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 NIGEIRA.....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 fradstar 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 fraudstars. 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 uphold 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 accsued 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 eh 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 17NWLR 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.

JUDGMENT

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 H^1 and H^2 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. <u>In a criminal case this would be a valid objection</u> 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) not withstanding. 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, it

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

IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE HUSSEINI BABA YUSUF

SUIT NO: FCT/HC/CR/12/06

BETWEEN:

INSPECTOR GENERAL OF POLICE) COMPLAINANT
AND
1. OFEM OMINI EKAPONG
2. LAWRENCE MANYA } ACCUSED PERSONS

JUDGMENT

The trial of the two accused persons, Mr. Ofem Omini Ekapong and Lawrence Manya is predicated on a seven count charge framed against them on the amended charge and filed on the 31/03/08. The said charges read as follows:

(1) That you Ofem Omini Ekapong, Lawrence Manya and others now at large on or about the 23rd day of February 2006 at Area 11 Garki, Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while armed with guns and other dangerous weapons had formed a common intention to commit an offence: to wit shoot one Alhaji Danladi Halilu 'M' Secretary of the National Judicial Council and in furtherance of which you did the following criminal act i.e. shot him with such knowledge that death would be a probable and not only a likely consequence of your act and under such circumstances if by that act you had caused the death of Alhaji Danladi Halilu you would have all been guilty of culpable homicide punishable with death and you thereby committed an offence punishable under section 229 read

with section 79 of the penal code Act applicable to the Federal Capitl Territory.

2 That you Ofem Omini Ekapong, Lawrence Manya and others now at large on or about the 23rd day of February 2006 at Area 11 Garki, Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while armed with guns and other dangerous weapons did voluntarily cause grievous hurt to Alhaji Danladi Halilu 'M' secretary of the National Judicial Council by shooting him knowing that it would cause injuries of such magnitude in that it kept Alhaji Danladi Halilu the said victim in severe bodily pain for over a month and you thereby committed an offence punishable under section 247 of the penal code Act applicable to the Federal Capitl Territory.

3. That you Ofem Omini Ekapong, on or about the 10th day of March, 2006 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory forged a certain document to wit: a letter purporting to be from one Alhaji Anibaba M. Aboki (MFR) addressed to the Chief Justice of Nigeria and Chairman of the National Judicial Council with intent to cause damage or injury to Alhaji Danladi Halilu 'M' secretary of the National Judicial Council and you thereby committed an offence under section 362 of the penal code Act applicable to the Federal Capital Territory.

4. That you Ofem Omini Ekapong, on about the 10th day of March, 2006 at Abuja in the Abuja Judicial Division of the high Court of the Federal Capital Territory falsely personated one Alhaji Anibaba M. Aboki (MFR) by causing a document to wit: a letter purporting to be from the said Alhaji Anibaba M. Aboki (MFR) to be addressed to the Chief Justice of Nigeria and Chairman of the National Judicial Council and in such assumed character made several damaging statements against the person of Alhaji Danladi Halilu 'M' secretary of the National Judicial Council and

thereby committed an offence punishable under section 179 of the penal code Act applicable to the Federal Capital Territory.

5. That you Ofem Omini Ekapong, Lawrrence Manya and others now at large on or about the 23rd day of February 2006 at Area 11 Garki, Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did conspire amongst yourselves to commit felony to wit: Armed Robbery and thereby committed an offence punishable under section 5(b) of the Robbery and Firearms (Special Provisions) Act Cap 398 Laws of the Federation of Nigeria 1990 as amended by Tribunals (Certain Consequential Amendment Etc) Act No. 62 of 1999.

6. That you Ofem Omini Ekapong, Lawrence Manya and others now at large on or about the 23rd day of February 2006 at Area 11 Garki, Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while armed with guns and other dangerous weapons did rob a Honda Civic car with Registration number FJ 37 NJC property of the National Judicial Council from one Alhaji Danladi Halilu 'M' secretary of the National Judicial Council and thereby committed an offence punishable under section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act Cap 398 Laws of the Federation of Nigeria 1990 as amended by Tribunals (Certain Consequential Amendment Etc) Act No. 62 of 1999.

7. That you Ofem Omini Ekapong, Lawrence Manya and others now at large on or about the 23rd day of February 2006 at Area 11 Garki, Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory while armed with guns and other dangerous weapons did rob a Samsung Mobile telephone handset property of one Alhaji Danladi Halilu 'M' secretary of the National Judicial Council and thereby committed an offence punishable under

section 1 (2) (a) of the Robbery and Firearms (Special Provisions) Act Cap 398 Laws of the Federation of Nigeria 1990 as amended by Tribunals (Certain Consequential Amendment Etc) Act No. 62 of 1999.

It is manifest on the charges that counts 1, 2, 5, 6 and 7 are against the two accused persons while counts 3 and 4 are against the 1st accused alone. After reading the charges to the accused persons, they pleaded not guilty to all the counts.

In order to prove the offences against the accused persons, the prosecution called five witnesses and tendered exhibits. At the end of the case for the prosecution, the 1st accused gave evidence for his defence and closed his case. The 2nd accused on the other hand did not defend himself, rather he chose to rest his case on the case of the prosecution. At the end of the case however, parties filed written final submission which they adopted on the 15/12/09 and the case adjourned for judgment.

