IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON THURSDAY, THE 1ST DAY OF JUNE, 2017
BEFORE HIS LORDSHIP, THE HON. JUSTICE G.O. KOLAWOLE
JUDGE

CHARGE NO. FHC/ABJ/CR/186/2010

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA ::::: COMPLAINANT

AND

1. **CHARLES TOMBRA OKAH 'M'**
2. **OBI NWABUEZE 'M'**

} **DEFENDANTS/APPLICANTS**

3. **EDMOND EBIWARE ::::::::::::: CONVICTED**
4. **TIEMKEMFA FRANCIS OSVWO :::::::: DECEASED**

RULING

The Defendants in this proceeding were charged before this Court by a Charge originally filed on 6/12/10. It was initiated and signed by the erstwhile Attorney General of the Federation and was filed against four (4) Defendants. In the course of the proceedings, the 3rd Defendant, Edmond Ebiware in March, 2012, opted to be tried separately after the proceedings had suffered inordinate delay due to the steps and actions taken by the

other Defendants. The said Edmond Ebiware's full trial began sometime in June/July 2012 and by 25/1/13, this Court had delivered its Judgment wherein he was convicted of Counts 2, 3 and 4 which relate to him.

Again, in the course of the proceedings, the 4th Defendant, Tiemkemfa Francis Osvwo (a.k.a. General Gbokos) died in custody on 2/3/12.

The criminal proceeding was therefore left with two (2) Defendants who are still standing trial on the Charge which was amended by the Prosecution. The "Amended Charge" is dated 10/1/11 and was filed on 11/1/11. This was before the 4th Defendant passed on. The said "Amended Charge" has 8 Counts and they read thus:

COUNT 1

"That you, Charles Tombra Okah 'm' and Obi Nwabueze 'm' between the months of September, 2010 and October, 2010 both months inclusive, in the Federal Capital Territory Abuja, within the jurisdiction of the Court, deliberately and intentionally participated in the commission of terrorists act, to wit; causing the explosion of dynamites near the Eagle Square, Abuja, venue of Nigeria's 50th Independent Anniversary Celebrations and you thereby committed an offence contrary to and punishable under Section 15(2) of the ***Economic and Financial Crimes Commission (Establishment) Act, 2004.***"

COUNT 2

"That you Edmond Ebiware 'm' between the months of September, 2010 and October, 2010 both months inclusive, in the Federal Capital Territory Abuja, within the jurisdiction of the Court, knowing that one Henry Okah (now in South Africa) intended to commit treason did not give information thereof with all reasonable dispatch to the President of the Federal Republic of Nigeria and you thereby committed an offence contrary to Section 40(b) of the Criminal Code Cap. C 38, Laws of the Federation of Nigeria (LFN) 2004."

COUNT 3

"That you Edmond Ebiware 'm' between the months of September, 2010 and October, 2010 both months inclusive, in the Federal Capital Territory, Abuja, within the jurisdiction of the Court, knowing that one Henry Okah (now in South Africa) intended to commit treason did not use reasonable means to prevent the commission of the offence and you thereby committed an offence contrary to Section 40(b) of the Criminal Code CAP. C 38, Laws of the Federation of Nigeria (LFN) 2004."

COUNT 4

"That you Edmond Ebiware 'm' between the months of September, 2010 and October, 2010 both months inclusive,

in the Federal Capital Territory, Abuja, within the jurisdiction of the Court knowing that one Henry Okah (now in South Africa) intended to commit treason did not give information thereof with all reasonable dispatch to a Peace Officer and you thereby committed an offence contrary to Section 40(b) of the Criminal Code CAP. C 38, Laws of the Federation of Nigeria (LFN) 2004."

COUNT 5

"That you Obi Nwabueze 'm' between January 2010 and March 2010, both months inclusive, at Port-Harcourt, Rivers State of Nigeria, within the jurisdiction of this Court did willfully collect from one Henry OKAH 'm' (now in South Africa) the sum of One million and two hundred thousand Naira (₦1,200,000.00) with intent that the money be used to purchase cars to perpetrate acts of terrorism and you thereby committed an offence contrary to Section 15(1) of the ***Economic and Financial Crimes Commission (Establishment) Act, 2004****."*

COUNT 6

"That you Obi Nwabueze 'm' and Tiemkemfa Francis Osvwo (a.k.a. General Gbokos) 'm' between January 2010 and March 2010, both months inclusive, at Warri, Delta State of Nigeria, within the jurisdiction of this Court did participate in the commission of a terrorist act, to wit: causing the

explosion of dynamites near the Government House Annex, Warri venue of the Vanguard Newspaper's Post Amnesty Dialogue and you thereby committed an offence contrary to Section 15(2) of the ***Economic and Financial Crimes Commission (Establishment) Act, 2004.***"

COUNT 7

"That you Obi Nwabueze 'm' sometime in the month of September, 2010 or thereabout at Apapa, Lagos within the jurisdiction of the Court did willfully collect from Charles Okah and Henry Okah the sum of two million Naira (₦2,000,000.00) with intent that the money be used to purchase cars to perpetrate acts of terrorism and you thereby committed an offence contrary to Section 15(1) of the ***Economic and Financial Crimes Commission (Establishment) Act, 2004.***"

COUNT 8

"That you Charles Tombra Okah 'm' sometime in the month of September, 2010 or thereabout at Apapa, Lagos within the jurisdiction of the Court did willfully provide to Obi Nwabueze the sum of two million naira (₦2,000,000.00) to purchase cars to be used to perpetrate acts of terrorism and you thereby committed an offence contrary to Section 15(1) of the ***Economic and Financial Crimes Commission (Establishment) Act, 2004.***"

Reading through these Counts, the 1st Defendant is concerned mainly with Counts 1 and 8 in the "Amended Charge", whilst the 2nd Defendant is concerned with Counts 1, 5, 6, 7 and partly, with Count 8 in the "Amended Charge".

The trial of these Defendants had become *protracted* and in terms of speed, was *haphazard* and slow due largely to the steps taken by the series of applications filed in the course of the proceedings by the 1st Defendant through his erstwhile Counsel, Messrs Festus Keyamo's Chambers. It was the frustration occasioned by the delay in the proceedings which informed the decision of Mr. Edmond Ebiware to be tried separately on Counts 2, 3 and 4 in the "Amended Charge". Several interlocutory Rulings were delivered on the series of applications filed by the Defendants. It was after S.O. Zibiri, Esq. SAN took over, having been appointed by the Legal Aid Council, that the trial proceedings began to witness little progress. This was in 2015 – about five (5) years after the Charge was filed in the Registry of this Court as the Chambers of Festus Keyamo was discharged as Defence Counsel on 8/10/14.

The trial of the Defendants began on 23/4/15 when the Prosecution fielded its first witness, (PW1) by name John Afolabi who says that he is an "Exhibits' Keeper" with the State Security Service. The Prosecution called sixteen (16) other witnesses making a total of 17 witnesses in all in order to prove the 8 Count indictments in the "Amended Charge" dated 10/1/11 against both Defendants. Considerable number of *exhibits, documentary* and *real* items were tendered in the course of the trial. These include a Mazda 626 which was brought to the Federal High Court Car Park and

which the Court inspected in the presence of the Defendants and their Counsel with the Prosecutor and was admitted as Exhibit '2' through PW5.

When the Prosecution's 13th witness at the proceeding of 19/4/16 sought to tender the *extra-judicial Statements* which the 2nd Defendant allegedly made whilst in the custody of the State Security Service, the 2nd Defendant's Counsel, O.O. Otemu, Esq. raised an objection to nine (9) Statements being admitted in evidence on the ground that they were not obtained in accordance with the provision of Section 29(1) of the **Evidence Act, 2011**.

This development punctuated the trial as the Court had to embark on a "trail within trial" proceedings in order to enquire into the allegation of *involuntariness* of the said nine (9) Statements made by the 2nd Defendant whilst in the State Security Service custody.

The Prosecution called two (2) witnesses who participated in the exercise of taking the 2nd Defendant's *extra-judicial Statements*. Both witnesses, Victor Akeh and Alhassan Iliyasu had previously testified during the substantive trial.

The 2nd Defendant called three (3) witnesses on the said "trial within trial", and also testified for himself. Both parties filed written addresses on the *evidence led* at the "trial within a trial", and on 16/6/16, the Court delivered its Ruling. The objection raised was dismissed as the 2nd Defendant failed to *prove* the allegation that the *extra-judicial Statements* he volunteered whilst in the custody of the State Security Service were obtained by methods contrary to law as prescribed in Section 29(1) and (2)

of the **Evidence Act**. The said Statements were accordingly received in evidence and were directed to be marked as exhibits.

The Prosecution's 17th witness concluded his evidence and was cross-examined by the Defence Counsel on 30/1/17. When the proceedings resumed on 31/1/17, the learned Prosecutor, Dr. Alex A. Izinyon, SAN informed the Court, that having reviewed the evidence so far called, he would be closing the Prosecution's case.

The Defendants' Counsel, S.O. Zibiri, Esq. SAN who held brief for the 2nd Defendant's Counsel, O.O. Otemu, Esq. informed the Court that they intend to make a "no case submission". Each party was given a prescribed period within which to file their respective written addresses.

On 3/4/17, I listened to the respective oral submissions of the Counsel to the 1st Defendant, 2nd Defendant and the Prosecutor.

The 1st Defendant's Counsel, E.E. Okoroafor, Esq. adverted the Court's attention to the "No Case Submission made in favour of the 1st Defendant" dated 14/3/17 and filed on 16/3/17.

