**THE STATE**

**V.**

**LEKAN ADEKUNLE SOYINKA**

IN THE COURT OF APPEAL OF NIGERIA

ON FRIDAY, THE 28TH DAY OF FEBRUARY, 2020

CA/IB/97C/2017

**LEX (2020) CA/IB/97C/2017**

**OTHER CITATIONS**

3PLR/2020/44 (CA)

(2020) LPELR-49493 (CA)

**BEFORE THEIR LORDSHIPS**

JIMI OLUKAYODE BADA. JCA

HARUNA SIMON TSAMMANI, JCA

FOLASADE AYODEJI OJO, JCA

**BETWEEN**

THE STATE - Appellant(s)

AND

LEKAN ADEKUNLE SOYINKA - Respondent(s)

**ORIGINATING COURT(S)**

HIGH COURT OF OGUN STATE

**REPRESENTATION**

T. O. ADEYEMI ESQ. (Senior State Counsel Ogun State Ministry of Justice) - For Appellant

AND

[NOT REPRESENTED] - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE - NO CASE SUBMISSION:- Essence/purpose of a no case submission - Whether is appropriate in a trial within trial at the close of prosecution's case

CRIMINAL LAW AND PROCEDURE – TRIAL WITHIN A TRIAL:- Essence of – Duty of trial court to admit rival statement and to call on accused to give evidence of his alleged involuntariness during trial within trial

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE - TRIAL WITHIN TRIAL:- Procedure to be followed by the Court in conducting a trial within trial – Duty of trial court to admit relevant evidence necessary to make a just resolution - Whether a no case submission can be made in a trial within trial

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

This appeal is against the decision of the trial court after conducting a trial-within-trial to determine voluntariness of the Appellant’s Confessional Statement made at the Divisional Police Station, Ibara Abeokuta, which the Respondent’s Counsel had objected to on ground of involuntariness. At the close of the trial-within-trial, instead of giving his testimony, the Respondent through hiss Counsel made a No case submission. Then Counsel for both parties addressed the Court after which the trial Court ruled rejecting the statement of the Respondent for want of voluntariness.

DECISION(S) APPEALED AGAINST

“[At] the close of the Prosecution’s case, instead of the Respondent to give evidence on how his statement was recorded and most importantly the particulars of the alleged involuntariness, the Counsel for the Respondent made a No case submission, written addresses were filed and exchanged by both Counsel and on the 10th February 2016, a Ruling was delivered rejecting the [Confessional] statement of the Respondent. “

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

(1) Whether the trial Court rightly rejected the Respondent’s Confessional Statement having regard to the circumstances of the case.

(2) Whether a No case submission is appropriate in a trial within trial.

*BY RESPONDENTS*

[Did not file respondent’s brief]

*AS ADOPTED BY COURT*

*[Adopted issues as formulated by the Appellants]*

DECISION OF COURT OF APPEAL

1. The trial Judge in the proceedings culminating into this appeal failed to distinguish between a trial conducted to test the admissibility of the extra-judicial statement allegedly made by the accused which is the subject of the trial-within-trial and a submission made at the conclusion of the Prosecution’s case in a substantive trial. A no case submission is usually made after the close of the Prosecution’s case in the substantive trial. It is alien to the procedure laid down for a trial within trial.

2. The lower Court was therefore gravely in error when it relied on the no case submission of the Counsel to the accused in a trial within trial to reject the extra-judicial statement of the respondent sought to be tendered. The wrong procedure adopted by the learned trial Judge has therefore rendered the trial within trial a nullity.

3. The application made by learned Counsel for the defence to make a No case submission during trial-within- trial fused the proceedings in the trial within trial and main trial together. Such a procedure is unknown to our Nigeria’s procedure.

4. Consequently, issue numbers 1 and 2 resolved in favour of the Appellant and against the Respondent. Appeal affirmed. The ruling of the lower Court is set aside. In its place, the charge is to be sent to the office of the Chief Judge of Ogun State for reassignment to another Judge.

**MAIN JUDGMENT**

JIMI OLUKAYODE BADA, J.C.A. (Delivering the Leading Judgment):

This is an interlocutory appeal against the ruling of the High Court of Ogun State of Nigeria in Charge No - AB/13R/06 - BETWEEN: THE STATE VS.

