**IN THE COURT OF APPEAL**
**ABUJA JUDICIAL DIVISION**
**HOLDEN AT ABUJA**

**ON TUESDAY, THE 22ND DAY OF MAY, 2018**

**BEFORE THEIR LORDSHIPS**

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|---|---|
| **MOJEED ADEKUNLE OWOADE (PJ)** | **JUSTICE, COURT OF APPEAL** |
| **HAMMA AKAWU BARKA** | **JUSTICE, COURT OF APPEAL** |
| **BOLOUKUROMO MOSES UGO** | **JUSTICE, COURT OF APPEAL** |

**APPEAL NO. CA/A/742A$^{C}$/2014**

**BETWEEN:**

**MOHAMMED BUBA ..... ..... ..... ..... APPELLANT**

**AND**

**FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT**

# JUDGMENT

## (DELIVERED BY MOJEED ADEKUNLE OWOADE, JCA)

This is an Appeal against the Ruling of the Federal High Court, Abuja, Coram **E.S. Chukwu J**. delivered on the 20th October, 2014 overruling the no case submission made on behalf of the Appellant.

The Appellant who was one time Company Secretary of TRANSNATIONAL CORPORATION (TRANSCORP) PLC was the **2nd Accused** in a 32 Count charge of conspiracy to disguise and conceal funds, false pretence, fraudulent issuance of contracts, fraudulent transfers and payments of money, procuring and inducing contrary to Section 17(a) and (c) of the Money Laundering Prohibition Act 2004, Section 1(1) (a) (b) 1(2) & 1(3) of the Advanced Fee Fraud and Other Related Fraud Offences Act 2006, and Section 16(a) and (b) of the Money Laundering (Prohibition) Act 2004.

The prosecution called five (5) witnesses. However in relation to the case of the Appellant only the evidence of **PW1** was relevant.

At the close of the case for the prosecution, the Appellant and the other two Accused Persons made no case submission. The learned trial Judge overruled the no case submission of the Appellant and the other two Accused Persons on Pages 186 – 187 of the Record of Appeal as follows:

**"Let me state the obvious that the question before the Court now does not relate to whether or not the evidence is believed is immaterial and does not**

and EFCC (Establishment) Act 2004 particularly Section 40 of the EFCC Act 2004.

The grounds upon which the said objections were based are as follows:

**"1. That the Appeal is on mixed law and facts.**

**2. That in consequence of paragraph 1 above the Appellant failed to obtain leave of Court before appealing.**

**3. That Section 40 of the EFCC Act 2004 forbids interlocutory Appeals to this Court.**

**4. That by virtue of provisions of Section 306 of the Administration of Criminal Justice Act 2015 (ACJA) the Appeal is incompetent.**

**5. That the Respondent thereby urged their Lordships to strike out this Appeal forthwith"**

Learned Counsel for the Appellant furnished a reply to the Respondent's Preliminary Objection in his Appellant's Reply Brief. He submitted at first that an Appeal on a no case submission is not an interlocutory Appeal because an acquittal there under is on the

merits and only appealable to the Court of Appeal or as the case may be.

On this, he referred to the cases of:

**ADEYEMI VS. THE STATE (1999) 6 NWLR (Pt. 195) 2 at 35;**

**POLICE VS. MARKE (1952) 2 FSC 1;**

**AITUMA VS. THE STATE (2006) 10 NWLR (Pt. 94) 255.**

He submitted that in any event, an Appeal on issue of law alone does not require leave of Court. He referred to provision of Section 241(1) (b) of the Constitution of the Federal Republic of Nigeria (as amended) and the cases of:

**METAL CONSTRUCTON (WA) LTD VS. MIGLIORE (1990) 1 NWLR (Pt. 126) 299;**

**OGBECHIE VS. ONOCHIE (1986) 2 NWLR (Pt. 23) 484 at 491 – 492;**

**COKER VS. UBA PLC. (1997) 2 NWLR (Pt. 490) 641 at 658 – 659;**

**FBN PLC VS. T.S.A. IND. LTD. (2010) 15 NWLR (Pt.1216 247 at 291 – 292;**

**NWADIKE VS. IBEKWE (1987) 4 NWLR (Pt. 67) 718 at 743 -745.**

Appellant's Counsel further submitted that a close look at the Grounds of Appeal (Pages 189 – 190) of the Record shows that the entire gamut of the grounds deals with issues of law alone and the contention that leave is required is misconceived.

On Ground One of the Grounds of Appeal with particular reference to particulars of error in (a) (b) (c) and (d), Counsel submitted that this is a ground of law since it complains that there is no evidence or no admissible evidence upon which a finding or decision was based.

