IN THE COURT OF APPEAL
IN THE AKURE JUDICIAL DIVISION
HOLDEN AT AKURE

ON THURSDAY, THE 31ST DAY OF MAY, 2018.

BEFORE THEIR LORDSHIPS:

UZO I. NDUKWE - ANYANWU — JUSTICE, COURT OF APPEAL
OBANDE F. OGBUINYA — JUSTICE, COURT OF APPEAL
RIDWAN M. ABDULLAHI — JUSTICE, COURT OF APPEAL

APPEAL NO. CA/AK/234C/2016

BETWEEN:

SUNDAY DADA ADEBAYO ..... APPELLANT

VS.

FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT

J U D G M E N T

(DELIVERED BY OBANDE FESTUS OGBUINYA, JCA)

This appeal probes into the correctness of the decision of the High Court of Ondo State, sitting in Akure (hereinafter called "the lower court") *coram judice:* T. O. Osoba, J., in Suit No. AK/110C/2014, delivered on 20th April, 2016. Before the lower court, the appellant and the respondent were the accused person and the complainant respectively.

The facts of the case, which transformed into the appeal, are amenable to brevity and simplicity. The Independent Corrupt Practices Commission (ICPC, for short) is one of the law enforcement and

prosecutorial agencies against corruption in Nigeria. Sometime ago, the Commission received a petition titled: "Fraud Incorporated at FMC Owo over 100 million confirmed missing". The Commission assigned the petition to a team of personnel for investigation. It was, duly, investigated. Thereafter, the commission sought and obtained leave of the lower court to file criminal charges against the appellant and one Oguntuase David Akintayo, now deceased, who were the Acting Chief Medical Director and Chief Accountant of the Federal Medical Centre, Owo respectively. Pursuant to the consent, the respondent filed a 4-count information against the appellant for these offences: doing an act in furtherance of commission of an offence, use of position to confer corrupt advantage upon self (₦100M), making of statement which is untrue in any material particular and making of statement which is false punishable under the provisions of 16, 19, and 25(1) (b) of the Corrupt Practices and other Related Offences Act, 2000 respectively. On arraignment before the lower court, on 20th November, 2014, the appellant pleaded not guilty to all the counts in the information. The appellant was later admitted to bail.

Following the not guilty plea, the lower court proceeded to a full-scale determination of the case. In proof of the case, the respondent fielded two witnesses, PW1 and PW2, and tendered documentary evidence. At the closure of the respondent's case, the appellant made a no-case submission. The lower court heard the parties, *qua* counsel, on it. In a considered ruling, delivered on 20th April, 2016, found at pages

404-411 of the printed record, the court overruled the no-case submission and called upon the appellant to open his defence.

The appellant was dissatisfied with the decision. Hence, on 29th April, 2016, he lodged a 5-ground notice of appeal, seen at pages 412-416 of the records, and prayed the court for:

(a) An order allowing the appeal

(b) An order setting aside the decision of the court calling on the accused person to enter into his defence.

(c) An order upholding the no-case submission urged upon the learned trial Judge

(d) An order discharging and acquitting the accused person/appellant.

Thereafter, the parties filed and exchanged their briefs of argument in line with the rules governing the hearing of criminal appeals in this court. The appeal was heard on 8th March, 2018.

During its hearing, learned counsel for the appellant, N. A. Ayoola, Esq., adopted the appellant's brief of argument and the appellant's reply brief, filed on 9th November, 2016 and 26th May, 2017 respectively, as representing his arguments for the appeal. He urged the court allow it. Similarly, learned counsel for the respondent, G. P. West, Esq., adopted the respondent's brief of argument, filed on 20th April, 2017, as forming his reactions against the appeal. He urged the court to dismiss it.

