

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN
ON TUESDAY THE 22ND DAY OF MAY, 2018
BEFORE HIS LORDSHIP, THE HONOURABLE
JUSTICE N. AYO-EMMANUEL
JUDGE

CHARGE NO: FHC/IB/36C/2015

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

1. PATIENCE OKORO EYE
2. AFOLABI OLUFEMI JOHNSON
3. ILORI ADEKUNLE SUNDAY
4. KOLAWOLE BABALOLA
5. FATAI ADEDOKUN YUSUF

..... DEFENDANTS

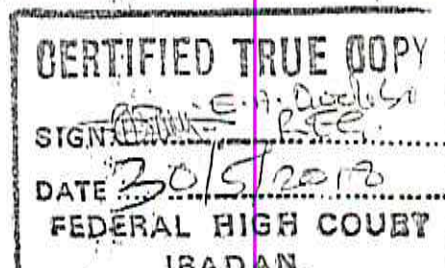
R U L I N G

The Defendants were charged before this court on an amended charge dated 12th June, 2017 to wit:

COUNT I

That you Patience Okoro Eye, Afolabi Olufemi Johnson, Ilori Adekunle Sunday, Kolawole Babalola and Fatai Adedokun Yusuf on or about 5th of August, 2014 in Ibadan within the jurisdiction of this Honourable Court, conspired among yourselves to commit an offence to wit: contributing to the economic adversity of the Federal Republic of Nigeria by virtue of abuse of office by destroying a box marked "Counted Audited Dirty" filled with Newspaper in place of a box containing ₦10,000,000 (Ten Million Naira) of ₦1,000.00 denomination and which activity led to the increase of money in circulation and inaccurate data of

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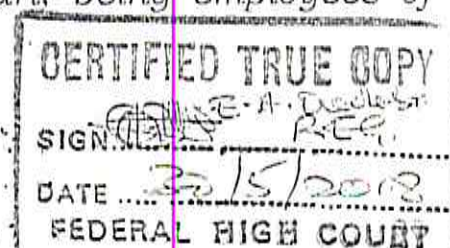
money supply in the economy thereby misleading the monetary policy mandate of the Central Bank of Nigeria and thereby committed an offence contrary to Section 1(2) (d) of the Recovery of Public Property (Special Provision) Act, Cap. R4, Laws of the Federation of Nigeria, 2004 and punishable under Section 10(1) of the same Act.

COUNT II

That you Patience Okoro Eye, Afolabi Olufemi Johnson, Ifeoluwa Adekunle Sunday, Kolawole Babalola and Fatai Adedokun Yusuf on or about 5th of August, 2014 in Ibadan within the jurisdiction of this Honourable Court, have by virtue of abuse of your office, being employees of Central Bank of Nigeria, contributed to the economic adversity of the Federal Republic of Nigeria when you destroyed a box marked "Counted Audited Dirty" filled with Newspaper in place of a box containing ₦10,000,000.00 (Ten Million Naira) of ₦1,000 denomination and which activity led to the increase of money in circulation and inaccurate data of money supply in the economy thereby misleading the monetary policy mandate of the Central Bank of Nigeria and thereby committed an offence punishable under Section 1(2) (b) and Section 10 of the Recovery of Public Property (Special Provision) Act, Cap R4, Laws of the Federation of Nigeria, 2004.

COUNT III

That you Patience Okoro Eye, Afolabi Olufemi Johnson, Ifeoluwa Adekunle Sunday, Kolawole Babalola and Fatai Adedokun on or about 5th of August, 2014 in Ibadan within the jurisdiction of this Honourable Court, being employees of



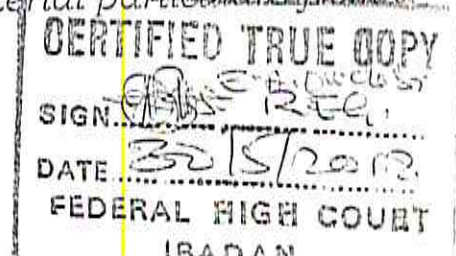
Central Bank of Nigeria owned asset, to wit: the sum of N10,000,000 (Ten Million Naira) being money you took from a box marked "Counted Audited Dirty" which was meant for briquetting and which you replaced with Newspapers and used for your personal purpose which asset is in excess of your legitimate, known and provable income and assets and you thereby committed an offence under Section 7(2) of the Bank Employees etc, (Declaration of Assets) Act Cap. B1, Laws of the Federation of Nigeria, 2004.

