

SUPREME COURT OF NIGERIA
FRIDAY 7TH DECEMBER, 2012. SC. 254B/2007
**CORAM:- M. MOHAMMED, M. S. MUNTAKA-
COOMASSIE, S. GALADIMA, N. S. NGWUTA,
M. D. MUHAMMAD, JJSC**

JUDE UGWU (a.k.a. AGADA) APPELLANT
V.
THE STATE RESPONDENT

APPEALS - Ground - Competence - Ground must challenge the decision of court - And not what court has not decided in its judgment (H1)

APPEALS - Criminal procedure - No case submission - Need to uphold - Following the successful plea of the submission - C.A. is empowered by C.A. Act s. 15 - To hold in appellant's favour (H2)

CRIMINAL PROCEDURE - No case submission - Effect - Once prosecution's evidence fails to disclose prima facie case against accused - The submission ought to succeed (H3)

CRIMINAL PROCEDURE - No case submission - Lesser offence - Notwithstanding the submission - Trial Judge is obliged where a lesser offence is disclosed - To rule that accused has case to answer (H4)

CRIMINAL PROCEDURE - No case submission - Precondition - The submission is made where there is no evidence - To prove the offence - And where prosecution's evidence is discredited (H5)

FACTS

Accused/appellant along with 7 others were arraigned before the Federal High Court Abuja on 4 counts charge of criminal conspiracy to murder Dr. (Mrs.) Dora Akunyili (former Director General of NAFDAC). To prove its case, prosecution/respondent called 19 witnesses. After the close of respondent's case, a no case submission was made on behalf of the accused persons. In its judgment, the court sustained the submission in respect of 1st and 2nd heads of the

charge and thus discharged the accused persons.

The court however held that it lacked jurisdiction over the 3rd and 4th charges and declined further proceedings regarding those charges. Dissatisfied, respondent appealed to the Court of Appeal Abuja. The court dismissed the appeal in respect of the 1st and 2nd charges, but allowed the appeal in respect of 3rd and 4th charges. The court in allowing the appeal remitted the case to the trial court for proceedings to be concluded in respect of the 3rd and 4th charges. Not satisfied, appellant filed appeal in Supreme Court.

ISSUE FOR DETERMINATION

“Whether the Court of Appeal was right in ordering a retrial of the Appellant after it had held that there is no incriminating evidence linking him? And whether this is not an appropriate case for the Supreme Court to apply the Provisions of Section 22 of the Supreme Court Act to evaluate the evidence and discharge and acquit the Appellant”

HELD (Unanimously allowing the appeal per

OGUNBIYI JSC)

APPEALS - Ground - Competence

1. While the law is well settled that for a ground of appeal to be competent it must challenge the decision of a Court and not what a Court has not decided in its judgment, the two grounds of appeal filed by the Appellant in this appeal clearly arose from the judgment of the Court of Appeal specifically at page 1239 of the record of appeal. That part of the judgment after very closely examining the evidence adduced at the trial Court plainly found that there was no evidence on record incriminating the Appellant. There is no doubt whatsoever that this is an appealable decision within the provision of Section 318(1) of the 1999 Constitution.

The Preliminary Objection is thus misconceived and accordingly the same is hereby dismissed. (p. 4142 D)

Criminal procedure - No case submission - Need to uphold

2. Certainly in my view, the power to make the pronounce-

ment in favour of the Appellant is available to that Court under Section 15 of the Court of Appeal Act as rightly urged on behalf of the Appellant. This is in line with the decision of this Court in the case of Ikomi v. The State (1986) 3 NWLR (Pt. 28) 340 at 356 where Nnamani JSC (of the blessed memory) said -

“The powers of Courts to prevent abuse of process includes the power to safe guard an accused person from oppression and prejudice such would result if he is sent to trial pursuant to an information which discloses no offence with which he is in any way linked.

Applying these decisions to the present case, the need for this Court to prevent serious miscarriage of justice and prejudice to the Appellant for failure of the trial Court and the Court below the pronounce on his right or benefit of the decision on the no-case submission plea made in his favour, this Court definitely has the power to do so under Section 22 of the Supreme Court Act in order to prevent the occurrence of and the continuation of gross miscarriage of justice in this case.
(p. 4145 C)

CRIMINAL PROCEDURE - No case submission - Effect

3. On the question of whether or not this Court may exercise its power under Section 218 of the Criminal Procedure Code of the Federal Capital Territory to convict the. Appellant for lesser offences allegedly disclosed under Sections 149 and 171 of the Penal Code of the Federal Capital Territory, I entirely agree with the learned Counsel to the Appellant that no such offences have been disclosed against the Appellant from the only evidence of PW.4 and PW.17 who mentioned the name of the Appellant in their evidence at the trial Court. In any case such power of finding guilty resulting in conviction and sentencing the accused for lesser offences under Section 218 of the Criminal Procedure Code Act of the Federal Capital Territory, is definitely not available to the Court having regard to the outcome of a successful submission of no case to answer where the Court in such Ruling is not expected to express any opinion on the evidence before it not to talk of

whether such evidence may support conviction. In other words, once the evidence called by the prosecution does not disclose prima facie case of the offence with which the accused was charged, his plea or submission of no case to answer, ought to succeed. (p. 4145 H)

