

IN THE HIGH COURT OF LAGOS STATE
HOLDEN AT IKEJA JUDICIAL DIVISION
SITTING AT COURT 22 SPECIAL OFFENCES COURT, IKEJA
BEFORE HON. JUSTICE O. A. TAIWO (MRS.) JUDGE
TODAY TUESDAY THE 22ND DAY OF OCTOBER, 2019

SUIT NO: ID/7958C/18

BETWEEN

FEDERAL REPUBLIC OF NIGERIA

....COMPLAINANT

AND

OLUSEYI MOMOH LAMORIU

....DEFENDANT

JUDGEMENT

The Defendant is facing an eight count charge of forgery and possession of fraudulent document contrary to Section 363(1) of the Criminal Law of Lagos State 2011 and Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006. The Defendant was arraigned on the 25th of September and pleaded not guilty to the charges.

In support of the charge, the Prosecution called three witnesses and several documents admitted and marked as Exhibit A – R-R13. The defence called only one witness being the Defendant.

The case of the Prosecution is that the Commission received a petition from the British High Commission requesting for assistance in the investigation of suspected persons linked to credit card fraud and forgery of Certificate of Incorporation and alleged that the Defendant was one of the suspected individuals. The Prosecution tendered a copy of the petition through PW1 Paul Okoli an operative of EFCC who identified the document as the petition received from the British High Commission. PW1 testified that upon receipt of the said petition which is marked Exhibit. A his team commenced investigation by proceeding to the British High Commission where they met one Mrs. Ekaette seated with the Defendant who she claimed was her husband. That the two of them were taken to the Commission for questioning. At the Commission the

Defendant was shown the petition from the British High Commission where he was mentioned as a holder of a credit card that was not genuine and that the payment made for some student's visa application forms were made using the same credit card.

Pw1 stated further that the Defendant volunteered to make a statement in writing. Pw1 stated that he administered the words of caution to the Defendant who understood and wrote his statement in his own handwriting. Thereafter Pw1 took the Defendant to his office where a search was conducted and in the course of the search several documents were recovered. Pw1 further stated that they took the documents back to the Commission to examine them and it was discovered that some of them were fictitious. That the Commission dispatched investigation activity letters to some universities including ABU Zaria, Benue State University, Osun State Universities and Eco Bank to authenticate the 13 pieces of statement of account and certificates which were found in the Defendant's possession. They also extended their investigation to WAEC in respect of one WAEC result.

Pw1 testified that they received responses from Benue State University and it was confirmed that the certificates found were fake. That Eco Bank confirmed in their response that the bank statements recovered from the Defendant were fake while WAEC stated that the certificate was forged. That STANBIC IBTC and GT Bank also confirmed that the statements of accounts bearing their logos were false. Pw1 further testified that the Defendant made a second statement dated 23rd August 2017 when they raised questions on the authenticity of some of the recovered documents.

Pw1 stated that at the conclusion of their investigation their findings revealed that the Defendant specializes in arranging student visa applications for his customers and that the Defendant knew that the documents presented by his customers were false or forged and that is why he was charged to court.

Pw2 one Yusuf Teslim Omogbolahan an employee of Eco Bank also testified. He stated that the bank received a letter from EFCC requesting the bank to authenticate the statement of accounts of some persons and that the bank responded. Pw2 identified Exhibits B, C, D, D1, E and E1. He identified Exhibit D as the response from the bank wherein it is stated that the statement forwarded to them to authenticate did not emanate from their bank. Pw2 also stated that they arrived at this conclusion because the portal quoted on the statement is not on their system. That a look on the statement of account shows that it was not printed directly from Eco Bank data base. That the stamp on it

and the letterhead used for the statement of account did not bear the names of the Directors of the bank as at 2017.

Pw3 is Awofusi Opeyemi an operative of EFCC and one of the team members that investigated the case. He corroborated the testimony of PW1 who was a member of the team. Pw3 identified some documents recovered from the Defendant which were tendered, admitted and marked as Exhibits M-M33, P and P1, Q-Q7 and R-R13.

The Prosecution witnesses were all cross examined by the defence and at the conclusion of PW3's testimony the Prosecution closed its case.

The defence opened its case on the 23rd of May 2019 and called only one witness being the Defendant.

