

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE KADUNA JUDICIAL DIVISION**  
**HOLDEN AT KADUNA**  
**ON MONDAY THE 1<sup>ST</sup> DAY OF APRIL, 2019**  
**BEFORE HIS LORDSHIP, THE HONOURABLE JUSTICE S. M.**  
**SHUAIBU**  
**JUDGE**

**SUIT NO: FHC/KD/26C/2017**

**BETWEEN:**

FEDERAL REPUBLIC OF NIGERIA - **COMPLAINANT**

**AND**

RABIU MOHAMMED UMAR - **ACCUSED**

**JUDGMENT**

The Accused person herein, **RABIU MOHAMMED UMAR**, is standing trial before this court on an eight (8) count charge dated 6<sup>th</sup> and filed on the 8<sup>th</sup> day of June 2017. The offence in each of the counts is contrary to and punishable under Section 5(1) (b) of the Counterfeit Currency (Special Provisions) Act CAP. C35 Laws of the Federation of Nigeria 2004.

The particulars of the offences for which the accused person is standing trial are given as follows-

**COUNT ONE:**

That you **RABIU MOHAMMED UMAR** on or about the 12<sup>th</sup> day of October, 2016 in Kaduna within the jurisdiction of the Federal High Court, Kaduna had in your possession without lawful authority nine (9) pieces of counterfeit N500 Notes each with serial numbers **T/06 427279** knowing same to be counterfeit and thereby committed an offence contrary to and punishable under Section (5(1) (b) of the Counterfeit Currency (Special Provisions) Act, Cap. C35, Laws of the Federation of Nigeria, 2004.

**COUNT TWO:**

That you **RABIU MOHAMMED UMAR** on or about the 12<sup>th</sup> day of October, 2016 in Kaduna within the jurisdiction of the Federal High Court, Kaduna had in your possession without lawful authority two (2) pieces of counterfeit N500 Notes each with serial numbers **S/82671995** knowing same to be counterfeit and thereby committed an offence contrary to and punishable under Section 5(1) (b) of the

*Counterfeit Currency (Special Provisions) Act, Cap. C35, Laws of the Federation of Nigeria, 2004.*

**COUNT THREE**

That you **RABIU MOHAMMED UMAR** on or about the 12<sup>th</sup> day of October, 2016 in Kaduna within the jurisdiction of the Federal High Court, Kaduna had in your possession without lawful authority two (2) pieces of counterfeit N500 Notes each with serial numbers **Q/95920299** knowing same to be counterfeit and thereby committed an offence contrary to and punishable under Section 5(1) (b) of the Counterfeit Currency (Special Provisions) Act, Cap. C35, Laws of the Federation of Nigeria, 2004.

**COUNT FOUR:**

That you **RABIU MOHAMMED UMAR** on or about the 12<sup>th</sup> day of October, 2016 in Kaduna within the jurisdiction of the Federal High Court, Kaduna had in your possession without lawful authority one (1) piece of counterfeit N1000 Notes each with serial numbers

**D/46 370957** knowing same to be counterfeit and thereby committed an offence contrary to and punishable under Section 5(1) (b) of the Counterfeit Currency (Special Provisions) Act, Cap. C35, Laws of the Federation of Nigeria, 2004.

**COUNT FIVE:**

That you **RABIU MOHAMMED UMAR** on or about the 12<sup>th</sup> day of October, 2016 in Kaduna within the jurisdiction of the Federal High Court, Kaduna had in your possession without lawful authority one (1) piece of counterfeit N1000 Notes each with serial numbers **D/46 456927** knowing same to be counterfeit and thereby committed an offence contrary to and punishable under Section 5(1) (b) of the Counterfeit Currency (Special Provisions) Act, Cap. C35, Laws of the Federation of Nigeria, 2004.

