

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

**BEFORE HIS LORDSHIP: HON. JUSTICE SALISU GARBA
COURT CLERKS: BWALA NATHAN & OTHERS
COURT NUMBER: HIGH COURT FIVE (5)
CASE NUMBER: FCT/HC/CR/17/2005
DATE: 17TH DECEMBER, 2010**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

**1. AUWAL ABDULSALAM)
2. OMO OKAIFOH)- ACCUSED PERSONS**

J U D G M E N T

By an Amended Charge, the two accused persons were charged with the following offences:

COUNT ONE

That you Auwal Abdulsalam and Omo Okohaifor on or about 27/10/2004 at the Corporate Affairs Commission (CAC) Abuja in the Abuja Division of the High Court of the Federal Capital Territory did conspire among yourselves to commit felony to wit: obtaining money by false pretences and thereby committed an offence contrary to Section 8(a) of the Advance Fee Fraud and other Fraud Related Offences Decree No. 13 of 1995 and punishable under Section 1(3) of the same Decree as amended by the Tribunals (Certain Consequential Amendments etc) Decree No. 62 of 1999.

COUNT TWO

That you Auwal Abdulsalam and Omo Okhaifor on or about 27/10/2004 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory Abuja did with intent to defraud, obtained the sum of N136,000.00 from one Bala Sule Bissala under the false pretences that you are capable of incorporating two different companies with the names of Basa Linx International Limited and Bss Export International Limited at the Corporate Affairs Commission for him which you fail to do and thereby committed an offence contrary to Section 1(1) (a) of the advanced Fee Fraud and other Fraud Related Offences Decree No. 13 of 1995 and punishable under Section 1(3) of the same Decree as

amended by the Tribunals (Certain Consequential Amendments etc) Decree No. 62 of 1999.

COUNT THREE

That you Auwal Abdulsalam and Omo Okhaifor on or about 27/10/2004 at the Corporate Affairs Commission Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory agreed between yourselves to commit criminal conspiracy to wit: forgery of incorporation document of Basa Linx International Limited and Bss Export International Limited and thereby committed an offence punishable under Section 97 of the Penal Code Cap. 532 laws of the Federal Republic of Nigeria 1990.

COUNT FOUR

That you Auwal Abdulsalam and Omo Okhaifor on or about 27/10/2004 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory forged a Certificate of Incorporation of Basa Linx International Limited and thereby committed an offence punishable under Section 364 of the Penal Code Cap 532 Laws of the Federation of Nigeria 1990.

COUNT FIVE

That you Auwal Abdulsalam and Omo Okhaifor on or about 27/10/2004 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did fraudulently used as genuine before Bala Sule Bissala a certificate of incorporation of Basa Linx International Limited which you knew was forged and thereby committed an offence contrary

to Section 366 of the Penal Code and Punishable under Section 364 of the Penal Code Cap 532 Laws of the Federation of Nigeria 1990.

COUNT SIX

That you Auwal Abdulsalam and Omo Okhaifor on or about 27/10/2004 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory forged a Certificate of Incorporation of Bss Export International Limited and thereby committed an offence punishable under Section 364 of the Penal Code Cap. 532 Laws of the Federation of Nigeria 1990.

COUNT SEVEN

That you Auwal Abdulsalam and Omo Okhaifor on or about 27/10/2004 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did fraudulently used as genuine before Bala Sule Bissala a Certificate of Incorporation of Bss Export International Limited which you knew was forged and thereby committed an offence contrary to Section 366 of the Penal Code and punishable under Section 364 of the Penal Code Cap 532 Laws of the Federation of Nigeria 1990.

In proof of the case, the prosecution called 5 witnesses.

The PW1 one Obianuju R. Abazi staff of Corporate Affairs Commission stated in her evidence-in-chief that in December 2004 while going about her official duties she came across some files which were placed where they are not supposed to be. In particular there is one called Baseline Nigeria Limited; this file was different with other files because the RC No. was 646794 and as at that time, Corporate Affairs Commission has not gotten to that number.

PW1 further stated that she opened the said file and discovered that the Certificate in it was an old certificate which was phased out. The said certificate was admitted in evidence as Exhibit A; while the new Certificate that online was also admitted in evidence as Exhibit B.

