IN THE COURT OF APPEAL OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON FRIDAY, THE 24TH DAY OF JULY, 2020

BEFORE THEIR LORDSHIPS:

STEPHEN JONAH ADAH	**JUSTICE, COURT OF APPEAL**
RIDWAN MAIWADA ABDULLAHI	**JUSTICE, COURT OF APPEAL**
ABUBAKAR SADIQ UMAR	**JUSTICE, COURT OF APPEAL**

APPEAL NO: CA/A/452C/2018

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ::::::: APPELLANT

A N D

1. AZIBAOLA ROBERT
2. MRS. STELLA AZIBAOLA ROBERT ::::: RESPONDENTS
3. ONE-PLUS HOLDINGS NIGERIA LTD

JUDGMENT
(DELIVERED BY: STEPHEN JONAH ADAH, JCA)

This is an interlocutory appeal against the ruling of the Federal High Court sitting in Abuja, delivered on the 29th day of March 2018, Coram: Nnamdi O. Dimgba J.

Facts in Brief:

Upon conclusion of an investigation conducted by the Economic and Financial Crimes Commission (EFCC) (an Anti-Corruption Agent of the Appellant), the appellant by an Amended

Charge dated the 19th day of April, 2017 arraigned the Respondents before the trial court on a nine count charge bothering on the offences of Money Laundering and Conspiracy. (See pages 955 – 959 of Vol. 2 of the Record of Appeal).

The Respondents herein as Defendant pleaded not guilty and the matter went into full trial. The Prosecution in order to prove his case called 10 witnesses (i.e. PW1 – PW10) and tendered 31 Exhibits and thereafter, closed his case on the 23rd January, 2018.

The Respondents through their counsel filed a No-Case Submission, dated the 15th February, 2018 but filed on the 19th February, 2018, on which the trial court ordered parties to file their respective Written Addresses.

In a considered ruling delivered on the 29th March, 2018, the trial court held as follows:

> **That the No-Case Submission of the Defendant succeed in part and fail also in part. I uphold the No-Case Submission in relation to Counts 1, 4, 5, 6, 7, 8 and 9. I hereby discharge and acquit all the Defendants in relation to these counts.**
>
> **I uphold the No-Case Submission in relation to Counts 2 and 3 only in relation to the 2nd Defendant, Mrs. Stella Robert. I hereby discharge and acquit the 2nd Defendant of counts 2 and 3.**
>
> **I refuse the No-Case Submission in relation to Counts 2 and 3 in relation to the 1st and 2nd**

Defendants, Mr. Azibola Robert, and One Plus Holdings Nig. Ltd. I dismiss the No-Case Submission in relation to these Counts 2 and 3 as pertains to the 1st and 3rd Defendants and hereby direct the 1st and 3rd Defendants to open their defence in relation to Counts 2 and 3. The 2nd Defendant is hereby discharged and acquitted of all the counts in the Amended Charge dated 19/04/2017.

Dissatisfied with the said ruling, the appellant appealed to this court vide a Notice of Appeal dated and filed on the 18th day of April, 2018. The Record of Appeal was transmitted to this Court on the 15th day of May, 2018.

In line with the rules of this court, parties filed their respective briefs of argument.

Sylvanus Tahir, Esq., of counsel for the Appellant distilled a lone issue for the determination of the appeal in the Appellant's Brief of Argument filed on the 5th June, 2018 but deemed properly filed and served on the 12th day of March, 2020. Thus:

Whether a prima facie case was made out against each of the respondents to warrant calling on each of them to enter a defence.

In response, Chief Gordy Uche, SAN, of counsel to the Respondents also submitted a sole issue for the determination of this appeal in the Respondent's Brief of Argument filed on the

2nd day of October, 2018 but deemed properly filed and served on the 12th day of March, 2020. The issue is worded as follows:

> **Whether the learned trial Judge was right in his Ruling on the no-case submission of the Respondents.**

On the 30th day of April, 2020, when the appeal came up for hearing, counsel for the Respondents Gordy Uche, SAN, moved and adopted the Respondents' Preliminary Objection field on the 02/03/2020 and urged the court to strike out the appeal.

I shall first consider the Preliminary Objection of the Respondents one way or the other before considering the appeal on its merit, if need be. This is because a Preliminary Objection is aimed at scuttling the hearing of a matter or an aspect of a matter before the court. by its intendment, it has to be determined as a threshold matter. See **Obasi v. Mikson Establishment Industries Ltd., (2016) 16 NWLR (Pt. 1539) 335**.

PRELIMINARY OBJECTION:

The learned senior counsel for the respondents filed the preliminary objection urging the court to hold that:

> **This appeal is incompetent and has become a mere academic exercise, final judgment in the matter having been duly delivered and having not been appealed against.**

And FURTHER TAKER NOTICE that the grounds of the Preliminary Objection are as follows:

(1). The Appellant filed the instant appeal on 18th April 2018, against the decision of the Federal High Court delivered on 29th March, 2018 in respect of the no-case submission of the Respondents.

2. At the instance of the Appellant, trial and hearing continued before the Court below in the matter.

3. On 27th May, 2019, final judgment was delivered in the matter by the Court below, dismissing the case of the Appellant in its entirety.

4. The Appellant did not appeal against the said final judgment.

5. The present interlocutory appeal is now academic as there are no live issues to be determined.

6. This appeal is incompetent and this Honourable Court lacks the jurisdiction to entertain the same.

This appeal is based on the decision of the trial court in respect of a no-case submission made before the trial court. the trial court upheld the no-case submission in part.

It is essentially correct and apt to say right away that in a criminal trial where the charge contains more than one count such as is prevalent in the instant case, each count of the charge is distinct and different from the other counts of the charge. In fact, each count is deemed to be a charge on its own. That is

why in taking plea, each count must be read separately to the accused and he must plead separately to them. Where a submission of no case is made as in the instant case, the court is duty bound to look at the evidence before it and see if the essential ingredients of the offence are prima facie established from the evidence of the prosecution witnesses called before the court.

