Obi v Federal Republic of Nigeria (CA/L/629/2014)[2016] NGCA 89 (24 March 2016)

In the Court of Appeal

Holden at Lagos

Between

Appellant

GABRIEL ONYEBUCHI OBI

and

Respondent

FEDERAL REPUBLIC OF NIGERIA

Judgement

CHINWE EUGENIA IYIZOBA JCA: This is an appeal against the judgment of Okechukwu Okeke J of the Federal High Court, Lagos Division in Suit No. FHC/L/89C/2011 delivered on the 17th day of May, 2013 wherein the Appellant, Gabrielle Onyebuchi Obi and Ugwu Geoffrey (2nd accused) were convicted on the first count of the offence of conspiracy to import 165 Kilogram of Cocaine into Nigeria; and on the second count of importation of the said 165 Kilogrammes of Cocaine into Nigeria. They were sentenced to 15 years imprisonment on the first count and 5 years on the second count, the sentences to run concurrently for 15 years.

THE FACTS: Sometime in November 2010, the National Drug Law Enforcement Agency (NDLEA) received intelligence report that three containers Nos. MSCU 1816340, MSCU 3668026 and MSCU 1287231 originating from Bolivia were suspected to be carrying Cocaine, a narcotic drug. NDLEA Operatives mounted surveillance at Tin can Island Port Lagos for the arrival of the containers. Container number MSCU 1816340 arrived the Tin can Island Port, it was intercepted, searched and nothing incriminating was found. When container number MSCU 3668026 arrived, nobody initially came to claim ownership. This prompted NDLEA officials and other security Agencies at the Tin can Island Port to conduct a search on the container and 110 Kilograms of Cocaine was allegedly found inside it. As a result of this discovery, and further investigations conducted by NDLEA, the 2nd accused was arrested at a company called Ellisbonave Nig. Ltd located at Mangoro/Cement Bus Stop, Lagos where he had gone to collect clearance letter for the release of the container — MSCU 1816340. On his arrest, he was found with the following documents:

(i) A copy of release letter to the Mediterranean Shipping Line (MSC) Exhibit U.
(ii) A copy of Bill of Lading in respect of containers MSCU 3668026 and MSCU 1287231, Exhibit W.
(iii) A receipt for payment of N35, 000.00 fee for the release of the containers Exhibit UZ.

In other to obtain the above documents, the 2nd accused forged and presented to Ellisbonar Nigeria Ltd;

(i) An identity card of himself as a staff of Efcrisam Groups Company Ltd. Exhibit V2.

(ii) Certificate of Incorporation of Efcrisam Groups Company Ltd - Exhibit V.
(iii) A letter of authority from Efcrisam Groups Company Ltd. Exhibit VI.

The 2nd accused in his extrajudicial statement dated 21st January 2011 said he got the bill of loading - Exhibit W from Audu Ismail. Investigations revealed that the said Audu Ismail got it from one Ibrahim Maidurumi, while Ibrahim Maidurumi got it from Gabriel Onyebuchi Obi the Appellant herein. The Appellant admitted in his testimony in Court and in his extrajudicial statement dated 21st January 2011.- Exhibit L that he gave the bills of lading to Ibrahim Maidurumi to help him clear the 2 containers numbers MSCU 3668026 and MSCU 1287231, but claimed that it was one Chief Oke who gave them to him. He further claimed that Chief Oke gave him N300, 000. 00 to clear the containers for him. He claimed he did not know Chief Oke's residence; that they only met at a drinking joint and that he does not know his phone number because Chief Oke always called him with a hidden number. Attempts by the appellant to help NDLEA apprehend Chief Oke failed. The Respondent on the other hand claimed the appellant did not give NDLEA any useful information that would lead to the arrest of Chief Oke. The Appellant, the 2nd Accused Ugwu Geoffrey, Audu Ismail and Ibrahim Maidurumi were on 27th January 2011 taken to the Tin can Island Port Lagos where the container number MSCU 1287231 was opened and searched in their presence and 165 Kilograms of Cocaine was found in the container. This fact was admitted by the Appellant in his extrajudicial statements dated 27th & 28th January 2011 - Exhibits O and P respectively. Ibrahim Maidurumi PW10 in his testimony confirmed the fact.
CA/L/629/2014

The Appellant claimed to be a business man who deals in fairly used spare "parts and from time to time assists his clients to clear containers and or vehicles from the Tin Can Island and Apapa Ports. He claimed that usually when he receives such briefs, he engages the services of Nigerian Customs officials to assist him clear the said containers and or vehicles. On one occasion, he was requested by one Chief Okey to clear for him a container of floor tiles. Upon the said instruction, he approached Ibrahim Maidurumi, PW 10 to assist him clear the container. He gave him a photocopy of the bill of lading which he had received from Chief Okey. The original he claimed was still with Chief Okey. The appellant claimed that a few days later he was arrested by NDLEA who accused him of importing a container containing cocaine and detained him and seized his telephones. The Appellant denied the accusation and informed NDLEA operatives that he got the photocopy of the bill of lading from Chief Okey. He informed NDLEA officials that Chief Okey is likely to call him. They handed over his phones to him and Chief Okey did call him. He informed Chief Okey as directed by NDLEA officials that he needed more money to clear the containers. The Appellant arranged to meet with Chief Okey at Benny Suites hotel Festac Town, Lagos. Chief Okey did not show up for the meeting. The appellant claimed that apart from the copy of bill of lading which

the Appellant gave to PW 10, the Respondent did not produce any other evidence linking the Appellant to the container and the cocaine purportedly found therein. Both the Appellant and the 2nd accused in their defence claimed that save on the day of their arrest on the 21st of January 2011; they had never met before and did not know each other. The Appellant admitted that he gave the bill of lading to PW 10. PW 10 gave the said bill of lading to one Audu Ismail a clearing agent. Audu Ismail contacted the 2nd accused, Gabriel Ugwu and gave him the instruction to begin the process of clearing the said container.

It is pertinent to mention that after the search of the second container, allegedly not claimed by anybody, and where 110 kg of cocaine was found, NDLEA now did what they should have done in the first place made inquiry through the shipping line and got information from the cargo manifest of the container linking two companies to the containers. The companies are Efcrisam Group Company Ltd and Ellisbonav Nig Ltd. Through enquiries at these companies the 2nd accused Gabrielle Ugwu and other suspects including the appellant were arrested.

During the trial, the Respondent called 11 witnesses. The appellant and his co-accused each testified on his own behalf and called no other witness. In a considered judgment delivered by Okechukwu Okeke J. on 17/5/13, the Appellant was convicted and sentenced as stated above. Naturally, unhappy with the judgment, the Appellant appealed by Notice of appeal dated 29/11/13 filed on 6/12/13 at pages 351 - 357 of the Record of Appeal containing seven grounds of appeal. As is customary in this court, the parties filed and exchanged briefs of arguments. The appellant's brief was settled by Mobolaji Olanipekun Sowole Esq while the Respondent's brief was settled by J. N. Sunday Esq. Director, Prosecution & Legal Services (NDLEA) and, Obiageri Iwuchukwu.