It is the evidence of PW1 that the old Certificate of Incorporation was phased out in June 2004 and BASALINX INTERNATIONAL LIMITED was registered in October 2004.

Under cross-examination, the PW1 stated that she did not see the accused persons placing any file in the file room and that she does not know whether Bassalinx International Limited and Bss Export International Limited were presented by lawyer for registration at C.A.C.; there was no re-examination.

The PW II is one Ibrahim Galadima (ASP). In his testimony he stated that on 26/11/04 a case of forgery was referred to him for investigation by the Head of Operation of EFCC; the complaint was against the 1st accused person who was a former staff of the C.A.C. The complainant (CAC) was invited and statement was obtained, that led to the owner of the company in dispute BASALINX INTERNATIONAL COMPANY. The owner of this company is one Baba Sule Bissallah. Statement was also obtained from the owner of the company that led to the arrest of the 1st accused person. The 1st accused person statement was obtained; this also led to the arrest of the 2nd accused person. The 2nd accused person's statement was obtained and was admitted in evidence as Exhibit C.

It is further stated by the PW II that in the cause of investigation another Certificate of Incorporation in respect of BSS Export International Limited with RC No. 646793 was discovered; the said certificate was admitted in evidence as Exhibit D.

An additional statement was obtained from the 2nd accused person dated 10/12/2004 and was admitted in evidence as Exhibit E.

It is the evidence of PW II that at the end of his investigation, he found out that Baba Sule Bissalah, the owner of the 2 companies in dispute gave the 1st accused person the 2 names for incorporation and the sum of N136,000.00 for him to incorporate the 2 companies being a staff of C.A.C. He also discovered that the 1st accused person gave the 2 names to the 2nd accused person with the sum of N86,000.00 and converted N50,000.00 for his own use.

The PW II further stated that the sum of N136,000.00 was fully recovered from the 2 accused persons.

Under cross examination, the PW II stated that the name of the presenter on the files where the 2 companies' registrations were processed is one Mr. Edekwere. The witness also stated that there was no complaint from C.A.C that 2 copies of its blank certificate of incorporation were stolen by the 1st accused but it was discovered in the process of investigation. The 2 old Certificates were stolen in the former Office of C.A.C at Area 11, Garki. PW II stated that he did not have specific report in respect of the theft of the 2 certificates.

The PW III one Baba Sule Bissalah stated in evidence-in-chief that he engaged the 1st accused person to incorporate 2 companies, one Basa

Linx International while the other is B.S.S Export; he paid the sum of N136,000.00 to the 1st accused person for the work.

PW III also stated that later the 1st accused person brought 2 certificates of incorporation to him; they are for Basa Linx International Limited and B.S.S. Export International Limited. The witness identified Exhibits A and D as the certificates given to him.

Under cross-examination, the PW III restated that the sum of N136,000.00 he gave to the 1st accused person was for the registration of 2 companies and to get Tax Clearance and that he gave the 1st accused person the job because he knew him to be a staff of C.A.C. The witness also stated that the money he gave to the 1st accused person was returned to him by the EFCC. No re-examination.

The PW IV one Sunday Owai in his evidence-in-chief stated that on 26/11/04 the 1st accused person was handed over to him by Ibrahim Galadima for interrogation. He stated further that the 1st accused person voluntarily made a statement in writing. The said statement dated 26/11/04 was admitted in evidence as Exhibit F.

The witness further stated that on 27/11/04 the 2nd accused person was arrested with the aid of the 1st accused person. Based on the 2nd accused person's statement, the 1st accused person volunteered an additional state in writing dated 29/11/04; same was admitted in evidence as Exhibit G.

Under cross-examination, PW IV stated that in the cause of investigation he went to C.A.C. However he did not call for any file and non was shown to him. He was at C.A.C to only present report.

It is also the evidence of PW IV that the accused persons refunded the money shared by them; the 1st accused refunded N50,000.00 while the 2nd accused refunded N86,000.00; that was the amount the complainant gave to the accused person to incorporate the companies. The witness also stated that he did not see the certificate of incorporation alleged to be forged by the accused persons.

There was no re-examination and the prosecution subsequently closed its case.