On this, Appellant's Counsel further referred to the cases of:

**NWADIKE VS. IBEKWE (1987) 4 NWLR (PT. 67) 718** at **743 -745,**

**COMEX LTD VS. N.A.B. LTD (PT.496)643** at **656** and

**COKER VS. UBA PLC (1997) 2 NWLR (PT. 490) 641.**

He submitted that Ground Two of the Grounds of Appeal also raise issue of law as it deals with failure of the trial Judge to do what he ought to do when no ***prima facie*** case has been made out.

He referred to Section 286 of the CPA Cap. C.41 LFN 2004.

In particular, said Counsel Paragraphs (b) and (c) of the particulars of error offend the constitutional provisions in Section 36 (5) of the 1999 Constitution (as amended) while Paragraph (c) also deals with the pervasiveness of the decision in that there was no evidence or admissible evidence upon which the Court would have concluded that the Appellant has a case to answer.

Ground Three, said Counsel is also a ground of law because the lower Court did not give reasons for its ruling or decision and therefore failed to do what it ought to do in the circumstances.

On this, Counsel referred to the case of **OGBORU VS. UDUAGHAN (2012) 11 NWLR (Pt. 1311) 357.**

In answer to the point made by the learned Counsel for the Respondent that the Appeal is in competent by virtue of provision of Section 306 of the ACJA and Section 40 of the EFCC Act, Appellant's Counsel submitted that the provisions of Section 306 of the ACJA and Section 40 of the EFCC Act govern situations where there is an application for stay of proceedings pending Appeal and not where a substantive Appeal has been filed as in the instant case.

He urged us to discountenance the Respondent's Preliminary Objection.

## RESOLUTION OF PRELIMINARY OBJECTION

The central issue for the resolution of the Respondent's Preliminary Objection is whether the Appellant's Grounds of Appeal are on law alone which case it would not require leave of Court to appeal or whether they are of mixed law and facts in which case leave of Court would be required to file an Appeal.

I do agree with the learned Counsel for the Appellant that each of the three Grounds of Appeal raises question of law. The first two Grounds together with their particulars complain on lack of evidence or admissible evidence upon which the Court's decision was based. The third ground complains the failure of the Court to give reasons for its decision.

In the case of **METAL CONSTRUCTION (WA) LTD VS. MIGLIORE (1990) 1 NWLR (Pt. 126) 299** the following amongst others were held to be ground of law simpliciter:

> **"(3) Where the lower Court reached a conclusion which cannot reasonably be drawn from the facts found, the superior**

**Court will assume that there has been a misconception of the law.**

**(6) When the complaint is that there is no evidence or no admissible evidence upon which a finding or decision was based"**

See also:

**OGBECHIE VS ONOCHIE (1986) 2 NWLR (Pt. 23) 484** at **491 – 492;**

**COKER VS. UBA PLC (1997) 2 NWLR (Pt. 490) 641** at **658**

Also, in the case of **NWADIKE VS. IBEKWE (1987) 4 NWLR (Pt. 67) 718 at 743 – 745;** Nnaemeka – Agu, JSC gave five categories of grounds of law, one of which was that:

**"Where the complaint is that there was no evidence or no admissible evidence upon which a finding or decision was based. This is regarded as a ground law, on the premise that in a Jury trial there would have been no evidence to go to the Jury"**

See also, **COMEX LTD VS. N.A.B. LTD (1997) 3 NWLR (Pt. 496) 643** at **656.**

Clearly, Appellant's Grounds of Appeal are grounds of law which do not require any leave of Court before Appeal. This is so by virtue of the provision of Section 241(1) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which provides that:

> **1.** *An Appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases.*
>
> *(b) Where the Grounds of Appeal involves questions of law alone, decisions in any Civil or Criminal proceedings'*

On the complaint of the learned Counsel to the Respondent that the Appellant's Appeal is caught by the provisions of Section 306 of the Administration of Criminal Justice Act and/or Section 40 of the EFCC Act, 2004 the Sections provide as follow:

**SECTION 306 ACJA 2015**

> **"An application for stay of proceedings in respect of a Criminal matter before the Court shall not be entertained"**

**SECTION 40 OF EFCC ACT 2004**

**"Subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 an application for stay of proceedings in respect of any Criminal matter brought by the Commission before the High Court shall not be entertained until Judgment is delivered by the High Court"**

In the instant case, and as rightly pointed out by the learned Counsel for the Appellant none of these provisions dealing with stay of proceedings is applicable in the instant case where there is already a substantive Appeal as to whether the Ruling on the no case submission is proper or not.

In all the circumstances, the Appellant's Appeal does not require leave as it is an Appeal based on law under the provision of Section 241(1) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and his Appeal is not caught by the provisions of Section 306 of the ACJA 2015 or Section 40 of the EFCC Act 2004.

**The Respondent's Preliminary Objection lacks merit and it is accordingly dismissed.**

## THE MAIN APPEAL

Learned Counsel for the Appellant argued his two Issues for the determination together.

He referred to the provisions of Sections 286 and 287 of the Criminal Procedure Act (CPA) and submitted that a no case to answer will be made on behalf of an accused person in any of the following circumstances.

