

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL
TERRITORY**

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

SUIT NO: FCT/HC/CR/05/2011

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....PLAINTIFF

AND

USMAN IBRAHIM.....ACCUSED

JUDGEMENT

DELIVERED BY HIS LORDSHIP: HON. JUSTICE S.E. ALADETOYINBO

The accused person was arraigned before this Court on the 17th day of November, 2011 by the Economic and Financial Crimes Commission for the offence of Criminal Breach of Trust contrary to section 311 and punishable under section 312 of the Penal Code. The charge against the accused person reads as follows:

"That you Usman Ibrahim being a staff of Standard Chartered Bank Abuja. On or about the 2nd day of February, 2011 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, Abuja did dishonestly misappropriated the sum of \$90,000.00 entrusted to you by one FARUK SAMBO to be deposited into his Standard Chartered Bank Domiciliary account No. 00227090000 and thereby committed Criminal Breach of Trust punishable under section 312 of the Penal Code CAP 532 laws of the Federation of Nigeria (Abuja), 2004"

After the arraignment of the accused person, he pleaded not guilty and the Prosecutor called three witnesses to establish the ingredients of the offence against the accused person. The 1st witness is PW1; his name is **FARUK SAMBO**, a retired public servant, Managing Director of Quarda Construction Company Ltd.

The accused was a staff of standard Chartered Bank Garki, Abuja before he was dismissed for this incident.

PW1 Faruk Sambo has a domiciliary account with Standard Chartered Bank Garki Abuja. The accused person was his account officer. PW1 bought construction equipments from United States of America and there was need for him to remit **\$200,000.00** to where he bought the equipments.

PW1 therefore gave his brother by name Muritala Garuba a cheque drawn on Unity Bank Plc valued **N32,500,000.00** with a directive to cash the money, change same to **\$200,000.00** at Bureau de change and then give the money to the accused person to be paid into his domiciliary account at Standard Chartered Bank, Garki Abuja. Muritala Garuba who gave evidence as PW3 actually cashed the money, changed same to **\$200,000.00** and delivered same to the accused person who issued receipt to him which was admitted as Exhibit 'A'. Exhibit 'A' reads as follows:

"A total of **USD200,000=** has been given to me **USMAN IBRAHIM** for deposit into Standard Chartered Bank Account"

Signed:
02/2/11.

PW1 told the Court that he was aware that the accused person cannot deposit the **\$200,000.00** to his domiciliary account at once in a single day and that the bank cannot accept more than **\$50,000.00** deposit per day.

It will therefore take the accused four working days to deposit the **\$200,000.00**. The accused person only deposited the sum of **\$110,000=** into the domiciliary account of PW1 and claimed that he was defrauded of the balance of **\$90,000.00** by angels of Allah who happened to be fraudstars; PW1 then wrote a petition to EFCC which led to the accused being arraigned before this Court for breach of trust.

The 2nd witness for the prosecution was PW2 by name **SHEHU AWWA MOHAMMED**, he is attached to EFCC as an investigator and he investigated the case against the accused upon the petition written to EFCC by PW1 through his lawyer, PW2 told the Court that the sum of **\$200,000.00** was given or entrusted to the accused person by PW1. The money was to be deposited into PW1 domiciliary account in Standard Chartered Bank Garki, Abuja. The accused person only deposited **\$110,000.00=** into the said domiciliary account. The remaining balance of **\$90,000.00** was not accounted for by the accused, he only claimed he was defrauded of **\$90,000=** by fraud star. PW2 obtained the statement of the accused person through the words of caution and the accused wrote his statement in his own handwriting, same was admitted as Exhibit 'G'.

In Exhibit 'G', the accused person accepted collecting the sum of **\$200,000=** from PW1 but claimed he can only made **\$50,000.00** deposit into the account of PW1 per day and therefore went home with the balance. It was at home he encountered the fraudstars who duped him of **\$90,000.00** out of the **\$200,000.00**. The accused wrote a petition, Exhibit 'K' to the EFCC on the 3rd day of March

2011 about the fraudster who defrauded him. He later wrote another petition Exhibit 'L' to the Commissioner of Police, FCT Command about the same people that defrauded him.

