IN THE COURT OF APPEAL
IN THE AKURE JUDICIAL DIVISION
HOLDEN AT AKURE

ON FRIDAY THE 19TH DAY OF MAY, 2017

BEFORE THEIR LORDSHIPS:

HON. JUSTICE U. I. NDUKWE-ANYANWU	JUSTICE, COURT OF APPEAL (PRESIDING)
HON. JUSTICE M. A. DANJUMA	JUSTICE, COURT OF APPEAL
HON. JUSTICE R. M. ABDULLAHI	JUSTICE, COURT OF APPEAL

APPEAL NO: CA/AK/96C/2011

BETWEEN:

ERIC OBIKEZE :::::::::::::: :::::::::::::: APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA :::::::::::::: RESPONDENT

JUDGMENT
(DELIVERED BY HON. JUSTICE RIDWAN MAIWADA ABDULLAHI, JCA)

This Peculiar appeal by the Appellant had three (3) different notice of appeal against three (3) different rulings of the trial court. The first notice of appeal (page 53 of the Record) is the appeal filed on 3rd December, 2010 against the ruling of the trial court of 22nd November, 2010. The appeal is contesting the decision admitting the undertaking dated 18th July, 2009 as exhibit.

The second notice of appeal (at page 56 of the Record) is the appeal filed on 31st January, 2011 against the ruling of the trial court of 18th January, 2011. The appeal is contesting the decision of the court refusing to admit the further counter affidavit of **Kuburat Oketunde** as an exhibit and marking same rejected.

The third notice of appeal (at page 59 of the Record) is the appeal filed on 24th May, 2011 against the ruling of the trial court of 9th May, 2011. The appeal is contesting the decision of the court overruling the appellant's submission of no case to answer.

The three (3) Notices of Appeal were consolidated on an Appellant/Applicant's application in a motion on notice dated 10/6/2013 and filed on 13/6/2013 which was moved and granted on the 25/5/2016.

In the Appellant's Brief of Argument, it is stated thus:

> **"This is an appeal by the accused/appellant challenging the ruling of the Federal High Court, Osogbo delivered on 9/5/2011 which dismissed the 'NO Case to answer'** made on his behalf by his Counsel."

Parties in this appeal filed and exchanged their respective briefs and the appeal was heard on the 22nd March, 2017 wherein the briefs were adopted by their learned counsel who appeared on that day.

The Appellant's Brief of Argument filed on 9/11/2011 but deemed on 6/2/2017 together with the Appellant's Reply Brief filed on 27/5/2013 but deemed on 6/2/2017 were both identified and adopted by **Nnamdi Otukwu Esq.** who settle same. The Respondent's Brief of Argument filed on 26/4/2013 and deemed on 6/2/2017 was adopted by **Funke Fawole (Mrs)** who settled same.

The Respondent's Brief of Argument contained Notice of Preliminary Objection and argument in support thereof to the grounds of objection as contained in paragraphs 2 to 4.05 at pages 3-8 of the brief.

On the first ground of objection, learned counsel to the Respondent referred to S. 241(1) (a) & (b) of 1999 Constitution and S. 242(1) of the same and submitted that it is only a final decision of the Federal high Court or the State High Court that can be appealed against as of right. That if it is an interlocutory appeal, leave of the trial court or of Court of Appeal must be sought and obtained before such appeal is filed. He relied on the case of

Oketade v. Adewunmi & Ors (2010) 4 SCM. 1 at page 11 paragraphs A-C.

That there is nothing on record to show that the Appellant in this appeal either applied for or obtained any leave of the trial court or this court before filing any of the three (3) notices; therefore the three Notices of Appeal are in breach of the condition precedent having regard to Sections 241(1)(a) and S. 242(1) of the 1999 CFRN. (as amended).

On the second and third grounds of objection, he submitted that all the grounds contained in the three Notices of Appeal are of mixed law and facts and referred to the grounds of appeal at pages 53-62 and their particulars in the record of appeal.

