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**IN THE HIGH COURT OF JUSTICE**  
**OYO STATE OF NIGERIA**  
**IN THE OYO JUDICIAL DIVISION**  
**HOLDEN AT OYO**

**BEFORE THE HONOURABLE JUSTICE O.O. OLATUNJI - JUDGE**  
**THIS MONDAY THE 23<sup>RD</sup> DAY OF NOVEMBER, 2015**

**COURT NO: 1**  
**SUIT NO. HOY/7C/10**

**BETWEEN:**

**THE STATE** ..... **COMPLAINANT**

**AND**

**MORUFU ADEJARE** ..... **ACCUSED**

Accused person is present  
N.A. Abiola Assistant Deputy Civil Litigation and  
Advisory service for the State  
O.A. Okeyinka Esq. holds the brief of R.A. Olawuwo Esq.  
for the defendant

**JUDGEMENT/RULING**

By an amended charge dated 9<sup>th</sup> February, 2011, the accused person, Morufu Adejare faced 11 counts charge covering fraud under the Advanced free Fraud and other related offences Act, 2006, Dishonoured Cheques offences Act, Cap DII Laws of Federal Republic of Nigeria and forgery under section 465 and 467 of the Criminal code.

In proof of the prosecution case, Total number of five witnesses testified after which, the Learned defence Counsel Olawuwo Esq. made a submission of no case under section 286 of the Criminal Procedure Law, Cap 39 Vol. II Laws of Oyo State of Nigeria 2000.

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In his Written Address on submission dated 28<sup>th</sup> September, 2015 Olawuwo Esq. contended that the totality of evidence placed before the Court has not established a prima facie case which would enable the Court to call upon the accused for his defence on all the counts of the charge.

He stated that the prosecution has failed to prove the essential elements of the offences alleged and that the evidence adduced is so manifestly unreliable that this court cannot safely convict on it.

Learned defence Counsel crafted a lone issue on behalf of the accused as follows:

*"whether having regards to the totality of evidence of prosecution witness and admitted exhibits, the prosecution has established prima facie case against the accused to warrant him to stand for trial in this case."*

It was argued that by virtue of Section 286 of the Criminal Procedure Law this Honourable Court is vested with power to discharge and acquit the accused on submission of no case to answer by the accused counsel. Counsel placed reliance on the following cases.

**State V. Nwachineke (2008) All FWLR (Part 398) 204 at 230** where the Court held that no case submission means that there is no evidence on which the Court or tribunal could reasonably base a conviction even if the evidence was believed by the court or tribunal.

**Akpan V. State (1986) 3 NWLR (Part 27) 225.**  
**Ohuka V. State (1988) 7SC (Part 11) 25**  
**Ubanatu V. C.O.P (2000) FWLR (Part 1) 138**  
**Igabee V. State (2004) 15NWLR (Part 898) 314**  
**Aminu V. State (2005) All FWLR (Part 244)**  
**Emedo V. State (2005) 4 LRCNCC 116 at 199.**

The highlights of the Learned Defence Counsel argument on Counts 1-4 of the charge is that the charge and the particulars of the offence of advanced fee fraud did not disclose any offence against the accused because the accused is alleged to have obtained money by false pretence both for future conduct and that the accused would use the money for a particular purpose.

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He commended the case of **the State V. Letita Osler (1991) NWLR (Part 199) 576 at 587** for the consideration of the court, submitting that the money was obtained for particular purpose to supply good and promised to pay the money with profit on a future date.

He then urged me to uphold the no case submission of the accused person and discharge and acquit him on 1<sup>st</sup> – 4<sup>th</sup> counts. He also referred to **Nwakwoala V. State (2007) 2 NCC 107 at 116**.

He stated the ingredients of the offence of Advanced fee fraud and other related offences Act, 2006 as laid down in the case of **Aimuanwehi Osarenren V. FRN (2014) B4 WRN Page 98 at 121 to be**

- a. Pretence made by the accused person and directed to the victim.
- b. That the pretence is committed in a letter or other documents.
- c. That the letter in other document was used and
- d. That the pretence institutes an offence under the Act.  
received by the person on whom the false pretence was directed.

