

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA – ABUJA**

**BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: JIMOH I. SALAWU & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CR/50/2007
DATE: 29TH JANUARY, 2016**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

TUNDE ORENIGA - ACCUSED PERSON

Accused person in court.

T.N. Ndifon appearing with Krystle A. Okeke (Miss) and Teiboi P. Jita (Miss) for the prosecution.

Tony Mozie for the Accused Person.

Prosecution's Counsel – The matter is slated for judgment.

J U D G M E N T

The accused person is standing trial before this court on a 27 Amended Count Charge of conspiracy, theft, forgery, using as genuine forged documents and obtaining money by false pretence. Prior to the amendment of the charge, the accused person was standing trial with two other persons, this is, one Ojeyinka Omotosho (now at large) and Adewale Adesanya who was discharged based on his no case submission.

The accused person upon his arraignment pleaded not guilty.

The prosecution in proving its case, called the following witnesses.

Bolanle Ogunbanjo testified as PW1. In his evidence-in-chief, he stated that on the 8/3/06 the accused person came to the Bank with a cheque and he followed the normal process; he paid the accused the sum of N260,000.00.

On 9/3/06, the accused brought another cheque of N350,000.00 with a confirmation letter, he also paid him accordingly.

On 17/3/06 the accused yet again came with another cheque of N750,000.00 without a confirmation letter, he asked him to go for the confirmation letter, the accused left and later came back with the confirmation letter and he was paid accordingly.

PW1 stated further that some months after the bank called his attention that he paid some cheques that were fraudulent. The PW1 informed the manager that it was Adewale Adesanya, a staff of the bank that introduced the accused person to him. When Adewale Adesanya was confronted, he told the manager that he knows the accused person. The United Bank for Africa cheque No. 10814007 dated 6/3/06 was admitted as Exhibit A. The cheque No. 10814009 dated 7/3/06 was also admitted as Exhibit B; while Cheque No. 10814012 dated 17/03/06 was admitted as Exhibit C.

The PW1 further stated that the account involved belongs to somebody else. The confirmation letter dated 6/3/06, 7/3/06 and 17/3/06 were admitted in evidence as Exhibit D, E and F respectively.

Under cross-examination, the PW1 stated that all the payments he made to the accused person followed due process; that whatever was presented by the accused was what was meant to be presented.

No re-examination, PW1 was discharged.

Peace Odenuga testified as PW2. In her evidence-in-chief, she stated that her schedule of duties is to pay customers and received cash deposit.

On 4/3/06 she paid a cheque of N90,000.00 to the accused person; that the accused came to bank as other customers and presented a cheque of one Mohammed Abubakar with Account No. 1142010001760. She stated that she followed all known procedure before she paid the sum on the cheque to the accused person.

PW2 further stated that on 27/10/06, she was called by her supervisor that she paid a fraudster a cheque of N90,000.00 and that it was not the account holder that issued the cheque. She was taken to EFCC to write a statement. The cheque of United Bank for Africa No. 10814006 dated 3/03/06 was admitted as Exhibit G.

Under cross-examination, PW2 stated that before 4/3/06 she had never met the accused person and that none of the steps she took in paying the cheque was wrong. When she made the payment, she did not know whether it is fraudulent or not.

No re-examination, PW2 was discharged.

The PW3 is one Yusuf Dauda. In his evidence-in-chief, he stated that he works with the EFCC; that there was a petition written by the United Bank for Africa against the accused person. He was instructed to source out the suspects and on the 2/11/06 the accused person was arrested.

The accused was taken to the EFCC's Office where he made a statement after following due procedures.

On 3/11/06 the accused person also made two additional statements. The 3 statements of the accused person dated 2/11/06 and 3/11/06 were admitted as Exhibits H, H¹ and H² respectively.

PW3 further stated that the 2nd accused person (now at large) was arrested on 3/11/09. The 2nd accused also made statements. The 2 statements of the 2nd accused dated 3/11/06 and 22/11/06 are admitted in evidence as Exhibit 1 and 1¹ respectively.

No cross-examination, PW3 was accordingly discharged.