The learned senior counsel for the Respondents has vigorously argued in his objection that since the substantive matter at the trial court had been concluded and the appellant did not appeal on it, this interlocutory appeal has become academic. This argument can fairly sail in a civil cause where the Writ of Summons deals with the cause of the Plaintiff as a single action. In the instant case, the case at the trial court is not like the situation in the civil causes, it is a Charge of Nine (9) counts. Earlier in this judgment I had made the position that a composite charge or charge with many counts are viewed to host counts that are distinct and independent of the other so much so that each count has the personality and the character of a full fledge charge. Where of the Nine counts Seven counts are found not to be established prima facie, the left over counts found worthy to be defended cannot in any form terminate the seven other counts in focus in this appeal. If at the end of the day, this court finds there is a prima facie case established in any of the said seven counts this court has the power to send back to the

trial court those counts to be tried by the trial court. the situation should be cleared by the foregoing explanation that what was concluded at the trial court was the two counts which were defended by the Respondents which are counts 2 and 3 of the Charge. The complaint in this appeal is majorly on the issue of the Seven counts knocked down by the ruling of the trial court on no-case submission. As long as the decision of the trial court in respect of the said Seven Counts of the Charge was not a final or conclusive decision, those Seven Counts cannot be said to be paid of the two counts heard to conclusion by the trial court. it is in this respect that I believe the objection of the respondents is lacking in merit. The Preliminary Objection is therefore, overruled. The appeal is not academic. The appeal is a life appeal and it is hereby set down for consideration on merit.

MAIN APPEAL:

Having disposed-off the Preliminary Objection of the respondents, this appeal will therefore, be determined on the sole issue submitted by the counsel for the appellant for the determination of this appeal. Same is reproduced hereunder as follows:

> **Whether a prima facie case was made out against each of the respondents to warrant calling on each of them to enter a defence.**

The sole issue formulated for the determination relate to all the grounds of appeal which essentially complains against the ruling of the lower court upholding in part the respondents no-case submission and consequently discharging and acquitting the 2nd respondent on all the counts that relate to her i.e. counts 1, 2, 3, 4, 5, 6, 8 and 9. The 2nd respondent was not mentioned or charged in count 7 of the charge.

On the other hand, the lower court also discharged and acquitted the 1st and 3rd respondents on counts 4, 5, 6, 7 ,8 and 9 of the charge. The 3rd respondent did not feature in count 1 of the charge.

By its ruling of 29th April 2018 only the 1st and 3rd respondents are to stand trial on counts 2 and 3 of the charge dealing with offences of taking possession or control of the sum of $39.9 Million USD as constituted in counts 2 and 3 of the charge respectively.

For convenience and clarity, the issues were argued in four different counts i.e. subheadings/components as follows: Conspiracy, Money Laundering of $40 m, $39.9m & N650m respectively.

On the Count of conspiracy to launder the sum of $40M as constituted in count 1 of the charge, learned counsel for the appellant referred this court to page 955 of the Record, and submitted that from the above quoted Count 1, it is manifestly

clear that three persons Azibaola Robert, Mrs. Stella Azibaola and Amobi Ogum (charged at large) were charged with the offence of Conspiracy to Launder the sum of $40M. He invited this court's attention to the evidence of PW10, PW 6 and PW7 at pages 1156, 27 & 532, 30, 1130-1136 Vol. 2 of the Record of Appeal and stated that the trio were linked through acts from which conspiracy could directly and inferentially be established against them. The trial court was in error to have held otherwise.

He maintained that having directly taken possession or control of the said money, Amobi Ogum, was used to trade with money by swapping/exchanging/transferring various sums to different companies. This court was referred to the evidence of PW6, PW7, PW9 & PW10 at pages 1130-1188 of the Record.

It is the contention of the learned counsel for the Appellant that it was presumptuous of the trial court to come to the conclusion that the 1st and 2nd Respondents were husband and wife and therefore legally disabled from committing conspiracy with each other. He opined that there was no evidence before the court which warranted the trial court's view that they are married couple. He cited the case of **Obiakor v. State (2002) 10 NWLR (Pt.776) 612 at 627** and stated that a court is not permitted to go outside the evidence tendered before it. He relied on the case of **Mohammed v. State (2007) 7 NWLR (Pt.1032) SC 152 at 162 paragraph F-H.**

On what constitutes the offence of conspiracy, learned counsel referred this court to the following cases **Onochie v. The Republic (1966) NLR 307, (1966) 4 NSCC 73 at 74, Ikwunne v. State (2000) 5 NWLR (Pt.658) at 561 para. A** and **Okosun v. A.G. Bendel State (1985) 3 NWLR (Pt.12) 283 at 299 para H**.

He submitted that, on the facts and circumstance of this case, and the availability of evidence, the prosecution has established a prima facie case of conspiracy between the 1st, 2nd and Amobi Ogum who is charged at large, that warranted the trial court to have called upon them to enter their defence. Reliance was placed on Section 8(1) of the evidence Act 2011.

Counsel urged the court to hold that the prosecution made out a *prima facie* case, order the Respondents to enter their defence and set aside the ruling of the trial court.

On the counts dealing with laundering the sum of $39.9M by way of transfers of various sums out of the sum of $39.9M received from the ONSA to 3rd parties as constituted in Counts 4,5,6,8, and 9 of the charge, learned counsel referred this court to pages 955-959 of the Record, Exhibit ASO 5, ASO 11, 1-39, ASO 15 1-39 & ASO 20,1-39 and testimony of PW10. IN COUNT 5, the evidence of PW8, PW10 and Exhibit ASO 5, ASO 12, 1-39 and ASO 20,1-39. IN COUNT 6, the evidence of PW8, PW10 and Exhibit ASO 5, ASO 20, 1-39(transfer mandate).IN COUNT 8, the evidence of PW7, Confidence Onabu, PW8, PW10 and

Exhibits ASO 5, ASO 13, 1-8 and ASO 20, 1-39. IN COUNT 9, the evidence of PW9, PW10 and Exhibit ASO5, ASO14, 1-19, ASO 20, 1-39 are all important and relevant. As noted above, the offence of money laundering by way of "direct transfer" is an offence contrary to Section 15(2) of the Money Laundering (Prohibition) Act, 2011 as amended in 2012.

Counsel submitted that a *prima facie* case of money laundering was established by way of direct transfer to third parties of funds which the respondents took possession or control from ONSA, the trial judge upheld the respondents no case submission and consequently discharged and acquitted them all on Counts 4, 5, 6, 8 and 9 (pages 1237-1239 of Vol. 2 of the record). He maintained that the court below misconceived the interpretation placed on Section 15(2)(b) of the ML(p) Acts, 2011. That the offences of "conversion" or "transfers" stipulated under Section 15(2)(b) of the said Act constitute independent offences though provided for under the same clause of paragraphs (b).

