

SUPREME COURT OF NIGERIA
FRIDAY 5TH JULY, 2013. SC. 230/2010
**CORAM:- M. MOHAMMED, M. S. MUNTAKA-
COOMASSIE, N. S. NGWUTA, M. U. PETER-ODILI,
O. ARIWOOLA, JJSC**

DELE FAGORIOLA APPELLANT
V.
FEDERAL REPUBLIC OF NIGERIA RESPONDENT

CRIMINAL PROCEDURE - No case submission - Principle - The submission postulates that there is no legally admissible evidence - Or that prosecution's evidence has been so discredited - That no reasonable court can convict accused on such evidence (H1)

COURTS - No case submission - Procedure to adopt - When the submission is made - Court is not called upon to express opinion on evidence before it - But to rule that evidence exist or not - That links accused with offence charged (H2)

CRIMINAL PROCEDURE - Prima facie case - Exists when there is sufficient evidence - To support the allegation made against accused - Of which he is expected to rebut in his defence (H3)

FACTS

Before the High Court of Ondo State Holden at Akure, accused/appellant was arraigned on a nine count charge of conferring corrupt advantage upon himself and wife contrary to section 19 of the Corrupt Practices and Other Related Offences Act 2000. It was alleged by prosecution/respondent that appellant while serving as the Chairman of the Akure North LGA of the State, approved and collected various sums of money on the pretext of attending seminars/workshop which he and his wife never attended. At the trial, respondent called eight witnesses and tendered several incriminating documents to prove its case against appellant.

At the close of respondent's case, appellant pursuant to section 286 of the Criminal Procedure Law Cap. C31 Laws of Ondo State 1978, made a no case submission on the ground that prosecu-

tion has not proved the essential ingredients of the offence as contained in section 19 of the ICPC Act. The court heard arguments from both parties on the submission and at the end overruled the submission. Appellant was dissatisfied. Hence, he appealed to the Court of Appeal Benin Division. The court heard the appeal and dismissed same. The decision of the trial court was thus affirmed. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the respondent has made out a prima facie case against the appellant making it necessary for the Court of Appeal to call on the appellant to open his defence.

2. Whether the Court of Appeal was right in holding that the trial court did not make any observation or express any opinion on the evidence before it which fetters its discretion.

HELD (Unanimously dismissing the appeal per

MUNTAKA-COOMASSIE JSC)

CRIMINAL PROCEDURE - No case submission - Principle

1. My Lords, I have set out the submissions of the learned counsel on behalf of their respective parties/clients in this case. The pertinent question at this juncture is when a “no case submission” is made, in a criminal trial, at the close of the case for the prosecution, a submission of no prima facie case to answer made on behalf of the accused person postulates one or two things or both of them at once:

(a) Such a submission postulates that there has been, throughout the trial, no legally admissible evidence of whom the submission has been made linking him in any way with the commission of the offence with which he had been charged, which would necessitate his being called upon for his defense.

(b) That whatever evidence there was which might have linked the accused person with the offence has been so discredited that no reasonable court can be called upon to act on it as establishing criminal guilt in the accused person concerned.

Similarly, a no case submission may be upheld where

(a) there is no evidence to prove an essential element of the alleged offence.

(b) the evidence has been so discredited as a result of cross-examination, and

(c) the evidence is manifestly unreliable that no reasonable tribunal or court can safely convict on it.

(pp. 3761 D/3762 B)

COURTS - No case submission - Procedure to adopt

2. Therefore when a submission of no case is made, the trial court is not hereby called upon, at that stage of proceeding, to express any opinion on the evidence before it. The court is only called upon to take note and to rule accordingly that there is, before the court, no legally admissible evidence linking the accused person with the commission of the offence with which he is charged or that there is evidence before it linking the accused person with the offence charged.

The appellant alleged that the trial court made observation that has fettered its discretion in this case. *I have closely gone through the ruling of the trial court I do not see anywhere the trial court made any observation or appraisal of the evidence before it that may fetter its discretion. The mere fact that the trial court stated that there is evidence before it to support the allegation that the appellant and his wife collected money for seminars/workshops, is merely to support the fact that there is prima facie evidence that would require the appellant to offer some explanation in his defence.* (Italics mine for clarity)
(pp. 3761 H/3763 C)

CRIMINAL PROCEDURE - Prima facie case

3. The next question is when is a prima facie case made by the prosecution? A prima facie case is said to exist when there is evidence sufficient enough to support the allegation made against the accused person. It means that a presumption of guilt is made out against the accused, and as soon as a prima facie case is made out against the accused, he should rebut same on fact in his defence.

