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No Case Submission Under Nigerian Law

Ibraheem, Ojo Tajudeen
Acting Dean, Faculty of Law, Adekunle Ajasin University,
Akungba Akoko, Ondo State

Abstract:

Under Nigerian law, every accused is presumed innocent until his guilt is proved. The legal burden of proving the guilt of the accused, unlike the evidential burden of proving specific facts, rests on the Prosecution and does not shift throughout the trial. At the close of the case for the prosecution, the accused is invited to make his defence. A number of options, of which the no-case submission is one, are open to the accused at this stage. This article discusses the no-case submission. It also examines the conditions required to be satisfied by the accused in order to succeed on the submission.

The ways in which a judge/magistrate may rule on a no-case submission and the effects of those rulings are also examined.

After a ruling has been made, subsequent evidence may be introduced by either party. What is the consequence of this? With the aid of statutory and judicial authorities, this article examines the basic rules relating to a submission of no case to answer as is applicable under Nigerian law.

Keywords*: Accused, prosecution, proof, prima-facie case, ruling, evidence, witness*

1.Options Open To The Accused At The End Of The Case For The Prosecution

In every decent society built on the sanctity of the Rule of Law, everyone accused of a criminal misdeed is deemed innocent until the prosecution has been able to submit sufficient evidence to the Court which will persuade the Court to pronounce them guilty. Concomitant to this principle is another equally sacrosanct principle - that the burden of proving the guilt of an accused rests squarely on the prosecution. It is not up to the accused persons to prove their innocence; it is up to the prosecution to prove their guilt. Section 36(5) of the Nigerian Constitution[1] guarantees the presumption of innocence of everyone accused of criminal offence(s) in Nigeria. It is the duty of the prosecution to rebut this presumption by adducing sufficient evidence to persuade the Court of the defendant's guilt.[2]

At the conclusion of examination in chief, cross-examination and re-examination of all witnesses for the prosecution, the prosecution announces the conclusion of its case. It is now the turn of the defence to go into its case.

The options open to the accused person at this stage are many. Firstly the accused person can rest his case on that of the prosecution. The accused may also decide to enter his defence and call witnesses. Alternatively, the accused person may decide to make a no case submission, contending that the materials made available by the prosecution present 'no case' requiring him to make any defence.[3] In other words, in a criminal trial, after the conclusion of the prosecution's case the defence has the options of either

- calling their own witnesses (which may or may not include the accused) to rebut the prosecution's case;
- rest their case on the prosecution's evidence without calling any witness; or
- invite the Court to dismiss the charges and discharge the accused if, in their opinion, the evidence produced by the prosecution has not presented a prima facie case against the defendant.

In United Kingdom law, at the close of the prosecution's case during a criminal trial, the defendant may submit to the judge or magistrate that there is no case for the defendant to answer. If the judge agrees, then the matter is dismissed and the defendant is acquitted without having to present any evidence in their defence. If the judge does not accept the submission, the case continues and the evidential burden of proof shifts to the defendant who must convince the jury of his innocence in order to be acquitted. Because a judge's

refusal to uphold such a submission may potentially bias a jury's decision, a submission of No Case to Answer is usually heard in the absence of the jury.[4]

2.The No Case Submission

Before the accused goes into his case, he might make a submission of no case to answer. The meaning of this submission is that there is no evidence adduced by the prosecution on which the court could convict even if it believed the evidence of the prosecution. In other words, there is no evidence upon which the accused should be called to make his defence.[5]

Section 191(3) of the Nigerian Criminal Procedure Code (CPC, The Code) applicable in the northern parts of the country provides that-

> 'Notwithstanding the provisions of sub-section 2 of this section, the Court may afterhearing the evidence for the prosecution, if it considers that the evidence against the accused is not sufficient to justify proceeding further with the trial, record a finding of not guilty in respect of the accused without calling upon him to enter his defence. And such accused shall be discharged'

Section 286 of the Criminal Procedure Act provides 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.

