IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ADO EKITI JUDICIAL DIVISION
HOLDEN AT ADO EKITI
ON WEDNESDAY THE 15TH DAY OF JANUARY, 2020
BEFORE HIS LORDSHIP
HON JUSTICE U.N. AGOMOH (JUDGE)

SUIT NO: FHC/AD/27C/16

INSPECTOR GENERAL OF POLICE - COMPLAINANT

AND

OMOLAYO SUNDAY KAYODE - DEFENDANT

RULING ON NO CASE SUBMISSION

The defendant herein was arraigned and in fact evidence led based on a one count charge dated and filed 30th of September 2016 but by order of court made on the 7th of October 2019 the said charge was amended by virtue of an amended charge dated and filed 16th of November, 2016 which was inadvertently not referred to at the time this trial commenced denovo before this court.

Suffice it therefore to state that the defendant stood trial on an amended charge of two counts which read thus:-

COUNT 1

That you Omotayo Sunday Kayode "M" and others at large, within Ado Ekiti Judicial Division did conspire to defraud one Eric Ben Chechet and thereby committed an offence punishable under Section 8(a) of the Advanced Fee Fraud and other Fraud Related Offences Act 2006.

COUNT 2

That you Omotayo Sunday Kayode "M" within the same period, place and aforementioned Judicial Division under false pretence of been a registered forex trader and with intent to defraud did obtain the total sum of Nineteen Million Six Hundred Thousand Naira (N19,600,000) from one Eric Ben Chechet and thereby committed an offence punishable under Section 1(3) and 11 of Advanced Fee Fraud and Other Fraud Related Offence Act 2006.

Plea of the defendant was taken on the 25th of January 2018 on the original charge of only Count upon which the prosecution fielded his two witnesses and closed its case. The two witnesses are:-

a. **PW1 Eric Ben Chechet** is the nominal complainant.
b. **PW2 ASP Ajidahun Babatope** is the Investigating Police Officer

The defence counsel at the close of the prosecution's case informed the court that he intends to make a no case submission. It is correct as narrated by defence counsel in his written submission that it was on

the date fixed for adoption of the no case submission that it was realized that there is pending before the court an amended charge filed that was not attended to. Issues were joined on whether the court should still take cognizance of the said process. On a considered ruling delivered on the 7th of October, 2019 this court accepted the said amended charge herein.

Upon the order for the amendment of this charge the defendant took fresh plea. The prosecution thereafter informed the court that he is not recalling or calling any further witnesses.Likewise the defence counsel also informed the court that they do not intended to recall any of the witnesses but will still apply to make a no case submission as indicated earlier, before the amendment of the charge was made.

The defence counsel Rotimi Adabembe Esq. who elected to make a no case submission filed his written submission. F. D. Falade Esq. the prosecuting counsel also filed his written response to same. Reply on points of law was also filed by defence counsel. Issues having been joined by both counsels this court made an order for the no case to answer to be argued.

Adabembe Esq articulated a lone issue for determination thus:

> **Whether the prosecution has not failed to establish the ingredients of conspiracy to defraud and the offence of obtaining under false pretence with intention to defraud against**

the defendant that would have warranted him to have case to answer before this Honourable Court.

On his part Falade Esq for the prosecution also formulated a lone issue thus:

Whether there is before this court legally admissible evidence linking the defendant with the commission of the offence with which he is charged to warrant the court calling the defendant to open his defence

Having given a calm consideration to the issues formulated by learned counsel which in my view are the same except of course for difference in expression. I will rephrase same to make it clearer. The issue therefore is:-

Whether from the evidence so far adduced by the prosecution, a prima facie case has been made out against the defendant to warrant his being called upon to enter his defence.