My Lords, applying the above stated principles, can one say

that there is no evidence before the trial court as “worth looking at” or to make it worthwhile to continue the proceedings? I have no doubt in my mind that a perusal of the evidence of the prosecution witnesses show that various sums of money was collected by the appellant for seminars/workshops for himself and his wife which the witnesses said were never attended or that some did not even take place. These pieces of evidence deserved explanation from the appellant in the course of his defence. I have no doubt in my mind that if these pieces of evidence were not challenged they would be sufficient to ground the appellant’s conviction. I therefore hold that the lower court was correct in affirming the ruling of the trial court.
(p. 3762 D/H)

D REPRESENTATION

F. Omotosho, Esq., for the Appellant
G.O. Igbadume, Chief Legal Officer, I.C.P.C. with G. P. West, Principal Legal Officer, I.C.P.C., Abuja, for the Respondent

E CASES REFERRED TO

- Ekwunugo v. FRN (2008) 15 NWLR (pt. 1111) 630
Ajiboye v. State (1995) 8 NWLR (pt. 414) 408
Ajidagba v. IGP (1958) NSCC 20
Ubanate v. COP (2000) 2 NWLR (pt. 643) 115
Ekanem v. King (1950) 13 WACA 108
Atano v. AG Bendel State (1988) 2 NWLR (pt. 75) 201
State v. Emedo (2001) 12 NWLR (pt. 726) 131
Atuma v. State (2007) 5 NWLR (pt. 1028) 466
Igho v. State (1978) 3 SC 87
Duru v. Nwosu (1989) 1 NWLR (pt. 113) 24
Okoro v. State (1988) 5 NWLR (pt. 94) 255
IGP v. Marke (1957) SCNLR 53
R. v. Coker (1952) 20 MLR 62
Mogede v. State (1996) 5 NWLR (pt. 448) 270

STATUTES REFERRED TO

Corrupt Practices & Other Related Offences Act 2000, s. 19
Criminal Procedure Law Cap. C31 Laws of Ondo State 1978, s. 286

LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC

The appellant, Dele Fagoriola, was arraigned before the High Court of Justice sitting at Akure, Ondo State, on the complaint of the Independent Corrupt Practices and Other Related Offences Commission (I.C.P.C) on a nine (9) count charge under section 19 of the Corrupt Practices and Other Related Offences Act, 2000, hereinafter called ICPC Act. B

The appellant was accused of conferring corrupt advantage upon himself and his wife by collecting and/or approving various sums of money totaling nine hundred and seven thousand, four hundred and fifty naira (N907,450) from the coffers of the Local Government for the purposes of attending conferences, seminars and workshops but which the appellant did not attend and to which his wife was not entitled as she was not a staff of the Local Government. At the material time, the appellant was the chairman of the Akure North Local Government. At the trial the prosecution called eight (8) witnesses and tendered many documents while some documents, exhibits Z12 -18 were tendered by the appellant through the prosecution witness No. 8, during cross-examination recognizing the position of the chairperson in the Local Government and its entitlement to certain benefits. At the conclusion of the prosecution's case, the appellant, through his counsel, made "a no case submission" pursuant to section 286 of the Criminal Procedure Law, Cap. C31 of the Laws of Ondo State, 1978 on the ground that the prosecution failed to establish the essential ingredients of the offence as contained in section 19 of the I.C.P.C. Act, Cap. 31, L.F.N., 2004. The trial court in a considered ruling refused "the no case submission". In its conclusion, the trial court found as follows at pages 115- 118 of the record: C D E F G

"It is pertinent at this stage to ask myself a number of questions which I believe will resolve the issue of whether to uphold the no case submission or not. The questions are:

- i. What were the true facts of this matter?* H
- ii. Did the accused confer corrupt advantage upon himself and his wife or not?*
- iii. If yes how did he do so?*
- iv. If the answer is in the negative where is the evidence for this*

court to act upon?

There are other questions submitted in the major question posed above.

There is evidence before this court that the accused person and his wife did not attend some conferences and workshops. There is evidence before this court that some of the conferences and workshops did not hold. I hold without saying more that the accused person must explain and throw light upon the areas which are not clear to the court. The accused must explain in defence of his position. I hold that the accused has a case to answer and for this I now call upon him to enter upon his defence”.

The appellant was aggrieved with the decision of the trial court and as a result appealed to the Court of Appeal, Benin division, hereinafter called the lower court. On 11th May 2010 the lower court dismissed the appellant’s appeal. In its conclusion it held as follows:

“At the stage of no case submission at the close of the prosecution’s case, what is required of a trial court is not to evaluate or attach weight to the evidence led by the prosecution at that stage or to write lengthy judgment. 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. Therefore the issue is not whether the prosecution has proved the charge against the accused beyond reasonable doubt. In the instant case I cannot see how the trial Judge descended (sic) into the arena and expressed any opinion that may fetter his discretion”.

In fact concluded (sic) thus and I quote. At pages 218 - 219 per Shoremi, JCA.

“I intend to maintain a clear mind to receive the defence of the accused person and adjudicate on the totality of the evidence in this matter”.

“It follows 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 a prima facie case requiring at least some explanation from the accused person. See Ekwunugo v. FRN (2008) 7 SCNJ (July) 236 at 242, (2008) 15 NWLR (Pt. 1111) 630. It is therefore clear that the trial Judge at that time had not convicted the appellant but merely did the right thing by calling on him to make a defence. It is still open to the appellant either to make a defence or rest his case on the

prosecution. I hold that the trial Judge did not concern itself with the credibility of witnesses or the weight of their evidence. He therefore did not make any observation or expressed any opinion on the evidence before him therefore deferring his discretion”.

