IN THE HIGH COURT OF JUSTICE
OYO STATE OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

BEFORE HONOURABLE JUSTICE S. A. AKINTEYE – JUDGE
THIS THURSDAY THE 25TH DAY OF APRIL 2013

COURT NO. 5
SUIT NO:- I/8CA/2012

BETWEEN:

OJENIYI ADEYEMI ********** APPELLANT

AND

COMMISSIONER OF POLICE ********** RESPONDENT

Parties are absent.

Mr. O. Makinde for the Appellant.

Mrs. Oloso Olayiwola, Senior State Counsel for the Respondent.

# JUDGMENT

This appeal is in respect of a ruling delivered on the 27th of April 2012 by his worship, Chief Magistrate E.O. Idowu of chief Magistrate Court, Iyaganku Ibadan on a no – case submission of the learned counsel to the Appellant.

The Appellant and 2 others were arraigned before the lower court in Charge No:- I/339c/2012 on a 4 – count charge of conspiracy, stealing and receiving. For the purpose of this appeal, court 4 of the charge is what is relevant to the Appellant. The said count states as follows:-

Count 4 "That you Ojeniyi Adeyemi "M" on the same date, time and place at the same aforementioned Magisterial District did unlawfully received the sum of Twelve Thousand, Three Hundred and Ten Naira (N12,310:00), and one wall clock valued N600:00 (Six Hundred Naira), property of Mrs. Funmilayo Alli "F" and thereby committed an offence punishable under Section 427 of the Criminal Code Cap. 38 Vo. 11 Laws of Oyo State of Nigeria, 2000"

The appellant pleaded not guilty to the charge.

4 witnesses testified for the prosecution and at the end of prosecution's case, Appellant's counsel made a no-case submission.

In a considered ruling, the trial Chief Magistrate held as follows:-

"I hereby hold that the prosecution's case disclosed a prima facie case against the defendants in respect of all counts. See LAZARUS ATANO & 1 OR. VS. A – G. BENDEL STATE (1988) 2 NWLR (Pt. 75) pg. 201 at 231 – 232.

The defendants are therefore to enter into their defence as evidence so adduced by the prosecution disclose a prima facie case against them (sic) defendant".

SIGNED
E.A. IDOWU (MR.)
CHIEF MAGISTRATE II
27/4/2012".

On the 8th of May 2012, the Appellant filed a 1 – ground notice of appeal as follows:-

> "The trial court erred in law when it dismissed the Appellant's No – case submission and thereby occasioned failure of justice."

The particulars of error are as follows:-

a. The court did not consider the reason adduced by the Appellant in raising No – case submission.
b. The trial court took a wrong view of the application and considered irrelevant matters.
c. The conduct of the trial court occasioned failure of justice".

In his written address in support of the appeal, learned counsel to the Appellant, Mr. Olumuyiwa Makinde formulated the issue for determination as follows:-

> "Whether having regards to the circumstances of this case, the trial Magistrate was right in calling on the Appellant to enter his defence."

Counsel submitted that at the trial court, it was his submission that no evidence was adduced by the prosecution witnesses on very crucial elements/constituents of the offence alleged against the Appellant and that the evidence of the prosecution witnesses has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable court would safely convict on it.

He said in the case of Suberu Vs. The State (2010) 31 WRN pg. 1 at pg. 7 the Supreme court held that at the stage of no –case submission, the court

is under a duty to consider the evidence on ground and determine whether prima facie case had been made out against the Appellant.

He submitted that the ruling of the trial court falls abysmally short of the set-standard as it does not demonstrate how the court arrived at its conclusion having regards to the evidence adduced before the court.

Counsel further submitted that in the offence of receiving stolen property contrary to Section 427 of the Criminal Code, Cap. 38 Vol. II Laws of Oyo State of Nigeria, 2000, the following ingredients of the offence must be proved. They are:-

a. There is proof of stealing of the goods in question.
b. There is proof that the person charged dishonestly received the goods stolen.
c. There is evidence of guilty knowledge.

See Okoroji Vs. The State (2002) NWLR (Pt. 759) pg. 21 at 29.

He said none of the 4 witnesses for the prosecution gave an iota of evidence to show that the appellant dishonestly received the money and wall clock or knew them to be stolen.

He further stated that the Prosecutor has failed to adduce prima facie evidence with regards to the alleged dishonestly receiving the money and the wall clock and cited Chianugo Vs. The State (2002) 9 NWLR (Pt. 750) 225 at 230.

Counsel submitted further that inconsistencies and contradiction in the evidence of the prosecution are fatal if they are material and they are material if they are likely to create doubt in the mind of the court. He cited Gabriel Vs. The State (1989) 5 NWLR (Pt. 122) 457.

2.Ele Vs. The State (2006) 42 WRN pg. 88 at 127 – 128.

He urged me to discharge the Appellant on the lone count as no prima facie case has been made against him.

Learned counsel to the Respondent, Mrs. Abu –Okolo, Senior Legal Officer, Ministry of Justice, Ibadan, formulated 2 issues for determination as follows:-

(a) The trial court erred in law when it dismissed he Appellant's No-case submission and thereby occasioned failure of justice.

(b) Whether based on the evidence adduced by the Prosecution before the trial Magistrate court, a prima-facie case has been disclosed against the appellant.

On the 1st issue, counsel submitted that based on the evidence before the trial court, a prima facie case has been disclosed against the Appellant.

She said prima facie evidence can be established through direct evidence, circumstantial evidence or by confession and cited Nigeria Navy Vs. Lambert (2007) All FWLR (Pt. 396) 547 at 585.

