



## No Case Submission in Nigerian Criminal Trials: Has Delta State of Nigeria Abolished it?

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### Abstract:

Serious legal issues have cropped up since the enactment of the Administration of Criminal Justice Act, 2015 in the Federation of Nigeria and the domestication of the law by some or all the States of the Federation. One of the important strictures surrounding the enactment of the law shall dominate this study. It is the doctrine of 'no case submission.' For the purpose of this study, in a ruling of a trial Magistrates' Court sitting at Abbi in Charge No. MAB/22c/2019 Commissioner of Police v. Sunday Usuh the trial Magistrate, His Worship, Edema Doris (Mrs.) Senior Magistrate

Grade 1, ruled on the 27<sup>th</sup> day of May, 2023 that *'The most recent law of the State which is the Administration of Criminal Justice Law does not make provision of a no case submission. The law does not entertain it. So therefore the defendant is called upon to open his defence in accordance with section 492(3) of the ACJL 2017. The matter is adjourned to the 24<sup>th</sup> day of June, 2022 for defence.'* Is it true? The facts of the case in Charge No MAB/22c/2019 Commissioner of Police v. Sunday Usuh shall be extensively considered in this discourse. Can a State law do away with the fundamental rights of a citizen as guaranteed by the provisions of the 1999 Constitution of the Federal Republic of Nigeria and notorious judicial precedence or case law on the point of law? This paper which adopts the doctrinal method seeks to review the Administration of Criminal Justice Law, 2017 of Delta State vis-à-vis the Administration of Criminal Justice Act, 2015, Laws of the Federation of Nigeria and the provision of section 36 of the Constitution of the Federal Republic of Nigeria, 1999. It will also consider the impact of the State law on judicial precedence and the constitutional rights of a defendant to appeal against any ruling not favourable to him. It concludes that the law is irregular and contrary to well established constitutional provisions and recondite principles of procedural law and should be amended.

**Keywords:** *No Case Submission, Administration of Criminal Justice Act, Law, Delta State Nigeria, Magistrates' Court Abbi, Criminal Procedure Law.*

### Introduction

The doctrine of no case submission is an age old concept in the administration of criminal justice in Nigeria. It is a common procedural defence mechanism in criminal litigation. It is available in both criminal and civil proceedings (Abdul, 2022). It is inherited from the Common law system of accusatorial justice. In the system, the

golden rule is that the onus is upon the prosecution throughout the criminal trial to establish the guilt of the accused person (now sometimes referred to as the defendant) beyond reasonable doubt. If at the end of the trial there is any reasonable doubt left in the mind of the court, the doubt is resolved in favour of the accused person and is therefore entitled to be discharged and acquitted.

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According to Abdul, Lord Sankey L. C. made the earliest formulation of the principle in the House of Lords in *Woolmington v. D. P. P.* (1935) AC 462 as follows, 'If, at the end of and on the whole of the case of the prosecution, there is reasonable doubt created by the evidence given by either the prosecution or the defence, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case, and the prisoner is entitled to an acquittal.' The principle was followed in *R v. Basil Lawrence* (1933) 11 NLR 6 by Lord Atkin and later incorporated into the Nigerian Evidence Act. It is clear however, that the holding of Lord Sankey sits more with the principle of resolution of doubts at the end of the trial which the trial court or the appellate court resolves in favour of the defendant, but not a no case submission which strictly speaking comes up immediately after the presentation of the case of the prosecution and not after the defendant has entered his defence.

Abdul (2022) was therefore on the right wicket when he postulated that the defendant before calling his witnesses in defence of the allegations against him has the statutory right to bring up a no case which if upheld ends the case of the prosecution or where it is refused, he may proceed to rest his case on that of the prosecution or open his defence or proceed on appeal against the ruling. The prosecution equally has the right of appeal against a ruling holding that it has not made out a prima facie case against the defendant.

Before the enactment of the Administration of Criminal Justice Act of 2015 (the Federal Act) and the Administration of Criminal Justice Law of 2017 (the Delta State Law), the Criminal Procedure Act Cap C41 Laws of the Federation of Nigeria 2004 had provided that '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.' The 'evidence' referred to in section 286 of the Criminal Procedure Act means no less than that tendered in court and tested or liable to be tested under cross-examination and is quite distinct from

statements contained in the proof of evidence that have not been ventilated in court during trial. The court is bound to confine itself to the evidence tendered in court strictly so called (*Mohammed v. The State* (2002) 145 LRCN 471 at 473.

