IN THE SUPREME COURT OF NIGERIA

Suit No: SC105/2000

Petitioner: Sunny Tongo ,Helen Tongo

And

Respondent: Commissioner of Police

Date Delivered: 2007-04-27

Judge(s): Umaru Atu Kalgo, George Adesola Oguntade, Aloma Mariam Mukhtar, Walter Samuel Nkanu Onnoghen, Christop

Judgment Delivered

This criminal appeal has a long history. On 25-02-92, the appellants were charged before His Worship Magistrate E.I. Ikponmwonba (Mrs.) of Edo State Judiciary sitting at Benin City. The charge brought against them reads:

\"That you Sunny Tongo (m) and Helen tongo (f) on or about the 16th day of February, 1991 at Plot 88, 2nd Garrick Avenue, Off Siluko road, Benin City in Benin Magisterial District, wilfully and unlawfully damaged block wall fence valued N2, 000.00 property of Madam Ehisiemwen Odiase (f) and thereby committed an offence punishable under section 451 of the Criminal Code Cap. 48 Vol. 2, Laws of Bendel State of Nigeria, 1976.\"

Each of the appellants pleaded not guilty to the charge. The hearing of the case commenced on 25-05-92. The prosecution called four witnesses after which the appellants\' counsel Mr. A.N.A. Igbinovia made a no-case submission on 31-8-92. -On 22-9-92, the learned Magistrate in her ruling overruled the no-case submission. Dissatisfied, the appellants brought an appeal against the said ruling before the High Court sitting at Benin City. On 19/9/95, Edokpayi J. (as he then was) heard arguments on the appeal; and on 26-9-95, dismissed same. Still dissatisfied, the appellants brought a further appeal before the Court of Appeal, Benin City (hereinafter referred to\" as the court below\'). The court below on 14-12-99 in its judgment dismissed the appellants\' appeal. The appellants have now come before this Court on a final appeal. Appellants\' counsel filed separate briefs for each of the two appellants. In the first appellant\'s brief, the issues for determination in the appeal were identified as the following:

\"(1) Whether the appellant can rely on the defence of Bona fide-claim of right (Section 23 Criminal Code) at the close of the Prosecution\'s case. (Grounds\" 1 and 5)

(2) Whether the evidence of the Prosecution was discredited such that no reasonable tribunal can rely on it or manifestly unreliable at the close of the prosecution\'s case. (Ground 2).

(3) Whether the parameters for a prima facie case are one and the same at the consent level (Section 340 (2)(b) CPL) and at the close of the Prose'cution\'s case. (Section 286 CPL) (Ground 3)

(4) Whether the prosecution made out a prima facie Case. (Ground 4).\"

From the second appellant\'s brief, the issues formulated for determination read thus:

\"1. Whether the Alibi inured to the benefit of the appellant - Ground 2.

2. Whether the prosecution established a prima facie case.\"

The respondent formulated two issues for determination in respect of the 1st appellant and adopted the issues raised by the 2nd appellant. The respondent\'s issues are amply accommodated under the appellants\' issues. I do not need to reproduce the said respondent\'s issues. I shall be guided in this judgment by the issues formulated by the appellants. The said issues could be conveniently discussed together. I shall so discuss them.

I reproduced earlier the charge brought against the appellants under Section 451 of the Criminal Code, Cap. 48 Vol. II of the Laws of Bendel State. The appellants had faced a charge of wilful and unlawful damage to property. The contention of the appellants, which they have doggedly pushed through all the courts below, is that, at the close of the prosecution\'s case before the learned Magistrate, a case was not made out sufficiently against the appellants to require them to make a defence. Were the appellants correct in their standpoint' I think not.

The evidence before the court of trial shows that the 1st appellant had sold a parcel of land to the complainant who testified as P. W. 1. According to P.W. 1, he had paid for the land in 1977. P.W. 1 caused the land to be fenced with a block wall about 1990. On 16/2/91, a Saturday P.W.I went on the land. As to what happened on that day P.W.I at page 5 of the record of proceedings testified thus:

\"On 16/2/91, when we got there, 1st and 2nd accused person and the neighbours were destroying the fence, I ask him why. He said he was not selling to me again. I asked how many years ago I paid for the land. He said if 1 had power I should go to court. He said that if the case gets to court, even the child yet unborn will get married before the case is heard. He said he\'d tell the court he\'ll pay N2 monthly.

