IN THE COURT F APPEAL
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON MONDAY, THE 26TH DAY OF MARCH, 2018.
BEFORE THEIR LORDSHIPS:

MOJEED ADEKUNLE OWOADE.....JUSTICE, COURT OF APPEAL
CHIDI NWAOMA UWA.....JUSTICE, COURT OF APPEAL
HAMMA AKAWU BARKA .....JUSTICE, COURT OF APPEAL

CA/A/449C/A/2017.

BETWEEN:

BRILLA ENERGY LIMITED..... APPELLANT

AND

1. FEDERAL REPUBLIC OF NIGERIA
2. ALMINNUR RESOURCES LIMITED } **... RESPONDENTS**
3. JUBRIL ROWAYE

JUDGMENT
(DELIVERED BY CHIDI NWAOMA UWA, JCA).

The appeal is against the judgment of the High Court of the Federal Capital Territory, Abuja delivered on the 7th day of April, 2017. The Appellant was charged along with the 2nd and 3rd Respondents with the offences of Conspiracy contrary to Section 97 of the Penal Code and Section 8(a) of the Advanced Fee Fraud and Other Fraud Related Offences, obtaining money by false pretence, punishable under Section 1(3) of the Advanced Fee Fraud and Other Fraud Related Offences Act, forgery, contrary to

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Section 364 of the Penal Code and using as genuine, forged documents contrary to Section 366 of the Penal Code. The defendants pleaded not guilty to each of the seventeen (17) count charge.

In proof of its case, the prosecution called twelve (12) witnesses and tendered several exhibits. At the close of the prosecution's case, the Appellant made a no case submission which was overruled by the trial court. The Appellant was ordered to enter his defence. The Appellant elected not to testify but, rested its case on the evidence of the prosecution witnesses. At the close of the trial, the appellant with the other Defendants were found guilty of fifteen (15) out of the seventeen (17) counts, the appellant and the 2nd and 3rd Respondents were sentenced to various terms of imprisonment as contained in the judgment of the trial court. The appellant who was dissatisfied with the judgment of the trial court, appealed to this court.

The background facts are that the 2nd Respondent was awarded a contract by a letter of award dated the 15th day of June, 2011 to import 10,000 Metric Tons of Petroleum Motor Spirit (PMS) with a permit validity period of ninety (90) days. The 2nd Respondent assigned the contract to the Appellant to finance on its behalf. The appellant contacted its bank, Spring Bank (now Enterprise Bank) to finance the transaction. The bank was said to have processed the form M and Letter of Credit to the suppliers of the product (Napa Petroleum INC). It was made out that Spring Bank

established a Letter of Credit in favour of the supplier (Napa Petroleum INC) based on documents which include Proforma Invoice alleged to have been given to the appellant by the supplier.

On the 13th day of February, 2012, the Executive Chairman of the Economic and Financial Crimes Commission (EFCC) received a petition from the Honourable Minister of Petroleum Resources (Exhibit V. 1) in which the commission was invited to review the petroleum products import subsidy payments by the Federal Government of Nigeria to various oil marketing companies and importers. Exhibit V. 2 was said to have been a petition from a coalition of Civil Society Groups and Exhibit V. 3 from the Law Firm of Falana and Falana. The commission vide Exhibit V. 1 (The petition from the Minister of Petroleum Resources) was invited to review and investigate all payments made in respect of subsidies, checked against actual import and to take all necessary steps to prosecute any person involved in any fraud, over payment and related illegalities. From the investigations carried out by the EFCC, it was alleged that the 2nd Respondent, Alminnur Resources Limited was granted the Permit by the Petroleum Products Pricing Regulatory Agency (PPPRA) vide Exhibit 'A' for the importation of 10,000 Metric Tons of Premium Spirit (PMS) was for the period of Second Quarter (Q2) of 2011. The 1st Respondent made out that Exhibit 'A', paragraph 2 (iv) spelt out part of the terms of the permit as follows:

"The title of this permit resides with the beneficiary company and shall not be assigned to a third party under any circumstance."

Following the award, as per Exhibit 'A' by the PPPRA, the 2nd Respondent obtained a permit from the Department of Petroleum Resources (DPR) on the 15th day of June, 2011 for the important of the 10,000 MT.

The 1st Respondent made out that the DPR permit specifically stipulated the country of origin where the petroleum product was to be imported from, as "Amsterdam, Netherlands." Further, that contrary to the terms of the PPPRA permit which prescribed that title to the permit resided with the beneficiary company, the Managing Directors of Alminnur Resources Limited, one Alhaji Saminu Rabiu (deceased) and the 3rd Respondent, the Managing Director of the Appellant (Brilla Energy Limited) entered into a Memorandum Of Understanding, (MOU) in Exhibit 10, where on 20th May, 2011, the 2nd Respondent agreed with the Appellant to assign its allocation for the importation of the 10,000 MT of PMS and per the PPPRA letter of 5th April, 2011. In the execution of the permit to import the 10,000 MT of PMS which had been assigned to the 2nd Respondent, a Letter of credit (LC) was said to have been opened at Spring Bank (now Enterprise Bank) for the importation through or from a foreign marketer, NAPA Petroleum Trade Inc. The Appellant claimed to have imported the PMS on a

Mother vessel named MT Kriti Akti, from Amsterdam, Netherlands on the 14th day of June, 2011 as reflected on the Bill of Lading. A first daughter Vessel named MT Althea was said to have off loaded the petroleum products from the MT Kriti Akti at offshore Cotonou. MT Althea in turn was said to have offloaded the products in two tranches to a second daughter Vessel named MT Brila keji that discharged the products at Fatgbems jetty or depot in Lagos.

After the shipments and trans-shipments and the final discharge, shipping documents supporting the transaction and some other relevant documents were packaged and presented to the PPPRA to enable it process subsidy payments to the 2nd and 3rd Respondents.

It was made out that intensive and forensic scrutiny of the entire transaction on investigation revealed that the purported transaction was a sham, as no PMS was imported from the country of origin, Amsterdam, Netherlands, by the appellant and 2nd Respondents, contrary to the stipulations in both the PPPRA and DPR permits and the policy of the Federal Government of Nigeria and the sum of over one billion Naira had been collected as subsidy payment by the appellant, 2nd and 3rd Respondents.

At the conclusion of investigation, the Appellant and 2nd Respondent were arraigned with their managing Directors on 17th October, 2012 on Seventeen (17) counts of offences bordering on conspiracy to obtain money by false pretences, obtaining by false pretences contrary to Sections 8(a) and 1 (1) (a) respectively of

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the Advanced Fee Fraud and other Fraud related Offences Act, 2006 and punishable under Section 1 (3) of the same Act, these offences were covered in counts 1 and 2 of the charge. In counts 3, 6, 9, 12 and 15, the appellant, 2nd and 3rd Respondents were jointly charged with the offence of criminal conspiracy to forge various shipping documents, punishable under Section 97 of the Penal Code, Cap 532, Laws of the Federation, 1990. In counts 4, 7, 10, 13 and 16, the appellant, 2nd and 3rd Respondents were jointly charged with the offences of making forged documents (forgery) punishable under Section 364 of the Penal Code Cap 532, Laws of the Federation of Nigeria, 1990. In counts 5, 8, 11, 14 and 17, the appellant, 2nd and 3rd respondents were charged with the offence of using as genuine various forged documents contrary to Section 366 of the Penal Code Cap. 532, Laws of the Federation, 1990 Punishable under Section 364 of the same Act.

At the trial, in support of its case the prosecution tendered Exhibits A – Z4, AA1 – FF, while Exhibits L and L1, BB1 – BB7 and CC1 were tendered at the instance of the learned counsel to the appellant and the 3rd respondent through the prosecution witnesses.

It is noteworthy that one Alhaji Saminu Rabiu who was the 1st Defendant in the original charge passed away on the 7th October, 2014 which resulted in the amendment of the charge by the prosecution on the 12th of February, 2015. Fresh plea was taken on the amended charge on the 10th of March, 2015.

The Appellant, 2nd and 3rd Respondents were found guilty, convicted and sentenced to various terms of imprisonment while discharging and acquitting them on counts 12, 13 and 14 which dealt with the offences of conspiracy to forge "Certificate of Quality Transfer", forgery of "Certificate of Quantity Transfer" and using as genuine "Certificate of Quality Transfer" instead of "Quantity" in the course of the amendment of the Charge.

In the appeal against the judgment of the trial court, the appellant distilled Nine (9) issues for the determination of the appeal as follows:

i. **"Whether the learned trial Judge was right to have admitted in evidence and accorded probative value to a copy of the internet print out of the Lloyds List Intelligence Report (Exhibits P4) and the hearsay testimonies of PW7 and PW11 for the purpose of establishing the truth of the allegation that the mother vessel MT Kriti was not at the port of loading and point of transshipment at the relevant times. (Grounds 10, 11, 12 and 13 of the Amended Notice of Appeal.**

ii. **Whether the contradictions and discrepancies in the evidence of the**

prosecution witnesses are material and substantial cast doubt in the case of the prosecution and the guilty (sic) of the Appellant." (Grounds 2, 3 and 4 of the Amended Notice of Appeal.).

iii. Whether the Learned trial Judge was right to have relied on the hearsay evidence of PW3, PW5, PW8 and PW11 to hold that the prosecution proved beyond reasonable doubt the forgery of; (a) Certificate of quantity transfer dated 9th July 2011, (b) Certificate of Origin dated 9th July 2011, (c) Certificate of quantity transfer dated 14th June, 2011 and (d) Bill of lading dated 14th June 2011 against the Appellant and that he knowingly used them as genuine to defraud the Federal Government of Nigeria" (Grounds, 5, 6, 7 and 9 of the Amended Notice of Appeal.

iv. Whether the learned trial judge was right when she held that the prosecution proved beyond reasonable doubt the offence of obtaining money by false pretense against the Appellant (Ground 14 of the Amended Notice of Appeal).

v. Whether the learned trial judge was right when she held that the prosecution proved beyond reasonable doubt the guilt of the Appellant on each count of conspiracy in counts 1, 3, 6, 9, 12 ad 15 (Ground 8 of the Amended Notice of Appeal)."

vi. Whether the learned trial judge was right when she failed to consider the evidence of prosecution witnesses which are in favour of the innocence of the Appellant and cast doubt in the prosecution (sic) case and to have held that the Appellant was expected to have led evidence to shed light on the lapses and discrepancies in the evidence of the prosecution. (Grounds 1, 15, 16, 17 and 21 of the Amended Notice of Appeal).

vii. Whether the sentences imposed on the Appellant by the trial court in the circumstances of this case were excessive. (Ground 18 of the Amended Notice of Appeal).

viii. Whether in the circumstances of this case the learned trial Judge was right to have ordered the Defendants jointly and severally

to pay pack (sic) to the Federal Government the sum equivalent to the loss sustained. (Ground 19 of the Amended Notice of Appeal)."

The 1st respondent on his part formulated eleven (11) issues for the determination of the appeal as follows:

"1. **Whether the learned trial judge erred in law when His lordship commenced the judgment by analyzing the legal effect and consequences of when a defendant at the close of the prosecution's case chose to rest his case on that of the prosecution.**

Relates to ground 14 and 15.

2. **Whether the learned trial Judge was not right/correct on the available evidence and by inference in finding the appellant guilty along with the 2nd and 3d respondents on the charge of conspiracy as contained in counts 1, 3, 6, 9 and 15 of the charge.**

Relates to grounds 8

3. **Whether the learned trial Judge was not right/correct on the available evidence in**

finding the appellant guilty, convicting and sentencing him accordingly on the charge of obtaining money by false pretences.

Relates to grounds 13.

4. Whether the learned trial judge was not right/correct on the available evidence in finding the appellant guilty, convicting and sentencing him accordingly on the charge of making and sentencing him accordingly on the charge of making false documents (forgery) as contained in counts 4, 7, 10 and 16 and for using same as genuine as contained in counts 5, 8, 11 and 17.

Relates to grounds 4, 5 and 7.

5. Whether there were material contradictions and lapses in the case of the prosecution which the lower court ignored, thereby occasioning any injustice to the appellant to warrant a reversal of the judgment of the lower court.

Relates to grounds 1, 16 and 19.

6. Whether the prosecution is bound to call any particular witness to prove its case.

Relates to ground 2.

7. **Whether ground 3 of the grounds of appeal should not be deemed abandoned and struck out.**

Relates to grounds 3.

8. **Whether the learned trial Judge was not right/correct in admitting in evidence the Lloyds List intelligence Report duly obtained by the prosecution in the course of investigation which convincingly showed that the purported mother vessel, MT Kriti Akti was infact dead/scrapped as at April, 2010 and therefore could not have been used by the appellant to import PMS from Amsterdam, the Netherlands.**

Relates to grounds 6, 9 10, 11 and 12.

