

SUPREME COURT OF NIGERIA
FRIDAY 18TH MARCH, 2016. SC. 264/2012
CORAM:- M. MOHAMMED, CJN, S. GALADIMA,
O. RHODES-VIVOUR, N. S. NGWUTA,
M. D. MUHAMMAD, JJSC

UDE JONES UDEOGU APPELLANT
V.
1. FEDERAL REPUBLIC OF NIGERIA
2. ORJI UZOR KALU RESPONDENTS
3. SLOK NIGERIA

CRIMINAL PROCEDURE - Money laundering - Ingredients - Are that accused converted resources - That resources was derived from illegal acts - And that conversion is aimed at concealing illicit origin of resources (H1)

CRIMINAL PROCEDURE - Prima facie case - There is sufficient proof proffered by prosecution - To call on appellant to enter his defence - As there is a prima facie case against him (H2)

FACTS

The case presented by prosecution/1st respondent at the Federal High Court Lagos, is that sometime in the year 2005, some concerned indigenes of Abia State petitioned the Economic and Financial Crimes Commission (EFCC) against defendant/2nd respondent who was then the Executive Governor of Abia State. The investigations that were carried out by the EFCC upon the receipt of the said complaint revealed that 2nd respondent had some illegal dealings with 3rd respondent - SLOK NIGERIA LIMITED, as he had withdrawn billions of Naira belonging to the State Government, and converted same in various bank drafts which were subsequently lodged into 3rd respondent's bank account. It was further alleged that the Government's contracts were awarded to companies in which 2nd respondent had interests.

As a result of these revelations, a criminal charge was filed against appellant and 3rd respondent. However, the said charge was withdrawn and following an amendment, appellant and 3rd respon-

dent were arraigned along with 2nd respondent before the Federal High Court, Abuja. Appellant and 3rd respondent filed a joint application wherein they sought for an order quashing the charges preferred against them. Written addresses were filed in respect of the application. In a considered ruling, the learned trial Judge dismissed the application. Appellant and 3rd respondent appealed to the Court of Appeal. The appeal was dismissed. Dissatisfied, appellant appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Issue One: Whether the Court of Appeal was right when it affirmed the decision of the trial Court that the proof of evidence disclosed prima facie evidence in this matter against the Appellant.

2. Issue Two: Whether the Court of Appeal was right when it held that the Appellant’s objection that counts 98 - 112 of the charges are defective (sic) have been waived being a procedural objection and the aforesaid Counts are not fundamentally defective.

HELD (Unanimously dismissing the appeal per GALADIMA JSC)

CRIMINAL PROCEDURE - Money laundering - Ingredients

1. The ingredients of the foregoing Section 14 (1) (a) of the Act and as rightly submitted by ROTIMI JACOBS SAN of counsel to the 1st Respondent [EFCC] are that:-

(i) the accused converted or transferred resources or property;

(ii) the resource or property must have been derived directly or indirectly from drugs related offences or any other crimes or illegal acts;

(iii) the conversion or transfer of the resources must be with aim:

(a) concealing or disguising the illicit origin of the resources or Property; or

(b) aiding any person involved in any of the acts of drug related offences or any other crime or illegal act so as to evade the illegal consequences of his action.

Important point has been made by the Learned Senior Counsel for the 1st Respondent. This is that several distinct

offences can be brought out from the foregoing ingredients of the offence under the said Section 14(1)(a) of the Act. It is left for the prosecution to choose with which offence the accused should be charged. For instance, with respect to the aim of the accused in transferring the resources or property, the prosecution is also at liberty, depending on the available evidence, to choose between “concealing” or “disguising” the illicit origin of the resources. (p. 2175 G)

CRIMINAL PROCEDURE - Prima facie case

2. From the above it has become clear that the Appellant herein, did not deny he was involved in the illegal transfer of Government funds. He merely stated that he was helping out in the collection of debts. It will therefore be appropriate or necessary to allow the matter to proceed to trial so as to enable the prosecution to show that the funds transferred were indeed from the account of Abia State Government. It is difficult to fathom the spurious reasons given by the Appellant, who was the Director of Finance in the Government House and a Civil Servant at the material time that no prima facie case is disclosed in this case against him. The offence alleged against the Appellant in counts 45-64 of the charge created under Section 14 (1) (b) of the Act is that the accused must have collaborated with another person; and the collaboration must have been with the aim of concealing or disguising either the genuine nature or origin of the resources etc.