S. 137(1) of the Evidence Act[6] provides that if the commission of a crime by a party to any proceeding is directly in issue it must be proved beyond reasonable doubt. This burden is the responsibility of the prosecution and it stays as such until the case is concluded.[7]

The case of Ajisogun vs. The State [8] is relevant to the extent that it explains clearly the stages in the prosecution process, the implications of each of the stages and the hurdles the prosecution ought to surmount in each of the stages. Summed up, the position is as follows:

> "A submission of 'no case to answer' in a criminal court or trial is a submission on point of law. Pure and simple. Nothing more and nothing less. It is a legal submission. It is analogous to a demurer in a civil court or trial. All the accused is saying at that stage of the trial is to this effect: Accept all that the prosecution has said through its witnesses, yet it (the prosecution) cannot secure a conviction

> either of the offence charged or of any other alternative offence of which I may possibly be convicted, upon the evidence.
>
> It becomes rather apparent from the above that in every criminal trial, there are two (2) stages the prosecution may attain and seek to get through or over. The first stage or hurdle is the stage of making out a "prima facie" case, a case requiring an accused to enter upon his defence, to explain. Put nakedly and simply there ought at this stage, to be some evidence direct or indirect against the accused which evidence, unless and until it be displaced or explained off, would be enough to support a conviction either of the offence charged or of any other alternative offence the accused may possibly be convicted of. If there be any such evidence, then a submission of "no case to answer" must fail. Why? Because there is a "case to answer"
>
> The second stage or hurdle may never be reached, provided the prosecution fell and failed in the first stage or hurdle. That stage is the stage of establishing the guilt of the accused, subject of course, to any statutory exceptions there be or may be, beyond reasonable doubt. And this stage is reached after all the evidence has been called and received from both sides.
>
> An accused is entitled to an acquittal on the failure of the prosecution at either of the stages or hurdles. But a failure at the first stage does not, "ipso facto" ensure or warrant a success on the second stage.
>
> At the first stage, (i.e. "no case to answer") no issue of credibility ever arises. It does not. The trial court ought not to be asked to believe or disbelieve any witness."

Although the concept of 'No Case Submission' (also known as 'half time submission') is a well-entrenched practice in Common Law jurisprudence, it is perhaps pertinent to reiterate here its Constitutional, Statutory and Case Law provenance.

Case laws, both foreign and Nigerian, have supported this principle. In the United Kingdom, the locus classicus is perhaps the case of R vs. Galbraith [9]. The Galbraith case lays down the test which a trial Court must take into account when dealing with a defence's half time submission thus:

> "The difficulty (for the Court) arises where there is some evidence but it is of a tenuous character, for example, because of inherent weakness or vagueness, or because it is inconsistent with other evidence-

> (a)- Where the judge comes to the conclusion that the prosecution's evidence, taken at its height, is such that a jury properly directed could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.
>
> (b) - Where however the prosecution evidence is such that its strengths or weaknesses depend on the view to be taken of a witness' reliability, or other matters which are generally within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judges should allow the matter to be tried by the jury"

Although the guidance in the Galbraith case is clearly tailored for jury trials, it is submitted that the crucial aspects of the guidance can easily be made to apply to Judge-led trials as well. Indeed in the North Ireland case of Chief Constable of Northern Ireland vs. LO [10], Kerr LCJ, as he then was, observed that-

> "The proper approach of a judge or magistrate sitting without a jury does not, therefore, involve the application of a different test from that of the second limb in R v. Galbraith. The exercise that the judge must engage in is the same, suitably adjusted to reflect the fact that he is the tribunal of fact. It is important to note that the judge should not ask himself the question, at the close of the prosecution's case, 'do I have a reasonable doubt?' The question that he should ask is whether he is convinced that there are no circumstances in which he could properly convict. Where evidence of the offence charged has been given, the judge could only reach that conclusion where the evidence was so weak or so discredited that it could not conceivably support a guilty verdict."

In any case, 'No Case Submission' has enjoyed such notoriety in Nigeria that even before Galbraith, Nigerian Courts had been considering the issue and giving profound and time-tested guidance on the matter. Thus the concept had been well treated in such landmark cases as State vs. Audu [11], Daboh vs. The State [12], Onagoruwa vs. The State [13], etc.

The provisions of Sections 286 of the CPA and 191(3) & (5) of the CPC may be invoked suo motu by the court. Counsel representing the accused may also submit before the court that the accused has no case to answer and move the court to exercise its discretion under section 286 of the CPA.