From the seven grounds of appeal, learned counsel for the Appellant in his brief distilled three issues for determination as follows:

1. Whether the offence of importation of 165 kilograms of cocaine was proved against the Appellant in line with provisions of the enabling law. Ground 2.
2. Whether the offence of conspiracy to import 165 kilograms of cocaine was proved against the Appellant in line with provisions of the enabling law. Grounds 1, 4 & 5.
3. Whether the learned trial Judge properly directed himself as to 1 the burden and standard of proof having regard to the nature of the issues placed before him and made a proper evaluation of the evidence led by the prosecution and the defence. Grounds 3,6 & 7.

The Respondent's counsel on their part formulated two issues for determination as follows:

1. Whether the prosecution has proved its case Against the Appellant Beyond Reasonable doubt as required by law.
2. Whether in the circumstances of this case it will not be improper for the Court of Appeal to tamper with the findings of fact of the Trial Court.
The Appellant's three issues cover the Respondent's two so I will adopt the Appellant's three issues in the determination of the appeal.

APPELLANTS ARGUMENTS:

On issue one: whether the offence of importation of 165 kilograms of cocaine was proved against the Appellant in line with provisions of the enabling law, learned counsel faulted the procedure adopted by the Respondent in determining whether or not there were drugs in the containers. Counsel submitted that PW9 testified that when the three containers arrived in Nigeria, two of the three containers were opened and searched by the Joint Task Force (JTF) of the Respondent alone when the normal practice would have been to have the containers opened and searched only in the presence of the owners or those who would come forward to clear them. Counsel argued that the claim by the Respondent that it found cocaine in the second container and was then prompted to inquire through the shipping line and information from the cargo manifest led them to a company called EFCRISAM GROUPS COMPANY LIMITED, Egbeda Lagos is manifestly irregular. The inquiry should have been made and the owners or their clearing agents located before the opening of any of the containers. Counsel submitted that it is unfair to arrest and detain clearing agents and hold them out as the owners of the containers when JTF knows that the clearing agents are never the owners but used by the owners to clear their goods and in most cases the clearing agents may not even know the owners of the containers. Counsel submitted that it is only after breaking the seal of the containers and opening the said containers in the presence of the owners or those who come forward to clear them that the JTF can confirm for sure that the said containers had drugs in them. Counsel queried why the JTF was in such a hurry to open the said containers on the ground that no one claimed ownership when it had in its possession the bills of lading with which it could have traced the owners of the containers. Counsel opined that the unusual practice adopted by the Respondent raise suspicion as to whether the drugs may have been planted in the containers. He indeed submitted that the only conclusion one can arrive at is that there was no cocaine in the two containers when they arrived in Nigeria and that JTF having opened and searched the first container in the absence of the owners and finding no cocaine therein, were disappointed and as a result opened the remaining two containers and planted cocaine therein. It was after that, they now did what they should have done in the first instance. Counsel referred to the evidence of PW9:

That". . . .the Joint Task Force then made an inquiry through the shipping line and information from the cargo manifest of the container. I led a team of officers to Efcrisam Group Company Limited, Egbeda Lagos where the owner of the company Kayode Fashagba was invited to the Joint Task office and interrogated by us."

Counsel submitted that by the evidence of PW9 the JTF knew how to reach those connected with the containers whether consignors or Nigerian agents of the owners; and that if JTF had contacted Efcrisam Groups Company Limited upon the arrival of the containers, an ambush would have been laid for those who would show up to clear the containers and upon their showing up, they would have been taken to the containers, all the seals would have been broken in their presence and a search of the said containers would have been carried out. Counsel brazenly contended that the JTF actually opened all the three containers and having found nothing therein planted cocaine in the last two containers and resealed same for the eventual mock opening of the said containers. Counsel on this issue: finally submitted that although the damaging trail of evidence of the opening and search of the containers in the absence of the owners was provided by the Respondent's witnesses; the learned trial Judge ignored the adverse nature of the said evidence on the case presented by the Respondent. He opined that if the trial Judge had given due consideration to the said evidence, he would have resolved the issue of the importation of cocaine in favour of the Appellant and the 2nd accused.

In view of the above submissions, counsel opined that the offence of importation of 165 kilograms of cocaine was not proved against the Appellant. Counsel submitted that the Respondent failed to establish by credible evidence that the cocaine claimed to have been found in the containers were actually contained in the said containers at the point of entry into Nigeria and not that they were planted in the said containers. Counsel argued that if on receipt of the information that the containers had drugs in them the JTF had waited for the would be owners of the container or those who would show up to clear the containers and upon their coming forward, the seals of the containers were broken and the containers opened in their presence and the drugs found therein, then the Respondent would have had a case against the Appellant and the 2nd accused. Counsel finally submitted that the Respondent failed to prove the offence of importation of 165 kilograms of cocaine against the Appellant and urged this Court to so hold.

On issue 2: whether the offence of conspiracy to import 165 kilograms of cocaine was proved against the Appellant in line with provisions of the enabling law learned counsel submitted that the crime of conspiracy could not have been committed when there was no proof that there was cocaine in the container upon its arrival-in Nigeria as earlier submitted under issue one. Counsel argued that the cocaine found in the last two containers could only have been planted in the said containers by the Respondent and the JTF in their obvious desperation to rope in

the Appellant. Counsel relying on Akinwunmi v The State (1987) NWLR (Pt 52) 608 submitted that the Respondent failed to establish the ingredients of the offence of conspiracy.

On issue 3: whether the learned trial Judge properly directed himself as to the burden and standard of proof, having regard to the nature of the issues placed before him made a proper approach to the evidence led by the prosecution and the defence, counsel relying on The State v. Usman (2005) 5 ACLR 45 at 49 ratio 39 submitted that the burden of proof in a criminal matter rests squarely on the prosecution and the prosecution must not only prove that a crime has been committed by the accused person, but must also prove it beyond reasonable doubt. Counsel submitted that the Respondent did not prove its case beyond reasonable doubt. He opined that the evidence which the prosecution presented before the Court was simply that the 2nd accused was caught with forged documents with which he intended to use to -clear two containers; that the Appellant gave two bills of lading to PW 10 in order that he may assist him in clearing the said containers and nothing more. Counsel submitted that most of the Respondent's witnesses who testified during the trial, testified either to the fact that they kept the drugs in safe custody or that they oversaw the taking of the statements of DWI and DW2.

