

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY  
HOLDEN AT JABI - ABUJA

THIS THURSDAY, THE 10<sup>TH</sup> DAY OF OCTOBER, 2013

BEFORE: HON. JUSTICE UGOCHUKWU A. OGAKWU - JUDGE

CHARGE NO. FCT/HC/CR/31/2010

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ..... PROSECUTION

AND

VICTOR OSITA UWAJEH ..... ACCUSED PERSON

## JUDGMENT

The hackneyed cliché, which is now a banal aphorism, is that when you fight corruption, corruption fights back. The war against corruption is a war of several battles contested on different fronts. The battles are usually against the hunted, but sometimes the tide turns on the hunter or in this instance, the agent of the hunter. The *accused person*, *Victor Osita Uwajeh*, was instructed by the *Economic and Financial Crimes Commission (EFCC)* to conduct inquiries in respect of certain *Politically Exposed Persons (PEPs)* and *Agencies* of the *Federal Government of Nigeria*. However it has been alleged that the *accused person* abused his instructions and sought to unlawfully and illegally feather his nest. The tide consequently turned on him and this agent of the hunter was confronted with his own personal battle when he was arraigned on a *six-count charge*. So the situation presented by this matter is either a fight against corruption or corruption fighting back.

The *six-count charge* against the *accused person* alleges offences of *making a false document with intent to commit fraud, fraudulently using as genuine a false document knowing same to be false, making false complimentary cards of the Economic and Financial Crimes Commission with the intent to commit fraud, fraudulent using as genuine false*

*complimentary cards knowing same to be false, attempt to commit extortion and attempt to put persons in fear of injury and finally attempt to extort money as gratification. The accused person pleaded not guilty to the charge and based on this plea the Prosecution took up the gauntlet thrown down by the accused person and called five witnesses in proof of its case.*

The PW1 was Mohammed Goje, a Deputy Detective Superintendent with the EFCC. He testified that on or about 13<sup>th</sup> January 2010, he and his other colleagues were summoned by Messrs Ozigi and Tahiru Usman and they informed them that a committee was formed to investigate a matter in which the accused person was said to be parading himself as a member of the EFCC, thereby defrauding unsuspecting members of the public. He stated that they went to the residence of the accused person where they arrested him and conducted a search. He said that items and documents were recovered and that the accused person was brought to the EFCC office where he volunteered a statement in his own writing in respect of the allegations against him. The said statement was admitted in evidence as EXHIBIT A.

It is the further testimony of the PW1 that two days later, on or about 15<sup>th</sup> January 2010, the accused person volunteered an additional statement in respect of some of the properties that were recovered during the execution of the search warrant in his house. The said additional statement was admitted in evidence as EXHIBIT B. The PW1 stated that among the documents recovered from the residence of the accused person was a document purportedly emanating from the EFCC dated on or about 28<sup>th</sup> October 2009, addressed to the Office of the Recorder of Deeds, Maryland and purportedly signed by one Muazu, A., who was the then Head of Operations of the Lagos Office of EFCC. He stated that the said Mr. Muazu was interviewed him in respect of the said letter and he said that he did not sign the letter. He also stated that complimentary cards belonging to the accused person, EFCC badges and other documents were equally recovered from the house of the accused person.

Cross examined by learned counsel for the accused person, the PW1 said that the accused person was standing trial for impersonation and forgery. He stated that in the course of investigations, they did not come across any members of the public whom the accused person

defrauded by his impersonation as a member of *EFCC*. He said that he did not know the source of the intelligence report received by *EFCC* to the effect that the *accused person* had forged documents and was parading himself as an *EFCC* official. He further stated that he had not seen any *Petition* against the *accused person* or any *Complaint* from the *Recorder of Deeds* against the *accused person*. He gave the name of the *EFCC Head of Operations, Lagos* as one *Muazu Zubairu* and agreed that there was a difference between *Muazu Zubairu* and *Muazu Abdullahi*. He said that it was *Muazu Zubairu* who was asked if he signed the letter and not *Muazu Abdullahi*, who was *Head of Forensic Unit of EFCC Abuja Office*, because the letterhead used for the letter was purportedly that of *Lagos Office of EFCC* and not *Abuja Office*. Furthermore that *Muazu Abdullahi* was not in a position to sign such a letter so he was not asked if he was the one that signed it.

Testifying further the *PW1* said that he was one of those who conducted the search at the house of the *accused person* and that they were more than *ten persons* that conducted the search. He stated that the *accused person* was not at home when they arrived but that they waited for him to get back home before they started executing the *search warrant*. He further stated that he did not remember if the *accused person* searched them before they entered his house to conduct the search. He said that in the course of investigation he saw a copy of letter given to the *accused person* to act for *EFCC* but that he had never heard about the *accused person* before the day that he was arrested. He further said that he could not remember the date of the letter appointing the *accused person* or the person who signed it; but that *Mrs. Farida Waziri, Chairman of EFCC* did not deny having appointed the *accused person* to act for *EFCC* in respect of certain matters.

The *PW1* stated that he had not seen any letter by which the appointment of the *accused person* to act for *EFCC* was withdrawn and that he did not know why the *accused person* was engaged by *EFCC* as an *Investigator/Consultant*. He said that he did not give *Exhibits A* and *B* to his superiors to countersign and further stated that he was not part of the team that investigated *Mrs. Cecilia Ibru* or *Oceanic Bank* and that even though he did not know the person that was in charge of the investigation, he knew that it was done in *Lagos*. He maintained that he knew that the investigation was done by *EFCC operatives* but he did not

remember the *accused person* as being part of the investigation. He said that he could not remember when *Mrs. Cecilia Ibru* was arrested but that he knew that *Mrs. Ibru's* assets were published in *Nigerian* newspapers, though he did not know when it was done. He also did not remember which came first between the publication of the assets of *Mrs. Ibru* and the arrest of the *accused person*. The *PW1* agreed that he had seen the *Nigerian International Passport* of the *accused person* but that he did not take notice from the *passport* of when the *accused person* returned to *Nigeria* from *London*. He finally stated that they did not obtain a statement from *Mrs. Farida Waziri*.

*Salihu Kadir*, an *EFCC operative* testified as the *PW2*. He stated that on or about *13<sup>th</sup> January 2010*, he and some of his colleagues were called by their superiors *CSP Umoru Ozigi* and *CSP Tahir Usman*, to brief them on intelligence received about an individual parading himself as an *operative* of the *EFCC* and defrauding unsuspecting members of the public. He said that on the same day they visited the residence of the *accused person* where the *accused person* was arrested and a search conducted in his house and premises.

He stated that when they arrived at the residence of the *accused person* he was not at home but when he returned, they showed him the *search warrant* and then conducted a search in his house and premises during which some items were recovered. He said that the items recovered were documented behind the *search warrant* and duly signed. The said document showing the items recovered was admitted in evidence as *EXHIBIT C*. Some other items that were recovered during the search were also tendered in evidence and marked as follows:

1. *EFCC badges as EXHIBIT D.*
2. *Bundle of complimentary cards in the name of the accused person as EXHIBIT E.*
3. *Letter on EFCC letterhead dated 28<sup>th</sup> October 2009 addressed to the Office of the Recorder of Deeds signed by one Muazu, A. as EXHIBIT F.*

It is the further testimony of the *PW2* that the badge, *Exhibit D*, is not given to *EFCC operatives* and that he was not aware of any staff of

*EFCC* who carries a badge like *Exhibit D*. He said that the *letterhead* on which the letter, *Exhibit F*, was written is not the *letterhead* of *EFCC* because the common feature of the *EFCC letterhead* which is the *green-white-green line* on the left side of the *letterhead* is not on *Exhibit F*; secondly, that the texture of the *Exhibit F* paper is lighter than the *EFCC letterhead*. He also said that *EFCC operatives* do not usually carry complimentary cards.

Under cross examination by learned counsel for the *accused person*, the *PW2* said that some staff of *EFCC* use complimentary cards. He stated that he had not seen the complimentary cards of *Mrs. Farida Waziri*, *Stephen Otioju*, former *Director of Operations* or that of *Zubairu Muazu*, *Head of Operations, Lagos*. He said that he had not seen the complimentary card of any staff and so he did not know how it looked, because he related with *operatives* who do not use complimentary cards. He further testified that he was aware that the *accused person* was engaged sometime in *2008* to work for *EFCC* and that he saw the letter appointing the *accused person* during the course of the search. He said that he would not know if there was anything in the letter to the effect that the *accused person* should not print complimentary cards and he also did not know if the complimentary card was sent for forensic analysis. He did not know if anything was wrong with the complimentary cards, *Exhibit E*, which cards were in the name of *Victor Uwajeh*. The witness did not know of anybody who was deceived by the complimentary cards and he did not know when the cards were printed. He equally did not know if the *accused person* needed permission to print complimentary cards, just as he did not know if there was any problem with the complimentary cards, *Exhibit E*.

Testifying further under cross examination, the *PW2* stated that he would not know if the production of the badges was a contract given to the *accused person*. He did not know one *Mr. Yusuf* of the *EFCC Procurement Department*, and he did not know if the production of the badges, *Exhibit D*, was a contract given to the *accused person* and for which he was duly paid. The *PW2* did not know of anybody to whom the *accused person* presented the badges, *Exhibit D*. He said that he was not the custodian of the *EFCC letterhead* and confirmed that there was no stamp on *Exhibit F* to show that it was received. He testified that he had not seen the *Nigerian Passport* of the *accused person* and so did not know if the *accused person* returned to *Nigeria* on *27<sup>th</sup> October 2009*.