**a.** Where there has been no evidence to prove an essential element or ingredient of the alleged offence; or

**b.** Where the evidence adduced by the prosecution has been so discredited or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

He referred to the cases of:

**IBEZIAKO VS. C.O.P. (1963) SCNLR 93;**

**AJIDAGBA VS. I.G.P. (1958) SCNLR 60;**

**AKANO VS. A-G BENDEL STATE (1988) 2 NWLR (Pt. 75) 201;**

**AITAMU VS. THE STATE (2006) 10 NWLR (PT. 94) 255;**

**ILIYASU SUBERU VS. THE STATE (2010) 8 NWLR (Pt. 1197) 587.**

He submitted with regard to the 32-Count charge against the Appellant as 2nd Accused and others that none of the ingredients or elements of the offences was proved. That the evidence of **PW1** which was a casual mention of the Appellant was even discredited in cross examination and that no reasonable tribunal will rely on it.

He referred to the supplementary Record of Appeal which relates to the evidence in Chief of **PW1** on the 23rd January 2013 and her cross – examination by Counsel to the 1st Accused at Page 9 of the Supplementary Record of Appeal. That **PW1** stated in relation to the Appellant thus:

> **"Who were the signatories to the account? Afribank was not willing to show us the signatories to this account BUT showed us the file and memos indicating that withdrawals were made based on written authentication from the 2nd accused"**

Also, that at Page 11 of the Supplementary Record of Appeal, the **PW1** in a question put to her by the prosecution stated thus:

> **"Who signed the contract on behalf of TRANSCORP? The memo of TRANSCORP provide for 2 Directors or one Director and the Secretary of the Company. The Memorandum and other contracts you have seen who signed them? I saw some were signed by DGM 3rd accused person, some by the Group Managing Director the 1st Accused in conjunction with the 2nd Accused Person the Company Secretary the 2nd Accused Person.**
>
> **Who instructs you to work and who were you answerable to? At that time, I was answerable to the DGM Shared Services the 3rd Accused Person"**

Appellant's Counsel submitted that basically the above was **PW1's** evidence in chief and as it relates to the 2nd accused, it has to do with the memo wherein the 2nd accused allegedly authorized the withdrawals from the AfriBank Account. The evidence also showed that the 2nd Accused (Appellant) in conjunction with the 1st accused

allegedly signed some contract documents. The evidence also reveals that the witness worked under the 3rd accused who was the DGM Shared Services and who gave her instructions.

Appellant's Counsel submitted that this evidence in no way implicates the Appellant (2nd accused) and does not show that the 2nd accused committed any criminal offence. The mere signing of a memo to withdraw money or signing of a contract document is not enough to input criminal liability on the Appellant (2nd accused). She did not say that the Appellant (2nd accused) withdrew any money from that account.

He submitted that the so–called memo signed by the Appellant and the contract documents he was alleged to have executed with the 1st accused were not tendered before the lower Court. It is trite law, said Counsel that a Court cannot rely on evidence or documents not before it. Any attempt to do so will be speculative and perverse.

He referred to the cases of:

**ZAMANI LEKWOT VS. JUDICIAL TRIBUNAL (1997) 8 NWLR (Pt. 515) 22 at 34;**

**MANUWA VS. NJC (2013) 2 NWLR (Pt. 1337) 1 at 31.**

What is more, said Counsel there is no charge relating to the withdrawal of any sums of money in AfriBank belonging to Transcorp.

He submitted further to buttress the fact that the evidence of **PW1** was not able to establish any case sufficient enough to warrant an answer from the Appellant, at Pages 12 - 15 of the Supplementary Record, the **PW1** said that she did not know anything relating to these contracts she alleged the 1st accused and the Appellant signed. At Pages 12 and 13 of the Supplementary Record, **PW1** said she was not in a position to say anything about finances having not worked in Accounts Department of Transcorp. She could only speak on the contract she worked on and not how money was transferred.

In relation to Appellant's (2nd Accused) Counsel's question in cross examination, the relevant portions are shown at Pages 81 – 88 of the Supplementary Record. He further submitted:

I. She drafted and renewed contracts involving Transcorp.

II. In the contracts she drafted, she was instructed to leave blank spaces for the figures.

III. She did not take any instruction from the 2nd Accused regarding the drafting or renewal of any contracts. 2nd Accused never supervised her work.

IV. 2nd Accused was not aware of the contracts reviewed or renewed or drafted by the witness because she was not working under 2nd Accused.

V. With regard to evidence relating to BGL she was not aware of the details of the transaction and never mentioned it to EFCC in her statement at all.