In paragraph 2.1 of the said address, the 1st Defendant's Counsel set down one issue for determination. It is: "*Whether from the over whelming contradictions in the evidence presented by the Prosecution and the failure to proof (sic) any of the ingredients of the offences, the Prosecution has been able to establish a prima facie case of Terrorism against the 1st Defendant to warrant this Honourable Court to call upon the 1st Defendant to enter his defence.*" *(Underline is mine for emphasis)*

This issue was argued by the 1st Defendant's Counsel who signed the said address, i.e. E.S. Maji, Esq. from paragraphs 3.1 – 3.70 of the address. The 1st Defendant's Counsel began his submissions by identifying the two (2) major principles as *judicial guidelines* which the Court needs to take into consideration when a "no case submission" is made on behalf of a Defendant in a criminal proceeding. He did this by citing the decision in **UGWU v. STATE (2013) 4 NWLR (pt.1343) 188 – 189** and these two (2) principles are: (1) *"There has been no evidence to prove the essential elements of the alleged offence;" and (2) "The Evidence adduced by the Prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable Tribunal would safely convict on."*

It was contended by the 1st Defendant's Counsel that "*all the grounds upon which a "no case submission" might be upheld has been established in this case*". The 1st Defendant's Counsel further contended, that "*the burden of proof in line with the provisions of Section 135(1) of the **Evidence Act, 2011** must be first discharged by the Prosecution before it shifts to the Defendant requiring his explanation*". The 1st Defendant's Counsel cited several appellate Courts' decisions on this issue and reproduced *excerpts* of the said decisions.

In paragraphs 3.8 – 3.13 of the address, *legal* submissions were *canvassed* as to the ingredients which the provisions of Section 15(1) and (2) of the **EFCC Act, 2004** pursuant to which the 1st Defendant was indicted in Counts 1 and 8 of the "Amended Charge" dated 10/1/11 will require to be proved. It was argued, that the key active words in the said provisions are

"willfully", "intent" and *"knowledge"* and that all of these, must be *proved* by the Prosecution in order to *link* the 1st Defendant with the said Counts in the "Amended Charge".

The 1st Defendant's Counsel also referred the Court to the provision of Section 303(3) of the **Administration of Criminal Justice Act (ACJA), 2015**. It was submitted, that by this provision, the Court is required to consider the presence of the following conditions before the 1st Defendant can be called upon to enter into his defence. These are: *(a) "Whether an essential element of the offence has been proved;" (b) "Whether there is evidence linking the Defendant with the commission of the offence with which he is charged;" (c) "Whether the evidence so far led is such that no reasonable Court or Tribunal would convict on it;" and (d) "Whether there has been 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."* When I read and reflected on these provisions, I am not left in any doubt, that what the National Assembly has done, was to have prescribed in *statutory form*, the body of *judicial principles* which the appellate Courts over the years, had *formulated* by their *consideration* and *interpretation* of the provision of Section 286 of the defunct **Criminal Procedure Act**, Cap.C.41, LFN 2004 which the provision of Section 493 of the **ACJA**, supra has *repealed*. I refer in this regard to the Supreme Court's seminal decision in **AJIBOYE & ANOR. v. THE STATE (1995) 8 NWLR (pt.414) 408 S.C.** Whilst *codification of developed judicial principles,* may serve the immediate need to ensure *clarity* of what a Court of law should do, it is in my view a practice which ought not to be encouraged as it may

later *hamstrung* the Court in being able, in the exercise of its *interpretative jurisdiction*, to *construe* provisions of Acts of the National Assembly in a manner that will address exigencies of differing circumstances which may never be forseen and which in my view, a *cold codification of judicial principles* are turned into *statutory* provisions as the National Assembly has done with respect to Sections 158 – 167 of the **ACJA**, supra on the issues of bail pending trial. The old state of the law as prescribed *skeletally* in Section 118(1), (2) and (3) of the **Criminal Procedure Act**, supra which the appellate Courts in the exercise of their *interpretative jurisdiction* have given some flesh by the *evolving judicial principles*, is *easier* and *better* to manage for a Court of first instance than when the *judicial principles* have been *codified* as *statutory provisions*. It makes it difficult for Courts of first instance, in the exercise of its *undoubted interpretative jurisdiction*, to *manouvre* in order to accommodate and address new developments which *codification of judicial principles* may never *anticipate* or *provide* for.

In paragraph 3.17 of the address filed, the 1st Defendant's Counsel having dealt with the preliminary issues of law, argued that none of the 17 witnesses called by the Prosecution, was able to establish the ingredients for the offences alleged against the 1st Defendant. It was submitted, that the "*Court is not called upon to express any opinion on the evidence before it, ... it is "only being called upon to take note and rule that there is before the Court, no legally admissible evidence linking the 1st Defendant with the commission of the offence".*

The Court's attention was drawn to the evidence of PW1 and the exhibits which he tendered and the evidence of PW17 who took delivery of the

exhibits sent to Port-Harcourt on or about 24/10/10 – i.e. about 23 days after the bomb-blasts had occurred in Abuja on 1/10/10. The 1st Defendant's Counsel also pick "holes" in Exhibit '1' which he argued that by the evidence of PW1, was "*not a certified true copy of the ledger*" from where it was reproduced. The Court was urged to *expunge* Exhibit '1' from its record as it was wrongly admitted and that the said exhibit having been tampered with, *was no longer reliable to be relied upon*. A few decisions of the appellate Courts were cited by the 1st Defendant's Counsel.

In relation to PW2 who tendered Exhibit 'P2', i.e. the Mazda 626, it was argued that the said exhibit was no longer in the form it was as at when PW2 saw it in the custody of the State Security Service. The 1st Defendant's Counsel briefly reviewed the evidence of PW3, PW4 and PW5 and of the role which they played. It was submitted that PW5 by his evidence, did not sell any car to the 1st Defendant. On PW6 – the subpoenaed staff of Zenith Bank Plc who also gave evidence, it was argued that the accounts' documents which were tendered, relate to "Tombra Life Support Co. Ltd". It was submitted that "*being a registered entity with distinct personality is different from the 1st Defendant*". The 1st Defendant's Counsel, by his submission, did not want to give any attention to the fact that by the "Extract of the Board Resolution" which authorized the opening of the said Account with Zenith Bank Plc, that the 1st Defendant was named as the "*sole signatory*" to the account being approved by the Board to be opened.

The 1st Defendant's Counsel however emphasized the evidence of PW6, that "*there has not been any record that "Tombra Life Support Co. Ltd." is carrying out any business other than that for which it has registered*".

The Court was urged to discountenance the evidence of PW8 and that the evidence of PW9 who is a brother-in-law to the 2nd Defendant *contradicted* that of PW16 in relation to Exhibit 2, (i.e. the Mazda 626). The 1st Defendant's Counsel having cited the Court of Appeal's decision in **STEPHEN HARUNA v. THE A.G. OF THE FED. (2010) LPELR – 4233** submitted in paragraph 3.44 of the address filed, that "*where the discrepancies or contradictions are on material point or points on the Prosecution's case, which creates some doubt, that the Defendants will be entitled to an acquittal because of such circumstances*". It was contended that the evidence of PW1, PW9 and PW16 are *contradictory* and gave *inconsistent* account on the same event.

The 1st Defendant's Counsel dismissed the evidence of PW10 being a Pathologist who was subpoenaed from the National Hospital, Abuja and who conducted postmortem examination on the bodies of the victims of the 1st October, 2010 Abuja Bomb blast as evidence of one who was not at the scene of the incident and who merely received the bodies of the victims when brought to the National Hospital, Abuja.

The Prosecution's witness 11 (PW11) was the one who sold Exhibit '2' to the 2nd Defendant and it was contended that the "Receipt of Purchase" and "Change of Ownership" which he prepared was unsigned.

PW11, it was argued, had testified that Exhibit '2' is no longer in the same shape and form when he saw it in the State Security Service Headquarters and that he also testified that he had no dealing with the 1st Defendant. Again, I note that in relation to this issue, that the 1st Defendant's Counsel

was quiet on the evidence of PW11, that the name of the 1st Defendant came up when he was to prepare Exhibits '5B' and '5C' – being the "Purchase Receipt" and "Change of Ownership" he wanted to issue to the 2nd Defendant, and that he never saw the 2nd Defendant again to collect Exhibits 'P5', 'P5A', 'P5B' and 'P5C' until he met him at the State Security Service Headquarters as a "suspect".

The 1st Defendant's Counsel summarized the evidence of PW12 who tendered coloured pictures taken at the scene of the bomb blasts which were admitted as Exhibits 'PC' – 'PC10', respectively. PW13 was the one who took the Statement of the 2nd Defendant. The said Statements were challenged in the course of the proceedings as it was alleged that they were not *voluntarily* made. I had considered this issue earlier in this Ruling and the said Statements made by the 2nd Defendant were admitted as exhibits because, the allegation of *involuntariness* of the Statements were found *unproved* by the 2nd Defendant and through the three (3) witnesses he called.

The evidence of PW14 relates to the incident of bomb blasts which occurred in Warri on 15/3/10. The evidence of PW15 was to the effect that the 1st Defendant instructed him to courier certain consignments by ABC Transport to Port-Harcourt to be received by one Nimi Allison. These were exhibits that were received as '2D10'. It was the consignment which PW17 testified that he collected on 24/10/10 from ABC Transport in Port-Harcourt. It was submitted that the testimony of PW15 was *contradictory* and that PW16 also testified, that Exhibit '2D10' was signed for by him when he was not the consignee. The 1st Defendant's Counsel submitted

that the evidence of PW15; PW16 and PW17 as to Exhibit '2D10' "*glaringly contradicts each other*" and that it ought "*to be resolved in favour of the 1st Defendant*". It was argued that the "*case of the Prosecution leaves more to desire for as it was riddled with material contradictions and conflicting evidence amongst the Prosecution witnesses*". The 1st Defendant's Counsel also argued, that "*from the testimony of all the Prosecution witnesses, none could establish that the 1st Defendant facilitated, supported, mobilized or in fact carried out the said offences for which he is being charged with*". The Court was urged, in the circumstances where the evidence of the Prosecution witnesses are *contradictory*, not to *pick* and *choose* which evidence it will accept and that the doubts created by the *contradictions* must be resolved for the benefit of the 1st Defendant. The Court was referred to the decision of the Court of Appeal in **AL-MUSTAPHA v. STATE (2013) 17 NWLR (pt.1383) 403**. The Court was urged to *discharge* and *acquit* the 1st Defendant "*as no prima facie case has been established against him*".

