

IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL
TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT MAITAMA

SUIT NO: FCT/HC/CR/05/2011

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA.....PLAINTIFF

AND

USMAN IBRAHIM.....ACCUSED

JUDGEMENT

DELIVERED BY HIS LORDSHIP: HON. JUSTICE S.E. ALADETOYINBO

The accused person was arraigned before this Court on the 17th day of November, 2011 by the Economic and Financial Crimes Commission for the offence of Criminal Breach of Trust contrary to section 311 and punishable under section 312 of the Penal Code. The charge against the accused person reads as follows:

“That you Usman Ibrahim being a staff of Standard Chartered Bank Abuja. On or about the 2nd day of February, 2011 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory, Abuja did dishonestly misappropriated the sum of \$90,000.00 entrusted to you by one FARUK SAMBO to be deposited into his Standard Chartered Bank Domiciliary account No. 00227090000 and thereby committed Criminal Breach of Trust punishable under section 312 of the Penal Code CAP 532 laws of the Federation of Nigeria (Abuja), 2004”

After the arraignment of the accused person, he pleaded not guilty and the Prosecutor called three witnesses to establish the ingredients of the offence against the accused person. The 1st witness is PW1; his name is **FARUK SAMBO**, a retired public servant, Managing Director of Quarda Construction Company Ltd.

The accused was a staff of standard Chartered Bank Garki, Abuja before he was dismissed for this incident.

PW1 Faruk Sambo has a domiciliary account with Standard Chartered Bank Garki Abuja. The accused person was his account officer. PW1 bought construction equipments from United States of America and there was need for him to remit **\$200,000.00** to where he bought the equipments.

PW1 therefore gave his brother by name Muritala Garuba a cheque drawn on Unity Bank Plc valued **N32,500,000.00** with a directive to cash the money, change same to **\$200,000.00** at Bureau de change and then give the money to the accused person to be paid into his domiciliary account at Standard Chartered Bank, Garki Abuja. Muritala Garuba who gave evidence as PW3 actually cashed the money, changed same to **\$200,000.00** and delivered same to the accused person who issued receipt to him which was admitted as Exhibit 'A'. Exhibit 'A' reads as follows:

"A total of **USD200,000=** has been given to me **USMAN IBRAHIM** for deposit into Standard Chartered Bank Account"

Signed:
02/2/11.

PW1 told the Court that he was aware that the accused person cannot deposit the \$200,000.00 to his domiciliary account at once in a single day and that the bank cannot accept more than \$50,000.00 deposit per day.

It will therefore take the accused four working days to deposit the \$200,000.00. The accused person only deposited the sum of \$110,000= into the domiciliary account of PW1 and claimed that he was defrauded of the balance of \$90,000.00 by angels of Allah who happened to be fraudstars; PW1 then wrote a petition to EFCC which led to the accused being arraigned before this Court for breach of trust.

The 2nd witness for the prosecution was PW2 by name SHEHU AWWA MOHAMMED, he is attached to EFCC as an investigator and he investigated the case against the accused upon the petition written to EFCC by PW1 through his lawyer, PW2 told the Court that the sum of \$200,000.00 was given or entrusted to the accused person by PW1. The money was to be deposited into PW1 domiciliary account in Standard Chartered Bank Garki, Abuja. The accused person only deposited \$110,000.00= into the said domiciliary account. The remaining balance of \$90,000.00 was not accounted for by the accused, he only claimed he was defrauded of \$90,000= by fraud star. PW2 obtained the statement of the accused person through the words of caution and the accused wrote his statement in his own handwriting, same was admitted as Exhibit 'G'.

In Exhibit 'G', the accused person accepted collecting the sum of \$200,000= from PW1 but claimed he can only made \$50,000.00 deposit into the account of PW1 per day and therefore went home with the balance. It was at home he encountered the fraudstars who duped him of \$90,000.00 out of the \$200,000.00. The accused wrote a petition, Exhibit 'K' to the EFCC on the 3rd day of March

2011 about the fraudster who defrauded him. He later wrote another petition Exhibit 'L' to the Commissioner of Police, FCT Command about the same people that defrauded him.