B
CRIMINAL PROCEDURE - No case submission - Lesser offence
4. This is because under the law on the subject, where a trial Judge, on a submission of no-case to answer, finds that although the prosecution have prima facie not proved the offence charged but that a lesser offence had been disclosed, then the trial Judge is obliged to rule that there is a case for the accused person to answer and to proceed with the trial by asking the accused person to enter his defence. (p. 4146 D)

D
CRIMINAL PROCEDURE - No case submission - Precondition
5. I shall also emphasize at this stage that it is well settled by a long line of authorities that a submission of no case to answer may be properly made and upheld in the following circumstances-

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(1) When there has been no evidence to prove an essential element in the alleged offence either directly, circumstantially or inferentially.
(2) 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 can safely convict on it.

F
It is trite that a trial Judge can rule that an accused person has no case to answer if one of the two conditions is satisfied. In the present case therefore, I have no reason whatsoever to agree with the findings of the trial Court and further on appeal by the Court below that there is no evidence at all linking the Appellant with the offences of conspiracy, attempted culpable homicide and culpable homicide with which the Appellant was charged at the trial Court. Consequently, upon this very clear and unambiguous finding of the Courts below that the Appellant has no-case to answer in respect of charges 3 and 4, the Court below was in error in including him in the case remitted

to the trial Court for the continuation of the trial. The Appellant's appeal is therefore meritorious and definitely deserves to succeed. (p. 4146 F)

REPRESENTATION

Matthew Ojua with Maxogar, Dominic Anyador, Oluchi Nwagu (Miss), Sunny Tabi, Solomon Abuo and Oluwasekemi Egbeola (Miss), for the Appellants

Gboye Oyewole with Kehinde Ogunmumiju and Abdulsalam Belgore, for the Respondent

C

CASES REFERRED TO

Osahon v. FRN (2003) 16 NWLR (Pt. 845) 89

Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) 423

Abubakar v. Yar'Adua (2008) 4 NWLR (Pt. 912) 434

Garuba v. Omokhodion (2011) 15 NWLR (Pt. 1269) 145

Obi v. INEC (2007) 11 NWLR (Pt. 1046) 56

Ogucha v. The Queen (1959) SCNLR 154

Daboh v. The State (1977) All NLR 146

Ajidagba v. IGP (1958) SCNLR 60

Adeyemi v. The State (1991) 6 NWLR (Pt. 195) 1

Ibeziako v. COP (1963) 1 All N.L.R. 61

Okoro v. The State (1988) 5 NWLR (Pt. 94) 255

Ikomi v. State (1986) 3 NWLR (pt. 28) 340

Egbe v. State (1980) 1 NLR 341

Conelly v. DPP (1964) AC 125

Umeze v. State (1973) 6 SC 221

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STATUTES REFERRED TO

Court of Appeal Act, ss. 15, 16

Supreme Court Act, s. 22

Penal Code of FCT, ss. 149, 171 and 229

Criminal Procedure Act Cap. 532 Laws of FCT, ss. 159(1), 218

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LEAD JUDGMENT BY MOHAMMED JSC

This appeal is against the judgment of the Court of Appeal Abuja Division delivered on 5th July, 2007 in which the State/Respondent's appeal was allowed in part. The appeal against the

upholding of the No Case Submission made on behalf of all the accused persons by the-trial Court was upheld in respect of charges 1 and 2. The appeal on the issue of jurisdiction in respect of charges 3 and 4 was allowed and the case was remitted to the trial Court to complete the trial of the accused persons in respect of those charges.

B The Appellant in the present appeal was charged along with 7 other accused persons with the following offences in 4 separate charges namely-

C “1. That you Francis C. Okoye (a.k.a. Ebubedike), Emmanuel Nnamdi Nnakwe (a.k.a. Aboy) Marcel Nnakwe, Emeka Ojiakor, Christopher Okwara Mbah (a.k.a. Persus), Olisaemeka Igbokwe (a.k.a. Holy War), Chukuka Ezeukwu and Jude Ugwu (a.k.a. Agada) on or between October, 2001 to December, 2003 at different places in the Federal Capital Territory and Anambra State agreed to do or cause D to be done an illegal act to wit cause the death of Dr. (Mrs.) Dora Akunyili Director-General, National Agency for Food and Drugs Administration and Control (D.G. NAFDAC) and that the said act was attempted to be done in pursuance of an agreement and that you thereby committed an offence punishable under Section 97 of Penal E Code.

F 2. That you Francis C. Okoye (a.k.a Ebubedike), Emmanuel Nnamdi Nnakwe (a.k.a. Aboy), Marcel Nnakwe, Emeka Orjiakor, Christopher Okwara Mbah (a.k.a. Persus), Olisaemeka Igbokwe (a.k.a. Holy War), Chukuka Ezeukwu and Jude Ugwu (a.k.a. Agada) on a day in the month of October 2001 at about 7 p.m at D.G. NAFDAC’s Residence on Freetown Crescent, Wuse II Abuja did Act, to Wit, caused unknown gunmen to invade the residence of Dr. (Mrs.) Dora Akunyili Director-General Agency for Food and Drugs Administration and G Control (DG NAFDAC) and forcibly entered the rooms in the House in search for the purpose of firing gun shots at her with such intention and or knowledge and under such circumstances that if by act you had caused the death of the said Dora Akunyili you would have been guilty of culpable homicide punishable with death and that you H thereby committed an offence punishable under Section 229 of the Penal Code.

