**0ADAMA**

**V.**

**THE STATE**

SUPREME COURT OF NIGERIA

SC. 69/2014

5TH DAY OF MAY 2017

**LEX (2017) - SC. 69/2014**

OTHER CITATIONS

3PLR/2017/15 (SC)

**BEFORE THEIR LORDSHIPS:**

MARY UKAEGO PETER-ODILI JSC (Presided)

OLUKAYODE ARIWOOLA JSC

KUMAI BAYANG AKA’AHS JSC

AMINA ADAMU AUGIE JSC

SIDI DAUDA BAGE JSC (Read the Lead Judgment)

**BETWEEN**

OKO OGAR ADAMA

AND

THE STATE

**ORIGINATING COURT**

1. COURT OF APPEAL, CALABAR JUDICIAL DIVISION

2. HIGH COURT OF CROSS RIVER STATE SITTING AT OGOJA

**REPRESENTATION/LAWYERS**

Fred Onuobia (with him, Solomon Ezike) - For the Appellant.

Joseph O. Abang (A.G, Cross River State) (with him, Peter S. Bisong (DPP, Cross State), S.B. Tateh (A.D.), M. Inyam (SC 1), Bajie Ayuk (SC), J. Opiah (SC 1), Frank B. Agim (SC II) - For the Respondent.

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

CRIMINAL LAW AND PROCEDURE - ARRAIGNMENT - Purport of - Section 215 Criminal Procedure Code considered. – Valid arraignment - Essential requirements of.

CRIMINAL LAW AND PROCEDURE - CHARGE - Application to prefer against accused - Consent of Judge to file – Failure of prosecution to obtain same - Whether vitiates the charge.

CRIMINAL LAW AND PROCEDURE - IRREGULAR PROCEDURE:- Where acquiesced into by accused person - challenge on appeal – Legal effect of .

CRIMINAL LAW AND PROCEDURE - NO-CASE SUBMISSION - Determination of - Proper approach of trial court to.

CRIMINAL LAW AND PROCEDURE - NO-CASE SUBMISSION - When proper to uphold

CRIMINAL LAW AND PROCEDURE - PRIMA FACIE CASE - Meaning of

**PRACTICE AND PROCEDURE ISSUES**

ACTION - WRITTEN ADDRESSES – Adoption of - Propriety of - Presumption raised thereby.

APPEAL - FINDINGS OF FACT BY LOWER COURTS - Where concurrent - Attitude of the Supreme Court thereto.

JUDGMENT AND ORDER - SUBSTANTIAL JUSTICE - Procedural matter which affects and that which does not it - Distinction between – Duty of court thereto

JURISDICTION - ISSUE OF JURISDICTION AND QUESTION OF LAW - Statutory procedure for raising - Compliance with - Propriety of.

STATUTE - CRIMINAL PROCEDURE CODE, SECTION 215 - Arraignment - Purport of.

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant, Oko Ogar Adama, along with 13 other accused persons were arraigned before Justice E.E. Ita of Cross River High Court, charged with conspiracy, unlawful assembly, malicious damage and stealing contrary to sections 20(6), 70, 541 and 390(9) of the Laws of Cross River State of Nigeria, 2004 respectively. The appellant and the other 13 accused persons denied both counts.

At the trial, the prosecution called a total of five (5) witnesses while a no-case-submission was made on behalf of the appellants. After hearing and evaluation of the testimonies of the five witnesses, the learned trial judge over-ruled the no-case submission and requested the appellant to enter their defence.

Dissatisfied with the ruling, the appellant appealed to the Court of Appeal. The court affirmed the ruling of the High Court and dismissed the appeal. This appeal is against that ruling.

DECISION(S) APPEALED AGAINST

The Court of Appeal, Calabar Judicial Division affirmed the ruling of the trial court, which overruled the no-case submission of the Appellants thereby obligating them to enter their defence.

**ISSUE(S) FOR DETERMINATION ON APPEAL**

*BY APPELLANT:*

“(1) Whether the trial court has jurisdiction to try the appellant when the consent or direction of a High Court Judge of Cross River State was not obtained as required by section 309(2)(a) of the Criminal Procedure Law, Cap. C17, Laws of Cross River State of Nigeria, 2004 (the “CPL”) before the information was filed?

(2) Whether the purported arraignment and taking of the plea of the appellant was valid in law? (Ground 5).

(3) Whether the written address and the reply on the “no case submission” did not breach the appellant’s right to fair hearing and thereby consequently rendering the entire trial a nullity? (Ground 6).

(4) Whether the decision of the court below “to be very brief and to restrict itself” in reviewing the arguments canvassed in the appellant’s brief of argument does not amount to a denial of the right to fair hearing of the appellant, and thus rendering the judgment of the court below arrived at in such circumstance liable to be set aside? (Ground 3).

(5) Whether, having regard to the entire circumstances of this case, the court below was correct in affirming the ruling of the trial court and thereby calling upon the appellant to enter his defence? (Grounds 1, 2 and 4).”

*BY RESPONDENTS*

“Whether the Court of Appeal was right in affirming the decision of the High Court that the evidence of the prosecution/respondent disclosed a prima facie case and thereby calling on the appellants to enter their defence?”

*AS ADOPTED BY COURT*

[The Court adopted the Issues presented by the Appellant]

DECISION OF SUPREME COURT

1. The need to be as brief as possible when a trial court is faced with a “no-case submission” is a settled matter of procedural law. but to reiterate that position, When a submission of no prima facie case is made on behalf of an accused, the trial court is not thereby called upon at that stage to express any opinion on the evidence before it. The court is called upon to note and rule accordingly to that which is before the court: no legally admissible evidence linking the accused person with the commission of the offence he is charged. If the submission is based on discredited evidence such discredit must be on face of the record”.

2. The prosecution established a prima facie case against the appellant . Decision of Court of Appeal affirmed.

Appeal dismissed.

**MAIN JUDGMENT**

**BAGE JSC** (Delivering the Lead Judgment):

This is an appeal against the ruling of the Court of Appeal, Calabar Judicial Division delivered on 19 November 2013, in appeal No. CA/C/76C/2012. The Court of Appeal affirmed the ruling of the High Court of Cross River State sitting at Ogoja. The appellant, Oko Ogar Adama, along with 13 other accused persons were arraigned before Justice E.E. Ita of Cross River High Court, charged with conspiracy, unlawful assembly, malicious damage and stealing contrary to sections 20(6), 70, 541 and 390(9) of the Laws of Cross River State of Nigeria, 2004 respectively.