That a cursory look at the said grounds of appeal and their particulars will reveal that they deal with evidence and the questioning of evaluation of facts by the trial court before the application of law. Cited the cases of **Kashadadi v. Noma (2007) 12 SCM (Pt. 2) 349 at 356 and Opuiyo & Ors v. Omoniwari & Anor (2007) 12 SCM (Pt. 2) 563 at 571 and 574.**

On the authorities of the above cited cases and provisions of S. *241(1)(a) and (b) and also S. 242(1) (supra)*, Counsel opined that the Appellant's

grounds of appeal in the three Notices of Appeal are in competent on the ground that they contained grounds of mixed law and facts which required that leave of the trial court or this court first be sought and obtained before filing those appeal; but no such leave was sought or obtained before filing the appeal. We were urged to so hold and strike out the three (3) Notice of Appeal and also the entire appeal.

On the fourth and fifth grounds of objection, Learned Counsel contended that the lumping of the three (3) different appeals together amounts to an abuse of court process and referred to pages 53-62 of the record of appeal.

That there is nothing on record to show that the order of this court was sought or obtained to consolidate or lump the three (3) distinct and different appeals together while it is conceded that an Appellant can file more than one Notice of Appeal in an appeal, such Notices of Appeal must not only relate to the same decision but the Appellant must also be ready to choose one out of the numerous Notices of Appeal that he wish to use and withdraw the rest. Referred to the case of **Bilante v. NDIC (2011) 8 SCM 40 at 50 paras. B-D.**

That the Appellant formulated issues on all the grounds of appeal contained in the three (3) Notices of Appeal in his Brief of Argument which are subsequently argued therein.

Counsel referred to Order 17 Rule 3(1) of the Court of Appeal Rules, 2011 and submitted that filing of multiple Notices of Appeal in respect of different interlocutory decisions of the trial court and lumping them together under a single appeal without order of consolidation from this court amounted to an abuse of process of court. We were urged to so hold and uphold the preliminary objection and to dismiss this appeal as being incompetent.

Reacting to the preliminary objection, Learned Counsel for the Appellant in Appellant's Reply Brief contended that the Respondent's Counsel did not take into account or consider the provisions of S. 241(1) (H)(i) of the 1999 constitution which stated thus:

> **"An appeal shall lie from the decisions of the Federal High Court or State High Court to the Court of Appeal as of right in the following cases:-**

Decision made or given by the Federal High Court or a State High court where the Liberty of a person or the custody of an infant is concerned."

He submitted that the subsection exempt appeals challenging the decision of a court affecting the liberty of a person from the list of appeals requiring the leave of court. That the subsection did not draw any distinction between interlocutory or final decision. That the decision in **Oketade v. Adewunmi & Ors (supra)** relied upon by the Respondent is only in respect of a single situation contained in subsection (a) and (b) of S. 241(1). It did not cover all the situations listed in S. 241 of the Constitution.

Counsel urged us to hold that the appeal made against the ruling of the Court on a *'No Case* Submission' does not require the leave of court. That by Section 241(1)(f)(i) (supra) it is an appeal as of right and that an appeal cannot be as of right and the same time requires the leave of court.

He opined that hearing the appeal on the basis of one record of appeal and one brief of argument would not amount to an abuse of court process nor would it occasion a miscarriage of justice. We are urged to so hold.

RESOLUTION ON PRELIMINARY OBJECTION.

The gravamen of the objection is that the grounds of appeal are against the interlocutory decisions of the trial court and no leave of either the trial court or this court sought and obtained before the appeals were filed. The Respondent referred to S. 241(1)(a) and (b) and S. 242(1) of the 1999 Constitution and also case laws cited to buttress the argument that the three (3) Notices of Appeal filed and relied upon by the Appellant are incompetent which virus infected the appeal.

The appeal stems from a criminal trial which no doubt the liberty of the Accused/Appellant is at stake because the law imposes a duty on him to be physically present at trials. Furthermore, if he is convicted, it invariably affects his liberty. For these reasons *S. 241(1)(f)(i) of the 1999 CFRN* comes to play as a vital tool in this appeal. This subsection as quoted in this judgment somewhere above exempts appeals challenging the decision of the court affecting the liberty of a person from the list of appeals requiring the leave of court. Moreso that it does not draw any distinction between interlocutory or final decision. This I found and so hold.

On issue of consolidation of the three (3) Notices of Appeal, I early enough at the beginning of this judgment referred to the motion on notice dated

10/6/2013 and filed in this court on 13/6/2013 which was moved and granted on the 25/5/2016 consolidating the three (3) Notices of Appeal filed differently by the Appellant. for this reason, the issue of an abuse of court process has been taken care of by the grant of the application on 25/5/2016.