3. That you Francis C. Okoye (a.k.a. Ebubedike), Emmanuel Nnamdi (a.k.a. Aboy), Marcel Nnakwe, Emeka Orjiakor, Christopher Okwara Mbah (a.k.a. Persus), Olisaemeka Igbokwe (a.k.a. Holy

War), Chukuka Ezeukwu and Jude Ugwu (a.k.a Agada) on the 26th day of December, 2003 At Agulu in Anambra State did an act to wit, caused gun shots to be fired at Dr. (Mrs.) Dora Akunyili Director-General, National Agency for Food and Drugs Administration and Control (D.G. NAFDAC) while driving inside her Peugeot 406 saloon official car with such intention or knowledge and under such circumstances that if by that act you had caused the death of Dr. (Mrs.) Dora Akunyili D.G NAFDAC you would have been guilty of culpable homicide punishable with death and that you thereby committed an offence punishable under Section 229 of the Penal Code. B

4. That you Francis C. Okoye (a.k.a. Ebubedike), Emmanuel Nnamdi Nnakwe (a.k.a. Aboy), Marcel Nnakwe, Emeka Orjiakor, Christopher Okwara Mba (a.k.a. Persus), Olisaemeka Igbokwe (a.k.a. Holy War), Chukuka Ezenkwu and Jude Ugwu (a.k.a. Agada on the 26th day of December 2003 at Agulu Anambra State did commit culpable homicide punishable with death in that you cause the death one Emeka Onuekutu by doing act to wit caused several gun shots to be fired at Dr. (Mrs.) Dora Akunyili D.G. NAFDAC while driving inside her Peugeot 406 Saloon official car which gun shot missed target but instead hit the deceased inside his Mitsubishi 300 Minibus with Reg. No. AE 763 AJL with the Intention of causing the death of and or with the knowledge that the death of the said Emeka Onuekutu would be the probable consequence of your act thereby committed an offence punishable under Section 221 of the Penal code.” C

In the course of the trial of the Appellant and the other 7 accused persons at the trial Federal Capital Territory High Court, the prosecution called a total of 19 witnesses and tendered 58 exhibits which were received in evidence. At the end of the case of the prosecution, the Appellant and all the other 7 accused persons opted to make a No-Case submission on the case of the prosecution. In a considered Ruling delivered by the trial Court on 23 September, 2005, the learned trial Judge upheld the No-Case submission in respect of charges 1 and 2 in favour of the Appellant and all 7 other accused persons being tried with him. The learned trial Judge however, was of the view that the trial Court lack jurisdiction to try the Appellant and his 7 other co-accused persons for the offences in charges 3 and 4. The State was not happy with the Ruling and immediately appealed against it to the Court of Appeal, Abuja Division. The Appel- D

lant in this appeal was therefore one of the Respondents in the Appeal before the Court of Appeal. In its judgment of 5th July, 2007, the Court of Appeal affirmed the decision of the trial Court on the No-case submission in favour of all the accused persons being tried at the trial Court, including the Appellant. In the same judgment however, the Court of Appeal single out the Appellant and made a specific and far reaching finding in respect of the case against him in relation to all the charges upon which evidence was led by the prosecution where that Court remarked at page 1239 of the record of appeal thus -

“The 7th accused had no evidence incriminating him. He was arrested because he was a personal security guard to the 1st Respondent and was only arrested in the process of protecting his master from any personal assault when the officers of the State Security Service apprehended him.”

This specific finding was made by the Court of Appeal before affirming the decision of the trial Court on the issue of the No case submission resulting in the order discharging and acquitting the Appellant and his 7 co-accused persons of the offences in charges 1 and 2 respectively. Without reverting to the case of the Appellant on the finding made on the evidence on record, the Court of Appeal simply allowed the appeal in respect of charges 3 and 4 affecting all the accused person on the question of jurisdiction which the present Appellant never contested before that Court and remitted the case to the trial Court for continuation and conclusion of the trial on charges 3 and 4 against all the accused persons. The present appeal is against that order of the Court of Appeal.

Before proceeding to deal with the Appellant’s appeal on the merit, I shall have to look at the Notice of Preliminary Objection raised by the Respondent to the two grounds of appeal contained in the Appellant’s Notice of Appeal to the effect that the grounds of appeal filed on 24 November, 2009 and deemed properly filed by the order of this Court given on 3rd February, 2010, do not arise from the judgment of the Court of Appeal. The grounds of appeal with their particulars read -

“(1) The learned Justices of the Court of Appeal having held that the High Court of the Federal Capital Territory, Abuja had jurisdiction to entertain counts 3 and 4 in the charge, erred in failing to invoke the provisions of Section 16 of the Court of Appeal Act for

the purpose of appraising the evidence and discharging and acquitting the Appellant and this occasioned a serious miscarriage of justice.

