

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: THE HON. JUSTICE PETER O. AFFEN

TUESDAY, MAY 15, 2018

CHARGE NO. FCT/HC/CR/35/2014

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA PROSECUTION

AND

AMADI DARLINGTON CHIDIEBERE DEFENDANT

R U L I N G

THIS RULING is in respect of a no-case submission made on behalf of the Defendant herein, *Amadi Darlington Chidiebere*, who is standing trial on a 3-count charge of giving false information to a public officer contrary to and punishable under s. 25 (1) of the Corrupt Practices And Other Related Offences Act, 2000. The specifics of the charge [dated 2/11/15 but filed on 12/11/15] are as follows:

"COUNT ONE

That you Amadi Darlington Chidiebere (M) on the 18th August, 2014 or thereabout at Abuja, made a false statement with intent to mislead the Comptroller-General of Customs, a public officer in the course of the exercise of the duty of his office as the Comptroller-General of Customs, Nigeria Custom Service to wit: when you wrote a letter dated 9th June 2014, captioned a LETTER OF INTRODUCTION and addressed to the Comptroller-General of Customs asserting the presence of the International Human Rights Commission, Nigeria Committee in Nigeria which statement was to your knowledge false and thereby committed an offence contrary to section 25 (1) [a] and punishable under section 25 (1)(b) of the Independent Corrupt Practices and Other Related Offences Act, 2000.

COUNT TWO

That you Amadi Darlington Chidiebere (M) on the 9th June, 2014 or thereabout at Abuja, made a false statement with intent to mislead the Chairman of the Independence[sic] Corrupt Practices and Other Related Offences Commission, a public officer in the course of the exercise of the duty of his office as Chairman of the Independence[sic] Corrupt Practices and Other Related Offences Commission to wit: when you wrote a letter dated 9th June 2014, captioned a LETTER OF INTRODUCTION and addressed to the said Chairman of the Independence[sic] Corrupt Practices and Other Related Offences Commission asserting the presence of the International Human Rights Commission, Nigeria Committee in Nigeria which statement was to your knowledge false and thereby committed an offence contrary to section 25 (1) [a] and punishable under section 25 (1)(b) of the Independent Corrupt Practices and Other Related Offences Act, 2000.

COUNT THREE

That you Amadi Darlington Chidiebere (M) on the 9th June, 2014 or thereabout at Abuja, made a false statement with intent to mislead the Executive Secretary, National Human Rights Commission, a public Officer in the course of the exercise of the duty of his office as the Executive Secretary, National Human Rights Commission, to wit: when you wrote a letter dated 9th June 2014, captioned a LETTER OF INTRODUCTION and addressed to the said Executive Secretary, National Human Rights Commission asserting the presence of the International Human Rights Commission, Nigeria Committee in Nigeria which statement was to your knowledge false and thereby committed an offence contrary to section 25 (1) [a] and punishable under section 25(1)(b) of the Independent Corrupt Practices and Other Related Offences Act, 2000."

Upon his arraignment on 2/12/15, the Defendant pleaded "Not Guilty" to all three (3) counts of the charge, thereby setting the stage for the Prosecution to

discharge the non-shifting burden of establishing his guilt beyond reasonable doubt. The Prosecution called two (2) witnesses [PW1 and PW2] in proof of its case. At the close of the Prosecution's case, the Defendant initially opened his defence by testifying as DW1 but the learned defence counsel, *Peter Uche Udoku, Esq.* sought for an adjournment midway to enable him "put our house in order". But when the matter came up for continuation of defence, he opted to make a no-case submission. This reverse defence strategy was not opposed by the Prosecution, whereupon the parties filed and exchanged written submissions which were adopted in open court by their respective counsel on 20/3/18. The Defendant's no-case submission is dated 7/2/18 whilst the Prosecution's reply is dated 21/2/18.

The straightforward issue to be resolved is whether the Prosecution has made out a *prima facie* case to warrant calling upon the Defendant to enter his defence. It is merely restating the obvious that our adversary criminal justice system is accusatorial in nature and substance, and every person charged with a criminal offence is presumed innocent until he is proved guilty. See **s. 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)**. A necessary corollary of the presumption of innocence is that in a criminal trial such as the present, the burden is always on the prosecution to establish the guilt of the accused person beyond reasonable doubt. For present purposes however, what we are grappling with is not whether the guilt of the accused person has been established on the criminal threshold of proof beyond reasonable doubt. In considering a plea of *no-case-to-answer* at the close of the Prosecution's case, the court is not required to enquire into the guilt or otherwise of the accused person *per se* by evaluating the evidence adduced thus far. No. Rather, the court is preoccupied with ascertaining whether a *prima facie* case has been made out to warrant calling upon the accused

