

**SUPREME COURT OF NIGERIA**  
11TH JULY, 2008. SC. 110/2006  
**CORAM:- D. MUSDAPHER, S. A. AKINTAN,**  
**W. S. N. ONNOGHEN, I. T. MUHAMMAD,**  
**M. S. MUNTAKA-COOMASSIE JJSC**

EMEKA EKWUNUGO ..... APPELLANT  
V.  
FEDERAL REPUBLIC OF ..... RESPONDENT  
NIGERIA

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CRIMINAL PROCEDURE - No case submission - Meaning - It means that there is no evidence - On which even if court believes it could convict - Issue of credibility of witnesses - Does not yet arise (H1)

NO CASE SUBMISSION - Propriety of - Can be upheld for lack of evidence - Or discrediting vide cross examination - What to consider - Is whether prima facie case requiring explanation - Was made out against accused person (H2)

ADVANCE FEE FRAUD - No case submission - Propriety of - Can be upheld for lack of evidence - Or discrediting vide cross examination - What to consider - Is whether prima facie case requiring explanation - Was made out against accused person (H2)

COURTS - Misdirection - No case submission - Made at close of prosecution's case - Trial court was wrong in evaluating evidence - And writing lengthy judgment acquitting appellant - As rightly held by Court of Appeal (H3)

**FACTS**

Before High Court of Justice Enugu, appellant was arraigned on a one count charge for obtaining the sum of over N9.5 Million by false pretences and with intent to defraud contrary to s. 1 (1) (b) of the Advance Fee Fraud Decree 1995. Appellant was alleged to have induced the complainant who delivered the said amount to him upon a promise to transfer the sum of US \$108,000 into his London

Barclays Bank account, purported to be export proceeds of appellant's genuine business. Appellant actually transferred the said US Dollar amount into the complainant's said Bank account. But a London court made an order freezing Complainant's bank account on the ground that the amount was fraudulently obtained by appellant from one Gerald Skoff. When appellant was informed of the development, he eventually agreed to refund the money to the complainant.

At the close of prosecution's case, a no case submission was made and the trial Judge reserved his ruling. But instead of giving a ruling, he delivered a lengthy judgment on 29-7-2002 and came to the conclusion that the prosecution failed to prove its case against the appellant. Prosecution's appeal to the Court of Appeal was allowed. Being dissatisfied, appellant has now appealed to the Supreme Court.

### **ISSUE FOR DETERMINATION**

*"Whether from the evidence led before the trial court there was enough evidence upon which the court below had held as it did that there was a prima facie case against the appellant for which he had to stand trial and if the fact that the trial Judge had written a judgment instead of a ruling in the matter went to any issue and or had any material effect on the matter."*

**HELD** (Unanimously dismissing the appeal per **AKINTAN JSC**)

### ***No case submission - Meaning***

1. The main question raised in this appeal brings to the fore what a trial Judge should look for in a case where a no case submission is made at the close of the case for the prosecution. The position of the law is that a submission that there is no case to answer by an accused person means that there is no evidence on which even if the court believes it, it could not convict. In other words, certain essential elements of the offence for which the accused stands charged was not proved by the prosecution. No evidence was led to prove such essential element. The question whether or not the court believes the evidence led does not arise at that stage of the proceedings. The credibility of the witnesses also does not arise at that stage. This is because the trial of the case was at that stage not yet concluded. This is therefore the reason why the court should not concern itself with the credibility of witnesses or the weight to be attached to the evi-

dence, even if they are accomplices. (p. 2849 D)

***NO CASE SUBMISSION - Propriety of***

2. A submission of no case to answer could therefore only be properly made and upheld when - (a) there has been no evidence to prove an essential element in the alleged offence; and/or (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. It follows therefore that what has to be considered at the stage of a no case submission is not whether the evidence against the accused is sufficient to justify conviction but whether the prosecution has made out a prima facie case requiring at least some explanation from the accused person.