In defence of this case the accused persons called 4 witnesses.

The DW1 is the 1st accused person. In his evidence-in-chief he stated that he was given a job by PW III for incorporation of 2 companies for the sum of N146,000.00. He took the job to Barrister Obeh Ekwere at his office at Area 11 Noble Complex but was informed that Obeh Ekwere was not in the office when he got there but met his secretary who happened to be the 2nd accused person.

DW1 further stated that on been informed by the 2 accused person that the Barrister was not around, he (DW1) told the 2nd accused person that he has a job of incorporating 2 companies for the Barrister and he will pay the sum of N86,000.00. The DW1 dropped the money with the 2nd accused person and left for Minna. He later came back to the Barrister's office on Monday and Barrister Ekwere gave him set of forms and memorandum and he took it back to the PW III to sign. After signing the DW1 collected the documents and set them back to the lawyer's office and handed it to the 2nd accused person.

After 3 weeks the DW1 came back to pick the documents after the job must have been done. The 2nd accused person handed over the documents to him in an envelope that contains 2 certificates of incorporation and 2 memorandums. The names on the certificate are: Bassa Links Nigeria Limited and B.S.S. Export Nigeria Limited. The DW1 took the documents to the PW III. It is the evidence of DW1 that after a month the PW III called and informed him that he has another job for him (DW1).

The following date being Friday, he came to Abuja and met with the PW III in his office at Imani Estate. The PW III told the DW1 to give him 2 minutes and he went out only to come back with 2 other persons who introduced themselves as officials of the EFCC and he was taken to the EFCC Office. The DW1 further stated that it was the 2nd accused person that gave him the 2 certificates but was Barrister Ekwere that processes the certificates. It is also the evidence of DW1 that he was in EFCC custody for 3 months. In December 2004 the EFCC officials asked him to refund the money collected by him before he could be released. The sum of N50,000.00 was paid to EFCC by his family and the 2nd accused person paid the balance through his sister.

Under cross-examination, the DW1 stated that it is true that before you do a job in C.A.C you must be accredited lawyer; he is not a lawyer neither is the 2nd accused person. He also stated that he is not the one that registered the companies but the lawyer whom he gave the job to do.

He further stated that when he collected the job from PW III he knew he was incapable of doing it.

Under re-examination, the DW1 stated that he collected the job from PW III to assist him process same through a lawyer.

The DW III one Abdulsalam Alhassan gave evidence-in-chief as to the effect that after 2 months of the 1st accused person in detention, he paid the sum of N50,000.00 to the EFCC officials for the 1st accused person's release. However, after payment of the said sum of N50,000.00 the 1st accused person was not released, it was this court that granted him bail.

Under cross-examination, the DW II restated that what he told the court is what he knows about the case.

The DW III is one Awelu Okhaifoh. In his evidence-in-chief he stated that he introduced the 2nd accused person to Ude Udekwere who is a barrister and that the said Ude Udekwere employed the 2nd accused person as the secretary in his office in January 2004.

The DW III further stated that in December 2004 his brother (2nd accused person) was arrested by the EFCC. On getting to the EFCC, he was also informed that the person his brother work for did a job that was fake. He was instructed by Mr. Galadima to pay the money involved in the matter before his brother could be released and their mother paid the sum of N86,000.00 but EFCC failed to release the 2nd accused person after the sum was paid.

Under cross-examination, the DW III stated that he did not know the 1st accused person and that he was not present when the 1st accused

person gave the 2nd accused person N86,000.00; there was no re-examination, DW III was discharged accordingly.

The DW IV Omo Okafor the 2nd accused person in this matter stated in evidence-in-chief that he was working as a secretary with Udo Udokwere's chambers. Sometimes in November 2004 the 1st accused person came to the office and asked for his boss and he informed him that he was not in the office that day. The 1st accused person brought 2 sets of memorandum of association and gave the sum of N86,000.00 to keep for his boss. When his boss came back he gave the documents and the money to his boss and informed him it was the 1st accused person that brought them.

It is also the evidence of DW IV that before November, 2004, the 1st accused person do come to the office to see his boss.

