



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

**ON TUESDAY, THE 22<sup>ND</sup> DAY OF MAY, 2018**

**BEFORE THEIR LORDSHIPS**

<b><u>MOJEED ADEKUNLE OWOADE (PJ)</u></b>	<b><u>JUSTICE, COURT OF APPEAL</u></b>
<b><u>HAMMA AKAWU BARKA</u></b>	<b><u>JUSTICE, COURT OF APPEAL</u></b>
<b><u>BOLOUKUROMO MOSES UGO</u></b>	<b><u>JUSTICE, COURT OF APPEAL</u></b>

**APPEAL NO. CA/A/742B<sup>C</sup>/2014**

**BETWEEN:**

**MIKE OKOLI       .....       APPELLANT**

**AND**

**THE 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 delivered on the 19<sup>th</sup> day of October, 2014 overruling the no case submission on behalf of the Appellant.

The Appellant who was one time Deputy General Manager (DGM) Shared Services of TRANSNATIONAL CORPORATION (TRANSCORP) PLC was the 3<sup>rd</sup> Accused in a thirty two (32) Count charge bordering on Sections 16 (a) & (b) and 17(a) (c) of the Money Laundering Prohibition Act 2004 Sections 1(1) (a) & (b), 1(2) and 1(3) of the Advanced Fee Fraud and Other Fraud Related Offences Act.

Counts **1, 3, 5, 7, 9, 11, 13, 15, 17, 21, 23, 25, 27, 29,** and **31** are charges of conspiracy contrary to Section 17(a) (c) of the Money Laundering (Prohibition) Act 2004 while Counts **2, 12, 14, 16, 18, 19, 20, 22, 24, 26, 28, 30** and **32** are charges bordering on false pretence contrary to and punishable under Section 1(1) (a) (b) 1(2) and 1(3) of the Advanced Fee Fraud and Other Related

Fraud Offences Act, 2006. The Prosecution called five (5) witnesses and tendered Exhibits in the case.

At the close of the case for the prosecution, the Appellant and the other two accused persons made a no case submission. The learned trial Judge overruled the no case submission of the Appellant and the other two accused persons on Pages 327 - 328 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 arise.**

**Similarly the consideration of the credibility of the witness is of no moment. So far all intents and purposes this Court has to consider if the essential ingredients of the 32 count charges have been proved. At this point am not going to consider whether the evidence is weighty, enough to secure conviction.**



On this my proposition of the Law I place strict reliance on the case of **EKWUNUGO V. FRN (Supra)** ably cited by both counsels (sic) for the defence and the prosecuting Counsel respectively and the same was more frontally stated in the case of **IKOMI VS. STATE (1986) 3 NWLR (PT. 28) 340 @ 366**. In effect having said the obvious I will briefly state that the evidence lead (sic) by the prosecution so far may have established a prima facie case and the success of which will only be considered when I must have heard the Accused Persons stated their own side of the story and I so hold.

The Accused Persons may have some explanation to make. In the circumstance the no case submissions of the Accused persons fails (sic) and it is accordingly dismissed. The Accused person (sic) should enter their defence”.

Dissatisfied with the ruling/decision of the Court, the Appellant filed a Notice of Appeal containing only One Ground of Appeal into this Court on 21/10/2014.

The Relevant Briefs of Argument for the Appeal are as follows.

- i. Appellant's Brief of Argument dated 21/03/2016 and filed on 22/03/2016 but deemed filed on 29/03/2017. It is settled by Sylvester Ogbelu, Esq.**
- ii. Respondent's Brief of Argument dated 20/06/2017 and filed on the same date. It is settled by Mela Audu Nunghe, Esq.**
- iii. Appellant's Reply Brief dated 3/11/2017 and filed on 7/11/2017 but deemed filed on 9/11/2017. It is settled by Max Ogar, Esq.**

Learned Counsel for the Appellant nominated only One Issue for determination of the Appeal. It is:-

**"Whether the learned trial Judge was right by finding and holding that the Appellant's No case submission failed, requiring the Appellant to enter a defence?"**

Learned Counsel for the Respondent claimed to have have formulated two Issues for determination. In actual fact, his so called Issue One incorporated his arguments on his Notice of Preliminary Objection. Respondent's only Issue for determination is therefore:

**"Whether or not the Respondent has made a *prima facie* case against the Appellant to warrant the Appellant to be called upon to make some explanation by way of defence".**

### **THE PRELIMINARY OBJECTION**

Learned Counsel for the Respondent filed a Notice of Preliminary Objection:

- a) That this Appeal is incompetent by virtue of Section 242 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).**
- b) That the Appeal is further incompetent by virtue of the combined effect of Section 306 of the Administration of Criminal Justice Act 2005 and EFCC (Establishment) Act 2004 particularly S.40 of the EFCC Act 2004.**



The grounds upon which the said objection was 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 S.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".**

In his Reply Brief, learned Counsel for the Appellant maintained that the only Ground of Appeal is on law and does not require any leave of Court to Appeal.