At this stage, the Court may not necessarily need to pry into the entire circumstance under which the Appellant collaborated with the other accused persons in concealing the genuine origin at the various sums allegedly illegally laundered.

From the foregoing, there is sufficient proof proffered by the prosecution to call on the Appellant to enter his defence as there is a prima facie case against him. Hence, this issue is resolved in favour of the 1st Respondent. (p. 2177 D)

NOTABLE POINT OF INTEREST
GALADIMA JSC

1. Criminal law – Prima facie case – Meaning of

I have dealt with the issue of prima facie in great details in SC.215/2012 in which the Appellant herein was the 2nd Respondent and the 3rd Respondent was the Appellant. I had found that the term” prima facie case” only means that there is ground for proceeding. It is not the same as proof which comes later when the Court has to find whether the accused is guilty or not. It is sufficient once it is shown that there are facts which reveal commission of a crime and show that the accused person is linked with the same. (p. 2174 D)

REPRESENTATION

George E. Ukaegbu Esq with E. N. Akaebu Esq; Thomson Sekibo Esq and M. Debora (Miss), for the Appellant
Olalekan Ojo Esq. with O. A. Afolagbe Esq. and H. O. P. Ejiga Esq.,
for the 1st Respondent
Awa U. Kalu SAN with N. B. Adkwu Esq; A. N. Nwodu (Miss); C. I. Obidike Esq; C. J. Nnaji Esq. for the 2nd Respondent.
3rd Respondent absent, not represented

CASES REFERRED TO

Ajidagba v. IGP (1958) SCNLR 60
Shersingh v. Jitend-Dranthen (1931) 1 LR 59 Calcutta 275
Abacha v. State (2002) 11 NWLR (pt. 779) 437
Ikomi v. State (1986) 3 NWLR (pt. 28) 340

STATUTE REFERRED TO

Money Laundering (Prohibition) Act 2004, s. 14

LEAD JUDGMENT BY GALADIMA JSC

This Appeal is against the judgment of the Court of Appeal, Abuja Division [hereinafter referred to as the Court below). The Judgment which was delivered on Friday 27th day of April, 2012 was in respect of consolidated Appeals NOS.CA/A/224C/2009; ORJI UZOR KALU v FRN & 2 ORS, and CA/A/229C/2009; UDE JONES UDEOGU & ANOR v FRN AND 2 ORS.

In its judgment the Court below affirmed the decision of the trial Federal High Court, Abuja Coram, A. Bello (J) which dismissed the Appellant’s application seeking to quash the amended charge

preferred against him and the 2nd Respondent herein.

I shall be very brief in setting out the background facts of this case as these are substantially the same with those in SC.215/2016. Sometime in 2005 some concerned indigenes of Abia State sent a written petition to the Economic and Financial Crimes Commission (EFCC) against the 2nd Respondent herein, who was then the Executive Governor of Abia State. The investigations that were carried out by the EFCC upon the receipt of the said complaint revealed that the 2nd Respondent had some shady dealings with SLOK NIGERIA LIMITED - the 3rd Respondent, as he had withdrawn billions of Naira belonging to Abia State Government, and converted them in various bank drafts which were subsequently lodged into the 3rd Respondent Account with the Inland Bank [now First City Monument Bank). It was further alleged that the Government's contracts were awarded to companies in which the 2nd Respondent had cronies, agents and associates. Some of these companies include ZEROCK CONSTRUCTION LTD; HITEC CONSTRUCTION LTD; HAPEL NIGERIA LTD. Some of the drafts lodged into the Accounts of the 2nd Respondent came in form of gratifications in appreciation for the contracts awarded by the 2nd Respondents on behalf of the Abia State Government. The 1st Respondent described these funds as laundered funds, illegally withdrawn from the account of the Government. In the circumstance, the 1st Respondent filed a criminal charge against the Appellant and the 3rd Respondent at the Federal High Court, Lagos.

