

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE IBADAN JUDICIAL DIVISION  
HOLDEN AT IBADAN  
ON TUESDAY, THE 11TH DAY OF APRIL, 2017  
BEFORE HIS LORDSHIP, THE HONOURABLE  
JUSTICE N. AYO-EMMANUEL  
JUDGE

CHARGE NO: FHC/IB/71C/2012

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA ..... COMPLAINANT**

**AND**

**1. REVEREND EDWARD BAYO ADEJUMO } ..... DEFENDANTS**  
**2. EMMANUEL O. AKINDELE }  
3. WILLIE IBENEME }**

J U D G M E N T

The Defendants are standing trial on an eight (8) count amended charge filed on the 4<sup>th</sup> of June, 2013 to wit:

COUNT 1

*That you, Reverend Edward Bayo Adejumo 'm' between January 2007 and October 2008, while serving as General Manager Finance of Bond Chemical Industries Ltd, Awe, Oyo State, within the jurisdiction of the Federal High Court of Nigeria, did conspire with Emmanuel Akindele 'm', Willie Ibeneme 'm' and others now at large to commit a felony to wit: forgery and falsification of Bank tellers and stamps and you thereby committed an offence contrary to Section 3(6) of the Miscellaneous Offences Act Cap. M17, Laws of the Federation of Nigeria 2004 and punishable under Section 1(2) of the Act.*

COUNT 2

*That you, Reverend Edward Bayo Adejumo 'm', Emmanuel Akindele 'm', Willie Ibeneme 'm' and others now at large between January 2007 and October 2008, at Awe, Oyo State, within the jurisdiction of the Federal High Court of Nigeria, did forge Zenith Bank Plc tellers and rubber stamps which you uttered to the Accounts Department of Bond Chemical Industries Ltd (your employer) with the intent that they may be acted upon as genuine and you thereby committed an offence contrary to Section 2(a) of the Miscellaneous Offences Act Cap. M 17, Laws of the Federation of Nigeria 2004 and punishable under the same section of the Act.*

COUNT 3

*That you, Reverend Edward Bayo Adejumo 'm', Emmanuel Akindele 'm', Willie Ibeneme 'm' and others now at large between January 2007 and October 2008, at Awe, Oyo State, within the jurisdiction of the Federal High Court of Nigeria, did forge Guarantee Trust Bank (GTB) Plc tellers and rubber stamps which you uttered to the Accounts Department of Bond Chemical Industries Ltd (your employer) with the intent that they may be acted upon as genuine and you thereby committed an offence contrary to Section 2(a) of the Miscellaneous Offences Act Cap. M 17, Laws of the Federation of Nigeria 2004 and punishable under the same section of the Act.*

#### COUNT 4

*That you, Reverend Edward Bayo Adejumo 'm', Emmanuel Akindele 'm', Willie Ibeneme 'm' and others now at large between January 2007 and October 2008, at Awe, Oyo State, within the jurisdiction of the Federal High Court of Nigeria, did forge United Bank for Africa Bank (UBA) Plc tellers and rubber stamps which you uttered to the Accounts Department of Bond Chemical Industries Ltd (your employer) with the intent that they may be acted upon as genuine and you thereby committed an offence contrary to Section 2(a) of the Miscellaneous Offences Act Cap. M17, Laws of the Federation of Nigeria 2004 and punishable under the same section of the Act.*

#### COUNT 5

*That you, Reverend Edward Bayo Adejumo 'm' between January 2007 and October 2008, while serving as General Manager Finance of Bond Chemical Industries Ltd, Awe, Oyo State, within the jurisdiction of the Federal High Court of Nigeria, did conspire with Emmanuel Akindele 'm', Willie Ibeneme 'm' and others now at large to commit a felony to wit: stealing and conversion contrary to Section 516 of the Criminal Code Act Cap C38 Laws of the Federation of Nigeria 2004 and punishable under the same Section of the Act.*

#### COUNT 6

*That you, Reverend Edward Bayo Adejumo 'm', Emmanuel Akindele 'm' Willie Ibeneme 'm' and others now at large between January 2007 and October 2008,*

at Awe, Oyo State, within the jurisdiction of the Federal High Court of Nigeria, did steal the sum of ₦44,000,000.00 property of Bond Chemical Industries Ltd (your employer) and you thereby committed an offence contrary to Section 516 of the Criminal Code Act Cap C38 Laws of the Federation of Nigeria 2004 and punishable under the same section of the Act.

COUNT 7

That you, Reverend Edward Bayo Adejumo 'm' between January 2007 and October 2008, while serving as General Manager Finance of Bond Chemical Industries Ltd, Awe, Oyo State, within the jurisdiction of the Federal High Court of Nigeria, did conspire with Emmanuel Akindele 'm', Willie Ibeneme 'm' and others now at large to commit a felony to wit: fraudulent appropriation of Company property and you thereby committed an offence contrary to Section 516 of the Criminal Code Act Cap C38 Laws of the Federation of Nigeria 2004 and punishable under the same section of the Act.