Dw1 denied the allegations against him. He admitted that various documents were recovered from his office following the raid and the search warrant carried out in his office. He stated that the documents some of which may be forged were various documents submitted to him by various applicants and which were in the files of the applicants. He further stated that the documents were not procured or produced by him but rather supplied by the applicants. That the clients are responsible for the documents and information they bring to his office. He stated that his credit card was linked to the application at the embassy because his company helps them pay for visa fees. That he has an account in the UK, TSB. The Defendant stated that he has never been involved in any credit card fraud. He stated that he does not know the three other persons mentioned in the petition from the British High Commission (Exhibit A). That he has never been denied visa to travel to the USA.

The Defendant was cross-examined and thereafter closed his case.

The defence filed a final written address dated 19th June 2019. The crux of the address as submitted by the Defence Counsel is that the Prosecution has failed woefully to prove any of the offences against the Defendant. That there are doubts as to whether the Defendant knew whether the certificates and various documents supplied by the visa applicants but in his possession were forged, whether the Defendant forged the documents since no equipment, instrument or machine with which documents could be printed or forged were found in his possession, whether the Defendant with others ran a credit card scheme since the other supposed conspirators were never found.

Learned Counsel for the Defendant further submitted that the Prosecution's case is built entirely on suspicion based on the petition Exhibit A. That count 4 of the charge is bad for ambiguity and duplicity as the Defendant is alleged to have

defrauded with a forged First Bank statement of account purporting to have emanated from Eco Bank Nig. Plc. He also submitted that the Prosecution did not show that the Defendant running a travel Consultancy Agency was illegal as the Agency was duly registered under the law and the Defendant was entitled to be in possession of documents submitted by the Applicants to process visas and other travelling documents. That the Prosecution has failed to prove that the Defendant knew or ought to have known that the documents found in his possession were false.

Learned Counsel for the Defendant urged the court to discharge and acquit the Defendant as it is the duty of the Prosecution at all times to prove the essential ingredients of the offence for it to sustain a conviction. Counsel referred to the following cases in support of the argument:-

Bozin v The State (1985) 2 NWLR(PT8) 468

Alabi v State (1993) 7 NWLR (PT 307) 511

Ogba v The State (1992) 2NWLR (PT222) 164

Ikemson v State (1997) 1 NWLR(PT 481) 355

Olayinka v The State (2007) 9 NWLR (PT 1040) 561

Okosi V A. G Bendel(1989) 1 NWLR(PT 100) 642.

The Prosecution filed a final written address dated 1/7/19 and raised one issue for determination i.e. *Whether the Prosecution has proved the essential elements of the offence as charged.*

On the issue of the offence of forgery, the Prosecution submitted that the Prosecution has proved the essential ingredients of the offence. That the Defendant forged the ECO BANK statements of account as well as the university certificates with the intention that same should be used to perpetrate fraud. Learned Counsel for the Prosecution referred to the case of *OSUNDU V THE STATE* (2000) 12 NWLR (PT682)482. He submitted further that the forged documents were created to obtain a visa from the British High Commission.

Learned Counsel for the Prosecution further submitted that the case before the court is not a conventional case of forgery but one where the forgery is actualised by adding to a genuine document or writing any false date, attestation, seal or material matter. He also submitted that the bank testified that the statements of account found in the Defendant's possession did not emanate from the bank. That for a document to be held as false all it needs to do is tell a lie about itself. That the Prosecution has established that the documents found in the Defendant's possession are false, that the Defendant knew they were false

and intended that they be used or acted upon to the detriment of any person as genuine.

The Prosecution further contended that it had proved the offence of possession of fraudulent documents provided in Section 6, 8(b) and 1(3) of the Advance Fee Fraud and Other Fraud Related Offences Act. That it is not in doubt that the Defendant was in possession of documents containing false pretence purported to have emanated from Eco Bank Plc. That the Defendant never denied being in possession of forged documents which he admitted were used for visa applications.

In conclusion, the Prosecution submitted that it had adduced credible evidence to prove beyond reasonable doubt the Defendant's guilt of the offences against him

The Defendant is charged basically for two offences;

- (1) Possession of fraudulent document contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006
- (2) Forgery contrary to Section 363(1) of the Criminal Law of Lagos State.

The Prosecution has alleged that the Defendant had in his possession several fraudulent documents and that he forged some documents. Counts 2, 4, 6 and 8 of the information relate to the offences of forgery and therein the Prosecution alleges that the Defendant forged the following documents:-

1. Ecobank Nigeria Plc- Statement of account with Account number 2852009964 with the name Adewale Anuoluwapo Kudirat.
2. First Bank of Nig. Plc. Statement of Account Number 3062000183 name Ajibode Oluwaseun Olusola.
3. Benue State University certificates.
4. West African Senior School Certificate with the name Shonubi Muhcebah Olasunbo.