Perhaps it is expedient to consider the submissions of the counsel to the 2nd accused and the senior counsel for the prosecution in the light of the evidence available and dispose of the issue of culpability of the 2nd accused to the offences charged.

The gist of the submission of the counsel to the 2nd accused is that the evidence adduced by the prosecution has not indicted the 2nd accused in any of the five count charges against him. This was echoed by the senior counsel for the prosecution when he said in the last paragraph of his 33 page address that the 2nd accused may be discharged for lack of evidence.

I have considered their submissions in the light of the totality of evidence adduced by the prosecution and I too agree that there is no iota of evidence linking the 2nd accused person with the offences charged. He is an innocent man and so he is discharged and acquitted of all the charges against him. As a matter of fact, if there was a "no case submission" properly made in his favour, he would have been discharged before this stage of trial. Be that as it may, he is a free man and he walks away free of any blemish.

The submission of counsel to the 1st accused that the evidence proffered against the two accused are the same is not true. The reasons are legion. I may have to address this point more in the course of consideration of the case against the 1st accused.

In his final address, the senior counsel for the 1st accused identified five issues as arising for determination.

1. Whether from the evidence adduced by the prosecution at the trial, the prosecution proved the offence of conspiracy alleged against the 1st accused beyond reasonable doubt.

2. Whether the prosecution has beyond reasonable doubt established the offence of armed robbery against the 1st accused.

3. Whether the prosecution has discharged the evidential burden placed on it by law and established the offence of causing grievous hurt to Alhaji Danladi Halilu on the 23rd February, 2006.

4. Whether from the evidence adduced by the prosecution, it did establish beyond reasonable doubt the offence of forgery against the 1st accused person.

5. Whether from the totality of evidence of the prosecution, case of criminal impersonation was established against the 1st accused person beyond reasonable doubt by the prosecution.

On his part, learned senior counsel for the prosecution formulated only one issue for determination. That is:

- Whether the prosecution has proved the offence alleged in the 7 count amended charge of common intention with 2nd accused and others at large to shoot PW5, cause grievous hurt, impersonation, forgery and armed robbery contrary to

the various provisions of the penal code and other legislations beyond reasonable doubt.

Before going into the substantive case, I think it is appropriate to dispose off the preliminary point raised by the senior counsel for the 1st accused which is to the effect that the joining of the offences in counts 1, 2, 5, 6 and 7 along with those in counts 3 and 4 in the same trial is bad in law and offends section 221 of the Criminal Procedure Code Act. He cited the case of HARUNA & ORS. VS. THE STATE 1972 1 ALL NLR (PT 2) 738 as laying down the test to be applied to determine the offences committed in the course of the same transaction.

Mr. Ameh (SAN) urged the court to declare the entire trial a nullity, discharge and acquit the 1st accused because it is predicated on a faulty and defective charge.

Mr. J.B. Daudu (SAN) for the prosecution interestingly relied on the same case of HARUNA & ORS. VS. THE STATE (supra) to respond to Mr. Ameh (SAN's) preliminary objection. According to him, section 221 (d) of the CPC talks about "persons" as opposed to "person". It is Mr. Daudu's contention that the 1st accused was charged alone in counts 3 and 4 of the amended charges as well as other counts. To that effect, it is only the 1st accused that is standing trial for what appears to be different offences. Accordingly, Mr. Daudu submitted that there is no infraction of section 221 (d) of the CPC. He explained that section 221 (d) of the CPC applies where persons charged together are standing trial for the offence of conspiracy and other substantive offences. That it is in such a situation that the law requires that those substantive offences have a nexus with the initial offence of conspiracy, that is they must have been committed in the course of the same transaction. In any event, learned senior counsel contended that charging a person with several offences on its own is not fatal to the trial except the accused is prejudiced or was misled in his defence. Counsel cited ILUNO & ORS. VS. COMMISSIONER OF POLICE 1971 NWLR 152. Counsel argued that section 212 which provides for separate trials for separate offences is the general rule which admits of exceptions in sections 213, 214, 215, 216 and 221 and that in this particular case, charging the 1st accused with kindred offences is supported

by the provisions of sections 213, 214 and 215 of the CPC. He then submitted that the amended charge is not a nullity.

The issue for consideration is whether or not the amended charge is bad in law, thus rendering the entire trial a nullity. Specifically, the main question raised is whether the offences in counts 3 and 4 could be tried together with the ones in counts 1, 2, 5, 6 and 7.

In my view, the governing section for the consideration of this point is section 212 of the CPC which lays down the general rule that for every distinct offence of which any person is accused, there shall be a separate charge and every such charge shall be tried separately except in cases mentioned in sections 213, 214, 215, 216 and 221 of the CPC. The said sections 213 – 216 and 221 then proceed to describe different sets of circumstances in which charges maybe joined and tried together. They are intended to operate independently of one another in describing different sets of circumstances in which offences may be tried together. Section 221 (d) which both counsels have harped their argument upon constitute just one of the exceptions to the general rule in section 212. What is required of the prosecution therefore is to situate its case in one of the exceptions listed. I do not really think that the issue is whether the charge negates section 221 of the CPC as Ameh (SAN) submitted. A charge may negate section 221 of the CPC and yet fall within one of the exceptions to section 212.