9. **Whether the learned trial Judge erred in law on the sentences imposed on the appellant and the order made for restitution to the Federal Government, of the sum equivalent to the loss sustained.**

Relates to grounds 17 and 18."

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The learned counsel to the 2nd respondent did not file any brief of argument and did not intend to file any but, urged that the appeal be allowed.

Similarly, the learned counsel to the 3rd respondent did not file any brief of argument but, also urged that the appeal be allowed.

In arguing the appeal, the learned senior counsel, Lawal Pedro (SAN) appearing with A. P. Ameh Esq. and C. O. Oni Esq. for the Appellant relied on his Amended Appellant's brief of argument filed on 20/11/17 but, deemed properly filed on 22/1/18 and his reply brief filed on 5/12/17 but, deemed, properly filed on 22/1/18 in urging us to allow the appeal. In arguing his first issue, it was not disputed that the copy of the Lloyds List of Intelligence Report Exhibit P4 admitted in evidence and relied upon by the trial court is a computer generated document. It was contended that the said copy of the Lloyds List of Intelligence Report generated from the internet was inadmissible and deserved no probative value in the circumstances of this case. It was submitted that Exhibit P4, is a downloaded information which was accessed by the PW7 via internet from Lloyds Intelligence Database with a computer in EFCC's office in which the mandatory requirement of Section 84 of the Evidence Act on authentication of the computer/device which produced the information that was uploaded to Lloyds Intelligence Database was not complied with. It was argued that the conditions stipulated in Section 84 of the Act cannot be dispensed with. See, **KUBOR VS. DICKSON (2013) 4 NWLR (PT. 1345) 534** and **OMISORE VS.**

AREGBESOLA (2015) 15 NWLR (Pt. 1482) 294. It was argued that the copy of the Lloyds report is a secondary evidence of the original by reason of the provisions of Sections 85 and 87(a) of the Evidence Act, 2011. Also, that the report is a public document by virtue of Section 106(1) of the Evidence Act, 2011. Further, that on the authority of Sections 90 (1) (c) and 106 (1) of the Evidence Act, it is only a Certified True Copy of the document that is admissible as secondary evidence. It was submitted that a photocopy of a public document which is not certified is not admissible in evidence and where wrongly admitted the court is duty bound to expunge such document even without objection. See, **ANYAOHA VS. OBIOHA (2014) 6 NWLR (PT. 1404) p. 445, OJO VS. ADEJOBI (1978) 3 SC 65** and **FASADE VS. BABALOLA (2003) 11 NWLR (PT. 830) 26.** It was argued that for the failure of the prosecution to comply with the provisions of Section 106 (1) of the Evidence Act, the copy of the Lloyds Report (a computer generated evidence/documents) is inadmissible. See, **KUBOR VS. DICKSON (supra)**. In the alternative, it was argued without conceding, that even if the internet printout copy of the Lloyds Report is admissible, the trial court ought not to have attributed any weight or probative value to its content because the PW 11 who tendered the report was not the maker, at the same time conceded that documentary evidence could be admitted in the absence of the maker. See, **ABUBAKAR VS. CHUKS (2007) 18 NWLR (PT. 1066) 386** and **OMEGA BANK (NIG) PLC VS. O. B. C. LTD (2005) 8 NWLR (PT.**

928) P. 587. The Lloyds company's official was argued to be the proper person to have tendered the report and be cross examined on it. See, **BELGORE VS. AHMED (2013) 8 NWLR (PT. 1355) P. 60.** Also, **OKONKWO VS. STATE (1998) NWLR (PT. 561) 210** and **FLASH FIXED ODDS LTD VS. AKATUGBA (2001) 9 NWLR (PT. 717) 46.** It was argued that the Defendants' right to fair hearing was breached, see, **NIMASA VS. HENSMOR (NIG) (2015) 5 NWLR (PT.1452)** and **BUHARI VS. INEC (2008) 19 NWLR (PT. 1120) 246.** It was the argument of the learned Senior Counsel that the best evidence of shipment or non-shipment of the fuel from Netherlands before the court are the Bill of Lading and cargo manifest issued by the Captain of M.T. Kriti Akti which were not impeached by the prosecution. Further, that the evidence of the PW7 and PW11 was to the effect that the mother vessel did not import any fuel from Netherlands and did not take part in the trans-shipment in offshore Cotonou was based on information accessed from Lloyds List Intelligence database on the movement of ships, which is hearsay because their evidence was not the product of their personal knowledge. It was argued that the PW7 was neither in Netherlands nor at the Coast of West Africa on the relevant dates as to be competent to testify on the presence or absence of the mother Vessel MT Kriti Akti at the locations. Similarly, the evidence of the EFCC Operative, the PW11 who was said to have given evidence of what was not within his physical knowledge. Their evidence was said to be inadmissible by virtue of Sections 38 and 126 of the Evidence

Act. It was concluded that no probative value should have been attached to the Lloyds report.

On the appellant's second issue, it was submitted that the evidence of the PW1, PW3, PW5, PW7, PW8, PW9 PW11 and PW12 are contradictory and inconsistent on material facts or allegations that there was no importation of the PMS and that there was no ship to ship transfer in offshore Cotonou of the PMS imported by the Appellant. It was argued that 10,000 Mts of petrol was discharged at the designated farm tank in Lagos and there is no evidence that the product was bought from any refinery in Nigeria. It was submitted that the trial court ought not to have believed that the Appellant did not import the petrol to have been entitled to the money received as fuel subsidy. On the allegation of forged documents to defraud the government, the evidence of PW3, PW5, PW6, PW8, PW11 and PW12 on the maker and origin of the purported forged documents were said to be contradictory and inconsistent. While the PW5, PW8 and PW11 suggested that the 3rd Respondent is the maker of the suspected documents, PW3, PW6 and PW12 in their respective evidence confirmed that all the documents were made by the shipper and were delivered via DHL Courier Services to the appellant's bank through the foreign bank of the shipper. The evidence of the PW3 was reviewed to the effect that the company stamp of MGI Inspection Ltd impressed on the certificates as proof of inspection alleged to be forged; the PW3 testified that the documents and stamp were genuine.

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It was also argued that the surveyor who participated in the STS transfer and stamping of the documents ought to have testified. We were urged to hold that the evidence of the PW3 is hearsay. The evidence of the PW12 was also reviewed to the effect that his Bank did not appoint or pay the agent for the inspection of the STS transfer of the product from the Mother Vessel to the Daughter Vessel in offshore Cotonou but, under cross examination confirmed that his predecessor in office one Mr. Uzor confirmed to the EFCC that the Bank appointed and paid agents that carried out the inspection of the STS transfer of the product, page 862 of the printed records of appeal. The evidence of the PW11 (the EFCC Operative) was also said to be inconsistent as to the inspection. It was argued that no explanation was given for the inconsistencies. See, **AHMED VS. STATE (1999) 7 NWLR (PT. 613) 641, IBEH VS. STATE (1997) 1 NWLR (PT. 484) 632, DAGAYYA VS. STATE (2006) 7 NWLR (PT. 980) 637** and **JOHNBULL ARHABONE VS. THE STATE (2014) LPELR – 22 609 (CA).**

In arguing his third issue, the learned Senior Counsel outlined the essential ingredients to be proved in order to establish the offences of forgery and the use of forged documents respectively under Sections 364 and 366 of the Penal Code. Section 363 defined forgery and forged documents while Section 364 provides the punishment for the offence of forgery. It was argued that the essential ingredients must be proved beyond reasonable doubt for the accused persons to be found guilty of the offence. See, Section

135 (1)(2) and (3) of the Evidence Act, 2011 and **AGWU VS. EZE (2012) LPELR 7885.** The evidence of the PW3 was once again reviewed to the effect that the PW3 denied his company's participation in the inspection of STS transfer of the PMS imported by the 3rd Respondent and that the stamp of his company on the certificates in question did not emanate from his company and it is a forgery but, under cross examination admitted that by his letter to the EFCC (Exhibit L1) he confirmed his company's inspection of the STS transfer of the PMS. It was submitted that the evidence of the PW3 who did not participate in the inspection of the STS of the product and in the stamping of the certificates in question is not only hearsay; it is unreliable and deserved no evidential value by the trial court.

The evidence of the PW8 was faulted as well as the reliance on Exhibits U1 – U5, e-mails from its company's affiliates in Netherlands that denied that the certificates ever came from them. It was argued that Section 84 of the Evidence Act was not complied with, in respect of the certificate of trustworthiness of various computers/devices used to produce the electronically generated documents which was not tendered by the prosecution. See, **KUBOR VS. DICKSON (2013) (supra).** The evidence of the PW8 was also said to be hearsay, having been based on the content of e-mail messages received from SGS Geneva relating to the alleged forged certificates. It was submitted that no evidential value ought to be attached to the

evidence. See, **F.R.N. USMAN (2012) 8 NWLR (PT. 1301) 141** at **160, PARAS B – D.**

It was also argued that the evidence of the PW6 and PW12 was uncontested to the effect that the Appellant played no role and could not have made or interfered with the Bill of Lading. Further, that to establish the offence of forgery, it is necessary for the supposed maker of the document to be called to deny making the document he is alleged to have made or executed. The person whose document was alleged to have been forged was argued to be a material witness to prove the forgery. See, **AITUMA VS. STATE (2007) [illegible] NWLR (PT. 1028) 466.** It was concluded that no evidence was led by the prosecution to prove that the documents were either forged by the Appellant or that they were forged to its knowledge. The prosecution was said not to have proved the offences of forgery and use of forged documents against the Appellant.

The appellant's fourth issue is on the offence of obtaining money by false pretence which has been defined in the Advanced Fee Fraud and Fraud Related Offences Act. The required ingredients for the proof of same were outlined by the learned Senior Counsel. It was argued that there is no evidence of any pretence proved against the appellant but, instead there was value for money paid by PPPRA. It was contended that there was importation of the correct quality and quantity of petroleum by the Appellant. The decision of the trial court in this regard was faulted. On the issue of forgery, the argument under the fourth issue was adopted. Further, that the

prosecution was unable to establish the source or origin of the imported PMS by the Appellant as different from where the Appellant claimed the PMS was imported from, which would amount to an offence of false pretence or any offence at all. It was argued that there was no evidence of another source or origin which was placed before the court by the prosecution.

On the other hand, it was also argued that even if the Appellant did not import the PMS from Netherlands as alleged, it was submitted that there is no law which makes it an offence for a marketer or importer to import the product from a different country, which would only amount to a breach of contract, which may lead to a claim for refund of any excess payment of money paid on the basis of the source of the product. It was finally argued that the prosecution did not prove the allegation that the Mother Vessel Kriti Akti was dead and scrapped in 2010 and could not have been at the port of loading in Amsterdam and in offshore Cotonou for the STS transfer in 2011, reliance was also placed on the argument in support of issues 1 and 2 above. It was concluded that the owner of the vessel and the country of her registration was not contacted to ascertain the status of the vessel. The prosecution was said to have failed to prove the offence of obtaining money paid to the Appellant as fuel subsidy by false pretence against the Appellant.

With the appellant's fifth issue, on conspiracy for forgery, the argument under the third issue was adopted. It was submitted that the prosecution led evidence alleging that the shipping documents

made by the shipper was sent from outside the country into Nigeria via DHL Courier Service, without the involvement of the Appellant, who could not have made the document. The offence of conspiracy against the Appellant was said not to have been proved.

On conspiracy to obtain money by false pretence, the argument under the fourth issue above was adopted. It was argued that there was no evidence to suggest any conspiracy on the part of the appellant to do any illicit act but, a genuine execution of contract by the Appellant to the satisfaction of the PPPRA and other agencies of government involved in the transaction. It was concluded that the petition of the former Minister for Petroleum was based on suspicion and speculation which no matter how strong should not have been believed by the trial court. See, **ADIO VS. STATE (1986) 3 NWLR (PT. 31) 716, BOZIN VS. STATE (1985) 2 NWLR (PT. 8) 465** and **ALAKE VS. STATE (1992) 9 NWLR (PT. 265) 260** at **272 – 4.**

In arguing the appellant's sixth issue, it was submitted that the prosecution alleged that the Appellant did not buy the fuel from NAPA and that the fuel discharged into the designated Fatgbems Tank Farm by the Appellant was not from Netherlands but, "from another source (or sources) entirely". But, that there was evidence that the fuel was imported and not purchased locally. Also, that the shipping documents were forwarded to Enterprise Bank through DHL courier service by the corresponding Bank (Union Bank UK) on behalf

of the shipper (the maker of the documents). It was argued that all these pieces of evidence were not considered by the trial court.