The offence of forgery is defined in Section 363(1) of the Criminal Law of Lagos State as follows:-

"1. A person who knowingly makes a false document or written white:

(a) it may in any way be used or acted on as genuine, to the prejudice of another or;

(b) any person may, in the belief that it is genuine, be induced to do or refrain from doing any act, whether in the State or elsewhere, is said to forge the document or writing."

Thus the essential elements of the offence of forgery are:

1. That there is a document or writing;
2. That the document or writing was forged;
3. That the Accused person forged the document or writing in question;
4. That he intended the forged document or writing to be acted upon to the prejudice of the victim in the belief that it is genuine. See the case of **OBIOMA V STATE (2018) 3 SC (111) 28.**

The "term making a false document in writing" includes altering a genuine document or writing in any material part, either by erasure, obliteration, removal, or otherwise, and making any material addition to the body of a genuine document or writing; and adding to a genuine document any false date, attestation, seal or other material matter.

The Prosecution called three witnesses in support of the charge. PW1 testified that EFCC received a petition from the British High Commission tendered as Exhibit A in respect of an alleged case of credit card fraud. In the said petition the name of the Defendant was mentioned as one of four people who had been using credit cards to pay for UK visa applications for individuals. That credit cards issued by banks in the UK, Spain, France, the USA and Canada were used. That checks were undertaken with the fraud departments of the banks that issued the credit cards and it was revealed that the cards were not genuinely held by the holders and were subsequently cancelled.

The petition also stated that two Applicants Ekaete Olabisi Etim and Abimbola Imoeyo Obarinde were found to have submitted forged bank statements allegedly issued by Ecobank and their application paid for by a credit card linked to the Defendant.

PW1 testified that several documents were retrieved from the Defendants office including Ecobank statements of account and certificates which after investigation discovered to be false. In particular, the Prosecution tendered Exhibits B, C, D, E and E1 in respect of the alleged forged statement of accounts purportedly emanating from Ecobank. Exhibit B is a letter written by EFCC to the Managing Director of Ecobank requesting the bank to confirm the genuineness or otherwise of a statement of account for one Odofin Mutiu Oladipupo. The bank responded by Exhibit C stating that the document did not emanate from Ecobank. Exhibit E is also a letter written to the M.D of Ecobank seeking authentication of a statement of account in the name of Adewale Anuoluwapo Kudirat. The bank responded with Exhibit E stating that the

statement of account did not emanate from Ecobank and that the name Adewale Anuoluwapo did not match their database.

Similarly the EFCC wrote to First Bank to authenticate the statement of account number **3062000183** in the name Ajibode Oluwaseun Olusola i.e Exhibit G. The bank responded in Exhibit G and that the account number does not exist in their records, that the statement of account is fake and did not emanate from their bank. The commission also wrote to Benue State University to authenticate the certificates found in possession of the Defendant i.e. Exhibit K1. The university responded in Exhibit K and stated that the names on the certificates were not at any time students of Benue State University and that the certificates were forged. There is also a letter from EFCC to the Registrar of WAEC seeking authentication of a WAEC certificate for one Shonubi Muheebah Olasunbo, Exhibit J. The Deputy Registrar of WAEC wrote back and stated that the certificate did not emanate from them. All these documents are the documents alleged to have been forged by the Defendant in counts 2, 4, 6 and 8 of the information.

The Prosecution called PW2 who happens to be a compliance officer with Ecobank and he confirmed receiving letters from EFCC seeking authentication of some statements of account. The witness stated that there were features on the statements which show that it was not printed directly from Ecobank database. That the directors they had in 2017 are not the ones shown on the letter head.

The Defendant in his statement to EFCC operatives and in court acknowledged that the forged documents were recovered from his office but stated that it is the applicant for visa that brings the documents and they only assist them to fill the form and coach them on how to answer likely questions. He admitted that he is aware that some of the documents were forged. The Defendant however denied that he assisted the applicants to forge the documents. The Defendant also admitted that he used his credit card to process the visa application for one Obarinde and Ekaette. Under cross-examination the Defendant answered as follows:-

Q Take a look at Exhibit B—N, Q—Q7 and confirm whether those documents were recovered from your office?

A Not all. Some of them were recovered from my office. The responses from the bank Exhibit Q-Q7 were not recovered from my office.

Q The documents recovered are Eco-bank statements?

