IN THE COURT OF APPEAL
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY THE 4TH DAY OF AUGUST, 2020

BEFORE THEIR LORDSHIPS

PETER OLABISI IGE	JUSTICE, COURT OF APPEAL
PATRICIA AJUMA MAHMOUD	JUSTICE, COURT OF APPEAL
FOLASADE AYODEJI OJO	JUSTICE, COURT OF APPEAL

CA/A/1041C/2019

BETWEEN:

HON. FAROUK M. LAWAN.....APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA.....RESPONDENT

JUDGMENT
(DELIVERED BY PETER OLABISI IGE, JCA)

The Appellant was on 23rd day of February, 2015 arraigned before the High Court of Federal Capital Territory Abuja on a Charge containing three Counts as follows:-

"AMENDED CHARGE

COUNT ONE

That you HON. FAROUK LAWAN (M) while being a member of the House of Representatives and Chairman of the House of Representatives Ad-Hoc Committee on Monitoring of Fuel Subsidy Regime sometimes in April 2012 or thereabout at Abuja within the Federal Capital Territory under the Jurisdiction of this honourable Court did, while acting in the course of your official duty corruptly asked for the sum of $3,000,000 (Three million US dollars) for yourself from Mr.

Femi Otedola Chairman Zenon Petroleum and Gas Ltd on account of intention to afterwards show favour to the said Mr. Femi Otedola by removing the name of Zenon petroleum and Gas Ltd from the Report of the House of Representatives Ad-hoc committee on Monitoring of Fuel Subsidy Regime and you thereby committed an offence contrary to Section 8(1)(a) of the Corrupt Practices and Other Offences Act, 2000 and punishable under Section 8(1) of the same Act.

COUNT TWO

That you BON. FAROUK LAWAN (M) while being a member of the House of Representatives and Chairman of Ad-hoc Committee on Monitoring of Fuel Subsidy Regime sometimes in April 2012 or thereabout at Abuja within the Federal Capital Territory under the Jurisdiction of this honourable Court d:d while acting in the course of your official duty corruptly agreed to accept the sum of $3,000,000 USD (Three million US dollars) for yourself from Mr. Femi Otedola Chairman Zenon Petroleum and Gas Ltd as an inducement to remove the name of Zenon Petroleum and Gas Ltd from the report of the Ad-Hoc committee on monitoring and fuel subsidy regime and you thereby committed an offence contrary to Section 17(1)(a) of the Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 17(1) of the same Act.

CHARGE THREE

That you HON. FAROUK LAWAN (M) while a member of the House of Representatives and Chairman of Ad-Hoc Committee on Monitoring of Fuel Subsidy Regime sometimes in April 2012 or thereabout at Abuja within the Federal Capital Territory

under the Jurisdiction of this honourable Court did while acting in the course of your official duty corruptly obtain the sum of $500,000 (Five hundred thousand US dollars) for yourself from Mr. Femi Otedola Chairman Zenon Petroleum and Gas Ltd as an inducement to remove the name of Zenon Petroleum, and Gas Ltd from the Report of the House of Representatives Ad-hoc committee on Monitoring of Fuel Subsidy Regime and you thereby committed an offence contrary to Section 17(1)(a) of The Corrupt Practices and Other Related Offences Act, 2000 and punishable under Section 17(1) of the same Act.

Amended this 19th day of February, 2015."

The Defendant now Appellant pleaded NOT GUILTY to all the Counts contained in the Charge preferred against him and the matter proceeded to hearing.

The Respondent called five (5) witnesses in order to sustain its case against the Appellant and tendered numerous exhibits. The Prosecution closed its case before the lower Court on 10th June, 2019.

The Appellant made a no case submission contending that the Prosecution failed to make out any prima facie case against the Appellant on all the three Counts to warrant any order of the lower Court calling upon him to enter upon his defence to the said Charge. The Respondent maintained that it has made out prima facie case against the Defendant/Appellant warranting his being called upon to defend the three Counts Charge against the Appellant.

In a considered Ruling on the said no case submission the learned trial Judge on 17th day of October, 2019 (CORAM) OTALUKA - J found as follows:-

"A submission of no case evidently means that there is no evidence on which the Court of law can convict the defendant even if it is believed.

On the other hand the meaning of prima facie is determined by having sufficient evidence adduced in a case. Thus, in the case of Ubanatu v. C.O.P (1999) 7 NWLR (Pt 611) 512, the Court of Appeal held that prime facie case explains that, there is a ground for the proceeding but it should be noted that a prima facie case is not same as proof, of finding whether the defendant is guilty or not. See Atano v. A.G. Bendel State (1998) 2 NWLR (Pt 75) 2Q1.

Further, in the case of Ajiboye v. The State (1995) LPELR 300 (SC) the Supreme Court held, per Iguh, JSC, that the prima facie case must be distinguished from proof of the guilt of the defendant (accused) which is determined at the end of the case when the Court has made its findings of whether guilty or not.

In another way is pertinent to note 'that when a no case submission is made, what the Court is to consider is not whether the evidence adduced by the prosecution against the defendant is sufficient to justify conviction, but whether the prosecution had indeed made out a prima facie case requiring some explanation as to his conduct in the case or otherwise. This is the position of the law.

The practices and principles guiding the no case submission have been outlined in plethora of cases - Ibeziako v C.O.P. 1 All NLR 161, FRN V Mr. Robert Gaktetor & Ors (2018) LPELR - 4412 (CA).

Therefore, the question as to whether or not the evidence is believed is immaterial and does not arise at this stage. The general considerations are laid down in Section 303 (3) a-d,

ACJA.

"Thus whether:-

a) Whether an essential element of the offence has been proved;

b) Whether there is evidence linking the defendant with the commission of the offence with which he is charged;

c) Whether the evidence so far led is such that no reasonable court or tribunal would convict on it; and 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. Having perused the submissions of the parties, it appears to me that the evidence so far adduced by the prosecution links the defendant to the Crime and that such evidence can only be discredited by calling for some explanation from the defendant. Therefore, the no case submission made by the learned defence counsel is hereby, overruled and the defendant is ordered to enter a defence."

The Appellant was aggrieved by the decision overruling his no case submission and has by his NOTICE OF APPEAL dated and filed on 31st day of October, 2019 appealed to this Court on five grounds which without their particulars are as follows:-

"2. PART OF THE DECISION COMPLAINED OF

The whole decision.

3. GROUNDS OF APPEAL

GROUND ONE

The learned trial Judge erred in law when he held at page 25 of the Ruling on the Defendant/Appellant's no case submission, that:

> "it is my considered view that a prima facie case has been made out against the Defendant which requires some explanation from the Defendant as regards his conduct or otherwise, and I so hold.

Accordingly, the no case submission fails and is hereby dismissed.
The defendant is ordered to enter his Defence, if any."

GROUND TWO

The learned trial Judge erred in law when he held at page 28 of the Ruling on the Defendant/Appellant's no case submission, that:

> "Having perused the submissions of the parties, it appears to me that the evidence so far adduced by the prosecution links the Defendant to the crime and that such evidence can only be discredited by calling for some explanation from the defendant.

Therefore, the no case submission made by the learned defence counsel is hereby overruled and the Defendant is ordered to enter a defence."

GROUND 3

The learned trial judge erred when he delved into the arena reached a conclusion in a no case submission with respect to question asked during cross examination and resorted to making a case for the Complainant when at page 14 of the ruling his Lordship held:

"The defence counsel speculated in his cross examination question that because the content of the envelope was not visible, that it could have been a wedding invitation or a letter and not dollars, that since PW5 was not a seer, and because the content was not shown, that it could have been a letter. The PW5 agreed with the speculation by answering "possibly",

GROUND 4

The learned trial judge erred when he did not give equal analysis or report in his Ruling to the examination in chief, as done by the Complainant and cross examination of the various Prosecution witnesses as carried out by the defence counsel and thus occasioned a miscarriage of justice.

GROUND 5

The Ruling is against the weight of evidence,

TAKE NOTICE that additional grounds of appeal may be filed upon receipt of the full record of appeal,

RELIEFS SOUGHT FROM THE COURT OF APPEAL:

1. AN ORDER allowing this Appeal and setting aside or quashing the Ruling of the High Court of the Federal Capital Territory (FCT), Coram: Hon. Justice A. O. Otaluka, delivered on 17th October, 2019, directing the Appellant to enter his defence.
2. AN ORDER quashing Charge No: FCT/HC/CR/76/2013, in its entirety.
3. AN ORDER discharging the Appellant forthwith."

The Appellant's Brief of Argument dated 24th day of March, 2020 was filed on 26th March, 2020 and was deemed properly filed on 28th April, 2020. It was settled by

GODWIN IYINBOR, ESQ. The Respondent's Brief of Argument was dated and filed the 30th April, 2020. It was settled by EYITAYO FATOGUN, ESQ. The Appellant filed Appellant's Reply Brief of Argument on 4th May, 2020.

The appeal was heard on 21st day of May, 2020 when the learned Counsel to the parties adopted their respective Brief of Argument in the appeal.

The learned Counsel to the Appellant GODWIN IYINBOR, ESQ distilled four issues for determination as follows:-

"1. Whether having regard to the totality of evidence adduced by the Respondent and the failure of the trial Judge to separately consider each count of the charge, the trial judge was right to have held that a prima facie case had been made against the Appellant, proceeded to dismiss the no case submission and ordered the Appellant to enter his defence, if any, when the Respondent was not able to prove any of the essential ingredients of the counts contained in the offences charged and when the evidence led on record are contradictory and conflicting.
(Distilled from ground 1 of the notice of appeal.)

2. Whether it amounts to asking the Appellant to prove his innocence, contrary to the provisions of the Constitution of the Federal Republic of Nigeria, when the trial judge held that the evidence led by the Respondent links the Appellant to the crime and that such evidence can only be discredited by calling for some explanation from the

Appellant.
(Distilled from ground 2 of the notice of appeal.)

3. Whether the learned trial judge delved into the arena and reached a conclusion on the no case submission when he held that the counsel to the Appellant speculate with respect to the contents of the envelope and that PW5's answer agreed with the speculation by answering "possibly". (Distilled from ground 3 of the notice of appeal.)
4. Whether the learned trial judge could be said to have been fair and balanced having given a better and more elaborate analysis to the case as presented by the Respondent, as against the scanty and bare analysis given to that of the Appellant and thus occasioned a miscarriage of justice. (Distilled from ground 4 of the notice of appeal.)

Learned Counsel to the Respondent EYITAYO FATOGUN, ESQ. nominated two issues which are as follows:-

"1. Whether on the strength of the evidence before the Court led by the Respondent, the learned trial Judge was correct when it held that a prima facie case has been made against the Appellant warranting him to enter his defence.

2. Whether the learned trial Judge in consideration of evidence presented before the Court did justice and act correctly in dismissing the no case submission of the Appellant."

The appeal will be determined on the four issues formulated by the Appellant. The issues will be taken together.

"1. Whether having regard to the totality of evidence adduced by the Respondent and the failure of the trial Judge to separately consider each count of the charge, the trial judge was right to have held that a prima facie case had been made against the Appellant, proceeded to dismiss the no case submission and ordered the Appellant to enter his defence, if any, when the Respondent was not able to prove any of the essential ingredients of the counts contained in the offences charged and when the evidence led on record are contradictory and conflicting.
(Distilled from ground 1 of the notice of appeal.)