Lazarus Eke testified as PW4. In his testimony-in-chief, he stated that he was in court to give evidence in respect of a case reported to the EFCC by the United Bank for Africa Plc via a petition that borders on fraud and stealing from a disclosed account of the United Bank for Africa.

PW4 stated that in the course of investigation, it was discovered that the account the money was stolen from belong to one Alhaji Mohammed Abubakar and some Millions of Naira were withdrawn from the said account without the consent of the

account owner; the said Mohammed Abubakar made some statement that some millions of Naira were withdrawn from his account without his consent. Information reveals that it was the accused person that made the withdrawals. The accused person was arrested and he volunteered additional statements. The 2 additional statements of the accused person were admitted in evidence as Exhibits K and L respectively.

The witness further stated that following the confessional statement of the accused person that he did not do the fraud alone but with the 2nd accused person (now at large). That the 2nd accused person will write the name of the 1st accused person as beneficiary and signed the cheque purporting to be the rightful owner of the account. The 2nd accused person will then minute letter of identification, identifying the 1st accused person authorizing the bank to pay the cheques to the 1st accused person.

Based on this information, the 2nd accused person was arrested and he volunteered statement under words of caution. The additional statement of the 2nd accused person dated 9/11/06 was admitted as Exhibit M.

PW4 further stated that on the cause of investigation, they requested from the Bank the copies of the cheques and letter of identification written by the 2nd accused person; the cheques were shown to the accused person.

The witness stated that through the investigation it was discovered that about N1.4 Million was withdrawn from the account by the accused person without the consent of Mohammed Abubakar.

Under cross-examination, PW4 stated that they investigated all the people alleged to have participated in the crime and took statements from the accused persons.

PW4 stated that he saw the cheques involved in the case; the cheques were issued by the accused persons and the 1st accused withdrew the money from the complainant's account.

No re-examination, PW4 was discharged.

Ejeh Ochechi testified as PW5. In his evidence-in-chief, he stated that he works with the EFCC as an Investigator; that sometime in October 2006 the management of United Bank for Africa reported a case of alleged fraud to the EFCC. The Bank alleged that the account of one Mohammed Abubakar was debited to the tune of N2,605,000.00. The Bank alleged that the 1st accused person acting with one Yinka Omotosho and other persons at large defrauded the account of the said account holder.

PW5 stated that in the course of investigation, he recorded the additional statement of the accused person on 27/11/06; the said additional statement dated 27/11/06 was admitted in evidence as Exhibit N while the 2nd additional statement of the accused recorded by James Onaji on the 1st and 4th of December 2006 was admitted as Exhibits O and P respectively.

It is the evidence of PW5 that in the course of investigation, he recorded the statement of Omotosho Yinka (now at large). The witness further stated that Mr. Yinka came with some money he wants to refund but he later said that the sister that was with the money had gone out. However, Mr. Yinka offered a statement as he signed the cheques and forged the account holder's signature. That he (Yinka) signed cheques with Serial Nos. 1081400006; 10814007, 10814009 and 10814012 that he issued the 4 cheques in the name of the accused person. Mr. Yinka also informed the PW5 that he forged the confirmation letters; the statement of Omotosho Yinka dated 5/12/06 was admitted as Exhibit Q.

PW5 further stated that in the course of investigation, the 4 cheques and letter of confirmation were sent along with the specimen signature and hand-writing obtained from the accused persons, Omotosho Yinka and Mohammed Abubakar to EFCC Forensic Document Examiner for the purpose of examination, comparison and report. The Document Examination and Comparison Result dated 3/5/07 was admitted as Exhibits R, S, T and T¹ respectively.

PW5 further stated that in the course of investigation, the accused person and Yinka Omotosho at various times refunded certain amount of monies to the EFCC claiming that same was part of what they benefitted from the transaction. The sum of N400,000.00 in different denominations was admitted as Exhibits U¹, U², U³ and U⁴ respectively.

PW5 also stated that the accused person is the beneficiary of the 4 cheques; that he (accused person) benefitted the sum of N537,000.00 in the course of investigation he refunded the sum of N200,000.00.

PW5 stated that the accused person conspired with Yinka Omotosho and some other persons at large to steal Exhibits A, B, C and G and he also benefitted from the proceeds of the alleged offence.