2nd accused person then spat on me with their children. I went home and waited till Sunday. On Monday, when they did not come, I went to arrest them. I reported at Ogida police Station. They sent a policeman to follow me. They were at home. 2nd accused person said she would wait for the children from school. 1st accused person was taken to the station. 2\" accused person later came to meet 1s\' accused person in the station. Yes, he gave me the documents. I will know them.\"

It is apparent from the above extract of the evidence of P.W.I, that there was evidence that the two appellants were seen by P. W. 1 destroying the wall fence.

Similarly P.W.2 testified as to the fact that the appellants were seen destroying P.W.l\'s wall fence on the land. At page 8 of the record, P.W.2 testified thus:

\"Yes, I remember 16/2/91. On that day, PW1 and I went to the piece of land by Dr. Garrick Area. We went with 2 labourers for clearing. When we got there, we met accused persons destroying the fence of PWl. It was a block fence. She said she was surprised to see them destroying the fence. I called 1st accused person and asked him why he was destroying the fence. He said he had come to PW1 \'s house to tell her that he is not selling the land again. He had sold the land to PW1 for about N9, 000.00. I asked him if he had told PWl, before destroying the fence and he said No. My sister said the two labourers should start clearing the land. Then 2nd accused person said they should not and was dragging the shovel from the labourers. So I called PW1 and said let us go before there was bloodshed. Before we left I asked PW1 if he were in the one with PWl position and someone did this to him, he would like it and he said no. So I took PWl and the 2 labourers away.\"

P.W.3, a soldier testified as to how he had accompanied P.W.I to the 1st appellant to negotiate and pay for the land in dispute. He had also witnessed the measuring of the land with a tape.

P.W.4 was the Investigating Police Officer (I.P.O). He had obtained the statement of the 1st and 2nd appellants, which he tendered as Exhibits A and B respectively. Now in a portion of his statement exhibit \'A\', the 1st appellant wrote:

\"Then I brought tape to measure the one sold and it was 60ft width instead of 50ft width. I went to one Mr. Joseph Igiebor who is a brother to Madam Ehisienmwen and told him that he should tell her sister that I am not prepared to self the plot and that she should come and collect her money. Joseph asked me if I am prepared to add '42,000.00 as interest to the money. I said yes. Joseph promised to speak to his sister. Joseph later came to tell me that he told his sister about what we discussed and she refused. About two weeks ago, I personally removed the fence she made to demarcate the plot. I removed the fence because that was not the place the fence suppose to be erected.\"

I did not destroy the blocks. That on 16/2/91 as it was alleged, I, my wife and two others did not destroy fence.\"

The 2nd appellant, in her Statement to the Police exhibit \'B\' said:

Two weeks ago, when I returned from travelling, I met that my husband has removed the fence Madam Ehisienmwen used to demarcate her plot from our own.

That on 16/2/91, while I was in our compound, Madam Ehisienmwen came with four other men through the broken fence, I greeted her and she failed to respond. As she was asking me about the removed fence, I have to send for my husband. When my husband came she asked him about the broken fence and my husband res'ponded that he was the one who removed the fence. My husband said to avoid trouble; she should come and collect her money. At this time she started to shout on us and we later went into our house. On that 16/2/91, I, my husband and two others as it was alleged did not destroy the fence made by Madam Odiase. The fence was removed by my husband about two weeks ago. I did not drag any of her labourer at all. I was arrested and I made statement to the police.\"

It is seen from the above extracts of exhibits \'A\', that there was no denial from the 1'| appellant that he had destroyed the wall fence on the land he sold to PW1. He claimed to have done so because the wall fence was not erected on the land he had sold to the P.W. 1. The 2nd appellant on the other hand claimed that she had travelled somewhere when her husband destroyed the wall fence.

There is no doubt that at the close of the case for the prosecution there was evidence from P.W.I and P.W.2 that the appellants had been seen destroying P.W.l\'s wall fence. The statements made by the appellants would also appear to have confirmed the testimony of P.W.s\' 1 and 2 that the 1st appellant destroyed the wall fence. The 2nd appellant raised an alibi. The alibi however needed to be set against the evidence of P.W.s 1 and 2, that she was seen destroying the wall fence.