Under cross examination, PW2 claimed Exhibit 'K' was never assigned to him for investigation; neither was Exhibit 'K' assigned to his team of investigators for investigation, Exhibit 'K' is a petition written to EFCC by the accused about his being defrauded of \$90,000.00 by fraudsters. The petition was written on the 2nd day of March 2011 and received by the EFCC on the 3rd day of March 2011.

Apart from Exhibit 'K'; the accused person wrote in his statement Exhibit 'G' that he had earlier written a petition to EFCC on the issue of \$90,000.00 on the 3rd day of March, 2011 for investigation. PW2 claimed that accused only provided him with the telephone number of those people that defrauded him, he called the number which was not available. PW2 claimed he cannot go further on the investigation as there was no enough facts to do so. The petition written to the Commissioner of Police, FCT Command by the accused person in respect of his being defrauded of \$90,000.00 dated 21st day of March 2011 was tendered in evidence as Exhibit 'L' through PW2. Equally admitted through PW2 is Exhibit 'M' a certified true copy of FIR with which the Commissioner of Police FCT arraigned three people accused of defrauding the accused of \$90,000.00. Exhibit 'M' indicated that the three accused persons who defrauded the present accused of \$90,000.00 were arraigned before Upper Area Court Karu after the investigation of Exhibit 'L'.

PW3 Murtala Garba confirmed to this Court that PW1 is his brother and that he gave him a cheque valued N30,000,000.00 to be cashed at Unity Bank Plc with the instruction to change the money to \$200,000= and give same to the accused

person. He gave the \$200,000.00 to the accused on the 2nd day of February 2011 and the accused gave him an acknowledgement which had been admitted as Exhibit 'A'.

From the evidence of the Prosecution witnesses it is not in doubt nor disputable that the accused received the sum of \$200,000= from PW1, the directive given to the accused was to pay the N200,000.00 to the domiciliary account of PW1 in Standard Chartered Bank Garki, Abuja FCT. What the accused paid to the account of PW1 was \$110,000.00 remaining the balance of \$90,000= which the Prosecutor alleged accused person dishonestly misappropriated.

After the conclusion of the evidence of the prosecution, in other words after the witnesses for the prosecution concluded their evidence and closed their case, Counsel to the accused person made a **NO CASE SUBMISSION ON BEHALF OF THE ACCUSED PERSON** on the 23rd day of December 2014 while the Prosecutor equally stated in his written address that a prima facie case has been established against the accused person. What did no case submission made by defence Counsel postulate? For answer to the question. See: **EKWUNUGO VS. FRN (208) 15 NWLR PT 1111 PG 630 AT 632** where the Supreme Court held as follows:

"A submission that there is no case to answer by an accused person means that there is no evidence on which even if the Court believe it, it could not convict. In other words, that certain essential elements of the offence for which the accused stands charged was not proved by the Prosecution; that no evidence was led to prove such essential element. The question whether or not the Court believes the evidence led does not arise at that stage of the proceedings. The credibility of

the witnesses also does not arise at that stage. This is because the trial of the case was at that stage not yet concluded. This is therefore the reason why the court should not concern itself with the credibility of witnesses or the weight to be attached to the evidence”.

On when a no case to answer made by defence Counsel on behalf of the accused can be properly made and uphold by the Court, See: **EKWUNUGO VS. F.R.N. (2008) 15 NWLR PG 630 AT 633** where the Supreme Court held as follows:

“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 offence and or;*
- (b) 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”*

The duty of the Court while ruling on no case submission is to look at the evidence of the prosecution witnesses including the Exhibits and determine whether a prima facie case had been made out against the accused person. What has to be considered is not whether the evidence of the three prosecution witnesses including the Exhibits are sufficient to justify conviction, the Court is equally not expected to write lengthy judgment. A ruling on no case submission should be as brief as possible and not in any way go into evaluation of the evidence led.

See: **UBANATU VS. C.P. (2000) 1 SC PG 47** where the Supreme Court held as follows:

"It is trite law that on a submission of "no case to answer" it is wiser for a judge or magistrate to be brief in his ruling and make no remarks or observations on fact"

On what amounts to prima facie case against accused person in a no case submission, in other words when a no case submission made on behalf of the accused person will not be upheld by the Court.