**COUNT SIX:**

That you **RABIU MOHAMMED UMAR** on or about the 12<sup>th</sup> day of October, 2016 in Kaduna within the jurisdiction of the Federal High Court, Kaduna had in

*your possession without lawful authority thirty two (32) pieces of counterfeit N1000 Notes each with serial numbers **D/46 509773** knowing same to be counterfeit and thereby committed an offence contrary to and punishable under Section 5(1) (b) of the Counterfeit Currency (Special Provisions) Act, Cap. C35, Laws of the Federation of Nigeria, 2004.*

**COUNT SEVEN:**

*That you **RABIU MOHAMMED UMAR** on or about the 12<sup>th</sup> day of October, 2016 in Kaduna within the jurisdiction of the Federal High Court, Kaduna had in your possession without lawful authority Thirty three (33) pieces of counterfeit N500 Notes each with serial numbers **D/46 526615** knowing same to be counterfeit and thereby committed an offence contrary to and punishable under Section 5(1) (b) of the Counterfeit Currency (Special Provisions) Act, Cap. C35, Laws of the Federation of Nigeria, 2004.*

**COUNT EIGHT:**

That you **RABIU MOHAMMED UMAR** on or about the 12<sup>th</sup> day of October, 2016 in Kaduna within the jurisdiction of the Federal High Court, Kaduna had in your possession without lawful authority ten (10) pieces of counterfeit N1000 Notes each with serial numbers **D/46 456421** knowing same to be counterfeit and thereby committed an offence contrary to and punishable under Section 5(1) (b) of the Counterfeit Currency (Special Provisions) Act, Cap. C35, Laws of the Federation of Nigeria, 2004.

On the 14<sup>th</sup> December, 2017, the offence in each of the counts were each are separately read, interpreted in Hausa Language and explained to the accused person by the Court Registrar. The accused person denied the offence in each of the counts.

Section 135(1) of the Evidence Act 2011 provides that:-

- (1) *If the commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt.*

See on this point the cases of **FABIAN NWATURUOCHA VS. THE STATE (2011) 6 NWLR PART 1242 PAGE 170 AT 174, AMADI VS THE STATE (1993) 8 NWLR PART 314 PAGE 644** as well as the case of **ALOR VS THE STATE (1997) 4 NWLR PART 501 PAGE 511.**

Again Sub-Section (2) of Section 135 of the Evidence Act, 2011 provides-

*(2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to Section 139 of this Act, on the person who asserts it, whether the commission of such act is or not directly in issue in the action.*

In the bid to discharge this burden, the Learned prosecution Counsel in this case, **MUSA ISAH ESQ** called three (3) witnesses and tendered a total of four (4) exhibits in support of the charge.

The witnesses for the Prosecution are **INSPECTOR DANIEL GANI**, of the Nigeria Security and Civil Defence Corps. The second witness is, **WAZIRI AHMADU NITTE**, a Public Servant

with the Economic and Financial Crimes Commission (EFCC), Kano State Command. The third and last witness for the Prosecution is, **AMINU ABDULAZEEZ YUSUFU** of the Nigeria Security Printing and Minting Company. They testified as the PW1, PW2 and PW3 respectively. The four (4) exhibits in this case were tendered through these witnesses.

The facts of this case as presented by the Learned prosecution Counsel are simple. Based on intelligence Report that confirmed the circulation of counterfeit currencies at the Railway Station Yam Market, Kaduna, the Nigeria Security and Civil Defence corps monitored the movements and activities of the Accused Person herein from 2015 to October 2016. Meanwhile, the Nigeria Security and Civil Defence Corp had a sample of One Thousand Naira Counterfeit Note given the corps from intelligence source.