He referred on this to the case of **COMEX LIMITED VS. N.A.B. LIMITED (1997) 3 NWLR (PT. 496) 643.**

He added that neither the provision of Section 40 of the EFCC Act nor Section 306 of the ACJA dealing with stay of proceedings is applicable to this Appeal.

### **RESOLUTION OF PRELIMINARY OBJECTION**

The central issue for the Resolution of the Respondent's Preliminary Objection is whether the Appellant's sole Ground of Appeal is a ground of Law in which case it would not require leave of Court to appeal or whether it is of mixed law and fact or facts in which case leave of Court would be required to file an Appeal.

The Appellant's sole Ground of Appeal together with its particulars are reproduced below.



## **GROUND 1**

**"The learned trial Judge erred in law for finding and holding that the Appellant's No case submission failed, requiring the Appellant to enter a defence".**

## **PARTICULARS**

- i. There is no legally admissible evidence linking the Appellant with the commission of the offences alleged in the charge.
- ii. None of the prosecuting witnesses said anything indicting against the Appellant.
- iii. There is no *prima facie* case made against the Appellant.
- iv. Compelling the Appellant to enter a defence is a reversal of the constitutional provision of presumption of innocence.
- v. Suspicion does not ground conviction".

I do agree with the learned Counsel for the Appellant that the sole ground in the Appellant's Notice and Ground of Appeal is a ground of Law.

In COMEX LIMITED VS. N. A. B. LIMITED (1997) 3 NWLR  
(PT. 496) 643; Ogundare, JSC (of blessed memory) stated:

"Lastly, I should mention one class of grounds of law which have the deceptive appearance of grounds of fact, 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 of Law, on the premises that in a jury trial there would have been no evidence to go to the jury"

See also:

OGBECHIE VS. ONOCHIE (1986) 2 NWLR (PT. 23)  
484 at 491 - 492;

COKER VS. UBA PLC (1997) 2 NWLR (PT 440) 641  
at 658;

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

MENTAL CONSTRUCTION (WA) LTD VS. MIGLIORE  
(1990) 1 NWLR (PT. 126) 299.

Clearly, Appellant's sole Ground of Appeal is a ground of Law which does 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 Ground of Appeal involves questions of law alone, decisions in any civil or criminal proceeding.

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, the Sections provide as follows:

**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 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.

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

### **THE MAIN APPEAL**

Learned Counsel for the Appellant summarized the state of evidence in relation to the Appellant as follows: That,

It is on Record that none of the first four (4) out of the five Prosecuting Witnesses; employees/former employees of Transcorp PLC, linked the Appellant (3<sup>rd</sup> Accused Person in the trial Court) to any infraction amounting to any penal offence in Nigeria. The state of evidence before this Court reveals that:

- nothing was placed before the trial Court showing that there was any meeting of minds either between the Appellant herein (3<sup>rd</sup> Accused before the trial Court) and the other Accused Persons or between the Appellant (3<sup>rd</sup> Accused in the trial Court) and any 3<sup>rd</sup> party for the purpose of doing anything

unlawful touching on the property or interests of Transcorp PLC;

- here was nothing before the trial Court showing that the Appellant (3<sup>rd</sup> Accused) was involved in any fraudulent award of contracts or fraudulent transfer of any money;
- here was nothing before the trial Court showing the involvement of the Appellant (3<sup>rd</sup> Accused) in conspiring, disguising and concealing the sum of **\$1,200,000.00** or any other sum to be paid into Global Employment Solution Incorporated (GESI) account domiciled in the United States;
- here was nothing before the trial Court linking the Appellant (3<sup>rd</sup> Accused) with conspiring, disguising and concealing the sum of **\$100,000.00** to be paid to Global Information Technology Inc.;
- here was nothing before the trial Court showing the involvement of the Appellant (3<sup>rd</sup> Accused) in inducing or procuring the



payment of **\$108,000.00** to be paid to Ankor Pointe Integrated Limited;