He said he did not know anything about the Deeds listed in the letter, *Exhibit F*, and he did not know the person whose name is written on *Exhibit F* as the author of the letter. He also did not know that *EFCC* had made a publication listing the assets of *Mrs. Cecilia Ibru* worldwide and therefore would not know the essence of *Exhibit F* if *EFCC* already had the documents and had made publication in the newspapers about them. The witness did not see any *petition* or *complaint* against the *accused person* and he did not know of anybody who said he was deceived by virtue of *Exhibits D, E* and *F*. He said that the allegation against the *accused person* was forgery and impersonation, maintaining that the *EFCC letterhead* recovered in the bedroom of the *accused person* is not that of the *EFCC*. He stated that *nine operatives* conducted the search at the residence of the *accused person*, but he could not remember the number of persons that were present in the bedroom when *Exhibit F* was recovered. He finally stated that he did not know if *Exhibit F* was received and acted upon by anybody.

The *PW3* was *Benedict Agweye*, a *Forensic Document Examiner* with the *EFCC Forensic Science Laboratory*. He gave details of his training and qualifications stating that sometime in *January 2010*, the *Forensic Document Examination Section* of *EFCC Forensic Science Laboratory* received a request for examination, comparison and report comprising two sets of documents. The first set being was the disputed document which was marked *X* and the second set of documents being the known specimens which were marked as *A – A3* and *B* respectively. He identified *Exhibit F* as the disputed document and said that the nature of the request was to compare the disputed signature of one *Muazu, A.* on the document marked *X* and to also examine the specimen signature marked *A – A3* and the *letterhead* paper marked *B*. The second set of documents, the known specimens, was admitted in evidence as *EXHIBITS G, G1 – G4*.

The witness testified as to the analysis he conducted leading on to the opinion he formed that the author of the known specimen signatures marked *A – A3* (*Exhibits G – G3*) did not sign the signature of one *Muazu, A* on the disputed document marked *X* (*Exhibit F*). He stated that the signature marked *X* (*Exhibit F*) was an attempt at using freehand to forge the signature of the specimen signatures of *A – A3* (*Exhibits G – G3*). He further stated that in his opinion the specimen *letter headed* paper *B* (*Exhibit G4*) was not the same as the disputed

document *X (Exhibit F)* because the substrait (the paper) marked *B (Exhibit G4)* was printed using a printing process known as screen-print and the substrait is a conqueror paper containing tiny ridges that run through the length of the entire paper horizontally, but that the disputed document marked *X (Exhibit F)* has a substrait of a normal commercially available paper and the printing process was through inkjet printing. He gave the other variations between the two sets of documents as including the absence of the *Green White Green stripe* running from the top left hand corner of the paper to the bottom in the disputed document *X (Exhibit F)* and the arrangement of the address on the top right corner of the specimen marked *B (Exhibit G4)*, while on the disputed document marked *X (Exhibit F)* it is centred at the top of the disputed document just below the words *Economic and Financial Crimes Commission*. It is his further testimony that he passed the documents to his boss who after independently analyzing the documents peer-reviewed his work and issued a *Report* which he signed in his presence. The said *Report* was admitted in evidence as *EXHIBIT H*.

Cross examined by the defence counsel, the *PW3* said that there was nothing on *Exhibits G – G4* showing that he personally received them or that he personally examined the documents, including *Exhibit H*. He stated that the examination lasted about *two or three hours* and that as at the date on *Exhibit H* he was not the *Head of the Forensic Department*. He said that there was nothing in *Exhibit H* showing that the author referred to him by name and that the conclusion in *Exhibit H* is the opinion of the author and not his own opinion. He stated that after examining the documents, he arrived at his opinion and after the late *Mr. Muazu Abdullahi* independently analyzed the documents and peer-reviewed his work, he arrived at the same opinion. He further stated that he did not reduce his opinion in writing because there was a senior *Forensic Document Examiner*, the late *Muazu Abdullahi*, who signed the *Report* and that the opinion in the said *Exhibit H* was that of *Muazu Abdullahi*, after the peer-review. He did not know if *Exhibits G – G4* bear the signature of the *accused person* as he did not work with names, but he confirmed that the signature on *Exhibit A* was not on *Exhibits G-G3*, stating that he did not analyze the signature on *Exhibit A*.

*Bala Sanga*, a *Deputy Director* with *EFCC* was the *PW4*. He stated that sometime in *November 2008* when he was the *Principal Staff Officer*

to the *Executive Chairman* of *EFCC*, he met the *accused person* at a meeting with the *Executive Chairman* where the *accused person* presented himself as having the capacity to obtain information about the assets and finances of *Politically Exposed Persons (PEPs)* in the *UK* and that he was a member of the *Institute of Private Investigators* of the *UK*. He said that the *accused person* indicated his willingness to work with the *EFCC* in order to bring *PEPs* to book. As a result he stated that the *Executive Chairman* gave the *accused person* a letter of authorization to act on behalf of *EFCC* with a limitation period of *six months*. A copy of the said letter was admitted in evidence as *EXHIBIT J*.

The *PW4* further testified that sometime in *2010*, the *EFCC Operations Department* requested that he confirm from the *Metropolitan Police* in *London* if the *accused person* was indeed a *Member* of the *Institute of Investigators* and if he was a citizen of the *UK*. He said that this request was based on information received that the *accused person* was impersonating officers of the *EFCC* and that during a raid at the premises of the *accused person*, complimentary cards identifying the *accused person* as a staff of *EFCC* were found. The witness maintained that after the *six month* period on *Exhibit J*, the relationship created by *Exhibit J* ceased to exist and the same was never renewed. He said that he duly obtained the confirmation requested for in *emails* exchanged with the *Metropolitan Police* wherein they stated that there was no such institution as *Institute of Private Investigators*. The *email* printout was admitted in evidence as *EXHIBIT K*.

Cross examined by the learned counsel for the *accused person*, the *PW4* said that the essence of giving *Exhibit J* to the *accused person* was to enable him discharge his desire of serving as an *informant* for the *EFCC* and helping in collecting intelligence about the assets and funds of *PEPs*. He stated that the *accused person* never applied to work with *EFCC* and that *Exhibit J* was given to the *accused person* to facilitate his recovery of assets of *PEPs*. He said that it was usual to give letters to *EFCC informants* where the case so required. He agreed that the *accused person* is not introduced as an *informant* in *Exhibit J* and further stated that he had not seen any *petition* where it was alleged that the *accused person* was impersonating and that he, the *PW3*, was not involved in the investigation of the *accused person*.



In his further testimony under cross examination, the *PW4* said that there was no formal *petition* against the *accused person* relating to bribery and forgery of documents. He stated that a *Special Bank Fraud Investigation Team* was set up for the purpose of investigating the assets of *Cecilia Ibru*. He maintained that the *accused person* was not an employee of *EFCC* and so he never investigated any cases for *EFCC* and that no files of *PEPs* were ever referred to the *accused person*. He said that in discharge of the instructions in *Exhibit J*, providing of intelligence and information on where assets and accounts of *PEPs* were, the *accused person* reported either to the *Chairman* or to him (the *PW4*) where the *accused person* could not reach the *Chairman*. He stated that rather than give the *accused person* specific instruction, the *EFCC* relied on the *accused person* to give it information. He said that no letter was written to stop the *accused person* from acting at the end of the *six month* period in *Exhibit J* and that the *control number* on *Exhibit K* was extracted from the *identity card* of the *Institute of Private Investigators* used by the *accused person*.

The *PW4* said that he had a complimentary card by virtue of being an employee of *EFCC*. He stated that there was nothing in *Exhibit J* which forbade the *accused person* from having a complimentary card, but that the *accused person* could not have an *EFCC* specific *email* address but that he was free to have a *yahoo*, *gmail* or other domicile *email* address, which the *EFCC* did not have control over. He said that by the nature of *Exhibit J*, the *accused person* could not use *EFCC* letterhead or *EFCC* complimentary card and that he was the person to have facilitated the use by the *accused person* of *EFCC* letterhead, *email* or complimentary card. He finally stated that the communication from the *EFCC Operations Department* was not specific as to whom the *accused person* impersonated himself to.

The *PW5* was *Zubairu Muazu*, a *Deputy Commissioner of Police* and *Head of Operations, EFCC Lagos Office* from *August 2008* to *March 2012*. He testified that sometime in *January 2010*, the then *Head of Operations, EFCC Abuja Office* called him to inquire if he signed a letter for one *Mr. Victor Uwajeh* in respect of a case investigated by the *EFCC* which has to do with *Oceanic Bank*. He identified *Exhibit F*, as the letter he was asked if he signed. He stated that he did not sign the letter but that the signature on the letter was an attempt to sign his signature, as it looked like his signature. He said he provided several

specimens of his signature and identified *Exhibits G1, G2 and G3* as the specimen he provided. It is his further testimony that he noticed that *Exhibit F* was not in the usual format of *EFCC letterhead* as *EFCC letterhead* has *EFCC* logo on the left and that below it is boldly written *Economic and Financial Crimes Commission*. He said that on the extreme right is the address of the particular office that bears the *letterhead* and the contacts for that office. But that the format of *Exhibit F* was totally different. He said that his full names were *Zubairu Muazu* and that he has no 'A' in his names as stated in *Exhibit F* as "*Muazu, A.*" He further stated that he was not part of the investigations into *Oceanic Bank* and therefore would not have signed any letter for anybody in respect of that investigation.

Cross examined by learned counsel for the *accused person*, the *PW5* stated that there are two other persons bearing the name *Muazu* in *EFCC*. He gave their names as *Muazu Abdullahi* and *Muazu Bashiru*. He confirmed that *Exhibit F* was signed in the name of *Muazu A* and not *Muazu, Z* but that the investigators from *Abuja* asked him if he signed *Exhibit F*. He said that *Exhibit F* does not bear any initials resembling his own and that he was not present when the house of the *accused person* was searched. He stated that while he was still *Head of Operations EFCC Lagos*, he had met the *accused person* but that the *accused person* had not worked for or with *EFCC* at any time. He agreed that *Exhibit F* had an *Abuja* address and also did not have *Muazu Zubairu* as the author but that he was in court based on the witness summons he was served.

