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**IN THE FEDERAL HIGH COURT OF NIGERIA.**  
**IN THE AWKA JUDICIAL DIVISION**  
**HOLDING AT AWKA**  
**ON MONDAY THE 19<sup>TH</sup> OF NOVEMBER, 2018**  
**BEFORE HIS LORDSHIP,**  
**HON. JUSTICE M. L. ABUBAKAR (JUDGE)**

SUIT NO: FHC/AWK/CS/75C/2013

**BETWEEN**

1. FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

**AND**

1. ANAYO OKOYE	}	<b>DEFENDANTS</b>
2. IFEANYI ONUOHA		
3. CHUKWUDOZIE EZE		
4. OKECHUKWU NWAFOR		

**JUDGMENT**

This is a transferred case from the Lagos Division of this court to this Awka Division. The Defendants stand charge of six (6) counts of an amended charged as follows:

**Count 1:** That you Anayo Okoye 'M', Ifeanyi Onuoha 'M' Chukwudozie Eze 'M' Okechukukwu Nwafor 'M' on or about the 21<sup>st</sup> day of February, 2009 at Onitsha within the jurisdiction of the Federal High Court of Nigeria conspired with one another and persons now at large, to commit a felony, to wit: possession of counterfeit and substandard drugs and you thereby committed an offence contrary to Section 516 of the Criminal Code Act Cap C. 38 of the Laws of the Federation of Nigeria 2004 and punishable under the same Section of

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the Act read in conjunction with Section 3 (1) (a) of the counterfeit and fake drugs and unwholesome Processed Foods (miscellaneous Provisions) Act Cap. 34 Laws of the Federation of Nigeria 2004.

**Count 2:** That you Anayo Okoye 'M', Ifeanyi Onuoha 'M' Chukwudozie Eze 'M' Okechukukwu Nwafor 'M' on or about 21<sup>st</sup> day of February, 2009 at Onitsha within the jurisdiction of Federal High Court of Nigeria had in your possession for sale Counterfeit and Substandard Amalar, Artesunat, Amplicox, Augumentine, NGU Valgin, Glanil, Brinerdin, Actifed, Zinnat, Amoxil, Halfan etc, drugs and you thereby committed an offence contrary to Section 1 (a) and (b) of the counterfeit and fake drugs and unwholesome Processed Foods (miscellaneous Provisions) Act Cap. 34 Laws of the Federation of Nigeria 2004 and punishable under Section 3 (1) (a) of the same Act.

**Count 3:** That you Anayo Okoye 'M', Ifeanyi Onuoha 'M' Chukwudozie Eze 'M' Okechukukwu Nwafor 'M' on or about the 21<sup>st</sup> day of February, 2009 at Onitsha within the jurisdiction of the Federal High Court of Nigeria did conspire with one another and persons now at large, to display for the purpose of sale, counterfeit and substandard drugs and you thereby committed an offence contrary to Section 516 of the Criminal Code Act Cap C. 38, Laws of the Federation of Nigeria 2004 read in conjunction with Section 3 (1) (b) of the Counterfeit and Fake Drugs and unwholesome Processed

*M. Anayo*

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Foods (miscellaneous Provisions) Act Cap. C34 Laws of the Federation of Nigeria 2004.

**Count 4:** That you Anayo Okoye 'M', Ifeanyi Onuoha 'M' Chukwudozie Eze 'M' Okechukukwu Nwafor 'M' on or about 21<sup>st</sup> day of February, 2009 at Onitsha within the Jurisdiction of the Federal High of Nigeria did display for the purpose of sale counterfeit and Substandard Amalar, Artesunate, Amplicox, Augumentine, NGC Valgin, Glanil, Brinerdine, Actifed, Zinnat, Amoxil, Halfan etc, drugs at Beer line (Ogbo Mmanya), Onitsha Beer Dealers Market, Headbridge Onitsha, a place not duly licenced or registered by the authority and you thereby committed an offence contrary to Section (2) (1) (a) and (b) of the Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act Cap. C34 Laws of the Federation of Nigeria 2004 and punishable under Section 3 (1) (b) of the same Act.

**Count 5:** That you Anayo Okoye 'M', Ifeanyi Onuoha 'M' Chukwudozie Eze 'M' Okechukukwu Nwafor 'M' on or about the 21<sup>st</sup> day of February, 2009 on Onitsha within the Jurisdiction of the Federal High Court of Nigeria did conspire with one another to falsify the trademarks of Neros Pharmaceuticals Limited, Elbe Pharmacy Limited, Glaxo Smithkline (GSK) etc, and you thereby committed an offence contrary to Section 516 of the Criminal Code Act Cap. C38, Law of the Federation of Nigeria 2004.