COUNT 8

That you, Reverend Edward Bayo Adejumo 'm', Emmanuel Akindele 'm', Willie Ibeneme 'm' and others now at large between January 2007 and October 2008, at Awe, Oyo State, within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud, did make false entries into account nos 6011406733, 20600000630 and 401227321110 belonging to Bond Chemical Industries Ltd (your employer) and you

*thereby committed an offence contrary to Section 435 of the Criminal Code Act Cap C38 Laws of the Federation of Nigeria 2004 and punishable under the same section of the Act.*

The names of the three Defendants appeared in counts 1, 2, 3, 4, 6 and 8 while the 1<sup>st</sup> Defendant's name also appeared in counts 5 and 7 respectively.

On arraignment, the Defendants pleaded not guilty. The case then proceeded to trial.

In proving the charge against the Defendants, the learned prosecuting counsel called four (4) witnesses as follows:

- i. PW 1 - Inspector Johnson Ajayi (IPO).*
- ii. PW 2 - Bode Ajao, an Accountant with Bond Chemicals Ltd.*
- iii. PW3 - Ogunmokun Olajide, a Banker with UBA, Oyo Branch.*
- iv. PW4 - Efuonu Henry, a Banker with Zenith Bank.*

The prosecution tendered twenty five exhibits in the course of trial.

At the close of the Prosecution's case, the three Defendants opened their defence.

The 1<sup>st</sup> Defendant gave evidence as DW1 and called his wife who testified as DW2.

The 2<sup>nd</sup> Defendant gave evidence as DW3 and called his wife who testified as DW4.

Lastly, the 3<sup>rd</sup> Defendant testified in his defence as DW5.

In all, a total of seventeen exhibits were tendered for their defence.

At the end of trial, written addresses were filed and exchanged by counsel.

### REVIEW OF EVIDENCE

PW1, Inspector Johnson who is the IPO, testified that in January, 2009, petitions Exhibits P1 and P2 written by Bond Chemicals was referred to his team for investigation. He restated the content of the petition Exhibits P1 and P2 in the course of his evidence. He said base on the petition, the Defendants were arrested and on their arrest he recorded the statement of the Defendants which were tendered through him as Exhibits.

He stated that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants confessed to the commission of the offence but the 2<sup>nd</sup> Defendant did not make any confessional statement. He further testified that the modus operandi of how the crime was committed, was that the 1<sup>st</sup> Defendant who happened to be the General Manager (Finance and Administration) instructed the Company's Sales Representative not to remit proceeds of sales into the Company's account with GTB, UBA and Zenith Bank, rather such proceeds should be deposited into Wema Bank, Modakeke Branch. He said the two sales Representatives of the company to wit; Abiodun Oyeniye and Abdulmalik were involved in this act. PW1 further gave evidence of what Abiodun Oyeniye stated in his statement to the Police. The statements of Abiodun Oyeniye were thereafter tendered through him as Exhibits P3, P4 and P5 respectively.

PW1 further testified that they wrote letters to GTB and UBA which were responded to by the two Banks. The letters and their responses including deposit tellers were tendered and marked as Exhibits P6, P7 and Exhibits P8 (i-xii), P9, P10 and P11 (1 - 19). PW1 further stated that in the course of his investigation, he was informed by the Complainant that Taofiq and Olaniyi, the two sales representatives received instruction from the company to remit proceeds of their sales into the company's account with UBA and GTB.

PW1 testified that they were able to recover the sum of ₦6,395,000.00 from the 1<sup>st</sup> and 3<sup>rd</sup> Defendants and others at large, while the 2<sup>nd</sup> Defendant made a refund of ₦3,000,000.00 through his wife. He said these sums represent part of the stolen funds. PW1 further testified that the 1<sup>st</sup> Defendant listed out the properties he acquired with his own share of the stolen funds. He thereafter tendered Exhibit 16 in support. He stated further that the 2<sup>nd</sup> Defendant did not confess to the commission of the crime but that he was informed by the Complainant that, the 2<sup>nd</sup> Defendant has made some refund to the complainant. He also gave evidence to the fact that Abiodun Olaniyi was granted administrative bail upon arrest but that he has since jumped bail and has not been re-arrested till date.

PW1 finally tendered the statement of the Defendants in evidence marked as Exhibits 17, 18 and 19.

Under cross-examination, PW1 confirmed that the 1<sup>st</sup> Defendant made his statement without any inducement and that the 1<sup>st</sup> Defendant voluntarily surrendered the properties he used the illegal funds to acquire.

Under cross-examination by counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, PW1 confirmed that Exhibit P2 was made without the knowledge of 2<sup>nd</sup> and 3<sup>rd</sup> Defendants neither was the content read to them. PW1 also confirmed that he did not recover any incriminating thing or money from the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in the course of the investigation.

PW2, Ajao Olabode is an Accountant with the Complainant. Testifying he says, he knows the three Defendants but said that he was not in the service of the Complainant when this fraud incident happened. He further testified that the source of his information were from documents available to him. He said the complainant maintains three different accounts with three Banks to wit:

- i. *Zenith Bank – Account No. 6011406733*
- ii. *UBA – Account No. 206200000630; and*
- iii. *Wema Bank – Account No. 401227321110*

He stated that false entries were made into these accounts. He said letters were then written to the Banks to verify this information and the Banks responded accordingly. He thereafter tendered Exhibits P20, P21, P22 and P23. He finally stated that the Complainant recovered the sum of about ₦3,200,000.00 from the 3<sup>rd</sup> Defendant being part of the fraud.

