

IN THE FEDERAL HIGH COURT
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

CHARGE NO: **FHC/201/C/2026**

BETWEEN

THE STATE.....COMPLAINANT

AND

MUSA EMEKA AYO.....DEFENDANT

REPLY TO NO-CASE SUBMISSION

1.0. INTRODUCTION

1.1. Your Lordship, at the close of the Prosecution’s case, the Defendant filed a no case submission brought pursuant to Section 302 of the Administration of Criminal Justice Act arguing that the Prosecution had failed to establish a prima facie case against the Defendant. The Prosecution, in response, files this response to the Defendant’s no case submission and relies on the legal arguments put forth below in firm support of its application.

2.0. STATEMENT OF FACTS

2.1. The Defendant, Dr. Musa Emeka Ayo is a billionaire resident in the Republic of Magaria and founder of the “WAZOBIA Foundation for Magarian Relief.” In 2024, the Foundation received an award for building 50 solar-powered health clinics in remote areas of Magaria.

2.2. In February 2025, a joint operation between the Magarian Financial Intelligence Unit (MFIU) and the Magarian Military Intelligence Bureau (MMIB) flagged a series of suspicious movements:

2.2.1. Two and a half billion Magarian Pounds was over a span of 18 months deposited into the Foundation’s account via 500 different Point-of-Sale (POS) agents, with no single deposit exceeding M4.9 Million.

- 2.2.2. 2,000,000 United States Dollars was allegedly transferred to the Foundation from a “Global Peace Charity” based in a jurisdiction recently blacklisted by the Financial Action Task Force.
- 2.2.3. Intelligence suggests that 30% of the medical supplies purchased by the Foundation were found in the hands of a several insurgent groups including the proscribed “Ax Liberation Movement (ALM)”.
- 2.3. The Defendant was subsequently arrested on the basis of the aforementioned allegations during a board meeting and charged with the offence of money laundering under Section 18 of the *Money Laundering Act* and terrorism financing (providing material support to a terrorist organization) under Section 13 of the *Terrorism Prevention and Prohibition Act*.
- 2.4. During the course of trial, the Defendant maintained his innocence, alleging that the Foundation vehicles conveying the medical supplies to legitimate sources were hijacked at various points by bandits and insurgents.
- 2.5. Dr. Musa further alleged that the POS deposits were legitimate “Zakat” (charitable) donations from thousands of anonymous rural donors who did not have traditional bank accounts.
- 2.6. At the close of the Prosecution’s case, the Defendants filed a no case submission before your Lordship alleging a failure by the Prosecution to establish a prima facie case against the Defendant. The Prosecution now files this reply in response.

3.0. OFFENCES ALLEGED

- 3.1. Money Laundering under Section 18 of the Money Laundering Act, for “structuring” transactions to avoid detection.
- 3.2. Terrorism Financing under Section 13 of the Terrorism Prevention and Prohibition Act, for providing material support to a terrorist organization.

4.0. ISSUES FOR DETERMINATION

- 4.1. The Prosecution hereby formulates the following sole issue for determination by your Lordship:
 - 4.1.1. Whether having regard to the provisions of Section 36(5) of the Constitution of the Federal Republic of Magaria 1999 (as amended), the reverse burden of proof created by Section 74 of the Proceeds of Crime (Recovery And Management) Act constitutes a fundamental violation of the Defendant’s right to be presumed innocent until proven guilty?

5.0. LEGAL ARGUMENTS

5.1. WHETHER HAVING REGARD TO THE PROVISIONS OF SECTION 36(5) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF MAGARIA 1999 (AS AMENDED), THE REVERSE BURDEN OF PROOF CREATED BY SECTION 74 OF THE PROCEEDS OF CRIME (RECOVERY AND MANAGEMENT) ACT CONSTITUTES A FUNDAMENTAL VIOLATION OF THE DEFENDANT’S RIGHT TO BE PRESUMED INNOCENT UNTIL PROVEN GUILTY 2022?

- 5.1.1. On this issue, it is the Prosecution’s humble yet fervent submission that the provisions of Section 74 of the Proceeds of Crime (Recovery and Management) Act do not offend, either in letter or in spirit, the provisions of Section 36(5) of the 1999 Magarian Constitution.
- 5.1.2. Section 36(5) provides thus:
“Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty.”
- 5.1.3. While the Prosecution concedes that the constitutional presumption of innocence encapsulated in Section 36(5) is one that underpins the entirety of Magarian criminal jurisprudence—or in the words of the Supreme Court in **Daudu v. F.R.N.**,¹ a “*hallowed principle lying at the heart of criminal law*”—the Prosecution nevertheless seeks to remind this Honourable Court that Section 36(5) still finds itself subject to certain limitations. In the very next paragraph, the same Section 36(5) goes further to state, unequivocally, that “*nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.*” In other words, a law cannot be deemed illegal merely because it places on an accused person the burden of proving “particular facts”.²
- 5.1.4. Taking both the proviso and the substantive portions of Section 36(5) into account, it becomes clear that while Section 36(5) places the legal or ultimate burden of proving a Defendant’s guilt on the Prosecution, the burden of

¹ Daudu v. F.R.N (2018) 10 NWLR (Pt. 1626) 169

² Also see Ojo v. F.R.N. (2023) 11 NWLR (Pt. 1896) 433, Ohunyon v. State (1996) 3 NWLR (Pt. 436) 264, State v. Chuwang (2020) 17 NWLR (Pt. 1752) 21

proving “particular facts”, the evidential burden, can still shift to an accused person in the course of criminal proceedings.