It is the submission of Adabembe Esq that the two main ingredients that the prosecution must prove against the defendant as regards the offence of conspiracy are (a) the intent to effect the unlawful purpose (mensrea) (b) the agreement (actusreus). He submitted that the actual commission of the offence is not necessary to establish a prima facie case for the offence of conspiracy, as all that is needed from the prosecution is to establish the meeting of the minds to commit an offence. It is contended that the entire testimony of the prosecution

witnesses is beret of evidence of the defendant acting in concert with any other person to commit any offence whatsoever. See **Gbadamosi v State (1991) 6 NWLR (PT 196) 182; Iyaro v State (19980 1 NWLR (PT 69) 256; Aituma v The State (2006) 10 NWLR (PT 989) 452; OkunadeKolawole v State (2015) 61 (PT111) NSCQR 1568 @ 1631.** Relying on the decisions in the above cases counsel urged on the court to find and hold that the prosecution has failed to establish the ingredients of this offence against the defendant and therefore discharge and acquit him on same. It is further contended that by the provisions of **Section 8(a) of the Advanced Fee fraud and Other Fraud Related Offences Act 2006,** the prosecution ought to prove that the defendant was involved in act of conspiracy by way of aids or assisting, abetting or indulging another person to commit the said offence but that unfortunately the evidence adduced by the prosecution has not proved the offence.

On the 2nd count which is for the offence of obtaining by false pretence, counsel submitted that before a prima facie case can be said to have been established against the defendant the prosecution must prove the underlisted ingredients without missing any one and they are;

a. **that there was a pretence**
b. **that the pretence emanated from the accused/defendant**

c. that it was false

d. that the accused person/defendant knew of its falsity

e. that there was an intention to defraud

f. that the thing is capable of being stolen

g. that the accused/defendant induced the owner to transfer his whole interest in the property

It is submitted that the prosecution has failed to proof and establish all these ingredients and the resultant effect is that the defendant is entitled to an acquittal. See **Rasaki v The State(2011) 16 NWLR (PT 1273) 251.**It is the submission of Adabembe Esq. that for the court to come to the conclusion that the prosecution has discharged the burden placed on it by law, it must be satisfied that the proof is beyond reasonable doubt. He relied on **Njoku v State (2013) 2 NWLR (PT 1339) 548 @ 566 PARA B-D.**

It is contended that from the evidence adduced there is no trace that any pretence existed in the relationship between the defendant and the nominal complainant nor that the defendant is not a forex trader.

Counsel submitted that the prosecution has failed to make out a prima facie case for the defendant to answer and therefore urged the court to uphold this application of no case submission and discharge and acquit the defendant.

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ORIMOLOYE DAMO ATTAHIRU (HEO)

On his part learned counsel for the prosecution F. D. Falade Esq. submitted that the defendant herein is unarguably charged under the Advanced Fee Fraud and Other Fraud Related Offences Act 2006 and by its Section 1(1)(c) the Act makes it clear that the offence is committed by any person who 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. Counsel submitted that the contention of defence counsel that both parties were involved in business that is fraud induced cannot exculpate or exonerate the defendantfrom being called to put his defence.

It is his submission that for an application for a no case submission to succeed the defence must establish whether:-

a. **an essential element of the offence has not been proved**
b. **there is no evidence linking the defendant with the commission of the offence with which he is charged**
c. **the evidence so far led is such that no reasonable court or tribunal would convict on it and**
d. **any other ground on which the court may find that a prima facie case has not been made out against the defendant for him to be called upon to answer.**

See Section 303(3) ACJA 2015.

It is submitted that one of the guiding principles in a no case submission is whether there is before the court legally admissible evidence linking the defendant with the commission of the offence with which he is charged. Relying on **Daboh& Anor v State (1977) 5 SC 197 @ 209.** It is also submitted that the said case also held that no matter how slight the legally admissible evidence linking the defendant with the crime is, the case ought to proceed for defence. Counsel then catalogued what according to him are the facts adduced by the witnesses linking the defendant to the alleged offence and submitted that the said facts are more than sufficient to require the defendant to be invited to enter his defence.

It is the contention of Falade Esq that the defence counsel's submission in this no case submission calling on the court to evaluate the evidence of the prosecution at this stage is not the law, it is contended that the court cannot at this stage express any opinion on the evidence before it except to rule that there is or that there is no legally admissible evidence linking the defendant with the commission of the offence with which he is charged. **Tongo v COP (2007) 12 NWLR (PT1049) 525.** He submitted further that the court is not at this stage to seek out whether the prosecution has proved the guilt of the defendant beyond reasonable doubt as required by Section 135(1) of the Evidence Act.

