**IN THE HIGH COURT OF ANAMBRA STATE OF NIGERIA**
**IN THE HIGH COURT OF AWKA JUDICIAL DIVISION**
**HOLDEN AT AWKA**

**SUIT NO.A/6CA/2013**

**MAW/ 63C/2008**

**BEFORE HIS LORDSHIP, HON. JUSTICE DENNIS C. MADUECHESI, DELIVERED ON THE 19TH DAY OF DECEMBER, 2018.**

**BETWEEN**

**STEVEN ONUEGBU---------- APPELLANT**

**AND**

**COMMISSIONER OF POLICE---------- RESPONDENT**

**JUDGMENT**

This appeal is against the judgment of the Chief Magistrate Court of Anambra State, Awka Magisterial District, delivered on the 17/12/12, by His Worship, D.A.Onyefulu (as he then was). From the printed records the appellant was shown to have faced an eight count charge of:

(i) Stealing punishable under Section 495 (a) of the Criminal Procedure Code, Cap 36, Vol.II Revised Laws of Anambra State of Nigeria, 1991 as amended.

(ii) Stealing the postal matter or chattel contained in postal matter to wit: documents relating to trade mark, the property of Equity Law Office, Awka, punishable under Section 353 (2) of the Criminal Code, Cap.36 Vol. II Revised Laws of Anambra State of Nigeria, 1991 as amended.

(iii) Stealing the certificate of Trade Mark, the property of Equity Law Office, Awka, issued and sent by the Federal Ministry of Commerce and Industry, Abuja, to Equity Law Office, Awka, punishable under Section 353 (2) of the Criminal Code, Cap.36 Vol. II Revised Laws of Anambra State of Nigeria, 1991 as amended.

(iv) Stealing Equity Law Office Trade name, to wit: ***"Equity Law Office"*** property of Equity Law Office Awka, punishable under Section 353

(1) of the Criminal Code, Cap.36 Vol. II Revised Laws of Anambra State of Nigeria, 1991 as amended.

(v) Falsely and fraudulently representing himself to Anambra State Police Command, Corporate Affairs Commission, Abuja, Pharmacy Council of Nigeria, Nigeria Drug Law Enforcement Agency, Federal Inland Revenue Office, Awka, and to be a member of, or lawyer working at, Equity Law Office, Awka punishable under Section 460 of the Criminal Code, Cap.36 Vol. II Revised Laws of Anambra State of Nigeria, 1991 as amended.

(vi) Forging a document to wit: Equity Law Office letter headed paper or letter head, punishable under Section 443 (1) of the Criminal Code, Cap.36 Vol. II Revised Laws of Anambra State of Nigeria, 1991 as amended.

(vii) Keeping in his possession a Bachelor Degree Statement of Result belonging to one Uguru Nwabueze Robinson with Reg. No/96/000251, Department of Material/Metallurgical Engineering, reasonably suspected of having been stolen, punishable under Section 396 of the Criminal Code, Cap.36 Vol. II Revised Laws of Anambra State of Nigeria, 1991 as amended.

(viii) Uttering a false document of writing, to wit: Equity Law Office letter headed paper or latter head, an offence punishable under Section 444 of the Criminal Code, Cap.36 Vol. II Revised Laws of Anambra State of Nigeria, 1991 as amended.

At the end of the trial, the learned trial court discharged and acquitted the appellant of counts 1, 2, 3, 4, 5 and 7 but convicted him of counts 6 and 8. The learned trial; court proceeded to sentence the appellant to a 2 year imprisonment or a Ten Thousand Naira (₦10,000,00) fine. The appellant paid the fine and subsequently appealed against the judgment vide a Notice of Appeal dated 14/1/13 but filed on the 23/4/13. The appellant raised four (4) grounds of appeal in the said notice. During the pendency of this appeal, both the appellant and the respondent filed applications which were heard alongside the substantive appeal on the 8/10/18 and I reserved the rulings.

I will give my rulings in those applications in this judgment. However, before I do that let me give the brief facts of this appeal.

The appellant is a legal practitioner. He was allegedly employed as an associate counsel in Equity Law Office on the 20/6/07 for a 3 month probationary period. The probation was to last from 1/7/07 to sometime in September 2007. His employment was summarily terminated on the 17/8/07. He was alleged to have continued to be holding out himself to various Federal and State Government agencies as an associate counsel of Equity Law Office. And in that capacity forged Equity Law Office letter head using same to write several letters dated 17/09/07, 20/09/07, 02/10/07, 03/10/07 and 15/10/07. He was alleged to have blackmailed Peez Pharmaceutical Co. Ltd and one Honourable Ebere Ezechukwu.

According to the appellant, he authored the letter while still in the employ of Equity Law Office. He alleged that his travail was as a result of his advice to the chief counsel in that firm to live his life as a priest and because of his application for a loan which was rejected by the chief counsel.