COUNT IV

That you Patience Okoro Eye on or about 5th of August, 2014 in Ibadan within the jurisdiction of this Honourable Court, with intent to defraud, was privy to making false entry in a document, to wit: the report of your briquetting exercise that took place at the Central Bank of Nigeria, Ibadan branch which you submitted to the Head, Currency Disposal and Control office of the Central Bank of Nigeria, to the effect that briquetting exercise was hitch-free and successful when indeed a box stuffed with Newspaper as against N10,000,000 (Ten Million Naira) notes was discovered during the said briquetting exercise on the 5th of September, 2014 and you thereby committed an offence punishable under Section 438(b) of the Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria, 2004.

COUNT V

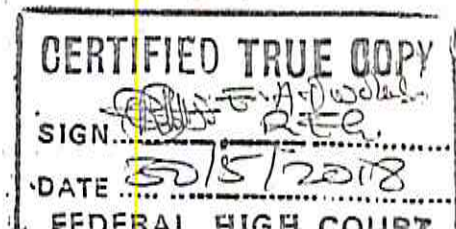
That you Patience Okoro Eye, Afolabi Olufemi Johnson, Ilori Adekunle Sunday on or about 5th of August, 2014 in Ibadan within the jurisdiction of this Honourable Court, with intent to defraud, was privy to omitting material particulars from a



document to wit: the report of your briquetting exercise that took place at the Central Bank of Nigeria, Ibadan branch which you submitted to Central Bank of Nigeria, headquarters Abuja, to the effect that the briquetting exercise was successful without any abnormality when indeed a box stuffed with Newspaper as against N10,000,000 (Ten Million Naira) notes was discovered during your briquetting exercise on the 5th of September, 2014 and you thereby committed an offence punishable under Section 438(c) of the Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria, 2004.

COUNT VI

That you Kolawole Babalola on or about 5th of August, 2014 in Ibadan within the jurisdiction of this Honourable Court, whilst still being an employee of the Central Bank of Nigeria, aided Patience Okoro Eye, Afolabi Olufemi Johnson, Ilori Adekunle Sunday to contribute to the economic adversity of the Federal Republic of Nigeria, by virtue of abuse of their offices when you directed the Treasury Assistants who were your subordinates to return a box marked "Count Audited Dirty" filled with Newspapers to the briquetting room within Ibadan branch of the Central Bank of Nigeria instead of a box containing N10,000,000 (Ten Million Naira) denomination and the destruction of the said Newspapers led to increase of money in circulation and inaccurate data of money supply in the economy thereby misleading the monetary policy mandate of the Central Bank of Nigeria and you thereby committed an offence contrary to Section 1 (2) (d) of the Recovery of Public



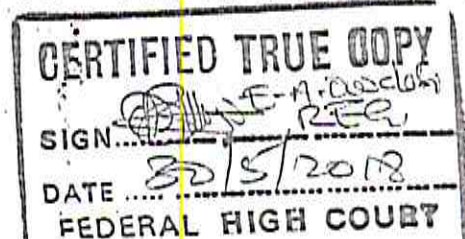
Property (Special Provision) Act, Cap. R4, Laws of the Federation, 2004 and punishable under Section 10 (1) of the same Act.

COUNT VII

That you Fatai Adedokun Yusuf on or about 5th of August, 2014 in Ibadan within the jurisdiction of this Honourable Court, whilst still being an employee of the Central Bank of Nigeria, aided Patience Okoro Eye, Afolabi Olufemi Johnson, Ilori Adekunle Sunday to contribute to the economic adversity of the Federal Republic of Nigeria, by virtue of abuse of their offices when you invited Yemisi Ologundudu to come to your office during the briquetting exercise thereby paving the way for the said Patience Okoro Eye, Afolabi Olufemi Johnson, Ilori Adekunle Sunday to destroy a box marked "Counted Audited Dirty" filled with Newspapers instead of a box containing N10,000,000 (Ten Million Naira) of N1,000 denomination and the destruction of the said newspapers led to the increase of money in circulation and inaccurate data of money supply in the economy thereby misleading the monetary policy mandate of the Central Bank of Nigeria and you thereby committed an offence contrary to Section 1(2) (d) of the Recovery of Public Property (Special Provision) Act, Cap. R4, Laws of the Federation of Nigeria, 2004 and punishable under Section 10(1) of the same Act".