The appellant was again dissatisfied with the decision/judgment of the lower court and appealed to this Hon. Court. Both parties filed their respective briefs of argument. The appellant formulated two issues for determination in his brief as follows:

1. Whether the respondent has made out a prima facie case against the appellant making it necessary for the Court of Appeal to call on the appellant to open his defence.

2. Whether the Court of Appeal was right in holding that the trial court did not make any observation or express any opinion on the evidence before it which fetters its discretion.

The respondents in its brief of argument also formulated two issues for determination in the following terms:

1. Whether or not the prosecution has proved all the essential ingredients (elements) of the offences with which the appellant was charged to warrant him to open his defence.

2. Whether or not the trial court’s ruling dismissing the no case submission made by the appellant contained observation or opinion that is prejudicial to the appellant’s case.

At the hearing on 11/4/13, the appellant’s learned counsel adopted his brief of argument and urged this court to allow the appeal.

On his issue No. 1, it was submitted that at the stage of no case submission, what has to be considered is certainly not whether the evidence against the accused is sufficient to justify conviction but whether the prosecution has made out & prima facie case requiring at least some explanation from the accused person, cites: *Ekwunugo v. F.R.N (2008) 15 NWLR (Pt. 1111) 630 at 639; Ajiboye v. State (1995) 8 NWLR (Pt. 414) 408 at 418*. He further contended that a prosecution is said to have made out a prima facie case when the totality of the evidence adduced by the prosecution is such that if uncontradicted and believed will be sufficient to prove the case against the accused person, he referred to *Ajidagba v. I.G.P (1958) NSCC 20 at 21, (1958) SCNLR 60; Ubanatu v. C.O.P. (2000) 2 NWLR (Pt. 643) 115 at 129*. He therefore contended that one of the essential

elements/ingredients of the offence charged was not proved. He referred to section 19 of the I.C.P.C. Act and he contended that the element of the offence charged are:

- i. The accused person must be a public officer and
- ii. That the accused person used his office or position to gratify
B or confer any corrupt or unfair advantage upon himself or any relation.

The second ingredient was alleged not to have been proved by the prosecution. He referred to the evidence of PW4 which he
C said that the accused person was not only the approving authority for payment, and they were three (3) unless the three of them approved no payment would be made. He therefore submitted that the lower court was wrong to have upheld the ruling of the trial court.

On issue No. II, he contended that the trial court evaluated the
D evidence adduced in its ruling, which fettered its jurisdiction that the posing of some vital and fundamental questions by the trial court readily reveals that the court had conclusively made up its mind to place the burden of proof on the appellant when prosecution has failed to prove the elements of the offence.

E Learned counsel to the respondent adopted his brief of argument at the hearing and urged this court to dismiss the appeal. On his issue No. 1, it is the submission of the learned counsel that having regard to the evidence adduced by the prosecution and exhibits
F tendered in the course of the trial, the no case submission was misconceived and properly refused. That all that is required at this stage of trial is a prima facie case against the appellant. The evidence establishing a prima facie case is not to be such as would ground a conviction, relying on *Ubanatu v. COP* (2001) 2 ACLR 315 at 335, (2000)
G 2 NWLR (Pt. 643) 115.

Learned counsel agreed with the ingredients of the offence charged under section 19 of the Corrupt Practices and Other Related Offences Act as stated by the appellant and submitted that contrary
H to the submission of the appellant, the second ingredient of the offence has been proved by the evidence given by the prosecution witnesses. He referred to the evidence given by the prosecution witnesses. He referred to the evidence of PW1 and PW8 which show that the appellant collected various sums of money from the coffers of the local government under the guise of attending seminars and

workshops which he never attended or for some seminars/workshops that never took place. The evidence of collection of the money was given by PW4 while PW3 gave evidence of approval given by the appellant in exhibits E, F, G, H, I, K, L and M.

On issue No. 2, it was the contention of the learned counsel to the respondent that the mere fact that the trial court commented by way of observation or opinion in a no case submission is not enough to fetter its discretion; B

What the court did was to ascertain whether or not there is any evidence at all, no matter how slightly, linking the accused with the offence charged. This does not involve evaluation of evidence or the ascription of probative value to evidence. He therefore contended that the observation or opinion in the ruling of trial court has no effect of vitiating or fettering the discretion of the court. What the court did in this case was steering a middle course relying on Ekanem D v. King (1950) 13 WACA 108, Atano v. A-G Bendel (1988) 2 NWLR (pt.75) 201 & State v. Emedo (2001) 12 NWLR (pt.726) 131

My Lords, I have set out the submissions of the learned counsel on behalf of their respective parties/clients in this case. The pertinent question at this juncture is when a “no case submission” is made, in a criminal trial, at the close of the case for the prosecution, a submission of no prima facie case to answer made on behalf of the accused person postulates one or two things or both of them at once: E