Now, section 214 of the CPC provides that if a series of acts so connected together as to form the same transaction is alleged, the accused may be charged with and tried at one trial for every offence which he would have committed if all such acts or some one or more of them without the rest were proved.

I have carefully considered the seven counts alleged in the amended charge. They allege series of acts against the 1st accused. The connection of the series of the acts alleged can be seen from the fact that they allege one form of injury or the other against the same person, the PW5. The journey started on 23/2/06 when the PW5 was attacked to the 10/3/06

when petition was written against the PW5 which petition sought to explain the circumstances of the attack.

In my humble view, the seven counts therefore fit within the scope of section 214 of the CPC. This view is derived from the fact that there is proximity of time, place and continuity of action in all the counts to satisfy the guides laid down in Haruna vs. The State (supra). And what is more, there was no application for separate trial of the offences alleged in counts 3 and 4 and neither was it shown or established that the accused has been prejudiced or misled in his defence. Counts 3 and 4 were read and explained to the 1st accused by the clerk of court. He understood same clearly and pleaded not guilty to them.

Finally on this point, counts 3 and 4 were not said to have been committed on the 23/02/06 as the senior counsel for the 1st accused has alleged. Each of the counts i.e 3 and 4 stated clearly that the offences were committed on 10/03/06. There is therefore no prejudice of any sort against the 1st accused. In the result, the preliminary objection of Mr. Ameh (SAN) holds no water. I overrule his preliminary objection and same is dismissed.

COUNT ONE

This count alleges that the accused persons along with others at large, on 23/2/06 at Area II, Garki, Abuja while armed with guns and other dangerous weapons did form a common intention to wit: shoot one Alhaji Danladi Halilu and in furtherance thereto did shoot him with the knowledge that had he died, that death would have been a probable and not a likely consequence of such a conduct. This offence is punishable under section 229 read along with section 79 of the penal code. The cardinal principle of law is that the commission of a crime by an accused person must be proved beyond reasonable doubt. This standard is prescribed in section 138 of the evidence Act. The burden never shifts. See ISMAIL VS. THE STATE 2008 ALL FWLR (PT 434) 156.

In order to discharge this burden against the 1st accused on this count, the prosecution has a duty to establish the following elements:

(a) There must be two or more persons.

(b) That death of a human being was attempted.

(c) That the 1st accused was involved in the attempt.

(d) That such act was done with the intention of causing death or that the accused knew or had reason to know that death would be the probable result and not only the likely consequence of the act or of any bodily injury which the act was intended to cause.

See AKINKUMI & ORS. VS. THE STATE 1987 1 NSCC 305 at 310.

The first ingredient was proved in the evidence of the PW5, the victim in his statement to the police where he stated that a gang of two robbers attacked him on the night in question. He repeated this in his oral testimony before the court. These testimonies were not challenged by the defence.

The proof of the second ingredient can also be found from the same statement of PW5 (exhibit P19) to the police in which he said he was shot. This was corroborated by the evidence of Dr. Olayemi Olumoye, the PW2 and the medical certificate tendered as exhibit P16. The opening paragraph of exhibit P16 states:

> " The above named was brought to the accident and emergency unit of our hospital on 23/2/06 few hours after he was shot and his car snatched by armed robbers".

The next question is whether the accused was involved in this attempt on the PW5's life. According to S.I. Ameh (SAN), the offence of common intention is akin to the offence of criminal conspiracy and that the ingredients to be proved to secure conviction was itemized in the case of R.V. CLAYTON 1943 33 CR APP 113. He also cited the case of KENNETH CLARK & ANOR. VS. THE STATE where it was held:

> " I believe that the essential ingredients of the offence of conspiracy or the gist of the offence lies in the agreement and association to do an unlawful thing which is contrary to or forbidden by Law".

Senior counsel also cited the Supreme Court case of NJOVENS & ORS. VS. THE STATE 1973 NSCC 280 where conspiracy was described as criminal agreement which is often hardly capable of direct proof.

Senior counsel for the 1st accused then asked whether from the statement of the accused persons and the evidence adduced by prosecution, it can be inferred that the 1st and 2nd accused persons had any agreement to do a criminal act? He answered in the negative. He further submitted that just like conspiracy, the proof of common intention under section 79 is one of fact and when an alleged conspiracy is disproved, common intention cannot be inferred on the same evidence. The senior counsel referred to statement of PW5 to the police (exhibit P19) and concluded that there was no evidence of common agreement to commit criminal act.

In his response, J.B. Daudu (SAN) for the prosecution disagreed with the contention that the requirement for the proof of common intention is the same with conspiracy. According to J.B. Daudu (SAN), in an offence of common intention, all that is required is that from the acts carried out by the parties, a common intention is discernible. Counsel further submitted that this is different from conspiracy where the offence is concluded at the point of an agreement to commit a specific offence.

I have considered the argument of counsel on this point and I agree with the prosecution that under this offence, there is no requirement of Law to prove agreement to commit criminal act as it is with the offence of conspiracy. Common intention manifest in the execution of the object and so there is no requirement that the intention by parties be factually proved. Once a common object is executed, the intention is inferred and this is enough to render each accused person guilty of the offence. See NWANKWOALU VS. THE STATE 2006 14 NWLR (PT 1000) 663 at 683, it was held:

> " In practical terms, common intention is incapable of positive proof. Its existence can only be inferred from circumstances disclosed".