The 2nd Defendant through his Counsel, O.O. Otemu, Esq. also filed a written address on the "2nd Defendant's No Case Submission". It's dated 27/3/17.

In paragraph 2.1 of the address filed, the 2nd Defendant's Counsel set down one issue for determination. It is: "*Whether from the evidence led by the Prosecution, a prima facie case upon which this Honourable Court can act upon and convict the 2nd Defendant has been made to warrant the 2nd Defendant been (sic) call (sic) upon to enter into his defence.*" *(Underline is mine)*

The 2nd Defendant's Counsel began his submissions by citing the Supreme Court's decision in **C.O.P. v. AMUTA (2017) LPELR – 41386 (S.C)** wherein the apex Court re-stated the general *judicial principles* which *guide* and *regulate* what the Court will consider when a "no case submission" is being made in a criminal trial.

The 2nd Defendant's Counsel argued that the "*presumption of innocence of an accused person is sacrosanct*" and that the "*burden is always on the prosecution to prove the guilt of the accused and not his business to prove his innocence*". It was contended that "*without any case made out against the accused, he cannot be called upon to enter his defence because in doing otherwise would undermine the constitutional presumption of innocence*". The 2nd Defendant's Counsel submitted, that "*at the stage when a "no case submission" is made, the trial Court is not called upon to express an opinion on the evidence before it*". He further submitted that "*the credibility of the witnesses is not in issue at this stage*" and that what the "*Court is required to do is to determine whether or not there is legally admissible evidence linking the accused person with the commission of the offence with which he is charged*". The 2nd Defendant's Counsel cited a host of appellate Courts' decisions on these *legal propositions*.

In paragraph 1.5 of the address, it was submitted that "*there is no credible evidence to warrant the 2nd Defendant being called upon to enter his defence*", and that the Court should "*discharge this case against the 2nd Defendant*".

In paragraph 1.6 of the address, the 2nd Defendant's Counsel did a summary of his understanding of the evidence of PW2, PW5, PW9 and PW11 and in paragraph 1.7, the 2nd Defendant's Counsel submitted, that the evidence of these witnesses and of PW10, that "*there was no evidence that directly or remotely show or link the 2nd Defendant to the 1st October, 2010 Abuja Bomb blast*". The 2nd Defendant's Counsel argued that even the evidence of PW12 "*did not link the 2nd Defendant to Abuja bomb blast*".

In paragraph 1.11 of the address filed, the 2nd Defendant's Counsel identified Counts 1, 5, 6 and 7 of the "Amended Charge" filed on 10/1/11 as the ones that were "*brought against the 2nd Defendant*". The next paragraph was used to consider the various provisions of the **EFCC Act**, supra which the 2nd Defendant's alleged acts *contravened*. These are Sections 15(1) and (2). It was contended that "*there is no evidence that any of the vehicles purchased by the 2nd Defendant was involved directly or indirectly in any of the bomb blasts and so cannot be said to have committed any offence under Section 15(2) of the **EFCC Act***".

It was also argued, that when the provision of Section 15(1) of the **EFCC Act** are read, that the Prosecution has not *led* evidence to *prove* Counts 5 and 7 in the "Amended Charge". It was contended that "*the Prosecution must not only prove that the 2nd Defendant collected monies from Henry and Charles Okah to buy and fabricate hidden compartment in the cars, he must prove that indeed the money was to commit or facilitate the commission of a terrorist act*". This submission does not seem to take into consideration, the evidence of PW2, PW5 and PW6 in relation to the purchase of cars in Lagos by the 2nd Defendant and of the payment of N2

Million to the 2nd Defendant from the Zenith Bank Plc Account of "Tombra Life Support Co. Ltd." – which the 1st Defendant's Counsel, had argued, is a *distinct* and *separate entity* from the 1st Defendant who I had remarked, is by the "Extract of its Board Resolution" tendered by PW6, is the "*sole signatory*" to the said account. Even with this observation, I still warn myself, that it is not a criminal offence for the 2nd defendant to purchase fairly used cars, but when the use to which the cars were allegedly being put to has become an *issue of criminal enquiry*, it may, and I say this without *prejudice* to the other issues which the 2nd Defendant's Counsel has argued in his address, be of some interest to the Court, what eventually become of the cars apart from Exhibit '2' which was brought to the Court's premises. This is a question which I am of the view, and say this by way of *obiter*, may be asked and perhaps, interrogated against the evidence of PW5 who says that the 2nd Defendant – who *ostensibly* bought two (2) cars from him and his friend, PW11, never returned to collect the "Purchase Receipt" and the "Change of Ownership" – admitted as Exhibits 'P5', 'P5A', 'P5B' and 'P5C' and that he never sets his eyes again on the 2nd Defendant until when he saw him in the State Security Service Headquarters. Exhibits 'P5', 'P5A', 'P5B' and 'P5C' appear to acknowledge that the Hyundai Salon Car was sold to "MR. CHARLES ORKWA" which 'PW5' says, was the name the 2nd Defendant gave to them to the prepare the "Purchase Receipt".

The 2nd Defendant's Counsel argued that for the Prosecution to *prove* Counts 5 and 7 in the "Amended Charge" which were based on the provision of Section 15(1) of the **EFCC Act**, it must "*prove that the 2nd*

Defendant either provided or collected money with the intention that the money will be used or is in the knowledge that the money shall be used for any act of terrorism". In paragraph 1.16 of the address filed, the 2nd Defendant's Counsel submitted that "*assuming this Court believe the testimony of the Prosecution and agree with the testimonies of all the witnesses called by the Prosecution, can this Court even convict the 2nd Defendant*". This question was answered in the *negative* because according to Mr. Otemu, "*the evidence placed before the Court if acted on, is not sufficient, or has not in any way linked the 2nd Defendant to any of the bombings*" and it was submitted, that "*this "no case submission" should succeed against the Prosecution*".

In paragraph 2.3 of the address, it was submitted that "*in order to determine the criminal liability of the 2nd Defendant under Section 15(1) and (2) of the* ***EFCC (Establishment) Act, 2004****, the guilty mind or intention of the 2nd Defendant must be established together with other elements of the offence*". In paragraph 2.6 of the address filed, the 2nd Defendant's Counsel listed five (5) issues of facts that must be *proved* in order to establish the 2nd Defendant's "*mens rea*" in relation to the provision of Section 15(1) and (2) of the **EFCC Act**. The learned Counsel submitted that the "*Prosecution have (sic) not proved any of the ingredients of the offence under Section 15 of the* ***EFCC (Establishment) Act, 2004***". It was argued that the "*burden of proof cannot be shifted on the 2nd Defendant nor can he be called upon at this stage to enter his defence*". The 2nd Defendant's Counsel then referred the Court to the provisions of Section 303(3)(a) – (d) of the **ACJA, 2015** which I had

earlier made a short analysis of vis-à-vis the hitherto provision of Section 286 of the defunct **Criminal Procedure Act**, Cap.C.41, LFN 2004 which has been *repealed* by the new Act on the statutory considerations for a "no case submission".

In paragraph 2.12 of the address, the 2nd Defendant's Counsel argued that none of the 17 witnesses called by the Prosecution "*was able to establish a prima facie evidence in proof of the ingredients of the offences*".

The 2nd Defendant's Counsel referred to the evidence of PW1 and of the series of the exhibits that were tendered by him as the "Exhibits' Keeper". It was submitted that all the documents which were tendered as certified true copies "*woefully fall short of the legal requirement of a certified true copies as provided for in Section 104(1) of the* ***Evidence Act, 2011***".

It was contended that none of the certified true copy documents shows evidence of payment of fees "*for the certification of all the documents tendered as certified true copy*". The Court was urged to *expunge* from its records, such documents wrongfully admitted in evidence.

In paragraphs 2.20 – 2.21 of the address, the 2nd Defendant's Counsel re-visited the proceedings conducted as a "trial within trial" in order to ascertain the truth or otherwise of the allegation made by the 2nd Defendant on the *voluntariness* or otherwise of the *extra-judicial Statements* which the 2nd Defendant made whilst in the State Security Service's custody. It was contended that the 2nd Defendant, by the evidence of PW13 made only nine (9) *extra-judicial Statements*, whereas "*this Court admitted 10 extra-judicial Statements purportedly made by the*

2nd Defendant even where the Prosecution only tendered nine (9) extra-judicial Statements purportedly made by the 2nd Defendant". By this submission, it is legitimate to assume, that the 2nd Defendant's Counsel is insinuating that this Court may have on its own, manufactured the tenth (10th) Statement. It's an issue which I believe could have been resolved by the 2nd Defendant's Counsel going through the Court's Exhibits' file in order to ascertain how many Statements were tendered and received as exhibits. If only nine (9) were tendered and received in evidence, and the Court's records state that they are ten (10), it is either the tenth Statement does not exist, in which case it can be regarded as a slip when the tendered documents were being marked, or it may be due to arithmetical calculations as the Ruling delivered on the "trial within trial" was not a bench Ruling which should have afforded the Court easy and immediate access to the Exhibits' File. It is not an issue which in my view, has any impact on the success or otherwise of the 2nd Defendant's "no case submission". It suffices that the extra-judicial Statements which the 2nd Defendant *volunteered* had been received in evidence as exhibits – whether they are nine (9) or ten (10) in number is of no evidential moment to the trial of the 2nd Defendant as the Court cannot rely or use a 10th Statement that does not exist.