DW IV further stated that after 2 weeks, Mr. Udekwere asked him to call the 1st accused person to come to the office by 2.00 p.m.; he complied with the instructions. The 1st accused person came to the office by 5.00 p.m. instead of 2.00 p.m. and by that time his boss had left the office as he had meeting at the Force Headquarters. DW IV also stated that his boss dropped a brown envelope and asked him to keep it for the 1st accused person. When the 1st accused person came he took the envelope and left.

After 3 – 4 weeks, the 1st accused person called to enquire whether he was in the office and he said yes. The 1st accused person came with 2 men to the office and they introduced themselves as EFCC officials and arrested him.

On getting to the EFCC's Office he was shown certificates and memorandum of association and he said he did not know anything about the certificate but the memorandum of association. DW IV also stated that he informed the EFCC that it was his boss that did the job. He gave his boss telephone number to Mr. Galadima and also informed Mr. Galadima that his boss live in Kubwa. He made statements to EFCC and was detained in EFCC custody for 3 months. The additional statement made by the 2nd accused person dated 13/2/2004 was admitted in evidence as Exhibit H. It is the evidence of the DW IV that he was issued an identify card by the law firm he was working with. The I.P.O. in the case collected the identify and some of his belongings. The I.P.O. also went to the office at Area 11 Garki, Abuja to know whether such an office exist and he confirmed there was one.

The D.W. IV further stated that the content of the envelope handed over to him for onward transmission to the 1st accused are as follows: filing receipt, stamp duty receipt and certificates; witness restated that he did not forge the certificates; that he got the envelope and its contents from his boss Ude Udekwere Esq.

Under cross-examination, the DW IV stated that he knew the 1st accused person 3 months before the case as a friend to his boss. The witness also stated that it is not true that the 1st accused person contracted him to register 2 companies for him but gave the sum of N86,000.00 to give to his boss. The DW IV further stated that the statement he made to EFCC was under duress.

Under re-examination DW IV was asked to read Lines 12 – 15 of Exhibit C; subsequently the Defence closed their case.

On 2/4/08 the Defence counsel asked for a date to address the court, this court ordered for a written address and adjourned the matter to 30/4/08 for adoption of written addresses by both counsel.

On 30/4/08 learned Defence counsel informed this court that he could not file his written address for reason best known to him and further prayed for another date to file the said written address. The prosecution counsel did not oppose to the application; the court ordered the Defence to file the said address within 2 weeks from that day (30/4/08) while the prosecution is given 7 days to file his reply. The case was subsequently adjourned to 2/6/08 for adoption of the written addresses.

On 2/6/08 the Defence further informed the court that their written address was not ready, matter was further adjourned to 23/6/08 for adoption of the written addresses.

On 17/7/08 when the matter came up, the Defence counsel further informed the court that their address was not still ready; this court reluctantly granted the application by the Defence for another date in the interest of justice; case was accordingly adjourned to 25/9/08.

On 23/10/08 when the matter came up, the accused persons were in court but their lawyer was not in court without any reason to this court and also did not file any address. Court further adjourned the case to 4/12/08 for the adoption of written addresses; the matter was subsequently adjourned from 9/2/09 – 9/3/09, 13/5/09 – 22/6/09,

26/6/09 – 15/7/09, 15/7/09 – 5/10/09, 5/10/09 – 16/11/09, 11/1/2010 – 18/2/10, 12/7/10 – 4/10/10.

On 4/10/2010 this court having satisfied the conscience of justice and fair hearing closed the defence right to file the address in this matter and adjourned the matter for judgment.

It is trite law that although the right to final address by counsel is constitutionally guaranteed they can however be expressly or impliedly waived, for it is optional at the instance of the counsel. See *AMOUGH v ZAKI* (1998) 3 NWLR Pt 542 at 483.

In the instant case I am of the considered view that the Defence by their conduct had impliedly waived their right to final address. On the other hand, the prosecution counsel filed a 6-page written address dated 29/7/2010 wherein learned counsel formulated an issue for determination to wit:

"Whether by the quantum of evidence adduced by the prosecution, it could be rightly be said it has proof its case beyond reasonable doubt".