2. Whether it amounts to asking the Appellant to prove his innocence, contrary to the provisions of the Constitution of the Federal Republic of Nigeria, when the trial judge held that the evidence led by the Respondent links the Appellant to the crime and that such evidence can only be discredited by calling for some explanation from the Appellant.
(Distilled from ground 2 of the notice of appeal.)

3. Whether the learned trial judge delved into the arena and reached a conclusion on the no case submission when he held that the counsel to the Appellant speculate with respect to the contents of the envelope and that PW5's answer agreed with the speculation by answering "possibly". (Distilled from ground 3 of the notice of appeal.)

4. Whether the learned trial judge could be said to have been fair and balanced having given a better

and more elaborate analysis to the case as presented by the Respondent, as against the scanty and bare analysis given to that of the Appellant and thus occasioned a miscarriage of justice. (Distilled from ground 4 of the notice of appeal.)

The learned Counsel to the Appellant argued issues 1 and 2 together. He urged this Court to hold that having regard to the totality of evidence adduced by the Respondent and what he called the failure of the trial Judge to separately consider each Count of the Charge the trial Judge was wrong to have held that a prima facie case has been made against the Appellant and then proceeded to dismiss the no case submission and ordered Appellant to enter his defence if any. That this was despite the inability of the Respondent to prove any of the essential ingredients of the Counts contained in the offences charged and when the evidence led on record are contradictory and conflicting.

He drew attention of the Court to Section 302 and 303 of the Administration of the Criminal Justice Act, 2015 allowing a Defendant to make no case submission and laying down four conditions a trial Court must consider. That the four conditions must be concurrently considered along with the evidence before the Court both under examination-in-chief and under cross examination. Reliance was placed on the case of:-

1. OLATUNJI V FRN (2018) LPELR - 43909 SC per AKAAHS AT PAGES 11 - 13 F - A;

2. STATE V NWACHINEKE (2008) ALL FWLR (PT. 398) 204 AT 230 C - D;
3. EMEDO & ORS VS THE STATE (2002) LPELR - 1123 SC PAGES 7 - 8.

That learned trial Judge was addressed separately on each of the Counts contained in the Charge by Appellant's Counsel but the trail Judge failed to consider each of the count separately when there were many contradictions in the evidence of prosecutions cases and when doubts created ought to have been resolved against the Respondent in favour of the Appellant.

That if the trial Court had done so there would be no need for asking Appellant to defend himself. He relied on the cases of:-

1. GARBA V C.O.P (2007) 16 NWLR (PT. 1060) 378 AT 407 - 408;
2. ABUBAKAR V THE STATE (2014) LPELR - 23199 CA PAGE 16.
3. EMEDO V STATE SUPRA.

The learned Counsel to the Appellant then laid out the three Counts contained in the Charge to submit that Respondent must establish them beyond reasonable doubt and there was no such proof in this case other than the mere verbal allegation of MR FEMI OTEDOLA PW5 who alleged that the Appellant corruptly agreed to accept the sum of $3,000,000 US Dollars for himself from PW5 and that Appellant actually corruptly obtained $500,000 from him. He submitted that the evidence

given by all Prosecutions witnesses, PW1 - PW5 do not support or establish the ingredients of the offence. He again took Counts 1 and 2 one after the other to show that evidence of PW5 and PW1 did not establish the ingredients of the said Counts. He stated that it was the evidence of PW1 that PW5 pressurized the Appellant as well as PW1 to accept some bribe in an attempt to bribe the Committee to compromise their duties and not the other way round.

That evidence of PW2 show that he made up his mind right from the beginning that Appellant was guilty. He relied on Exhibit PW2A the leadership News Paper and further submitted that PW2 carried out "a shabby investigation not worthy of a Police Officer of his Status" He relied on pages 333 - 335, 502 - 503, 512 - 513 of the record to contend that PW2 was wrong in his conclusion.

He submitted that the Respondent failed to produce vital evidence to prove the Counts against the Appellant in violation of Section 167 of Evidence Act 2011. He relied on the cases of SHODIYA V STATE (2013) LPELR - 20717 SC and THE PEOPLE OF LAGOS STATE V UMANI (2014) LPELR - 22466 SC P. 60 A - F.

That the failure of the Prosecution to produce the call log of the verbal exchange between the Appellant and PW5 is fatal to Respondent's case. He accused the Respondent of withholding evidence. According to the Appellant's learned Counsel the reasonable inference to

be drawn on the failure of Respondent to produce vital evidence means the Respondent had not given clear, credible and verifiable evidence to prove that Appellant indeed corruptly ask for or enter into any corrupt agreement to accept bribe. That this essential element of the charge was not established. He relied on KASI V STATE (2016) LPELR - 40454 CA per IGE, JCA.

That the mere allegation of the PW5 is not enough to establish the ingredient of the offence for which the Appellant was charged as per Counts 1 and 2. He relied on the case of:-

1. ABIDOYE V FRN (2014) 15 NWLR (PT. 1399) 30 AT 64 E - H;
2. SHANDE V STATE (2004) LPELR - 7396 CA per SANUSI, JCA;
3. IBRAHIM V STATE (2015) LPELR - 40833 SC per NWEZE, JSC.

He further submitted that a Defendant should not be put through rigours of trial unless available evidence points prima facie to his complicity in the commission of a crime. He relied on the case of OHWHOVORIOLE V FRN (2003) FWLR (PT. 141) 2012 AT 2037 B - C and AKPABIO V STATE (1994) 7 NWLR (PART 359) AT 670 C - E. His conclusion on Counts 1 and 2 can be found in paragraph 6, 8 and 6.9 of Appellant's Brief where learned Counsel to him submitted:-

> "We further respectfully submit that because the prosecution did not proffer any credible evidence to

show that the Defendant corruptly asked or agreed to accept the sum of $3,000,000.00 from Femi Otedola, Chairman Zenon Petroleum Gas Ltd (PW5), there can be therefore be no inference to be drawn from the evidence before the Court that it was done with the intention to afterwards show favour by removing the name or Zenon Petroleum and Gas Ltd from the Report of the House of" Representatives Ad-hoc Committee on Monitoring of Fuel Subsidy Regime.

We therefore humbly submit that the Respondent did not investigate the facts and circumstances of the alleged offence, and therefore could not provide any credible evidence to support Counts one and two of the charge. Consequently, the essential elements or the alleged offence in the said counts were never proved. Having failed to do so, whatever doubt results from this failure as to whether or not the Appellant corruptly asked for or corruptly agreed to accept a bribe, must be resolved in his favour. We most humbly urge your Lordship to so hold, since the trial judge failed to do so."

Under issue 3 the learned Counsel to the Appellant wants this Court to hold that the learned trial Judge delved into arena and reached a conclusion on no case submission when the trial Court held that the Counsel to the Appellant speculated with respect to the contents of the envelope and that PW5 answered in agreement with the speculation when PW5 said "possibly".

He stated that by the numerous authority on the implication of a no case submission and that a Judge is not

expected to express her opinion or make a finding on any issue before her relying on the cases of:-

1. FRN V NUHU & ANOR (2015) LPELR 26013 (CA) P. 22 per ABIRU, JCA;
2. USO V COP (1972) LPELR - 3433 SC P. 9 B - E per ELIAS, CJN.

That in breach of the decisions in the two cases just referred to the lower Court descended into the arena. That the answer of PW5 "possibly" ought to convince the lower Court that the entire case was founded on speculations. That the Court ought to have resolved it in Appellant's favour. He urged the Court to resolve issue 3 in Appellant's favour.

On issue 4 as to whether the learned trial Judge properly analysed the facts in Appellant's favour in the course of evaluation of evidence which learned Counsel to the Appellant believed was reviewed to favour Respondent's case thus leading to a miscarriage of justice.

He submitted that the trial Judge was unfair and unbalanced in her analysis of the evidence before the lower Court. That a Judge must be fair and impartial at all times in the adjudication on cases and must not descend to arena. He relied on the case of GBENGA V B. S. J. C. (2006) 14 NWLR (PART 1000) 621. The Appellant's learned Counsel summarized what he believed to be unequal analysis done by the trial Judge as regard the evidence to be the following:-

"11.5 Excerpts from the record of appeal showing the unequal analysis, as contained in the judgment of the trial court in

relation to the no case submission, are:

1. Whereas the examination in chief of PW2 spanned four pages (88 lines) (pages 380 to 383 of the record of appeal), his Lordship's analysis of the cross examination of the same PW2, spanned only 20 lines (pages 8 and 9 of the Ruling), even when his Lordship had stated that PW2 was duly and exhaustively cross examined by the learned defence counsel (see page 383 of the record of appeal).
2. The same was done for PW3, whose cross examination was only reported in 5 lines (page 385 of the record of appeal), despite the exhaustive cross examination carried out by the defence counsel, as against the two pages and 26 lines of analysis of the examination in chief of the same PW3. See pages 384 and 385 of the record of appeal.
3. The cross examination of PW4 was only reported in two lines; "The PW4 was dully cross examined by the learned defence counsel as against the 42 lines used in analysing that of the PW1.

   The exhaustive cross examination of PW5 was only reported in 26 lines as against the 62 lines used in analysing that of the Respondent.

11.6 There was clearly more preference and leaning paid to the evidence of Respondent than was given to the Appellant, thus leading to a miscarriage of justice, as this weighed heavily on the mind of the trial Judge in deciding that the Defendant should enter into his defence. We submit that, had a fair and balanced analysis been given to both side, the trial Judge would have upheld the no case submission. We respectfully urge your Lordship to so hold and resolve this issue in favour of the Appellant."

In conclusion learned Counsel to the Appellant submitted that it would be a breach of the right of Appellant as enshrined in the Constitution of the Federal Republic of Nigeria to ask Appellant to enter his defence in the face of failure of the Respondent to lead credible evidence to establish the essential ingredients of the offences or Counts contained in the Charge against Appellant. He urged this Court to resolve issue 4 in Appellant's favour and to allow the appeal.

In response to the submissions of the Appellant's learned Counsel, EYITAYO FATOGUN, ESQ for Respondent agreed with the principles of no case submissions as laid down by the Courts in numerous cases and in Sections 302 and 303 of the Administration of Criminal Justice Act 2015. He cited the case of SUBERU V THE STATE (2020) 5 SCM 215 AT 227 B - D per ADEKEYE, JSC. The learned Counsel to the Respondent however opined that at this stage of the trial, all that is required of the prosecution is not to prove its case beyond all iota of doubt but to prove that by necessity, there are reasons to call the defendant to make some clarifications in his defence on the already established facts before the Court relying on the cases of:-

1. TANKO V COP (2007) 12 NWLR (PART 1049) 525;
2. FRN V MARTINS (2012) 14 NWLT (PART 1320) 287 per BULKACHUWA, JCA later PCA (RTD.).

It is the submission of learned Counsel to the Respondent that the learned trial Judge was not called upon to express any opinion on the evidence before the Court at

this stage, the credibility of the witnesses and the weight to attach to their evidence. According to him all that is required of the Court is to take note and to rule accordingly that there is no legal admissible evidence linking the defendant with the commission of the offence with which he is charged and that if the submission is based on discredited evidence such discredit must be apparent on the face of the record. That if such is not the case then the submission of no case is bound to fail. He relied on the case of EKWUNUGO VS FRN (2008) 15 NWLR (PT. 1111) 630 AT 638 E - H per AKINTAN, JSC.

The Respondent's learned Counsel submitted that the learned trial Judge was not at that stage called upon to determine the guilt or otherwise of the defendant but to determine a simple question whether the evidence led by the prosecution is sufficient to justify calling on the defendant to make a defence. That the trial Judge was expected to determine whether a prima facie case has been made and not a case beyond reasonable doubt which will come after the whole evidence including that of Appellant has been recorded.