Under cross-examination, PW5 stated that in this matter, the EFCC interviewed a number of persons but cannot recollect the number. PW5 stated that he cannot remember whether they interviewed one Liman Mohammed in the course of investigation.

It is the testimony of PW5 that he arrived at the conclusion that the accused person and some other persons stole the cheque based on the facts available and the fact that the accused persons did not deny that facts.

No re-examination, PW5 was discharged and that is the case for the prosecution.

In defence of the charges against the accused person, the defence called a sole witness. The accused person himself testified as the DW1. In his evidence-in-chief, he stated that he knows Yinka Omotosho through Musbau; that Liman Mohammed is his client and he brought Yinka Omotosho to him (accused person).

DW1 further stated that in February 2001, the said Liman Mohammed came with Yinka Omotosho to him and the father of Liman Mohammed is an Assistant Director in a Government Agency and requires prices of the following printing items:

1. Invitation Card
2. Programme of Event
3. Banners
4. T-Shirt and face cap.
5. Memo-pad for seminar.

The accused person gave the prices to Liman Mohammed and on Friday in the last week of February, 2006 Liman Mohammed came with a write-up that the accused should make symbol for him which he did.

DW1 stated further that after few days, Liman Mohammed came with the printing job of invitation cards and he was charged N15,000.00. Liman Mohammed said the accused should hold on and that he was going to get him the money from his father. After about an hour, Liman Mohammed came with a United Bank for Africa cheque in the accused person's name and for the sum of N90,000.00. The accused stated that he cashed the cheque and Liman Mohammed collected the balance of N75,000.00 after giving him his N15,000.00. The accused identified the cheque as Exhibit G; that that was the only cheque Liman Mohammed brought to him.

The accused further stated that after this transaction, the following week Liman Mohammed came back with Yinka Omotosho to print programmes of event, memo pad and T-shirt and face cap. That he charged them a total of N485,000.00. DW1 stated that he was paid N290,000.00. The money for programme of event was paid through United Bank for Africa Cheque, the name of the accused for the sum of N350,000.00 and he cashed same, he was paid his balance out of the N350,000.00. The accused person identified the cheque as Exhibit A.

DW1 further stated that the other bill for memo pad was also paid in cheque by Mohammed Liman and Yinka Omotosho in a United Bank for Africa cheque in the name of the accused for the sum of N260,000.00. The accused identified Exhibit B as the cheque.

For the T-shirt and face cap, DW1 stated that Liman Mohammed brought the cheque alone. It is for the sum of N750,000.00. Exhibit C is the cheque while Exhibit F is the confirmation letter.

The witness also testified to the effect that his wife came to see him while in EFCC cell with the sum of N130,000.00. One S.P. Abubakar told him that if she pays the money they were not going to prosecute him and that he (the accused) should make additional statement in respect of the money.

In the course of DW1's evidence, the CTC of an F.I.R. dated 7/11/12 before Upper Area Court, Gudu was admitted as Exhibit C.

Under cross-examination, DW1 stated that he is aware that he made statement to the EFCC. In his statement he told the EFCC the whole truth about the matter to the best of his knowledge.

DW1 further stated that the cheques were brought to him by one Liman Abubakar son of owner of the cheques. DW1 also admitted knowing Yinka Omotosho (who is now at large); that his wife was promised that if he pays the money he will not be charged to court. DW1 stated that he presented the 4 cheques in his name to the bank and he withdrew the value of same.

Under re-examination, DW1 stated that the statement he recorded about all that happened is not before the court. DW1 was discharged and that is the case for the defence.

The accused person's counsel filed 13-page written address dated 27/10/15 wherein counsel submitted that from the 27 count charges it shows that the entire charge are under 5 broad categories as follows:

- (a) The charges under Section 97(i) of the Penal Code Act Cap 552 LFN Abuja Count 1 and 6 (Conspiracy).
- (b) The Charges under Section 287 of Penal Code Count (2, 3, 4, 5) Theft.
- (c) The Charges under Section 366 of Penal Code Count 12, 14, 18, 20, 27 (Forgery).
- (d) The Charges under Section 364 of Penal Code (Forgery) Count 7, 8, 9, 10, 11, 13, 15, 16, 17, 19 and 21.

