

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS FRIDAY, THE 29TH DAY OF SEPTEMBER, 2017

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO: CR/50/10

BETWEEN:

FEDERAL REPUBLIC OF NIGERIAPLAINTIFF

AND

ALHAJI ABDULWAHEED POPOOLADEFENDANT

JUDGMENT

The defendant was arraigned on an Amended seven count charge of obtaining the sum of N2, 050, 000.00 (Two Million, Fifty Thousand Naira) by false pretence contrary to **Section 1 (1)(a) of the Advance Fee Fraud and other Other Related Offences Act 2006** and punishable under **Section 1(3) of the same Act**; Forgery of Ministry of Federal Capital Territory, Abuja, Offer of Terms of Grant/Conveyance of Approval of Statutory Right of Occupancy dated 2nd September, 1996; forgery of Revenue Collector's Receipt dated 21st August, 1996 and forgery of Acceptance of Offer of Grant of Occupancy within the Federal capital Territory, Abuja dated 2nd September, 1996 contrary to **Section 363(1) of the Penal Code Act Cap. 532 Laws of the Federation of Nigeria (Abuja)** and punishable under **Section 364 of the same Act**, and using as genuine the above mentioned forged documents contrary to **Section 366 of the Penal Code Act Cap. 532 Laws of the Federation of Nigeria (Abuja)** and punishable under **Section 364 of the same Act**.

The defendant pleaded Not Guilty to the charge.

In proof of its case, the prosecution called four (4) witnesses. I will here summarise the essence of their evidence. **PW1 is Augustine Olowonih Shola**. He is a Deputy Detective Superintendent with EFCC and his schedule of duty include investigating cases minuted to his team. In this case, a petition written by

the law firm, Remedium Chambers was minuted to his team for investigation and it relates to offences of obtaining money by false pretence, forgery and using as genuine, documents that are forged, all leveled against Defendant. On receipt of the petition, the petitioner was invited to give further particulars on the petition; he honoured the invitation and furnished the commission with original of title documents including the Right of Occupancy, the purported original copy of Acceptance and Revenue collectors receipt all given to him by defendant before he paid money to him for the purchase of the land in question. PW1 stated that they wrote to AGIS to confirm the authenticity of the documents given to the complainant by the defendant and that the AGIS replied stating that the Right of Occupancy is a forged and cloned copy of the original. Based on the reply by AGIS, the commission invited the defendant and confronted him with all the relevant documents he gave to the complainant. That the complainant admitted he sold the land to the complainant and gave him the purported original documents of title and that he is surprised to hear that the documents are not genuine. The defendants statements were then recorded without any inducement or intimidation. He stated further that he again wrote to AGIS enquiring about who re-certified the plot and they replied informing them that the plot was recertified by one Ahmed on behalf of Sunday Ameh Ako on 8th September, 2008.

PW1 testified that from the reply by AGIS, they got the particulars of Sunday Ako, the original allottee or owner and they invited him. The said Sunday Ako came to their office with the original documents of the land and stated that he never instructed anyone to sell the plot of land on his behalf. He deposited all his original title documents at the commission. PW1 stated that based on these facts and documents from Sunday Ako, they invited the defendant again to further furnish them with facts and documents which he did. After getting all the documents from both the defendant and Sunday Ako, they went to AGIS and obtained the statement of Tijani Usman a staff with AGIS, F.C.T. The said Tijani from AGIS maintained that the said title documents of the defendant are forged and a cloned copy of the original. He then obliged them with certified copies of the title documents in respect of the plot of land in the original file of the plot. PW1 stated also that having gotten all the title documents from all the parties and AGIS, and having examined same, they came to the conclusion that the title documents given to the petitioner by defendant were forged and not genuine. Further that the defendant used these false documents to obtain the sum of N2, 050, 00.00 from petitioner by false pretence.

The following documents were tendered as evidence through PW1 thus:

- 1. The Certified True Copy of the petition dated 10th November, 2008 together with 5 Annexures were admitted as Exhibit P1.**
- 2. The copy of the offer of forms of grant of approval dated 2nd September, 1996 was admitted as Exhibit P2.**
- 3. The acceptance of offer letter dated 2nd September, 1996 was admitted as Exhibit P3.**
- 4. The Revenue collector's receipt dated 21st August, 1996 was admitted as Exhibit P4.**
- 5. The letter dated 18th December, 2008 to General Manager AGIS and acknowledged by AGIS was admitted as Exhibit P5.**
- 6. The letter by AGIS dated 3rd February, 2009 to the Executive Chairman EFCC was admitted as Exhibit P6.**
- 7. The Acknowledgment letter by AGIS together with an attachment dated 25th February, 2009 was admitted as Exhibit P7.**
- 8. The letter from AGIS with 2 attachments dated 23rd April, 2009 to the Director Operations EFCC was admitted as Exhibit P8.**
- 9. The six statements of the Accused (Defendant) dated 23rd March, 2009; 2nd April, 2009; 22nd April, 2009; 13th July, 2009; 28th July, 2009 and 27th October, 2009 were admitted as Exhibit P9(a-f).**
- 10. The letter from EFCC dated 5th May, 2009 and acknowledged by AGIS was admitted as Exhibit P10.**
- 11. The Reply letter by AGIS to EFCC dated 8th June, 2009 with 5 attachments was admitted as Exhibit P11.**
- 12. The CTC of offer of Terms of Approval in the name of Sunday A. AKoh dated 26th October, 2013 was admitted as Exhibit P12.**