To learned Counsel to the Respondent the learned trial Judge did this rightly on page 404 of the record of appeal. He urged this Court to hold that the submissions of Appellant are erroneous having regard to the totality of the evidence adduced by the Respondent. That it cannot be said that prima facie evidence was not made out against the Appellant.

On the contention of the Appellant's learned Counsel that the lower Court failed to make specific pronouncement on each of the Counts contained in the Charge, the Respondent's learned Counsel stated that the learned trial Judge dealt decisively with the issues presented before the Court by the parties in the Ruling on the no case submission and thoroughly considered the three Count of the Charge along with the evidence adduced by the Prosecution and arguments canvassed before reaching its decision that a prima facie case has been made out against the Appellant. He relied on pages 389 - 398 of the record.

He submitted that there is no provision in the Criminal Procedure Law that a learned trial Judge must pronounce separately and distinctly on each of the Count in a Ruling on no case submission. He opined that the trial Judge is not called upon to decide that way at interlocutory state of the case in a Ruling on no case submission when Appellant has not testified. That what the trial Judge is called upon to consider is not whether the evidence adduced by the prosecution against the Appellant is sufficient to justify or warrant conviction for the offences but whether the evidence, on its face has shown real and direct connection to or linked the Accused person with the commission of the criminal offence(s) he was charged with in terms of the essential ingredients or elements of the offences which would necessitate and require some explanation from Defendant, in the absence of which Court could convict him. He relied on the cases of OLAOFE V FRN & ORS (2018)

LPELR - 45319 (CA) and DAMA VS STATE (2017) LPELR - 42266 SC. He stated that the trial Judge was not expected to write thesis or long Ruling but a brief Ruling on a no case submission and determine whether a prima facie case has been made out against the Appellant relying on the cases of:-

1. HARD ROCK CONSTRUCTION ENGINEERING CO. & ANOR VS STATE OF LAGOS & ORS and
2. EKWUNIFE V FRN & ANOR (2018) LPELR 44897 CA.

He submitted that the cases of GARBA V COP (2007) 16 NWLR (PT. 1060) 378 and ABUBAKAR VS STATE (2014) LPELR - 23199 (CA) relied upon by Appellant are inapplicable while he stated that there is nothing in EMODE V STATE supra suggesting or holding that the several Counts in Charge must be individually treated in a no case submission. He therefore submitted that the trial Court was not in violation of decisions of Supreme Court. That the findings of the lower Court was in order.

He went into summary of the Charge and what constitute the elements of or ingredients of the offence for which the lower Court found that Appellant should enter his defence. He relied on the case of TEMPLE NWANKWO VS FRN (2015) LPELR - 24392 as stating the ingredients of offence for which the Appellant was charged, He started with Count 1. He submitted relying on Section 2 of ICPC Act the Appellant was undoubtedly a Public Officer and a Legislator that was a Member of Federal House of Representatives representing SHANONO - BAGWAL Federal Constituency of Kano State and while being a Public Officer,

the Appellant was the Chairman of AD HOC COMMITTEE ON MONITORING OF FUEL SUBSIDY REGIME. He referred to page 264 of the supplementary record of appeal.

On the second ingredient, Learned Counsel to the Respondent stated that the evidence led by the Prosecution showed that Appellant who was a Public Officer corruptly asked for the sum of USD 3,000,000 from PW5 as a bribe money with intent to exonerate Zenon Oil and Gas Ltd from the list of those indicted by ad hoc committee on Monitoring of Fuel Subsidy Regime on companies indicted in the subsidy scheme scam. He drew attention to the evidence of PW5 on pages 242 of the record of appeal and page 353 of the said record. He also made reference to page 338 containing also the evidence of PW5. Learned Counsel also drew attention to the cross examination of PW5 on pages 353, 357, 366 of the record.

On whether it was PW5 who made efforts to bribe the said Committee in view of PW1's evidence, learned Appellant's Counsel stated that PW1's evidence centred on N100,000 USD he (PW1) received from PW5 on behalf of the Appellant. That PW1 testified that he handed over the money to Appellant with a covering memo and this that the testimony was not destroyed during cross examination on page 143 of the record of appeal. He quoted PW1's evidence wherein he (PW1) stated that Appellant took the money from him (PW1). The Respondent relied on PW2's evidence given on 18/5/16 on pages 170 - 171, of the record.

On the alleged failure of the Respondent to verify and produce voice recording or the call log of the Appellant and that of the PW5 in evidence, the learned Respondent Counsel referred to the PW2's evidence on it on page 310 of supplementary record to the effect that Appellant refused to give the investigator his phone for investigation. He urged the Court to draw necessary inference therefrom. That PW1's evidence show there was contact between the Appellant and PW5 and that money exchanged hands as according to the Respondent's learned Counsel ***"PW5 was emphatically consistent in his position that a demand of $3,000,000 was made by the Appellant to exonerate Zenon Petroleum and Gas Ltd from the subsidy scheme scam."***

That from evidence of PW2 and PW5 cogent evidence was led showing prima facie that Appellant has some explanation to make. That the Appellant demanded the money in his official capacity as Chairman of House of Ad Hoc Representatives Committee on subsidy regime.

That the question as how did the PW5 know about the findings of the Committee Learned Counsel to the Appellant asked: why did the defendant proceed to the house of PW5 at about 2am to collect $500,000 USD which learned Counsel to the Respondent stated the Defendant "admitted in his extra judicial statements that he collected? He urged the Court to hold that prima facie case has been established against Appellant.

On Counts 2 and 3, the Respondent's learned Counsel stated the ingredients of the offence under Section 17(a) of ICPC Act to be:-

(a) That the Appellant corruptly agreed to accept any gift or consideration;

(b) That the money was obtained as an inducement or reward for doing an act.

He relied on the evidence of PW1, PW2 and PW5 and Exhibit PW3B, evidence of video which learned Counsel to Respondent stated the Appellant agreed being with PW5 on page 513 of supplementary record. That Appellant agreed the parcel was delivered to him and that the voice of PW5 was audible enough stating outstanding amount to be $2,500,000 to be delivered to the Appellant. That the Appellant did not deny visiting the house of PW5 in April, 2012 and receiving money from him but only alleged that the money was offered to him by Mr. Otedola and that PW5 gave him (Appellant) $250,000. He referred to Exhibit PW2G - G3 made by the Appellant contained on pages 796 - 797 of supplementary record. He also relied on Exhibit PW2K which he said is Appellant's statement wherein he stated he (Appellant) handed over the sum of $600,000 USD to PW4 on 24/4/2012 as the bribe money he received from PW5.

To learned Counsel to the Respondent all these are overwhelming pieces of evidence to justify the rejection of the no case by the lower Court. That on the same morning of 24/4/2012 that Appellant visited the PW5, he laid Report of

his Committee before the joint session of the House on 24th April, 2012.

Learned Counsel to the Respondent submitted that Appellant executed the act of exonerating Zenon Petroleum and Gas Ltd from the list of Companies indicted by the AD HOC COMMITTEE on Subsidy Regime chaired by Appellant. He relied on Exhibit PW1B6 - the House of Representatives Federal Republic of Nigeria votes and proceedings of Tuesday24/4/2012 at page 790 No. 94 where the Appellant was said to have proposed the amendment in the order. The order was reproduced on pages 21 - 22 of Respondent's Brief of Argument. He also relied on page 566 of the supplementary record of appeal.

He stated that upon the above the no case submission was misconceived. He opined that the Court is not to consider the merit of the evidence, state his belief or disbelief of any evidence at the stage of no case but to say if the evidence on record requires an answer from Appellant. He is of the view that Appellant completely agreed to receive the sum of $3,000,000 USD from PW5 as consideration to exonerate the Zenon Petroleum and Gas Ltd from the list of companies indicted in subsidy scam.

Learned Counsel also stated that Appellant obtained $500,000 for himself alone as it was shown that Appellant neither handed over the money to PW4 nor to the leadership of the House. He referred to PW4's evidence on pages 790 of supplementary record.

He submitted that each of the prosecution witnesses were cross examined and that their respective testimonies remain manifestly reliable and irresistible to found that the prosecution has made out a prima facie case against the Appellant.

On issue 2 as to whether the learned trial Judge did not err when he said on page 400 of the record thus:

> *"Accordingly the no case submission fails and it is hereby dismissed. The Defendant is ordered to enter his defence, if any."*

When according to the Appellant, the Respondent was not able to prove any of the essential ingredients of the Counts contained in the charge.

The Learned Counsel to the Respondent drew attention to the fact that that was not the conclusion of the entire Ruling. He then referred this court to page 404 where the Learned trial Judge concluded that he overruled the no case submission. The Respondent Learned Counsel submitted that the words "if any" in the ruling is very innocuous and did not speak the mind of the trial Judge in any way.

On whether the Learned trial Judge descends into the arena, the Respondent's Learned Counsel stated that on pages 13 - 14 of lower Court's Ruling the questions put to PW5 by Counsel to the Appellant during cross examination was reproduced by lower Court and that contrary to the submissions of Appellant's Learned Counsel what the lower Court did would not tantamount to a finding or conclusion and that the word 'speculate' used by the trial Judge cannot be

interpreted to mean a support for Respondent's case by the trial Court. He relied on page 366 of the record. He urged the Court to ignore the Appellant's complaint.

On whether the Learned trial Judge was balanced in his analysis of the evidence led, the Respondent's Learned Counsel submitted that in a no case submission, what is to be subjected to judicial scrutiny is not the evidence of the Defendant/Accused person but the evidence led by the prosecution alone that must be examined. He relied on the case of TONGO V. COP (2007) 12 NWLR (PART 1049) 525. That the trial Judge has not in any way exhibited any form of bias and he urged this court to uphold the decision of the trial Court.

As stated earlier the Learned Counsel to the Appellant filed Appellant Reply Brief of Argument and that save that the Appellant relied on the case of State v. Okoye (2007) 16 NWLR (Part 1061) 607 at 666 - 667 to support his position that lower Court ought to make pronouncement on each of the counts in the charge the rest of the argument and or submissions in the Appellant's Reply Brief are mere reharsh, repetition and embellishment of the main Brief filed on behalf of the Appellant.

RESOLUTION OF ISSUES

Pursuant to section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 as amended every person who is charged with a criminal offence shall be presumed innocent until he is proved guilty. Similar provisions are contained in section 135(1)(2) and (3) of the Evidence Act

2011 Cap E. 14 Law of the Federation of Nigeria all of which provides:-

> "135(1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.
>
> (2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to section 139 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action.
>
> (3) If the prosecution proves the commission of a crime beyond reasonable doubt the burden of proving reasonable doubt is shifted on to the defendant."

It is thus beyond argument that the cumulative effect of the above provisions of the Constitution and the Evidence Act is that the burden and standard of proof in any criminal proceedings are squarely on the prosecution. It also means that until a Defendant is prima facie proved guilty he would not be called upon to put up a defence to any alleged criminal offence or offences against him.

1. UCHE ORISA V. THE STATE (2018) 11 NWLR (PART 1631) AT 466 C-D per GALINJE, JSC who said:

> "The law he law is settled that if the commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt. The burden of proving that any person has been guilty of a crime or wrongful act is on the person who asserts it, whether the commission of such act is or is not directly in issue in the action. See Akpan v. The State (1990) 7 NWLR (Pt. 160)

101; Adamu v. A.-G. Bendel State (1986) 2 NWLR (Pt. 22) 284. Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 provides that every person who is charged with criminal offence shall be presumed innocent until he is proved guilty.