He submitted that none of the ingredient stated above has been proved by the prosecutor.

In response to the no case submission, the State through N. A. Abiola Esq. Assistant Director Civil Litigation and Advisory Services Oyo State Ministry of Justice, filed a Written Address dated 15<sup>th</sup> October, 2015. In his written submission counsel formulated a singular issue for determination thus:-

*"whether having regard to the totality of the evidence of the prosecution as placed before the trial court, a prima facie case has not been established against the accused to call him for his defence to the charge preferred against him."*

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Arguing the sole issue, Learned Counsel stated that where it is clear from the evidence before the court that some explanations have to be made by the accused, the court has a duty to call upon the accused to enter his defence.

He relied on **Ogucha V. The Queen (459) 4 FC Page 64.**

It is also his attention that it is not the duty of court the stage of no case submission to weigh and evaluate evidence or decide who is telling the truth or who is lying and he is not to conclude that the evidence adduced by the prosecution is unreliable. Counsel cited **R.V Baker (1977) 65 CR APP R 287** in support.

He also placed reliance on

**Ibeziako V. C.O.P (1963) All NLR page 64**  
**Stoneley V. Coleman 1974 Crim L.R 254 D.C**  
**Ossai Emado & Ors V. The State (2002) 13 SCMP 61 at 64**  
**Atano V. A.G. Bendel State (1988) 2 NWLR (Part 75) Page 201**

On when to uphold a no case, Counsel stated that a no case may be properly up held.

- a. when there has been no evidence to prove an essential element of the alleged offence.
- b. when the evidence adduced by the prosecution has been so discredited as a result of Cross examination or is manifestly unreliable that no reasonable tribunal can convict on it. Reliance was placed on **Mohammed V. The State 29 NSQR Page 634 at 642 – 643.**

**Ibeziako V. C.O.P. (supra)**  
**Ajidagba V. IGP (1958) 3 FSC Page 5**

On the counts of false pretences i.e. Counts 1-4 of the Charge, counsel argued that the prosecution has discharged the burden of proof required on all the ingredients of the offences charged as the accused voluntarily Exhibit T admitted obtaining money from the complainant Adeleye John Adeyinka. Relying on **Adio V. State (1986) NSCC Page 525.**

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Learned Counsel stated that a voluntary confession of guilt by the accused person is sufficient without further corroboration to support conviction.

On Counts 9, 10 and 11, which bother the offence of forgery, Counsel stated that the offence of forgery is said to have been proved if the prosecution established the following ingredients as enunciated in the case of **Alake V. State (Supra) Page 592** namely

1. That there is a document or writing
2. That the document or writing is forged.
3. That the forgery is by the accused person.
4. That the accused knows that the document or writing is forged and
5. That he intends the false document or writing to be acted upon to the prejudice of the victim on the believe that it is genuine.

He submitted that the evidence before the Honourable Court has established all the above ingredients of forgery.

Counsel finally urged the Court to held that by the gamut of evidence before it, a prima facie case has been established against the accused warrant being called upon for his defence.

In order to properly appreciate the Learned Defence Counsel autention under Section 286 of the Criminal Procedure Law, it is I think, desirable to self out all the 11 counts in charge HOY/7C/2010 brought against the accused person.

They read:-

#### **COUNT 1:-**

That you Morufu Adejare "M" on or about the 3<sup>rd</sup> of August, 2009 at Yidi Area Agunpopo Oyo in the Oyo Judicial Division with intent to defraud, induced one Adeleye John Adeyinka to deliver to you the sum of N12, 850.000.00k (Twelve Million eight Hundred and Fifty Thousand Naira Only) by falsely pretending to him that you have a Local Purchase Order of Animal Care Services Konsult (Nig) Ltd with No. 0003266 to supply 300 metric tons of Wheat Grain through which you shall pay him back the sum with profit and thereby committed and offence punishable under section 1 (1) (b) of the Advanced Fee Fraud and Order Related Offences Act, 2006.