The principle behind the submission of no case to answer is that an accused should be relieved of the responsibility of defending himself when there is no evidence upon which

he may be convicted. The submission might also be made that whatever evidence there was, which might have linked the accused person with the offence has been so discredited that no reasonable court can be called upon to act on it as establishing the guilt of the accused.[14]

It is the duty of the prosecution to prove its case beyond reasonable doubt and a general burden to rebut the presumption of innocence constitutionally guaranteed to the accused. Where no case has been made out against the accused at the end of the case for the prosecution, asking him to answer the charge against him is a reversal of the constitutional provision by asking him to establish his innocence.[15]

A submission that there is no case to answer means that there is no evidence on which even if the court believes, it could convict. In Ekwunugo vs FRN [16], no evidence had been led to prove the essential elements of the offence with which the accused was charged and the submission was upheld.

3.Conditions To Be Satisfied To Succeed On A No Case Submission

The conditions to be satisfied to succeed on a submission of no case to answer are not stated in either the CPC or the CPA. Nigerian courts in practice resort to the English practice governing the submission of no case to answer.

The English practice is as contained in the Practice Notes of Lord Parker.[17] The essence of the practice directions is that a submission of no case to answer may be made and upheld

- When there has been no evidence to prove an essential element in the alleged offence.
- When the evidence adducted by the prosecution has been so discredited as a result of cross examination or is so manifestly unreliable that no reasonable tribunal could safety convict on it.

If any of these two conditions are present, the submission will be upheld and if a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer.**[18]** The first condition is the easiest to prove.

The defence has the right to raise a plea of no-case to answer where the Prosecution's case has been so discredited in cross examination as to render his case inadequate and most unreliable in the circumstances that no reasonable tribunal will act on it.[19]

The credibility of the prosecution witness (es) is not in issue at this stage and the defence

counsel should be prevented from addressing the court on the issue.

The Court of Appeal in Odido vs. State [20] opined as follows:

> "If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating Tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable Tribunal might convict on the evidence so far laid before it."

The Court of Appeal stated in Ajisogun vs. The State [21] as follows:

> "… there ought, at this stage, be some evidence, direct or indirect, against the accused which evidence, unless and until it be displaced or explained off, would be enough to support a conviction either of the offence charged or of any other alternative offence of which the accused may possibly be convicted. If there be any such evidence, then, a submission of "no case to answer" must fail. Why? Because there is a case to answer."

All the authorities are agreed that what is required by the court at the stage of no case submission is to satisfy itself not on the credibility of witnesses but whether on the surface from the evidence led there is evidence prima facie for which explanations are required from the accused persons. [22]

In Igabele vs. State, [23] for instance, the court reiterated that the duty of the prosecution in a case of murder is to establish that

- The deceased died.
- The act or omission of the accused which caused the death of the deceased was unlawful.
- That the act or omission of the accused which caused the death of the deceased must have been intentional, with knowledge that death or grievous bodily harm was its probable consequence.

These three conditions must co-exist and when one of them is absent or tainted with doubt, the charge cannot be said to be proved. The onus to prove these is on the prosecution and does not shift. The court should not speculate on evidence but decide on the evidence presented before it.[24]

Any contradiction in the evidence of the prosecution that will be fatal must be substantial. Such must deal with the real substance of the case. Minor contradictions which do not affect the credibility of witnesses may not be fatal. Trivial contradictions will also not vitiate the trial.[25]

4.What Is A Prima Facie Case?

The court stated in Nyame vs. FRN [26] as follows:

> "…the term prima facie case was defined in Ajidagba vs. IGP [27] following the Indian case of Sler Singh vs. Jitendransthen [28] as follows: what is meant by prima facie case? It only means that there is ground for proceeding. But a prima facie case is not the same as proof which comes later when the court has to find whether the accused is guilty or not guilty and the evidence discloses a prima facie case when it is such that if uncontradicted and if believed it will be sufficient to prove the case against the accused. What the information must disclose at this stage is a certainty; not the guilt of the accused but a prima facie case to answer."[29]

And in Dr. Olu Onagoruwa vs. The State [30] it was described in the following words:

> "The Latin expression prima facie in ordinary parlance means on the face of it; at first sight; on the first appearance; so far as can be judged from the first disclosure. It also means a fact presumed to be true unless disproved by some evidence to the contrary. A prima facie case is a case which has proceeded upon sufficient proof to that stage where it will support findings if evidence to the contrary is disregarded. It is a case which on the face of it is sufficient to call upon the accused to make his defence, without which a court of law is competent to proceed to conviction. It is a case where the prosecution has presented sufficient evidence to render reasonable a conclusion on the face of the evidence that the accused is convictable, in the absence of contrary evidence. Prima facie evidence is synonymous with sufficient evidence. It is evidence which, on the face of it, is sufficient to sustain the charge preferred against the accused. It is evidence which, in the judgment of the adjectival law is sufficient to establish the guilt of the offence he is charged with."

Iguh, JSC, in the case of Ajiboye & Anor vs. The State [31], in his contribution, stated inter alia, as follows:

> "But a prima facie case must be distinguished from proof of guilt of an accused which is determined at the end of the case when the Court has to find out whether such an accused is guilty or not guilty of the offence charged… in a no Case submission therefore, whether or not the evidence of the prosecution is believed is, at that stage of the proceedings, irrelevant and immaterial as the credibility of the witnesses is neither in issue then nor does it arise."

A prima facie case is one where the evidence of the prosecution is sufficient to prove the charge against the accused if there is no defence to the charge or any doubt in the evidence of the prosecution. In Ufoma Paul Eto vs. the State [32], the Court of Appeal [33] held as follows:

> "The evidence establishing a prima facie case is not to be such as would ground a conviction which is invariably premised on proof beyond reasonable doubt. It only means that the evidence led by the prosecution has so covered all the essential elements of the alleged offence and it remains uncontradicted and not discredited through cross-examination. The trial judge at this stage is neither called upon to express any opinion on the evidence before him nor is he called upon to reach a decision as to conviction or acquittal as this can only be done when the whole evidence which either side wishes to tender has been placed before him."

On how to decide whether a prima facie case exists for the accused to answer in an information, the court in Abacha vs. The State [34] held that the judge must look at the proofs of evidence attached to the information in totality and should not pick words out of context. Proofs of evidence i.e. statements from relevant persons and perhaps also the suspect must be read and considered. Something in the evidence must link the appellant with the crime on the indictment other than suspicion. It is not sufficient that there has been a casual reference to the accused. [35]

Suspicion, however well placed, does not amount to prima facie, therefore more facts are needed to nail the accused to his being required to explain. The prosecution must be wary of being accused of persecution rather than prosecution.[36] As D.O. Coker said in Ikomi's case, it is the suspicion which leads to investigation and discovery of evidence against the suspect. But suspicion alone is not enough to justify preferring a charge against a person. There must be evidence linking the suspect with the offence. There ought to be some evidence, no matter however remote, which calls for some explanation from the suspect. Such evidence must meet ALL, and not some of the essential elements of that offence.

The prosecution only needs to have, as Justice Belgore himself observed in FGN vs.Bankole & Nafada, [37] made available "evidence pointing to or attaching to all the ingredients of the offence(s) alleged against the accused person."

5.Proof Beyond Reasonable Doubt

The prosecutorial responsibility is to establish its case beyond reasonable doubt in order to secure a conviction. Section 138(1) of the Nigerian Evidence Act [38] makes it mandatory that the standard of proof required in criminal trials by the prosecution is proof beyond reasonable doubt.

Proof beyond reasonable doubt was explained in Miller vs. Minister of Pensions [39] as follows:

> "Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted to fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt but nothing short of that will suffice."