It is therefore plain that the burden of proof in criminal cases is on the prosecution who must prove its case beyond reasonable doubt and a general duty to rebut the presumption of innocence constitutionally guaranteed to the accused person. This burden does not shift. See Alabi v. The State (1993) 7 NWLR (Pt 307) 511 at 531 paras A-C; Solola v. The State (2005) 5 SC (Pt. 1) 135; (2005) 11 NWLR (Pt. 937) 460; Bakare v. The State (1987) 1 NWLR (Pt. 52) 579."

2. UMAR MUSTAPHA USMAN V. STATE (2018) 15 NWLR (PART 1642) AT 336 B -C where GALINJE, JSC who said:

"The law is settled that if the commission of a crime by a party, to any proceedings is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt. The burden of proving that any person has been guilty of a crime or wrongful act is on the person who asserts it, whether the commission of such act is or is not directly in issue in the action. See section 135 (1) and (2) of the Evidence Act, 2011, see Adamu v. A. -G. of Bendel State (1986) 2 NWLR (Pt. 22) 284; Akpan v. The State (1990) 7 NWLR (Pt. 160) 101; Sunday Amala v. The State (2004) 6 SCNJ 79 at 88, (2004) 12 NWLR (Pt. 888) 520; The State v. Olatunji (2003) 2 SCNJ 65, (2003) 14 NWLR (Pt. 839)

138. Section 36 (5) of the Constitution of the Federal Republic of Nigeria 1999 provides that every person who is charged with a criminal offence shall be presumed innocent until he is proved guilty. Flowing from the provision of section 36 (5) of the Constitution, the burden of proof in criminal cases is on the prosecution who must prove its case beyond reasonable doubt, and a general duty to rebut the presumption of innocence constitutionally guaranteed to the accused person. This burden never shifts. See Alabi v. The State (1993) 7 NWLR (Pt. 307) 511 at 531, paras. A - C; Solola v. The State (2005) 5 SC (Pt. 1) 135, (2005) 11 NWLR (Pt. 937) 460."

3. WAHEED BALOGUN V THE STATE (2018) 13 NWLR (PART 1636) 321 AT 328 F - G per GALINJE, JSC;
4. ALBAN AJAEGBO V THE STATE (2018) 11 NWLR (PART 1631) 484 AT 503 G - H per KEKERE-EKUN, JSC.

The contention of the Appellant's Learned Counsel is that no prima facie case has been established against the Appellant to warrant his being called upon to make a defence. The expression "Prima Facie Case" has received numerous judicial pronouncements in Criminal Matters. The first port of call is the cases of Ajidagba vs. inspector -General of Police (1958) NSCC 20 at 21 -22 per Abbott F. J. who said:

> "We have been at some pains to find a definition of the term "Prima Facie Case." The term, so far as we can find has not been defined either in the English or in the Nigeria Court."
>
> In an India Case however, SHER SINGH VS. JITENDRANA THESEN (1931) I.L.R 50 CAL C. 275

we find the following dicta:

> "What is meant by a Prima Facie Case? It only means that there is a ground for proceeding... But a Prima Facie Case is not the same as proof which comes later when the Court has to find whether the accused is guilty or not guilty... The evidence discloses a Prima Facie Case when it is such that if uncontradicted and it believed it will be sufficient to prove the case against the accused per Lort- Williams J."

The position was recently reemphasized by the apex in the land in the cases of (1) IKUFORIJI V. FRN (2018) 6 NWLR (PT. 1614) 142 AT 159 G - H TO 160 A - per EKO, JSC who said:

> "Prima facie means "first appearance". The phrase, when it is applied to the rule on onus of proof in the law of evidence, means that the case is supported by such evidence, as are available, on every material issue of the offences charged that, if no rebuttal evidence is called; it is sufficient to establish the fact in issue. Thus, as it was stated in Police v. Ajidagba 3 FSC 5, reported as Ajido9ba v, T.G.P. (1956) SCNLR 60; evidence discloses a prima facie case when the evidence is such that if, uncontradicted, and it is accepted, will be sufficient to prove the case against the accused person. Therefore, if at the close of the prosecution's case the evidence so far marshaled against the accused is such that if it could be presumed to be true in relation to the fact in issue, unless rebutted or disproved by some other evidence to the contrary; then, a prima facie case has been disclosed

to warrant calling on the accused to offer his exculpatory defence. See Onagoruwa v. The State (1993) 7 NWLR (Pt. 303) 49 at 81 - 82; Tongo v. The State (2007) 30 NSCQR 180 at 192 - 193; (2007) 12 NWLR (Pt. 10 49) 525."

(2) CHIYFRANK NIGERIA VS FRN (2019) 6 NWLR (PART 1667) 143 at 159 C -D per AUGIE, JSC who said:

"The question that comes up where a no-case submission is made by an accused person is whether the prosecution made out a *primafacie* case requiring, at least, some explanation from an accused - see *Tonga v CUP* (2007) 12 NWLR (Pt. 1049) 525 SC. Thus, a *prima facie* case simply means that there is ground for proceeding with the case against the accused person; it is not the same as proof which comes later, when the court or tribunal has to find whether the person charged with an offence is guilty or not.

So, the evidence discloses a *prima facie* case when it is such that if uncontradicted, and if believed, it will be sufficient to prove the case against the accused person - see *Abacha v. State* (2002) 11 NWLR (Pt.779) 437 SC, and *Ajidagba v. I.G.P.* (1958) SCNLR 60.

(3) FRANK AMAH V. FRN (2019) 6 NWLR (PART 1667) 160 at 201 H to 202 A -B per EKO JSC who said:

"My Lords, once the prosecution, from the totality of the evidence led against the accused person is able to make a case warranting the accused person to make some explanations or refute the evidence against him a *prima facie* case is said to have been made against him. That is why Galadima, JSc, in *Orji Uzor Kalll v. FR.N.* (2016) LPELR- 40 I 08 (SC); (2016) 9 NWLR (Pt. 1516) 1, states that *prima facie* means the establishment of a legally required rebuttable presumption. I am satisfied that, on the totality of the evidence the respondent adduced against the appellant a *prima facie* case had been made out against him

to warrant his being called upon to offer a defence. The evidence established a good ground for the case to proceed or for the proceedings against the appellant to continue: *Ajidagha v. I. G. P* (1958) SCNLR 50; *Ubanatu v. The Commissioner of Police* (2000) FWLR (Pt. 1) 138 at 1 SO - 152; (2000) 2 NWLR (Pt. 643) 115; *Ikomi v. The State* (1986) 3 NWLR (Pt. 28) 340."

The real import of a no case submission has been positively espoused in the cases of:-

1. GODWIN DABOH & ANOR VS. THE STATE (1977) 5 SC 197 at 209 - 211 where SIR UDO UDOMA, JSC neatly encapsulated it thus:

"Before however, embarking upon such an exercise, it is perhaps expedient here to observe that it is well known rule of Criminal Practice, that in Criminal trial at the close of the case for the prosecution, a submission of no Prima Facie Case to answer made on behalf of an accused person postulates one or two things or both of them at once.

Firstly, such a submission postulates that there has been throughout the trial no legally admissible evidence at all against the accused person on behalf of whom the submission has been made linking him in any way with the commission of the offence with which he has been charged, which would necessitate his being called upon for his defence. Secondly, as has been so eloquently submitted by Chief Awolowo that whatever evidence there was which might have linked the accused person with the offence has been so discredited that no reasonable Court can be called upon to act on it as establishing criminal guilt in the accused concerned and

in the case of trial by jury, that the case ought therefore to be withdrawn from the jury and ought not to go for a verdict. On the other hand it is well settled that in the case of a trial by jury, no less then in a trial without a jury, however slight the evidence linking an accused person with the commission of the offence charged might be, the case ought to be allowed to go to the jury. Therefore, when a submission of no prima facie case is made on behalf of an accused person, the trial Court is not thereby called upon at that stage to express opinion on the evidence before it. The Court is only called upon to take note and to rule accordingly that there is before the Court no legally admissible evidence linking the accused person with the commission is based on discredited evidence, such discredit must be apparent on the face of the record. If such is not the case, then the submission is bound to fail."

2. CHIYFRANK NIGERIA VS. FRN (2019) 6 NWLR (PART 1667) 143 at 154 D -E per NWEZE,, JSC who said:

"As it is well-known, a submission that there is no case to answer may be properly made and upheld in the following circumstances

(a) when there has been no evidence to prove an essential element in the alleged offence

(b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

Ibeziakor v. *Commissioner of Police* (1963) I All NLR 61; (1963) NNLR 88:(1963) 1 SCNLR 99; *Ajidagba and ors* v

J. UP (1958) 3 FSC 5; (1958) SCNLR 60; *Okoro* v. *The State* (1988) 5 NWLR (Pt. 94) 255; *Adeyemi* v. *The State (1991)* 6 NWLR (Pt. 19)) 1; *Sher Singh* v. *Iitendranathsen* (1931) L.R, 59 CAL 275 *Ajiboye and Amar* v. *The Stale* (1995) 8 NWLR CPt. 414) 408; (1995) LPELR -300 (SC) 8."

3. FRANK AMAH VS. FRN (2019) 6 NWLR (PART 1667) 160 at 191 B -F per KEKEKE - EKUN JSC who said:

"Section 286 of the Criminal Procedure Law of Lagos State provides:

"286. If at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the defendant sufficiently to require him to make a defence, the court shall, as to that particular charge, discharge him."

The purport of a no case submission is that, in law, there is no evidence on which, even if believed, the court could convict. See: *Ibeziako* v. *C.O.P (1963)* 1 All NLR 61; (1963) I SCNLR 99; *Ajidagba* v. *IG P* (1958) 3 FSC 5; (1958) SCNLR 60; *Tongo* v. *C. OP* (2007) 12 NWLR (Pt. I 049) 525; *Fagoriola* v. *F R.N* (2013) 17NWLR(Pt.J383)322.

The question whether or not the evidence is believed is immaterial and does not arise. Furthermore, the credibility of the witnesses is not in issue. It is also important to note that at the stage of a no case submission the court is not required to express an opinion on the evidence before it. The reason is that at that stage, the trial has not been concluded. See: *Adeyemi* v. *The Slate* (1991) 6 NWLR (Pt.195) I; *Agbo* v. *The State* (2013) II NWLR (Pt.1365) 377: *Igabele* v. *The State* (2006) 6 NWLR (Pt.975) 100; *Aituma* v. *The State* (2007) 5 NWLR (Pt.1028) 466.

A submission that the accused has no case to answer will succeed in the following circumstances:

a. Where the prosecution fails to prove an essential element of the offence:

b. Where the evidence led by the prosecution has been so discredited as a result of cross-examination, or is so manifestly unreliable that no reasonable tribunal would safely convict on it.

See: *Ajiboye v. The State* (1995) 8 NWLR (Pt.414) 408 414-415; *Daboh v. The State* (1977) 5 SC 197 @ 209; *Tongo v. C.O.P. (supra)*: *Ajuluchukwu v. The State* (2014) 13 NWLR (Pt.1425) 641; *CUP v. Amuta* (2017) LPELR- 41386 (SC)@ 28- 29, G- F; (2017) 4 NWLR (Pt. 1556) 379."