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Court was urged to find and hold in favour of the prosecution, overrule the no case submission and call on the defendant to enter his defence.

As I stated earlier in this Ruling, the defendant filed a Reply on points of law. In the said Reply, Counsel in my respectful view used it as an opportunity to re-argue his position.Let me say that a reply on points of law as the name suggests is simply what it means i.e. a reply on law. It is therefore filed when an issue of law or arguments raised in the Respondent's address calls for a reply on law in rebuttal. In other words, a reply on point of law is expected to and should deal with only legal issues canvassed in the Respondent's address. It is not in my humble view a repair kit to correct or put right an error or lacuna in the applicants address or to re- argue his case.

Let me commence the treatment of this application to enter a no case to answer for the defendant by stating that it is our law that at the end of the prosecution's case, if the defence counsel considers that the evidence adduced by the prosecution is not sufficient to justify the continuation of trial, in that the defendant has not been linked in any way with the commission of the offence charged, the defence counsel could urge the court to record a finding of "not guilty" in respect of the defendant without calling him to enter his defence and such defendant

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shall there upon be discharged. See **Section 302 of the Administration of Criminal Justice Act, 2015; Ajidaagba *v.* IGP (1958) 3 FSC 5 at 6.**

It is vital to state at this point that the intendment of the draftsmen in enacting this provision, that is **(Section 302 of the ACJA 2015),** in my respectful view is to prevent protracted and futile trial of frivolous charges against defendant(s)and to safeguard the defendant's fundamental rights to personal liberty and presumption of innocence as guaranteed by **Section 36(5) of the 1999 Constitution as amended.**

Let me say that I agree with learned prosecuting counsel Falade Esq. and that of course is firmly settled in our law that the court in considering an application of a no case to answer by a defendant(s)shall have regard to the following:

i. **Whether the essential elements of the offence have been proved**
ii. **whether there is evidence linking the defendant(s) with the commission of the offence(s) charged**
iii. **whether the evidence led is such that no reasonable court or tribunal would convict on it**
iv. **Whether there is any other ground on which the court may find that a prima facie case has not been made against the defendant(s) for him to be called upon to answer. SeeSection**

303(3) of ACJA 2015; Daboh&Anor v. State (1977)5 SC 197 ; Emedo v. The State (2002)15 NWLR (pt. 789)196.

I do not therefore agree with the submission of Adabembe Esq that at this stage the court should take a decision whether the prosecution has proved the offence against the defendant beyond reasonable doubt or not.

It must be made clear at this point therefore that the duty of court at this stage is not to evaluate and weigh the evidence adduced by the prosecution in order to determine the credibility of the witnesses and whether the prosecution has proved its case beyond reasonable doubt. Rather, the duty on the court is to take a panoramic overview of the entirety of the evidence on record to see whether indeed the prosecution has made out a case against the defendants. Essentially, the focus of the court at this point is on the quality of the evidence adduced by the prosecution, to ascertain whether a prima facie case has been made and not necessarily whether or not the court believed such evidence. See **Duru v. Nwosu (1989)4 NWLR (Pt. 113)24 at 31 ;Ikomi v. State (1986)3 NWLR(pt.28) 340 at 366; Tongo v. COP (2007)12 NWLR(pt.1049)525; Onagoruwa v. State(1993) 7NWLR (pt. 303) 49 at 82-83.**

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ORIMOLOYE DAYO ANTHONY (HCO)

Being properly guided I havegiven a careful consideration to the evidence of the prosecution vis a vis the elements of the offences charged. Let me also say that it is our law that even when the evidence linking the defendant with the commission of an offence charged might be slight, the case ought to be allowed to go on trial. **Daboh& Anor v State supra.**

I am therefore of the respectful view that the prosecution has made out a prima facie case for the defendant to be called upon to enter his defence.

Having come to the above finding, I hold that this application for a no case to answer fails and is accordingly dismissed; the defendant is hereby called upon to enter his defence.

U.N. AGOMOH
JUDGE
15/01/2020

FOR PROSECUTION

F.D. FALADE ESQ.
ROTIMI ADABEMBE ESQ
WITH HELEN OLANIPEKUN &
KEHINDE BAYODE ESQ

FOR DEFENDANT

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