Counsel submitted further that the allegation of "direct transfer "of the various sums of monies mentioned in counts 4,5,6,8 and 9 of the charge against the respondents each constitute a separate offence of money laundering distinct from the allegation of "direct conversion" in count 3 of the charge. He contended that the words "convert" and "transfer" are not the

same. According to Black's Law Dictionary 7th Edition at page 333 defines the word "CONVERSION"

> **"the act of changing from one to another, the process of being exchanged"**

The same Dictionary defines "direct conversion" thus:

> **"the act of appropriating the property of another to one's own benefit, or to the benefit of another".**

The same dictionary at page 1504 defines "'transfer" Thus:

> **"to convey or remove from one place or person to another, to pass or handover from one another, especially to change over the possession or control of. To sell or give"**

On what constitute the interpretation of statutes, he referred the court to the cases of **Uhunmuangho v. Okojie (1989) 5 NWLR (Pt.122) SC 471 at 490 paras B-C & Egbe v. Alhaji (1990) NWLR (PT.128) S.C 546 at para D.**

Counsel submitted that the Money Laundering (prohibition) Act, 2011 has made the acts of both "direct conversion" and "direct transfers" of illicit funds as distinct offences, it would amount to doing a great violence to the letters of the law, if the criminal conduct in Section 15(2)(b) is restricted alternatively to a choice of either "conversion" or "transfer". Furthermore, that the word "or" when used in a statute connotes disjunctive, a times it is not always the case. He cited the case of **FRN v. Ibori (2014) 13 NWLR (Pt.1423) C.A. 168 at para G & Inakoju v.**

Adeleke (2007) 4 NWLR (PT.1025) S.C. 423 at p.612, paras C-D. He contended that in this case the word "or" in Section 15(2)(b) ML (P) Act 2011 creates multiple rather than alternative obligation. We urge this court to so hold.

The prosecution's evidence raised a *prima facie* case which required the respondent to give explanation. The defence never challenged the counts of "direct transfers" of various sums in counts 4,5,6,8 and 9 on the basis that it amounts to double jeopardy vis-à-vis the count 3 of the charge dealing with the allegation of "direct conversion" of the sum of $39.9M. The lower court raised the issue *suo motu* in its Ruling dated 29th March, 2018 and resolved same against the Appellant without inviting the parties to address its competence or otherwise, the counts on grounds of double jeopardy as raised by the court, thereby denying the Appellant of his right to fair hearing under Section 36 CFRN 1999 (as amended). He cited the case of **Nobis-Elendu v. INEC (2015) 16 NWLR (Pt.1485) 193 at 219 paras B-C; Olaolu v. FRN (2016) 3 NWLR (Pt.1498) 133 at 155 paras C-E.**

Counsel stated that the trial court evaluated the evidence of the prosecution witnesses and labelled same as "weak". This violates the principles for considering a no case submission as the credibility of the evidence of the prosecution witnesses is not a ground to be considered in a no case submission. He cited the

case of **Ajiboye v. State (1995) 8 NWLR (Pt.414) 408; Atoyebi v. FRN (2018) 5 NWLR (Pt.1612) SC 350 at 367 paras D-E**. On the relevance of credibility of the prosecution witnesses or weight of their evidence in a plea of no case, counsel for the Appellant referred the court to the case of **Aituma v. State (2007)5 NWLR (PT.1028) C.A 466 at 486 paras C-E**.

On the discharge of the 2nd Respondent on Counts 2 and 3 of the Charge dealing with allegations of directly taking possession or control and converting the sum of $39.9m counsel submitted that the reasoning of the trial court justifying the discharge of the 2nd Respondent on counts 2 and 3 of the charge are perverse and ought to be set aside. That the trial court by the evidence led by the prosecution rightly found that the 2nd Respondent is a director and signatory to the account and that as a signatory to the account of the 3rd respondent, the 2nd respondent could also act as an alter ego. Counsel maintained that the trial court summersaulted when it held that the 2nd respondent was probably charged because she is the spouse of the 1st respondent. He argued that a company and its Directors could be held criminally liable jointly and severally. Also that where offences are alleged against partners of members of corporate body the veil of incorporation will be lifted. He referred to **Oyebanji v. State (2015) 14 NWLR (Pt. 1479) SC 270**.

Counsel submitted that there was enough evidence placed before the trial court to arrive at a decision calling upon the 2nd respondent to enter her defence to counts 2 and 3 just like the 1st and 3rd respondents.

Counsel urged the court to hold on this leg of the issue that the prosecution by its evidence adduced before the lower court raised a prima facie case against the 2nd respondent on the charges contained in counts 2 and 3 warranting an explanation alongside with the 1st and 3rd respondents. He urged this court to so hold and set aside the Ruling of the trial court.

On the count of laundering the sum of N650 Million levelled against the 1st and 3rd respondent as constituted in count 7 of the charge, counsel submitted that the said money was used to purchase the house/property known as plot No. 2245, Cadastral Zone A06, Maitama District, Abuja for the 3rd respondent as evidenced by the Deed of Assignment (see pages 125-128 & 129-134 of the record).That the prosecution led evidence through PW3, PW4, PW5 and PW10 and tendered some exhibits in respect of count 7. He referred to pages 1092 – 1127 and pages 1149 – 1188 of the Record of Appeal. Also Exhibit ASO7, ASO8, ASO9,1-19, ASO16, ASO 18A & B, ASO19, A-C, ASO21 A-B, ASO22, ASO23.

Counsel argued further that in spite of the abundant evidence laid before the trial court, both oral and documentary

which links the 1st and 3rd respondents to the allegations contained in the charge which would warranted the lower court to call upon the 1st and 3rd respondent to offer some explanation, the lower discountenanced the evidence and proceeded to discharge and acquit the respondents on the charge on the ground that the prosecution did not establish any prima facie case. He referred the court to page 1251 last paragraph-page 1252.

It is the contention of the counsel for the Appellant that the trial court misdirected itself in law and occasioned a gross miscarriage of justice when it upheld the no-case submission of the 1st and 3rd respondents and consequently discharged them on the charge of laundering the sum of N650 Million in count 7. He maintained that the totality of evidence adduced by the prosecution against all the respondents proved that a prima facie case was made, warranting the lower court to call upon the respondents to enter their defence. He cited the cases of **Tongo v. COP (2007) 12 NWLR (Pt. 1049) SC 525 at P. 548 Paras F – G Per Chukwuma Eneh, JSC, Queen v. Oguoha (1950) 4 FSC 64, Duru v. Nwosu (1989) 4 NWLR (Pt. 113) 24 at 31, Ikomi v. State (1986) 3 NWLR (Pt. 28) 340 at 366** and **Onagoruwa v. State (1993) 7 NWLR (pt. 303) 49 at 80.**

On the whole, he urged the court to allow the appeal, set aside the ruling of the trial court and make a consequential Order

directing all the respondents to enter their defence on the entire 9 counts charge.

