IN THE COURT OF APPEAL
KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA
ON FRIDAY THE 13TH DAY OF FEBRUARY, 2015
BEFORE THEIR LORDSHIPS

ISAIAH O. AKEJU	**JUSTICE, COURT OF APPEAL**
O.A. ADEFOPE-OKOJIE	**JUSTICE, COURT OF APPEAL**
AMINA A. WAMBAI	**JUSTICE, COURT OF APPEAL**

CA/K/290/2014

BETWEEN:

MUHAMMAD AL-AMEEN AL-HALEEL .... APPELLANT

AND

FEDERAL REPUBLIC OF NIGERIA .... RESPONDENT

JUDGMENT

(DELIVERED BY ISAIAH OLUFEMI AKEJU, JCA)

This appeal is against the judgment of the Federal High Court, Kaduna delivered on 12th July, 2012 in respect of charge No. **FHC/KD/70c/2011** which was amended to contain seven counts as follows:

AMENDED CHARGE

*That you **Mohammad Al-ameen Al-haleel** (also known as **Mallam Al-amin Yar'adua; Muhammad Amin Garba; Mohammed Awwal Sulieman)** on or about January 2011, at Kaduna, within the jurisdiction of this Honourable Court with intent to*

defraud, conspired with one **Mr. Smith** now at large to obtain money by false pretence from **Dr. Shiabu Sani Teidi of No. 2 Toni Ani Road, Finance Quarter, Wuye,** Abuja and thereby committed an offence contrary to section 8 (a) of the Advance Free Fraud and Other Fraud Related Offences Act, 2006 and punishable under section 1 (3) of the same Act.

COUNT TWO

That you **Muhammad Al-ameen Al-haleel** (also known as **Mallam Al-amin Yar'adua; Muhammad Amin Garba; Mohammed Awwal Sulieman)** with one **Mr. Smith** now at large on or about January 2011, at Kaduna, within the jurisdiction of this Honourable Court, did with intent to defraud, obtained the sum of Ten Million Naira (N10,000,000.00) by false pretences from **Dr. Shaibu Sani Teidi of No. 2 Toni Ani Road, Finance Quarters, Wuye,** Abuja, through one **Abdullahi Lawal,** that same would be used to facilitate a meeting between him and the Vice President of the Federal Republic of Nigeria to ensure that he (**Shaibu Sani Teidi**) gets nominated as the Governorship Candidate of PDP for Kogi State which you knew to be false and you thereby committed an offence contrary to section 1 (1) (a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under section 1 (3) of the same Act.

COUNT THREE

That you **Mohammad Al-Ameen Al-Haleel** (also known as **Mallam Al-Amin Yar'adua; Mohammad Amin Garba; Muhammed Awwal Sulieman**) on or about January 2011, at Kaduna, within the jurisdiction of this Honourable Court with intent to defraud, conspired with one **Mr. Smith** now at large to obtain money by false pretences from **Dr. Shaibu Sani Taidi (sic) of No. 2 Toni Ani Road, Finance Quarters, Wuye,** Abuja and thereby committed an offence contrary to section 8 (a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under section 1 (3) of the same Act.

COUNT FOUR

That you **Muhammad Al-Ameen Al-Haleel** (also known as **Mallam Al-Amin Yar'adua; Muhammad Amin Garba; Mohammed Awwal Sulieman)** and one **Mr. Smith** now at large on or about January 2011, at Kaduna, within the jurisdiction of this Honourable Court, did with intent to defraud, obtained the sum of Fifty Million Naira (N50,000,000.00) by false pretences from **Dr. Shaibu Sani Taidi (sic) of No. 2 Toni Ani Road, Finance Quarter, Wuye,** Abuja, through one **Abdullahi Lawal,** that same would be given to the Chairman of EFCC for general clearance which you knew to be false and thereby committed an offence contrary to section 1 (1) (a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under section 1 (3) of the same Act.

COUNT FIVE:

That you **Muhammad Al-Ameen Al-Haleel** (also known as **Mallam Al-Amin Yar'adua; Muhammad Amin Garba; Mohammed Awwal Sulieman**) on the 24th October 2011, within the jurisdiction of this Honourable Court, made a false declaration of Assets by failing to disclose the ownership of a plot of land lying and situate at No.6 Road B, TPO 633, DOKA KADUNA and you thereby committed an offence contrary to section 27 (1) and (3) of the Economic and Financial Crimes Commission (Establishment) Act, 2004 and punishable under subsection 3 of the same Act.