In paragraph 2.22 of the address filed, the 2nd Defendant's Counsel concluded by submitting, that "*with the attendant contradictions and confusions*", "*the totality of the evidence*" before this Court, "*does not establish a case that should warrant this Court to call on the 2nd Defendant to go through the rigor of opening his defence*". The Court was urged to

discharge the 2nd Defendant "*as no prima facie case has been established against him*".

When the Prosecutor was served with the written addresses filed on behalf of the 1st and 2nd Defendants on their respective "no case submission", the Prosecutor, Dr. Alex A. Izinyon, SAN filed a "*Complainant/Respondent's Written Submission in Opposition to the No Case Submission on behalf of Charles Tombra Okah*". It's dated and was filed on 22/3/17.

The Prosecution having reproduced the eight (8) Counts in the "Amended Charge" dated 10/1/11, states that the State called 17 witnesses and tendered several exhibits.

In paragraph 2.1 of the address filed, the Prosecution sets down only one issue for determination. It is: "*Whether the Prosecution has made out a prima facie case warranting this Court to call on the 1st Defendant to open his defence (if any).*"

The Prosecution identified Counts 1 and 8 in the "Amended Charge" dated 10/1/11 and filed on 11/1/11 being the Counts that concern the 1st Defendant. It was contended that the argument of the 1st Defendant that no *prima facie* case has been established against him "*is not only highly misconceived but also the height of falsehood*". Just as the 1st and 2nd Defendants' respective Counsel have done in their written addresses filed to support the "no case submission" made, the Prosecutor also prefaced his submissions by re-stating with the aid of appellate Courts' decisions what a "no case submission" entails in our *criminal jurisprudence*. In paragraph 3.5 of the address, Dr. Izinyon, SAN argued that "*what is looked*

at" in a "no case submissions", "*is not whether the evidence against a Defendant is enough to justify a conviction but instead whether the Prosecution has made out a prima facie case that requires the Respondents to make some explanation*". He cited the Supreme Court's decision in **AGBO v. STATE (2013) 11 NWLR (pt.1365) 377 @ 394**. The Prosecution submitted that "*however slight the evidence against a Defendant is, the case must proceed for the Defendant to explain his own side of the matter*".

The Prosecution in his address, reminded the Court that its Ruling should be brief and that the Court cannot at this stage, consider the *credibility* of the Prosecution witnesses or accord *probative value* to *evidence led*. The *limited jurisdiction* which the Court is required to exercise when a "no case submission" is made, is to ascertain from the *evidence led*, "*whether the prosecution has made out a prima facie case and not proof of guilt of a Defendant*". He cited and relied on the decision in **SUBERU v. STATE (2010) 8 NWLR (pt.1197) 586 @ 610**.

The learned silk also argued, that Counts 1 and 8 in the "Amended Charge" are predicated on the provision of Section 15(1) and (2) of the **EFCC Act**. It was submitted, that Count 1 relates to Section 15(2) of the **EFCC Act**, whilst Count 8 relates to Section 15(1) of the said Act. The Prosecution adverted the Court's attention to the evidence of PW2 and page 2 of Exhibit 1. The said evidence was in the Prosecution's view, one that shows that the 1st Defendant knew what Mr. Henry Okah was up to when he commissioned PW2 on what he will do with the two cars in Port-Harcourt. The evidence of PW6, a staff of Zenith Bank Plc who gave evidence as to

the Cheque of N2 Million issued by the 1st Defendant to the 2nd Defendant on 13/9/10. The Court's attention was drawn to Exhibit 'P4' being the 1st Defendant's Statement made on 31/10/10 wherein he admitted issuing the said Cheque to the 2nd Defendant. The Prosecution also referred to the evidence of PW7 from Corporate Affairs Commission who tendered the incorporation records of "Tombra Life Support Co. Ltd." The Court's attention was drawn to Exhibit '2D6' – being one of the Statements the 2nd Defendant made on 29/10/10. *Excerpts* of the said Statement were reproduced in paragraph 3.22 of the address filed wherein the 2nd Defendant stated the purpose for which he was issued a Zenith Bank Plc Cheque for N2 Million. The Prosecutor argued that PW5 and PW11 in their Statements, confirmed what the 2nd Defendant has stated in Exhibit '2D6' who admitted selling two (2) cars to the 2nd Defendant. It was argued that the two (2) cars were kept in the 1st Defendant's house and it was there that the *hidden compartments* were constructed by the PW2. It was contended that it was the 1st Defendant who paid PW2 after he has finished the job of constructing the *hidden compartments* in the two cars which were done in the 1st Defendant's house. Again, the Prosecutor referred to Exhibit '2D8' – being the 2nd Defendant's Statement made on 9/11/10. The Prosecutor having reproduced *excerpts* of the 2nd Defendant's Statement in Exhibit '2D8' argued that "*a person in possession of timers knows what it is meant for*" and argued that "*the timers were eventually used to detonate the bombs*". The question is: where did the Prosecutor get this evidence or conclusion from? But in paragraph 3.33 of the address, as if the Prosecutor was reading my mind on the question which I have

just posed, he referred to Exhibit '2D9' – again, being the 2nd Defendant's Statement made on 15/11/10, he reproduced *excerpts* of the said Statement by which the 2nd Defendant stated that the 1st Defendant loaded two of the cars "*with dynamite and proceeded to Abuja from Port-Harcourt between 28th and 30th September, 2010*".

The Prosecutor also referred the Court to the evidence of PW15 whose real identity was shielded by referring to him as "AS". He was the person the 1st Defendant sent to courier the three (3) Bags through ABC Transport from Lagos to Port-Harcourt which PW17 says that he collected on 24/10/10 at the ABC Transport Park in Port-Harcourt.

The Prosecutor in paragraphs 3.39 and 3.40 of the address filed, also adverted the Court's attention to the evidence of PW9 – who is a brother-in-law to the 2nd Defendant and of PW12 who confirmed that one of the two (2) cars used for the bomb blasts was a Mazda 626 which the 2nd Defendant bought.

The Prosecutor also referred to the evidence of PW10 who as a medical doctor, gave evidence of persons killed in the Abuja bomb blasts. In paragraph 3.43 of the address filed, the learned Prosecutor submitted that "*the totality of the 1st Defendant's Written Address relate to the evaluation of evidence, credibility of witnesses, admissibility of documents which are issues that should be raised on the merit of this case and not at the stage of a "no case submission*". The Court was urged by the Prosecution, to discountenance the paragraphs of the 1st Defendant's written address that dealt with these issues.

The Prosecutor submitted in paragraph 3.46 of the address, that "*what the Prosecution is required to show at this stage is to link the 1st Defendant to the offence for which he is charged by establishing a prima facie case against the 1st Defendant*". It was contended that reliance placed on Section 135(1) of the **Evidence Act** that the Prosecution must *prove* its case *beyond reasonable doubt* "*is grossly inapplicable to the stage of this trial as shown above*". He contended that "*what the 1st Defendant wants is proof of guilt which is not required at this stage*". He again cited the decision in **SUBERU v. STATE** supra.

In paragraph 3.49 of the address, the learned silk submitted that "*the burden of proof required at this stage is to show a prima facie case against the 1st Defendant*" and states that "*the Prosecution has done*".

On the arguments of the 1st Defendant's Counsel that there were *contradictions* in the evidence of PW1 and PW17 regarding the exhibits produced by PW1 as the "Exhibits' Keeper", the Prosecutor argued that "*there is no such contradiction*" and the Court was urged to reject the said *contention*. He submitted that "*the fact that the exhibits were recovered 23 days after the bomb blasts cannot by any stretch of imagination be said not to be connected to the said bomb blasts*". On the argument that Exhibit '1' should be discountenanced as it fails to meet the requirements of Section 104 of the **Evidence Act**, the Prosecutor urged this Court to reject the said *contention* and submitted that "*Exhibit '1' complies with Section 104 of the* ***Evidence Act***".

On the evidence of PW2 concerning Exhibit '2', the learned Prosecutor argued that Exhibit '2' having been kept for over seven (7) years, deteriorated due to the elements and that it was even bought as a "*second hand car*", and that it was not due to any physical tampering.

On the *contention* that "Tombra Life Support Co. Ltd." "*is not conducting business different from its object*" which was based on the evidence of PW6 – the Zenith Bank's officer who was subpoenaed, the Prosecutor urged the Court to read the contents of Exhibit 'PD8' and Exhibit 'P4'. Exhibit 'P4' is the Statement made by the 1st Defendant. The Prosecutor also argued that there is no *contradiction* between the evidence of PW9 and PW16 and submitted that the "*1st Defendant failed to realize that two Mazda 626 cars were bought by the 2nd Defendant*" and that "*whilst one was brought to Abuja which was filled with dynamites and detonated, the other had mechanical fault and thus left behind in Port-Harcourt*". He submitted that PW16 "*was only referring to the Mazda 626 left behind in Port-Harcourt*". The learned Prosecutor submitted that "*there is clearly no contradiction in the evidence of PW1, PW9 and PW16 on the said Mazda 626*". It was further argued that even if there was *discrepancy*, that "*the said discrepancy is not material*". He argued that "*PW5 and PW11 have testified that PW11 sold the said Mazda 626 to the 2nd Defendant and the 2nd Defendant had admitted purchasing the said car from PW11*". Again, the Prosecutor submitted that PW11 never gave evidence that Exhibit 'P2' was tampered with and that "*there is no element of contradiction in the evidence of PW5 or between the evidence of PW15, PW16 and PW17*". The Prosecution argued that PW15 signed the "Way Bill" as the "sender" and

PW16 signed on behalf of "Department of Security Service" as the one who received the consignment from ABC Transport in Port-Harcourt. He also argued that PW15 testified that the "Way Bill" admitted as Exhibit '2D10' "*contains names of items it is taken*" and that the "*items listed on the "Way Bill" are what are contained in the bag*". He argued that "*there is no contradiction here*".