He further testified that there was no received or dispatched stamp on *Exhibit F* and that he could not remember the date when *Mrs. Cecilia Ibru* was arraigned in Court and he also did not know the date when her assets were forfeited. He however will not be surprised if it was in *August 2009* that *Mrs. Cecilia Ibru* was arraigned in court. He did not know where *Exhibit F* was found and he also did not know the offence for which the *accused person* was standing trial. He stated that apart from *Exhibit F* he did not know of any other complaint against the *accused person* while he was with *EFCC*. He said that he met the *accused person* for the first time while he was with *Force CID* in *2000 – 2001* and later in *2009* while he was with *EFCC*. He finally stated that by virtue of being in operations, as *Head of Operations EFCC*

*Lagos Office*, he had a complimentary card containing his *email* address, telephone number and address.

With the testimony of the *PW5* the *Prosecution* closed its case.

The *accused person* testified for himself in defence of the *Charge* and did not call any other witness. He testified as to his training and qualifications in criminal investigations and financial crimes. The documents in respect thereof were admitted in evidence as follows:

1. *Redding University Degree of Associate of Science conferred upon Victor Osita Uwajeh dated 12<sup>th</sup> June 2007 as EXHIBIT L.*
2. *Redding University Official Transcript in the name of Victor Osita Uwajeh as EXHIBIT L1.*
3. *Photocopy of Private Investigator Identity Card of Institute of Private Investigation in the name of Victor Uwajeh as EXHIBIT M.*
4. *Institute of Private Investigation Suggested Book List as EXHIBIT M1.*
5. *Letter of Introduction from Institute of Private Investigation introducing Victor Uwajeh as a student for the year 2008 as EXHIBIT M2.*
6. *Tutors Biographical Details and Packing List for course in Diploma in Private Investigation as EXHIBITS M3 and M4.*
7. *The Private Investigation Special Report of the Institute of Private Investigation as EXHIBIT M5.*
8. *The Private Investigation Manual of the Institute of Private Investigation as EXHIBIT M6.*
9. *Letter from Institute of Private Investigation addressed to Victor Uwajeh dated 13 October 2008 enclosing course materials for the Diploma in Private Investigation as EXHIBIT M7.*

10. *Binder containing course materials for Diploma in Private Investigation course as EXHIBIT M8.*

It is the further testimony of the *accused person* that he knows one *Mrs. Farida Waziri*. He stated how he met the said *Mrs. Waziri* and the cordial family relationship which they had thereafter, including exchange of visits and attending parties together. The digital camera memory card and photographs taken at some parties were admitted in evidence and marked as follows:

1. *Memory card as EXHIBIT N.*
2. *Photographs taken at naming ceremony as EXHIBITS N1 and N2.*
3. *Photograph taken at birthday party as EXHIBIT N3.*

The *accused person* further stated that at the party for the naming ceremony of his daughter, which *Mrs. Farida Waziri* attended, *Mrs. Waziri* informed him that she was being nominated as *Chairman* of *EFCC* and she requested that he speak to his Senator friends so that she could have a smooth sail during the Senate screening. He said he contacted his friends at the Senate and *Mrs. Farida Waziri* eventually got the job in *2008*.

It is the further testimony of the *accused person* that after *Mrs. Farida Waziri* was appointed as *Chairman* of *EFCC*; she prevailed upon him to work with her as an investigator. He said he accepted but for a definite time frame consequent upon which she invited him to her office and issued him a letter appointing him to act on behalf of *EFCC*. The said letter from the *Executive Chairman, EFCC* reference *EFCC/EC/GC/031/1509* dated *3<sup>d</sup> November, 2008* titled "*To Whom It May Concern*" "*Instruction to Act on Behalf of EFCC*" was admitted in evidence as *EXHIBIT O*.

The *accused person* said that he is a *British* citizen by *naturalisation*, holding a *British Passport* and that he lived in *Britain* for several years before he relocated to *Nigeria* in *2005*. The *Certificate of naturalisation as a British citizen* issued to *Uwajeh Victor Osita* dated *05 August 2003* was admitted in evidence as *EXHIBIT P*. He stated that the *EFCC* complimentary cards in his name were printed at the instance

of *Mrs. Farida Waziri*, who instructed her *Personal Secretary* to introduce him to the *EFCC* printer, *Mr. Yahaya*. He said that this was because he had told *Mrs. Waziri* that since he could not carry an *ID card*, there was need for another form of identification for him. He further said that he wrote out his names, *email*, *EFCC* address and telephone number as he wanted it printed on the complimentary card and gave to *Mrs. Waziri's Secretary* for onward transmission to the *EFCC* printer. He said that the *Secretary* later gave him about five packets of complimentary cards in an envelope; he showed the card to *Mrs. Waziri* and she took some of the cards and compared them with her own card after which she gave him about three of her own cards.

It is his further testimony that he exchanged cards with *Bala Sanga (PW4)* as well as with *Muazu Zubairu (PW5)* who was in *Bala Sanga's* office at the time, stating that he had known *Muazu Zubairu (PW5)* several years back when he, the *PW5*, was at the *Police Headquarters*. He said he further exchanged cards with one *Mr. Femi Babafemi*, the then *EFCC Head of Media* and with one *Stephen Otitioju* who was appointed as *Head of Operations, EFCC Abuja office*. The said complimentary cards he got from these persons were admitted in evidence as *EXHIBITS Q, Q1 - Q5*.

The *accused person* stated that when he was made a *consultant* with *EFCC*, one of the major reforms he brought to *EFCC* was the introduction of *Sheriff Badge* for staff of *EFCC* in order to avoid impersonation. He said that the contract for the production of the *badges* was awarded to a company he nominated, *Corporate Orient Nigeria Limited*, and that the *badges* were produced and delivered to *Mrs. Farida Waziri* in her office. He said that he equally introduced the *Anti-Corruption Revolution (ANCOR)* to *EFCC* and that part of the things produced for the *ANCOR* were *lapel pins*, the contract of which was awarded to his company *PMV Projects Nig. Ltd* and that the *lapel pins* were duly produced and delivered to *EFCC* and received by one *Mr. Yusuf* in the presence of *Mrs. Farida Waziri* in her office. The *sheriff badge*, *lapel pin* as well as the contract award letters and contract agreements were admitted in evidence as *EXHIBITS R, R1, R2, R3, R4* and *R5*. He said that he also produced the *T-shirts* and *face caps* which were used at the launch of the *ANCOR*. The *ANCOR caps* and *T-shirts* were admitted in evidence as *EXHIBITS R6, R7* and *R8*. The *accused*

*person* also tendered the *Newswatch magazine* publication on the launch of the *ANCOR* and the same was admitted in evidence as *EXHIBIT S*.

It is the further testimony of the *accused person* that *Mrs. Farida Waziri* issued him an *Internal Memo* instructing him to carry out investigation and asset tracing of some persons and that funding was made available to him for that purpose. He stated that the investigation and asset tracing took him to *London* and *Accra*, at the end of which he submitted the assets he traced, which led to the arraignment of the said individuals. He said that he got the asset documents from the *Recorder of Deeds in UK*. The *Internal Memo* from *Executive Chairman* to *Victor Osita Uwajeh* dated *5<sup>th</sup> November 2008* and the documents from the *UK Recorder of Deeds* were admitted in evidence as *EXHIBITS T, T1 – T6*.

The *accused person* further stated that on *9<sup>th</sup> April 2009*, *Mrs. Farida Waziri* issued him a *Memo* instructing him to carry on asset tracing and investigation of money laundering of some other individuals and that funding was once again made available to him to carry out the instructions. He said that he travelled to *America* where he carried out his investigations and traced most of the assets of the individuals to the *Maryland Potomac* area and *Washington DC*. He stated that he took photographs of the houses and also obtained documents in respect of the houses from the *Recorder of Deeds in Maryland*. The *Internal Memo* from *Executive Chairman* to *Victor Osita Uwajeh – Private Investigator* was admitted in evidence as *EXHIBIT U*, while the documents and photographs of houses were admitted as *EXHIBITS U1, U2, U3, U4, U5, U6, U7 – U11* and *U12 – U18*.

In his further testimony, the *accused person* stated that *Mrs. Farida Waziri* also issued him an *Internal Memo* instructing him to investigate and trace the assets of *Mrs. Cecilia Ibru* and *Oceanic Bank* among other bank executives and their associates. He said that funding was given to him and he travelled to the *US, UK* and *Dubai, UAE* for his investigations and that he successfully traced assets linked to *Oceanic Bank, Mrs. Cecilia Ibru* and her associates and siblings. He stated that he obtained the *certificates of incorporation* in respect of the two *Oceanic Banks* registered in the *UK* as well as the title documents in respect of the documents he traced, which title documents were released to him

on *24<sup>th</sup> August 2009*. The documents were admitted in evidence and marked as follows:

1. *Internal Memo from Executive Chairman to Victor Osita Uwajeh dated 3<sup>rd</sup> August 2009 as EXHIBIT V.*
2. *Title documents in the name of Cecilia Ibru as EXHIBIT V1, V2 and V3.*
3. *Title documents in the name of Anita Da Silva Ibru as EXHIBITS V4 and V5.*
4. *Title documents in the name of Janet Ibru as EXHIBITS V6 – V9.*
5. *Title document in the name of Hirut Ibru as EXHIBIT V10.*
6. *Title document in the name of Obaro Ibru as EXHIBIT V11.*
7. *Title document in the name of Edesiri Ibru as EXHIBIT V12.*
8. *Title document in the name of Nana Shittu Beddell, Nanashittu Abdulai as EXHIBIT V13.*
9. *The certificates of incorporation of the two Oceanic Banks in UK as EXHIBITS V14 and V15.*

He stated that he handed over his investigation report on *Mrs. Cecilia Ibru* to *Mrs. Farida Waziri* on *28<sup>th</sup> August 2009* after which *Mrs. Cecilia Ibru* was arrested and arraigned in court on *31<sup>st</sup> August 2009*. The certified true copy of the *Charge and Amended Charge* in *FHC/L/2970/09: FEDERAL REPUBLIC OF NIG. VS. DR. MRS. CECILIA IBRU* were admitted in evidence as *EXHIBITS V16 and V17*.