In the instant case, the evidence led by the prosecution clearly established that the appellant agreed to pay specified sum of United States dollars into the complainant's bank account at Barclays Bank in London and collect the agreed naira equivalent at a pre-agreed rate. He informed the complainant that he made the payments and he was paid the agreed naira equivalent. But the money he paid into the London bank account was said to be obtained fraudulently from one Gerald Skoff who got a court order freezing the complainant's London bank account. In other words, the said payment failed to materialise. (pp. 2849 H/2850 B)

***COURTS - Misdirection - No case submission***

3. The learned trial Judge misdirected himself of what was expected of him at the stage reached in the trial of the case before him, which was then at a no case submission at the close of the prosecution's case. The position of the law on the point, as I have declared above, clearly shows that what was required of him was not to evaluate or give weight to the evidence led by the prosecution at that stage or to write a lengthy judgment in which he concluded by discharging and acquitting the appellant. This court has in fact in a number of cases said that a ruling on a no case submission should be as brief as possible and not in any way go into evaluation of the evidence led.

In conclusion therefore and for the reasons I have set out above, the lower court was right in allowing the appeal and setting aside the

orders made by the learned trial Judge. There is therefore no merit in the appeal and I accordingly dismiss it. I also make an order affirming the judgment of the court below and order that the case be tried de novo before another Judge of the same jurisdiction. (p. 2850 H)

**B** **NOTABLE POINT OF INTEREST**  
**ONNOGHEN JSC**

*1. No case submission - When a prima facie case is deemed made out*

**C** It has to be noted that at the stage where a no case submission is made by learned counsel for the appellant, the issue is not whether the prosecution has/had proved the charge against the appellant beyond reasonable doubt but whether a prima facie case has been made out by the prosecution against the appellant so as to make it  
**D** necessary for the court to call on the appellant to open his defence to the charge. It is settled law that prima facie case is made out where the evidence adduced by the prosecution is such that, if uncontradicted would be sufficient to prove the case against the accused person.

**E** At the no case submission stage, it is not for the trial court to go into a consideration of the issue of credibility of the witnesses.

It is in evidence as contained in Exhibits R and S that the appellant collected the money and promised to refund the money and  
**F** even made part payment of US\$5,000.00 and even pledged the certificate of occupancy to his property at No. 124 New GRA Trans Ekulu, Enugu in that respect. (p. 2852 H)

**REPRESENTATION**

**G** Mr. Chuma Oguejiofor (with Miss A. Agwunobi) for appellant.  
Mrs. G. E. Odegbare (Chief State Counsel, Federal Ministry of Justice) for respondent.

**CASES REFERRED TO**

**H** Ajiboye v. The State (1995) 8 NWLR (Pt. 414) 408  
R. v. Coker 20 NLR 62  
R. v. Ekanem (1950) 13 WACA 108  
Bello v. The State (1967) NMLR 1

Ajidadgba v. Police (1958) 3 F.S.C. 5

Ibeziako v. Commissioner of Police (1963) 1 SCNLR 99

Owonikoko v. The State (1990) 7 NWLR (Pt. 162) 381

Adeyemi v. The State (1992) 6 NWLR (Pt. 195) 1

**STATUTE REFERRED TO**

Advance Fee Fraud and Other Fraud Related Offence Act s. 1 (1) (b)

**BOOK REFERRED TO**

Criminal Law and Procedure of the Southern States of Nigeria, 3rd Edition; (1982) paragraph 427, page 150.