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**COUNT 2:-**

That you Morufu Adejare "M" on or about 13<sup>th</sup> August, 2009 at Yidi Area, Agunpopo Oyo in the Oyo Judicial Division with intent to defraud, induced one Adeleye John Adeyinka to deliver to you the sum of N16, 490.000.00k (Sixteen Million Four Hundred and Ninety Thousand Naira Only) by falsely pretending to him that you have a Local Purchase Order of Zartech Ltd to supply 300 tons of Dry Maize through which you shall pay him back the sum with profit and thereby committed and offence punishable under section 1 (1) (b) of the Advanced Fee Fraud and Order Related Offences Act, 2006.

**COUNT 3**

That you Morufu Adejare "M" on or about 21<sup>st</sup> August, 2009 at Yidi Area, Agunpopo Oyo in the Oyo Judicial Division with intent to defraud, induced one Adeleye John Adeyinka to deliver to you the sum of N8, 2500.000.00k (Eight Million Two Hundred and Fifty Thousand Naira Only) by falsely pretending to him that you have a Local Purchase Order of Animal Care Service Konsult (Nig) Ltd with No. 0004126 to supply 150 Million tons of Dry Maize through which you shall pay him back the sum with profit and thereby committed and offence punishable under section 1 (1) (b) of the Advanced Fee Fraud and Order Related Offences Act, 2006.

**COUNT 4**

That you Morufu Adejare "M" on or about 2<sup>ND</sup> September, 2009 at Yidi Area, Agunpopo Oyo in the Oyo Judicial Division with intent to defraud, induced one Adeleye John Adeyinka to deliver to you the sum of N16, 100.000.00k (Sixteen Million One Hundred Thousand Naira Only) by falsely pretending to him that you have a Local Purchase Order of Zartech Ltd with No: 1491 to supply 300 tons of Soya Seeds through which you shall pay him back the sum with profit and thereby committed and offence punishable under section 1 (1) (b) of the Advanced Fee Fraud and Order Related Offences Act, 2006.

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**COUNT 5**

That you Morufu Adejare "M" on or about 21<sup>st</sup> August, 2009 at Kosobo Area, Oyo Town Oyo in the Oyo Judicial Division did issued a First Bank Cheque with serial No. PC65340584 for the sum of N18,300,000.00 (Eighteen Million Three Hundred Thousand Naira Only) to one Adeleye John Adeyinka "M" and upon presentation at the Bank it was returned dishonored and thereby committed and offence contrary to and punishable under section 1(1) (B) of Dishonored Cheque Offences Act Cap DII Laws of Federation of Nigeria, 2004.

**COUNT 6**

That you Morufu Adejare "M" on or about 7<sup>th</sup> September 2009 at Kosobo Area Oyo Town, in the Oyo Judicial Division did issued a First Bank Cheque with serial No. PC65340583 for the sum of N14,800,000.00 (Fourteen Million Eight Hundred Thousand Naira Only) to one Adeleye John Adeyinka "M" and upon presentation at the Bank it was returned dishonored and thereby committed and offence contrary to and punishable under section 1(1) (B) of Dishonored Cheque Offences Act Cap DII Laws of Federation of Nigeria, 2004.

**COUNT 7**

That you Morufu Adejare "M" on or about 28<sup>th</sup> September 2009 at Kosobo Area, Oyo town in the Oyo Judicial Division did issued a First Bank Cheque with serial No. PC65340587 for the sum of N9,150,000.00 (Nine Million One Hundred and Fifty Thousand Naira Only) to one Adeleye John Adeyinka "M" and upon presentation at the Bank it was returned dishonored and thereby committed and offence contrary to and punishable under section 1(1) (B) of Dishonored Cheque Offences Act Cap DII Laws of Federation of Nigeria, 2004.

**COUNT 8**

That you Morufu Adejare "M" on or about 10<sup>th</sup> August, 2009 at Kosobo Area, Oyo Town in the Oyo Judicial Division knowingly and fraudulently uttered a false Local Purchase Order purporting to be the Local Purchase

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Order of Zartech Ltd thereby committed and offence contrary to Section 468 of the Criminal Code Cap,38 Volume II, laws of Oyo State of Nigeria 2000.