The preliminary objection is therefore discountenance in the light of the aforementioned.

STATEMENT OF FACTS

The Appellant was arraigned on 5th May 2010 before the Federal High Court, Osogbo Judicial Division on a three (3) count charge of conspiracy, obtaining property under false pretence and stealing contrary respectively to Sections 8(1)(a) and 1(3) of the Advance free fraud and Related Offences Act, 2006 and also Section 390(9) of the Criminal Code cap C. 38 L.F.N 2004. He was alleged to have conspired and committed the offence with one Sola Abudu presently at large. He pleaded not guilty to the 3 counts.

The facts as presented by the Prosecution's two witnesses are that PW1, James Sunday, sometimes in September, 2008 approached Sola Abudu to whom he knew to be dealing in importation of trucks. He (PW1) testified that when he had enough money to purchase a MAN Diesel Truck as discussed

earlier with the suspect at large, he (PW1) contacted Sola Abudu who asked him to pay into the account of his partner called ERIC OBIKEZE (The accused person) at Diamond Bank. He said he made payment twice into the Bank Account in the sums of N450, 000 in September, 2008 and N670,000 in October, 2008 and the bank tellers were tendered and admitted as Exhibits, A and A1. PW1 said after the payments he was told by the suspect at large that everything has been handed over to the accused person, but despite being told that the vehicle will be delivered, he was never contacted thereafter. He also said that whenever he called the suspect at large he continued to ignore him. He thereafter reported the case at the SCID.

The PW2 testified that when the Appellant was picked by the Police, he made confessional statement to the effect that the money was withdrawn by him and that he made a written undertaking to pay the said money. The Appellant's statement was tendered and admitted as Exhibit D; the written undertaking when sought to be tendered was objected to on ground that it was obtained under duress.

Trial within trial was conducted on the undertaken and same was admitted as Exhibit E.

In Exhibits D and E (at pages 67-70 of the Record) the Appellant admitted that the money was paid into his DIAMOND Bank Account. He also admitted that the suspect at large is his friend and that he knows him. He made undertaking to pay back the money in question.

At the close of the Prosecution's case the Appellant chose to make a 'No Case Submission' which was opposed by the Prosecution. In its ruling of 9th May, 2011 the trial Court overruled the 'No Case Submission' and invited the Appellant to enter his defence (see page 52 of the Record). Hence the present appeal.

The Appellant formulated the following four issues for determination of the appeal, thus:

(a) Whether from the totality of evidence adduced by the prosecution witnesses a prima facie case has been made out against the accused/appellant so as to require him to be called upon to make a defence.

(b) Whether the trial court failed in its hallowed duty to consider the evidence of prosecution witnesses

and submissions of counsel before arriving at its decision and if the answer is in the affirmative whether this court can assume jurisdiction, consider and evaluate the evidence and the submissions thereon.

(c) **Whether in view of the evidence tendered in the course of Trial within Trial, the trial Judge was right in admitting the Undertaking which was extracted from the accused person under duress.**

(d) **Whether the refusal to admit in evidence a certified true copy of a Further Counter-Affidavit of Kuburat Oketunde did not amount to wrongful exclusion of admissible evidence.**

The Respondent adopted issue one raised by the Appellant in his brief of argument for the determination of the appeal, to wit: **"Whether from the totality of evidence adduced by the prosecution witnesses a prima facie case has been made out against the accused/appellant so as to require him to be called upon to make a defence."**

Looking at the issues enumerated above, the first issue can adequately be used in determining the appeal while the other three issues will be subsumed therein.

ARGUMENT ON THE SAID ISSUE

The Learned Appellant's Counsel contended that all through the evidence of the Prosecution witnesses, there is no mention of the fact that the accused person and Sola Abudu or indeed any other person for that matter conspired to commit any of the offences with which he is charged or any offence for that matter. That in his evidence, the Pw1 (James Sunday) stated that he went to Sola Abudu to purchase a truck (at page 5 of the record) and that there was no mention of the accused person. In fact Pw1 testified that he saw the accused person for the first time in Osogbo in 2009 when the Police invited him at page 7 lines 18-19 and page 9 lines 5-6 of the record. Meanwhile the conspiracy was alleged to have taken place in Ayetoro-Osogbo in September, 2008 as contained at page 2 of the charge sheet.