(a) ***Such a submission postulates that there has been, throughout the trial, no legally admissible evidence of whom the submission has been made linking him in any way with the commission of the offence with which he had been charged, which would necessitate his being called upon for his defense.*** F G

(b) ***That whatever evidence there was which might have linked the accused person with the offence has been so discredited that no reasonable court can be called upon to act on it as establishing criminal guilt in the accused person concerned.*** H

Therefore when a submission of no case is made, the trial court is not hereby called upon, at that stage of proceeding, to express any opinion on the evidence before it. The court is only called upon to take note and to rule accordingly that

there is, before the court, no legally admissible evidence linking the accused person with the commission of the offence with which he is charged or that there is evidence before it linking the accused person with the offence charged. See *Atuma v. State* (2007) 5 NWLR (Pt. 1028) 466; *Igbele v. State* (2004) 15

B NWLR (Pt. 896) 314; *Ajiboye v. The State* (1998) 1 ACLR 355, (1995) 8 NWLR (Pt.414) 408.

Similarly, a no case submission may be upheld where

(a) ***there is no evidence to prove an essential element of the alleged offence.***

C (b) ***the evidence has been so discredited as a result of cross-examination, and***

(c) ***the evidence is manifestly unreliable that no reasonable tribunal or court can safely convict on it.***

D ***The next question is when is a prima facie case made by the prosecution? A prima facie case is said to exist when there is evidence sufficient enough to support the allegation made against the accused person. It means that a presumption of guilt is made out against the accused, and as soon as a prima***

E ***facie case is made out against the accused, he should rebut same on fact in his defence.*** See *Igho v. State* (1978) 3 SC p. 87.

This court in *Ubanatu v. C.O.P.* (2000) 3 NWLR (Pt. 643) 115 at 129, paras. B-C. My learned brother *Ogwuegbu, JSC*, (as he then was) defined prima facie as follows:

F ***“But prima facie case is not the same as proof which comes later when the court has to find whether the accused is guilty or not guilty”*** pp. 125 -131.

In the case at *Duru v. Nwosu* (1989) 1 NWLR (Pt. 113) 24 at G 41, para. *Nnamani, JSC* (as he then was of blessed memory) stated thus:

“It seems to me the simplest definition is that which says that “there is ground for proceeding”. In other words, that something has been produced to make it worthwhile to continue the proceedings.

H ***On the face of it, suggests that the evidence produced so far indicates that there is something worth looking at”.***

My Lords, applying the above stated principles, can one say that there is no evidence before the trial court as “worth looking at” or to make it worthwhile to continue the proceed-

ings? I have no doubt in my mind that a perusal of the evidence of the prosecution witnesses show that various sums of money was collected by the appellant for seminars/workshops for himself and his wife which the witnesses said were never attended or that some did not even take place. These pieces of evidence deserved explanation from the appellant in the course of his defence. I have no doubt in my mind that if these pieces of evidence were not challenged they would be sufficient to ground the appellant's conviction. I therefore hold that the lower court was correct in affirming the ruling of the trial court.

The appellant alleged that the trial court made observation that has fettered its discretion in this case. I have closely gone through the ruling of the trial court I do not see anywhere the trial court made any observation or appraisal of the evidence before it that may fetter its discretion. The mere fact that the trial court stated that there is evidence before it to support the allegation that the appellant and his wife collected money for seminars/workshops, is merely to support the fact that there is prima facie evidence that would require the appellant to offer some explanation in his defence. (Italics mine for clarity)

In the final analysis, I hold that this appeal lacks merit and it is hereby dismissed. A case that started in 2006 has been dragged and delayed for eight years by the appellant, the period within which he could have it determined one way or the other by the trial court. I have therefore no option other than to send and remit this case to the trial court for continuation and for the appellant to enter his defence, if he intends to do so.

MOHAMMED JSC

The judgment of my learned brother Muntaka-Coomassie, JSC just delivered was read by me before today. I entirely agree that there is no merit in this appeal which deserves nothing but a dismissal. This is because having regard to the ingredients of the charge under section 19 of the I.C.P.C. Act, 2004 under which the appellant was charged and the evidence adduced by the prosecution in support of that charge

before the trial court, that court was quite right in finding that prima facie case had been disclosed from the evidence to justify asking the appellant to defend himself of the charge against him. In other words, the dismissal of the no case submission made by the appellant by the trial court was quite in order as affirmed by the Court of Appeal. This
 B is in line with the decision of this court in *Duru v. Nwosu* (1989) 4 NWLR (Pt. 113) 24 at 43 where prima facie case was deafly defined to include a situation where there is ground for proceeding. In the present case, on the face of the proceedings reached so far in the trial
 C of the appellant, the evidence produced indicates that there is something worth looking at in the case against the appellant to justify the dismissal of his no case submission.

In the result, I also dismiss this appeal and abide by the consequential orders made in the judgment of my learned brother.
 D

NGWUTA JSC

I read in draft the lead judgment just delivered by my Lord, Muntaka-Coomassie, JSC and I entirely agree with the reasoning
 E and conclusion therein.