Particulars of Error

(a) The prosecution called all its witnesses and closed its case.

(b) There is no shred of evidence even remotely linking the Appellant with the commission of the alleged offences in Counts 3&4. B

(c) The Appellant made a no-case submission covering counts 3 and 4 of the charge.

(d) The Court of Appeal had a responsibility under section 16 of the Court of Appeal Act to have appraised the evidence and discharged and acquitted the Appellant on the merit in the face of the available evidence. C

(e) All the preconditions enunciated by the Supreme Court in Obi v. INEC (2007) 11 NWLR. (1046) 565 for the invocation of the powers of the Court of Appeal under Section 16 of the Court of Appeal Act were present. D

2. The learned Justices of the Court of Appeal erred in law in making an order for retrial of the Appellant after it had held that “the 7th accused (Appellant) had no evidence incriminating him. He was only arrested because he was a personal security guard to the 1st Respondent and was only arrested in the process of protecting his master from any personal assault when the officers of the State Security Service apprehended him. E

Particulars of Error

(a) Having held that there was no incriminating evidence against the Appellant, there was nothing to be remitted for retrial. F

(b) The evidence against the Appellant in respect of Counts 1 & 3 is not different from that in support of counts 3 and 4.

(c) The finding of fact that the Appellant had no incriminating evidence against him is in respect of all the counts. G

(d) There is manifest incalculable injustice in remitting the case for retrial in the face of the available evidence.

(e) It is oppressive and an abuse of the Court’s process to continue the trial of the Appellant after it has been adjudged that there is no evidence linking him with the offences charged. H

The Respondents Counsel has argued that these grounds of appeal are not competent because they do not challenge the decision of the Court below but that the grounds are merely complaining

of what that Court had failed to decide in its judgment. Learned Counsel had relied on this stand on the cases of the Registered Trustees, Pentecostal Assemblies of the World Inc. v. The Registered Trustees of the African Apostolic Christ Church (2002) 15 NWLR (Pt. 790) 424 at 450 and Osahon v. FRN (2003) 16 NWLR (Pt. 845) 89 B at 114.

In his response to the Preliminary Objection in the Appellant's Reply brief filed by the Appellants learned Counsel, it was submitted that the grounds of appeal clearly arose from the judgment of the Court of Appeal particularly with regard to the finding on page 1239 C of the record. Relying on the cases of Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) 423 at 633 and Abubakar v. Yar'Adua (2008) 4 NWLR (Pt. 912) 434 at 457-458, learned Appellant's Counsel contended that the Preliminary Objection is misconceived and ought D to be dismissed as it was based on technicalities, which must be avoided to meet the ends of justice.

While the law is well settled that for a ground of appeal to be competent it must challenge the decision of a Court and not what a Court has not decided in its judgment, the two E grounds of appeal filed by the Appellant in this appeal clearly arose from the judgment of the Court of Appeal specifically at page 1239 of the record of appeal. That part of the judgment after very closely examining the evidence adduced at the trial Court plainly found that there was no evidence on record F incriminating the Appellant. There is no doubt whatsoever that this is an appealable decision within the provision of Section 318(1) of the 1999 Constitution. See Garuba v. Omokhodion (2011) 15 NWLR (Pt. 1269) 145. The Preliminary Objection is G thus misconceived and accordingly the same is hereby dismissed.

Coming back to the appeal itself, the Appellants brief of argument has identified only one issue from the two grounds of appeal in the Appellants Notice of Appeal. The single issue H reads -

“Whether the Court of Appeal was right in ordering a retrial of the Appellant after it had held that there is no incriminating evidence linking him? And whether this is not an appropriate case for the Supreme Court to apply the Provisions of Section 22 of the Supreme

Court Act to evaluate the evidence and discharge and acquit the Appellant”

Although in the Respondent’s brief of argument the learned Counsel to the Respondent also saw only one issue for the determination of the appeal, the issue was differently couched from that in the Appellant’s brief of argument. As for the Respondent’s learned Counsel, the issue falling for determination in the appeal is-

“Whether the Court of Appeal could have rightly invoked Section 16 of the Court of Appeal Act to discharge and acquit the Appellant having regard to the materials before it.”

The issue as identified in the Appellant’s brief is more in line with the grounds of appeal of the Appellant and I shall proceed to determine the appeal on the same. For the Appellant, it was argued that the Court below having agreed with the submission of the Appellant who was the 8th accused person at the trial Court and the 7th Respondent at the Court below that there was no evidence given by any of the 19 witnesses called by the prosecution at the trial Court linking the Appellant to any of the 4 charges for the offences upon which they were tried, the Court below ought to have exercised its powers under Section 16 of the Court of Appeal Act to discharge and acquit the Appellant; that sending the Appellant back to the trial Court to face trial in the absence of evidence against him in respect of the charges 3 and 4 on which the trial shall proceed at the trial Court, will cause great miscarriage of justice to the Appellant and therefore urged this Court to proceed under Section 22 of the Supreme Court Act, to discharge and acquit the Appellant since the evidence of the only two witnesses PW4 and PW17 who mentioned the name of the Appellant in their evidence, had disclosed no offence against the Appellant.

