

IN THE HIGH COURT OF JUSTICE
OYO STATE OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

BEFORE THE HONOURABLE JUSTICE MAS'UD A.A. ABASS – JUDGE
THIS THURSDAY THE 31ST DAY OF JULY, 2008

SUIT NO. I/1/EFCC/2006

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANTS

VS.

<ol style="list-style-type: none"> 1. MUFUTAU BEGBAJI 2. AMADU MUDA 3. IKECHUCKWU ANIBUALI 4. CLEMENT CHIDIAKOBI 5. ELO-MOORE OIL LTD. 	} ACCUSED
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Accused persons are present and 4th accused person represented the 5th accused person.

Kayode Oni for the prosecution.

U.A Otiokhine for the 1st and 2nd accused persons.

Lucky Ivienagbor for the 3rd accused person.

Kelechi Ejiofor for the 4th and 5th accused persons.

RULING

By an information dated the 25th of July, 2006 and filed on the 26th of July, 2006, The Economic and Financial Crimes Commission charged the above-named accused persons with the following offences.

“STATEMENT OF OFFENCE 1ST COUNT

Conspiracy to commit felony to wit: forgery contrary to Section 516 of the Criminal Code Cap. 30 Vol. II, Laws of Oyo State of Nigeria, 1978.

PARTICULARS OF OFFENCE

Mufutau Begbaji, Amadu Muda, Ikechukwu Anibuali, Clement Chidiakobi and Elo-Moore Oil Ltd on or about 13th February, 2006 at Ibadan within the Ibadan Judicial Division with intent to defraud, conspired to forged a letter titled “RE-SPECIAL ALLOCATION OF NIGERIA CRUDE OIL: BONNY LIGHT, FORCADOS, ESCRAVOS, QUA-IBOE-BLENDS” dated the 13th of February 2006.

STATEMENT OF OFFENCE – 2ND COUNT

Forgery contrary to Section 467 of the Criminal Code Cap 30, Vol. II Laws of Oyo State of Nigeria, 1978.

PARTICULARS OF OFFENCE

Mufutau Begbaji, Amadu Muda, Ikechukwu Anibuali, Clement Chidiakobi and Elo-Moore Oil Ltd on or about 13th February, 2006 at Ibadan within the Ibadan Judicial Division with intent to defraud, forged a letter titled “RE-SPECIAL ALLOCATION OF NIGERIA CRUDE OIL: BONNY LIGHT, FORCADOS, ESCRAVOS, QUA-IBOE-BLENDS” dated the 13th of February 2006 to the Federal Government of Nigeria.

STATEMENT OF OFFENCE – 3RD COUNT

Uttering contrary to Section 468 of the Criminal Code Cap 30 Vol. II Laws of Oyo State of Nigeria, 1978.

PARTICULARS OF OFFENCE

Mufutau Begbaji, Amadu Muda, Ikechukwu Anibuali, Clement Chidiakobi and Elo-Moore Oil Ltd on or about 27th February, 2006 at Ibadan within the Ibadan Judicial Division with intent to defraud, knowingly and fraudulently uttered forged a letter titled "RE-SPECIAL ALLOCATION OF NIGERIA CRUDE OIL: BONNY LIGHT, FORCADOS, ESCRAVOS, QUA-IBOE-BLENDS" dated the 13th of February 2006 to the Federal Government of Nigeria as genuine."

The accused-persons pleaded not guilty to the three alleged offences consequent upon which trial in this case commenced on the 18th of September, 2006. The prosecution called 4 witnesses and closed its case. At the end of the prosecution's case, the counsel to the accused-persons announced that they intend to make no-case submissions on behalf of the accused-persons.

The facts of this case are that following a complaint contained in the minute of the former President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo at the foot of Exhibit 2 to the effect that he did not believe that the signature on Exhibit 2 and the request in Exhibit 3 were that of Chief A.M.A. Akinloye, directed that his suspicion be investigated, the Operatives of the EFCC arrested the accused-persons and charged them with the offences earlier stated above after the completion of their investigations.

From the evidence led in this case through the testimonies of the four witnesses called by the prosecution, the prosecution's case is that a team of the Economic and Financial Crimes Commission investigators in compliance with the then president of the Federal Republic of Nigeria directives contained in Exhibit 2, visited the Ibadan residence of one Chief A.M.A. Akinloye who was alleged to have signed the documents which aroused the suspicion of the President and that when Chief Akinloye was asked whether he signed the said Exhibits, he replied that the documents were not signed by him and that on

further enquiry from him, he said that the signature looked like his own. Based on the alleged denial of signing of the documents by Chief A.M.A. Akinloye, the Operatives of the EFCC, arrested the 1st accused who was the Personal Valet of Chief A.M.A. Akinloye and who was at Chief Akinloye's house on the day the EFCC investigators visited Chief Akinloye. The arrest of the 1st accused and the information gathered from him by the EFCC investigators led to the arrest of the 2nd, 3rd and 4th accused persons. The 5th accused-person is a Limited Liability Company which has the 4th accused-person as one of its directors.