- (e) The Charge under Section 8(a) Advance Fee Fraud and Other Related Offence, Decree No. 13 of 1985 as amended by the Tribunal (Certain Consequential Amendment etc) Decree No. 62 of 1999 and punishable under Section 1(3) of same Count 23.
- (f) The Charge under Section 1(a) of Advance Fee Fraud and Other Related Offences Decree No. 13 of 1985 Count 24, 25, 26, 27.

On the charge of conspiracy, it is submitted that there must be an agreement between the parties to commit an illegal act or to perform a legal act illegally for the charge of conspiracy to be proved. See GARBA v C.O.P. (2007) 16 NWLR (Pt 1060) 378 at 405 Para A – B.

It is submitted that in the instant case, the prosecution did not proffer any evidence to ground or support this ingredient in support of the charge of conspiracy against the first accused person. Since the charge of conspiracy must be grounded with an agreement between two or more persons.

From the entire evidence before the court at no point did any of the witnesses state that there was a collusion between the accused and the 2nd accused (who is at large) to commit the alleged offences. In the circumstances court is urged to discharge and acquit the accused person of all the charges pertaining to Section 97(1) of the Penal Code.

With respect to the charges of theft, it is submitted that the prosecution has the onus to prove that the accused had intention to be fraudulent and that the accused actually stole the items.

In the instant case, the cheque books/leafs from the evidence of the prosecution none of the witnesses testified to the fact that the accused person stole the said cheque book or leafs that were used for the various withdrawals rather the evidence points to the fact that upon genuine transactions the accused person, was issued with the cheques and also the necessary mandate to actualize the said payments. Court is referred to the evidence of PW1 to the effect that all procedure was followed when he paid the accused person. Court is urged to discharge and acquit the accused person on Count 2, 3, 4 and 5 of the Charge Sheet. See CHIA v STATE (1996) 6 NWLR Pt 455.

On the charges of forgery, it is the submission that the underlining position of the law in the instant case is that the prosecution must endeavour to show from the evidence of its witnesses that the accused did undertake to forge the documents in this case (the cheque and the confirmation letters).

From the evidence of PW1 and PW2, it is clear that the prosecution has not in any manner placed before the court any piece of evidence to ground the charge of forgery and most importantly the absence of the nominal complainant whose signature is alleged to have been forged is very fatal to the case of the prosecution. See ALAKE v STATE (1993) NWLR (Pt 265) 260 at 270 Para G – H. Court is urged to hold that in line with the

provision of the Evidence Act that the evidence of Mohammed Abubakar was not brought because it would not have been favourable to the prosecution's case and as such this has greatly prejudiced the prosecution's case.

On the charge of conspiracy under Section 8(a) of the Advance Fee Fraud and Other Related Offences Decree No. 13 of 1995, it is submitted that the offence requires the same modus of proof as required under the Penal Code and the prosecution has not been able to show any form of conspiracy.

With respect to Count 27, it is the submission that the prosecution has failed to establish and prove the various elements constituting the broad charges.

It is the submission that the Report in Exhibits R, S, T and T1 did not in any way indict the accused, though the said report cannot in law be relied upon and the probative value to be ascribed to the report remains very low.

It is submitted that it would be very wrong to convict an accused person on speculative finding or suspicious because for a conclusion to be grounded it must be based on credible or reasonable inference to be drawn from the totality of evidence including the defence made out by the accused. See *AMADI v STATE* (1998) 8 NWLR Pt 314 at 644.

It is submitted that proof of any crime must be beyond reasonable doubt. See *EDAMINE v STATE* (1996) 3 NWLR Pt 438.

It is submitted that the prosecution have failed to prove the offences as charged against the accused person; that justice must be done to both the accused and the prosecution, but most importantly where there is any iota of doubt such doubt must be resolved in favour of the accused person. See case of ALIYU v state (2000) 2 NWLR Pt 644 at 78. Court is urged to discharge and acquit the accused person for lack of proof of all the allegations against him by the prosecution.