On the 10<sup>th</sup> October, 2016 the officers of the Nigeria Security and Civil Defence Corps, organised a raid that was directed by **INSPECTOR MBA**. However, **INSPECTOR DANIEL GANI** led **ASSISTANT INSPECTOR DANJUMA DOGO** in the operation that



led to the arrest of the Accused Person herein, **RABIU MOHAMMED UMAR.**

According to the case presented by the Prosecution in support of the charge, suspected counterfeit notes consisting of seventy five (75) pieces of One Thousand Naira Notes and Thirteen (13) pieces of Five Hundred Naira Notes were recovered from the Accused Person, hidden under a cardigan, the Accused Person wore on that day. These suspected counterfeit notes including the one thousand naira note earlier given to the Nigeria Security and Civil Defence Corps, are altogether admitted in evidence and marked Exhibit EFCC 1. The notes were tendered in evidence through the PW1, **INSPECTOR DANIEL GANI**, who recovered them in the course of the Raid ~~cooperation~~ *operation*.

That upon arrest and the recovery, the Nigeria Security and Civil Defence Corps transferred the case to the Economic and Financial Crimes commission for further investigation and prosecution. Before then, the Nigeria Security and Civil Defence Corps had written to the Central Bank of Nigeria and forwarded the recovered suspected counterfeit currencies for analysis. That the Central Bank in turn sent the notes to the Nigeria security,

minting and printing company requesting for the conduct of analysis on the notes.

At the Economic and Financial Crimes Commission, a team led by **WAZIRI ADAMU NITTE**, was assigned the task of further investigation into the case. **WAZIRI ADAMU NITTE** is the second prosecution witness in this case. He testified on the 21<sup>st</sup> February 2018. Through this witness the letter dated 19<sup>th</sup> October, 2016 by which the Nigeria Security and Civil Defence Corps transferred the case to the Economic and Financial Crimes Commission, was admitted in evidence and marked exhibit EFCC 2. The extra-judicial statement of the accused person dated 20<sup>th</sup> October, 2016 was also tendered in evidence through the second prosecution witness **WAZIRI ADAMU NITTE**. It is exhibit EFCC 3 before the court.

According to the facts presented by the prosecution, an analysis of the notes was conducted by the Nigeria Security, Minting and printing company. That the result of the analysis shows that the notes are counterfeit. One **AMINU ABDULAZEEZ YUSUF** of the Nigeria-Security, Minting and printing company, who conducted the analysis and issued a report, is the third and last prosecution

witness in this case. He testified on the 16<sup>th</sup> May 2018. The witness tendered the Report of the analysis that he issued. It was admitted in evidence and marked as Exhibit EFCC 4.

Those are the facts upon which the charge against the Accused Person was filed. The prosecution witnesses testified along those facts as summarised.

In the course of investigation, the PW2, **WAZIRI ADAMU NITTE** of the Economic and Financial Crime Commission, said that the accused person claimed that he is a yam seller at the Railway junction market, Kaduna. The PW2 said that his team visited the market and inquired from the leadership of the Yam Sellers Association in the market but that the leaders denied that the accused person is a member of the Association.

The PW2 also testified that in the course of investigation, the accused person said that the suspected notes found in his possession were money paid to him for the yam he sold. That he delivered the yam at the house of his customers that gave him the money.

That when he showed his master, **ABBA TUKUR RUMA** the money, **RUMA** confirmed to him that the notes are counterfeit. That **RUMA** nevertheless collected part of the money and left the balance with the Accused Person until it was recovered from him by the Nigeria Security and Civil Defence Corps on the 10<sup>th</sup> day of October, 2016. The Accused Person said **ABBA RUMA** asked him to wait until he files a Report with the Police. That it was while he was waiting that he fell asleep and was arrested by the NSCDC that night.

In answers to questions in cross examination, the PW2, **WAZIRI ADAMU NITTE** said that in the course of the investigation, the accused person did not tell them that he is a member of the yam sellers Association, Railway junction market, Kaduna. The witness said that he is not aware, whether there was telephone conversation between the accused person and **ABBA TUKUR RUMA** from the date the accused person was arrested to the time the Accused Person made his statement.