However, the said charge was withdrawn; and following the amendment, the Appellant and 3rd Respondent herein were arraigned along with the 2nd Respondent before the Federal High Court, Abuja. The Appellant and the 3rd Respondent filed a joint application on 11th July, 2008, wherein they sought for an order quashing the charges preferred against them. Written addresses were filed in respect of the application. In a considered ruling delivered on 8th May, 2009, the learned trial Judge dismissed the application. The Appellant herein and the 3rd Respondent appealed against the decision of the learned trial Judge vide their joint Notice of Appeal dated 15th May, 2009.

At the Court of Appeal, briefs of argument were filed and exchanged and the appeal was consolidated with the Appeal No: CA/

A/2244/2009 filed by the 3rd Respondent herein and adjourned for hearing on 10th October, 2011. Briefs of argument were adopted on 15th March, 2012 and on 27th April, 2012; the Court below delivered its judgment in the consolidated appeals and dismissed it.

Dissatisfied with the decision of the Court below, the Appellant B and the 3rd Respondent were granted leave to appeal against the decision. The Appellant filed his Notice of Appeal on 2nd November, 2015.

In paragraph 2.9 of his brief of argument the Appellant has indicated that he does not intend to proffer argument in respect of C Grounds 2 and 3 and pray this Court to strike out the grounds.

In the Appellants' brief settled by his counsel, GEORGE E. UKAEGBU ESQ and filed on 5th November, 2015 two issues distilled for determination of this appeal are as follows:-

D *"1. Issue One: Whether the Court of Appeal was right when it affirmed the decision of the trial Court that the proof of evidence disclosed prima facie evidence in this matter against the Appellant. (Grounds 4 and 5)*

E *2. Issue Two: Whether the Court of Appeal was right when it held that the Appellant's objection that counts 98 - 112 of the charges are defective (sic) have been waived being a procedural objection and the aforesaid Counts are not fundamentally defective. (Ground 1)"*

F The 1st Respondent's brief of argument was settled by its counsel, ROTIMI JACOB SAN on 18th November, 2015. The two issues set out for determination of this appeal are as follows:-

G *"i. Whether the Court of Appeal was not right when it affirmed decision of the trial High Court that the facts contained in the proofs of evidence disclosed a prima facie case against the Appellant. (See Grounds 4 and 5)*

H *ii. Whether the Court of Appeal was not right when it affirmed the decision of the trial High judge which discountenanced the Appellant's preliminary objection to the alleged formal defects on the face of the charge when the objection was not raised before the Appellant took its plea. (See Ground 1)"*

The 2nd and 3rd Respondents did not file any brief in this appeal.

As I have noted earlier, the Appellant and the 3rd Respondent

were co-accused, jointly prosecuted for money laundering offence with ORJI UZOR KALU, 2nd Respondent in this appeal and the Appellant in the Appeal No: SC.215/2004. Since the Appeal No: SC.264/2013 and the Appeal No.SC.215/2013 were consolidated and the single Ruling was given at the trial Court, I shall in this appeal be making references to my findings and conclusions in Appeal No. SC.215/2013; where the issues and circumstances are identical in both.

However, I am of the respectful view that having considered Grounds 1, 4, and 5, the two issues distilled therefrom by the Appellant are apt and they call for determination of this appeal.

APPELLANT'S ISSUE 1 [1ST RESPONDENT'S ISSUE (i)]

On this issue, the learned counsel for the Appellant has contended that the proof of evidence did not disclose any prima facie case against the Appellant. He has argued that under Section 14 of the Money Laundering (Prohibition) Act 2004, the conversion or transfer of the resources or properties must have been either directly or indirectly from

(a) Illicit traffic in narcotic drug and psychotropic substances or,

(b) Any other crime or illegal act.