The trial magistrate in her ruling on the no-case submission made by the defence counsel said:

\"From the above, the damage must not only be unlawful but also malicious. Learned counsel is relying on Section 23 Criminal Code. For this provision to avail the accused person, it must be shown that the accused person damaged the property in good faith under a claim of court or under a genuine mistake.

The question whether there is a mistake or a genuine claim of right will be determined upon the view of the facts of the case. In this case it is clear that the damage was not a mistake. So was it in good faith under a claim of right' From the evidence before me, the 1st accused person sold land to PW1 and she built a fence on it presumably to secure it: At least 2 years later the accused person brings down the fence on the ground that he does not want to sell as she had taken 10ft from his land.

The destruction of a block fence because the other has 10ft. of ones land cannot in my view be considered a reasonable-way I which to prevent unauthorized occupation of the land. Especially since accused person had sold and collected money on that land and this had lapsed since then. Legal means therefore, is a way available to bring PWl\'s occupa'tion to an end. Refer to Fashion Iroaghon v. C. O.P (1964) NMLR pg. 48 where it was held that: -

\'Once the evidence for the prosecution revealed that there was a genuine dispute as to ownership or at least the control of the land, the prosecution has to succeeded in discharging the basis of proof showing that the act was done unlawfully. In the case at hand, there is no evidence of any genuine dispute before me. I hold therefore that the elements of the offence under Section 415 have been established. At this stage the court is not considering the issue of sufficiency of evidence for conviction but rather whether the prosecution has made out a prima facie case requiring at least some explanation from the accused persons. I have taken the whole evidence of the prosecution into consideration and I am satisfied that a prima facie case has been made out against the accused persons requiring them to be called upon to make their defence.\'\"

The appellate High Court and the court below affirmed the ruling of the trial court.

It seems to me that appellants\' counsel has not fully adverted his mind to the circumstances when a no case submission may be upheld by the court. In Ajidagba v. I.G.P. [1958] 3 FSC 5 at 6, Abbot FJ discussed the import of a no-case submission in relation to Section 286 of the Criminal Procedure Act thus:

\"It is plain from the language of that section (particularly when one looks at the first two lines of the following section) that a Magistrate is under a duty to discharge an accused person if he finds that no prima facie case has been made against him. We have been at some pains to find a definition of the term \"prima facie case\'. The term, so far as we can find has not been defined either in the English or in the Nigerian courts. In an Indian case, however, Sher Singh v. Jiterndranathsen [1931] I.L.R 59 Calc. 275 we find the following dicta: -

'What is meant by a 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.' (per Grose J.) 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\' (per Lort Williams J.).

A decision to discharge an accused person on the ground that a prima facie case has not been made against him must be a decision which, upon a calm view of the whole evidence offered by the prosecution, a rational under'standing will suggest; the conscientious hesitation of a mind that is not influenced by party, preoccupied by prejudice or subdued by fear.\"

In Daboh & Anor. v. State [1977] 5 SC. 122 at 129 this Court per Udoma J.S.C. discussed when a no-case submission may be upheld:

\"Before, however, embarking upon such an exercise, it is perhaps expedient here to observe that it is a well-known rule of criminal practice, that in a criminal trial at the close of the case for the prosecution, a submission of no prima facie case to answer made on behalf of an accused person postulates one of two things or both of them at once.

Firstly, such a submission postulates that there has been throughout the trial no legally admissible evidence at all against the accused person on behalf of whom the submission has been made linking him in any - way with the commission of the offence with which he has been charged, which would necessitate his being called upon for his defence. Secondly, as has been so eloquently submitted by Chief Awolowo, that whatever evidence there was which might have linked the accused person with the offence has been so discredited that no reasonable court can be called upon to act on it as estab'lishing criminal guilt in the accused person concerned; and in the case of a trial by jury, that the case ought therefore to be withdrawn from the jury and ought-not to go to them for a verdict. On the other hand, it is well settled that in the case of a trial by jury, no less than in a trial without a jury, however slight the evidence linking an accused person with the commission of the offence charged might be, the case ought to be allowed to go to the jury for their findings as Judges of fact and their verdict.