Under cross-examination by counsel to the 1<sup>st</sup> Defendant, PW2 restated that the sources of his information are from documents.

Under cross-examination by counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, PW1 stated that the 3<sup>rd</sup> Defendant did not resign



voluntarily from service. Exhibit P24 was thereafter tendered through the PW2 to prove that the 3<sup>rd</sup> Defendant left service voluntarily. PW2 also confirmed that his coming to court was based on information he obtained from documents.

PW3, Ogunrulewu Olajide Olawoye, is a Banker with UBA, Oyo Business Office. He identified Exhibits P9, P10, and P11 (1-19). He stated that the stamp on Exhibit P11 does not belong to their bank. He also stated that the attached tellers are fictitious as it does not reflect in the account of the complainant.

Under cross-examination by 1<sup>st</sup> Defendant's counsel, PW3 admitted joining the services of the Bank in 2013. He also admitted not having any dealings with the account of the Complainant when the incident happened between 2007 – 2009.

Under cross-examination by counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, PW3 admitted that he do not know the Defendants and that Exhibit P9 does not bear the name of the Defendants.

PW4, Etuonu Henry, a Banker with Zenith Bank Plc. He testified that he does not know the Defendants in this case but that he knows Bond Chemicals. PW4 identified Exhibits P21 and P22 being the letter received from Bond Chemicals and the Banks' responses. He also tendered Exhibit P25 being tellers. He further stated that according to the tune of their letter all the tellers do not reflect any payment in Bond Chemical's account. This confirms the confession of Abiodun.

Under cross-examination by counsel to the 1<sup>st</sup> Defendant, PW4 confirmed that the payee on Exhibit P21 is one Oyeniyi Abiodun.

Under cross-examination by the counsel to the 2<sup>nd</sup> – 3<sup>rd</sup> Defendants, PW4 confirmed that the payee's name on Exhibit P25 is one Tunde. He also stated that Exhibit P20 bears the name of Oyeniyi Abiodun. Finally under cross-examination, PW4 stated he does not know the Defendants.

That was the case for the prosecution.

The 1<sup>st</sup> Defendant giving evidence as DW1 testified that he is an employee of Bond Chemicals (The Complainant). He said on the 29<sup>th</sup> of January, 2009, three armed Policemen arrested him from his office and taken to SARS Station, Oyo. He said his car was impounded immediately. He was later to be informed that he stole from his employer Bond Chemical Industry, Awe in Oyo Town to which he denied. He said he was then taken into the cell among criminals. He stated that he was pressed and pressurized to list all the assets he had and that of his wife, including the ones he had acquired before joining the Complainant's Company. He testified that he had worked in other places for 25 years before joining the complainant company. He said he spent 10days in cell before he was moved to SARS Ikoyi, Lagos handcuffed.

At Lagos, DW1 said he made statement but to his surprise, the statement was not acceptable to the Police and he was directed to make another one. He said he was put under pressure and forced to write a dictated statement. He said this statement was made under duress and force as it was dictated to him. DW1 stated further that he was kept in cell for another 12days, under dehumanizing conditions. He said he was informed at the Police Station that as General Manager Finance,

he has the responsibility to take care of the Account Department even though he has other staff working under him.

He testified that when he finally got in contact with his family members, he told them to start looking for money just like what he went through at Oyo.

DW1 denied all the charges against him. He testified that among the things seized from him was his Mercedes car which he has been using for more than 6years before joining the services of the complainant company. He said other items seized from him include his wife's car and a Toyota car which was taken to Lagos SFU. DW1 identified Exhibit P18 as the statement dictated to him. He said he would not know what happened to the first statement he made because it was taken from him.

Under cross-examination by the prosecutor, DW1 restated the fact that Exhibit P18 was dictated to him. The statement of account of DW1 was tendered in evidence and admitted through him as Exhibit P26. DW1 admitted under cross-examination that the sum of ₦2,125,000.00 was paid by him in the course of investigation. DW1 also confirm that he is not aware that Abiodun Oyeniya made some incriminating statements against him at the Police Station.

Under cross-examination by counsel to the 2<sup>nd</sup> - 3<sup>rd</sup> Defendants, DW1 confirmed that the 2<sup>nd</sup> - 3<sup>rd</sup> Defendants were not working under him while in the complainant's company.

DW 2, Cecilia Olufunke Adejumo, is the wife of the 1<sup>st</sup> Defendant. She testified that upon the arrest of her husband, the 1<sup>st</sup> Defendant, he was initially taken to Oyo SARS and later to

SFU Lagos. On both occasions according to her, she was asked to go and look for money for the bail of the 1<sup>st</sup> Defendant which she did. She testified that the money was meant for the release of 1<sup>st</sup> Defendant.

The 2<sup>nd</sup> Defendant gave evidence in his defence as DW3. He testified that he used to be an Auditor with the complainant's company between 2007 - 2009. The DW3 said on the 1<sup>st</sup> of January 2011, Police from SARS came to arrest him in his house and took him to their detention centre at Oyo.

