IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT ENUGU
ON MONDAY THE 20TH DAY OF JANUARY, 2014
BEFORE THE HONOURABLE JUSTICE M. L. SHUAIBU
JUDGE

CHARGE NO.FHC/EN/CR/69/2012

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ..... COMPLAINANT

AND

1. IKECHUKWU OKORONKWO
2. OBIANUJU OKORONKWO ..... ACCUSED PERSONS

FEDERAL HIGH COURT
ENUGU
Certified True Copy
SIGNATURE
NAME Udeh M C
for REGISTRAR
DATE 24/4/18

Marshal Umukoro Onome for the prosecution

U. M. Okeji (holding the brief of Okeke Chijioke) for the Accused persons.

JUDGMENT

By the amended charge dated the 12th day of December 2012 the above named Accused persons were arraigned on three Counts charge of intent to forge and forging of medical Report dated 25th August, 2011 and purporting to have been issued by the Nigerian Prison Service Enugu, an offence contrary to and punishable under section 1 (2) (C) of the Miscellaneous Offences Act LFN 2004.

FEDERAL HIGH COURT CASHIER SIGN Date ENUGU

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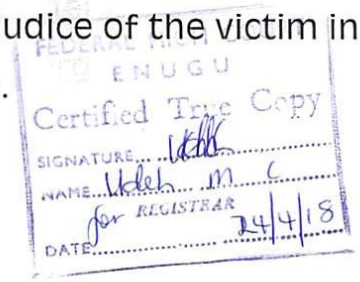
In prove of the case the Prosecution called two witnesses and tendered Exhibits A,& B series while the 1st Accused testified in his defence and tendered Exhibits C, D, E, F, and G. And at the end of the trial the respective counsel filed and adopted their brief of argument.

Learned Defence counsel Mr. Okeke has identified a sole issue that is,

Whether the prosecution has proved its case beyond reasonable doubt.

To prove a case beyond reasonable doubt according to Mr. Okeke every ingredients of the offence must be established and the essential ingredients of forgery include –

1. That there is a document or writing
2. That the document or writing is forged
3. That the forgery is by the Accused person.
4. That the Accused person knows the document or writing is false.
5. That he intends the forged document to be acted upon to the prejudice of the victim in the belief that it is genuine.



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It was contended on behalf of the defence that the medical report dated 25/8/2011 which was allegedly forged annexed to Exhibit A clearly shows that it emanated from the clinic of the Nigerian Prison Service. That same was issued and signed by Dr. Chike Okoli. Thus the character of the alleged forged document is very important in ascertaining the nature and particulars of the alleged forged. That the medical report allegedly forgery was devoid of the name of the maker, stamp and signature. It was submitted that the medical report tendered by the defence in Exhibit E is clearer, duly signed and stamped by the maker Dr. Chike Okoli Enugu State Prison Command DCP Medical. That being the position, the allegation according to Mr. Okeke is not sufficiently precise and hence the Accused persons are entitled to acquittal relying on sections 152 and 154 of the Criminal Procedure Act as well as the case of DOMONGO .V. QUEEN (1963) NSCL 61.

Learned counsel Mr. Okeke further argued that where a party denies making a document which is alleged to have been executed or thump-printed such denial is tantamount to saying that the document is a forgery or Fake. Therefore, the burden of proof of forgery rest on the party

who alleges. That there is no statement, oral or documentary from Dr. Chike Okoli disclaiming the report of the 1st Accused. Also pw2 who investigated the case admitted that he never made any contact with the said Dr. Okoli. Also in Exhibit B, Dr. Nwosu did not alleged forgery of medical report and that the letter stated the obvious that is the copy of illegible photocopy of medical report did not emanate from the prisons clinic – In essence, the maker of the alleged forged document ought to be called to debunk the multiple reasonable queries which Exhibit E elicits. Reliance was placed on ALAKE .V. STATE (1992) 3 NSLC 365 at 370 and ODUNEYE .V. STATE (2001) 2 NWLR (part 697) 311 at 329 to the effect that the failure to call person whose signature were alleged to have been forged is fetal to the case of the prosecution. The court was finally urged to discharge and acquit the Accused persons.

