**NBA-CLE SESSION**

**CRIMINAL LITIGATION TRAINING**

**APPEALS AGAINST NO CASE SUBMISSION APPLICATION.**

**25th MAY, 2023**

**BY MUHAMMED L. SHUAIBU**

**JUSTICE COURT OF APPEAL**

**SOKOTO DIVISION.**

1. **INTRODUCTION**

 The Constitution of the Federal Republic of Nigeria 1999 as amended presume every person charged with a criminal offence to be innocent until proved guilty. Furthermore, no person who is tried for a criminal offence shall be compelled to give evidence at the trial. Thus, the Constitution accords rational methods towards the discovery of just end. A no case submission has always been in our criminal codes and more recently, it has been enacted in sections 302 and 303 of the Administration of Justice Act, 2015. The pertinent provision of section 302 and 303 of Administration of Justice Act, 2015 reads as follows:

**“302-The court may on its own motion or on application by a defendant after hearing the evidence for the prosecution, where it considers that the evidence against the defendant or any of several defendants is not sufficient to justify the continuation of the trial record, a finding of not guilty in respect of the defendant without calling on him or them to enter his or her defence and the defendant shall accordingly be discharged and the court shall then call on the remaining defendant, if any to enter his defence.**

**303-(1) Where the defendant or his legal practitioner makes a no case submission in accordance with the provisions of this Act, the court shall call on the prosecution to reply.**

**(2) The defendant or his legal practitioner has the right to reply to any new point of law raised by the prosecutor, after which, the court shall give its ruling.**

**(3) In considering the application of the defendant under Section 303, the court shall in the exercise of its discretion, have regard to whether:**

**(a) an essential element of the offence has been proved;**

**(b) there is evidence linking the defendant with the commission of the offence with which he is charged,**

**(c) the evidence so far led is such that no reasonable court or tribunal would convict on it, and**

**(d) any other ground on which the court may find that a prima facie case has not been made out against the defendant for him to be called upon to answer.”**

From the above, a defendant, in a criminal trial has the right to raise a no case submission at the end of the evidence proffered by the prosecution witnesses. The essence of an application for a no case submission, is that the pieces of evidence of the prosecution witnesses did not establish the essential ingredients of the offences alleged in the counts against the defendant and that those pieces of evidence were sufficiently contradicted and controverted through the fire of cross-examination that no reasonable court or tribunal can act on them and convict the defendant. Furthermore, that the said pieces of evidence did not link the defendant with the offences alleged against him. Th trial judge upon a perusal of the pieces of evidence so proffered by the prosecution witnesses, then decides, having taken into consideration all the aforementioned factors, and come to the conclusion as to whether or not a prima facie case has been made out against the defendant, which would require him to offer some explanation thereto.

 Note that the trail court does not evaluate nor ascribe any probative value to the evidence presented by the prosecution and that explain why the requirement is merely the establishment of a prima facie case which was severally defined as the slightest evidence legally admissible against the defendant.

1. **APPEAL AGAINST A RULING ON NO CASE SUBMISSION.**

If it appears to the trial court that a case has been sufficiently made out against the defendant, the no case submission will fail. The degree of sufficiency required as stated earlier is a prima facie case as there cannot be any standard other than prima facie case evidence adduced by the prosecution, even if believed the court cannot convict the defendant, the no case submission must be upheld by the trial court. In a no case submission, discharged amounts to acquittal and a dismissal of the complaint. [ IBEZIAKO VS C. O. P (1963) 1 SCNLR 99 and F.R.N VS ISEGHOHI (2019) 12 NWLR (PT.1685) 154 @ 169.

**(A) TIME TO APPEAL.**

 The 1999 constitution by Section 241 (1) and 242 (1) creates two rights of appeal from any decision of the High Court. They are a right of appeal as of right and right of appeal with leave either of the High Court or the Court of Appeal. Section 241 (1)(a) and (b) of the 199 Constitution (as amended) specifically provides:

**“(1) An appeal shall lie from decision of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases:**

**(a) Final decision in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance.**

**(b) Where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings”**

Furthermore, Section 14 of the Court of Appeal Act provides that leave must first be sought and obtained before filing appeals against interlocutory decisions of a trial court particularly, where the grounds of appeal are not ground of law alone.

The question then is an appeal against a no case submission a specie of interlocutory appeals requiring either the leave of the trial court or court of appeal?

In OGBONNA VS FRN (2017) LPELR – 50255 (CA) this court has held that the appellant having not limited himself to grounds of law alone, but went into foray of facts was consequently caught by the constitutional requirement of leave prior to filing of the notice of appeal.

Also the apex court in DANKOFA VS F.R.N (2019) 9 NWLR (PT. 1678) 468 @ 479-480 has held that:

**“An appeal on a no case submission requires leave to appeal because the ruling of the trial court on a no case submission necessarily involves a critical examination of the elements of the count or counts for which the appellant is charged to ascertain if a prima facie case had been made out to require his defence to the charge or charges”**

The reasoning in the above decision was that the four grounds of appeal were grounds of mixed law and facts. The requirement of leave to appeal was held to be a procedural requirement of constitutional signifance wherein the court may overlook, in deserving situation innocuous flaws for the purpose of doing substantial justice. However, the constitutional requirement of leave to appeal, though procedural could not be waived as doing otherwise would render the decision unconstitutional.