He said he does not know anything about Exhibit P18. He equally testified that in the course of detention, he was not allowed to see his wife even though his wife paid the sum of ₦3,000,000.00 to SARS but not on his instruction. The 2<sup>nd</sup> Defendant further testified that Oyeniya Abiodun did not work under him but that he knew him from a distant. He denied all the charges against him and that his relationship with the 1<sup>st</sup> Defendant was strictly official. Finally he testified that he resigned from the complainant's company on personal grounds.

Under cross-examination by the prosecuting counsel, the 2<sup>nd</sup> Defendant confirmed that the sum of ₦3,000,000.00 was paid to SARS by his wife which was not authorized by him. He further stated under cross-examination that he does not know Oyeniya Abiodun well and that he is not aware that the 1<sup>st</sup> and 3<sup>rd</sup> Defendants made incriminating statements against him.

There was no cross-examination by the 1<sup>st</sup> Defendant's counsel.

DW4, Oluwakemi Akindele (Mrs) is the wife of the 2<sup>nd</sup> Defendant. She gave evidence of how the Police stormed their residence on the 1<sup>st</sup> of January 2011 to arrest her husband. She stated that after going round some Police Stations looking for the 2<sup>nd</sup> Defendant, she finally went to SARS in Oyo, where she met two people that came to arrest her husband. At SARS, she said she was told to bring ₦5,000,000.00 (₦5million) if she does not want the life of the 2<sup>nd</sup> Defendant to be wasted. She said she eventually paid ₦3,000,000.00 in two installments. She testified that the money she paid was not for the settlement of the fraud they alleged the 2<sup>nd</sup> Defendant committed. She said PW1 assured her that he will tell the 2<sup>nd</sup> Defendant to include it in his statement that the sum of ₦3,000,000.00 was paid by her. She said she saw the 2<sup>nd</sup> Defendant for the first time at Igbosere Magistrate Court after his arrest and that was where she got to know why the 2<sup>nd</sup> Defendant was arrested. She testified that she paid the ₦3,000,000.00 to SARS on the grounds that the 2<sup>nd</sup> Defendant was an armed robber and thereafter she was not told anything again.

Under cross-examination by the Prosecuting counsel, DW4 denied paying the ₦3,000,000.00 into the Complainant Company's account. She equally stated that the last paragraph of Exhibit P17 is a lie as she cannot say what transpired between the PW1 and the 2<sup>nd</sup> Defendant before Exhibit P17 was made.

That was the case for the 2<sup>nd</sup> Defendant.

The 3<sup>rd</sup> Defendant, Willie Ibeneme testified as DW5 in his defence. He said he was initially engaged to work with Bond

Chemist until his service was transferred to Bond Chemical Ltd. He tendered Exhibits D1, D2, D3, D4, D5 – D17 in evidence.

The 3<sup>rd</sup> Defendant further stated that what he paid into the Complainant Company's account was the outstanding amount owed by customers of the complainant's company. He denied the charges against him. He further testified how the complainant's company appreciated him with gift of a car and letter of commendation upon his disengagement from the service of the complainant's company even after he made Exhibit 19, his statement to the Police. He testified that he does not have any direct dealing with Tunde Olaniyi being a staff of Ibadan Branch. He testified further that it was after one year he left service that he was asked by PW1 to report at the Federal High Court Lagos. He further testified that even after this charge was filed, the complainant company did not withdraw the incentives given to him and that no money was deducted from his entitlement as a result of this case.

Under cross-examination, the 3<sup>rd</sup> Defendant confirmed that there was fraud in the complainant's company between 2007-2008. He equally confirmed that he was never arrested in respect of this case neither did he make any refund into the company's account.

That was the case for the 3<sup>rd</sup> Defendant and the close of the Defendants defence.

Written addresses were thereafter filed and exchanged.

The 1<sup>st</sup> Defendant filed his written address on the 15<sup>th</sup> of November 2016, while the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed their own

written address on the 28<sup>th</sup> of October 2016. The prosecutor final written address was filed on the 8<sup>th</sup> of November 2016. The prosecutor filed a reply to the Defendants' written address on the 2<sup>nd</sup> of December 2016 while the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed a reply to the prosecution's written address on points of law on the 14<sup>th</sup> of December 2016. The reply of the 1<sup>st</sup> Defendant was filed on the 9<sup>th</sup> of February 2017.