In the appellant's brief of argument, he distilled two issues for determination to wit:

1. **Whether from the evidence adduced by the prosecution, the trial court was right in holding that a prima facie case has been made against the appellant thereby overruling the no case submission urged upon her by the appellant at the close of the prosecution's case when there have been no evidence to prove an essential ingredient of the alleged offences.**
2. **Whether from the ruling of the trial court on the no case submission by the appellant, the trial court has not made crucial findings thereby prejudging the accused guilty of the offences charged.**

The respondent, in its brief of argument, crafted two issues for determination viz:

(a) **Whether the Learned Honourable Lower Trial Judge was not right when His Lordship held that the essential elements and/or ingredients of the offences in the various counts alleged against the Appellant herein, Mr. Sunday Dada Adebayo had been proven by the**

evidence adduced before the Lower Trial Court, thus evincing the existence or a strong prima facie case against the Appellant as the Accused person, thereby requiring him to proffer some explanations in the light of his earlier entering of a plea of "not being guilty" to the alleged offences?

(b) Whether the Honourable Lower Trial Court had in its Ruling refusing and dismissing the 'No Case to Answer' submissions urged upon it by the Appellant made crucial prejudicial findings of fact adjudging the Appellant guilty beyond reasonable doubt of the offences for which he is standing trial before it thus fettering His Lordships' discretion with proceeding with the determination of the case to its conclusion.

A close look at the two sets of issues shows that they are identical in substance. Indeed, the respondent's verbose and clumsy issues are almost a clone of the appellant's. For this reason of sameness, I will decide the appeal on the issues formulated by the appellant: the undoubted owner of the appeal.

Arguments on the issues

Issue one.

Learned counsel for the appellant enumerated the ingredients of the offences charged. He submitted that no-case to answer meant that there was no evidence on which a court could convict an accused person even if it believed the evidence. He relied on ***Abacha v. State*** (2002) FWLR (Pt. 118) 1224; ***Ekpo v. State*** (2001) FWLR (Pt. 55) 454. He enumerated the two instances when a no-case submission should be made as noted in ***Ekpo v. State*** (supra). He observed that they were not of general applicability. He referred to ***Ibeziako v. C.O.P.*** (1963) All NLR 61; ***Ajibiye v. State*** (1995) 8 NWLR (Pt. 414) 408; ***Akwa v. C.O.P.*** (2003) FWLR (Pt. 149) 1482; ***Emedo v. State*** (2002) FWLR (Pt. 130) 1645. He stated the meaning of *prima facie* case as noted in ***Sher Sigh v. Jiterddranthen*** (1931) 1 LR 59 Calc. 275; ***Ajidagba v. IGP*** (1958) SCNLR 60; ***Ubanatu v. The State*** (2000) FWLR (Pt. 1) 138. He posited that the respondent failed to adduce evidence in proof of all the essential ingredients of the offence. He relied on the evidence on record. He reasoned that the respondent failed to prove that the cheque, exhibit C, was cleared and paid to the appellant. He cited ***Chindo Worldwide Ltd. v. Total Nig. Plc*** (2002) FWLR (Pt. 115) 750; ***H.M.S. Ltd. v. FBN Plc.*** (1991) 1 NWLR (Pt 167) 290; ***Abeke v. State*** (2007) All FWLR (Pt. 366) 644; ***NDIC v. K.B. & C. Services Ltd.*** (2007) 41 WRN 34. He said that the respondent's failure to produce the statement of account showed that

it was unfavourable to it. He relied on ***UBN Plc. v. Ofagbe Farms Ltd.*** (2003) FWLR (Pt. 142) 49.

Learned counsel conceded that an accused person could be convicted solely on his confessional statement. He cited ***Wachukwu v. The State*** (2007) 12 SCM 447; ***Ikemson v. State*** (1989) 3 NWLR (Pt. 110) 455; ***Barmo v. State*** (2000) 1 NWLR (Pt. 641) 433. He, however, added that such confessional statement should be supported by other evidence which was lacking in the case. He reasoned that the case was based on suspicion which would not ground conviction. He referred to ***Abasha v. State*** (supra). He concluded that even when an accused confessed to a crime the prosecution would not be relieved of the burden to prove a case beyond reasonable doubt. He relied on ***Omonga v. State*** (2006) All FWLR (Pt. 306) 930.