person to enter upon his defence. The decision should depend not so much on whether the adjudicating tribunal will at this stage convict or acquit the accused, but whether the evidence adduced is such that a reasonable tribunal could convict on it. See **ATANO v ATTORNEY-GENERAL, BENDEL [1988] 2 NWLR (PT. 75) 201**. In other words, what the court seeks to ascertain at this stage is whether on the face of the evidence adduced thus far by the Prosecution upon whom the non-shifting burden of proof lies, there is a ground for proceeding with the trial in that there is something worth looking at. Generally, there is ground for proceeding where the evidence before the court is such that if uncontradicted and if believed will be sufficient to prove the case against the accused person. See **DURU v NWOSU [1989] 1 NWLR (PT. 113) 24** –per Nnamani JSC and **FIDELIS UBANATU v C. O. P. [2002] 2 NWLR (PT. 643) 115**. The chief rationale behind a no-case submission is that the accused person [who is presumed innocent until proved guilty] should not be saddled with the burden of defending himself when there is no evidence upon which a trial court could validly convict. In the leading case of **IBEZIAKO v COMMISSIONER OF POLICE (1963) 1 ALL NLR 61 at 67-68**, the Supreme Court (per Adetokunbo Ademola, CJF) held that a no-case submission may properly be made and upheld when: (a) there has been no evidence to prove an essential element in the alleged offence; and (b) the evidence adduced by the prosecution has been so discredited as a result of cross examination, or it is so manifestly unreliable that no reasonable tribunal could safely convict on it. See also **FIDELIS UBANATU v C. O. P. supra at 136** –per Kalgo JSC, **STATE v AUDU (1972) 6 SC 28**, **ONAGORUWA v STATE [1993] 7 NWLR (PT. 303) 49** and **AGBO v THE STATE (2013) LPELR-20388 (SC)** amongst a host of other cases. These requirements have now been codified in s. 303 (3) (a) – (d) of the **Administration of Criminal Justice Act, 2015** (hereinafter “ACJA”). In considering whether or not there is *prima facie* case against a defendant, the trial court is

bound to confine itself severely to the evidence adduced in court. See **MOHAMMED v STATE [2007] 7 NWLR (PT. 1032) 152 (SC)**. Against the backdrop of the foregoing, let us proceed presently to ascertain whether or not, on the face of the evidence adduced thus far by the Prosecution, there is any basis or ground for proceeding with the trial by calling on the Defendant to enter his defence as urged upon me by the Prosecution and resisted by the Defence.

The PW1, *Bala Mohammed* stated that he is an Investigator/Principal Superintendent with the ICPC; that he has been with the ICPC for eleven (11) years; that petitions submitted to the ICPC are routinely assigned to his team for investigation and he records statements of suspects/witnesses and retrieves documents/exhibits; that a petition from the former Comptroller-General of Customs was assigned to his team for investigation sometime in September 2014; that the accused was the National Coordinator of International Human Rights Organisation based in Geneva, Switzerland; that investigation revealed that the organisation was not registered with the Corporate Affairs Commission (CAC); that it was equally discovered that the accused sent a letter to the former Comptroller-General of Customs seeking audience with him and requesting for financial assistance of ₦477,548,000 with the intent to defraud the Nigerian Customs Service; and that they also discovered other documents sent by him to other agencies such as EFCC, ICPC, Nigeria Police, etc. along the same lines. He testified further that they wrote an enquiry letter to, and received a response from, the CAC; and that his involvement in the investigation ceased when he left the team to deal with another case assigned to him and the investigation was concluded by his colleagues. Under cross examination by *Peter Uche Udoku, Esq.* of counsel for the Defendant, the PW1 denied being aware of any letter appointing the Defendant as Nigerian

Representative [or Coordinator] of *International Human Rights Commission*, but conceded that he did not write to Geneva to ascertain the genuineness of the organization and that he left the investigation at the stage of enquiries from CAC.

The PW2, *Olatunji Jabaru* stated that he is an investigator with ICPC and his schedule of duties entails (i) investigating cases of corrupt practices and related offences; (ii) recovering exhibits or documents in the course of investigation; (iii) interrogating respondents and interviewing witnesses; (iv) giving evidence in court; and (v) any other duties as may be assigned to him by the Commission; that the former Comptroller-General of Customs, *Alhaji Abubakar Nde Dikko* informed the Chairman of ICPC sometime in September 2014 that he received a letter dated 6/6/14 from International Human Rights Commission, Switzerland (Nigerian Committee) signed by the Defendant; that the NGO introduced itself to Nigerian Customs Service (NCS) as an existing NGO operating in Nigeria; that the Chairman of ICPC was further informed by the Comptroller-General that he also received another letter dated 18/8/14 from the same NGO requesting for audience and assistance from the NCS to the tune of ₦477,548,000; that based on the second letter, the NCS conducted background investigation on the NGO but was not satisfied with their findings, hence the ICPC was requested to carry out detailed investigation into the activities of the NGO; that *Mr Bala Mohammed* [PW1], himself and Taiwo were detailed to investigate the matter and the team discovered that the same NGO had written similar letters to various government agencies, such as ICPC, NHRC, EFCC, AGF, Ministry of Interior, Nigerian Immigration Services, Prison Service, AMAC, to mention but a few; that the team wrote to Corporate Affairs Commission (CAC) and National Human Rights Commission (NHRC) to ascertain the status of the NGO and