Counsel submitted that the Respondent's star witness was PW9, who is a Staff Officer in charge of investigation in the NDLEA. His schedule of duties included coordinating surveillances, liaising with their international counterparts; coordinating some operations and investigation of cases. He investigated and gave his evidence which in the main was that he received intelligence report about three suspicious containers coming from Bolivia and suspected to contain drugs. PW9 gave evidence as to how the Appellant and the 2nd accused person were arrested on the 21st of January 2011 followed by the arrest of Ibrahim Maidurumi, PW 10 and the clearing agent Audu Ismail. The summary of the said evidence as presented by the Respondent purportedly pointed to the fact that the container with bill of lading No. MSCU1287321 which purportedly contained the 165kg of cocaine was believed to belong to the Appellant who was being assisted by the 2nd accused to clear the said container. Counsel submitted that these facts were not proved beyond reasonable doubt.

Counsel submitted that there were crucial issues during the trial which the learned trial Judge ought to have made definite findings of fact on. These are:

1. Why the container in issue was opened by the Respondent and the JTF in contravention of the procedure for opening suspected containers said to contain drugs;
2. Whether in reality, there was drug in the container;
3. Whether the Appellant and the 2nd accused indeed conspired to import the drugs;

4. Whether there was a meeting of minds to commit an offence;
5. Why the Respondent made no effort to trace the telephone number that the Appellant provided the police; and
6. Whether the Appellant and the 2nd accused were guilty of any crime whatsoever.

Counsel submitted that there was ample evidence provided by the Appellant that the actual owners of the container were known and could have been traced. But for reasons best known to the prosecution, it chose to ignore the leads it had as to the actual owner of the container. Counsel submitted that the lead in question was the telephone number of the boy who works for the owner which the owner gave the Appellant and which the Appellant passed on to the Task Force. Further, that the Appellant cooperated with the NDLEA and made effort to lead the Task Force to the actual owner - Chief Okey - but the Task Force bungled the opportunity.

Counsel opined that the learned trial Judge failed to consider the defence of the Appellant to wit: that he was procured by one Chief Okey to clear the container on his behalf. Counsel submitted that the learned trial judge appeared to have been swayed by his conclusion that the appellant and the 2nd accused were liars but the law is that an accused cannot be convicted of an offence the prosecution has failed to prove simply because he lied. Counsel cited the cases of Okpere v. The State (1971) NMLR 145 and Philip Omoaodo v The State (1981) 5SC 5 page 22.

Relying on the cases of Alatise v State (2013) ALL FWLR (PT.686) PG. 552 at [567. paras. A-E]; Odogwu v The State (supra): and R.v. Teper (1952) A C. 480 at 489. learned counsel submitted that the circumstantial evidence relied on by the learned trial judge to convict the appellant was not so cogent, complete and unequivocal as to lead to the irresistible conclusion that the appellant and the 2nd accused conspired to import 165 Kilograms of cocaine from Bolivia.

Counsel submitted that while it is trite that an appellate Court would not disturb or reverse the findings of fact made by a trial court, which had the opportunity of hearing and watching the demeanour of the witnesses, where the trial court failed to properly evaluate the evidence or make proper use of the opportunity of seeing and hearing the witnesses at the trial or where it is shown that the trial court's findings are perverse and that a miscarriage of justice has been occasioned as a result, the appellate Court will interfere. Adimora v Ajufo (1983) 3NWLR (Pt. 80) 1 Ebba v Ogodo (1984) 1 SCNLR 372 at page 185. See also Williams v The State (1998) 4 SCNJ 202 at 222. Ojo V Governor of Oyo State (1989) 1 NWLR (Pt 95) and Elohor v Osayade (1992) 6 NWLR (Pt. 249) 524.

Counsel submitted that the Respondent failed to prove each of the counts against the Appellant beyond reasonable doubt and urged us to allow the appeal and to discharge and acquit the Appellant on the two counts.

RESPONDENT'S ARGUMENTS:

On the first issue, whether the prosecution has proved its case against the Appellant beyond reasonable doubt as required by law, learned counsel for the Respondent submitted that the case against the Appellant was proved , beyond reasonable doubt and that there was evidence beyond reasonable doubt to warrant the conviction of the Appellant for the offences of conspiracy to import 165 Kilograms of Cocaine into Nigeria and importation of the said 165 Kilograms of Cocaine into Nigeria. Counsel quoted the dictum of Karibi Whyte JSC in Ogwumba v. State (1993) 5 NWLR (Part 296) 60 at 67 that "—-a formulation which only raise the issue of whether the case against the Appellant had been proved beyond reasonable doubt is not merely raising the issue of burden of proof, it questions the proof of essential ingredients of the offence and the validity of procedure adopted". Counsel submitted that the prosecution in discharging the burden of proof proved all the essential ingredients of the offences and that the trial court adopted the right procedure in accordance with the relevant laws in criminal trial in coming to the decision convicting the Appellant. Counsel submitted that the Respondent tendered evidence that the Appellant was involved in the conspiracy and importation of container no. MSCU 1287231 which contained 165 Kilograms of Cocaine imported into Nigeria in January 2011. He opined that the 2nd accused who was convicted along with the Appellant admitted an oath that he faked documents to facilitate the clearance of the^ container no. MSCU 1287231 which contained the 165 Kilograms of Cocaine.

On the ingredients of conspiracy, Counsel referred to the Supreme Court case of Kaza V. State (2008) 7 NWLR (Pt. 1085) 125 at 133 and submitted that the prosecution adduced the under listed evidence to prove the conspiracy between the Appellant and the second accused person in the importation of the container containing the cocaine?

(i) Evidence that the Appellant handed over the bill of lading in respect of container no. MSCU 1287231 which contained the 165 Kilogrammes of Cocaine to Ibrahim Maidurumi — PW12 and also paid a deposit of N300, 000 to enable him clear the container containing 165 Kilogrammes of Cocaine. -
(ii) Evidence that Ibrahim Maidurumi handed the bill of Lading to Audu Ismail, who in turn gave it to Ugwu Geoffery (the 2nd Accused).
(iii) Evidence that the 2nd accused then forged some documents and made payments to Ellisbonar Nigeria Ltd to get a release letter to clear the container from the Tin can Island Port.

Learned counsel urged the Court to affirm the conviction of the Appellant for conspiracy to import the 165 Kilogrammes of Cocaine into Nigeria.

With respect to the offence of importation of the 165 Kilograms of Cocaine, Counsel submitted that the prosecution also proved the offence beyond reasonable doubt. Counsel submitted that the Respondent was required to prove the following ingredients.

a. That there was importation of cocaine into Nigeria.
b. That the Appellant was a party to the importation of the Cocaine.
c. That the substance imported is proved to be cocaine.