For the respondent, learned counsel stated that the applicable provision was section 303 of the Administration of Criminal Justice Act, 2015. He observed that authorities had decided on the rules to guide the courts in no-case submission. He relied on ***Ubanatu v. C.O.P.*** (2000) 1 SC 31; ***Ekwunugo v. FRN*** (2008) 7 SC 196; ***Tongo v. C.O.P.*** (2007) 4 SCNJ 221; ***Dabol v. State*** (1977) 5 SC 122. He explained the meaning of *prima facie* case as noted in ***Ubanatu v. C.O.P***. (supra); ***Tongo v. C.O.P.*** (supra). He appraised the evidence to show that *prima facie* case was made. He said that the appellant was a public officer as defined by section 2 of the Corrupt Practices and other Related Offences Act. He cited ***Utih v. Onoyiwve*** (1991) 1 NWLR (Pt. 166) 176. He insisted that

the evidence adduced by the respondent were unchallenged and should be accepted by the court. He cited ***Egbuna v. Egbuna*** (1989) 2 NWLR (Pt. 106) 773; ***Oforlete v. State*** (2000) 7 SC (Pt. 1) 80/(2000) 7 SCNJ 162. He posited that the PW1 was not cross-examined on the evidence that his company rendered no feasibility study services to the Federal Medical Centre and same should be deemed as admitted. He relied on ***Leye Adejuyigbe v. FRN*** (unreported) Appeal No. CA/AK/67C/2014 delivered on 17th March, 2017; ***Egwumi v. State*** (2013) 13 NWLR (Pt. 1372) 525) ***Ikaria v. State*** (2014) 1 NWLR (Pt. 1389) 639.

Issue two.

Learned counsel for the appellant contended that a court's ruling on no-case submission must be brief without remarks on the facts. He relied on ***Ubanatu v. C.O.P.*** (2000) 2 NWLR (Pt. 643) 115; ***Ajiboye v. State*** (1996) 8 NWLR (Pt. 414) 408. He reproduced some parts of the lower court's ruling and maintained that the decision was determination of the substantive case. He explained that a substantive case should not be determined at interlocutory stage. He cited ***Misc. Offences Tribunal v. Okoroafor*** (2001) 18 NWLR (Pt. 745) 295; ***Orji v. Zaria Ind. Ltd.*** (1992) 1 NWLR (Pt. 216) 124; ***A. –G., Fed. v. A. –G., Abia State*** (2001) 11 NWLR (Pt. 725) 689. He asserted that when no-case submission was made, an accused should no longer be regarded as charged with the offence and must be discharged and acquitted. He cited ***Adeyemi v. State*** (1991) 6 NWLR (Pt. 195) 1; ***Ubanatu v. State*** (supra). He persisted that courts should be impartial. He cited ***Akinbinu v. Oseni***

(1992) 1 NWLR (Pt. 215) 121. He concluded that a trial court should not convict an accused until all the ingredients of an offence were proved beyond reasonable doubt. He referred to ***Tanko v. State*** (2008) 16 NWLR (Pt. 1114) 564.

On behalf of the respondent, learned counsel submitted that an expression of opinion or observation made in a no-case submission would not be sufficient to reverse it. He cited ***R. v. Ekanem*** (1950) 13 WACA 108. He explained that not all cases of lengthy ruling would falter court's discretion as to lead to reversal of a no-case submission. He referred to ***Omisore v. State*** (2005) 1 Q CCR 148. He reasoned that the ruling of the lower court would not fetter its discretion. He maintained that the respondent showed *prima facie* case. He cited ***Abogede v. State*** (1996) 4 SCNJ 223.

Resolution of the issues.

For the sake of orderliness, I will attend to the issues in their numerical sequence of presentation by the parties. To this end, I will kick off with the settlement of issue one. The meat of the issue is plain. It quarrels with the lower court's finding that the respondent established a *prima facie case* against the appellant to warrant his defence.