VI. None of the charges against the 2nd Accused relates to the ₦2billion contracts or transaction.

VII. That none of the charges against the 2nd Accused relates to ₦2billion Naira or TBDC.

VIII. The suit by BGL for ₦2billion was instituted after 2nd Accused had left Transcorp.

IX. She is not a member of the Board of TBDG nor part of the deliberation leading to any decision.

X. She was (sic) not aware whether the 2nd Accused executed any contract involving him and anybody.

XI. She was not aware whether the 2nd Accused was a signatory to any Transcorp's account.

**XII.** She was not aware of who withdrew money in TDBC account, how much was withdrawn, circumstances under which money was withdrawn.

**XIII.** At the time she was appointed the Company Secretary, 2nd Accused was no longer in the employ of Trancorp.

On another wicket, learned Counsel for the Appellant submitted that the duty of the Court where a no case submission is made is to consider and decide whether the prosecution has actually produced sufficient evidence to prove the ingredients of the offence charged either directly or indirectly or circumstantially or by inference or whether the evidence led by the prosecution is that which no reasonable tribunal can safely convict on.

He referred on this to the cases of:

**AMADI VS. FRN (2010) 5 NWLR (Pt. 1186) 87** at **114;**

**SULEIMAN VS. THE STATE (2009) 15 NWLR (Pt. 1164) 258** at **270;**

**AJULUCHUKWU VS. THE STATE (2014) 13 NWLR (Pt. 1425) 641** at **657.**

He reproduced relevant portion of the Ruling of the learned trial Judge at Pages 186 – 187 of the Record.

He submitted that the learned trial Judge did not consider the evidence adduced by the prosecution vis – a – vis the elements of the offences charged in order to determine whether a ***prima facie*** case has been made out for the Appellant to offer some explanation or whether the evidence is reliable or unreliable as the case may be, to warrant an explanation or a discharge of the accused at that stage.

He submitted that all the trial Court said in considering whether a case has been made out can be found at Page 187 of the Record, to wit:

> **"In effect having said the obvious I will briefly state that the evidence lead (sic) led by the prosecution so far may have established a *prima facie* case---"the accused person may have some explanation to make "(emphasis supplied)**

Appellant's Counsel submitted that the above fell far short and below the responsibility imposed on the trial Court in law. Counsel queried How did the learned trial Judge come to the conclusion that

the accused persons "may have some explanation to make" and that the prosecution "may" have established a prima facie" case without considering the elements of the offence in a-32 Count charge with the evidence of five (5) witnesses for the prosecution.

Appellant's Counsel referred again to the cases of:

**AMADI VS. FRN (SUPRA)** at **114 – 115** and
**AJULUCHUKWU VS. THE STATE (Supra)** at **657** and

emphasized that **"it is not sufficient case made up, if there is only a casual reference to the accused. There must indeed be some materials warranting the accused to give explanation or deny"**

He submitted further that from the Ruling of the trial Court above, it does appear that the Court was not sure as to whether the Appellant and other Accused Persons needed to proffer explanation or that a ***prima facie*** case has been made out. This, he said, stems from the use of the word "May" by the trial Court. The use of the word "may" according to Counsel imputs some element of uncertainty, doubt, indiscretion, unfirmness in this context.

He referred to the cases of:

**SULEIMAN VS. THE STATE (SUPRA) at 280,**

**EKASA VS. ALSCON PLC. (2014) 16 NWLR (Pt. 1434) 542 at 563** and submitted that a decision of a Court should be certain, unequivocal, and clear as to what it determines.

He argued that the element of doubt and uncertainty imputed into the Ruling of the trial Court has the legal effect that when a doubt exists in the mind of the Court as to whether an accused committed an offence or not such doubt will definitely be resolved in favour of the accused.

He referred to the case of **NAMSOH VS. THE STATE (1993) 5 NWLR (Pt. 292) 129 at 145** and urged us to hold that the Appellant is entitled to be discharged on the no case submission based on the doubt in the mind of the Court.

It is also the law, said Counsel, that calling upon an Accused Person to defend himself or make an explanation when he should not considering the effect of his no case submission is akin to asking him

to prove his innocence contrary to the provision of Section 36 (5) of the 1999 Constitution.

On this, he further referred to the cases of:

**SUBERU VS. THE STATE (2010) 8 NWLR (Pt. 1197) 586 at 609; and**

**OHUKA & ORS VS. THE STATE (1988) 1 NWLR (Pt. 72) 539.**

He added that to be valid, a decision of any Court must contain reasons for the decision. That failure of a Court of law to give reasons for its decision will result in the decision being set aside.

On this, he referred to the cases of:

**OGBORU VS. UDUAGHAN (2012) 11 NWLR (Pt. 1311) 357;**

**ABACHA VS. FAWEHINMI (2000) 6 NWLR 228;**

**EKWUNIFE VS. WAGNE (WA) LTD (1989) 5 NWLR (Pt. 122) 422;**

**WILLIAMS VS. HOPE RISING VOLUNTARY FUNDS SOCIETY (1982) 1 – 2 SC at 145;**

**AGBANELO VS. UBN LTD (2000) 7 NWLR (Pt. 666) 534.**

Appellant's Counsel submitted further that the learned trial Judge did not only fail to consider the no case submission made on behalf of the Appellant but also did not give any reasons for failure to do so or for merely rehearsing or summarizing the evidence without more.