INTERLOCUTORY APPLICATIONS

The first of the application is motion No:A/473M/15 dated 25/11/14 but filed on the 11/8/15. The motion is a preliminary objection to the appearance of the respondent's counsel. The appellant sought the following reliefs:

(1) An order prohibiting Mr. E.S.C Obiorah of Equity Law Office or any lawyer from Equity Law office from appearing in this appeal on behalf of the State in view of the purported fiat granted to him to prosecute charge number MAW/63C/08 without any specific authority from the Attorney General of Anambra State to prosecute the appeal with appeal Number A/6CA/2013.

(2) An order striking out the motion for dismissal of this appeal filed by Mr. Obiorah as the motion is incompetent as there is no specific authority from the Attorney general of Anambra state to file same.

He predicated his preliminary objection on two grounds. The application is supported by a 14 paragraph affidavit with 4 exhibits annexed thereto. He filed a written address which he adopted as his argument. In further oral submission, he submitted that the respondent has no counter affidavit; therefore, the application was not opposed. He urged the court to grant the reliefs he has sought.

In response, the respondent's counsel argued that the arguments on the preliminary objection were extensively canvassed at the Magistrate Court. That his argument in opposition in the instant notice is contained in the respondent's brief of argument. In further oral submission, he referred to Adekanye .v. FRN (2005) 15 NWLR (pt.949) 433 @ 462 and FRN .v. Adewunmi (2007) 10 NWLR (pt.1042) 399 @ 434.

He urged the court to dismiss the preliminary objection.

The gravamen of the appellant's submission in the preliminary objection is that the respondent's counsel: Dr. E.S.C Obiorah had no right to prosecute the appeal on the ground that the fiat or the authority to prosecute granted to him was against the interest of justice. He further contended that Dr. Obiorah is the complainant, witness and prosecutor at the same time. He submitted that the Attorney General in exercising his power under Section 211 (1) of the 1999 constitution must have regard to public interest, interest of justice and the need to prevent abuse of legal process. He placed reliance on the case of C.O.P .v. Emeakayi (2004) All FWLR (pt.211) 1522 and FRN .v. MARTINS & Anor (unreported) FHC/ABJ CR/61/90. He submitted that the powers of the Attorney General to give fiat to a legal practitioner can be challenged on any of the above grounds.

That the respondent's counsel has no locus standi. He referred to Osaho .v. FRN (2003) 4 WRN 69 and Offodile .v. Onejeme & Ors (2012) All FWLR (pt.668) 947 @ 949.

He finally urged the court to grant the reliefs sought.

Responding to the above submissions, the learned respondent's counsel reiterated that the Attorney General is constitutionally empowered to grant the authority or fiat to him to prosecute the appeal and the trial at the lower court. He urged the court to dismiss the preliminary objection.

Certainly, the appellant is attacking the appearance of Dr. E.S.C Obiorah in this appeal. The appellant made similar attack at the court below but he was unsuccessful. He wanted the court to set aside the fiat issued to Dr. E.S.C. Obiorah by the Attorney General of Anambra State.

I would say right away that the Attorney General is constitutionally empowered to delegate or donate his powers to a private legal practitioner by virtue of Sections 174 and 211 of the 1999 constitution. Once such powers are donated to a private legal practitioner, the legal practitioner only needs to tender the fiat as an exhibit.

This is meant to notify the court that such a private legal practitioner is prosecuting with the authority of the Attorney general. It follows therefore, that once a lawyer appears in court and announces his appearance, the court will not inquire into his authority to appear. It is only the party whom he claims to be representing that can challenge his alleged instruction. See Adekanye .v. FRN, supra @ 462, FRN .v. Adewunmi supra @ 424.

It is of no moment if such private legal practitioner is the complainant and witness as in the instant case. Once it is a personal case of the lawyer, he can do so. Even at that, any person is constitutionally entitled to conduct his case or engage any legal practitioner of his choice to do so on his behalf. Apart from the foregoing, the decision in the case of A.G. Federation .v. Kenny Martins & Anor supra, which the appellant relied heavily on, was set aside by the court of Appeal and the Supreme Court upheld the decision of Court of Appeal in Martins & Ors .v. FRN (2018) 13 NWLR (pt. 1637) 523 @ 543.

For avoidance of doubt, let me reproduce part of the decision of Supreme Court here:

> "In regards to issue of ethics, a lawyer cannot be a witness in a case that is not personal and then proceed to prosecute in the same matter. On the other hand, in a personal case, a legal practitioner can testify and represent himself. The reasoning is that a counsel cannot prosecute and be put in a witness box to be cross examined at the same time as it is not tidy and not in tandem with the rules of professional ethics and morals."

In the light of the above, I hold that the grounds of the preliminary objection relating to the appearance of Dr. E.S.C. Obiorah as a prosecutor and the respondent's counsel in this appeal as well as the complainant or witness is misconceived, frivolous and baseless. The preliminary objection is hereby dismissed.