Finally, in his answers to questions in cross examination, the PW2 said that after the extra-judicial statement of the Accused Person, further investigation into the case was limited to confirmation whether the Accused Person is actually a yam seller at the Railway junction market, Kaduna or not.

There was no question in cross examination for the PW3, **AMINU ABDULAZEEZ YUSUFU**.

As for the PW1, **INSPECTOR DANIEL GANI**, he said under cross examination that previously yam sellers from Niger State attend the market to sell yam. He confirmed that the Accused Person was found in a waiting room to which members of the public do not have access to after 7:00pm. The PW1 said that he did not however inquire how the Accused person accessed the room at 2:00am when he was arrested.

At the close of the prosecution case, the Defence did not call evidence in defence to the charge. Consequently final written addresses were ordered. In compliance with the order of Court, written addresses were duly filed and exchanged.

The final written address by the Learned Prosecution Counsel, was filed on the 31<sup>st</sup> May, 2018. The final written address in reply by the Learned Defence Counsel was filed on the 19<sup>th</sup> June, 2018.

On the 7 January, 2019 therefore, the respective Learned Counsel adopted their final written addresses and the case accordingly adjourned for Judgment.

In his written address, the Learned Prosecution Counsel, MUSA ISAH ESQ. formulated an issue for determination as follows:-

*Whether upon the evidence so far adduced by the Prosecution through its witnesses and the documents tendered and admitted in evidence, the Prosecution has proved its case beyond reasonable doubt the essential elements or ingredients of the offence against the Defendant*

In his argument on the issue as formulated, the Learned Prosecution Counsel, **MUSA ISAH ESQ.** submitted that the elements Constituting the offence under Section 5(1) (b) of the Counterfeit Currency (Special Provisions) Act Cap. C35 LFN 2004 have been established in this case.

That the Prosecution having established all the essential elements of the offence charged, the burden placed on it by law has been discharged and the Court must go ahead and convict. Counsel cited the case of **ONAGORUWA VS. THE STATE (1993) 7 NWLR PART 303 PAGE 49 AT 85 PARAGRAPH C-D** on the point.

Learned Prosecution Counsel in his written address reproduced the provision of Section 5(1) (b) of the Counterfeit Currency (Special Provision) Act Cap. C35 LFN 2004 which provides that:-

*Any person who has in his possession any Counterfeit bank note or current coin, knowing it to be counterfeit is guilty of an offence under this Act and upon conviction thereof shall be liable to imprisonment for a term not exceeding twenty one (21) years.*

The Learned Prosecution Counsel, **MUSA ISAH ESQ.** reviewed the evidence of the Prosecution Witnesses and submitted that the evidence of the PW1, **INSPECTOR DANIEL GANI**, has established possession as the first element of the offence

prescribed by the provisions of Section 5(1) (b) of the Counterfeit Currency (Special Provision) Act LFN 2004.

Learned Counsel argued that possession simply means a considerable degree of physical control over a thing. That the Counterfeit notes were recovered hidden under the cardigan of the Accused Person. That the evidence of the PW1 remained unchallenged and uncontroverted. Learned Prosecution Counsel therefore, urged the Court to accept and act upon it on the authority of the decision of the Supreme Court in the case of **MAGAJI VS. NIGERIAN ARMY (2008) 8 NWLR PART 1089 PAGE 338 AT 393 PARAGRAPH D.**

On the element of possession with knowledge, the Learned Prosecution Counsel, **MUSA ISAH ESQ.** submitted that once possession as an element is established, there is a Presumption of law that the Accused Person is in possession with knowledge. Learned Prosecution Counsel referred the Court to the provisions of Section 5(3) of the Counterfeit Currency (Special Provisions) Act, Cap. C35 LFN 2004.



That by the provisions of Section 5(3) (Supra), the burden of disproving knowledge rests on the Accused Person. That in the instant case, the Accused Person missed the opportunity to discharge this burden placed on him by law when he declined to give evidence in defence to the charge.