By way of prefatory observations, a no-case submission connotes that there is no evidence on which a court, even where believes it, can convict an accused person, see ***C.O.P. v. Amuta*** (2017) 4 NWLR (Pt. 1556) 376. It is a method, usually, employed by an accused person as

an alternative to defence, at the conclusion of the prosecution's case in a criminal trial. In ***Ibeziako v. C.O.P.*** (1963) 1 All NLR 61/(1963) 1 SCNLR 99, the apex court invented two circumstances under which a no-case submission will be upheld thus:

> **(i) When there has been no evidence to prove an essential element in the alleged offence either directly, circumstantially or inferentially;**
>
> **(ii) 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 can safely convict on it.**

The case-law sanctions that a trial court's ruling on a no-case submission must be brief, not lengthy, and should not make remarks on facts. The reason is not far-fetched. A lengthy ruling, touching on the facts and evidence will likely fetter its discretion in the event that it overrules it. A no-case submission does not invite a trial court to express opinion on the evidence or credibility of witnesses. All that is required is for it to ascertain whether there is any evidence, no matter the *quantum*, that links the accused person with the offence preferred against him, see ***Ubanatu v. C.O.P.*** (2000) 1 SCNQ 89; ***Omisore v. State*** (2005) 12 NWLR (Pt. 940) 591; ***Uzoagba v. C.O.P.*** (2014) 5 NWLR (Pt. 1401) 441; ***Okafor v. State*** (2016) NWLR (Pt. 1502) 248; ***Egharevba v. FRN*** (2016) 10 NWLR (Pt. 1521) 431; ***C.O.P. v. Amuta*** (supra); ***Oko v. State*** (2017)

17 NWLR (Pt. 1593) 24. In other words, the law requires the court to discern, from the evidence on record, if the prosecution has established a *prima facie* case against an accused person *vis-à-vis* the crime levelled against him. Historically, *prima facie*, which has been disobedient to a single definition, traces paternity of its significance to the Indian case of ***Sher Singh v. Jitend-dranthen*** (supra) which was adopted by the Nigerian Supreme Court in ***Ajidagba v. IGP*** (1958) SCNLR 60. It denotes the existence of ground(s) for proceeding in a matter. It is not coterminous with proof which comes at the twilight of a proceeding when a court will decide the fate of a culprit. A piece of evidence discloses a *prima facie* case when it is such that, if unrefuted and believed, it will be enough to prove the case against an accused person, see ***Abacha v. State*** (2002) 11 NWLR (Pt. 779) 437; ***Ubanatu v. State*** (supra); ***Abogede v. State*** (1996) 4 SCNJ 223; ***Uzoagba v. C.O.P*** (supra); ***Okafor v. State*** (supra); ***C.O.P. v. Amuta*** (supra); ***Oko v. State*** (supra). For a dispassionate determination of the appeal, this court will wear/bear these hallowed principles of no-case submission, like a badge, on its judicial shoulder.

Now, the offences, which were preferred against the appellant, are wrapped in the penalty provisions of sections 19, 25(1) (a), 25(1) (b) and 26(1) (b) of the Corrupt Practices and other Related Offences Act. The various ingredients of these offences are inherent and decipherable from the provisions.

In total loyalty to the law, I have consulted the record, the touchstone of the appeal, especially at the residence of the respondent's evidence which colonises pages 379-388 of it. I have perused the *viva voce* evidence of PW1 and PW2, dotted with admitted documentary evidence, with the finery of a tooth comb. Interestingly, they are submissive to easy comprehension. I have, in due obeisance to the law, situated/married the testimonies with the ingredients of the offences. The *raison d'etre* for the juxtaposition is simple. It is to discover if the former, the evidence, satisfied the requirements/injunctions of the latter: the ingredients. The evidence, both oral and documentary, amply, demonstrate a serious *nexus*/connection between the appellant and the offences charged. Put differently, the evidence, clearly, revealed some incriminating points against the appellant which demand certain explanations from him. Those explanations fall within his personal knowledge. Since they are personal to him, he can only avail or starve the lower court of it by dint of entering a defence.

The lower court, at the foot of page 410, lines 18 and 19, of the record, ultimately, found:

> **Also, without saying more, I hold that the accused person has a case to answer for which I now call upon him to enter his defence.**

In the light of this brief juridical anatomy, done after due consultation with the law, the solemn finding is unassailable. The lower court did not, in the least, fracture the law on the finding to warrant the intervention by

this court. Indeed, all the castigations, which the appellant, *qua* counsel, rained/poured against the immaculate finding peter into insignificance. In the end, I have no choice than to resolve the issue one against the appellant and in favour of the respondent.