However, learned Counsel to the Respondent is of the strong view that as the Appellant’s grounds of appeal do not arise from the judgment of the Court of Appeal, neither the Court of Appeal nor this Court can exercise powers under Section 16 now 15 of the Court of Appeal Act or Section 22 of the Supreme Court Act to grant the Appellants reliefs of his discharge and acquittal, if the cases of *Obi v. INEC* (2007) 11 NWLR (Pt. 1046) 56 at 639 - 640; *Ogucha v. The Queen* (1959) S.C.N.L.R. 154 at 156; *Daboh & Anor. v. The State* (1977) All N.L.R. 146 (1977) 11 N.S.C.C. 309 at 315 and *Ajidagba*

v. I.G.P. (1958) S.C. N.L.R. 60 at 62, are taken to consideration. Alternatively, learned Counsel to the Respondent contended that the evidence on record has disclosed two offences under Section 149 and 171 of the Penal Code of the Federal Capital Territory against the Appellant for which the Appellant could have been convicted although he was not specifically charged with such offences by virtue of Section 218 of the Criminal Procedure Act CAP 532 of the Laws of the Federal Capital Territory and therefore urged this Court to convict the Appellant for lesser offences disclosed against him.

In response to the alternative submission of the learned Counsel to the Respondent, the learned Counsel to the Appellant maintained that the evidence on record does not even disclose the offences of obstruction of public officer in the discharge of his public function or intentionally offering resistance or illegal obstruction to the lawful arrest of any person, under Sections 149 and 171 of the Penal Code Act CAP 532 of the laws of Federal Capital Territory against the Appellant, to justify his conviction and sentence for the lesser offences.

From the charges earlier quoted in this judgment, it is quite clear that the Appellant was specifically charged with the offences of conspiracy under Section 97 of the Penal Code of the Federal Capital Territory Abuja in charge No. 1; attempted Culpable Homicide under Section 229 of the Penal Code of the Federal Capital Territory Abuja in charges numbers 2 and 3, while in charge no. 4, he was charged with the offence of Culpable Homicide punishable under Section 221 of the Penal Code of the Federal Capital Territory Abuja. The Ruling of the trial Court of 23 September, 2005 in favour of the Appellant upholding his plea of No-Case Submission was confined to charges 1 and 2, only as that count had declined to exercise jurisdiction in respect of charges 3 and 4 upon which therefore there was no decision of the trial Court. However, the Court of Appeal which thoroughly reviewed the evidence on record against the background of the No Case Submission and come to the irresistible conclusion that the evidence does not disclose any offence against the Appellant or as put by that Court -

“there was no evidence incriminating him,” ought to have extended the benefit of this very important finding in favour of the Appellant to the offences he was charged with in charges 3 and 4 in

respect of which the trial Court made no pronouncement in its Ruling on the No-Case Submission which was clearly made by the Appellant and his 7 co-accused persons in respect of all the 4 charges. In otherwords, all the Court below ought to have done, was to pronounce on the status of the Appellant at that stage against whom it found there was no evidence disclosed to justify the continuation of his trial for the offences of Attempted Culpable Homicide and Culpable Homicide respectively in charges 3 and 4 being remitted to the trial Court for the continuation of the trial. In otherwords, it is the question of extending the dismissal of the Respondent's appeal on the issue of the No Case Submission made on behalf of the Appellant at the trial Court to include the remaining charges 3 and 4 in respect of which the trial Court wrongly found that it had no jurisdiction so to say. ***Certainly in my view, the power to make the pronouncement in favour of the Appellant is available to that Court under Section 15 of the Court of Appeal Act as rightly urged on behalf of the Appellant. This is in line with the decision of this Court in the case of Ikomi v. The State (1986) 3 NWLR (Pt. 28) 340 at 356 where Nnamani JSC (of the blessed memory) said -***

"The powers of Courts to prevent abuse of process includes the power to safe guard an accused person from oppression and prejudice such would result if he is sent to trial pursuant to an information which discloses no offence with which he is in any way linked. See also the cases of Egbe v. The State (1980) 1 NLR 341 and Conelly v. D.P.P. (1964) A.C. 1254 at 1301-1302.

Applying these decisions to the present case, the need for this Court to prevent serious miscarriage of justice and prejudice to the Appellant for failure of the trial Court and the Court below the pronounce on his right or benefit of the decision on the no-case submission plea made in his favour, this Court definitely has the power to do so under Section 22 of the Supreme Court Act in order to prevent the occurrence of and the continuation of gross miscarriage of justice in this case. On the question of whether or not this Court may exercise its power under Section 218 of the Criminal Procedure Code of the Federal Capital Territory to convict the. Appel-

lant for lesser offences allegedly disclosed under Sections 149 and 171 of the Penal Code of the Federal Capital Territory, I entirely agree with the learned Counsel to the Appellant that no such offences have been disclosed against the Appellant from the only evidence of PW.4 and PW.17 who mentioned the name of the Appellant in their evidence at the trial Court. In any case such power of finding guilty resulting in conviction and sentencing the accused for lesser offences under Section 218 of the Criminal Procedure Code Act of the Federal Capital Territory, is definitely not available to the Court having regard to the outcome of a successful submission of no case to answer where the Court in such Ruling is not expected to express any opinion on the evidence before it not to talk of whether such evidence may support conviction. In other words, once the evidence called by the prosecution does not disclose prima facie case of the offence with which the accused was charged, his plea or submission of no case to answer, ought to succeed. This is because under the law on the subject, where a trial Judge, on a submission of no-case to answer, finds that although the prosecution have prima facie not proved the offence charged but that a lesser offence had been disclosed, then the trial Judge is obliged to rule that there is a case for the accused person to answer and to proceed with the trial by asking the accused person to enter his defence. See Adeyemi v. The State (1991) 6 NWLR (Pt. 195) 1 at 29.

