IN THE COURT OF APPEAL
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON TUESDAY, THE 16TH DAY OF MAY, 2017

BEFORE THEIR LORDSHIPS

TINUADE AKOMOLAFE-WILSON	-	**JUSTICE, COURT OF APPEAL**
PETER OLABISI IGE	-	**JUSTICE, COURT OF APPEAL**
EMMANUEL AKOMAYE AGIM	-	**JUSTICE, COURT OF APPEAL**

APPEAL NO: CA/A/742^{C}/2014

BETWEEN:

THOMAS ISEGHOHI } **APPELLANT**

AND

FEDERAL REPUBLIC OF NIGERIA } **RESPONDENT**

JUDGMENT
DELIVERED BY TINUADE AKOMOLAFE-WILSON, JCA

The appellant, one Mohammed Buba and Mike Okoli are currently being tried in the Federal High Court of Abuja in criminal case No: FHC/ABJ/CR/86/2009 on a-16-counts charge of Money laundering and conspiracy, contrary to S.17 (a) and (c) of the Money Laundering (Prohibition) Act 2004, 3-count charge of Money Laundering contrary to S.16 (a) and (b) of the Money Laundering Act (supra) and Advance Fee Fraud contrary to S.1 (1) (a), (b), (2) and (3) of the Advance Fee Fraud and other Related Fraud Offences Act 2006.

Following their arraignment and plea of not guilty, their trial commenced.

The prosecution closed her elicitation of evidence in proof of the charge after the conclusion of the testimony of its 5th witness.

The accused persons made a submission that the totality of the evidence adduced by the prosecution did not establish a prima facie case against the accused persons and that therefore they should be discharged and acquitted. The prosecution replied arguing that the evidence adduced by the prosecution proved that the accused committed the offences they were charged with in the 32 counts and that, therefore, there was need for them to adduce evidence in defence of the case established by the evidence of the prosecution.

On 19-10-2014, the trial court ruled thus:

"I have critically studied and digested the application of no case submissions by the Accused Persons and the reply by the prosecuting counsel in opposition to the application.

Let me state here that both parties i.e. the defence counsel and the prosecuting counsel have gone full blast in their argument in support and in opposition to the no case submission to the issues which can only be considered after full trial. I must state that any detailed comment by the Court may lead to the unwarranted result

of commenting on the substantive Suit as both Counsel have done in this case. In the circumstance, I must be circumspect in my consideration of this no case submission. The Law is trite that at this stage this Court is concerned only with the issue of whether the prosecution has made out a prima facie case.

Put succinctly, has the prosecution proved any of the elements of the case alleged against the Accused Persons as to warrant the Accused to offer some explanation? On this proposition of the Law, I will place reliance on the cases ably cited by the learned counsel for the 2nd accused person IBEZIAKU V. COP (supra), LLUYABU SUBERU V. THE STATE (Supra) and ADEYEMI V. THE STATE (supra).

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, for all intents and purposes this court has to consider if the essential ingredients of the 32-count charge 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 EKWUNGO V. FRN (supra) ably cited by both counsels 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 led 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 and it is accordingly dismissed. The Accused person should enter their defence.

I make no order as to cost".

Dissatisfied with this ruling, the 1st accused commenced this appeal No: CA-A-742C-2014 on 31-01-2014 by filing a notice of appeal containing three grounds for the appeal.

Both sides have filed, exchanged and adopted their respective briefs namely - appellant's brief, respondents brief, appellant's reply.

The respondent filed a notice of preliminary objection that:

(a) That this appeal is incompetent by virtue of S. 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 sections 306 of the Administration of Criminal Justice Act 2005 and the Economic (Establishment) Act 2004 particularly S.40 Economic and Financial Crimes Commission.

AND TAKE FURTHER NOTICE that the grounds of the said objection are as follows;

1. *That this 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 Economic and Financial Crimes Commission (Established) 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, the appeal is incompetent.*
5. *That the Respondent thereby urge their lordships to strike at this appeal forthwith.*

It was argued as the 1st issue in the respondent's brief and replied to in the appellant's reply. So I will determine it together with the issues for determination in this appeal.

The appellant's brief raised one issue for determination as follows –

"Whether the totality of the evidence adduced in the course of the prosecution's case established a prima facie case to warrant calling upon the accused to enter his defence. (This issue relates to both Grounds one and two of the Notice of Appeal)".

The respondent's brief raised two issues for determination as follows:-

1. **Whether or not this Appeal is competent**
2. **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.**

The lone issue for determination in the appellant's brief and issue No: 2 in the respondent's brief are the same. As I had said, issue No 1 in the respondent's brief is the objection to competence of this appeal. So, I will determine issue No. 1 in the respondent's brief first as it touches on the competence of this appeal. Then I would proceed to determine the merit of this appeal on the basis of the issue for determination in the appellant's brief.

Learned counsel for the respondent argued that the appellant did not seek for and obtain the leave of this court to bring this appeal.