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**Count 6:** That you Anayo Okoye 'M', Ifeanyi Onuoha 'M' Chukwudozie Eze 'M' Okechukukwu Nwafor 'M' on or about 21<sup>st</sup> day of February, 2009 at Onitsha within the jurisdiction of the Federal High Court of Nigeria had in your possession for sale Fake brands of Amalar, Artesunate, Amplicox, Augumentine, NGU Valgin, Glanil, Brinerdine, Actifed, Zinnat, Amoxil, Halfan etc, drugs, bearing forged trademarks resembling the trademarks belonging to Neros Pharmaceuticals Limited, Elbe Pharmacy Limited, Glaxo Smithkline (GSK) etc., all trademark proprietors of the original Amalar, Artesunant, Amplicox, Augumentine, NGC Valgin, Glanil, Brinerdine, Actifed, Zinnat, Amoxill, Halfan etc, drugs which is calculated to deceived and to be acted upon as genuine infringing upon the trademark rights of the proprietors (owners of the trademarks), and you thereby committed an offence contrary to Section 3 (2) of the Merchandise marks Act cap M 10 Laws of the Federation of Nigeria 2004 and punishable under Section 3 (3) (a) and (c) of the same Act.

★ The plea of the Defendants were taken on 28/1/2014 and the prosecution called four (4) witnesses in proof of their case i.e Pw1 Donatus Chima Okoro, PW2 Akarule Chidozie, PW3, Asp Abdulrahman Mustafa and PW4, CSP Dr. Benedict Agbo. Similarly sixteen (16) Exhibits were tendered through the said witnesses as follows:

1. Exhibit 1: A copy of a petition written to the police dated 17/2/2009 by Neros Pharmaceuticals Limited titled "Re-sale of suspected fake Artesunate Tablets at Fagge – Onitsha.

2. Exhibit 2: A copy of a written statement made by the PW1 to the police on 27/2009
3. Exhibit 3: Is a Ghana Must go Bag and its contents registered as C.E.R 251/2009 by the police
4. Exhibits 4, 4(a), 4(b) and 4(c) (91) – 4(c) – are four (4) envelopes where the alleged original and fake drugs were parked and sent for analysis.
5. Exhibits 5, 5 (a) & 5(b) are three (3) DD2 Forms
6. Exhibits 6 & 6A – Are Key and Padlock
7. Exhibits 7, 7a, 8, & 9 are written statements of 1<sup>st</sup> 2<sup>nd</sup>, 3<sup>rd</sup> & 4<sup>th</sup> Defendants respectively.
8. Exhibit 10: Is a Charge sheet of a Magistrate Court, Lagos.
9. Exhibit 11: Is a request for Scientific Aid Form dated 2/3/2009
10. Exhibit 12, 13, 14, 15 & 16 are a bunch of five (5) Reports written by the PW 4, Dr. Benedict Agbo.

In his testimony the PW1 a staff of the nominal complainant, Neros Pharmaceutical Limited, Lagos narrated how they came to know through their field marketers, the fact that one of their product i.e Artesunate was being adulterated and they complaint to the Police in Lagos through exhibit 1 i.e a written petition and consequently the four defendants were arrested in Fagge, Onitsha with the fake drugs. He added that he was there when the defendants were arrested and that his company is the sole importer of the product. Under cross examination

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he insisted that he was there when the Defendants were arrested in a place where drinks are sold. He further added that they did not include the names of the Defendant in their petition to the Police but were arrested with the said fake drugs on suspicion. PW2 a representative of one of the nominal Complaint, Elbe Pharmaceutical Company stated that before 25/2/2009, they had reports that their products were being adulterated at Head bridge Market, Onitsha. He was asked to write a report to the police in Yaba Lagos and he did. Under Cross- Examination, he stated that he learnt about the arrest of the Defendants and others through the police but did not know them by names.

The PW3 narrated how the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were arrested at the Ogbomayan Beer dealers Association Market in Onitsha with various cartons of Fake drugs. They were taken to Fagge police Station together with the Exhibits Under Interrogation the 1<sup>st</sup> Defendant implicated the 4<sup>th</sup> Defendant as the seller of the fake drugs and was consequently arrested. He added that he took the statement of the Defendants. Under Cross Examination the witness agreed that in his examination in Chief he stated that the 4<sup>th</sup> Defendant was first arraigned at the Magistrate Court in Lagos when they were first arrested. He admitted that as per the Charge filed at the Magistrate Court, Lagos the Defendants were arrested at Ajao Estate Road, Lagos on 16/2/2009 and it was him who led the team that arrested them for the offence of forgery etc.