On this singular issue learned counsel submitted that the offence of conspiracy is committed when there is an agreement by two or more persons to do an illegal act or legal act by illegal means. The agreement which constitute the offence is seldom proved by direct evidence but by inference proved facts. See *OBIAKORE v STATE* (2002) NSCLR Pg 27 at 38; *ERIM v STATE* (1994) 5 NWLR Pt 346 Pg 522 at 534; *OYAKIRE v STATE* (2006) ALL FWLR Pt 3050 Pg 703 at 718.

It is further submitted that to prove the offence of conspiracy the prosecution must establish the following ingredients:

- (a) That there was an agreement between two or more persons.
- (b) That the agreement was to do or causes to do an illegal act.
- (c) Or to do a legal act by illegal means.

Counsel submitted that the accused persons in their statements admitted collecting the money for the incorporation of the said two companies i.e. Bassa Linx International Limited and B.S.S. Export International Limited respectively. The 1st accused person gave N86,000.00 to the 2nd accused person and took the remaining N50,000.00 which corroborate the testimonies of PW II and PW III.

It is the submission of counsel that in order to prove conspiracy it is not necessary that there should be direct communication between each conspirator and every other. All that need to be established is that the criminal design alleged is common to all of them. See *ERIM v STATE* (Supra) Pg 533; *OYEDIBAN v REPUBLIC* (1960) 4 NSCC 252 at 257 – 258. It is also trite that all the conspirators need not have stated at the same time as same may join at a later stage. See *NJOVENS & ORS v STATE* (1973) NSCC Pg 257 at 280.

Court is urged to hold that count one and three dealing with the offence of conspiracy have been established against the accused persons.

On the charge on defrauding i.e Count 2, learned counsel submitted that in establishing a case of obtaining money by false pretence, the prosecution has a duty to prove the following ingredients.

- (i) That there is a pretence

- (ii) That the pretence emanated from the accused persons.
- (iii) That it was false
- (iv) That the accused person knew of its falsity or did not believe in its truth.
- (v) That there was an intention to defraud
- (vi) That the thing is capable of being stolen
- (vii) That the accused person induced the owner.

See cases of *ONUWUDIKE v F R N* (2006) ALL FWLR Pt 319 Pg 774 at 812 Para E; *AWAKE v STATE* (1991) 7 NWLR Pt 205 Pg 567. With respect to ingredient 1, 2 and 3 as above it is in evidence through PW II and IV that the 1st accused person presented himself to PW1 as a staff of C.A.C and collected the N136,000.00 from him to incorporate two companies, Exhibits C, E, F and G corroborated this facts. These piece of evidence by the prosecution witness were never impeached or contradicted by the defence and should be taken as established. See *DAGASH v BULAMA* (2004) 14 NWLR Pt 892 Pg 144 at 240. It is further submitted that a free and voluntary confession of guilt whether judicial or extra judicial if it is direct and positive and is properly established as in this case is sufficient proof of guilt. See *AKPAN v STATE* (2000) 12 NWLR Pt 682 Pg 607 at 623.

The ingredients 5, 6 and 7 were taken together by counsel. It is submitted that PW III in his evidence stated that following the pretence of DW1 as a staff of CAC collected the sum of N136,000.00 from him; this evidence was neither challenged nor contradicted by the defence and must be taken as established. See *NJIOKWUEME v OCHEI* (2004) 15 NWLR Pt 895 Pg 196 at 227. The synopsis of the foregoing is that the PW III was actually

defrauded of N136,000.00. That money was capable of being stolen and that the 1st accused person induced the payment of the N136,000.00 by false pretence and was not in doubt.

On Count 4 and 6 as charged, learned counsel submitted that a document is said to be forged if the whole or part of it is made by a person with all falsity and with intent that it may be acted upon as genuine to the prejudice of the victim. See *OSUNDU v STATE* (2000) 2 NWLR Pt 682 Pg 483 at 504; *ALAKE v STATE* (1991) 7 NWLR Pt 205 Pg 367 at 592.

It is submitted that to establish the offence of forgery, the prosecution must prove the following ingredients:

1. That there is a document
2. That the document or writing is forged
3. That the forgery is by the accused
4. That the accused knows that the document or writing is false.
5. That he intends that the forged document to be acted upon to the prejudice of the victim in the believe that it is genuine.