The second motion was one brought by the respondent. It is motion No A/1177M/2014 brought pursuant to Order 56 Rules 5, 12 and 13 of the High Court (Civil Procedure) Rules 2006 and Section 6 (6) of the constitution of the Federal Republic of Nigeria 1999 as amended. The respondents sought the following reliefs:

(1) Dismissing the appeal as incompetent,

(2) Dismissing the appeal because the Honourable Court has no jurisdiction to entertain the same,
(3) Dismissing the appeal for want of diligent prosecution on the ground that the appellant /respondent failed to file his brief and other processes within the time provided for in Rule 13 of Order 56 of the High Court of Anambra State (Civil Procedure) Rules, 2006,
(4) And for other and further orders as this court might deem fit and proper.

The respondent predicated the above reliefs on 8 grounds as shown on the motion paper. The motion is supported by an 18 paragraph affidavit in support with one exhibit annexed thereto. Learned counsel for the respondent filed an address which he adopted as his argument in urging the court to strike out the appeal.
In reaction, the appellant filed a 12 paragraph counter affidavit in opposition. He filed an address which he also adopted as his argument in the application in urging the court to dismiss the application.
From the affidavit in support, the reasons given by the respondent appear to be in paragraphs 5 to 15. In his address, the learned counsel for the respondent contended that the court lacked jurisdiction to entertain the appeal on the ground that the appellant failed to serve the Notice of Appeal, memorandum of grounds of Appeal and other court processes. He relied on Braithwaite .v. Skye Bank Plc (2013) 5 NWLR (pt.1346) 1 @ 19, Bello .v. I.N.E.C (2010) 8 NWLR (pt.1196) 342 @ 405; Olorunyolemi .v. Akhagbe (2010) 8 NWLR (pt.1195) 48 @ 60 and Order 7 Rule 2 of the High Court Rules, 2006.
He argued further that the conditions precedents to filing of this appeal were not fulfilled. He submitted that failure by the appellant to comply with conditions stipulated under Order 56 Rules 12 and 15 of the High Court rules robs the court of jurisdiction to entertain the appeal. Reliance was placed on U.N.T.H.M.B. v. Nnoli (1994) 8 NWLR (pt.363) 376 @ 401; Ogieva .v. Igbinedion (2004) 14 NWLR (pt.894) 467; N.N.P.C. v. Tijani (2006) 17 NWLR (pt.1007) 29 @ 45, Gov. Ebonyi State .v. Isuama (2004) 6 NWLR (pt.870) 511 @ 533.
He submitted that where there is non – compliance with a stipulated pre – condition for setting a legal process in motion, any suit instituted in contravention of the precondition is incompetent. He argued that both the notice of appeal and the memorandum did not comply with the specified forms and they lacked vital

requirements as provided by the rules. He further relied on F.R.N. .v. Martins (2012) 14 NWLR (pt.1320) 287 @ 310.

It was further contended that the record of Appeal is incompetent as it is confusing having omitted the decision, ruling or orders and other documents necessary for adjudication of the appeal. He placed reliance on Idam .v. Mene (2009) 17 NWLR (pt.1169) 74 @ 95; Aderibigbe .v. Abidoye (2009) 10 NWLR (pt.1150) 592, 609 – 610.

Learned counsel urged the court to strike out the record of appeal. In further argument, learned counsel submitted that the appellant has failed to diligently prosecute the appeal because of lack of Appellant's Brief of Argument. He referred to Ajayi .v. Omorogbe (1993) 6 NWLR (pt.301) 512 @ 534.

He alleged that the appeal is a mere academic exercise because the appellant has already served the sentence. That by so doing, the judgment of the learned trial court had been executed. Reliance was placed on Oparaugo .v. Oparaugo (2008) 5 NWLR (pt.1081) 575 @ 597. He urged the court to dismiss the appeal.

In response, the appellant argued that the processes were served on the Attorney General of Anambra state. He argued that the issue of service had been overtaken by events. On the issue of incompetence of Notice of Appeal, counsel contended that the rules of court provided for oral Notice of Appeal or that a memorandum of appeal be included in the notice of appeal. He argued that all the requirements as stipulated by the High Court Rules were complied with. He relied on Order 26, Order 52 Rule 5 (2) of the High Court Rules, 2006 and Ikpaja .v. Bendel State 1 LC 207 @ 209. Onubogu .v. State supra.

He stressed the point that Order 56 Rules 11 and 12 (2, 3 and 4) of the High Court Rules were complied with. He urged the court to dismiss the application.

I have carefully perused the affidavit evidence of both parties as well as the submissions of their counsel. I found that some of the complaints by the applicant in this application had been overtaken by events or were waived. For instance, the respondent/applicant had since filed its Respondent's Brief of Argument thereby rendering the issue of lack of service of the originating processes of the appeal ineffectual and unnecessary. As per issue of lack of diligent prosecution of appeal, I found that the appellant filed his Brief of Argument on the 11/08/15.

It is not lost on me that the respondent/applicant filed this motion on the 13/10/14 before appellant filed his brief of argument. However, the motion became stale as

at 8/10/18 when the appeal was argued. The learned counsel for the respondent ought not to have insisted on arguing the motion having seen that virtually all the reliefs being sought were no longer potent. Both the respondent's and appellant's Briefs of argument were before the court and were adopted. I ask, what is the purpose of this application then? I believe that the respondent's counsel ought to have applied to have the motion struck out because it had become an academic exercise at the time it was argued. In the main, I found the application to be without merit and it is hereby struck out.