See: **EKWUNOGO V. F.R.N. (2008) 15 NWLR (PT.1111) 630 AT 634** where the Supreme Court held as follows:

"At the stage where a no case submission is made on behalf of an accused, the issue is not whether the Prosecution has proved the charge against the accused beyond reasonable doubt but whether a prima facie case has been made out by the prosecution against the accused so as to make it necessary for the Court to call on the accused to open his defence to the charge".

Case is made out against the accused person. See: **EKWUNOGO V. F.R.N. PG 634 supra.**

"A prima Facie case is made out where the evidence adduced by the prosecution is such that if uncontradicted, would be sufficient to prove the case against the accused persons"

See: **DURU V. NWOSU 1989 1 NWLR (PT.113) 24 AT 43** where Nnamani Jsc held about prima facie case as follows:

"It seems to me that simplest definition is that which says that "there is ground for proceeding". In other words that something has been produced to make it worthwhile to continue with the proceeding. On

the face of it "suggest that the evidence produced so far indicates that there is something worth looking at"

Coming back to the present case, what are the ingredients of Criminal Breach of Trust contrary to Section 311 of the Penal Code and punishable under Section 312 of the Penal Code? The following are what the prosecution must establish for the offence of criminal breach of trust in this case.

- (a) That the accused was entrusted with the **\$90,000.00**.
- (b) That the accused misappropriated the **\$90,000.00** or converted same to his own use.
- (c) That the accused misappropriated the **\$90,000.00** in violation of the directive made to him to deposit same in the domiciliary account of PW1 at Standard Chartered Bank, Garki, Abuja.
- (d) It must be established by the prosecution that the misappropriation of the **\$90,000.00** by the accused was dishonest.

For the ingredients of the offence of criminal breach of trust. See **ONUOHA V. THE STATE (1988) 7 SC PART 1 PG 74 AT 93** where the Supreme Court held as follows:

"The ingredients of the offence have been correctly stated by the learned trial judge to be as follows:

- (a) *That the accused was entrusted with property or with dominion over it.*
- (b) *That he;*
 - (i) *Misappropriated it ; or*
 - (ii) *Converted it to his own use;*

- (iii) *Used it; or*
- (iv) *Disposed of it;*
- (c) *That he did so in violation of:*
 - (i) *Any direction of law prescribing ,the mode in which such trust was to be discharged or;*
 - (ii) *Any legal contract expressed or implied which he had made concerning the trust or;*
 - (iii) *That he intentionally allowed some other persons to do as above;*
 - (iv) *That he acted as in (b) dishonestly..."*

It is not in doubt that the accused person was entrusted with the sum of **\$200,000.00** to be paid into the domiciliary account of PW1 at Standard Chartered Bank, Garki Abuja.

The evidence of the prosecution further revealed that the said **\$200,000.00** cannot be paid into the said account at once, because the Bank cannot accept more than **\$50,000.00** to be deposited in the account per day.

It therefore follows that accused had to take part of this money along with him to his house. Evidence of prosecution witnesses further revealed that accused only paid the sum of **\$110,000.00** into the account of PW1, the balance of **\$90.000.00** the accused claimed he was defrauded by fraudstars.

Accused wrote a petition Exhibit 'K' to EFCC on the 3rd day of March, 2011 he stated that the fraudstar made him to send **N65,000.00** MTN recharge cards to them quoting the numbers of the re-charge cards and the telephone numbers used by the fraudstar. He claimed he was later defrauded of **\$90,000.00**.

In the petition, the accused tried to link PW1 Farouk Sambo with the fraudstars. When the accused was arrested on the 7th day of April 2011, he wrote in his statement that he was defrauded of \$90,000.00 by fraudstars. It is very surprising that the EFCC failed to investigate the petition written by the accused to them Exhibit 'K' on the 3rd day of March.

It is equally surprising that the EFCC failed to investigate how the accused was defrauded of \$90,000.00 mentioned in his statement, Exhibit 'G'. The EFCC has a duty to investigate whether the accused was defrauded of \$90,000.00.