The appellant and the other 13 accused persons denied both counts. At the trial, the prosecution called a total of five (5) witnesses while a no-case-submission was made on behalf of the appellants. After hearing and evaluation of the testimonies of the five witnesses, the learned trial judge over-ruled the no-case submission and requested the appellant to enter their defence.

Dissatisfied with the ruling, the appellant appealed to the Court of Appeal. The court affirmed the ruling of the High Court and dismissed the appeal.

This appeal is against that ruling. From the information in the charge, the facts of the case against the appellant are that they, on 10 May 2010, at Oloko-Agwape village in Yala Local Government Area, conspired to and unlawfully assembled, caused malicious damage and stole a motorcycle, twelve (12) goats, two (2) bicycles and bush meat, property of Oganode Awoko Ipuole.

The appellant on 30 April 2015, filed his brief of argument and formulated five issues for determination in his appeal.

“1. Whether the trial court has jurisdiction to try the appellant when the consent or direction of a High Court Judge of Cross River State was not obtained as required by section 309(2)(b) of the Criminal Procedure Law, Cap. C17, Laws of Cross River State of Nigeria, 2004 (the CPL) before the information was filed?

2. Whether the purported arraignment and taking of the plea of the appellant was valid in law? (Ground 5)

3. Whether the written address and the reply on the no case-submission did not breach the appellant’s right to fair hearing and thereby consequently rendering the entire trial a nullity? (Ground 6).

4. Whether the decision of the Court below “to be very brief and to restrict itself” in reviewing the argument does not amount to a denial of the right to fair hearing of the appellant, and thus, rendering the judgment of the court below arrived at in such circumstances liable to be set aside? (Ground 3).

5. Whether, having regard to the entire circumstances of this case, the court below was correct in affirming the ruling of the trial court and thereby calling upon the appellant to enter his defence? (Grounds 12 and 4).”

However, the respondent in his brief of argument filed on 8 January 2016, formulated the following issues for determination:

“1. Whether the failure to obtain the direction or consent of a judge to prefer the information in this case can be raised for the first time in this court regard being had to the provision of section 309(3)(b) of the Criminal Procedure Law, Cap. C17, Vol. 3, Laws of Cross River State, 2004? (Jurisdiction issue)

2. Was the appellant arraignment in compliance with the provisions of section 309 of the Criminal Procedure Law? (Arraignment issue) (Ground 5)

3. Considering the facts, did the learned trial judge infringe on the appellant’s right to a fair hearing as to validate a nullification of the proceedings? (Fair hearing issue) (Grounds 3 and 6).

4. Whether the learned justices of the court below were right in dismissing the no-case-submission and affirming the decision of the learned trial judge on the ground that a prima facie case has been made out against the appellant? (Dismissal of no-case submission issue) (Ground 1, 2 and 4).”

Looking at the two sets of issues above, it shows clearly that learned counsel for the parties appeared to be ad idem on the issues. They ask the same questions. I shall accordingly rely on the appellant’s issues in considering this appeal. At the hearing of the appeal, learned counsel for the appellant adopted his brief and urged this court to allow the appeal, while learned counsel for the respondent adopted the respondent’ s brief and urged this court to dismiss the appeal and affirm the concurrent ruling of both courts below.

Issue 1

“Whether the trial court has jurisdiction to try the appellant when the consent or direction of a High Court Judge of Cross River State was not obtained as required by section 309(2)(b) of the Criminal Procedure Law, Cap. C 17, Laws of Cross River State of Nigeria, 2004 before the information was filed?”

Learned counsel to the appellant argued that, this is an issue of jurisdiction and as such, the leave of the court is not required before same can be raised. He relied on decision of the court in Benson Agbule v. Warri Refinely & Petrochemical Co. Ltd (2012) LPELR 20625 (SC) at page 13.

He further argued that, the trial was not initiated by due process of law as the condition precedent to the exercise of the jurisdiction of the trial court was not fulfilled. He cited section 309(2)(b) of CPL. He submitted that, it is apparent from the record that no such consent or direction was obtained before the respondent filed the information against the appellant. At least, no such consent or direction of the High Court of Cross River State forms part of the record.

He argued that, it is trite that the content of the record of proceedings of a court are binding on the court and the parties, and in appellate court, which is always bound by the record and the record only.

He urged the court to hold that failure of the respondent to obtain consent of a judge of High Court of Cross River State before filing the information against the appellant robbed the trial court of the jurisdiction to try the appellant. Finally, he submitted that the information is liable to be quashed and this court should quash same and strike out this action for want of jurisdiction. On the other hand, learned counsel for the respondent submitted that, the above arguments canvassed by the appellant are misleading, although, he admitted that the issue of jurisdiction can be raised at any time during the course of proceedings, he submitted that it is not free for all procedure particularly where there is a procedure to be followed in raising the objection.

He also argued that this issue is a non-starter, even though the appellant was represented by counsel throughout the trial, this issue was not raised, he cannot now raise it. It is dead on arrival.

He further submitted that the appellant cannot, as he seeks to do, split in piecemeal, his objection to the jurisdiction of the lower court. The jurisdiction argument must be made as a whole, not in bits and pieces. He finally submitted that the appellant is precluded from contending non-compliance with section 309(2)(b) of the CPL as a basis for invalidating the proceedings.

Had the appellant counsel exercised reasonable diligence, he would have made this argument as addition in his challenge to the jurisdiction of the court. But he did not, and cannot now do so. He urged the court to reject the appellant’s submission and hold that the trial was validly undertaken before the trial court. Looking at the above arguments from both counsel, there are two issues to be considered by this court, whether failure to seek the consent of the trial judge in arraigning the appellant is fatal and can render the trial to be struck out for want of jurisdiction and whether this issue can be raised on appeal for the first time in this court.

Section 309(3) provides that:-

“(3) If an information preferred otherwise than in accordance with the provisions of sub-section (2) of this section has been filed by the registrar, the information shall be liable to be quashed:

Provided that-

(a) ...

(b) Where a person is convicted on any information or on any count of an information, that information or count shall not be quashed under this section in any proceedings on appeal, unless application is made at the trial that it should be so quashed.”

It is pertinent to state that, the trial judge before arraignment of the appellant ordered prosecution to file certified true copy of all the proceedings that took place at the Magistrate’s court together with the exhibit to enable him determine whether or not he can assume jurisdiction see page 38 of the record. Sequel to that, on 9 June 2011, the trial judge ruled that:-

“At the stage where the matter was struck out, I do not see any injustice that will occasion the accused person if the charges are pursued in this court.”

This court is satisfied that the trial judge, based on the above facts had impliedly consented and given his directives in respect to the procedure provided under section 309(2)(b) above. However, failure from the respondent to seek for consent of the judge cannot be said to have rendered the trial a nullity and liable to be struck out.