The prosecution on its side filed a 37-page final written address dated 6/11/15 wherein counsel formulated an issue for determination, thus:

“Whether from the quantum of evidence adduced by the prosecution, it could be said it has discharged the burden on it by proving the offences for which the accused is charged beyond reasonable doubt”

On this singular issue, it is the submission that the guilt of an accused person may be proved by:

- (a) The confessional statement of the accused; or
- (b) Circumstantial evidence; or
- (c) Evidence of eye witnesses.

See case of EMEKA v THE STATE (2001) 14 NWLR (Pt 734) 666 at 683.

It is submitted that from the totality of evidence adduced at the trial, the prosecution has proved its case against the accused person as required by law. Court is referred to Section 135(1) of Evidence Act 2011.

It is further submitted that where all the essential ingredients of the offences charged have been proved by the prosecution, as done in this matter, the charge is proved beyond reasonable doubt. See *NWATURUOCHA v STATE* (2001) 2 NWLR (Pt 697) 397 at 415 – 416.

It is the submission that to prove the offence of conspiracy, the prosecution must establish the following ingredients:

- (a) That there was an agreement between two or more persons.
- (b) That the agreement was to do or cause to do an illegal act.
- (c) Or to do a legal act by illegal means.

In the instant case from the evidence of PW3, PW4, PW5 and Exhibits H1, I, K, L and M, it is clear that there was an agreement between the accused person and one Ojeyinka Omotosho (now at large) to do an illegal act that is to commit the offences the accused person is being charged.

It is trite law that a free and voluntary confession by an accused person is sufficient to ground a conviction. See *EMEKA v STATE* (2001) 14 NWLR (Pt 734) 666 at 682 Paras E – F.

In the instant case the confessional statement of the accused are corroborated by Exhibits I and M the statement of the co-conspirator. Court is urged to hold that the prosecution has proved its case against the accused person with the offence in Counts 1, 6 and 23 dealing with conspiracy. For the charges for

theft, it is the submission that to prove the offence of theft the prosecution is expected to prove the following ingredients:

1. Intention of the accused person to take the movable property.
2. The moving of the property being dishonest; and
3. Absence of consent at the time of moving the property.

See MOHAMMED v STATE (2000) 12 NWLR (Pt 682) 596 at 603 – 604 Para G – A.

In the instant case, it is in evidence that Exhibit A, B, C and G being the property stolen were moved dishonestly by the accused with his co-conspirators now at large without the consent of Mohammed Abubakar (the owner).

It is also in evidence that the intention of taking the said Exhibits A, B, C and G was to deprive the owner of the value of the said property; this intention was manifestly carried out on the 3rd, 6th, 7th and 17th Days of March, 2006 where the owner of Exhibits A, B, C and G was deprived of the value therein.

It is further submitted that from the accused extra judicial statements and that of his co-conspirators admitted in evidence as Exhibit H1, I, K, L and M detailing what the accused did is a confession to the crime of theft. See NWACHUKWU v STATE (2008) 3 NCC 100 at 135.

From the foregoing, it is submitted that the prosecution has proved its case against the accused person as regards Counts 2, 3, 4 and 5 dealing with the offence of theft.

On the counts of forgery and using as genuine forged documents, it is the submission that the offence of forgery can be committed when a person is said to make a false document. To prove the offence of forgery, the prosecution must establish the following:

- (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 *AMADI v FRN* (2008) 18 NWLR (Pt 1119) 259 at 277 – 278 Paras H – B.

It is submitted that the document in issue are Exhibits A, B, C and G and also Exhibits D and F were not written and signed by Mohammed Abubakar the Account holder, but they were written and signed by one Ojeyinka Omotosho (now at large). Court is referred to Exhibit Q the confessional statement of Ojeyinka Omotosho which is to the effect that he wrote the said forged documents. Court is urged to hold that the prosecution has proved and established a prima facie case against the accused person in respect of the counts of forgery and therefore the accused be convicted. See the case of *AGWUNA v A.G. OF THE FED* (1995) NWLR 9Pt 396) 418 at 438 Para G – H.

With respect to Counts 24, 25, 26 and 27 which is the offences under the Advance Fee Fraud and Other Fraud Related Offences, the prosecution must establish the following ingredients:

1. That there was a false pretence made by the accused person.
2. That the accused person obtained property as a result of the false pretence from the said person.
3. That the accused did same with intent to defraud.