In paragraph 3.66 of the address, the Prosecutor argued that "contrary to the submission of the 1st Defendant in paragraph 3.60 of his Written Address, PW16 never said that Exhibit '2D10' was signed by his Agency as "Sender"; and in paragraph 3.67, he submitted that "*contrary to the submission of the 1st Defendant in paragraph 3.60 of his Written Address, PW17 testified that what were found in the bags sent by the 1st Defendant were different from what were listed on the "Way Bill"*". The question I will pose again here is: Is the 1st Defendant name on the "Way Bill" as the "Sender" of the consignments carried by ABC Transport? The Prosecutor referred the Court, as if he was answering to the question, to Exhibit 'PD6' – being the Statement made by the 2nd Defendant on 29/10/10 which *ex facie linked* the 1st Defendant with the consignment which the "Way Bill" *evidenced*. The Prosecutor argued that there are no *contradictions* on the evidence of its witnesses and that even if there are, he submitted that "*they are not material contradictions considering the direct evidence required to prove the offence which the 1st Defendant is charged*". It was contended that the "*Prosecution has made out a clear prima facie case against the 1st Defendant which requires him to enter his defence to put up explanation to the prima facie case made out against him*".

The Court was "*urged to dismiss the "no case submission" raised by the 1st Defendant and order him to enter his defence, if he has any*".

In relation to the 2nd Defendant's Counsel's written address on the "no case submissions", the Prosecution also filed a "*Complainant/Respondent's Written Submission in Opposition to the No Case Submission on Behalf of Obi Nwabueze*". It's dated and was filed on 29/3/17.

The learned silk in the address filed, follows the same pattern and style of presentation as he has done in relation to the address filed to oppose the 1st Defendant's Counsel's address.

After he has reproduced the eight (8) Counts in the "Amended Charge" dated 10/1/11, he sets down one issue for determination which is similar to the lone issue that was argued in the address filed to oppose the written submissions filed on behalf of the 1st Defendant. The said issue is: "*Whether the Prosecution has made out a prima facie case warranting this Honourable Court to call on the 2nd Defendant to open his defence (if any).*"

In relation to the 2nd Defendant, the Prosecutor identified Counts 1, 5, 6 and 7 in the "Amended Charge" as the ones that relate to the 2nd Defendant.

As the learned silk as done in the reply filed to the 1st Defendant's address, he also prefaced his submissions in respect of the *Complainant's address to the 2nd Defendant's Written Address by recapturing the jurisprudence and legal principles distilled from judicial decisions* based on the hitherto

provision of Section 286 of the **Criminal Procedure Act**, supra which deals with the requirements Court of first instance should concern itself with when a "no case submission" is being made on behalf of a Defendant who is standing trial. The *judicial decisions* and their *excerpts* which the learned SAN cited to convey his submissions are substantially the same as he had previously cited in the written address filed to oppose the 1st Defendant's Written Address on the same issue.

In paragraph 3.13 on page 8 of the address filed, the learned Prosecutor, just as he had done earlier, argued that Counts 1, 5, 6 and 7 in the "Amended Charge" which affect the 2nd Defendant are predicated on the provision of Sections 15(1) and (2) of the **EFCC Act**, supra. It was contended by the Prosecutor, that the *evidence adduced* through the 17 witnesses called by the State show that "*the 2nd Defendant participated in the commission of terrorist act and collected money with intent that the money shall be used or in knowledge that the money shall be used by any act of terrorism pursuant to Section 15(1) and (2) of the* ***EFCC Act***".

In paragraph 3.15 of the address filed, the Prosecutor further argued that "*the evidence adduced ... show the 2nd Defendant as the Chief Co-ordinator of both the 15th March, 2010 Warri Bomb blasts and the 1st October, 2010 Abuja Bomb blasts*".

The Prosecutor in order to justify the conclusions which he has reached, began his analysis of the evidence produced by reference to the testimony of PW2 and referred the Court to pages 2 – 3 of Exhibit 'P2' tendered by PW3. The learned Prosecutor reproduced *excerpts* of Exhibit 'P1' being the

extra-judicial Statements volunteered by PW2 who is a welder by occupation.

The Prosecutor also referred to the sum of N2 Million allegedly paid to the 2nd Defendant by the 1st Defendant to purchase four (4) cars and linked this with the testimony of PW6 who is a staff of Zenith Bank Plc subpoenaed to testify on the banking relationship with the 1st Defendant's Company, "Tombra Life Support Co. Ltd." The said Cheque, the Prosecutor submitted, was cashed by the 2nd Defendant and also referred to page 4 of Exhibit 'P4' – being the *extra-judicial Statement* of the 1st Defendant made on 31/10/10. The Prosecutor, still on the issue of the N2 Million paid by the 1st Defendant to 2nd Defendant, referred the Court to page 3 of Exhibit '2D6' – being the *extra-judicial Statement* made by the 2nd Defendant on 29/10/10. The *excerpts* of the said exhibit were reproduced in paragraph 3.20 of the address filed, and also referred to pages 4 – 5 of Exhibit '2D8' of the 2nd Defendant's Statement made on 9/11/10.

The Prosecutor, still appearing to be tying the "*web of the testimonies*" of the witnesses together to build its case, also referred to the evidence of PW5 and PW11 which he argued, corroborated the Statements of the 2nd Defendant in Exhibits '2D6' and '2D8' which he urged the Court to read along with Exhibits 'P2' and 'P3' being the Statements made by PW5 and PW11 which were tendered through PW3 and PW4. The learned silk also referred the Court to Exhibit '2D8' – being the Statement made by the 2nd Defendant on 9/11/10 and specifically reproduced *excerpts* from its page 6 in paragraph 3.23 of the address filed. The Prosecutor linked the evidence in Exhibit '2D8' with the testimony of PW2 – who was the welder who

constructed the false *bottom compartments* to the four (4) cars in the premises of the 1st Defendant in Apapa, Lagos. The Court was referred to Exhibit 'P2' and to the evidence of PW15 nicknamed "AS".

In paragraph 3.26 of the address, the learned Prosecutor reproduced *excerpts* on page 7 of Exhibit '2D8' – being the Statement made by the 2nd Defendant on 9/11/10 and whilst adverting to the issue of the 8 timers which the 1st Defendant handed over to the 2nd Defendant – on the strength of Exhibit '2D8', the Prosecutor in paragraph 3.28 of the address filed, submitted, against these evidence, that "*a person in possession of timers knows what it is meant for*" and concluded that: "*Timers were usually used to detonate bombs*". In order to authenticate the submission which he has just made on the use of *timers*, the Prosecutor reproduced *excerpts* on page 3 of Exhibit '2D9' – being the Statement made by the 2nd Defendant on 15/11/10. The Prosecutor submitted that "*the 2nd Defendant personally arranged the movement of the remaining three (3) cars to Port-Harcourt from Lagos*" and *linked* this with Exhibit '2D8' – being the 2nd Defendant's Statement made on 9/11/10 wherein he admitted that the 1st Defendant told him (2nd Defendant) that the sum of N500,000.00 had been paid into the 2nd Defendant's account to "*cover logistics and other needs for the movement of the three (3) cars from Port-Harcourt to Abuja*".

In paragraphs 3.31 – 3.34 of the address, the Prosecutor gave an account of the *evidence led* by his own understanding of the movements of three (3) of the cars from Port-Harcourt to Abuja and relate this with the evidence of PW9 – who is the 2nd Defendant's in-law and in whose Estate in Abuja two (2) of the cars were parked. The Court's attention was again

drawn to pages 10, 11, 12 and 13 of Exhibit '2D8' – being the 2nd Defendant's Statement made on 9/11/10.

The Prosecutor later moved to the evidence of PW10, the Pathologist with the National Hospital, Abuja who attended to the dead victims of the Bomb blasts.

In relation to the 15th March, 2010 Bomb blasts, the Prosecutor referred to the Statements made by the 2nd Defendant in Exhibit '2D8' which was taken on 9/11/10 and in paragraph 3.38 of the address filed, the Prosecutor argued that "*after he became aware of what the cars were used for, the 2nd Defendant still proceeded to be involved in the 1st October, 2010 bomb blasts in Abuja*". The Prosecutor on the incident in Warri on 15th March, 2010, referred the Court to the evidence of PW14 and the evidence of PW8 which he *linked* with Exhibits 'P10' – 'P13'.

The Prosecutor urged the Court to discountenance the submissions of the 2nd Defendant's Counsel, that the 2nd Defendant was not *linked* either *directly* or *remotely* with the Bomb blasts that occurred on 15/3/10 in Warri and in Abuja on 1/10/10. It was argued that substantial submissions of the 2nd Defendant's arguments are such that "*should be canvassed on the merit of the case*".

On the issue of Exhibit '1' and the documents admitted as certified true copies, the learned silk submitted that "*all the documents admitted as certified true copies in evidence met the requirements of Section 104(1) of the Evidence Act, 2011*" and further argued, that "*the contents of Exhibit '1' were also admitted in evidence individually*". He argued that if Exhibit '1'

is rejected, *"the items listed therein still stand as they were admitted individually"*.

In paragraph 3.45 of the address, still on the issue of improper certification of Exhibit '1' in accordance with the provision of Section 104(1) of the **Evidence Act**, the Prosecutor contended that *"if fees are not paid, having met other fundamental requirements, what the Court does in the circumstance is to order that the fees be paid"* and cited the Supreme Court's decision in **TABIK INVESTMENT LTD. v. GTB PLC (2011) NWLR (pt.1276) 240 @ 258 – 259**.

The Prosecutor also argued, that the issue of certification "*should be raised at the conclusion of the entire case when 2nd Defendant had given evidence not at the stage of "no case submission"*.