He submitted that the grounds of this appeal, even though described as errors of law, are not errors of law alone,

that the grounds ought to show the particular law in respect of which the trial Court erred to bring the appeal under S. 141 (1) (b) of the 1999 Constitution, and that where leave is required to bring an appeal, it must first be obtained before the appeal is filed.

For these submission he relied on **Monk V. Bartram (1891) 1 QB 346. Balogun V. Balogun (1969) NSCD 321, Umana V. Attah (2004) 7 NWLR (Pt.871)63, A-G.**

Akwa ibom State V. Essien (2004) 7 NWLR (PT. 872) and Ojemen V. Momodu II x Ors (1981)3 SC, 173.

Learned Counsel for the appellant argued in reply that the grounds of this appeal involve questions of law only and the appeal is one under S.241 (1) (b) of the Constitution and not one under S.242 of the Constitution, that the respondent did not show why it describes the grounds of appeal as complained. It was further argued that grounds of appeal are not mixed law and fact as alleged. It was submitted that this appeal is based on the failure of the trial Court to apply well established and settled principles of law guiding the determination of whether a prima facie case had been made out by the Prosecution is a ground of law. He explained that in the present case, what was required of the trial Court was to determine the ingredients of the offences and consider if they are proved by the evidence adduced and that the failure of the

trial Court to do this is what this appeal is complaining about. The cases relied on by the Learned Counsel for the respondent are inapplicable. For these submissions, reliance was placed on **Chief of Defence Staff V. Adhekegba (2009) 13 NWLR (Pt. 1158) 332, Nwadike V. ibekwe (1987) 4 NWLR (Pt.67)718, Ogbechie V. Onochie (1986) 2 NWLR (Pt.23) 484** merits of the above arguments of both sides.

I think that it will help a better understanding of the discourse on the nature of the three grounds of this appeal if their full text is reproduced here:-

Ground one

The Learned trial Judge erred in law when he held that a prima facie case had been established by the Prosecution with respect to the charges against the Appellant sufficient to call on the Appellant to enter his defence to same, despite the failure by the Prosecution to adduce any evidence that established the elements of the offence for which the Appellant was charged, thereby occasioning a miscarriage of justice.

PARTICULARS OF ERROR

(a) None of the Prosecution witnesses; PW1-PW5 adduced evidence at the trial that established the ingredients of the offences for which the Appellant was charged, which if uncontroverted would have warranted a conviction of the Appellant.

(b) None of the elements of the offence of Conspiracy, Money Laundering and Advance Fee Fraud for which the Appellant was charged was adduced at the trial by the Prosecution witnesses.

(c) The establishment of a prima facie case by the Prosecution in a criminal trial is contingent upon the existence of the elements of the offences for which the Appellant was charged in the evidence adduced by the Prosecution at the trial, which the Prosecution failed to do in this instance.

(d) Evidence adduced by the Prosecution at the trial to establish the alleged commission of the offences of conspiracy, Money Laundering and Advance Fee Fraud by the Appellant did not in any way or at all, link the Appellant with the commission of the offences as charged.

(e) The Lower Court failed to follow a long line of decided cases that supports the fact that, where essential ingredients of the offence for which an accused is charged are not established at the close of the Prosecution's case, an accused ought to be discharged upon a submission of a no case to answer made on his behalf, as was the case in the instant case.

(f) The decision of the Lower Court calling on the Appellant to enter his defence in the absence of any incriminating evidence adduced by the prosecution amounts to no more

than calling on the Appellant to establish his innocence of the allegations against him, in violation of his constitutional right.

GROUND TWO

The learned trial Judge erred in law when he overruled the no case submission by the Appellant, despite the fact that the evidence adduced by the Prosecution witnesses was severely discredited during cross-examination, such that no Court could reasonably rely on same to convict the Appellant.

PARTICULARS OF ERROR

(a) Under cross-examination, PW1 failed to and was unable to give any evidence linking the Appellant with any of the monetary sums for which he was charged with having laundered or obtained by fraudulent means.

(b) PW1 stated under cross-examination that she was not in a position to give evidence on financial matters relating to the allegation of fraud and money laundering against the Appellant, because she did not work in the Finance Department of Transnational Corporation (Transcorp) Plc.

(c) PW2, under cross-examination tendered Exhibit PW2A, the audited annual report of Transcorp and also testified that Transcorp by its audited financial report as contained Exhibit PW2A never had the sum of N15,000,000,000 =

(Fifteen Billion Naira) said to have been defrauded and laundered by the Appellant.

(d) PW3 & PW4 under cross-examination were unable to tender or give any evidence in support of the allegations against the Appellant with respect to the specific offences of money laundering, conspiracy and advance fee fraud levied against the Appellant, in any way or at all.

(e) PW5, the Investigating Officer from the Economic & Financial Crimes Commission testified under cross-examination that the EFCC never received any complaint on allegations of fraud against the Appellant from Transcorp.