See IJUAKA v C.O.P. (1976) 6 SC 99; R v JOHN JAMES SULLIVAN 30 CR APP, R 132.

It is submitted that there is evidence before this court that the accused person presented Exhibit A, B, C, G, D, E and F to the Bank on the false pretence that the said Exhibits were made or written, signed and issued by Mohammed Abubakar the account holder or owner, knowing very well that it is not true. Court is referred to the confessional statement of the accused person, where the accused admitted that the writing and signature on the cheques and confirmation letters were that of Ojeyinka Omotosho (now at large) but not that of Mohammed Abubakar the account owner.

It is also in evidence that the accused obtained by false pretence from United Bank for Africa Plc the sum of N1,450,000.00 which was paid to him in four instalments having presented Exhibits A, B, C, D, E, F and G to the bank on the pretence that the said Exhibits were

issued to him by Mohammed Abubakar the account owner which he knew is false.

Submitted that the statement of the accused person to the EFCC i.e. Exhibits H1, K, L, N, O and P are confessional and consequently sufficient to convict the accused person. See SOLOLA v STATE (2005) All FWLR (Pt 269) 1751 at 1782.

It is submitted that from the evidence before the court, the prosecution has discharged the burden placed on it by proving all the counts beyond any reasonable doubt and therefore urged the court to convict the accused accordingly.

I have carefully considered the processes filed, the evidence of witnesses and the submission of learned counsels on both sides, I do agree with learned counsel for the prosecution that the sole issue that is due for determination is whether from the evidence adduced by the prosecution, it could be said it has discharged the burden on it by proving the offences for which the accused is charged beyond reasonable doubt.

It is trite law that the standard of proof in a criminal trial is proof beyond reasonable doubt; this means that it is not enough for the prosecution to suspect a person of having committed a criminal offence; there must be evidence, which identified the person accused with the offence, and that it was his act, which caused the offence. See AIGBADION v STATE (2000) 4 SC 9Pt 1) 1 at 15.

Looking at the 27 count charges, it will be appropriate to categorize same as follows:

- (a) The charges under Section 97(i) of the Penal Code on Counts 1 and 6 (conspiracy).
- (b) The charges under Section 287 of Penal Code on Counts 2, 3, 4 and 5 (theft).
- (c) The charges under Section 366 of Penal Code on Counts 12, 14, 18, 20 and 22 (forgery).
- (d) The Charges under Section 364 of Penal Code on Counts 7, 8, 9, 10, 11, 13, 15, 16, 17, 19 and 21 (forgery)
- (e) The charges under Section 8(a) of the Advance Fee Fraud and Other Related Offences (conspiracy).
- (f) The charges under Section 1(a) of the Advance Fee Fraud and Other Related Offences Counts 24, 25, 26 and 27 (fraud).

Now on the charges of conspiracy, the prosecution must establish the following ingredients:

1. That there was an agreement between two or more persons.
2. That the agreement was to do or cause to do an illegal act;
or
3. To do a legal act by illegal means.

A cursory look at the evidence of PW3, PW4 and PW5 and further Exhibits H1, I, K, L and M show clearly that there was an agreement between the accused person and one Ojeyinka Omotosho (now at large) to do an illegal act.

In the confessional statement of the accused dated 3/11/2006, admitted as Exhibit H1, the accused stated thus:

“...All this cheque was brought by Liman Abubakar the son to the account holder, and the four cheques and confirmation letters were written and signed by Yinka”

The accused went further to state in Exhibit K dated 6/11/2006 as follows:

“... the UBA cheque dated 03/06/06 with Serial No. 10814006 in the value of N90,000.00 in favour of Tunde Oreniga was given to me by Yinka Omotosho and I received N15,000.00 Naira only. It has been written and signed by him. I only cashed the money from bank and delivered the money to Yinka Omotosho. The UBA cheque dated 06/03/06 with Serial No. 10814007 in the value of N350,000.00 in favour of Tunde Oreniga with confirmation letter dated 06/03/06 addressed to the Branch Manager, Garki Main Branch was also given to me by Yinka Omotosho which I cashed the money from bank and was given N105,000.00 naira only and the rest with Yinka Omotosho”.