I shall also emphasize at this stage that it is well settled by a long line of authorities that a submission of no case to answer may be properly made and upheld in the following circumstances-

- (1) When there has been no evidence to prove an essential element in the alleged offence either directly, circumstantially or inferentially. See Ibeziako v. Commissioner of Police (1963) 1 All N.L.R. 61 at 69.**
- (2) 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 can safely convict on it. See Ibeziako v. C.O.P. (supra) and Okoro v. The State (1988) 5 NWLR (Pt. 94) 255.**

It is trite that a trial Judge can rule that an accused person has no case to answer if one of the two conditions is satisfied. In the present case therefore, I have no reason whatsoever to agree with the findings of the trial Court and further on appeal by the Court below that there is no evidence at all linking the Appellant with the offences of conspiracy, attempted culpable homicide and culpable homicide with which the Appellant was charged at the trial Court. Consequently, upon this very clear and unambiguous finding of the Courts below that the Appellant has no-case to answer in respect of charges 3 and 4, the Court below was in error in including him in the case remitted to the trial Court for the continuation of the trial. The Appellant's appeal is therefore meritorious and definitely deserves to succeed.

Accordingly, the appeal is hereby allowed. The order of the Court below in this respect as it affected the Appellant is hereby set aside. As there is no prima facie case made out against the Appellant from the evidence already adduced by the prosecution, it would amount to a serious miscarriage of justice to subject him to a further trial. The Appellant shall be and is hereby discharged in accordance with the provisions of Section 159(1) of the Criminal Procedure Act CAP 491 of the laws of the Federal Capital Territory which states -

“159(1) - If on taking all the evidence referred to in Section 158 of this Code and making the examination, if any, of the accused as may be made in accordance with Section 235 of this Code, the Court finds that no case against the accused has been made out, which if not rebutted would warrant his conviction, the Court shall discharge him”

MUNTAKA-COOMASSIE JSC

I had a preview of the lead judgment just delivered by my learned brother, Mohammed JSC and I entirely agree with his reasoning and conclusions which I adopt, with respect, as mine.

The learned Justice has produced a well researched judgment and in my view the analysis and decisions arrived at are correct in law. The appellant deserves to be treated with utmost care devoid of any recklessness which will, if care is not taken, amount to miscar-

riage of justice on his person. It is clear that there is no iota of evidence to connect the Accused/Appellant with the commission of any criminal offence. We have to put heads together to guard against causing avoidable gross miscarriage of justice. We have those powers to prevent such abuse or oppression. See the statement of Nnamani
 B JSC in the case of *IKOMI vs THE STATE* (1986) 3 NWLR (pt 28) 340 at 356. This is a clear case where I will not object to urging us to invoke Section 22 of the Supreme Court Act to dispose of the matter since the trial court declined to hold that the appellant has no case to
 C answer, taking into consideration the existence of Section 159 (1) of the criminal procedure Act Cap 491 of the Laws of the Federal Capital Territory. I have no obligation to reproduce them here since my learned brother has clearly done so in the lead judgment.

The position now is that the appeal is pregnant with tremendous merit same must and is hereby allowed. The appellant is hereby
 D discharged under Section 159 (1) of the C. P. A. There was no pressing need to order for any retrial before another court.

E **GALADIMA JSC**

On 05/07/2007 the Abuja Division of the Court of Appeal, allowed the Respondent's appeal in part and upheld the No Case Submission on behalf of all the accused persons by the trial Court in
 F respect of charges 1 and 2. The appeal on the issue of jurisdiction in respect of charges 3 and 4 was allowed and the case was remitted for completion of the trial of the accused at the trial court.

In his Judgment, my learned brother Mahmud JSC, has painstakingly set out fully the background facts of this case. Needless repeating them. However, the Appellant was charged along with other
 G 7 accused persons with 4 separate charges. Their trial commenced with 19 witnesses testifying for the prosecution while 58 exhibits were tendered in evidence. Ruling on the no case submission made by the appellant and other 7 accused persons, the learned trial Judge held
 H the view that the court lacked jurisdiction to try them for the offence in charges 3 and 4. Aggrieved by the ruling, the State appealed to the Court below which allowed the appeal in respect of charges 3 and 4 affecting all the accused on the issue of jurisdiction which the present appellant never contested before that court and remitted the

case for continuation of trial in respect of charges 3 and 4 against all the accused persons. Further aggrieved with this decision the appellant appealed to this Court against that decision, essentially complaining that there was no shred of evidence remotely linking him with the commission of the alleged offences set out on counts 3 and 4. He contended that the Court of Appeal had a responsibility under Section 16 of the evaluated the evidence and conclusively discharged and acquitted the Appellant on the merit in the circumstance and in the face of the available evidence before the Court. B