- 13.The Recertification and Re-issuance of Certificate of Occupancy Acknowledgment by AGIS dated 8th September, 2008 was admitted as Exhibit P13.**
- 14.The Certified True Copy of Acceptance of Offer of Grant dated 2nd November, 2013 was admitted as Exhibit P14.**
- 15.The Revenue Collector's Receipts dated 15th September, 2008 and 11th May, 1993 were admitted as Exhibit P15 a and b.**
- 16.Letter of payment of processing fee was admitted as Exhibit P17.**
- 17.The Right of Occupancy dated 2nd September, 1996 was admitted as Exhibit P17.**
- 18.The Acceptance of Offer of Grant was admitted as Exhibit P18.**
- 19.Revenue Collector's Receipt dated 21st August, 1996 was admitted as Exhibit P19.**
- 20.T.D.P of the plot was admitted as Exhibit P20.**
- 21.Application to Register Power of Attorney in respect of Katampe dated 12th August, 2008 was admitted as Exhibit P21.**
- 22.Letter by defendant to AGIS dated 15th August, 2009 was admitted as Exhibit P22.**
- 23.Letter by defendant to AGIS dated 20th August, 2008 was admitted as Exhibit P23.**
- 24.The Right of Occupancy dated 26th October, 1993 was admitted as Exhibit P24.**
- 25.Acceptance of Offer dated 2nd November, 1993 was admitted as Exhibit P25.**

26. Revenue Collector's Receipt dated 15th September, 2008 and 11th May, 1993 were admitted as Exhibit P26 a and b.

27. Payment of Processing Fee dated 11th May, 1993 was admitted as Exhibit P27.

Under cross-examination, PW1 described the disputed plot as plot 1528, Katampe District and that it was allocated to Sunday Ameh Ako alone and not to any other person. PW1 stated that the Right of Occupancy they sent to AGIS given by defendant is a forged or cloned copy of the original and that AGIS confirmed this. Further that AGIS confirmed that all the other title documents defendant gave petitioner did not emanate from them. Also that from their investigation, they are not aware of any double allocation in respect of plot 1528. That the defendant gave the complainant a forged copy of the title document which was found to be forged by AGIS. PW1 stated that he is not aware that EFCC is investigating and even prosecuting several AGIS officials.

PW2 is Fredricks E. Itula, the nominal complainant or petitioner. His evidence is that sometimes in July, 2008, one Mr. Paul came to him with title documents of Plot 1528, Katampe District, and he claimed that the owner of the plot is one Abdulwaheed Popoola, the defendant. They met with the defendant and sought to conduct a search on the plot but the search could not be conducted as the title documents were not recertified. They then agreed on N3.9Million for the plot and they also agreed to set aside N300,000 for recertification and registration of the Power of Attorney. A draft of N150,000 was raised for recertification and another draft of N100,000 for the registration of Power of Attorney. PW2 stated also that at this point, the defendant wanted his Nissan Altima 2002 car which, PW2 wanted to sell. They agreed price at N1.6 Million for the car and he handed to the defendant the car and a cash of N200, 000 which were to be part of the purchasing price of the said plot of land. The total amount given to the defendant is N2, 050,000. The defendant thereafter handed to PW2 the following documents: Original Letter of offer; copy of the acceptance letter of offer and receipt for the application of the land, all of plot 1528.

PW2 stated that armed with the foregoing documents, he applied for recertification and paid N150,000. After some weeks, AGIS called PW2's law firm requesting for all the documents they have; PW2 took the documents to AGIS and the

documents were intercepted. That they even wanted to arrest him, but AGIS found out that he innocently bought the land. PW2 stated that on the 10th November, 2008, AGIS wrote confirming these facts and said that:

1. The documents he had were forged and fake.
2. The original allottee, Sunday Ako Ameh was allocated the plot in 1993 and not 1996 as it appears the allocation given to him.
3. The original allottee had since recertified the documents.

PW2 stated that given the above and since he could not recover his money back, he petitioned EFCC. He identified the petition as Exhibit P1. EFCC invited him shortly and he gave his statement and gave copies of Deed of Assignment and other title documents to the EFCC. The said Deed of Assignment was in the name of Sunday A. Ako and PW2, and the defendant was a witness to the said document.

PW2 testified that he had never met Mr. Sunday A. Ako. PW2 looked at Exhibits P2, P3 and P4 which he presented to EFCC which were given to him by the defendant. He also looked at Exhibits P12, 14 and 15b which he is just seeing for the first time in court. PW2 stated that he had seen that Exhibit P2 is not the same with Exhibit P12, Exhibit P3 is not the same with Exhibit P14 and Exhibit P4 is not the same with Exhibit P15b. PW2 further stated that upto now he could not get access to the said plot nor his money returned to him by the defendant. The Deed of Assignment between Sunday Ameh Ako and Fredrick Itula was admitted as Exhibit P28.