Briefly, the facts of the case are that during the Respondent’s trial before the lower Court, at the point of tendering the Respondent’s statement made at the Divisional Police Station, Ibara Abeokuta, the Respondent’s Counsel objected on the ground of involuntariness and the trial Court conducted a trial within trial. At the close of the Appellant’s case for trial within trial, the Respondent’s Counsel made a No case submission. Counsel for both parties addressed the Court.

The Court in its Ruling rejected the statement of the Respondent for want of voluntariness.

The Appellant who is dissatisfied with the Ruling of the lower Court appealed to this Court.

The learned Counsel for the Appellant formulated two issues for the determination of the appeal.

The said issues are set out as follows:-

(1) Whether the trial Court rightly rejected the Respondent’s Confessional Statement having regard to the circumstances of the case.

(2) Whether a No case submission is appropriate in a trial within trial.

It would be recalled that all Court processes were duly served upon the Respondent’s Counsel and he did not deem it fit to file the Respondent’s Brief of Argument in this appeal.

On 24/9/2019, this Court made an order setting this appeal down for hearing based upon the Appellant’s Brief of Argument alone.

At the hearing of this appeal on 21/1/2020, the learned Counsel for the Appellant stated that the appeal is an interlocutory appeal against the Ruling of the High Court of Justice, Ogun State which was delivered on 10/2/2016.

The notice of appeal was filed out of time but it was regularized by an order of Court made on 21/2/2017. The Record of Appeal, the Notice of Appeal and the Appellant’s brief of argument were duly served on the Respondent.

The learned Counsel for the Appellant referred to the Appellant’s Brief of Argument filed on 31/3/2017, she adopted and relied on the said brief as her argument in urging that this appeal be allowed.

ISSUES FOR THE DETERMINATION OF THE APPEAL.

ISSUES 1 AND 2 (TAKEN TOGETHER)

“(1) Whether the trial Court rightly rejected the Respondent’s Confessional Statements having regard to the circumstances of the case.

(2) Whether a No case submission is appropriate in a trial within trial.”

The learned Counsel for the Appellant stated that a confession is an admission made by any person charged with a crime at any time stating or suggesting the inference that he committed the offence. SECTIONS 28 and 29(2) a-b OF THE EVIDENCE ACT 2011 and the following cases were referred to:-

- AKPA VS. STATE (2008) 8 SCM PAGE 68 AT 74.

- ADAMU SALIU VS. STATE (2014) 8 SCM PAGE 1.

- JIMOH VS. THE STATE (2014) 11 S.C.M PAGE 216.

It was contended that the Respondent objected at the point of tendering ID1 thus “that the statement was not made voluntarily”. Trial within trial was consequently conducted by the trial Judge and a Ruling rejecting the statement was delivered. Reference was made to pages 32 to 39 of the Record of Appeal.

Learned Counsel for the Appellant stated that at the trial within trial, the Appellant called only the PW1 (Inspector Malik Lasisi) who gave evidence on how the Respondent volunteered his statement in Yoruba Language and he recorded it in Yoruba Language, read it over to the Respondent in Yoruba Language who admitted that the statement was correct and he thumb printed it. The PW1 translated the statement into English Language and he took the Respondent with his statements (Yoruba and English) versions before his DCO. That in the office of the DCO, it was stated that the statement was read over again to the Respondent in Yoruba Language and he admitted it. The DCO signed as the endorsing officer, the Respondent thumb printed as the maker while PW1 signed as the recorder.

Learned Counsel for the Appellant stated that PW1 testified that he did not beat, torture, oppressed or intimidate the Respondent before the Respondent volunteered his statement.

It was contended on behalf of the Appellant that at the close of the Prosecution’s case, instead of the Respondent to give evidence of how his statement was recorded and most importantly the particulars of the alleged involuntariness, the Counsel for the Respondent made a No case submission. Written addresses were filed and exchanged by Counsel for both parties and on the 10th day of February 2016, Ruling was delivered by the lower Court rejecting the statement of the Respondent.

It was submitted on behalf of the Appellant that in a trial within trial, both parties must be heard. The accused must give evidence to show the particulars of the involuntariness.