Adopting the sole issue identified by the defence, the prosecuting counsel Mr. Chukwumah Eneh contended that by the contents of Exhibits A and B the prosecution has established the essential elements of the offence charged.

In all criminal cases, the onus of proof is on the prosecution as the Accused is presumed innocent until

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proved guilty. See section 36 (5) of the 1999 constitution. Also proof beyond reasonable doubt is proof that precludes every reasonable hypothesis except that which it tends to support and it is proof which is wholly consistent with the guilt of the Accused and inconsistent with any other rational conclusion. Thus for evidence to warrant or to shove up conviction in criminal trial it must exclude beyond all reasonable doubt every other conceivable imaginable state of Affairs that of the guilt of the Accused. In UBANI .V. STATE (2013) 12 SC (prt II) 1 it was held that an Accused shall be entitled to acquittal of crime charged if conclusion for conviction is not the only reasonable interpretation of which the facts adduced against him are susceptible.

That the gist of the three counts charge against the Accused persons who are Husband and wife is that they have uttered a forged medical Report dated 25th August, 2011 purporting to have been issued by the Nigerian Prison Services wherein they presented it to the commissioner for Oath Mr. Ugwu of the High Court Enugu State. This was in the 2nd Accused's attempt to secure the release of the 1st Accused on bail before the High Court of Enugu State in suit No. E/95C/2011. The alleged forged medical Report was part

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of the processes filed before the Court and the 2nd Accused was the deponent of the affidavit which accompanied the said medical Report.

The evidence of the prosecution through PW1 and PW2 was that on being served with the motion paper together with the amended medical Report which reveals that the 1st Accused was suffering from Tuberculosis, they became suspicions of its guineness and hence, wrote to the prison's authorities for authentication vide Exhibit B1. That the out come is what is contained in Exhibit B2 to the effect that the said medical report sent for authentication does not emanated from the prison's clinic.

Learned defence counsel has correctly posited the essential ingredients for the offence of forgery as outlined in the case of ALAKE .V. STATE (1991) 7 NWLR (prt 205) 567. In OSUNDU .V. FRN (2000) 12 NWLR (prt 682) 483 it was held that an accused would be presumed to have forged a document where a document was shown to be used as intermediate step in a scheme of fraud in which an Accused person was involved, if shown that such document was false and was presented or uttered by an Accused in order to gain advantage on irresistible inference exist that either the

Accused forged the document with his own and or procured someone to commit the forgery. Put differently; the document in question must be false or forged and must have been uttered knowingly and fraudulently.

In the case at hand, the document allegedly forged was purportedly written and signed by someone who is different from the person that authenticated it. From the evidence before the court one Nwosu Valantine I. DCP authored the forged document while Chike Okoli, DCP (medical) authenticated it. The question is "was there any document written by Mr. Nwosu which was later forged or uttered by the Accused persons. In fact does the said Nwosu V. I. exist and does the alleged forged document emanated from him ? The answers to these questions and much more would have given a clearer picture of the whole scenario. I am also tempted to ask another question that is, what prevent the prosecution to call both messrs Valentine and Nwosu to shade light on the apparent inadequacies ? I therefore cannot but agree with the defence that even though the prosecution has the discretion to call witnesses it considers relevant but where as in this case vital and

material witnesses are not called, such a failure is no doubt fetal to the prosecution's case.

The provision of section 167 (d) of the Evidence Act 2011 is to the effect that if the evidence which could be produced but was not produced would if produced be unfavourable to the person who withholds it, it would be presumed that that evidence if made available would be against that person. See also CHINEKWE .V. CHINEKWE (2010) 37 WRN 53 at 57.

On the strength of the above, there is other conceivable imaginable state of affairs than that of the guilt of the Accused persons. Thus, the prosecution has not proved the allegations in the three counts charge against the Accused persons. They are accordingly discharged and acquitted.

M.L.SHUAIBU
JUDGE
20-1-14

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