On the arguments which were *canvassed* by the 2nd Defendant's Counsel on the admissibility of the *extra-judicial Statements* made by the 2nd Defendant, the Prosecutor submitted that the "*Court's Ruling on "trial within trial" where this issue was earlier raised, is very clear*" and that the 2nd Defendant's Statements were by the said Ruling, admitted. He argued that "*there is no confusion on the said Statements*" and that it is "*the 2nd Defendant that is creating confusion and if there is any which is not conceded, the 2nd Defendant should enter defence and give evidence to explain the said confusion*".

In paragraphs 3.50 and 3.51 of the address filed, the Prosecutor submitted that it "*has adduced evidence linking the 2nd Defendant to the offences he is charged*" and that "*at this stage*", what the Prosecution is required to do,

"*is to link the 2nd Defendant to the offence for which he is charged by establishing a prima facie case against the 2nd Defendant and for the 2nd Defendant to come and explain his own side of the matter*". He once again cited the Supreme Court's decision in **AGBO v. STATE**, supra. to buttress this submission.

In rounding up his arguments, the Prosecutor argued that the "*totality of the 2nd Defendant's Written Address relate to the evaluation of evidence, credibility of witnesses, admissibility of documents which should be issues that should be raised on the merit of this case and not at the stage of a "no case submission*". The Prosecution whilst citing the Supreme Court's decision in **UGWU v. STATE (2013) 4 NWLR (pt.1343) 172 @ 188** concluded his argument by stating that it has "*proved the offences which the 2nd Defendant is charged with*" and urged the Court "*to dismiss the "no case submission" raised by the 2nd Defendant and order him to enter his defence, if he has any*".

When I read the *excerpts* of the decision in **UGWU v. STATE**, supra. cited by the Prosecution, I really would not know what the Prosecution intends to make of it because, he did not *canvass* any *legal submission* for which the said decision was cited. But, when I reflected on the implication of the said decision and of the pending Criminal Charge filed simultaneously with the instant Charge in FHC/ABJ/CR/187/10, I went back to re-read the one Count in the Charge which is brought pursuant to Section 37(1) of the **Criminal Code Act**, Cap.C.77, LFN, I realized that the punishment for a conviction for the said Charge is a *death penalty* which is heavier than the penalty prescribed for the 8 Counts in the instant Charge in

FHC/ABJ/CR/186/10 which is a "life imprisonment". Having regard to the *severity* of the punishment prescribed for both criminal Charges, I would have expected that the one Count in the second Charge, i.e. FHC/ABJ/CR/187/10 should have been the *primary focal* Charge against the Defendants whilst the instant Charge which attracts a life imprisonment – as a lesser offence brought pursuant to Section 15(1) and (2) of the **EFCC Act, 2004** – being *indictment* founded on *funding and facilitating terrorist's act*, should have been the second, perhaps the *secondary* Charge. I recall that at the earlier stage of this proceeding, it was agreed that the instant Charge, i.e. FHC/ABJ/CR/186/10 will be used as the lead Charge and that whatever happens in the said Charge is taken as applicable to the second Charge, i.e. FHC/ABJ/CR/187/10.

The one Count in the said Charge has "*Particulars of Overt Acts of Treason*". The said one Count and its 22 "*Particulars*" read thus:

COUNT 1

"That you, Charles Tombra Okah, 'Male', Obi Nwabueze, 'Male' and Tiemkemfa Francis Osvwo (A.K.A. General Gbokos) between the 13th day of March 2010 and 14th October, 2010, both days inclusive, at the Federal Capital Territory, Abuja and diverse places in Nigeria within the jurisdiction of the Court, did levy war against the State in order to intimidate or over awe the President of the Federal Republic of Nigeria and you thereby committed an offence contrary to and punishable under Section 37(1) of the **Criminal Code**, Cap. 77 LFN, 1990.

PARTICULARS OF OVERT ACTS OF TREASON

1. That between 1st July, 2010 and 1st October, 2010, both days inclusive, within the Federal Capital Territory and in diverse places, Charles Tombra Okah 'Male', Obi Nwabueze 'Male' and Tiemkemfa Francis Osvwo (A.K.A. General Gbokos) 'Male' did conspire together with each other and with Henry Okah and Emmanuel Allison to make a direct attempt to endanger the life of President of the Federal Republic of Nigeria by seeking to drive two motor vehicles wired with time regulated explosive devices to the Eagle Square, in the Federal Capital Territory, Abuja, on the occasion of the nation's 50th Independence anniversary celebration, where the President of the Federal Republic of Nigeria was in attendance, for the purpose of levying war against the State.

3. Charles Tombra Okah 'Male', Obi Nwabueze 'Male' and Henry Okah 'Male' (now in South Africa), sometime in September, 2010 at Lagos, Nigeria engaged the services of one Bassey Umoren, a Welder, paying him the sum of Fifty Thousand Naira (N50,000.000) to construct hidden compartments into four (4) motor cars, two (2) of which were subsequently loaded with explosive devices at Port-Harcourt by Obi Nwabueze and Chima Orlu (now at large) and positioned on 1st October, 2010 at 0830 hours, near

the Eagle Square, in the Federal Capital Territory, Abuja, on the occasion of the nation's 50th Independence anniversary celebration, for the purpose of levying war against the State.

4. Charles Tombra Okah between the 26th September, 2010 and 8th October, 2010 sent two consignments of army camouflage torches, bullet proof vests and boots to one Emmanuel Allison for onward transmission to one Segun Ilori 'Male' (alias Stone-face), now at large, for use by terrorists recruited by Charles Okah and Henry Okah in the creeks of Niger-Delta in order to levy war against the State.

5. That on 14th October, 2010, Charles Tombra Okah, requested Emmanuel Allison for the sum of One Million Naira (N1m) for the said Charles Tombra Okah to mobilize and sponsor criminal elements in the creeks of the Niger-Delta to levy war against the State.

6. Sometime in September, 2010 Charles Tombra Okah, Henry Okah, Obi Nwabueze and Chima Orlu in diverse places in Nigeria and within the Federal Capital Territory, Abuja engaged the services of Bassey Umoren by giving him a total sum Fifty Thousand Naira (N50,000.00) to construct false compartments in the booths of the four (4) cars purchased at Lagos.

7. Charles Tombra Okah and Henry Okah engaged the services of Bassey Umoren by giving him a total sum of One Hundred and Twenty Thousand Naira (N120,000.00) to travel to Port-Harcourt, Nigeria, to construct false compartments in the booths of the two (2) cars purchased at Port-Harcourt used for the execution of the bomb blast of 15th March, 2010 for the purpose of levying war against the State.

8. Obi Nwabueze was paid Two Hundred Thousand Naira (N200,000.00) by Charles Okah to facilitate the transportation of the said cars wired with time regulated explosive devices to Eagle Square, Abuja for the purpose of levying war against the State.

9. The preparation and loading of the explosive devices into the three vehicles were personally handled by Chima Orlu (now at large) and Obi Nwabueze in the Port-Harcourt residence of Emmanuel Allison in preparation for the levying of war against the State.

10. Sometime in September, 2010 on the instruction and financial sponsorship of Charles Okah and Henry Okah, Obi Nwabueze purchased one car, Mazda 626 Saloon BY 318 FKJ from one Fatai Isiaka Adeyinka, an auto electrician at Mile 2, Lagos for the sum of N250,000.00 and a Hyundai Sonata car from Ahmed Ariyo a Motor

mechanic at Mile 2, Lagos same day at the same area in Lagos for the sum of N380,000.00 for use in the levying of war against the State.

11. Obi Nwabueze and Michael Oniawa (now at large) positioned the two vehicles wired with time regulated explosive devices at the near the Eagle Square, after being denied access by security operatives into the Eagle Square where the President of the Federal Republic of Nigeria, foreign dignitaries, top public officials and invitees were celebrating the nations 50th Independence anniversary, the President of the Federal Republic being the prime target of the planned bombings.

12. Obi Nwabueze paid sums of N25,000.00 and N27,000.00 to the other two hired drivers who together with Obi Nwabueze drove the cars wired with time regulated explosive devices from Port-Harcourt to Abuja for the purpose of levying war against the President of the Federal Republic of Nigeria.

13. The said bomb blasts of 1st October, 2010 near the Eagle Square, Abuja caused the death of about twelve persons.

14. Charles Tombra Okah and Henry Okah in the month of September, 2010 or thereabout stored up arms and ammunition in the terrorists camps in Georgekiri in the

Niger-Delta creeks for use by terrorists led by Black Moses for the purpose of levying war against the State.

15. That between 2nd January, and 15th March, 2010, both days inclusive, within Port-Harcourt, Rivers State and in divers places Charles Tombra Okah, 'Male', Obi Nwabueze 'Male' and Tiemkemfa Francis Osvwo (a.k.a. General Gbokos) 'Male' did conspire together with one another and with Henry Okah (now in South Africa), Chima Orlu (now at large) and persons unknown to make a direct attempt to endanger the lives of the Governor of Delta State, Governor of Edo State and the Governor of Imo State by seeking to drive two motors vehicles wired with time regulated explosive devices into Government House Annex, Warri, Delta State, the venue of the Vanguard Post Amnesty Dialogue, where the said Governors were in attendance, in order to levy war against the State.

16. Three (3) of the said cars were wired with time regulated explosive devices at Port-Harcourt and thereafter driven by Obi Nwabueze and two hired hands to Abuja where two of the cars were used for the execution of the bomb blasts of 1st October, 2010.

17. Sometime in March, 2010 Obi Nwabueze took Bassey Umoren to Emmanuel Allison's house in Port-Harcourt where the false compartments were constructed into the

booths of the two (2) cars which concealed the with time regulated explosive devices that were detonated at Government House Annex, Warri for the purpose of levying war against the State.

18. Sometime between January and March, 2010 at Port-Harcourt, Henry Okah gave the sum of One Million and Two hundred Thousand Naira (N120,000.00) to Obi Nwabueze and Raphael Damfebo for the purchase of two (2) cars which were later used to execute the bomb blast of 15th March, 2010 near Government House Annex, Warri for the purpose of levying war against the State.