It is the submission of counsel that the existence of Exhibit A and D are not in doubt, having already been tendered in evidence during the trial with regard to the first ingredient.

With regard to the second ingredient, it is in evidence by the PW1 and PW II that Exhibits A and D were not issued by the C.A.C. That the said Exhibits A and D were specifically made to deceive the PW III and by extension that the transaction they executed was genuine. See *SMART v STATE* (1994) 9 NSCC Pg 575 at 581.

On Count 5 and 7 for using as genuine contrary to Section 366 of the Penal Code, learned counsel argued the counts together as they are intention and dependant on Counts 4 and 6 respectively. It is submitted that for a prosecution to succeed in a charge of using as genuine, it must establish the following:

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

Learned counsel adopted his analysis of facts, arguments and all the authorities cited in count 4 and 6 to also apply to counts 5 and 7 respectively. Court is urged to discountenance with the testimonies of the defence as untrue and court should not rely or attach any weight to it.

It is submitted that where a witness gives unstable evidence, the witness has exposed himself as one whose evidence cannot be trusted or relied upon and the court has no competence to pick and choose the correct version, but the evidence must be rejected. See *SOWEMIMO v STATE* (2004) 11 NWLR Pt 885 Pg 515 at 532; *EGBOGHONOME v STATE* (1993) 7 NWLR Pt 306 Pg 383 at 431.

It is finally submitted that the prosecution has, through its witnesses proved its case beyond reasonable doubt and that the accused persons be found guilty.

On the part of the court, after a careful consideration of the processes filed and evidence adduced, I adopt the sole issue formulated by the prosecution's counsel as the issue for determination to wit:

"Whether by the quantum of evidence adduced by the prosecution, it could rightly be said it has proof its case beyond reasonable doubt".

The accused persons were charged in count 1 and 3 for criminal conspiracy to obtain money by false pretence contrary to Section 8(a) of the Advance Fee Fraud and Other Fraud Related Offences Act punishable under Section 1(3) of same Act.

In proof of the offence of conspiracy, the prosecution must establish the following:

- (a) That there was an agreement between the two or more persons.
- (b) That the agreement was to do or causes to be done an illegal act.
- (c) Or to do a legal act by illegal means.

In the case at hand, the evidence of the PW1 did not establish any of the ingredients mentioned above.

On the part of PWII Mr. Ibrahim Galadima (ASP), the Investigation Officer, in his evidence-in-chief stated thus:

"At the end of my investigation into the matter, I found out that Baba Sule Bissalah, the owner of the 2 companies in dispute gave the 1st accused person the 2 names for incorporation and the sum of N136,000.00 for him to incorporate the 2 companies being a staff of C.A.C".

The PW2 went on to state that thus:

"I discovered that the 1st accused persons gave the 2 names to the 2nd accused person with the sum of N86,000.00 and converted N50,000.00 to his own use".

From these piece evidence of evidence I find it difficult to come to terms that the PW II was able to establish the ingredients of conspiracy against the accused persons.

The PW III Baba Sule Bissalah in his evidence-in-chief stated thus:

"I knew the 1st accused person at the C.A.C and I engaged him to incorporate 2 companies... The 1st accused promised to do the work within a week. I paid the sum of N136,000.00 to the 1st accused person for the incorporation of the 2 companies and tax clearance. Later the 1st accused person brought 2 certificates of incorporation to me... I received the certificate and we started business..."

Under cross-examination, the PW III restated that he gave the 1st accused person the job because he knew him to be the staff of C.A.C.

In fact the PW III never in his evidence-in-chief nor cross-examination mentioned or linked the 2nd accused person to this charge.

The PW IV in his evidence-in-chief was led to tender the statements he took from the 1st accused person. Under cross-examination, the PW IV stated that the accused persons refunded the money shared by them.