The accused person stated that at the time he was doing consultancy for *EFCC*, the *Head of Forensics* at *EFCC* was *Abdullahi Muazu* who was later assassinated. The *Vanguard* newspaper publication of *Wednesday, September 15, 2010* on the said assassination was admitted in evidence as *EXHIBIT W*. He said that he had concluded all the investigations and that even though his initial brief was for *six months*, he was still given further briefs. He stated that after he completed the investigation in

*Cecilia Ibru's* matter, he sent an *invoice* for his professional fees in the sum of £18million to *Mrs. Farida Waziri* and a copy to *Emmanuel Akomaye*, the *Secretary* of *EFCC*. It is his testimony that *Mrs. Farida Waziri* later called him to tell him that she had spoken to the *Executive Governor* of *Delta State*, *Dr. Emmanuel Uduaghan* and that she would send the *Governor's* telephone number to him by text for him to call the *Governor* as she already had an arrangement with the *Governor*. He stated that he subsequently called the *Governor* who told him that his in-law, one *Mr. Tuoyo* was going to call him to come to the *Delta State Liaison office* at *Asokoro*. He said that he went there and met the said *Mr. Tuoyo* who brought out two payment vouchers with two cheques attached. The *accused person* said that one of the cheques was in his name for ₦350million while the second cheque was in the name of one *Moses Terfa*, the *Special Assistant* to *Mrs. Farida Waziri*, also in the sum of ₦350million and that *Mr. Tuoyo* asked him to sign the two payment vouchers, take the cheque in his name and leave the other cheque. He said that he asked the motive for the payment since he did not do any contract for *Delta State Government* and also asked why he would sign for a cheque in the name of *Moses Terfa* and leave with only one of the cheques. He stated that he did not want to get involved and so he left the *Liaison office* without signing, but that after he left, *Mrs. Farida Waziri* called him on phone to berate him and he told her that there was no way he could do what she wanted him to do.

The *accused person* testified that he was later told that *Mrs. Farida Waziri* had accused him of collecting bribe but that he laughed it off and continued calling *Mrs. Farida Waziri* to demand payment but that she became evasive and eventually stopped taking his calls. He stated that sometime in *November 2009*, *Mrs. Cecilia Ibru* came to his house and offered to give him *US \$10million*, which she said she had in the boot of her car, so that he could soft pedal on his investigation but that he told her that he had submitted her file since *28<sup>th</sup> August 2009* and therefore could not do anything to assist her, whereupon she left with whatever she had come with together with the gentleman who came with her. He stated that he continued calling *Mrs. Farida Waziri* without success and that about the first week of *January 2010*; he sent a text message to *Mrs. Farida Waziri* in annoyance referring to the corruption going on in the *EFCC*. He said that immediately *Mrs. Farida Waziri* received the text message she called him on phone and threatened to deal with him and that barely a week later the *EFCC* raid at his premises



took place. He stated that he had left the house for his office when his wife called him that *EFCC* was all over the house. He said he drove back home and saw more than *ten EFCC policemen* outside the premises and so many other *EFCC policemen* all over the premises. He stated that the team leader met him, took all his telephone handsets in order to delete his text messages with *Mrs. Farida Waziri*. He said that he was searched as he entered the house but that he did not search any of the *EFCC* officials; and that one *Bashiru Muazu* was with the team leader with three other persons and one lady called *Funmi* and they took him straight to his bedroom and asked that he open the safe in the bedroom. He said that he initially declined to open the safe because all his original documents, memos and letter of appointment were in the safe, but that as they were searching various parts of the bedroom, he went towards the safe and that as he tried to open the safe, *Bashiru Muazu* screamed and said "*I have seen it, I have seen it!*". He stated that the *EFCC* officials took possession of all the original documents in the safe and that what *Bashiru Muazu* screamed he had seen was a letter purportedly written to the *Recorder of Deeds* dated *28<sup>th</sup> October 2009*.

He said that he was handcuffed and taken to the *EFCC* office where he was put in the underground cell and that *Bashiru Muazu* gave him blank copies of statement form and a pen to write his *statement* which he did; but that *Bashiru* saw that he refused to own up to the authorship of the letter which he claimed that he found in his bedroom, he slapped him several times and tore the *statement* he had written. He stated that for *fourteen days* he refused to own up to the authorship of the letter since he knew nothing about it; and that each time he wrote a *statement*, *Bashiru* would tear it. He said that eventually the lady *EFCC* official, *Funmi* told him to own up to the authorship of the letter because *Mrs. Farida Waziri* was bent on eliminating him; and he yielded to her advise since he would have his day in Court. He maintained that the said letter to the *Recorder of Deeds*, *Exhibit F*, was strange to him and that he knew nothing about it because he had concluded his investigation and submitted the file on *28<sup>th</sup> August 2009* and all the documents in *Exhibit V series* were already in his possession. He said that *Exhibit F* is dated *28<sup>th</sup> October 2009*, more than *two months* after he had concluded his investigation and it made no sense to be asking in *Exhibit F* for something which he already had.

It is his further testimony that when he went to collect his assets after the current *EFCC Chairman, Ibrahim Lamorde*, graciously released them, he met *Bashiru Muazu* who apologized to him, stating that the assault and humiliation he meted out to him was because *Mrs. Farida Waziri* had threatened to redeploy him back to the *Police* if he did not take stringent measures against him and that he would never come to Court to testify in the matter.

He insisted that he is not the author of *Exhibit F* and that he never used it as genuine, maintaining that the letter was fabricated to undo him and that *Counts 1* and *2* of the *Charge* were not correct. He further stated that it was also not correct that he made and used false complimentary cards because the complimentary cards were produced by the *EFCC* printer at the instance of *Mrs. Farida Waziri* and therefore that *Counts 3* and *4* of the *Charge* were not correct. He denied demanding *US\$2million* from *Mrs. Ibru* and further denied that he used *Kayode Abraham* to collect the money. He stated that *Mrs. Ibru* came to his house to offer him money but he refused and therefore *Counts 5* and *6* of the *Charge* were not correct. He said that no one claimed that he uttered any documents or tried to extort any money from any one, despite the *EFCC* publication on the internet and news media worldwide calling for people to come forward who he had represented himself to as an *EFCC Operative*. He stated that *EFCC* is yet to pay him the *£18million* he invoiced them and that they were already in court in that regard.

Under cross examination by the learned prosecuting counsel, the *accused person* said that he had conducted investigations for *Major Hamza Al-Mustapha* during the *Abacha* regime. He stated that he was formally appointed at the time, but that he could no longer find the letter of appointment as it had been a long time since then. He said that by *Exhibit J* he considered himself as a *consultant* for *EFCC* and that he understood *Exhibit J* as authorizing him to do anything without restriction in respect of investigating matters on behalf of *EFCC*. He however maintained that he never signed any person's signature; the *accused person* said that he was arrested on *13<sup>th</sup> January 2010* and that his *statement, Exhibit A*, was signed on the said date. He stated that though he referred to *Exhibit F* in *Exhibit A*, he never stated therein that he wrote *Exhibit F*, insisting that *Exhibit A* was written under duress.

It is his testimony that after he was arrested, *Bashiru Muazu* put him in the underground cell and gave him statement forms to write his *statement* and because he did not own up to authoring the letter, *Exhibit F*, *Bashiru Muazu* tore the *statement*, struck him on the neck and slapped him. He said that *Bashiru Muazu* would take him out of the cell while he wore only shorts and singlet and take him from one office to another in handcuffs, and that after all the torture and maltreatment when one *Funke*, a staff of *EFCC* asked him to own up to the document and he did, *Bashiru Muazu* said that he must date the *statement* 13<sup>th</sup> January 2010, being the date he was arrested. He agreed that he made a further *statement*, *Exhibit B*, which is dated 15<sup>th</sup> January 2010. He said that the statement in *Exhibit A* that *Exhibit F* was written to enable him recover the deeds of *Mrs. Cecilia Ibru* is not correct because he had already finished investigating *Mrs. Ibru* as at the date on *Exhibit F*. That he only made the said statement to satisfy what the investigators wanted. He further said that it was not correct as written in *Exhibit A* that he handed the deeds to *Mr. Otitioju*, as that was what they wanted him to write and own up to. He stated that the issue as it relates to *Exhibit F* was the only part of *Exhibit A* which was not correct as the portions of *Exhibit A* that concern his person, property and profile were correct. He said that in addition to the portion of *Exhibit A* relating to *Exhibit F*, he was tortured and teleguided to write the portion that relates to the photocopies of documents on page 2 of *Exhibit A*, the area that deals with complimentary cards on page 3 of *Exhibit A* and also the area on page 1 that has to do with his *CV* as they did not want it to be shown that he had any experience on the job. He insisted that he was teleguided to write most of what was in *Exhibit A* as the statement was a product of fifteen days of torture which was what *Bashiru Muazu* set out to achieve.