- here was no shred of evidence linking the Appellant (3<sup>rd</sup> Accused) with any fraudulent inducement of Transcorp/NITEL to pay **\$500,000.00** to Hammattan Ventures Limited;
- one of the Prosecuting Witnesses linked the Appellant (3<sup>rd</sup> Accused) to any conspiracy to conceal the sum of **#64,000,000.00** to be paid to Landsak International Limited;
- here was no iota of evidence before the trial Court linking the Appellant (3<sup>rd</sup> Accused) to either a fraudulent award of a contract or the fraudulent payment of **#4,900,000.00** to Constant Services Limited;
- he Appellant (3<sup>rd</sup> Accused) was not linked to the alleged payment by Transcorp of the sum of **#20,542.376.00** to A. B. Ismaila & Co. for any purported consultancy.

He stated that, **PW1** in the trial Court (**Mrs. Helen Ogonna Iwuchukwu**- Company Secretary) said under cross examination by the Appellant's (3<sup>rd</sup> Accused Person's) Counsel:

- do not know if the 3<sup>rd</sup> Accused Person (Appellant) had any final approving authority while his employment with Transcorp lasted.
- do not know if the 3<sup>rd</sup> Accused Person (Appellant) was solely responsible for the payment of contractors.
- he 3<sup>rd</sup> Accused Person (Appellant) was not involved in the day to day running of NITEL while he was in the employment of Transcorp.
- am not in a position to know about accounting matters to be able to tell how much of the 15 Billion Naira the 3<sup>rd</sup> Accused Person (Appellant) removed from Transcorp.

He further stated that there is nothing in the evidence of **PW2** (Nicholas Okoro) or **PW4** (Oyewale Ariyibi) indicting the Appellant (3<sup>rd</sup> Accused Person) therein.

According to Counsel, the last straw that broke the camel's back in the Respondent's (Prosecution's) case before the trial Court is the testimony of the **PW5** (Aminudeen Mohammed). The Investigating Officer through whom the statements of the Appellant and the other Accused Persons and the investigation report were tendered. The witness told the Court that:



e never traced any money belonging to Transcorp to the account of any of the three Accused persons including the Appellant (3<sup>rd</sup> Accused) therein.



ranscorp did not make any complaint against any of the Accused Persons including the Appellant (3<sup>rd</sup> Accused) therein.

Appellant's Counsel considered that the indispensable foundation of proving a case beyond reasonable doubt is making a *prima facie* case against an accused person. He referred to the







**iv.**

procure and induce the payment of **\$108,000.00** (One Hundred and Eight Thousand United States Dollars) to be paid to Ankor Pointe Integrated Ltd as monthly retainership fees?

**v.**

procure and induce Transcorp PLC/NITEL to pay the sum of **\$500,000.00** (Five Hundred Thousand United States Dollars) to Hammattan Ventures Limited.

He submitted that the Respondent (Prosecution) did not demonstrate through any credible evidence that there was any false pretence by the Appellant whether alone or in liaison with any other known or unknown person(s).

Learned Counsel for the Appellant refers to Section 2 of the Corrupt Practices and Related Offences Act (Cap. C.31) LFN 2004 which defines 'false pretence' as:

**"Any representation made by words, writing or conduct, of a matter of fact, either past or present, which representation is false in fact, and which**



**the person making it knows to be or does not believe to be true”**

He further submitted that on its part, the Advanced Fee Fraud Act, under which the Appellant was also charged in its Section 1(1) provides:

**“---- any person who by any false pretence and with intent to defraud -**

**a.**

obtains, from any other person, in Nigeria or in any other country, for himself or any other person.

**b.**

induces any other person, in Nigeria or in any other country, to deliver to any person, or

**c.**

obtains any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence is guilty of an offence under this Act.

Appellant's Counsel reiterated that the Respondent (Prosecution) in the entirety of its evidence (through five witnesses) did not demonstrate how the Appellant (3<sup>rd</sup> Accused).

I made any false representation to any person(s).

i.

ntended to defraud any of the nominal complainants, or

ii.

nduced any person(s) to do anything mercantile unethical.