On the third and last element of the offence that the notes recovered from the Accused Person are Counterfeit notes, the Learned Prosecution Counsel placed reliance on the evidence of the PW3, **AMINU ABDULZEEZ**, a Forensic Expert from the Nigeria Security, Printing and Minting Company that conducted analysis on the recovered notes. That the witness confirmed the notes as Counterfeit.

The Learned Prosecution Counsel, also placed reliance on the Report of the analysis tendered through the PW3 and marked Exhibit EFCC 4, to show that the notes recovered from the Accused Person are Counterfeit notes.

Finally the Learned Prosecution Counsel, **MUSA ISAH ESQ.** submitted that the Accused Person throughout the entire case

did not impeach the testimony that the currencies were found in his possession.

Learned Prosecution Counsel therefore, urged the Court to find that the Prosecution has established all the elements of the offences against the Accused Person beyond all reasonable doubt as required by law. That in the circumstance, the Court should proceed to convict the Accused Person as charged and sentence him accordingly.

As I have already indicated in this Judgment before now, the Accused Person opted not to give evidence in defence to the charge at his trial. The Accused Person is entitled in law to this option. The law is settled that at the close of the case for the Prosecution in support of the charge, the Accused Person has three (3) options open to him.

He may, remain silent and say nothing. He may opt to give evidence from the dock. In that case, he shall not be cross examined by the Learned Prosecution Counsel.

Thirdly he may decide to move into the witness box and give evidence in defence. In that case, Learned Prosecution Counsel is entitled to cross examine him.

The Law is also settled that where an Accused Person decided not to give evidence as in this case, the decision ought not to be a basis for comment by the Learned prosecution Counsel for the purpose of any argument.

Consequently the argument by the Learned Prosecution Counsel in his written address, that the decision by the Accused person not to give evidence, be construed as his admission of the evidence led in support of the charge, is hereby discountenanced as misconceived.

Now, by the decision of the Accused Person, it means the evidence in defence, is his statement dated 20<sup>th</sup> October, 2016 and Exhibit EFCC 3 before the Court. This is aside the legal submissions of his Learned Counsel as contained in the written address filed on the 19<sup>th</sup> June, 2018.

The extra judicial statement of the Accused Person was admitted in evidence on the 21<sup>st</sup> February, 2018 through the second Prosecution Witness, **WAZIRI ADAMU NITTE** an operative with the Economic and Financial Crimes Commission. ¶

From the statement, the Accused Person said that he was given the notes, the subject-matter of the charge, by a customer that bought his yam. That the customer requested the Accused Person to follow him to his house to deliver the yam. That the customer paid for the yam with counterfeit notes.

That he showed the money to one **ABBA TUKUR RUMA**. That **ABBA TUKUR RUMA** had earlier assisted him with capital to start business in yam, which the Accused Person said he was doing for the past five (5) years before his arrest on the 10<sup>th</sup> October, 2016 leading to the present proceeding against him.

That **ABBA TUKUR RUMA** told him that the notes are counterfeit. That **RUMA** collected part of the Counterfeit notes and told the Accused Person that he will lodge a Report to the police.

The Accused Person said that while waiting for the outcome of the Report to the police, he fell asleep and only to be arrested by the officials of the Nigeria Security and Civil Defence Corps with the remaining notes in his possession. That the notes found on him are payments for yam supplied which he accepted innocently without knowledge that the notes are fake or Counterfeit notes.

In the written address filed by the Learned Defence Counsel, **J.M. OMUGHELE ESQ**, Learned Defence Counsel adopted the issue as formulated in the written address of the Learned Prosecution Counsel.

In his argument on the issue the Learned Defence Counsel submitted that portions of the evidence in support of the charge are prejudicial and lacking in probative value. That hiding money in apparels in a manner making access difficult is a common step of prudence. That what was said of the Accused Person on the manner he hid the notes under his cardigan, is consistent with the ways of the most honest and prudent people.