The trial court was said not to have considered the 3rd Respondent's extra judicial statement to the EFCC in arriving at its decision alongside other pieces of evidence. Further, that even though the appellant did not call any witness, reliance was placed on the evidence of PW3, PW5, PW6, PW8, PW11 and PW12 whose evidence under cross examination supported its innocence and created doubt in the case of the prosecution. See, **ADESAKIN VS. STATE (2012) LPELR – 7883 (C**[illegible]**), ADAMU VS. STATE (2014) LEPLR – 22 696 (SC)** and **SHUROMO VS. STATE (2010) 19 NWLR (PT. 1226) PAGE 73** at **107.**

The appellant's seventh issue challenged the sentences imposed on the Appellant by the lower court on its conviction alongside the other defendants who are corporate bodies. It was submitted that Sections 97, 364 and 366 of the Penal Code gave the court, discretion to impose a lesser sentence and fine, particularly Section 364 of the Penal Code. It was contended that with regard to the circumstances of this case, a lesser sentence of one (1) year on each count would meet the justice of the case. The seven (7) years imposed was argued to be excessive. On the ten (10) years imprisonment for the offence of Advanced Fee Fraud imposed on the appellant, it was submitted that the relevant Act provides for lesser punishment of seven (7) years for the offence of conspiracy and obtaining under false pretences, the ten (10) years sentence was said

to be excessive for the offences. It was concluded on this issue that at all times, the Appellant acted in good faith in the importation of the fuel to qualify it for payment of fuel subsidy. The Appellant was said not to have any criminal record before this case commenced. A punishment of ten (10) years was said to be excessive.

The appellant's eighth and last issue challenged the trial court's order that the appellant should pay back to the Federal Government the sum equivalent to the loss sustained as if the PMS discharged at the designated farm tank was not imported. The learned Senior Counsel argued that the evidence of the prosecution witnesses showed that the Appellant imported the PMS and that the shipper was paid through a Letter of Credit (LC) opened by the Appellant's bank before it was paid the subsidy for the importation. It was submitted that the amount received by the Appellant as subsidy for the PMS imported represented the price difference between the local price of PMS in Nigeria as fixed by the government and cost in the international market at the time of the importation. It was concluded that there was no evidence of any loss sustained by the Federal Government of Nigeria in the transaction to warrant the order made by the learned trial judge. The trial court was said to have been wrong to have ordered the Appellant to pay back to the Federal Government the sum equivalent to the loss sustained in the transaction. We were urged to allow the appeal.

In response, the learned counsel to the 1st Respondent Sylvanus Tahir Esq. appearing with Funke Durojaiye (Mrs.) and

Richard Dauda relied on his brief of argument filed on 4/12/17 but, deemed properly filed on 22/1/18 in urging us to dismiss the appeal for lacking in merit. In arguing his issue one, it was submitted that the evidence before the trial court was one sided, that of the prosecution, since the accused persons including the appellant gave no evidence in rebuttal of that of the prosecution. The trial court was left with no option than to accept all the material allegations leveled against the defendants on the implication of an accused person resting his case on that of the prosecution, reference was made to the following cases, **MAGAJI VS. NIGERIAN ARMY (2008) 8 NWLR (PT. 1089) S. C. 338 AT P.379 PARA. G., PAGE 338 PARA B – E, BABALOLA VS. STATE (1989) 4 NWLR (PT. 115) S. C. 264.**

On the legal effect of an accused person electing not to give evidence on oath in his trial, it was argued that it amounts to a failure to give necessary explanation to rebut the case of the prosecution thus, the trial court was left with nothing than to draw inferences that the defendants had accepted the prosecution's case/allegations or that they were shielding themselves from giving evidence to avoid cross examination See, **ALI VS. STATE (1988) 1 NSCC 14 AT P. 25, 27 – 28, ABOGEDE VS. STATE (1995) 1 NWLR (PT. 372) C. A. 473 AT P. 487, PARAS D – E, NWEDE VS. STATE (1985) 3 NWLR (PT. 13) 444 AT 455 PARAS G – H.**

In responding to the submissions of the learned Senior Counsel, especially the appellant's second issue, amongst others, it

was submitted that there were no contradictions, discrepancies or lapses in the case of the prosecution through the PW3, PW5, PW6, PW8, PW11 and PW12 as alleged. It was argued that the evidence of the prosecution witnesses were not discredited through cross examination, the appellant's statement was said to have been considered. It was argued that the government agencies were not on trial and any alleged lapses would not exonerate the appellant and his accomplices. Further, that addresses of counsel cannot replace evidence by the appellant. See, **OGUGU VS. STATE (1994) 9 NWLR (PT. 366) 1 AT 33.** and **NIGER CONSTRUCTION LTD VS. CHIEF OLUGBEMI (1987) 4 NWLR (PT. 67) 787.** It was concluded that we should hold that the trial court was right to have commenced its judgment by analyzing the legal effect and consequences of the appellant and the 2nd and 3rd respondents resting their case on the case of the prosecution, the prosecution's case remains unrebutted.

The 1st Respondent's issue two was whether the trial court was not right through the available evidence and by inference to have found the appellant guilty along with the 2nd and 3rd Respondents on the charge of conspiracy as contained in counts 1, 3, 6, 9 and 15 of the charge. The appellant, 2nd and 3rd respondents were acquitted on count 12 following a mix up in the amended charge of conspiracy to forge a "Certificate of Quantity Transfer" which was inadvertently drafted as "Certificate of Quality Transfer" in the amended charge. The charges of conspiracy were contained in counts 1, 3, 6, 9 and 15

in the amended charge. The allegations in the above counts were reviewed.

In count 1, the prosecution's case was that they conspired to obtain money by false pretences from the Federal Government of Nigeria to the tune of N1,051,030,434.63 (One Billion, Fifty One Million, Thirty Thousand, Four Hundred and Thirty Four Naira And Sixty Three Kobo) as fuel subsidy. It was submitted that Exhibit 'A', the terms and conditions for the permit made it clear that the permit was not to be assigned to a third party but, the 2nd Respondent and its Managing Director (now deceased) assigned the permit under an MOU Exhibit 'W' to the Appellant.

Further, that the DPR permit which formed part of Exhibits 'D' and 'E', made it clear that the PMS was to be imported from Amsterdam, the Netherlands but, the PMS was not from the alleged country of origin. A bill of Lading previously used by Oando supply and Trading Limited were cloned by the defendants bearing the information showing the authentic Oando Bill of Lading previously used and the 2nd respondent's forged Bill of Lading, except some information that were varied such as the date, destination, Port, the volume and quantity of the product. This document was presented to the PPPRA to calculate the subsidy which was paid out to the accused persons. It was contended that the appellant and the 2nd and 3rd respondents agreed to obtain the money from the Federal Government without any importation of PMS from Amsterdam, Netherlands.

In respect of count 3, the evidence of the PW5 and PW6 showed that the Bill of Lading of the mother vessel, MT Kriti Akti earlier used by Oando supply and Trading Limited in 2009 was submitted as that of the defendants. In respect of count 6, there was a forged "Certificate of Quality Transfer" purportedly issued by an inspection company MG1 Inspections Limited as proof of the alleged transfer of the PMS from the mother vessel MT Kriti Akiti to the first daughter vessel, MT Althea at offshore Cotonou. Under count 9, the "Certificate of Origin"dated 9th July, 2011 purportedly issued by MG1 Inspections Ltd as proof of the importation of the PMS through the marketers NAPA Petroleum Corporation on board the vessel MT KRITI AKTI, EX MT ALTHEA at offshore Cotonou. Under count 15, the alleged conspiracy to forge the document captioned "Certificate of Quantity" dated the 14th June 2011, was purportedly issued by SGS Netherlands BV as proof of the quantity of PMS said to have been loaded on to the mother vessel, MT KRITI AKTI at Amsterdam, the Netherlands to West Africa. It was submitted that all the above mentioned documents presented to the PPPRA by the appellant, 2nd and 3rd respondents and the issuance of all the documents were denied by the companies that allegedly issued them. Reference was made to Exhibits O, P, Q1, 1 – 49, Q2, 1 – 37, R and S which were forged Bill of lading, used by Oando supply and Trading Limited in 2009, also the disparity in the name of the bank that purportedly opened the Letter of Credit (LC) on behalf of the 2nd respondent, was Spring Bank (Later became Enterprise Bank) but,

that the LC number of the Bill of Lading showed, IBF, meaning, Inter-Continental Bank, which financed the Oando transaction of 2009 which appeared in the appellant's and 2nd respondent's transaction of 2011. Also referred to are Exhibits J and K and the evidence of the PW3, the Certificate of Quality purportedly issued by SGS Netherlands BV was also disclaimed by the company, the evidence of the PW8 and Exhibits 'T' and 'U1' – 'U5'. The Learned Counsel submitted that the offence of conspiracy in law consists of the agreement between two or more persons to achieve an unlawful act or to do a lawful act by unlawful means. See, **OSHO VS. STATE (2012) 8 NWLR (PT. 1302) C. A. 243 – 275-276, ONOCHIE VS. THE REPUBLIC (1966) NWLR 307, IKWUNNE VS. STATE (2000) 5 NWLR (PT. 658) AT 56, PARA A** and **OKOSUN VS. A. G. BENDEL STATE (1985) 3 NWLR (PT. 12) 283 AT 299 PARA H.** It was stressed that evidence was placed directly and by inference before the trial court to warrant the conviction of the appellant and that what was said, done or written by any of the conspirators is relevant against each of them, see, Section 8(1) of the Evidence Act, 2011. It was concluded under this issue that the trial court properly analyzed and evaluated the evidence adduced by the prosecution which remained unrebutted and rightly convicted the appellant the 2nd and 3rd respondents.

The 1st Respondent's third issue, covers count two (2) of the charge, of obtaining money by false pretences vide the subsidy payment for the purported importation of N10,000 MT of PMS by the

2nd respondent. The evidence of the PW1 (the former General Manager Operations) PPPRA, PW4 (Chief Operation Officer, Portfolio Management Department, Debt Management Office) DMO and, PW11 (an Operative of the EFCC) and the contents of Exhibits 'M' and 'N1' – 'N13' were reviewed showing that the amount alleged in the charge was paid to the appellant and the 2nd respondents through the issuance of Sovereign Debt Notes (SDN) by the DMO.

It was submitted that evidence was led to show that the product discharged at Fatgbems Depot was never imported from the supposed country of origin that is, Netherlands, the Vessel MT Kriti Akti purportedly used to import the product was said to be a dead vessel as at 17th April, 2010 and could not have been used to import the PMS. It was stressed that the subsidy regime is on the basis of importation of PMS whereas the Federal Government of Nigeria paid over one Billion Naira to the appellant and 2nd respondent as subsidy for PMS that was not imported. While relying on the case of **ALAKE VS. STATE (1991) 1 NWLR (PT. 205) 567 AT 592,** it was submitted that all the ingredients of obtaining by false pretences enumerated in the above case were met in the case at hand. It was concluded that the prosecution proved the charge of obtaining money by false pretences beyond reasonable doubt and the trial court was right to have convicted the appellant, the 2nd and 3rd Respondents.

Under the 1st Respondent's fourth issue, the forged documents highlighted under issue two (2) were referred to, as well as the

evidence of the PW5, PW6 and PW7 were reviewed with Exhibits O, P, Q, 1 – 49, Q2, 1 – 37, R and S. Also, the evidence of the PW11 as well as Exhibits Z1, Z2, Z3 and Z4 comprising of Lloyds List Intelligence Reports to the effect that the mother vessel, MT Kriti Akti was a scrapped vessel at the time of the alleged importation of the PMS from Amsterdam and could not have been used to import PMS. The evidence of the prosecution was argued not to have been rebutted and the court was said to have been right to have believed same. See, **ALI VS. STATE (supra).** While relying on the case of **NIGERIA AIRFORCE VS. JAMES (2002) 18 NWLR (Pt. 798) 295 – 322 PARA F – H.** It was submitted that the documents, subject of counts 4, 7, 10 and 16 were forged and the falsity were exposed by credible evidence. See also, **OSONDU VS. FRN (2000) 12 NWLR (PT. 682) 483 AT 505, PARAS A – B.** It was argued that the appellant on behalf of the 3rd respondent who executed the importation permit forged the documents or procured another to forge the documents, thus making him liable. It was contended that the evidence of the PW3, the Managing Director of MGI and that of PW8 a staff of SGS Nigeria Ltd, a subsidiary of SGS Netherlands BV, the parent company were both credible and unassailable and their evidence were neither contradicted nor rebutted by the appellant who offered no evidence, oral or documentary. Further, that companies can only act through servants or its officials. See, **KATE ENTERPRISES LTD VS. DACURO NIG. LTD (1985) 2 NWLR (PT.5) S. C. 116.** It was argued that evidence of an investigating

police officer discovered during, investigation of crime is not hearsay evidence, see, **KACHI VS. STATE (2015) 9 NWLR (PT. 1464) C. A. AT 234 – 235 PARA F – A** also, **OLADEJO VS. STATE (1994) 6 NWLR (PT. 348) 101** and **ABOKOKUYANRO VS. STATE (2012) 2 NWLR (PT. 1285) C. A. 530.**

On the prosecution not calling as witnesses, the surveyor of MG1 Inspections Limited and an official of SGS Netherlands BV to testify, it was argued that it was up to the prosecution to call any number of witnesses or particular witness in proof of its case. See, **OKANLANWO VS. STATE (2015) 17 NWLR (PT. 1459) S. C. 445 AT P. 481 PARAS D – E, IJIOFOR V. THE STATE (2001) 9 NWLR (PT. 718) 37.** It was concluded on this issue that, the appellant was not denied fair hearing as alleged all through his issues. See, **ADEBAYO VS. A. G. OGUN STATE (2008) 7 NWLR (PT. 1085) S. C. 201 AT PP 221 – 222, PARAS G – C** to the effect that it is a party who has a bad case that embrace and make use of the constitutional provision of fair hearing with a view to moving the court away from the live issues in the litigation. It was submitted that there was no denial of fair hearing.