Under cross examination, PW2 claimed Exhibit 'K' was never assigned to him for investigation; neither was Exhibit 'K' assigned to his team of investigators for investigation, Exhibit 'K' is a petition written to EFCC by the accused about his being defrauded of **\$90,000.00** by fraudsters. The petition was written on the 2nd day of March 2011 and received by the EFCC on the 3rd day of March 2011.

Apart from Exhibit 'K'; the accused person wrote in his statement Exhibit 'G' that he had earlier written a petition to EFCC on the issue of **\$90,000.00** on the 3rd day of March, 2011 for investigation. PW2 claimed that accused only provided him with the telephone number of those people that defrauded him, he called the number which was not available. PW2 claimed he cannot go further on the investigation as there was no enough facts to do so. The petition written to the Commissioner of Police, FCT Command by the accused person in respect of his being defrauded of **\$90,000.00** dated 21st day of March 2011 was tendered in evidence as Exhibit 'L' through PW2. Equally admitted through PW2 is Exhibit 'M' a certified true copy of FIR with which the Commissioner of Police FCT arraigned three people accused of defrauding the accused of **\$90,000.00**. Exhibit 'M' indicated that the three accused persons who defrauded the present accused of **\$90,000.00** were arraigned before Upper Area Court Karu after the investigation of Exhibit 'L'.

PW3 Murtala Garba confirmed to this Court that PW1 is his brother and that he gave him a cheque valued **N30,000,000.00** to be cashed at Unity Bank Plc with the instruction to change the money to **\$200,000=** and give same to the accused

person. He gave the \$200,000.00 to the accused on the 2nd day of February 2011 and the accused gave him an acknowledgement which had been admitted as Exhibit 'A'.

From the evidence of the Prosecution witnesses it is not in doubt nor disputable that the accused received the sum of \$200,000= from PW1, the directive given to the accused was to pay the N200,000.00 to the domiciliary account of PW1 in Standard Chartered Bank Garki, Abuja FCT. What the accused paid to the account of PW1 was \$110,000.00 remaining the balance of \$90,000= which the Prosecutor alleged accused person dishonestly misappropriated.

After the conclusion of the evidence of the prosecution, in other words after the witnesses for the prosecution concluded their evidence and closed their case, Counsel to the accused person made a **NO CASE SUBMISSION ON BEHALF OF THE ACCUSED PERSON** on the 23rd day of December 2014 while the Prosecutor equally stated in his written address that a prima facie case has been established against the accused person. What did no case submission made by defence Counsel postulate? For answer to the question. See: **EKWUNUGO VS. FRN (208) 15 NWLR PT 1111 PG 630 AT 632** where the Supreme Court held as follows:

"A submission that there is no case to answer by an accused person means that there is no evidence on which even if the Court believe it, it could not convict. In other words, that certain essential elements of the offence for which the accused stands charged was not proved by the Prosecution; that no evidence was led to prove such essential element. The question whether or not the Court believes the evidence led does not arise at that stage of the proceedings. The credibility of

the witnesses also does not arise at that stage. This is because the trial of the case was at that stage not yet concluded. This is therefore the reason why the court should not concern itself with the credibility of witnesses or the weight to be attached to the evidence”.

On when a no case to answer made by defence Counsel on behalf of the accused can be properly made and upheld by the Court, See: **EKWUNUGO VS. F.R.N. (2008) 15 NWLR PG 630 AT 633** where the Supreme Court held as follows:

“A submission of no case to answer could only be properly made and upheld when;

(a) there has been no evidence to prove an essential element in the offence and or;

(b) the evidence adduced by the prosecution has been so discredited as a result of cross examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it”

The duty of the Court while ruling on no case submission is to look at the evidence of the prosecution witnesses including the Exhibits and determine whether a prima facie case had been made out against the accused person. What has to be considered is not whether the evidence of the three prosecution witnesses including the Exhibits are sufficient to justify conviction, the Court is equally not expected to write lengthy judgment. A ruling on no case submission should be as brief as possible and not in any way go into evaluation of the evidence led.