The DW1 (1st accused person) stated in evidence-in-chief that he was given a job by the PW III to incorporate 2 companies for him. He took the 2 jobs to Barrister Obeh Ekwere at his office at Area 11 but met his secretary, the 2nd accused person who informed him that Barrister Obeh Ekwere was not around. The DW I then dropped the sum of N86,000.00 with the 2nd accused and left for Minna. When he came back to the Barrister's Office on Monday, the Barrister Ekwere gave him sets of forms

and memorandum and he took it back to Baba Sule to sign and returned same to the Barrister. After 3 weeks he came back to the Barrister's Office and the 2nd accused person handed over the 2 certificates of incorporation and 2 memorandum. He then took the documents to the PW III; this piece of evidence was restated under cross-examination when the DW I stated that "I am not the one that registered the companies but the lawyer in October 2004". It is a settled law that it is a cardinal principle of law that the commission of a crime by a party must be proved beyond reasonable doubt. The burden of proving that any person is guilty of a crime rests on the prosecution vide Section 138 of the Evidence Act. The burden never shifts and if on the whole of the evidence the court is left in a state of doubt, the prosecution would have failed to discharge the onus of proof which the law lays upon it.

In the instant case as regard count 1 and 3 I am of the considered view that the prosecution has not adduce positive evidence to warrant the court to convict the accused persons; accordingly the 1st and 2nd accused person are hereby discharged and acquitted of Count 1 and 3 respectively.

The accused persons are charged in Count 2 with defrauding one Baba Sule Bissala of the sum of N136,000.00 under the false pretence that they are capable of incorporating companies at C.A.C.

In establishing a case of obtaining money by false pretence, the prosecution has a duty to prove the following ingredients:

1. That there is a pretence.
2. That the pretence emanated from the accused person.
3. That it was false

4. That the accused person knew of its falsity or did not believe in its truth.
5. That there was an intention to defraud
6. That the thing is capable of being stolen
7. That the accused person induced the owner.

It is the contention of the prosecution with respect to ingredient one, two and three that it is the evidence of PW2 and Pw4 that the 1st accused person presented himself to PW1 as a staff of C.A.C and collected N136,000.00 from him to incorporate two companies for him which PW3 confirmed.

The PW1 stated in evidence-in-chief that the 1st accused person was a former staff of C.A.C but never mentioned the date the 1st accused person seizes to be a staff of C.A.C.

The PW2 at the end of his investigation found out that the PW3 the owner of the 2 companies in dispute gave the 1st accused person the 2 names for incorporation and the sum of N136,000.00 for him to incorporate the 2 companies. PW2 also discovered that the 1st accused person was a dismissed staff of C.A.C. However his investigation did not reveal the date the 1st accused person was dismissed. It is instructive to reproduce the evidence-in-chief of the PW3 and it is so reproduced thus:

"...I knew the 1st accused person at the C.A.C and I engaged him to incorporate 2 companies, one Bassa Linx International while the other is B.S.S. Export. The 1st accused person promised to do the work within a week. I

paid the sum of N136,000.00 to the 1st accused person for the incorporation of the 2 companies and tax clearance".

From the foregoing, I am of the considered view that the PW III willfully engaged the service of the 1st accused person; there was no form of pretence nor inducement from the 1st and 2nd accused persons. In fact as stated earlier the PW3 never made mention of knowing or having any link with the 2nd accused person in his evidence before this court; accordingly the prosecution has failed to proof beyond reasonable doubt to warrant this court to convict the accused persons; subsequently the 1st and 2nd accused persons are hereby discharged and acquitted of Count 2.

Counts 4 and 6 that deals with forgery will be dealt together since the facts are intertwined. It is the contention of the prosecution that the accused person printed Exhibit A and D at the same time.

It is trite that to establish the offence of forgery, the prosecution must prove the following ingredients:

1. That there is a document
2. That the document or writing is forged
3. That the forgery is by the accused.
4. That the accused knows that the document or writing is false.
5. That he intends that the forged document to be acted upon to the prejudice of the victim in the believe that it is genuine.

I do agree with the prosecution's counsel that the existence of Exhibit A and D are not in doubt. I am also in concert with the prosecution that Exhibit A and D were not issued by the Corporate Affairs Commission. The

only ingredient that the prosecution needed to prove was it the accused persons that forged Exhibit A and D?

The PW1 in her evidence stated that in December 2004, while going about her official duties, she came across some files which were misplaced and one of the files was that of Bassalinx Nigeria Limited. Under cross-examination PW1 stated that she did not see the accused persons placing any file in the file room. The PW1 went on to state that she does not know whether Bassalinx International Limited and B.S.S. Exports International Limited were presented by lawyer for registration at C.A.C because she did not check the name of the lawyer on the registration form.