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

Now, looking at the evidence of P.Ws. 1 and 2, could one say that there was no evidence linking the 1st and 2nd appellants with the crime alleged' I think not. It may well be that when, at the conclusion of the case for the prosecution and the defence, the sufficiency of the evidence called through prosecution witnesses, and their credibility may become the crucial determinants of the guilt or otherwise of the appellants, that would not be a reason to cast overboard the testimony of P.Ws. 1 and 2 who had testified that they saw the appellants destroying the wall fence of P.W.1. As for the alibi raised by the 2nd appellant, this would cease to be of a consequence if the court accepts the evidence of P.Ws. 1 and 2. See Fatoyinbo v. Attorney General, Western Nigeria [1966] W.N.LR. 4 at 6-7.

The other issue that I need to briefly react to is whether or not the -factors relevant in the consideration of a no-case submission are the same with those to be considered when the State is seeking the consent of the court to bring information against an accused. Appellants\' counsel raised this question as the third issue. The issue however is irrelevant to the issue whether or not a prima facie case was established against the appellants by the prosecution. It is not a relevant issue in this appeal and I refuse to be drawn into a discussion of it.

I am satisfied that the no-case submission made by the appellants was correctly rejected by the three courts below. This appeal has no merit. It is dismissed.
I only need add that the 1st appellant when he made his first appearance before the trial court on 25/2/92 was 69 years old. Now he is 85. The 2nd appellant is 62. Appellants\' counsel ought to have borne in mind the health risks involved in committing the 1st appellant to a fresh trial after embarking on an appeal, which manifestly was devoid of any merit.

Appeal dismissed.

Judgment Delivered By
Aloma Mariam Mukhtar, J.S.C.

I have had the privilege of reading in draft the lead judgment delivered by my learned brother Oguntade J.S.C. I entirely agree with the reasoning and conclusion reached that the appeal is completely devoid of any merit and should be dismissed. It irks me to see such flimsy matters of this nature rising to the apex court of the land. It is apparent from all of the steps taken that the learned counsel of the appellant was oblivious of the resources put into the matter right from the magistrate court to this court, most especially the time wasted. It is a pity.
I also dismiss the appeal in its entirety.

Judgment Delivered By
Walter Samuel Nkanu Onnoghen, J.S.C.

This is an appeal against the judgment of the Court of Appeal Holden at Benin City in appeal No.CA/B/273/96 delivered on the 14th day of December, 1999 in which the court dismissed the appeal of the appellants against the judgment of the High Court of Edo State sitting on appeal in appeal No. B/5CA/95.

The appellants were charged before the Magistrate\'s Court of Edo State, Holden at Benin City with the following offence: -

\"That you Sunny Tonga (M) and Helen Tonga (F) on or about the 16th day of February, 1992 at Plot 88 2nd Garrick Avenue, off Siluko Road, Benin City in Benin Magistraterial District, willfully and unlawfully damaged block wall fence valued N2, 000.00k property of Madam Ehisiemwen Odiase (f) and thereby committed on offence punishable under section 451 of the Criminal Code Cap. 48 Vol.2 Laws of Bendel State of Nigeria, 1976\".

The appellant pleaded not guilty to the charge and the prosecution called witnesses in proof of the charge who were duly cross examined by learned counsel for the appellants who, after the prosecution closed their case, made a no case submission without resting on same. The learned trial Magistrate overruled the no case submission resulting in an appeal to the High Court, which dismissed same as lacking in merit. The appellants were still not satisfied and appealed to the Court of Appeal, which dismissed the appeal resulting in the final/further appeal to this court.

It should be noted that appellants filed separate appeals and separate briefs of argument though their appeals were assigned a single number. It is funny that the ruling of the learned trial magistrate which is about three pages (from page 17-20 of the record) could generate so much literature that at the time it got to this court a simple ruling on a no case submission has generated four issues for determination in an appellant\'s brief of 51 pages!! It has also taken almost 14 years for the case to travel through the hierarchy of courts in this country without us seeing the end of it yet, particularly as the learned counsel for the appellants, in his wisdom, did not consider it necessary to rest on the said no case submission.

The issues as formulated by learned counsel for the appellants are as follows: -

'1. Whether the Appellant can rely on the defense of bonafide claim of right (section 23 C.C) at the close of the prosecutions case: Grounds 1&5

2. Whether the evidence of the Prosecution was discredited suck that no reasonable tribunal can rely on it or manifestly unreliable at the close of the prosecution case - Ground 2

3. Whether the parameter for a prima facie case are one and the same at the consent level (section 340(2)(b) CPL) and at the close of the prosecution\'s Case (section 286 CPL) - Ground 3

4. Whether the prosecution made out a prima facie Case, Ground 4.'

On the other hand, learned counsel for the respondent formulated only two issues, namely;

\"(i) Whether the evidence of the prosecution has established a prima facie case against the Appellant

(ii) Whether the defence of Bonafide claims of right under section 23 of the Criminal Code can avail the Appellant at the stage of a no case submission\".