This brings me to the substantive appeal. As I have indicated earlier, the appellant raised four (4) grounds of appeal originally. He later filed memorandum of Additional Grounds of Appeal containing 6 grounds some of which are repetition of the original grounds. In his brief of argument, he formulated 14 issues for determination. This is unacceptable. I need to say that the main purpose of formulation of issues for determination in an appeal is to enable the parties to narrow the issues in controversy in the grounds of appeal in the interest of accuracy, clarity and brevity. In other words, an issue in an appeal is a succinct and precise question based on one or more grounds of appeal for the determination of the court. It is a question of law or fact or both and should not include argument or opinion of facts not yet established. See the case of Ezeuko .v. State (2016) 6 NWLR (pt.1509) 529 @ 575 – 582.

Proliferation of issues for determination in an appeal is not allowed in law. See John Shoy International Ltd .v. FHA (2016) 14 NWLR (pt.1533) 427 @ 443.

In this appeal, it is not in doubt that the appellant formulated 14 issues for determination from only 6 grounds of appeal. Even the grounds of appeal also have problems in the way they were drafted. A cursory look at the grounds of appeal will leave no one in doubt that it is not only inelegantly drafted but it is verbose and argumentative. For example, grounds 1 to 3 have average of about 10 paragraphs of particulars. Moreover, I do not see the rationale and essence of ground 4 which disparages the integrity, character and objectivity of the learned trial court. The appellant scandalously used the most abusive words on the person of the learned trial magistrate (as he then was). I do not think that a counsel could go so low in an appeal against a decision of a court. I need to say at this earliest opportunity that the right of an appeal is constitutional. However, it is within the province of law also that the exercise of such right must be within bounds and not

at large. Where the right is let loose, the effect stands to endanger the very purpose for which it is set out to achieve. All rights are subject to limitation, and constitutional right is not an exception, but is circumscribed also within that principle. See the case of Ladoja .v. Ajimobi & Ors (2016) 10 NWLR (pt.1519) 87 @ 129.

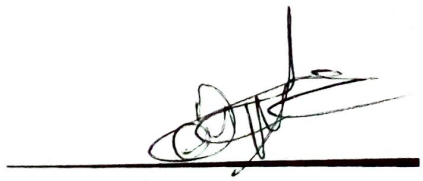
I have painstakingly read the printed records in this appeal; I could not find where the integrity, character and personality of the learned trial Magistrate were made an issue. It was not the learned trial court that was on trial. In essence, the appellant's grounds 3 and 4 are incompetent, they are hereby struck out.

It is trite that the fact that a ground of appeal is argumentative, repetitive or inelegantly couched it is not sufficient to deny an appellant his right of appeal when on the face of the ground of appeal notable issue arises for consideration by the court. The principal duty of the court is to do justice. See Waziri & Anor .v. Geidam & Ors (2016) 11 NWLR (pt.1523) 230 @ 257.

In regard of the above, I am inclined to countenance the other grounds of appeal presented by the appellant. Likewise, in considering an appeal and ensuring that technicalities are not elevated beyond their scope or in a way to stifle substantial justice, the court is obliged to consider a brief of argument with issues not neatly presented, verbose or clumsy. The court has the lee – way to re – craft such issues in a manner to show the light to what is really in controversy in the interest of justice and so the court seeking accuracy, clarity and brevity would design the issues to suit the purpose on ground.

An appellate court is not expected to confine itself to issues confusingly on display whereby in considering the matter in dispute the court loses its way. See the case of Okeke .v. State (2016) 7 NWLR (pt.1512) 417 @ 445 – 446.

After considering the memorandum of grounds of appeal and indeed the totality of the issues for determination as formulated by the appellant, I believe strongly that the omnibus ground (ie ground 1) is apposite and apt as a ground in the appeal. Similarly, issue No1 formulated by the appellant is also appropriate in the determination of the appeal. Nonetheless, I would consider the submission made by the appellant in other issues in the resolution of this appeal.



## ISSUES FOR DETERMINATION

"Whether the court was right in law or not, not minding the material contradiction in the case of the prosecution, which had created serious doubt and the court went ahead to convict"

Learned counsel argued that there were material contradictions between the evidence of PW1 and PW4. He submitted that in law, once there is a material contradiction which makes the case of the prosecution unreliable, it is unsafe for the court to convict and such doubt is always resolved in favour of the accused person. Reliance was placed on Odunsi .v. The State (1970) ANLR 183 @ 191; Igbo .v. The State (1975) 11 S.C 129; Muka .v. State (1976) 9 – 10 S.C 305 @ 325 – 327; Nwabueze & Ors .v. The State (1988) 4 NWLR (pt.16) 27 @ 28. Obade & Ors .v. The state (1991) 6 NWLR (pt.198) 435 @ 444; Eze .v. The State (1992) 7 NWLR (pt.251) 75 @ 83 – 85 and The State .v. Emine (1992) 7 NWLR (pt.256) 658 @ 667.