19. On or about the 14th day of March, 2010 at Port-Harcourt, Rivers State, Henry Okah (now in South Africa), Chima Orlu (now at large), Obi Nwabueze, Raphael Damfebo and Emmanuel Allison gathered at the house of Emmanuel Allison where the said Henry Okah and Chima Orlu assembled the explosives devices into the said cars for the purpose of levying war against the State.

20. On the 14th day of March or thereabout, the two cars wired with time regulated explosives devices were driven to Warri from Port-Harcourt by Tiemkemfa Francis Osvwo (a.k.a. General Gbokos) and one Mike (now at large) to the Government House Annex, Warri venue of the Vanguard Newspapers Post-Amnesty Dialogue, where the

Governor of Delta State, Governor of Edo State and the Governor of Imo State were in attendance, in order to cause a bomb blast for the purpose of levying war against the State.

21. In the morning of 15th March, 2010 Tiemkemfa Francis Osvwo (a.k.a. General Gbokos) and the said Mike (now at large) positioned the two cars wired with time regulated explosives devices near the Government House Annex, Warri after being denied access by security operatives into the venue of the Vanguard Newspapers Post Amnesty Dialogue, where the said Governors were in attendance.

22. The explosion of the said two cars caused the death of one man.

The "*Particulars*" on the said Count, relate essentially to the facts in the *indictments* in the 8 Counts in the Charge No. FHC/ABJ/CR/186/10. However, when I read the evidence produced by the Prosecution, it does not seem that the *tenor* of the *evidence led*, was really focused on the one Count in the Charge No. FHC/ABJ/187/10 which has the life and safety of the President as its *fulcrum*. The *evidence led* has not said anything about whether or not, the President was in fact intimidated by the incident or was over awed as no witness was called from amongst the Brigade of guards to the President or even of the President himself if his direct evidence will be required, to tell the Court that the President felt intimidated or was over

awed by the twin bomb explosions that occurred in Abuja on 1/10/10. The Prosecution did not lead *evidence* as to whether or not, the 50th Independent anniversary was by reason of the explosions, abruptly ended and or that the President was ferried to safety by the Presidential guards on the said date. The address filed by the Prosecution which I have reviewed, was mainly concerned with the *indictments* in the "Amended Charge" dated 10/1/11 and no submission was made on the *evidence led* vis-à-vis the one Count in the second Charge which relates to *treason*. The Defendants' Counsel also did not *canvass* any *legal arguments* in relation to the "No Case Submission" made as it relate to the said Charge No. FHC/ABJ/CR/187/10.

I recall that the instant Charge and the sister Charge in FHC/ABJ/CR/187/10 are being heard as *consolidated* Criminal Charges because, the said Charge was meant to abide the outcome of the instant Charge which has been used as the "pilot" case. The second Charge, i.e. FHC/ABJ/CR/187/10 appears to have remained, on account of the submissions *canvassed* on the "no case submission" made by both the Defendants' Counsel and the Prosecution, *idle*, and perhaps *overtly abandoned*. It was in relation to this observed *factual* situation, that I seem to view the case cited by the learned Prosecutor that if the Court finds that a lesser offence has been committed by the Defendants, it will order the Defendants to enter their defence to the said lesser offence which criminal Charge FHC/ABJ/CR/186/10 is when compared with the punishment prescribed by Section 37(1) of the **Criminal Code Act**, supra in Charge

No. FHC/ABJ/CR/187/2010 to the 8 Counts *indictments* brought against the Defendants pursuant to Section 15(1) and (2) of the **EFCC Act**, supra.

The *tenor* of the *evidence led* and the submissions *canvassed* by both the Defendants' Counsel and the Prosecution were centrally focused on the instant Charge, i.e. FHC/ABJ/CR/186/10. In the light of the remarks that I had made earlier, that no evidence was called in order to *prove* or *establish prima facie* case that the President was intimidated or *over awed* by the incident of the twin bomb blasts that occurred within the precincts of the Eagle Square where and when the President was hosting other heads of States/Governments and other invited important dignitaries as part of the major activities to celebrate the 50th Independence Anniversary of the Federal Republic of Nigeria on 1/10/10, it can safely be assumed that the Prosecution may have tactically abandoned the second Charge, i.e. FHC/ABJ/CR/187/10 because, the submissions canvassed at the hearing on 3/4/17 failed to evaluate the *evidence led* in order to *link* it as *prima facie* proof of the *indictment* in the one Count Charge filed in FHC/ABJ/CR/187/10. Even in relation to the 15th March, 2010 Bomb blasts in Warri, the Prosecution did not call evidence to establish that the Governors who attended the Amnesty Dialogue were intimidated or over *awed* by the incident in order to *prove* a case on the provision of Section 37(1) or Section 41 of the **Criminal Code**, supra. The said Charge is for these reasons, struckout as the *evidence led* by the Prosecution, focused essentially on the 8 Counts in the Charge filed in FHC/ABJ/CR/186/10. The Defendants are by this decision, discharged from the second Charge, i.e. FHC/ABJ/CR/187/10 which relates to a more serious offence of *treason*.

On 3/4/17, I listened to the Counsel's oral submissions on the respective written addresses filed and exchanged on the "no case submission" being made by the Defendants. I listened to the oral submissions of the 1st Defendant's Counsel, E.E. Okoroafor, Esq. who adopted the written address filed on the "no case submission" dated 14/3/17 and filed in the Registry on 16/3/17. The arguments of the 1st Defendant's Counsel covered the issues which were *canvassed* on the said written address and which I had in a reasonable detail, reviewed in the course of this Ruling. The Court was urged, on *"the totality of the arguments proffered in our written address, that the 1st Defendant does not deserve to go through the rigours of criminal trial"*. The Prosecution, he contended, "*having failed to establish a prima facie evidence which requires his explanation*". The Court was urged "*to discharge the 1st Defendant*".

Shortly after I had taken the oral submissions of the 1st Defendant's Counsel, I listened to the 2nd Defendant's Counsel, O.O. Otemu, Esq. The 2nd Defendant's Counsel also adverted the Court's attention to the written address he filed on the "No Case Submission" dated 27/3/17 and was filed on 28/3/17. The said address was adopted by the 2nd Defendant's Counsel.

The 2nd Defendant's Counsel argued that the "*Prosecution has not linked the 2nd Defendant with any of the four (4) Counts with which he was charged with*" and referred the Court to Counts 1, 5, 6 and 7 in the "Amended Charge" dated 10/1/11. The Court was urged to "*uphold our "no case submission" and discharge the 2nd Defendant*".

The Prosecution was heard after the Defendants' Counsel have adopted and adumbrated their respective written addresses. In his oral submissions, the learned silk, Dr. Alex A. Izinyon, SAN adverted the Court's attention, firstly in relation to the 1st Defendant, the written address dated and filed on 22/3/17. He adopted it and urged the Court to dismiss the "no case submission" made on behalf of the 1st Defendant. The Prosecutor observed that the address he has filed is detailed enough and that the 1st Defendant's Counsel in their written submissions, delved "*into evaluation of evidence at this stage*" and "*that it is for the 1st Defendant to give any evidence against any evidence that has been given against him*". The Prosecutor did a summary of the arguments which he had canvassed on the evidence led at the trial by which the 1st Defendant was *linked* with Counts 1 and 8 in the "Amended Charge" dated 10/1/11. The Court was "*urged to hold, without evaluating this evidence*", that "*there was an issue which the 1st Defendant is required to explain*".

On the 2nd Defendant, the Prosecutor drew the Court's attention to the written address filed "in opposition to the 2nd Defendant's No Case Submission". It's dated and was filed 29/3/17. The said address was also adopted as the Prosecution's oral submissions. As it was *canvassed* in the written address filed, the Prosecutor argued that the "*2nd Defendant was the Chief Co-ordinator of the entire activity and this he shows in his extra-judicial Statements*". The Court's attention was called to Exhibits '2D8' and '2D9'. The learned Prosecutor argued that "*even these Statements alone and the essential elements of the offence having been delineated, it is for this Court to call on the 2nd Defendant to explain his role*". He submitted

that the "*Prosecution has established a prima facie case against the 2nd Defendant that could warrant the 2nd Defendant to explain his role in the whole matter*". The Court was urged to dismiss the 2nd Defendant's "No Case Submission".

After I had listened to both parties through their respective Counsel, I reserved the Court's Ruling till 16/5/17. However, on 2/4/17, I received a call from home, that my elder brother had passed on. As at when the Court sat on 3/4/17 when the addresses filed were being adopted, the family had not yet met to deliberate on the burial plans. The burial was later fixed for 17th – 19th May, 2017 which inevitably led to my having to travel home for the preparation for the burial on 15/5/17. By the time I returned to Abuja on 21/5/17, I advised the Registrars to re-schedule the Ruling till today as I had not finished reading through the evidence of the 17 witnesses called by the Prosecution when I traveled home.

In the course of this Ruling, I had deliberately taken a decision to review the addresses filed by all the parties in some reasonable details. I did so in order that the Ruling and decision which I will reach, can as far as it is possible, be brief. This is in line with the *injunction* in the Supreme Court's decision in **AJIBOYE & ANOR. v. THE STATE (1995) 8 NWLR (pt.414) 408 @ 413** where the apex Court, per Kutigi, JSC (as he then was) and now the CJN (Rtd.) opined that: "*It must be recognized that at the stage of a "No Case Submission", the trial of the case is not yet concluded. At that stage therefore, the Court should not concern itself with the credibility of witnesses or the weight of their evidence even if they are*

accomplices. The Court should also at this stage, be brief in its Ruling as too much might be said which at the end of the case, might fetter the Court's discretion. The Court should again at this stage make no observation on the facts." Keeping these *judicial injunctions* in view, the *limited jurisdiction* which I can exercise is to ask myself, when shorn of any *judicial evaluation* or ascription of any form of *probative value* to the *evidence led*, including the *documentary exhibits* tendered – some of which are the *extra-judicial Statements* made by both the 1st and 2nd Defendants in the course of their being investigated on the *indictments* contained in the "Amended Charge" dated 10/1/11, is whether the Prosecution has *led* and *adduced evidence* which *prima facie*, *linked* the 1st and 2nd Defendants to the respective *indictments* in the "Amended Charge" dated 10/1/11 and filed on 11/1/11.