I hold the view that the essence of a submission of a no case to answer lies in the contention that the evidence of the prosecution called in the discharge of the burden of proof placed on them by law, has failed to establish a prima facie case, in the instant case, of willful and malicious damage or establish the ingredients of the offence against the accused to make it imperative for the court to call upon the accused to defend himself or answer to the charge or open his defence or enter his defence. It should always be borne in mind that at the stage where a no case submission is made, particularly where learned counsel indicates intention not to rely on same, what is to be considered by the court is not whether the evidence produced by the prosecution against the accused is sufficient to justify conviction but whether the prosecution has made out a prima facie case requiring, at least, some explanation from the accused person as regard his conduct or otherwise. See Queen v. Ojuwa(1959) 4 FSC 64; Duru v. Nwosu(1989) 4 WLR (Pt. 113) 24 at 31; Ikomi v. State (1986) 3 NWLR (Pt. 28) 340 at 366; Onagoruwa v. State (1993) 7 NWLR (Pt. 303) 49 at 80 etc, etc, etc..

Looking at the record, can it be said that a prima facie case was made out against the appellants as found by the learned trial magistrate'

That calls for a look at some evidence as produced by the prosecution in proof of the charge. For instance;

PW 1 stated in evidence as follows: -

'.... On 16/2/91 when we got there, 1st and 2nd accused and the neighbours were destroying the fence. I asked him why, he said he was not selling to me again. I ask him how many years ago I paid for the land. He said if I had power I should go to court...\"

On the other hand, PW2 testified inter alia, as follows:

\"...When we got there we met accused persons destroying the fence. She said she was surprised to see them destroying the fence. He said he has come to PWI\'s house to tell her that he was not selling again. He has sold the land to PW1 for about N9, 000.00\".

It should be remembered that the charge is malicious damage to \"a block wall fence\" property of PW1. There is no evidence that the block fence was not put up by PW1 neither have the appellants denied destroying the said fence.

The pieces of evidence reproduced supra is legally admissible to prove the offence of malicious damage to property against the appellants particularly as the said evidence was not discredited as a result of cross examination neither was it demonstrated to be so manifestly unreliable that no reasonable court or tribunal can safely convict on it.

Learned counsel for the appellants has submitted rather forcefully, that the defence of bona-fide claim of tight made hi good faith avails the appellant. The defence is provided for hi section 23 of the Criminal Code, which states thus

\"A person is not criminally responsible for an offence relating to property for an act done or omitted to be done by him with respect to any property in exercise of an honest claim of right and without intention to defraud\".

Emphasis supplied.

From the above provision, it is clear that for an accused person to avail himself of that defence he has to produce evidence at the trial to establish the fact that the claim of right is:

(a) Made with all honesty, and

(b) Without intention to defraud.

It is for the trial court to then decide whether the said defence avails the appellants particularly since a prima facie case has been made out against the appellants. It follows therefore that having regard to the particular facts of this case, the defence of bona fide claim of right made in good faith is not available to the appellants at the no case submission Stage hi the proceeding.

With the above facts I hold the view that the essential ingredients of the offence of malicious damage to property contrary to section 451 of the criminal code were duly established thereby making out a prima facie case against the appellants. I therefore have no hesitation whatsoever in coming to the conclusion that having regard to the totality of the evidence adduced by the prosecution the learned trial Magistrate was right in holding that a prima facie case had been made out against the appellant making it necessary for the court to call on the accused persons to open their defence to the charge and that the lower appellate courts were perfectly in order when they affirmed the decision of the learned magistrate.

In conclusion I agree with my learned brother Oguntade J.S.C., whose lead judgment I had read in draft, that the appeal is hopelessly without merit and should be dismissed.

I accordingly dismiss same and affirm the judgments of the lower courts.

Appeal dismissed.

Judgment Delivered By
Christopher Mitchell Chukwuma-Eneh,J.S.C.