In *Egharevba v. FRN & Ors* (2016) 254 LRCN 85 at 104 it was settled that in dealing with a no case submission, the issue of the court believing or disbelieving the evidence or the credibility of the witnesses should not arise and so the facts that will lead to the merit *vel non* of the case are not in issue. In other words, all the trial court is supposed to consider is not whether the evidence so far adduced by the prosecution against the defendant is sufficient to justify conviction but simply whether the prosecution has made out a prima facie case requiring some explanation from the defendant as regards his conduct or otherwise (*Onogoruwa v. State* (1993) 7 NWLR (Pt. 303) 49 at 80). In *Fagoriola v. FRN* (2013) 221 LRCN 1 at 17 it was settled that a no case submission can be made where: (a) there was no evidence to prove an essential element of the offence; (b) the evidence has been so discredited as a result of cross-examination and (3) the evidence is manifestly unreliable that no reasonable tribunal or court can safely convict on it (*Agbo & Ors v. The State* (2013) 224 LRCN (Pt. 1) 137 at 153 – 154). This tripod was developed and firstly pronounced in the Practice Direction laid down by Lord Parker C.J. It is therefore difficult to agree with Idiarhi (2015) when he is understood to argue that the doctrine of no case submission is 'rooted in disparate considerations' as shall be later considered in this study. He stated for instance, that 'the parameters within which it is to be made are not given' under our laws when in fact it is a notorious ratio of our judicial precedence that to hold that a defendant should enter his defence when a prima facie case against him has not been made out is equivalent to asking the defendant to prove his innocence as held by Karibi-Whyte JSC in *Adeyemi v. State* (1991) 6 NWLR (Pt. 195) p. 1.

## Statement of the Problem

Now that ‘the most recent law’ of Delta State which is the ‘Administration of Criminal Justice Law (1917) does not make provision’ for a no case submission, what becomes the fate of the earlier federal act which is the Administration of Criminal Justice Act, 2015 that makes provision for a no case submission? What becomes the fate of the 1999 Constitutional provision that ‘an accused person shall be presumed innocent until the contrary is proved’? What becomes of the Supreme Court authorities in several cases on the issue in *Onagoruwa v. State* (supra); *Mohammed v. The State* (supra); *Agbo & Ors v. The State* (supra); *Fagoriola v. FRN* (supra); and *Egharevba v. FRN & Ors* (supra)?

Now, the facts of the prosecution’s case before the trial Magistrate Court, Abbi in Ndokwa West Local Government of Delta State, Nigeria were as follows: PW1, John Aniogor, sent some labourers to work in his farm...led by PW2 Chinedu Osadinizu who called the PW1 that the defendant (Sunday Usuh) placed juju on the farm threatening that he would kill the PW1 if the PW1 enters the farm. On 3<sup>rd</sup> April, 2019 after the Traditional Council entered judgment in PW1’s favour, the PW1 went to the farm and saw that ten palm trees planted there by him were uprooted. The PW1 reported back to the Traditional Council which had earlier in the day given judgment in his favour. The Traditional Council advised the PW1 to report to the Nigeria Police. A case of malicious damage, forcible entry and invocation of juju was thereafter framed against the defendant who was subsequently arraigned before His Worship, Edema Doris (Mrs.). PW1 admitted that there is a strip of land between the motor way and the land he bought and it was this strip of land that the defendant was claiming and disputing with him. And the land on the adjacent side of the motor way belongs to the defendant’s family; in other words, the motor way transverse the land of the defendant’s family. The PW1 admitted that the ten palm trees were not uprooted in his presence and they were not planted on the strip of land the defendant was contesting with him.

PW2, Chinedu Osadinizu, was working in the farm as the led labourer of the PW1 when the defendant met him in the farm and when defendant came PW2 saw the defendant tie red and white cloth with two sticks inside the strip of land in dispute and when defendant finished doing so he went away. Defendant did not destroy anything like palm trees. PW2 called PW1 on phone and intimated him what happened. Defendant did not confront the PW2 and PW2 claimed that he did not know the significance of what the defendant did. Defendant did not remove any of the palm trees during the incident in the presence of the PW2.