The principles guiding a no case submission have now been expressly enacted by the National Assembly of Nigeria in sections 302 and 303 of the Administration of Criminal Justice Act, 2015 all of which provide:

"302. The court may, on its own motion or on application by the defendant after hearing the evidence for the prosecution, where it considers that the evidence against the defendant or any of several defendants is not sufficient to justify the continuation of the trial, record a finding not guilty in respect of the defendant without calling on him or them to enter his or their defence and the defendant shall accordingly be discharged and the court shall then call on the remaining defendant, if any, to enter his defence.

303.(1) Where the defendant or his legal practitioner

makes a no case submission in accordance with the provisions of this Act, the court shall call on the prosecutor to reply.

(2) The defendant or his legal practitioner has the right to reply to any new point of law raised by the prosecutor, after which, the court shall give its ruling.

(3) In considering the application of the defendant under section 303, the court shall, in the exercise of its discretion, have regard to whether:

(a) an essential element of the offence has been proved:

(b) there is 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."

Thus a Defendant who conceives that at the end of the prosecution' case, the prosecution has not proved the essential ingredients of the offences or offence for which he was charged or that whatever evidence there is, linking him with commission of the offence for which he was charged has been totally discredited under cross examination thus making the pieces of evidence against him manifestly unreliable, is perfectly entitled to make a no case submission

that a case has not been sufficiently made out against him requiring him to make a defence pursuant to section 302 and 303 of the Administration of Criminal Justice Act, 2015. The Defendant can be discharged by the trial Court under section 357 of the same ACJA if the no case submission is upheld.

Conversely where at the close of the prosecution's case it is discovered that the evidence called by the prosecution in support of the charge establishes a prima facie case against the Defendant vide oral and documentary evidence proffered and tendered the no case submission would fail.

Can it be said in this case that Prosecution (Respondent herein) has made out a prima facie case against the Respondent in this appeal sufficient enough to warrant calling on the Appellant to enter upon his defense in respect of three count charges against him. The 1st issue raised for determination is the failure of the lower Court to consider each of the Counts in the charge separately led to miscarriage of justice in that essential elements of the counts were not proved. The Appellant also contended that the evidence on record is conflicting.

While it is desirable for the trial judge to consider the evidence led in proof of each of the Counts contained in a charge when a submission of no case to answer is made to the trial court seised of the matter, the failure of the court to consider or to take the Count one after the other and determine whether the essential elements of each of the charge were established or proved against the Defendant will

not vitiate a Ruling rejecting a no case submission where the Defendant is unable to prove or fails to establish that he suffered a miscarriage of justice or any injustice thereby. It is true that where a Defendant or an Accused is charged for multiple offences or counts contained in a charge he may be discharged on some or any of them on a submission of case submission while he may be asked to enter his defence in respect of one or two of the Counts. However, where the approach is not followed or enlisted by the trial Judge as in this case the Appellate Court will sustain or affirm the decision on the no case submission where the Appellate Court finds that there is oral and/or documentary evidence led or proffered by the prosecution which links the Appellant or the Defendant with any of the offences contained in the charge against the Appellant.

I agree with the submission of the Learned Counsel to the Appellant to the effect that it is desirable that trial Court ought to consider each of the counts in the charge against the Appellant in order to discern or decipher whether the elements or ingredients constituting each of the counts in the charge was actually established to require the Appellant to enter upon his defence in respect of any of the three count charge against the Appellant. This is because each if the counts in the charge is an offence. See

1. PROF. BUKAR BARABE V. FRN (2019) 1 NWLR (PART 1652) 100 AT 125 C - E per KEKERE EKUN, JSC who said:

   "It must however be stressed that an accused person has no duty to prove his innocence. See: A deniji v. The State (2001) 13 NWLR (Pt.730) 375; Isah v. The State (2017) LPELR - 43472 @ 28 - 29, F - E; (2018) 8 NWLR (Pt. 1621) 346. His failure to testify, for example, cannot result in a conviction. The prosecution must adduce cogent

and compelling evidence to discharge the burden of proving its case beyond reasonable doubt. Any doubt created in the mind of the court must be resolved in favour of the accused person. See: Archibong v. The State (2006) 14 NWLR (Pt. 1000) 349; Aiguoreghian v. The State (2004) 3 NWLR (Pt.860) 367; Adie v. The State (1980) NLR 323; Shehu v. The State (2010) 8 NWLR (Pt.1195) 112.

In order to establish the guilt of an accused person beyond reasonable doubt, the prosecution must prove all the essential elements of the offence or offences with which he is charged. The court must be satisfied that the totality of the evidence led supports the particulars of the offence as charged. See: Alor v. The State (1997) 4 NWLR (Pt.501) 511; Nwaturuocha v. The State (2011) 6 NWLR (Pt.1242) 170; Orji v. The State (2008) 10 NWLR (Pt.1094) 31; George v. F.R.N. (supra)." (underlined mine)

2. FRN VS. THOMAS ISEGHOHI (2019) 12 NWLR (PART 1685) 154 at 178 H TO 179 A - D per ODILI, JSC who said.

"Indeed, from the findings of the Court of Appeal and the ensuring conclusion what comes to light is that an accused person cannot be convicted on what he was not charged with and no evidence in support such as the case in hand where there was no count in the charge on misappropriation of funds or financial recklessness or mismanagement ineptitude. Rather the charge on Money Laundering and Advance Fee Fraud and while the elements of financial recklessness or misappropriation or management ineptitude were the evidence led by the prosecution and so it cannot be said the offences charged were made out for which a conviction can be secured, as the appellant's counsel urges the court to do. This goes against the grain of what this court had stated in Abidoye v. FRN. (2014) 5 NWLR (Pt. 1399) 30 at 55-56 thus:-

"Once a charge is laid, it is deemed that all the ingredients included in the particulars are needed to prove the charge and any ingredient omitted is not necessary. The prosecution cannot default in proving any ingredient included in the particulars of the offence charged, nor can he offer proof of an ingredient omitted in the particulars of the offences. Having considered what the court below did in its findings and the conclusion and decision reached, there is no gainsaying that none of the ingredients of money laundering or advance fee fraud was proved by the prosecution and I acknowledge that the court below was right in setting aside the decision of the trial court and on its part upholding the no-case submission." (Underlined mine)

The Appellant has not shown positively that the findings or Ruling appealed against has on account of failure by the trial Judge to consider each of Counts separately occasioned a miscarriage of justice. There is no such miscarriage of justice in this case. See section 302 of the Administration of Criminal Justice Act 2015 which provides:

"302. The court may on its own motion or on application by the defendant, after hearing the evidence for the prosecution, where it considers that the evidence against the: defendant or any of several defendants is not sufficient to justify the continuation of the trial, record a finding not guilty, in respect of the defendant without calling on-him or them to enter his or their defence and the defendant; shall accordingly be discharged and

the court shall then call on the remaining defendant, if any, to enter his defence:"

The above covers the composite Ruling made in respect of all the Counts in the charge in the case herein.

On whether there is failure on the part of the Respondent to proffer the necessary evidence to support any of the ingredients of the offences against the Appellant as strongly submitted by the Appellant's Learned Counsel, the Learned Counsel to the Respondent contended that a close perusal of evidence of the 5 five witnesses called by the Respondent show that the pieces of evidence given by them sufficiently linked the Appellant with the offences for which he was charged.

The Learned Counsel to the Respondent stated the ingredients of the offence contained in Count 1 of the charge to be as follows:

"1. That the Accused is a Public Officer within the meaning of section 2 of the Act.
2. That the Accused asked or received benefit of any kind for himself or for any other person in respect of something to be done afterwards, or something already done.
3. That he asked for or received the benefit in the course of the discharge of his official duties.

Learned Counsel to the Respondent opined that all the ingredients have been established in that:

1. The Appellant was a Public Officer as he was a member representing SHANONO - BAGWAI FEDERAL CONSTITUTENCY OF KANO STATE in the Federal House

of Representative and was at the material time the Chairman AD HOC committee on monitoring of Fuel Subsidy Regime.

2. That the Appellant demanded for the sum of $3,000,000.00 USD from PW5 EXONERATED Zenon Oil and Gas Limited from the list of those indicted by the Ad Hoc Committee of which he was chairman.
3. That he collected $500,000 USD from PW5 leaving a balance of $2.5m.

With respect to Counts 2 and 3 the prosecution stated all it has to show are that:

"1. That the Appellant corruptly agreed to accept any gift or consideration.
2. That the money obtained was an inducement or a reward for doing an act.

The Appellant was charged in Count 1 of the charge against him under section 8(1) of the Corrupt Practices and Other Related Offences Act 2000 which provides:

"(1) Any person who corruptly-
(a) asks for, receives or obtains, any property or benefit of any kind for himself or for any other person; or
(b) agrees or attempt to receive or obtain any property or benefit of any kind for himself or for any other person, on account of-
(i) anything already done or omitted to be done, or for any favour or disfavour already shown to any person by himself in the discharge of his, official duties or in relation to any matter connected with the, function, affairs or business of a Government department or corporate body other organisation or

institution in which he is serving as an official; or

(ii) anything to be afterward done or omitted to be done or favour or disfavour to be afterward shown to any person, by himself in the discharge of an his official duties in relation to any such matter as aforesaid, is guilty of an offence of official corruption and is liable to imprisonment for seven (7) years.

The Appellant was charged under section 17(1) of the said Corrupt Practices and Other Related Offence Act 2000 for offence bordering on gratification punishable under the said section 17 which provides:

17-(1) Any person who corruptly-

(a) accepts, obtains or agrees to accept or obtain or attempts to obtain from any person for himself or for any other person, any gift or consideration as an inducement or reward for doing, forbearing to do, or for having done, or forborne to do, any act or thing;

(b) gives or agrees to give or offers any gift or consideration to any agent' as an inducement or reward for doing or forbearing to do, or for having done, or forborne to do, any act or thing in relation to his principal's affairs or business;

(c) knowingly gives to any agent, or being an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested and which contains any statement which is false or erroneous or defective in any material particular, and which, to his knowledge, is intended to mislead his principal or any other person, is guilty

of an offence and shall on conviction be liable to five (5) years imprisonment.

(2) For the purposes of this section, the .expression "consideration" includes valuable consideration of any kind; the expression "agent" includes any person employed by or acting for another; and the expression "principal" includes an employer.

I agree with the Learned Counsel to the Respondent as to the ingredients or elements of the offences for which the Appellant was charged as contained in the charge against him under sections 8 and 17 of the Corrupt Practices and Other Related Offences Act 2000.

See:

(1) TEMPLE NWANKWOALA V. FRN (2018) 11 NWLR (PART 1631) 397 at 412 G - H to 413 A per RHODES-VIVOUR, JSC who said:

"Consequently, the Corrupt Practices and Other Related Offences Act 2000 is valid. The appellant was tried and convicted on a valid law. To succeed under count 1 and 3 the prosecution must prove the following beyond reasonable doubt.

(a) That the accused person is a public officer.

(b) That the accused person received or obtains any property or benefit of any kinds for himself or for any other person for anything already done or omitted to be done or for any favour or disfavor already shown to any person by himself in the discharge of his official duties, or in relation to any matter connected with the functions, affairs or business of a government department or corporate body or other organization or institution in which he is serving as an official.

(c) That he asked for the benefits in the course of his official duties.

(d) That the accused person failed to report the offer of gratification to any officer of the Independent Corrupt Practices Commission (ICPC)."