**LEAD JUDGMENT BY AKINTAN JSC**

The appellant was arraigned before Enugu High Court on a one count charge which reads as follows:

*“That you Emeka Ekunwunugo alias Kingsley Onuorah of No. 1 Inyi Street, Achara Layout, Enugu on or about the month of September 1995 at Enugu within the jurisdiction of the Honourable Court by false pretences and with intent to defraud, induced Ndukwo Ndukwo Ogbujah and Sir C. O. Ikoro to deliver to you the sum of =N=9,724,820 by falsely claiming that you would transfer to their account at Barclays Bank, London the sum of \$108,000 (One Hundred and Eight Thousand United States Dollars) purported to be export proceeds of your genuine business and you thereby committed an offence contrary to section 1(1) (b) of the Advance Fee Fraud and other Fraud Related Offences Decree No. 13 of 1995 and punishable under section 1(3) of the same Decree.”*

The appellant pleaded not guilty to the charge and thereafter the prosecution opened its case. A total of six witnesses were called by the prosecution in support of its case. At the close of the prosecution’s case, a no-case submission was made and the learned trial Judge, Ozoemena, J. reserved his ruling. But instead of delivering a ruling on the no-case submission, the learned Judge delivered a judgment on 29th July, 2002. In it, the learned Judge came to the conclusion that the prosecution failed to prove its case against the appellant. He accordingly discharged and acquitted the appellant.

The prosecution was not satisfied with the conclusion reached

by the learned trial Judge. An appeal to the court below was filed against the said judgment. The court below allowed the appeal and made an order that the case be heard de-novo before another Judge of Enugu High Court. The present appeal is from that judgment. The parties filed their respective brief of argument in this court. The  
 B appellant formulated the following issue which was also adopted by the respondent in the respondent's brief:

*"Whether from the evidence led before the trial court there was enough evidence upon which the court below had held as it did  
 C that there was a prima facie case against the appellant for which he had to stand trial and if the fact that the trial Judge had written a judgment instead of a ruling in the matter went to any issue and or had any material effect on the matter."*

The brief facts of the case are that the main complainant in the  
 D case, one Ndukwo Ndukwo Ogbujah (PW1), a businessman based in Enugu, met the appellant who told him (PW1) that he was in a position to help him source United States Dollars he needed to pay for his imports of goods needed in the course of his business. They agreed on the rate of exchange to be paid for each dollar procured  
 E by the appellant and the amount so procured was to be paid into Mr. Ogbujah's London bank account at Barclays Bank in London. The details of the London bank account were supplied to the appellant. As agreed by the two men, the appellant made dollar payments into  
 F the man's London bank account and Mr. Ogbujah released the agreed naira equivalent to the appellant. The total amount released to the appellant is the amount named on the charge.

The dispute that eventually led to the appellant's arraignment arose when a London court made an order freezing Mr. Ogbujah's  
 G London bank account to which the appellant made the payments. This was on the complaint that the various sums transferred to the account by the appellant were fraudulently obtained by the appellant from one Gerald Skoff. When the appellant was informed of the development, he eventually agreed to refund the money to the complainant, Mr. Ogbujah.  
 H

Another man, one Mr. C. O. Ikoro , who was introduced to the appellant, also had similar transaction with the appellant. Various sums of money were also paid by Mr. Ikoro in exchange for the

United States Dollars deposited into the man's London bank account.

It is argued in the appellant's brief that the learned Justices of the court below were wrong in their decision that the trial court's decision that the prosecution failed to establish a prima facie case against the appellant was wrong. It is also argued that the fact that the learned trial Judge wrote a judgment instead of a ruling was irrelevant since the crucial point was that the prosecution failed to establish that a prima facie case was not made out. The failure to call Mr. Ikoro who was the second man, with whom similar transactions were made with the appellant as a witness, is said to be very vital to the success of the prosecution's case.

It is submitted in reply in the respondent's brief that the decision of the court below is correct in that there was sufficient evidence on record to warrant the appellant being called upon to defend himself.