Under cross-examination, PW2 stated that he and the defendant presented the documents for recertification at AGIS and when it was found to be forged, the defendant disappeared. PW2 stated that he willingly signed the Deed of Assignment not knowing whether Mr. Sunday Ako exist; he only knows that the defendant claimed to speak with Mr. Sunday Ako.

PW3 is Sunday Ameh Ako. His evidence is that he is the original allottee and the real owner of plot 1528 Katampe District with File No. BN912 as contained on the offer letter dated 26th October, 1993. He stated that he travelled from Makurdi to Abuja on the 6th July, 2009 on the invitation of one Mr. Shola of EFCC in respect of plot 1528. On getting there he was asked if he owns plot 1528 Katampe District. He answered in the affirmative and he presented all his title documents, it was photocopied and the originals were handed back to him and he wrote a

statement. PW3 stated also that he was given only one allocation paper in respect of plot 1528 and he has never known or ever been in contact with one Alhaji Abdulwaheed Popoola, the defendant. He stated further that he never advertised the said plot of land for sale nor attempted to commission anybody to sell the land on his behalf. PW3 compared Exhibits P2 and P3 and all the original documents with him. PW3 further stated that he has never given copies of his land documents to anybody except the personnel of EFCC. He did not also execute any Deed of Assignment with any Barrister or any other person(s).

The following documents were tendered in evidence through PW3 thus:

- 1. The statement of Sunday Ameh Akoh (PW3) dated 6th July, 2009 was admitted as Exhibit P29.**
- 2. The Offer of Terms of Grant/Conveyance of Approval dated 6th October, 1993 was admitted as Exhibit P30.**
- 3. Recertification and Re-issuance of Certificate of Occupancy Acknowledgment was admitted as Exhibit P31.**
- 4. Acceptance of Offer of Grant of Occupancy dated 2nd November, 1993 was admitted as Exhibit P32.**
- 5. Revenue Collector's Receipt dated 13th September, 2009 was admitted as Exhibit P33.**
- 6. Revenue Collector's Receipt dated 11th May, 1993, the sum of N6,700 together with the payment of processing fee acknowledging the said sum were admitted as Exhibit P34 a and b.**

Under cross-examination, PW3 stated that he had heard of multiple allocations but never heard of multiple allocations with same names on them.

PW4 is Tijani Sanusi. His evidence is that he worked with the Legal Services Secretariat of FCDA between 2008 and 2009. He was later transferred to AGIS Lands Department as the Legal Adviser. He recalled that AGIS received a letter from EFCC asking for confirmation of a letter of offer and having received the said letter Exhibit P7 and all the attached documents and after going through their records, it was discovered that Exhibit P2 is forged and cloned and that the

documents did not emanate from AGIS or the Land Registry. They wrote back to EFCC of their findings. PW4 stated that Exhibit P2 is not in any file in AGIS.

Under cross-examination, PW4 stated that before the computerization of the system, there were instances of multiple allocation but not to the same person or the same name and he is not aware that any staff of AGIS including directors are facing criminal charges in court.

With the evidence of PW4, the prosecution finally closed its case.

The defendant never put in a defence despite the more than ample time given him to do so. It is important to state that this matter has dragged this long precisely because of the antics and dilatory tactics of the defendant. He initially jumped bail which led to a revocation of same. When he was arrested, he then feigned that he had a very serious and terminal ailment and produced a medical report from Lagos University Technology Hospital (LUTH) which stalled proceedings for a considerable period of time before it was later determined that the ailment was a ruse when he was arrested again and prosecuted in another court on a different charge. The prosecution informed court that he was granted bail in the other court and that he jumped bail. The defendant however never appeared in this court again thereby frustrating proceedings. The court was thus compelled to have recourse to the provision of **Section 352 (4) of the Administration of Criminal Justice Act (ACJA) 2015** to proceed with hearing in the absence of the defendant and in the absence of reasonable explanation for his absence.

It is only apposite to add that despite the absence of defendant, his counsel however appeared constantly in court. Accordingly, with the closure of the case of prosecution, counsel for the defendant sought for an adjournment to open his defence. The matter was adjourned at his instance but counsel never appeared in court again despite service of hearing notices. The defence was then foreclosed and parties ordered to file their final address. Learned counsel to the defendant here too, elected or chose not to file an address.

The written address filed on behalf of the prosecution by **T.N Ndifon** of counsel dated 2nd March, 2017 and filed same date in the Court's Registry raised one issue as rising for determination to wit:

“Whether from the quantum of evidence adduced by the prosecution and exhibits tendered, it could be said it has discharged the burden on it by

proving the offences for which the defendant is charged beyond reasonable doubt.”

The above issue raised by the prosecution captures the crux of the issue that the court will shortly resolve. I have carefully considered the charge in this matter, the evidence adduced by parties and the written address filed by the learned counsel to the prosecution herein to which I may refer to in the course of this judgment where necessary. It seems to me that the single issue for determination in this matter and which requires the most circumspect of consideration is whether the prosecution has proved the charge against the defendant beyond reasonable doubt to warrant a conviction for the offences charged.

Now, it is not a matter for dispute that the charge defendant is facing involves the alleged commission of crimes. Under our criminal justice system and here all parties are in agreement, the burden or onus is clearly on the prosecution to prove the guilt of the defendant beyond reasonable doubt. See **Section 135(1) of the Evidence Act**. The position of the law, as provided for by **Section 135(2) and (3) of the Evidence Act**, needs restatement, that the burden of proving that any person has been guilty of a crime or wrongful act is, subject to **Section 139 of the Act**, on the person who asserts it; and that if the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the Accused person.

