Sub-Sahara African Academic Research Publications
June, 2021 Editions

JHSS
Journal of Humanities and Social Science.
Vol.20, No.6, ISSN:2316-7989

LEGAL EFFECTS OF FEDERAL LEGISLATIONS IN VALIDATIMG 'NO CASE SUBMISSION' UNDER DELTA STATE ADMINISTRATION OF CRIMINAL JUSTICE LAW.

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Abstract

This paper applies the doctrinal research method to critically appraise the legal ambits , purport and scope of defendants rights to making no case submission at the close of prosecution's case in Nigerian criminal trials under the Federal Administration of Criminal Justice Act 2015 as well as the Delta State Administration of Criminal Justice Law 2017 vis a vis constitutional provisions. This paper concludes that the right of an accused person to make no case submission is a constitutional right which cannot be taken away by mere lacuna in the Delta State ACJL. This paper recommends urgent reform and amendment of the Delta State Administration of Criminal Justice Law to remedy its inconsistency with constitutional provisions and ensure its validity

Keywords: *Legal Effects No Case Submission, Constitution, Criminal Justice.*

Introduction

The rights of accused persons \defendants to validly and lawfully make No Case Submission before any court with criminal jurisdiction at the close of prosecution's case are accentuated by the clear and unambiguous provisions of section 36 (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which is the grundnorm or chief law in Nigeria. This constitutional right to presumption of innocence in favour of an accused person is further validated by section 135 Evidence Act 2011; reinforced by sections 302 and 303 of the Administration of Criminal Justice Act 2015 and supported by sections 301 and 302 Delta State Administration of Criminal Justice Law 2017.

This right of the defendant to make no case submission has been roundly restated by the Supreme Court of Nigeria and the Court of Appeal in a long line of judicial authorities which by the doctrine of *stare decisis* all lower courts are legally bound to follow and apply.

Meaning and Purport of 'No Case Submission'.

The right of a defendant to make a submission of no case to answer at the close of prosecution's case is an integral, inalienable and settled principle of our criminal law jurisprudence for several decades. Defendants are by law entitled to make 'No Case Submission' in the circumstances stated by the Supreme Court in the case of Commissioner of Police v Amuta, (2017) which are where:

1. The prosecution has not proved all the essential ingredients of the offence charged
2. The evidence of the prosecution has been so discredited by cross examination and/or is so manifestly unreliable that no reasonable tribunal can safely convict the defendants.

   Also, in the case of Ede Oko v State (2017) the Supreme Court of Nigeria held that by making a 'No Case Submission' the accused persons are in effect telling the trial court either or both of two things:

   i. 'That there has been throughout the trial no legally admissible evidence linking them with commission of the offence charged and/or
   ii. That the evidence as adduced by the prosecution has been so discredited by cross examination that no reasonable court can safely convict on it'

In the case of Major Hamza Al- Mustapha v the State (2017), the Court of Appeal emphasized the legal obligation on the prosecution to link the defendant with the alleged offence when it held thus:

> *'In the case of Ikomi v State (1986) LPELR 1482 it was held inter alia that there must be some evidence which links the accused with the offence but certainly not suspicion or mere conjecture. There must be evidence to meet all the essential elements of the offence. The prosecution having failed to prove the offence of murder of Alhaja Kudirat Abiola against the*

> *appellant beyond reasonable doubt, the appellant is entitled to be discharged and acquitted of the charges'.*

The apex court further reemphasized this settled principle of law in the case of Ogar Adama v State (2017) and held that where the prosecution has not made out a *prima facie* case against the accused, he cannot be called upon in law to enter his defence as doing so would violate the constitutional right to presumption of innocence of an accused person.