How they get around to achieving this is entirely their responsibility. Whether they field one, two or more witnesses in satisfaction of such proof will surely depend on the circumstances of each case. But under no circumstances will the accused person dictate to the prosecution regarding the person or the number of persons they field as witnesses. [40]

The prosecution may discharge the burden of proof beyond reasonable doubt

- By an eye witness of the crime
- By confession or admission voluntarily made
- By circumstantial evidence positive and compelling and pointing to one conclusion only: that the accused committed the offence. [41]

Circumstantial evidence is defined as the evidence surrounding circumstances which by undesigned coincidence is capable of proving a proposition with mathematical accuracy. It means that there are a number of circumstances which make a complete unbroken chain of evidence.[42] Circumstantial evidence must not only be cogent, complete and unequivocal but must equally be compelling and point irresistibly to the guilt of the accused appellant and to no other person. That circumstantial evidence must therefore be narrowly examined so that a possibility of fabrication to cast suspicion on an innocent person is ruled out.[43] Circumstantial evidence will ground a conviction only where the inference drawn from the whole history of the case points strongly to the commission of

the crime by the accused.[44] Where circumstantial evidence is deficient, it helps the appellant to acquittal.[45]

If a case is proved through the direct evidence of a witness and buttressed by the accused's confessional statement and duly relied upon by the court, same is proved beyond reasonable doubt. [46] A plea of guilty made by an accused is as good as a judicial confession or admission of commission of a crime. Where there is an admission of guilt, the legal burden of proof no longer arises and no burden of proof rests on the accuser, it having been discharged by the admission of the accused.[47] Where all ingredients are clearly established and proved by the prosecution, the charge is proved beyond reasonable doubt.[48]

Where there are other possibilities that others other than the accused had the opportunity of committing the offence with which the accused was charged, such an accused cannot be convicted of the offence.[49]

One must always be conscious of the fact that proof beyond reasonable doubt differs from "proof beyond all shadow of doubt."[50] If the testimonies of witnesses who saw and heard are believed, there will be proof beyond reasonable doubt. A decision to discharge an accused person on the ground that a prima facie case has not been made against him must be a decision which, upon a calm view of the whole evidence offered by the prosecution, a rational understanding will suggest; the conscientious hesitation of a mind that is not influenced by party, preoccupied by prejudice or subdued by fear.[51]

6.Rulings And Effects Of The Rulings On A No Case Submission

In ruling on a no case submission, the question the Court asks itself is whether or not there are circumstances, based on the prosecution's evidence, in which it would convict the defendant.[52] The duty of the court in consideration of a no case submission is illustrated by a number of decided authorities.

In Alewo Abogede vs. The State [53] the Supreme Court held on the duty of the court as follows:

> "When a court is giving consideration to a submission of no case, it is not necessary at that stage of the trial for the learned trial judge to determine if the evidence is sufficient to justify a conviction. The trial court only has to be satisfied that there is a prima facie case requiring at least some explanation from the accused person."[54]

A tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to render has been placed before it. If however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer.[55]

In Ajisogun vs. The State [56], the Court of Appeal stated inter alia, that:

> "At that stage it is not the duty of the trial judge to say anything about the credibility of the witnesses. The decision of the trial judge would not depend so much on whether he would convict or acquit."

Before the submission can be rejected the case for the prosecution must be sufficiently cogent to require the accused to further deny the accusation. At this stage the court is only called upon to take note and rule accordingly that there is before the court no legally admissible evidence linking the accused with the commission of the crime.[57]

The issue of whether the court believes the evidence led does not arise at this stage as the case is not yet concluded. In ruling on it, the court does not concern itself with the issue of credibility of witnesses or the weight to be attached to it, even if they are accomplices. The court should not express its opinion on the evidence before it.[58] It should rather rule on whether there is any legally acceptable evidence linking the accused with the commission of the offence with which he is charged. This is the whole purport of a no case submission.[59]

When a submission of no case is being upheld, the ruling could have the contents of a judgment. In Okoro vs. The State [60] the court held, inter alia, that

- A submission of no case to answer is wrongly overruled if, when the ruling was made calling on the accused to make his defence to the charge, the evidence presented by the prosecution was not sufficient to require the accused to make his defence.
- Where a no case to answer has been wrongly overruled, and the accused subsequently gives evidence in his defence and supplies the hitherto missing ingredients required for his conviction, such conviction will be regarded as invalid.

Under the CPA, the verdict, when a submission of no case to answer is upheld, is an

acquittal.[61] Under section 301(1) of the Act, when a dismissal is stated to be on the merits it has the same effects as an acquittal. In other words, a discharge at the conclusion of the case for the prosecution is a discharge on the merits which carries the effect of an acquittal. Therefore, dismissal on other grounds such as lack of jurisdiction and lack of diligent prosecution or non-suit are not discharges on the merit which will operate as an acquittal.