Learned counsel went on to highlight the areas in which the material contradictions occurred. He submitted that in criminal trial, every doubt must be genuine and reasonable. He relied on the case of Onwe .v. The State (1975) 9 – 11 S.C 23 @ 32 and State .v. Balogun (1964) 2 ANLR 178 @ 180.

He further submitted that the learned trial court failed to resolve that the period between 1/9/07 to 30/10/07 was in issue because PW1 testified that exhibit D did not emanate from his office. Secondly, that the appellant who authored exhibit D was dismissed from his office before the probation period which did not expire at the time the letter head was allegedly forged. He submitted that the appellant was entitled to be given the benefit of doubt created by the PW1's evidence. He referred to Fashanu .v. Adekoya (1974) 1 All NLR (pt.1) 35 @ 41 – 43. He further referred to a host of other authorities that stated that once a doubt has been created; it would be resolved in favour of the accused person. He argued that the learned trial court neglected the PW1's evidence to the effect that the appellant was on probation and was not allowed to write or sign on behalf of PW1. He further argued that the learned trial court was wrong when he amended the charge. That the trial court was bound by the charge sheet and based on it to convict the appellant. Reliance was placed on Clark .v. The State (1986) 3 NWLR (pt.35) 331 @ 407).

He went on to contend that the learned trial court made material assumptions in convicting the appellant. He referred to Mohammed .v. The State (1991)5 NWLR (pt.192) 438 @ 456; R.V. Ogunde (1936 – 7) 13 NLR, 180 @ 182.

He stated that the learned trial court was wrong to have based his decision to convict the appellant on PW1's evidence and the extra judicial statement of the defendant to the police. That the trial court failed to indicate part of exhibit "V" he believed and those he did not believe or accepted. Reliance was placed on Shodiya .v. State (1992) 3 NWLR (pt.230) 457; Nwuguru .v. State (1991) 1 NWLR (pt.165) 41 @ 49 and Duru .v. Nwosu (1989) 4 NWLR (pt.113 24 @ 35 – 36.

That the trial court failed to consider and examine the defence of the appellant and this amounted to miscarriage of justice. He referred to Ogunleye .v. State (1991) 3 NWLR (pt.177) 1 @ 13.

That the trial court ought to have considered the appellant's defence no matter how stupid, unpalatable, bogus or incongruous such a defence might be. He referred to Bozin .v. State (1985) 2 NWLR (pt.8) 465 @ 480; Adamu & Ors .v. State (1991) 4 NWLR (pt.187) 530 @ 538; Oguala .v. The State (1991) (pt.175) (sic) 509 @ 586; Kim .v. State (1992) 4 NWLR (pt.233) 17 @ 57 Sughy .v. State (1988) 2 NWLR (pt.77) 475 @ 494; Ekpenyong .v. State (1991) 7 NWLR (pt.200) 683 @ 698 and Opayemi .v. The State (1985) 12 SC 59 @ 61.

He submitted that the prosecution must prove its case beyond reasonable doubt. He referred to Okoko .v. State (1964) 1 ANLR, 423; State .v. Obaji (1965) 9 ENLR 68 @ 74; Queen .v. Ijoma (1960) WRNLR 130 @ 134, Williams .v. The State (1992) 8 NWLR (pt.261) 515 @ 521; Alake .v. State (1991) 7 NWLR (pt.205) 567 @ 591.

He argued that the prosecution failed to negate the defence raised by the appellant. He referred to Opayemi .v. The State supra. That claim of rights negates mens rea. He referred to Ohonbamu .v. C.O.P. (1990) 6 NWLR (pt.155) 201 @ 208 and Ibeziako & Ors .v. The State (1989) 1 CLRN 123 @ 139.

That a conviction without proof of mens rea is bad in law and should be set aside. Reliance was placed on R .v. Vega (1938) 4 WACA 8 and.Omoboriowo & Anor .v. Ajasin (1986) 3 SC, 178 @ 225.

That intent of an offence must be proved alongside other facts that constituted an offence. He referred to State .v. Ofole (1972) 2 ECSLR (pt.2) 524 @ 526; R .v. Damingo (1963) 1 All NLR 81.

He further argued that the charge against the appellant was motivated by malice. He submitted that where evidence exists that a charge was motivated by malice, or trumped up; the appellate court should quash any conviction arising there from. He referred to Gwawoh .v. COP (1974)1 ANLR (pt.2) 395 @ 399 – 402 and Onyekwe .v. The State (1988)1 NWLR (pt72) 565 @ 576.

That an appellate court is empowered to consider defences raised by evidence though not considered by the trial court. That the learned trial court rejected admissible evidence concerning the reasons that forms the basis of this charge. He alleged that the trial court failed to evaluate and consider exhibit "W" (ie the search warrant). He accused the learned trial court of taking over the case of the prosecution, made material assumptions and proceeded to convict the appellant. He referred to Ndidi .v. State (2007) 5 SC, 175 and Mohammed .v. The State (1991) 5 NWLR (pt.192) 438 @ 456.