### COUNT 9

That you Morufu Adejare "M" on or about 31<sup>st</sup> August, 2009 at Kosobo Area, Oyo Town in the Oyo Judicial Division did forge a Local Purchase Order purporting to be the Local Purchase Order of Zartech Ltd with No. 1491 thereby committed and offence contrary to Section 465 of the Criminal Code Cap,38 Volume II, laws of Oyo State of Nigeria 2000.

### COUNT 10

That you Morufu Adejare "M" on or about 12<sup>th</sup> August, 2009 at Kosobo Area, Oyo Town in the Oyo Judicial Division did forge a Local Purchase Order purporting to be the Local Purchase Order of Animal Cre Konsult (Nig) Ltd with No. 0004126 and thereby committed and offence contrary to Section 465 of the Criminal Code Cap,38 Volume II, Laws of Oyo State of Nigeria 2000.

### COUNT 11

That you Morufu Adejare "M" on or about 29<sup>th</sup> July, 2009 at Kosobo Area, Oyo Town in the Oyo Judicial Division did forge a Local Purchase Order purporting to be the Local Purchase Order of Animal Care Konsult (Nig) Ltd thereby committed and offence contrary to Section 465 of the Criminal Code Cap,38 Volume II, Laws of Oyo State of Nigeria 2000.

It has been well settled in a long line of cases some of which were cited by counsel to both parties that a submission of no case to answer may be upheld

1. when there has been no evidence to prove an essential elements in the offence alleged and
2. when the evidence adduced by the prosecution has been so discredited as a result of cross-examination, or is so manifestly

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unreliable that no reasonable tribunal could safely convict on it **See Aminu V. State (2005) 2NWLR (part 909 at 180.**

Where a no case submission is raised, the court is not called upon at that stage to express any opinion on the evidence before it as the discredited evidence must be apparent on the face of record. **See State V. Bello (1989) Criminal Law Report of Nigeria Vol. I Page 370.**

It should also be noted that there is no burden on the accused person to establish his innocence by virtue of Section of the Evidence Act. The burden is always on the prosecution to prove every element of the offence charged beyond reasonable doubt **See Olieh V. FRN (2005) 5 WRN 87.**

See also **Pincen V. State (2003) 7WRV 54** where it was held that proof beyond reasonable doubt imposes a duty on the prosecution to prove the main ingredients of the alleged offences charged to the satisfaction of the trial judge. **Aladu V. State (1998) 8 NWLR (Part 53 ) 618.**

**Aguro V. State (1988) 4 NWLR (Part 544) 90.**

Having regard to the written arguments filed by both parties and their submissions made before me, it became clear that the question which calls for determination is as couched by the parties and that is

*"whether having regard to the totality of the evidence of the prosecution as place before the trial court, a prima facie case has been established against the accused person to call him for his defence."*

Section 286 of the Criminal Procedure Law provide thus.

*"If at the close of the evidence in support of the charge it appears to the court that a case is not made out against the defendant sufficiently to require him to make a defence the court shall, as to that particular charge, discharge him".*

The effect of this section in the circumstance of the present case is that

1. there has been no evidence to prove an essential element in the alleged offence or the evidence adduced in the essential elements has been so discredited as a result of cross examination or is so

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manifestly unreliable that no reasonable tribunal could safely convict on it.

I have carefully and soberly considered the evidence adduced by all the Prosecution witnesses in support of the charge and the submission of no case to answer by the defence.

Before coming into a conclusion, that an accused has a case to answer, trial court must be satisfied that there is in law, a nexus behind the criminal conduct and the offence the accused is charged with and this must be apparent on the face of the evidence led by the prosecution.