The *accused person* agreed that some parts of *Exhibit A* were correct while some were not correct, but said that everything in *Exhibit B* was to the best of his knowledge correct. He said that it was not correct that he deliberately set out to play some members of *EFCC* against each other and cause enmity by wild allegation. He denied that he came to court to tell deliberate lies and finally stated that he did not forge *Exhibit F* to perpetuate fraud because *Exhibit F* is dated 28<sup>th</sup> October 2009 while he concluded the investigation of *Mrs. Cecilia Ibru* on 28<sup>th</sup> August 2009 and she was arraigned in court on 31<sup>st</sup> August 2009.

With his testimony as the sole witness in defence of the *Charge*, the *accused person* closed his defence.

The matter thereafter proceeded to *address*. *Written addresses* were filed and exchanged. Addressing the Court on *16<sup>th</sup> July 2013*, *A. O. Agbonlahor, Esq.*, learned counsel for the *accused person* adopted the submissions in the *final written address* of the *accused person* which is dated and filed on *9<sup>th</sup> May 2013* as well as the *Reply on Points of Law* which is dated and filed on *24<sup>th</sup> June 2013*. He submitted that the ingredients of the offences charged were not proved beyond reasonable doubt and that no evidence has been adduced by the *Prosecution* linking the *accused person* with the offences charged. He urged the Court to discharge and acquit the *accused person*.

In the same vein, the learned prosecuting counsel, *Festus Keyamo, Esq.*, adopted the submissions in the *final written submission* of the *Prosecution* which is dated and filed on *19<sup>th</sup> June 2013*, he urged the Court to find the *accused person* guilty on *Counts 1 – 4* of the *Charge*, stating that in proof of those counts, the *Prosecution* relied on the *confessional statements* of the *accused person*. On the requisite intent to commit fraud, it was submitted that the evidence shows that the *accused person* was not part of the team that investigated *Mrs. Cecilia Ibru* and that he did not obtain any document in that regard. He posited that by writing the letter, *Exhibit F*, the *accused person* wanted to show that he did some job in the investigation of *Mrs. Cecilia Ibru* in order to claim money from *EFCC*. With respect to *Counts 5* and *6* of the *Charge*, the learned prosecuting counsel conceded that no evidence was led in respect of the said *Counts*. He therefore applied to withdraw the said *Counts 5* and *6* of the *Charge*. He finally urged the Court, to find the *accused person* guilty and convict him on *Counts 1 – 4* of the *Charge*.

I have given a deep and insightful consideration to the *Charge* against the *accused person*, the testimonial and documentary evidence as well as the *written addresses* filed by learned counsel on both sides of the divide. By *Section 135* of the *Evidence Act*, the burden of proving that any person is guilty of a crime rests on the prosecution. This burden will only shift where the prosecution proves the commission of the crime beyond reasonable doubt. See *Section 135 (3)* of the *Evidence Act*. If

on the whole of the evidence, the Court is left in a state of doubt, the prosecution would have failed to discharge the onus of proof cast upon it by law and the *accused person* will be entitled to an acquittal. See UKPE vs. STATE (2001) 18 WRN 84 at 105. In order to get a conviction, the prosecution has to prove all the material ingredients of the offence charged beyond reasonable doubt: SADU vs. STATE (2001) 33 WRN 21 at 40. Where the prosecution fails to establish by evidence, the ingredients of an offence, the charge is not made out and the accused person ought to be discharged and acquitted. See MAJEKODUNMI vs. THE NIGERIAN ARMY (2002) 31 WRN 138 at 147.

In the *final written address* of the *accused person*, a sole issue was distilled as arising for determination, namely:

*Whether the Prosecution has proved the ingredients of the alleged offences against the accused person?*

The *Prosecution* in its *final written submission* equally distilled a sole issue for determination as follows:

*Whether the Prosecution has proved its case beyond reasonable doubt against the accused person?*

The issues for determination distilled in the *written addresses* filed by learned counsel, though differently worded are in their true essence and purport the same. In view of the settled state of the law, which places the onus of proof on the *Prosecution*, I find more apt the sole issue as distilled by the *Prosecution*. It is therefore on the basis of the said issue that the evidence adduced in this matter will be considered and evaluated vis-a-vis the *six count charge* on which the *accused person* is standing trial.

As already stated and as clearly captured in the issue formulated by the *Prosecution*, the burden cast upon the prosecution by law is to prove the charge preferred against an accused person beyond reasonable doubt. See UZOKA vs. F.R.N (2010) 2 NWLR (PT 1177) 118 at 146. The law is firmly settled beyond peradventure that in order to discharge the burden cast upon it by law, there are three ways or

methods available to the prosecution to prove the guilt of an accused person. These are:

- By reliance on a confessional statement of an accused person voluntarily made;
- By circumstantial evidence; and
- By the evidence of eyewitnesses.

See EMEKA vs. STATE (2001) 32 WRN 37 at 49 and OKUDO vs. STATE (2011) 3 NWLR (PT 1234) 209 at 236D.

In the course of this *Judgment*, we will find out if the *Prosecution* proved the charge against the *accused person* by any of these ways or methods or by a combination of one or the other or all of them.

### COUNTS 5 AND 6

For purposes of convenience, and not on account of any reverse order of considering the *Counts* of the *Charge*, I will start with Counts 5 and 6 of the *Charge* primarily because the *Prosecution* in paragraph 3.63 of its *final written submission* applied to withdraw Counts 5 and 6 of the *Charge* because it could not call its witnesses in relation to the said *Counts*. The learned counsel for the *accused person*, in paragraph 3.3 of the *Reply on Points of Law* argued that it was too late in the day to withdraw the said *Counts* and that since no evidence was led in respect thereof, the *Counts* were abandoned and liable to be dismissed.

At the outset of this *Judgment* I stated that the *accused person* pleaded not guilty to the *Charge*. By a plea of not guilty, an accused person is not saying that he is innocent. The presumption of innocence in *Section 36 (5)* of the *Constitution* already enures in his favour. When an accused person pleads not guilty, he puts himself to his trial as stipulated in *Section 188* of the *Criminal Procedure Code (CPC)*. The plea of not guilty dares the prosecution to prove its case beyond reasonable doubt. A dare which the prosecution took up by calling its witnesses as required by *Section 188* of the *CPC*. The prosecution will not have proved its case on the required standard laid down in criminal trials unless it proves all the essential elements of the charge. See ENEWOH vs. STATE (1989) 5 NWLR (PT 119) 98 at 117E-F. By pleading not guilty, the *accused person* thereby cast upon the *prosecution* the burden of proving all the facts in issue in respect of all *Counts* of the *Charge* including

*Counts 5 and 6.* If after trial and when the totality of the evidence has been heard and considered and the Court is not satisfied beyond reasonable doubt, then, the Court shall acquit on those counts of the charge in respect of which the constituent elements of the offences charged have not been established beyond reasonable doubt. See *STATE vs. AZEEZ (2008) ALL FWLR (PT 424) 1423 at 1458F – 1459A* and *KANO vs. NIGERIAN ARMY (2008) LPELR 1 at 26D-E*. The learned prosecuting counsel conceded that there is no evidence in proof of *Counts 5 and 6* of the *Charge*. This concession was made at the *address* stage after all the evidence had been adduced. I do not think that it was still within the power of the *Prosecution* to seek to withdraw the said *Counts* at that stage of the proceedings. Perhaps, it may have been possible if it had sought to do so before it closed its case. The submission that the said *Counts* of the *Charge* were being withdrawn seems to be an attempt to escape through the back door having seen that there is no evidence in support of the said *Counts*. This cannot be allowed at that stage of the proceedings when the *Prosecution* was no longer *dominis litis*.

The law is clear as to the effect where evidence has not been adduced to prove the material ingredients of the offence charged. *Counts 5 and 6* of the *Charge*, charge the *accused person* of attempting to commit extortion by attempting to put one *Mrs. Cecilia Ibru* and *Kayode Abraham* in fear of injury and also attempting to extort money from *Mrs. Cecilia Ibru* as gratification and inducing one *Kayode Abraham* to assist procure the bribe money. Since there is absolutely no evidence in proof of these *Counts* of the *Charge*, the said *Counts* have not been made out and the *Prosecution* has failed to prove the same beyond reasonable doubt.

By way of prolegomenon to a consideration of the other *four counts* of the *Charge*, the *Prosecution* in its *final written submission* freely and copiously referred to what it termed the devious and lying nature of the *accused person* as well as his cock and bull and ridiculous story. Let me immediately set the right parameters in this regard. The law is that although a man may lie because he is guilty, he may just as well lie because he is stupid or afraid or both and whether he is guilty or not: *HARUNA vs. POLICE (1967) NMLR 145 at 153*. It has never been the law that the mere fact that a person told lies, is by itself sufficient to convict him of an offence unconnected with mendacity nor does the fact that an accused person told lies relieve the prosecution of its duty

of proving the guilt of the accused person of the offence charged beyond reasonable doubt. See OKPERE vs. STATE (1971) 1 ALL NLR 1 at 5, WOOLMINGTON vs. DPP (1935) AC 462 and OGIDI vs. STATE (2005) 5 NWLR (PT 918) 286 at 318. It is therefore immaterial that the *Prosecution* perceives that the *accused person* has been devious, told lies, and cock and bull ridiculous stories. The *Prosecution* must still prove its case beyond reasonable doubt, the lies notwithstanding.

### COUNT 1

In *Count 1* of the *Charge*, the *accused person* is charged with having made a false document *with intent to commit fraud* and thereby committed an offence contrary to *Section 363* of the *Penal Code*. The said *section* makes provisions with respect to making a false document or forgery and provides for several intents for which the false document may have been made. In *Count 1* of the *Charge*, the intent subject of the *Count* is the *intent to commit fraud*. As rightly submitted, by learned counsel, the *Prosecution* must prove that the *accused person* made a false document and that the false document was made *with the intent to commit fraud*.