The Notice of Preliminary Objection raised by the Respondent in the appeal is that two grounds of appeal do not arise from the judgment of the Court of Appeal and do not challenge the decision of the Court below. In his response, the Appellant's counsel submitted in the Reply Brief that the grounds of appeal clearly arose from the Judgment of the Court below. He urged the court to dismiss the objection. The objection is misconceived as this appeal is against the decision of the court below. Accordingly the preliminary objection is dismissed. C D

As for the appeal the central issue for determination is whether the court below could have rightly invoked Section 16 of the Court of Appeal Act to discharge and acquit the Appellant having regard to the materials before it. E

I have carefully considered the arguments and submissions of the respective learned counsels on this issue. I do not agree with the view expressed by the learned counsel for the Respondent that neither the Court of Appeal nor this Court can exercise powers under the then Section 16 (now Section 15) of the Court of Appeal Act or Section 22 of the Supreme Court Act to grant the reliefs sought by the Appellant. I readily agree with the Appellant that there was no evidence given by any of the witnesses called by the prosecution at the trial court linking the Appellant to any of the 4 charges for the offences which he and others were tried. It was futile and unnecessary to send the Appellant back to trial court in the absence of any shred of evidence against him in respect of the 3rd and 4th charges on which the trial shall proceed at the trial court. F G H

The Court of Appeal which appraised and reviewed the evidence on record against the background at the "no case submission" stage and concluded that the Appellant was not incriminated by any

evidence, should have extended the benefit of this vital finding also in favour of the Appellant in respect of the offences of attempted Culpable Homicide and Culpable Homicide respectively in charges 3 and 4 being now remitted to the trial court for continuation of the trial. In other words, the court below ought to have invoked section
 B 15 of the Court of Appeal Act and pronounced in favour of the Appellant to the effect that he was in no way linked with the offences he was charged with the others, and accordingly discharged and acquitted him. This is in line with the decision of this Court in the cases
 C of Ikomi V. The State (1986) 3 NWLR (Pt. 28) 340 at 356 and the earlier case of EGBE V. THE (1980) 1 NLR 341 See also CONELLY V. DPP (1964) A.C. 125 1301-1302.

These decisions are apt and applicable to the case at hand. The court below with the materials placed before it could have prevented the miscarriage of justice and prejudice to the appellant by
 D extending the benefit of its decision under S. 15 of the Court of Appeal Act on the no case submission. The court below failed to do so. This Court has the power under Section 22 of the Supreme Court Act so as to present any miscarriage of justice. Therefore upon very
 E clear and unambiguous findings of the two courts below that there is no evidence whatsoever, to link the Appellant with the offences of conspiracy, attempted culpable homicide, and culpable homicide, with which the Appellant was charged at the trial court, this appeal succeeds and it is allowed. The order of the Court of Appeal as it affected the Appellant is accordingly set aside. As there is no shred of
 F evidence adduced by the prosecution to link the appellant with the offences charged against him, he cannot be subjected to any further trial. He is hereby discharged in accordance with the provisions of
 G Section 159 (1) of the Criminal Procedure Act Cap 491 Laws of the Federal Capital Territory.

NGWUTA JSC

H I had the privilege of reading in draft the lead judgment just delivered by My Lord, Mohammed, JSC and I agree with the reasoning and conclusion therein.

In Charge No. FCTJ'HC/CR/28/2004, the appellant was the 8 accused person. He was the 7th Respondent in the Court below. From

the record of the trial Court of the 19 witnesses fielded by the Prosecution, only the 4th and the 17 witnesses mentioned the appellant in their evidence.

PW4, Abuchi Obidike, stated in his evidence, *inter alia*:
“On reaching the office of Ogar, we met five other men, by the stair case. I saw some boys who I was told were the body guards of Ogar B and amongst them was one Jude Ogaga who I cannot identify because I saw him only once.” See page 581 of the record.

The evidence of the PW4 did not link the appellant with any crime. At page 690 of the record, PW17 Mr. Christian Ajobu, the C Investigating Police Officer, swore that:

“...the 8th accused was arrested by the SSS when he tried to distract the 555 from carrying out their duties in the investigation.”

At page 694 the witness said, *inter alia*:

“found out during investigation that the membership of the D security guards for the 1st accused were 16 and three are here they include 5th, 6th and 8th accused... 1st accused employed them as personal guards.”

Crossed-examined by learned Counsel for the 8 accused, E PW17 said, *inter alia*:

“One of the witnesses confessed that there was attack on the DG of NAFDAC but the name of the 8th accused not specifically mentioned.”

From the evidence reproduced above, it is clear that the appellant did no more than the job which the 1st accused employed F and paid him to do. There is no evidence that he is involved in any act, criminal or otherwise, carried on by his boss-the 1st accused.