Each of the Defendants pleaded not guilty to each of the counts as applicable.

The prosecution thereafter proceeded to open its case by calling twelve witnesses and tendered Exhibit P1 - P19 in evidence. At the



conclusion of the prosecution's case, the 1st, 2nd, 3rd and 5th Defendants decided to file a 'no case submission'.

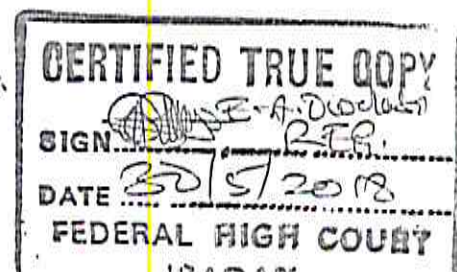
Before considering each of the applications, it will be pertinent for me to lay out at this stage the applicable principles concerning a 'no case submission' generally.

Section 303 of the Administration of Criminal Justice Act 2015 deals with when and how a 'no case submission' should be made by a Defendant. This provision has found judicial expression in some cases. See *Ekwenugo v FRN* (2008)15 NWLR (Pt. 1111) at 638 - 639 SC and *Ajidagba v Inspector General of Police* (1958) SCNLR 60 at 62.

The position of the law is that a submission that there is no case to answer by a Defendant means that there is no evidence on which even if the court believes it, it could not convict. In other words, certain essential elements of the offence for which the Defendant stands charged was not proven by the prosecution. The question whether or not the court believes the evidence led does not arise at this stage of the proceedings.

A submission of no case to answer could only be properly made and upheld when:

- (a). there has been no evidence to prove an essential element in the alleged offence; and/or
- (b). when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it: See *Ibeziako v Commissioner of Police* (1963)1 SCNLR 99; *Owonikoko v The State* (1990)7 NWLR (Pt. 162)381

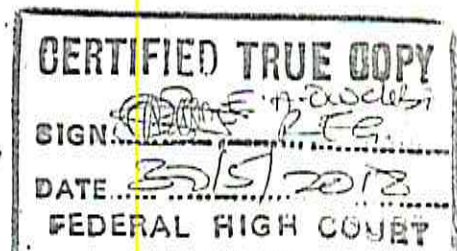


and Adeyemi v The State (1992)6 NWLR (Pt. 195)1.
It follows therefore that what has to be considered at the stage of a no case submission is not whether the evidence against the accused is sufficient to justify conviction but whether the prosecution has made out a prima facie case requiring at least some explanation from the accused person.

The court at this stage is not required to evaluate or give weight to the evidence led by the prosecution or to write a lengthen ruling. In fact the ruling of the court should be as brief as possible.

Since all the applications virtually raised the same issue for determination, I will combine same and deliver a single ruling though each of the application shall be considered on its merit. In doing this, I will strictly be guided by the evidence before the court vis-à-vis the written argument of counsel.

The Defendants were officials of the CBN. The 1st to 3rd Defendants among others were part of the briquetting panel constituted by the CBN to undertake briquetting exercise between the 4th and 8th August, 2014 at the Ibadan Branch of the CBN. Briquetting exercise is the process by which counted Audited Dirty (CAD) currencies are destroyed so as to enable the Central Bank of Nigeria control the volume of money in circulation and also maintain accurate data of money supply in the economy. The 1st Defendant was the coordinator of the briquetting panel who according to the Operations Manual is expected to report back to the CBN every shortage discovered during the exercise. The 2nd Defendant is the representative of the audit unit who is also a principal member of the panel. The 3rd Defendant is a panel member. The 4th Defendant is the



Head of Treasury in the Ibadan branch where the briquetting exercise took place and who is in custody of the CADs that were supposed to be destroyed. The 5th Defendant was the chief security officer of the Ibadan branch of CBN. On the 2nd day of the exercise, a box marked CAD which was supposed to contain N10,000,000 (Ten Million Naira) of N1,000.00 denominations but filled with newspapers cut in currency note sizes was destroyed. The head Treasury and the 5th Defendant were alleged to have connived with the 1st - 3rd Defendants to destroy the box stuffed with newspapers. The activities of the briquetting exercise is the one that has led to the filing of this charge.