The principle which guides the court in “no case” submission is that it is when all the ingredients of an offence have been laid out in evidence by the prosecution and the evidence so adduced has been
 F so discredited as a result of cross-examination, or is so manifestly unreliable that no reasonable tribunal can safely convict on it that the submission can succeed. See *Okoro v. The State* (1988) 5 NWLR (Pt. 94) 255; *Police v. Marke* (1957) 2 FSC 5, reported as *I.G.P. v. Marke* (1957) SCNLR 53.

G On the facts before us, it can hardly be said that the evidence laid by the prosecution has been discredited in cross-examination or is manifestly unreliable. For instance, the evidence of PW1 and PW8 that the appellant collected various sums of money from the treasury of Akure North Local Government on the pretext of attending some
 H seminar/workshops was not discredited in cross-examination, and it cannot be said to be unreliable.

It is not the case of appellant that he did not collect money to attend seminars/workshops nor is it in dispute that some of the seminars/workshops did not hold or that he did not attend some of them.

If the court believes the evidence adduced by the prosecution, it can convict the appellant. At this stage, learned counsel for the appellant cannot address the court on the credibility of the witnesses or the weight of their evidence. See *R. v. Coker* (1952) 20 MLR 62. Based on the above and the fuller reasons in the lead judgment, I hold that the trial court was right in holding that the prosecution made prima-facie case for the appellant to enter upon his defence. I also dismiss the appeal as devoid of merit.

PETER-ODILI JSC

I am in agreement with the judgment just delivered by my learned brother, Saifullahi Muntaka-Coomassie, JSC and to underscore my support I shall make a few comments.

This is an appeal against the decision of the Court of Appeal Benin Division, affirming the ruling of the High Court of Justice of Ondo State delivered by Hon. Justice T. B. Osoba on 30th May 2007, dismissing the appellant's application on a no case submission.

Facts Briefly Stated

The appellant was on the 26th October 2006 arraigned before the High Court of Justice of Ondo State on a nine count charge of conferring corrupt advantage upon himself and his wife all contrary to the provisions of the Corrupt Practices and Other Related Offences Act, 2000 to which he pleaded not guilty. It was the Department of State Security Services (SSS) that lodged the complaint that led to the charges against the accused person at the Independent Corrupt Practices and Other Related Offences Commission, (I.C.P.C.).

The report of the investigation carried out was that appellant had collected several sums of money of purportedly attending seminars/workshops, some of which he never attended or never took place at all. Also in the finding was that the appellant approved payment of several sums of money for his wife who is not a member of staff of the Akure North Local Government Area for purportedly attending seminars/workshops that she never attended or never took place. He was also said to have approved monies for his wife for seminars/workshops she never participated. Some of the monies meant for his wife were collected by the appellant himself.

In proving the charge against the appellant, the respondent

called a total of eight witnesses and tendered several documents which comprised payment vouchers with which the appellant collected the money from the Local Government coffers, memos and letters. At the close of the prosecution's case the appellant made a no case submission and after hearing counsel on both sides, the trial court over-ruled the appellant's submission.

Dissatisfied with the ruling of the trial court, the appellant appealed to the Court of Appeal, Benin Division which affirmed the decision of the trial court. Again not satisfied, the appellant has appealed to the Supreme Court on two grounds.

On the 11th April 2013 date of hearing, the appellant's counsel, F. Omotosho, Esq. adopted the brief of argument he had settled and filed on 13/7/2010. He distilled two issues for determination which are as follows:

1. Whether the respondent has made out a *prima facie* case against the appellant making it necessary for the Court of Appeal to call on the appellant to open his defence.

2. Whether the Court of Appeal was right in holding that the trial court did not make any observation or express any opinion on the evidence before it which fetters its discretion.

Learned counsel for respondent, Mr. Adamu adopted the brief of argument of the respondent settled by Sanusi Kado Esq. and filed on 23/8/10 in which were framed two issues for determination, viz:

a. Whether or not the prosecution has proved all the essential ingredients (elements) of the offences with which the appellant was charged to warrant him to open his defence.

b. Whether or not the trial court's ruling dismissing the no case submission made by the appellant contained observation or opinion that is prejudicial to the appellant's case.

The issues as crafted are just two sides of a coin or the same things painted differently. For ease of reference, I shall utilize the issues as formulated by the appellant.

Issue One

This issue raises the question whether a *prima facie* case was made out by the respondent necessitating the appellant to open his defence. In tackling the question, learned counsel for the appellant submitted that at the stage of a no case submission, what is to be considered is not whether the evidence against the accused is suffi-

cient to justify a conviction but whether the prosecution has made out a *prima facie* case requiring at least some explanation from the accused person. He cited Ekwunugo v. F.R.N. (2008) 15 NWLR (Pt. 1111) 630 at 639; Ajiboye v. State (1995) 8 NWLR (Pt. 414) 408 at 418; Mogede v. State (1996) 5 NWLR (Pt. 448) 270 at 280.