See: **UBANATU VS. C.P. (2000) 1 SC PG 47** where the Supreme Court held as follows:

"It is trite law that on a submission of "no case to answer" it is wiser for a judge or magistrate to be brief in his ruling and make no remarks or observations on fact"

On what amounts to prima facie case against accused person in a no case submission, in other words when a no case submission made on behalf of the accused person will not be upheld by the Court.

See: **EKWUNOGO V. F.R.N. (2008) 15 NWLR (PT.1111) 630 AT 634** where the Supreme Court held as follows:

"At the stage where a no case submission is made on behalf of an accused, the issue is not whether the Prosecution has proved the charge against the accused beyond reasonable doubt but whether a prima facie case has been made out by the prosecution against the accused so as to make it necessary for the Court to call on the accused to open his defence to the charge".

Case is made out against the accused person. See: **EKWUNOGO V. F.R.N. PG 634** supra.

"A prima Facie case is made out where the evidence adduced by the prosecution is such that if uncontradicted, would be sufficient to prove the case against the accused persons"

See: **DURU V. NWOSU 1989 1 NWLR (PT.113) 24 AT 43** where Nnamani Jsc held about prima facie case as follows:

"It seems to me that simplest definition is that which says that "there is ground for proceeding". In other words that something has been produced to make it worthwhile to continue with the proceeding. On

the face of it "suggest that the evidence produced so far indicates that there is something worth looking at"

Coming back to the present case, what are the ingredients of Criminal Breach of Trust contrary to Section 311 of the Penal Code and punishable under Section 312 of the Penal Code? The following are what the prosecution must establish for the offence of criminal breach of trust in this case.

- (a) That the accused was entrusted with the **\$90,000.00**.
- (b) That the accused misappropriated the **\$90,000.00** or converted same to his own use.
- (c) That the accused misappropriated the **\$90,000.00** in violation of the directive made to him to deposit same in the domiciliary account of PW1 at Standard Chartered Bank, Garki, Abuja.
- (d) It must be established by the prosecution that the misappropriation of the **\$90,000.00** by the accused was dishonest.

For the ingredients of the offence of criminal breach of trust. See **ONUOHA V. THE STATE (1988) 7 SC PART 1 PG 74 AT 93** where the Supreme Court held as follows:

"The ingredients of the offence have been correctly stated by the learned trial judge to be as follows:

- (a) *That the accused was entrusted with property or with dominion over it.*
- (b) *That he;*
 - (i) *Misappropriated it ; or*
 - (ii) *Converted it to his own use;*

- (iii) *Used it; or*
- (iv) *Disposed of it;*
- (c) *That he did so in violation of:*
 - (i) *Any direction of law prescribing ,the mode in which such trust was to be discharged or;*
 - (ii) *Any legal contract expressed or implied which he had made concerning the trust or;*
 - (iii) *That he intentionally allowed some other persons to do as above;*
 - (iv) *That he acted as in (b) dishonestly..."*

It is not in doubt that the accused person was entrusted with the sum of **\$200,000.00** to be paid into the domiciliary account of PW1 at Standard Chartered Bank, Garki Abuja.

The evidence of the prosecution further revealed that the said **\$200,000.00** cannot be paid into the said account at once, because the Bank cannot accept more than **\$50,000.00** to be deposited in the account per day.

It therefore follows that accused had to take part of this money along with him to his house. Evidence of prosecution witnesses further revealed that accused only paid the sum of **\$110,000.00** into the account of PW1, the balance of **\$90,000.00** the accused claimed he was defrauded by fraudstars.

Accused wrote a petition Exhibit 'K' to EFCC on the 3rd day of March, 2011 he stated that the fraudstar made him to send **N65,000.00** MTN recharge cards to them quoting the numbers of the re-charge cards and the telephone numbers used by the fraudstar. He claimed he was later defrauded of **\$90,000.00**.

In the petition, the accused tried to link PW1 Farouk Sambo with the fraudstars. When the accused was arrested on the 7th day of April 2011, he wrote in his statement that he was defrauded of \$90,000.00 by fraudstars. It is very surprising that the EFCC failed to investigate the petition written by the accused to them Exhibit 'K' on the 3rd day of March.