Another scenario, is whether an appellant can raise an interlocutory issue in an appeal against the judgment? Although a party can include an appeal against a ruling in an interlocutory application when he comes to appeal against the final judgment, and this is encouraged in order to avoid unnecessary delay by appealing separately, there is a procedure to be followed in order to meet the unavoidable technicalities involved. I stated that by Section 24 (2) of the Court of Appeal Act, 2004, the period prescribed for appealing against and interlocutory decision is 14 days, while the time prescribed for appealing against a final decision in three months. Thus, in order to marry the two appeals together one has to obtain leave to appeal out of time against the interlocutory ruling. It was however held in plethora of decisions that a decision made by the trial court on wrongful admission of evidence or wrongful rejection of evidence is part of the main trial and not an interlocutory decision unless special case has been made in respect of the issue. Thus, a party wishing to appeal against the judgment of the court can file one of the grounds of appeal alleging that inadmissible evidence had been admitted during trial or admissible evidence had been rejected because both are fundamental as the error might occasion a miscarriage of justice. See ONWE VS NWAOGBUINYA & ORS (200`) LPELR – 2709 (SC). Afortiori, the appellant in such a situation does not require prior leave of the trial court or court of appeal.

Now the implication of the apex court`s decision in DANKOFA VS F.R.N (SUPRA) is that a ruling on a no case submission in my humble view may and may not require leave to appeal depending on the nature of the order handed down by the trial court. As stated earlier that the decision in DANKOFA VS F.R.N (supra) was based on the challenge to the correctness of the trial court`s decision on the no case submission made by the appellant and hence a complaint on the application of the law to the facts by the trial court in which the four grounds of appeal were issues of mixed law and facts. In such situation there was no way the court of appeal could determine the appeal without a consideration of the facts in the evidence adduced by the prosecution. Lest, I forget the application for a no case submission in that case was overruled by the trial court and being an interlocutory decision which gives room for parties to go back to the same court to ask it to decide on the same matter.

The situation would certainly be different where a decision on a no case submission finally disposes of all the rights of the parties in the case and gives no room to go back to the same court to ask it to decide on the same matter. Thus, where the trial court uphold the no case submission, it finally dispose the rights of the parties and same became final. By virtue of Section 241 (1)(a) of the 1999 Constitution, leave of court is not required in the final decision of the Federal High Court or High Court sitting at first instance. This is irrespective of the nature of the ground of appeal as the appeal in such a case is of right.

Perhaps, I may need to state here that it is a constitutional requirement that where grounds of appeal raise questions of mixed law and fact, leave of either the court of appeal or the Supreme court is required by virtue of Section 233 (3) of the 1999 constitution aforesaid. While there is no requirement of leave against the final decision of the trial court on no case submission to the court of appeal, it is mandatory to seek leave to appeal to the Supreme Court when the grounds of appeal raises questions of mixed law and fact.

**B. REMEDY FOR NOT SEEKING LEAVE.**

A court is only competent to adjudicate in a matter when among other conditions, the subject matter of the suit is competently before the court, and when the action is initiated by due process of law. It follows therefore, that failure of an appellant to seek and obtain the mandatory statutorily or constitutionally required leave to appeal rendered the notice of appeal incompetent and nugatory. In EKUREKWU VS EGBOCHE (2010) 14 NWLR (PT.1213) 194 @ 206, this court has held that where an appeal requires leave of court to be obtained and the leave was not obtained such appeal is incompetent and would be struck out. This is so because a court of law has no jurisdiction to hear an incompetent appeal. And where an appeal is adjudged incompetent ***ab initio,*** the appellate court has no jurisdiction to entertain and determine such appeal. Same is to be struck out. See MOSOBA VS ABUBAKAR (2005) 6 NWLR (PT. 922) 460, ODOFIN VS AGU (1992) 2 NWLR (PT.229) 350 and OGIDI VS EGBA (1999) 10 NWLR (PT. 621) 42.

**C. NATURE OF GROUNDS OF APPEAL AGAINST THE DECISION ON NO CASE SUBMISSION**.

 Where for example, the trial court erroneously came to the conclusion that there is no evidence to prove an essential ingredient of the offence and proceeds to discharge the defendant or the court erroneously holds that the evidence adduced by the prosecution has been thoroughly discredited as a result of cross-examination or is manifestly unreliable that no reasonable tribunal could safely convict on it, the prosecution has an undoubted right of appeal against such ruling of the court. By the same token, the defendant is not disentitled from such right of appeal where he is dissatisfied with the ruling of the trial court.

The nature of the grounds appeal may vary depending on the complaint against such ruling but very often are premised on the misapplication of the law to the facts in relation to establishing prima facie against the defendant or that the evidence so far adduced by the prosecution is discredited that no reasonable court or tribunal could convict on it.

1. **CONCLUSION**

Application for a no case submission is increasingly becoming a norm in virtually all criminal trials before Nigerian courts, mainly due the prosecution policy in place. The prosecution policy in my view accounts to delays and sometimes to outright abuse of court`s processes. The current prosecution policy gives emphasis on establishment of prima facie as against reasonable prospect of conviction as the yardstick of a decision to charge. I strongly suggest a paradigm shift that charge would solemnly be dependant on reasonable prospects of conviction.

Thank you.