He stated that a *prima facie* case does not connote proof which comes later when the court has to find whether the accused is guilty or not guilty. Rather, it is that when the totality of the evidence adduced by the prosecution is such that if uncontradicted and believed will be sufficient to prove the case against the accused person. He relied on Ajidagba v. I.G.P. (1958) KSCC 20 at 21, (1958) SCNLR 60; Ubanatu v. C.O.P. (2000) 2 NWLR (Pt. 643) 115 at 129-130.

Learned counsel for the appellant contended for the appellant that one of the essential ingredients of the offence in section 19 of the ICPC Act under which the appellant was charged is that the appellant was a public officer which fact did not have any evidence in proof thereof and so a *prima facie* case was not made for which appellant would be called upon to make a defence.

For the respondent was submitted that none of the conditions for a successful no case submission had been proved. That the evidence adduced by the prosecution in support of the charge against the appellant has established a *prima facie* case requiring some explanations from the appellant. That the decision does not depend on whether the trial court would at that stage convict or acquit but on whether a reasonable tribunal might convict. He cited Ajiboye v. The State (1998) 1 ACLR 355, (1995) 8 NWLR (Pt. 414) 408; Duru v. Nwosu (1989) 1 NWLR (Pt. 113) 24 at 43.

For the respondent was submitted that a clear nexus had been established between the criminal conduct and the offence the appellant is being tried for.

On the definition of “*prima facie*” some attempts have been made by the Supreme Court to so define or guide. This court had, per Nnamani, JSC stated this in Duru v. Nwosu (1989) 1 NWLR (Pt. 113) 24 at 43:

“it seems to me the simplest definition is that which says that “there is ground for proceeding.” In other words, that something has been produced to make it worthwhile to continue with the proceeding. On the face of it “suggest that the evidence produced so far

indicates that there is something worth looking at."

From Ogwuegbu, JSC was another slant in the definition in the case of Ubanatu v. COP (2000) 3 NWLR (Pt. 643) 115 at 129, paras. A-C and that is thus:

B "The expression "*prima facie* case has also received numerous definitions by our courts. In Ajidagba v. Inspector General of Police (1958) SCKLR 60, (1958) 3 FSC 5 at 6, Abott, F.J. attempted to find a definition for the expression. He said:

C "*We have been at some pains to find a definition of the term "prima facie case." The term so far as we can find has not been defined either in English or in Nigerian courts. In an Indian case, however, Sher Singh v. Jitendranathsen (1931) I.L.R. 59, Calc, 275, we find the following dicta: "What is meant by a prima case (case)? It only means that there is ground for proceeding... But, prima facie*
D *case is not the same as proof which comes later when the court has to find whether the accused is guilty or not guilty... the evidence discloses a prima facie case when it is such that if uncontradicted and if believed it will be sufficient to prove the case against the accused" (per Lord Williams J)"*

E What the above attempts at the definition of *prima facie* case in simple terms within the contemplation of all parties and the court is that the prosecution had at the close of its case produced a solid peg on which its case is hanging and a need for the clarification or explanation of the accused and in this instance, the appellant. After that
F explanation which in effect is the evidence proffered by the accused, either his testimony alone or other witness(s) with or without that of the accused, then one of two things would happen.

G It is either that the explanation provided by the defence could not withstand the case put forward by the prosecution in which case, there is a conviction on the standard of proof in criminal matters or the other possibility would be that the clarification produced by the accused has set aside the points raised by the prosecution which seemed weighty but in the light of this defence has not measured up
H to the required proof beyond reasonable doubt and in the scenario, a discharge and acquittal of the accused would follow. The other way to say it is that a *prima facie* case being made out is akin to a voice which demands to be heard. On being heard, the hearer would now decide if it is worth the trouble or not to proceed with the matter.

The factors which must exist from which it can be said a *prima facie* case has not been made and stop the process at the end of the prosecution's case are that from the totality of the evidence adduced by the prosecution, an essential element of the offences charged has not been proved or that the evidence of the prosecution has been discredited in the course of cross-examination of the prosecution witnesses or that no reasonable tribunal could convict on the evidence of the prosecution. See *Ajiboye v. The State* (1998) 1 ACLR 335, (1995) 8 NWLR (Pt. 414) 408; *Ubanatu v. COP* (2000) 2 NWLR (Pt. 643) 115 at 129-130. B

Again at this stage, what is sought out is not whether the evidence proffered is believed or not. Also immaterial is the credibility of witnesses or the weight to be attached to the evidence. See *Queen v. Oguchea* (1959) FSC 64, reported as *Oguchea v. Queen* (1959) SCNLR 154. C

From all that I am trying to say it is clear to me that the issue of whether a *prima facie* case has been made out is positively resolved in favour of the respondent. D

Issue Two

The poser here is whether the Court of Appeal was right in holding that the trial court did not make an observation or express an opinion on the evidence before it which fettered its discretion. In answer, learned counsel for the appellant said the discretion of the trial Judge was fettered by the comments he made when he said thus: E

"There is evidence before this court that the accused person and his wife did not attend some conferences and workshops, there is evidence before this court that some of the conferences and workshops did not hold..." F