It is equally surprising that the EFCC failed to investigate how the accused was defrauded of \$90,000.00 mentioned in his statement, Exhibit 'G'. The EFCC has a duty to investigate whether the accused was defrauded of \$90,000.00.

The investigation would have revealed whether the accused dishonestly misappropriated the sum of \$90,000.00. If the investigation revealed that the accused was actually defrauded of the \$90,000.00, there is no need for the arraignment of the accused person before this Court because one of the essential ingredient of criminal breach of trust is that the accused dishonestly misappropriated the \$90,000.00 or converted same to his own use.

The failure of the EFCC to investigate the petition written to them by the accused Exhibit 'K' is fatal to this case because it shows the EFCC was bias against the accused person. Failure to investigate Exhibit 'K' means investigation had not been completed on the part of EFCC, the case ought not to have been charged to Court.

One of the essential ingredient of criminal breach of trust of which the accused was charged before Court is that the accused dishonestly misappropriated the \$90,000.00 or converted to his own use the sum of \$90,000.00.

See: **AIYEJENA V. THE STATE 1969 NNLR 73 AT 74** where the Court held as follows:

“The offence of criminal breach of trust is defined in Section 311 of the penal code. An essential ingredient is that the person charged “dishonestly misappropriates or converts to his own use” the property. In that case, before a Court could convict the appellant there must be a finding of fact that he misappropriated the £500.00..... Conviction of a person for the offence of criminal breach of trust may not in all cases, be founded merely on his failure to account for the property entrusted to him or over which he has dominion even when a duty to account is imposed upon him; but when he is unable to account or renders an explanation of his failure to account which is untrue, an inference of misappropriation with dishonest intent may readily be made”

See also: **BATSARI V. KANO NATIVE AUTHORITY 1966 NRNLR 151** where the Court held as follows:

“It is essential that before there can be a conviction on a charge of breach of trust there must be evidence of entrustment and of dishonest misappropriation of what was entrusted. Section 311 of the penal code which defines the offence is in exactly the same wording as section 405 of the Indian penal code. So the remarks on that Section contained in the 20th Edition of Ratanlal on the law of crimes are pertinent. At page 1035 the learned author says..... “the misappropriation or conversion or disposal must be with a dishonest intention. Every breach of trust gives rise to a suit for damages but if is only when there is evidence of a mental act of fraudulent misappropriation that the commission of embezzlement of any sum of money becomes a penal offence punishable as criminal breach of trust

it is this mental act of fraudulent misappropriation that clearly demarcates an act of embezzlement which is a civil wrong or tort from the offence of criminal breach of trust”.

There is no evidence before this Court that the accused person dishonestly misappropriated the \$90,000.00, therefore the prosecution had failed to established one of the essential ingredients of criminal breach of trust therefore the no case submission made by the accused will be upheld. The accused is hereby discharged, the case of the prosecution is very weak, it cannot be made strong by compelling the accused person to enter into his defence.

See: **ABRU V. STATE 2011 17NWL R PT.1275 PG 1 AT 7** where the Court of Appeal held as follows:

“When a prima facie case has not been established against an accused person, it means that the availing presumption of innocence is still invocable in favour of such an accused person. In such instance, a no case submission must be upheld and the accused person will be entitled to be discharged. Afortiori where the case of prosecution is weak, it cannot be fortified by compelling the accused person to enter into his defence with the likelihood of his filling the Blank or supplying the missing links in the case for the prosecution”

The accused person wrote another petition about his being defrauded of \$90,000.00 by fraud star to commissioner of Police FCT Command dated 21st March, 2011 same was admitted as Exhibit ‘L’. The Commissioner of Police investigated the fraud arrested two suspects and arraigned them before Upper Area Court Karu. The Certified True Copy of the FIR was admitted as Exhibit ‘M’. The basic principle in a criminal prosecution is that the prosecution must prove all the

ingredients of the offence charged. The burden never shifts, in this case, the prosecution failed to establish that the accused person dishonestly misappropriated the sum of \$90,000.00. Exhibit 'M' tendered by the accused completely established the innocence of the accused person.