(f) PW5 admitted under cross-examination that the investigation by the EFCC was as a result of a case file transferred to the EFCC by the Department of State Services (DSS).

(g) PW5 was categorical in his response during cross-examination that his investigation was not concerned with the alleged money laundering and fraud in the sum of N15,000,000,000 = (Fifteen Billion Naira) for which the Appellant was charged at the lower Court.

(h) The Cross-examination of the prosecution witnesses particular PW2, PW4 & PW5 as well as the contents of Exhibit PW2A admitted in evidence during Cross-examination of PW2 established that the money alleged to

have been defrauded and laundered by the Appellant neither existed nor was traced to the account of the Appellant or linked to him, in any way or at all.

Ground three states that **"The decision of the lower court is unreasonable having regard to the evidence adduced at the trial"**

The nature of a ground of appeal is not determined by how it is described or characterized. This is determined by examining the main body of the particulars of the alleged error or misdirection to find out what the substance of the complaints is. This is what will expose its true nature not the characterization. **See Ehin Lawo V. Oke (2008)6-7 SC (Pt.11)123, Obatoyingoo & Anor V. Oshatoba & Anor (1996) LPELR – 2156(SC).**

Learned Counsel for the appellant correctly restated the law that a ground of appeal that complains that a Court misunderstood the law on the principles guiding the judicial determination of an issue or that it misapplied such law to the established or admitted facts or that it failed to consider the issues raised before it arising from the evidence before it, is definitely a ground of law.

The complaint in ground one that the trial court erred in law when it held that a prima facie case was established despite the failure of the evidence adduced by the prosecution

to establish the elements of the offences the appellant was charged mandatorily requires a consideration of the totality of the evidence to find out if it established the facts constituting the ingredients of the said offences the appellant was charged with.

The complaint in ground two that the trial court erred in law for overruling the no case submission despite the fact that the evidence adduced by the prosecution was severely discredited during Cross-examination to the extent that no court could reasonably rely on it to convict the appellant requires a consideration of the evidence adduced by the prosecution during examination-in-chief and the evidence adduced under cross examination to find out if the cross examination discredited the evidence adduced by the prosecution.

The third ground is the omnibus ground of a criminal appeal that the judgment is unreasonable having regard to the evidence adduced at the trial. This complaint requires an appraisal of the totality of the evidence to find out if the finding that the appellant has a case to answer is supported by the evidence.

The evidence before the trial court was the one adduced by the prosecution. The appellant and his co-accused were yet to adduce evidence in defence of the case established by the

prosecution's evidence. As it is, the elicited evidence remained unchallenged and the facts if established remained undisputed. It is glaring that the complaints in the grounds of appeal are essentially that the trial court drew the wrong conclusion from the unchallenged evidence and reached a decision not supported by the evidence. The grounds are not questioning the evaluation of facts by the trial court. Rather, the grounds of appeal complaining about a misunderstanding or misapplication of the law by the learned trial Judge to facts before the court. Where a trial court fails to apply the facts, which it has found, correctly to the circumstances of the case before it, and there is an appeal to a Court of Appeal which alleges a misdirection in the exercise of the application by the trial court, the ground of appeal alleging the misdirection is a ground of law and not of fact. See **Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 67) p. 718.**

The grounds of this appeal are therefore grounds of law. See **UA Ltd V. Stahlbau GIMBH &Co K.G. (1989) LPELR – 3400 (SC)** in which the Supreme Court adopted the test laid down by **Eso JSC in Ogbechie ORS V. Onochie & Ors (1986)2 NWLR (Pt.74) 5** at **16** in determining when a ground of appeal is one of law or mixed law succinctly thus:

> **"There is no doubt that it is always difficult to distinguish a ground of law from a ground of fact but what is required**

is to examine thoroughly the grounds of appeal in the cases concerned to see whether the grounds reveal a misunderstanding by the lower tribunal of the law or a misapplication of the law to the facts already prevail or admitted, which case it would be question of law or one that would require questioning the evaluation of facts by the lower tribunal before the application of the law in which case it would amount to question of mixed law and fact. The issue of pure fact is easier to determine"

Since the grounds of appeal are complaints of error of law, leave of the trial Court or this Court is not required to file the notice of appeal containing those grounds. This is so by virtue of S.241 (1) (b) of the 1999 Constitution of Nigeria which provides that an appeal shall lie as of right from the decisions of a High Court in its original jurisdiction to this Court where the grounds of appeal raise questions of law alone. So the ground of objection that the appeal is incompetent because leave of court was not first obtained before it was filed because the grounds of appeal are grounds of mixed fact and law fails. It is hereby dismissed.

Learned Counsel for the respondent also argued relying on the decision in **Oguntimehin V. Tokunbo (1957) FSC 56** that an appeal against an interlocutory order or decision cannot competently lie unless leave to file such an appeal had been first obtained from the lower Court or this Court and that such

leave is required irrespective of whether the grounds of appeal complained of error of law or not.