PW3, Chief Onah Samuel Uzoma, had in 2018 received a report from the PW1 that someone entered PW1’s land and placed an inscription, ‘No trespasser do not trespass’ and left a phone number to reach him. Defendant came to the PW3 when PW3 placed a call to the phone number which turned out to be defendant’s phone number; and the PW3 advised the defendant to let go the strip of land for the PW1. Later in February, 2019 the defendant went to place fetish juju on the land. PW3 admitted that the inscription was placed by the defendant and that the defendant and PW1 were disputing the strip of land.

PW4, Chief Osagwu Augustine, told the trial court that PW1, Sir John Aniogor brought a case to the Palace in April, 2019 that he has a land dispute with the defendant. The two and their witnesses presented their cases before the Traditional Council and the defendant claimed the strip of land which was 15 feet to the road, or between the surveyed land of the PW1 and the motor road. PW4 admitted that the defendant placed the juju to show a claim of right.

Now, curiously, in a paper titled, ‘No case submission in the Lower Courts: Practice and Procedure’ presented at the Induction Course for the Newly Appointed Magistrates and other Judges of the Lower Courts at the National Judicial Institute, Abuja, Hanif Sanusi Yusuf claimed in the lecture that under the Administration of Criminal Justice Act, 2015 two options only, are open to a defendant whose

Counsel's no case submission has been overruled. Yusuf (2022) submits, 'Where a no case is overruled, the defendant will have two options (1) to enter his defence or (2) to rest his case on that of the prosecution. Does this imply that the Administration of Criminal Justice Act, 2015 has also abolished the right of the defendant to challenge or appeal against the ruling that he has a case to answer?'

## Theoretical Framework

### Theory of Constitutionalism

Bazezew (2009) states that constitutionalism checks whether the act of a government is legitimate and whether officials conduct their public duties in accordance with laws pre-fixed or pre-determined in advance. Constitutionalism is descriptive of a complicated concept, deeply embedded in historical experience, which subjects the officials of governmental power to the limitations of a higher law. Throughout the literature dealing with modern public law and the foundations of statecraft, the central element of the concept of constitutionalism is that in political society government officials are not free to do anything they pleased in any manner they choose; they are bound to observe both the limitations on power and the procedures which are set out in the supreme constitutional law of the land. The touchstone of constitutionalism is limited government under a higher law (<https://www.en.m.wikipedia.org>).

It is thus the respected view of Emiko (1976) that the criminal law represents a sustained effort to preserve important values from serious harm and to do so not arbitrarily but in accordance with rational methods directed towards the discovery of just ends. Accordingly, no one who is put on trial for a criminal offence shall be compelled to give evidence at the trial and anyone who is charged with a criminal offence shall be presumed innocent until the contrary is shown provided that in certain circumstances the law may impose the burden of proving particular facts. Furthermore, no one shall be placed on trial or guilty of an offence which is not written down before the commission of the

offence. These constitutional provisions are inviolable and are therefore the guiding principles and cornerstones of constitutional democracy. The provision of section 36(5) of the 1999 Constitution guarantees presumption of innocence while section 138(1) of the Evidence Act provides that the prosecution must prove its case beyond reasonable doubt. Thus the constitutional principle behind a no case is that a defendant should be relieved of the responsibility of defending himself when there is no evidence upon which he may be convicted and on the other hand, the precious judicial time of the court is saved (Saheed, 2022).

### Theory of Right of Appeal

The right to challenge any decision of a court of law before a higher court is the right of appeal. An interlocutory appeal occurs before the trial court's final ruling on the entire case (Garner, 2009, p. 113). An appeal against a submission of no case to answer is essentially an interlocutory appeal. However, if it succeeds on appeal it transforms into a final appeal in so far as the defendant is no longer under any legal obligation to appear before the lower trial court to answer to the said charges. Furthermore, the appellate court may allow the appeal in parts by holding that the defendant should return to the trial court to enter his defence to such other charges which the appellate court may hold that he has a prima facie case made out against him by the prosecution for which he should defend before the trial court.