In Anthony Okoro v. The State (2012) All FWLR (Pt. 621) 1471, (2012) 7 NCC 184. This court held that:

“There is a distinction between a matter of procedure that affects substantial justice in the trial of a case and a matter of procedure which in no way affects the justice of the trial of a case.”

See also, Idemudia v. State (1999) 7 NWLR (Pt. 610) 202. Litigants should expect no technical but substantial justice from this court. We have said several times that we are not a workshop for technical justice. Over and over again, we have reiterated the need to do substantial justice and avoid delving into the error of technicalities, see for example, the case of National Revenue Mobilization Allocation and Fiscal Commission (N.R.M.A.F.C) v. Johnson (2007) 49 WRN 169 - 170, where per Peter-Odili JCA (as he then was), opined as follows:-

“... The courts have deliberately shifted away from narrow technical approach to justice which characterized some earlier decisions to now pursue the course of substantial justice. See Makeri Smelting Co. Ltd v. Access Bank (Nig.) Plc (2002) 7 NWLR (Pt. 766) 447 at 476 - 477 ... The attitude of the court has since changed against deciding cases on mere technicalities. The attitude of the courts now is that cases should always be decided, wherever possible on merit. Blunders must take place from time to time, and it is unjust to hold that because a blunder has been committed, the party blundering is to incur the penalty of not having the dispute between him and his adversary determined upon the merits.” See also Ajakaiye v. Idehia (1994) 8 NWLR (Pt. 364) 504; Arta Ind. Ltd v. NBCI (1997) 1 NWLR (Pt. 483) 574; Dakat v. Dashe (1997) 12 NWLR (Pt. 531) 46; Benson v. Nigeria Agip Co. Ltd (1982) 5 SC 1.”

In the case at hand, the respondent’s failure to seek the consent of the judge does not in any way affect the justice of the trial. Therefore, the appellant cannot rely on the provision of Section 309(2)(b) above. See also Egbedi v. The State (1981) 11-12 SC 98 and Ajayi v. Zaria N.A. (No. 2) (1964) NNLR 6l.

In Egbedi v. State above, this court held that:-

“It is settled law that an accused person who acquiesced to an irregular procedure that did not lead to miscarriage of justice, cannot complain of the procedure on appeal.”

In this case, the proper procedure as provided under section 309(3) has not been followed. The section provides thus:-

“(3) If an information preferred otherwise than in accordance with the provisions of sub-section (2) of this section has been filed by the registrar, the information shall be liable to be quashed, provided that

(a) ...

(b) Where a person is convicted on any information or any count of an information, that information, or count shall not be quashed under this section in any proceedings on appeal, unless application is made at the trial that it should be so quashed.”

In Adejobi v. State (2011) All FWLR (Pt. 588) 850, (2011) 12 NWLR at page 351 this court held that:-

“A question of law and jurisdiction can be raised at anytime in the proceedings, but it is not a free for all procedure. Where a statute under which an issue or matter is to be raised has provided a procedure for raising such issue or matter, that procedure and no other, must be followed. In the instant case, the procedure that must be followed to quash the information or count was as provided under section 340(2)(b) of the Criminal Procedure Law, Cap. 39 Laws of Oyo State, 2000. Failure to apply to quash it at the trial court rendered both the grounds of appeal on that point and the issue raised thereon incompetent. Indeed the Court of Appeal has no jurisdiction to quash any information or count unless there has been an application to quash it at the trial.”

However, in Jov v. Dom (1999) 9 NWLR (Pt. 620) 538 at 541, this court held that a question of law and jurisdiction can be raised at anytime in the proceedings, but it is not on a free for all procedure. Per Belgore JSC at page 547, paragraphs C - E has this to say:-

“This is so, in order to avail the other side every opportunity to advert to that issue. But to contend that issue of law or the constitution can be raised at anytime and do nothing more than to raise it in argument is like laying a disrupting ambush for the opponent. This is not the spirit of our practice of adjudication of holding the even balance. Proper application must be made so that the other side will know clearly what he has to meet. In the present appeal, the appellant introduced ground 5 on lack of jurisdiction by trial area court, a matter not raised in the appellate High Court and in the Court of Appeal. It came like a bird out of the whirlwind, why was this not raised at the High Court or at the Court of Appeal.”

As stated earlier, I am satisfied that, failure of the respondent to seek consent of Justice Ita E. E., does not invalidate the trial. This issue is hereby resolved in favour of the respondent. Issues 2, 3, and 4 will be taken together.

Issue 2.

Whether the purported arraignment and taking of the plea of the appellant was valid in law.

Issue 3.

Whether the written address and the reply on the no case-submission did not breach the appellant’s right to fair hearing and hereby consequently rendering the entire trial a nullity.

Issue 4.

Whether the decision of the court below to be very brief and to restrict itself in reviewing the arguments canvassed in the appellant’s brief of argument does not amount to a denial of the right of fair hearing of the appellant, and thus, rendering the judgment of the court below, arrived at in such circumstances liable to be set aside.”

Learned counsel for the appellant submitted that a cursory look at the record will reveal that the trial of the appellant did not commence with the arraignment of the accused. He argued, this is in breach of the settled principle of the procedure for arraignment in criminal matters. He submitted that the trial did not comply with the provisions of section 36(6)(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). He urged the court to discharge and acquit the appellant. On the third issue, learned counsel submitted that the entire proceedings leading to the overruling of the appellant’s “no-case submission” at the trial court is violated by the manner in which the no-case-submission was rendered by the appellant’s and respondent’s counsel. The learned trial judge by permitting both counsel to the appellant and respondent to file the written address and reply, breached the constitutionally-entrenched provision relating to appellant’s right to fair hearing.

He also argued that it behooves on the court below to give a full and comprehensive consideration of all the issues and argument canvassed in the appellant’s brief of argument and pronounce on them. Failure to do so, as the court below had done in the instant appeal, is tantamount to not hearing the appeal at all.

This failure, he argued, no doubt breached the appellant’s right to fair hearing and resulted to a miscarriage of justice. He cited Longe v. First Bank of Nigeria Plc (2010) All FWLR (Pt. 525) 258, (2010) 6 NWLR (Pt. 1189) 1 at page 20, paragraph H – page 21.

Learned counsel submitted that had the court below fully reviewed the arguments and issues canvassed in the appellant’s brief of argument, there is no doubt that it would have come to a different conclusion. He urged this court to resolve the issue raised herein in favour of the appellant and set aside the ruling of the court below.