S.241 (1) and S. 242 of the 1999 Constitution prescribe the situations in which an appeal to this Court from the decision of a High Court shall be as of right or with leave of the lower court or of this Court. S.241 (1) (a) to (f) lists the cases in which appeals from the judgments of High Courts to this court shall be as of right.

In other words, leave of Court is not required to commence such appeals. An appeal to this Court, a situation not listed in S.241 (1), must be with leave of the lower court or of this Court by virtue of S. 242 of the 1999 Constitution. I will now find out if this appeal comes within any of the cases listed in S.241 (1) of the 1999 Constitution or not.

It is beyond argument that the ruling appealed against is an interlocutory decision as it was made at an interlocutory stage of the trial and did not finally determine that the evidence adduced by the prosecution proved that the appellant and his co-accused committed the offences they were charged with in the 32 counts. It postponed the final determination of this issue to after hearing the evidence of the accused in defence of the case established against them. This is clear from the concluding part of the ruling which states thus –

"In effect having said the obvious I will briefly state that the evidence led 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.

In the instant case, the distinction as to whether or not leave should be sought and obtained before filing an appeal as prescribed by Section 241(1) and Section 242 (1) of the Constitution as amended is not dependent only on whether or not an appeal is final or interlocutory. Rather it is on whether the appeal is on law alone or on facts or mixed fact and law. In other words, even if an appeal is not a final decision as envisaged under S. 241 (a) of the Constitution but it is a decision that involves question of law alone, the appeal can be filed as of right. See **Jegede V. Akande (2014) 16 NWLR (Pt.1432)43 at 78-79, Nwaolisah V. Nwabufoh (2011) 14 NWLR (Pt.1268) 600 at 637; NIDC V. Okem Ent Ltd (2004)10 NWLR (Pt.880)107 at 183**. Although it is an interlocutory decision, of a High Court; an appeal against it to this Court can be brought as of right on grounds of law by virtue of S.241 (1) (b) of the 1999 Constitution. Appeals against decisions of the High Court in Civil and Criminal proceedings on grounds of law are listed in S. 241 (1) (b) as one of the appeals that can be brought as of

right. Since the grounds of this appeal have been adjudged herein to be grounds of law, then the appeal was competently commenced without leave of court. Therefore, the argument of Learned Counsel for the respondent that the appeal being against an interlocutory decision, leave of Court to file it was necessary even if the grounds for the appeal are of law alone is not valid.

Another argument of Learned Counsel for the respondent is that S. 40 of the EFCC (Establishment) Act 2004 and S. 306 of the Administration of Criminal Justice Act 2015 prohibits the Courts from entertaining interlocutory appeals pending during pending criminal trials. The exact texts of the said provisions are reproduced in the briefs of both sides as follows:

S.40 EFCC (Establishment) Act 2004

"Any person who –

"..... an application for stay of proceeding 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"

"S.306 Administration of Criminal Justice Act 2015 – "An application for Stay of proceedings in respect of a criminal matter before the Court shall not be entertained".

There is nothing in any of these provisions prohibiting appeals against interlocutory decision in a pending criminal trial

or prohibiting Court from entertaining such appeal. Those provisions in very clear and unambiguous words prohibit the Courts from entertaining application for Stay of pending criminal proceedings. By any stretch of imagination, those clear words cannot be read to prohibit appeals against interlocutory decisions in pending criminal trial. The submission of Learned Counsel for the respondent in the face of the said provisions reproduced in the respondent's brief, that the provisions prohibit appeals against interlocutory decision in a pending criminal trial is not borne out by the clear words of those statutory provisions. So the argument that this appeal is incompetent because S. 40 of the EFCC (Establishment) Act and S. 306 of the Administration of Criminal Justice Act prohibit courts from entertaining this kind of appeal is not tenable.

The law that gives this Court the discretion to refuse to hear this type of appeal is Rule 10 (b) of the Court of Appeal practice Direction 2013 which provides that

> **"Without prejudice to any of the foregoing the court shall refuse to hear appeals arising from interlocutory decisions of the court below where the matter deals with any of the issues listed in 3 above and the court is of the opinion that the grounds raised in the appeal are such that the court can conveniently be determined by way of an appeal arising from the final judgment of the court below. Provided that where the grounds of the appeal deal with**

issues of pure law the court may exercise discretion and determine it expeditiously".

This type of appeal is one of the issues listed in Rule 3(a) thus –

"(i) All Criminal Appeals originating from or involving the EFCC, ICPC or any other statutorily recognized prosecutorial agency or person, or where the offence relates to Terrorism, Rape, Kidnapping, Corruption, Money Laundering and Human Trafficking.

(ii) Interlocutory appeals challenging the ruling of the court below on an interlocutory application heard in that court."

One of the main objectives of the said Practice Direction is to prevent the use of appeals against interlocutory decisions pending trial to frustrate an expeditious trial process in the case pending before the trial Court. This is clear from the provisions of Rule 2 (c) (i) (ii), (iii), (iv) and (viii).