2. SUNDAY GABRIEL EHINDERO VS. FRN & ANOR (2018) 5 NWLR (PART 1612) 301 At 324 E - H to 325 A - B per EKO, JSC who said:

"I will need to reproduce the provisions of sections 19, 25(1)(a) and 26(1) (c) of the ICPC Act. They are:

19. Any public officer who uses his office to gratify or confer corrupt unfair advantage upon himself or any relation or associate of public officer or any other public officer shall be guilty of an offence and shall on conviction be liable to imprisonment for five (5) years without option of fine.

25(1) Any person who makes or causes any other to make to an officer of the Commission or to any other public officer, in the course of the exercise by such public officer of the duties of his office, any statement which to his knowledge of the person making the statement, or causing the statement to be made-

(a) Is false, or intended to mislead or untrue in any material particular; or

(b) Is not consistent with any other statement previously made by such person to any other having authority or power under any law to receive, or require to be made such other statement notwithstanding that the person making the statement is not under any legal or other obligation to tell the truth, shall be guilty of an offence and shall or

conviction be liable to a fine not exceeding One Hundred Thousand Naira or to imprisonment not exceeding two (2) years or to both such fine and imprisonment.

26(1)Any person who -

(c) abets or is engaged in a criminal conspiracy to commit any offence under this Act, shall be guilty of an offence and shall, on conviction, be liable to the punishment provided for such offence.

The elements constituting each offence are very well stated in the provisions, which, in my opinion, are unambiguous. Each charge is also clear as to what it alleges and the offence charged. The proofs of evidence 31 and the charges, if juxtaposed against the provisions of ICPC Act, under which the charges have been laid, clearly disclose a prima facie case to warrant the trial to proceed.

It is here apposite to examine the pieces of evidence given by the witnesses called by the Respondent in order to discern if there is sufficient evidence linking the Appellant with the commission of the offences contained in the charge against him to warrant his being called upon for his defence.

PW1 was one EMENALO BONIFACE who was a Deputy Director, Legislative at the House of Representative. He acted as secretary to the House of Representatives Ad Hoc Committee on Petroleum subsidy of which the Appellant was the Chairman. He testified that in the course of the committee's work on 24/4/2012, he received persistent calls from PW5. He reported to the Appellant who he said asked

him "to play along."

It is necessary to reproduce his (PW1) evidence under examination and Cross examination on pages 141 - 154 which runs thus:

"Awornolo SAN: Take a look at Exhibit PW1 87 and confirm that it is the report of the Ad hoc committee in which the Defendant was the Chairman is the one you are referring to.

PW1: Yes it is the report.

Awomolo SAN: Confirm to the Court that after the laying of the report on the 18th of April, 2012 whether there was any sitting of the committee thereafter.

PW1: The ad hoc committee did not meet after the report was laid.

Awornolo SAN: Take a look at Exhibit PW186 which is the proceedings of 24th April, 2012.

PW1: Yes it is.

Awomolo SAN: Confirm to the Court the motion moved by the Defendant at page 94 and read.

PW1 I have read the motion.

Awomolo SAN: Take a look of Exhibit PW1 B7, at page 194 and read the amendment proposed by the Defendant to the house of Rep.

PW1 I have read it.

Awomolo SAN: Was the amendment carried out. Take a look at PW1B and confirm whether amendments of deletion proposed by the Defendant was accepted or rejected.

PW1: By the votes and proceedings it was accepted

Awomolo SAN Do you know a gentleman called Femi Otedola

PW1: I came across Femi Otedola during the assignment.

Awomolo SAN: What circumstance led to your knowing him and what transpired on 24th April, 2012?

PW1: On 24th April, 2012, it was in the morning hours, I did not take note of the particular time. I had persistent calls from Mr. Otedola and I reported to the Defendant/ Chairman about the calls and he asked him to play along with Mr. Otedola, that he was with him the previous night. So when Mr. Otedola called again, he asked me to come over to his house and gave me the descriptions. Following the description, I got to his house. He also confirmed to me that he was with Defendant the previous night and that; he has a message for tile Defendant. He gave me two bundles of dollar bills in a 100 dollar denomination. Each bundle fifty thousand making it hundred thousand dollars. They were not covered. When I got back to the office, I wrote a small memo forwarding the money to Defendant (Chairman).

Awomolo SAN Please confirm that you gave the '100,000 dollars to the Defendant.

PW1 I gave the $100,000 (One Hundred Thousand dollars) to Defendant (Chairman) and he received it from me.

Awomolo SAN: If you see your own copy of the memo to the Defendant (Chairman) can you recognise it?

PW1: Yes.

Awomolo SAN: Have a look at the document and confirm.

PW1: Yes its

Awomolo SAN: I seek to tender the memo

Ozekhome SAN: Absolutely no objection and we would need this document. Document tendered, admitted and marked Exhibit PW1C

Awomolo SAN: To the best of your knowledge was the receipt of this one hundred thousand dollars reported to the police.

PW1 I would not know if the Defendant reported to the police.

CROSS EXAMINATION

Ozekhome SAN How long have you worked with the House of Representative.

PW1: About 15 years before 2012.

Ozekhome SAN: Can you remember that you were initially arraigned with the Defendant on 1st February, 2013, on a 7 count charge.

PW1: Yes, I can remember.

Ozeekhome SAN How did you now become a witness rather than being in the dock with the Defendant?

Awomolo SAN: Objection. The choice as to who to prosecute or make a witness is the business of the prosecutor. Therefore, the witness is not competent to answer the question which is not within his knowledge. The Court is in position to disallow a question that is needlessly offensive - Section 228 Evidence Act. It is the prerogative of the prosecutor to answer that question.

Ozekhome SAN: I ask the Court to discountenance the objection as being of no moment. The question is not embarrassing.

Court: Objection is overruled

PW1: I do not know

Ozekhome: Before your arraignment with the accused were you ever detained by the Police?

PW1 Yes, I was detained

Ozekhome SAN: Were you detained alone or if with others who they were.

PW1: I was detained with Defendant Hon. Farouk Lawan

Ozekhome SAN: Was any other one detained?

PW1: No to my knowledge.

Ozekhome SAN: When you were detained with the police, I assume you made a statement?

PW1: Yes I did.

Ozekhome SAN: You made two statements to the police.

PW1: Yes.

Ozekhome SAN: The statements were they made in your own hand writing?

PW1: Yes.

Ozekhome SAN: Have a look at pages 35 - 40 of the proof of evidence and confirm your statement made to the Police.

PW1: They are my statements in my hand writing dated 14th June, 2012, all of them.

Ozekhome SAN: Following the set up of the Ad hoc committee you were posted to serve as secretary of the committee.

OZEKHOME SAN: You read the money is hereby forwarded as 'evidence', tell us as evidence of what?

PW1: As evidence that the committee' in the course of their assignment were to compromise through the means of threats, inducements.

OZEKHOME SAN: You mean bribery by the word "inducement"?

PW1: Yes I mean bribery.

OZEKHOME SAN: At the point of the $100,000 handed over to you by Mr. Otedola, were you apprehended by any police officer?

PW1: No.

OZEKHOME SAN: How did you know Mr. Otedola in the first instance?

PW1: I came in contact with him at the point of my assignment.

OZEKHOME: In inviting you to his house, how did you know his house?

PW1: He was directing me

OZEKHOME SAN: Can you tell this court of the details of the persistent pressure you mentioned in Exhibit PW1C.

PW1: I saw a missed call of 19 solid times of number I know nothing about and I brought my Chairman's notice to it.

OZEKHOME SAN: You told the court on oath that, it is only $100,000 that was given to you. Would you be surprised that Mr. Femi Otedola said he gave you $120,000.

PW1: I will be more than surprised because I read it in the newspapers, I felt bad that he could tell such a lie.

OZEKHOME SAN: In your report to the house which was adopted "Exhibit PW 1B7" how many companies of Mr. Femi Otedola were involved in the public hearing?

PW1: Three companies

a) Zenon Oil and Gas
b) AP
c) Forte Oil

OZEKHOME SAN: In your report Exhibit PVJ1B7, was any of the companies exonerated.

PW1: Zenon was asked to go because it was not involved in the subsidy regime. However, in the course of investigation, it was discovered at the financial forensic of submission made by companies that the same 'Form M' used by Zenon to procure foreign 'exchange was also used by AP to procure products and obtain subsidy. It was at this point that the committee resolved to refer the issue for further investigation by relevant government agency.

OIEKHOME SAN: You did not give a clean bill of health in respect of AP.

PW1: Yes.

OZEKHOME SAN: At the committee stage, were you present?

PW1: I was present during the public hearing and I was taking note.

OZEKHOME SAN: And when they were discussing about the other companies were you there?

PW1: The discussion did not take place at the public hearing.

OZEKHOME SAN: That means the decision must have taken place at a closed door session.

PW1: Yes

OZEKHOME SAN: As the Secretary of the ad-hoc committee, were you privileged to be present at the closed session?

PW1: Not all but in some.

OZEKHOME SAN: Can you recollect when the public hearing itself began?

PW1: The public hearing took place from 16th January, 2012 to 9th February, 2012.

OZEKHOME SAN: At this ad-hoc committee level, what was the modus operandi of the chairman and other members?

OZEKHOME SAN: And when they were discussing about the other companies were you there?

PW1: The discussion did not take place at the public hearing.

OZEKHOME SAN: That means the decision must have taken place at a closed door session.

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PW1: The public hearing took place from 16th January, 2012 to 9th February, 2012.

OZEKHOME SAN: At this ad-hoc committee level, what was the modus operandi of the chairman and other members?

PW1: Yes

Ozekhome SAN: Prior to your appointment secretary to the Ad hoc committee did you ever work with the Defendant before

PW1: Yes.

And on pages 164 - 166 the witness further stated under Cross Examination thus:

"Ozekhome SAN: Specially did he give you $20,000 that day?

PW1: No.

Ozekhome SAN: It was on that 2nd meeting 24th ,April, 2012 that he gave you the $100, 000 notes?

PW1: Yes.

Ozekhome SAN: In your statement Exhibit PVV1 E please read.

PW1: (Reads).

Ozekhome SAN: Do you still maintain that you collected' the money from Mr. Otedola to show as Exhibit that he wanted to bribe the committee

PW1: Yes I still maintain that.

Ozekhome SAN: Did the Police or SSS or EFCC forward to you a copy of any correspondence they had with the Defendant?

Ozekhome SAN: Looking at Exhibit PW1B5 other paper Tuesday 24th April, 2016 and read from "Those..."

PW1: Reads

Ozekhome SAN: So the PW1B5 made the recommendation which included Zenon Oil as company that did not import oil but received forex.

PW1 Yes.

Ozekhome SAN: Take a look at Exhibit PW1B6; what is the document?

PW1: Votes and proceedings of 24th April, 2012.

Ozekhome SAN: Look at No.5 on the first page, and what is it saying? Read it.

PW1: (Reads)

Ozekhome SAN: Go to the next page and read paragraph 2.

PW1: (Reads)

Ozekhome SAN: No more questions, I am grateful for the Court patience.

Re-Examination.

Awomolo SAN: No re-examination and I appreciate the Court patience. The witness is a public office on subpoena and I wish to apply for is discharge.

PW2 was an investigation Police Officer - David Igbodo. He stated that he carried out investigations of the allegations against the Appellant and found out that

Defendant/Appellant demanded the sum of $3,000,000 USD from Mr. Otedola to enable him remove the name of ZENON OR AP. He also found that Defendant was in Otedola's house on 24/4/2012 where Appellant collected $500,000 USD from PW5 Mr. Otedola and that the collection of the money was captioned on video. He stated that the Appellant admitted to the Police that he was given $500,000.00

Under Cross examination the maintained his evidence as given under examination in chief but agreed that the interactive session he had with Appellant was not video recorded.