In response, learned counsel for the respondents while arguing the lone issue submitted that the learned trial judge was right in his Ruling that there was no conspiracy among the respondents to launder any monies, as there was no evidence either direct or circumstantial, from which it could be inferred that the respondents and the person said to be at large had a meeting of minds to have the money in question transferred to the account of the 3rd respondent, and/or to launder the money so transferred. That the material points of this conspiracy as alleged by the appellant ought to start from any agreement of the parties to have the said funds moved from the Office of the National Security Adviser (ONSA) to the bank account of the 3rd respondent. The only available evidence was an assignment given to the 3rd Respondent by the NSA and a transfer of funds from the NSA to the 3rd respondent. He relied on the case of **Aituma v. The State (2007) 5 NWLR (1028) 466**. He maintained that where, as in the instant case, the particulars of the offence of conspiracy alleged have been pinned down to a specific acts, that those particulars alleged must be proved. He cited the case of **Oladejo v. State (1994) 6 NWLR (Pt. 348) 101, 121**.

Counsel further submitted that there is no iota of evidence that any of the respondents took part in the transfer of the said

sum of USD40 Million to the 3rd respondent's bank account, rather that the evidence shows that the transfer of the sum of USD 40 Million was a contract sum entered between the 3rd respondent and the ONSA. There is nothing on the face of the transaction to show that it was or formed part of the proceeds of an unlawful act.

On the involvement of the 2nd respondent, counsel submitted that her role in the matter was plainly limited to the fact that she was a Director and/or Finance Director of the 3rd respondent. Counsel referred the court to her Statement in Exhibit ASO 27, 1 – 4 at page 30 of Vol. 1 of the Record of Appeal. There was also no evidence to show that the money in question was of an illicit origin. That the evidences of the PW 1 and PW 10 demonstrated that the said fund was of a legitimate origin and officially approved and made as payment for a security assignment. That to ground a prima facie case on the count of the charges in this matter inclusive of this charge of conspiracy, the prosecution must prove inter alia; (1) that there was some conspiracy between the respondents and the named person at large to transfer the said sum of US $40 Million or to launder the transferred sum of USA 40 Million; (2) that the respondents and the named person at large knew or ought reasonably to know that the said sum is or forms part of the proceeds of an unlawful act.

On the source of the fund, counsel submitted that there can be no greater legitimate source of funds than such that has the approval and imprimatur of the President and Commander-in-Chief of the Armed Forces of the Country and released through statutory instrument for special operations by the appropriate officers of the appropriate security agency through the Apex Bank, the Central Bank of Nigeria.

On the reasonable knowledge of illegal activity, counsel submitted that at the time of the payment of the $40 Million, the paying authority, the then National Security Adviser was the incumbent in office and had the authority and power of the office to make the payment. More so, the payment was a part of a larger payment for an assignment from funds approved by the incumbent President of the Federal Republic of Nigeria. The Appellant did not lead any evidence as to what the respondents did that constituted knowledge or reasonable expectation of knowledge of illicit origin, and no evidence was led as to the role the respondent played in processing the payment to suggest such mens rea.

Counsel submitted that the 2nd respondent in her statement (exhibit ASO 27,1-4 at page 30 vol.1 of the record) stated that she is married to the 1st respondent. She stated that she is a Christian, literate and wrote her statement in English which was the contention of the Appellant in its brief and there was on

evidence before the trial court which held that the 1st & 2nd respondent were married under the Act as not to be criminally liable for conspiracy. He maintained that the case of the Appellant against the 1st & 2nd respondents with respect to conspiracy, revolve on the nature of their marriage, the Appellant had the burden to proof, had the onus to have led the evidence showing that their marriage was one not under the marriage Act as to clothe them with immunity on conspiracy. He relied on the case of **Nowawu & Ors. v. Okoye & Ors. (2008) LPELR-2110 (SC)**.

Counsel submitted that the Learned Trial Judge was indeed referring to the paucity of the evidence of the witness rather than the credibility, to the effect that even their testimonies were believed to be short of the legally requisite standard or not "strong" to make out a case against the Respondent. There was no aspect of the trials court Ruling dealing with the belief or disbelief of the Appellants witnesses and maintained that the case of **Aituma v. State (2007) 5 NWLR (Pt.1028) 466 at 468** cited by the Appellant on this point is not applicable.

On the discharge of the 2nd Respondent in counts 2 and 3, counsel submitted that there was no evidence whatsoever that the 2nd Respondent took possession or control of the said $40m (Forty Million US Dollars). The whole evidence shows that an assignment was given to the 3rd Respondent and funds paid

directly to the bank accounts of the 3rd Respondent and disbursed from the account of the 3rd Respondent. Her involvement in this matter is because she is a director and finance director of the 3rd Respondent. He referred this court to her statement in Exhibit ASO 27, 1-4 at page 30 of vol.1 of the Record of appeal. He maintained that Exhibit ASO 20, 1-39 which were withdrawal mandates signed by the 2nd Respondent authorizing withdrawals of some monies from the 3rd Respondents bank accounts were done in her official capacity as Finance director and signatory of the 3rd Respondent. Furthermore, the 2nd defendant being a staff of the 3rd Respondent, like other directors of the 3rd respondent, without any personal direct involvement on the facts, ought not to have been charged in this matter. He submitted that the trial judge was right and there was nothing perverse in his decision to discharge the 2nd Respondent in these counts.

On the discharge of the 1st and 3rd respondents in court 7, counsel submitted that the trial court was very right in discharging the 1st and 3rd respondents on this count relating to a 'Safe House' paid for by the NSA as the appellant failed to prove that the said money (N650 Million) used in purchasing the property was in possession of the respondents, that the respondents used the said money to purchase Plot 2245, Maitama Cadastral Zone A06 for themselves, and that the

respondents knew that the sum represented the proceeds of an unlawful activity of the then NSA.

Counsel submitted that the Appellant failed to place any material evidence linking the Respondents with the said payment of the sum of N650M.there is absolutely nothing before the trial court tracing both the receipt of the fund and the purchase of the property to the 1st and 3rd Respondent to sustain this count. He referred this court to page 1252 of vol.2 of the Record of Appeal.

On the whole, counsel urged the court to hold that the trial court was right in discharging the respondents from count 1 and the 2nd Respondent from counts 2 and 3 and discharging the 1st and 3rd respondents in counts 4, 5, 6, 8 and 9. That the trial court was also right in discharging the 1st and 3rd respondent in count 7. And that the appellant failed woefully to show that the ruling appealed against is in any way perverse. He urged the court to dismiss this appeal.