It means that the evidence produced so far indicates that there is something worth "looking at"

1<sup>st</sup> PW in his examination in chief stated thus:-

*"Between 27<sup>th</sup> April 2009 and 29<sup>th</sup> June of the same year, I engaged with the accused in 5 Local Purchase order from Zartech Ltd, Animal Care Konsult Service Nig. Ltd and C.H.I. The total value of those transactions was shared, my portion was Eight Million Five Hundred Thousand Naira while his own was Three Million Six Hundred Thousand Naira."*

Exhibit K, L, M and N are the agreement evidencing the above transaction. They were tendered through 1<sup>st</sup> P.W. The accused person in his extra judicial statement, Exhibit T stated thus:

*"I am concluding by saying that I and Mr. Adeyinka J. Adeleye has done business of grains before amounting to the tone of One hundred and Fifty Million (N150M) which I paid back."*

Furthermore, the state in the written submission at Page 8, stated that the accused in Exhibit T stated thus:-

*"I know the petitioner in this case named Adeleye John Adeyinka. He is the financier of my business. Sometimes in the months of August and September 2009, I collected the sum of Sixty Million Naira from him for the purpose of transaction (six) business in grains. Having obtained Local Purchase Order*

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from Zartech Nig. Ltd and Amental Care Service Konsult Nig. Ltd and other companies."

From the foregoing, it is implicit that the relationship between the complainant and the accused is that of business strictly which has no connotation of crime. In the instant case, PW1 voluntarily parted with his money with a view to making profit.

The case of **Alfred Jones** (1910) Criminal Appellate report Page 17, is instructive where the Lord Chief Justice had this to say:-

*"It is important that the distinction between a civil remedy and a criminal offence should be carefully maintained, that people should not be encouraged to think that they are entitled to treat that which affords good ground for a civil claim as constituting a criminal offence."*

Also in *State V Osler* (1991)6 NWLR (pt 119) 576 at 578 Amosu J.C.A. posited that:

*"Regard must be heard to the receipt for the money paid, the subject of count 1-3 i-e Exhibit "M" stated that payment was "for services to be rendered by Panavco" Clearly that is for an act to be done in the future. The pretence involves an element of futurity. It is trite law that a pretence has to future conduct is not within the section and a charge that alleges the obtaining of a sum of money by a false pretence that accuse will use the money for a particular purpose disclose no offence. *Achonra v I.G.P.* (1958) 3 FSC 30 (1958) SCNLR 357 *Anu v I.G.P.* (1958) FSC 34 (1958) SCNLR 367"*

Based on the above decision and the circumstances of this case, I am of the calm view that the accused did not obtain the said loan from PW1 for his business by false pretences. The accused from the unset disclosed to the police in Exhibit T that there is a business relationship between him and the 1<sup>st</sup> PW to which PW1 admitted under cross examination as quoted above. The intent to defraud has therefore not been proved to my satisfaction. This has equally raised a big doubt in the mind of the court as to the accused criminal liability of the accused person. Moreso, there is a pending civil suit No. HOY/53/2014 in High Court 2, Oyo wherein the PW1 deposed in paragraph 3 of the affidavit in support of the application for

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summary trial. That the accused approached him for a loan. Therefore, the relationship between PW1 and the accused is that of borrower and lender. I so hold.

From the foregoing, it cannot be said that the evidence led in support of this case discloses a prima facie case against the accused on the counts of false pretences as it is such even if believed is not sufficient to prove the case against the accused person beyond reasonable doubt. **See Ajidagba V. I.G.P (1958) 3 FCS 5.**

A criminal trial is, however, not based on analogies. Before a prima facie case can be said to be made against the accused person, the essential element of the offence must be established against him. There must be no doubt in the mind of the court that all the facts point to only the accused who committed the offence charged where there is doubt at all, then it must be resolved in favour of the accused person. **See Aituma V. The State (2007) All FWLR (Part 381) 1798 at 1810.** Consequently, I hold that counts 1-4 of the charge having not been proved as required by law against the accused, he is discharged and acquitted.