Learned counsel went on to argue that the appellant was denied fair hearing by the trial court because the court did not determine motion No NMC/Misc.52/2012. He placed reliance on Nitel .v. Mayaki (2007) 4 NWLR (pt.1023) 173; Enebeli .v. CBN (2006) 9 NWLR (pt.984) 69; Eke .v. Ogbonda (2006) 18 NWLR (pt.1012) 506; Section 36 (1) and (4) of the constitution of FRN, 1999 as amended and Sambo .v. State (1989) 1 CLRN. 75 @ 85.

He submitted that the learned trial court did not evaluate the totality of evidence adduced before reaching his decision. That the judgment of the trial court did not contain point or points for determination contrary to section 329 of the Administration of Criminal Justice of Anambra State. He argued that the failure occasioned miscarriage of justice. He referred to Ogunleye .v. state, supra and Duru .v. Nwosu, supra. Aigbe & Anor .v. The State 1977 9 – 10 SC, 77 @ 90; Queen .v. Fadina (1958) 3 FSC 11.

Counsel further submitted that if the liberty of a man is at stake, every requirement of the law must be strictly complied with. Reliance was placed on Fawehinmi .v. State (1990) 5 NWLR (pt.148) 42 @ 87.

He submitted that the underlying factor in every judgment is adherence to fairness to all parties. He referred to Abdullahi .v. State (1995) 9 NWLR (pt.417) 115 @ 125 and Stephen .v. State (1988) 3 NWLR (pt.83) 460.

That the trial court failed to consider and evaluate exhibit "1" in his judgment. He contended that the learned trial court failed to follow and apply the decision of

Federal High Court contrary to the constitution. The court was urged to set aside the judgment of the learned trial court, discharge and acquit the appellant.

Responding to the above submissions, the respondent's counsel submitted that by the provisions of Section 138 (1) of the Evidence Act, 2011 as amended, 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. That beyond reasonable doubt does not mean beyond shadow of doubt. **Reliance** was placed on Dibie .v. State (2007) 9 NWLR (pt.1038) 30 @ 56 – 57; **Ochemaje** .v. State (2008) 15 NWLR (pt.1109) 57 @ 95; Nwaturuocha .v. State (2011) 6 NWLR (pt.1242) 170 and Akpa .v. State (2008) 14 NWLR (pt.1106) 72 @ 101.

He argued that appellant was charged, tried and convicted for forging the letterhead of Equity Law Office and uttering forged documents. He referred to Sections 443 (1) and 437 of the Criminal Code. He stated that the appellant used the forged letter heads to write letters dated 17/09/2007, 20/09/2007, 02/10/2007, 03/10/2007 and15/10/2007 to various government agencies against Hon. Ezechukwu and Peez Pharmaceutical Ltd. That the appellant admitted committing the crime in his evidence. He submitted that once a defendant admits any fact against his interest, the court is enjoined to rely on the admission. He referred to INEC .v. Oshiomhole (2009) 4 NWLR (pt.1132) 607 and Ebla Const. Ltd .v. Costain (W.A) Plc (2011) 6 NWLR (pt.1242) 110.

He submitted that the prosecution proved the case of forgery against the appellant. He relied on the case of Amadi .v. FRN (2008) 18 NWLR (pt.1119) 259 @ 279 – 280.

Learned counsel submitted that prosecution also proved the offence of uttering false documents under Section 444 of the Criminal Code against the appellant. He contended that PW1 and PW4 gave unchallenged evidence that the appellant was not authorized to make or formulate the Equity Law office letterheads which he used in writing the offensive letters. He placed reliance on Aleke.v. State (1991) 7 NWLR (pt.205) 567 @ 593 and Blacks Law Dictionary, 8th ed. (2004) @ 1582 to give the ingredients and definition of the offence.

It was contended that the appellant admitted that he submitted the false letterheads to all the recipients and he intended the recipients to act on the documents as genuine ones. It was argued that in each of the letters, the appellant falsely referred to Mr. Asiegbu when such a person did not exist. It was submitted that a fraudulent

action or conduct conveys an element of deceit to obtain an advantage for the owner of the fraudulent action or conduct or another person or to cause loss to any other person. He relied on the case of Onwudiwe .v. FRN (2006) 10 NWLR (pt.988) 382 @ 429 – 430.

Learned counsel maintained that the prosecution proved the offence of uttering false documents against the appellant beyond reasonable doubt. That the learned trial court rightly convicted the appellant of the two offences. The court was urged to affirm the judgment of the learned trial court and to dismiss the appeal.

Reacting to the argument by the respondent's counsel, the appellant filed a Reply brief on the 3/10/18. In the reply brief the appellant began all over again to make arguments which cannot be entertained and allowed in a Reply brief.

It is settled that the main purpose of a reply brief is to answer any new points arising from the respondent's brief of argument. A reply brief is filed when an issue of law or argument raised in the respondent's brief calls for a reply. Where it is necessary, it should be limited to answering any new point arising from the respondent's brief. See the case of Godgift .v. State (2016) 13 NWLR (pt.1530) 444 @ 462.