A. Eco-bank, GTbank, First Bank, WAEC certificate and BSC certificate.

Q. Confirm to the court that they are documents you use to apply for visa application?

A. We had not applied but they were just brought in to process the application.

Q. All of them?

A. Yes.

Q. Confirm to the court this your debit card was used?

A. Yes I confirm.

Q. Who is Obarinde Abimbola?

A. One of our client.

Q. Have you applied for visa for her?

A. Yes.

Q. Confirm to the court this Exhibit, the statement of account was used to process it?

A. Yes.

Q. Confirm that upon your application for visa that you attached all this enabling documents?

A. Yes sir.

Q. Confirm to the court that these documents were once in your possession?

A. Yes sir.

Q. When you apply for visa with all those attachments, is the issuing body supposed to act on it?

A. Yes, they are expected to carry out checks and use it."

Having carefully considered the oral and documentary evidence the question arises as to whether the Prosecution has proved the charge of forgery against the Defendant beyond reasonable doubt.

It is the view of this court that the Prosecution has established that some of the documents retrieved from the Defendant are forged documents and that they were used to process visa applications at the embassies. The Defendant has confirmed this fact.

Section 362(b) Criminal Law of Lagos State provides that a document or writing is said to be false if the whole or some material part of the document or writing purports to be made by or on behalf of some person who did not make it or authorise it to be made.

Ecobank, Benue State University and WAEC in their respective letters to EFCC have stated that the documents alleged to have emanated from them did not in fact emanate from their establishments. Therefore the said documents can be said to be false documents as they all tell a lie about themselves. These establishments did not make the said documents.

In the case of *BRILLA ENERGY LIMITED V F.R.N. (2018) LPELR- 43926 CA*, it was stated per Sankey J.C.A that the Criminal Code of Lagos State defines uttering to include using or dealing with, and attempting to use and deal with and attempting to induce any person to use, deal with, or act upon the thing in question. It was further held in that case that where a document was used as an intermediate step in the scheme of fraud in which the accused person is involved, if it is shown that such a document was false and was presented or uttered by an accused person in order to gain an advantage, an irresistible inference exists that either the accused forged the document with his own hand or procured someone to commit the forgery. That it is immaterial who actually forged the document so long as the accused person is a party to the forgery. See also *OSUNDU V FRN(2000) 12 NWLR(PT682) 483*.

In the case at hand the documents in question were held out by the Defendant and his clients as true and presented to the British High Commission as genuine documents needed for the procurement of a visa. The bank statements presented not only told a lie to wit that it issued from an existing bank, but also told a lie about itself that they were genuine and the contents of the said documents were true. These documents were attached to visa applications with the intention of inducing the embassy to issue a visa to the applicant. Furthermore, the forged university certificates and WEAC certificates told lies about the holder that he or she obtained secondary and tertiary education which is not true and that they were issued by the Benue State University and WAEC all for the purpose of convincing the embassy that the applicants were fit and proper persons and thus deserving of a visa.

The defence has submitted that only an expert or a person who works in the relevant agencies could testify that they were indeed forged and thus the Defendant did not know that they were forged.

From the evidence of PW2 it has been proven that the bank statements did not emanate from Ecobank and there are several letters from the relevant agencies written to EFCC that the certificates were not made by them. While it is true that only PW2 was called to testify on behalf of his bank the different letters from the other establishments buttress the Prosecution's case that the Defendant

deals with forged or fake documents. Exhibits C, D1, E1, F1, G1, H1, J1, K, L, M1, Q1-Q7 are all letters written to EFCC by the different agencies that documents presented as having emanated from them did not emanate from their respective establishments. Therefore this court is satisfied that the Prosecution has proved the offence of forgery against the Defendant in respect of count 2, 4, 6 and 8 as it is immaterial whether the Defendant made the forged documents himself or procured someone to do it so far as the documents were found in his possession and used by him. The failure of the Prosecution to produce experts or officials from all the different establishments is not fatal to its case PW2 in his testimony stated that his bank wrote Exhibit C, D1 and E1 indicating that the statements of account in count 2 did not emanate from Ecobank.

As regards counts 4, 6 and 8, the Prosecution did not call any expert or official from the different establishments. However the documents speak for themselves and are relevant to the facts in issue. While it is desirable to have the maker of the document in court to testify, oral testimony cannot be used to state the contents of a document or contradict same. See section 132(1) Evidence Act 2011. Documentary evidence is said to be the best evidence. See the case of *AGBAREH & ANOR V DR ANTHONY MIMRA & ORS*. The bank official will only confirm what is in the documents they wrote to the Commission.