In his response, learned counsel for the respondent on issue of arraignment contended that, the arraignment of the appellant ration complied substantially with the provisions of section 209 of the CPL and this suffices to validate the arraignment. He cited Erekanure v. State (1993) 5 NWLR (Pt. 294) 385 and James v. Edun & Ors. (1996) 1 All NLR 17. He submitted that as the record indicated, the proceedings were conducted in the English language, a language which from available evidence on the record, the appellant understands perfectly. He finally submitted that the arraignment of the appellant is proper, valid and complies with Section 209 of the CPL.

The learned counsel argued that there can be no merit in the appellant’s complaint that the trial was not conducted in public simply because the written address was adopted and not read in open court, as a matter of fact, adoption of written address is so deeply entrenched in the practice and procedure of our superior courts, he cited Obodo v. Olomu (1987) 3 NWLR (Pt. 59) 111.

He further argued that it was the appellant who first filed a written address apparently without an express order of Justice Ita, he appeared to have done so of his own accord.

He submitted that appellant cannot turn-around to complain about the alleged irregularity. If anything, he has acquiesced in, or waived his right to complain. He urge the court to reject the appellant’s contention that he was not accorded a fair hearing in the consideration of this case by both the trial High court and the court below. The proceedings were entirely fair. Determination of the issues. The object of arraignment in terms of section 215 of the Criminal Procedure Law is to ensure that justice is done to the accused by ensuring that he understands the charge against him and so as to enable him to make his defence.

In Chikaodi Madu v. The State (2012) All FWLR (Pt. 641) 1416, (2012) NCC 553, this court on the essential requirement of valid arraignment enumerated conditions for valid arraignment:

“(a) The accused must be placed before the court unfettered unless the court shall see cause otherwise to order.

(b) The charge or information shall be read over and explained to the accused to the satisfaction of the court by the registrar or other officer of the court; and

(c). The accused shall then be called upon to plead instantly thereto unless course, there exist any valid reason to do otherwise such as objection to want of service where the accused is entitled by law to service of a copy of the information and the court is satisfied that he has in-fact not been duly served therewith.”

See also, Olabode v. State (2009) All FWLR (Pt. 500) 607, (2009) 4 NCC 199; Ogunye v. State (1999) 5 NWLR (Pt. 604) 518; Monsuru Solola & Ors. v. State (2005) All FWLR (Pt. 269) 1751, (2005) 22 NSCQR 254 at pages 289 - 290.

Looking at pages 62 - 63 of the record, this is what transpired in the trial court when the appellant was arraigned.

“J - I Ushie for the State

J - I Ofen & C Odey for the accused plea

Count 1 Read to accused persons In English Language. Each of the 14 accused persons says he/she understands the charge and pleads not guilty.

Count 2 Read to the accused persons in English Language. Each of the 14 accused persons says he/she understands the charge and pleads not guilty.

Count 3 Read to accused persons in English Language. Each of the 14 accused persons says he/she understands the charge all pleads not guilty.

Count 4 Read to accused persons in English Language. Each of the 14 accused persons says he/she understands the charge and plead not guilty.”

From the foregoing, this court is satisfied that what transpired at page 62 of the record in this case is in conformity with the provision of the law above. The appellant has not furnished this court with any evidence or fact to prove his claim.

The charge having been read over and explained to both accused persons in English language and each of them pleaded not guilty thereto, I find it difficult to conceive how the arraignment of the accused persons can be faulted. Without doubt, it would have been preferable for the learned trial judge to have recorded the plea of each of the accused persons separately in the direct speech. However, failure to do this cannot be fatal to their plea so long as the charge was read over and over and explained to them, whether jointly or separately, and they both understood the same and each of them individually entered his plea thereto. It would not matter, whether the court’s record which described the event was written in direct or reported speech. See Udeh v. State (1999) 7 NWLR (Pt. 609) 1. Anthony Okoro v. The State. National Revenue Mobilization Allocation and Fiscal Commission v. Johnson. The authorities do not say that it must be recorded that the charge was read and explained to the accused to the satisfaction of the court (as claimed by the appellant) before proceeding to record his plea thereto. Without doubt, it is good practice for the trial court to record that “the charge was read and fully explained to the accused to the satisfaction of the court”, but I do not think the failure to record will render the trial a nullity. See Eyisi v. State (2000) 15 NWLR (Pt. 691) 555, (2001) FWLR (Pt. 35) 750.

On the issue of filing and adopting written address as permitted by the trial judge in which the appellant claimed to have contravened section 36(1)(3) & (4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This court found no merit in the claim. As a matter of fact, adoption of written address is a practice of this court and other lower courts.

Rules of different courts have made provisions for filing and adoption of written address. In this case, Order 33, rules 1 – 6 of the High Court (Civil Procedure) Rules of Cross River State and Order 30, rules 13, 14, 15 and 16 of the same law stipulates the time within which each party shall file its written address. Once the written address is adopted, it is taken as read.

This court will not waste time in resolving this issue against the appellant. On the basis of the above, issues 2, 3 and 4 are hereby resolved in favour of the respondent.

Issue 5

“Whether having regard to the entire circumstances of this case, the court below was correct in affirming the ruling of the trial court and thereby calling upon the appellant to enter his defence. The learned counsel for the appellant argued that, the law is settled that before an accused person can be called upon to enter his defence, the prosecution must have established a prima facie case against the accused where the prosecution failed to establish a prima facie case against the accused, such an accused would not be called upon to enter his defence. He cited Ubanatu v. C.O.P. (2000) FWLR (Pt. 1) 138, (2000) 2 NWLR (Pt. 643) 115 at 128, paragraph G. He further argued that where a prima facie case was not made out against an accused, a submission of no-case to answer, made by such an accused person ought to be upheld by a trial court and such accused person be discharged and acquitted.”

He submitted that, evidence of PW1 and PW2 which was relied upon by the trial court to hold that there was conspiracy is unreliable. No reasonable tribunal could have safely convicted the appellant on such unreliable evidence on the crucial issue of the actual commission of the offence. He finally urged this court to resolve this issue in favour of the appellant. On the contrary, learned counsel for the respondent contended that an in-depth evaluation of the evidence adduced by the prosecution at the trial does not support the appellant’s contention. He argued that the primary consideration at the stage of a no case to answer submission is not whether the evidence laid by the prosecution would sustain a conviction but whether, on the strength of the evidence, the prosecution has established a prima facie case against the defendant.

He holds that evidence disclosed a ‘prima facie case’ when it is such that if un-contradicted and if believed, will be sufficient to prove the case against the respondent. He finally submitted that the court below rightly affirmed the findings of fact made by the trial court. He urged this court to find that the appellant has been properly called to defend the charges against him, his no case submission was rightly dismissed by the court below.