Based on the evidence in the record, the Court below held; G rightly in my humble view that:

“The 7th accused (appellant) had no evidence incriminating him. He was only arrested because he was a personal security guard to the 1st Respondent and was only arrested in the process of protecting his master from being personal assault when the officers of the State Security Service apprehended him.” See page 1239 of the H record of the lower Court.

The above finding of the Court below was not limited to Counts 1 and 2 nor did it exclude Counts 3 and 4 in respect of which the Court below held that the trial Court had jurisdiction.

In my humble view, it is a finding that is based on the evidence led by the PW4 and especially the PW17, a Commissioner of Police. The appellant (as the 8th accused and the 7th Respondent) was not incriminated in any of the four counts of the charge preferred against him and others. As far as the appellant is concerned, there is no basis
B for the order that:

"Hearing in the criminal trial shall accordingly continue in respect of Counts 3 and 4 on the Charge/" See page 1243 of the record.

A similar situation arose in Appeal No. SC.66/2009 determined on 20/1/2012 (Unreported). In the same case the lower Court
C found:

*"...the only cogent evidence before the Court for the offence of murder charge is inadmissible evidence of hearsay. It is not admissible to prove the offence consequently no offence is proved against
D the appellant."*

The above finding notwithstanding the Court below concluded:

"The accused is discharged but not acquitted"

In concurrence with the lead judgment allowing the cross-appeal I said that the Court, trial or appellate having reached the above
E conclusion, ought not only to discharge but to discharge and acquit the accused or the appellant. At the conclusion reached the Court below ought to have discharged and acquitted the appellant in all the four counts of the information. A subsequent trial in Counts 3 and 4
F of the information will amount to double jeopardy and the principle of *autre foi acquit* will avail the appellant in a continued trial on Counts 3 and 4 of the information. See *R. v. Jinadu* 12 WACA 368; *Umeze v. State* (1973) 6 SC 221; *Conelly v. DPP* (1964) 48 CAR 133.

For the above and the more comprehensive reasoning in the
G lead judgment. I also allow the appeal] and pursuant to the power of the Court in s.22 of the Supreme Court Act, I discharge and acquit the appellant in the four counts of the information.

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MUHAMMAD JSC

I have had a preview of the lead judgment of my learned brother Mahmud Mohammed, JSC and entirely agree with the reasons given and the conclusion arrived at therein that this appeal has merit. I am particularly allowing the appeal for those very reasons

outlined in the lead judgment. Notwithstanding that resolve, I offer a few words of mine by way of emphasis of what his lordship has already articulated.

The Appellant along with seven others were arraigned before the Federal Capital Territory High Court, the trial court, for the offences in the four separate charges reproduced at pages 2 - 7 of the lead judgment. B

To prove their case, the Respondent called all its 19 witnesses through whom all the fifty Eight (58) Exhibits tendered were admitted. At the close of Respondents case, a no case submission was made on behalf of all the eight accused persons. The trial court sustained the submission in respect of the 1st and 2nd heads of charge and discharged all the eight accused persons. The court however held that it lacked jurisdiction over the 3rd and 4th charges and declined further proceedings regarding those charges. C

Aggrieved by the trial court's decision, the Respondent appealed to the Abuja Division of the Court of Appeal (hereinafter referred to as court below) whereat the appeal in respect of the 1st and 2nd heads of charge was dismissed and that in respect of the 3rd and 4th heads of charge was allowed. The court below in allowing the appeal remitted the case to the trial court for proceedings to be concluded in respect of the 3rd and 4th charges in spite of its finding at page 1239 of the record of Appeal thus:- D

"The 7th accused had no evidence incriminating him. He was arrested because he was a personal security guard to the 1st Respondent and was only arrested in the process of protecting his master from any personal assault when the officers of the State Security Service apprehended him." E

The question which arises in this appeal is the justice in the order by the court below remitting Appellant's case to the trial court for continuation of proceedings in spite of its foregoing finding that at the end of Respondent's case no incriminating evidence has been led against the Appellant. This court has held in a seemingly endless chain of decisions that in a criminal trial such as the instant one where at the close of the prosecution's case a submission of no case to answer has been made on behalf of the accused and there is 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 com- F G H

mission of the offence with which he has been charged, the no case submission urged on behalf of the accused may be upheld.

In the instant case where the court below has found “no incriminating evidence” against the Appellant pertaining all the four heads of charge the Appellant is arraigned for, the only proper order
B the court is to make is to further uphold the no case submission made on behalf of the Appellant in respect of the 3rd and 4th charges and discharge the Appellant as well. See *Ajidagba v. IGP* (1958) 3 FSC 1 at 6; *Tongo & Anor v. Commissioner of Police* (2007) 6 SC (pt. 1) 210 or (2007) 12 NWLR (pt.1049) 525; *Nyame v. FRN NCC* Vol. 5
C (2010) 295; *Ubanatu v. Commissioner of Police NSCQLR* Vol. 1 (2000) 89, and *Ibeziakor v. C.O.P* (1963) 1 ALL MLR 61.

The court’s otherwise order is perverse and is liable to be set aside on appeal. It is for the foregoing and more so the fuller reasons
D outlined in the lead judgment that I also allow the appeal, set aside the judgment of the court below and discharge the Appellant.

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