay**. [UGWUNMBA V. STATE (1993) 5 NWLR (Pt. 296) 660 referred to.] (P 304, paras. D-E)** Per EDOZEE, J.C.A. at page 304, paras. C-E: "It must be noted here that although P. W 2 stated that Mr. Brownson admitted that at the instance of the Appellant, the P.W.I gave him a total of N140,000 from the Local Government funds, for reasons best known to the prosecution, Mr. Brownson was not called to give evidence. I amaware that on 6th November,1995 that court ordered that a witness summons be issued to Mr. Brownson to*

Testify for the prosecution and the case was adjourned to 27th November,1995. On this latter date, that is 27th November,1995 the record shows that the witness summons was not served. The case was further adjourned to 13th December,1995 on which date the prosecution closed its case as Mr. Brownson did not show up. The consequence is that the evidence of PW.2 as to the admission by Mr. Brownson is no more than hearsay evidence. That piece of evidence is distinguished from the evidence of a police witness about what he had seen and observed which is not hearsay vide the case of ***UGWUMBA V. STATE (1993) 6 SCNJ (PL) 217 AT 224. 225: (1993) 5 NWLR IP1.2961 660*** *at 668."*

So therefore, it is the Counsel respectful submission that as it stands now, there is no credible evidence before the court that the Prosecution in this case can rely on to establish a case against the Defendants as presently constituted. Counsel further wish to add that in the event that Court may still want to consider the statement of the nominal complainant (Queen Okorie). You will see that from lines 5 to 10 of the confessional statement of the Nominal Complainant (Queen Okorie) that she does not know the Defendants. Having not known, sight or see the Defendants during the Robbery is fatal to the case of the Prosecution.

> "*About 22:00hrs when I was going to my house, when someone I don't know now hit me with a stick on my hand and the bag! was holding now fell down and the person now pick the bag and ran away. unknowingly to me that the boys are many which I don't know them...*"

It is further clear that the Nominal Complainant does not know the Defendants, and there is nothing before this court to show thatthe Defendants currently standing trial are the ones that attacked the Nominal Complainant. Furthermore, there was no any identification parade done to ascertain the presence of the Defendants at the scene of crime. Soit is the Counsel respectful submission that there is no credible evidence before this court to establish a prima facie case to allow the Defendants to enter a Defence in this matter. The Prosecution has woefully failed to adduced credible and compelling evidence to prove the ingredients of the offences to establish a ground for proceeding against the Defendant

I have substantially reproduced the evidence adduced before the Court and the exhibit tendered in the cause of trial. Am strongly of the view without any iota of hesitation agree with the learned defence Counsel totality. I would convincingly incorporate in this judgement that largely most of the delay was caused by the prosecution Counsel. The Defendants was arraigned before this Court since the year 2021. The prosecution called witness(s)who refused to come back for cross examination purposes. I must categorically state in this judgment that having taken into consideration there is nothing before the Court to warrant even calling on the Defendant to enter their defence, our is accusatorial criminal justice system the duty is strictly on the prosecution to established the guilty of the Defendant failure to do that would automatically warrant discharging the Defendant see section 36 (5) of the 1999 Constitution in the instant case the evidence in chief of a witness who failed to appears for cross examination is of no value an accused person is entitled at law to

cross examine every witness who has testified against him unless however the accused person abandoned his statutorily right to cross examination. The Court would always adjourned proceedings to enable a prosecution witness to attend proceeding to face his cross examination as done in this case.

However, when any event and after opportunity given to a prosecution witness to attend to Court and he fails and his examination is closed and eventually the case for the prosecution closed then any such untested evidence offered by the said PW goes to nothing.

The evidence is worthless and carries no weight. I therefore re emphasis in this judgment not only that the Defendant have no case to answer but also there is no evidence at all before the Court to warrant the Defendant enter their defence. I have no doubt in my mind it is better to release 10 suspected criminal than to convict an innocent person. Consequently going by the entire proceedings in this trial i am strongly of the view that the Defendant are entitled to be discharge. I therefore discharge all the Defendants.

HON. JUSTICE M.S IDRIS
(Presiding Judge)

Appearance
1st Defendant In Court
2nd Defendant In court
3rd Defendant in Court
E.W Aiyudubin-:- For the Defendant

Z.E Bashir:- Holding the brief of TJ Aondafor the prosecution.