The appellant's Reply brief in the instant appeal fell below the standard expected. I did not see any need for the reply brief except that the appellant used same to highlight the parts of evidence adduced that were in his favour but were not reckoned with by the trial court and the parts of the prosecution's evidence that were contradictory and inadmissible which the learned trial court relied upon. He did that in the main brief of argument.

Apart from the above, the appellant used the reply brief to haul more far reaching invectives and abuses at the prosecution's counsel and on the person of the learned trial court. I must say, however, that the only tangible and legal argument in the reply brief is when the appellant submitted that "criminal grounds of appeal are quite different from the grounds of appeal in civil matters" I agree with him on that point. I say no more.

I would now proceed to resolve the issue.

Section 443(1) of the criminal code provides

> "Any person who forges any document, writing or seal is guilty of an offence which unless otherwise stated is a felony and he is

liable, if no other punishment is provided, to imprisonment for three years".

In section 437 of the criminal code, forgery is defined as

> "A person who makes a counterfeit seal, mark... with intent in either case that the thing so made may in any way be used or acted upon as genuine, whether in Anambra State or elsewhere, 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 whether in Anambra State or else where is said to forge the seal or mark."

As per the offence of uttering false document, section 444 of the Criminal Code cap 36, vol. II, Revised Laws of Anambra State, 1991 provides as follows:

> "Any person, who knowingly and fraudulently utters a false document or writing of counterfeit seal, is guilty of an offence of the same kind and is liable to the same punishment as if he forged the thing in question.

It is immaterial whether the false document or writing or counterfeit seal was made in Anambra State or else where.

> The term 'fraudulently' means an intention that the thing in question shall be used or acted upon as genuine whether in Anambra State or else where, to the prejudice of some person, whether a particular person or not, shall in the belief be induced to do or refrain from doing some act, whether in Anambra State or elsewhere".

Therefore, to prove an offence of forgery against any person, the prosecution must establish that:

(a) There must be a document, writing or mark.
(b) The document is a counterfeit or false
(c) The counterfeit/false document was made by the defendant.
(d) The defendant intended the counterfeit/false document to be used or acted upon as genuine to the prejudice of another person or,

(e) The defendant intended that any person in the belief that the counterfeit /false document is genuine be induced to do or refrain from doing an act.

Generally see the case of Odiawa v. FRN (2008) All FWLR (PT 439) 436. Similarly, the prosecution is expected to establish the following essential elements of uttering false document or writing:

(a) The document or writing is false.
(b) That it was uttered knowingly and fraudulently.

By virtue of Section 135 (1) of the Evidence Act, the person who alleges that a document was forged must prove that allegation beyond reasonable doubt. See the case Nduul .v. Wayo (2018) 16 NWLR (pt.1646) 548 @ 601.

The document which was allegedly forged in the instant appeal is the letter head of Equity Law Office. It is not disputed that the appellant wrote the letters using the letter heads. The appellant himself admitted it. (See pages 84 to 89 of the record). The only fact the appellant did not admit was that he did not write the letters using the letter heads of Equity Law Office when he left the office. He claimed that he wrote the letters while in that office.

However, he admitted using the computer on his desk to formulate the letter heads. That he did that with the assistance of the secretary. The question remains: As at the time he was formulating the letter head, whether with the assistance of the secretary or not, did the appellant obtain permission from his superior? PW1 stated categorically that he did not authorize the appellant to do so. (See pages 14 and 16). The appellant did not challenge this evidence. PW4 further testified that the letterheads which the appellant used in writing the letters were not authentic. Again, the evidence of PW4 on this point was not challenged.

To be clear, the following excerpts of the cross examination would be imperative:

"Qtn: when you wrote these letters, did you obtain a specific permission from the Director of Equity Law Office?.

Ans: No, I cannot remember for now.

Qtn: Are you saying that you did not write those letters that were included in Servanda Chambers letter to Equity (Exhibit 'D')?

Ans: I wrote them myself

Qtn: The letter heads you used in writing these letters to various agencies which bore Equity Law Office you formulated using the computer?

Ans: Yes, from the computer in Equity Law Office"

From the answer elicited from the appellant, he expressly admitted that he formulated the letter heads from his computer. It is of no moment whether he did so within the period he was employed by the law firm or when he had left. The bottom line is that he formulated the letter head without the permission of the management of the law firm.

The learned trial court held as follows:

"I hold that by the evidence of the prosecution through PW1 and the defendant's admission in exhibit V his statement to the police there is a clear proof of forgery. It has been held that to sign a document in the name of another person is forgery and the document is a forged document. See R v. Damingo (1963) 1 All NLR 81

To even insert in a document a false date or place of making where it is material constituted a forgery. See the old case of R v. Betson (1869) LR1 CCR 200. This means that the defendant acted as if he has the authority of the firm to write such a letter.