He further submitted that the ingredients of the offence of false pretence were not established even in the least. That the Respondent (Prosecution) made wild allegations against the Appellant but failed to demonstrate by providing credible evidence at trial.

He concluded by referring to the dictum of **ONNOGHEN, JSC** in **EKWUNUGO VS. FRN (2008) 40 WRN 160** at **164** that:

**"It is settled law that a *prima facie* case is made out where the evidence adduced by the prosecution is such that, if**

**uncontradicted would be sufficient to prove the case against the accused person”.**

He urged us to set aside the Ruling of the learned trial Judge calling on the Appellant to give explanation in the case and to discharge and acquit the Appellant.

Learned Counsel for the Respondent on the other hand submitted 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 pretence.

**7.**

eceit.

In relation to the Appellant, the Respondent's Counsel referred to the evidence of **PW1** at Pages 228 – 229 of the Record of Appeal. That she (**PW1**) received instructions from the Appellant (3<sup>rd</sup> Accused) as well as a proposal and profile of a company called G.L.T. He asked that she prepares a contract for the company to investigate a fire incident at NITEL at Saka Tinubu in Lagos State.

He submitted that the uncontradicted evidence of **PW1** has shown the engagement and culpability of the Appellant in the transactions culminating in the commission of the offences for which the Appellant and others stood charged.

He urged us to uphold the decision of the learned trial Judge and dismiss the Appeal.

### **RESOLUTION**

In resolving the only Issue in this Appeal, the pertinent question is whether or not there was sufficient evidence from the Respondent (prosecution) 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 payment 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 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 majority of which in any event border on criminal conspiracy, learned Counsel for the Respondent has suggested on Pages 8 – 9 of his Brief of Argument that the ingredients of the offences for which the Appellant was charged include:

**1.**

two or more persons must be involved in the execution of the Act.

**2.**

he accused pretended to do an act which does not exist and which said act is unlawful.



3.

he accused person had the intention to deceive and defraud.

4.

he accused persons induced another person to commit an offence.

5.

actual payment of money.

6.

false pretences.

7.

except.

I have carefully gone through the record of proceedings and found that amongst the Five (5) witnesses called by the Respondent – the Appellant was only mentioned in the evidence of **PW1** and perhaps also in the cross examination of **PW2** by the learned Counsel for the Appellant. I would therefore indulge in reproducing relevant portions of the examination in Chief of **PW1** at Pages 228 of the Record, Cross-examination of **PW1** by the learned Counsel to the Appellant (3<sup>rd</sup> Accused) at Pages 241 to 242 of the Record and cross-examination of **PW2** by the Appellant's Counsel at Pages 253 to 254 of the Record.

## **EXAMINATION IN CHIEF OF PW1**



ou also mentioned five forensic investigations about a contract you prepared for them? I received instructions from the 3<sup>rd</sup> Accused person as well as proposal and profile of a company called GLT. He asked that I prepared a contract for the company to investigate a fire incidence at NITEL at Saka Tinubu in Lagos State. The contract was for 5 days period and the amount was about \$100,000.00 or \$105,000.00 (One Hundred Thousand Dollars or One Hundred and Five Thousand Dollars)

In the Company an indigenous company? It is an American Company.



ho signed the contract on behalf of Trascorp? The memo of Transcorp provide (sic) 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 the DGM 3<sup>rd</sup> Accused person, some by the group Managing Director, the 1<sup>st</sup> Accused person in conjunction with the 2<sup>nd</sup> Accused Person, the Company Secretary Legal Adviser, the 2<sup>nd</sup> Accused person.



who instructs you to work and who were you answerable to? At the time I was answerable to the DGM Shared Services, the 3<sup>rd</sup> Accused person.

**CROSS-EXAMINATION OF PW1 BY 3<sup>RD</sup> ACCUSED**

**(APPELLANT'S) COUNSEL**

*Tell the Court if the 3<sup>rd</sup> accused person had any final approving authority while his employment in Transcorp lasted? I do not know my lord.*

Was the 3<sup>rd</sup> accused person sole responsible for the payment of contractors? I do not know my lord.

Was the 3<sup>rd</sup> accused person involved in the day to day running of NITEL while he was in the employment of Transcorp? No my lord.



Tell this Court how much of the 15 Billion Naira the 3<sup>rd</sup> accused person removed from Transcorp? I am not in a position to know about accounting matters.