Secondly that the assertion by the PW2 that investigation showed that the Accused Person is not a member of the Association of yam sellers at the Railway junction market and that the Accused Person was arrested at a place he ought not to have been at the time of arrest are not probative. That the fact that the Accused Person is not a member of the Association, does not necessarily eliminate the legitimacy of his presence without evidence to demonstrate that this is an exclusive requirement. That evidence illegitimizing the presence of the Accused Person at the market and indeed at the place of arrest at the time he was arrested, must be direct. In other words, that for such evidence to attract probative value, must proceed from the mouth of the Railway Authorities.

Learned Defence Counsel, **J.M. OMUGHELE ESQ.** submitted that the seeming diligence of prosecution witnesses is affected by some vices sufficient to defeat the case. That the notes recovered were defined by their serial numbers in the charge, and in Exhibits EFCC 2 and EFCC 4, but that there is no evidence before the Court to show that soon after the recovery of the notes from the Accused Person, either the PW1 or any other operative

defined the very currency notes by taking the particulars now being relied upon by the Prosecution in proof of the charge. That this omission is fundamental for several reasons.

Firstly, That the PW1 having failed to define the currency notes distinctly before forwarding to an expert, the witness cannot subsequently claim to identify the notes in Court long after he parted with them. That the subsequent identification in Court was made with reference to nothing. The learned defence counsel, urge the court to so hold.

Secondly that the practice in all investigations of this nature is to instantly particularise the recovered exhibits so as establish basis for identification at the trial. That this established criminal probative practice is lacking in this case.

Learned Defence Counsel, **J.M. OMUGHELE ESQ.** further argued that the evidence led in support of the charge failed to show who marked or noted the serial numbers and when the currencies were marked or noted in terms of recording the serial numbers from each one. Learned Defence counsel, **J.M. OMUGHELE ESQ.** argued that these lapses detract from the probative value of the

evidence led in support of the charge, as the Court cannot conclude, in the circumstance, that the currency analysed and tendered were not tampered with. Similarly that the Court cannot also conclude, that the currency recovered, were the currency upon which the charge is based.

Learned Defence Counsel further submitted that there is no evidence to show that the PW2 investigated what the Accused Person said of **ABBAS TUKUR RUMA** in this matter so as to negative the claim by the Accused Person in that regard. Learned Counsel argued that the fact that no uttering by the Accused Person of the recovered notes was suggested nor established by the investigation, goes to confirm that the Accused Person was in possession to await outcome of report to the police. Learned Defence Counsel argued that so far as possession is concerned, definite knowledge of the character of the currency cannot be attributed to the Accused Person, given his explanation of innocent receipt from buyers of goods, which according to the Defence Counsel, was not negated.

Learned Defence Counsel argued that though the information gathered from the accused person led to the arrest of **ABBAS**



**TUKUR RUMA**, there is nothing to suggest that any effort was made to confirm the veracity of what the accused person said of the involvement of **ABBAS TUKUR RUMA** in the matter. That investigation was also not directed to identify and arrest the persons who allegedly gave the accused person the counterfeit notes so as confirm the veracity of the claim of the accused person on the point.

On the provisions of Section 5(1)(b) of the Counterfeit currency (Special Provision) Act, LFN 2004, the Learned Defence Counsel submitted that the provisions demand possession and knowledge. That according to his extra-judicial statement, the accused person collected the notes as payment. That it was **ABBAS TUKUR RUMA** that expressed suspicion about the character of the notes. Learned Counsel submitted that suspicion, is not the same as knowledge; it only demands that action be taken pursuant to it by a prudent person. That going to the Police with part of the money to report is a reasonably prudent step.