It is also the evidence of PW2 that in the course of investigation they discovered another Certificate of Incorporation in respect of B S S Export International Limited with RC No. 646793 (Exhibit D) which is also ***suspected to be forged by the 2 accused person.***

[The words suspected to be forged by the 2 accused person is emphasized by this court].

The said PW2 in his evidence-in-chief stated that at the end of his investigation, he discovered inter alia: that the 1st accused being a former staff of C.A.C ***smuggled the 2 certificates out of C.A.C.***

Under cross-examination, the PW2 stated that the name of the presenter on the file is Mr. Udekwere. The witness further stated that there was no complaint from CAC that 2 copies of its blank Certificate of Incorporation were stolen by the 1st accused person.

On the part of the PW4 he stated under cross-examination that as an investigator, he went to CAC in the course of his investigation, but he did

not call for any file at CAC and non was shown to him. That he went to CAC to present a report only. It is worthy of note that, that report was never brought before this court. Witness further stated that he did not see the certificates of incorporation alleged to be forged by the accused persons; what an investigation indeed!.

From the foregoing, I am of the considered view that there is no evidence in proof of essential elements of the offences in Counts 4 and 6 respectively, since the evidence adduced lacks probative value to secure a conviction; accordingly, the 1st and 2nd accused persons are found not guilty on Counts 4 and 6 respectively; they are accordingly discharged and acquitted.

In regards to Counts 5 and 7 for using as genuine documents which were forged. For the prosecution to succeed it must establish the following:

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

It is the evidence of PW3 that he engaged the 1st accused person to incorporate 2 companies (Exhibit A and D) respectively. The 1st accused promised to do the work within a week; later the 1st accused person brought the 2 certificates of incorporation to him i.e Exhibits A & D.

To corroborate this fact, the DW1 (1st accused person) stated in evidence-in-chief that he was the person that took Exhibit A and D to the PW 3. DW1 further stated that it was the 2nd accused person to whom he gave

the incorporation that gave him the 2 certificates (Exhibit A & D) but that it was Barrister Ekwere that processed the certificate for him.

Under cross-examination, DW1 restated that it was the 2nd accused person that gave the 2 certificates and memorandum to him and in turn he gave them to the PW3.

The PW2 stated that at the end of his investigation he discovered that the 1st accused person gave the 2 names to the 2nd accused person with the sum of N86,000.00.

It is common ground that in all criminal prosecution, it is the duty of the prosecution to prove its case beyond reasonable doubt. It is not essential to prove the case with absolute certainty but the ingredients of the offence charged must be proved as required by law and to the satisfaction of the court. See AGBACHUNI v STATE (1970) 1 ALL NLR 69 at 76.

In the instant case I am of the considered view that the prosecution had proved with positive evidence Count 5 and 7 against the 1st and 2nd accused persons. The 1st and 2nd accused persons are found guilty by this court of Count 5 and 7 and they are hereby convicted for same.

(Sgd)
Hon. Justice Salisu Garba
(Presiding Judge)
17/12/2010

Defendant's Counsel – We are grateful for the well-considered judgment. We plead with the court to be lenient with the accused persons; they are first offenders, the money have been refunded back to PW III, the accused persons spent 3 months in detention before they are arraigned before this

court, they are always in court throughout the proceeding, and they didn't commit any other offence, we pray the court to give the accused an option of fine.

Prosecution's Counsel – We thank the court for the judgment. We pray the court to take into consideration the offence the accused persons are found guilty is rampant. I urged the court not to give the accused persons option of fine. There is no record of previous conviction.

Court – After listening carefully to the plea by the Defence counsel for leniency and the position of the prosecution's counsel, I am of the considered view that the accused person be given an option of fine since they are first offenders; they are young persons, they spent 3 months in custody of the EFCC before they are arraigned before the court.

In the circumstance, each of the accused is hereby sentence to 1 year imprisonment of the 2 counts or in the alternative pray a fine of N10,000.00 in court. The sentences are to run concurrently.

(Sgd)
Hon. Justice Salisu Garba
(Presiding Judge)
17/12/2010