There is no doubt that the grounds raised in this appeal are such that can conveniently be determined by way of an appeal arising from the final judgment of the trial Court upon the conclusion of trial.

In many cases, the constitutional right of appeal is exercised to appeal against the decision of a trial court dismissing a no case submission for the inordinate purpose of preventing the progression of the Criminal trial proceedings so

as to frustrate it. Such abusive use of the right of appeal is what the Court of Appeal Practice Directions 2013 seeks to prevent. The overriding objective and guiding principle for the Practice Direction is to fast track criminal relating to offences like corruption, money laundering. Human trafficking and terrorism. The overriding objective and guiding principle for the Practice Direction is to fast track criminal appeals relating to offences like corruption, money laundering, human trafficking and terrorism. This Court can *suo motu* invoke its power in Rule 10 (b), of the practice Direction to refuse to hearing this kind of appeal or a respondent to the appeal can move this Court to refuse to hear the appeal on the grounds stated in Rule 10 (b) of the Practice Direction. In our present case, the respondent has not moved this Court to exercise its power under Rule 10 (b) to refuse to hear this appeal and this Court has not opted to invoke that power *suo motu* for it to competently do so, it must avail both parties the opportunity to be heard.

For the above reasons, the respondent's preliminary objection to the competence of this appeal fails as it lacks merit it is overruled. Issue No 1 in the respondent's brief is resolved in favour of the appellant.

Let me now determine the sole issue for determination in the appellant's brief which asks:

"Whether the totality of the evidence adduced in the course of the prosecution's case established a prima facie case to warrant calling upon the accused to enter his defence. (This issue relates to both Grounds one and two of the Notice of Appeal").

I have calmly and carefully read and considered the arguments of both sides on this issue.

As I had stated herein the appellant and his co-accused were charged with 16 counts of money laundering and conspiracy to commit Money Laundering contrary to S. 17 (a) and (c) of the Money Laundering Act (prohibition) Act 2004, 3 counts of Money Laundering contrary to S.16 (a) and (b) of the Money Laundering that (prohibition) Act 2004 and 13 counts of advanced fee fraud contrary to S. 1 (1) (a), (b), (2) and (3) of the Advanced Fee Fraud and other Related Fraud Offences Act 2006.

The relevant sections are reproduced hereunder – Section 17 (a) and (c) of the Money laundering Prohibition Act:-

" A person who –

(a) Conspires with, aids, abets, or counsels any other person to commit an offence; or ..

(c) incites, procures or induces any other person by any means whatsoever to commit an offence, under this Act commits an offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act"

Section 1 of the Advanced Fee Fraud and other Fraud Related offences Act:-

"1 obtaining property by false pretences, etc

(1) Notwithstanding anything contained in any other enactment or law, 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; or

(b) induces any other person in Nigeria or in any other country to deliver to any person, any property whether or not the property is obtained or its delivery is induced through the medium of a contract induced by false pretence, commits an offence under this Act.

(2) A person who by false pretence, and with intent to defraud, induces any other person, in Nigeria or in any other country, to confer a benefit on him or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for commits an offence under this Act.

(3) A person who commits an offence under Subsection (1) or (2) of this Section is liable on conviction to imprisonment for a term of not more than seven years without the option of a fine".

To prove the offence of Money Laundering in S. 16 (a) and (b) of the Money Laundering Act, the evidence adduced by the prosecution must prove that –

1. the commission of a crime or an illegal act.
2. the existence of proceeds, in terms of money or any other form of property, from that crime for illegal act.
3. that the accused concealed, remained, from jurisdiction, transferred to nominees or otherwise retained the said proceeds on behalf of the person who committed the crime or illegal act.
4. that the accused did so with the knowledge or suspension that the accused engaged in criminal from a criminal conduct.
5. that with knowledge that a property either wholly or in part is directly or indirectly the proceeds of a crime acquires or uses or has possession of the property.

To prove the offence of advance fee fraud under S. 1 of the Advance Fee Fraud and other Related Offences Act the evidence adduced by the prosecution must prove –

1. false pretence with intent to defraud.
2. that by means of this false pretence, the accused obtained from another person within or outside Nigeria, for himself or other person or induces any person within or outside Nigeria to deliver to any person any property whether

or not the property is obtained or its delivery is induced through the medium of a contract induced by false pretence, or induces any other person within or outside Nigeria to confer a benefit on him or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for. See **Amadi V. FRN (2008)12 SC (Pt.111) 55.**

To prove the offence of Money Laundering under S.17 (a) and (c) of the Money Laundering Act, the evidence adduced by the prosecution must prove that the accused conspired with or aided or abetted, or counseled or incited or procured or induced another person to commit any of the offences of money laundering created by Money Laundering Act. Each of the said acts is differently constituted from the other. So the ingredients of one differ from the other in law. To prove the particular act, the ingredients that constitute that act must be established by the evidence adduced by the prosecution. One of the said acts is conspiracy to commit money laundering, with which the appellant and his co-accused were charged in counts 1,3, 5,7,9,11,13,15,17,19,21,23,25,27,29 and 31.