The *Prosecution* has heavily relied on the *confessional statement* of the *accused person* as being cogent, direct, positive, unequivocal and as clearly pointing to the irresistible conclusion that the *accused person* committed the offences charged. The *accused person* in his testimony in defence of the *Charge* testified that he was tortured and humiliated before he wrote *Exhibit A* and that the said *Exhibit A* was a product of *fourteen days* of torture. By his testimony, he sought to resile or retract some aspects of *Exhibit A* as not having been made voluntarily.

The *confessional statement*, *Exhibit A*, was admitted in evidence without any objection. The issue as to the voluntariness of the *statement* raised by the *accused person* in his testimony in defence of the *Charge* seems to have come a little too late in the proceedings. The question of voluntariness of a confessional statement ought to be raised at the time the statement is sought to be tendered in evidence. As already stated, the *confessional statements* were tendered at the trial without any objection from the defence. It is rather belated for the issue to be raised in the testimony of the *accused person* in his defence of the *Charge*



after the *Prosecution* had closed its case. In circumstances such as this, the voluntariness of the *confessional statements* cannot be in doubt. See *ALARAPE vs. STATE* (2001) 5 NWLR (PT 705) 79 at 100A-B.

The mere retraction or resiling from a confessional statement or denial by an accused person of his having made such a statement does not *ipso facto* render it inadmissible in evidence. See *ALARAPE vs. STATE* (2001) 2 SC 114 at 125 and *AREMU vs. STATE* (1991) 7 SC (PT II) 82 at 90. An accused person can still be convicted on the basis of such retracted confessional statement: *HASSAN vs. STATE* (2001) 7 SC (PT II) 85 at 93.

Now, there is no evidence stronger than a person's own admission or confession. The confessional statement made by an accused person is potent evidence in the hand of a prosecutor for proving a charge. It is the best and safest evidence on which to convict. See *ADEBAYO vs. A-G OGUN STATE* (2008) 7 NWLR (PT 1085) 201 at 221F-G and *USMAN vs. STATE* (2011) 3 NWLR (PT 1233) 1 at 11. The free and voluntary confessional statement of an accused person alone is enough to sustain his conviction where such voluntary confession of guilt is direct and positive. See *YESUFU vs. STATE* (1976) 6 SC 167 at 173, *IDOWU vs. STATE* (2000) 7 SC (PT II) 50 at 62 – 63, *DIBIE vs. STATE* (2007) 9 NWLR (PT 1038) 30 at 63G-H and *KAZA vs. STATE* (2008) 7 NWLR (PT 1085) 125 at 166A, 194A and 195D.

The offence charged in *Count 1* is not a strict liability offence. The elements for the offence involve both the *actus reus* and *mens rea*. Therefore a confessional statement on the basis of which the Court can convict must admit of the crime both in fact and in law. It must admit of the doing of an act or the making of an omission which constitutes an offence in law. The confession must admit of all the ingredients of the crime or the offence confessed, *id est*, both the *actus reus* and the *mens rea*. See *NWOBE vs. STATE* (2000) 15 WRN 133 at 141 or (2000) 11 NWLR (PT 678) 271 at 279 and *YUSUF vs. F.R.N* (2010) LPELR 1 at 17.

With specific reference to *Count 1* of the *Charge*, for the *confessional statement* of the *accused person*, *Exhibit A* to be direct, positive and unequivocal about the commission of the crime: *DIBIE vs. STATE* (supra) and *OGUGU vs. STATE* (1990) 2 NWLR (PT 134) 539 at 548, it must admit the essential ingredients of the offence charged, namely: that he made the document *with the intent to commit fraud*.

There is nothing in the statement, *Exhibit A* admitting the *intent to commit fraud* being the *mens rea*, for the offence. Accordingly, I do not think that the said *Exhibit A* contains any admission of all the ingredients of the offence charged in *Count 1*. The contents of the said *Exhibit A*, taken as a whole do not in my considered view rise to the level of a confessional statement that is direct and positive enough to warrant the conviction of the *accused person* of the offence charged in *Count 1* in the absence of other evidence. See *EKURE vs. STATE* (1999) 13 NWLR (PT 635) 636 at 655.

I am neither a repository of knowledge nor do I lay any claim to infallibility. Given the fact that I am fallible, I will still in the course of this *Judgment* return to further consider the *confessional statement* relative to *Count 1* of the *Charge*, as though it were one that admitted all the ingredients of the offence charged, given the fact that the law enjoins the Court to seek any other evidence however slight of circumstances which make it probable that the confession is true by applying the requisite tests before it convicts on a retracted confessional statement.

## COUNT 2

The *accused person* is charged in *Count 2* of *fraudulently* using as genuine a forged document knowing same to be forged and thereby committed an offence contrary to *Section 366* of the *Penal Code*. Once again as rightly identified by learned counsel in their *written addresses*, the *Prosecution* must establish that the *accused person* knew or had reason to believe that the document was forged and that the *accused person* *fraudulently* or *dishonestly* used the document as genuine.

*Section 366* of the *Penal Code* provides for the *fraudulent* or *dishonest* use of a document that is not genuine. It employs the disjunctive word "*or*". In the *Charge* before the Court, the *Prosecution* charges the *accused person* with the *fraudulent* use of the document. Therefore in order for the *confessional statement* to admit of the ingredients of the offence charged in *Count 2*, the statement must not only admit of the *accused person* knowing the document to be forged, it must also admit of the *fraudulent* use to which the document was put.

The relevant portion of the *confessional statement*, *Exhibit A* as it relates to *Counts 1* and *2* of the *Charge* reads as follows:

*"A letter written to the recorder of deeds in Prince Georges County, Maryland was also recorded from my file. It was written to enable me procure vital deed documents of Mrs Cecilia Ibru and co which I handed over to Director Ops EFCC Mr Stephen Otitioju in Ikoyi office after I came back from the assignment. This was on the instruction of Mrs Farida Waziri. I wrote the letter to facilitate the securing of the deeds. I signed the letter. The letter was sighted and returned to me."*

It is the submission of the *Prosecution* in *paragraph 3.48* of the *final written submission* that the forged letter was used as a genuine document to obtain the deeds. But the document which was said to have been forged, *Exhibit F* herein, does not allude to procuring vital documents or facilitating the securing of the deeds. In fact, the document, *Exhibit F* refers to the deeds as attached to the letter. So far from securing the procurement of the deeds as the *fraudulent* use of the document, the document refers to the deeds as being attached showing that the deeds have already been obtained before *Exhibit F* was written, thus negating the alleged *fraudulent* use of the document, which is the *mens rea* of the offence charged.

In elucidation of its *final written submission*, the learned prosecuting counsel alluded to the *fraudulent* use being to show that the *accused person* did some job in the investigation of *Mrs. Cecilia Ibru* in order to claim money from *EFCC*. If this were to be taken as the *fraudulent* use of the document as charged in *Count 2*, even though there is no evidence on the record in this regard, then, the *confessional statement, Exhibit A*, does not admit this *fraudulent* use as an ingredient of the offence charged.

Once again, it remains my considered view that the contents of *Exhibit A* taken as a whole does not rise to the level of a confessional statement that is direct and positive enough, admitting all the ingredients of the offence warranting the conviction of the *accused person* in *Count 2* of the *Charge* in the absence of other evidence: *EKURE vs. STATE* (*supra*). I will revert later in the course of this *Judgment* to apply the requisite tests before a Court can convict on a retracted confessional statement in the rare chance that I am wrong in the views I have expressed thus far, but I still believe that I am not.

### COUNT 3

The charge in *Count 3* is that of making false complimentary cards of the *EFCC with the intent to commit fraud* contrary to *Section 363* of the *Penal Code*. Once again, as rightly submitted by learned counsel, the *Prosecution* must establish that the *accused person* made a false document and that he did so with any of the intents mentioned in *Section 363* of the *Penal Code*. Of all the several intents set out in the said *Section 363*, the *Prosecution* charged the *accused person* of making the false complimentary card *with the intent to commit fraud*. Therefore, for the *confessional statement* of the *accused person*, *Exhibit A*, to be direct and positive, it must admit of the essential ingredients of the offence charged, namely: making the false complimentary card *with the intent to commit fraud*.

The relevant portion of the *statement, Exhibit A*, as it relates to *Count 3* of the *Charge* reads as follows:

*"In 2008 in the month of November, I was commissioned by Mrs Farida Waziri, Chairman of EFCC to commence work and act on behalf of the EFCC in investigative and inquiry capacity. To confirm this appointment, a letter was issued to me in that capacity to investigate, Politically Exposed Persons, Parastatals and Government Agencies. I started work immediately with several briefs from her. With the letter of appointment, I made a Complimentary Card for myself and commenced work... I got this card based on my appointment to act for the EFCC. I produced the card to make my job easier and cannot recall if I informed Mrs Waziri about it."*

Now, first and foremost, there is no admission that the complimentary card is a false document. *Exhibit J* which is the same as *Exhibit O* is the instruction given to the *accused person* by the *Executive Chairman* of *EFCC* for him to act on behalf of *EFCC* and conduct inquiries on behalf of *EFCC* in respect of certain *Politically Exposed Persons (PEPs)* and *Agencies* of the *Federal Republic of Nigeria*. It has not been denied that the *EFCC* so instructed the *accused person* and it is based on this instruction that the *accused person* wrote in *Exhibit A* that he produced the card to make his job easier. Therefore, I do not see how *Exhibit A* has admitted the ingredient of making a false complimentary card.

If it is as submitted by the *Prosecution*, that the *accused person* did not follow the necessary procedure before he produced the complimentary cards thus making the complimentary cards a false document, I will now proceed to consider if the *confessional statement* admits the other necessary ingredient of the offence charged – the *intent to commit fraud*.