I have had the advantage of reading before now the judgment of my learned brother Oguntade JSC just delivered in the appeal. He has in my respectful view given the issues raised in the appeal a good treatment. I agree with his reasoning and conclusions.

In this case the 1st and 2nd appellants are married couple and have been charged with the offence of \"wilfully and unlawfully damaging the block-wall-fence of one Madam Ehisiemwen Odiase contrary to Section 451 C.C. Cap. 48 Volume 11 Bendel State Laws of Nigeria 1976 applicable in Edo State\". This appeal is against the concurrent decisions of the lower Courts starting from the Magistrate\'s Court, Benin in the then Bendel State, the High Court and- Court of Appeal. The case has finally come to this Court. The prosecution closed its case as far back as 20/08/92. The appellants have made a no case submission on 31/08/92 by their Counsel without resting their case thereon. The trial Court in a considered ruling has overruled the no case submission on 22/9/92 when this case truly started its journey through the

Courts (underlining for emphasis). The accused persons appealed to the High Court which \"after hearing their appeal dismissed the appeal for lack of merit. Aggrieved by the decision the appellants again appealed to the Court of Appeal, which also dismissed their appeal. Still aggrieved by that decision both appellants have finally appealed to the Court on five grounds of appeal. Each of the appellants filed a brief of argument and the respondent has responded equally in that manner by filing two briefs. The 1st appellant in his brief of argument has raised four issues for determination while the 2nd appellant has raised only two issues for determination. In respect of the 1st appellant the issues are as follows:

(1) Whether the appellant can rely on the defence of Bona fide claim of Right (section 23 C.C.) at the close of the Prosecution\'s case. (Grounds 1 and 5)

(2) Whether the evidence of the Prosecution was discredited such that no reasonable Tribunal can rely on it or manifestly unreliable at the close of the prosecution\'s case. (Ground 2)

(3) Whether the parameters for a prima facie case are one and the same at the consent level (Section 340 (2) (b) CPL and at the close of the Prosecution\'s case (Section 286 C.P.L.). (Ground 3)

(4) Whether the prosecution made out prima facie case (Ground 4)

The 2nd appellant has formulated two issues as follows:

(1) Whether the Alibi inured to the Benefit of the Appellant

(2) Whether the prosecution established a prima facie case.

The respondent perhaps to meet the appellants\' case frontally on an individual basis has filed 2 briefs in line with the appellants two briefs. Against the 1st Appellant brief, the respondent has raised two issues as follows:

(1) Whether the evidence of the prosecution has established a prima facie case against the appellant

(2) Whether the defence of bonafide claims of right under Section 23 of the C.C. can avail the Appellant at the stage of a no case submission.

And against the 2nd appellant, the respondent has also raised two issues as follows:

(1) Whether the evidence of the prosecution has established a prima facie case against the Appellant.

(2) Whether the second Appellant can rely on defence of alibi.

From the foregoing issues, I am of the view that three issues stand out as the planks for deciding this appeal and, they are:

(1) Whether the evidence of the prosecution has established a prima facie case against the Appellant See Ajiboye v. The State (1996) 8 NWLR (Pt. 44) 408 at 413 SC.

(2) Whether the defence of Bona fide claim of Right under Section 23 of the Criminal Code can avail the Appellants at the close of the Prosecution\'s case.

(3) Whether the alibi innured to the Benefit of the 2nd appellant.

As regards Issue 3 of the 1st appellant brief of argument that is, where the prosecution is seeking the Court\'s consent to prefer a charge under Section 340 (2) (b) C.P.L. because it does not directly arise from the facts of this-appeal, I do not intend to deal with it.

The main issue in this case is whether a prima facie case has been made out against each of the appellants deserving a rebuttal, that is to say, to warrant calling upon each of them do make a defence. This has been held to arise when evidence against an accused is such that if uncontradicted and if believed it will be sufficient to prove the case against the accused. See Ajidagba v Inspector-General of Police (1958) SCNLR 60.