An appeal in a no case submission must be made within reasonable time (15 days after the ruling) otherwise an appellate court may not find it necessary to grant an extension of time within which the defendant may apply for leave, extension of time within which to appeal and leave to appeal (the trinity prayers) as the appellate court would hold that the grouse(s) in the no case be taken at the end of the case. An appeal against a no case submission is an appeal as of right in that the leave of the trial court or the leave of the appellate court is not required or provided for. In his paper at the National Judicial Institute, Abdul (2022) submits that appeals in a refusal or upholding of a no case to answer is



allowed but the hunch is that the interlocutory appeals must go pariparsu with the trial at the lower court. Stay of proceedings at the trial court is not granted neither would the appellate court order a stay of proceedings before the trial court if refused as section 306 of Administration of Criminal Justice Act, section 36(4) of the Constitution of the Federal Republic of Nigeria and section 40 of the Economic and Financial Crimes Commission Act have annulled the procedure for speed (Ogunbiyi, JSC in *Olise Metu v. FRN & Anor*).

## Literature Review

Upon the state of the facts before the learned trial Magistrate, His Worship Edema Doris (Mrs.) Senior Magistrate Grade 1, the Counsel representing the defendant, made the following arguments to buttress the no case submission: Firstly, that there was no evidence to prove an essential element of the offence of malicious damage. It was submitted by learned Counsel to the defendant that for the trial court to hold that the defendant damaged the palm trees of the PW1, there must be direct evidence as circumstantial evidence was not applicable. The defendant did not remove the trees in the presence of the PW1 who went on to allege that he suspected that the defendant removed the ten palm trees because one Chief Orsino Chimsunum ordered the defendant through a phone call to do so because the palm trees were on the right of way. The prosecution did not call Chief Orsino Chimsunum to testify to the fact that he called the defendant on phone to remove the palm trees because they were on the right of way or was Chief Orsino Chimsunum made a co-defendant. The PW2 who was the most suitable eye witness of what happened had stated that he was working in the farm of PW1 when the defendant met him and when the defendant came he saw the defendant tie red and white cloth with two sticks inside the farm and as the defendant finished, he went away. Defendant did not destroy anything like palm trees.

The PW4 who volunteered unsolicited evidence that after the Palace Chiefs left the locus in quo, palm trees planted by PW1 were damaged by the

defendant did not see the defendant doing so. Counsel therefore submitted that the evidence was speculative and at best a hearsay evidence and urged the trial court not to treat same as circumstantial as there were other actors or third parties who could have removed the palm trees as volunteered by the PW1 that one Chief Orsino Chimsunum could have damaged the palm trees because they were on the 'right of way'. Therefore, there was no clear evidence that the defendant damaged the palm trees.

Secondly, Defence Counsel submitted that there was no evidence to prove an essential element of the offence of the invocation of juju as the evidence the PW1 placed on record that he was called that the defendant placed juju on the farm threatening that he will kill PW1 if the PW1 entered the farm was confuted. The PW2 maintained that the defendant did not confront him nor did the defendant say any word of threat against the PW1. PW2 stated before the trial court, 'I saw him tie red and white cloth with two sticks inside the farm. As he finished he went away. He did not confront me. He did not destroy anything. I do not know the significance of what he did.' Thus, the evidence of PW1, defence Counsel submitted, was a figment of his imagination. Counsel also urged the Court to hold that the evidence of the PW4 that the defendant agreed to remove the juju and abstain from reinstating it on the farm and that the exercise was in bonafide claim of right under section 23 of the Criminal Code which provides that no offence is committed by a defendant who does any act within the remit of a claim of right in good faith also attenuated the case of the prosecution.

Thirdly, the Defence Counsel submitted that there was no evidence to prove an essential element of the offence of forcible entry. The evidence before the court was at variance with the prosecution's case of forcible entry. There was no guise of forcible entry in the act or conduct of the defendant. As the PW2 told the court that the defendant did not confront him, and he did not know the significance of what the defendant did by tying the red and white cloths to the sticks in the farm and the defendant did not remove any palm trees in the farm, the

prosecution failed to establish the elements of the entry into a land with the guise of force, threat, harm or misconduct.