5.1.5. The question that thus behooves this Honourable Court is not whether Section 74 of the Proceeds of Crime (Recovery and Management) Act places a burden of proof on the Defendant, but instead, on whether the burden placed by Section 74 of the Act is an evidential one justifiable under Section 36(5)’s proviso, or a legal one falling outside the scope of the proviso and going against the letter and spirit of Section 36(5).

5.1.6. The Prosecution contends, unequivocally, that the provisions of Section 74 of the Proceeds of Crime (Recovery and Management) Act merely place an evidential burden on an accused mandating him to lead evidence in proving certain facts which are within his knowledge. Section 74 of the Act reads thus:

*“Subject to the provisions of the Act, the defendant in any proceedings under this Act bears the burden of proving that he is the legitimate owner of the assets suspected to be proceeds of crime or derived from unlawful activity or that the assets are of legitimate origin and not proceeds of unlawful activity.”*³

5.1.7. The term “burden of proof” can be used in two different senses. First, it can refer to a legal burden, which refers to the ultimate burden (placed on the Prosecution in criminal cases and on the Claimant in civil cases) of establishing a case, or, alternatively, in the evidential sense which is the burden on a party to adduce evidence in proof of a particular fact to enable the Court find in his favour on that particular fact.

5.1.8. In ***Odom v PDP***,⁴ the Supreme Court noted the distinction between the legal burden of proof and the evidential burden of proof where it stated “*Whereas legal burden of proof remains throughout on the claimant to establish his case otherwise he loses his claim, the evidential burden of proof in a case*

³ Proceeds of Crime (Recovery and Management) Act 2022, s 74

⁴ *Odom v PDP* (2015) 6 NWLR (Pt. 1456) 527

fought on the pleadings rests on the party who asserts in the affirmative; and it shifts depending on the pleadings of the parties at each turn.”

- 5.1.9. Furthermore, in **F.R.N V Mamu**,⁵ the Court of Appeal noted on the evidential burden of proof that “*it is undisputable that the [legal] burden of proof in a criminal case rests on the prosecution from beginning of a criminal trial to the end. As a doctrine of law of evidence, evidential burden imports that where a given allegation, whether affirmative or negative, forms an essential part of a party’s case, the onus of proof of such allegation rests on [that party].*”
- 5.1.10. Flowing from the above provisions, it is clear that while the legal burden of proof remains static throughout the course of trial, the evidential burden oscillates, mandating parties who make certain assertions to prove those assertions to the satisfaction of the Court.
- 5.1.11. In **Daudu v. F.R.N**,⁶ the Supreme Court held a similar provision of the repealed *Money Laundering (Prohibition) Act* that placed the burden of proving the legitimacy of assets for which a Defendant could not properly account for or that were disproportionate to his “*known sources of income*” on a Defendant as being constitutional and within the confines of the proviso to Section 36(5). The Court, per Peter Odili (JSC) explained the rationale for its decision thus:

“Of a fact is that the onus or burden of such proof in a criminal trial such as this is on the prosecution to establish the ingredients of the offence beyond reasonable doubt and when the prosecution has done that and in so doing so once the prosecution having placed sufficient evidence on the guilt of the appellant either by direct or circumstantial or presumptive evidence beyond reasonable doubt required by law. At that stage, the onus is on the accused appellant to attack or rebut the evidence so presented by the prosecution by evidence contrary to what the prosecution has laid out.”

⁵ F.R.N V Mamu (2020) 15 NWLR (Pt. 1747) 303

⁶ Daudu v. F.R.N (2018) 10 NWLR (Pt. 1626) 169

- 5.1.12. In other words, where the Prosecution is able to establish a prima facie case against a Defendant, the evidential burden naturally shifts to the Defendant to put up a strong defence rebutting the Prosecution's case. A tangential yet crucial point is that where facts are within the special knowledge of an accused person, the accused person would bear the burden of proving those facts.
- 5.1.13. Applying this to the present case, the Prosecution submits that as the only person who can reliably speak to the legitimacy or otherwise of assets found in his possession is the accused himself, it is only natural that the accused be saddled with the burden of proving all facts coming within his special knowledge. Crucially, as a failure to discharge this burden does not directly result in a conviction and the Prosecution remains saddled with the obligation of proving the existence of each individual element of the offence, it is submitted that Section 74 cannot be construed as constituting a violation of Section 36(5) of the Magarian Constitution. It is so submitted.

6.0. CONCLUSION

- 6.1. It is based on the arguments canvassed above that the Prosecution prays this Honourable Court to rule against the no-case submission put forth by the Defendant and regard the evidence tendered by the Prosecution as sufficient in establishing a prima facie case against the Defendant.

7.0. INDEX OF AUTHORITIES

7.1. Cases Cited

- 7.1.1. Daudu v Federal Republic of Nigeria (2018) 10 NWLR (Pt 1626) 169
- 7.1.2. Federal Republic of Nigeria v Mamu (2020) 15 NWLR (Pt 1747) 303
- 7.1.3. Odom v Peoples Democratic Party (2015) 6 NWLR (Pt 1456) 527
- 7.1.4. Ohunyon v State (1996) 3 NWLR (Pt 436) 264
- 7.1.5. Ojo v Federal Republic of Nigeria (2023) 11 NWLR (Pt 1896) 433
- 7.1.6. State v Chuwang (2020) 17 NWLR (Pt 1752) 21

7.2. Statutes Cited

- 7.2.1. Constitution of the Federal Republic of Magaria 1999 (as amended)
- 7.2.2. Evidence Act
- 7.2.3. Proceeds of Crime (Recovery and Management) Act

Dated this 23rd Day of March 2026.



A handwritten signature in red ink, appearing to read "E. K. Andem", positioned above a horizontal line.

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FOR SERVICE ON
The Defendant's Counsel