The court should confine itself only to live issues relevant to the ruling since a discharge at this stage has been stated in most of the provisions under the CPC [62] not to be a bar to further proceedings against the accused in respect of the same matter. Under the Code, the effect of a discharge on a submission of no case to answer will not be an acquittal in summary as well as in committal proceedings. Section 159(3) of the CPC provides that a discharge under the section shall not be a bar to further proceedings against the same accused in respect to the same matter. It is argued that section 158 of the Code envisages the full presentation of the prosecution's case. If at the end of his case there is not sufficient evidence to require the accused to stand trial the right thing to do would be to discharge and acquit the accused. Not doing so would encourage incompetence by giving the prosecution another opportunity to polish up a defective case. It would also offend the spirit of section 36(9) of the 1999 Constitution of Nigeria. As regards trials in the High Court, there is no specific provision on what the effect should be.

Where a submission of no case to answer is wrongly upheld and the prosecution appeals, if the appellate court finds for the prosecution, the court will remit the case to the lower court and call upon the accused to make his defence.[63]

If the overruling was rightly done and the basis of his conviction was not the subsequent evidence after his withdrawal, the conviction will be upheld on appeal. The basis of the conviction must be the evidence of the prosecution witnesses and not that of the accused or a co-accused.

A ruling upholding the no case submission is a judgment of the court on the matter, a final judgment which may be subject to an appeal. Where the court rejects it, it should confine its ruling to the subjects raised in the submission. Whether or not a lengthy or short ruling fetters the discretion of the judge depends on each particular case. But where a lengthy ruling does not fetter the court's discretion, the validity of the trial cannot be challenged on those grounds.[64] The ruling should neither be too short nor too long.

Where the defendant's submission of no-case is overruled, he still has the choice of giving evidence in the substantive matter. This is to be contrasted with a situation Where

a Defendant rests his case on that of the Plaintiff, the defendant cannot be allowed by the trial judge to return to the position (i.e. status quo ante) before resting his case on that of the prosecution with the right to call evidence in defence of the claim.[65]

7.Subsequent Evidence After Ruling Is Delivered

In Clement Nwali vs. IGP [66], the appellant was charged before a magistrate court with four offences contrary to section 116(1) of the Criminal Code. The prosecution failed to prove certain of the facts necessary to ground a conviction. Upon a no case submission by counsel to the appellant, the magistrate discharged the appellant but stated that the discharge 'was not on the merit of the case'. Three days later the same charge was preferred against the appellant before the same court. He pleaded autrefois acquit. The magistrate rejected the plea and proceeded to trial, thereby giving the prosecution the opportunity to prove the facts that they had omitted to prove at the first trial. The appellant was thereupon convicted.

On appeal, while holding that the plea of autre fois acquit should have been allowed, Ainley Ag. J pronounced as follows:

> … It might be argued that this section does not permit a magistrate to make any determination equivalent to an acquittal upon a successful submission of 'no case to answer'. Where does this argument leave us? It leads us to this, that if the crown fails to prove a man guilty, and the magistrate does his duty, and refuses to call on the accused for his defence, then the crown may have a second, third, fourth and fifth chance and chances ad infinitum. It means that the crown may continue to prosecute the subject for one and the same offence until they eventually succeed in persuading a magistrate that there is a case to answer…. It is very difficult to believe that such an extraordinary state of affairs was intended by the legislature…[67]

In Mumuni vs. The State [68] after the no case submission of the applicant was overruled, the accused declined further participation at the trial and was subsequently convicted on the testimonies of other co-accused persons against him. On appeal against the conviction it was held that to wrongly overrule a submission of no case to answer has the effect of calling upon the accused to testify in his defence, which amounts to asking him to prove his innocence. Where, therefore, the court erroneously rules that an accused has a case to answer when in fact the reverse is the case, an accused person who withdraws from further participation in the case would have a very bright prospect on appeal. But if

the accused stupidly continues to participate in the proceedings, even though no case has been made against him, his conviction on evidence subsequently adduced would be in order.