See OGU OFFOR & ANOR. VS. THE QUEEN 1955 15 WACA 4 at 5; and ALARAPE VS. THE STATE 2001 14 WRN.

In this connection, I need hardly point out that "common intention" in criminal Law may always be inferred from the evidence led before the court and need not be provable by express agreement of the accused persons as in criminal conspiracy.

In order to answer the question whether the 1st accused was involved in the plot of attempt on the PW5's life, there is need to critically examine the evidence put forward by the prosecution. Both parties agree that the evidence against the 1st accused is circumstantial. There is nothing derogatory in describing an evidence as circumstantial as it is said that circumstantial evidence is capable of proving a case with the accuracy of mathematics. See ONA VS. THE STATE 1985 2 SC 1361; and the case cited by counsel to the prosecution – ADIE VS. THE STATE 1980 12 SC 73 where the case of TAYLOR & ORS. VS. R. 21 CR APP R. 20 at 21was adopted. In TESSER VS. THE QUEEN 1952 AC 48 it was held:

> " It is always necessary before drawing the inference of the accused guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference. As a matter of fact, circumstantial evidence must lead to only one conclusion and that is the guilt of the accused".

Now, it is expedient for me to turn to the evidence led by prosecution against the 1st accused. I start from his petition to the police admitted as exhibit P19. There the PW5 spoke of his encounter with two armed robbers on 23/02/06. He spoke on the method devised to fish out the 1st accused through the petition allegedly written against him by one Alhaji Anibaba MFR and stated that:

" It is based on the foregoing information and development that I strongly suspect that Mr. Omini Ekapong Ofem was the brain behind my attack, as the plan to assassinate me, I believe, is still being perpetrated by Mr. Omini Ekapong Ofem and his cohorts. I therefore crave your indulgence, to kindly use your good offices to investigate my complaint, please."

There is evidence that when the 1st accused was arrested, he admitted the authorship of the petition allegedly written by Alhaji Anibaba. See exhibit P1. The specimen signature were collected from the 1st accused and sent for handwriting analysis with a covering letter. (exhibits P9 and P10) The result proved that the accused was the author. Before the court, the 1st accused also adopted the statement as his.

At this point, it is necessary to examine the content of exhibit P14. In this regard, paragraph I is relevant. The paragraph is set down below:

" This is to inform you Hon. CJN that your secretary Danladi was cut (sic) in the act sleeping with my wife at my Wuse II house. On that fateful day, Danladi had come to the house at about 6 pm to take away my wife. My boys followed him to Sheraton Hotel where he stayed with my wife at about 10 pm he also came to my house asking my boys if I was in town. He was told that I'm in Lagos, he now came in to the main house calling my love my love where are you. I then came out and say to him here I am. He started by crying and begging me that what ever I want he will give it to me. I told him that I don't need anything from him but should pack his car and go home. At a point he said to me why are you doing this to me that we have been long time friends, he now told me to shoot him. I told him that I don't have a gun with me. He now ask me if I could help him I said yes and ask him what do you want from me, he said he was going to shoot himself that I should help pick him to a place where he can get a car to his house."

The content of the foregoing petition reveals that the author was present and witnessed the shooting of the PW5. The 1st accused has admitted that

he is the author whose information is corroborated by the report of handwriting analyst (exhibit P11).

Further more, when the 1st accused testified before the court, he told the court that he was the person who was last seen with the PW5 before his attack and the 1st to be seen with PW5 after the attack. I agree with the learned counsel to the prosecution that in this circumstance, some explanation is required from the 1st accused. See EGBOGHONOME VS. STATE 1993 NWLR (PT 306). As a matter of fact, there is nothing from the passage of the exhibit P14 which could support any inference that the PW5 shot himself.

From the bits of evidence put together as examined above, I am satisfied that there is enough circumstantial evidence from which to hold that the 1st accused was involved in the shooting of the PW5 on the 23/02/06.

At this point, I must stress that as with joint enterprise, it is not necessary to show under this charge that it was the 1st accused that actually shot the PW5. The Law is clear that where common intention is established, a fatal blow or gun shot though given by one of the parties is deemed in the eyes of the law to have been given by all those present and participating. The person who actually delivered the fatal blow is in such a case, no more than the hand by which others struck. See OFOR VS. QUEEN 1955 15 WACA 4 at 5; and ADEKUNLE VS. THE STATE 1189 5 NWLR (PT 123) 505 at 518.

On the last ingredient, I am to say that there is no gainsaying that the fact that a man who shot his victim with gun as described by PW2 and exhibit P16 intended to kill or knew that death would be a probable consequence. On that note, I find that the 1st count is proved beyond reasonable doubt against the 1st accused and he is convicted.

COUNT TWO

On this count the accused was charged under section 247 of the Penal Code. The count alleges that the accused and other persons at large on 23/02/06 at the place specified in count 1while armed with guns and other dangerous weapons, caused PW5 grievous bodily hurt and they thereby committed an offence punishable under section 247 of the Penal Code.

The elements of the offence of grievous hurt are as follows:

(a) That the accused caused hurt of any kind described in section 241 of the Penal Code.

(b) That he did so intentionally or with the knowledge that it was likely to cause grievous hurt or any of the hurt so described.