Counsel is of the view that the transaction from the testimony of Pw1, is commercial and no evidence that the accused person agreed with Sola Abudu to commit any of the offences charged.

He submitted that even the (I.P.O) Investigating Police Officer, Olusegun Adebayo who testified as Pw2 did not say that the accused person conspired with Sola Abudu or some other persons to commit the offences charged. That Pw1 and Pw2 confirmed that what transpired between the complainant (Pw1) and Sola Abudu was purely a commercial transaction. This piece of evidence removes criminality in the transaction.

In view of the submissions made with respect to count 1 of the charge, we were urged to hold that no evidence was adduced by the Prosecution to prove conspiracy and to discharge and acquit the accused person on Count 1.

Learned Counsel for the Appellant submitted that there is no scintilla of evidence from the Prosecution witnesses linking the accused person with the offence of Obtaining Money By False Pretence from the Pw1, James Sunday as alleged in Count 2. Referred to Pw2 testimony under cross-examination, thus: **"The accused person did not go to James Sunday to obtain ₦1,200,000.00."** That the Pw2 further stated that **"In September, 2008 when the offence was alleged to have been committed, the accused person was in London not in Ayetoro-Osogbo where it was committed."**

That both the Pw1 and Pw2 testified to the fact that the accused person was first seen in Osogbo in 2009. That Pw1 further stated that it was Sola Abudu who sent the accused person's Bank Account number to him and did not know where the accused was when he made the payment.

Counsel urged us to hold that there is nothing linking the accused person with the offence charged in Count 2 and nothing has been established by the Prosecution. Rather from evidence the prosecution witnesses exonerated the accused from the alleged offence. Referred to the case of **Uzoka v. FRN (2010) 2 NWLR (Pt. 1177) at P. 118**.

Learned Appellant's Counsel adopted the argument proffered in respect of Count 2 on Count 3 which is a charge of stealing of **₦1,200,000.00** property of James Sunday at Ayetoro Osogbo. He argued that there is no evidence tendered at all in respect of this charge.

That Pw1 (James Sunday) testified that: **"I made the first payment of ₦450,000.00 in September, 2008. The second was ₦670,000.00 in October, 2008"** (at page 6 lines 1-3 of the record). The Tellers evidencing the payment were tendered as Exhibits 'A' and 'A1'. He submitted that from the evidence above, the total sum paid into accused person's account was

₦1,120,000.00 which is at variance with the amount of **₦1,200,000.00** alleged to have been stolen.

That in Exhibit 'B' (petition dated 3/12/2008) the Pw1 stated that he was asked by Mr. Sola Abudu to pay the sum of ₦1.4million for the purchase of truck (as shown on page 74 of the record). This is also not in line with the amount allegedly stolen.

Counsel submitted that the position of law is that where an accused person is charged with stealing a specific amount, the Prosecution bears the burden to prove that particular amount. Cited the case of **Onagoruwa v. State (1993) 7 NWLR (Pt. 303) 49 at 91**.

It is submitted that the accused could not have stolen any money from the Pw1 in 2008 when he was not in Osogbo. Furthermore, there is no evidence that the accused person ever spoke to the complainant either on the phone or in person. Pw1 stated that he had never seen nor spoken to the accused person before his arrival in Osogbo in 2009.

It is contended that mere paying money into a person's account without more cannot affix that person with criminal liability. This is on the basis that such conduct lacks the necessary 'mens rea' and the accompanying 'actus

reus' for a conviction. Referred to the case of **Adeniji v. State (1992) 4 NWLR (Pt. 234) p. 248 @ 265;** where it was held that the Prosecution must prove not only the guilty mind of the accused but also his guilty act.

Leaned Appellant's Counsel submitted that the Prosecution has failed woefully to prove that the accused/appellant stole any money from the complainant. We were therefore urged to hold that the Prosecution did not prove the charge of stealing and to discharge and acquit the accused person.

