

SUPREME COURT OF NIGERIA
FRIDAY 12TH JULY, 2002. SC. 234/2001
CORAM:- S. M. A. BELGORE, I. L. KUTIGI,
M. E. OGUNDARE, U. MOHAMMED, U. A. KALGO, JJSC

1. OSSAI EMEDO
2. CHRISTOPHER UKACHUKWU APPELLANTS
3. EMEKA NWAPA
V.
THE STATE RESPONDENT

CRIMINAL PROCEDURE - No case submission - Propriety of - Such submission is upheld when no evidence exist to prove offence - And when prosecution evidence cannot be relied upon - To convict accused (H1)

CRIMINAL PROCEDURE - Judgment - On no case submission - Propriety - In considering a no case submission - A judge should not write judgment - But a brief ruling - And make no observation on the facts (H2)

CRIMINAL PROCEDURE - Judgment - Technicality - Effect - Irregularity of writing judgment instead of a ruling - Is not a factor justifying setting aside of verdict - Unless a miscarriage of justice was occasioned (H3)

CRIMINAL PROCEDURE - No case submission - Determination - If a no case submission is made - Judge is to consider whether evidence exists for conviction - And whether it is safe to convict on such evidence (H4)

FACTS

Accused/appellants were arraigned at the Imo State High Court, for the murder of Chief Ijeoma Maduagwu. At the end of prosecution/respondent's case, the counsel for appellants made a no case submission. The learned trial judge considered the submission and agreed with the learned counsel for appellants that respondent had not established a prima facie case for appellants to open their de-

fence. He accordingly discharged all appellants. Dissatisfied with that decision, respondent filed an appeal at the Court of Appeal against the discharge of appellants. The court in a considered judgment, allowed the appeal. Hence, appellants were ordered to be rearrested and made to stand trial before another judge of the High Court. It is against that decision that appellants have filed this appeal to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the lower court was right in considering the appeal on one probable cause of death when, from the evidence before the court, there were other probable causes of death which would absolve the appellants from the criminal charges?

2. Whether the lower court was right in holding that a prima facie case was made out against the accused/appellants at the trial court?”

HELD (Unanimously allowing the appeal per **MOHAMMED JSC**)

CRIMINAL PROCEDURE - No case submission - Propriety of

1. 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 is so manifestly unreliable that no reasonable tribunal could safely convict on it. The decision to uphold or reject the submission should not depend upon whether the adjudicating tribunal would at that stage convict or acquit, but upon whether the evidence is such that a reasonable tribunal might convict. Although those considerations were expressed to be for the guidance of judges during criminal trials it is clear that they are of general applicability. It is now pertinent to ask, which evidence would then be used for the retrial of the appellants? After the prosecution had adduced such evidence which is so tenuous and unreliable it was obvious that the trial court had no alternative but to rule that the appellants had no case to answer and discharge them.

The fact that the judge erroneously wrote a “judgment” instead of a ruling does not improve the case of the prosecution. If evidence is not available or is so manifestly unreliable the court must uphold a submission and discharge the accused persons. Looking at the evidence as a whole it is abundantly clear that no reasonable tribunal can convict the appellants on the evidence adduced by the prosecution.

(pp. 2243 G/2246 C)

Judgment - On no case submission - Propriety

2. In the case in hand, the learned trial judge, in upholding the submission of learned counsel for the appellants, wrote what, to all intents and purposes, was a final judgment. He weighed the evidence adduced by the prosecution and considered the discrepancies in the testimonies of witnesses for the prosecution. The Court of Appeal held that the learned trial judge was wrong to do so at that stage of the trial. I entirely agree. There are several decisions of this court warning against the discharge of accused persons after a submission of no case to answer, particularly when it is clear from the evidence adduced that the facts disclose some explanation which the accused has to make in view of what the prosecution has so far established from the evidence. It is the judge’s duty however, when a submission of no case to answer is made to discharge an accused where the evidence adduced by the prosecution does not disclose the necessary minimum evidence establishing the facts of the crime charged. In doing so the judge does not write a “judgment”. It is not the judge’s job, at that stage, to weigh and evaluate evidence or decide who is telling the truth or who is lying and he is not to conclude that what the prosecution has adduced is unreliable. In considering a submission of no-case the correct procedure is to write a brief ruling and make no observation on the facts. (p. 2244 A)

Judgment - Technicality - Effect

3. Be that as it may, I will regard the procedure followed by the judge in writing a judgment instead of a ruling as an irregularity. An irregularity is not a factor justifying the setting

aside of a verdict or decision unless it is established that there has been a miscarriage of justice by the court's decision.
(p. 2244 G)

CRIMINAL PROCEDURE - No case submission - Determination

- B ***4. If a submission of no case is made it is the judge's duty not only to consider whether there is some scintilla of evidence which in law would lead to conviction, but also whether it would be safe to convict on the evidence as it stands.*** (p. 2245 B)