(c) That the accused did so voluntarily.

According to Ameh (SAN), the prosecution has not put in any evidence to prove the offence. That there is no material evidence before the court from which the court can infer the intention to cause death or grievous bodily hurt. See THOMAS VS. STATE 1994 4 NWLR (PT 337) 129 PP 138 paragraph D.

The prosecution on the other hand relies on the evidence of PW5, the 1st accused confessional statement on the issue of the forged petition with the coincidental link between the content of the confessional statement and the victim's attack as well as the 1st accused's testimony in defence wherein he admitted that he was the last person that saw the PW5. That these combination leads to no other inference than it is the 1st accused that shot the PW5 and caused injuries inflicted.

In my view, the submission of learned senior counsel to the 1st accused that there is no evidence before the court to prove that the accused committed the offence tends to over look the statement of the 1st accused in exhibit P1 and the content of exhibit P14 as well as the 1st accused testimony before the court. These pieces of evidence put together in my

view leads to no inference than that it was the 1st accused who shot the PW5.

From the nature of the injuries sustained by the PW5, the injuries has met the requirement stipulated in section 241 of the Penal Code. This is because, as could be seen from the medical report (exhibit P16) and the testimony of the PW2 before the court which in effect corroborate the PW5, the PW5 was admitted from 23/02/06 to 10/03/06. There is no doubt that from the evidence available, the shooting was voluntary. I therefore hold that the prosecution has proved the offence beyond reasonable doubt and I convict him upon the second count.

COUNTS THREE AND FOUR

These counts allege forgery contrary to section 362 of the Penal Code and section 179 of the Penal Code. The following ingredients of the offence of forgery must be proved to secure conviction.

(a) That the 1st accused made, sealed or signed the document in question or any part thereof.

(b) That it was made in any of the circumstances stated in section 363 of the Penal Code.

(c) That the accused made it dishonestly or fraudulently or with any of the specific intents mentioned in section 362.

Ameh(SAN's) contention in saying that the prosecution has not proved this offence is that the author of expert report was not called for cross examination. That by failing to call him, the defence is denied the opportunity of testing the veracity of his report.

He submitted further that the court can compare the specimen handwriting of the 1st accused with the disputed writing for the purpose of finding out if they are similar. This exercise according to counsel should be conducted pursuant to the powers of court under section 108 of the evidence Act. He also submitted that if that is done, the court would

discover that the disputed handwriting is not same with 1st accused writing. Counsel referred to U.B.T. VS. AWANZINGANA ENT. LTD. 1994 6 NWLR (PT 348) 56 at 81. The senior counsel also raised the issue of failure to call Alhaji Anibaba, M. Aboki, Mr. Eugene Ikechukwu Odukwu and Deputy Director (Admin.) who received the envelope. That the prosecution has failed to lead evidence to show that these persons were non existing or fictitious or that their addresses were fake. On these omissions, counsel cited the case of ALAKE VS. THE STATE 1992 9 NWLR (PT 265) at 260.

The senior counsel also submitted that the prosecution need to prove in an offence of forgery that the contents of the forged document are false. That the offence rests on the falsity of the statement and not whether or not the accused wrote the statement. Counsel cited the following cases:

> OSONDU VS FRN 2000 12 NWLR (PT 682) 483 at 507 – 508 where the Court of Appeal relied on ODU VS. STATE 1965 ALL NLR 25.

In his own response, Daudu for the prosecution submitted that the elements of the offence were proved. He submitted that the 1st element of the offence can be gleaned from 1st accused person's confessional statement in exhibit P1. (He reproduced the content).

It is the contention of the senior counsel for the prosecution that the document (exhibit P13) shows that although the name of Alhaji Aboki was written, the real author is the 1st accused. That the contents were false and admittedly written to inflict great damage to the PW5's character. That in exhibit P13, the 1st accused did not only admit making the false document, but admitted its falsity.

Learned counsel further submitted that where the accused has admitted the vital ingredients of the offence of forgery as he has done in this case, then there is no need to seek for corroboration or to establish any of such ingredients by any other means. On this, the senior counsel cited the Supreme Court case of KASA VS. STATE 1994 6 SC 1 per Adio (of blessed memory). Counsel further argued that corroboration in this case is

not necessary, but that despite this position of the Law, the prosecution has gone ahead to produce satisfactory corroborative evidence in the nature of forensic handwriting expert report which was admitted in evidence as exhibit P11 along with covering letter (exhibit P12).

I have considered the submission of counsel and my reaction is as follows.

The argument of senior counsel to the 1st accused in which he invited the court to undertake fresh exercise of determining the handwriting of the 1st accused is misconceived. He hinged his application on section 108 of the evidence act. The section does not apply when the trial has been concluded and the case ready for judgment. The court does not also have powers under section 108 of the evidence Act when an expert advice has been sought and obtained.

In KENNETH OGOALA VS. THE STATE 1991 2 NWLR (PT 175) 509 at 527 the Supreme Court per Nnaemeka Agu JSC stated the principle thus:

> " The prosecution has the duty only to prove the facts in issue and for this purpose is not obliged to call every witness or any number of witnesses or indeed save where by law corroboration is necessary or a fact is seriously in contention, to call more than one witness on any particular point prosecution would in fact be a very laborious exercise and the task of trial court unduly cumbersome, if every person whose name has been mentioned in the testimony or statement of every witness will be regarded as a material witness whom the prosecution must call. This is fortunately not the Law".