In the said Exhibit 'M' the two accused person mentioned therein were alleged to have confessed to defrauding the accused person. Some of the proceeds of the crime were recovered by the Police from them.

Signed:
Hon. Judge.
16/2/2015 .

Accused person present in Court.

Onjefu Obe appearing for the prosecution.

Steve E. Eke appearing for the accused person.

Signed:
Hon. Judge.
16/2/2015 .

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

BEFORE HIS LORDSHIP: HON. JUSTICE S.E. ALADETOYINBO
COURT CLERK: M.S. USMAN & OTHERS
COURT NUMBER: HIGH COURT FOUR (4)
CASE NUMBER: FCT/HC/CR/1/2002
DATE: 2ND FEBRUARY, 2015

BETWEEN:

ATTORNEY GENERAL OF THE FEDERATION - COMPLAINANT

AND

SAEED MONIDAFE JIMETA - ACCUSED

The Accused person present in court.

N.A. Obinna appearing for the accused person.

The prosecutor is absent in court.

A.A. Bello announced his appearance at this point in time and thank the court for the judgment.

J U D G M E N T

The accused person was arraigned before this court on the 28th Day of May 2003, for a two count charge of forgery punishable under section 364 of the Penal Code and using as genuine a forged document punishable under section 366 of the Penal Code.

On the 10th Day of May 2006, the charge against the accused person was subsequently amended theft punishable under Section

287 of the Penal Code was included in the charge. The three count charge reads as follows:

Count One:

That on or about 30th October 2000, Saeed Monidafe Jimeta at Abuja with the intent to cause damage to the National Clearing and Forwarding Agency or commit fraud dishonestly or fraudulently made or executed a false document, to wit: a letter entitled "RE Activation of Account No. 2375 Reference No ADM/63/Vol 1/2000 dated 30th October 2000 addressed to the Assistant General Manager, Habib Nigeria Bank Limited Wuse Zone 1, Abuja purporting to authorize you to operate the said account with the intention of causing the said Bank to believe that the letter was jointly made, signed or executed by one Andy Isichei (a Managing Director of the said Agency and yourself on the authority of the National Clearing and Forwarding Agency at a time at which you knew that the said letter was not so made, signed or executed by the said Andy Isichei and or authorized by the said Agency and you thereby committed an offence of forgery contrary to Section 363 and punishable under Section 364 of the Penal Code.

Count Two:

That on or about 3rd November 2000 at Abuja, you Saeed Monidafe Jimeta dishonestly or fraudulently used as genuine a document to wit: a letter entitled "RE Activation of Account 2375" Reference No. ADM/63/Vol.1/2000 dated 30th October, 2000 addressed to the Assistant General Manager Habib Nigeria Bank Limited Wuse Zone 1,

Abuja which you then knew or had reason to believe to be a forged document and that you thereby committed an offence punishable under Section 366 of the Penal Code.

Count Three:

That or on about 20th December 2000, you Saeed Monidafe Jimeta at Habib Bank Nigeria Limited, Wuse Zone 1, Abuja committed the theft of N1,397,500.00 (One Million, Three Hundred and Ninety Seven Thousand and Five Hundred Naira only) by withdrawing/taking the said sum out from a purported account of the National Clearing and Forwarding Agency No. 2375 which the said agency maintains at the Wuse Zone 1 Abuja Branch and you thereby committed the offence of theft contrary to Section 286 and punishable under Section 287 of the Penal Code.

Only one witness gave evidence for the prosecution; he tendered seven exhibits in evidence. The name of PW1 who was the sole witness in this case for the prosecution is Aiyelemi Adebayo, the Head of Commercial Group, Habib (Nigeria) Bank Limited. He told the court that National Clearing and Forwarding Agency opened an Account No. 2375 with the Bank sometimes in 1998; the said account had remained dormant. PW1 tendered seven documents as exhibits A – F. The documents alleged to have been forged among the tendered exhibits is Exhibit C, it read as follows:

**"NATIONAL CLEARING AND FORWARDING AGENCY
(Formerly Government Coastal Agency)**

Ref: ADM/63/Vol.1/2000

30/10/2000

The Assistant General Manager,
Habib Nigeria Bank Limited
349, Olusegun Obasanjo Way,
Wuse Zone 1,
Abuja

RE: ACTIVATION OF ACCOUNT 2375

Yours Ref. No. CA/ABJ. 409/2000 dated 22/8/2000 refers.