C **REPRESENTATION**

A. U. Mberekpe for the Accused/Appellants

L. C. Azuama (Principal State Counsel, Imo State) for Respondent

D **CASES REFERRED TO**

R. v. Plain (1967) 1 WLR 565

Ibeziako v. C. O. P. (1963) 1 All NLR 61

Stoneley v. Coleman (1974) Crim L. R. 254 D. C

Ogucha v. The Queen (1959) 4 FSC 64

- E R. v. Barker (1977) 65 Cr. App R 287

Bello v. The State (1967) N.M.L.R. 1

R. v. Hipson (1969) Crim. L.R. 85

LEAD JUDGMENT BY MOHAMMED JSC

- F The three appellants, together with one Richard Ozeke, were arraigned before Njiribeako J. of Imo State High Court, for the murder of chief Ijeoma Maduagwu. At the end of the prosecution's case the counsel for the appellants made a no-case submission against all
G the accused persons. The learned trial judge considered the submission and agreed with the learned counsel for the accused persons that the prosecution had not established a prima facie case for the accused persons to open their defence. He accordingly discharged all the accused persons.

- H Dissatisfied with that decision, the state filed an appeal to the Court of Appeal against the discharge of Ossai Emedo, Christopher Ukachukwu and Emeka Nwapa. They are the three appellants before this court. The Court of Appeal in a considered judgment, delivered by Ikongbeh JCA and concurred in by Ogebe and Akpiroroh

JJCA, allowed the appeal. The three appellants were ordered to be re-arrested and made to stand trial before another judge. It is against that decision that the appellants have filed this appeal. Learned counsel for the appellants identified two issues which he said had arisen for the determination of the appeal. The issues are:

*“1. Whether the lower court was right in considering the ap- B
 peal on one probable cause of death when, from the evidence be-
 fore the court, there were other probable causes of death which would
 absolve the appellants from the criminal charges?”*

*2. Whether the lower court was right in holding that a prima C
 facie case was made out against the accused/appellants at the trial
 court?”*

In the respondent’s brief learned counsel for the respondent adopted issue 2 as formulated by appellant’s counsel and for the second issue he questioned; whether in a “no case submission” the D
 trial court would need to speculate on how the deceased died in the
 face of the evidence adduced by P.W.5 and P.W.10.

The main issue in this appeal is whether the Court of Appeal was right to hold that a prima facie case had been established against the appellants. It is a practice in the criminal courts, at the close of E
 the prosecution’s case for the defence to make a submission that the
 evidence has not established a prima facie case to call upon the ac-
 cused to open his defence for one or more or the whole counts in
 the charge. If a judge upholds a submission for any of the counts the F
 accused should during the rest of the trial be regarded as no longer
 being charged on that count even though no formal verdict of Not
 Guilty has been taken. See R. v. Plain (1967) 1 W.L.R 565.

If however the court upholds the submission for all the counts the accused shall be discharged. **A submission of no case to an- G
 swer may properly be upheld (a) when there has been no evi-
 dence 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 is so H
 manifestly unreliable that no reasonable tribunal could safely
 convict on it. The decision to uphold or reject the submission
 should not depend upon whether the adjudicating tribunal
 would at that stage convict or acquit, but upon whether the
 evidence is such that a reasonable tribunal might convict.**

Although those considerations were expressed to be for the guidance of judges during criminal trials it is clear that they are of general applicability. See Ibeziako V. C. O. P. (1963) 1 All NLR 61 and Stoneley v. Coleman (1974) Crim L.R. 254 D.C.

In the case in hand, the learned trial judge, in upholding the submission of learned counsel for the appellants, wrote what, to all intents and purposes, was a final judgment. He weighed the evidence adduced by the prosecution and considered the discrepancies in the testimonies of witnesses for the prosecution. The Court of Appeal held that the learned trial judge was wrong to do so at that stage of the trial. I entirely agree. There are several decisions of this court warning against the discharge of accused persons after a submission of no case to answer, particularly when it is clear from the evidence adduced that the facts disclose some explanation which the accused has to make in view of what the prosecution has so far established from the evidence. Similar opinion was expressed by Abbott F. J. in Ogucha v. The Queen (1959) 4 F.S.C 64. **It is the judge's duty however, when a submission of no case to answer is made to discharge an accused where the evidence adduced by the prosecution does not disclose the necessary minimum evidence establishing the facts of the crime charged. In doing so the judge does not write a "judgment". It is not the judge's job, at that stage, to weigh and evaluate evidence or decide who is telling the truth or who is lying and he is not to conclude that what the prosecution has adduced is unreliable.** See R. v. Barker (1977) 65 Cr. App R 287. **In considering a submission of no-case the correct procedure is to write a brief ruling and make no observation on the facts -** Bello v. The State (1967) N.M.L.R. 1.