After referring on the above to the cases of **JOHN SHOY INTERNATIONAL LTD VS. A.E.P.B. (2013) 8 NWLR (Pt. 1357) 625 at 642;** and **OSAFILE VS. ODI (No. 1) (1990) 3 NWLR (Pt. 137) 130** at **178;** Appellant's Counsel opined that in a joint criminal trial, evidence against each accused is considered separately and separate verdict pronounced as well.

He referred to the case of **AJIBOYE VS. THE STATE (1995) 8 NWLR (Pt. 414) 408 at 413** and continued that rather than give separate considerations to each accused person's no – case submission, the learned trial Judge gave a general and blanket Ruling encompassing all the submissions without considering the evidence

led against each of the accused persons vis – a - vis the ingredients of the offences charged.

He submitted that where as in the instant case, a trial Court fails to answer and resolve issues placed before it, the Appellate Court has a duty to resolve such issues provided there are enough or sufficient materials before it to do so.

He referred to the cases of:

**THE STATE VS. GODFREY AJIE (2000) 11 NWLR (Pt. 678) 434;**

**GARBA VS. THE STATE (2014) 14 NWLR (Pt. 1266) 98**

He urged us to allow this Appeal, set aside the Ruling of the lower Court and enter a verdict to discharge and acquit the Appellant on its merits. Learned Counsel for the Respondent on the other hand submitted in relation to Appellant's Issue One and Two that the evidence that the prosecution is expected to adduce to qualify same as having established a ***prima facie*** case at the stage of the proceedings is not such as would elicit the conviction of the accused person but rather one evincing the proof of the essential elements

and/or ingredients of the offences for which the accused person is standing trial.

For the above proposition, Respondent's Counsel placed reliance on the Supreme Court authorities of:

**UBANATU VS. C.O.P. (2000) 1 SC 31 at 54; and**

**TONGO VS. C.O.P. (2007) 4 SCNJ 221 at 232**

He submitted that the ingredients of the offences under Section 17 (a) and (c) of the Money Laundering (Prohibition) Act 2004 and Section (1) (a) (b) 1 (2) and 1 (3) of the Advanced Fee Fraud and Other Fraud Related Offences Act 2006 for which the Appellant and other Accused Persons stood trial are:

1. Two or more persons must be involved in the execution of the act.
2. The accused person pretended to do an act which does not exist and which said act is unlawful.
3. The accused person had the intention to deceive and defraud.
4. The accused persons induced another person to commit an offence.
5. Actual payment of money

**6.** False pretences.

**7.** Deceit.

In relation to the Appellant, Respondent's Counsel referred to the evidence of **PW1** who testified that BGL gave the sum of Two Billion Naira to TBDC a subsidiary of Transcorp in order to be a Shareholder. That, since the transaction was not consummated a refund was demanded which led to a law suit against Transcorp and TBDC. Upon investigation, it was discovered that "there was money belonging to TBDC in AFRIBANK PLC at Transcorp Hilltop. That, out of the Two Billion Naira only Seven Thousand Naira ₦7,000 was left in the account. It was discovered "that withdrawals were made based on written authorization from the Appellant (2nd Accused) (Pages 8 and 9 of Supplementary Record of Appeal).

Respondent's Counsel submitted that the uncontradicted evidence of **PW1** has shown very clearly the engagement and culpability of the Appellant in the transactions culminating in the commission of the offences for which he stands charged before the trial Court.

He added that the evidence of **PW1** was not discredited in the course of cross – examination.

It is pertinent for me at this juncture to interject in the summary of the submissions as contained in the Brief of Argument of the learned Counsel for the Respondent and say that this is all the Respondent had to say on the Appellant from the events recorded in the Record of Appeal.

And this is precisely why in his Reply Brief, the learned Counsel for the Appellant noted at Page 9 that "what the Respondent has done (in his Brief of Argument) is to lump the three Accused Persons together in his submission without linking Appellant to any evidence against him (Pages 9 – 13 of the Respondent's Brief of Argument).

Learned Counsel for the Respondent went ahead from Pages 14 to 16 of his Brief of Argument to defend the decision of the learned trial Judge on the allegation by the learned Counsel for the Appellant that not only did the learned trial Judge fail to consider the no case submission made on behalf of the Appellant but also did not give any reasons for failure to do so.

He submitted that the learned trial Judge was right when he resisted the temptation to delve into the issues bordering on the evaluation of evidence at the stage of a no – case submission.

