

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

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

BETWEEN:

ATTORNEY GENERAL OF THE FEDERATION - COMPLAINANT

AND

SAEED MONIDAFE JIMETA - ACCUSED

The Accused person present in court.

N.A. Obinna appearing for the accused person.

The prosecutor is absent in court.

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

J U D G M E N T

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

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

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

Count One:

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

Count Two:

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

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

Count Three:

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

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

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

Ref: ADM/63/Vol.1/2000

30/10/2000

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

RE: ACTIVATION OF ACCOUNT 2375

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

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

We would appreciate your extending all necessary assistance to him.

Thank you.

Yours faithfully,

(Sgd)
Andy Isichei
MD/CEO

(Sgd)
Saeed Monidafe Jimeta
G M – ABUJA

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

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

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

December 22, 2000

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

Dear Sir,

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

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

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

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

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

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

Thank you.

Yours faithfully.

For: National Clearing and Forwarding Agency

(Sgd)

MR. P. IJEH

COY SECRETARY/LEGAL ADVISER

(Sgd)

MR. ANDY ISICHEI

MANAGING DIRECTOR CEO

cc: (1) Commissioner for Agriculture Yobe State.

(2) The Managing Director Habib Bank of Nigeria Limited

Above is for your information and necessary action, please.

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

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

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

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

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

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

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

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

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

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

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

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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 FASHAWA* 2005 7 SC Pt 11 Pg 118 where the Supreme Court held as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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