On the issue of No case submission, it was submitted that it may be properly made and upheld when -

(1) There has been no evidence to prove an essential ingredients of the offence alleged or

(2) The evidence adduced by the prosecution has been so discredited as a result of cross examination or is so manifestly unreliable that no reasonable Court or Tribunal could safely convict on it.

The following cases were relied upon:-

- OSSAI EMEDO & 2 OTHERS VS. THE STATE (2004) 1 CA CASES PAGE 19 AT PAGE 40.

- SUBERU VS. THE STATE (2010) 5 SCM PART 1 57 AT 58 - 59.

- EKUWOJO VS FRN (2008) 12 SCM PART 157 AT 58-59.

- TONGO VS. C.O.P (2007) 9 S.C.M. PAGE 113 AT 126.

The learned Counsel for the Appellant submitted further that no case submission is totally different from an accused person resting his case on that of the prosecution and same cannot be fused together.

She relied on the following cases:-

- SOLOMON ADEKUNLE VS THE STATE (2006) 14 NWLR PART 1000 PAGE 717.

- IGABELE VS THE STATE (2006) 3 SCM PAGE ?

It was also submitted that a No case submission is made when there has been no evidence to prove an essential element/ingredient of the offence alleged or the evidence adduced by the Prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable Court or Tribunal could safely convict on it.

Learned Counsel finally urged that the Ruling of the lower Court be set aside and admit Respondent’s statement dated 29/5/2004 made at Ibara Divisional Police Headquarters as Exhibit.

RESOLUTION

The facts of this case has been succinctly stated earlier in this Judgment. What is in issue is the procedure followed by the lower Court in this case.

I will therefore enumerate the procedure to be followed by the Court in conducting a trial within trial.

The main purpose of a trial within the main trial is to test whether the Confessional Statement to be tendered by the Prosecution was made voluntarily by the accused person or whether he was forced or induced to make it. Once a trial within trial is ordered by the trial Judge, the main trial is suspended until the conclusion of the trial within trial.

The trial within trial commences with the state calling witnesses, usually police officers who would be examined under Oath by the State and cross examined by the defence. The witnesses for the State are to satisfy the Court that the accused person made the Confessional Statement voluntarily while the defence Counsel is to show the contrary i.e. that the accused person was forced or induced to make the statement. After the State concludes its evidence, the accused person goes into the witness box to explain to the Court how he was forced or induced to make the statement. He may call witnesses, but they can only be called after he has given evidence.

In this appeal under consideration, at the close of the Prosecution’s case, instead of the Respondent to give evidence on how his statement was recorded and most importantly the particulars of the alleged involuntariness, the Counsel for the Respondent made a No case submission, written addresses were filed and exchanged by both Counsel and on the 10th February 2016, a Ruling was delivered rejecting the statement of the Respondent. (See page 35 of the record of appeal).

It is clear from the foregoing that the learned trial Judge did not follow the laid down procedure in conducting the trial within trial.

In this case, the application made by learned Counsel for the defence to make a No case submission during trial within trial fused the proceedings in the trial within trial and main trial together. Such a procedure is unknown to our criminal procedure. The overall interest of Justice is in question.

The wrong procedure adopted by the learned trial Judge has therefore rendered the trial within trial a nullity.

See - ADELARIN LATEEF & OTHERS VS. F.R.N. (2010) 37 WRN PAGE 85.

- KAYODE BABARINDE & OTHERS VS. THE STATE (2014) 3 NWLR PART 1395 PAGE 568.

- EFFIONG VS. THE STATE (1998) 5 S.C. PAGE 37 PARAGRAPH B - F.

- OGEDENGBE VS. STATE (2014) 12 NWLR PART 1421 PAGE 338.

- IFARAMOYE VS. STATE (2017) 8 NWLR PART 1568 PAGE 457.

On the issue whether a No case submission is appropriate in a trial within trial. A submission of No case means that there is no evidence on which the Court could convict even if the Court believed the evidence given.

In AGBO & OTHERS VS. STATE (2013) 11 NWLR PART 1365 PAGE 377. It was held among others that the purport of a No case submission is that the Court is not called upon at that stage to express any opinion on the evidence before it. 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 offence charged. But if there is legally admissible evidence, however slight, the matter should proceed as there is something to look at.