It was thus the view of the Defence Counsel that the evidence before the learned trial Magistrate at Abbi, in Ndokwa West Local Government Area of Delta State in Charge No. MAB/22c/2019 Commissioner of Police v. Sunday Usuh had been so discredited as a result of cross-examination; and that the evidence was manifestly unreasonable that no reasonable tribunal can safely convict on it. In *Okafor v. The State* (2016) 259 LRCN 168 at 190 when a no case to answer is made, it does not mean that the trial court is called upon at that point to express any opinion on the evidence adduced before it. Rather, the trial court is only called upon to bear in mind and note that there is no legally admissible evidence linking the defendant with the commission of the offence he is charged with. If the submission is predicated on discredited evidence, such discredit must be apparent on the face of the records.

In a paper delivered at the 2022 Refresher Course for Magistrates at the National Judicial Institute, Abuja, Abdul Yusuf (2022) restated the same principles that a no case means that the defendant has nothing to defend based on the charges against him and the evidence led against him. However, the prosecution is not required to demonstrate its case beyond reasonable doubt at the stage of a no case submission. It is only at the end of the trial when the defendant has presented his own side of the coin that such a burden of proof is required. At a no case stage it is whether the prosecution has made out a prima facie case to warrant the accused being called upon to enter his defence and demonstrate the doubt in the case of the prosecution. At this stage, the defendant is saying that the prosecution has not 'sufficiently proven the legal threshold to establish the commission of the offence in a law court' requiring him to state his own version of what transpired.

### **Attacking the Holding in Sunday Usuh**

In the ruling in the specimen under consideration, Charge No MAB/22c/2019 Commissioner of Police v. Sunday Usuh, the

trial Magistrate, His Worship, Edema Doris (Mrs.) Senior Magistrate Grade 1, held on the 27<sup>th</sup> day of May, 2023 that '*The most recent law of the State which is the Administration of Criminal Justice Law does not make provision of a no case submission. The law does not entertain it. So therefore the defendant is called upon to open his defence in accordance with section 492(3) of the ACJL 2017. The matter is adjourned to the 24<sup>th</sup> day of June, 2022 for defence.*'

Being dissatisfied with the ruling, the defendant appealed to the High Court of Justice, kwale. In the Notice of Appeal filed on 6<sup>th</sup> October, 2022 the Defence Counsel gave two principal Grounds of Appeal to the effect that the ruling was against the evidence; that the learned trial court erred in law in holding that the defendant was not entitled to make a no case before the trial court because the Administration of Criminal Justice Law of Delta State 2017 did not give room or make provision for a no case submission. While particularizing the grounds of error, Counsel stated that under the 1999 Constitution of the Federal Republic of Nigeria (as amended) and decided cases, the defendant was entitled to the right to fair hearing and to be presumed innocent until the contrary is proved beyond reasonable doubt and is not to prove his innocence. That the failure of the trial court to rule on the no case submission made on behalf of the appellant on the ground that the Administration of Criminal Justice Law has abolished no case submission in criminal trials in Delta State was contrary to law and has occasioned a miscarriage of justice.

Since the coming into force of the Administration of Criminal Justice Act (2015) the Federal law and the Administration of Criminal Justice Law (2017) the domesticated Delta State law, two rulings on no case submission delivered on 27<sup>th</sup> February, 2019 by His Lordship, D. Z. Senchi J, in FCT/HC/CR/129/14 FRN v. Zacheus Gutap & 3 Ors and on 17<sup>th</sup> October, 2019 by His Lordship, Abubakar Idris Kutigi J, in HC/FCT/CR/80/10 FRN v. John Areh shall be cited for illustration for the currency of the existence of the right to bring up a no case submission after the closure of the case of the prosecution. Senchi J in allowing a no case

submission ruled as follows, *‘I have combed through the evidence ...there are no confessional statements before this court establishing an admission of the offence before the court. No corpse of Moses Dabip was recovered to support the allegation that he was killed or PW1 and PW2’s testimony that some of the defendants might have confessed to killing him. There is therefore no compelling evidence showing that the alleged Moses Dabip has been killed. No evidence at all on how he was killed speak less of whether the defendants were the cause of the death by beating as alleged in the charge. No prima facie case of criminal conspiracy and culpable homicide has thus been made out against the defendants from the evidence produced by the prosecution...This court cannot possibly convict the defendants for the offences charged based on the evidence before it. It would thus be absurd to continue with this case and call upon the defendants to put in their defence. Consequently, I hold the view that the prosecution failed to prove its case against the defendants who are discharged in accordance with sections 302 and 357 of the Administration of Criminal Justice Act, 2015’.*