The accused went further to state in the six last lines of Exhibit L dated 7/11/2006 as follows:

“...I do tell Yinka the amount to write in the cheque after we both agreed on the figure before writing”

Moreso, in Exhibit M dated 9/11/2006 the co-conspirator Ojeyinka Omotosho (now at large) stated thus:

“...I wish to add that on any cheque that Liman brings to me blank, I always consult Tunde on any amount to write on the

blank cheque... so I therefore want to state that any blank cheque Liman brought to me, I seek Tunde's consent on the amount to write on the cheque because he goes to the bank to withdraw the cheques”

It is very clear from the above that Exhibit M corroborated Exhibits H1, K and L.

In the light of the above, I am of the considered view that there was an agreement between the accused Ojeyinka Omotosho and others to commit the offence of conspiracy.

It is instructive to state that the piece of evidence with respect to the exhibits was not disputed nor discredited during cross-examination of PW3, PW4 and PW5.

Accordingly, I hold that the prosecution have been able to proffer credible evidence to warrant the accused person's conviction on the counts charge of conspiracy.

Now with respect to Counts 2, 3, 4 and 5 on theft. To prove the offence of theft, the prosecution is expected to prove the following ingredients:

- (i) Intention to be fraudulent
- (ii) The moving of the property
- (iii) Absence of consent at the time of moving the property.

From the evidence of the prosecution none of the witnesses testified to the fact that the accused person stole the said cheque book or leaves that were used for the various withdrawals.

In fact in Exhibit H1 the accused stated, thus:

“All this cheque was brought by Liman Abubakar the son to the account holder”

And in Exhibit I a co-conspirator Ojeyinka Omotosho (now at large) stated as follows:

“...I wish to state that Liman Mohammed is a boy who lives in the same Area 1 with me. He brought the following UBA Cheques to me on the 2nd Day of March 2006..”

From the above, it is clear that the evidence of Liman Abubakar become very material to this matter. I find it difficult to come to term on why the said Liman Abubakar was never arrested by the EFCC nor was he called to testify in this matter.

It is also instructive to point out here that even the nominal complainant whose cheque was allegedly stolen was not even call as a witness in this matter.

I hold the strong view that the only person who was in a position to show that the said cheques were stolen was the nominal complainant, the owner of the cheques. Therefore failure to call Mohammed N. Abubakar is fatal to the case of the prosecution and I find it difficult to convict the accused person on counts 2, 3,

4 and 5. The accused person is accordingly discharged and acquitted on the above counts boarding on theft.

With respect to counts 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 boarding on forgery the prosecution must establish the following ingredients:

- (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.

In *GARBA v C.O.P.* (Supra) the court held that forgery is an act of fraudulently making a false document or altering a real document to be used as if genuine.

In the instant case, for the prosecution to secure a conviction, the prosecution must endeavour to show from the evidence of its witnesses that the accused person did undertake to forge the documents in this case (the cheque and the confirmation letters).

It is in evidence that Exhibits A, B, C and G the documents purportedly forged were written and signed by one Ojeyinka Omotosho (now at large).

Also the evidence of the accused person DW1 was very clear as to how he came about the said cheques. Having stated that, the

cheques came from Mohammed Liman the son of the nominal complainant. This piece of evidence was not denied nor controverted by the prosecution.

As stated earlier, it is surprising that the said Mohammed Liman was never called in by the prosecution. The law is clear that while it is not necessary for the prosecution to call every available witness but it is vital and incumbent on the prosecution to call particular witness whose evidence is material for the resolution of vital issues as in the instant case. See *OGUNZEE v STATE* (1998) 5 NWLR Pt 551 at 521.

It is also trite law that on a charge of forgery, it is essential for the prosecution to prove that the accused person forged the document in question. In order to make out a prima facie case, the prosecution needs to call a hand-writing analyst to show that the handwriting of the person who is alleged to have forged the document is the same as the one on the forged document where the supposed alteration was made. Furthermore, the person whose handwriting is forged is a material witness; thus, the failure of the prosecution to call a handwriting analyst and the person or persons whose writings were mutilated and changed as witnesses is fatal to its case. See the Supreme Court case of *ALAKE v STATE* (1992) 9 NWLR 9Pt 265) 260 at 270.