Management wishes to inform you that due to the sudden demise of our former General Manager Abuja in a ghastly motor accident, it has been resolved that the new General Manager Mr. Saeed Monidafe Jimeta operate the said account.

We would appreciate your extending all necessary assistance to him.

Thank you.

Yours faithfully,

(Sgd)
Andy Isichei
MD/CEO

(Sgd)
Saeed Monidafe Jimeta
G M - ABUJA

The above Exhibit C reproduced is the subject of the forgery. The accused person in his defence accepted signing Exhibit C, he said also that Andy Isichei the MD/CEO of the National Clearing and Forwarding Agency equally signed Exhibit C. Another letter, Exhibit B was written to the Manager Habib Nigeria Bank Abuja Branch by the

MD/CEO Andy Isichei of National Clearing and Forwarding Agency including the Secretary/Legal Adviser P. Ijeh, the said Exhibit B read as follows:

**NATIONAL CLEARING AND FORWARDING AGENCY
(Formerly Government Coastal Agency)**

December 22, 2000

The Manager,
Habib Nigeria Bank Limited,
Abuja Branch,
Abuja

Dear Sir,

**RE: N4 MILLION CHEQUE FROM YOBE STATE GOVERNMENT TO
NATIONAL CLEARING AND FORWARDING AGENCY (NACFA)**

We have just been informed by the Honourable Commissioner of Agriculture, Yobe State that one Mr. Saeed Monidafe an ex-staff of our Agency whose appointment was terminated on the 5th December 2000 has collected a Habib Nigeria Bank Limited Cheque for N4,000,000.00 (Four Million Naira only) on Wednesday 20th December, 2000 on behalf of the Agency from Yobe State Government.

We understand that the above referenced cheque was given to him on the basis of a fraudulent progress report on the job we are executing for the State Government.

Also, we understand that the cheque/draft was drawn on your Branch (Habib Bank Nigeria Limited Abuja).

Pending when we are able to get the full particulars of the cheque (i.e. cheque number, date, exact amount, branch etc), we appeal that any cheque in favour of National Clearing and Forwarding Agency (NACFA) from Habib Bank of Nigeria Limited and drawn on

your branch be dishonoured and brought to our attention since it was collected on a fraudulent pretext.

Thank you.

Yours faithfully.

For: National Clearing and Forwarding Agency

(Sgd)

MR. P. IJEH

COY SECRETARY/LEGAL ADVISER

(Sgd)

MR. ANDY ISICHEI

MANAGING DIRECTOR CEO

cc: (1) Commissioner for Agriculture Yobe State.

(2) The Managing Director Habib Bank of Nigeria Limited

Above is for your information and necessary action, please.

Exhibit B reproduced is an indication that Exhibit C was not signed by Andy Isichei, the Managing Director and Chief Executive Officer of National Clearing and Forwarding Agency. The authentic signature of Andy Isichei the MD/CEO is in Exhibit B while the forged signature of the said Andy Isichei is in Exhibit C. A trial judge, sitting without a jury in a criminal case involving a questioned writing is entitled, without assistance of expert evidence, to personally compare the questioned writing with other writings which are acknowledged to be genuine and so find from such comparison whether the questioned writing is or is not a forgery. See THE QUEEN v WILCOX (1961) All NLR 631 SCN.

Despite the letter Exhibit B written to the Manager of Habib Nigeria Bank Limited dated 22nd December 2000 and acknowledged same

date, the account re-activated was with the Habib Nigeria Bank Limited on the 3rd Day of November 2000.