The 1st Defendant appeared in counts 1, 2, 3, 4 and 5 of the charge sheet and as such her application will be considered first.

The 1st Defendant's application is dated 16th March 2018 and the prosecution's response is dated 23rd April 2018. The prosecutor formulated one issue for determination to wit:

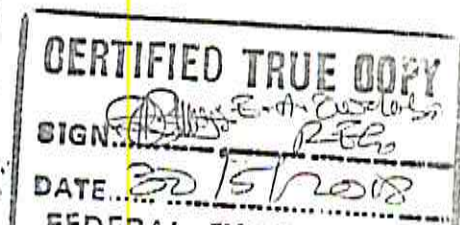
"Whether having regards to the totality of the evidence as adduced by the prosecution witnesses and the Exhibits tendered by them, it can be said that a prima facie case is not made out against the Defendant/Applicant sufficiently to require her to make a defence".

The 1st Defendant's counsel filed a further reply on points of law dated 23rd April 2018 wherein learned counsel responded to the issue formulated for determination by the prosecution.

The first count as it relates to the 1st Defendant bothers on the offence of conspiracy.

In Exhibit P7, the statement of the 1st Defendant she stated thus:

"The Heads security and Treasury continued (sic) treating (sic) and pleading that I should not report the case that it is not a shortage per se that it is a matter of newspaper that he is



going (to) report it on the incident report that the matter should be closed, being my senior and boss I believed them and I did not add it in my report.... I did not show any of my team members the report that I submitted in Abuja because we all agreed that I should not add it in my report since Heads (sic) security and The Head of Treasury said that they were going to report it in the incident report".

The 1st Defendant by this extract from her statement a prima facie case on the offence of conspiracy has been made against her and some explanation is required from her.

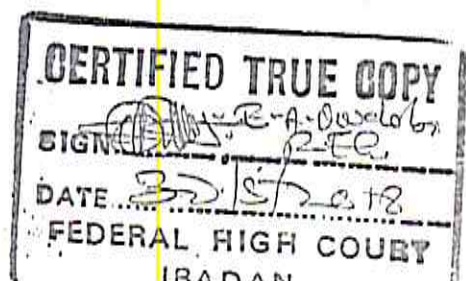
On count II, the 1st Defendant stated thus in her statement Exhibit P7:

"When we came back from the Head Security office the boxes had been emptied and destroyed. One of the panel member Chiefson Ilagah told me that they still destroyed newspaper 1 box of currency note of N1,000.00 was containing newspapers instead of money...."

It is in evidence that the box containing newspapers that was destroyed ought to have contained N10,000,000 of N1,000.00 denominations. On the implication of this to the economy of the country, PW11 stated thus in this evidence:

"Part of the mandate of CBN Act is promoting price stability as such CBN embark on some policy to back that law. Price stability is based on whether prices are high or low and in inflation with regard to movement of money. If the supply of money is high, inflation will be high".

By these pieces of evidence put together, a prima facie case has been made out against the 1st Defendant on the 2nd count requiring some explanation from her.



On count three against the 1st Defendant, I do not see any evidence on record to support this count. In fact the prosecution refrained from rendering any address or joining issues with the 1st Defendant's counsel on this. The prosecution has therefore failed to establish any prima facie case against the 1st Defendant on count three and I so hold. The 1st Defendant is hereby discharged of count three for want of evidence.

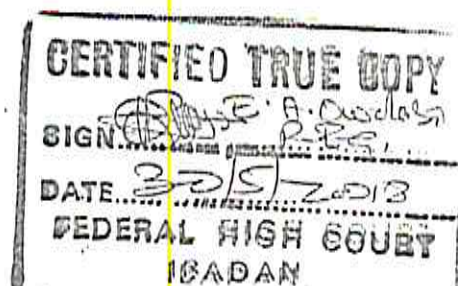
Counts four and five are similar in nature as almost the same material is required to prove same. By Exhibit P7, the statement of the 1st Defendant which I had earlier on quoted above, the 1st Defendant do have some explanation to give as I do find and hold that by the 1st Defendant's very statement a prima facie case has been made against her by the prosecution.