In the instant case, the prosecution failed to call an handwriting analyst and Mohammed N. Abubakar whose signature was purportedly forged. It should be of note that the prosecution

called Ejeh Ochechi (PW5) who was used to tender Document Examination and Comparison Result.

Under cross-examination, the PW5 admitted that he did not possess any qualification in forensic science and he cannot explain the analysis in forensic regard (Exhibit R). Accordingly I hold that the PW5 is not competent to testify as handwriting analyst.

It is also not in doubt that Mohammed N. Abubakar was not called as a witness in this matter.

In the light of the above I am of the considered view that the counts on charges of forgery must fail, the prosecution having failed to adduce credible evidence to ground a conviction against the accused person. Accordingly, the accused person is discharged and acquitted on Counts 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 bordering on forgery.

With respect to Counts 24, 25, 26 and 27 on intent to defraud by false pretence, for the prosecution to ground a conviction, it must establish the following ingredients:

1. That there was a false pretence made by the accused persons.
2. That the accused person obtained property as a result of the false pretence from the said person.
3. That the accused did same with intent to defraud.

From the content of the charges, the question that comes to mind is **accused person ever represented himself to be one Alhaji Mohammed N. Abubakar?**

There is evidence before this court that the accused person presented Exhibits A, B, C, G, D, E and F to the bank that is United Bank for Africa Plc on the false pretence that the said Exhibits were made or written, signed and issued by Mohammed Abubakar the account holder or owner, knowing very well that it is not true. In Exhibits H1, K and L the accused person admitted that the writing and signature on Exhibit A, B, C, D, E, G and F were that of Ojeyinka Omotosho (now at large) but not that of Mohammed Abubakar the account owner. The accused further stated in Exhibit H1, K and L that Exhibits A, B, C, D, E, F and G were written and signed by Ojeyinka Omotosho and given to him which he presented to the bank for payment.

It is also in evidence that upon the cashing of the money as reflected in Exhibits A, B, C and G shared the proceeds or money with one Ojeyinka Omotosho (now at large). See Exhibits H1, I, K, L and M. Also the evidence of PW3, PW4 and PW5, this evidence was neither discredited nor controverted by the defence.

In the light of all stated above, I am of the considered view that the prosecution has proffer credible evidence to convict the accused person on Counts 24, 25, 26 and 27, I so hold.

In conclusion, I hold the firm view that the prosecution have failed to discharge the burden placed on it by proving its case beyond reasonable doubt on the following count charges, Counts 2, 3, 4 and 5 (on theft), Counts 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22 (on forgery). Accordingly the accused is discharged and acquitted on these counts.

On the other hand, I hold the considered view that the prosecution has discharged the burden placed on it by proving its case beyond reasonable doubt with respect to Counts 1, 6 and 23 (on conspiracy). Counts 24, 25, 26 and 27 (on intent to defraud and obtaining by false pretence). Accordingly, the accused person Tunde Oreniga) is hereby find guilty on these count charges.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
29/01/2016

Defendant's Counsel – At this junction we submit that the accused person is a first offender; the accused person is a reliable person who has a very good business.

In the cause of this trial the accused has lost his mother and his wife has abandoned him.

In the light of this, we pray the court to temper justice with mercy.

Prosecution's Counsel – To the best of my knowledge there is no report of previous conviction. I urge the court to consider Section 11 of Advance Fee Fraud Act for restitution.

Court – After listening carefully to the submission of the learned Defence Counsel praying the court to temper justice with mercy in sentencing the accused person as he is a family man, this court will be lenient with the accused in sentencing him considering the fact that he is a first offender and a young man who should be giving another chance in life.

Accordingly the accused is hereby sentence to 2 years imprisonment for the offence conspiracy and 5 years for the offence of obtaining money through false pretence.

The sentences are to run concurrently with effect from 14/3/13 when the convict was rearrested and remanded in prison custody.

I order the convict to compensate the victim (Mohammed Abubakar) for the money withdrawn from his account.

(Sgd)
JUSTICE SALISU GARBA
(PRESIDING JUDGE)
29/01/2016