On (a), counsel submitted that the trial court found at page 349 of the record of Proceedings that the said container no. MSCU 1287231 containing the 165 Kilograms of Cocaine was imported into the country from Bolivia, South America. The Country of origin is Bolivia and the destination of the container is Nigeria. Counsel argued that once the container landed at Tin can Port, Lagos, it has been imported into Nigeria. He referred to Exhibit W (the bill of lading).

On (b), that the Appellant was a party to the importation of the v Cocaine, counsel referred to the findings of the learned trial judge in his judgment at page 349 of the Record of Proceedings:

“The activities of the 1st and 2nd accused persons are indicative of the involvement of a syndicate. The two accused persons though they claim not to know each other, I am satisfied that they conspired with persons now at large to import the 165 Kilograms of Cocaine in container no. MSCU 1287231 from Bolivia, South America"

Counsel also referred to the findings of the trial judge at page 348 of the Record of proceedings:

"That the evidence before the Court is that the 1st accused handed over the Bill of Lading (Exhibit W) for container MSCU 1287231 to Ibrahim Audu Maidurumi (PWIO) to assist him in the clearing of the said container. In Exhibit M the 1st Accused Statement dated 22nd January 2011, the 1st accused stated that he gave the bills of lading for containers nos. MSCU 3668026 and MSCU 1287231 to Ibrahim and that they were given to him by one Chief Oke. The Bill of Lading for container no. MSCU 1287231 was given to Ibrahim by the 1st accused personally".

Counsel submitted that all these findings were sufficient to prove that the Appellant was party to the importation of the cocaine.

On (c), that the substance imported is proved to be Cocaine, counsel submitted that in his evidence PW4 gave a graphic account of how the powdery substance recovered from the tiles which was the mode of concealment was field tested and

packed into A1 and A3. The evidence of PW4 was that AI was sent to the Forensic Laboratory for forensic analysis. PW3 the liaison officer gave evidence of how he received Al from PW4 and kept until it was analyzed on 14th of February 2011 by PW2. He also gave evidence of how the Al was returned. Al was admitted as Exhibit F and the forensic reports were admitted as Exhibit E. The report confirms that the powdery substance tested positive for Cocaine.

Counsel referred to section 42 of the Evidence Act which provides as follows:

"Either party to the proceedings in any criminal case may produce a certificate signed by the Government Chemist, the Deputy Government Chemist, an Assistant Government Chemist, a Government pathologist or entomologist, or the Accountant-General or any other chemist so specified by the Government Chemist of the Federation or of the State, any pathologist or entomologist specified by the Director of Medical Laboratories of the Federation or of the State, or any Accountant specified by the Accountant-General of the Federation or of the State (whether any such officer is by that or any other title in the service of a State or of the Federal Government), and the production of any such certificate may be taken as sufficient evidence of the facts stated therein"

He submitted that in addition to producing the forensic reports of the Exhibits in this case, the Forensic Analyst was called as a witness and she was cross-examined by the defence. Counsel further submitted that all the ingredients of the offence of importation have been proved by the prosecution. The onus consequently shifted to the accused (appellant herein) to prove lawful authority. Counsel cited Section 142 of the Evidence Act which provides that "when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him"; and section 143 of the Evidence Act which further provides that: "Any exception, exemption, proviso, excuse, qualification whether it does or does not accompany in the same section the description of the offence in the Act, order, by-law, regulation or other document creating the offence may be proved by the accused, but need not be specified or negatived in the charge; and if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the prosecution". Counsel cited the case of Ibrahim Abdul-Rahaman V. Commissioner of Police (1971) 1 NNLR 87 or 1971 NMLR 24 where it was held that "the onus was on the accused to show that he falls within the exceptions allowed in law." Counsel submitted that the Appellant failed to prove lawful authority to import cocaine into the country. Counsel urged the court to hold that the Respondent has proved count II that is importation of 165 Kilogrammes of cocaine against the Appellant beyond reasonable doubt and to affirm the conviction of the Appellant accordingly.

On the second issue, whether in the circumstances of this case it will not be improper for the Court of Appeal to tamper with the findings of fact of the Trial Court, learned counsel submitted relying on Mini Lodge Vs. Ngei (2009) 12 SCNJ 93 at 104 and Amadi v. F.R.N (2005) 18 NWLR Part 1119, 259 at 267 and 268 that the evaluation of evidence remains the exclusive preserve of the trial Court because of its singular opportunity of hearing and watching the demeanour of witnesses as they testify and thus the Court is best suited to assess their credibility. Where therefore a trial Court makes a finding as to the credibility of a witness an appellate Court would not ordinarily interfere. Contending that the findings of the trial court were not perverse and ought not to be interfered with, counsel urged us to dismiss the appeal as lacking in merit.

RESOLUTION

I shall begin by considering appellant's issue 2, the count of conspiracy. In the case of Obiakor v. State (2002) 10 NWLR (Part 774-776) 612 @ 628-629: Kalgo JSC discussed the nature of the offence of conspiracy thus:
"Conspiracy as an offence is the agreement by two or more persons to do or cause to be done an illegal act or legal act by illegal means. The actual agreement alone constitutes the offence and it is not necessary to prove that the act has in fact been committed.

Because of the nature of the offence of conspiracy, it is rarely or seldom proved by direct evidence but by circumstantial evidence and inference from certain proved acts.....And for circumstantial evidence to ground conviction, it must lead to one and only one conclusion i.e the guilt of the accused See Popoofa v. Commissioner of Police (1964) NMLR 1; R. v. Roberts (1913) 9 CAR 189 Raphael Ariche v. State (1993) 6 NWLR (Pt302) 752. The facts to be relied upon for conviction must be consistent, cogent and must irresistibly lead to guilt of the accused....."

Further in the case of Clark v State (1986) 4 NWLR (Pt. 35) 381 @ 394 H, Kolawale JCA delivering the lead judgment observed:

"What then is the nature of evidence required in a case of conspiracy of this kind? Generally, it may be stated that where persons are charged with criminal conspiracy, it is usually required that the conspiracy as laid in the charge be proved, and the person charged be also proved to have been engaged in it I think it is well recognized in law that it is not necessary that it should be proved that the appellants met to concoct the scheme which led to the theft of the subject aircraft----------
I believe that the essential ingredient of the offence of conspiracy or the gist of the offence lies in the bare engagement and association to do an unlawful thing which is contrary to or forbidden by law, whether that thing be criminal or not, whether or

not the accused persons had knowledge of its unlawfulness. It is of course necessary to constitute the offence that there should be a criminal purpose common to all the conspirators. (See R. v. Clayton (1943) 33 Cr. App.R 113)"

The charge of conspiracy reads:

That you Gabriel Onyebuchi Obi and Ugwu Geoffery males, adults, sometime in October 2010 at Lagos within the jurisdiction of this Honourable Court, conspired with others at Large to commit an unlawful act, to wit, to import 165 Kilogrammes of Cocaine from Bolivia, South America using container no. MSCU 1287231 and you thereby committed an offence contrary to and punishable under Section 14(b) of the National Drug Law Enforcement Agency Act Cap N30 Laws of the Federation 2004;

For the prosecution to secure a conviction on the above count of conspiracy, it must establish the following:

1. That the appellant and Ugwu Geoffrey had an agreement or a meeting of their minds to import cocaine into Nigeria from Bolivia using container MSCU 1287231;
2. In the absence of the overt act of the meeting of their minds, there must be evidence of acts on the part of the appellant and Ugwu Geoffrey from which the inference can be drawn that there was indeed a meeting of their minds to commit the offence charged.