***The main question raised in this appeal brings to the fore what a trial Judge should look for in a case where a no case submission is made at the close of the case for the prosecution. The position of the law is that a submission that there is no case to answer by an accused person means that there is no evidence on which even if the court believes it, it could convict. In other words, certain essential elements of the offence for which the accused stands charged was not proved by the prosecution. No evidence was led to prove such essential element. The question whether or not the court believes the evidence led does not arise at that stage of the proceedings. The credibility of the witnesses also does not arise at that stage. This is because the trial of the case was at that stage not yet concluded. This is therefore the reason why the court should not concern itself with the credibility of witnesses or the weight to be attached to the evidence, even if they are accomplices:*** See *Ajiboye v. The State* (1995) 8 NWLR (Pt. 414) 408; *R. V. Coker* 20 NLR 62; *R. v. Ekanem* (1950) 13 WACA 108; *Bello v. The State* (1967) NMLR 1; *Ajidagba v. Police* (1958) 3 F.S.C. 5; and *Aguda, Criminal Law and Procedure of the Southern States of Nigeria*, 3rd edition; 1982) paragraph 427, page 150.

***A submission of no case to answer could therefore only***

- be properly made and upheld when - (a) there has been no evidence to prove an essential element in the alleged offence; and/or (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:** See *Ibeziako v. Commissioner of Police* (1963) 1 SCNLR 99; *Owonikoko v. The State* (1990) 7 NWLR (Pt. 162) 381 and *Adeyemi v. The State* (1992) 6 NWLR (Pt. 195) 1. **It follows therefore that what has to be considered at the stage of a no case submission is not whether the evidence against the accused is sufficient to justify conviction but whether the prosecution has made out a prima facie case requiring at least some explanation from the accused person:** See *Ajiboye v. The State*, supra.
- In the instant case, the evidence led by the prosecution clearly established that the appellant agreed to pay specified sum of United States dollars into the complainant's bank account at Barclays Bank in London and collect the agreed naira equivalent at a pre-agreed rate. He informed the complainant that he made the payments and he was paid the agreed naira equivalent. But the money he paid into the London bank account was said to be obtained fraudulently from one Gerald Skoff who got a court order freezing the complainant's London bank account. In other words, the said payment failed to materialise.**

The offence for which the appellant was charged with is section 1 (1) (b) of the Advance Fee Fraud and Other Fraud Related Offence Act. The section provides as follows:

- "1 - Obtaining property by false pretence, etc.**
- (1) Notwithstanding anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud.....**
- (2) Induces any other person, in Nigeria or in any other country, to deliver to any person, .....is guilty of an offence under this Act."**

**The learned trial Judge misdirected himself on what was expected of him at the stage reached in the trial of the case**



**before him, which was then at a no case submission at the close of the prosecution's case. The position of the law on the point, as I have declared above, clearly shows that what was required of him was not to evaluate or give weight to the evidence led by the prosecution at that stage or to write a lengthy judgment in which he concluded by discharging and acquitting the appellant. This court has in fact in a number of cases said that a ruling on a no case submission should be as brief as possible and not in any way go into evaluation of the evidence led:** See e.g. Ajiboye v. The State supra at page 416 of the report.

**In conclusion therefore and for the reasons I have set out above, the lower court was right in allowing the appeal and setting aside the orders made by the learned trial Judge. There is therefore no merit in the appeal and I accordingly dismiss it. I also make an order affirming the judgment of the court below and order that the case be tried de novo before another Judge of the same jurisdiction.**

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### **MUSDAPHER JSC**

I have had the preview of the judgment of my Lord Akintan, just delivered with which I entirely agree. In the aforesaid judgment, his Lordship has succinctly detailed the facts and has meticulously dealt with the issue arising for the determination of the appeal. For the same reasons canvassed in the judgment which I respectively adopt as mine, I too, find the appeal unmeritorious.

I dismiss it. I affirm the judgment of the Court below and order that the matter be reverted to the High Court and there to be tried de novo by another judge.

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### **ONNOGHEN JSC**

I have had the opportunity of reading in draft, the lead judgment of my learned brother AKINTAN, JSC just delivered. I agree with his reasoning and conclusion that the appeal has no merit and should be dismissed.