He referred to the cases of:

**ABOGEDE VS. THE STATE (1996) 4 S.C.N.J. 223 at 233;**

and

**EMEDO VS. THE STATE (2002) 15 NWLR (Pt. 789) 190** at **204 – 205.**

He submitted that all that the law and the Court expects of the Prosecution at this stage is for it to show that from the evidence already adduced there exist some ground for proceeding with the trial of the Appellant, notwithstanding that such evidence might seemingly be seen to be even weak.

He referred to the case of **IKOMI VS. THE STATE (1986) 3 NWLR (Pt. 28) 340** at **366**. He quoted from the Judgment of **Oputa, JSC** in the case of **ATANO VS. A.G, BENDEL STATE 19 N.S.C.C. (Pt. 1) 643** at **664** that:

**"Strictly speaking, as a submission of no case to answer should be limited to law, there will be no harm discussing law in the Ruling. But one soon discovers that no meaningful discussion of the law can be made in vacuum without reference to the facts. If law and facts are thus to be discussed then it is much wiser to be extremely short. In fact one single sentence is enough "I overrule the submission and will give my reason in my Judgment" it is much wiser to be brief".**

He urged us to dismiss the Appeal.

## RESOLUTION OF ISSUES ONE AND TWO

Appellant's Issue One and Two are indeed two faces of the same coin.

The pertinent question common to the two issues is whether or not there was sufficient evidence from the Respondent in the Court below to call upon the Appellant to enter his defence to any or all of the 32 Counts charge of conspiracy to disguise and conceal funds, false pretence, fraudulent issuance of contracts, fraudulent transfers and payments of money, procuring and inducing contrary to Section

17 (a) and (c) of the Money Laundering Prohibition Act, 2004, Section 1 (1) (a) (b) 1 (2) and 1 (3) of the Advanced Fee Fraud and Other Related Fraud Offences Act 2006 and Section 16 (a) and (b) of the Money Laundering (Prohibition) Act 2004.

Curiously, and without reference to any of the 32 Counts against the Appellant, majority of which in any event border on criminal conspiracy, learned Counsel for the Respondent has suggested on Page 8 of his Brief of Argument that the ingredients of the offence for which the Appellant was charged include:

1. Two or more persons must be involved in the execution of the act.
2. The accused pretended to do an act which does not exist and which said act is unlawful.
3. The accused person had the intention to deceive and defraud.
4. The accused persons induced another person to commit an offence.
5. Actual payment of money.
6. False pretence.

**7.** Deceit.

It is not in dispute between the parties in this case that all that concerned the Appellant was limited to the evidence of **PW1**. For this reason, I consider it pertinent to reproduce portions of **PW1's** evidence from the records in relation to the Appellant.

On Pages 6 – 9 of the Supplementary Record of Appeal, the **PW1** witnessed generally and in relation to the Appellant as follows:

- Tell the Court about TBDC you mentioned? TBDC stands (sic) *for* Telecoms Backbone Development Company Ltd. Some time at the end of 2008 the DEM Shared Services instructed that I work 3 days at TRANSCORP office in Abuja. The reason he gave is that the MD at NITEL at the time Mr. Kelvin ease so required assistance and I should work with him for 3 days and work in Transcorp Shared Services for two days in a week. In the course of working with Mr. Caveso he gave me a contract between TBDC and NITEL to review. Searches conducted at CAC showed that TBDC had just been incorporated as a subsidiary of Transcorp.
- After receiving contract I advice him not to sign the contract until more details were provided by the draft man because it was very scanty. The subject matter of

the contract was to provide SAT 3 Cable, the contract was for TBDC to manage the SAT 3 product and services for NITEL. No fees were indicated as at the time I saw the contract and a lot of the commercial terms has not been stipulated.

- Against my advice Mr. Cariso (sic) later signed the contract. Sometime in 2009 in August 2009 when I became the Company Secretary, Legal Adviser to TRANSCORP HILTON BGL a stock broking company sent a claim to Transcorp attaching contract board resolutions and other documentary evidence showing that BGL has given the sum of Two Billion Naira to TBDC in other to become a shareholder in TBDC. Since the transaction was not consummated Transcorp should refund BGL the sum of Two Billion Naira plus inter discussed intensively by the board and it was resolved that Transcorp was not aware nor the board authorized the transaction. BGL sued Transcorp and recently the matter was resolved out of Court.
- Following the claims by BGL the external Auditors of Transcorp PWC during the audit pointed out that there was no money belonging to TBDC in AFRIBANK PLC at Transcorp Hilltop. Nobody in Transcorp at the time knew about the account and nobody indicated that they knew about the account. The bank statements were received

from the bank and after consideration the board decided that they indeed owed BGL and that was the reason for resolving amicably.