Also restating the legal principle that suspicion no matter how strong can never amount to prima facie evidence that will ground a conviction, the Court of Appeal in the case of Hamza Al-Mustapha v the State (2017) held:

> *'No matter the suspicion and its degree, no matter the grievance or grouse, no matter the height of conjecture, no matter the depth of hatred, even the strongest suspicion can never found a conviction in law. There is the duty, not discretion, on the prosecution to prove its case beyond reasonable doubt'.*

No Case Submission is Rooted in the Nigerian Constitution

It is submitted that the right of defendants to make a 'No Case Submission' where the prosecution has not established a *prima facie* case against the defendants is a fundamental right which is predicated upon and firmly rooted in the constitutional right to presumption of innocence until proven guilty, enshrined in section 36 (5) Constitution of the Federal Republic of Nigeria 1999. This right places the onus of proving the guilt of defendants/accused persons beyond reasonable doubt on the prosecution. The defendants are by virtue of the presumption of innocence not obligated to prove their innocence. Where the prosecution is unable to prove a *prima facie* case against them through credible and admissible evidence, counsel for defence can validly activate the constitutional right of defendants to presumption of innocence by making a submission via address that defendants have no case to answer.

In the case of C.O.P v Amuta (2017), the Supreme Court of Nigeria restated the meaning and purport of the constitutional right to presumption of innocence in favour of an accused person as follows:

> *"The constitutional provision of presumption of innocence of an accused person is sacrosanct and settled. The burden is always*

> *on the prosecution to prove the guilt of the accused and not his business to prove his innocence. He can decide to keep mute from the beginning of the trial right through to the end… Without any case made out against the accused, he cannot be called upon to enter his defence because in doing otherwise would undermine the constitutional presumption of innocence'.*

The Apex Court further reemphasized this settled principle in the case of Samuel Chidozie v C.O.P (2018). Also in the earlier case of Olusina Ajayi v State (2013) the Supreme Court held on the constitutional presumption of innocence thus:

> *"Generally and it is trite law that it is not the duty of an accused person to prove his innocence. Indeed, there is a presumption of innocence in favour of an accused. See section 36(5) of the 1999 Constitution (as amended)"*

It is argued that the right of defendants/accused persons to make No Case Submission is predicated on the constitutional presumption of innocence in their favour. Where the prosecution has not made out a *prima facie* case against defendants, requesting defendants to enter their defence without making 'No Case Submission' would be tantamount to requesting defendants to prove their innocence which would undermine their constitutional rights to presumption of innocence.

It is further argued that in tandem with the constitutional presumption of innocence, and in addition to the right of defendants to make 'No Case Submission', the courts are vested with the inherent powers to *suo motu* discharge the defendants where it appears that the prosecution has not made out a case that requires the defendants to enter their defence. On this settled rule of Nigerian criminal jurisprudence it is pertinent to refer to the judgment of the Supreme Court of Nigeria in the recent case of Ede Oko v state (2017) where it held as follows:

> *"The law is settled 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 sufficient to require him to make a defence, the court shall, as to that particular charge discharge him"*

This settled principle of law is also codified under section 302 Administration of Criminal Justice Act, 2015.

The Evidence Act Validates No Case Submission

It is submitted that section 135 of the Evidence Act 2011 which is in conformity with the constitutional presumption of innocence, places the burden of proving the guilt of an accused beyond reasonable doubt on the prosecution and validates the making of 'No Case Submission'.

Section 135 (3) of the Evidence Act only obligates the defendants to enter their defence if (making it conditional) the prosecution proves the case against the defendants beyond reasonable doubt.

In the case of Olusina Ajayi v State (2013) the Supreme Court restated the linkage between proof beyond reasonable doubt in the Evidence Act and the Constitutional Presumption of Innocence when it held thus:

> *"It (proof beyond reasonable doubt) simply means the establishment of all the ingredients of the offence charged in tandem with the dictates of section 138 (now section 135) of the Evidence Act and section 36 (5) of the 1999 Constitution (as amended)'.*

Furthermore, in the recent case of State v Odunayo Ajayi (2017), it was also held by the appellant court that in tandem with extant provision of the Evidence Act 2011, the burden of proof rest on the prosecution who must provide credible evidence to prove the guilt of an accused person beyond reasonable doubt by establishing all the essential ingredients of the alleged offence charged.

In the case of Hamza Al-Mustapha v State (2017), the Court of Appeal defined reasonable doubt as follows:

> *"It is that state of the case which after entire comparison of all the evidence leaves the minds of juror in that condition that they cannot say that they feel an abiding conviction to a moral certainty of truth of the charge'.*

The court further restated the correct position of the law that the standard of proof in criminal trails is proof beyond reasonable doubt and once doubt exist in evidence, it must be resolved in favour of the accused who must be discharged and acquitted.