He also agreed that the 1<sup>st</sup> Defendant was arrested at Agbomanya Market and nothing was found on him except a key to a shop. When they went to the shop, they found a large quantity of suspected fake drugs and some of it were later sent to forensic laboratory for analysis. He added that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were arrested at the shop of



the 3<sup>rd</sup> Defendant where they ran and locked themselves where the suspected drugs were also recovered.

In his testimony, the PW4 who is an expert in forensics stated that he was the person who conducted test on the suspected drugs and handed over his reports to the PW2. Under Cross-examination the witness stated his intimidating qualifications with a Degree, and masters, and ph.D in his filed 1990 including training in various fields of forensic investigation with the F.B.I, British Metropolitan police, Russian Papillion and French Technical Police.

The prosecution closed his case on 18/1/18 and the Defence opened their own on 14/2/18 by calling DW1, the first Defendant himself on 14/2/18. The 2<sup>nd</sup> Defendant also testified as DW2 on 12/3/18. The 3<sup>rd</sup> Defendant also gave evidence as DW3 on 10/5/2018 while the 4<sup>th</sup> Defendant also testified as DW4 on the same date. They all denied the allegations against them or even knowing each other before the arrest. They argued that they were forced to signed their written statements by the police under duress.

The Defendants' counsel filed his final written address on 20/10/2018 and a reply to the prosecutors written address on 19/11/18 and the prosecution filed his own on 24/10/18. Both addresses were adopted on 19/11/18. The Defendants' Counsel in his address raised a sole issue for determination i.e whether the prosecution has proved the offence in all counts of the Charge as to secure conviction of the Defendants. He narrated the charge and the evidence of all the witness for the prosecution and the evidence of the Defendants and concluded that the prosecution has failed to prove his case beyond reasonable doubt under Section 131 (1) & (2) & 135 of the Evidence Act. He also cited so



Many authorities too numerous to be mentioned here. He added that no proper investigation was done by the PW3 and his team and therefore the Defendants should be discharged and acquitted.

The prosecution in his written address raised a sole issue for determination i.e whether the prosecution has been able to prove the case against the Defendants as per the charge. He reviewed all the counts charge and the evidence of the witnesses and submitted that the charge against the Defendants has been proved beyond reasonable doubt. He **CITED THE CASE OF ABEKE V STATE (2007)9 NWLR 411 & the case of ABDULLAHI V.NIG ARMY (2010)18 WRN RATION 5.**

The prosecution further submitted that the Supreme Court has held that the burden of proof placed on the prosecution may be discharged in any of the following ways:

1. Confession
2. Circumstantial evidence
3. Or evidence of Eye witness

He **CITED THE CASE OF EMEKA V STATE (2001) FWLR** where it was further held that a confession alone even without corroboration can support a conviction as long as the court is satisfied of the truth. The counsel urged the court the convict the Defendants of all the counts in the charge. He added orally that the reply to their written address filed by the Defendant's counsel should be discountenance as it amount to further written address.

These are the submission of counsels to both Defendants and the prosecution. The issue for determination is whether the prosecution has proved his case beyond reasonable doubt.



There are plethora of Supreme Court authority which stated that in all criminal matters, the burden of proof beyond reasonable doubt is always on the prosecution to discharge and any doubt must be resolve in favour of the Defendants. I have carefully considered all the available evidence before me and am of the humble opinion that the prosecution has successfully prove his case beyond any reasonable doubt. To make matters worst, the Defendants did not call any other persons, besides themselves, to give evidence on their behalf. It will be difficult to believe their testimonies as they have vested interest in this case. Secondly, their confessional statements which undergo many trial-within-trials in the course of trial are not in their favour. Consequently, I hold that the Defendants are not witness of truth and I agreed with the prosecution that the Defendants are culpable even on their confessional statements alone. The drugs recovered from them has the same trademarks and semblance with the products of PW1 and PW2 pharmaceutical companies. The testimony and report of PW4 who is on expert in forensics point to the fact that the recovered drugs are the adulterated version of the original drugs. Based on all the above, I hold that the Defendants are culpable and are hereby convicted accordingly.

## **ALLOCUTUS**

E.O. Egwo- The Defendants are 1<sup>st</sup> offenders with no previous records. They all have families and are the bread winners. We urged the Court to warn or caution the Defendants. We urged the Court to discharge the Defendants.

E.E. Nwokoro- No previous conviction.

## **SENTENCES**

I have listened to the plea for mercy by the Counsel to the Defendants. In Sentencing, I understand the Defendants to be first offenders, family men and bread winner. However the offenses with which they were charge is very rampant in the society. They are sentenced to 18 months Imprisonment on each Count but should run concurrently. The Drugs Exhibit to be destroyed after 30 days if no appeal is made.

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JUDGE  
19/11/18

## **Appearance**

E.E. Nwokoro- prosecution  
E.O. Egwo- Defendants