From the evidence adduced, there was no overt act establishing the agreement/ That, of course is not surprising as any such agreement would have been in complete secrecy. The prosecution consequently relied on circumstantial evidence and inference from the under-listed proved acts:

(i) Evidence that the Appellant handed over the bill of lading in respect of container no. MSCU 1287231 which contained the 165 Kilogrammes of Cocaine to Ibrahim Maidurumi — PW10 and also paid a deposit of N300, 000 to enable him clear the container containing 165 Kilogrammes of Cocaine.
(ii) Evidence that Ibrahim Maidurumi handed the bill of Lading to Audu Ismail, who in turn gave it to Ugwu Geoffery (the 2nd Accused).
(iii) Evidence that the 2nd accused then forged some documents and made payments to Ellisbonar Nigeria Ltd to get a release letter to clear the container from the Tin can Island Port.

Do the above circumstantial pieces of evidence lead to one and only one conclusion - that the appellant and the 2nd accused entered into an agreement or had a meeting of their minds to import cocaine into Nigeria from Bolivia? The answer in my

humble view is an emphatic no! But the learned trial judge in his judgment at page 348 of the Record of appeal answered the question in the affirmative. His view:

"The evidence before the court is that the 1st accused handed over the Bill of lading (exhibit W) for container MSCU 1287231 to Ibrahim Audu Maidurumi (PWIO) to assist him in the clearing of the said container. In Exhibit M the 1st accused's statement dated 22nd January 2011 the 1st accused stated that he gave bills of lading for containers no's MSCU 3668026 and MSCU 1287231 to Ibrahim and that they were given to him by one Chief Oke. The Bill of Lading for container no MSCU 1287231 was given to Ibrahim by the 1st accused personally.

The 2nd accused in his statement dated 23fd January 2011 (Exhibit JI) stated that nobody asked him to go to computer to produce Efcrisam's letter heading and ID card. That he did not tell Audu Ismail about faking of the ID card and letter heading. That the sum of N5, 000 given to him by Audu Ismail was for his feeding and transport

The activities of the 1st and 2nd accused persons are indicative of the involvement of a syndicate. The two accused persons though they claim not to know each other, I am satisfied that they conspired with persons now at large to import the 165 kilograms of cocaine in container no MSCU 1287231 from Bolivia, -South America."

There is nothing in the evidence set out above by the trial judge to justify his conclusion that there was a conspiracy. All the above acts do not supply the element of the meeting of the mind between the appellant and the 2nd accused. There was no direct or indirect connection of the appellant and the 2nd accused in the above established acts. As submitted by learned counsel for the Appellant, the Respondent did not adduce any evidence to show that the appellant and the 2nd accused knew each other or had any communication concerning the importation of the cocaine. A meeting of their minds to carry out the illegal act cannot also be deduced from their respective acts. The Respondent had seized the phones of the appellant and the 2nd accused and could have obtained from their service providers their call records in proof of communication between the two, if any. The evidence before the court was that the bill of lading was given to the 2nd accused by Audu Ismail. There is no evidence whatsoever that the appellant and the 2nd accused planned the forgery of the documents of Efcrisam Group. There is evidence that money passed from Audu Ismail to the 2nd accused for the actions he took. The prosecution did not call Audu Ismail to give evidence. PW11 Eshiet Elihu the Managing Director of Ellisbanov Nig Ltd in his evidence in chief stated that BG Logistics Bolivia were the shippers of the container MSCU 1287321. He had also told the Court that from the information on the bill of lading, Efcrisam Group was the consignee of the cargo. The owner of Efcrisam Group Mr. Kayode Fashagba

was arrested by NDLEA officials and taken to their office where he made a statement. He was not charged along with the Appellant and the 2nd accused and was not even called as a witness to testify. The fact that the 2nd accused forged the documents of Efcrisam Group to enable him clear the container does not prove conclusively or lead irresistibly to the inference that he worked in concert with the appellant to import cocaine into Nigeria; especially as PW11 the MD of Ellisbanov Nig Ltd stated in his evidence that he the case of State v. Ogbubunjo (2001) 2 NWLR (Pt. 698) 576 @ Pp 590 D-G. 607 F-G. the Supreme Court observed:

"In order for circumstantial evidence to support a conviction, such evidence must not only be cogent, complete and unequivocal but compelling and lead to the irresistible conclusion that the accused and no one else is the offender; it must leave no ground for reasonable doubt and must be inconsistent with any other rational conclusion. There must be no other co-existing circumstance which can weaken such inference. [Lori v. State (1980) 5SC 5; State v. Uzor (1972) 1NMLR 208]"

There are certainly in the instant case other possible explanations for the actions of the 2nd accused other than a plan to import cocaine into Nigeria. He may have acted because he was paid to forge the documents or to facilitate the quick clearance of the container in order to earn his fees. In his first statement after arrest on 21/1/11 at pages 155 - 158 of the printed record, he stated that he was given a total sum of N50, 000.00 by Audu Ismail for the processing of the documents. He also said that when he went to Efcrisam Group at no 7 Olusesan Ogunro Street Okunola Egbeda Lagos he found it was a residential home without any company signboard with the name Efcrisam Group, he informed Audu Ismail who told him to wait that he would contact the person that gave him the documents. After waiting for two days and time was passing, he then went to computer centre at Apapa to do the fake documents. There is nothing in the evidence led to show any connection between the 2nd accused and any other person in the entire transaction/other than Audu Ismail. It is thus rather surprising that Ismail - and Kayode Fashagba were not called to testify. However, the fact remains that the circumstantial evidence adduced by the Respondent did not lead to the logical conclusion that there was a conspiracy between the appellant and the 2nd accused to import cocaine from Bolivia into Nigeria. Learned counsel for the appellant is right in his submission that it is the duty of the court in every case of conspiracy to ascertain as best as it could the evidence of the complicity of any of those charged with the offence of conspiracy. No evidence of complicity was adduced in the instant case and the learned trial judge erred in convicting the appellant of conspiring with 2nd accused and others at Large to import 165 Kilograms of Cocaine from Bolivia, South America using container no. MSCU 1287231

I will take the appellants issues 1 & 3 together, that is whether the offence of importation of 165 kilograms of cocaine was proved against the Appellant in line

with provisions of the enabling law and whether the learned trial Judge properly directed himself as to the burden and standard of proof having regard to the nature of the issues placed before him and made a proper evaluation of the evidence led by the prosecution and the defence.