In shedding more light on the statutory responsibility and expectation of the prosecution to prove its case beyond reasonable doubt, the Supreme Court held in **Mufutau Bakare V. The state (1987)3 SC 1 at 32**, per Oputa, JSC (now late) as follows:

“Proof beyond reasonable doubt stems out of a compelling presumption of innocence inherent in our adversary system of criminal justice. To displace this presumption, the evidence of the prosecution must prove beyond reasonable doubt, not beyond the shadow of any doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure including the ministration of criminal justice.”

See also **Lortim V. State (1997)2 N.W.L.R (pt.490)711 at 732; Okere V. The State (2001)2 N.W.L.R (pt.697)397 at 415 to 416; Emenegor V. State (2009)31 W.R.N 73; Nwaturuocha V. The State (2011)6 N.W.L.R (pt.1242)170.**

It is also well settled that in a criminal trial, the prosecution could discharge the burden placed on it by the provisions of **Section 135(2) and (3) of the Evidence Act**, to prove the ingredients of an offence, and invariably the guilt of an Accused Person beyond reasonable doubt, in any of the following well established and recognized manners, namely:

1. By the confessional statement of the accused which passes the requirement of the law; or
2. By direct evidence of eye witnesses who saw or witnessed the commission of the crime or offence; or
3. By circumstantial evidence which links the Accused Person and no other person to or with the commission of the crime or offence charged.

See **Lori V. State (1980)8 8-11 SC 18; Emeka V. State (2011)14 N.W.L.R (pt.734)668; Igabele V. State (2006)6 N.W.L.R (pt.975)100.**

Being therefore mindful of the well settled principles as espoused in the authorities cited in the foregoing, I shall proceed to examine the instant charge in the light of the evidence adduced by the prosecution in order to determine whether or not the prosecution has established the charges against the defendant beyond reasonable doubt.

I now proceed to consider the counts in relation to the evidence on records and in the process determining whether the required legal threshold of proof was met.

Now under **COUNT 1**, the defendant is charged with the offence of obtaining money under false pretence contrary to **Section 1(1)(a) of the Advance Free Fraud Act** and punishable under **Section 1(3) of the same Act**.

It may be necessary to at this stage state the relevant full provision of **Section 1 of the Act** to enable a full appreciation of its import and application. The section provides thus:

“1. Notwithstanding anything contained in any other enactment or law, any person who by any false pretence and with intent to defraud...

(a) obtains, from any other person, in Nigeria or any other country for himself or any other person; or

(b) induce any other person, in Nigeria or any other country, to deliver to any person; or

(c) obtains any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence, commits an offence under this Act.”

The above provision appears to me clear. In understanding its correct import, it is important to situate what false pretence connotes. **Section 20 of the same Act** defines false pretence as follows:

“false pretence” means a representation, whether deliberate or reckless, made by word in writing or by conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true.”

Learned counsel to the prosecution has in his address and relying on the above provisions and decided cases set out the key ingredients needed to be established in proof of this count. In **Ijuaka V. C.O.P (1976) 6 SC 99**, the Supreme Court instructively stated as follows:

“In order that a person may be convicted of that offence, it has been said hundreds of times that it is necessary for the prosecution to prove to the satisfaction of the jury that there was some mis-statement which in law amounts to a pretence, that is, a mis-statement as to existing fact made by the accused person; that it was false and false to his knowledge; that it acted upon the mind of the person who parted with the money; that the proceeding on the part of the accused person was fraudulent. That is the only meaning to apply to the words with intent to defraud.”

Having delineated from the above decision, the necessary elements of the offence, the simple, albeit delicate task and I have already alluded to it, is to examine the evidence led by the prosecution witnesses in the light of the legal ingredients required to establish the offence for which the defendant was charged. It is settled that before a conclusion can be arrived at that an offence has been committed by an accused person, the court must look for the ingredients of the offence and ascertain critically that the acts of the accused person come within the confines of the particulars of the offence charged. See **Amadi V. State (1993)8 NWLR (pt.314) 646 at 664.**

I had at the beginning of this judgment deliberately and in extenso stated the substance of the evidence of the prosecution witnesses.

Now on the evidence which is essentially unchallenged as there is nothing on the other side of the aisle or scale of justice, it is not a matter for dispute that the defendant presented himself to one Barrister Fredricks E. Itula, PW2 that he is the owner of plot 1528 Katampe District, Abuja, with File No. or Right of Occupancy No. **MFCT/LA/90/BN.912**. It is common ground on the evidence that the defendant witnessed and signed a Deed of Assignment admitted in evidence as **Exhibit P28** purporting to have transferred and assigned his interest in the said land to PW2 for valuable consideration. It is also in evidence that Mr. Sunday Ameh Ako PW3 whose name is mentioned in Exhibit P28 and who is the genuine owner of plot 1528 said he is not aware of Exhibit P28 as he is seeing it for the first time in court, and that he never made nor signed same. Furthermore that he never commissioned anybody to sell his land. It is similarly not disputed that Exhibit P2 which is the same with Exhibit P17 being the document the defendant gave to the nominal complainant in respect of the said land was intercepted by AGIS and they established that it is a forged document. It is also proven in evidence that Exhibits P3 and P4 being also documents the defendant gave to the PW2 are forged documents.