- Was the Two Billion intact in the account? There were several withdrawals. But the finance department at that time claimed ignorance of the transaction.
- Who were the signatories to this account? AFRIBANK was not willing to show us the signatories to this account AUT showed us the file and memos indicating that withdrawals were made base on written authorization from the 2nd accused person.
- How much did you people meet in the cause (sic) of this investigation? The bank statement showed that there was very little money left in the account, about ₦7,000 only. You said you conducted a search in CAC who represented Transcorp in TBDC? The Company was incorporated in 2008 with Transcorp was holding 95 or 98% and Transcorp was represented by the 1st accused person.

Under cross – examination by 1st Accused Counsel on Pages 12 – 13 of the Supplementary Record **PW1** was asked

**"Do you have anything specific with respect to the ₦15,000,000,000.00 (Fifteen Billion Naira) the Accused conspired to defraud from**

**Transcorp PLC in conjunction with the other Accused person?**

**She answered:**

**"With regard to the ₦15,000,000,000.00 (Fifteen Billion Naira) I am not in a position to say because I have never been in the accounts department of Transcorp"**

Again, relevant portion of the cross – examination of **PW1** by Counsel to the Appellant was recorded on Pages 85 to 87 of the main Record of Appeal as follows:

In your evidence in chief you said that BGL gave the sum of 2 Billion Naira to IBDC to enable BGL become a shareholder in TBGC? Yes my lord.

*TBDC is a different entity from Transcorp? TBDC is a subsidiary of Transcorp.*

*TBDC is a limited liability company? Yes my lord it is.*

*TBDC was incorporated to enable it source for funds to pay off debtor? I do not know the reason for their incorporation.*

*Put the reason TBDC was incorporated was to pay off those Transcorp was owing? I am not aware of that.*

*You are aware that IBDC was asking for funds from Transcorp? I am not aware of that.*

*IBDC through its activities raised the sum of One Billion Naira of which ₦500,000,000 was paid as banks interest owed Transcorp? I am aware of that.*

*The balance of ₦500,000,000 was used to pay NITEL STAFF? That is not what we found on the bank statement of TBDC.*

*What did you find? There were a lot of transactions I did not have them off head.*

*Put there is no Two Billion Naira anywhere which the accused was alleged to have stolen? BGL sued Transcorp claiming that it paid TBDC* the sum of Two Billion Naira for which Transcorp issued a corporate guarantee.

*In your statement to EFCC you never mentioned this fact of Two Billion Naira? As at the time of making that statement, I was not even aware of the details of the transaction.*

*When did you become aware of the details of the transaction? Late 2009. Did you go back to EFCC to make a statement incorporating that? No my Lord.*

*You will not be surprised that in all the charges against the accused person non relates to the Two Billion Naira or TBDC? Yes my Lord.*

*The suit you alluded to by BGL claiming Two Billion Naira was instituted after the accused persons employment had been determined by Transcorp? Yes my Lord.*

*You are not also a member of the board of TBDC? No my Lord. I am not a member of the board TBDC. You were not part of the celebrations of TBDC? No my Lord, I was not.*

*The 2nd accused person never executed any contract agreement between and anybody? I am not aware.*

*The 2nd accused person is not a signatory to any of Transcorp account? I am not in position to answer accounting matters.*

*You alluded to your evidence in chief to withdrawals made from Afribank account on written memo issued by the 2nd accused person? That is correct.*

*Who* made the withdrawal? The e-mail and the memo we saw in the file of TBDC account emanated from the 2nd accused person.

Who made the withdrawal? I do not know who made the withdrawals.

*You also do know how much was withdrawn? I know that and I saw the bank statement? I do not know the exact amount. You do not know the circumstances under which any withdrawals was made? Yes my lord.*

*You have never been the company secretary of from October, 2003 to February, 2012. I was company secretary and legal adviser to PLC.*

It is interesting to observe that at Page 86 of the Record of Appeal the **PW1** admitted that of 32 Counts there are no charges against the Appellant that relates to Two Billion Naira or TBDC.

In one's wildest imagination and perhaps because NITEL was mentioned in Count One against the Appellant one could imagine that the nearest charge in relation to the Appellant of the 32 Counts Charge considering the evidence of **PW1** is Count One. Even at that **PW1** at Pages 12 – 13 of the Supplementary Record of Appeal categorically denied knowledge of conspiracy to defraud Transcorp of ₦15 Billion Naira. The evidence of **PW1** did not mention any specific connection between the Appellant and the other accused persons to suggest any ***prima facie*** evidence of conspiracy. Rather at Page 86 of the Record of Appeal **PW1** said **"the 2nd Accused person (Appellant) never executed any contract agreement-------"**

Lest I forget, one intriguing portion of this case at least in relation to the evidence of **PW1** as against the Appellant is that no documentary evidence was tendered and or demonstrated to corroborate or put the evidence of **PW1** into proper perspective.