In count two, the appellant was charged with importing without lawful authority 165 kilograms of cocaine from Bolivia South America on or about the 27th day of January, 2011 using container no MSCU 1287231 contrary to Section 11(a) of the National Drug Law Enforcement Agency Act Cap 30 Laws of the Federation 2004. To succeed the prosecution must prove each of the following beyond reasonable doubt:

a. That there was importation of 165 kg of cocaine into Nigeria on or about the 27th day of January, 2011.
b. That the substance imported is proved to be cocaine.
c. That the Appellant was a party to the importation of the Cocaine.

What amounts to proof beyond reasonable doubt? I am bound to start with the locus classicus on the point, the case of Miller v. Minister of Pensions (1947) 2 All E.R. p. 372' where Lord Denning J (as he then was) observed

"That proof beyond reasonable doubt does not mean proof beyond the shadow of doubt The law would fail to protect the community if it admitted of fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence "of course it is possible, but not in the least probable'1 the case is proved beyond reasonable doubt but nothing short of that will suffice."

I will also refer to the authorities cited by the Respondent in its brief of argument:

"Proof beyond reasonable doubt must attain a high degree of probability. In the case of Ahmed v. State (2003) 3 ACLR, 145 Ayoola JSC (as he then was) said

"It is equally now firmly established that proof beyond reasonable doubt means no more than what it says and need not attain the degree of absolute certainty, although it must attain a high degree of probability. That is what proof beyond reasonable doubt is all about in our criminal jurisprudence" (Emphasis added) Also, in the case of Audu v. State, 7 NWLR (Part 820) 516 at 554, this Court held that "I will now deal briefly with issue No. 1 of the Respondent. It is true that by virtue of the provisions of Section 138 of the Evidence Act, the burden of proof is on the prosecution and the standard of proof is beyond reasonable doubt, but as held in the case of Akalezi V. The State (1993) 2 NWLR, Part 273, 1 at 12, 1993 2 SCNJ 19 and restated in the case of Nasiru v. The State 1999, 2 NWLR, Part 589,87,1999,1

SCNJ 82 at 94 per Uwais CJN, the expression beyond reasonable doubt, certainly does not mean "beyond any shadow of doubt"

The prosecution consequently has the burden of proving all the essential elements of the offence in the charge beyond reasonable doubt. It must put forward before the court evidence which is so strong, compelling and convincing that it leaves no reasonable man in doubt as to the guilt of the accused. I will now take each of the ingredients of the offence seriatim to see whether there was proof beyond reasonable doubt.

(a)That there was importation of cocaine into Nigeria.

The contention of the appellant is that the cocaine found in two out of the three containers must have been planted there by the Joint Tax Force (JTF) of NDLEA and that there was no proof beyond reasonable doubt that cocaine was in the containers imported from Bolivia. The contention was hinged on the fact that the first container was examined in the absence of the owners or their clearing agent and that having found nothing in the container, to justify their suspicion the Respondent then planted the cocaine in the other two containers. With respect the contention of the appellant's counsel is speculative. No doubt for reasons best known to them and not explained at the trial, the Respondent did not follow proper procedure in opening and examining the first two containers. That is why although cocaine was found in the second container no charge was preferred in respect thereof. The evidence before the court is that the third container MSCU 1287231 which is the subject of the charge herein was opened in the -presence of the appellant, the second accused and several officials of the Respondent. In his statement made on 27/1/11 at page 145 of the printed - record, the appellant said:

"Today, 27/01/11 at about 11 am, I was taken to tin can port along with Ibrahim, Audu, A Moses. A container with number MSCU 1287231 was opened and some tiles were off loaded from the container. There were also small bags of cement inside the container. When some of the tiles were opened by the officers, I saw some packs inside the tiles the officers told me were hard drugs; they took some sample and tested it and they say is cocaine. The packs were removed and weighed and they say the total weight is 165kg."

The appellant by this statement made immediately after the opening and inspection of the container MSCU 1287231,. confirmed that this particular container was opened in their presence. Furthermore, PW4, Hassan Ibn Mohammed an assistant superintendent of narcotics NDLEA testified that on 27/01/11 officers of Joint Task Force of NDLEA, himself and the two accused persons (appellant & 2nd accused Ugwu Geoffrey) went to the Tin Can Island Port where the intercepted container was opened in their presence. Hear him:

"In the course of search conducted in the container powdery substances suspected to be cocaine were recovered neatly concealed in packs of tiles. After the extraction of the suspected substances from the tiles I carried out on the spot test of the suspected substances in the presence of the accused persons and other witnesses. The tests proved positive for cocaine. The substances were then weighed to be 165kg and were packed in eight Ghana Must Go bags; packet of tiles with suspected substances was also packed as samples of mode of concealment. I then issued the relevant exhibit forms which are Certificate of Test Analysis and Packing of substance Form which were signed by the two accused persons and other witnesses.

PW4 at page 219 of the printed record gave evidence of other actions taken with respect to the eight Ghana Must Go bags all in the presence of the two accused persons. No question was put to the witness in cross-examination with respect to his assertion that the two accused persons witnessed all the steps taken during the search of the container and signed all the relevant forms. PW5 Leonard Nnadim a staff of NDLEA also testified that the search of the container MSCU 1287231 was in the presence of the appellant and his co-accused. Under cross-examination he confirmed that the container was sealed and that the seal was cut in the presence of the appellant and his co-accused. The evidence that the appellant and his co-accused were present when the container was searched is overwhelming. Their subsequent denial in their evidence in court of being present when the container was searched is an afterthought. Having established that the container was sealed and that the seal was cut and the container opened in the presence of the appellant and others, there is no basis for the contention of the appellant that the cocaine may have been planted in the container by officials of NDLEA. If that was the case, nothing prevented NDLEA officials from also sealing back the container MSCU 3668026 after the discovery of 110 kg of cocaine and then going back with the appellant and others to search the container just as the appellant claimed they did in the case of container MSCU 1287231. In view of the bill of lading evidencing the importation of the container MSCU 1287231 from Bolivia to Nigeria and the finding of the cocaine hidden amongst the tiles in the container on inspection in the presence of the appellant and others, there is proof beyond reasonable doubt that there was importation of cocaine from Bolivia to Nigeria.