These documents Exhibits P2, P3, P4 and P17 are not from Mr. Sunday Ameh Ako as they were purported to have been made in 1996. It is in evidence that the authentic and genuine documents in respect of plot 1528 Katampe District, Abuja, with File No. or Right of Occupancy No. MFCT/LA/90/BN.912 in favour of Mr. Sunday Ameh Ako were made in 1993 and not 1996. See **Exhibits P12, 14, P15(b), P24, P25, P26(b), P30, P32 and P34(a)**. It is in evidence that when the defendant obtained the sum of N2, 050,000.00 (Two Million and Fifty Thousand Naira) in cash and kind from the nominal complainant PW2, the defendant presented **Exhibits P2, P3, P4 and P28** to PW2 as documents in respect of plot 1528 Katampe District, Abuja, claiming same to be his land which he knew is false since on the evidence, he was never allocated the plot by the issuing authority and he never bought same from the lawful allottee, PW3.

The unchallenged evidence of PW1, PW2, PW3 and PW4 show conclusively that the disputed plot 1528 was never at anytime allocated to the defendant but PW3 and that the documents of title defendant used as the basis for selling to PW2 were all found not be genuine. The defendant therefore at the time he was making the

transaction to sell plot 1528 to PW2 for value proceeded on a false premise, to wit; that his documents were not genuine to his knowledge but held them out as such to obtain value from an innocent third party.

I have no difficulty on the unchallenged evidence in holding that the defendant obtained the sum of N2, 050,000 in cash and kind from PW2 on the false pretence that he is the owner of plot 1528 within Katampe District Abuja, covered by Right of Occupancy No. MFCT/LA/90/BN912 dated 2nd September, 1996 which he knew to be false.

As stated earlier, the narrative of all the prosecution witnesses were not in any way challenged or undermined and in law, they are deemed as admitted. As a logical corollary, I hold that with respect to Count 1, the prosecution has proved the offence against the defendant beyond reasonable doubt. Accordingly I find the defendant Guilty on Count 1 of the charge.

Under **COUNT 2**, the defendant is charged with the offence of forgery contrary to **Section 363 of the Penal Code** which provides as follows:

“Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that may be committed, committed, commits forgery; and a false document made wholly or in part by forgery is called a forged document.”

It may be apt to also refer to **Section 362 (a) of the Penal Code** which provides thus:

“A person is said to make a false document:

- (a) who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document or makes any mark denoting the execution of a document with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed or at a time at which he knows that it was not made, signed, sealed or executed...”**

The above provisions are clear. Here again, learned counsel has also in his address set out the ingredients of the offence of forgery as follows:

- (a) That there is a document or writing;
- (b) That the document or writing is forged;
- (c) That the forgery is by the accused person;
- (d) That the accused person knows that the document or writing is false;
- (e) That he intends the forged document to be acted upon to the prejudice of the victim in the belief that it is genuine.

See the case of **Amadi V. FRN (2008) 18 NWLR (pt.1119) 259 at 277-278 paras: H-B.**

In this case and from the evidence, the document subject of this charge is the Ministry for Federal Capital Territory, Abuja, Offer of Terms of Grant/Conveyance of Approval of Statutory Right of Occupancy dated 2nd September, 1996 in respect of plot 1528 Katampe District, with File No. BN.912, in favour of Mr. Sunday Ameh Akoh purportedly issued by Department of Land, Planning and Survey of Ministry for Federal Capital Territory, Abuja. It is in evidence that the said Offer of Terms of Grant/Conveyance of Approval of Statutory Right of Occupancy in favour of Mr. Sunday Ameh Ako purportedly issued by Department of Land, Planning and Survey of Ministry for Federal Capital Territory, Abuja and admitted in evidence as Exhibits P2 and P17 are forged. It is also in evidence that the said Exhibit P2 which is the same with Exhibit P17 was given to the nominal complainant Fredricks E. Itula (PW2) by the defendant for a consideration of N2, 050,000.00. It is equally in evidence that the said Exhibit P2 which is the same with Exhibit P17 did not emanate from AGIS Land Registry and neither was it made and issued by Department of Land, Planning and Survey of Ministry for Federal Capital Territory, Abuja. It is also in evidence that the purported original of the said Exhibits P2 and P17 given to PW2 by the defendant, was intercepted by AGIS in the course of PW2 trying to carry out re-certification of the document. The evidence of PW1, PW2, PW3 and PW4 respectively confirms the above material facts.

Now adverse to the documents defendant gave to PW2 as the right of offer of the disputed plot, the issuing authority produced Exhibits P12, P24 and P30 (which are one and the same documents but Exhibit P30 is the original) as the genuine offer of Terms of Grant/Conveyance of approval of Statutory Right of Occupancy dated 26th October, 1993 in respect of plot 1528 in favour of Mr. Sunday Ameh Akoh,

PW3. On the evidence, PW4 from AGIS or issuing authority stated categorically that it is the only recognised lawful allocation on the disputed plot. The owner PW3, stated that he never sold or transacted business over the land with defendant and infact does not even know him. The critical question then is how did defendant come about this letter of offer he sold to PW2 which on the unchallenged evidence of PW1, PW2, PW3 and PW4 is not genuine but forged. The defendant did not proffer evidence of how he came about his own letter of offer over plot 1528.