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. In Ajuluchukwu v. The State (2012) 7 WCC 281, the Court of Appeal on when a no-case-submission will be upheld, stated that:-

“Where there has not been any evidence to establish the essential ingredients of the alleged offence, or the evidence of the prosecution has become manifestly unreliable after cross-examination, that it cannot reasonably be a basis for conviction, the respondents should be discharged without being called upon for defence.”

In the case at hand, the prosecution called a total of five witnesses out of which PW1 and PW2 were eye witnesses. PW1 in giving his testimony stated, as contained in pages 63 - 64 of the record, thus:

“On 10 May 2010 at about 7:20am, (left Echumoga village to Echumofana to write my Senior School Certificate Examination. I saw a large crowd including the accused persons. They carried sticks and cutlasses ... I saw the accused singing war songs and breaking my father’s buildings. 3rd accused person was holding a gun. 4th accused person was holding my younger brother Awoko Joseph by his hand. I asked 4th accused why he was holding my brother and he said if I did not keep quiet he will kill me. He asked me whether my wife did not pass to me the message he, 4th accused, sent through her. 3rd accused pointed the gun he was holding at me and said if I did not keep quiet he will shoot me. He shot unto the air to show me he was serious. I was afraid and ran away to Yegu village and informed my elder brother, Fidelis Awoko, about what was happening in our compound. Fidelis and I left to the Police station, Area Command, Ogoja where we laid a complain. A police man (Agara) accompanied us to Oloko Ogwobe village where the incident took place. When we got to Oloko Ogwobe we met the crowd at Adamode’s compound. 8th accused person told the Police that they were more than those we met there. That the Police should go and bring truck to accommodate all of them. Accused persons destroyed three zinc houses and four huts in my father’s compound. They used sticks to hit and destroy the building. They used their hands and cutlasses to cut the huts. I was leaving at Echumoga until trouble started between my father and Oloko people. The people wrote a petition against my father and we were invited to the Local Government Council Office. It was because of that problem that I and my brothers left Oloko. I went to leave at Echumoga. Apart from the building, they damage a motorcycle, two bicycles and many other things I cannot remember the value of the properties damaged. My elder brother would know that.”

PW2 in giving his testimony, after corroborating what PW1 had earlier said, stated that he had a grinding machine, cushion chairs, box and 12 goats which were all missing. See pages 69 - 70. Looking at the testimonies of PW1 and PW2 above, (which was not discredited during cross-examination) I am left with no doubt that the prosecution has established a prima facie case against the accused persons. In Abogede v. The State (1996) 5 NWLR (Pt. 448) 270 at 280, the Supreme Court held that.-

“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 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.”

See also R. v. Ogucha (1959) 4 FSC 64.

In Shatta v. F.R.N. (2009) 3 NCC 527, the Court of Appeal held that.-

“Without going into the credibility of the witnesses called by the prosecution, but based on the evidence presented before the trial court, it is my view that the court does not have to believe the evidence adduced by the prosecution at this stage but the issue to be determined is that if the case for the prosecution is believed is there anything for the appellant to explain.”

In Aduku v. F.R.N. (2009) 4 NCC 350. On the meaning of prima facie case, the Court of Appeal has this to say:-

“What is meant by prima facie case? It only means that there is a ground for proceedings ... but a prima facie case is not the same as proof which comes later when the court has to find whether the accused is finally guilty or not and the evidence discloses a prima facie case when it is such that un-contradicted and if believed it will be sufficient to prove the case against he accused.”

See on this, Dr. Olu Onagoruwa v. The State (1993) 7. There are several decisions of this court warning against the discharge of accused persons after a submission of no-case to answer, particularly, when it is clear from the evidence adduced that the facts disclose some explanation which the accused has to make in view of what the prosecution has so far established from the evidence.

In The Queen v. Ogucha (1959) 4 FSC 64, Abbott F. J. Stated that:-

“It is the judge’s duty however, when a submission of no-case to answer is made to discharge an accused where the evidence adduced by the prosecution does not disclose the necessary minimum evidence establishing the facts of the crime charged. In doing so, the judge does not write judgment. It is not the judge’s job, at that stage, to weigh and evaluate evidence or decide who is telling the truth or who is lying and is not to conclude that the prosecution is unreliable”.

The learned trial judge in his ruling at page 97 of the record stated that:-

“Count 1 is one of conspiracy. The evidence of PW1 and PW2 is that the accused persons gathered at the village square and from there moved on to damage the houses of PW2. A court can infer conspiracy from the fact of doing things-together, upon that inference, I can convict the accused persons, so they owe me an explanation which I call upon them now to offer”.

On the 2nd count of unlawful assembly, the trial judge found in his ruling at pages 97 - 98 that:-

“These pieces of evidence show that people, including the accused persons gathered with sticks and cutlasses and moved up to the gate of PW2. They started breaking the house of PW2. It is only left for me to decide whether they conducted themselves in such a manner as to cause persons in the neighbourhood to fear on reasonable ground that the persons so assembled will turn tumultuously to disturb the peace or that they will provoke other persons tumultuously to disturb peace. There is prima facie evidence from the above evidence in support of this change and I call upon the accused persons to offer their explanations.”

Learned trial judge found, however, on the third count in his ruling at page 98 that:-

“Count 3 is for malicious damage to property, PW1 and 2 said they saw the accused persons destroying the property of PW2. Counsel for the accused persons fell into error in his address when he went into how the property was damage. Whether by breaking down or by fire. This is not the stage for that. Section 451 of the Criminal Code Law under which the charge is laid does not make such distinction. There is prima facie evidence put in by the prosecution that accused persons can be convicted, if believed. Accused persons are called upon to offer this defence.”

On the last count, i.e, stealing, the trial court found that:-

“PW2 said the above items were in his house when the accused persons destroy his house and that after the destruction, he could no longer find those items in his house. This is prima facie evidence of stealing those items. It is now time for the accused persons to tell me what happened, and if they do not, I can convict them on the evidence of PW2 alone.”

This well respected view of the learned trial judge was also affirmed by the court below where the court in its judgment dismissed the appeal and affirmed the ruling of the trial High Court. The law settled that the Supreme Court, this noble court, will not interfere with concurrent findings of facts made by the trial court and the Court of Appeal unless such findings are perverse; or are not supported by the evidence; or are reached as a result of a wrong approach to the evidence; or as a result of a wrong application of any principle of substantive law or procedure.

See Arabambi v. Advance Beverages Ind. Ltd (2005) 19NWLR (Pt. 959) 1, (2006) All FWLR (Pt. 295) 581, per Onnoghen JSC (as he then was) at (page 46, paragraphs C - E).

It is my conclusion in the circumstances that since the appellant has not been able to show these findings to be perverse; this court cannot interfere with the decisions of both courts below.