In conclusion, the Learned Defence Counsel **J.M. OMUGHELE ESQ.** Urged the court to acquit the accused person because of the gaps identified in the case of the prosecution which according to learned counsel, raised doubt as to the guilt of the accused person.

Now, those are the various legal submissions of Learned Counsel as contained in the respective written addresses. The central issue in all these submissions is the question whether the evidence led in support of the charge met the standard stipulated by the provisions of Section 135(1) of the Evidence Act, 2011. The Learned Prosecution Counsel answered that question in the affirmative. The Learned Defence Counsel thought otherwise.

The Accused person is standing trial for offences contrary to and punishable under Section 5(1) (b) of the counterfeit Currency (Special Provisions) Act Cap. C35 LFN 2004. It provides-

*Any person who has in his possession any counterfeit bank note or current coin, knowing it to be counterfeit is guilty of an offence under this Act and upon conviction thereof shall be liable to*

*imprisonment for a term not exceeding twenty one years.*

The provisions of Section 5 (1) (b) (supra) as reproduced above are plain, clear and unambiguous. The literal principle of interpretation of statute is to the effect that, where statutory provisions are plain and clear, the court has no duty to interpret but to apply it, as clear statutory provisions do not call for interpretation. See the case of **AKEREDOLU VS MIMIKO (2014) 1 NWLR PART 1388 PAGE 402 AT 476-477.**

Relatedly, Section 5 (3) of the counterfeit currency (special provision) Act, Cap. C35 LFN 2004 provides-

*Where a person has fifty or more counterfeit Bank notes or current coins in his possession, the Federal High Court before whom such person is tried may, presume knowledge that they are counterfeit Bank notes or current coins and also an intention to utter any of them, unless he proves the contrary.*

Thus, where the counterfeit Bank notes are less than fifty, the Prosecution must establish **possession**. Secondly, the prosecution must show that the Bank notes are **counterfeit**. Lastly, the prosecution must establish that the accused person was in possession of the Bank notes with **knowledge** that they are counterfeit and also has the **intention** to utter any of them.

However, where the Bank notes are more than fifty, the Prosecution shall only prove **possession** and then demonstrate that the notes are **counterfeit**. In that case, the elements of knowledge and intention to utter any of them is presume by law pursuant to Section 5 (3) of the counterfeit currency (special provision) Act LFN 2004. The burden shifts to the accused person to adduce evidence to disprove knowledge and intention.

In the instant case, the latter is the situation. The accused person was found in possession of a total of eighty eight Bank notes. The prosecution therefore is relieved of the burden of proving knowledge and intention to utter any of them.

I therefore, accept the argument of the Learned Prosecution Counsel, that the first element of possession is established by the evidence of the PW1, **INSPECTOR DANIEL GANI**. The evidence of the PW3, **AMINU ABDULAZEEZ YUSUFU** on the other hand established that the eighty eight Bank notes found in the possession of the accused person are counterfeit. In further and conclusive proof of this fact, is exhibit EFCC 4, the Report of the analysis conducted by the PW3 – on the recovered Bank notes.

Knowledge therefore is not an element of the offence for which the accused person is standing trial. The Prosecution has no burden to prove knowledge. This so because by the provision of Section 5 (3) of the Counterfeit Currency (Special Provision) Act LFN 2004, where the Bank notes involved are more than fifty, the law presume knowledge on the part of the accused person.