It is trite law that where an alleged maker of a document raises the issue of forgery, the onus is on the person asserting that same was made by the other person to prove due execution; in other words, where the alleged maker of a document denied making it, the person alleging that the other is the maker must prove same creditably. See **Fatunde V Onwoamanam (1990) 2 N.W.L.R (pt.132) 322 at 334 para: C**. See also the case of **Carlen (Nig.) Ltd. V UNIJOS (1994) 1 N.W.L.R (pt.323) 631 at 666**.

In this case, the **issuing authority** of all lands in the Federal Capital Territory vide Exhibit P8 stated that Exhibits P3, t he offer letter which is the same as Exhibit P17 which defendant gave to PW2, the norminal complainant for value is a **“cloned copy”** and forged. As already alluded too, they confirmed that Exhibit P30, the offer letter dated 25th October, 1993 and issued in favour of Mr. Sunday Ameh Ako (PW3) is genuine and confirms his ownership of the disputed plot 1528.

It may be apposite at this point to draw attention to the confessional statement of defendant admitted as Exhibit P9. In the statement, the defendant stated that he bought the land from an agent in AMAC and that all efforts he made to recertify the plot and sell same was in vain, before he met one Mr. Paul who introduced him to one Barrister Fredricks Itula (PW2) who said he was interested in buying the said plot. It is therefore crystal clear, that the defendant knew that Exhibit P2 is fake and or forged and that he did not get same directly from the Department of Land of the Ministry of Federal Capital Territory, Abuja or from PW3 Mr. Sunday Ameh Ako, the real and authentic owner of Exhibit P30 which explains the failed attempt at recertification.

It is trite law that extra judicial statements made by a person, are admissible in evidence at the trial of the person, and if it is evident that they were made voluntarily by the person, as in the instant case, such evidence become admissible against him. See **Amala V State (2004) 12 NWLR (pt.888) 520 at 549**. In law, a confession in criminal procedure is like an admission in civil proceedings. It is the

strongest evidence of guilt on the part of an accused person as already alluded to. It is stronger than the evidence of an eye witness because the evidence comes out of the “horses’ mouth”, who is the accused person. There is no better evidence and there is no need for further proof, since what is admitted needs no further proof. See **Akpan V The State (2008) 14 NWLR part 1106 page 72.**

In the instant case, it is not in dispute that the defendant was in possession of Exhibits P2 and P17 which is the purported original letter of offer he gave to the nominal complainant and which was intercepted by AGIS for being a cloned and forged document. Exhibit P1 and the attachments thereto and Exhibit P8 confirms this position. The evidence of PW1, PW2, PW3 and PW4 which I have repeatedly referred corroborates this position in all material particulars. In **Agwuna V Attorney General of the Federation (1995) NWLR (pt.396) 418 at 438 paras. G-H**, the Supreme Court hold thus:

“...it is certainly not the law that only the person who manually write or signs a forged document that may be convicted for the forgery of the document. The law is settled that all persons who are participies criminis, whether as principals in the first degree or as accessories before or after the fact to a crime are guilty of the offence and may be charged and convicted with the actual commission of the crime. Parties, participies criminis to a crime, include inter alia every person who actually does the act or makes the omission which constitutes the offence, person who aid, abet or assist them in the commission of the offence or who counsel or procure others to commit the offence or knowingly give succour or encouragement to the commission of the crime or who knowingly facilitate the commission of the offence.”

I need not add to the above. In the absence of any counter evidence from the defendant, the conclusion I have arrived at with respect to Count 2 is that the prosecution has credibly established the offence of forgery under Count 2 and I accordingly find the defendant guilty as charged.

Under **COUNT 3** which flows from Count 2, the defendant is charged with fraudulently using the same title document he gave PW2 as genuine and emanating from the Department of Land, Planning and Survey FCT which he knew to be forged contrary to **Section 366 of the Penal Code.**

Now **Section 366 of the Penal Code** provides as follows:

“Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.”

Section 16 of the Penal Code provides thus:

“A person is said to do a thing “dishonestly” who does that thing with the intention of causing a wrongful gain to himself or another or of causing loss to any other person.”

The above provisions are clear. Now in our consideration of the evidence on Count 2, I held that the document of title or the offer of conveyance, Exhibits P2 and P17 which defendant offered to PW2 as genuine documents of title were forged and or are not genuine. The documents were not issued by the issuing authority and indeed by Exhibit P8, they stated that the documents are **“cloned”** and not the original. The documents were also not given to him by the lawful allottee of plot 1528, the PW3.

On the evidence, there was clearly no basis for the defendant to have sold plot 1528 to PW2 or indeed to anybody on the basis of the forged Exhibit P2 and or P17. You cannot sell or give out what you don't own. In the circumstance, the defendant gave the said offer letter, P2 and P17 dishonestly with the intention of causing wrongful gain to himself (here he got over N2 Million naira) and loss to another (PW2) particularly here when he knew that the documents are not genuine but he held them out as genuine to PW2 who parted with a huge amount in return for nothing in real terms.