COUNT SIX

That you **Mohammad Al-Ameen Al-Haleel** (also known as **Mallam Al-Amin Yar'adua; Muhammad Amin Garba; Mohammed Awwal Sulieman)** on the 24th October 2011, within the jurisdiction of this Honourable Court, plot of land lying and situate at No. 8 and 8a, Road B, TPO 633, DOKA KADUNA and you thereby committed an offence contrary to section 27 (1) and (3) of the Economic and Financial Crimes Commission (Establishment) Act, 2004 and punishable under subsection 3 of the same Act.

COUNT SEVEN

That you **Muhammad Al-Ameen Al-Haleel** (also known as **Mallam Al-Amin Yar'adua;Mohammad Amin Garba; Mohammed Awwal Sulieman**) on the 12th December 1986, within the jurisdiction of this Honorable Court, did forge a Kaduna Polytechnic Statement of Result, and thereby committed an offence

contrary to section 1 (2) (c) of the Miscellaneous Offences Act Cap M17 2004 punishable under the same section.

The appellant pleaded not guilty to all the counts upon arraignment and in support of the charge the prosecution called a total of eight witnesses as PW1 – PW8 while in his own defence, the appellant testified as the DW1 and called additional witness who testified as the DW2. Documentary evidence was also adduced. At the end of the evidence of the parties and written addresses by their learned Counsel, the learned trial judge found the appellant guilty of the offences of Conspiracy, obtaining by false pretences and forgery while he was discharged and acquitted on the allegation of failure to disclose his interest in some property.

Dissatisfied with the judgment of the Federal High Court, Kaduna, (here in after called the trial Court), the appellant filed his Notice of Appeal with four grounds of appeal in commencement of this appeal. In the Appellant's Brief of Argument settled by **O.I. Habeeb Esq.,** and filed on 1/7/14, the lone issue raised by learned Counsel is;

> *Whether in the light of the totality of evidence led, the trial Federal High Court judge was justified in finding the appellant guilty of the offences of conspiracy, obtaining by false pretences and forgery.*

In the Respondent's Brief of Argument settled by **Austin Emumejakpor Esq.,** and filed on 18/8/14 the learned Counsel too formulated one issue.

Whether in the light of the evidence adduced, the decision of the trial judge to convict the appellant was/is logical, reasonable and therefore correct.

The learned Counsel for the parties were present at the hearing of the appeal and they adopted their respective brief of argument whereupon we were urged by appellant's Counsel to allow the appeal, while the respondent's Counsel urged that the appeal be dismissed.

The issue formulated by both parties is rooted on the sufficiency of the evidence adduced by the prosecution to accomplish the proof of the charge against the appellant beyond reasonable doubt and consequently his conviction. I will for the purpose of consideration and determination of this appeal adopt the sole issue as formulated by the appellant's Counsel.

The learned Counsel for the appellant submitted that the law requires the prosecution by virtue of section 36 (5) of Constitution of the Federal Republic of Nigeria, 1999 (as amended) which guarantees presumption of innocence to all persons alleged of commission of offences, to prove such allegation beyond reasonable doubt. The case of **RASAKI V. STATE (2011) 16 NWLR (Pt. 1273) 25 at 284** was cited and relied upon.

On the appellant's conviction for conspiracy, it was submitted that the ingredients of the offence have been set out by the Supreme Court in the case of **KAZA V. STATE (2008) 7 NWLR (Pt. 1086) 125 at 176** to be that there must be an agreement or meeting of

mind of two or more people who plan to carry out unlawful act which constitutes an offence, and that the act of conspiracy is complete if there are acts on the part of the accused person from which the trial Court may conclude that he and other persons were engaged in accomplishing a common object or objective.

It was contended by learned Counsel that the trial Court did not in any part of its judgment make any finding of guilt of conspiracy or in proof of the ingredients of conspiracy against the appellant to justify his conviction for that offence as there was no iota of evidence that the appellant conspired with Mr. Smith to commit the offence of obtaining the sum of N10 million or N50 million under the pretext of securing PDP Gubernatorial ticket in Kogi State for the complainant with the assistance of the Vice President and Chairman of EFCC. It was submitted that there was no legal basis for the finding of guilt of conspiracy against the appellant, and any such finding should be reversed; **OBASANJO BELLO V. F.R.N. (2011) 10 NWLR (Pt. 1256) 605.**