Having dispensed with issue one, I will proceed to treat issue two. It falls within a very narrow compass. It chastises the lower court's crucial findings as prejudging the appellant guilty. The appellant's chief grievence is erected on the lower court's references to specific evidence, in each count, that call for the appellant's explanations. It would appear, that that judicial exercise, extraction of the portions of evidence that the appellant needs to puncture, is injudicious. Nevertheless, the lower court was not oblivious of the law. At page 408, line 3, of the record, the lower court warned itself on the purport and incidents of a no-case to answer. Also, at page 411, lines 1 and 2, of the record, it undertook: "I intend to maintain a clear mind to receive his evidence and adjudicate on the totality of the evidence in this matter." It is discernible from these, that the lower court never adjudged, or intended to adjudge, the appellant guilty of the offences preferred against him without his professing his defence. As a matter of fact, by pinpointing/highlighting those areas, the lower court, unwittingly and tacitly, favoured the appellant. The lower court never found the appellant guilty of the offence. In effect, those findings donot smell of any miscarriage of justice: "A grossly unfair outcome in judicial proceedings, as when a defendant is convicted despite a lack of evidence on an essential elements of a crime," see ***Adeyemi v. State***

(2014) 13 NWLR (Pt. 1423) 132 at 156, per Peter-Odili, JSC; ***Itu v. State*** (2016) 5 NWLR (Pt. 1506) 446. The findings were predicated on the evidence presented before the lower court. It is only when a finding/decision is grounded on alien/extraneous evidence that it will smack of miscarriage of justice for an appellate court to interfere in it, see ***Igbikis v. State*** (2017) 11 NWLR (Pt. 1575)126. On this score, I dishonour the appellant's enticing invitation to crucify those findings on the undeserved altar/shrine of prejudgment of guilt for want of legal justification. In sum, I will not hesitate to resolve issue two against the appellant and in favour of the respondent.

On the whole, having resolved the two issues against the appellant, the destiny of the appeal is obvious. It is bereft of any morsel of merit and deserves the penalty of dismissal. Consequently, I dismiss the appeal. For the avoidance of doubt, I affirm the decision of the lower court, delivered on 20th April, 2016, wherein it overruled the appellant's no-case submission and ordered him to enter his defence to the case against him.

OBANDE FESTUS OGBUINYA
JUSTICE, COURT OF APPEAL

COUNSEL:

N. A. Ayoola, Esq. for the appellant.

G. P. West, Esq., CLO, ICPC, for the respondent.

CA/AK/234C/2016

UZO I. NDUKWE-ANYANWU, JCA

I had the privilege of reading in draft form, the judgment just delivered by my learned brother, **Obande Festus Ogbuinya, JCA.** I am in total agreement with his conclusions.

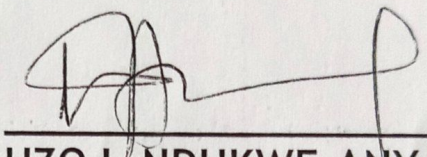
A no case submission may be upheld where: (a) there is no evidence to prove an essential element of the alleged offence; (b) the evidence adduced has been so discredited as a result of cross-examination; and (c) the evidence is so manifestly unreliable that no reasonable tribunal or court can safely convict on it. **AITUMA V STATE (2007) NWLR (PT. 1028) PG. 466, AMINU V STATE (2005) 2 NWLR (PT. 909) PG. 108, IGABELE V STATE (2004) 15 NWLR (PT. 896) PG. 314, AKWA V COP (2003) 4 NWLR (PT. 811) PG. 461, OHUKA V THE STATE (NO. 2) (1988) LPELR 2362 1988 7 SC (PT. ii) PG. 25, ADEYEMI V STATE (1991) LPELR 172** Karibi-Whyte JSC held as follows:

> *"The defence is clearly set out in Section 286 of the Criminal Law which provides as follows:*
>
> *286:"If at the close of 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,*

they shall, as to that particular charge, discharge him."

See also **EKWUNUGO V FRN (2008) LPELR 1105.**

For this and the more robust reasoning in the lead judgment I also dismiss the appeal and affirm the judgment of the lower court. I also abide by all the other orders contained in the lead judgment.



UZO I. NDUKWE-ANYANWU
JUSTICE, COURT OF APPEAL