She further stated that there was no direct evidence in this case but referred to the evidence of PW3 and that of the complainant. She submitted that when direct positive evidence is elusive, surrounding circumstances of positive, cogent and compelling evidence inescapably linking the accused with the commission of the offence is acceptable. She cited Chima Ijiofor Vs. The State (2001) FWLR (Pt. 49) 1457 at 1542.

She further submitted that where a no case submission is made, what is to be considered by the court is not whether the evidence produced by the prosecution against the accused is sufficient to justify conviction but whether

the prosecution has made out a prima facie case requiring some explanation from the accused person as regard his conduct or otherwise.

She said in this case, explanation is needed form the appellant since the complainant claimed that there was gateman, yet the appellant took the back gate of the house and supposedly went away with her goods and valuables.

Counsel stated that a prima facie arises when evidence against an accused is such that, if uncontradicted and if believed will be sufficient to prove the case against the accused and cited Tongo Vs. C.O.P. (2007) 12 NWLR (Pt. 1049) 525 at 527.

2.Abru Vs. the State (2001) 12 NWLR (Pt. 726) 137.

On discredited evidence, she submitted that such discredit must be apparent on the face of the record and that if such is not the case, then the no-case submission must fail.

Counsel urged me to dismiss appellant's appeal and order him to enter his defence before the trial Magistrate Court.

I have read the printed record in this appeal as well as the written addresses of both counsel.

I have identified the issue for determination in this appeal as follows:-

> "Whether the trial Chief Magistrate was right in dismissing the no – case submission of learned counsel to the Appellant in view of the evidence before him"

As stated earlier, the Appellant was arraigned in court under Section 427 of the Criminal Code, Cap. 38, Vol. II, Laws of Oyo State 2000.

For ease of reference, Section 427 (supra) provides as follows:-

"Any person who receives anything which has been obtained by means of any act done at a place not in Oyo State, which if it had been done in the state would have constituted a felony or misdemeanor, and which is an offence under the laws in force in the place where it was done, knowing the same to have been so obtained, is guilty of a felony, the offender is liable to imprisonment for fourteen years, except in the case in which the thing so obtained was postal matter, or any chattel, money or valuable security contained therein, in which case the offender is liable to imprisonment for life.

In any other case the offender is liable to imprisonment for seven years. For the purpose of proving the receiving of anything, it is sufficient to show that the accused person has, either alone or jointly with some other person, had the thing in his possession, or has aided in concealing it or disposing it."

No case submission means that from the evidence adduced by the prosecution, the accused has no case to answer and should not therefore be called to defend himself.

Before a trial court comes to the conclusion that the accused has a case to answer, it must be satisfied that there is in law, a nexus between the criminal conduct and the offence he is charged with and this must be apparent on the face of the evidence led by the prosecution.

See the case of Shatta Vs. F.R.N. (2009) 10 NWLR (Pt. 1149) 403 at 412 – 413.

In Daboh Vs. The State (1977) 5 SC 122, the Supreme Court states that "when a submission of no prima facie case is made on behalf of an accused person, the trial court is not thereby called upon at that stage to express any opinion on the evidence before it. The court is only called upon to take note and to rule accordingly that there is before the court no legally admissible evidence linking the accused person with the commission of the offence with which he is charged. If the submission is based on discredited evidence, such discredit must be apparent on the face of the record. If such is not the case, then the submission is bound to fail."

Also in Tongo Vs. C.O.P. (2007) 12 NWLR (Pt. 1049) 525, the Supreme Court states as follows:-

> "It should always be borne in mind that at the stage where a no –case submission is made, particularly where learned counsel indicates intention not to rely on same, what is to be considered by the court is not whether the evidence produced by the prosecution against the accused is sufficient to justify conviction but whether the prosecution has made out a prima facie case requiring, at least, some explanation from the accused person as regard his conduct or otherwise."

The term "Prima facie" has been defined in Ikomi Vs. The State (1986) 3 NWLR (Pt. 28) 340 to mean "on the face of it."

Having stated all these, can it be said that from the printed record, the Appellant has no connection with the charge before the court?

From the evidence on record of PW1 and PW3, it could be seen that the wall clock which PW1 identified as belonging to her was recovered from the residence of the Appellant and also an envelope bearing the name of Odua Investment Company in which there was a sum of money was recovered from the appellant. PW1also identified the said envelope and money as belonging to her.

From these pieces of evidence, it becomes apparent that the appellant has some explanation to make as regards how he came about the items recovered from him. In other words, there is a nexus connecting the Appellant with the items recovered from him for which he has to make some explanation.

However, at the conclusion of the case for the prosecution and the defence, the sufficiency of the evidence called by the prosecution witnesses and their credibility may be the determinant factors of the guilt or otherwise of the Appellant.

After a calm view of this Appeal, it is my respectful view that the no-case submission made by the Appellant was correctly rejected by the court below.

Accordingly, this appeal lacks merit and it is hereby dismissed.

The Appellant is hereby directed to open his defence at the trial Chief Magistrate Court.

I wish to comment on the 1st issue formulated by counsel to the Respondent. The argument canvassed in support of this issue is at variance with it. While the argument is in support of the position of the Respondent, the issue as formulated is against it.

It is my respectful view that counsel should proof read very carefully what has been prepared for filing in order to avoid this type of situation.

That shall be my judgment in this Appeal.

25TH APRIL 2013

HON. JUSTICE S. A. AKINTEYE
JUDGE