To prove these offences the evidence adduced by the prosecution must prove the constituent ingredients of the offence of conspiracy and the ingredients of the Money Laundering offence they conspired to commit. I have already

stated the ingredients of the offence of Money Laundering under S. 16 (a) and (b) of the Money Laundering Act. So I will concern myself here with a restatement of the law on essential ingredients of the offence of conspiracy.

The consensus of judicial authorities is that the essential ingredient and identifying character of conspiracy is agreement by two or more persons to do an illegal act or carry out an lawful act by illegal means. The intention to commit the conspiracy if not expressly stated as happens in most of the cases, it is implied from the agreement to carry out an act which is of an offence or carry out a lawful act by unlawful means.

The agreement may be expressed or can be inferred from the fact that the persons acted in consent in furtherance of the unlawful purpose. See **Haruna & Ors V. The State (1972) 8-9 SC 108, Odigji V. The state (1976)6 SC 152, Daboh & Anor V. The State (1977) 5 SC 122, Njovens & Ors V. The State (1973)5 SC 12, Oduneye V. The State (2001)1 SC (Pt.1) 1, Bright V. The State (2012) LPELR – 7841 (SC), Oseni V. The State (2013) LPELR – 1833 (SC) and V Abdullahi V. The State (2008) 17 1 NWLR (Pt.1115) 203 at 2211 and Onyenye V. The State (2012) LPELR – 7866 (SC).**

The preponderance authorities clearly state – that a person who participated in the agreement but did not participate in carrying out the illegal act is guilty of the offence

of conspiracy. Supreme Court in **Abdulahi V. The State (Supra)** held that

But the Supreme Court in cases held that the offence is completed upon the agreement and a person who was part of the agreement would remain liable for conspiracy even if he did not participate in the execution of the act. **In Omotola & Ors V. The State (2009) LPELR – 2663 (SC),** adopted its decision in **Obiakor V. The State (2002) 10 NWLR (Pt.774-776) 612 at 628-629** that **"Conspiracy as an offence is the agreement by two or more persons to do or cause to be done an illegal act or legal act by illegal means. The actual agreement alone constitutes the offence and it is not necessary to prove that the act has in fact been committed"**

In **Sule V. The State (2009) LPELR – 3125 (SC)** it held that "An offence of conspiracy can be committed, where persons have acted either by agreement or in concert. Bare agreement to commit an offence is sufficient. The actual commission of the offence is not necessary. This position was restated in **Bright V. The State (Supra).**

Since **Omotola V. The State, Sule V. The State and Bright V. State are later in time than Abdulahi V. State,** they represent the current State of the law on the point.

Learned Counsel for the appellant has argued at length that the totality of the evidence adduced by the prosecution through its five witnesses did not establish any of the

ingredients of the offences with which the appellant and his co-accused were charged; that a prima facie case cannot be said to have been established when the totality of the evidence adduced by the prosecution did not establish any of the ingredients of the said offences and that therefore the trial Judge should have upheld no case submission.

Learned Counsel for the respondent argued in reply that the prosecution witnesses were consistent in their evidence in establishing the role of the appellant in the commission of the offences with which they were charged, that the appellant and his co-accused used some companies, namely Anko pointe, Bifocal Communication Ltd, FCB Redline Nig. Ltd, Oasis Management Services Ltd and others as conduit vehicle for the commission of the alleged crimes, that the appellant signed some of the contracts with these companies, that PW1, PW2 and PW3 testified that the appellant authorized the contract between Transcorp and Ankor Pointe Integrated Limited, under which Transcorp paid $100,000.00 every month for over 1 year to Akor Pointe for the maintenance of Oil block OPl 281 at the time that the Federal Government of Nigeria had revoked Transcorp's ownership of the Oil well, that counts 2,7 and 8 are in respect of these transaction, that PW2 also testified that the appellant rented a building known as NECOM House for 60 million naira, that the building belongs to NITEL, a subsidiary of

Transcorp and was not put into use and the money was not recovered, that the appellant authorized payments by Transcorp to companies and individual persons above his expenditure approval limit of 10 million naira, that the payments authorized by the appellant were not wholly, reasonable, exclusively and necessarily incurred or made, that the appellant admitted his excesses in the award of the said contracts as " **honest mistake",** that the appellant and his co-accused laundered money when they conspired and awarded a contract to a company called GESI (Global Employment Solution Inc) to which Transcorp paid $75,000.00 per month to an account in the USA instead of the $25,000.00 agreed as the contract fee, that Exhibits PW4 A-C (Transcorp invoices, vouchers, and cheques in respect of the said transactions and payments), exhibits PW5A – C (witness Statements of the appellant and his co-accused made at the head office of EFCC and exhibit PW5H (the EFCC report of investigation into this matter) confirmed the guilt of the appellant that the evidence of the prosecution witnesses remained uncontradicted even during their Cross-examination and their testimonies were corroborated by the documentary evidence, that the evidence adduced by the prosecution established a case against the appellant and his co-accused and that the trial Court was right in its decision that the accused had a case to answer.