It is trite law that a person who uses or possesses or deals with a forged document is guilty of forgery even if he is not the maker. And that the absence of evidence of a hand writing or any expert in the case of forgery is not prejudicial to prosecution's case where the document and the accused are strongly linked. And where there is a very strong connecting link between the accused and the document to the extent that the circumstances establish the commission of the alleged offence by the accused, the court is entitled to draw the inference circumstantially that the accused was the author of the document and therefore the author of the crime, like in the instant case. See the case of **Akinbisade V The state (2006) 17 N.W.L.R (pt.1007) 187 or (Criminal Appeal Cases) Vol. 3 at 31.**

On the whole, Count 3 was established by the prosecution and I accordingly find the defendant guilty as charged.

Like count 2, **Count 4** charges the defendant with the offence of fraudulently making a false document or forgery contrary to **Section 363 of the Penal Code** and punishable under **364 of the same Act**.

I had earlier explained the import of the provision of **Sections 363 and 362(a) of the Penal Code** and the necessary elements that must be proved to sustain the charge of forgery. I need not repeat myself again. On the evidence, the document subject of this count is the Revenue collectors receipt dated 21st August, 1996 purported to have been issued to Mr. Sunday Ameh Ako (PW3) by the FCT acknowledging payment of N21, 000 land form and processing fee. This document was admitted in evidence as Exhibit P4 and it was part of the documents defendant issued to the nominal complainant as genuine documents for the sale of Plot 1528. As we have repeated in this judgment, the sale was for consideration and the defendant received the sum of N2,050,000 (Two Million and Fifty Thousand Naira) in cash and kind for the sale.

Now from the unchallenged evidence of prosecution witnesses, this Revenue Receipt purported to have been issued in favour of Mr. Sunday Ameh Ako on 21st August, 1996 did not emanate from the Federal Capital Development Authority. Indeed the genuine Revenue collectors receipt issued in favour of Mr. Sunday Ameh Ako for land processing fee is dated 11th May, 1993 and not 21st August, 1996 and admitted as Exhibit P15(b) or 34(a). The acknowledgment of the payment of these fees is also on 11th May, 1993 vide Exhibits P16 or 34b. These documents were issued years before the purported Exhibit P4 was made dishonestly and presented as a genuine receipt to induce PW2 to enter into the failed sale of land transaction.

Here again, the defendant has not given evidence on how he came about Exhibit P4 made in 1996, three years after the original was issued and which he presented as genuine to PW2 with respect to the sale of plot 1528 but which the issuing authority has stated does not emanate from them. The lawful owner of the plot, PW3, has equally stated that he did not at any time sell or transact any business of sale of the plot with defendant. The said Exhibit P4 is on the unchallenged evidence of prosecution witnesses certainly not genuine and therefore forged.

In the circumstances, it is not difficult to hold that the offence of forgery under Count 4 has been established beyond reasonable doubt against defendant. I so hold.

COUNT 5 equally flows from count 4. Here too the defendant is charged with fraudulently using the Revenue collectors receipt, Exhibit P4 which he gave to the norminal complainant as genuine and emanating from the FCDA and which he knew to be forged contrary to **Section 366 of the Penal Code**.

I had in the consideration of count 3 referred to the relevant and applicable provisions of Sections 366 and 16 of the Penal Code and what the law requires in proving this count. I need again not repeat myself.

In my consideration of Count 4, I held or found that the Revenue collector's receipt, Exhibit P4 which the defendant gave PW2 as part of documents of title over the sale of plot 1528 and for which he obtained consideration is not genuine and therefore forged. It was never issued by the issuing authority FCDA or even the real owner of the plot. Indeed the genuine Revenue receipts are Exhibits 15(b) or 34(a) and Exhibits P16 or 34(b) and all issued in 1993 about 3 years before Exhibit P4 was purportedly made in 1996.

I therefore on this count hold that the defendant gave the said receipt, Exhibit P4 dishonestly to PW2 and knowing it to be forged with intention of causing wrongful gain to himself and loss to PW2. The prosecution has accordingly established this count against the defendant beyond reasonable doubt. I find the defendant guilty on count 5 as charged.

COUNT 6 on the charge mirrors counts 2 and 4 on the charge sheet. The defendant here is accused of the offence of fraudulently making a false document contrary to **Section 363 of the Penal Code** and punishable under **Section 364 of the same Act**. The relevant provisions and the legal requirements in establishing this count I have already earlier referred to. I simply adopt same for purposes of dealing with this count.

On the unchallenged evidence of the prosecution witnesses, the document subject of this count is the Acceptance of Offer of grant of Occupancy dated 2nd September, 1996 purported to have been issued and signed by Mr. Sunday Ameh Ako to the Honourable Minister FCT accepting the terms and conditions of the grant of Right of Occupancy with the intention of causing it to be believed that the document emanated from Mr. Sunday Ameh Ako to the Honourable Minister FCT. This purported document or acceptance was admitted in evidence as Exhibit P3 and it also forms part of the documents for the sale of plot 1528 defendant gave PW2 and for which he received consideration.