In arguing his issue five, on the allegation of contradictions in the prosecution's case raised by the appellant, with particular reference to the evidence of the PW1, PW3, PW5, PW7, PW8, PW9, PW11 and PW12 on the allegation that there was no importation of PMS. It was argued that there were no contradictions in the evidence of the prosecution which revealed that the appellant did not

import PMS as they made PPPRA to believe. On the other hand, that if there were variations in the evidence of the prosecution witnesses, they were minor and not fundamental. It was argued that the appellant did not discharge the burden of showing and proving the contradictions.We were urged to discountenance the allegation of material contradictions in the case of the prosecution.

The 1st respondent's issue six (6) raised the question as to whether the prosecution is bound to call any particular witness to prove its case? The evidence of the PW12 was reviewed to the effect that Mr. Uzoh Aghaegbuna had resigned from Enterprise Bank and could not be reached, on the other hand that the appellant and the other defendants could have subpoened Mr. Uzoh to appear and testify on their behalf but, they failed to do so.

On the seventh issue, we were urged to strike out the appellant's ground 3 of the grounds of appeal as no issue was formulated from the said ground and deem it abandoned. We were urged to strike out the said ground while relying on the cases of **ONAFIDE VS. OLAYIWOLA (1990) 7 NWLR (PT. 161) 130** and **NDIWE VS. OKOCHA (1992) 7 NWLR (PT. 252) 29.**

Issue eight (8) was said to have been dealt with under issue four (4), the argument under issue four was adopted.

On issue Nine (9), it was submitted that given the fact that the maximum sentence prescribed under Section 1(3) of the AFF Act, 2006, is twenty (20) years and the minimum is 7 years, the trial court therefore exercised its discretion judiciously and judicially and ought

not to be interfered with by this court. Further, that for the offence of making false documents, conspiracy and using as genuine forged documents under the Penal Code, the maximum punishment prescribed is fourteen (14) years but, the trial court imposed a sentence of seven (7) years or an option of fine of N5 million on each of the counts that the appellant was found guilty of. On the order of restitution that was faulted, the learned Senior Counsel to the appellant having argued that no loss was sustained by the Federal Government of Nigeria, it was submitted that from the findings of the trial court of non importation of the PMS, the Federal Government suffered loss in the over payment of subsidy to the convicts. We were urged to dismiss the appeal and affirm the judgment of the trial court.

The appellant's reply brief reargued points already argued in the appellant's brief and that of the 1st Respondent. Further, that a no case submission means that there is a *prima facie* case that entail proceeding with the trial. It was argued that the proof of the prosecution's case comes at the stage of final judgment, whether the accused person testified or not, the available evidence would be considered and determine whether it is sufficient to ground a conviction. See, **KALU VS. FRN (2012) LPELR – 9287 (CA).**

It was conceded that at the stage of the judgment, the failure of the accused person to give evidence empowers the trial court to make inference from the available evidence of the prosecution to determine whether the case has been proved beyond reasonable

doubt. It was argued that the inference the trial court made based on circumstantial evidence can only ground a conviction only if it is shown to unequivocally and positively point to the fact that the offence was committed by the accused person and no other person. See, **ADEPETU VS. STATE (1998) 9 NWLR (PT. 565) 185, OMOGODO VS. STATE (1981) 5 S. C. at 24** amongst others.

It was argued that to sustain a conviction on circumstantial evidence, this court must ensure that the evidence satisfied the standard of proof beyond reasonable doubt. See, **ORJI VS. STATE (2008) 10 NWLR (PT. 1094) 31.** It was submitted that the hearsay evidence, contradictions and inconsistent evidence and lapses in the evidence of the prosecution weakened the circumstantial evidence against the Appellant, See, **IJIOFFOR VS. THE STATE (2001) NWLR (PT. 718) 371, STATE VS. EDOBOR (1975) 9 – 11 S. C. 69** and **LORI VS. THE STATE (1980) 8 – 11 S. C. 81** amongst others.

It was conceded that the prosecution need not call a particular witness but, to call those witnesses to enable it discharge the onus of proof on the prosecution to prove its case beyond reasonable doubt but, that the exception to the general rule is to call a vital and material witness whose evidence may determine the case one way or the other and failure to call such a witness would be fatal to the prosecution's case. See, **ALAKE VS. STATE (1992) NWLR (PT. 265) 260, AFOLALU VS. STATE (2010) 16 NWLR (PT. 1220) 584 S. C.** and **OGUDO VS. STATE (2011) LPELR – 860 (S.C)** It

was argued that the failure to call the authors or makers of the documents alleged to be forged, the eye witnesses to the ship to ship transfer and those that stamped the documents in question is fatal to the prosecution's case.

Contrary to the contention of the learned counsel to the 1st Respondent, it was submitted that Ground 3 in the Notice of Appeal formed part of Issue No. 3 in the Appellant's amended brief of Argument. We were also, urged to expunge the statement in Exhibit FF as it is inadmissible evidence. We were once again urged to allow the appeal.

The Learned Counsel to each of the 2nd and 3rd respondents did not file any brief of argument but, urged that the appeal be allowed.

I have examined the issues formulated by the appellant and the 1st Respondent; they are similar but, not argued in the same sequence. I will resolve the issues in the order in which they were raised and argued in the appellant's brief of argument.

The appellant's issues (i) and (iii) would be resolved together, but, in reverse order, which are whether the learned trial judge was right to have admitted in evidence the Lloyds List Intelligence Report which showed that the purported Mother Vessel, MT Kriti Akti had been scrapped as at 17th April, 2010 and could not have been used by the appellant to import PMS from Amsterdam, Netherlands. Also, whether the prosecution proved beyond reasonable doubt the offence of forgery and fraud against the Federal Government amongst others. Starting with the appellant's issue (iii), the learned

Senior Counsel in arguing his issue (iii) alleged that the trial court relied on the hearsay evidence of the PW3, PW5, PW8 and PW11 to hold that the prosecution proved its case beyond reasonable doubt, the alleged forgeries. The documents alleged to have been forged are as follows:

(a) Forgery of the Bill of Lading dated 14th June 2014 containing FORM M NO – CB 06920090010249 MF 048119 and LC NO IBF0747109904.

(b) Certificate of Quantity Transfer dated 9th July, 2011.

(c) Certificate of Origin dated 9th July, 2011.

(d) Certificate of Quantity dated 14th July, 2014.

To prove the allegation of forgery in respect of the above mentioned documents the prosecution led evidence through the PW3 and tendered Exhibits 'J' and 'K' to show that all the "certificates" purportedly issued by MGI Inspections Ltd did not emanate from that company and were therefore forged documents. Exhibit 'J' was written to MGI Inspections Ltd to authenticate the genuineness or otherwise of the attached documents (certificates), certificate of Quantity Transfer dated 9/7/11, Certificate of Quantity Transfer dated 26/8/11 and Certificate of Origin dated 9/7/11. Exhibit 'K' is the response of MGI Inspections Ltd declaring that the purported documents (certificates) marked A – A5 sent to them for authentication was not done or issued by them. It was clearly stated

that they were not aware of the operation and therefore had no information concerning the said documents.

In a similar manner, the evidence led through PW8 in which Exhibits 'T' and U1 – 5 were tendered proved that the purported Certificate of Quantity dated 14th June, 2011 claimed to have been issued by SGS Netherlands BV as proof of the quantity of PMS loaded on board the vessel MT KRITI AKTI at Amsterdam to West Africa did not emanate from the company. By Exhibit 'T', is a letter written by the EFCC to SGS Inspection Services Nigeria Limited, to authenticate a Certificate of Quantity which purportedly emanated from SGS Netherlands. The request was made pursuant to Section 38(1) of the Economic and Financial Crimes Commission (Establishment) Act, 2004 in cause of the EFCC's investigation of the alleged fraud and money laundering to authenticate the genuineness or otherwise of the Certificate of Quality attached to their letter. In their response, the SGS Inspection Services Nigeria Limited in Exhibits U1 – 5, it was clearly stated that they contacted their SGS Corporate Security in establishing the authenticity of the documents attached to the letters. SGS Corporate Security contacted SGS Netherlands and responded thus:

1. "That the attached document in respect of KRITI AKTI is false.

TRUE COPY

2. The documents marked A – A1 for HERMIONE are correct but not conclusive as they are not the final documents sent to a client."

The documents used to facilitate the crime are relevant. The documents utilized by the appellant, 2nd and 3rd respondents used to obtain the subsidy were forged and they knowingly used them as genuine to defraud the Federal Government of Nigeria. The documents told lies and the lies were exposed and confirmed through the exhibits highlighted above. The trial court was right to have held that the documents subject of counts 4,7,10 and 16 at the trial court were forged. See, **NIGERIA AIRFORCE VS. JAMES (2002) 18 NWLR (PT. 798) 295 AT 322 PARAS. F – H, BABALOLA VS. THE STATE (1989) 4 NWLR (PT. 115) 264 AT 277.** In proof of forgery, the accused person may personally forge the documents or procure another person to do it. All the documents earlier listed in this judgment told lies about themselves as those who purportedly issued them as emanating from their companies disclaimed them in evidence. The 3rd Respondent being the "alter ego" of the Appellant who executed the import permit either forged or procured those that forged the documents; in both cases the appellant is liable. See, **OSONDU VS. FRN (2000) 12 NWLR (PT. 682) 483 AT 505, PARAS.A – B.**

A company acts through its agents or servants, therefore, any servant or agent of a company can give evidence to establish any

transaction entered into by that company, such evidence is admissible and not hearsay. Therefore, the evidence of the PW3, the Managing Director of MGI and that of the PW8, an authentic staff of SGS Nigeria Ltd, a subsidiary of SGS Netherlands BV, the parent company are credible, unassailable and not hearsay. Their evidence were neither contradicted, discredited nor rebutted by the appellant and the 2nd and 3rd respondents who found it unnecessary to testify in their defence, and had no evidence whatsoever, oral or documentary to challenge the testimony of the PW3 and PW8 who rightly testified on behalf of their companies. The learned Senior Counsel was wrong to have argued that their evidence was hearsay, the learned trial judge was right to have utilized same.

The learned Senior Counsel also alleged that the evidence of the PW5 and PW11 were hearsay and ought not to have been relied upon by the trial court. The prosecution led evidence through the PW5 and PW11 (also PW6 and PW7) to prove the forgery of the Bill of Lading and Exhibits O, P, Q1, 1 – 49, Q2, 1 – 37, R and S to buttress their oral testimonies. Exhibits Z1, Z2, Z3 and Z4 comprising of the Lloyd's List Intelligence Reports to the effect that the Mother Vessel, MT Kriti Akti was a scrapped vessel at the alleged time of importation of PMS from Amsterdam, and could therefore not have been used to import the PMS, pages 786 – 795 of the printed records of appeal. The appellant as a defendant as well as the other defendant did not offer any contrary evidence to rebut the contents of these exhibits, which is evidence placed before the court by the

prosecution. The Exhibit 'Z' series were reports obtained from the Lloyd's List Intelligence which were relied upon and taken to be conclusive by the trial court on the status of the vessel, MT KRITI AKTI, in which the report revealed that as at 17th April, 2010 MT KRITI was a scrapped/dead vessel. There was no contrary evidence on the part of the accused persons that the vessel had not been scrapped as at when it was alleged to have loaded the PMS or that the vessel was active and in operation within the period stipulated by the appellant, 2nd and 3rd respondents. The learned trial judge was right to have believed and acted on the evidence of these witnesses which was not rebutted.