Let me now determine the merit of the above arguments.

It is not in dispute that at the time the appellant instructed the payment to the Anchor Pointe Ltd of 100,000.00 US dollars per month to maintain and service Oil bloc OPL 281 as belonging to Transcorp, the Federal Government of Nigeria had in fact revoked Transcorp's right of the Oil bloc.

It is inexplicable to comprehend why, with the knowledge that Oil bloc OPL 281 no longer belonged to Transcorp, its right therein having been revoked by the Federal Government of Nigeria, the appellant and the co-accused persons still instructed, approved and enabled the payment to Anchor Pointe Limited the sum of 100,000.00 US dollars monthly by Transcorp the maintenance and servicing of the said Oil bloc.

However, it is paramount to note that the charges in respect of payment of over hundred thousand dollars, specifically $108,000, charged in Counts 7 and 8 were brought under Section 17 (a) and (c) and Section 16 (a), (b) of the Money Laundering Prohibition) Act. The ingredients of the offence of Money Laundering have been enunciated by me earlier. The question now is whether it can be said that any of the ingredients have been proved. Payment of money to service an oil bloc which has been revoked does not amount to commission of a crime or an illegality. An act is illegal when it is one which the law directly forbids. A crime is one as

prescribed by law see **Alli Bello & Ors V. A.G., Oyo State (1986) 125 c 1 at 26.** None of the five ingredients I itemised earlier was proved by the prosecution. The act of the Appellant and the co-accused in my view amounts to financial recklessness and management ineptitude. The evidence adduced however does not establish the offences charged.

The evidence adduced by the prosecution also did not show that the contract for Global Employment Solution Inc. (GESI) to supply to Transcorp technical experts, the payment of $75, 000.00 GESI per month and payment of $25,000.00 to each of such experts per month Transcorp was illegal or unlawful. The technical experts like PW1 expressed surprise that they were being paid $25,000.00 US dollars per month, when their Company Gesi was being paid $75,000.00 per month for sub-contracting them to Transcorp. The payment appears excessive and unreasonable. The written contract between Transcorp and Gesi was not put in evidence. However the evidence establishes that such a contract existed and that the payments were made pursuant thereto. The technical experts were engaged sub contracted to and worked for Transcorp and admitted receiving payment of 25,000.00 US dollars per month.

The evidence adduced by the prosecution also failed to show that the failure to recover the 60 million naira paid by

Transcorp as 3 years rent for the lease of NECOM house belonging to NIIER its subsidiary which it did not put to use was illegal or unlawful. Whether Transcorp could recover such rent or not depends on the terms of the lease contract and the circumstances of the failure of Transcorp to use or occupy the leased building. There is nothing wrong in principle for a principal company to pay rent for its lease of a property belonging to its subsidiary company, unless there is an existing arrangement that permits the principal company to freely use the property of its subsidiary company. In this case, there is no evidence to that effect. The two companies are separate legal entities. There is no evidence of illegality or the commission of a crime in this transaction.

The evidence adduced by the prosecution shows that the approval limit of the appellant as the Chief Executive of Transcorp was 10 million naira and was required to be authorized by the board before approving Transcorp's payment of any amount beyond 10 million naira. The evidence shows that the appellant did not receive such authorization before he approved all the payments referred to above. It is unlawful for the appellant to have approved payments beyond his limit of approval.

PW3 the Financial Controller of Transcorp stated that **"payments were also made in some millions of naira for media**

and public relation" based on the approval of the appellant, and that in his opinion there was no evidence of performance. The prosecution did not adduce evidence of such non-performance.

PW1 the legal Adviser of Transcorp who drafted the contracts involving Transcorp stated that **"In most of the contracts, I renewed, I was instructed to leave the figure blank"** and that she could not tell the amount for each contract. PW3 testified that as Financial Controller, he paid all the amounts on the invoices of respective companies upon approval, after the completion of other documentation such as payment vouchers and approval memos attached to the invoices.

PW5 the officer from the Economic and Financial Crimes Commission that investigated the case testified that none of the monies paid by Transcorp to any of the companies was traced to the accounts of the appellant and his co-accused and that the money laundered was not traced to the accused persons.

The evidence adduced by the prosecution did not prove that the accused persons defrauded Transcorp of 15 billion naira. PW5 testified that **"we did not specifically investigate N15, billion against the Accused persons. We investigated contracts for which they fraudulently awarded".**

It is glaring that there is no evidence of the details of the transactions between Transcorp and Hammattan Ventures Ltd, GESI, Hasasa Enterprises Ltd, Awal Associates, Bifocal Communication Ltd, A.B. IsmLaila & Co, Victor Fingesi, Oasis Management Services Ltd, Centre Spread FCB, FCB Redline Nig. Ltd and Amplified Nig. Ltd, the amounts paid to each of them and the fraudulent nature of such transactions.