It is observed that Learned Prosecution Counsel in his Written Submission tried to smuggle in the offence of uttering document contrary to Section 468 of the Criminal Code when the accused person is not charged for the offence of uttering. The law is settled beyond peradventure that address no matter how well prepared and delivered cannot take place of evidence **See UBA V. A.C Nig. Ltd (2005) 12 NWLR (Part 939) 232 at 277 – 278.**

In support of counts 5, 6, 7 prosecution tendered Exhibits C.D and G. In **State V. Femi Adetoyi (1982) 4 OYSH.C**, the Court laid down the ingredients of offence of Dishonoured Cheque thus:-

1. That the thing obtained or whose delivery is induced by the accused person to himself or to any other person is capable of being stolen
2. That at the time the thing was obtained or its delivery induced it was by means of cheque
3. That this cheque was presented for payment within three months therein.
4. That on presentation for payment the cheque was dishonoured on the ground that there were

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no funds or insufficient funds standing to the credit of the drawer of the cheque in bank on which the cheque was drawn.

It was held further that the prosecution must adduced the necessary minimum evidence to prove the above stated ingredients.

1<sup>st</sup> PW under cross-examination testified as follows:-

.....Exhibit A,E,H and the one marked rejected formed the foundation for our business relationship. We agreed on their contents. I gave the defendant loan and I charged extra money as profit in the business.

..... The practice is that the defendant collects his cheques back when he returns the money.....

From the testimony of PW1, it cannot be said that the prosecution has established the mens rea in Counts 5, 6, 7 under Section 1(1)(b) of Dishonoured Cheque offences Act Cap D 11 Laws of Federation of Nigeria 2004 as the intention to induce delivery to the accused or to any other person things capable being stolen or obtained is missing. The cheques were not expected to be deposited or presented. PW1 himself stated that the practice is to return the cheque after the defendant must have refunded the loan granted. Therefore the intention to defraud prosecution has failed to prove the accused intention to defraud.

The accused is accordingly discharge and acquitted on counts 5, 6 and 7.

On a charge of forgery, it is essential to prove that the accused person forged the document in question, The prosecution to make out a prima facie case need to call hand writing analyst to show that the handwriting of the person who is alleged to have forged documents is the same as the one on the forged documents where the supposed alterations was made. Furthermore the person whose hand writing is forged is a material witness. **See Alake V State (1992) 9 NWLR (Part 265) at 270 where Kutiji J.S. said:-**

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*"I ought to add that I agree with Prof. Kasumu that Ajadi and Lawsweerde were vital and material witnesses in the case. They were persons whose signatures were alleged to have been forged.*

*I think failure to call them to deny or confirm their signatures on the cheques was clearly fatal to the case of the prosecution, the evidence of hand writing analyst (PW6) notwithstanding. Their evidence would have settled the point in issue once and for all. See R. V Kuree WACA 175; Wambal & Anor V. Kano N.A. (1965) NMLR 15 Appellant conviction for forgery can therefore not stand."*

The only witness called by the Prosecution in respect of the offence of forgery contained in Counts 9, 10, 11 is PW4, Richard Adekunle Oluwole, an accountant with Zartech Ltd. The Feed Mill Manager whose signature appeared to be dissonant in different part of Local Purchase Order 1491 accordingly to Exhibit R was not called as a witness. This omission is very fatal to the prosecution case.

It is generally correct to say that the prosecution has a discretion as to who to call as a witness. It is equally clear that where a vital and or material witness is not called, such a failure would be fatal to the case of the prosecution as in this case. **Per Kutigi JSC (page 6, paragraphs D to F in Alake v State (supra))**

Going by the decision in **Alake V. State** failure of the prosecution to call material witness to show the various Local Purchase Order in counts 9-11 were forged and to call witness whose signatures were alleged to have been forged is fatal to their case. In other words forgery must be particularized as it is not sufficient to lead evidence that the Local Purchase Order was not issued by the said companies. i.e Zartech Ltd. and Animal Care Konsult Ltd.

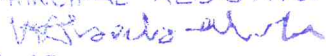
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In conclusion, there is no aota of evidence to prove all the essential ingredients of the offences alleged. A submission of no case to answer will succeed where there has been no evidence to prove an essential element of the offence. **See Ubanatu V. C. O. P (2000) 1 S.C 31; (2000) 2 NWLR (Part 643) 115.** Accordingly the no case to answer submission succeeds. The accused is discharged and acquitted on all the counts.

  
Hon. Justice O.O. Olatunji  
Judge

23/11/2015

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