received a response dated 13/10/14 from CAC stating clearly that the NGO was not registered at CAC; that one *Barr. Harry Oguce* who is a Deputy Director at NHRC also made a Statement to the effect that NHRC was not satisfied with the letter it received from the NGO, and the NGO was invited to a meeting at its offices to enable them conduct a background check but the invitation had not been honoured up till the time of investigation. The PW2 further stated that his team traced the address stated on the NGO's letterhead at Asokoro, Abuja but discovered that the address was a marketplace where tiles are sold and the NGO and the Defendant were unknown at the said address; that the Defendant was invited to the Commission and cautioned in English Language before he volunteered a statement in his own handwriting wherein he maintained that he is the National Coordinator of the NGO in Nigeria and have all relevant documents but conceded that the organization has not been registered, and no account has been opened. He tendered Exhibits P1 – P5 in evidence. Exhibits P1 and P2 are introduction letters written by the Defendant to the Chairman of ICPC and the Executive Secretary of NHRC respectively; Exhibit P3 is an introduction letter and request for audience with Alhaji Dikko dated 18/8/14; Exhibits P4^A and P4^B are extra-judicial statements made by the accused person on 11/9/14 and 12/9/14 respectively; whilst Exhibit P5 is a letter dated 13/10/14 by the Corporate Affairs Commission to the Chairman of ICPC.

Cross-examined by *Peter Uche Udoku, Esq.* of counsel for the Defendant, the PW2 stated that he is an Assistant Chief Superintendent, a Certified Fraud Examiner and a pioneer staff who has worked with the ICPC for fourteen (14) years. He maintained that *Barr. Oguce* made a Statement [which is not before the Court] but could not remember the date he visited their office. The PW2 stated that they requested for all correspondence exchanged between

the NGO and NHRC but was informed by Mr Oguche that the NGO was yet to honour their invitation. He denied being aware of any attempt by the NGO to register with the CAC; and insisted that although they ascertained the existence of the International Human Rights Commission, Geneva, Switzerland in that they googled the website of the International body and discovered that it is well known just like the United Nations Organisation (UNO), he could not say the same for the Nigerian Committee. When pressed by counsel as to whether there was any concrete evidence of fraud on the part of the Defendant, the PW2 stated that Exhibit P3 gave the impression that the NGO was registered and that they wished to inaugurate the Nigerian Committee in addition to promising to honour the former Comptroller-General of Customs, whilst the letter to NHRC [Exhibit P2] did not create any such impression. He however conceded that Exhibit P1 was just an introduction letter, which was equally sent to other government agencies.

The foregoing is the totality of the evidence put forward by the Prosecution, which the Defendant contends has not made out a *prima facie* a case to warrant calling on him to enter a defence. As stated hereinbefore, the Defendant is charged with making a false statement to public officers with intent to defraud contrary to and punishable under s. 25 (1) of the *Corrupt Practices and Other Related Offences Act, 2000* which provides thus:

"25 (1) Any person who makes or causes any other person to make to an officer of the Commission or to any public officer, in the course of the exercise by such public officer of the duties of his office, any statement which to the knowledge of the person making the statement, or causing the statement to be made-

- (a) is false, or intended to mislead or is untrue in any material particular, or
- (b) is not consistent with any other statement previously made by such person to any other person having authority or power under any

law to receive, or require to be made such other statement notwithstanding that the person making the statement is not under any legal or other obligation to tell the truth, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand naira or to imprisonment for a term not exceeding two (2) years or to both such fine and imprisonment."

The common thread that runs through the three-count charge preferred against the Defendant is that he made a false statement to the former Comptroller-General of Customs, the Chairman of ICPC and the Executive Secretary of National Human Rights Commission [who are public officers] with intent to mislead them. The ingredients of the offence under s. 25(1) of the *Corrupt Practices and Related Offences Act* are:

- (i) That the Defendant made or caused to be made a statement to a public officer in the course of the exercise by such public officer of the duties of his office;
- (ii) That he knew that the statement was false or untrue in any material particular; and
- (iii) That he made the statement with intent to mislead.