The learned Senior Counsel listed the elements required to be proved for forgery, it tallied with those of the 1st Respondent. These are:

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

See, **BABALOLA VS. THE STATE (1989) (supra), KATE ENTERPRISES LTD VS. DAEWOO NIG LTD (1985) (supra)** and **NIGERIA AIR FORCE VS. JAMES (2002) (supra).**

The PW11 was one of the investigating officers whose evidence was not discredited or rebutted. The learned trial judge thoroughly analyzed the documents confirming the forgery for which the appellant was tried and convicted. I cannot fault it. The trial court found that Exhibits 'D' and 'E' that were submitted by the 2nd Respondent to the PPPRA was for the purpose of claiming subsidy payment. These documents were relied upon and the subsidy payment was processed and actually paid. The appellant has not denied that the subsidy was not paid based on these documents. The appellant, 2nd and 3rd respondents knew and/or had reason to believe that the documents were forged and they went ahead and presented the documents to the PPPRA. I had held above that a company such as the appellant and 2nd Respondent can only act through its officers or agents. In the present case, the appellant and 2nd Respondents acted through the 3rd respondent and the deceased Managing Director to the 2nd respondent. I hold that the appellant, appellant and 2nd respondents presented the various documents earlier highlighted in this judgment knowing that they would be fraudulently used or dishonestly used as genuine. See, **ODIAWA VS. FRN (2008) ALL FWLR (PT. 439)** at **437** and **AREBI VS. GBABIJO (2010) ALL FWLR (PT.527)** at **710.** The appellant had the opportunity to counter the contents of the documents said to

have been forged by him and others, but, it failed to do so. It did not call evidence and it did not discredit the documents. The learned trial judge was right to have relied on the above exhibits. The 1st respondent made out that the documents used for the payment of the subsidy were forged by the appellant, 2nd and 3rd respondents the forged documents were presented when the appellant knew they were not genuine. The appellant presented the documents knowing they were forged since those who purportedly issued the documents denied making them and/or having knowledge of the contents or transaction leading to the claim and payment of the subsidy. On whether the evidence of an investigating police officer as regards what he saw or discovered in course of investigation is hearsay, his lordship Garba, JCA in **ODOGWU VS. STATE (2009) LPELR – 8506 (CA) (PP. 24 – 25, PARAS. C – D)** stated thus:

> "However the PW1 gave evidence of the investigation conducted by him and tendered exhibits recovered in the course of the investigation. It cannot seriously be contended that the account of what the witness did and saw in the course of the investigation he conducted on the charge against the Appellant was a story that was told to him by another person to qualify it as hearsay. The evidence given by the witness on the investigations he personally conducted cannot by any stretch of reasonable imagination be said to be

hearsay since it was from his personal knowledge and therefore solidly direct as required under Section 77 of the evidence Act. References by the witness to what he said was stated by PW2 and PW3 do not qualify as hearsay since the alleged makers were witnesses who testified in court about the relevant facts they know on the charge against the Appellant. The references were made not to establish the truth of what was said by PW2 and PW3 but to just show that they were made by such witnesses. Whether or not the witnesses made the said statements to PW1 would be borne out by their respective testimonies as recorded by the High Court or as contained in their written statements in the course of the investigations by the police. In the circumstances, the reference made by PW1 does not constitute evidence of a hearsay nature that is rendered inadmissible in law."

In the same vein, the PW7 and PW11 gave evidence of the outcome of their investigations, it does not constitute hearsay. See, also **FRN VS. SARAKI (2017) LPELR – 43392 (CA) (P. 63, PARAS A – C)** where his lordship Akamolafe – Wilson, JCA, in the same respect held thus:

"The law is settled that the evidence of an investigating police officer of facts he personally saw or discovered in the course of his investigation is not hearsay evidence to render such facts inadmissible. See, **OLADEJO VS. THE STATE (1994) 6 NWLR (PT. 348) 101, KACHI VS. THE STATE (2015) 9 NWLR (PT. 1464) 213** at **234 – 235**."

The learned Senior Counsel faulted the evidence of the PW3 and the prosecution's failure to call as a witness the surveyor of MGI Inspections Limited and an official of SGS Netherlands BV to testify or other witnesses. The law is settled that it is up to the prosecution to call a particular witness or number of witnesses in proof of its case; it is not the defence to dictate who to call or ought to have been called to testify for the prosecution. In **ODUNEYE VS. STATE (2001) LPELR – 2245 (SC) (PP. 26 – 27, PARAS C – A)** his lordship Achike, JSC on the discretion of the prosecution in calling witnesses held thus:

"Whether, therefore, the prosecution will call one, two, or more witnesses in proof of their case, or even the choice to make between witnesses, is a matter of strategy and the decision in respect thereof is entirely at the discretion of the prosecution. No doubt, some witnesses are more

material than others. Yet the law, in my view, does not require the prosecution to call every eye-witness to the offence to testify nor will the situation be different even where some of the witnesses may be described or identified as material witnesses. Indeed, it is not good practice to field numerous witnesses where the prosecution could, with a handful of witnesses, have discharged the burden of proof required to establish the guilt of the accused. So it follows that the prosecution in order to secure conviction must obviously call material witnesses in proof of their case and it is immaterial that the testimony of such witnesses is favourable to or against the prosecution. It will be invidious however to insist that the prosecution must field every witness connected with the case, as argued in Ram Ranjan Roy V. R. (1914) 1 LR 42; Calc 422 14 Digest 490273; 22816 (ii)."

It is an established principle of law that a court can convict upon the evidence of one witness without more and if his evidence is sufficient to prove the offence charged. See, **NWAMBE VS. STATE (1995) LPELR – 2100 (SC) PP. 26 – 27, PARAS. F – B** and in **SIMON VS. STATE (2017) LPELR – 41988 (SC) P. 25, PARAS.**

E – F his lordship Muhammad, JSC reiterated the above principle thus:

> ".....the law does not impose any obligation on the part of the prosecution as to the number of witnesses to call to prove its case. However, the quality of the evidence it leads sustains its cases. See, **BABUGA VS. THE STATE (1996) 7 NWLR (PT. 640) 279** and **ALI VS. STATE (1988) 1 NWLR (PT. 581)** at **70."**

On the other hand, an accused person/defendant is at liberty to call any witness of his choice in support of his case but, not dictate to the prosecution which witness it should have called. Worse still, in this appeal, the appellant chose not to call any witness at all in defence of the serious and various allegations made against it. In **ALIYU VS. STATE (2013) LPELR – 20748 (SC) (P. 19, PARA. A),** his lordship Fabiyi, JSC on whether an accused can call a witness which the prosecution failed to call (as alleged by the appellant in this appeal) held that:

> "It should also be reiterated here that where the prosecution failed to call a particular witness considered vital, the accused is at liberty to call him. See, **EKPEYONG VS. THE STATE (supra).**"

See, also **LT. F.O. ODUNLAMI VS. THE NIGERIAN NAVY (2013) LPELR – 20701 (SC) (P. 39, PARAS. F – G); (2013) 12 NWLR (PT. 1367) P. 20** and in **KANU VS. ATTORNEY GENERAL OF IMO STATE (2013) LPELR – 20646 (CA) (P. 11, PARAS E – P)** where his lordship Abubakar, JCA held that:

> "Nothing stops the defence from calling the same witnesses left out by the prosecution if the defence feels such a witness is material to the defence."

Unfortunately, the appellant chose not to call any witness at all to talk of any one left out by the prosecution that would have helped its defence. The appellant did not even deem it necessary to testify in its own defence when the no case submission was overruled by the trial court in its Ruling and held that the appellant, the 2nd and 3rd Respondents had a case to answer. Interestingly, all through the argument of the learned Senior Counsel, a recurring complaint was that X, Y and Z did not testify or was not called from Netherlands, Cotonou, Nigeria, here and there in proof of the prosecution's case. I hold that the prosecution called the witnesses it needed to prove its case beyond reasonable doubt. Further, the PMS transactions were carried out by the appellant, 2nd and 3rd respondents. In the present appeal, the appellant ought to have called evidence to counter the evidence (oral and documentary) put forward by the prosecution in proof of its case, but, failed to do so. I am of the view that the

appellant had no denfence and for this reason neither put up a defence nor called any witness in defence.

The learned Senior Counsel faulted the E-mails being computer generated evidence and also faulted the decision of the trial court admitting same on the grounds that the prosecution failed to satisfy the requirement of Section 84 of the Evidence Act, 2011. The lower court in its judgment thoroughly dealt with the admissibility of E-mail evidence and the authentication of the device used to generate the e-mails and their outputs in resolution of the third issue at the lower court, pages 60 – 66 of Volume III of the printed records of appeal (the judgment of the lower court). The prosecution made out that the Lloyd's List Intelligence Report has a world class reputation and is conclusive on the status of the Mother Vessel, MT Kriti Akti. Details of how the report was obtained and authenticated were given details of at pages 61 – 62 of Vol. III of the printed records (the judgment) as well as the working condition of the Mechanical Instrument utilized to obtain the report. There was no evidence to the contrary. For clarity, I will reproduce portions of pages 62 – 64 hereunder of what the learned trial judge had to say thus:

> "The first computer from Lloyd's List Intelligence has a certificate of compliance in conformity with the requirement of Section 84 of the Evidence Act.

.....

The prosecution provided evidence of compliance with the provisions of the Evidence Act by ensuring the Certification of these Documents by the maker or extractors of the information contained therein. The evidence on Record further shows that the Report was derived from an E-mail correspondence between the Prosecution and an Official of the Lloyd's List.

.....

Now, the test of admissibility of this Electronically Generated Documents is in its authencity and trustworthiness and the relevance of its content to the proceedings.

The certificate of Identification from the Director of Operations stated that the contents of the Report was an attachment in his e-mail correspondence with the Lloyd's List and that is as seen in the front page of Exhibit Z4, which displayed a chain of communication between the Director of Operations and Justin Donald of the Lloyd's List Intelligence.

The documents containing e-mail correspondences were produced from the Director of Operation's e-mail inbox through an Apple Desktop computer and

he named the serial Number and the model of the Printer and computer, certifying that the computer and printer were used regularly to store, process and print information. During the period of use, there was regularly supplied to the E-mail Address and computer in the ordinary course of those activities, information of the kind contained in the inbox of his e-mail address, from which the information, so contained, was derived through the computer and printer. He further certified that throughout the period, the E-mail Address, computer and printer were operating properly and the information contained in the documents reproduced was derived from the information supplied to the E-mail Address.

This piece of evidence provided by the PW11 was not controverted by any evidence adduced by the Defence, challenging the trustworthiness of the process in obtaining the Report.

Therefore the **process of obtaining** this Report is deemed properly derived in compliance with the requirements of the law.

As regards the fact that the Report is stated to be Hearsay Evidence, the provisions of Section 84

(5)(a) and (c) of the Evidence Act 2011 has settled the issue of hearsay by providing that, with or without human intervention, both the supply of information to the computer and the production of a Document by a computer are to be taken to be appropriately done. The settled Law in Nigeria, by this provision, therefore, is that Hearsay has little or no role to play in admissibility of computer Evidence. This Section permits without qualification, human intervention in supply of information to the computer and even in the printout coming from a computer.

As regards the **reliability** of the information supplied by Lloyd's List Intelligence, it is seen in Exhibit Z4 that the Lloyd's List is an Informa Business, and one of the world's leading providers of specialist information and services for the academic, scientific, professional and commercial business communities. In their Report submitted to the EFCC, they relied on the vessel AIS Box, satellite Sightings and Conventional Movements (Verified by Agents in Ports), and further claimed to correctly reflect real events.

It is their summary that no vessel, whether Kriti Akti or Akti, was reported to have arrived at Amsterdam between the 12th and 15th of June 2011, and it was highly unlikely that Kriti Akti could have been at Cotonou in July 2011, because there is sufficient evidence to support the fact that the vessel was demolished at Gadarni Beach in April 2010."

Further, at page 65, the learned trial judge in respect of the evidence of the PW11 the (Investigating Police Officer – IPO).In respect of the representative of the Lloyd's List Intelligence held thus:

"This Representative highlighted all the relevant information regarding EFCC's Request, which included the List of scrapped vessels at Gadarni Beach in Pakistan in 2010 and had provided further information on two vessels namely, MT Kriti Akti and MT Althea. This information was sent to the commission through the official Email of the Director of Operations, which was subsequently printed out from the central computer and duly certified by the commission. This Representative also furnished the commission with the physical copy of the

certificate of compliance signed by the Director, Commercial of Lloyd's List Intelligence. He testified as to the description, day-to-day use and as to the competency of the computer."