PW3 evidence was to the effect that he was a Principal Staff Officer Technical Services in the DSS and that upon Petition of PW5 his team went to the house of PW5 Mr. Femi Otedola to install or mount recording device in the sitting room of PW5 where a meeting was schedule to take place between PW5 and the Appellant and after the meeting the DVD of the recording of event was played in their office and it showed PW5 and Appellant exchanging a parcel. His evidence under cross examination was that he carried out the duty he was mandated to carry out.

PW4 was one JAGABA ADAMS JAGABA. He testified that he knew Appellant as they came together to the House of Representatives in 1999. He was asked whether it was true the Appellant came to his house on 24/4/2012 and gave him (PW4) $620,000 USD. He denied the allegation. He stated that he did not receive Exhibit PW1C, a letter and the sum of $420,000 USD from the Appellant.

Under Cross examination PW4 stated that he did not know PW5 Mr. Femi Otedola and had never met him. He stated that he was not a member of Ad Hoc committee on Petroleum subsidy Regime Headed by the Defendant. He

could not remember whether Appellant called him on phone on 24/4/2012.

PW5 was Femi Otedola. He testified among other that the Appellant came to his house on 18/4/2012 pursuant to a phone call the Appellant made to him while in UK. That Appellant told him that he was going to indict ZENON PETROL and Gas as Appellant stated that ZENON did not import Petrol and that Appellant demanded the sum of $3million dollars from him to exonerated Zenon. He queried Appellant on why they should indict ZENON. That Appellant told him many of the companies involved paid a bribe. PW5 said he told Appellant he would not be part of it as that amounted to extortion. He later heard his company was mentioned on NTA. He was given $620,000 USD from DSS and agreed to instruction of DSS to play along with the Appellant. He testified that Appellant came to his house on 23-4-2012 and he handed over $500,000 USD given to him by DSS to the Appellant. He stated that the Appellant then promised to see the leadership of the House and requested that the name of ZENON be removed. He later watched the defendant on the floor of the House requesting that the name of Zenon be removed. That after the removal of the name of his company's name from indicted list the Defendant called demanding for the balance of 2.5 million dollars and he promised Appellant he would arrange to bring the balance to Abuja and that Appellant promised to send someone to pick the money. He stated that his meeting with Appellant was captioned on video exhibit PW3B. He denied putting pressure on the Appellant but insisted that Appellant demanded balance of 2.5 million dollars from him.

Under cross examination he confirmed that he wrote Petition to DSS as per Exhibit PW 3A on 18/4/12. In answer

to a question under cross examination as to how many times in all did the Defendant allegedly come to collect the alleged bribe money, PW5 said it was twice.

The questions and answers which were recorded on pages 353 - 355 of the record are as follows:

"Defence Counsel: How many time in all did the Defendant allegedly come to collect the alleged bribe money.

PW5: That was twice.

Defence Counsel: On each occasion how much did you five?

PW5: I gave $250,000

Defence Counsel: How much did you allegedly give him during the alleged sting operation?

PW5: $250,000.

Defence Counsel: When and where was the other $250,000 given to the Defendant?

PW5: In my house.

Defence Counsel: The 1st alleged trench of $250,000 was it before or after your petition Exh. PW3A

PW5: It was after the Petition that I gave him the two trenches of $250,000.

Defence Counsel: Why didn't you think it was important to alert the security agencies without parting with the security agents.

PW5: I could not have alerted them because it was after the petition that the DSS gave me the money to give to him.

Defence Counsel: Did you not consider it necessary to write a petition as soon as Defendant demanded the money from you without paying the first trench of $250,000.

PW5: After the Defendant demanded the money from me, I wrote to DSS and they handed me over the money to give to the Defendant.

Defence Counsel: Did the Defendant sign to collect any if these two trenches?

PW5: He did sign because if I were in his shoes I will not sign.

Defence Counsel: Do you have any evidence of the giving of the 1st trench of $250,000.

Defence Counsel: Do you have any video of the alleged $250,000 giving to the Defendant?

PW5: Capital NO.

Defence Counsel: What date was the 1st trench allegedly giving to the Defendant?

PW5: I cannot remember but it was before the DSS set up the camera. Before they set up the camera he had collected the 1st trench.

And on page 367 - 368 of the record the following also appears:

"In 2012 you granted an interview in which you said the 1st Defendant stuff the money in his cap.

PW5: No I never granted an interview.

Defence Counsel: From the video we saw we did not see Defendant stuffing something inside it.

PW5: Not at all.

Defence Counsel: The allegation is that the total money you gave is N620,000.

PW5: Yes.

Defence Counsel: You said that the Defendant is expecting N2.5m

PW5: Yes.

Defence Counsel: You said the Defendant demanded N3m.

PW5: Yes.

Defence Counsel: Please add $620,00 + $2.5m.

PW5: That will be $3,120,000

Defence Counsel: Remember that the subsidy ad hoc was televised life.

PW5: Yes.

Defence Counsel: You did say that you contacted the Defendant and committee as to how to help them do their work to successfully.

PW5: No, Defendant reached to me."

I have gone through this tedium in order to find whether the prosecution has indeed made out *prima facie* case against the Appellant. I am of the firm view than upon a calm reading of the pieces of the Oral evidence of the five witnesses called by the prosecution both under evidence-in-chief and under cross examination coupled with the documentary evidence tendered before the lower Court by the prosecution, there is no doubt at all that the said oral and documentary evidence as led and proffered by the five (5) witnesses called by the prosecution sufficiently linked the Appellant with the Counts contained in the charge against the Appellant to warrant or justify his being called upon to enter upon his defence. The evidence is such that a reasonable Tribunal or Court can convict an Accused or a Defendant on it if it remains uncontradicted or unexplained. The prosecution evidence was not destroyed under cross examination. In other words the evidence linking the Appellant with the offences included in the charge was not discredited under cross examination. See

1. HON ADEYEMI IKUPORIJI V. FRN (2018) 6 NWLR (PART 1614) 142 at 159 E 160 A - F per EKO, JSC who said:

> "The various documents tendered, as well as the evidence of the PW I and PW2, were all produced for one purpose. That is, to establish *prima facie* that the appellant has a case to answer in respect of the allegations that he violated the provisions of sections 1, respectively, of MLPA 2004 and MLPA, 2011. I have read the appellant's brief of argument, and his reply brief. I have not been able to see where the appellant could claim that the evidence of the prosecution had been so badly discredited by their cross-examination to the extent that no reasonable tribunal could act on them. This is one of the reasons trial courts harp on to uphold No-case submissions. See *Ibeziako* v.C.O.P. (supra).

The appellant, apart from the allegation that he received cash payments in excess of the prescribed statutory threshold, is also being prosecuted for conspiracy to commit the crime under sections I respectively of MLPA 2004 and MLPS, 2011. The essential element of conspiracy is the agreement to do an unlawful act, or agreement to do a lawful act by an unlawful means. See *Daboh & Anor v. The State* (1977) 2 NSCC 309; *Okosun v, A.·G, Bendel State* (1985) 3 NWLR (Pt. 12) 283 at 297; *Abacha v. The State* (2002) 11 NWLR (Pt. 779) 437 at S23. It is now trite that the proof of conspiracy is generally a matter of inference, deduced from certain criminal acts of the parties concerned, which acts are done in pursuance of an apparent criminal purpose that is in common between the conspirators. See *Dabon & Anor v. The State* (supra) at 319.

My Lords, I have been able to set out the elements of the substantive offences under MLPA, 2004 and MLPA, 2011, and the criminal conspiracy that the respondent, as the prosecutor, is required to establish in order that a *prima facie* case would be said to have been established. *Prima facie* means "first appearance". The phrase, when it is applied to the rule on *onus* of proof in the law of evidence, means that the case is supported by such evidence, as are available. on every material issue of the offences charged that, if no rebuttal evidence is called; it is sufficient to establish the fact in issue. Thus, as it was stated in *Police v. Ajidagba* 3 FSC 5, reported as *Ajidagba v. I.G.P.* (1956) SCNLR 60; evidence discloses a *prima facie* case when the evidence is such that if, uncontradicted and it is accepted, will be sufficient to prove the case against the accused person. Therefore, if at the close of the prosecution's case the evidence so far marshalled against the accused is such that if it could be presumed to be true in relation to the fact in issue, unless rebutted or disproved by some other evidence to the contrary; then, a *prima facie* case has been disclosed to warrant calling on the accused to offer his exculpatory defence. See *Onagoruwa v. The State* (1993) 7 NWLR (Pt. 303) 49 at 81 - 82; *Tonga v, The State* (2007) 30 NSCQR 180 at 192 -193; (2007) 12 NWLR (Pt. 1049) 525.

Putting it rather negatively on the authority of *Fagoriola v. FRN* (2013) 17 NWLR (Pt. 1383) 322, the appellant's counsel submits that a no case submission connotes that there is no evidence on which the court will convict even if the trial court believes the evidence adduced by the prosecution. The submission is correct in law. Juxtaposing the facts disclosed by the evidence of the PW I and PW2, and the documentary evidence vis-a-v is the charges the appellant is defending at the trial court, I am of the firm view that a *prima facie* case has been disclosed by the prosecution's evidence at the trial court to warrant the appellant being called upon to offer his defence. I bear in mind that at the stage of a no-case submission, the court is not called upon to express any opinion on the evidence before it, as to their probative value. All that the court is called upon to rule on at this stage, is simply whether there exist legally admissible evidence linking the accused person with the commission of the alleged offence (s): and if the no-case submission is on the basis of some discredited evidence such discredited evidence must be on the face of the printed record and in respect of relevant and material facts. See *Daboh & Drs v. The State* (supra) at 315. As I earlier pointed out in the instant case, the no-case submission was made largely on the basis of there being no legally admissible evidence linking the appellant with the commission of the alleged criminal offences."

2. FRANK AMAH VS. FRN (2019) 5 SCM 76 at 107 H TO 108 A per KEKERE - EKUN JSC who said:

"All that the court is required to do when a no case submission is made is to determine whether the evidence adduced by the prosecution is sufficient to warrant an explanation from the accused person. The court below carefully examined the evidence on record and rightly, in my view, concluded that a *prima facie case* has been made out in respect of counts 5 and 6 of the information sufficient to warrant the appellant bent called upon to make his defence thereto.

On page 118 H - I to 119 A my lord EKO, JSC said:

"My Lords, once the prosecution, from the totality of the evidence led against the accused person is able to make a case warranting the accused person to make some explanations or refute the evidence against him a prima facie case is said to have been made against him. That is why Galadima, JSC, in *Orji Uzor Kalu V. Frn (2016) LPELR - 40108 (SC)*, states that *prima facie* means the establishment of a legally required rebuttable presumption, I am satisfied that, on the totality of the evidence the Respondent adduced against the Appellant, a *prima facie* case had been made out against him to warrant his being called upon to offer a defence. The evidence established a good ground for the case to proceed or for the proceedings against the Appellant to continue: *Ajidagba V. Cop* (1958) *SCLR 50; Ubanatu V. The Comm. Of Police (2000) FWLR (pt.1)*138 *at 150* - 152; *Ikomi V. The State* (1986) 3 *NWLR (pt.* 28) 314 accordingly, I also resolve issue 2 against the Appellant."

I have ruminated over the four issues raised for determination vis-à-vis the finding (s) of the lower Court and I am of the view that the rejection of the no case submission is well founded and that the Ruling of the lower has not occasioned any miscarriage of justice against the Appellant.

