

**IN THE HIGH COURT OF JUSTICE OF KADUNA STATE**  
**IN THE KADUNA JUDICIAL DIVISION**  
**HOLDEN AT COURT 12 KADUNA**  
**DELIVERED THIS 24<sup>th</sup> DAY OF JULY, 2018**

**BEFORE THE HONOURABLE JUSTICE D.H. KHOBO—JUDGE**

**KDH/KAD/EFCC/6/14**

**BETWEEN**

FEDERAL REPUBLIC OF NIGERIA ..... COMPLAINANT

AND

MOHAMMED IBRAHIM SODANGI ..... ACCUSED

**RULING**

This is a no case submission made by the defendant at the close of the prosecutor's case. The antecedent of this case before the no case submission is that pursuant to the leave of this court granted on the 15/5/2014, the defendant was arraigned on the same date on 13 count charge bordering on allegations of impersonation as contained in count 1 of the charge and theft as contained in counts 2—13 of the charge dated 5/5/2014.

Upon arraignment the defendant pleaded not guilty to all the 13 counts charge. Trial thereafter commenced on the 19/6/2014 and



in the course of the trial, the prosecution called 5 witnesses and tendered 19 documents and then closed its case.

At the close of the prosecution's case, after the recall of PW1 on the 3/5/2018, the defendant entered a no-case submission and filed a written address in support of the no case submission filed on the 8/5/2018.

When the defendant's written address was served on the prosecution as required by law, the prosecution in response filed a written address dated 9/6/2018 and filed on 8/6/2018.

On the 12/6/2018, this court took the defendant's no case submission wherein learned counsel representing the defendant, A.S. Moyosore Esq. adopted their written address as their oral submission in support of the no case submission.

He submitted that the defendant should not be called upon to enter defence, the prosecution having failed to establish a prima facie case against the defendant and also for their failure to prove the essential ingredients of the offence alleged in all the counts contained in the charge sheet.

Counsel submitted further that Section 132 of the Penal Code did not provision for retired officer/civil servant imported by the prosecution in the charge and thus has the effect of asking the defendant to answer to a charge not covered by law. He submitted that, it is the law that the provision of a statute should be construed by the court literally and the words must be given their ordinary meaning. He referred to the case of **P.M.L. NIG LTD VS FRN (2018) 7 NWLR (Pt. 1619) 448 at 485**. He argued that the term used in Section 132 of the Penal Code is "public servant" and public servant cannot be equated with the word "consultant" and "retired civil servant" expressly used in Section 132 of the Penal Code. He



submitted to that extent that the defendant cannot be tried under count 1 as couched in the charge sheet.

On the submission made in respect to section 314(3) of the Administration of Criminal Justice Law, 2017, learned counsel representing the defendant submitted that the court shall have regard to the items listed in paragraphs a, b, c and d of the subsection. He submitted that paragraph (d) of that section refers to any other ground on which the court may find. He submitted that a consideration of that subsection presupposes that the court will consider the defence arguments against count 1 and also their arguments that the ingredients of the offences listed in count 2—13 are not proved.

On count 2—13, learned counsel to the defendant submitted that there is nowhere in the totality of the evidence before the court that the defendant was linked with the commission of the offence. He submitted that the documents tendered are of no evidential value as the documents were either legally inadmissible or were not linked to the defendant vis-a-vis the alleged offence.

Counsel submitted further on Exhibit 1 before the court, that the maker was available but was not called as a witness contrary to Section 83(10) of the Evidence Act, Section 83(4) and 93 all of the said Evidence Act. He submitted further on the computer generated evidence, what was tendered before the court is certificate of identification and not certificate as provided for in section 84(4) a, b, c, of Evidence Act.

Learned counsel representing the prosecution, Sylvanus Tahir Esq. on the other hand, adopted their own written address as their oral submission urging the court to dismiss the defendant's no case submission and make an order calling on the defendant to enter his defence.