The 1<sup>st</sup> Defendant's counsel formulated one issue for determination in his written address to wit:

*“Whether the prosecution has from the available admissible facts before this Honourable Court discharged the burden of proof placed on it by law to warrant the conviction of the 1<sup>st</sup> Accused Person of the offences for which he is charged”.*

Counsel to the 2<sup>nd</sup> – 3<sup>rd</sup> Defendants on the other hand also formulated three issues for the determination of the court in his written address to wit:

- i. Whether the prosecution has established by credible evidence that Accused Persons did conspire to commit the alleged offence charged?*
- ii. Whether the Prosecution has proved the ingredients of law required to prove all the counts in charge FHC/IB/13/12 against the 2<sup>nd</sup> and 3<sup>rd</sup> accused persons beyond reasonable doubt.*
- iii. Whether the Prosecution has established the guilt of the 2<sup>nd</sup> and 3<sup>rd</sup> Accused Persons as required by the*

*criminal jurisprudence of proving beyond reasonable doubt as provided for in Evidence Act?*

The prosecution formulated three issues for the determination of the court to wit:

- i. Whether this Honourable Court can convict based on the re-tracted extra-judicial confessional statements of the 1<sup>st</sup> and 3<sup>rd</sup> Accused Persons?*
- ii. Whether the 2<sup>nd</sup> Accused Person has any good defence in view of the apparent contradictions in his extra-judicial statement and his oral testimony in court?*
- iii. Whether the prosecution has attained the standard of proof in this case as required of him by virtue of Section 135(1) of the Evidence Act 2011?*

The prosecution also filed a reply dated 23<sup>rd</sup> of November 2016 to the Defendants' written addresses dated 15<sup>th</sup> of November 2016 and 27<sup>th</sup> of October 2016 respectively. Counsel further raised three issues for the determination of the court to wit:

- i. Whether the counsel to the 1<sup>st</sup> accused person objected to the tendering of his confessional statement on grounds of voluntariness? (paragraph 2.2 of his address).*
- ii. Whether Section 379 of the Administration of Criminal Justice Act, 2015 is applicable to criminal trials in the Federal High Court? (paragraph 5.14).*
- iii. Whether failure of the Prosecution to call Segun Oyewole, the Head of Operation of Zenith Bank Plc,*



*is fatal to the Prosecution's case? (paragraphs 6.1 and 6.2).*

Counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed a reply on the 14<sup>th</sup> of December 2016 to the Prosecution's final written address on point of law. And finally, counsel to the 1<sup>st</sup> Defendant filed on the 9<sup>th</sup> of February 2017 a reply to the prosecution's final written address.

I have considered the various written submissions of counsel and the issues formulated therein. For the purpose of this judgment, I will be guided and I so adopt the issue formulated by 1<sup>st</sup> Defendant's counsel for determination to wit:

*"Whether the prosecution has from the available admissible facts before this Honourable Court discharged the burden of proof placed on it by law to warrant the conviction of the 1<sup>st</sup> Accused Person of the offences for which he is charge".*

Before I go any further, there is the need for me to address the probative value and the weight to be attached to some exhibits which were tendered in the course of trial. These exhibits appear to be the bedrock of the prosecution's case. These exhibits are:

- i. Statement of Oyeniya Abiodun – Exhibits P3, P4 and P5.*
- ii. Statement of the 1<sup>st</sup> Defendant – Exhibit P18*
- iii. Statement of account of 1<sup>st</sup> Defendant from Wema Bank – Exhibit P26.*

On Exhibits P3, P4, and P5 being statements of one Oyeniyi Abiodun, it is pertinent to note that these exhibits were tendered through the PW1 who happens to be the Investigating Police Officer. The maker of the statement did not testify in this case.

Section 29(4) of the Evidence Act 2011 provides as follows:

*29(4). Where more persons than one are charged jointly with an offence and a confession made by one of such persons in the presence of one or more of the other persons so charged is given in evidence, the court shall not take such statement into consideration as against any of such other persons in whose presence it was made unless he adopted the said statement by words or conduct.*

In the course of trial, the Defendants denied knowledge of the content of the exhibits under reference. This piece of evidence was not shaken under cross-examination. This is also supported by the fact that the said Oyeniyi Abiodun and the Defendants were arrested and/or reported to the Police at different times. It is trite as pronounced in the case of *Sunday John v The State (2013) LPER 20536 CA* that:

*“..The confession of a co-accused cannot be held to work against another co-accused in the same trial. This means that the guilt of the individual accused persons must be established on its merit”.*

See also *Al-Mustapha v The State* (2013)24 WRN 96 at 151-152, *Abolore v The State* (2011) All FWLR (Pt. 583) 1996 at 1983 paras A – C.

Moreover, for the exhibits under reference to have any value at all, it is important for the maker to testify. This would have given opportunity to the adverse party to cross-examine the witness on same.

In *Okereke v Umahi* (2016)11 NWLR (Pt. 1524) pg. 438, it was held thus:

*“Weight can hardly be attached to a document tendered in evidence by a witness who cannot or is not in a position to answer questions on the document... The implication therefore is that tendering them without the testimony of the maker or clear reasons for his absence is valueless”.*

Mere stating the fact that the said Oyeniyi Abiodun, jumped administrative bail is not enough. What effort was made to get the said Oyeniyi Abiodun re-arrested? This question begs for answer.

Therefore based on Section 29(4) of the Evidence Act, 2011 and judicial pronouncements, Exhibits P3, P4 and P5 are valueless and no weight whatsoever can be attached to it and I so hold.