See also OLARENWAJU ONI VS. THE STATE 2003 31 WRN 104.

Further, Alhaji Anibaba is according to the 1st accused in exhibit P1 where he confessed to making exhibit P13, not a real person. It would be a futile effort to embark on such a course. There is no need for the prosecution to lead any evidence to show that the Anibaba existed or that

his address is fake. In ALEKE VS. THE STATE (SUPRA), OSONDU VS. FRN AND ODU VS. STATE (supra) relied upon by the senior counsel to the 1st accused, there was no confession from the accused as in this case where the 1st accused himself had admitted the falsity of the contents of exhibit P13 and that in fact there is nobody like Alhaji Anibaba. Further more, in Odu's case, the suspect did not give any impression that the documents were authored by another person. He only put a different name. There, the Supreme Court said there was no forgery. And in any case, the point must be made that the prosecution has no obligation to call any particular number of witnesses to prove his case. This authority in my view is a complete answer to the senior counsel on his complaint that certain witnesses were not called.

Before I end this point, I feel it is necessary to produce the relevant part of the 1st accused statement in exhibit P1 where the accused confessed to the commission of the offence in the following words:

> " An envelope was shown to me when I was making my statement address (sic) to Mr. Eugene Ikechukwu Odukwu Deputy Director Administration, National Judicial Council, Abuja. I identify the envelope to be the very one addressed to him conveying a petition against the secretary Alhaji Danladi Halilu and management. The petition was about corruption and management. Another white envelope was shown to me and addressed to Deputy Director Administration and posted at Garki post office on 13/3/2006 that it was sent by one Alhaji Anibaba Aboki MFR of house 11 Abuja. I wrote it. It was not Anibaba that wrote. It's as a result of grievances. I was the one that signed the letter although the contents were false. (underlining mine for emphasis."

The document in issue is exhibit P13. Exhibit P1 was tendered without any objection. No issue was raised whether or not the confession in exhibit P1 was voluntary. It is therefore clear to me that the ingredient of the offences charged in counts 3 and 4, that is forgery and impersonation, have been proved beyond reasonable doubt and I convict the 1st accused upon them.

CONSPIRACY AND ARMED ROBBERY (COUNTS 5, 6 AND 7)

The incident of 23rd day of February, 2006 forms the subject matter, counts 5, 6 and 7. Count 5 alleges the offence of conspiracy to commit armed robbery against the 1st and 2nd accused persons and others at large punishable under Section 5 (b) of the Robbery and Fire arms (Special Provisions) Act Cap 398 of the Laws of the Federation, 1990 as amended by Tribunals (Certain Consequential Amendment etc) Act No. 62 of 1999. Counts 6 and 7 are counts of armed robbery in which the subject matter are a Honda Civic car with registration No. FJ 37 and Samsung mobile telephone, both property of the National Judicial Council respectively, punishable under Section 1 (2) (a) of the same Act.

Now, the main issue for determination here is whether or not the prosecution has succeeded in establishing the offences of conspiracy and armed robbery charged against the accused persons under the three counts beyond reasonable doubt. It is now firmly established that proof beyond reasonable doubt means no more than what it says and needs not attain degree of absolute certainty, although it must attain a high degree of probability. That is what proof beyond reasonable doubt is all about in our criminal jurisprudence. See AHMED VS. THE STATE 2001 18 NWLR (PT 746) 622; BAKARE VS. THE STATE 1987 NSCC 267.

In order to prove the offence of Armed Robbery under S.1(1) of the Robbery and Fire Arms (Special Provisions) Act Cap 398 Laws of the Federation of Nigeria 1990 as amended by the Tribunals (Certain Consequential Amendment Edit) Act No. 62 of 1999, the onus is squarely on the prosecution to prove the following ingredients beyond reasonable doubt:

(i) That there is theft or extortion.

(ii) That the accused person in order to commit the offence voluntarily causes or attempt to cause to any person, death or instant hurt or instant wrongful restraint or fear of instant death or hurt to any person.

(iii) That the offender at the time of committing the extortion is in the presence of the person put in fear of instant death, of instant hurt or wrongful restraint to that person or to some other persons so put in fear there and then to deliver up things extorted.

(iv) That the accused person in committing the offence is armed with any dangerous or offensive weapon or instrument.

In the same vein, the ingredients that the prosecution is required to prove in respect of the offence of conspiracy are:

(i) An agreement between two or more people to do an illegal act or acts.

(ii) That the act or acts were done in pursuance of the agreement.

Conspiracy is an agreement of two or more persons to do an act which is an offence. See Haruna vs. State 1972 8 – 9 SC 174. The offence of conspiracy is completed the moment two or more people have agreed that they will do at one time or at some future time certain things not permitted by law. In order to prove conspiracy, it is not necessary that there should be direct communication between each conspirator and every other but the criminal design alleged must be common to all.

In this case, apart from exhibit P2 where the 1st accused gave account of the plot to commit these offences, the fact that an offence was committed and the accused and others carried it out leads to reference that of the offence of conspiracy. The count 5 is thus proved and the accused is convicted.