It cannot escape notice that the offence with which the Defendant is charged is not a strict liability offence. No. Rather it is a 'true offence' requiring proof of both *actus reus* [physical element] and *mens rea* [mental element]. The Prosecution is required to lead evidence to show not only that the act complained of occurred [which is the *actus reus*] but also that it was done with the requisite criminal intent [which is the *mens rea*] as encapsulated in the Latinism '*actus non facit reum nisi mens sit rea*' [which literally means 'the act does not make guilt unless the mind is guilty as well']. In this connexion, I have

carefully and insightfully considered the testimonial evidence adduced by the two (2) Prosecution witnesses, as well as the arguments put forward by counsel in support of and in opposition to the no-case submission. It does not seem to me that the Prosecution presented evidence in proof of the essential ingredients of the offence charged. The Prosecution witnesses did not point to any statement that is allegedly false or made with intent to mislead in the letters of introduction addressed to various government functionaries [i.e. the Chairman of ICPC, the Executive Secretary of National Human Rights Commission and the former Comptroller-General Customs as contained in Exhibits P1, P2 and P3 respectively]. The Defendant introduced the Nigerian Committee of the International Human Rights Commission, Geneva, Switzerland to these public officers, and in the case of the former Comptroller-General of Customs, solicited for financial assistance for the "*inauguration of National and State Officers*" and invited him to the proposed ceremony. The Prosecution merely harped on the fact that the organisation is not registered at the Corporate Affairs Commission without leading any evidence to show that the Defendant falsely represented that the Nigeria Committee was in fact registered. The Prosecution did not also lead any evidence to demonstrate that the representations made by the Defendant in Exhibits P1, P2 and P3 are false and/or calculated to mislead the public officers to whom they were addressed. Whereas the PW2 stated that they ascertained the existence of the International Human Rights Commission, Geneva, Switzerland in that they googled its website and discovered that it is well known just like the United Nations Organisation (UNO), and that Exhibit P1 was merely an introduction letter that was equally sent to other government agencies, the PW1 conceded that they did not make any enquiry from the Organisation's Headquarters in Geneva to ascertain the genuineness of the Nigerian Committee.

It occurs to me that the mere fact alone that an organisation is yet to be registered does not mean that it does not exist *in fact*. After all, it is only after people have come together to form an organisation in exercise of their constitutional right to freedom of association that they proceed subsequently to formalise the organisation by registration. At any event, the Defendant did not state anywhere in Exhibits P1, P2 and P3 that the Nigerian Committee was already duly registered in Nigeria. Quite the contrary, what the Defendant wrote in Exhibit P3 is that *"the organisation is faced with problem of inadequate funds to effect an august ceremony for the inauguration of National and State officers"*, for which he requested for financial assistance.

It seems to me obvious that the Prosecution did not put forward any shred of evidence to prove that the Defendant made any false statements in Exhibits P1, P2 and P3 with intent to mislead public officers in the discharge of their public duties. Rather, the Prosecution has merely treated this court to a cocktail of suspicion that the Nigerian Committee of the International Human Rights Commission does not exist without making any effort to contact the Headquarters in Geneva, Switzerland [whose existence was confirmed]. Unfortunately for the Prosecution, notwithstanding that it is suspicion that triggers investigation and the discovery of evidence against a criminal suspect, suspicion alone is not a sufficient basis for preferring a criminal charge against any person. Suspicion however grave cannot be elevated to the pedestal of legally admissible evidence that is required to prove that an offence has in fact been committed: there must be evidence to meet all the essential elements of the alleged offence. This is a notorious legal proposition for which the citation of authorities is unnecessary, but for reasons of completeness, I will refer to the decisions of the Supreme Court in **IKOMI & ORS v THE STATE**

[1986] 3 NWLR (PT.28) 340 at 356, [1986] 1 NSCC 730 at 739 and **ABACHA v STATE** [2002] 11 NWLR (PT. 779) 437.

In the premises of the foregoing, the inescapable conclusion to which I must come is that the Prosecution has failed or neglected to adduce evidence to prove the essential ingredients of the offence alleged to warrant calling on the Defendant to enter upon his defence. See **EKWUNUGO v F. R. N. [2008] 15 NWLR (Pt. 1111) SC 630 at 638**. To do otherwise would be tantamount to imposing on the Defendant a misplaced burden of establishing his innocence, which would be invidious for being inconsistent with the constitutional presumption of innocence under s. 36(5) of the Constitution that inures to his benefit in our adversarial system of administration of justice. See **MUMUNI v STATE** *supra*, **SUBERU v STATE (2010) 3 MJSC (Pt. II) 47** and **DABOH v STATE (1977) 5 SC 122 at 129**.

Accordingly, I will and do hereby uphold the no-case submission and record an order discharging the Defendant, *Amadi Darlington Chidiebere* on all three-counts of the charge preferred against him. IT IS SO ORDERED.


PETER O. AFFEN
Honourable Judge

Counsel:

J. P. Okwor, Esq. for the Prosecution.

Peter Uche Udoku, Esq. (with him: **Dr Edeh Ibok**) for the Defendant.