As to the probative value of the Report, the learned trial judge did a thorough analysis to show that the prosecution proved that the alleged vessel MT Kriti Akti was not in existence as at the time she was alleged to have moved the PMS from Amsterdam to Cotonou having been declared inactive and decommissioned to be broken up on 17th April, 2010. The trial court rightly held that there was no contrary evidence on all the above procedure followed, before the Email Reports were admitted and utilized by the trial court in arriving at its decision. The court was right to have accepted and utilized the Lloyd's List Intelligence Report as a reliable piece of evidence that was not challenged by the appellant. In a decision of this court, **CONTINENTAL SALES LIMITED VS. R. SHIPPING INC. (2012) LEPLR – 7905 (CA); (2013) 4 NWLR (PT. 1343) P. 67** his Lordship Ogunwumiju, JCA in respect of a computer generated mail held thus:

"Email is a form of communication that is set down in writing. It is not oral. The fact that it is electronic is immaterial. It is not in the air. It can be downloaded and as real as a hard copy of the letter or mail in your hand,"

I hold that the prosecution in tendering Exhibits Z, Z2, Z3 and Z4 dealing with the Lloyd's List Intelligence Report complied with the requirement of Section 84 of the Evidence Act, 2011, as rightly found by the learned trial judge. The evidence of the PW11 (eleven) is also not hearsay. The appellant's issue (i) was resolved with its issue (iii), both are resolved against the appellant.

The appellant in his issue (ii) alleged contradictions and discrepancies in the evidence of the prosecution witnesses which are material and substantial to cast doubt in the prosecution's case and the guilt of the appellant. The Learned Senior Counsel faulted the evidence adduced by the PW1, PW3,PW5, PW7,PW8, PW9, PW11 and PW12 which were alleged to be contradictory and inconsistent on the material fact that there was no importation of the PMS and that there was no ship to ship transfer in offshore Cotonou of the PMS imported by the Appellant.

The issue of the prosecution calling particular witnesses to prove its case has been addressed. The appellant had alleged that the prosecution ought to have called one Mr. Uzoh Aghaegbuna, a staff of Enterprise Bank, the surveyor who is the Staff of MGI Inspection Ltd, a representative of NAPA Petroleum Inc., Staff of SGS Netherlands BV and others in support of their case. In a nutshell as held earlier in this judgment, the prosecution is at liberty to call any witness it wishes to call in proof of its case. In any case the defence was free to call these people as witnesses to shed light or clear any

perceived hazy areas if they wished but, they did not deem it necessary and cannot therefore complain about the above listed people not being called as witnesses.

On the allegation that the evidence of the PW3 is hearsay and that the surveyor who participated in the STS transfer of the product from the Mother Vessel to the Daughter Vessel in offshore Cotonou ought to have been called as a witness has also earlier been dealt with in this judgment where I held that the evidence of the PW3 is not hearsay. It is also on record that Mr. Uzor had left the services of the bank where the PW3 worked under him in the Energy Group of Spring Bank now Enterprise Bank. Mr. Uzor then in 2011 was directly in charge of the transactions as the head of the group and the PW3 was approached by the EFCC during investigation because Mr. Uzor was no longer there. If there was any variation in the evidence of the prosecution witnesses as to the appointment of an agent for the STS transfer of the imported product from the Mother Vessel to the Daughter Vessel in offshore Cotonou, these are minor and not fundamental, for instance the evidence of the PW3 and PW11. It is trite that only material contradictions are viewed seriously by the courts. The law does not prohibit minor discrepancies or contradictions here and there in the evidence of witnesses (where they are numerous), as in this case what the courts frown at are material contradictions which touch on the root or substance of the real issue at stake. The issue here is, whether there was an importation of PMS by the appellant, 2nd and 3rd respondents

through the Vessel MT, Kriti Akti from Amsterdam, Netherlands for them to have been entitled to the subsidy paid by the Federal Government of Nigeria? Also, whether there was a ship to ship (STS) transfer at offshore Cotonou of the PMS as alleged by the appellant? There was consensus by all that the appellant discharged 10,000 MT of PMS at the Fatgbems Tank Farm in Lagos. I hold that there were no contradictions in the evidence of the prosecution witnesses listed by the learned Senior Counsel earlier. The evidence led by the prosecution witnesses on the alleged importation of PMS by the appellants through the Vessel MT, KRITI AKTI revealed that the appellant did not import PMS as made out to PPPRA which believed the alleged importation and paid out the subsidy in question.

Further, on contradiction in the evidence of the prosecution witnesses, the Supreme Court in **EDET OKON IKO VS. THE STATE (2001) LPELR – 1480 (SC) PP. 11 – 12, PARAS. D – A**, his lordship Kalgo, JSC held that:

> "It is now well settled that for contradictions on evidence of witnesses for the prosecution to affect conviction, they must be sufficient to raise doubt as to the guilt of the accused. In the instant case the minor discrepancies in the evidence of the prosecution witnesses are not in my view, sufficient, by themselves, to entitle the appellant to an acquittal. See, **OGOALA VS. STATE (1991) 2**

NWLR (PT. 175) 509 AT 525; NWOSISI VS. STATE (1976) 6 SC 109; EJIGBADERO VS. STATE (1978) 9 – 10 SC 81; ATANO VS.A.G. BEDEL STATE (1988) 2 NWLR (PT. 75) 201; AYO GABRIEL VS. STATE (1989) 5 NWLR (PT. 122) 457 11 AT 468 – 469."

The contradiction in the evidence of the prosecution witnesses as alleged by the appellant as a whole in the real sense of it connotes opposites of what the others affirm or assert. On witnesses giving a straight jacketed, similar and identical evidence on an issue or incident in **ESANGBEDO VS. THE STATE (1989) 4 NWLR (PT. 113) SC. 57 AT 83 PARAS. G – H,** his lordship Oputa, JSC cautioned that:

> "When witnesses to one incident reproduce the same or uniform account of that incident, the danger is that their evidence has been tailored, tutored and doctored. In actual life there is bound to be minor variations in the account of truthful witnesses."

See, also **BASSEY VS. STATE (2012) 12 NWLR (PT. 1314) SC. 209 AT 232 PARAS D – G** and **ALO VS. STATE (2015) 9 NWLR (PT. 1464) SC. 238 AT 272, PARAS. D – F**. On the other hand, the burden is on the appellant who alleged contradictions to

discharge the burden in order to succeed, which he failed to do. I would sum up the issue of the alleged contradiction in prosecution's case by referring to the case of **KAZA VS. STATE (2008) LPELR – 1683 (SC) (P. 41, PARAS B – E)** where his lordship Chukwuma Eneh, JSC stated thus:

> "Respectfully, I think the appellant's complaints here amount to no more than a storm in the tea cup. I entirely agree with the respondent's statement of the law at paragraph 7.4 of the respondent's brief of argument on this question to the effect that "there can only be contradictory evidence where a piece of evidence contradicts another when it affirms the opposite of what that other evidence has stated not when there is just a minor discrepancy between them.Thus, for any conflict or contradiction in the evidence of the prosecution witnesses to be fatal to the case, it must be fundamental to the main issues before the court ....." See, **AGBO VS. THE STATE (2006) 6 NWLR (PT. 977) 545."**

On this note, I hold that there is no fundamental or material contradiction in the case of the prosecution and discountenance the allegation. I also agree with the submissions of the learned counsel

to the 1st respondent that the PW12 made it clear in his evidence that Mr. Uzor Aghaegbuna had resigned from Enterprise Bank and could not be reached by the prosecution to testify. The defendants could have subpoenaed the said Mr. Uzor to appear to testify on their behalf which they failed to do and turned around to say that the prosecution should have called him to give evidence on its behalf. The argument of the learned Senior Counsel on not calling Mr. Uzor as a prosecution witness is once again discountenanced.

The 1st respondent had urged this court to strike out ground 3 of the appellant's grounds of appeal, as no issue was formulated therefrom and deem the said ground abandoned. We were urged to strike out ground 3. Contrary to the contention of the 1st Respondent, ground 3 in the Amended Notice of Appeal formed part of the Appellant's issue (iii) (not issue 4 as argued in the appellant's reply brief) in the Appellant's Amended Brief of Argument, which alleged contradictions and discrepancies in the evidence of the prosecution witnesses. The 1st respondent's challenge of ground 3 in the Appellant's Amended Notice of Appeal is discountenanced.

The Appellant's issue (iv) is whether the trial court was right to have held that the prosecution proved beyond reasonable doubt that the offence of obtaining money by false pretence against the Appellant? The learned Senior Counsel rightly defined obtaining money by false pretence under the Advanced Fee Fraud and other Fraud Related Offences Act, 2006; Section 20 provides as follows:

" "False pretence" means a representation, whether deliberate or reckless, made by word, in writing or by conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true; "document" in this Act includes letters, maps, plans, drawings, photographs and also includes any matter expressed or described upon any substance by means of letter, figures or marks or by more than one of these means, intended to be used or which may be used for the purpose of recording that matter and further includes a document transmitted through fax or telex machine or any other electronic or electrical device, a telegram and a computer printout."

See, decisions of this court in **OLUWASHEUN VS. FRN (2016) LPELR – 40768 (CA) (PP. 23 – 24, PARAS. E – C)** and **EZERIKE VS. STATE (2015) LPELR – 407000 (CA) P. 24.**

The learned Senior Counsel had listed what the prosecution has to prove before it can convict a person of the offence of obtaining money by false pretence. These are that:

a. There was some mis-mistatement which in law amounts to a pretence.

b. That the mis-statement is as to an existing fact made by the accused person.

c. That it was false to his knowledge.

d. That it was acted upon by the person who parted with the money.

e. That the proceeding on the part of the accused person was fraudulent.

The learned Senior Counsel had also submitted that the pretence must be proved by the prosecution to be the only irresistible influence operating on the mind of the PPPRA to part with the money paid to the Appellant as fuel subsidy. Under count 2 of the charge, the defendants were alleged to have fraudulently obtained the sum of N1,051,030,434.63 from the Federal Government of Nigeria (FGN) under the false pretence that the sum represented subsidy payment for the purported importation of10,000 MT of PMS by the 2nd respondent. Oral and documentary evidence before the trial court showed that the alleged amount in the charge was paid by the FGN to the appellant and 2nd Respondents through the issuance of Sovereign Debit Notes (SDN) by the DMO. Evidence led through the PW1 (the Former General Manager Operations, (PPPRA), PW4 (Chief Operation Officer, Portfolio Management Department, Dept Management Office (DMO) and PW11, an operative of the EFCC and documentary evidence, Exhibits 'M' and 'N1' – 'N13' (earlier highlighted in this judgment) comprised of EFCC letter of investigation activities to the DMO seeking information on the

payment of the subsidy to the defendants, the response from the DMO showed the payment of the amount alleged to have been obtained. The evidence of the PW1, PW4 and PW11 to this effect was not countered or rebutted by the appellant and it did not deny payment of the subsidy to it and the 2nd Respondent. At a point, the argument of the learned Senior Counsel was that the subsidy was not paid to the 3rd Respondent directly. That argument cannot avail the 3rd Respondent. The 3rd Respondent as Managing Director of the Appellant all along acted and operated on behalf of the Appellant. The Appellant cannot think, plan or sign documents on its behalf but, operates through people. On the issue of forgery, the argument under the appellant's issue (iii) was reargued, to the effect that the prosecution failed to establish that the source of the allegedly imported PMS by the Appellant was different from where the appellant claimed the PMS was imported from and therefore that there was no evidence to support the offence of false pretence. Also, that there is no written law making it an offence for a marketer to source the product from a country different from where he claimed. It was argued that it would only amount to a breach of contract of the importation which would only amount to a refund of the excess payment of money paid on the basis of the source of the product. This argument could only be considered if the permit granted by the PPPRA to the 2nd respondent vide Exhibit 'A' did not specifically stipulate the country of origin where the Petroleum product was to

be imported from, to be Amsterdam, Netherlands. I therefore discountenance the argument of the learned Senior Counsel.