On the statement of the 1<sup>st</sup> Defendant Exhibit P18, learned defence counsel to the 1<sup>st</sup> Defendant has urged me to expunge same from the records on grounds that the court failed to

conduct trial within trial when its admissibility was objected. At the point of tendering Exhibit P18, counsel objected on the following grounds:

*“My client has just told me that he made these statements with the inducement that the dispute will be settled. The statement sought to be tendered are not voluntarily made”.*

In opposing the objection, the prosecution referred the court to Section 129 of the Evidence Act and submitted that inducement is no longer one of the grounds under which a trial within trial will be conducted to ascertain the voluntariness of the statement sought to be tendered.

I do agree with the prosecuting counsel that the voluntariness of a confessional statement cannot be attacked on grounds of inducement warranting trial within trial. The confessional statement of the 1<sup>st</sup> Defendant was thereafter admitted and marked as Exhibit P18.

However, in the course of his evidence in defence, the 1<sup>st</sup> Defendant as DW1 stated thus:

*“The statement I was forced to make was under duress and force, that was not my statement. I did not author it unilaterally. It was dictated to me”.*

This is a clear case of retraction. At this stage, it is my duty to evaluate Exhibit P18 in view of the surrounding circumstances under which Exhibit P18 was recorded in order to decide if the court can attach any probative value to same. I will therefore

refer to the records. The 1<sup>st</sup> Defendant testified that he spent 10 days in the cell at Oyo before being moved to Special Fraud Unit (SFU) Ikoyi Lagos. He said he was handcuffed like any hardened criminal and moved to Lagos. He said on getting to Special Fraud Unit, he was subjected to another round of torture, deprivation and public odium. He said he was not allowed to have access to treatment for his ailment being a patient of diabetics and High blood pressure. He was asked to render his statement under this condition. He further stated:

*“I made statement to the Police denying the allegations put against me but to my surprise, the statement I made was not acceptable to them and so they said I should make another statement. At that stage effort to get my Lawyer involved was denied me. The statement that I made earlier was not acceptable to them, they now put me under pressure and forced me to write a dictated statement .....*

*Again, they returned me to the cell under dehumanized conditions and I spent another 12 days in cell. No access to food, there was no money in my pocket, no family of mine had access to me despite my ailment. At that point, my strength began to fail me”.*

The question I asked myself was whether the court can rely on any statement recorded under this condition? I will return a negative answer. Any human being placed under these conditions will be ready to do anything in order to regain his freedom. Moreover the first statement of the DW 1 was not tendered in evidence. The prosecution is enjoined at all times to

tender all the statements of an accused recorded during investigation. The prosecution cannot pick and chose which of the statements to tender in evidence. I will therefore not attach any probative value to Exhibit P18.

On Exhibit P26, the statement of account of the 1<sup>st</sup> Defendant from Wema Bank, this was tendered by the Prosecution in the course of cross-examining the 1<sup>st</sup> Defendant. Exhibit P26 is no doubt a computer generated document. Section 84 of the Evidence Act is very clear on how such document can be tendered and admitted in evidence. Exhibit P26 has not satisfied Section 84 of the Evidence Act. The document was more or less dumped on the court. I will therefore expunge it from my record and I so order.

Now coming to the nitty gritty of the charge, counts 1, 5 and 7 deal with the offence of conspiracy punishable under Section 516 of the Criminal Code Act LFN, 2004 and Section 1(c) of the Miscellaneous Offences Act, LFN, 2004.

Section 516 of the Criminal Code Act defines conspiracy thus:

“Any person who conspire with another to commit any felony, or to do any act in any part of the world which if done in Nigeria would be a felony and which is an offence under the laws in the place where it is proposed to be done, is guilty of a felony and is liable if no other punishment is provided to imprisonment for seven years ....”.

This definition has been analyzed and x-rayed in several judicial pronouncements.

In *Tanko v Sate* (2008)16 NWLR (Pt. 1114)597/637, Omoleye JCA stated thus:

*“Conspiracy is the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. The two or more persons must be found to have combined in order to ground a conviction for conspiracy. For the offence to be in existence there must be consent of two or more persons .... There must be an agreement, which is an advancement of an intention conceived in the mind of each person secretly. The secret intention must have been translated into an overt act or commission or mutual consultation and agreement....”*

*The proof of conspiracy is generally a matter of inference deduced from certain criminal acts of the accused done in pursuance of an apparent criminal purpose in common between them”.*

Therefore to secure a conviction for the offence of conspiracy, the prosecution must establish:

- i. An agreement by two or more persons (the Defendants in this case) to execute an agreed act.*
- ii. The agreed act is unlawful, see *Aituma v State* (2006) Q.C.C.R. vol. 7 1 – 218, P. 124 – 125*

The Defendants stated in their evidence that they did not conspire with anybody or persons at large to commit any offence. Since the offence of conspiracy by its nature could hardly be proved by direct oral evidence, the prosecution tends to rely on

circumstantial evidence and inference drawn from available facts before the court. The prosecution in an attempt to prove the offence against the 1<sup>st</sup> Defendant relied heavily on Exhibits P18 and P26, particularly Exhibit P18, the statement of the 1<sup>st</sup> Defendant. With the knocking off of Exhibit P18 and P26, there is really no substantial evidence on which the offence of conspiracy can stand against the 1<sup>st</sup> Defendant.