In response, the Learned Counsel to the Respondent submitted that a submission of 'No case to answer' may properly be upheld; (a) when there has been no evidence to prove an essential element in the alleged offence and (b) when the evidence adduced by the Prosecution has been so discredited as a result of cross-examination or so manifestly unreliable that no reasonable tribunal could safely convict on it. Referred to the case of **Emedo & Ors v. The State (2002) 13 SCM 611 at 614.**

It is further submitted that at this stage, the Court is not called upon to express any opinion on the evidence before it. Cited the cases of **Tongo v. COP (2007) 9 SCM 113 at 123 and Ekwungo v. FRN (2008) 12 SCM (Pt. 1) 57 at 64.**

Counsel is of the view that all the argument proffered by the Appellant's Counsel bordered on proof beyond reasonable doubt and not 'prima facie' case which the court is enjoined to look at, at this stage. Relied on the case of **Abacha v. The State (2003) 3 ACLP 333 at 357.** Also referred to S. 8 & S. 1(1)(c) and (3) of the Advance Fee Fraud & Related Offences Act, 2006 and contended that the law is trite that to prove/show conspiracy, it is not necessary that the Conspirators should know each other or should be seen together coming out of the same premises. That it need not be established that the individuals were in direct communication with each other or consulting together. What is important is that there is an agreement with a common design. Referred to **Oyediran v. The Federal Republic (2003) ACLR 513 at 522-523. Abacha v. The State (supra) at 389**.

That the salient facts presented by the Prosecution are that the suspect at large asked the victim to pay certain amount of money into the account of his partner, the Appellant in this case, for the purpose of supply of MAN DIESEL Truck. The accused acknowledged and in fact admitted that he knows the suspect at large being his friend. He also admitted that the money was actually paid into his account and gave an undertaking during investigation that he will pay the money.

That a prima facie case is made for the offences charged with the available facts, as it could not have been possible for the suspect at large without the aid of the Appellant to defraud their victim. We are urged to so hold.

Learned Respondent's Counsel contended that the heavy weather made on the OPINION extracted from Pw2 during cross-examination at page 32 of the record that he found what transpired between the victim and Sola Abudu was purely commercial transaction geos to no issue. That apart from the fact that S. 1(1)(c) (supra) provides that the offence can be committed whether or not the delivery is induced through medium of a contract induced by the false pretence, it is not a place of a witness to express an opinion or make a finding. Expression of opinion and making a finding is an exclusive preserve of the court. We are urged to so hold.

On the whole, this Court is urged to discountenance the contentions of the Appellant on this issue and to hold that prima facie case of conspiracy, obtaining property under false pretence and stealing has been made out against the Appellant.

In reaction, the appellant's Counsel argued that it is not enough to cite the Section of the Act without evidence supporting same. That there is no evidence on record showing that the Appellant conspired with any person to

commit any offence. The obligation on the Respondent is to show the Court the evidence on record pointing to conspiracy.

That the Respondent at page 13 of its brief of argument stated that the Appellant acknowleged that he knows the suspect and that the later was his friend. It must be pointed out that the Appellant is yet to testify in this trial and that it is a mystery how it arrived at that conclusion.

That the reliance placed on S. 8 of the Advance Fee Fraud and Related Offence Act, 2006 is of no use as the Section is not an evidence but only shows what the offence is which requires evidence from the Prosecution witnesses to establish the offence, and there is none.

That the evidence given by a witness arising from his investigation cannot be said to be an opinion. It is conclusion based on findings.

Counsel urged the court to hold that no prima facie case has been made out against the Appellant as to require him to make a defence. He in conclusion urged this court to discharge and acquit the Accused/Appellant.

RESOLUSION ON THE ISSUE

It is no doubt that by the transmitted record of appeal filed in this court on the 26th of September, 2011 and deemed along side with the party's briefs of

argument on the 6th day of February, 2017, the Accused/Appellant herein is standing trial on a three (3) counts charge of conspiracy, obtaining property under false, pretence and stealing which he pleaded not guilt to before the lower court. The Prosecution led evidence in proof of the allegation.

The question is whether the Prosecution successfully established prima facie case in the course of prosecution that called for evidence in defence thereof on the part of the accused person who is the Appellant in this appeal.

Looking at the nature of evidence adduced by the Prosecution on record which has been dutifully captured in this judgment, it is left with much to be desired particularly with regards to the ingredients of the offences charged.

Beginning with count 1 which is a charge of conspiracy, the fact to be established by the Prosecution is the existence of one or more persons with whom the accused hatched a plot to commit an offence. In **Oduneye v. State (2001) 13 WRN 88,** the Supreme Court held that conspiracy consists not merely in the intention of two or more persons but rather in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. See also **Nwosu v. State (2004) 15 NWLR (Pt. 897) at 466** on the same principle.