The 1st Defendant's 'no case submission' succeeds in part as I find and hold that a prima facie case has been made against her in respect of counts 1, 2, 4 and 5 while discharging her on count three for lack of evidence.

The 2nd Defendant's address on his 'no case submission' is dated 2nd March 2018. Learned counsel formulated one issue therein for the determination of the court to wit:

"Whether the evidence adduced show any prima facie case against the 2nd Defendant to warrant him to defend this charge".

Learned counsel argued this issue in relation to all the offences concerning the 2nd Defendant i.e counts 1, 2, 3, and 5 of the charge sheet. The prosecution filed their response on the 16th of March 2018. The prosecution also adopted the issue formulated for determination by the 2nd Defendant. The 2nd Defendant's reply on point of law is dated 19th March 2018.



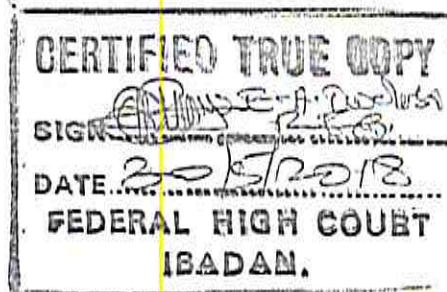
As earlier on mentioned, each of the offences as stated in the charge sheet shall be considered in view of the available evidence on record in order to determine whether a prima facie case has been established or not.

Count one relates to the offence of conspiracy. In considering this, let me quote some portions of the 2nd Defendant statement dated 7th May 2015 and 9th January 2015 which states thus:

"I was nominated to attend a briquetting exercise in Ibadan between August 4th - 8th, 2014 which I attended. But unfortunately on the second day of the exercise which is 5th August 2014 at the third loading we discovered a box of N1,000.00 denomination stuffed with newspaper which was a strange and abnormal situation"

On his further statement dated 9th January 2015, the 2nd Defendant stated thus:

"In addition to my previous statement dated 7th January 2015 I freely add as follows that after I have been begged and appealed to by Mr. Babalola Head Treasury and Mr. Yusuf Head Security to please accept and shred the box containing newspaper in which I refused I was outsmarted by the Head Treasury Mr. Babalola and Head Security Mr. Yusuf by not changing the box which I saw when the Treasury assistant opened the box again in the briquetting room but as I have been persuaded begged and assured by Mr. Babalola Head Treasury and Mr. Yusuf Head Security that no problem and that no evidence that we destroyed the newspaper I eventually participated in the destruction of the newspaper"



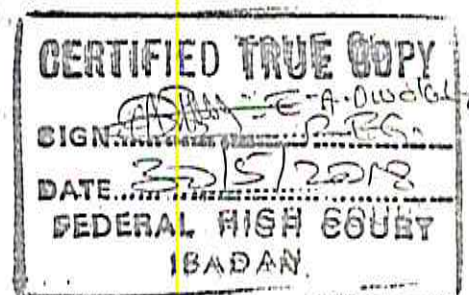
By the statement of the 2nd Defendant coupled with other pieces of evidence before the court it is my opinion and I so hold that a prima facie case has been made against the 2nd Defendant on count one which require some explanation from him.

On the second count, the 2nd Defendant by his statement above admitted participating in the destruction of a box with newspaper instead of N1,000.00 denomination notes. It is not in doubt by the evidence before the court that the 2nd Defendant was a staff of the CBN at the material time during the occurrence of this incident. Equally by evidence of PW11, the implication of destroying newspapers instead of currency notes marked for briquetting was clearly stated. By this pieces of evidence, I do believe that the prosecution has made out a prima facie case needing some explanation from the 2nd Defendant and I so hold.

On count three, there is no evidence before me to support this charge. The prosecution could not also support same in his written address. I therefore find and hold that a prima facie case has not be made by the prosecution to warrant the 2nd Defendant being called upon to enter his defence. I will therefore uphold the 'no case submission' in respect of count three and discharge the 2nd Defendant thereof.