The appellant on his part, chose not to adduce any evidence in his defence and called no witness, if it did may be it would have been able to show and/or prove that the PMS was imported from Amsterdam, Netherlands, on the basis of which the subsidy was calculated and paid by the Federal Government of Nigeria, it failed to do so to its detriment. The learned Senior Counsel also had argued that the prosecution ought to have contacted the owner of the vessel and the country of her registration to ascertain the status of the vessel. As earlier held in this judgment, the appellant was in a good position to have called these witnesses to add weight to or prove its version of having imported the PMS on a vessel that the prosecution proved was non-existent as at 17th April, 2010, and the date of the alleged loading in Amsterdam and transferred to the daughter ship in Cotonou. The appellant once again failed to do so. The appellant reargued its first and second issues, which had been resolved earlier in this judgment. The learned trial judge accepted and found that the evidence led at the trial court that the product discharged at Fatgbems Depot was not imported from Amsterdam, Netherlands, the supposed country of origin via the Vessel MT Kriti Akti purportedly used to import the product, since the vessel was dead as at the date of the importation of the PMS, I cannot fault the trial court's finding. The appellant did not lead any evidence that would have assisted the court to believe its version that the said vessel was

used for the importation of the PMS and from the country specified in the permit.

It is noteworthy that fuel subsidy payment under the Petroleum Support Fund (PSF) is rooted upon importation of PMS by oil marketers. Exhibit 'A' (the PPPRA Permit) issued to the 2nd respondent to import the PMS was captioned "PERMIT TO IMPORT PMS UNDER THE PSF SCHEME FOR SECOND QUARTER, 2011" dated 15th June, 2011 was specific as to the country of origin. The essence of the specification is obvious. It is to ensure that oil marketers do not buy products from any source than specified, from neighbouring countries, from within Nigeria or even from illegal 'refineries' at a lesser price and turn around to claim a large amount of subsidy from the Federal Government of Nigeria as if the PMS was imported from Europe or elsewhere according to the specifications and the FGN would unknowingly pay the subsidy, thus causing the loss of huge sums of money in the form of subsidy payment paid out to undeserving marketers.

Further, subsidy payment is on the basis of imported fuel from the origin; see the evidence of the PW11. From Exhibit 'A' and the DPR permit, Exhibits 'D' and 'E', the Petroleum Support Fund (SPF) and the fuel subsidy scheme are founded on the importation of PMS and not locally sourced PMS. Therefore, if sourced through other means other than from the specified origin as claimed in the documents submitted to the PPPRA to claim subsidy payment, any

payment made as in this case through false pretences amounts to obtaining money by false pretences. I am in agreement with the submissions of the learned counsel to the 1st respondent in this regard and agree with the finding of the learned trial judge that the appellant committed the offence of obtaining money by false pretences. The appellant did not lead any evidence or tender any document to show that the PMS was indeed imported from Amsterdam, Netherlands. The only evidence to prove the alleged importation of the PMS are only those tendered and faulted by the prosecution, that were forged. The appellant was also aware that the origin of the product was of importance to guarantee payment of subsidy, for which reason it procured documents to make it seem like the product supplied came from Amsterdam, payment of the subsidy was the reason for the whole saga of obtaining documents here and there found to have been previously used by an importer (Oando) to import PMS to justify the entitlement and payment of the subsidy.

The learned Senior Counsel had erroneously argued that there was no evidence of any false pretence since PMS was supplied and that there was value for money paid by the PPPRA as there was correct quality and quantity of PMS by the appellant. One thing is clear, contrary to the submissions of the learned Senior Counsel, the appellant was not prosecuted on the basis that it imported PMS from a different country or source but, rather that it obtained money by false pretences through the medium of a contract to import from Amsterdam and failed to do so. The law is that Advance Fee Fraud

can be rooted or achieved through a contract. Section 1 (1) (c) of the Advance Fee Fraud and other Related Offences Act, 2006 made it a criminal offence to obtain by false pretences through a contract or some other numerous ways. For clarity, Section 1 provides as follows:

> 1 (1) Not withstanding anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud –
>
> (a) Obtains, from any other person, in Nigeria or in any other country for himself or any other person; or
>
> (b) Induces any person, in Nigeria or in any other country, to deliver to any person; or
>
> (c) Obtains any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence, commits an offence under this Act.
>
> (2) A person who by false pretence, and with the intent to defraud, induces any other person in Nigeria or in any other country, to confer a benefit on him or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for commits an offence under this Act.

(3) A person who commits an offence under subsection (1) or (2) of this Section is liable on conviction to imprisonment for a term of not more than 20 years and not less than seven years without the option of a fine."

(underlined mine for emphasis).

The essential elements to be proved for the offence of obtaining money by false pretences were proved by the prosecution in line with the above section and as outlined by the learned Senior Counsel to the appellant. See, **ALAKE VS. STATE (1991) 1 NWLR (PT. 205) 567** at **592.** Also, for the purport of the above Section 1, see, **NWEKE VS. FRN (2016) LPELR – 41525 (CA) (PP. 16 -24 PARAS. C – F), ADEBAYO & ORS VS. P.D.P.** and **ORS (2013) LPELR – 20342) (SC), NDIC VS. OKEM (2004) 10 NWLR (PT. 880) 107, KAYODE VS. FRN (2017) LPELR – 41865 (CA) FEDERAL REPUBLIC OF NIGERIA VS. AMAH (2016) ALL FWLR (PT. 818) 889** at **PP. 893** and **909; THE STATE VS. FATAI AZEEZ (2008) 35 NSCQR 426; NWOKEDI VS. COP (1977) ALL NLR 11; ODIAWA VS. FRN (2006) ALL FWLR (PT. 319) 774; ARIJE VS. FRN (2013) LPELR – 22125;** and **CHUKWUEMEKA AGUBA VS. FRN (2014) LPELR 23211.**

I am of the view that the prosecution led credible (and not discredited or rebutted) evidence and proved the elements of the

charge as outlined earlier under this issue, beyond reasonable doubt and the trial court was right to have acted on the unchallenged and credible evidence for the conviction and sentence of the Appellant. The fourth issue is resolved against the appellant.

The appellant's sixth issue challenged the learned trial judge's holding that the prosecution proved beyond reasonable doubt the guilt of the appellant on each count of conspiracy. The charge of conspiracy ran through prosecution's case before the trial court, particularly counts 1, 3, 6, 9 and 15 in the amended charge. I will start with the definition and meaning of conspiracy. The offence of conspiracy in law consists of the agreement by two or more persons to achieve an unlawful act or to do a lawful act by unlawful means. It has been variously defined by the Apex. In **THE STATE VS. OLASHEHU SALAWU (2011) LPELR – 8252 (SC)** by his lordship Muhammad, JSC at **(PP. 38 – 39 PARAS. E – A); (2011) 12 SC PT. IV, P. 191; (2011) 18 NWLR PT. 1279 P. 580** as follows:

> "The general definition assigned to the word "conspiracy", in the realm of criminal law, is that it is an agreement by two or more persons acting in concert or in combination to accomplish or commit an unlawful/illegal act, coupled with an intent to achieve the agreement's objective. Burton's Legal Thesaurus 4th edition. In the Penal Code (PC) of the Northern Region of Nigeria CAP 89, Laws of

Northern Nigeria (1963) under which the respondent was charged, Section 96 thereof defines "conspiracy" as follows:

"(1) When two or more persons agree to do or cause to be done – (a) An illegal act; or (b) An act which is not illegal by illegal means."

Similarly, his lordship Ariwoola, JSC in **TAOFEEK VS. THE STATE (2013) LPELR – 20971 (SC) (PP. 38 – 39, PARAS. G – A); (2013) 16 NWLR (PT. 1381) P. 556** defined conspiracy thus:

"Conspiracy generally is an agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective, and action on conduct that furthers the agreement. Conspiracy is therefore a separate offence in itself from the crime that is the object of the conspiracy. See, Black's Law Dictionary, Ninth Edition P. 351."

See, also **KAYODE VS. STATE (2016) LPELR – 40028 (SC) (P. 32, PARAS A – B)** where his lordship Peter – Odili, JSC at P. 66, paras E – F, defined conspiracy thus:

"On the count of conspiracy which definition has one way or the other come to be a meeting of two or

more minds to plan an unlawful or illegal act or to carry out a legal act through illegal means."

An essential element of conspiracy from all of the above decisions is the "agreement" to achieve a common goal, "a meeting of the minds" to carry out the objectives of the conspiracy. The agreement can hardly be seen to have taken place; it can be inferred from the facts of things done towards a common goal or end. The conspirators need not come together for the purpose of the act of conspiracy but, they could consult among themselves in agreement to achieve the performance of an unlawful act or to do a lawful act by unlawful means, then the act of conspiracy would have been committed. The offence of conspiracy can hardly be seen directly done but, can also, apart from inference, be proved by circumstantial evidence from the surrounding circumstances of the case. The argument that there was no evidence that the appellant made or prepared the shipping documents to prove conspiracy on its part is therefore not tenable.

Once there is an agreement with others to do an unlawful act or lawful act by unlawful means as in this case, it is enough for the offence of conspiracy to have been committed. I will examine the various counts of conspiracy charge before the lower court. Under count 1, the prosecution made out that the defendants conspired to obtain money by false pretences from the Federal Republic of Nigeria (FGN) in the sum of N1,051,030,434.63 (One Billion, Fifty One

Million, Thirty Thousand, Four Hundred and Thirty Four Naira and Sixty Three Kobo) as fuel subsidy. I have earlier touched on the evidence of the PW1 and PW11 to show that the PPPRA granted a permit to the 2nd respondent to import 10,000 MT of PMS, the Permit is Exhibit 'A', on the face of which contained the Terms and Conditions of the permit where the 2nd Respondent, the beneficiary was enjoined not to assign the permit to a third party. Exhibit 'A', the permit to import PMS, dated 5th April, 2011 was from PPPRA to the Managing Director of Alminnur Resources Limited, headed: "PERMIT TO IMPORT PMS UNDER THE PSF SCHEME FOR THE SECOND QUARTER, 2011" clause (iv) of the terms and conditions provided thus:

> "The title of this Permit resides with the beneficiary company and shall not be assigned to a third – party under any circumstance."

The above term is plain and unambiguous that the permit should not be assigned to a third party. The 2nd Respondent in contravention of the above term with its Managing Director (now deceased) assigned the permit under a memorandum of understanding (MOU) (Exhibit W) dated 20th May, 2011, to the 3rd respondent. The terms of the MOU was agreed to be binding on the parties. Further, the Department of Petroleum Resources (DPR) permit dated 5th June, 2011 which formed part of Exhibits 'D' and 'E'

at page 15 of each, and at page 20 of the printed records of appeal, clearly on the face of it stated that the country of origin from where the PMS was to be imported is Amsterdam, Netherlands.

The permit from the DPR clearly stated thus:

> "The petroleum products imported contrary to the terms of this permit are liable to confiscation and the importer may be subjected to a fine and/or imprisonment.

TYPE OF PETROLEUM PRODUCT	COUNTRY OF ORIGIN	QUANTITY (METRIC TONS)	ESTIMATED VALUE $
PMS	AMSTERDAM NETHERLANDS	10,000 MT	8,500,000

"

There is nothing to show that the PMS was imported from Netherlands. To convince the PPPRA that the product was imported from Netherlands so as be entitled to the payment and to be paid same, a Bill of Lading previously used by Oando supply and Trading Limited was cloned by the defendants bearing the exact LC No: IBF074710994 and Form 'M' No: CB06920090010249 MF 0481139 respectively showing the authentic Oando Bill of Lading and the 2nd Bill of Lading forged by the respondents. At variance between the two Bills of Lading were the date, destination port and the

volume/quantity of the product. The forged document was used as the foundation of calculation of subsidy due and was presented to the PPPRA which was calculated and paid to the appellant, 2nd and 3rd respondents. The payment of the subsidy was without doubt claimed and paid pursuant to their agreement to obtain money from the Federal Government without any importation of PMS from Amsterdam, Netherlands. The conspiracy to obtain money by false pretences was proved.

Count 3 of the charge was conspiracy to forge the Bill of Lading of the Mother Vessel, MT Kriti Akti with FORM 'M' No: CB069200 900 10249 MF 048 1139 and LC No; IBF074 7109904. The above documents were used in a transaction by Oando Supply Trading Limited in 2009 to which the PW5 and PW6 gave evidence which was termed as hearsay by the learned Senior Counsel and I earlier held otherwise in this judgment. The appellant has not shown in any way that these documents were not the documents previously used by Oando Supply and Trading Limited, cloned by the appellant, 2nd and 3rd respondents. The evidence led by the prosecution was unrebutted and stands concrete.