The investigation would have revealed whether the accused dishonestly misappropriated the sum of \$90,000.00. If the investigation revealed that the accused was actually defrauded of the \$90,000.00, there is no need for the arraignment of the accused person before this Court because one of the essential ingredient of criminal breach of trust is that the accused dishonestly misappropriated the \$90,000.00 or converted same to his own use.

The failure of the EFCC to investigate the petition written to them by the accused Exhibit 'K' is fatal to this case because it shows the EFCC was bias against the accused person. Failure to investigate Exhibit 'K' means investigation had not been completed on the part of EFCC, the case ought not to have been charged to Court.

One of the essential ingredient of criminal breach of trust of which the accused was charged before Court is that the accused dishonestly misappropriated the \$90,000.00 or converted to his own use the sum of \$90,000.00.

See: **AIYEJENA V. THE STATE** 1969 NNLR 73 AT 74 where the Court held as follows:

"The offence of criminal breach of trust is defined in Section 311 of the penal code. An essential ingredient is that the person charged "dishonestly misappropriates or converts to his own use" the property. In that case, before a Court could convict the appellant there must be a finding of fact that he misappropriated the £500.00..... Conviction of a person for the offence of criminal breach of trust may not in all cases, be founded merely on his failure to account for the property entrusted to him or over which he has dominion even when a duty to account is imposed upon him; but when he is unable to account or renders an explanation of his failure to account which is untrue, an inference of misappropriation with dishonest intent may readily be made"

See also: **BATSARI V. KANO NATIVE AUTHORITY 1966 NRNLR 151** where the Court held as follows:

"It is essential that before there can be a conviction on a charge of breach of trust there must be evidence of entrustment and of dishonest misappropriation of what was entrusted. Section 311 of the penal code which defines the offence is in exactly the same wording as section 405 of the Indian penal code. So the remarks on that Section contained in the 20th Edition of Ratanlal on the law of crimes are pertinent. At page 1035 the learned author says..... "the misappropriation or conversion or disposal must be with a dishonest intention. Every breach of trust gives rise to a suit for damages but if is only when there is evidence of a mental act of fraudulent misappropriation that the commission of embezzlement of any sum of money becomes a penal offence punishable as criminal breach of trust

it is this mental act of fraudulent misappropriation that clearly demarcates an act of embezzlement which is a civil wrong or tort from the offence of criminal breach of trust".

There is no evidence before this Court that the accused person dishonestly misappropriated the \$90,000.00, therefore the prosecution had failed to establish one of the essential ingredients of criminal breach of trust therefore the no case submission made by the accused will be upheld. The accused is hereby discharged, the case of the prosecution is very weak, it cannot be made strong by compelling the accused person to enter into his defence.

See: **ABRU V. STATE 2011 17NWLR PT.1275 PG 1 AT 7** where the Court of Appeal held as follows:

"When a prima facie case has not been established against an accused person, it means that the availing presumption of innocence is still invocable in favour of such an accused person. In such instance, a no case submission must be upheld and the accused person will be entitled to be discharged. Afortiori where the case of prosecution is weak, it cannot be fortified by compelling the accused person to enter into his defence with the likelihood of his filling the Blank or supplying the missing links in the case for the prosecution"

The accused person wrote another petition about his being defrauded of \$90,000.00 by fraud star to commissioner of Police FCT Command dated 21st March, 2011 same was admitted as Exhibit 'L'. The Commissioner of Police investigated the fraud arrested two suspects and arraigned them before Upper Area Court Karu. The Certified True Copy of the FIR was admitted as Exhibit 'M'. The basic principle in a criminal prosecution is that the prosecution must prove all the

ingredients of the offence charged. The burden never shifts, in this case, the prosecution failed to establish that the accused person dishonestly misappropriated the sum of \$90,000.00. Exhibit 'M' tendered by the accused completely established the innocence of the accused person.

In the said Exhibit 'M' the two accused person mentioned therein were alleged to have confessed to defrauding the accused person. Some of the proceeds of the crime were recovered by the Police from them.

Signed:
Hon. Judge.
16/2/2015 .

Accused person present in Court.

Onjefu Obe appearing for the prosecution.

Steve E. Eke appearing for the accused person.

Signed:
Hon. Judge.
16/2/2015 .