On count five, the 2nd Defendant stated this in his statement Exhibit P8 dated 7th January 2015:

"After the briquetting exercise I did not incident this abnormality in my report because I was unable to equip myself with any evidence. I apologize for going against the rule of not reporting the incident as stated in the briquetting manual".



The court cannot close its eyes to this piece of evidence with particular reference to Exhibit P1 titled "CBN Operations Manual for the Destruction of Notes through Briquetting/Banda Machine". The 2nd Defendant is therefore called upon to enter his defence in respect of count five as a prima facie case has been made by the evidence before me. With respect to the application of the 2nd Defendant, the 'no case submission' succeeds in part as he is called upon to enter his defence in respect of counts 1, 2 and 5.

The 3rd Defendant's 'no case submission' address is dated 8th March 2018. Learned counsel formulated one issue for the determination of the court to wit:

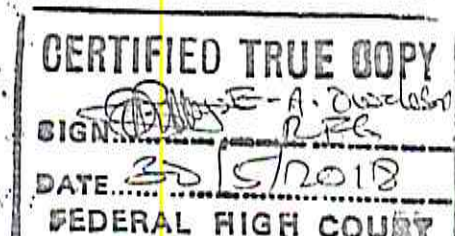
"Whether from the totality of the evidence adduced by the prosecution, a prima facie case has been made out against the 3rd Defendant in this case to warrant him calling evidence in his own defence".

The 3rd Defendant appeared in counts 1, 2 and 3 of the charge. Learned counsel argued this issue in respect of the three counts in his written address. The prosecution filed a response dated 16th March 2018 and therein adopted the only issue formulated for determination by the 3rd Defendant's counsel. The 3rd Defendant's counsel filed a reply on point of law dated 19th March 2018.

On count one, the PW4 has this to say:

"When he said we should shred the newspaper I started crying. I was crying because the bank asked me to come and shred money. I was expecting other members of the briquetting team to say something but they were not saying anything....."

On getting to the briquetting room, I now discovered that the briquetting machine has started working. I sat down with my other panel members and I was expecting that we should all be talking about



what happened because it was strange to me. I then spoke to my colleague Mr. Ilori, the 3rd Defendant and I asked him that are you sure that these people are not trying to play pranks with me. He then said no. I asked him that are you sure you did not join them to shred papers? He said no".

With this piece of evidence, there is enough ground to sustain a prima facie case strong enough to ask the 3rd Defendant to enter his defence in respect of count one of the charge and I so hold.

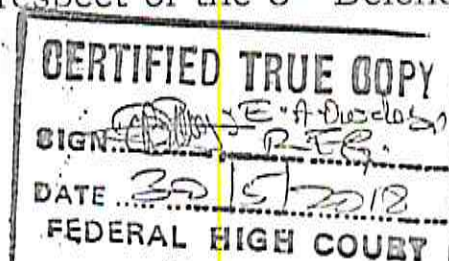
In respect of count two, I will adopt my findings in respect of same as done in the application of the 1st and 2nd Defendants as I find that a prima facie case has been made out against the 3rd Defendant which demands some explanation from him and I so hold.

In respect of Count three, I abide by my earlier findings that the prosecution have not been able to prove this by credible evidence to warrant a prima facie been made out. I will therefore uphold the 'no case submission' thereof and the 3rd Defendant is hereby discharged of the offence as referred to in count three of the charge sheet.

On the 5th count, the 3rd Defendant in his statement, Exhibit P9 dated 7th January 2015 stated thus:

"...Even after the whole exercise when I got back to my station a thought ran through me that I should report to my Branch controller, however I was afraid again... I will like to plead that the management should temper justice with mercy as my not reporting the incident was borne out of fear".

Exhibit P1 clearly lay down the rules of briquetting exercise which the 3rd Defendant is familiar with. Following these pieces of evidence, the 3rd Defendant has some explanation to give in relation to the 5th count as I find and hold that a prima facie case has been made against him by the prosecution. Overall, in respect of the 3rd Defendant, his



'no case submission' succeeds in part as I find and hold that a prima facie case has been made against him in respect of counts 1, 2, and 5 of the charge sheet. He is discharged of count three for want of evidence.