PW1, PW2 and PW4 are EFCC investigators who were assigned to investigate whether or not the documents sent to the Presidency with both the 5th accused letter headed paper and that of Chief A.M.A Akinloye, actually emanated from the said Chief A.M.A Akinloye. The prosecution witnesses said that based on the denial of Chief A.M.A Akinloye that the documents were signed by him, specimen signature of the said Chief A.M.A Akinloye was collected from him and was sent to the Forensic Document examiner together with the alleged signature of Chief A.M.A Akinloye which was contained in the documents allegedly sent to the Presidency for forensic examination and report. It is the report written by the PW3 couple with the Oral evidence of PW1, PW2, PW3 and PW4 that the prosecution is relying upon in proof of the offences alleged against the accused persons.

It must be stated here that the prosecution from the totality of the evidence of the four witnesses called and the exhibits tendered are not relying on the evidence of any eye witness to the Commission of the alleged offence or offences. The prosecution is also not relying on the direct evidence of any victim of the alleged forgery and uttering as the said Chief A.M.A. Akinloye whose signature is being alleged to have either been forged or uttered was not

called as a witness. It is also in evidence before this court that no statement was obtained from Chief A.M.A Akinloye by the team of EFCC investigators talkless of tendering same.

There is therefore no running away from the fact that the case of the prosecution here is largely placed on the alleged verbal or oral denial of Chief A.M.A Akinloye of signing the documents coupled with the report of the forensic expert.

From the no case submission written addresses filed by the learned counsel to the accused persons and the reply filed by the prosecuting counsel in this case, it is clear that there is a lone issue for determination at this stage of the proceeding. It is:

Whether the prosecution has made out a prima-facie case against the accused-persons that may warrant calling upon the accused-persons to enter into their defence.

Whenever a no-case submission is made on behalf of an accused, its purport is to the effect that;

- (a) In the case presented by the prosecution, no legally admissible evidence was led against the accused-persons to connect them in any way with the Commission of the offence with which they were charged which could compel their being called upon to defend themselves;
- or
- (b) that, whatever evidence there was which might link the accused-persons with the commission of the offence, they have been so discredited through cross-examination that no reasonable tribunal can be called upon to act on them as establishing the guilt of the accused-person or that the evidence are so manifestly unreliable such that no reasonable tribunal can safely convict on them.

The fulfillment or satisfaction of any of the two conditions above or both conditions can sustain a no-case submission.

Let me add here that it is not the duty of an accused person to prove his innocence. The onus lies squarely on the prosecution to establish the guilt of the accused person. The establishment of the guilt of an accused person can only be done by the calling of witnesses who will give not just any evidence in favour of the case of the prosecution, but only legally admissible and credible evidence. See *CHIANUGO VS. THE STATE (2002) NWLR (PT. 750) 225 AT 236*.

In the second count of the charges against the four accused-persons, they are alleged to have with intent to defraud, forged a letter titled "RE-SPECIAL ALLOCATION OF NIGERIA CRUDE OIL: BONNY LIGHT, FORCADOS, ESCRAVOS, QUA-IBOE-BLENDS" dated the 13th of February 2006. The said letter was tendered as Exhibit 3.

A document could be said to be forged if the whole or part of it is made by a person with all falsity and knowledge of the falsity and with intent that it may be used or acted upon as genuine to the prejudice of the victim. A document is said to be false if the whole or some material part of the document or writing is purported to be made by or on behalf of same person who does not exist.

The maker of Exhibit 3, that is, the letter in question is Elo-Moore Oil Ltd. It is a Limited Liability Company which the 4th accused person said he is one of the directors. The prosecution in this case have not led any evidence to the effect that ELO-MOORE OIL LTD is not an existing or validly registered Limited Liability Company as claimed by the 4th accused person. It then follows from the above that Exhibit 3 which was written on the letter headed paper of ELO-MOORE OIL LTD with the knowledge and consent of the

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director of the Company cannot be said in law to be a false document. The failure of the prosecution to lead evidence pointing to the non-existence of ELO-MOORE OIL LTD as a registered Limited Liability Company and the active participation of the 4th accused who is a director of ELO-MOORE OIL LTD with the other accused-persons in the processes that led to the issuance of the contents of Exhibit 3, will, in my mind erase any falsity claim on Exhibit 3. See *ODU VS. THE STATE (1965) 1 ALL NLR 25*.

The case of the prosecution is however not that the contents of Exhibit 3 is forged, but that the signature of Chief A.M.A Akinloye thereon is forged.