Kutigi J in dismissing the no case submission in *FRN v. John Areh* ruled as follows, *‘I am therefore not persuaded to go into any evaluation beyond what is legally imperative as cautioned by our superior court...to avoid making observations on the facts of the case in this ruling. At this stage, the accused person or defendant, it must be emphasized, has not led evidence in his defence, as it is obvious that the case has not been concluded. The court should therefore express no opinion on aspects of the case to which the accused person has not replied or rebutted in order not to fetter its discretion. In summation and for the avoidance of doubt, I hold that from the evidence so far adduced, the prosecution had made out a prima facie case against the defendant in respect of all the counts requiring explanation from him. The no case submission is accordingly overruled. In the circumstances and in accordance with the provision of section 303 of the Administration of Criminal Justice Act, 2015 the defendant is called upon to enter his defence.’*

A more conflicting and contrary opinion to the holding of His Worship, Edema Doris (Mrs.) sitting at the Magistrates’ Court Abbi, Delta State and by extension the Delta State Law on the subject matter can be found in the writings of Unini & Azubike (2020) wherein the writers opined that one of the innovations of the Administration of Criminal Justice Act 2015 can be found in section 302 which enables a trial

court to, suo motu, raise a no case submitting further that the Federal Act has been domesticated in section 309 of the Administration of Criminal Justice law of Rivers State No. 7 of 2015. Citing in extenso, the provisions of the Federal law, section 302 provides that ‘the court may, on its motion or on the application by the defendant after hearing the evidence of the prosecution, where it considers that the evidence against the defendant or any of several defendants is not sufficient to justify the continuation of the trial, record a finding of not guilty in respect of the defendant without calling on him or them to enter his or their defence and the defendant shall accordingly be discharged and the court shall then call on the remaining defendant, if any, to enter his defence’.

It follows that while the Rivers State’s domestication followed the Federal Act, the domestication of the Act in Delta State did follow the Federal Act thus running repugnant to the Federal Act. But Unini and Azubike (2020) are further worried that the trial court may not need to bother to invite submissions or addresses from the parties which they fear may be ‘dangerous because it may (predispose) the trial court to descend into the arena of conflict and depart from its position of neutrality.’ They argue that it is such a weighty issue for a trial court to broach without affording the parties the opportunities to address the court on it believing in another general principle of law that a trial court is not encouraged to raise an issue suo motu without eliciting reactions on the issue from the parties. Therefore, they recommended that whenever a trial court raises a no case suo motu it must invite the parties to address it. However, it should be made clear, that in so far as the Federal Act did not provide that the trial court could proceed to consider the no case with inviting addresses from the parties, the interpretation and recommendation of Unini and Azubike is nondescript and unsolicited. This is because the old law is in tandem with the new law in so far as it gives the court the discretion to raise a no case suo motu. The old law states, ‘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.’

### Attacks on ‘No Case’ Doctrine

A considerable level of attack has come against no case submission beyond the question whether it has to be made suo motu by the trial court without contributory addresses of the Counsel to the parties. It has been soundly submitted by Idiarhi (2015) that while the coinage of the doctrine and practice has procedural origin than substantive law it is an appealing creed the premises of which application are ‘rooted in disparate considerations.’ In the paper, *A critique of the principles of no case submission in criminal procedure*, Idiarhi considered the foundation for the grounds upon which a no case is made and upheld or rejected believing that there is a ‘maze of confusion’ about its application and the route to it is ‘a minefield requiring intellectual vigilance as the margin of error is colossal.’ Two fundamental principles and premises were thus advanced by Idiarhi being the presumption of innocence under section 36(5) of the 1999 Constitution and the burden of proof beyond reasonable doubt under section 138 of the Evidence Act.