Also that the questions raised by the trial court revealed that it had conclusively made up its mind on the fact that the prosecution had not established the essential ingredients of the offence and the best thing to do was to place the burden of proof on the appellant. That the observation and remarks of the trial court is a *fait accompli* or *cul-de-sac* for the appellant should the appellant go ahead to open his defence and so prejudicial to the appellant. He relied on *State v. Emedo* (2002) FWLR (Pt. 130) 1645 at 1650, (2001) 12 NWLR (Pt. 726) 131; *Ubanatu v. COP* (2000) FWLR (Pt. 1) 138 at 157. G

Responding, learned counsel for the respondent said what the trial court did was merely steering a middle course and no way prejudicial. He cited *Atano & Anor. v. A-G Bendel State* (1988) 2 NWLR (Pt. 75) 201; *Ekanem v. King* (1950) 13 WACA 108; *State v. Emedo* (2001) 12 NWLR (Pt. 726) 131.

B The observation of the trial court which the appellant took exception to, with such angst that learned counsel says the appellant's situation had been, *"there is evidence before this court that some of the conferences and workshops did not hold..."*

C For the appellant was contended that the discretion of the trial Judge was fettered by those comments afore-stated. This view, learned counsel for the respondent disagreed with stating that what the trial court did was steering a middle course. This court, per Agbaje, JSC in *Atano v. State* (2005) 4 ACLR 25 reported as *Atano v. A-G Bendel State* (1988) 2 NWLR (Pt. 75) 201 at 218, paras. E-F held thus;

D *"A lengthy ruling on a no case submission will not by its length alone vitiate the proceedings. In other words a lengthy ruling overruling no case submission will not by its length alone infringe the fundamental human right of an accused person as enshrined in section 33 sub-section 1 of the Constitution"*

E Perusing the observation or comments of the learned trial Judge while overruling the no case submission, there was indeed a danger that court was in nearly showing its hand. However, that court stopped short of overshooting the safe margin and therefore it can be said

F that the fundamental right of the accused/appellant as enshrined in section 36 of the current 1999 Constitution, *impari materia* with section 33 of the 1979 Constitution which Agbaje, JSC referred to. To avert the risk of a possible miscarriage of justice on account of the

G trial court reaching a conclusion before hearing from the defence, I am of the firm belief that it is safer when overruling a no case submission for the trial court to make the ruling as brief as possible, to await the defence. Perhaps an example might be suggested when overruling a no case submission to say thus:

H *"I am satisfied that a prime facie case has been made out necessitating the call upon the accused to make a defence. Therefore the submission of no case herein made is overruled."*

This in my humble view saves everyone the trouble and in the event that the appellate court feels otherwise, that court especially

the Supreme Court is in a position to proffer a well considered ruling as to why the submission should have succeeded. This is to protect the trial court from going out of bounds and run beyond its own shadow. See *Ekanem v. King* (1950) 13 WACA 108; *State v. Emedo* (2001) 12 NWLR (Pt. 726) 131.

From the above and the well reasoned lead judgment, I too dismiss the appeal while abiding by consequential orders therein made.

ARIWOOLA JSC

I had the opportunity of reading in draft, the lead judgment of my learned brother, Muntaka-Coomassie, JSC just delivered.

The appeal emanated from the decision of the Court of Appeal, Benin Division, hereinafter called the court below, delivered on 11th May 2010 dismissing the appeal on the ruling of the trial High Court sitting in Akure, Ondo State on the no case submission made by the appellant.

The appellant had been arraigned on 3rd October 2006 before the High Court of Justice sitting at Akure upon an information filed by the (ICPC). The appellant was the Chairman of Akure North Local Government. He was arraigned on a nine (9) count charge pursuant to section 19 of the Corrupt Practices and Other Related Offences Act, 2000.

By the particulars of the offence charged, the appellant was accused of having conferred corrupt advantage upon himself and his wife by collecting and/or approving various sums of money totaling N907,450.00 (Nine hundred and seven thousand and four hundred and fifty naira) that is, N688,150.00 for himself and N219,00.00 for his wife from the coffers of the Local Government for the purpose of attending conferences, seminars and workshops but which the prosecution claimed the appellant did not attend and to which his wife was not entitled not being a staff of the Local Government.

The charge was said to have been incidental sequel to the petition to the ICPC by the State Security Service (SSS) based on the audit report on the finances of the Local Government between June 2003 and 2004.

During the trial, the prosecution called eight (8) witnesses and tendered couple of documents admitted as exhibits.

At the close of the case for the prosecution, the learned counsel for the appellant made a no case submission pursuant to section 286 of the Criminal Procedure Law, Cap. 31, Laws of Ondo State of Nigeria, 1978 on the ground that the prosecution failed to establish the essential elements of the offence charged. The trial court over-ruled the no case submission and in its ruling called upon the appellant to open his defence. That ruling led to appeal to the court below.