**CROSS-EXAMINATION OF PW2 BY 3<sup>RD</sup> ACCUSED**

**(APPELLANT'S) COUNSEL**

You identified the 3<sup>rd</sup> accused person as a former DGM in Transcorp? Yes.

Tell my lord, if that position conferred any final approving authority on the 3<sup>rd</sup> accused person?

I do not know.

Was the 3<sup>rd</sup> accused person a signatory to any Transcorp account? I do not know.

In ranking between the office you held before you became the GMD of Transcorp and the office the 3<sup>rd</sup> accused person hold, which one was higher? In ranking I was higher.

Did you or any other management staff query the 3<sup>rd</sup> accused while his employment lasted?

I did not query him and I am not aware if any other person queried him.

As a former management staff of Transcorp, you are aware that NECOM house Lagos is not owned by Transcorp? I am not aware of that.

Finally, you are aware that the management of Transcorp had issues to settle with BPE (Bureau of Public Enterprise) over the ownership of NECOM house? I am aware that Transcorp had issues relating to NITEL and all the assets of NITEL with the Bureau of Public Enterprises.

In addition to the evidence reproduced above, under cross-examination by learned Counsel to the 1<sup>st</sup> Accused person **PW1** was asked:

**"Do you know 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 two Accused persons"?**

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"**

In all of these, 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 254 of the Record **PW2** who at the point in time was Senior in hierarchy to the Appellant witnessed that he was not aware that the Appellant was ever queried by Transcorp.

Learned Counsel for the Appellant was right when at Page 7 of his Brief of Argument he commended us in relation to the facts of this case to the dictum of Bate, J. in the case of: **DURIMINIYA VS. COMMISSIONER OF POLICE (1961) NNLC 70** at **73 - 74** where his Lordship espoused thus:

**"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 the testing is by cross-examination and argument. The function of the Court is to decide between the parties on the basis of what has been so demonstrated and tested”**

Learned Counsel for the Appellant then added that there was no iota of evidence before the trial Court establishing the primary ingredient of the offence of conspiracy; the meeting of minds.

Indeed, no documentary evidence was demonstrated to corroborate or put the evidence of **PW1** into proper perspective.

It is trite that at the close of the prosecution's case, a trial Court should consider whether there is evidence which will suffice to support the allegation made in the charge and whether such evidence will stand unless the accused produces no evidence to rebut it. If at the close of the case for the prosecution, there is no proof of an essential element in the said charge and a submission of no case is made, a trial Court ought to uphold the submission.

See:

**FIDELIS UBANATU VS. COMMISSIONER OF POLICE (2000) 1**  
**SCNJ 50 at 58 (2000) 19 WRN 55, (2000) FWLR (PT. 1) 138,**  
**(2000) 2 NWLR (PT. 463) 115.**

As to what constitutes a *prima facie* case against the Supreme Court per Ariwoola, JSC stated in the case of **AJULUCHUKWU VS. 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: OSARODION OKORO VS. THE STATE (Supra)".

Also in ILIYASU SUBERU VS. THE STATE (2010) 8 NWLR (PT. 1197) 587 at 602 in circumstances similar to the present case, Fabiyi, JSC held that:

"I need to point out here without 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) 18 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 uphold 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-à-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) SCNLR**

**53;** and

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

Based on the above, the **sole issue in this Appeal is 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 the 19<sup>th</sup> October, 2014 in Charge No. FHC/ABJ/CR/86/2009 against the Appellant as 3<sup>rd</sup> Accused are accordingly set aside.**

**The Appellant (3<sup>rd</sup> Accused) in Charge No. FHC/ABJ/CR/86/2009 is accordingly discharged and acquitted – of all the charges against him in charge No. FHC/ABJ/CR/86/2009.**

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

**COUNSEL/APPEARANCES:**

**Max Ogar, Esq. with him**  
**I. Bisong, Esq. and** } .... for the **Appellant**  
**B. Nneka, Esq.** }

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



**APPEAL NO:- CA/A/742B<sup>c</sup>/2014**  
**HAMMA AKAWU BARKA, JCA**

The judgment of my lord **MOJEED ADEKUNLE OWOADE JCA**, was made available to me in draft.


I wholly agree with the reasoning and the conclusions reached, and thereby join my lord in discharging and acquitting the appellant of all the charges against him in charge No. FHC/ABJ/CR/86/2009.



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

**APPEAL NO:- CA/A/742BC/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**