In the end, I am satisfied that the learned justices of the Court of Appeal were right in affirming the ruling of the trial court, on the evidence presented by the prosecution. The case of no- case-submission is hereby over-ruled. Appeal dismissed.

**PETER-ODILI JSC**:

I agree completely with the judgment just delivered by my learned brother, Sidi Dauda Bage, and to register my support, I shall make some remarks. This is an appeal against the decision of the Court of Appeal, Calabar Division coram: M. L. Garba, C. C. Nweze and Onyekachi A. Otisi JJCA with Garba JCA delivering the lead judgment. The Court of Appeal or court below dismissed the appellant’s appeal over the decision of the High Court of Cross River State sitting at Ogoja per Ita J, in which the Court of trial overruled the no-case submission made on behalf of the appellant.

Facts briefly stated:

The appellant and thirteen others were on 24 February 2011 charged on a four count Information namely:

Conspiracy contrary to section 520(6) of the Criminal Code Law of Cross River State of Nigeria, 2004. Unlawful assembly contrary to section 70 of the Criminal Code Law of Cross River State of Nigeria, 2004.

Malicious damage contrary to section 45 of the Criminal Code Law of Cross River State of Nigeria, 2004.

Stealing contrary to section 390(a) of the Criminal Code Law of Cross River State of Nigeria, 2004. The appellant and thirteen others were said to have conspired to and unlawfully assembled to damage the houses of one Oganode Awoko Ipuole and stole the following:

A day long motorcycle, 12 goats, 2 bicycles and bush meat from there. The appellant and co-accused were accordingly arraigned and their respective plea taken on 30 June 2011, wherein they each pleaded not guilty and at the conclusion of evidence of the prosecution, the appellant/co-accused’s counsel made a no-case submission on their behalf which the trial court overruled in a considered ruling on 5 March 2012. Aggrieved, the appellant appealed to the court below which appellate court dismissed the appeal. Hence, a recourse to the Supreme Court on appeal.

On 9 February 2017, date of hearing, learned counsel for the appellant, Fred Onuobia adopted the brief of argument of the appellant filed on 30 April 2015 and a reply brief filed on 26 February 2016. The appellant had formulated five issues for determination which are as follows:-

(1) Whether the trial court has jurisdiction to try the appellant when the consent or direction of a High Court Judge of Cross River State was not obtained as required by section 309(2)(a) of the Criminal Procedure Law, Cap. C17, Laws of Cross River State of Nigeria, 2004 (the “CPL”) before the information was filed?

(2) Whether the purported arraignment and taking of the plea of the appellant was valid in law? (Ground 5).

(3) Whether the written address and the reply on the “no case submission” did not breach the appellant’s right to fair hearing and thereby consequently rendering the entire trial a nullity? (Ground 6).

(4) Whether the decision of the court below “to be very brief and to restrict itself” in reviewing the arguments canvassed in the appellant’s brief of argument does not amount to a denial of the right to fair hearing of the appellant, and thus rendering the judgment of the court below arrived at in such circumstance liable to be set aside? (Ground 3).

(5) Whether, having regard to the entire circumstances of this case, the court below was correct in affirming the ruling of the trial court and thereby calling upon the appellant to enter his defence? (Grounds 1, 2 and 4).

Joseph Oshe Abang, learned counsel for the respondent adopted its brief of argument filed on 21 January 2016 and deemed filed on 16 March 2016. He adopted issue five of the appellant and raised a sole issue of his own, viz:-

Whether the Court of Appeal was right in affirming the decision of the High Court that the evidence of the prosecution/respondent disclosed a prima facie case and thereby calling on the appellants to enter their defence?

For a smooth flow in the determination of this appeal, I shall make use of the issues as crafted by the appellant.

Issues 1 and 2

Whether the trial court has jurisdiction to try the appellant when the consent or direction of a High Court Judge of Cross - River State was not obtained as required by section 309(2)(b) of the Criminal Procedure Law Cap. C17, Laws of Cross River State of Nigeria, 2004 before the information was filed?

Whether the purported arraignment and taking of the plea of the appellant was valid in law? (Ground 5)

Learned counsel for the appellant submitted that this being an issue of jurisdiction, leave of court is not required to raise it. That certain conditions must co-exist before a court of law would be seised of the jurisdiction and be competent to entertain an action in court, be it criminal or civil. That in this instance, the proceedings failed to pass the competency test as the information was preferred without the direction or with the consent of a judge or pursuant to an order made under part 30 to prosecute the person charged for perjury. He cited the cases of Benson Agbule v. Warri Refinery & Petrochemical Co. Ltd (2012) LPELR 2062 (SC) 13; Alhaji Tsoho Dan Amale v. Sokoto Local Government (2012) Madukolu v. Nkemdilim (1962) 2 SCNLR 341 etc.

Mr. Onuobia of counsel contended that a cursory look at the record will reveal that the trial of the accused did not commence with the arraignment of the appellant. That the steps to be taken to ensure the validity of an arraignment were not complied with in keeping with the Criminal Procedure Law, section 209 and 36 of the 1999 Constitution. He referred to Ogunye v. State (1999) 5 NWLR (Pt. 604) 548 at 565; Okolie v. State (2012) All FWLR (Pt. 607) 770, (2012) 1 NWLR (Pt. 1281) 385.

That the record did not show that the charge was read to the appellant, explained to him and if he understood and the plea taken in his own words. He cited Ogolo & Ors. v. Fubara & Ors. (2003) FWLR (Pt. 169) 1285, (2003) 11 NWLR (Pt. 831) 231; Sapo & Anor. v. Sunmonu (2010) All FWLR (Pt. 531) 1408, (2010) 11 NWLR (Pt. 1205) 374; Garuba & Ors. v. Omokhodion & Ors. (2013) All FWLR (Pt. 596) 537, (2011) 15 NWLR (Pt. 1269) 145.

The learned counsel for respondent submitted that the counsel for the accused/appellant if he objected to any part of the procedure he ought to have raised the concern not at the appeal level. That there is a presumption that everything was regular. He relied on Durwode v. State (2000) 15 NWLR (Pt. 69) 467 at 488, (2001) FWLR (Pt. 36) 950; Nnakwe v. State (2014) 10 NCC 189; Ogunye v State (1999) 5 NWLR (Pt. 604) 518; section 168 of the Evidence Act, 2011.

That there is nothing defective in the plea taking or arraignment of the appellant and the record would bear this out. He cited Golden Derbie v. State (2007) 3 SC (Pt. 1) 76; Eyisi & Ors. v. State (2000) 4 NSCQR 60, (2001) FWLR (Pt. 35) 750.