I shall proceed to consider the charge of armed robbery in counts 6 and 7 together. Essentially, the prosecution's attempt to establish the ingredients of the offence of armed robbery in counts 6 and 7 consists of the oral evidence of PW5, the petition earlier written by PW5 and an

alleged confessional statement of the 1st accused person in exhibits P1, P2 made on the 18th day of May, 2006.

Let me say here that in relation to the facts of the event of 23rd February, 2006, the evidence of PW5 before the court is a recapitulation of the contents of exhibit P19 in every materiality. The concluding paragraph of exhibit P19 reads:

> " It is based on the foregoing information and development that I strongly suspect that Mr. Omini Ekapong Ofem was the brain behind my attack, as the plan to assassinate me, I believe, is still being perpetrated by Mr. Omini Ekapong Ofem and his cohorts. I therefore crave your indulgence, to kindly use your good offices to investigate my complaint please".

The 1st accused who pleaded not guilty to the charge against him confessed to his involvement in the alleged robbery of PW5 in February 2006. However, in his oral evidence before me, he gave a different version of the story. According to him, on 23/2/2006, when PW5 was attacked, he (the 1st accused) was the one who assisted him back home. He said:

> " He requested me to get a car to take him to his house. I got a taxi which we boarded. In the car he warned me not to tell anybody including my wife. He promised to give me N3,000,000 to induce me not to reveal the incident to anybody."

He denied being part of the gang that attacked PW5 and dispossessed him of the car and his valuables.

By the way, Mr. S.I. Ameh (SAN), in his written address urged me to hold that there was no robbery incident against PW5 on 23rd February, 2006. He listed certain facts upon which he urged me to draw the conclusion. They include the following:

(a) That the particulars of the alleged vehicle that was robbed were not tendered.

(b) That there was no police report of the incident.

(c) That PW5 was allegedly treated of a gun wound by officers of the National Hospital, Abuja without a police report contrary to section 4 (2) of the Robbery and Fire Arms (Special Provisions) Act.

(d) That PW5's shirt which was allegedly soaked or stained with blood was not tendered.

(e) That the alleged robbery was committed on 23/2/2006 but was not reported until 4th May, 2006.

(f) That the head of the investigating team stated that he did not visit the alleged scene of the crime and the National Hospital.

(g) That the Okada (motor cycle) man who PW5 said assisted him home was not called as a witness.

(h) That the police orderly who was said to have reported the robbery to the police was also not called as a witness.

Learned senior counsel then submitted that the combination of all these facts supports the view that there was no robbery.

In his brief but pungent response to these submissions, Mr. J.B. Daudu (SAN), urged me to hold that all the enumerated facts do not assist in dislodging the uncontradicted evidence of PW5, who was the victim of the robbery incident. He also submitted that investigations carried by PW1, PW3 and PW4 established and confirmed the incident.

In so far as the resolution of this issue is concerned, it is important to note that PW5 gave a very graphic detail of how he was attacked on 23rd February, 2006 in both exhibit P19 and his oral evidence. That piece of evidence was not challenged. I am bound to accord credibility to the

evidence on that point. See ADEKUNLE VS. THE STATE 2006 10 MJSC 109.

There is also the uncontradicted evidence of PW2, Dr. Oluwole Olayemi Olawoye who gave evidence that PW5 was rushed to the accident and emergency unit with a gun wound as a result of gun shot. PW5 was said to have been operated upon, admitted and managed until 10/3/2006 when he was discharged.

And what is more, the 1st accused person in his oral evidence, alluded to the fact that he met PW5 in the night of 23/2/2006 in an uncompleted building with a wound on the hand.

Flowing from the above facts, I am bound to accept the evidence of the prosecution that there was a robbery incident in which PW5 was attacked with his Honda Civic car and two cell phones Samsung model stolen. Contrary to the submissions of Mr. S.I. Ameh (SAN), the particulars of the vehicle were given in exhibit P19 as: Plate No. FJ 37 NJC, Engine No. R18A11008901 and Chassis No. JHMFD167865402305.

Be that as it may, from the way the evidence of both the prosecution and the defence was rendered, it becomes clear that the issue of who the perpetrators of the robbery incident were is very crucial. Mr. Ameh (SAN) put the issue in the form of this question: "Assuming there was robbery, (which he did not concede) from the evidence adduced by the prosecution, was it established that the 1st accused was linked to the armed robbery?

The fact that the PW5 did not identify the 1st accused at the earliest opportunity does not derogate the fact that events that followed showed that the accused gave himself up as the perpetrator of the crime. I refer to exhibit P1 where the accused admitted authorship of exhibit P13. The contents of exhibit P13 have very damaging consequence on the accused person who in it, admitted witnessing the accused shot himself. There are other co-existing facts and evidence which point irresistibly to the fact that the 1st accused committed the offence. See for example, exhibit P2 which was made on the 18/02/06. One may wish to ask the following questions with respect to it.

(a) Is it confessional?
(b) Is it voluntary?
(c) Did the 1st accused retract it?