I have already reproduced the relevant portion of the *statement* as it relates to *Count 3* of the charge. There is nothing therein, which is an admission of the relevant *intent to commit fraud*. Therefore, based on my finding that the *statement, Exhibit A* does not admit of the necessary ingredient of making a false document and doing so with the *intent to commit fraud*, I am unable to agree that the *confessional statement, Exhibit A*, is direct and positive enough to warrant the conviction of the *accused person* for the offence charged in *Count 3* in the absence of other evidence: *EKURE vs. STATE (supra)*. Once again, I will revert in due course to apply the requisite tests to determine the veracity or otherwise of a retracted confessional statement before a court can convict on it.

#### COUNT 4

The charge in *Count 4* is one of *fraudulently* using as genuine forged complimentary cards of *EFCC* knowing same to be forged contrary to *Section 366* of the *Penal Code*. Learned counsel once again, identified in their respective *written addresses* the essential ingredients required to establish the charge in *Count 4*. They consist of: using as genuine any document knowing same to be false or having reason to believe that it is forged and doing so *fraudulently* or *dishonestly*. The *Prosecution* does not charge the *accused person* of the *dishonest* use of the document. The charge is of the *fraudulent* use of the document.

In my consideration of *Count 3* of the *Charge*, I held that in view of *Exhibits J* and *O* by the which the *accused person* was authorised to act on behalf of *EFCC*, the production of the complimentary cards, *Exhibit E*, by the *accused person* to make his job easier did not make the said complimentary cards, a false document even if the necessary procedure for the production of the same had not been followed. Be that as it may, there remains the inexorable need for the *Prosecution* to establish the *fraudulent* use of the complimentary cards as a genuine document. Let me reiterate that a confession must admit of all the ingredients of the crime or the offence confessed, *id est*, both the *actus reus* and the

*mens rea*: NWOBE vs. STATE (supra) and YUSUF vs. F.R.N (supra). There is nothing in the *confessional statement, Exhibit A*, which amounts to an admission of the essential ingredient that the complimentary cards were used *fraudulently*. Therefore, I do not think that the *confessional statement, Exhibit A* is direct and positive as it does not admit the essential ingredients of the offence charged in *Count 4* in order to warrant conviction in the absence of other evidence: EKURE vs. STATE (supra). I will later return to apply the requisite tests in order to ascertain the veracity or otherwise of the retracted confessional statement.

But before I do so, the learned prosecuting counsel submitted in *paragraph 6.30* of his *final written submission* that the *accused person* confessed in his evidence in chief that he gave out his forged complimentary cards to various persons and that these unsuspecting persons regarded the same as genuine and even exchanged cards with him. He then opined that the *accused person* did so *dishonestly* because he knew the cards were not officially printed for him to use.

I hasten to state that the charge in *Count 4* is not one of *dishonest* use of a forged complimentary card as genuine. The charge is of *fraudulent* use as genuine of a forged complimentary card. Howbeit, I still found nothing in the evidence on the basis of which to hold that the complimentary cards, *Exhibit E*, were forged. This notwithstanding, the persons to whom the *accused person* testified that he gave these complimentary cards and that they exchanged cards with him include *Mrs. Farida Waziri*, the *Executive Chairman* of EFCC, *Bala Sanga*, the *Principal Staff Officer* to the *Executive Chairman* of EFCC who testified as *PW4*, *Muazu Zubairu*, the *Director of Operations*, EFCC Lagos Office, who testified as *PW5*, *Stephen Otitioju*, *Director of Operations*, EFCC Abuja Office and *Mr. Femi Babafemi*, *Head of Media*, EFCC. The *PW4* and *PW5* in their testimony never said anything in respect of the *fraudulent* use of complimentary card by the *accused person* or their having regarded the cards given to them by the *accused person* as genuine. Indeed, there is absolutely nothing in the evidence to back up the submission of the *Prosecution* that, "*the unsuspecting persons regarded the cards as genuine.*" Accordingly, I find nothing in the evidence particularly, in the testimony of the *accused person* which amounts to an admission of guilt in respect of the offence charged in *Count 4* of *fraudulently* using as genuine forged complimentary cards of EFCC.

## VERACITY OR OTHERWISE OF THE CONFSSIONAL STATEMENT, EXHIBIT A

It is now the appropriate time to revisit the *confessional statement* of the *accused person*, *Exhibit A*. Since I am not the fountain of knowledge, it may well be that I am wrong in the finding I have reached that the *confessional statement*, *Exhibit A*, does not admit the essential ingredients of the offences charged in order to warrant a conviction, but I still believe I am not. The legal position is that the Court cannot act on the *confessional statement* without first applying the test for determining the veracity or otherwise of the retracted *confessional statement*. The law enjoins the Court to seek any other evidence, however slight, of circumstances which make it probable that the confession is true. The tests which have been laid down to ascertain the weight to be attached to a retracted confessional statement are:

- 1) *Is there anything outside the confession which shows that it is true?*
- 2) *Is it corroborated in any way?*
- 3) *Are the relevant statements of fact made in it most likely to be true as far as they can be tested?*
- 4) *Did the accused person have the opportunity of committing the offence?*
- 5) *Is the confession possible?*
- 6) *Is the alleged confession consistent with other facts which have been ascertained and established?*

See NWAEBONYI vs. STATE (1994) 5 NWLR (PT 343) 138; AKINMOJU vs. STATE (2004) 4 SC (PT I) 64 at 81; UBIERHO vs. STATE (2005) 7 MJSC 168 at 188 – 189 or (2005) 5 NWLR (PT 919) 644 at 663 to 664 and ALARAPE vs. STATE (supra).

Paramount in our applying the requisite tests is whether there is anything outside the confession which establishes the required *mens rea* for the offences charged, namely: the *intent to commit fraud* and the *fraudulent* use as genuine of false documents and whether there are other facts which have been ascertained and established in this regard or anything in the evidence corroborating the confession.

Without a doubt, the testimony of the *PW3* and the other *prosecution witnesses* seem to establish the document, *Exhibit F* as forged, since the *letterhead* is not the regular *EFCC letterhead*. But what of the requisite *intent to commit fraud* and the *fraudulent* use of the document which are integral parts of the ingredients the *Prosecution* has the onus of establishing beyond reasonable doubt?

*Exhibits J* and *O*, being the instruction given to the *accused person* to act on behalf of the *EFCC* is dated *3<sup>rd</sup> November 2008*. It is clearly for a period of *six months*. The *PW4* stated that there was no letter written preventing the *accused person* from further acting on behalf of *EFCC* after the *six month* period, but that the authorization ceased at the expiration of the *six month* period. However, there is evidence from the *accused person* which is backed up by *Exhibit V*, the *Internal Memo* issued to the *accused person* by the *Executive Chairman* of *EFCC* on *3<sup>rd</sup> August 2009* well after the *six months* period in *Exhibit J* and *O* had expired, instructing the *accused person* to carry out thorough asset tracing and money laundering inquiry on some bank *Managing Directors* including *Cecilia Ibru* of *Oceanic Bank PLC*. So, notwithstanding the denial of the *PW4* and *PW5* that the *accused person* was not involved in the investigation of *Mrs. Cecilia Ibru*, *Exhibit V* constitutes solid documentary evidence that the *accused person* was so involved. Documentary evidence is used in law as a hanger to assess oral testimony: See *FASHANU vs. ADEKOYA* (1974) 6 SC 83, *KIMDEY vs. MILITARY GOVERNOR OF GONGOLA STATE* (1988) 2 NWLR (PT 77) 445 at 473 and *HAWAD INTERNATIONAL SCHOOLS LTD vs. MIMA PROJECTS* (2003) 39 WRN 57 at 69, and while documentary evidence which is shown to be genuine does not tell a lie, oral evidence may tell a lie. The documentary evidence is therefore to be used as a base from which to assess the oral evidence. See *UDEORAH vs. NWAKONOB*I (2003) 4 NWLR (PT 811) 643 at 674H-675B. The *Internal Memo, Exhibit V*, was not challenged by the *Prosecution*, so it is clearly a genuine document by which the *accused person* was instructed to investigate *Mrs. Cecilia Ibru*.

The evidence before the Court as borne out by *Exhibits V1 – V13*, is that the documents of title in respect of *Mrs. Cecilia Ibru* were obtained as at *24<sup>th</sup> August 2009* while *Mrs. Cecilia Ibru* was charged to Court as at *31<sup>st</sup> August 2009* vide *Exhibits V16* and *V17*. *Exhibit F*, the document said to have been forged is dated *28<sup>th</sup> October 2009*; as at which date, the *accused person* testified that he had concluded his



investigations in respect of *Mrs. Cecilia Ibru* and submitted his report. In *Exhibit V*, the *accused person* was instructed to hand over all reports in respect of the asset tracing and money laundering on *Mrs. Cecilia Ibru* among others to the *Executive Chairman* as usual. The *PW4* in his testimony stated that the *accused person* reported to the *Executive Chairman* and that where it was not possible for him to reach the *Executive Chairman*, he would report to him, the *PW4*. The *accused person* in his testimony maintained that he had concluded investigations and submitted his report on *Mrs. Cecilia Ibru* to *Mrs. Farida Waziri*, the *Executive Chairman* of *EFCC* as at *28<sup>th</sup> August 2009* resulting in *Mrs. Cecilia Ibru* being arraigned in Court vide *Exhibit V16* on *31<sup>st</sup> August 2009*; therefore making it absolutely unnecessary for him to require the documents requested for in the letter, *Exhibit F* as at *28<sup>th</sup> October 2009* more than *two months* after he had concluded his investigation and submitted his report.

