

IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
HOLDEN AT MAITAMA F.C.T ABUJA  
BEFORE HIS LORDSHIP: HONOURABLE JUSTICE I.U. BELLO  
HON. JUDGE, HIGH COURT NO. 3

**COURT CLERK:** SALISU IDACHE AND DANLADI EGGA  
**DATE:** 26<sup>TH</sup> MARCH, 2013  
**CHARGE NO:** FCT/HC/CR/68/10

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT**

**AND**

- |   |   |                        |
|---|---|------------------------|
| <ol style="list-style-type: none"><li>1. PRINCE VINCENT OGBULAFOR -</li><li>2. EMEKA EBILAH</li><li>3. JUDE NWOKORO</li></ol> | } | <b>ACCUSED PERSONS</b> |
|---|---|------------------------|

Date: 26/3/13

1<sup>st</sup> Accused in court, orders absent

Sandi Awomolo Esq with Olojide Kumuyi  
Esq for Prosecution in Court

U. M. Jawur esq with S. O Manali Mrs,  
Muktar Abdullahi Esq and Olayemi Taiwo  
Miss holding brief to Chief J. K Gadzama  
S.A.N

D. J. Bukar Esq with I. N. Ikoru Esq and  
E.B Osiagie Esq holding brief for Dr Awa  
Kalu S.A N for 2<sup>nd</sup> Accused.

**Counsel to 2<sup>nd</sup> Accused:** The 2<sup>nd</sup> Accused is not in Court and  
we apologies for is absence:

**Prosecutor Counsel:** The case is for ruling on No case submission

**Court:** This is the ruling.

**RULING ON NO CASE SUBMISSION BY PRINCE**

**VINCENT OGBULAFOR**

The 1<sup>st</sup> Accused Price Vincent Ogbulafor was arraigned before this Court along with the Emeka Ebilah (2<sup>nd</sup> Accused) and Jude Nwokoro (3<sup>rd</sup> Accused) by the prosecution, vide an amended charge dated 17<sup>th</sup> day of June 2010 and in which 17 count charge were preferred against the three Accused persons.

After the plea of not guilty' as entered by each of the Accused persons on the 17 count charge respectively, the trial commenced.

The prosecution, no doubt has a duty to prove beyond reasonable doubts, the guilty of the Accused person who, is presumed innocent till the contrary is proved . the burden of proof is thus on the prosecution to so disprove the presumed innocence on the part of the Accused as posited in the following words by his Lordship A. O. Ejiwunmi Jsc at page 848 in Sunday Amala Vs State (2004) 18 NSC Criminal Procedure Rule 834 the learned jurist stated thus:

“Now, there is no question that the established principle in Criminal cases tried by any court within this jurisdiction is that the prosecution must establish the

guilty of the accused beyond reasonable doubt upon the established evidence before the trial court that burden on the prosecution never shifts.”

Although, in the present circumstances, specifically dealing with No case submission the court is not concerned with the guilty of the Accused and whether or not the presumed innocent on the part of the 1<sup>st</sup> Accused/Applicant has been dislodged by the prosecution, it is necessary to show that, the duty on the part of the prosecution to lead legal evidence and which must be adduced in order to established a pram face case to warrant asking the Accused to enter defence is rooted in a duty recognized by law in he burden of proof principle hence the wisdom in reference of the Amala case supra.

In the bid to adduce such evidence the prosecution called two witnesses who gave evidence for the prosecution on oath and also tendered in evidence a total of 17 exhibits. Thereafter the prosecution closed the case whereupon,

The 1<sup>st</sup> Accused through his counsel, the learned S.A.N Chief J. K Gadzama, made a No case submission by which it was submitted that the 1<sup>st</sup> Accused from all the circumstances of the case has no case to answer and ought be unhesitatingly discharged and acquitted on the merits relying on the case of IGP Vs Marko



(1957) SCN LR 53, a decision based on section 286 of the criminal procedure Act.