This appeal is against the ruling on a no-case submission wherein the trial court partly upheld. The fundamental essence of a no case submission is that, in law, there is no evidence on which, even if believed, the court could convict. The question whether or not the evidence is believed is immaterial and does not arise. Furthermore, the credibility of the witnesses is not in issue. It is also important to note that at the stage of a no case submission the court is not required to express an opinion on the

evidence before it. The reason is that at that stage, the trial has been concluded. See the cases **of Ibeziako v. C.O.P (1963) 1 SCNLR 99, Ajibade v. IGP (1958) SCNLR 60; Tongo v. COP (2007) 12 NWLR (Pt. 1383) 322; Adeyemi v. State (1991) 6 NWLR (Pt. 195) 1; Agbo v. State (2013) 11 NWLR (Pt. 1365) 377, Igabele v. State (2006) 6 NWLR (Pt. 976) 100, Aituma v. State (2007) 5 NWLR (Pt. 1028) 466 referred to in the case of Amah v. FRN (2009) 6 NWLR (Pt. 1667) 160**. A submission of no case is always made at the end of the case of the Prosecution. The import of this is that the prosecution who brought the charges against the accused persons has produced before the trial court all the evidence which it believed would be enough to prove all the ingredients of the offences for which the accused persons were charged. This is against the backdrop of the fact that under Section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. This presumption of innocence inures for everyone accused of committing any criminal offence of any dimension and any magnitude. For this presumption to be dismantled, the prosecution must prove the charge against the person accused beyond reasonable doubt. This level of proof is the ultimate in criminal trial. This can only be attained at the conclusion of trial. A criminal trial is not concluded with the closure of the case of the prosecution. It is only concluded when

both the prosecution and the accused persons have presented their respective cases. In our criminal trial the law is mindful of the rigors of subjecting a person charged with an offence to full blown trial by the court. The law therefore, gives a window of respite for any person accused to pry on the option of making a no case submission at the close of the case of the Prosecution where there is no prima facie case disclosed from the case of the Prosecution. Section 303 of the Administration of Criminal Justice Act, 2015 (to be referred to as ACJA for short), provides as follows:

> **303. (1) Where the defendant or his legal practitioner makes a no case submission in accordance with the provisions of this Act, the court shall call on the prosecutor to reply.**
>
> **2. The defendant or his legal practitioner has the right to reply to any new point of law raised by the prosecutor, after the court shall give its ruling.**
>
> **3. In considering the application of the defendant under Section 303, the court shall, in the exercise of its discretion, have regard to whether –**
>
> **(a) an essential element of the offence has been proved;**
>
> **(b) there is evidence linking the defendant with the commission of the offence with which he is charged;**

(c) the evidence so far led is such that no reasonable court or tribunal would convict on its; and

(d) any other ground on which the court may find that a prima facie case has not been made out against the defendant for him to be called upon to answer.

Over the years, our courts have evolved the parameters of a successful no case submission. A submission that the accused has no case to answer will succeed in the following circumstances:

(a) Where the prosecution fails to prove an essential element of the offence;
(b) Where the evidence led by the prosecution has been so discredited as a result of cross-examination, or is so manifested unreliable that no reasonable tribunal would safely convict on it.

See – **Ajiboye v. State (1995) 8 NWLR (Pt. 414) 406; Daboh v. State (1977) 5 SC 197; Tongo v. COP (2007) 12 NWLR (1049) 525; Ajuluchukwu v. State (2014) 13 NWLR (Pt. 1425) 641; COP v. Amuta (2017) 4 NWLR (Pt. 1556) 379.** It is all a matter of whether the evidence placed before the court by the prosecution disclosed prima facie case as alleged in each of the counts of the charge. It is certainly factual and definite that evidence is the anchor on which the case of the Prosecution is hoisted in a criminal trial. In the case of **Oteki v. A.G. Bendel State (1986) 2 NWLR (Pt. 24) 648**, Oputa, JSC held that:

> The sole object and end of evidence is therefore to ascertain the truth of a disputed fact or several disputed facts, or in ornate legal phraseology to resolve point in issue. Proof is the logically sufficient reason for assenting to the truth of a proposition advanced. In its juridical sense, proof will include and comprehend everything that may be adduced at the trial, within legal rules, for the purpose of producing conviction in the mind of the judge or jury. The whole and entire exercise is to discover the truth of the point in issue. And truth is not discovered by majority vote, by counting hands or heads. No one witness who is believed will carry more conviction than ten witnesses who are disbelieved or whose testimonies do not induce belief. Although belief is subjective, yet still the judge before believing will subject the evidence to the objective test of probability. Where the facts deposed to by a witness look probable when considered in relation to all the surrounding circumstances of the case, they induce belief. Probability is always s safe guide to the sanctuary where truth resides. As Aristotle once put it – "Probability has never been detected bearing a false testimony".

At the point of making a no case submission, the issue of believing the evidence of witnesses or assessing credibility of witnesses has not yet arisen. The issue is whether there is a prima facie case disclosed as to enable the court invite the Respondent to enter their respective defence.

In the instant case, the prosecution filed a charge of Nine (9) Counts indicating offences of conspiracy and money laundering under the Money Laundering (Prohibition) Act, 2011.

Conspiracy to commit an offence it must be borne in mind is a separate and distinct offence and it is independent of the actual commission of the main offence to which the conspiracy is related. Conspiracy consists of the agreement of two or more persons to do an unlawful act, to do a lawful act by unlawful means. The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express or in the part implied. The offence of conspiracy is therefore, committed as soon as the agreement is made, and the offence continues to be committee so long as the combination persists, until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration. The mental element in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. In a charge of conspiracy, for the prosecution to establish that there was conspiracy to commit an offence, the following are required to be proved:

(a) **That there was an agreement between two or more persons to do or cause to be done, an illegal act or an act which, though not illegal but by illegal means;**

(b) **Where the agreement is other than an agreement to commit an offence, that**

some acts besides the agreement was done by one or more of the parties in furtherance of the agreement.

(c) Specifically, that each of the accused individually participated in the conspiracy.

However, it is settled law that there need not be an express agreement before common intention can be shown in conspiracy. It can be implied from the circumstance of the case. See the case of **Mohammed Ismail v. FRN 79 NSCQR 314.** See the decision of Ariwoola, JSC. Invariably, it is therefore, effectual that the grain of the offence of conspiracy is the agreement to do something unlawful or not to do something that is lawful or doing something lawful in an unlawful way and there cannot be conspiracy unless there are conspirators.