The learned Counsel submitted that for conspiracy to be proved, there must be evidence either direct or circumstantial of agreement between two or more persons to do an unlawful act or to do a lawful act by unlawful means, and conspiracy is not committed by mere intention of the parties; **SHURUMO V. STATE (2010) 9 NWLR (Pt. 1226) 73; YAKUBU V. FRN (2009) 14 NWLR (Pt. 1160) 151.** It was also submitted that although a finding of guilt and conviction may be based on circumstantial evidence, such

circumstantial evidence must irresistibly compel the Court to infer the guilt of the accused; **POSU V. STATE (2011) 2 NWLR (Pt. 1234) 393; ODUNEYE V. THE STATE (2001) 2 NWLR (Pt. 697) 311.**

It was contended that the evidence of the PW4 on which the Court relied for the finding of guilt against the appellant on the offence of conspiracy does not warrant the inference that there was a meeting of minds between the appellant and Mr. Smith to commit the offence the appellant was alleged to have committed, there is nothing in the evidence of PW4 to show that there is an agreement between Mr. Smith and the appellant to do any unlawful act or to do a lawful act by an unlawful means to justify the guilt of conspiracy.

It was submitted with reference to the case of **RABIU V. STATE (2010) 10 NWLR (Pt. 1201) 127** that in the absence of any evidence of agreement either direct or circumstantial between the appellant and Mr. Smith to commit the substantive offence, for which the appellant was charged, there is no basis for the conviction of the appellant for the offence of conspiracy.

On the allegation of obtaining money by false pretences, the learned Counsel submitted that the respondent did not lead evidence to proof the allegation beyond reasonable doubt. It was submitted that the ingredients of the offence of obtaining by false pretence as created under section 1 of the Advance Fee Fraud and Other Fraud Related Offences Act are; (1) that there is a pretence; (2) that the pretence emanated from the accused person; (3) that it was false; (4) that the accused person knew about its falsity or did not believe

in its truth; (5) that there was an intention to defraud; (6) that the accused person induced the owner to transfer his whole interest in the property; **ONWUDIWE V. FRN (2006) 10 NWLR (Pt. 988) 382.**

It was contended that the respondent did not lead any evidence to show that the appellant falsely misrepresented himself to the PW4 who was the nominal complainant. It was contended also that there was no doubt about the fact that the appellant had a relationship or contact with the Vice President of Nigeria and Farida Waziri as the Chairman of the Economic Crimes Commission (EFCC), and the PW4 had no doubt about that fact, hence there was no evidence of any misrepresentation that the appellant was acquainted with the two people.

The learned Counsel submitted that the expression **"false pretence"** has been defined in the case of **UZOKA V. FRN (2010) 2 NWLR (Pt. 1177) 118** as a representation whether deliberate or reckless, made by word, in writing or by conduct of a matter in fact or law, either past or present, which is false to the knowledge of the person making it. It was contended that in the light of this definition of false pretence and in the absence of any evidence showing that the appellant misrepresented his relationship with the Vice president, an essential ingredient of offence of obtaining by false pretence was not proved against the appellant beyond reasonable doubt to warrant his conviction for that offence.

It was submitted that the prosecution is duty bound to prove all the ingredients of the offence with which the appellant has been charged beyond reasonable doubt and where there is failure to establish anyone of such ingredients, the accused person, i.e. the appellant must be discharged and acquitted; **ANYANWU V. STATE (2012) 16 NWLR (Pt. 1326) 221.**

It was contended that since the appellant was not proved to have falsely represented himself to the PW4 about his relationship with the Vice President, an essential element of the offence of obtaining by false pretence has not been proved beyond reasonable doubt. The learned Counsel further submitted that the ingredient of fraud which the prosecution is also required to establish beyond reasonable doubt to secure conviction in the allegation of obtaining by false pretences was also not proved as there was no evidence that the appellant made false pretence to the PW4 fraudulently with a view to deceiving him to part with money.

It was argued that it was the nominal complainant, PW4 that approached the appellant for assistance to be linked with the Vice President, and so the appellant had no basis to have conducted himself in any fraudulent manner; **ONWUDIWE V. FRN (Supra) at 429.** It was contended that the prosecution failed to adduce evidence to bring the appellant within the confines or circumstances set out in the case of **ONWUDIWE V. FRN (supra),** but it was the appellant who, by his extra-judicial statements tendered as exhibit H series, had maintained that the PW4 only gave him an amount of N5

million as gift and appreciation for his willingness to put word across to the Vice President of Nigeria about the Political ambition of the PW4, which the appellant actually did and thereby delivered on his promise by introducing the PW4 to the Vice President.