(b) That the substance imported is proved to be cocaine:
The prosecution led conclusive evidence that the substance imported from Bolivia was indeed cocaine. PW1 tendered the substance recovered from the container. PW2 gave evidence that the test analysis proved that the substance recovered was cocaine. PW4 processed the exhibits weighing 165 Kg for analysis. PW5 recovered the exhibits from the container MSCU 1287231 at Tin Can Island port in the presence of the appellant and his co-accused. Exhibits A-A7 is the bulk of the unanalyzed substance; exhibit B is the mode of concealment of the cocaine in the

cartons of ceramic tiles; exhibit F is the analyzed sample; exhibit E is the drug analysis report confirming the substance to be cocaine. All the exhibits were admitted in evidence without any objection from the appellant and his co-accused. The above witnesses were also not cross-examined or challenged as to the procedure adopted in the analysis of the substance. There is consequently proof beyond reasonable doubt that the substance imported was cocaine

(c) That the Appellant was a party to the importation of the cocaine.
The question here is what evidence did the Respondent adduce in support of their contention that the appellant was a party to the importation of the cocaine? There is evidence that the appellant gave two bills of lading to PW10 to assist him in clearing the two containers. There is also evidence that the appellant gave Maidurumi PW10 N300, 000.00 for clearing the containers. PW10 in his evidence confirmed all of the above. The Respondent at page 19 of their brief of argument referred to the findings of the trial judge at page 348 of the printed records:

"That evidence before the Court is that the 1st accused handed over the Bill of Lading (Exhibit W) for container MSCU 1287231 to Ibrahim Audu Maidurumi (PW10) to assist him in the clearing of the said container. In Exhibit M the 1st Accused Statement dated 22nd January 2011, the 1st accused stated that he gave the bills of lading for containers 1287231 to Ibrahim and that they were given to him by one Chief Oke. The Bill of lading for container no MSCU 1287231 was given to Ibrahim by the 1st accused personally".

The Respondent had submitted that the above findings were sufficient to prove that the Appellant was party to the importation of the cocaine. But the appellant's claim is that Chief Oke gave him the bills of lading to clear the containers for him and also gave him the sum of N300, 000.00 as deposit which he had given to PW10. He was however unable to produce Chief Oke. PW9, Katambi Ndirmbula a staff of the Joint Task Force Unit (JTF) of NDLEA conf irmed in his evidence in chief at page 288 of the printed record that the appellant took them to a beer parlour where he said he meets with Chief Oke but Chief Oke failed to turn up. The prosecution should have done more to either locate Chief Oke or establish that the name was fictitious arid nonexistent. PW11 Eshiet Elihu the Managing Director of Ellisbanov Nig: Ltd in his evidence in chief stated that BG Logistics Bolivia were the shippers of the container MSCU 1287321. He had also told the Court that from the information on the bill of lading, Efcrism Group was the consignee of the cargo. PW11 testified that they made contact with Efcrisam Group whose name appeared on the House bill of lading as the consignee and that it was on the strength of the contact that the 2nd accused Ugwu was sent to their office. He further testified that the House bill of lading is a trade document between the exporter of the goods referred to as the shipper and the buyer referred to as the consignee. It is evident then that Efcrisam Group played a vital role in the entire transaction as the

consignees of the -goods in the containers. The owner of Efcrism Group Mr. Kayode Fashagba was arrested by NDLEA officials and taken to their office where he made a statement. PW9 confirmed under cross-examination that Kayode Fashagba said he was aware of the containers and was communicating with the shippers. Yet he was not charged along with the Appellant and Ugwu and was not even called as a witness to testify as to his link with the consignment. His evidence would have thrown more light on the involvement of the appellant in the importation of the cocaine. The prosecution could have done more on the claim by the appellant that the bills of lading were given to him by Chief Oke. NDLEA officials had seized the phones of the appellant and could have obtained from his service providers all his call records to check for conversations relating to the importation of cocaine from Bolivia and in particular checked out the call records of Chief Oke's boy whose number was made available to NDLEA. Under cross-examination, PW9 said they must have tried in their office to trace the owner of the number 081-33084663 (Chief Oke's boy) but no evidence on the point was led by the prosecution. If there was nothing of relevance from the call records, that would have assisted in establishing the fact that Chief Oke did not exist. Rather the prosecution it appears shifted to the appellant the burden of producing Chief Oke forgetting that the burden of proving the case beyond reasonable doubt imposes on the prosecution the burden of eliminating any doubt that could arise from the evidence presented. It is the duty of the prosecution to prove the charge against an accused person beyond reasonable doubt. If there is any doubt, it must be resolved in favour of the accused as the presumption is that accused is Innocent until proven guilty. See Williams v The State (1992) NWLR (PT. 261) 515; Ogundiyan v. State (1991) 3 NWLR (Pt. 181) 519; Chukwuma v. F. R. N. (2011) LPELR-SC. 253/2007. The prosecution has in my view failed to put forward before the court evidence which is so strong, compelling and convincing against the appellant such that it leaves no reasonable man in doubt as to the probability that the appellant indeed imported cocaine into Nigeria in the container AASCU 1287231. The doubt is there that he may not have been a party to the importation of the cocaine and was just assisting Chief Oke clear the container.

The judgment of the trial court is at pages 310 to 350 of the printed record. It is noteworthy that summary of the proceedings and addresses of counsel spanned from pages 310 to 348 of the judgment. The views and actual judgment of the court started from the middle of page 348 to 350. The primary duty of a trial court is to evaluate evidence led at the trial, to make appropriate findings and to come to a reasonable conclusion based on its evaluation of the evidence. The learned trial judge did not evaluate adequately the evidence led neither did his lordship give due consideration to the issues raised in the addresses of counsel. The only comment the learned trial judge made about the appellant's claim that Chief Oke gave him the bills of lading to clear the ceramic tiles for him is this:

"The stories of the 1st and 2nd accused persons are bare faced lies. The 1st accused claimed that he does not know Chief Oke, yet he gave out his own N300, 000.00 to facilitate the clearing of container MSCU 1287231 the subject matter of this charge. I watched the demeanour of each of the accused persons. Each of them displayed the character of someone who would not speak the truth under any circumstance."

In the appellant's first statement on 21/01/11 at pages 131 -134 of the printed record, the appellant said Chief Oke gave him a deposit of N300, 000.00 for clearing the container which he in turn gave to Alhaji Ibrahim as deposit for the clearing job. Further, the appellant never claimed he did not know Chief Oke. His claim was that he did not know his address or phone number. His lordship's views are therefore a misrepresentation of the evidence on record.
The learned trial judge did not give any indication as to his reasons for his conclusion that the appellant and the 2nd accused displayed the character of persons who would not speak the truth under any circumstances. In the absence of proof of the ingredients of the offence charged beyond reasonable doubt, lies by an accused person can never ground a conviction. See Omogode v. State (1981) 5 SC 5. The learned trial judge did not evaluate the evidence led especially the claim by the appellant that he got the bills of lading from Chief Oke or the effect of the failure of the prosecution to put more effort into tracing Chief Oke or adducing convincing evidence that there is no such person in existence; the failure to call two witnesses whose evidence was vital - the owner of Efcrisam Group Mr. Kayode Fashagba whose company was the consignee of the containers; Audu Ismail who contacted the 2nd accused to help clear the containers. No explanation was given for the failure to call these witnesses. His lordship apparently concluded that the appellant and the 2nd accused lied and went ahead to convict them as charged on the basis of the lies they told. In the case of Omogode v. State (Supra)Nnamani JSC observed:

"The tribunal ought, in spite of the numerous lies told by the appellant, to have weighed the case of the prosecution very carefully, to determine whether on the totality of that evidence, the guilt of the appellant was proved beyond all reasonable doubt I do not think it did so."