The scenario reminds one of the statements of **Bate, J.** speaking for the High Court of Northern Nigeria on Criminal Appeal in Kano In the case of **MUHAMMADU DURIMINYA VS. COP (1961) NRNLR at Pages 73 – 74** that:

> **"A trial is not an investigation, and investigation is not the function of a Court. A trial is the Public demonstration and testing before a Court of the cases of the contending parties. The demonstration is by assertion and evidence, and testing is by cross – examination and argument. The function of a Court is to decide between the parties of what has been demonstrated and tested"**

As to what constitute a ***prima facie*** case the Supreme Court per **Ariwoola, JSC** stated in the case of **AJULUCHUKWU VS. THE STATE (2014) 13 NWLR (Pt.1425) 641 at 651** that:

> **"A *prima facie* case will be made out when the evidence adduced by the prosecution disclosed evidence which if believed by the Court will be sufficient to prove the case against the accused. It is evidence that**

**covers all the essential elements of an alleged offence"**

The learned Supreme Court Justice also stated:

**"However, pursuant to Section 286 of the Criminal Procedure Law, a Judge is duty bound to discharge an accused person if it appears to the Court that a case is not made out against the accused sufficient to require him to make a defence. It is not a sufficient case made up, if there is only a casual reference to the accused. There must indeed be some materials warranting the accused to give explanation or deny. See <u>OSARODION OKORO VS. THE STATE (SUPRA)</u>"**

Also in **<u>ILIYASU SUBERU VS. THE STATE (2010) 8 NWLR (Pt. 1197) 587 At 602</u>** in circumstances similar to the present case, **Fabiyi, JSC** held that:

**"I need to point out here without any equivocation that none of the three witnesses called by the prosecution said anything negative against the Appellant. None of them mentioned his name to connect him with the commission of the offence"**

Before then, the Court of Appeal **per Bulkachuwa, JCA** (as he then was) held in the case of **SULEIMAN VS. THE STATE (2009) 15 NWLR 258 at 281** that:

> **"On the facts and evidence adduced before the lower trial Court none of the ingredients of the three offence charged was proved, in such a situation the trial Chief Judge should have upheld the no case submission made on behalf of the accused for no case was made against him, to put up a defence"**

In the instant case, I agree with the learned Counsel for the Appellant that a consideration of the evidence adduced by the Respondent (Prosecution) against the Appellant vis – a – vis the charges before the Court would have led the learned trial Judge to uphold the no case submission made on behalf of the Appellant.

The effect of upholding a no case submission in law is that the accused person ought to be discharged and acquitted.

See:

**ADEYEMI VS. THE STATE (1991) 6 NWLR (Pt. 195) 2 AT 35;**

**POLICE VS. MARKE (1957) 2 FSC 1, (1957) 2 FSC 1 (1957) SCNLR 53;**

**AITUMA VS. THE STATE (2006) 10 NWLR (Pt.94) 255.**

Based on the above **Appellant's Issue One and Two are resolved in favour of the Appellant.**

The **Appeal is meritorious and it is accordingly allowed.**

The **Ruling and Order of E.S. Chukwu, J. delivered on 20th October 2014 in Charge No. FHC/ABJ/CR/86/09 against the Appellant as 2nd Accused are accordingly set aside.**

The **Appellant (2nd Accused) in Charge No. FHC/ABJ/CR/86/09 is accordingly discharged and acquitted – of all the Charges against him in Charge No. FHC/ABJ/CR/86/09.**

**MOJEED ADEKUNLE OWOADE**
**JUSTICE, COURT OF APPEAL**

**COUNSEL/APPEARANCES:**

**J. M. Egwuonwu, SAN** with him
**J. I. Ekeoma, Esq. and**
**N. R. Emeh (Miss)** ..... for the **Appellant**

**Mela A. Nunghe, Esq.** with him
**O. L. O. Okeke, Esq.** ..... for the **Respondent**

**APPEAL NO:- CA/A/742A$^{C}$/2014**
**HAMMA AKAWU BARKA, JCA**

I was priviledged to have read in advance the judgment of my learned brother **MOJEED ADEKUNLE OWOADE JCA.**

Having therefore perused the records of appeal and the submissions of learned counsel, I also hold the view that the appellants issue's one and two, be resolved in his favour. Having said so, I fully agree with the reasoning advanced and the conclusions reached in the lead judgment to the inevitable result that the appeal be allowed and the appellant be discharged and acquitted of all the charges leveled against him in charge No. FHC/ABJ/CR/86/2009.

**HAMMA AKAWU BARKA**
**JUSTICE, COURT OF APPEAL.**

**APPEAL NO:- CA/A/742AC/2014**

**BOLOUKUROMO MOSES UGO J.C.A.**

I had read in advance the judgment of my learned brother **MOJEED ADEKUNLE OWOADE, J.C.A.,** and I agree with his reasoning and conclusion that this appeal has merit; accordingly, I also allow it and discharge and acquit appellant on all the charges against him.

**BOLOUKUROMO MOSES UGO**
**JUSTICE, COURT OF APPEAL**