The strongest attack seems to come from the Nigerian innovation on the doctrine. While Lord Parker CJ did not use the words ‘prima facie case’ in his Practice Direction, setting out the two general heads which have been expounded into three general heads under which the application can be anchored, judicial authorities in Nigeria have developed the concept of ‘prima facie case’ to help in the further understanding of the doctrine. In framing the concept of ‘prima facie case’ in its precinct perspective Idiarhi submitted that while the defendant presents that the prosecution has not made out a case sufficient to call the defendant to enter his defence and therefore submits that he has no case to answer, the prosecution submits that it has made out a prima facie case to warrant the defendant to be called upon to enter his defence. Thus while a no case is a weapon of defence, prima facie is a weapon of attack from the

prosecution. By prima facie, the law is considering what can be seen on the face of the evidence adduced by the prosecution.

Another curious attack on the doctrine is based on the admonition that at the stage of a no case submission the trial court is not expected to evaluate the evidence adduced by the prosecution. This is so because it is only the evidence of the prosecution that is placed before the court. The side of the defence has not been placed before the court. Evaluation cannot be correctly based on one-sided facts. This is also why it is said that at the stage of a no case, the burden of proof is not one beyond reasonable doubt. Therefore, the ruling on a no case is perforce brief when the court is disinclined to uphold the no case submission. If on the other hand, the trial court is inclined to upholding the no case, then the trial Judge may chose to go the full length into evaluation of the sole evidence presented by the prosecution.

Yet it has been argued that whichever way the trial court goes, whether to uphold the no case submission or to refused to uphold it, the process of its consideration must involve evaluation of evidence before it. It is believed that it is contradictory to determine whether a prima facie case has been made out or not without considering: what are the elements of the charge under consideration and whether the evidence presented by the prosecution had so far established them. Furthermore, it has been argued that it is difficult to determine whether evidence is manifestly unreliable that no reasonable court can safely convict on it or that the evidence has been so discredited as a result of cross-examination without looking into the quality or the evidential value of the facts adduced by the prosecution and these are connected with evaluation in relation to credibility, admissibility, conclusiveness and probability (*Adekunle v. Aremu* (1998) 1 NWLR (Pt. 533) 203 at 229 and *Utie v. State* (1980) 1 NWLR 69 at 78).

### Sunday Usuh’s Argument on Appeal

When Sunday Usuh proceeded on appeal, he raised two principal issues and argued them separately. On the first issue whether the



Administration of Criminal Justice Law 2017 of Delta State has abolished the presumption of innocence of an accused person under the 1999 Constitution of the Federal Republic of Nigeria and therefore the constitutional right of an accused to bring up a submission of no case under Nigerian law, Defence Counsel argued that sections 302 and 303 of the Administration of Criminal Justice Act 2015 (the Federal act) and section 302 and 303 of the Administration of Criminal Justice law 2017 (the Delta State law) make provisions for no case submission. But the trial court held that the 2017 State law unlike the 2015 Federal law did not make provision for no case and thereafter called on Sunday Usuh to enter his defence.

Defence Counsel submitted that it is the general principle of interpretation of law that a State law contrary to a Federal law is null and void to the extent of the inconsistency. Section 1 (1) & (3) of the 1999 Constitution provides that 'this Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria; if any law is inconsistent with the provisions of this Constitution, this Constitution shall prevail and that other law shall to the extent of the inconsistency be void.' Section 36(5) of the Constitution goes on to provide that 'every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of providing certain facts.'

In Emmanuel Ibeziako v. Commissioner of Police (1963) FSC 329/62 (Lawlords, p. 74) the above cited provisions were interpreted as follows: 'It is the duty of the prosecution to prove the prisoner's guilt subject to the defence of insanity and any statutory exception which is established by the prisoner on the balance of probabilities.' The charges against Sunday Usuh were not those envisaged under the proviso to section 36(5) of the Constitution accordingly, if at the end of the case of the prosecution, it fails to establish the essential elements of the charges, the defendant is entitled to be discharged on a no case or on the ground that a prima facie case has not been

made out to warrant his being called upon to prove his innocence or on the ground that the case of the prosecution has been so discredited under cross examination that no reasonable tribunal can safely rely on it to convict the defendant appellant (Agbo & Ors v. the State, Supra). It was thus submitted that the trial court erred in law in holding that the right of the defendant to a submission of no case to answer had been abolished by the Delta State law of 2017.