Firstly, the important pieces of evidence encompassing the-ingredients of the offence charged as per the prosecution\'s case at the trial against each of the appellants, if I may paraphrase, are that on 16/2/91 they were seen (with their neighbours) by the complainants, that is, PW1-and PW2 on PW1\'s land destroying PW1\'s block-wall-fence standing on the land sold to PW1 by the 1st appellant. The appellants have however, contended that their respective defences contained in their statements received in evidence at the trial have to be considered along with the charge preferred against them at the stage of no-case submission. And that the said ruling failed to do so. The 1st appellant in his statement has claimed that the said block-wall-fence stands on an extra 10 feet of land not forming part of the land he sold to the 1st appellant and therefore has contended lawful intervention unto the property to protect his interest in the same and so has raised in his defence, the question of bona fide claim of Right under Section 23 of C.C. The 2nd appellant on her part has in her statement raised in her defence a plea of alibi - meaning that she was not at the scene of the crime.

The issue of making a prima facie case against an accused is as contemplated in Section 287(1) of the C.P.L, and it states:

\"At the close of the evidence in support of the charge if it appears to the Court that a prima facie case is made out against the defendant sufficiently to require him to make a defence the Court shall call upon him for his defence\"

Upon the foregoing provision, the Court is required to consider on a no-case submission whether a prima facie case has been made out against a defendant before he is put to his defence. In other words, the Court has to consider whether the evidence adduced by the prosecution is such that a reasonable tribunal might in the circumstances convict. See Ibeziako v. Commissioner of Police (1963) 1 ANLR 61.\" To underscore the foregoing factor the evidence proffered in that regard by the prosecution is required to be sufficient and reliable to cover the essential ingredients of the offence, which in this case is the willful and unlawful damage of the block wall fence of the PW1 on his land. See: Omorere v. Police (1956) N.RNLR 58; Ubanatu v. Commissioner of Police (2000) 1 SC 31. It is also the case that the defendant can make a no case submission where the prosecution\'s case has been so discredited under cross-examination that no reasonable Tribunal can rely on it.

I am of the firm view, considering the evidence proffered by the prosecution in this case that the prosecution\'s case is deserving of rebuttal on the part of the appellants 95 it is already in evidence that the appellants were seen by the PW1 on his land destroying his block-wall-fence. Without any rebuttal from the accused persons as it were, the prosecution\'s case in this situation would otherwise positively and conclusively nail of the accused persons for the offence as charged and a reasonable tribunal might otherwise not hesitate at this stage to convict. Such rebuttal is due from each of them in order to raise and expatiate on their respective defences, which each of them has been contending here. The defences of bona fide claim of right under Section 23 C.C. as well as that of alibi are clearly defences in criminal law to be raised by an accused person in his \'defence at the trial, This is so in the instant case as they i.e. the appellants have not rested their respective cases on the no-case submission. The 1st appellant has to show by evidence that inspite of the prosecution\'s case the block-wall-fence is standing on his land in order to sustain his defence under Section 23 of C.C. In other words, that the extra 10 feet of land on which the block-wall-fence stands belongs to him. In the case of plea of alibi, the 2nd accused person has to show its propriety as well as promptness in giving the particulars of the alibi at the earliest opportunity to the police as the accused person in essence is saying that she was not at the scene of the crime and equally as a plea of alibi cannot be at large. See: Okosi v. The Stated (1989) 2 SC 126 at 146; See: P. 34. The burden here on each of the accused persons is on balance of probabilities as in civil cases.

I, therefore resolve all the issues including the three issues I have particularly identified above in favour of the respondent. I have, firstly, come to the conclusion that both defences cannot be considered in the ruling at the stage of no case submission even moreso as the appellants have not rested their respective cases on their no-case submission. I think it will be prejudicial to comment any further on these questions in order not to prejudice the final order contemplated in this proceeding.

However, I cannot conclude this case without adverting to the realities of this case on the ground. In conscience, are there any grounds for this case to have gotten this far taking into account the period of nearly 15 years that have intervened vis-'-vis the ultimate order of this Court in this case. I can find none excepting to say that Counsel for the appellants with respect, has rather blindly fought this case this length of time when there is no substance whatsoever in the appeal. In hindsight it is an expensively frivolous venture and this is so as the appellants could still come on appeal at the conclusion of the case on the ground that no prima facie case has been made out against the appellants at the stage the no-case submission was overruled. And I strongly observe that just as this Court frowns at frivolous interlocutory appeals in civil cases it also frowns at exercises of this nature in criminal matters.

For all the above and much fuller reasons contained in the lead judgment the appeal should be dismissed. I dismiss it and abide by the orders in the lead judgment.

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with him
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