It is instructive to note that heavy reliance was placed on Exhibits **PW4 A-C,** being invoices, vouchers and cheques by the respondent to suggest that the offences charged were proved by the prosecution. A lot of emphasis was placed on the evidence of PW4 stressing that in Tax and professional accounting, expenditure to be valid must be **WREN** complaint. That is the expenditure must be **"Wholly, Reasonably, Exclusively and Necessarily"** incurred.

There is no doubt that the evidence led by the prosecution showed that most of the expenditures did not comply with the principle of **WREN** in financial matters. There seem to be elements of misappropriation of funds or financial recklessness. However, can it be said that this amounted to proving the ingredients of the offence charged. In my view, the prosecution could have charged the appellant and the other accused persons under some other relevant charges. In as much as the Judiciary is desirous of exercising its powers in the

administration of justice also to curb corruption, the prosecution must do the needful to ensure that appropriate charges are brought against accused persons.

The evidence adduced by the prosecution did not prove that the appellant and his co-accused committed any of offences alleged against them in all the Counts. There is no evidence proving any of the legal ingredients of the money laundering and the fraud alleged.

I agree with the submission of Learned Counsel for the respondent that the trial Court was right when it did not evaluate the evidence before it in deciding that the accused had a case to answer. I must however state that it had a duty to state the basis of its decision. The legally recognized basis for such decision is that the evidence did not establish the ingredients of the offences with which the accused were charged or that the evidence did not link the accused with the commission of the said offences or that the evidence establishing the ingredients of the offence or linking the accused with the commission of the offences charged is so contradictory or has been so discredited by cross examination that no reasonable tribunal can rely on same to convict the accused persons for the commission of those offences. There is an unending line of judicial authorities restating basis upon which a no case submission can be upheld by the trial court.

See for example **Daboh v. State (1977) 5 SC 197 at 209; Tongo v. C.O.P. (2007) 12 NWLR (Pt. 1049) 525, Suberu v. The State (2010) 8 NWLR (Pt. 1197) 586.**

In the consideration of a no-case submission, what the court must consider is not whether the evidence adduced by the prosecution against the accused person is sufficient to justify conviction but whether the prosecution has made a prima facie case against the accused person upon the charges filed against him requiring at least some explanation from the accused person as regards the charges made against him. At the stage of no case submission, the trial court is to consider whether there is before the court legally admissible evidence linking the accused person with the commission of the offence with which he is charged. A submission on no case to answer will succeed where there has been no evidence to prove an essential ingredient or element of the offence charged. See **Ubanatu v. C.O.P. (2000) 2 NWLR (Pt. 643) 115.** In the instant case, the prosecution failed woefully to establish the ingredients of the offences with which the appellant was charged. There was no basis for the court to have rejected the submission of the appellant on no case to answer. The evidence on record did not support the decision of the trial court that a prima facie case was established against the appellant.

Even though a trial Court is not expected to write lengthy ruling on no case submission and it is not expected to make findings on the credibility of the witnesses that testified for the prosecution, it is my strong view that the Court ought to clearly consider the evidence adduced by the prosecution, review same as to determine whether or not it proved the essential ingredients of the offences charged. This exercise does not amount to evaluation of evidence. Rather, it is tantamount to consideration of evidence. There cannot be evaluation of evidence when evidence adduced is only from one side. The court failed to show how it arrived at its conclusion that the appellant had a case to answer.

If at the close of the evidence adduced by the prosecution in support of a charge, it appears to the court that a case is not made out against the accused person sufficiently to require him to make a defence, the court shall, as to that particular charge, discharge him. See **Section 286 of the Criminal Procedure Act, Cap. 41, Laws of the Federation.**

On the whole, the sole issue raised in this appeal is resolved in favour of the Appellant. The appeal is meritorious and it succeeds. Consequently, I hereby make the following orders:-

1. **This appeal is allowed.**

2. The Ruling/Decision of the lower Court dated the 20th of October, 2014, which overruled the decision of no case to answer is set aside.
3. The charges against the Appellant at the lower Court are dismissed in its entirety.
4. The Appellant is hereby discharged of all the charges filed against him.

TINUADE AKOMOLAFE-WILSON
JUSTICE, COURT OF APPEAL

APPEARANCES

I.F. CHUDE with **Miss E.F. Elam** holding brief of **A.C. Ozioko** for the Appellant/Applicant.

M.A. Nunge with **S.I. Ugbe** for the Respondent

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PETER OLABISI IGE, JCA

I agree.

PETER OLABISI IGE
JUSTICE, COURT OF APPEAL

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EMMANUEL AKOMAYE AGIM, JCA

I had a preview of the judgment just delivered by my Learned brother, ***TINUADE AKOMOLAFE-WILSON, JCA.*** I agree with the reasoning, conclusions and orders therein.

EMMANUEL AKOMAYE AGIM
JUSTICE, COURT OF APPEAL