The 5th Defendant's 'no case submission' address is dated 29th March 2018. Learned counsel formulated three issues for the determination of the court therein to wit:

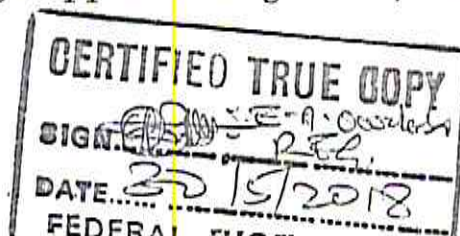
- "(a). Whether having regard to the totality of evidence before the court the prosecution has established a prima facie case against the 5th Defendant.*
- (b). Whether counts 1, 2 and 7 of the charge against the 5th Defendant are offences known to law.*
- (c). Whether the Honourable Court has jurisdiction to try this case".*

The prosecution's written opposition is dated 12th April 2018. The learned prosecutor adopted the same issues for determination as submitted by the 5th Defendant's counsel. The learned 5th Defendant's counsel reply address is dated 17th April 2018.

The 5th Defendant appeared in counts 1, 2, 3 and 7 of the charge.

On count one, dealing with conspiracy, it is in evidence that the 5th Defendant was one of those who witness the box stuffed with newspapers and one of those who was alleged to have participated in a meeting thereafter. He is equally said to be the person who invited the 1st Defendant and PW4 for a meeting in his office. On getting to the office this was what he told the PW4:

"...When did you join the bank? I told him when I did; he now said I am too emotional, that stealing happens everywhere, he



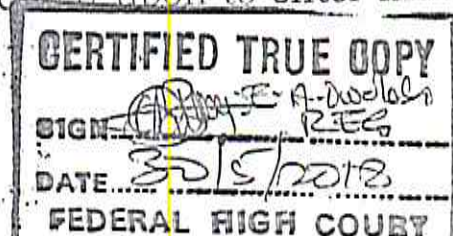
pointed to the head treasury that he has spent 30 years in the bank, I now replied that can you please allow me to go back and join my other colleagues in the briquetting room. On getting to the briquetting room, I discovered that the machine has started working ...".

All these pieces of evidence put together gives room for further enquiry as to why the 5th Defendant attended the meeting and the essence of his inviting the 1st Defendant and the PW4 to his office. The prosecution has established a prima facie case against the 5th Defendant requiring some explanations from the 5th Defendant and I so hold.

On the second count, it is in evidence that it was after the 5th Defendant invited the 1st Defendant and the PW4 for a meeting in his office that the box stuffed with newspapers was destroyed. The evidence of PW4 and PW9 is very clear on the role the 5th Defendant played. PW11 has also stated the implications of destroying newspapers instead of the intended money. The 5th Defendant is called upon to defend himself on the 2nd count as a prima facie case has been made against him and I so hold.

On count three, I have earlier found and held that the prosecution has not proffered enough evidence to ground this offence. Consequently a prima facie case has not been made out against the 5th Defendant on the 3rd count, he is discharged accordingly of the said offence.

On count seven, it is clear as reproduced from the evidence of the PW4, that it was after the 5th Defendant invited them to his office, that the box containing newspapers instead of money was shredded. The evidence of PW4 and other pieces of evidence before the court makes it imperative for the 5th Defendant to be called upon to enter his defence

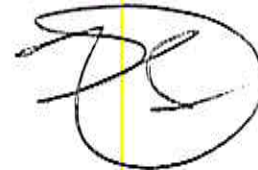


in respect of count seven of the charge as I find and hold that a prima facie case has been made out against him.

All objections as to the jurisdiction of the court should be reserved for final written address at the conclusion of trial. The application of the 5th Defendant succeeds in part. He is also discharged of count three of the charge while he is called upon to enter his defence in respect of counts 1, 2 and 7 of the charge.

In conclusion, the Defendants are hereby directed to enter their defence as stated in the findings of the court in respect of their respective applications.

This is the ruling of the court as delivered on this 22nd day of May 2018.



HON. JUSTICE N. AYO-EMMANUEL
JUDGE
22ND MAY 2018

Abiola Olorunfemi for the Prosecution.

K. A. Lawal for the 1st Defendant.

Festus Adesiyun with Olatunde Odeniyi and Wemimo Ikotun for the 3rd Defendant and holding the brief of M. F. for the 2nd Defendant.

Olasunkanmi Olaleye for the 5th Defendant.

L. O. Yusuf for the 4th Defendant.