The accused substituted his name and the signature to the account. When the accused gave evidence for his defence, the statement he made to the Police under the words of caution was given to him; he denied ever making the statement. The two statements were admitted as Exhibit H¹ and H² respectively.

In Exhibit H¹, the accused admitted withdrawing the sum of N1.3 Million from the account of National Clearing and Forwarding Agency, he also admitted in the said statement that he was a sole signatory to the said account; the court had gone through the said statements, Exhibit H¹ can be regarded as confessional statement upon which the accused can be convicted. See F.R.N. v IWEKA 2013 3 NWLR 9Pt 1341) P. 285 where the Supreme Court held as follows:

"In appropriate cases an accused person can be properly convicted on his or her confessional statement alone. Although it is always desirable to have some evidence outside the confession in further proof of the offence, the absence of such additional evidence would not necessarily prevent a court from convicting on the confessional statement alone provided the statement satisfies the tests of being positive, direct and unequivocal"

The problem with the confessional statement of the accused is that same was tendered evidence as exhibit H¹ and H² respectively;

during the cross-examination of the accused by the prosecutor, the accused denied ever making the statement and counsel to the accused objected to the admissibility of the said statement notwithstanding, the court admitted the confessional statement in evidence. See BORISHADE v F.R.N (2012) 18 NWLR 9Pt 1332) P 347 where the court held as follows:

“Where an accused person challenges the correctness of the statement as recorded or the signature or thumb impression, then that will be question of fact to be decided by the trial court”

The prosecutor failed to call the Investigating Police Officer to tender the confessional statement of the accused person in evidence; the prosecutor only called one witness from Habib Nigeria Bank Limited and closed his case; he told the court he could not locate the I.P.O. The question that arises is whether the court can admit confessional statement of accused person in the absence of I.P.O. and through the accused person, who had denied making such confessional statement. See the case of OKEKE v OBIDIFE & OTHERS 1965 4 NSCC 36 where the Supreme Court held as follows:

“Secondly, the appellant submit that the judge ought not to have treated the statement contained in the Police file as admissible evidence on the ground that the officer to whom it was made was not called as a witness. In a criminal case this would be a valid objection but in a civil case formal proof of a document can always be waived”

From the above case the confessional statement of the accused ought not be admitted in evidence in the absence of the I.P.O. This court will not act on the said confessional statement Exhibit H1 and H2 respectively. See *OLUKADE v ALADE* (1976) 2 SC 183 where the court held as follows:

"A court is expected in all proceedings before it to admit and act only on evidence which is admissible in law (i.e. under the Evidence Act or any relevant law in a particular case or matter) and so if a court should inadvertently admit inadmissible evidence it has the duty not to act on it"

See also *SHITTU v FASHAWE* 2005 7 SC Pt 11 Pg 118 where the Supreme Court held as follows:

"The law is that even where inadmissible evidence is admitted, the trial judge or an appellate court should reject the evidence and after expunging such evidence shall consider if there is any remaining legal evidence to sustain the claim"

In the No Case Submission made to the court on behalf of the accused person by his counsel, the court had already discharged and acquitted the accused on the offence of theft punishable under Section 187 of the Penal Code; the only remaining counts relate to Section 364 and Section 366 of the Penal Code, Section 364 and 366 state as follows:

(364) whoever commits forgery shall be punished with imprisonment for a term which may extend to fourteen years or with fine or with both.

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

The ingredients to be established by the prosecutor to sustain the charge under 364 are as follows:

- (a) (i) That the accused made, signed, sealed or executed the document in question or any part thereof or**
- (ii) That it was made by someone else.**
- (b) That it was made under any of the circumstances stated in Section 363.**
- (c) That the accused made it dishonestly or fraudulently or with any of the specific intents enumerated in Section 362.**

See also the case of ODUAH v F.R.N. (2012) 11 NWLR Pt 76 where the Court of Appeal held as follows:

"The offence of forgery can be committed without the element of fraud. All that needs to be established is that:

- (a) The document is false**
- (b) Knowledge that the false document or writing is false.**
- (c) Intention that same be used or acted upon as genuine**

(d) To the prejudice of any person or with intent that any person may in the belief that it is genuine be induced to do or refrain from doing any act"

To sustain a conviction under Section 366 of the Penal Code, the prosecutor must establish the following:

- (a) That the accused used a document as genuine.
- (b) That the accused knew or had reason to believe that the document was forged.
- (c) That he did so fraudulently or dishonestly.