Doubtless, the date when the *accused person* submitted his report has a direct bearing in a determination of whether the confession is possible relative to its consistency with other facts ascertained and established by the evidence. Even though it is not necessary for the *Prosecution* to call every piece of evidence in order to discharge the burden of proof: see *NWANKWO vs. F.R.N (2003) 4 NWLR (PT 809) 1 at 33*; it seems to me that given the line of reporting and the claim of the *accused person* as to when he submitted his report, *Mrs. Farida Waziri* was a very material and vital witness whose testimony would have shed some light through which the veracity or truth of the retracted confessional statement could have been tested. See *NWANKWO vs. F.R.N (supra) at 32D-H and 34D-H and USUFU vs. STATE (2007) 3 NWLR (PT 1020) 94 at 118C-E*. The evidence is that a statement was not even obtained from *Mrs. Farida Waziri* in the course of investigations!

All the prosecution witnesses were at one in their testimony that they do not know of anybody to whom the *accused person* uttered the forged document or of any *complaint* or *petition* that the *accused person* uttered the forged document or impersonated *EFCC* officials.

While it is correct that it is open to the *Prosecution* to prove its case by circumstantial evidence, but the circumstantial evidence has to be evidence that can be inferred from the evidence on record before the Court. It is definitely in realization that there is no evidence with regard to the *mens rea* required to prove the offences charged, that the *Prosecution* embarked on speculation and conjecture of what the

evidence which is not on record would have shown. The courts act on evidence and not on hunches, speculation, rumours or suspicion in order to ensure that justice in its purest form is administered to all. See *ONAH vs. STATE* (1985) 3 NWLR (PT 12) 236 at 344. Several assumptions and speculations were contained in the *final written submission* of the *Prosecution*. The classic which is in *paragraph 3.56* is as follows:

*“3.56 It goes without saying that since the limited mandate of the accused person included obtaining information for the Commission about Politically Exposed Persons, the complimentary cards were done with the intent of furthering this purpose. Such information definitely included documents, like in the case of Cecilia Ibru. Those documents are properties within the definition of Section 363 of the Penal Code. It would therefore mean that the accused printed the cards in order to obtain properties from persons. The fact that he had a letter of authorization means he should have used that letter, because that was the purpose of such a letter. But obviously, because of his hidden intention, he hid that letter because of its limited scope and decided to print complimentary cards to defraud unsuspecting persons.”*

To underscore that the *Prosecution* was confounded and at sea due to the paucity or lack of the evidence on *mens rea*, the learned prosecuting counsel in his oral submissions while addressing the court on the *intent to commit fraud* submitted that the fraud was on *EFCC* when he opined *“on intent to commit fraud, the evidence is that the accused person was not part of the team that investigated Mrs. Cecilia Ibru and that he did not obtain any documents in that regard. By writing the letter, Exhibit F, the accused wanted to show that he did some job in the investigation of Mrs. Cecilia Ibru in order to claim money from EFCC.”*

In the light of the fact that the *accused person* retracted his *confessional statement*, and duly considering the requisite tests to be applied by the Court to ascertain the weight to be attached to a retracted confessional statement especially as it relates to the *intent to commit fraud* and *fraudulent* use as genuine of a forged document, I find no credible evidence, however slight ascertaining and establishing any facts that are

consistent with the alleged *confessional statement*, *Exhibit A* as admitting the relevant *mens rea*. See SALAWU vs. STATE (1971) 1 NMLR 249 at 252 and AKINFE vs. STATE (1988) 7 SC (PT II) 131 or (1988) 3 NWLR (PT 85) 729. Courts generally are not disposed to act on a confession without first testing the truth thereof. It is desirable to have outside the accused person's confession some corroborative evidence no matter how slight which make it probable that the confession is true. Such corroborative evidence is invariably to be found outside the purported confession of the accused person, otherwise a conviction cannot be reached: KABIRU vs. A-G OGUN STATE (2009) 5 NWLR (PT 1134) 209 at 225G-H.

Having duly considered the test which I am bound to apply before I can convict on the *confessional statement*, I find in the evidence adduced, no independent facts which have been established or ascertained that are consistent with the alleged confession as it relates to the *intent to commit fraud* and the *fraudulent* use of forged documents as genuine. The concomitance of this, is that even if I had not held that the *confessional statement* was not direct and positive, as it did not admit all the ingredients of the crime or offence allegedly confessed, I would have still been unable to arrive at a conviction based on the said *confessional statement* which the *accused person* retracted, as the *confessional statement* does not satisfy the requisite tests laid down to be applied in other to ascertain the weight to be attached to a retracted *confessional statement* particularly with respect to the required ingredients of *intent to commit fraud* and *fraudulent* use of forged documents, being the *mens rea* of the offences charged.

I reiterate that in criminal trials, the prosecution has the duty to prove all and not merely some of the ingredients of the offence charged beyond reasonable doubt. If there is any element of doubt in relation to any of the ingredients, the doubt is resolved in favour of the accused person: OMOGODO vs. STATE (1981) 5 SC 5, NWEKE vs. STATE (2001) 4 NWLR (PT 704) 588 and ADEKOYA vs. STATE (2010) LPELR 1 at 24. From the totality of the evidence, I have my doubts as to whether the *accused person* committed any of the offences charged. The law is that because I doubt, the doubt should be resolved in favour of the *accused person*. See UKPE vs. STATE (*supra*) at 105 and ALHASSANI vs. STATE (2011) 3 NWLR (PT 1234) 254 at 279A-B.

In the course of this *Judgment* I referred to the onus placed on the *Prosecution* in criminal trials. It is to prove its case beyond reasonable doubt. Proof beyond reasonable doubt does not mean or import beyond any degree of certainty. The term strictly means that within the bounds of evidence adduced before the Court, no tribunal of justice would convict on it having regard to the nature of the evidence led in the case. Evidence in a criminal trial which is susceptible to doubt as in the instant case cannot be said to have attained the standard of proof that is beyond reasonable doubt. Suspicion, speculation or intuition cannot be a substitute for a proof beyond reasonable doubt. It should be a proof that excludes all reasonable inference or assumption except that which it seeks to support. It must have clarity of proof that is readily consistent with the guilt of the accused person. See *STATE vs. ONYEUKWU* (2004) 14 NWLR (PT 893) 340 at 379F-380 B and *SHANDE vs. STATE* (2005) 12 NWLR (PT 939) 301 at 321B-D.

In *OGBORU vs. IBORI* (2007) 34 WRN 52 at 107, *Shoremi, JCA* quoted with approval the dictum of *Pats-Acholonu, JSC* (of most blessed memory) in *BUHARI vs. OBASANJO* (2005) 13 NWLR 1 at 295C-E on the meaning of *proof beyond reasonable doubt* as follows:

*"It is proof that precludes every reasonable hypothesis except that which it tends to support and verily it is a proof that it is consistent with the guilt of the accused person or against whom the allegation has been made. Therefore it can be said that for evidence to attain the height that could bring about a conviction it must exclude beyond reasonable doubt every other hypothesis or conjecture or proposition or presumption except that of the guilt of the accused. If the evidence is wobbly, thermative or vague or is compatible with both innocence (and) or guilt, then it cannot be described as being beyond all reasonable doubt".*

It is for the *Prosecution* to establish the guilt of the *accused person* beyond reasonable doubt. The burden remains on the *Prosecution* even when the *accused person* in his statement admits committing the offence. The statement, within the bounds of the law, can only be used to prove the case beyond reasonable doubt. See *AIGBADION vs. STATE* (2000) 7 NWLR (PT 666) 686 at 704B. The *confessional statement* of the *accused person* which the *Prosecution* relied heavily upon is not such that can prove the case beyond reasonable doubt

within the bounds of the law. Equally there is no eyewitness testimony or any irresistible circumstantial evidence on the basis of which the *Charge* can be said to have been established beyond reasonable doubt.

Reasonable doubt is a doubt founded on reason which is rational, devoid of sentiment, speculation or parochialism. The doubt should be real and not imaginative. See *ABEKE vs. STATE* (2007) 9 NWLR (PT 1040) 411 at 429. The reasonable doubt, which justifies acquittal is doubt based on reason and arising from evidence or lack of evidence and it is a doubt which a reasonable man might entertain. It is not a fanciful doubt and it is not an imagined doubt as would cause prudent men to hesitate before acting in matters of importance: *DIBIE vs. STATE* (supra) at 56. It is apothegmatic to state that it is better for nine guilty persons to escape punishment than for one innocent person to be convicted. See *UKORAH vs. STATE* (1977) 4 SC 167 at 177, *SHEHU vs. STATE* (2010) LPELR 1 at 26 – 27 and *ALAMU vs. STATE* (2009) 4 MJSC (PT II) 147 at 167 – 168 and 171. A rational and incisive examination of the evidence in this matter has disclosed that the *Prosecution* did not discharge the burden cast upon it of proving the offences charged beyond reasonable doubt. The doubt which I entertain as to the guilt of the *accused person* must be resolved in his favour: *EDET vs. STATE* (1988) LPELR 1 at 21, *OFORLETE vs. STATE* (2000) 12 NWLR (PT 681) 415 and *ORJI vs. STATE* (2008) 10 NWLR (PT 1094) 31 at 50. I therefore return a verdict of not guilty in respect of all the counts of the *six count charge* preferred against the *accused person*; the *accused person*, *Victor Osita Uwajeh* is consequently discharged and acquitted.

[SIGNED]

UGOCHUKWU ANTHONY OGAKWU  
PRESIDING JUDGE

Appearances:

*Festus Keyamo, Esq. (with O. O. Otemu, Esq., A. T. Yusuf, Ugochukwu Ezekiel, Esq., N. O. Omonade, Esq. and B. I. Dakum, Esq.) for Prosecution.*

*A. O. Agbonlahor, Esq. (with Mrs. P. A. Otemu, O. C. Ikenta, Esq., J. Aguku, Esq., C. O. Ojobor, Esq., Miss H. Akpala, Esq., L. Akherame, Esq., and J. Etifa, Esq.) for the Accused Person.*