I must state here categorically that the entirety of the evidence led by the prosecution in this case on the falsity or forgery of the signature of Chief A.M.A Akinloye's are either hearsay evidence, which is inadmissible in law or evidence based on suspicion of the fact that because of the then State of mind of Chief A.M.A Akinloye (as a result of old age) the accused person must have induced him to sign Exhibit 3. The law is that suspicion however strong cannot take the place of a legal prove.

It is very curious, and I am prepared to say unacceptable and therefore unbelievable that the investigators in this case who traveled to Ibadan from Lagos mainly for the investigation of this case and were able to orally get the said Chief A.M.A. Akinloye to deny ever signing the documents could not get him to make a statement to that effect. This is more so when it is well known that a statement of witness in a case can be recorded for him by the I.P.O., and all that the maker need to do is to sign such statement as his own. If Chief Akinloye could be persuaded or made to append his specimen signatures on Exhibit 12A, one will then wonder why he could not be made to do the same on a statement of about two lines to the effect that he never signed the document sent to the Presidency. I am of the view and I so hold, that the entire evidence

of the witnesses of the prosecution to the effect that Chief A.M.A Akinloye denied signing the documents are hearsay evidence which is not admissible.

I am not unmindful of the fact that the prosecution witnesses who are the EFCC investigators claimed that they were disallowed by the 1st accused to record the statement of Chief A.M.A Akinloye. I however have my doubts as to the possibility or probability of the 1st accused who was met in Chief Akinloye's house, who tool the police to Chief Akinloye's sitting room, who volunteered statements on the subject-matter of the Investigators visit to Chief Akinloye's house, who did not stop the investigators from collecting Chief Akinloye's signature and who was eventually arrested and taken to Lagos by the EFCC operative would then stop the Investigators from reducing the denial of signing the documents by Chief Akinloye into written form. I am prepared as enjoined by law to resolve the doubt in favour of the accused persons.

I am in no doubt that the only foundation that can form the basis of any further investigation by the prosecution as to whether or not the signature of Chief A.M.A Akinloye was forged is for the prosecution to first establish through not only credible but also admissible evidence that the signature is not that of Chief A.M.A Akinloye. I say with every sense of responsibility that having due regard to the facts and circumstances of the case, the only person that could possibly deny the signature not to be his own is Chief A.M.A Akinloye himself and not his son or the PW1, PW2, PW4 and even PW3.

It is pertinent to note that not only that Chief A.M.A Akinloye was not listed as one of the witnesses for the prosecution in this case, no attempt whatsoever was made to call him as a witness in this case even though he was alive as at the time the prosecution closes its case.

From all indications, the prosecution is in this case placing some reliance on Exhibit 14. Exhibit 14 is a letter allegedly written to EFCC by one SECUN

AKINLOYE who described himself as the son of Chief A.M.A Akinloye. By a very curious aspect of the case of the prosecution is that, though the prosecution listed the name of Segun Akinloye as one of the witnesses intended to call during the hearing of this case, no attempt was however made to call him in evidence which would have given the counsel to the accused persons the opportunity to cross-examine him over the content of Exhibit 14.

I have however in the course of writing this ruling taken a look at the entire processes filed by the parties to this case. On page 70 of the case file this case, there is a letter written on the letter headed paper of "AKINLOYE CHAMBERS" Legal Practitioners and signed by the same OLUSEGU AKINLOYE. The signature on the said letter which was addressed to the:

Chairman EFCC,
Plot 1017 & 1018,
Coree Bay Crescent,
Off Adetokunbo Ademola Crescent,
Wuse 2,
Abuja

is the same with the one signed by him in Exhibit 4.

For the purposes of arriving at the justice of this case, even at this stage of the consideration of no-case submission made by the accused persons, I will reproduce the body of the letter; it reads;

- "RE:** 1. Mr. Mufu Begbaji
2. Chief Clement Chidiakobi
3. Mr. Ikechukwu Anubali
4. Mr. Ahmadu Muda.

The above men were arrested between the 25th day of March and sometime in the 1st week of April 2006 and are still being held at the EFCC office in Lagos.

The investigation involved whether or not my father Chief Adisa Akinloye signed two letters addressed to Mr President in respect of oil allocation.

Indeed my dad signed the letters as he usually does for those who need his help to accomplish whatever venture they are into without expecting any form of gratification.

I applea to you sir to use your good offices to ensure that investigations are carried out expeditiously as the number 1 person is my father's valet and we are experiencing difficulty in employing new hands as they have no experience in dealing with the elderly.

MY GSM NOS. ARE 0803 305 3680 AND 0802 314 0812

Thanking you for your kind cooperation.