Part of the exhibit P2 reads:

> " Additional Statement: In addition to my statement that sometimes in the month of February 2006, Mr. Soje Oye who is the Chief Public relation Officer of the NJC approached me that the present justice of Nigeria in person of Justice M.L. Uwais will retire from the service and said if there is any way that we can threaten the executive secretary Judicial Council, Alhaji Danladi Halilu, I asked him what will be my gain he said that he will make me the chief security officer of the Judicial Council, after this, Ishaku Shaibu brought a man by name Ada to me so that we can attack the secretary. Ada came and met me in the office and I took him to the car park where myself and him discuss on how to carry out the attack on the secretary and agree on our plan. Mr. Soje Oye gave me the sum of Thirty thousand Naira (N30,000) which I use to pick a drop and also part of it was to type the petition I later wrote. Then on the very day of the incident, my self and Ada went to area 11 because I wanted to buy some books for my children and coincidentally we saw Oga the secretary of Judicial Council and we went to where he has parked and was making call and immediately he finished making the call, we attacked him and Ada ask him to move from the driver to the passenger seat in the front and while I entered and sat at the back sit behind the secretary who is in the front sit and we drove round…."

In my view, this statement in exhibit P2 is clear on the admission of the crime by the 1st accused. To that extent, it is a confessional statement within the meaning of section 27 of the evidence Act. However, it becomes inadmissible if:

(a) the making or the statement is caused by any inducement, threat or

(b) promise having met to the charge against the accused person.

(c) Made by a person in authority and sufficient in the opinion of the court.

See section 28 of the evidence Act.

At the trial, the senior counsel to the 1st accused's attack on the statement was that

1. The statement was not sent with complete pages along with the proof of evidence and that it was not made by the accused.

There was no objection on ground of involuntariness. If there was, the court would have embarked on a trial within trial but this was not to be.

However, in the course of his oral testimony before the court, the 1st accused changed his direction of defence and told the court under tears how the statement was made under threat. He told the court how he was subjected to inhuman treatment and asked to make exhibit P2.

Now, I do not know what to make of this evidence. Voluntariness or otherwise of a statement of the suspect to the police is determined during trial by way of 'trial within trial'. If at the trial it is proved to be involuntary, it is rejected. Now exhibit P2 is in evidence. In my view, exhibit P2 is voluntary and all the story about its involuntariness is a cock and bull story.

At this point, it is necessary to examine the importance of exhibit P3. There was no objection to its admissibility by counsel to the 1st accused when it was tendered. My view is that the content of it throws more light on probative value of exhibit P2. It states:

" Additional statement that the statement I made on the 18th May, 2006 where I stated that it was Ishaku Shaibu that

introduce a man to me by name Ada was not true and the attack on my Hon. Secretary Alhaji Danladi Halilu was not true which I said I was the one was not true also I made mention of having gun kept in my village in Ekori in Yakuri LGA was not true. About the petition on my boss it was Mr Soji Oye who told me to write a petition against my boss because he feel he could be made to act as the council secretary if the secretary is appointed a Judge. Mr. Soji promise that I will be the Chief Security officer of the Council. Mr. Ishaku is not one of this petition. OFEM OMINI EKAPONG (JP) (SGD) 23 May, 2006".

By the content of this statement, the 1st accused admits that he was the author of exhibit P2 but that its contents are false. He did not deny making exhibit P2 or that it was involuntary, he merely said that what he stated there are not true.

Also, in the course of cross examination, the accused told the court that on 23/05/06 the PW1 told him to write a statement denying other ones especially the one he made on the 18/05/06. The implication of all these is that the 1st accused is a person of doubtful credibility and that he has a lot to hide with respect to his role in the armed robbery.

The conclusion I reach at the end of the day is that it was the PW1 who told him to deny exhibit P2 and not that the denial was borne out of the accused's personal conviction. Exhibit P2 may not be confessional but it has strong probative value in that,, put together with other pieces of evidence earlier alluded to in this judgment, they raise strong circumstantial evidence in which it is difficult to resist the inference that the 1st accused was responsible for the robbery on the PW5 on the night of 27/02/06.

I have no doubt in my mind that from my earlier finding in this judgment, the 1st accused was involved in the robbery on the PW5 and so I convict him on counts 5, 6 and 7 as charged.

Sgd.
Hon. Judge
12/03/10

SENTENCE

I have heard the plea of leniency made on behalf of the 1st accused against background of the severity of the offences for which the accused is charged. I also consider the current global dispensation in which emphasis of the criminal justice system is on the reformation of offenders. Side by side with this is the need for the accused person to change his ways in the interest of himself, the immediate family who have a stake in what he wants to make of his life. The background to this trial shows that his assailant is a person he himself agrees was everything to him. The attack was therefore without basis and or provocation.

The approach employed in these offences shows that the accused is not a stranger to violence especially when considered along with his attitude and hostility to the court during trial. Be that as it may, I am prepared to exercise my discretion in the overall interest of justice to temper justice with mercy in the consideration of sentences, even in the offences where the penalties are fixed. Accordingly, the accused shall be sentenced as follows:

1st count – He is sentenced to a prison term of 10 years with option of N200,000.

2nd count - He is sentenced to a prison term of 2 years with option of N50,000.

3rd count - He is sentenced to a prison term of 12 years.

4th count - He is sentenced to a prison term of 1 year.

On the 5th, 6th and 7th counts, he shall be sentenced to a prison term of 15 years each.

All the sentences shall run concurrently and the period already spent in the prison shall be reckoned with.

Sgd.
Hon. Judge
11/03/10