It is therefore submitted that to constitute an illegal withdrawal or funds from State Government Account, such a withdrawal must be forbidden by law or it is unlawful. That the withdrawal from State Government Account is illegal only if the fund withdrawn was not appropriated in the State Appropriation Law or the disbursement of the fund does not follow the procedure set out in the Financial Regulation of the State or the fund was withdrawn for the purpose it was not meant or appropriated for in the Appropriation Law of the State.

It is the further submission of learned counsel for the Appellant that the various amounts allegedly withdrawn as indicated in counts 17 - 19 have not been shown to be illegally withdrawn. And therefore, it has not be shown in the proof of evidence that when the application for issuance of drafts or banks cheques were made that the 3rd Respondent an/or any of its staff played any role in the withdrawal of any funds from the accounts of Abia State Government either illegally or otherwise.

It is finally submitted that in the circumstances of this case where

the proof of evidence has not revealed the existence of mens rea on the part of the Appellant with regards to the charge in counts 98 - 112 the Appellant cannot be asked to stand trial on the said counts as there is no prima facie case made against him.

B On this issue, Learned Counsel for the 1st Respondent submitted that the Court below having considered the proofs of evidence, rightly found that a prima facie case was disclosed against the Appellant.

C Let it be noted that there is a concurrent finding of fact in both the trial Federal High Court and the Court below in the issue that there sufficient proofs of evidence to call upon the Appellant to enter his trial. The attitude of this Court over the years is that it would not interfere with the concurrent findings of facts of two Lower Courts unless it is shown by the Appellant that such findings are perverse. An D overview of the argument canvassed by the Appellant at paragraphs 4.3 - 4.27 of his brief reveals that the Appellant has not been able to show that the findings of the two Lower Courts are perverse.

I have dealt with the issue of prima facie in great details in SC.215/2012 in which the Appellant herein was the 2nd Respon- E dent and the 3rd Respondent was the Appellant. I had found that the term "prima facie case" only means that there is ground for proceeding. It is not the same as proof which comes later when the Court has to find whether the accused is guilty or not. See *AJIDAGBA v IGP* (1958) SCNLR 60; *SHERSINGH V JITEND-DRANTHEN* (1931) F 1 LR 59 Calcutta 275. It is sufficient once it is shown that there are facts which reveal commission of a crime and show that the accused person is linked with the same. See *ABACHA v STATE* (2002) 11 NWLR (Pt.779) 437 at 495, where this Court quoted the dictum of D. O. COKER JSC with approval in *IKOMI v THE STATE* (1986) 3 G NWLR (Pt. 28) 340 at 376 where it was stated as follows:-

"At the stage of deciding whether to proffer charge the persecution is not obliged to decide as a trial Judge should whether, the available evidence is cogent enough to justify a conviction."

H Also at page 497 of the same report. *BELGORE JSC* (as he then was) stated as follows:-

"What the information must disclose is certainly not the guilt of the accused but a prima facie case for the accused to answer."

In demonstrating that proofs of evidence disclose prima facie

case, learned counsel for the 1st Respondent has referred to charges preferred against the Appellant, 2nd and 3rd Respondents herein. These are counts 17 - 44 which relate to offences under Section 14 (1) [a] of the Money Laundering of Prohibition) Act 2004. Count 17, for instance reads as follows:-

"That you Orji Uzor Kalu, Udeh Jones Udeogu, Slok Nigeria Limited, Emeka Abone (now at large) and Eunice Agwu (now at large) on or about July 7th 2005 within the jurisdiction of this Honourable Court did transfer through Manny Bank Ltd. (now Fidelity Bank Plc) the sum of N12,500,000.00 (Twelve Million, Five Hundred Thousand Naira) into Slok Nigeria Ltd's account with First Inland Bank Plc (a company solely owned by Orji Uzor Kalu and members of his family) which sum formed part of the funds you illegally withdrew from the account of Abia State Govt. with the aim of concealing the illicit origin of the said funds and you thereby committed an offence punishable under Section 14 (1a) of Money Laundering (Prohibition) Act, 2004".