My perusal of record disclosed that throughout the evidence of the prosecution witnesses, there was no mention of the fact that the accused person and Sola Abudu (suspect at large) conspired to commit any of the offences charged. Infact, there is no evidence on record to sustain the offence in Count 1 of the charge. This found and so hold.

On Count 2 which is a charge of obtaining money by false pretence from James Sunday, I have not found from record inclusive of the Exhibits tendered the direct connection of the accused person with the allegation; as the evidence adduced did not link the Appellant with the offence.

I am in agreement with the Learned Counsel for the Appellant that the reliance placed on S. 8 (supra) is of no use, as the Section together with S. 1(1) (c) and (3) of the Advance Fee Fraud and Related offences Act, 2006 referred to by the Respondent's Counsel which he relied upon are not evidence establishing the alleged offence. There is nothing by way of evidence which established the ingredient of the offence in proof of the allegation against the Accused/Appellant. The ingredients of the offence are itemised in the case of **Federal Republic of Nigeria v. Frank Amah & 1 Or. (2017) 3 NWLR (Pt. 1551) 139 at 162-163 paras. G-A**, thus:

(a) "That there is a pretence;

(b) That the pretence emanated from the accused person;

(c) That it was false;

(d) That the accused person knew its falsity;

(e) That there was an intention to defraud;

(f) That the thing is capable of being stolen;

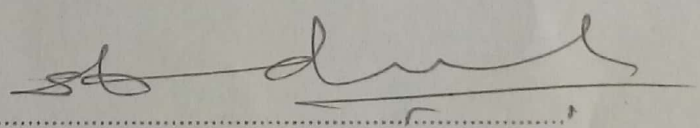
(g) That the accused person induced the owner to transfer his whole interest in the property"

On Count 3 which is a charge of stealing, the ingredients are equally not proved by way of evidence having failed to establish the ingredients of the 2nd Count. The proof of alleged stealing can only conveniently made from proof of the alleged obtaining money by false pretence. In the same case of **F.R.N. v. Frank Amah (supra) at page 167 paras. C-G**, the ingredients of stealing and fraudulent conversion are itemised.

I subscribed to the contention of the Learned Counsel for the Appellant that mere paying money into a person's account without more cannot affix that person with criminal liability. See the case of **Adeniji v. State (supra)**. Moreso, that from record, the Accused/Appellant was not shown to have induced the complainant (James Sunday) to make payment into his account.

I further agreed with the Appellant's Counsel contention that evidence given by a witness arising from his investigation as did by the Pw2 (I.P.O) in the case cannot be said to be an opinion. It is a conclusion based on his findings as a result of the investigation he conducted. It is an evidence. This I found and so hold.

Flowing from the aforementioned, the issue is resolved in favour of the Appellant against the Respondent. The appeal succeeds and the Ruling of the Federal High Court, Osogbo delivered on 9/5/2011 which dismissed the 'No Case to Answer' is hereby set aside and the Accused/Appellant herein is discharged as there is no prima facie case established against him on the alleged offences.



HON. JUSTICE RIDWAN MAIWADA ABDULLAHI
JUSTICE, COURT OF APPEAL.

APPEARANCES:

1. Nnamdi Otukwu Esq. with L. C. Onyekwere (Miss) for the Appellants

2. Funke Fawole (Mrs) Esq. for the Respondent

MOHAMMED AMBI-USI DANJUMA, JCA

My learned brother **Ridwan Maiwada Abdullahi, JCA** had availed me the opportunity of a draft of his leading Judgment in this appeal before now.

A study of the apt and articulately prepared Judgment has adequately and rightly in my view settled this appeal in favour of the deserving Appellant. The preliminary objection erected against this appeal was rightly dismissed as the appeal by an accused person undergoing criminal prosecution and more particularly who is in detention/remand or imprisonment or even on bail is an appeal involving the liberty of such a person.