He submitted that there is a distinction between the requirement of proof beyond reasonable doubt where the court is to write a judgement and the concept of prima facie case which is weigh solely on the evidence adduced by the prosecution.

Counsel submitted that the court is invited to note that only the prosecution has so far led evidence against the defendant, evidence as it is, is now only on one side.

He submitted that the question is, based on the evidence so far led by the prosecution without the hearing from the defendant "has the prosecution made a prima facie case by its evidence to warrant some explanation from the defendants? He refered the court to the case of **ADAMA VS STATE (2018) 3 NWLR (Pt. 1605) 94 at 122—123.**

Learned counsel for the prosecution submitted further that on the basis of the oral and documentary evidence tendered before this court, the defendant need to be called upon to offer some explanation. He submitted that on the charge of impersonation in count 1, the defendant's counsel has made a heavy weather on the fact that the prosecution in count 1 alleged that the defendant impersonated retired civil servant or pensioner and not public servant who is still serving. He submitted that section 132 of the penal code is a question of interpretation and urged the court to adopt a liberal interpretation to find the intention of the parliament. He referred to the case of **MAGOR VS C.T. MALON CORPORATION (1932) A.C** and submitted that Section 132 Penal Code is wide enough to accommodate all kinds of impersonation.

He urged the court to dismiss the defendant's no case submission as the prosecution has established a prima facie case against the defendant for the court to call on the defendant to enter his defence.



The defendant has formulated one issue for determination to wit;

“Whether the totality of evidence led so far by the prosecution is sufficient to justify the continuation of the trial such that the defendant will be required to enter his defence in this case”

The prosecution also formulated one issue for determination to wit;

“Whether from the overwhelming oral and documentary evidence presented by the prosecution, the prosecution has not established a prima facie case of the offences of impersonation and theft against the accused person to warrant this honourable court to call upon him to enter his defence”

In my view, the issue for determination is

*“Whether the prosecution has made out a prima facie case against the defendant to warrant the defendant being called upon to enter his defence in this case”*

The law is settled that at the close of the case of the prosecution, a submission of no case to answer made on behalf of the accused person postulates one of two things or both of them, namely;

- (a) That there is no legally admissible evidence linking the accused with the commission of the offence with which he had been charged which would necessitate his being called upon for his defence,
- (b) That the evidence adduced has so been discredited as a result of the cross examination or is so manifestly unreliable that no reasonable court or tribunal can act on it as establishing the criminal guilt in the accused person concerned.

A no case submission only means that there is nothing in the evidence adduced by the prosecution that would persuade the court to compel the accused to put up his defence. The purport of a no case submission when made on behalf of an accused person is

that the trial court is not 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. See the case of **SUBERU VS STATE (2010) 8 NWLR (Pt. 1197) p.586 at 601—602 paragraph G—B; 613 –614 paragraphs B—B.**

Furthermore, section 303(3) of the Administration of Criminal Justice Act has laid down the conditions the defendant must satisfy a no case submission and what the court should look out for.

In considering the application of the defendant on a no case submission under Section 303 of the Administration of Criminal Justice Act, 2017 the court shall in exercise of its discretion have regard to whether;

- a) Whether an essential element of the offence has been proved
- b) Whether there is evidence linking the defendant with the commission of the offence with which he is charged
- c) Whether on the face of the record, the evidence of the prosecution has been so discredited and rendered unreliable by cross examination that it would be unsafe to convict on such evidence.
- d) Whether the evidence so far led is such that no reasonable tribunal or court would convict on it, and
- e) Any other ground on which the court may find that a prima facie case has not been made out against the defendant for him to be called upon to answer.

I have carefully considered the submission for and against the no case submission, the evidence of the prosecution, vis-a-vis the charges against the defendant.

It is the argument of the defendant's counsel that paragraph 4.06 of his written address in support of the no case submission that the



statements of the defendant (Exhibits 7—13) are involuntary and therefore not a legally admissible document.