In an attempt to prove conspiracy against the 2<sup>nd</sup> Defendant, the prosecution relied on the payment of ₦3,000,000.00 paid by the wife of the 2<sup>nd</sup> Defendant who testified as DW4. This is evident in Exhibit P17 (Statement of the 2<sup>nd</sup> Defendant) and the testimony of DW4. The 2<sup>nd</sup> Defendant did confirm in Exhibit P17 that his wife DW4 paid the sum of ₦3,000,000.00 on two installments into the company's account believing she was pursuing out of court settlement, since the allegation bothered on stealing. In his evidence under cross-examination, he stated that the said money was paid to SARS by his wife and that he did not authorize the payment because he was not even allowed to see his wife after his arrest.

Now under what circumstances did his wife DW4 paid the money?

In her evidence in chief, the wife of the 2<sup>nd</sup> Defendant, DW4 testified as follows:

*"I went to SARS at Oyo where I saw two of the people that came to our house. I was told that If I do not want them to waste the life of the 2<sup>nd</sup> Defendant, I should go and bring ₦5million. I raised ₦1million and went back*



*to them and they collected the money but they said I should go and produce the money they asked for. The 2<sup>nd</sup> Defendant was not released to me. I went back to them with ₦2million which was collected from me. The purpose of paying the ₦3million is to spare the Defendant my husband's life. It is not true that the ₦3million I paid was for settlement of the fraud they alleged the 2<sup>nd</sup> Defendant committed...*

*I did not pay any money into any company's account. SARS collected cash from me on the grounds that the 2<sup>nd</sup> Defendant was an armed robber”.*

This piece of evidence was not shaken or weakened under cross-examination. Once again, it is important to know that the 2<sup>nd</sup> Defendant testified that he did not authorize his wife DW4 to pay the said money and he could not have done so because he was in detention throughout the period without access to the wife, DW4. There is no evidence before the court that the Complainant's company received the said money neither was the money tendered as an exhibit before the court.

The question then is, where is the money? Apparently, the evidence before me has not produced an answer to this question. It will therefore be difficult to pin any charge of conspiracy against the 2<sup>nd</sup> Defendant and I so hold.

On the part of the 3<sup>rd</sup> Defendant, he stated in Exhibit P19 as follows:

*“About February 2008, Rev. Adejumo sold the idea of sales under payments by some sales staff to me .... Boniface*

*Anyanwu gave in cash ₦3,280,000.00 to me (Willie N. Ibeneme). Boniface Anyanwu retained ₦820,000.00. The amounts with the marketing staff and the transaction had been confided with Chief (Dr.) Sir Debo Omotosho, Executive Chairman of the Bonn Group of Companies with the pledge that the entire amount held by the marketing staff of ₦6,480,000.00 will be paid back by the staff concern.*

*Refunds have already started and we have understanding that the entire amount will be paid fully by the end of June, 2009.*

*I have refunded ₦700,000.00...*

*I still pledge that the entire sum held by the marketing staff will be paid back fully in line with our understanding with Chief (Dr.) Sir Debo Omotosho”.*

The statement of the 3<sup>rd</sup> Defendant to the police, Exhibit P19 is confessional in nature however, it is with a rider. Therefore in order to appreciate the content of Exhibit P19, it must be read together.

What I can gather from this piece of evidence is that the Chief Executive of the Complainant's company, Chief (Dr.) Sir Debo Omotosho is aware of all these underpayment and the entire marketing staff including the 3<sup>rd</sup> Defendant has an understanding with the Chief Executive Officer of the Complainant's company to make refund payment. The only person who could have thrown light into this arrangement or assertion is Chief (Dr.) Sir Debo Omotosho. Even though, an accused can be convicted on the strength of his confessional

statement it is proper in most cases to look for corroborative evidence no matter how little. The absence at trial of Chief (Dr) Sir Debo Omotosho who could have provided such corroborative evidence is fatal to the prosecution's case.

However, PW2, Ajao Olabode an Accountant with the Complainant's Company testified that the sum of N3.2million was recovered from the 3<sup>rd</sup> Defendant. He testified earlier that he was not in the service of the Complainant's company when the incident happened but that his evidence was based on information he gathered from documents. Such document has not been placed before the court in order to test the veracity or accuracy of these documents. I will therefore not attach any probative value to the evidence of PW 2 as his evidence amounts to documentary hearsay.

In the absence of any compelling circumstantial evidence, a case of conspiracy has not been made out against the 3<sup>rd</sup> Defendant either.

Accordingly, from the totality of the evidence before the court, the prosecution has failed to prove the ingredients of conspiracy against the Defendants and I so hold.

Counts 2, 3 and 4 borders on the offence of forgery. Section 2(a) of the Miscellaneous Offences Act, Cap. M17, 2004 provides follows:

*“Any person who fraudulently or knowingly utters, forges, procures, alters, accepts or presents to another person any cheque, promissory note or other negotiable instrument knowing it to be*

*false, forged, stolen or unlawfully procured;”*

The definition of forgery can be found in Section 465 of the Criminal Code Act, LFN, 2004.