Be that as it may, I will regard the procedure followed by the judge in writing a judgment instead of a ruling as an irregularity. An irregularity is not a factor justifying the setting aside of a verdict or decision unless it is established that there has been a miscarriage of justice by the court's decision. The issue to consider at that stage is whether the learned trial judge was wrong to discharge the appellants at the stage he did. It is relevant to consider whether the evidence adduced by the prosecution

tion is sufficiently enough to convict the appellants of the offence charged in the information. It is essential before the Court of Appeal orders for the re-arrest of the appellants to look into the evidence available to the prosecution and see if the appellants would not be put into double jeopardy if made to go through the rigour of a retrial whose end result will be the same as the original one. ***If a submission of no case is made it is the judge's duty not only to consider whether there is some scintilla of evidence which in law would lead to conviction, but also whether it would be safe to convict on the evidence as it stands.*** See R. v. Hipson (1969) C
Crim. L.R. 85.

For the above reasons I want to be satisfied that the evidence adduced by the prosecution has established a prima facie case against the appellants. It is clear that the evidence of the only eye witness is most relevant. PW5 testified before the learned trial judge as follows: D

"I remember July 1994. I remember the day I was fishing one afternoon in July 1994. I heard someone shouting that Ossai wants to kill him. The person was shouting and asking if any persons were around. When I heard the persistent cry that Ossai and his people want to kill him, I was moved. So I rowed towards the scene. I stopped at a spot and walked and I saw that the person who was shouting was Ijeoma Maduagwu. I walked quietly to the scene and saw three persons holding him. They held him by his hands towards his back very firmly and one was tying a cloth around his neck. I now say I saw four persons. One was holding Ijeoma. Emeka Nwapa the 4th accused left Ijeoma and pursued me. I was afraid and quietly ran away. I ran to where I parked my canoe and rowed away. When I returned home I told a friend Romanus Ossai what I saw. Out of the four persons I saw, I know 1st, 3rd and 4th accused. I did not recognize the fourth person. Since that incident, out of fear, I have not returned to my pond. I later heard that Ijeoma Maduagwu was missing. I then met one Sunday the son of Ijeoma and told him what I saw in the bush. Sunday took me to the police and I made my statement to the Police." E
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This was the only testimony which linked the appellants with the alleged murder of Chief Ijeoma Maduagwu. If this testimony stands and is unshaken each of the appellants has a case to answer. However, when PW5 was cross-examined he was asked whether he made

the following statement to the police;

“It was after some days I heard that Chief Ijeoma was killed in the bush and I suspected that he was the man shouting for help on that day I went for fishing.”

The witness answered in the affirmative. The learned trial judge held that there was contradiction between the evidence given by PW5 and the statement he made to the police. The learned trial judge said, quite rightly, that the evidence of the witness was unreliable and cannot be the basis for a finding of guilt. This is the only witness who incriminated the appellants on the allegation that they murdered Chief Maduagwu. It can be seen that the testimony of PW5 has been discredited as a result of cross-examination and no reasonable tribunal could safely convict any of the appellants on such evidence.

It is now pertinent to ask, which evidence would then be used for the retrial of the appellants? After the prosecution had adduced such evidence which is so tenuous and unreliable it was obvious that the trial court had no alternative but to rule that the appellants had no case to answer and discharge them. The fact that the judge erroneously wrote a “judgment” instead of a ruling does not improve the case of the prosecution. If evidence is not available or is so manifestly unreliable the court must uphold a submission and discharge the accused persons. Looking at the evidence as a whole it is abundantly clear that no reasonable tribunal can convict the appellants on the evidence adduced by the prosecution.

Having resolved this issue in favour of the appellants I do not hesitate to say that this appeal has succeeded. The resolution of this issue in favour of the appellants has determined the appeal. The appeal is allowed. The judgment of the Court of Appeal is set aside. I restore the decision of the trial High Court that appellants have no case to answer to the charge of murder framed against each of them. They are each accordingly discharged.

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KALGO JSC

I have read in draft the judgment just delivered by my learned brother Mohammed JSC in this appeal. I agree that the submission of no case to answer upheld by the trial court in favour of the appel-

lants on the evidence before the trial court, should have been sustained by the Court of Appeal. I find that there is merit in the appeal. I allow it and set aside the decision and orders of the Court of Appeal and restore the decision and orders of the trial court. The appellants are accordingly discharged.

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KUTIGI JSC

I read before now the judgment just rendered by my learned brother, Mohammed, JSC. I agree with the conclusion to allow this appeal. The fact that the learned trial judge wrote the judgment instead of a Ruling on the no-case submission cannot be said to have occasioned a miscarriage of justice, the State or the prosecution having concluded its evidence in the case. This is a mere irregularity. Looking at the evidence led by the prosecution as a whole one can safely say that no reasonable tribunal can convict on it.

The appeal therefore succeeds and it is hereby allowed. The judgment of the Court of Appeal is set aside while that of the trial High Court is restored. Each of the appellants is discharged.

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OGUNDARE JSC

I agree entirely with the judgment of my learned brother Mohammed JSC just delivered. I adopt his reasoning as mine and I have nothing more to add. I, too, allow the appeal, set aside the judgment of the Court of Appeal and restore that of the trial High Court. I discharge each of the Appellants accordingly.

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