All the witnesses who testified for the prosecution who are PW1 to PW10 did not give any impression of any conspiracy nor was there any other evidence documentary or oral to the effect that there was any agreement among the respondents to commit any offence. The trial court in his judgment also did not infer any agreement of the parties to any offence as charged. The learned trial judge at pages 1229 to 1230 of Vol. 2 of the record of appeal found as follows:

"Relevant evidence adduced by the Prosecution. Reviewing the evidence adduced, I see nothing from which to presume the offence of conspiracy. The charge indicated that the 1st and 2nd Defendants with Amobi Ogum were in a

> conspiracy to launder the USD 40M obtained from office of the National Security Adviser. Yet in the trial, the reference made to Amobi Ogum was during the cross-examination of PW6, Mohammed A. Bello. A licensed BDC operator, who indicated that the transactions he had with the 3rd Defendant was on the instructions of one Amobi Agum, who in any event was not even charged as a Defendant in the Charge. Amobi Ogum himself was a staff of Zenith Bank where the 3rd Defendant maintained an account. If, as I find, that the only link which Amobi Ogum had with the Defendant is a banking relationship, being a staff of the bank which the 3rd Defendant maintained an account, from Exhibit AS04 that relationship had been there since around 2009 and 2012 when the 3rd Defendant's account with Zenith Bank was opened, and had predated the year 2014 when the transaction giving rise to the payment of the USD40M was birthed and the finds received into the account.
>
> I therefore, do not see any evidence of any conspiracy to launder USD40M with Amobi Ogum."

The Prosecution witnesses who testified were straight forward but none of them indicted the NSA who was alleged to be the mastermind of offences charged before the court. This makes it certain that there was no prima facie case of conspiracy before the trial court. The finding of the trial court in that respect was therefore, correct.

The other tranche of the charges were on Money Laundering. The allegation was that $40M – Forty Million

Dollars. The relevant counts of the charge are counts 4 to 9 of the Charge. These counts were heard by the lower court. these counts of the charge are worded as follows:

> Count 4:
>
> That you, Azibaola Robert (M), being the Managing Director/Chief Executive Officer (MD/CEO) and a signatory to the Zenith Bank account of ONE PLUS HOLDINGS NIG. LTD, Mrs. Stella Azibaola Robert, being a director and a signatory to the Zenith Bank account of ONE PLUS HOLDINGS NIG. LTD and ONE PLUS HOLDINGS NIG. LTD between the 8th October, 2014 and 18th April 2015 in Abuja within the jurisdiction of this Honourable Court did directly transfer the aggregate sum of US$600,000.00 (Six Million, Six Hundred Thousand USD) only being part of the sum of US$39,999,958.00 (Thirty Nine Million, Nine Hundred and Ninety Nine Thousand USD and Nine Hundred and Fifty Eight Cents) only out of the total sum of US$40,000,000.00 Forty Million United States Dollars) transferred to the domiciliary account of ONE PLUS HOLDINGS NIG. LTD with Zenith Bank Plc, Account No: 5070365750 from the account of the Office of the National Security Adviser with the Central Bank of Nigeria upon a transfer mandate Ref: No. 128/S.5LX/139, purporting to be for the supply of Tactical Communication kits for Special Forces to the Zenith bank account of KARAHYNA NIG. LTD, a BDC Company for naira exchange, which you knew or reasonably ought to have known that the said fund represented the proceeds of an unlawful activity of Col. Mohammed Sambo Dasuki (RTD.), the then National Security Adviser, (to wit: criminal breach of trust and corruption) and thereby committed an offence contrary to Section 15(2) of the Money Laundering (Prohibition Act, 2011 as amended in 2012 and punishable under Section 15(3) and (4) of the same Act.

Count 5:

That you, Azibaola Robert (M), being the Managing Director/Chief Executive Officer (MD/CEO) and a signatory to the Zenith Bank account of ONE PLUS HOLDINGS NIG. LTD, Mrs. Stella Azibaola Robert, being a director and a signatory to the Zenith Bank account of ONE PLUS HOLDINGS NIG. LTD and ONE PLUS HOLDINGS NIG. LTD on or about 5th November, 2014 in Abuja within the jurisdiction of this Honourable Court did directly transfer the aggregate sum of US$1,000,000.00 (One Million USD) only being part of the sum of US$39,999,958.00 (Thirty Nine Million, Nine Hundred and Ninety Nine Thousand USD and Nine Hundred and Fifty Eight Cents) only out of the total sum of US$40,000,000.00 Forty Million United States Dollars) transferred to the domiciliary account of ONE PLUS HOLDINGS NIG. LTD with Zenith Bank Plc, Account No: 5070365750 from the account of the Office of the National Security Adviser with the Central Bank of Nigeria upon a transfer mandate Ref: No. 128/S.5LX/139, purporting to be for the supply of Tactical Communication kits for Special Forces to the Zenith bank account of REYA TELECOMMUNICATIONS NIG. LTD., a sister company to ONE PLUS HOLDINGS NIG. LTD., which you knew or reasonably ought to have known that the said fund represented the proceeds of an unlawful activity of Col. Mohammed Sambo Dasuki (Rtd.), the then National Security Adviser, (to wit: criminal breach of trust and corruption) and thereby committed an offence contrary to Section 15(2) of the Money Laundering (Prohibition) Act, 2011 as amended in 2012 and punishable under Section 15(3) and (4) of the same Act.

Count 6:

That you, Azibaola Robert (M), being the Managing Director/Chief Executive Officer (MD/CEO) and a signatory to the Zenith Bank account of ONE PLUS HOLDINGS NIG. LTD, Mrs. Stella Azibaola Robert, being a director and a signatory to the Zenith Bank account of ONE PLUS HOLDINGS NIG. LTD and ONE PLUS HOLDINGS NIG. LTD between the 19th November, and

19th December 2014, in Abuja within the jurisdiction of this Honourable Court did directly transfer the aggregate sum of US$1,493,000.00 (One Million, Four Hundred and Ninety Three USD) only being part of the sum of US$39,999,958.00 (Thirty Nine Million, Nine Hundred and Ninety Nine Thousand USD and Nine Hundred and Fifty Eight Cents) only out of the total sum of US$40,000,000.00 Forty Million United States Dollars) transferred to the domiciliary account of ONE PLUS HOLDINGS NIG. LTD with Zenith Bank Plc, Account No: 5070365750 from the account of the Office of the National Security Adviser with the Central Bank of Nigeria upon a transfer mandate Ref: No. 128/S.5LX/139, purporting to be for the supply of Tactical Communication kits for Special Forces to the Zenith bank account of KAKATAR EL NIG. LTD, A sister company to ONE PLUS HLDING NIG. LTD, which you knew or reasonably ought to have known that the said fund represented the proceeds of an unlawful activity of Col. Mohammed Sambo Dasuki (Rtd.), the then National Security Adviser, (to wit: criminal breach of trust and corruption) and thereby committed an offence contrary to Section 15(2) (b) of the Money Laundering (Prohibition Act, 2011 as amended in 2012 and punishable under Section 15(3) and (4) of the same Act.