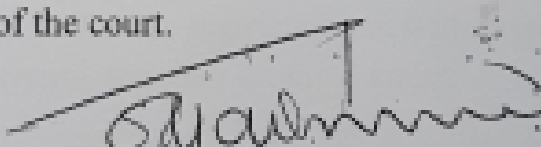
The Defendant is also charged for the offence of possession of fraudulent documents contrary to Section 6 of the Advance Fee Fraud and other Fraud Related Offences Act in counts 1, 3, 5 and 7 of the information. The particulars of offence state that the Defendant had in his possession an Ecobank Nigeria Plc statement of account with account number 2852009964 with the name of Adewale Anuoluwapo Kudirat; First Bank of Nigeria Plc statement of account number 3062000183 with the name of Ajiboye Oluwaseun Oluola; Benue State University certificates and a WAEC Senior School Certificate with the name Shonubi Muheebah Olasunbo all containing pretence which he knew to be false. There is no doubt all the above mentioned documents were all found in possession of the Defendant but the claims he did not know they were false documents. That he runs a legitimate business called Global Travels and Tours Ltd assisting would be travellers to process their applications for visas. That it is the applicants that produce the documents. However under cross examination the Defendant admitted that the said documents were used to process visa applications for one Obarinde and Ekaette who are also facing criminal charges in another court. The Defendant was also arrested in company of Ekaette at the embassy. The inference is that the Defendant knew that the documents were

false as there is a strong connecting link between the Defendant and the said documents to the extent that the circumstances strongly suggest that the Defendant committed the offence. See the case of *LEONARD DURU V FRN (2016) LPELR-40088 (CA)* where it was held that circumstantial evidence is often the best evidence where direct evidence is lacking. In the instant case, the link between the Defendant and the false documents is too strong to be ignored. It is the view of this court that once the Defendant accepted the documents from the respective clients he is under an obligation to ensure that the said documents are genuine before presenting them to the embassy on behalf of his clients. The Defendant as a Nigerian must protect the image of this country. In this case there are too many documents which turned out to be fake one then can infer that they were procured from the same source to the knowledge of the Defendant to enhance his business.

It must be pointed out that the Prosecution did not charge the Defendant for possession of fake credit cards as alleged in the petition written by the British Embassy therefore it is unnecessary to make any pronouncement on them.

In conclusion, I find that the Prosecution has proved beyond reasonable doubt the charges against the Defendant. The Defendant is hereby convicted on the 8 count charge.

This is the judgement of the court.



HON. JUSTICE O.A. TAIWO (MRS.)
JUDGE
22/10/19

ALLOCUTUS.

Mr. Adewale: We urge the court to tender justice with mercy and we urge the court to give community service or fine.

Mr. Ofoma:- The Defendant is not a first time offender. He was convicted for a similar offence before Hon. Justice Dada on a plea bargain agreement. We offered the Defendant a plea bargain agreement in this case but he declined. We urge the court to sentence the Defendant according to law as he is a second time offender. I refer to Section 1(3) of Advance Fee Fraud Act which is of strict compliance.

Court:- I have carefully considered the submissions of the Defence Counsel and Prosecution Counsel. There are certain facts which do not favour the Defendant. He is not a first offender. He was also convicted before Hon. Justice Dada on similar charges of possession of fraudulent documents. The Defendant is convicted for the offence of forgery under Section 363(1) of the Criminal Law of Lagos State which attracts upon conviction a sentence of imprisonment for three years.

The Defendant was found Guilty in respect of count 2, 4, 6 and 8. The defence Counsel has urged the court to temper justice with mercy and has suggested that the court impose a fine or community service, however, I am inclined to impose a custodial sentence to act as a deterrent as the incidents of fake documents is rampant.

I therefore sentence the Defendant to 2years imprisonment on each of the 2nd, 4th, 6th and 8th counts. Sentences to run concurrently.

On the 1st, 3rd, 5th and 7th counts, the Defendant is charged under Section 6, 1(3) of the Advance Fee Fraud and Other Fraud Related Offences Act.

Section 1(3) imposes upon conviction a sentence of imprisonment for a term of not more than 20years and not less than 7years without the option of fine.

I sentence the Defendant to 7 years imprisonment with no option of fine.

Sentences to run concurrently together on the 8 counts.



HON. JUSTICE O.A. TAIWO (MRS.)

JUDGE

22/10/19