The Prosecutor Chief Awomolo, SA.N failed an opposing argument as contained in their written address. therein, the prosecution tried to explain what 'No case submission entails through the words of Udo Udoma Jsc in the case of Daboh & Anor Vs State (1977) 5 sc 197 at 209 – 211 where he learned jurist stated thus:-

“Firstly such a submission postulates that there has been throughout the trial no legally admissible evidence at all against the accused person on behalf of whom the submission has been made linking him in any way with the commission of the offence with which he has been charged which would necessitate him being called upon for the defence. Secondly that whatever the evidence there was which might have linked the accused person with the offence has been so discredited that no reasonable court can be called upon to act on it as establish criminal guilty in he Accused person concerned”

It is clear from the foregoing that the court must ensure that there is no evidence at all linking the accused exists on where its exists has been so discredited that no reasonable tribunal or court can act

on it towards established the guilty of the Accused. It must also be stressed that at this point, the court is not concerned with the credibility of the witnesses or make pronouncement on the probative value of the evidence led . The case of Ekwunugo Vs FRN (2008) 15 NWLR (PT 1111) 630 is richly illustrative of this position wherein Akinton Jsc said as follows:-

“The question whether or not the Court believe 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 cases 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 that the weight to be attached to the evidence even if they are accomplices.”

While the above represents the settled position of the law and practice within the return of consideration on No case submission and which both the prosecution and the defence are in agreement, I find it rather uninferencing the argument by the prosecution/respondent at page 4 of their submission where the respondent submitted as follows:-

3.06 The court is respectfully misled to note that the case came before the court with leave to prefer charges. This

court in its wisdom was satisfied that a prima-facie case was established hence the 1<sup>st</sup> Accused was called upon to take his plea.

3.07 The Court is again respectfully reminded that the 1<sup>st</sup> Accused filed an application wherein this court was urged to quash the charge against him because there were no scintilla of evidence to connect him to the charge against him. The court meticulously considered the totality of evidence in the proof of evidence and again for the second time dismissed the application.

There has been no appeal against the two decisions

In my view, the prosecution has missed the court because in dealing with application to prefer charge,. Prima facie evidence in that context seeks to establish responsible grounds upon which, to allow charge to be preferred against person who, is alleged to have committed a wrong. The rationale is to guide against frivolity as grounds on which individual could be wrongly subjected to criminal trials. On the other hand, prima-facie evidence with consideration for No case submission deals with whether legally admissible evidence in the totality of the evidence adduced by the prosecution has not only linked with the Accused and which if not discredited could serve as basis for establishing guilty for the Accused except defended by legal evidence .



One fine distinction is that at the point of prefer charge; the required prima-facie evidence for that purpose cannot serve as basis for establishing the guilty of the Accused. It is not a vain talk to state in fortification of the above position, that witnesses have not been called, no cross examination etc to provide necessary basis for determining the existence of a quality evidence to disprove the innocence of the Accused. I do not therefore see the relevance of this argument with the context of this proceedings similarly, he reference to the refusal of the court to quash the charge.. I discountenance there argument being of no moment in situation of No case submission.

The 1<sup>st</sup> Accused/Applicant through his counsel the learned S.A.N Chief Gadzama had presented meticulously the applicants argument in urging this court to discharge the 1<sup>st</sup> Accused . I have noted that each of the count charge where the 1<sup>st</sup> Accused preferred, has been disclosed by the constituents of the offence in the light of the evidence adduced by the prosecution, and backed or supported by authorities cited and relied upon, although it is the position of the prosecution, that a number of those cases are not supportive of the applicant cases in the submission under consideration, Nevertheless, the applicant relying on the case of Okoro Vs State (1988) 5 NWLR (Pt 94) 255 at 277 per the Apex Court.

“The court is under duty by virtue of the provision of section 286 and 287 (1) of the criminal procedure law to discharge an accused if the prosecution at the close of its case has not provided the essential ingredient of the offence”.

I have considered very carefully the submission and arguments for and against the “No case” submission and in the final analysis I came to agree with the position as laid down in the case of Queen Vs Ojocha (1959) 11 JSC at 64. It was stated thus:

”When the issue of No case submission is made by an accused and challenged by the prosecution, it is not for the trial Judge to consider if the evidence is sufficient to justify conviction, but the trial Court only has to be satisfied that there is a prima-facie case requiring at least some explanation from the Accused”

It is my considered view based on the totality of the evidence as a voiced by the prosecution that a prima-facie evidence has been established by the prosecution to warrant the applicant entering defence if so desired by the applicant. The No case submission has failed to attract acceptability from this court; it is not upheld and so dismissed. This is the ruling of the court.

**Signed: 26/3/13**



**Court:** Case is adjourned to 15/4/13 for defence to open. Bail to continue

**Signed: 26/2/13**

**HON. JUSTICE I. U. BELLO  
HON. JUDGE**