The case of the prosecution in this appeal is unfortunately afflicted by the same malaise. The learned trial judge in spite of any lies told by the appellant and the 2nd accused failed to weigh the evidence presented carefully to determine whether there was proof beyond reasonable doubt. I .find it rather strange that the appellant and the 2nd accused were arrested on 21/01/11 but were not taken for a search of the container until one week 'after on 27/01/11. There simply was no proper evaluation of the evidence led in the case by the trial judge. In the case of Mafimisebi v Ehuwa [2007] All FWLR Pt 355 P562 @ 605 Onnoghen JSC observed:

"It is settled law that the evaluation of evidence and the ascription of probative value thereto reside within the province of the trial court that saw, heard and assessed the witnesses and that where a trial court unquestionable evaluates the evidence and justifiably appraises the facts, it is not the business of the appellate court to substitute its own views for the view of the trial court but the court can intervene where there is insufficient evidence to sustain the judgment, or where the trial court fails to make proper use of the opportunity of seeing, hearing and observing the witnesses or where the findings of fact of the trial court cannot be regarded as resulting from the evidence or where the trial court has drawn wrong conclusion from accepted evidence or has taken an erroneous view of the evidence adduced before it or its findings are perverse in the sense that they do not flow from accepted evidence or are not supported by evidence before the court."

See also Adimora v. Aiufo (1983) 3 NWLR (Pt. 80) 1; Atolagbe v. Shorun (1985) 1 NWLR (Pt. 2) 360; Are v. Ipaye (1990) NWLR (Pt. 132) 298; Elohor v. Osayade (1992) 6 NWLR (Pt. 249) 524.

The suboptimal findings of the learned trial judge are perverse and are not supported by the evidence before the court. The circumstantial evidence:
CA/L/629/2014

1. That the bills of lading and the sum of N300, 000.00 were given to PW10 by the appellant to proceed with the clearance of the containers;
2. That the appellant had in his house documents showing he had applied for a visa to Bolivia and was rejected;
3. That the co-accused proceeded to forge the documents of Efcrisam Group to enable him obtain from Ellisbonav the necessary documents for the clearance of the containers

do not point to one and only one rational conclusion, the guilt of the accused. They can be explained on other grounds. There were flaws and unexplained gaps in the evidence presented by the prosecution leaving doubts as to the guilt of the appellant. Further, vital witnesses whose positions were not so different from that of the appellant and particularly the 2nd accused (who if indeed there was a case to answer ought to have been charged along with the accused persons) were not even called to give evidence. The doubts created by these gaps in the case of the prosecution must be resolved in favour of the appellant. The prosecution did not prove the case on the standard required by law. It did not prove beyond reasonable doubt the alleged conspiracy between the appellant and the 2nd accused and that the appellant was involved in the importation of 165 Kg of cocaine from Bolivia using container MSCU 1287231. I hold that this appeal has merit. It is hereby allowed. The judgment of the lower court is set aside. The appellant is discharged and acquitted.

UZO L NDUKWE-ANYANWU, JCA: I had the privilege of reading in draft form, the Judgment just delivered by my learned brother Chinwe Eugenia Iyizoba JCA. I am in total agreement with his reasoning and final conclusion.

"Conspiracy is an agreement of two or more persons to do an act which it is an offence to agree to do. The very plot is an act itself and the act of each of the parties, promise against promise capable of being enforced if lawful, is punishable if it is for criminal object or the use of criminal means. In short, it is the agreement to do an act which it is an offence to agree to do which constitutes the offence of conspiracy under the Criminal Code",

per Fatayi Williams JSC in Olushegun Haruna vs. The State (1972) 8-9SCpage 108(1972)All NLR page 738.

It is true that conspiracy may exist between people who have never seen each other like in this case.

It is worrisome to note that the Appellant did not hand over any papers to the 2nd Accused person. The Appellant handed over to Ibrahim Maidurumi who handed over to Audu Ismail. Ibrahim Maidurumi later as PW10 gave evidence. There is a chain link between the Appellant, Ibrahim Maidurumi, Audu Ismail and finally Ugwu Geoffrey the 2nd Accused. The Appellant and the 2nd Accused are the 1st and 4th in the chain. The 2nd and 3rd in the chain Ibrahim Maidurumi and Audu Ismail were not charged.

It is doubtful that the Appellant and the 2nd Accused were in agreement. The 2nd Accused was running around to clear the containers with the bills of lading given to him. Even when he could not trace the address he continued in the process of clearing the containers.

If the PW10, a Custom officer handed over to Audu Ismail who handed to 2nd Accused Ugwu Geoffrey, why were they all not charged; Is it not the same handing over from one person to the other. Were the Appellant and the 2nd accused being made scapegoat of what the 2nd Accused did not know. In my own humble opinion, the 2nd accused, the 4th person in this chain could not have been said to conspire with the Appellant who did not hand over any document to him. I find it difficult to find that there is any conspiracy between the two persons charged without the PW10 and Audu Ismail. The chain and the connection was broken.

“It is well established that it is the duty of the prosecution to place before the court all available relevant evidence. This does not mean of course, that a whole host of witnesses must be called upon the same point but it does mean that if there is a vital

point in issue and there is one witness whose evidence would settle it one way or the other, that witness ought to be called"

per Achike JSC in Oduneye vs. The State (2001) LPELR - 2245. I dare say that this case was not properly investigated and prosecuted.

For this and the more comprehensive reasoning and conclusion in the lead judgment I also allow this appeal. I abide by all the consequential orders in the lead judgment.

JOSEPH SHAGBAOR IKYEGH. J.C.A.:I agree with the comprehensive judgment written by my learned brother, Chinwe Eugenia lyizoba, J.C.A., which I had the honour of reading in print.

Counsel

OBI OKWUSOGU SAN with M. O. SOWALE ESQ. and P. E. SODJE ESQ. for the APPELLANT
O. IWUCHUKWU (MRS) ASSISTANT DIRECTOR LEGAL SERVICES for NDLEA for the RESPONDENT.