The learned Counsel submitted that evidence of the appellant as the DW1 and his extra judicial statements admitted as exhibit H series are consistent with the fact that he did not commit the offence of obtaining by false pretence, and as such he was entitled to an acquittal based on the doubt from the prosecution's case; **OSENI V. STATE (2012) 5 NWLR (Pt. 1293) 351.**

It was contended that there is contradiction in the evidence of the prosecution with respect to the sum of N50 million or its dollar equivalent allegedly given to the appellant and by virtue of which contradiction the evidence of the prosecution has become unreliable. Reference was made to the evidence of the PW1 and PW4 on the fact of who actually delivered the money or its dollar equivalent. It was submitted on the authority of **ONUCHUKWU V. STATE (1998) 4 NWLR (Pt. 547) 576** that where there are contradictions and inconsistencies in the evidence before a criminal Court, such as to cast reasonable doubt upon the guilt of the accused person, the accused person should be given the benefit of the doubt and should not be convicted.

On the offence of forgery, it was argued that there is no justification for the conviction of the appellant for the offence since it was only the PW2, an investigating Police Officer that testified on the

offence of forgery of statement of result of National Diploma by the appellant allegedly obtained from Kaduna Polytechnic and the evidence of the PW2 is restricted to merely tendering the statement of result as exhibit C and the letters from EFCC requesting the authentication of the result from the Polytechnic and reply of Kaduna Polytechnic respectively tendered as exhibit C1 and C2 respectively.

It was contended that the evidence in respect of this offence of forgery was not properly or adequately evaluated as there is no sufficient evidence to establish the offence of forgery. The prosecution failed to call any witness from Kaduna Polytechnic to testify on the forgery or alteration of a portion of the document while no hand writing expert was called to prove forgery, and this failure has crated gaps and lapses in the prosecution's evidence on forgery and the offence has not been proved beyond reasonable doubt against the appellant to warrant his conviction, citing the case of **AITUMA V. STATE (2007) 5 NWLR (Pt. 1028) 466.**

We were urged to resolve this sole issue in favour of the appellant.

In response, the learned Counsel for the respondent submitted that proof beyond reasonable doubt does not mean proof beyond all shadow of doubt as held by the Supreme Court in **MICHEAL V. THE STATE (2008) 13 NWLR (Pt. 1104) 361 – 386.** It was submitted that a charge is proved beyond reasonable doubt when all the ingredients of the offences alleged have been proved by the prosecution; **NWATURUOCHA V. STATE (2011) VOL. 45 NSCQR**

300 – 301. The learned Counsel contended that in the instant case, the prosecution adduced evidence that established the essential elements of the offences of conspiracy, obtaining money by false pretences and forgery in the charge against the appellant beyond reasonable doubt.

According to learned Counsel, conspiracy as an offence means the meeting of two or more minds to carry out an unlawful act or to carry out a lawful act in an unlawful way; and what is required is the agreement of the conspirators on a course of conduct involving an act or omission by at least one of them which is prohibited by Criminal Law. The essence of conspiracy therefore is the agreement of two or more persons.

The learned Counsel then set out the elements of the offence of conspiracy to be;

1. Existence of two or more people;
2. Agreement to carry out an act;
3. The act agreed to be carried out is unlawful, or if lawful, to use unlawful means.

These ingredients, the learned Counsel contended, are proved in the instant case where evidence shows the existence of the appellant and one **Mr. Smith** who agreed to commit the offence of obtaining money with the pretence or promise to ensure that PW4 was selected as the gubernatorial candidate of Kogi State knowing fully that they could not. It was submitted that conspiracy does not necessarily require the physical presence of the conspirators before

the offence could be committed, as it could be by communication; **ERIM V. STATE (1994) 5 MWLR (Pt. 346) 322.**

In the instant case, as argued by the respondent, the evidence shows that the appellant knew Mr. Smith long before this Mr. Smith came to him with the PW4 to plead for his assistance to link the PW4 with the Vice President and ensure that the PW4 was selected as the PDP Governorship candidate of Kogi State and it was established that Mr. Smith was a friend of the appellant and they were working together, so it was Mr. Smith that took the PW4 to the house of the appellant and introduced him to the appellant.