Secondly, it is to ask myself if the *evidence led*, if it has *prima facie linked* the 1st and 2nd Defendants to the *indictments* in the "Amended Charge" dated 10/1/11 and filed on 11/1/11, whether the said evidence or the material part of it, has been so *discredited* by the cross-examination of the witnesses called by the Prosecution, that what will be left when the said evidence are considered, will no longer suffice in law, to establish a *prima facie evidence* that can be taken as *linking* the 1st and 2nd Defendants with the respective *indictments* in the 8 Counts in the "Amended Charge" dated 10/1/11 and filed on 11/1/11 as to require the Defendants to be called upon to enter into their defence and or to offer explanation on what may be left after the *evidence led* had been subjected to the "heat" of the "furnace" of cross-examination of the Prosecution's witnesses. It is not the

law, that the evidence which the law requires to be *prima facie*, should be sufficiently strong enough to secure a conviction of the Defendants. It suffices for the limited purpose of this Ruling, if the evidence produced, *prima facie linked* the Defendants with the offences stated in the 8 Counts in the "Amended Charge" dated 10/1/11 which are all predicated on the provision of Sections 15(1) and (2) of the **EFCC Act, 2004**. The said provision reads:

> *15(1) "A person who willfully provides or collects by any means, directly or indirectly, any money from any other person with intent that the money shall be used or is in the knowledge that the money shall be used by any act of terrorism, commits an offence under this Act and is liable on conviction to imprisonment for life." (Underline is mine for emphasis)*
>
> *(2) "Any person who commits or attempts to commit a terrorist act or participates in or facilitates the commission of a terrorist act, commits an offence under this Act and is liable on conviction to imprisonment for life." (Underline mine for emphasis)*

These provisions appear to be the extant law as at 6/12/10 when the Charge in respect of the 1/10/10 bomb blasts occurred in Abuja was filed and it was in 2011 that the National Assembly eventually passed the specific legislation, i.e. **Terrorism (Prevention) Act, 2011** which it amended in 2013 to deal with emerging threats posed by terrorism.

When I read these provisions vis-à-vis the 8 Counts in the "Amended Charge" dated 10/1/11, and when the *essential elements* of the offences created thereby are used (I have underlined the key words in the provisions in order to highlight the "*mens rea*" elements of the offences) to *juxtapose* the *evidence adduced* by the Prosecution, the questions which I had earlier set down in this Ruling, are such that I should unhesitatingly, answer the first question in the *affirmative*. By this, the *evidence adduced* by the Prosecution *prima facie linked* the 1st and 2nd Defendants with the respective Counts in the 8 Counts *indictments* in the "Amended Charge" dated 10/1/11 for which they are standing trial in this Court. See **ABACHA v. STATE (2002) 11 NWLR (pt.779) 437 @ 486**[B-G] and the Court of Appeal's decision in **ADUKU v. F.R.N. (2009) 9 NWLR (pt.1146) 370 @ 395 – 396**[F-E].

On the second question, which is closely related to the first, is whether the *evidence adduced*, which by the answer I had given to the first question which I posed upon my assessment of the Written Addresses filed and exchanged by both parties, is whether the said evidence, had been so *discredited* by cross-examination of the Prosecution's witnesses so much that what may be left of the evidence, have become so badly *fractured*, that it will be *idle*, judicially speaking, to call upon the 1st and 2nd Defendants to enter into their defence or at best, to offer explanation on what may be left of the degraded evidence which *prima facie*, may no longer in law, support the *indictments* or *link* the Defendants with the offences charged. Again, by my assessment of the testimonies of each of the witnesses called by the Prosecution and the *documentary exhibits*

tendered, I am unable to reach or return a *verdict*, that the *evidence adduced* by the Prosecution, has been so badly *discredited*, perhaps *severely fractured* that it will amount to *sheer judicial affectation to decline* to require the Defendants to enter into their respective defence. At the stage of a Ruling on a "No Case Submission", the Court is enjoined on the authorities of the appellate Courts' decisions, to *refrain* from making *prejudicial findings* on the *facts* or to dwell on the assessment of the *credibility* of the witnesses or begin to *ascribe probative value* to the testimonies of the witnesses. It is not a time when the Court should embark on an exercise to *x-ray* the *evidence led* with a view to finding contradictions which invariably may amount to ascribing *probative value* to the evidence of each of the witnesses. The primary duty of the Court is to ascertain if the *evidence led* is admissible and believable if they *link* and connect the Defendants with the *indictments* in the Criminal Charge.

It is my view, that the Court can only do these if it was already writing its "Judgment" by which on account of its *findings*, it will probably reach a *verdict* to *discharge* the Defendants. The substantial part of the forensic analysis which the 1st Defendant's Counsel did in his written address, is such that unless the Court consciously warned itself, may *invariably* occasion a "judicial slip" into the "terrains" which the several decisions of the appellate Courts have declared as a "*no go area*" at the stage when the Court is *saddled* with an application brought pursuant to Section 303(3) of the **ACJA, 2015** which I had remarked, was a *codification of judicial principles* that had over the decades, *evolved* and *developed* from the *consideration* and *interpretation* of Section 286 of the **Criminal**

Procedure Act, Cap.C.41, LFN 2004 and of other similar provisions based on **English Criminal Law and Jurisprudence**.

In conclusion, it is my view that a dispassionate consideration of the *evidence adduced* by the Prosecution, especially in relation to the evidence of PW2 which is about the construction work he did on the back seats and boots of the four (4) cars in the 1st Defendant's residence in Apapa, Lagos; the evidence of PW6 on the payment made by a Cheque issued by the 1st Defendant and cashed by the 2nd Defendant, when read and *contextualized* with the evidence of 'PW2', 'PW5', 'PW11' and 'PW15' and when *x-rayed* with related exhibits which include Exhibits 'P4', 'P2', '2D8' and '2D9', the Prosecution in my view, has *adduced prima facie evidence* which *linked* the 1st Defendant with the *indictments* in Counts 1 and 8 in the "Amended Charge" dated 10/1/11.

In relation to the 2nd Defendant, it is also my view, that the evidence of PW2, PW3, PW4, PW5, PW6, PW9, PW11 and PW15 when read and *juxtaposed* with Exhibits 'P2', 'P3', 'P4', '2D6', '2D8' and '2D9' have established a *prima facie evidence* that *links* the 2nd Defendant with Counts 1, 5, 6 and 7 in the "Amended Charge" dated 10/1/11 and filed on 11/1/11 and which in my view, should require a form of explanation from the 2nd Defendant as a defence to the said Counts.

The respective "No Case Submission" filed by the 1st and 2nd Defendants are for these reasons and by the analysis I had endeavoured to make, not well founded. They are accordingly dismissed. The 1st and 2nd Defendants are hereby directed to enter into their defences on the respective Counts

which relate to each of them based on the evidence already *led* by the Prosecution through its 17 witnesses.

Before I end this Ruling, let me take the liberty to briefly reflect on the issue of certification of Exhibit '1' which both Defendants' Counsel dwell upon in some details. I have deliberately refrained from making any *finding* on it at this stage because, it is the law that where a Court has wrongly admitted any evidence – be it *oral* or *documentary*, it is within its jurisdiction when delivering its final Judgment, to *expunge* such evidence from its records and where it is oral testimony of witnesses, to discountenance same because, by extant judicial authorities, the Court can only accept and act on admissible evidence in reaching valid decisions. See the Supreme Court's decision in **OWOYIN v. OMOTOSHO (1961) 1 All NLR 304** and in **OPEOLA v. OPADIRAN (1994) 5 NWLR (pt.344) 368 @ 386.**

Secondly, even where the said Exhibit '1' is not given any consideration at this stage when "No Case Submission" is being determined, because, it merely listed items which PW1 as the "Exhibits' Keeper" received from the investigators, it will not in any way affect the decision which I have reached that the Prosecution has *adduced prima facie evidence* that *linked* the Defendants with the *indictments* contained in the "Amended Charge" dated 10/1/11 as the listed items in Exhibit '1' have been individually tendered on the strength of their own as *legally admissible* Exhibits.

Thirdly, by the Supreme Court's decision in **TABIK INVESTMENT LTD. v. GTB PLC (2011) NWLR (pt.1276) 240 @ 258 – 259** cited by the

learned Prosecutor, it seems that the State still has a "*window of opportunity*" to get the said Exhibit '1' properly certified by payment of the prescribed fees whilst the proceeding is on and before the delivery of final Judgment since the "No Case Submission" has failed.

The Defendants' respective "No Case Submission" is hereby dismissed. I shall listen to both Counsel as to suitable dates when the judicial trial of the Defendants can resume in order for both Defendants to enter into their defence if they desire to do so.

HON. JUSTICE G.O. KOLAWOLE
JUDGE
1/6/2017

COUNSEL'S REPRESENTATION:

1. **DR. ALEX A. IZINYON, SAN with him are B.K. ABU, ESQ.; K.O. OMORUWA, ESQ.; P.O. IGOCHE, ESQ.; E. OGHOJAFOR, ESQ. and MS. C.U. ADA for the PROSECUTION.**
2. **E.E. OKOROAFOR, ESQ. with him is E. FERDINAND, ESQ. for the 1ST DEFENDANT.**
3. **O.O. OTEMU, ESQ. for the 2ND DEFENDANT.**

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