Section 14(1) (a) of the Money Laundering (Prohibition) Act under which the Appellant and 2nd and 3rd Respondents were charged in counts 17-44 provides and follows:'

"14, (1) Any person who-

(a) converts, or transfer resources or properties derived directly or indirectly from illicit traffic in drugs and psychotropic substances or any other crime or illegal act, with the aim of concealing or disguising the illicit origin of the resources or properties or aiding any person involved in the illicit traffic in narcotic drug or psychotropic substances or any other crime or illegal act to avoid the illegal consequences of his action.

Commits an offence under this Section and is liable on conviction to a term of not less than 2 years or more than 3 years."

The ingredients of the foregoing Section 14 (1) (a) of the Act and as rightly submitted by ROTIMI JACOBS SAN of counsel to the 1st Respondent [EFCC] are that:-

(i) the accused converted or transferred resources or property;

(ii) the resources or property must have been derived directly or indirectly from drugs related offences or any other crimes or illegal acts;

(iii) the conversion or transfer of the resources must be with aim:

(a) concealing or disguising the illicit origin of the resources or Property; or

(b) aiding any person involved in any of the acts of drug related offences or any other crime or illegal act so as to evade the illegal consequences of his action.

Important point has been made by the Learned Senior Counsel for the 1st Respondent. This is that several distinct offences can be brought out from the foregoing ingredients of the offence under the said Section 14(1)(a) of the Act. It is left for the prosecution to choose with which offence the accused should be charged. For instance, with respect to the aim of the accused in transferring the resources or property, the prosecution is also at liberty, depending on the available evidence, to choose between “concealing” or “disguising” the illicit origin of the resources.

In the case at hand, the funds allegedly transferred by the Appellant were funds originally in the account of the Abia State Government meant for the development of that state. It was alleged that the funds were later withdrawn illegally from the Government’s Account on the pretence that these were for official purpose; but in fact the money withdrawn in cash were used to purchase bank drafts and the said drafts were later traced to the Appellant’s Account and were subsequently paid into the account of the 3rd Respondent. Clearly the circumstance in which the withdrawals of these money were made requires some explanation from the Appellant about his involvement.

The Appellant has argued at paragraph 4.12 of his brief that there is nothing to show that the funds were illegally withdrawn from the account of Abia State Government. However, having regard to the ingredients of the offence of money laundering, which I have earlier set out, all the prosecution is required to do is to show that the resources transferred were derived from an illegal act. The Appellant shall be required to defend his conduct and involvement in such transfer of the funds from the account of Abia State Government.

With due respect, to the respective parties in this appeal, their copious arguments and submissions in their briefs of argument are unnecessary under this issue. These are matters for the trial. At this

stage all the 1st Respondent needs to do is to show that there is prima facie case against the Appellant.

All I have deduced from the Appellant in his statement when he was confronted with the documents showing the various drafts he obtained and the lodgments he made into the 3rd Respondent's account, he proffered spurious reasons that he bought some used clothing materials for the State Government. He stated at page 1138 vol. II of the record thus:-

"Mr. Onyogu Ikoro is the General Manger...He gives instructions verbal [sic] on (sic) December 2001. The instructions are as for helping out in the collection of debts owed them on the goods supplied as second hand goods. I do not keep the record for the supplies. I only get the instructions from the General Manger. I don't know why they do not pay directly to their account. I am not employee of the company Slok Benin SARL. I only help out in the collection of debts only. I have never seen the goods. The second hand goods are clothing supply by Slok Benin SARL. Slok Company is owned by DR. O. U. KALU. (signed)."