It was contended that all the evidence of the prosecution on this relationship of the Appellant and Mr. Smith were not challenged and so remained uncontradicted evidence which the Court must accept and act upon; **OFORLETE V. STATE (2000) 12 NWLR (Pt. 681) 415; ADA V. STATE (2008) 13 NWLR (Pt. 103) 149.**

The learned Counsel argued that the evidence of the appellant that he told the respondent's operatives that Mr. Smith was at the villa but they failed to arrest him because his evidence would be unfavourable to the prosecution's case was given for the first time in Court; it was not stated by him in any of his written statements and therefore remained an after thought that goes to no issue. It was submitted that the time to mention such fact is the earliest opportunity available to the appellant; **EBERE V. STATE (2001) 2 NWLR (Pt. 728) 617.** The respondent had no opportunity of investigating that piece of evidence which was not mentioned at the

earliest opportunity, while it was inconsistent with the appellant's statement admitted as exhibit H series, and such evidence should be regarded as unreliable; **OMINI V. STATE (1999) 12 NWLR (Pt. 630) 168; AKPAN V. STATE (2001) 15 NWLR (Pt. 737) 745.**

It was further submitted that the pieces of evidence relating to the location of **Mr. Smith** given by the appellant in the course of his testimony in Court but not contained in his statements were new inventions. It was submitted that the evidence of the appellant contained material contradictions which shows its unstable nature; **SOWEMIMO V. STATE (2004) 11 NWLR (Pt. 885) 515.**

The learned Counsel contended that the unchallenged evidence of the PW4 that **Mr. Smith** introduced him to the appellant because they were working together goes to show that the appellant had more regular contact with **Mr. Smith** than he was willing to admit while the account of the appellant and his own witness are contradictory and should be regarded as unreliable. It was contended that the appellant and **Mr. Smith** knew each other prior to this case, worked together, conspired and demanded the money fraudulently because they knew they could not deliver on their promise.

On the count of obtaining money by false pretences, the respondent submitted that the ingredients of that offence are;

1. Pretence that emanated from the accused; and which the accused knew to be false or did not believe in its truth;

2. An intention to defraud, in respect of a thing capable of being stolen;
3. The accused induced the owner to part or transfer his whole interests in the property.

The respondent contended that the evidence of the witnesses especially the PW1 and PW4 satisfied all these elements of the offence in that it was established that Mr. Smith and the appellant acted in unison and for a common purpose by initiating the whole process when he took the PW4 to the house of the appellant to link them up and falsely asked for money from PW4 who believed them and parted with money for the purpose of facilitating the gubernatorial nomination of the PW4 in Kogi State which money was something capable of being stolen. After the appellant collected the money but refused to utilize it for the purpose it was meant, the appellant ignored all the calls by the PW4.

On the issue of who delivered the money, the learned Counsel said the finding of the trial Court that heard the witnesses is that the PW4 personally handed over the ten million to the accused while the fifty million was given to the accused through the PW1.

On the count of forgery, the respondent referred to the definition in section 465 of Criminal Code and the cases of **AKINBISADE V. THE STATE (Criminal Appeal cases) vol. 3 page 31; BABBLOLA V. THE STATE (1989) 4 NWLR (Pt. 115) 264; and NIGERIAN AIRFORCE V. JAMES (2002) 18 NWLR**

(Pt. 798) 295, that forgery occurs when a document tells a lie about itself.

It was contended that the statement of Result purported to have been issued by Kaduna Polytechnic was recovered from the house of the appellant and admitted as exhibit C, and under cross examination the appellant admitted that though he wrote his qualifications to include a Diploma from Kaduna Polytechnic, he did not have any such Diploma while it was confirmed that exhibit C did not emanate from Kaduna Polytechnic. It was submitted that where a document is found in the possession of a person and such document is proved to be forged, and the person is unable to offer satisfactory explanation as to how he came about it, the person is deemed to be the maker; **BABALOLA V. STATE (Supra); AKIBISADE V. THE STATE (Supra).**

In answer to the argument of appellant's Counsel on the sole issue in the Appellant's Brief, the respondent's Counsel contended that there is ample evidence on record to justify the finding of the trial Court against the appellant on conspiracy. Reference was made to pages 121 – 123 and page 124 of the record on the findings of the trial Court on the Count of Conspiracy, and urged that the conviction for conspiracy be affirmed.

On the argument of the appellant concerning the offence of obtaining by false pretence, the respondent contended that contrary to the appellant's argument that the offence was not proved, there is

ample evidence on record to justify the conviction of the appellant for this offence of obtaining by false pretences.

It was submitted that it is not correct as argued by the appellant that since it was the PW4 that approached the appellant for assistance, there cannot be any fraudulent misrepresentation by the appellant, and indeed the learned trial judge made a finding of fact that the accused person made a representation on the basis of which the PW4 was made to part with the amount of ten million and fifty million respectively. The learned Counsel submitted that there was no contradiction in the evidence of the prosecution in this case and the trial Court made the correct finding thereon at page 129 of the record of appeal.

On the allegation of forgery which the learned Counsel for appellant contended that the prosecution woefully failed to proof, the respondent submitted that the allegation was proved by credible evidence beyond reasonable doubt, and the finding of the learned trial judge is thus correct and follows the decisions in **AKINBISADE V. STATE (Supra) and BABALOLA V. THE STATE** which are material to the issue of forgery.