The appellant was charged in Charge NO. E/16C/99 with the

following offence:

“That you, *Emeka Ekwunugo, Alias Kingsley Onuora of NO. 1 Inyi Street, Achara Layout, Enugu, on or about the month of September, 1995 at Enugu, within the jurisdiction of the Enugu State High Court, by false pretence and with intent to defraud, induced*  
 B *Ndukwo Ndukwo Ogbujah and Sir, O. O Ikoro to deliver to you the sum of Nine Million, Seven Hundred and Twenty-four Thousand, Eight Hundred and twenty Naira ( N9,724,820.00) by falsely claim-*  
 C *ing that you would transfer to their accounts at the Barclays bank London the sum of One Hundred and Eight Thousand, Six Hun-*  
 D *dred (US\$108,600.00) Untied States Dollars purported to be export proceeds of your genuine business and you thereby committed an offence contrary to Section 1 (1)(b) of the Advance Fees Fraud and other Fraud Related Offences Decree NO. 13 of 1995 and punish-*  
 D *able under Section I (3) of the same Decree “.*

The appellant, on arrangement with Mr. Ndukwo Ndukwo Ogbujah and his cousin, Sir O. O Ikoro, according to the charge, collected the total sum of Nine Million, Seven Hundred and Twenty-four Thousand, Eight Hundred and twenty Naira (349,724,820.00)  
 E from them and in return transferred about One Hundred and Eight Thousand, Six Hundred (US\$108,600.00) Untied States Dollars to the London accounts of the said complainants, purporting the US\$ dollars to have been the proceeds from his genuine export business transactions. However, the London account of the P.W.1 was later  
 F frozen and the amount withdrawn by order of a London Court because the money transferred by the appellant thereto was fraudulently obtained by the appellant from Mr. Gerald Skoff.

At the close of the case for the prosecution, learned counsel  
 G for the appellant made a no case submission which was upheld by the trial court resulting in an appeal to the Court of Appeal which appeal was allowed. The appellant consequently appealed to this court. It should be noted that the appellant by his statement to the police did not deny the substance of the charge.

H It has to be noted that at the stage where a no case submission is made by learned counsel for the appellant, the issue is not whether the prosecution has/had proved the charge against the appellant beyond reasonable doubt but whether a prima facie case has been

made out by the prosecution against the appellant so as to make it necessary for the court to call on the appellant to open his defence to the charge. It is settled law that prima facie case is made out where the evidence adduced by the prosecution is such that, if uncontradicted would be sufficient to prove the case against the accused person - See *Ajiboye vs. The State* (1998) 1 NCLR 355 at 358; *Ajiadagba vs I.G.P* (1958) 3 FSC 5. B

At the no case submission stage, it is not for the trial court to go into a consideration of the issue of credibility of the witnesses.

It is in evidence as contained in Exhibits R and S that the appellant collected the money and promised to refund the money and even made part payment of US\$5,000.00 and even pledged the certificate of occupancy to his property at No. 124 New GRA Trans Ekulu, Enugu in that respect. C

It is for the above reasons and the more detailed reasons contained in the lead judgment of my learned brother, AKINTAN, JSC that I too dismiss the appeal as lacking in merit. Appeal dismissed. D

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**MUHAMMAD JSC**

I was privileged by my learned brother Akintan, JSC to read before now the Judgment just delivered. There is no merit in this appeal whatsoever. I dismiss it. I abide by the consequential orders made in the lead judgment. E

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**MUNTAKA-COOMASSIE JSC**

I had the advantage of reading in draft the judgment just delivered by my learned brother Akintan, JSC. My Lord has exhaustively and competently too stated the facts of this appeal. All the issues before us were clearly thrashed out. The reasons and conclusions of my Lord Akintan tally with my understanding of the law, which I adopt as mine. Consequently I too agree that the appeal lacks merit and is hereby dismissed. I also order that the case be reverted back to the High Court of Enugu State to be tried de novo before another Judge other than Ozoemena J. F