From the above it has become clear that the Appellant herein, did not deny he was involved in the illegal transfer of Government funds. He merely stated that he was helping out in the collection of debts. It will therefore be appropriate or necessary to allow the matter to proceed to trial so as to enable the prosecution to show that the funds transferred were indeed from the account of Abia State Government. It is difficult to fathom the spurious reasons given by the Appellant, who was the Director of Finance in the Government House and a Civil Servant at the material time that no prima facie case is disclosed in this case against him. The offence alleged against the Appellant in counts 45-64 of the charge created under Section 14 (1) (b) of the Act is that the accused must have collaborated with another person; and the collaboration must have been with the aim of concealing or disguising either the genuine nature or origin of the resources etc.

At this stage, the Court may not necessarily need to pry into the entire circumstance under which the Appellant collaborated with the other accused persons in concealing the genuine origin at the various sums allegedly illegally laundered.

From the foregoing, there is sufficient proof proffered by the prosecution to call on the Appellant to enter his defence as there is a prima facie case against him. Hence, this issue is resolved in favour of the 1st Respondent.

ISSUE TWO (1st Respondent Issue Two):

B The 1st Respondent raised a point on this issue to the effect that the said issue formulated by the Appellant is absolutely irrelevant in the determination of the appeal. It is contended that the issue relates to the competence or otherwise of counts 98 - 112 which only affect SLOK NIG. LTD. That since the Appellant's name did not
C feature in any of the said counts 98 - 112; the issue of competence or other wise of those counts is purely academic.

In his reply brief the learned counsel for the Appellant failed to address this point. However, it must not be forgotten that the Appel-
D lant herein was also the 1st Appellant at the Court below while the 2nd Respondent was the 2nd Appellant. It is clear they jointly raised this in their "Issue 3.7" arising from their Ground 7 in the Court of Appeal. The Court below resolved the issue against the Appellants. The 1st Appellant and the Appellant herein has appealed against that
E decision. He must be heard. There is no basis for this preliminary point, it is overruled and accordingly dismissed.

However, in view of my stance on issue 1 that the proofs of evidence disclose a prima facie case of the allegations of money laun-
F dering preferred against the Appellant and that the 1st Respondent (EFCC) is competent to institute and prosecute this case, it would seem to me that issue 2 herewith is academic. This issue appears to stem from Grounds 2 and 4 on which application to quash the charge against the Appellant was founded.

G There is a concurrent finding of facts by both the trial High Court and the Court of Appeal on this point. Their finding has not been shown in any way to be perverse, I cannot disturb same.

In the light of all I have said, I cannot help but dismiss this appeal for lacking in merit. I affirm the decision of the Court below
H which rightly affirmed the decision of the trial Federal High Court that it was not bound by the ex parte order of Abia State High Court as to vitiate the charges preferred against the Appellant. It is therefore ordered that the learned Chief Judge of the Federal High Court should assign the case to another judge for expeditious trial.

MOHAMMED CJN

I have had the opportunity, before today of reading the lead Judgment of my learned brother Galadima, JSC, which had just been delivered. I entirely agree that this appeal lacks merit and deserves nothing other than dismissal and the appeal is accordingly hereby dismissed by me. I abide by the consequential orders made in the lead judgment. B

RHODES-VIVOUR JSC

I have had a preview of the leading judgment of my learned brother, Galadima, JSC and entirely agree with his reasoning that the appeal is lacking in merit. C

I agree with the order for trial de novo as proposed. D

NGWUTA JSC

I read in draft the lead judgment of my learned brother Galadima, JSC. E

I adopt my learned brother's reasoning and conclusion that the appeal is devoid of merit. Accordingly, and for the said reason, I also dismiss the appeal for lacking in merit. Appeal dismissed. F

MUHAMMAD JSC

I am privy to the reasoning and conclusion in the lead judgment of my learned brother Galadima, JSC, just delivered. I adopt same to dismiss this unmeritorious appeal. I also abide by the consequential orders made in the lead judgment. G

H