It provides thus:

*“A person who makes a false document or writing, knowing same to be false, and with intent that it may be used or acted upon as genuine, whether in Nigeria or elsewhere, to the prejudice of any person, or with intent that any person may, in the belief that it is genuine, be induced to do or refrain from doing any act, whether in Nigeria or elsewhere, is said to forge the document or writing.”*

In proving the offence of forgery, one has to take into account the ingredients of the offence. The ingredients are:

- “i) That the exhibits documents in question were forged.*
- ii) That the Defendants were in possession of the forged document(s)*
- iii) That the Defendants held these documents out knowing them to be forged.*
- iv) That the Defendants presented these forged documents to whom it may concern knowing that they would be used fraudulently or dishonestly as genuine.*

In the counts under reference, the Defendants were alleged to have forged tellers and stamps of Zenith Bank PLC, and United Bank for Africa PLC which they altered to the Accounts Departments of the Complainant's company with intent that they may be acted upon as genuine.

In trying to establish his case, the prosecution tendered in evidence Exhibits P9, P10 and P11 being the correspondence between the office of the PW 1 and United Bank for Africa PLC. Also tendered are Exhibits P20, P21, P22 and P25 being the correspondences between the office of the PW 1 and Zenith Bank PLC. Further tendered by the prosecution are Exhibits P6, P7 and P8 also being correspondences between the office of the PW 1 and Guarantee Trust Bank PLC. These exhibits include the alleged forged tellers from these three banks.

I have perused these exhibits under reference and I am unable to see where the name of any of the Defendants was mentioned.

Rather the alleged forged document bears the name of individual or master mind of the fraud who is presently not before this court. Kutigi JSC (as he then was) held in *Michael Alake v The State (1992) LPELR - 403SC* that:

*"It is an essential ingredient to be proved in a charge of forgery that the accused forged the document in question."*

I do not have such evidence before me as prosecution witnesses did not state anywhere in their evidence linking the Defendants with the offence of forgery neither did the exhibits under reference help the prosecution's case. I will therefore return a verdict of not guilty on counts 2, 3 and 4.

Count six (6) deals with the offence of stealing against the Defendants. Section 383 of the Criminal Code Act defines stealing in the following terms:

*“A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person anything capable of being stolen is said to steal that thing.”*

Ingredients of the offence therefore includes:

- “i) The ownership of the thing stolen*
- ii) That the thing stolen is capable of being stolen*
- iii) That taking or the conversion must be fraudulent.*

*See Okoroji v State (2002) 5 NWLR (Pt 759) 21.*

Aside from the evidence of PW 2, which was discountenanced for being documentary hearsay, there is no direct oral testimony from the Complainant's company supporting the offence of stealing against the Defendants. Exhibit P1, the written Complaint of the Complainant's company to the police was signed by one A. O. Omotosho, on behalf of the Managing Director. The said Omotosho was not called to testify neither did any other Management staff of the Complainant's company deemed it fit to testify in this case. This I must say is unsatisfactory. Ownership is the most vital and indispensable essential ingredient of the offence of stealing. There must be evidence that the property is owned by a person – see *Adejobi v State (2011) 12 NWLR (Pt 1261) 347*. The recovery of various sums of money from the Defendants does not preclude the prosecution from proving or establishing this ingredient.

It is therefore my finding that this very important ingredient of the offence of stealing has not been established. I will therefore return a verdict of not guilty.

The last count (8) deals with making false entries into account Numbers 6011406733, 206200000630 and 401227321110 belonging to the Complainant's company punishable under Section 435 of the Criminal Code Act.

There is no doubt that the Defendants were staff of the Complainant's company when the alleged fraud happened.

There is however no evidence linking the Defendants to false entries into the account numbers under reference. All the entries made in Exhibit 23(a), (b) and (c) were made by Oyeniya Abiodun and Adewole Taofeek. There is no evidence whatsoever connecting the Defendants to these entries. I will also return a verdict of not guilty on this count.

The prosecution has therefore failed to prove the guilt of the Defendants beyond reasonable doubt.

In view of the totality of the evidence before me, the prosecution has failed to discharge the constitutional burden of proof placed on it, to wit, the prosecution has failed to prove the guilt of the Defendants beyond reasonable doubt.

In conclusion, let me make some comments. As earlier observed, no management staff of the Complainant's company came to testify in this case. This suggests to me that the Complainant's company attached little or no importance to this case. Although, there is no evidence before me that they were ever summoned to testify.

Also of note is the fact that most of the exhibits allegedly recovered by the police were released to the Complainant's

company before the prosecution of this case. This is contrary to all known norms in criminal prosecution. This type of practice must be discouraged.

The Police should do everything possible to arrest the principal actors in this fraud i.e Oyeniyi Abiodun and Adewole Taofeek and bring them to justice. It is certainly not enough or acceptable that they have jumped administrative bail.

Finally, the Defendants are hereby discharged and acquitted for want of evidence.



**HON. JUSTICE N. AYO-EMMANUEL**  
**JUDGE**  
**11<sup>TH</sup> APRIL 2017**

A. C. Akinwewu (Mrs) for the prosecution appears with M. Usong.

Yomi Giwa for the 1<sup>st</sup> Defendant with Olanrewaju Abari.

Dare Adebayo with Tola Ademiju (Mrs) for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

F. O. Awonusi with O. Y. Abdul (Miss) - watching.