In that instance such an Appellant does not need the leave of the Court to appeal an interlocutory Ruling affecting his liberty. See S. 241 (1) H (i) of the 1999 Constitution which provides thus:

"An appeal shall lie from the decisions of the Federal High Court or State high Court to the Court of Appeal as of right in the following cases:-

Decisions made or given by the Federal high Court or a State High Court where the liberty of the person or the custody of an infant is concerned. It is obvious that the specific mention of liberty in this subsection excludes the application of the general Rule as in the preceding subsection of S. 241 (1) (a) and (b) of the Constitution, 1999 provided. The principle of law applicable is the **Latin maxim espressio unius est exclusio alterius**, that is, the express mention of one thing means the exclusion of the general Rule or the other. See **A.G. Lagos State V. Attorney General of the Federation, 2014 (?) NWLR.**

Rule or the other. See **A.G. Lagos State V. Attorney General of the Federation, 2014 (?) NWLR.**

As relating the multiple Notices of Appeal filed, I agree with my Lord **R.M. Abdullahi, JCA** in the lead that the Notices were not incompetent and could be so filed. In this matter, the Notices, having been so filed and streamed lined by adoption on one of the Notices of Appeal relating to the challenge based on a No-case submission the objection subsequently raised on that issue of Notices of Appeal is nothing but an abuse and; the raising of an academic question; its determination will have no utilitarian value and stands only as a diversionary antic. Courts of law do not determine academic questions; such are for the academia. See **Efet's** case.

On the merit of the appeal, I align unequivocally with my Lord in the lead that no prima facie case had been established against the Appellant to warrant that he be condemned into entering a defence.

None of the ingredients of the offences alleged against him had been linked to him by the duality or any of **"mens rea"** i.e. mental element or **"actus reus"** i.e. positive act or omission directly or by relay as in snippets of acts as found by the Court in **Omisade V. The State (1963) NLR**.

The Appellant as an Accused must be given the benefit of doubt as the money obtained from the complainant may have been lodged into the Appellant account as a decoy and for a safe haven in a trusted innocent friend's Bank Account or a ploy to implicate a friend.

Being a criminal trial, evidence needed to have been led suggesting strongly such or any consensus and usual mutual practice of the Appellant and the **"Friend"** at large who obtained the money with a view to coming to a conclusion that they acted in concert in the transaction.

Having recovered the money, the long arm of the law may remain stretched and so also the vigilant eyes of the Law; as there is no limitation of Action in Criminal Prosecution, after all. This is one such case that the State Prosecutorial Agencies should copy other civilized climes around the world. Record keeping and patriotic honesty of official actions should keep the spirit of Law Agencies alive at all times, notwithstanding the generation of a particular criminal action.

Appeal allowed.

MOHAMMED AMBI-USI DANJUMA
JUSTICE, COURT OF APPEAL

CA/AK/96C/2011

DISSENTING JUDGMENT:

The facts of this case is as stated in the lead Judgment; which I was privileged to read.

The Appellant made a no-case submission after the prosecution had closed its case.

In a considered ruling, the learned trial Judge held that the appellant had a case to answer and must put in his defence.

The Appellant was aggrieved hence this appeal.

A no case submission means that there is no case for an accused to answer i.e. that there is no evidence on which even if the Court believe it, it could convict. Where a no case submission has been made, it must be emphasised that the Court is only to answer whether there is a prima facie evidence which if believed by the Court would support a conviction. Where such evidence exists, the trial court is bound to find that there is a case to answer. But if there is no such evidence, the Court must discharge the accused/Appellant. At the stage of no case submission, the court should not consider the credibility of the prosecution witness or witnesses. It is also premature for the court to believe or disbelieve the witnesses, since the defence is yet to present its witnesses. **Agbo V. The State 2010 LPECR 4989.**

In this appeal, the prosecution led evidence to show that the Appellant knew the person at large **Mr. Sola Abudu.** That the sum for which **Mr. Sola Abudu** defrauded the complainant was paid into the Appellant's account. That the Appellant admitted being credited with the said sum. That the Appellant withdrew part of the said sum from his account.

This is evidence enough to connect the Appellant to the crime charged.

The Courts have warned that the ruling should not be of in-ordinate length. It should therefore be brief and no observation should be made **Per Sanusi JCA** (as he then was) in **Agbo V. State (Supra).**

I therefore hold that the prosecution in this case has made out a prima facie case against the Appellant that he should be made to put in his defence.

This appeal is unmeritorious. It is dismissed. I affirm the ruling of the trial Court.

UZO I. NDUKWE-ANYANWU
JUSTICE, COURT OF APPEAL