A reference to section 309 of the Criminal Procedure Law (CPL) provides as follows:-

“If an information preferred otherwise than in accordance with the provisions of sub-section (2) of this section has been filed by the registrar, the information shall be liable to be quashed”.

The said sub-section (2) of section 309 provides thus:-

“No information charging a person with an indictable offence shall be preferred unless -

(b) the information is preferred by the direction or with the consent of a judge or pursuant to an order made under part 30 to prosecute the person charged for perjury”.

Clearly, the appellant’s counsel is on solid ground to contend that the issue of whether or not consent of a judge had been obtained before a valid preferment of the charge can be made. Also, jurisdiction being a matter of the threshold and life wire of adjudication cannot be toyed with but taken with the seriousness it deserves. Therefore, all bottlenecks are removed for jurisdiction to be brought in the court at any level and in whatever manner since the competence of the court to sit on the matter before it depends on that hurdle being scaled.

The reason being that a court will not have the competence and jurisdiction to entertain an action placed before it, unless the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction and in this regard would fall the consent of the judge before a charge can be preferred in accordance with section 309 of the CPL. See Madukolu v. Nkemdilim (1962) 2 SCNLR 341; Western Steel Works Ltd v. Iron and Steel Workers Union of Nigeria (1986) 3 NWLR (Pt. 30) 617. This court had this issue on jurisdiction well captured in the case of Alhaji Tsoho Dan Amale v. Sokoto Local Government (2012) All FWLR (Pt. 618) 833, (2012) LPELR - 7842 per Fabiyi JSC at page 23, where he stated thus:-

“It has been stated by this court in Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508 at 528 per Obaseki JSC, that the issue of jurisdiction being a fundamental issue, can be raised at any stage of the proceedings in the court of first instance or in the appeal courts. This issue can be raised by any of the parties or by the court itself suo motu. Where there are sufficient facts ex facie on the record establishing want of competence or jurisdiction in the court, it is the duty of a judge or justice to raise the issue suo motu if the parties fail to draw the court’s attention to it”.

Learned counsel for the appellant went to great lengths in pointing out that there is no part of the record where the said consent is show-cased and so urges this court to quash the courts of the charges on the information. My reaction would be to caution that what learned counsel for the appellant is positing cannot be given so fast. The reason is that the issue of jurisdiction being fundamental, cannot be raised in vacuo and, the fact that the record has not shown that the consent was obtained without more, would not propel such a drastic action by the court without the backup facts establishing the want of competence. That is why every case has to be treated on its own merits and peculiar circumstances since legal principles are not applied just on the heck of it.

In this instance, the appellant was represented by counsel and if there was any fact suggesting the absence of consent before the information was preferred, he should have raised objection before the formal arraignment. That failure of counsel throws up the presumption of regularity as provided in section 168 of the Evidence Act, 2011, which produces the effect of the court taking as done that which ought to have been done. Also, the absence of the objection at the nick of time creates a bar for counsel to now raise it on this appeal. Court procedures are done in a methodical manner and not in a lackadaisical way or as the whim takes a party. Thus, producing a confused untidy atmosphere which would not augur well for our adjudicatory system. See Durwode v. State (2000) 15 NWLR (Pt. 6) 467 at 488; Nnakwe v. State (2014) 10 NCC 189; Ogunye v. State (1999) 5 NWLR (Pt. 604) 518.

It needs be emphatically stated that the objection now raised comes too late and goes to no issue. On the impropriety of the arraignment, it was submitted for the appellant that it was done without full compliance with section 36(6)(a) of the 1999Constitution of the Federation and section 209 of the Criminal Code Law of Cross-River State, 2004. That is, that the exact words used by the appellant when taking the plea were not recorded. For effect, I shall restate what transpired at the court of trial thus:-

“Count 1 read to the accused in English language. Each of the accused persons says he understands the charge and pleads not guilty”.

The same procedure was adopted and recorded by the learned trial judge in respect of all the counts charged. Learned counsel for the appellant posits that fell short of the requirements of section 36(6)(a) CFRN and section 209 CPL.

“(6) every person who is charged with a criminal offence shall be entitled to -

(a) Be informed promptly in the language that he understands and in detail of the nature of the offence ...”

Similarly, section 209 of the CPL provides:

“The person to be tried upon any charge or information shall be placed before the court unfettered, unless the court shall see cause otherwise to order, and the charge or information shall be read over and explained to him to the satisfaction of the court by the registrar or other officer of the court, and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the information, he objects to the want of such service and the court finds that he has not been duly served therewith”.

The interpretation of those sections was made by this court in Ogunye v. State (1999) 5 NWLR (Pt. 604) 548 at 565, paragraphs A - E, Iguh JSC captured the requirements of a valid arraignment in court as follows:-

“For there to be a valid arraignment of an accused person. These steps are (a) the accused person must be placed before the court unfettered unless the court shall see cause otherwise to order; (b) the charge or information must be read over and explained to the accused to the satisfaction of the court by the registrar or other officer of the court; and (c) the accused must be called upon to plead thereto, unless there exists any valid reason to do otherwise such as objection to want of service, where the accused is entitled by law to service of a copy of the information and the court is satisfied that he has in fact not been duly served therewith. The above stated requirements of the law are mandatory and not directory and must therefore be strictly complied with in all criminal trials. Since these requirements have been specifically provided to guarantee the fair trial of an accused person and to safeguard his interest at such a trial, failure to satisfy any of them will render the whole trial incurably defective and null and void”. (Emphasis mine).

Guided by the interpretations given to the constitutional provision and the CPL, what is required is that the trial judge being satisfied that the accused understands the charge and taken his plea, recording that fact, due process in the arraignment is satisfied. What the appellant is asking for is beyond what is expected in accordance with the statutory procedural provisions and placing a shackle on the judge without room for his human limitations. That in my humble view, is not what the legislature intended. In this case at hand, what the learned trial judge recorded served the purpose and in full compliance with the law. The robotic way of doing things at arraignment which appellant seeks is no for our adjudication. See Eyisi & Ors v. The State (2000) 4 NSCQR 60, (2001) FWLR (Pt. 35) 750; Golden Derbie v. State (2007) 3 SC (Pt. 1) 76. In the end, this issue is resolved against the appellant.

Issues 3 and 4:

Whether the written address and the reply on the “no – case submission” did not breach the appellant’s right to fair hearing and thereby consequently rendering the entire trial a nullity. Whether the decision of the court below “to be very brief and to restrict itself” in reviewing the arguments canvassed in the appellant’s brief of argument does not amount to a denial of the right to fair hearing of the appellant, and thus rendering the judgment of the court below arrived at in such circumstance liable to be set aside.