That means once the notes are more than fifty, the offence becomes one of ***strict liability***. It is Constitutional for the Legislature to prescribe offence of ***strict liability*** as appropriate in the light of the ***provisoto*** the provisions of section 36 (5) of the Constitution 1999 as amended which provides that:-

*Provided that nothing in this section shall invalidate any law by reason only that the law impose upon any such person the burden of proving particular facts.*

However, I observe that the written address by the Learned Defence Counsel, **J.M. OMUGHELE ESQ.** is replete with arguments that knowledge is an element of the offence for which the accused person is standing trial. For instance, the Learned Defence Counsel had argued thus:-

*Section 5 (1) (b) of the Counterfeit Currency (special Provisions) Act 2004, demand possession and knowledge, going by the ordinary usage of the words in the statute. According to the extra judicial statement, the Defendant collected the notes as payment. It was **ABBAS RUMA** who expressed suspicion about the character of the notes. That suspicion is not the same as knowledge; it only demands that action be taken pursuant to it by a prudent person. Going to the Police with the part of the money to report is a reasonably prudent step.*

Earlier before this submission, the Learned Defence Counsel in the written address submitted that:-

*So as far as possession is concerned, definite knowledge of the character of the currency cannot be attributed to the Defendant, given his explanation of innocent receipt from buyers of goods which was not negated.*

With profound respect to the Learned Defence Counsel, I reject this argument, as misconceived. Once a person is in possession of more than fifty counterfeit Bank notes, the offence is consummated. The prosecution has no burden to prove **knowledge**. It is for the accused person to adduce evidence to disprove knowledge. In the special circumstances of this case, I find that **ABBAS TUKUR RUMA** is a vital witness for the Defence on the point. The accused person however failed to call him. Consequently there is nothing to show that a report was actually made to the Police.

Another point raised by the Learned Defence Counsel in the written address is -

*No evidence was given that soon after recovering the notes from the Defendant, the PW1 or any other operative defined the very currency notes by taking particulars now being relied on, the serial numbers, against or from the notes before they were sent to the EFCC, the CBN and the NSPMC. This is fundamental for several reasons.*

Again, with respect to the Learned Defence Counsel, the facts and evidence before the Court do not support this argument. The Accused Person was arrested on the 10<sup>th</sup> day of October, 2016. After the arrest and even before the Nigeria Security and Civil Defence Corps submit the case file to the EFCC, the recovered notes were forwarded by the Corps to the Central Bank of Nigeria for analysis. The letter by which the notes were forwarded is dated 21<sup>st</sup> October 2016, ten days after the arrest. The letter from the NSPMC forwarding the result of the analysis, shows that the particulars of the notes were given together with the notes before the analysis. Those particulars are reproduced in the Report of the analysis conducted by the NSPMC, which is evidence before



the court as shown in exhibit EFCC 4. Again, these particulars are stated on each count of the charge in each case.

I therefore reject the argument that the PW1 did not define the currency notes distinctly before forwarding them to an expert.

In the final analysis, I find that Prosecution has established the offence in each of the counts preferred against the accused person beyond all reasonable doubt. I find the Accused Person guilty of the offence in each of the counts and is consequently hereby convicted accordingly as charged.

#### **SENTENCING PROCEEDING**

**OMUGHELE ESQ:** The convict has been in custody since his arrest on the 10<sup>th</sup> October 2016. During this period of incarceration he has learnt his lesson on the capability of the law to get him arrested, prosecuted and convicted for the offences charged. This experience impacted on the convict on the need for reformation for life ahead of him.

I therefore urge the Court to temper justice with mercy.

**COURT:** I have listened to the plea of the Learned Defence Counsel in mitigation of sentence. I have considered the age of the convict. He has life ahead of him. I accept the submission of Counsel that this experience has taught him lessons sufficient to turn a new leaf in his approach to life. Lastly I consider the fact that the convict has been in prison custody since the date of his arrest on the 10<sup>th</sup> October, 2016.

In consideration of all these, I hereby sentenced the convict to fifteen (15) months term of imprisonment on each of the eight offences for which he is convicted. The sentences are to run concurrently.

I further order exhibit EFCC 1 forfeited to be destroyed by the EFCC.



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**JUSTICE S.M SHUIABU**  
**JUDGE**  
**1/04/2019**

**APPEARANCES:**

**ISAH MUSA ESQ.:** For the prosecution.

**J.M OMUGHELE ESQ.:** For the accused person.