It is noteworthy of note here, that this issue has been put to rest by this court following the trial within trial coordinated by this court to determine the voluntariness or otherwise of the statements and a ruling was thereafter delivered on 20/7/2017 admitting the said statements of the defendant as being voluntary.

Furthermore, it is the contention of the defence counsel in support of the no case submission that the maker of Exhibit 1 was not called as a witness to testify.

The law is settled in a plethora of cases that the number of witnesses a prosecution needs to call to prove its case is entirely its responsibility and not that of the defence. See the case of **ADEYEMI VS STATE (2015) 16 NWLR (Pt. 1485) S.C.**

Furthermore, the defence counsel has contended on count 1 of the charge dealing with the allegation of personating a public servant/officer by the defendant that the prosecution failed to use the exact words as contained in Section 132 of the Penal Code refers to servants and not retired civil servants.

It is my view and as rightly submitted by the prosecution counsel that the basic function of every court called upon to interpret a piece of legislation is to seek out the intention of the legislator as could be gathered from the four corners of the statute itself. See the case of **UHUNMUANGHO VS OKOJIE (1989) NWLR (Pt. 122) S.C. 471 at 490 paragraphs B—C.**

Thus, section 132 of the penal code is intended to punish any offender who pretends to hold any particular public office as public servant or who falsely personates any other person holding such office and to hold otherwise will defeat the meaning of the section and capable of giving a lee way or escape route for offenders who personate retired public servants /officers.

The law is settled that when a court is giving consideration to a submission of a no case, it is not necessary at that stage of the trial for the learned trial judge to determine if the evidence is sufficient to justify a conclusion. The trial court only has to be satisfied that there is a prima facie case requiring at least some explanation from the accused. A man intends the natural consequences of his conduct. See the case of **ALEWO ABOGEDE VS STATE (1996) 4 SCNJ 223**.

Furthermore, in the case of **EMEKA EKWUNUGU VS FEDERAL REPUBLIC OF NIGERIA (2008) 7 SC 196**, the Supreme Court held that at the no case submission stage, it is not for the trial court to go into consideration of the issue of credibility of the witnesses.

Again, 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 some explanation from the accused person.

It is my considered view after examining the evidence led by the prosecution that there can be no doubt that the evidence discloses a prima facie case. There is a case to answer, and the only reasonable course to take is to call on the defendant to explain how the names of Mohammed Ibrahim and Mohammed S. with the same account details as his in Keystone Bank and FCMB found its way into the monthly pension payroll alleged by the prosecution, being a consultant charged with the responsibility of preparation and generation of pension payroll and not being a person who has worked for Kaduna State Government eligible for pension.

Prima facie was defined in the case of **UZOAGBA VS C.O.P (2014)5 NWLR (Pt. 1401) 441 at 461 paragraphs D—F** to mean that the prosecution's case against an accused person has raised some serious questions linking the accused person to the crime and so calling for some explanation from the accused person and which only the accused person from his personal knowledge can give.



Furthermore, a prima facie case is made against a person where in the face of the available evidence, an offence has being committed and there is evidence which could possibly ground conviction of suspect. See the case of **IKOMI & ORS VS THE STATE (1986) 1 NSCC 7 30.**

A prima facie case only means that there is a ground for proceedings, it is not the same as proof which has to find whether the accused is guilty or not guilty. An 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. See the case of **SHATTA VS FRN (2009) 10 NWLR (Pt. 1149) 403 at 412 paragraphs B—C.**

Thus, where there is evidence, however slight linking an accused person with the commission of the offence charged, the case ought to proceed for the accused to explain his own side of the matter. See the cases of **DABOH & ANOR VS STATE (1977) 5 SC 197** and **AGBO VS STATE (2013) 11 NWLR (Pt. 1365) 377 at 393 paragraphs F—H.**

On the whole, I overrule the no case submission by the learned counsel to the defendant and hold that a prima facie case has been made out by the prosecution in this case and the defendant has a case to answer.

Accordingly, the defendant herein is hereby called upon to enter his defence.



Signed 24/7/2018  
Judge.