8.Conclusion

While the law seeks to protect every accused person, the manner in which he chooses to make his defence is left entirely to him.

In the course of this article, the laws applicable to a no case submission have been highlighted. The interpretation given to these laws by the judiciary have also been considered. The contents of this article reflect the current position of the law in Nigeria.

9.Endnote

1. 1999
2. . Adebayo Kareem, "Revisiting The No Case Submission In The FGN -v- Bankole & Nafada Case", available at http://saharareporters.com/article/revisiting-no-case-submission-fgn-v-bankole-nafada-case; accessed on September 14th, 2012
3. Wahab Shittu, August 13th 2012; "No Case Submission and the Duty of Court"; available at http://www.punchng.com/feature/the-law-you/no-case-submission-and-the-duty-of-court/; accessed on September 14th 2012
4. "No Case to Answer", available at http://en.wikipedia.org/wiki/No_case_to_answer; accessed on September 14th 2012. [paraphrased].See further Alan Taylor, 2000, Principles of Evidence, Second Edition, London, Cavendish Publishing Ltd page 34
5. Onadeko, Olanrewaju Adesola, Nigerian Criminal Trial Procedure, Lagos, Lannon Nigeria Ltd, First Edition, 1998, Part II, Chapter 3
6. Cap E14, LFN 2004
7. Alonge vs. IGP [1977] 5 SC 197
8. (1998) 13 NWLR Pt 581; Per Nsofor, JCA at pages 256-257, par. D-E
9. (1981) 1 WLR 1039
10. (2006) NI 261
11. (1972) 6 SC 28
12. (1979) 5 SC 197
13. (1993) 7 NWLR (Pt303)

14. Onadeko, op. cit., Part II, chapter 3
15. Ibid
16. [2008] Vol. 10 MJSC 79, [Pages 84-85], Para G-A
17. The Practice Direction of February 9, 1962 in (1962) 1 ALL ER 448; (1962) 1 WLR 227.
18. Ibeziako vs.COP (1963) NNLR 88 at 94
19. Mezu vs. CCB. Nig Ltd [2012] Vol. 6-7 (Pt. 1) MJSC 140. This would also apply where the plaintiff's evidence has been so shaken in cross examination as to be unworthy of any credence.
20. (1995) 1 NWLR (Pt. 369) 88 at 110
21. (supra) per Nsofor JCA at page 257
22. Ibid
23. [2006] Vol. 5 MJSC 96 [pp. 103-104] paras B-A
24. See also Ubanta vs. COP [2000] NWLR (Pt 643) 115 @ 128; Emedo vs. State [2002] NWLR (Pt 789) 196 @ 204;Ani vs. State [2009] Vol. 6 (Pt II) MJSC 1
25. Osetola vs. State [2012] Vol. 6-7 (Pt.II) MJSC 41 Para 12 page 49
26. [2010] Vol. 3 (Pt I) MJSC 34
27. (1958) SCNLR 60
28. (1931) ILR 59 Cale, 275
29. Ikomi vs. State (1986) 3 NWLR (Pt 28) p. 340, Abacha vs. The State (2002) Vol. 9 MJSC 1; Ohwovoriole vs. FRN (2002) 2 NWLR (Pt 803) p 176
30. (1993) 7 NWLR (Pt. 303) Pg. 49 @ 81-82
31. (1995) 9 SCNJ 242 at 252 – 257
32. (2008) 43 WRN page 112 – 133
33. Benin Division per Shoremi JCA on page 126, lines 5 to 30 of the judgment.
34. (2002) Vol. 9 MJSC 1; see also the dissenting judgment of Ejiwunmi, JSC
35. Okoro vs. The State (1988)5 NWLR 225
36. Ibid, Per Belgore JSC, [p. 33] paras. A-B
37. Supra
38. Cap. E14 LFN 2004, see also Sections 135-137 Evidence Act. In any proceeding of a court of law, whether civil or criminal, the burden of proof is on the person who asserts the existence or non-existence of a particular thing.
39. (1947) 2 All ER P age 372 @ 373
40. Osetola v. State, supra, page 71 para F-G, per Ariwoola JSC