Yours faithfully

SIGNED

OLUSEGUN AKINLOYE"

The above quoted letter was attached as Exhibit 'A' to a motion for bail filed by the 3rd accused person on the 3rd of August, 2006. The contents of the above stated letter is a complete negation of the contents of Exhibit 3 which I have said earlier in this ruling to be the basis of the investigation and prosecution of the accused-persons in this case. There is therefore little wonder why SEGUN AKINLOYE was not called in this case as a witness of the prosecution.

The letter of Olusegun Akinloye which is contained on page 70 of the case file of this case forms part of the processes filed in this case. This court is entitled to look at its record in the determination of any issue before it.

The directives given by the former President of Federal Republic of Nigeria, Chief Olusegun Obasanjo through Exhibit 2 is for the EFCC to

investigate the authenticity of not only the contents of Exhibit 2 and 3 but also the authenticity of signature of Chief A.M.A Akinloye thereon.

I have earlier stated in this ruling that the entire evidence of the prosecution witnesses on the denial of signing Exhibits 2 and 3 by Chief A.M.A Akinloye are hearsay evidence which is inadmissible. I only need to add that in the face of no direct and admissible evidence of Chief Akinloye's denial of the signatures on Exhibits 2 and 3, there is no basis for the fruitless effort made by the prosecution by sending the specimen signatures of the respected Chief Akinloye to the Forensic Laboratory and eventual issuance of the report of the PW3 on same.

In the absence of admissible evidence of the denial of Chief Akinloye that he signed the documents in question, the procurement of the analysis or examination of the two specimen signatures and the entire evidence of PW3 becomes an exercise in futility as the evidence of PW3 in the circumstance and facts of this case can only be corroborative of the admissible evidence of the denial by Chief A.M.A Akinloye and not the foundation or main plank upon which the case of the prosecution could be built.

I must remind myself here that at this stage of the consideration of a no-case submission, I should be concerned with whether or not a prima facie case has been made out by the prosecution. This is not the same thing as proof which comes later when the court has to find whether the accused is guilty or not guilty. The term "prima facie case" simply implies that there is a ground for proceeding with the case.

See:

- (1) Okoro Vs. The State (1988)5 NWLR (Pt. 94)255
- (2) Adeyemi Vs. The State (1991)6 NWLR (Pt. 195)1
- (3) Ajidagba Vs. I.C.P. (1958)SCNLR.60

I have earlier on stated in this ruling that an essential element of the offences of Forgery or uttering in the falsity of the document allegedly forged or uttered.

I have also held that the falsity of Exhibits 2 and 3 by the accused-persons has not prima facie been established by the prosecution.

CONSPIRACY

The accused persons are also being charged with the offence of conspiracy. Conspiracy is an agreement of two or more persons to do an act which it is an offence to do. The crime of Conspiracy is committed completely the moment two or more persons agreed to do at one time or at some future time certain things which are criminal in nature.

See:

Onochie Vs. Republic (1968)NMLR 307
Erim Vs. The State (1994)5 NWLR (Pt. 346)52

The accused persons have not been prima facie shown to have agreed to do anything unlawful as an application like the one contained in Exhibit 3 can not by any sense of imagination be said to be unlawful. There is no evidence given by any of the prosecution witnesses pointing to the fact that the accused-persons agreed to effect an unlawful purpose. An application for the allocation of Nigeria Crude Oil has not been shown or established by the prosecution to be an unlawful act. The accused persons cannot therefore be said to have conspired to commit an offence.

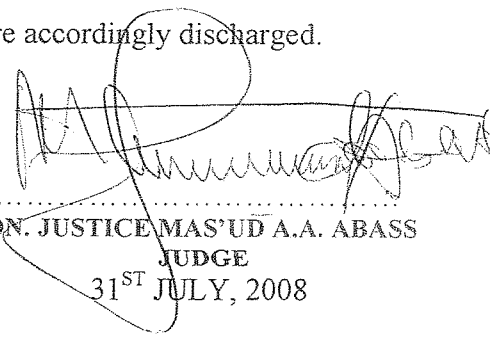
I am finally of the view that there has been no evidence by the prosecution in this case to prove the essential elements of the offences of conspiracy, forgery and uttering as alleged by the prosecution against the accused persons.

Where as in this case, there has been no evidence to prove the essential element of the alleged offences, a no-case submission made on behalf of the accused-persons ought to be upheld.

See:

1. **Ubanju Vs. COP (2000)2 NWLR (Pt. 643)115**
2. **Abacha Vs. The State (2002)7 SCNJ. 1 at 50 and**
3. **Chianugo Vs. State (Supra) at 236-237**

I accordingly upheld the no-case submission of counsel to all the accused-persons. The accused persons are accordingly discharged.



HON. JUSTICE MAS'UD A.A. ABASS
JUDGE

31ST JULY, 2008