Lacuna in the Delta State Administration of Criminal Justice Law (ACJL) 2017.

A detailed examination of the Delta State ACJL 2017, reveals that there appears to be a lacuna as it does not contain any express provision permitting defendants to make no case submission at the close of prosecution case.

It is however pertinent to submit that there is no section in the Delta State Administration of Criminal Justice Law (ACJL) 2017 that expressly or impliedly prohibit the making of a 'No Case Submission'.

It is further submitted that since making 'No Case Submission' is not expressly stated as prohibited under the ACJL, it is permitted under the law and can be validly made by defendants.

It is also argued that by virtue of the *Expressio Unius* rule in the canons of interpretation of statutes, since the making of a no case submission is not expressly prohibited by the ACJL, it is legally permissible more especially in view of the constitutional presumption of innocence. In the case of Federal Republic of Nigeria v James Ibori (2017), the Court of Appeal explained the *Expressio Unius* rule of interpretation thus:

> *"... Expressio Unius Est Exclusion: a canon of interpretation denoting that to express (or include) one thing implies the exclusion of the other or of the alternative. E.g The rule that "each citizen is entitled to vote" naturally implies that non citizen are not entitled to vote'.*

It is submitted that since 'No Case Submission' is not expressly prohibited by the ACJL, It can be validly made by defendants/accused persons under the ACJL.

The Position under the Administration Of Criminal Justice Act 2015

It is posited that the Administration of Criminal Justice Act ACJA 2015 which is a law validly made by the National Assembly expressly provides under section 303 for making a 'No Case Submission' and for the courts ruling on same. It is argued that the powers to make law to regulate practice and procedures of courts is contained in the concurrent legislative list (see item 2 (b) Supplement and Interpretation Part II Schedule 2 Constitution of the Federal Republic of Nigeria 1999 (as amended)

It is further submitted that by virtue of the doctrine of covering the field, where a law made by the State House of Assembly is inconsistent with the laws made by the National Assembly on an item in the concurrent list, the Federal law covers the given field, and the State Law shall to the extent of its inconsistency with the Federal Law be void. This position of the law is expressly enshrined in section 4 (5) Constitution of the Federal Republic of Nigeria 1999 (as amended), and was roundly restated by the Supreme Court of Nigeria in the recent case of Attorney General, Lagos State v. Eko Hotel Limited (2017).

It is argued that since the ACJL of Delta State 2017 does not expressly provide for the making of 'No Case Submission', the provisions of section 303 of the Federal Principal or Paramount law that covers the field should on the basis of its conformity with the constitutional right of presumption of innocence be applied by the courts in Delta State in this regard.

Conclusion.

In line with the submissions made above, this paper concludes as follows:

i. The right of a defendant/accused person to make 'no case submission at the close of prosecutions case is fundamental and predicated upon the constitutional entrenched right to presumption of innocence of an accused person entrenched in section 36 (5) of the 1999 Nigerian Constitution and cannot be taken away or reduced by the Delta State ACJL 2017.

ii. It is the legal duty, not discretion , of the prosecution to prove the guilt of an accused beyond reasonable doubt, and where the prosecution fails , refuses or neglect to discharge this burden by establishing a prima facie case the accused may be discharged and acquitted by the court upon making a submission of no case to answer

iii. The absence of specific provisions enabling the making of no case submission under the Delta State ACJL 2017 is a legislative lacuna which can be remedied by recourse to the Federal ACJA which covers the field.

Recommendations.

Flowing from the above, it is pertinent to herein make the following recommendations:

i. There is the urgent and pivotal need to immediately reform the Delta State Administration of Criminal Justice law 2017 to incorporate the clear and unambiguous provisions of the ACJA which permits and validates making of no case submission

ii. Courts in Delta State should in the interim apply the applicable provisions of the Administration of Criminal Justice Act which is a Federal law that covers the filed in validating making of no case submission by an accused person/defendant.

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