It is in evidence that the said Exhibit P3 purported to have been made and signed by Mr. Sunday Ameh Ako on 2nd September, 1996, was not made and signed by him. PW3 testified that he is seeing Exhibit P3 for the first time in court, and he did not make or sign same. He stated clearly that his signature is on Exhibit P29 which he made to EFCC on 6th July, 2009 and Exhibit P32 which he made to the Honourable Minister, Ministry of Federal Capital Territory on 2nd November, 1993 as Acceptance of Offer of Grant of Right of Occupancy within the Federal Capital Territory. It is clear in evidence that the Acceptance signed by Mr. Sunday Ameh Ako was made on 2nd November, 1993, but not 2nd September, 1996. See Exhibits P14, P25 and P32 being the genuine and authentic Acceptance of Offer of Grant of Right of Occupancy within the Federal Capital Territory made and signed by him on 2nd November, 1993. The evidence of PW1, PW3 and PW4 strengthen the credibility of the narrative of PW3.

As already stated, it is trite law that where an alleged maker of a document raises the issue of forgery, the onus is on the person asserting that same was made by the other person to prove due execution; in other words, where the alleged maker of a document denied making it, the person alleging that the other is the maker must prove. See **Fatunde V Onwoamanam (supra) 322 at 334**. See also the case of **Carlen (Nig.) Ltd V UNIJOS (supra) 631 at 666 para. B**. In the instant case PW3 has denied making and signing Exhibit P3 on 2nd September, 1996 but rather he only made and signed Exhibit P32 on 2nd November, 1993.

It is equally trite law that to prove falsification (forgery of signature), it is basic that there must be in evidence two signatures, one of which is labeled genuine, and the other stigmatized as false. See the Supreme Court case of **Sabiya V Tukur (1983) 11 S.C 109 at 110**. See also **Section 101 (1) and (2) of the Evidence Act** which empowers the court to carry out comparison of signature, writing, seal or finger impression with others admitted or proved in evidence in order to ascertain forgery or otherwise. In the instant case, the document stigmatized as forged is Exhibit P3 which the alleged maker PW3 said he did not make or sign. PW3 said what he made and signed is Exhibit P32 which is the same with Exhibits P14 and P25 but different from Exhibit P3. PW3 also stated that his signature is also in Exhibit P29 which is also the same signature on Exhibit P32. Upon a comparison of the signatures on Exhibits P29 and P32 with the signature on Exhibit P3, it is obvious by the discrepancies between the two signatures that PW3 did not make and sign Exhibit P3 which is stigmatized as forged and different from Exhibit P32 made and signed by him. Again on this count, there is nothing from the other side

of the aisle. I therefore hold that the offence of forgery under count 6 has been established beyond reasonable doubt against the defendant.

The final **Count 7** equally flows from count 6. Here the defendant is charged with fraudulently using the acceptance of offer of grant of Right of Occupancy, Exhibit P3 which he gave to the nominal complainant as genuine and signed by Mr. Sunday Ameh Ako and which he knew to be forged.

In our consideration of issue 6, we had dealt comprehensively with the fact that PW3 said he never signed the said acceptance letter Exhibit P3 and that in fact he had never seen the document. We had also equally referred to the genuine acceptance of offer of grant that he signed accepting the offer of plot 1528 to him.

As a logical corollary and flowing from the confluence of unchallenged facts and or evidence, I hold that Exhibit P3 was dishonestly given to PW2 by defendant knowing it to be forged with the intention of causing wrongful gain to defendant and loss to the nominal complainant. This count was therefore established or proved beyond reasonable doubt by the prosecution. I therefore find the defendant guilty of count 7 of the charge.

I had earlier at the beginning stated the burden of proof on the prosecution. I had similarly referred to the provision which states that if the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted to the Accused Person. What this simply means is that where the prosecution establishes or crosses the threshold of proving its case beyond reasonable doubt, the onus then shifted to the defence to adduce evidence capable of creating some reasonable doubt in the mind of the trial judge.

The point must be emphasised to avoid any disposition to confusion that the primary onus of establishing the guilt of the Accused Persons still remains with the prosecution and this does not shift. What does shift is the secondary onus or the onus of adducing some evidence which may render the prosecutions' case improbable and therefore unlikely to be true and thereby create a reasonable doubt. See **Mufutau Bakare V. The State (supra) 1 at 32, 33-34.**

The defendant has here not put in any evidence or facts in rebuttal or elicited facts in evidence susceptible to grant of innocence in which case doubt would have been created to enure in his favour.

On the basis of the foregoing, I have come to the conclusion that the prosecution has crossed the legal threshold and proved beyond reasonable doubt all the

requisite elements in proof of all the seven (7) counts charge proffered against defendant.

In the final analysis and for the avoidance of doubt, the judgment of the court is that the prosecution has succeeded in proving the charge laid against the defendant in this proceedings and accordingly I hereby find and pronounce defendant guilty as charged on all seven (7) Counts. With the conviction of defendant, the matter logically ought to proceed to sentencing but since the defendant is not available, the court must have recourse to **Section 352 (4) and (5) of the Administration of Criminal Justice Act (ACJA) 2015** and reserve his sentence until the defendant is arrested or he surrenders himself to the custody of the court.

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Hon. Justice A.I. Kutigi

Appearances:

- 1. T.N. Ndifon, Esq., for the Prosecution.**
- 2. Ibrahim Salawu, Esq., for the Defendant.**