There has been shown a clear intent to defraud or to act as if the letter was genuine and to make the person receiving it to act as if it was from a proper source or that is indeed genuine. I hold that the defendant has not been able to rebut this fact or explain his reasons, he rather admitted writing them. The issue is even if he was still in the employ of the firm he ought to be authorized by his employers. He has to act as if he was employed and under someone. I find him liable for this and I hold that the prosecution has proved this count."

The appellant had argued that there were material contradictions between the PW1's evidence and PW4's evidence.

With due respect to counsel, I am unable to find those contradictions he has laboured to highlight weighty enough to displace his categorical admissions. Above all, it is not every contradiction or inconsistency in the prosecution's case that would warrant the acquittal of an accused person. The contradiction or inconsistency must be substantial and fundamental to the main issue before the trial court. In other words, where there exists some minor discrepancy between a previous written statement and subsequent one, such discrepancy or disparity would not destroy the evidence because only material contradictions are relevant and capable of destroying the case of the prosecution. See the case of Baalo v. FRN (2016)13 NWLR (pt 1530) 400@432.

The appellant referred to the answer given by PW1 under cross examination. In page 29 of the record, PW1 stated:

> "The exhibit's' can only come from my computer. Any person attempting to use my computer would be stealing as it is totally forbidden and no lawyer was allowed to use any other letter head except the one in exhibit E but with my express permission. The accused person has no permission of mine to forge my letter head to write the various bodies".

The PW4 stated in his evidence as follows :( at page 52 of the record)

Qtn: Who uses the letter head in Equity Law Office?

Ans: "Only the director of Equity Law Office that uses it as in Exhibit E. No other person in the office is authorized to use it"

What is the contradiction in the above answer given by PW1 and PW4? As a matter of fact the two answers were not contradictory but were complementary to each other. As I said earlier, the appellant admitted formulating the letter heads and using same to write the offensive letters. It is settled that the facts that are admitted need no further proof. See Osuagwu v. State (2009)1NWLR (pt 1123)523.

I therefore, hold that the learned trial court was absolutely right in his findings that the prosecution proved the offence of forgery against the appellant beyond reasonable doubt.

As for the offence of uttering false document, the PW1 and PW4 in their evidence stated that the appellant was not authorized to use the letter heads to write the offensive letters. The appellant admitted that he formulated the letter head from the computer on his desk at Equity Law Office. He admitted he used the letter heads which he formulated to write the letters to the respective agencies and that he wanted the agencies to accept the letters as authentic documents from Equity Law Office. (see page 89 of the record). Again, the appellant admitted referring to Mr. Asiegbu as the client of Equity Law Office when he knew that no such person exists as a client to Equity Law Office. He admitted that the name "Asiegbu" was his name. He put up that name as a client to Equity Law Office, to write to CAC, Abuja against Honourable Ebere Ezechukwu and Peez Pharmaceutical Co. Ltd. In his findings, the learned trial court put it this way:

"By the evidence before me it shows the defendant made out the letter to appear that some one briefed him to write it. In his evidence defendant admitted he briefed himself and I find this most strange. Can he brief himself? Why did the defendant not write in a direct manner? A manner to show that he is writing it himself and not on behalf of a client.

The answer is that the document was surreptitiously written by him and altered by him deliberately. There is thus mens rea and the requisite actus reus as he was not authorized to do so. Defendant even acknowledged in cross examination on 10/11/2011 that he could not remember if he had authorization to write the letter. I find him liable for this and I rely on the principle stated in Aleke .v. State (1991)7 NWLR (pt 205)567 and 593. The defendant has not been able to explain why he acted in such a manner".

I have scrutinized exhibit "V". The appellant clearly admitted that he wrote the document. In that exhibit V, the appellant equally admitted that he used the letter heads of Equity Law Office to write the letters. In essence, it is not disputed that the appellant used the letter heads he formulated from his desk computer to write the letters. Again, it is immaterial whether he wrote the letters secretly or openly or during the period he was employed in that firm or when he was suspended. The truth of the matter, which the appellant eloquently admitted, was that he wrote and sent the letters to various state and federal agencies without the permission of the management of the firm that employed him. That to me was the crux of the matter.

I say so because the appellant dwelt so much on whether he was still in the employ of the law firm or outside it. That again does not matter.

Now there is this evidence that as a result of the letters (which the appellant sent to Corporate Affairs Commission,) Hon. Ebere Ezechukwu and Peez Pharmaceutical limited were queried by CAC. In other words, those he sent the letters to, actually acted on them. I have painstakingly waded through the massive record of Appeal, the appellant's brief of argument and Reply brief as well as the respondent's brief, I found it virtually impossible to upset the findings made by the lower court no matter how much I tried to do so. All the arguments proffered by the appellant with respect to his defence of malice did not hold water in view of his admissions.

I hold in the circumstances that the learned trial court was absolutely right in his findings and in his holding that the prosecution proved the offence of uttering false document against the appellant beyond reasonable doubt.

In the final result, this appeal lacks merit and it is hereby dismissed accordingly.

.....

**Hon. Justice Dennis C.Maduechesi**

**Appearances:**
**B.S. Onuegbu Esq appears in person**

**Dr. E.S.C. Obiorah appears for the prosecution.**