The court below in its judgment delivered on 11th May 2010 dismissed appellant's appeal and affirmed the decision of trial court. The court below had *inter-alia*, come to the following conclusion-

"...from the evidence available on record, the trial court was perfectly right in holding, that a prima facie case was established against the appellant. ...that the trial Judge did not concern itself (sic) with the credibility of the witnesses or the weight of their evidence. He therefore did not make any observation or express any opinion on the evidence before him thereby fettering his discretion."

That decision of the court below led to the instant appeal predicated on two grounds of appeal filed on 12/05/2010. Parties later filed and exchanged briefs of argument pursuant to rules of this court.

In the appellant's brief of argument settled by F. Omotosho, Esq. filed on 13/7/2010, the appellant distilled the following two issues for determination of his appeal.

1. Whether the respondent has made out a prima facie case against the appellant making it necessary for the Court of Appeal to call on the appellant to open his defence.

2. Whether the Court of Appeal was right in holding that the trial court did not make any observation or express any opinion on the evidence before it which fetters its discretion.

As earlier stated, at the conclusion of the prosecution's case, when the defendant was to proceed with his defence, if he had any, he had made a no case submission to the court upon which the trial court ruled by rejecting his submission and called upon him to proceed with his defence.

What then does the phrase "no case submission" mean? This means that there is no evidence on which the court would convict even if the court believed the evidence adduced by the prosecution. See *R. v. Coker & ors.*; *Ohuka v. State* (No. 2) (1988) 2 NWLR (Pt. 86) 36, (1988) 7 SC (Pt. 11) 25; *Gafari Ajidagba & ors. v. I.G.P* 3

FSC 5, (1958) N5CC Vol. 120, (1958) SCNLR 60.

It should be noted that by the Practice Direction established since February, 1962 by Lord Parker, the Lord Justice of England (sic). See; (sic) (1962) 1 WLR 277, a submission of no case may be upheld by the court where:

(a) There was no evidence to prove an essential element of the alleged offence, and B

(b) The evidence adduced by the prosecution has been so discredited as a result of cross examination.

(c) The evidence adduced by the prosecution is so manifestly unreliable that no reasonable tribunal can safely convict on it. But if a reasonable tribunal can convict on evidence so far led by the prosecution, then there is a case for the accused to answer. See *Osarodion Okoro v. State* (1988) 12 SC (Pt. 11), (1988) 5 NWLR (Pt. 94) 255. C

In other words, by our Procedural Law, at the end of the prosecution's case, if the defendant is of the opinion that the prosecutor has failed to establish a *prima facie* case, he has the right to make a no case submission. In the same vein, the court *suo motu*, can make a ruling of no case, and thereby discharge the accused person, if the court on its own volition is satisfied from the totality of the evidence adduced, the prosecutor has not made out a *prima facie* case, to which the accused person may be called upon to defend himself. Section 286 of the Criminal Procedure Act provides as follows: D

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

A *prima facie* case therefore, generally means "Sufficient evidence", if not rebutted, to prove a particular proposition or fact. In other words, a *prima facie* case means that there is ground for proceeding with a trial but it is not the same as proof which comes later when the court has to find whether the accused person is guilty or not. See *Ajidadgba & Ors. v. I.G.P.* (supra). F

The law is that after the prosecution closes its case, the question for the trial Judge is whether there is evidence against the defendant to require the defendant lead evidence in explanation of some facts, and not whether the available evidence is sufficient to secure a G

conviction. See *Ohwovoriole v. F.R.N.* (2003) 2 SCM 167, (2003) NWLR (Pt. 141) 2019, (2003) 2 NWLR (Pt. 803) 176.

However, when a submission of *no prima facie* case is made on behalf of an accused person, the trial Judge is not thereby called upon at that stage to express any opinion on the evidence already
 B before the court. The court at that stage is only called upon to merely take note and write a ruling accordingly, that there is before the court no legally admissible evidence to link the accused person charged, with the commission of the offence. If the submission is based on
 C discredited evidence adduced by the prosecution, such discredited evidence must be apparent on the face of the record. But if such is not the case, the submission of no case is bound to fail and be overruled. See *Godwin Daboh & Anor v. The State* (1977) 5 SC 197, (1977) All NLR 146, (1977) LPELR 904 SC per Udo Udoma, JSC.

D In the instant appeal, the trial court which had the evidence already adduced by the prosecution including various documentary evidence admitted as exhibits, considered the totality of the prosecution's case and rightly came to the conclusion *that a prima facie* case has been made out, to require the appellant's explanation
 E in defence.

Similarly, from the records, the court below was right in holding that the trial court did not make any observation or express any opinion on the evidence before it which could have fettered the court's
 F discretion. There is no doubt, the evidence adduced so far was properly found to be sufficient enough to cover the essential elements of the offences charged to enable the court call on the appellant to put up explanation in defence.

The no case submission by the appellant was therefore properly
 G overruled and the ruling was rightly upheld by the court below.

For the above reason and the fuller reasoning of my learned brother in the lead judgment with which I am in total agreement, I too hold that the appeal is devoid of any merit and it is hereby dismissed. The judgment of the court below is affirmed.

H I abide by the consequential orders in the said lead judgment on the remittance of the case to the trial court. Appeal dismissed.