Count 7:

That you, Azibaola Robert (M), being the Managing Director/Chief Executive Officer (MD/CEO) of ONE PLUS HOLDINGS NIG. LTD and ONE PLUS HOLDINGS NIG. LTS on or about 27th May, 2015 in Abuja within the jurisdiction of this Honurable Court having reason to know that the sum of N650,000,000.00 (Six Hundred and Fifty Million Naira) only directly represented the proceeds of an unlawful activity of Col. Mohammed Sambo Dasuki (RTD.) the then National Security Adviser, (to wit: Criminal Breach of Trust and corruption) in respect of the said amount used the said fund for the purchase of Plot 2245, situate at Maitama Cadastral Zone No: A06 Measuring about 2,482 28sqm with File No: KN 101082, Abuja from one Nu'uman Barau Danbatta represented by Tunji Adeniyi & Co. (Estate Surveyors & Valuers) and you thereby committed an offence contrary

to Section 15(2) (d) of the Money Laundering (Prohibition) Act, 2011 as amended in 2012 and punishable under Section 15(3) and (4) of the same Act.

Count 8:

That you, Azibaola Robert (M), being the Managing Director/Chief Executive Officer (MD/CEO) and a signatory to the Zenith Bank account of ONE PLUS HOLDINGS NIG. LTD., Mrs. Stella Azibaola Robert, being a director and a signatory to the Zenith Bank account of ONE PLUS HOLDINGS NIG. LTD and ONE PLUS HOLDINGS NIG. LTD on or about 22nd April, 2015, in Abuja within the jurisdiction of this Honourable Court did directly transfer the aggregate sum of US$2,000,000.00 (Two Million, USD) only being part of the sum of US$39,999,958.00 (Thirty Nine Million, Nine Hundred and Ninety Nine Thousand USD and Nine Hundred and Fifty Eight Cents) only out of the total sum of US$40,000,000.00 Forty Million United States Dollars) transferred to the domiciliary account of ONE PLUS HOLDINGS NIG. LTD with Zenith Bank Plc, Account No: 5070365750 from the account of the Office of the National Security Adviser with the Central Bank of Nigeria upon a transfer mandate Ref: No. 128/S.5LX/139, purporting to be for the supply of Tactical Communication kits for Special Forces to the Zenith bank account of CAPITALFIELD INVESTIMENT & TRSUT LTD., which you knew or reasonably ought to have known that the said fund represented the proceeds of an unlawful activity of Col. Mohammed Sambo Dasuki (RTD.), the then National Security Adviser, (to wit: criminal breach of trust and corruption) and thereby committed an offence contrary to Section 15(2) (b), of the Money Laundering (Prohibition Act, 2011 as amended in 2012 and punishable under Section 15(3) and (4) of the same Act.

Count 9:

That you, Azibaola Robert (M), being the Managing Director/Chief Executive Officer (MD/CEO) and a signatory to the Zenith Bank account of ONE PLUS HOLDINGS NIG. LTD, Mrs. Stella Azibaola Robert, being

a director and a signatory to the Zenith Bank account of ONE PLUS HOLDINGS NIG. LTD and ONE PLUS HOLDINGS NIG. LTD on or about the 17th December, 2014 in Abuja within the jurisdiction of this Honourable Court did directly transfer the sum of US$330,000.00 (Three Hundred and Thirty Thousand USD) only being part of the sum of US$39,999,958.00 (Thirty Nine Million, Nine Hundred and Ninety Nine Thousand USD and Nine Hundred and Fifty Eight Cents) only out of the total sum of US$40,000,000.00 Forty Million United States Dollars) transferred to the domiciliary account of ONE PLUS HOLDINGS NIG. LTD with Zenith Bank Plc, Account No: 5070365750 from the account of the Office of the National Security Adviser with the Central Bank of Nigeria upon a transfer mandate Ref: No. 128/S.5LX/139, purporting to be for the supply of Tactical Communication kits for Special Forces to the Zenith bank account of TELEDOM INERNAITIONAL LIMITED, which you knew or reasonably ought to have known that the said fund represented the proceeds of an unlawful activity of Col. Mohammed Sambo Dasuki (RTD.), the then National Security Adviser, (to wit: criminal breach of trust and corruption) and thereby committed an offence contrary to Section 15(2) (b) of the Money Laundering (Prohibition Act, 2011 as amended in 2012 and punishable under Section 15(3) and (4) of the same Act.

From the charge, the sum of US$40M which was said to be transferred or used by the Respondents was said to represent the proceeds of an unlawful activity of Col. Mohammed Sambo Dasuki (RTD.), the then National Security Adviser (NSA). In criminal trial he who alleges must prove his allegations beyond reasonable doubt to secure conviction. Proof beyond reasonable doubt as earlier pointed out in this judgment cannot be assessed or achieved at the level of no-case. What is required is for the Prosecution to show simply that a prima facie

case has been established at the close of its case before the trial court. A prima facie case means that there is ground or reason for the court to proceed with the trial and that the evidence has disclosed an allegation which if uncontradicted and believed will be sufficient to prove the case. See **Atoyebi v. FRN (2018) 5 NWLR (Pt. 1612) 350, Kalu v. FRN & Ors (2016) 9 NWLR (Pt. 1516) 1, Oko v. State (20017) 17 NWLR (pt. 1593) 24**. What the court is expected to do in an application of no case is to x-ray the evidence put in by the prosecution and see whether any believable evidence remained intact to support conviction. In the instant case, the prosecution called ten witnesses. The evidence of these prosecution witnesses did not in any form support the case of the prosecution or go near proving an inch of the allegations in the charge against the respondents. The PW1 Ibrahim Mahe, who was the then Permanent Secretary Office of the Secretary to the Government of the Federation (SGF). At page 1064, of the record of appeal, it is recorded as follows:

> **PWI: On 20/08/14, the then NSA endorsed a memo to me which originated from the office of Director of Finance and Administration of ONSA detailing the bank details of a company called OnePlus and the purposes for which the company was to be paid the sum of $40M (USD). The NSA instructed me to prepare payment and any understanding was to prepare the payment mandate for the $4OM in favour of OnePlus for his signature.**

Tahir: Before I proceed, please take a look at the dock, do you know the 1st and 2nd Defendants?

PW1: No, I don't know them. I got to know Oneplus, the 3rd Defendant, through the memo that was sent to me from the Director of Admin NSA. After I got the memo I prepared the payment mandate which I sent to the NSA which he signed and sent back to me. I countered signed the mandate and sent to the CBN for payment.