We were urged to affirm the finding of the trial Court and affirm the conviction and sentence of the appellant,

The amended charge of seven counts against the appellant shows that he was alleged of the offences of conspiracy; obtaining money by false pretences and with intent to defraud; making false declaration of assets by failing to disclose his ownership of plots of

land at Road B TPO 633, Doka Kaduna; and forgery of a statement of Result of Kaduna Polytechnic. In fuller details, the appellant was alleged to have conspired with one Mr. Smith (said to be at large) sometime in January 2011 in Kaduna knowing and fraudently obtained an amount of (N10,000,000.00) Ten Million Naira from one **Dr. Shaibu Sani Teidi** with the aim of using same to facilitate a meeting between **Dr. Shaibu Sani Teidi** and the vice President of the Federal Republic of Nigeria to ensure that he (**Dr. Shaibu Sani Teidi)** got nominated as the Governorship candidate of the PDP for Kogi State.

Another amount of (N50,000,000.00) Fifty Million was alleged to have been falsely and fraudulently obtained by the appellant from the same Dr. Shaibu while in conspiracy with the same Mr. Smith said to be at large now at large with the understanding that same would be given to the Chairman EFCC (Economic and Financial Crimes Commission) for general clearance of Dr. Shaibu. The remaining counts are that the appellant failed to declare or disclose his ownership of the land at Road B TPO 633, Doka Kaduna and that he (appellant) forged a statement of Result of Kaduna Polytechnic.

It is mutually contended by the appellant and respondent that the issue in this appeal is the justification of the finding of guilt of appellant for the offences of conspiracy, obtaining by false pretences and forgery. The allegation of failure to disclose his ownership of a landed property is not an issue in this appeal since the learned trial

judge had, in the judgment of 12th July, 2012 discharged and acquitted the appellant in respect of that offence.

Let me state, as correctly submitted by the learned Counsel for the appellant that by virtue of the provisions of applicable laws relating to the prosecution of crime in our criminal jurisprudence, the burden lies, and virtually unchambly on the prosecution to establish the guilt of any person alleged of commission of a crime beyond reasonable doubt. First is the provision of section 135 (1) and (2) of Evidence Act, 2011 that;

> "1. *If the commission of crime by a party to any proceeding is directly in issue in any proceeding Civil or Criminal, it must be proved beyond reasonable doubt.*
>
> 2. *The burden of proving that any person has been guilty of a crime or wrongful act is, subject to section 139 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action."*

Another material and relevant law is the now popular provision for right to fair hearing as guaranteed in section 36 of the Constitution of the Federal Republic of Nigeria, 1999, (as amended) by subsection 5 of which it is provided that *"Every person who is alleged with a criminal offence shall be presumed to be innocent until he is proved guilty"*.

This presumption of innocence has been judicially recognized in a number of decisions of our apex Court including; **OKORO V. STATE (1988) 12 SC (Pt. 111) 88; OLOWU V. NIGERIAN**

NAVY (2007) ALL FWLR (Pt. 350) 1278; ORUNGUA V. THE STATE (1970) ALL NLR 269; AFOLALU V. STATE (2010) 16 NWLR (Pt. 1220) 584; BAKARE V. STATE (1987) 3 SC 1.

Thus by the combined effect of this presumption of innocence and the burden on he who alleges the commission of an offence to proof that assertion, the burden rests squarely on the prosecution to establish the guilt of an accused person.

It is settled that by virtue of section 135 (1) of Evidence Act, 2011, the standard of proof of an allegation of commission of crime is beyond reasonable doubt, see **OZAKI V. STATE (1990) 1 NWLR (Pt. 124) 92; KALU V. STATE (1988) 10 – 11 SC 10; THE STATE V. AJIE (2000) 11 NWLR (Pt. 678) 434.** The prosecution is thus required to establish beyond any reasonable doubt all the ingredients of the offences alleged against an accused person.

In the effort to establish the allegations in the instant case, the prosecution called eight witnesses that testified as PW1 – PW8, and on the conclusion of their evidence, the appellant himself testified in his defence as the DW1 while another defence witness testified as the DW2. The appellant was discharged and acquitted on the allegation of failure to declare ownership of landed property, but was found guilty of conspiracy, obtaining by false pretence and forgery.

In finding that the prosecution proved the allegation of conspiracy against the appellant, the learned trial judge held at page 124 of the record of appeal as follows:

"The totality of the evidence before this Court established common agreement between the accused and Mr. Smith to obtain money from the nominal complainant albeit by false pretences and hence the allegation of conspiracy is proved".