The "Certificate of Quantity Transfer" purportedly issued by an inspection company MGI Inspections Limited, as proof of the purported transfer of 10,003.279 MT vac of PMS from the Mother Vessel MT Kriti Akti to the first daughter vessel, MT Althea at offshore Cotonou was denied by the company that purportedly issued the

Certificate of Quantity Transfer, therefore conspiracy to forge the certificate under count 6 of the charge was proved by the prosecution. Similarly, under count 9, the charge of conspiracy to forge the "certificate of origin" dated 9th July, 2011 purportedly issued by MGI Inspections Ltd as proof of the importation through the Marketers, NAPA Petroleum Corporation on board the vessel MT Kriti Akti, Ex MT Althea at offshore Cotonou was equally denied to have been issued by the company. The appellant, 2nd and 3rd respondents did not offer any explanation as to the "certificate of origin" presented to the PPPRA. On the conspiracy to forge the document captioned "Certificate of Quality" dated 14th June, 2011 purportedly issued by SGS Netherlands BV, as proof of the quality of PMS purportedly loaded on the Mother Vessel, MT KRITI AKTI at Amsterdam, to West Africa was also denied to have emanated from the company. All the documents presented to the PPPRA by the appellant, the 2nd and 3rd respondents to the PPPRA were denied to have been issued by the companies that supposedly issued them. Apart from the Bill of lading of the mother vessel, MT KRITI AKTI with forms M and LC numbers shown to be forged, exhibits O, P, Q1, 1 – 49, Q2, 1 – 37, R and S buttressed the fact that the Bill of lading presented was used by, Oando supply and Trading in a transaction in 2009. Exhibit 'O' is the letter to Oando Plc to release their Operations Manager for questioning concerning the transaction of 2009. Exhibit 'P' is the detailed statement of PW5 (Folasade Onyia) a Staff (Chief Operating Officer of Oando Plc); with details of their 2009 transaction

and importation of PMS from Amsterdam, Netherlands on MT Kriti Akti, Exhibits Q1, 1 – 49 are importation documents (Bill of Lading) showing details of the Oando transaction of 2009 as well as Q2, 1 – 37 (Bill of Lading), Exhibit 'R', Letter from the EFCC to the Managing Director, Access Bank Plc to confirm the issuance of Form 'M' through Intercontinental Bank Plc. Exhibit 'S' is the response from Access Bank showing their customer to be Oando Supply and Trading in a transaction in 2009. It is therefore clear from the detailed evidence of the PW5, pages 771 – 780 of the records and PW6 (Osamede Osayomore) a staff of Access Bank, that the documents the appellant, 2nd and 3rd respondents submitted as the Bill of Lading of the mother vessel, MT Akti with Forms 'M' and LC highlighted above were forged, Oando Supply and Trading Limited having used same in a transaction in 2009. From the evidence tendered at the lower court, the appellant, 2nd and 3rd respondents purportedly opened the letter of credit (LC) on behalf of the 2nd respondent with Spring Bank (later became Enterprise Bank), Exhibits 'D' and 'E'. A look at the Bill of Lading presented by the Appellant, the LC number showed the acronym IBF, which stands for the then Intercontinental Bank, the Bank that financed the Oando transaction in 2009, see, pages Q.17 (application and agreement for documentary credit with Oando). Q.18 (conditions for the credit to Oando) Q.19 is Oando's Form 'M' of 2009, Q.20 the Bill of Lading with LC No. IBFO74709904. Form 'M' No: MF 0481139 and CB 06920090010249 and the rest of Exhibits Q1 and Q2 reflected the Oando transaction and not that of the Appellant,

2nd and 3rd respondents of 2011. Similarly, the entire Exhibit 'S' (From C70 onwards) showed the details of the credit facility (the terms and conditions) to Oando from the then Intercontinental Bank and not to the Appellant, 2nd and 3rd Respondents. The PW6 testified that his Bank, Access Bank (Formally Intercontinental Bank Plc) had no banking relationship with the appellant and 2nd Respondents, (page 783 of the printed records) and did not issue any LC in favour of the Appellant, 2nd and 3rd respondents.

By Exhibit 'J' the shipping documents (Certificate of Quantity Transfer, Certificate of Origin, vessel ullage report before discharge, ullage report after discharging) purportedly issued by MGI Inspections Limited did not emanate from the company that purportedly issued them. The PW3, a Managing Director of MGI Nigeria Inspections Ltd at pages 759 – 760 confirmed the rubber stamps of his company on pages 44 – 49, 54, 64, 61, 63, 65 and 73 – 74 but, stated that the purported rubber stamps on these documents (Exhibits D & E) did not emanate from his company except the stamp at page 49 with STS written after Brila keji at Cotonou offshore vessel Haulage Report. He clearly stated at page 761 that he did not know the consignee or consignor on the STS transaction. Also, the PW8 Stanley Ambi (the legal and compliance officer of SGS Inspection Service, Nigeria Limited), in his evidence at the trial court stated that Exhibit 'T' from the EFCC, a Letter investigating a Certificate of Quantity purportedly emanating from his office had nothing to do with his office, as the Certificate of Quality

was not issued by his office. The witness made it clear that Exhibit S, page 22 dated 5-9/8/09 the certification of quality was issued to Oando Trading Ltd and not the appellant, 2nd and 3rd respondents. Similarly, that Exhibits U4 – 22 were certification of quality issued to Oando. The PW8 highlighted the differences between the certificate of quality received from SGS corporate security which has the Oando Trading Ltd address and a copy of the Certificate of Quantity sent by EFCC attached to Exhibit 'T' dated 14/6/2011 part of the documents submitted by the appellant, 2nd and 3rd respondents. Several differences were highlighted as well as similarities, for instance the SGS corporate security reference numbers were the same on both documents as 277761-1 (Certificate of Quantity from SGS corporate security and the one attached to the EFCC Letter Exhibit 'T'). The PW8 made it clear that no reference number can be given to multiple certificates. See, pages 797 – 807, particularly pages 800 – 802 of the printed records of appeal.

The various documents relied upon by the appellant, 2nd and 3rd respondents as having emanated from the companies who purportedly issued them were disowned by the companies as not emanating from them. The Appellant, 2nd and 3rd respondents did not offer any explanation whatsoever of how they came about these documents. The only inference one can draw is that the appellant, 2nd and 3rd respondents conspired to forge these documents. From the evidence before the lower court, direct and by inference in the circumstances of this case, the trial court was right to have convicted

the appellant, the 2nd and 3rd respondents. The learned trial judge properly and painstakingly evaluated the evidence adduced by the prosecution which is unrebutted and rightly held that the prosecution proved its case beyond reasonable doubt under the charges of conspiracy. The appellant's sixth issue is resolved against him.

The appellant's issue (vi) alleged that the learned trial judge failed to consider the evidence of the prosecution witnesses which are in favour of the innocence of the appellant which cast doubt in the prosecution's case and to have held that the Appellant was expected to have led evidence to shed light on the lapses and discrepancies in the evidence of the prosecution. The appellant's allegation is generalized. I agree with the view of the learned trial judge that if the appellant had led evidence at the trial, more light would have been thrown on the pieces of evidence of the prosecution that were in favour of the appellant. As it is, the appellant did not (not having called any evidence) specify the portions of the evidence of the prosecution that favoured the appellant that was not utilized by the trial court in arriving at its decision. If anything, the trial court relied on the evidence led by the prosecution to arrive at its decision. I discountenance the argument and resolve issue (vi) against the appellant.

I would resolve issues (vii) and (viii) together. These issues challenged the sentences imposed on the appellant as being excessive, including the order that the appellant, 2nd and 3rd

respondents should jointly and severally pay back to the Federal Government of Nigeria the sum equivalent to the loss sustained. On the sentences, I will once again reproduce the punishment section as prescribed under Section 1(3) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 which provides as follows:

> "A person who commits an offence under subsections (1) and (2) of this section is liable on conviction to imprisonment for a term of not more than 20 years and not less than seven years without option of a fine."
>
> (underlined mine for emphasis).

The appellant was found to have committed an offence under Section 1(1)(a) of the Advance Fee Fraud and Other Related Offences Act, 2006 and was convicted. Subsection 1(3) of the Act gave a maximum sentence of twenty (20) years and minimum sentence of seven (7) years imprisonment, both, without an option of fine. The learned trial judge exercised his discretion, judiciously and judicially by giving the minimum sentence of seven (7) years imprisonment with no option of fine.

With Forgery under Section 364 of the Penal Code the maximum punishment prescribed is fourteen (14) years imprisonment or with a fine or both. The learned trial judge imposed a sentence of seven (7) years imprisonment or an option of fine of N5,000,000.00 (Five Million Naira) on each of the counts that the

appellant was found guilty for the offences of making false document, conspiracy and using as genuine forged documents under the Penal Code. The seven (7) years imprisonment or fine of N5,000,000.00 (Five Million Naira) is not excessive. The punishment for using as Genuine a Forged Document under Section 366 of the Penal Code is the same as in Section 364 of the Penal Code above.

The appellant on the other hand did not pin point which sentence was in excess of what is prescribed by the Law. If anything, I think the learned trial judge was lenient considering the leakages here and there of the Federal Government Funds which has cumulatively contributed to the dwindling economy from the likes of the Appellant, it should not complain. Drops of water they say, make up the ocean.

On the Appellant jointly and severally paying back to the Federal Government, the sum equivalent to the loss sustained by the FGN (restitution order), from the findings of the trial court there was no evidence that the appellant imported any PMS from Amsterdam, Netherlands based on which the subsidy was calculated and paid. It was clear that by the subsidy sum paid, the FGN incurred great loss in the over payment of subsidy to the appellant, 2nd and 3rd respondents. The PPPRA is in a position to compute the loss sustained based on their Guidelines for the computation of subsidy for imported PMS or locally sourced, the argument by the Learned Senior Counsel that the amount of the loss was not stated with

respect is not tenable. The sentences imposed by the learned trial judge and the order for restitution were not excessive. The appellant's issues (vii) and (viii) are resolved against it.

In the final analysis, all the issues having been resolved against the appellant, I hold that the appeal is without merit, same is hereby dismissed in its entirety.

The Judgment of the learned trial judge A. A. I. Banjoko, J. delivered on 7th April, 2017 in charge No. FCT/HC/CR/9/12 in respect of the conviction and sentence of the appellant is hereby affirmed.

CHIDI NWAOMA UWA,
JUSTICE, COURT OF APPEAL.

COUNSEL:

Lawal Pedro (SAN) with A. P. Ameh Esq. and C. O. Oni Esq. for the Appellant.

Funke Durojaiye with Richard Dauda Esq. for the 1st Respondent.

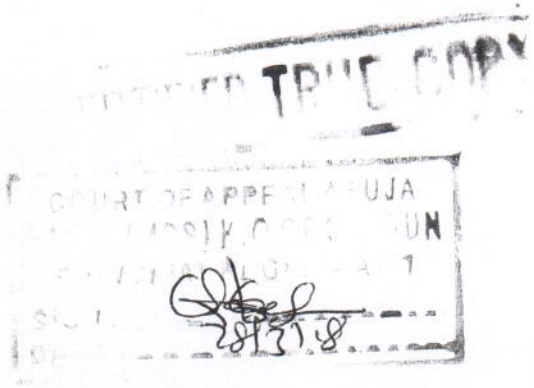
Zaidu Abdullahi with Khadija Ahmad for the 2nd Respondent.

Uduak Umoren for the 3rd Respondent.

CA/A/449C/A/17.
MOJEED ADEKUNLE OWOADE, JCA.

I agree.

MOJEED ADEKUNLE OWOADE.
JUSTICE, COURT OF APPEAL.



APPEAL NO:- CA/A/449C/A/2017.

HAMMA AKAWU BARKA, JCA

I agree

HAMMA AKAWU BARKA

JUSTICE, COURT OF APPEAL.

TRUE COPY

IN THE COURT F APPEAL
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON MONDAY, THE 26TH DAY OF MARCH, 2018.
BEFORE THEIR LORDSHIPS:

MOJEED ADEKUNLE OWOADE.....JUSTICE, COURT OF APPEAL
CHIDI NWAOMA UWA.....JUSTICE, COURT OF APPEAL
HAMMA AKAWU BARKA .....JUSTICE, COURT OF APPEAL

CA/A/449C/A/2017.

BETWEEN:

BRILLA ENERGY LIMITED..... APPELLANT

AND

1. FEDERAL REPUBLIC OF NIGERIA
2. ALMINNUR RESOURCES LIMITED } **... RESPONDENTS**
3. JUBRIL ROWAYE

JUDGMENT
(DELIVERED BY CHIDI NWAOMA UWA, JCA).

The appeal is against the judgment of the High Court of the Federal Capital Territory, Abuja delivered on the 7th day of April, 2017. The Appellant was charged along with the 2nd and 3rd Respondents with the offences of Conspiracy contrary to Section 97 of the Penal Code and Section 8(a) of the Advanced Fee Fraud and Other Fraud Related Offences, obtaining money by false pretence, punishable under Section 1(3) of the Advanced Fee Fraud and Other Fraud Related Offences Act, forgery, contrary to