On the second issue whether the appellate High Court of Justice, Kwale could discharge the Sunday Usuh on the evidence before the trial court that a sufficient case had not been made out to warrant the defendant being called upon to enter his defence, learned Defence Counsel submitted that having demonstrated that the trial Magistrate, His Worship Edema Doris (Mrs.) failed to entertain the no case, the appellate High Court could proceed to do so. Counsel submitted copiously that:

(1.) There was no evidence to prove the essential elements of the offence of malicious damage in that the PW2 who saw the defendant appellant on the land stated positively that the appellant did not destroy any palm seedlings of the PW1 as alleged in count 2 of the charge.

(2.) There was no evidence available to prove an essential element of the offence of invocation of juju in that the evidence of the PW1 that the appellant placed juju on the farm threatening that he (Sunday Usuh) or the juju will kill him was destroyed by the evidence of the PW2 who stated that when the appellant came to the land he did not confront him, or utter a word of invocation of juju or threat against the PW1 or did he know the significance of what the appellant did by tying red and white cloths with two sticks on the farm. Even the prosecution's case was further destroyed by the evidence of the PW4 who stated or admitted that the tying of the cloth on the stick on the land was an exercise in bonafide claim of right.

(3.) There was no evidence to prove an essential element of the offence of forcible entry and conduct likely to cause breach of peace. The evidence of the PW2, who saw the defendant

appellant, Sunday Usuh, was that he came to the farm, tied the cloths on the two sticks and went away. He did not destroy any seedling or speak to the PW2. He did not confront the PW2 and the PW2 did not know the significance of what the appellant did by tying the cloths. There was no guise of threat or violence.

(4.) The trial was a nullity because the court lacked jurisdiction to entertain it. There was ample evidence that the nature of the dispute between Sir John Aniogor and Sunday Usuh was land dispute. The land was 15 feet to the road. It was a strip of land between the land surveyed and bought by the PW1 and the road. Since 2018, the defendant appellant had placed an inscription, 'No Trespasser Do not Trespass!' on the land and the PW1 had been disputing it with the defendant appellant according to PW3 and PW4. It was thus submitted that the trial court ought to have declined jurisdiction and struck out the charge before it holding that it was civil (Lado v. CPC (2012) 206 LRCN 176 at 212).

The Defence Counsel in the resulting analysis called upon the appellate High Court of Justice, Kwale to hold that 'the law of the Constitution has not abolished no case submission' and that on a calm view of the facts placed before the trial Magistrates' Court, Abbi the prosecution had not made out a prima facie case to warrant the appellant to be called upon to enter his defence. And alternatively, that the nature of the subject matter before the trial Magistrates' Court, Abbi was a land dispute as established by the prosecution and as such the trial court lacked the requisite jurisdiction to entertain or potter into it and ought to have refused it as a civil matter.

## Conclusion

The Administration of Criminal Justice Act 2015 was a far reaching effort by the Nigerian legislature the foremost arm of the three organs of the government to amend and update the criminal procedure law in the country. In a demonstration of the federal system, the State governments were called upon to domesticate the federal law to apply it to all the States of the Federation. This has been done by several States

including Delta and Rivers States as has been demonstrated in this study. However, the Delta State law of 2017 appears to be at violent odds with the Federal Act of 2015 by failing to provide comprehensively for the right of the defendant in a criminal trial to make a no case submission. The Magistrates' Court sitting at Abbi in Delta State proceeded in Charge No MAB/22c/2019 Commissioner of Police v. Sunday Usuh on the 27<sup>th</sup> day of May, 2023 to hold that '*The most recent law of the State which is the Administration of Criminal Justice Law does not make provision of a no case submission. The law does not entertain it. So therefore the defendant is called upon to open his defence in accordance with section 492(3) of the ACJL 2017...*' igniting this study which concludes that 'the law of the Constitution has not abolished No case submission'.

## Recommendation

- The Delta State government should commence the process of reviewing the enactment: Administration of Criminal Justice Act 2017.
- The ruling in Charge No MAB/22c/2019 should be set aside by the appellate High Court of Justice, Kwale.

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