The conspiracy alleged against the appellant is that he with one Mr. Smith conspired to obtain money from Dr. Shaibu Sani Teidi and indeed obtained the sums of N10,000,000.00 and N50,000,000.00 respectively that would be used to facilitate a meeting between Dr. Shaibu and the Vice President of the Federal Republic of Nigeria to ensure that this Dr. Shaibu secured the nomination as the Governorship candidate of the Peoples Democratic Party in Kogi state, and to be delivered to the Chairman of EFCC for general clearance.

This Dr. Shaibu Sani Teidi testified as the PW4, and stated that he knew the appellant through one Mr. Smith and through this MR. Smith he met the appellant to discuss the issue of support of the Vice President for his nomination as the Governorship of Kogi State as well as to facilitate his clearance with the EFCC, Chairman, Farida Waziri. He said the appellant demanded N10 million and N50 million respectively which he delivered to him. While he personally delivered the N10 million, he sent the N50 million through his driver who confirmed to him, delivery thereof to the appellant. The PW4 stated that the monies he gave to the appellant were not utilized for the

purposes they were meant, the ticket was not given to him and he did not receive the clearance from EFCC Chairman, Farida Waziri.

The PW4's driver, through who the N50 million was allegedly delivered to the appellant was Abdullahi Lawal who testified as the PW1. He stated that his boss, the PW4 gave him N50 million for delivery to the appellant which he did.

Testifying as the DW1, the appellant admitted knowing the PW4 who came to him with his friend, Mr. Smith who introduced the PW4 as a gubernatorial aspirant in Kogi State and that he, (appellant) should help to prevail on the Vice President to allow for gubernatorial primaries which he was sure he would win. He (appellant) said the PW4 gave him an amount of N5 million in a Ghana must go bag as a gift which he collected. The appellant denied collecting the amount of N10 million though he connected the PW4 with the Vice President as he promised, and he did not collect N50 million on behalf of EFCC Chairman.

The prosecution is required to establish by credible evidence and beyond reasonable doubt the ingredients of the offences of conspiracy, obtaining by false pretence and forgery as alleged in the instant case.

On the allegation of conspiracy, section 8 of the Advance Fee Fraud and Other Fraud Related Offences Act under which the appellant was charged provides that a person commits the offence of conspiracy who (a) conspires with, aids, abets or counsels any other person to commit an offence; or (b) attempts to commit or is an

accessory to an act or offence, or (c) incites, procures or induces any other person by any means whatsoever to commit an offence.

The offence of conspiracy is said to be committed when two or more persons agree to do an unlawful act or to carry out an act which is lawful in an unlawful manner. See **MAJEKODUMI V. R. (1952) 14 WACA 64.** To establish the offence of conspiracy therefore, the prosecution must proof the existence of an agreement between two or more persons to do or cause to be done, some illegal act, or an act which is legal by illegal means and that each of the accused persons individually participated in the conspiracy. See **THE STATE V. SALAWU (2011) LPELR 8252 (SC).**

The appellant was alleged to have obtained the amount of N10,000,000.00 and N50,000,000.00 respectively with intent to defraud and by false pretence contrary to section 1 (1) (a) of the Advance Fee fraud and Other Fraud Related Offences Act, 2006, and punishable under section 1 (3) of the same Act.

Section 1 (1) (a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 states that;

> *"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 in any other Country for himself or any other person; or*
>
> *b. Induces any other person, in Nigeria or in 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.

To establish the allegation of obtaining by false pretence, the prosecution is required to proof the following ingredients; (a) that there is a pretence, (b) that the pretence emanated from the accused person; (c) that it was false (d) that the accused person knew it to be false; (e) that there was an intention to defraud; (f) that the thing involved is something capable of being stolen, and (g) that the accused person induced the owner to transfer his whole interest in the property. See **ALAKE V. STATE (1991) 7 NWLR (Pt. 205) 567.**

The evidence of Dr. Shaibu who is said to be the nominal complainant in this case and who testified as the PW4, is on pages 48 – 51 of the record of appeal. In the introductory part of the evidence at pages 48 – 49, he said **"I am a Civil Servant, that is, Ministry of Petroleum Resources, Abuja. I am a Director Finance/Account. I know the Accused person through one Mr. Smith from Presidential Villa. And through Smith I met the accused to discuss my Political ambition with the accused".** And at page 50 he said; **"Mr. Smith is a good friend and he introduced the accused to me".**

It is noted that the above is the only evidence that connects this Mr. Smith with this PW4 and with the appellant as far as the case

is concerned. It is clear from the evidence of the prosecution witnesses that there was no evidence of an agreement or even a meeting of the mind actually or inferentially between the appellant and Mr. Smith to warrant the finding of the trial Court that the offence of Conspiracy was established against the appellant.