Canvassing the position of the appellant, learned counsel stated that the entire proceedings leading to the overruling of the no-case submission at the trial court is vitiated by the manner in which the submission was rendered by appellant and respondent’s counsel. That the right to fair hearing of the appellant was breached thereby. This, learned counsel said had to do with the written address of counsel adopted by himself and read by the court which the appellant did not know the contents of. He cited sections 36 of the 1999 Constitution; Re: Lawal (2013) LPELR (1998) 1 SC; Mika’Ilu v. The State (2001) 8 NWLR (Pt. 715) 469 CA.

For the appellant, it was further contended that the court below ought to have given full and comprehensive consideration of all the issues and argument canvassed in the appellant’s brief and pronounced on them. That the failure to do that is tantamount to not hearing the appellant and a breach of fair hearing. He referred to Longe v. F.B.N. Plc (2010) All FWLR (Pt. 525) 258, (2010) 6 NWLR (Pt. 1189) 1 at 20; Ovunwo v. Woko (2011) All FWLR (Pt. 587) 596, (2011) 17 NWLR (Pt. 1277) 522 at 546 - 547.

For the respondent, learned counsel and Attorney-General of Cross - River State contended that the court below had rightly warned itself that it is required by law that the court not encroach on the undecided substantial issues before it in the determination of an interlocutory appeal. He cited Abikake v. Police (1966) 1 All NLR 132; Daboh v. State (1977) 5 SC 122 etc.

That the fact that the addresses were adopted in open court and the ruling also in open court met substantial compliance. The stance of the appellant is that there was a breach of Section 36(1)(3 & 4) of the 1999 Constitution, that is, the right to fair hearing of the appellant with the written “no-case submission” and reply having not been read in open court as it left the accused in the dark as to what was stated in the address. This posture is indeed strange since learned counsel for the accused/ appellant who presented the written addresses adopted them as his oral submissions. When that adoption was made, the words in the document were taken to have been read as the submissions of the accused/appellant and the principles of fair hearing fully complied with.

On the terse ruling by the court below, per M. L. Garba JCA, thus:- “It may be observed that I have been brief and restrictive in my review of the submissions by learned counsel in their respective briefs of argument which appellant viewed fell short of what that court should have done. What the court below did in a situation where a “no-case submission” was at play was exactly what our procedural law provides in order that the merit of the substantive case is not jeopardised or compromised. The situation is an interlocutory scenario and the accused/appellant has not testified, therefore the need for extreme caution not to enter into the arena of the substantive matter prematurely, had to be exercised. Asking the court to embark on a detailed examination or evaluation of the one-sided evidence adduced only by the prosecution is a request in vain, as the court cannot do so without fatally demolishing the case before conclusion. See Fagoruwa v. State (2014) 10 NCC 309 at 330; Daboh v. State (1977) 5 SC 122; State v. Audu (1986) 1 QLRN 220 at 227.

The need to be as brief as possible when a trial court is faced with a “no-case submission” is now a settled matter of procedural law but to reiterate that position, I shall quote what this court said in that regard in Daboh v. State thus:-

“When a submission of no prima facie case is made on behalf of an accused, the trial court is not thereby called upon at that stage to express any opinion on the evidence before it. The court is called upon to note and rule accordingly to that which is before the court, no legally admissible evidence linking the accused person with the commission of the offence he is charged. If the submission is based on discredited evidence such discredit must be on face of the record”.

The above is when the no-case submission has succeeded, at which the trial court would go into the evidence before it in evaluation and opinion. However, where as in this case, the “no-case submission” has failed, the trial court says no more than, “The no-case submission” of the accused has failed as the accused has a case to answer and is therefore asked to make his defence. That court gives no reasons and no details on why he came by that conclusion so as not to encroach into a half-baked trial without the defence side of the story as caution is the word.”

From the foregoing and the better articulated lead judgment, I see no merit in this appeal and I hereby also dismiss it as I abide by the consequential orders made.

**ARIWOOLA JSC**:

I had the privilege of reading in draft, the lead judgment just delivered by my learned brother, Sidi Bage JSC. I agree entirely with the reasoning therein and the conclusion arrived thereat, that the appeal lacks merit and ought to be dismissed. The appeal is accordingly dismissed by me.

Appeal dismissed.

**AKAAHS JSC**:

This appeal is based on the same facts as appeal No. SC. 68/2014 in which my learned brother, Bage JSC, dismissed the appeal and affirmed the decision of the court below further overruling the no-case submission.

I agree entirely with his reasoning and conclusion that the appeal lacks merit. This appeal like the one in SC. 68/2014 lacks merit and accordingly dismiss it. It is remitted to the Cross River State High Court presided over by Ita J., for defence and should be given expeditious hearing.

**AUGIE JSC**:

I have had a preview of the lead judgment delivered by my learned brother, Bage JSC, and I agree with him that the appeal lacks merit. He dealt with the issues at stake in this appeal, and I will only comment on the issue of no-case submission, and what that entails. The appellant and thirteen other accused persons were initially charged before the Yahe Chief Magistrate Court of Cross River State. The case was moved from the Chief Magistrate Court to High Court, Ogoja, wherein they pleaded not guilty to the charge of conspiracy, unlawful assembly, malicious damage and stealing against them.

The prosecution called five witnesses. At the close of its case, the appellant and the other accused persons opted to make a no-case submission, wherein they urged the High Court, Ogoja (trial court) to hold that a prima facie case had not been made out against them.

By making the no-case submission at the trial court, they were, in effect, telling the trial court one of two things or both, and that is -

i. That there has been, throughout the trial, no legally admissible evidence linking them with the 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. What a court usually considers where a no-case submission is made, is whether the prosecution has made out a prima facie case requiring, at least, some explanation from an accused – see Tongo v. C.O.P. (2007) All FWLR (Pt. 376) 636, (2007) 12 NWLR (Pt. 1049) 525 SC. A prima facie case in a criminal trial is one that has proceeded up to where it will support findings if evidence to the contrary is disregarded, and prima facie evidence means evidence, which on the face of it, is sufficient to sustain the charge against the accused - see Abacha v. State (2002) FWLR (Pt. 118) 1224, (2002) 11 NWLR (Pt. 779) 437 SC, and Ajidagba v. Inspector-General of Police (1958) SCNLR 60, where this court quoted with approval the definition in the Indian case of Star Sigh v. Jitendrana-thsen (1931) I.L.R. 59, 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.”

In this case, it is clear from the details set out by my learned brother that the prosecution established a prima facie against the appellant. It is for this and the other reasons in the lead judgment that I also dismiss this appeal and affirm the decision of the court below.

Appeal dismissed.