41. Ilodigwe vs. State [2012] Vol. 6-7 (Pt. II) MJSC 174 @ [pp. 198-199] paras. G-A; Adesina vs. State [2012] Vol. 6-7 (Pt II) MJSC 80; Mohammed vs. State (2007) 13 NWLR (Pt. 1050) p. 186; Nwaeze vs. State (1996) 2 NWLR (Pt. 428) p. 1; Akinmoju vs. State (2000) 4 SC (Pt. 1) p. 64
42. Adesina vs. The State (Supra) [Page 85] para. 4
43. Ibid., [p.182] para. 7 per Peter-Odili JSC
44. Ibid, [page 86] para. 5; Mohammed vs. State (2007) 13 NWLR (Pt. 1050) p. 186; Nwaeze vs. State (1996) 2 NWLR (Pt. 428) p. 1; Akinmoju vs. State (2000) 4 SC (Pt. 1) p. 64
45. Adesina vs. The State (supra) [p. 86] para. 6, per Ngwuta, JSC; Joseph Lori v. State (1980) 8-11 SC 81
46. Osetola v. state, supra, page 35 para B; Adio & ano v. The State (1986) 3 NWLR (Pt. 24) 581.
47. Torri vs. National Park Services of Nigeria [2011] Vol. 5-7 (Pt. 1) MJSC 153 [p. 157] para.5; Dongtee vs. Civil Service Commission, Plateau &Ors. (2001) FWLR (Pt. 50) 1671-B; Gozie vs. The State (2003) NSCQR 754
48. Osetola v. state, supra, page 35 para B; Alabi v. The State (1993) 7 NWLR (Pt. 307) 511 @523
49. [p. 86] para. 6; Ubani vs. State (2003) 18 NWLR (Pt. 851) p. 22
50. Osung vs. State [2012] Vol. 6-7 (Pt. II) MJSC 1[Page 34] para. E; page 5 para 2; Miller v. Minister of Pensions (1947) 2 All ER P. 372
51. Ajidagba vs. Inspector General of Police (1958) 1 NSCC 20 at 21, per Abbott, FJ
52. Adebayo, Kareem, February 22, 2012, "Revisiting the no-case submission in the FGN vs. Bankole & Nafada case", Available at http://saharareporters.com/article/revisiting-no-case-submission-fgn-v-bankole-nafada-case; accessed on September 14th 2012 [paraphrased]
53. (1996) 5 NWLR Pt. 448 at page 270 – 282.
54. (P 280, par. D); Ekpo vs. The State (2001) 6 W.R.N. 163 at 170, (2001) 7 N.W.L.R. (Pt. 712) 292 at 302 per Edozie JCA; Fidelis Ubanatu vs. The State (1999) 7 NWLR (Pt. 611) page 512 @ 522, per Muhammed JCA
55. Lazarus Atano & Anor vs. Attorney General, Bendel State; SC 37/1987
56. (1998) 13 NWLR (Part 581) page 236 particularly at page 262
57. Onadeko, op. cit., Part II, Chapter 3

58. Suberu vs The State [2010] Vol. 3, (Pt. II) MJSC 47
59. Gabriel Aituma vs. The State (2007) 5 NWLR (Pt 1028) p. 466
60. [1988] 5 NWLR 255
61. Police vs. Marke [1957] 2 FSC 5
62. Sections 159(3), 169(3)
63. COP vs. Agi [1980] 1 NCR 234
64. See Atano & ano. vs AG Bendel State [1988] 2 NWLR (Pt. 75) 201
65. Mezu vs. CCB. Nig Ltd [2012] Vol. 6-7 (Pt. 1) MJSC 140
66. (1956) LRERN I
67. Ibid at pg 4
68. [1975] 6 SC 79

10.Reference

1. Onadeko, Olanrewaju Adesola, Nigerian Criminal Trial Procedure, Lagos, Lannon Nigeria Ltd, First Edition, 1998
2. Alan Taylor, 2000, Principles of Evidence, Second Edition, London, Cavendish Publishing Ltd
1. The constitution of the federal republic of Nigeria, 1999
2. Evidence Act, Cap E14, Laws of the Federation of nigeria, 2004
3. Nigerian Criminal Procedure Act
4. Nigerian Criminal Procedure Code
5. Nigerian Criminal Code Act