On obtaining the sums of money i.e. N10 million and N50 million respectively for the purpose of facilitating meeting between Dr. Shaibu Sani Teidi and the Vice President, and for the EFCC to give general clearance, the evidence of the prosecution witnesses is that while the N50 million was given by the PW1, Abdullahi Lawal the Driver to the PW4 who alone was said to have delivered the money and did not know what had transpired previously between the PW4 and the appellant, the PW4 said he alone delivered N10 million to the appellant, and the delivery was also done by himself alone.

The response of the appellant both in his extrajudicial statement exhibit H series and his statement on oath at the trial, was a complete denial of the allegation that he received either N10 million or N50 million, from the appellant. He said he was given N5 million as a gift. It becomes so patent that a doubt has been created in the case of the prosecution unreliable. The law is settled that where there is any reasonable doubt from the evidence of the prosecution, the benefit of that doubt must be given to the accused person. See **ONYEJIAKA V. THE STATE (1997) NWLR (Pt. 530) 645.**

The facts of this case as shown by evidence is that it was the PW4 that sought the assistance of the appellant with the knowledge

and believe that the appellant had the ability to do what he (PW4) wanted him to do, to wit, to see the Vice President and seek clearance from EFCC Chairman respectively. It was not the appellant that made any representation to the PW4, let alone making any false representation or pretence. Significantly also, the appellant said he actually introduced the PW4 to the Vice President as requested by him.

Again I find no evidence on record to support the finding of guilt by the trial Court and the consequent conviction of the appellant. For this offence of obtaining money by false pretences.

On the allegation of forgery, the appellant was alleged to have forged a Kaduna Polytechnic statement of Result, an offence that is contrary to section 1 (2) of Miscellaneous Offences Act Cap M17 2004 and punishable there under.

The statement of Result was, according to the PW2 found in the house of the appellant during a search of that house in the course of investigation, and it was tendered and admitted as exhibit C while letters seeking clarification from the Polytechnic and response therefrom were exhibits C1 and C2 respectively. Also, the letter seeking authentification of the result and the reply thereto were admitted as exhibits D and D1.

On the allegation of forgery, I adopt the words of **Oguntade JSC** in **CHIEF VICTOR NDOMA EGBA V. AFRICAN CONTINENTAL BANK PLC. (2005) 14 NWLR (Pt. 944) 79** that.

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

Apart from the evidence of the correspondence tendered by the PW2, there is no evidence from the prosecution as to who actually did the forgery as exhibit C2 merely says the document was forged. There is also no evidence that the appellant presented the document as genuine or has made any person to act upon it or refrain from doing so.

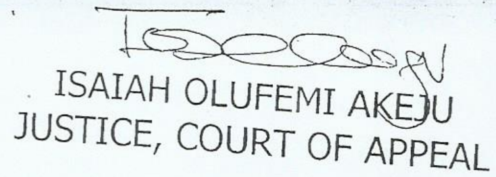
The law is that in a charge of forgery the prosecution must prove that it was the accused person that did the forgery. See **AITUMA V. THE STATE (2007) 5 NWLR (Pt. 1028) 466.**

This failure to adduce evidence specifically showing the appellant as the person that did the forgery has again created a doubt in the prosecution's case which must be resolved in favour of the appellant.

From the foregoing I find that the prosecution did not adduce evidence that established the allegations of conspiracy, obtaining by false pretence and forgery against the appellant beyond reasonable doubt.

I resolve the lone issue in favour of the appellant.

The consequence is that this appeal succeeds and it is allowed. The judgment of the Federal High Court, Kaduna delivered on 12/7/2012 in charge No. FHC/KD/70c/2011 is set aside with the conviction and sentence of the appellant, and in its place the appellant is discharged and acquitted.



ISAIAH OLUFEMI AKEJU
JUSTICE, COURT OF APPEAL

CA/K/290/2014

JUDGMENT
(DELIVERED BY OLUDUTUN ADEBOLA ADEFOPE-OKOJIE, JCA)

I am in agreement with the lead judgment just delivered by my learned Brother **ISAIAH O. AKEJU, JCA.** I also allow this appeal and set aside the judgment of the trial court and also the conviction and sentence of the Appellant.

Oludotun Adebola Adefope-Okojie,
Justice, Court of Appeal.