Under cross-examination, the PW1 testifies at pp. 1069 to 1070 as follows:

Uche: From what you have said, you are not involved in any way in the procurement process of the NSA?

PW1: Yes, I confirm that I am not involved.

Uche: But whenever requests by way of memos from the NSA for preparation of mandate for payment, you must pay.

PW1: Yes, it is so.

Uche: And you do that because by the time the memo gets to you it will have passed through the necessary processes before it gets to you, and that is why you pay without questioning?

PW1: Yes, once there is approval from NSA we pay.

The prosecution called this witness who testified that the payment to the respondents went through the normal process of

their payment mandate and that it was for authorized purposes. There is no allegation that the Respondents defaulted in carrying out the venture for which the money was paid them. The question then is where is the crime? The evidence of all the witnesses never indicted the respondents. Even the evidence of PW5 and PW10 who investigated the case did not indict the respondents. See the record of cross-examination of the PW5 at P. 1127:

Uche: That deposit of N650M was transferred by the NSA by your records to Tunji Adeniyi. In all the list of beneficiaries did you see the names of any of the Defendants as a beneficiary of any of the sums disbursed from the account?

PW5: They are not.

See P. 1172 of the record when the PW10 was cross-examined on this hear him:

Uche: In your investigation you confirmed that the sum of N650M received by Alhaji Dambatta was not paid by the defendants?

PW10: No, my lord. It was not paid by the defendants.

Uche: And in like manner you can easily also confirm that the money paid by the ONSA was not paid to the defendants?

PW10: No, it was not paid to the defendants.

See also the record of cross-examination of the PW10 at pages 1175, 1177 and 1178 as follows:

Uche: In your evidence in chief, you said that the ONSA wrote to your office asking you to investigate some disbursements that had no contract?

PW10: Yes.

Uche asks for Exh. AS016.

Uche: Take a look at Exh. AS0 16 and confirm that is the letter from the ONSA to investigate the disbursements without contract?

PW10: Yes.

Uche: This issue of $40M was not one of those referred to you to investigate?

PW10: I confirm so. I said so in my evidence that it was in the course of investigating the account of the defendants that investigators saw the payment of $40M and sought to know the purpose of the payment.

Uche: The defendants explained to you in his statements and interviews that the payment was for a security assignment in the Niger Delta.

PW10: Yes, he said so.

Uche: The intelligence apparatus, are you aware that the National Security Agencies Act established the Defence Intelligence Agency, the National Intelligence Agent, and the State Security Service, did you in

the course of your investigation interview any operative of any of these agencies in respect of this matter?

PW10: No, my lord.

Uche: You also recovered from the ONSA Exh. AS01 and 2, the memo written from ONSA with which the payment was made, signed by Col. Dasuki in his capacity as the NSA answerable only to Mr. President.

PW10 wishes to see the Exh. AS0 1 and 2 referred to, and they were shown to him.

Uche: From these exhibits you can see that the payments were duly authorized by the NSA?

PW10: Yes, they were duly authorized.

Uche: From your investigation, it was clear to your as confirmed by the PS that this was not the only payment made from the dollar funds released by the NNPC for these sort of assignments.

PW10: Yes, my lord, there were several payments.

Uche: But you were able to confirm that the funds came from the NNPC for these special operations?

PW10: Probably a background will help. In March 2014, the then NSA wrote a memo to the President titled Intervention on Urgent National Security Projects for which he sought the approval of Mr. President for the sum of 1B to handle a number of subheads including

unmanned aerial surveillance on pipelines and monitoring solutions, and an additional request in April for $250M. The President gave approval to the sum of $1.2B to be released to the NSA for the purpose that they sought his approval. In may the sum of $1.2B was released from NNPC account under the titled intervention on critical national security project. It was this fund that was then disburse to various receipt.

Uche: Confirm that this $40M was part of this $1.2B statutorily released by Mr. President for urged national security intervention.

PW: I confirm.

The law under which the Respondent were charged is the Money Laundering Prohibition Act 2011 (as amended), Section 15 (2) provides:

Any person or body corporate, in or outside Nigeria, who directly or indirectly –

(a) conceals or disguises the origin of;

(b) convert or transfer;

(c) removes from the jurisdiction; or

(d) acquires, uses, retains or takes possession or control of; any fund or property, knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act; commits an offence of money laundering under this Act.

The learned trial judge analyzed the evidence of the prosecution along with the position of the law before coming to the conclusion that there was no prima facie case. Hence the order sustaining the no case submission.

This provision of Section 15(2) of the Money Laundering Act, 2011 is very plain and direct. There is no plain and direct. There is no need for any construction before its intendment and meaning is arrived at. It is basic that in interpreting any, the settled principle is that where words used are devoid of ambiguity, same must be given their plain, ordinary and natural meaning. See **Saraki v. FRN (2016) 3 NWLR (Pt. 1500) 531, Skye Bank v. Iwu (2017) LPELR – 42595 (SC).**

In the instant case, the law as in Section 15(2) (b) of the MLA requires anyone or body corporate, in or outside Nigeria, who directly or indirectly converts or transfers any fund or property, knowingly or reasonably ought to have known that such fund or property is, or forms part of the proceeds of an unlawful act, commits an offence of money laundering. The requirements for the consummation of this offence are:

(a) **that a person or company directly or indirectly converts or transfers any fund or property;**

(b) **that the person or company knowingly or reasonably ought to have known that such property or fund forms part of the proceeds of an unlawful act.**

There is no evidence in the instant case to establish these ingredients. The sum of $40 Million paid into the account of the respondents was not shown to be sum forming part of an unlawful act to the knowledge of the appellants. It follows therefore that the respondents did not establish a prima facie case in this circumstance.

From the foregoing therefore, I am of the firm conclusion that this appeal is lacking in merit. The appeal is therefore dismissed.

STEPHEN JONAH ADAH
JUSTICE, COURT OF APPEAL

APPEARANCES:

Sylvanus Tahir Esq., for the Appellant.
Chief Chris Uche SAN, with: Darlington Owhoji Esq., Kanayo Okafor Esq., and Smart Ukoha Esq., for the Respondents.

APPEAL NO. CA/A/452C/2018

RIDWAN MAIWADA ABDULLAHI, JCA

I read in draft the judgment just delivered by my learned brother, **Stephen Jonah Adah, JCA** and I am in agreement with my learned brother's reasoning and conclusion in the lead judgement.

RIDWAN MAIWADA ABDULLAHI
JUSTICE, COURT OF APPEAL.

I agree.

ABUBAKAR SADIQ UMAR
JUSTICE, COURT OF APPEAL