The court is to examine the evidence before it and see whether same can sustain the two counts charge, the evidence include oral evidence of PW1 and the seven exhibits tendered in evidence by PW1, the court has to consider the evidence given by the accused for his own defence. Exhibit C which had been reproduced by this court is the subject matter of the forgery.

The person whose signature was alleged to have been forged by the accused is Andy Isichei, the Managing Director and Chief Executive Officer of the National Clearing and Forwarding Agency, the accused in his defence claimed that he did not forge the signature of Andy Isichei, he further claimed that Andy Isichei signed his signature in Exhibit C, Andy Isichei whose signature was alleged to have been forged by the accused person in Exhibit C was not called to give evidence to confirm whether his signature in Exhibit C was forged or not. See MICHAEL ALAKE v THE STATE (1992) 11/12 SCNJ 117 at 184 where the Supreme Court held as follows:

"In case of forgery, it is essential to prove that accused forged the document in question by calling evidence of persons whose signatures are alleged to be forged to deny or confirm that they signed the document"

In the same law report MICHAEL ALAKE v STATE (Supra) his lordship Kutigi JSC held as follows:

"I agree with Prof. Kasunmu that Ajadi and Lawsweerde were vital and material witnesses in the case. They were persons whose signatures were alleged to have been forged. I think failure to call them to deny or confirm their signatures on the cheques was clearly fatal to the case of the prosecution; the evidence of handwriting analyst (PW6) notwithstanding. Their evidence would have settled the point in issue once and for all. Appellant's conviction for forgery cannot therefore stand"

Although Exhibit C the subject matter of the forgery tell lies about itself when compared with Exhibit B, forgery is proved where the lie is exposed and confirmed. See BABATOLA v STATE (1989) 4 NWLR (Pt 115) 264.

In the instant case, the person whose signature was forged and who is a vital witness was not called to confirm whether his signature was forged or not, this court must follow the earlier Supreme Court case cited. See OGBU v URUM (1981) 4 SC 1 where the Supreme Court held as follows:

"The doctrine of Stare decisis, that is, follow what has been decided previously is a corollary of the Common Law System, if

is a basic principle of the administration of justice which stipulate that like cases should be decided alike”

The duty of this court is to adjudicate on the case based on the evidence presented before this court; this court is not a party to this case and therefore cannot tell any of the parties the witnesses to be called. See PRINCENT v STATE (2002) 18 NWLR Pt 798 Pg 49 at 57 where the court held as follows:

“The position of a judge adjudicating in a case in Nigerian Adversary System is that of an unbiased umpire. His role is generally to determine from the facts before him whether the charge against the accused has been proved. If the onus has not been discharged it is the constitutional and judicial duty of the Judge to so declare. Not being a party, he is bound to do nothing to promote the case of either party”

The only conclusion that has been reached by this court is that the prosecution failed to establish the case against the accused person beyond reasonable doubt and for that reason the accused person is discharged and acquitted for the offence of forgery punishable under Section 364 of the Penal Code. The accused is further discharged and acquitted for the offence of using as genuine a forged document punishable under Section 366 of the Penal Code. See the meaning of Proof beyond reasonable doubt in the case of ABADOM v THE STATE (1997) 1 NWLR (Pt 479) 1 CA where the Court of Appeal held as follows:

"The standard of proof in a criminal trial is proof beyond reasonable doubt. This means that it is not enough for the prosecution to suspect a person of having committed a criminal offence, there must be evidence, which identified the person accused with the offence and that it was his act, which caused the offence"

(Sgd)
Hon. Justice S.E. Aladetoyinbo
(Presiding Judge)
2/2/2015

N.A. Obinna – We thank the court, the judgment represent the law.

(Sgd)
Hon. Justice S.E. Aladetoyinbo
(Presiding Judge)
2/2/2015