See- IGABELE VS. THE STATE (2004) 15 NWLR PART 896 PAGE 314.

- AITUMA VS. THE STATE (2007) 5 NWLR PART 1028 PAGE 466.

At the stage of No case submission, credibility of Prosecution witnesses should not be considered. It is not a stage where a Court can believe or disbelieve Prosecution witnesses as the defence is yet to present its own witnesses. The Court is enjoined to avoid the temptation of being lured to pronounce on the merits or otherwise of the available evidence.

I am of the view that a No case submission is raised by an accused person at the close of prosecution’s case in the substantive trial i.e. main trial. And if it is upheld, the accused person is discharged and acquitted.

But on the contrary, if a No case submission is made by the Respondent (defence) at the close of prosecution’s case in trial within trial, it is inappropriate.

In this appeal, I am also of the view that the learned trial Judge erred in law by rejecting the statement of the Respondent dated 29th May, 2004 when the trial within trial was yet to be concluded. Furthermore, he also erred in law by not calling on the Respondent to give evidence of his alleged involuntariness during trial within trial.

Consequent upon the foregoing, issue numbers 1 and 2 are hereby resolved in favour of the Appellant and against the Respondent.

In the result, I am of the view that there is merit in this appeal and it is hereby allowed.

The ruling of the lower Court in Charge NO - AB/13/06 BETWEEN: THE STATE VS. LEKAN ADEKUNLE SOYINKA delivered on the 10th day of February, 2016 is hereby set aside.

In its place, the charge is hereby sent to the office of the Chief Judge of Ogun State for reassignment to another Judge who shall hear the case expediously.

**HARUNA SIMON TSAMMANI, J.C.A.:**

I had a preview of the judgment delivered by my learned brother Jimi Olukayode Bada, JCA.

I have no hesitation in agreeing with my learned brother that the learned trial judge bungled the trial-within-trial procedure. The learned trial Judge should also have entertained the no case submission, only, after the prosecution had closed its case. By adopting the wrong procedure in the trial-within-trial and the no case submission, the entire proceeding was rendered a nullity.

I therefore agree with my learned brother that, there is merit in this appeal. It is accordingly allowed. I abide by the consequential order(s) made by my learned brother.

**FOLASADE AYODEJI OJO, J.C.A.:**

I have read before now, the lead judgment of my learned brother Jimi Olukayode Bada, JCA just delivered. His Lordship painstakingly set out the procedure to be followed in a trial-within-trial. I agree with his reasoning and conclusion that the appeal has merit and should be allowed.

Trial-within-trial is a complete process in itself as it is independent of the substantive trial. It is for that reason that the substantive trial is halted and/or suspended once a challenge is raised to the voluntariness or otherwise of the extra-judicial statement sought to be tendered. It is pertinent to note that fresh oath is administered to witnesses who testify in trial-within-trial proceedings. Such witnesses testify and are subjected to cross-examination. At the conclusion, Counsel address the Court and the Court gives a considered ruling on the admissibility or otherwise of the extra-judicial statement. See Babarinde & Ors V. The State (2014) 3 NWLR (Pt. 1395) 568; Hassan V. State (2017) 5 NWLR (Pt. 1557) 1; State V. Sani (2018) 9 NWLR (Pt. 1624) 278. Trial-within-trial is so distinct and compartmentalized from the substantive trial that the utility of evidence adduced at trial-within-trial is restricted to the determination of admissibility of the extra-judicial statement. Such evidence cannot be utilised for determination of guilt nor can it be evaluated to determine weight to be attached to evidence in the substantive trial.

The trial Judge in the proceedings culminating into this appeal failed to distinguish between a trial conducted to test the admissibility of the extra-judicial statement allegedly made by the accused which is the subject of the trial-within-trial and a submission made at the conclusion of the Prosecution’s case in a substantive trial. A no case submission is usually made after the close of the Prosecution’s case in the substantive trial. It is alien to the procedure laid down for a trial within trial. The lower Court was therefore gravely in error when it relied on the no case submission of the Counsel to the accused in a trial within trial to reject the extra-judicial statement of the respondent sought to be tendered.

I also find merit in this appeal and allow it. I abide by the consequential Order made by my learned brother in the lead Judgment.