The language of the lower Court calling on the Appellant to enter upon his defence to make his defence "if any" has in no way placed the Appellant in any disadvantage or jeopardy consequent upon his being called upon to enter his defence or disprove the prima facie evidence led by the prosecution.

On the contention of the Appellant's Learned Counsel on the observation of trial Judge to the effect that Appellant's Counsel asked a question bordering on speculation to which PW5 answer: 'possibly'. Again the observation of the trial Judge is not inimical to the case or defence of the Appellant.

It is trite law that judgment or Ruling of a Court should not be read in convenient installments all in a bid by the Appellant or his Learned Counsel to disparage the judgment or Ruling. The judgment or Ruling of a Court must be read as a whole so as to bring out succinctly the decision of the Court or ratio decidendi of the judgment or Ruling. The same rule is applicable to Appellate Court. See: CHIEF ADEBISI ADEGBUYI V. APC & ORS (2015) 2 NWLR (PART 1442) 1 at 24 G - H to 25 A -C per FABIYI, JSC who said:

> "The court below found that the trial Judge could not have intended to use the word 'dismissal' after stating clearly that the issues are triable and evidence would have to be taken. It rightly found that it is not every slip of a judge that can result in the judgment being set aside. For a mistake to so result, it must be substantial in the sense that it affected the decision appealed against. The case of *Onajobi v. Olanipekun* (1985) 11 SC (Pt. 2) 156 is in point.
>
> This court said it clearly in *Adebayo v. Attorney-General, Ogun State* (2008) 2 SCNJ 352 at 366-367, (2008) 7 NWLR (Pt. 1(85) 20 I @ pg 221 paras. C-D per Niki Tobi, JSC that:
>
> > "In order to pick faults in judgment of a trial Judge, appellate court should not take paragraphs or pages in isolation or in quarantine but must take the whole judgment together as a single decision of the court. An appellate court cannot allow an appellant to read a judgment in convenient installments to underrate or run down the judgment."
>
> I cannot fault the approach of the court below. The reasoning process of the Judge before the use of the word 'dismissed', to my mind, after a slow and careful reading of same, shows that it is a Slip. The law allows a court to rectify any slip in a judgment as

long as it does not amount to a miscarriage of justice. See *Alh. I. Y. Ent. Ltd. v. Omolaboje* (2006) WRN 23 at 176, (2006) 3 NWLR (Pt.966) 195. A party should not employ technicality to frustrate the justice of a case. See *Falobi v. Falobi* (1976) 9-10 SC 1, (1976) 1 NMLR 169."

The Appellate Court is always interested in whether the evidence on the printed record support the decision or conclusion reached in a case by the Court below and not the route taken to reach the decision. See ALHAJI UMARU SANDA NDAYAKO & ORS VS. ALHAJI HALIRU DANTORO & ORS (2004) 13 NWLR (PART 889) 187 at 220 F - G per EDOZIE, JSC who said:

"An appellate court is only concerned with whether the judgment appealed against is right or wrong not Whether the reasons are. Where the judgment of the Court is right but the reasons are wrong, the *appellate* court does not interfere. It is *only* where *the* misdirection has caused the Court to come to a wrong *conclusion* that the appellate court will interfere: *see Ahaye v. Ofili* (1986) NWLR *(PI.* 15) 134 at 179; *Ukejianya v. Uchendu* 19 WACA 46 Since in the instant case, there Was evidence on record to support the finding of service of exhibit *NB/1* on *the* appellants the giving of a wrong reason by *the* Court below in arriving at the same conclusion is of no moment."

I have also read the record of appeal particularly the evidence of PW1 - PW5, the Ruling of the trial Court and Briefs of Arguments of the parties to this appeal and I am of the firm view that the review of the evidence by the lower Court was not slanted in favour of the prosecution against the Appellant. The lower Court was expected to be brief in his analysis of the evidence at the stage of the no case submission. In any event what calls for examination on a

no case submission is whether there is any evidence from the prosecution no matter how slight linking the Defendant with the commission of the offences for which he was charged and whether the evidence linking the Defendant has been discredited under cross examination. The trial Judge is also called upon at no case submission stage to find out if the elements or ingredients of the offence(s) for which the Defendant is charged have been established and NOT to go into any elaborate or extensive review of evidence of witnesses. The lower Court was right in its decision calling on the Appellant to enter upon his defence.

In the result all the four issues distilled for determination are hereby resolved against the Appellant. The Appellant's appeal lacks merit and it is hereby dismissed in its entirety.

The Ruling of the High Court of Justice of the Federal Capital Territory (Coram HON. JUSTICE A. O. OTALUKA) delivered o 17th day of October, 2019 overruling the no case submission of the Appellant and calling upon the Defendant/Appellant to enter upon his Defence in charge No. FCT/HC/CR/76/2013 FRN VS. HON FRAOUK M. LAWAN IS HEREBY AFFIRMED.

PETER OLABISI IGE
JUSTICE, COURT OF APPEAL

APPEARANCES:

MIKE OZEKHOME SAN with GODWIN IYINBOR ESQ. for Appellant

EYITAYO FATOGUN ESQ with CHIKE NWOGBO for Respondent.

I have read before now the lead judgment of my learned brother, ***PETER O. IGE, JCA*** just delivered. I agree entirely with the reasoning and conclusion that this appeal is devoid of merit.

A 'no case' submission as the name implies is a submission of no prima facie case to answer made on behalf of the accused person which postulates one or two things, or both of them at once:

(1) **Such a submission postulates that there has been throughout the trial to legally admissible evidence of whom the submission has been made, linking him in any way with the commission of the offence with which he had been charged, which would necessitate his being called upon for his defence;**

(2) **That whatever evidence there was which might have linked the accused person with the offence has been so discredited that no reasonable court can be called upon to act on it as**

establishing guilt in the accused person concerned.

When a no case submission is made like in the instant case therefore, the trial court is not thereby called upon at that stage to express any opinion on the evidence before it.

The court is only called upon to rule that there is before it no legally admissible evidence linking the accused person with the commission of the offence with which he is charged:

IGABELE V STATE (2004) 15 NWLR, PT 896, 314; AITUMA V STATE (2007) 5 NWLR, PT 1028, 466; CHYFRANK NIGERIA V FRN (2019) LPELR - 46401 (SC) and **OLAGUNJU V FRN (2018) LPELR – 43909**

A no case submission may be upheld where:

(i) There is no evidence to prove an essential element of the alleged offence;

(ii) The evidence adduced has been so discredited as a result of across examination and

(iii) The evidence is so manifestly unreliable that no reasonable tribunal or court can safely convict

on it. See **AITUMA V STATE (SUPRA)** and **AKWA V COP (2003) 4 NWLR, PT 811, 461.**

Given the evidence laid before the trial lower court, a lot of which has been reproduced in the lead judgment of his Lordship, I am in total agreement with him that the learned trial judge rightly reached the conclusion that the accused/appellant had a case to answer. This position is fortified by even a cursory look at the issues raised by the appellant in his brief in support of this appeal. None of the four issues challenges the fact that there was no evidence led to prove an essential element of the alleged offence; or that the evidence led has been so discredited as a result of cross examination or so manifestly unreliable that no reasonable tribunal or court can safely convict on it. In other words the appellant failed miserably to satisfy any of the conditions laid down that would have enabled the court uphold his submission of no case. The point should be made that in a 'no case submission, the focus is not on the conduct of the trial judge but on the nature and quality of evidence led. The appellant sadly missed the focus and this has proved fatal to his appeal.

I should also perhaps pause to observe that in all cases both civil and criminal, the trial judge is in a better position to administer justice fairly when he can decide all matters on the merit. That is to say when he hears from both sides.

The appellant should go and enter his defence so that the trial court can have the whole story that will enable him consider every available defence open to the appellant from the evidence.

This appeal fails and I dismiss it. I affirm the ruling of the trial court that the appellant be called upon to enter his defence.

PATRICIA AJUMA MAHMOUD
JUSTICE, COURT OF APPEAL

APPEAL NO: CA/A/1041C/2019

FOLASADE AYODEJI OJO, JCA

I had the opportunity of reading in draft the lead judgment just delivered by my learned brother, PETER OLABISI IGE, JCA. His lordship has admirably dealt with all the pertinent issues in this appeal and I completely agree with him that this appeal lacks merit.

The Appellant who pleaded not guilty to all the counts of the charge proffered against him at the lower court made a no case submission at the close of the prosecution's case. The learned trial judge rejected the no case submission and called on the Appellant to enter his defence. Dissatisfied with the ruling on his no case submission, the Appellant filed the instant appeal.

The law is settled that when an accused person makes a no case submission, all he is saying is that the prosecution has failed to place before the court legally admissible evidence linking him with the commission of the offence with which he has been charged or that the evidence placed on record has been so discredited under cross examination that no reasonable court and/or tribunal can safely convict on it. It is further the law that the duty of the trial judge at the stage of no case submission is not to embark on a determination of the credibility of the witnesses or evaluate evidence on record to ascertain whether the prosecution has proved its case beyond reasonable doubt. All that is required of him is to ascertain whether based on evidence before the

court, some explanation is required from the accused person. See OKAFOR VS. STATE (2016) 4NWLR (PT. 1502) 248; ALEX VS. FEDERAL REPUBLIC OF NIGERIA (2018) 7 NWLR (PT.1618) 228; OKO VS. STATE (2017) 17 NWLR (PT.1593) 24.

IN ODAY VS. STATE (2019) 2 NWLR (PT.1635) 97, the supreme court per Kekere-Ekun JSC held as follows:

> *"What constitutes a prima facie case when a submission of no case to answer has been made has been explained in a plethora of decisions of this court. Although there is no precise definition, a prima facie case has been held variously to mean that there is ground for proceeding, that the evidence led by the prosecutor is good and sufficient on its face, that there is a case in which there is evidence which will suffice to support the allegation made in it and which will stand unless there is evidence to rebut the allegation.* SEE AJIDAGBA VS. POLICE (SUPRA); AJIBOYE V. THE STATE; AGBO VS. THE STATE (2013) 11 NWLR (PT.1365) 377, UBANATU VS. C.O.P (SUPRA). *It is also the position of the law that a prima facie case isn't the same as proof, which comes later when the court has to determine whether the accused is guilty or not.* See OKO VS. THE STATE (SUPRA); KALU VS. FRN & ORS (2016) LPELR-40108 (SC) at 16-17 E-A; (2016) 9 NWLR (PT. 1516) 1."

A calm consideration of the oral evidence and documentary evidence placed before the trial court reveal that PW5 passed various sums of money to the Appellant. There is also evidence that subsequent to the exchange of money between them, the name of one of the companies owned by PW5 was dropped from the list of companies indicted by the adhoc committee of the House of Representatives chaired by the Appellant. These pieces of evidence have not been shown to be manifestly unreliable and were not discredited under cross examination. There is evidence on record that shows the Appellant in his capacity as chairman of the adhoc committee enjoyed some financial benefits in anticipation of some act to be performed by him. I agree with the trial court that there is need for the Appellant to enter his defence and proffer explanation to the allegation against him. The trial judge was right when he held the prosecution established a prima facie case against the Appellant. This is all that is required at this stage. The issue of credibility of witnesses is immaterial at this stage and does not arise.

It is for the above and the more elaborate reasons given by my learned brother in the lead judgment that I also dismiss this appeal and affirm the decision of the trial court.

HON. JUSTICE FOLASADE AYODEJI OJO

JUSTICE COURT OF APPEAL