

IN THE HIGH COURT OF LAGOS STATE
HOLDEN AT IKEJA JUDICIAL DIVISION
SITTING AT HIGH COURT NO. 12, SPECIAL OFFENCES COURT I,
BEFORE THE HON. JUSTICE M.A. DADA (MRS.)
TODAY FRIDAY THE 17TH DAY OF MAY, 2019

SUIT NO: LD/6481C/17

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

---- COMPLAINANT

AND

1. EMMANUEL OLUWASEUN

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2. WALTER DE-HEROES SCHOOL

---- DEFENDANTS

JUDGMENT

The Defendants stood trial in this court on 3 Counts Amended Information dated 18th December 2017 for;

1. Conspiracy contrary to Sections 8(a) and 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14 of 2006.
2. Obtaining money by false pretence contrary to Section 1 (1) (a) and 1 (3) of the Advance Fee Fraud and Other Related Offences Act No. 14 of 2006.
3. Forgery of document contrary to Section 363 (1) of the Criminal Law of Lagos State of Nigeria, 2011.

The Defendants are alleged to have conspired between themselves and one Abolanle Moshood Feranmi (still at large) to obtain and did obtain money on false pretence.

The 1st Defendant pleaded not guilty for himself and on behalf of the 2nd Defendant.

The Prosecution called 4 witnesses while the 1st Defendant testified for the defence.

PW1 was Alhaji Ibrahim Mahmud Migdad. He testified as follows:-

I am an Imam in Fiwakesin central mosque and an Arabic teacher tutor in Rudolf school of Arabic and Islamic studies. I know the Defendant in the dock. I got to know him through a Property Agent, Mr. Ramon Makinde who lives and works at Egbe. Sometime early 2016, Ramon, the Agent came to me and said there was a landed property with a building at no 25, Oladunjoye Street, Ikotun where I live, owned by Alhaja Oluwabunmi Bilikisu Abass, a sister to the Defendant who brought the property to AbdulRahman to be disposed. I asked for the reason why they wanted to dispose it, the Property Agent told me that the owner, Alhaja Bilikisu Abass who is a business woman living in Saudi Arabia was arrested and imprisoned in Saudi Arabia there asked them to sell out the property so that the money can be used after being disposed to set her free in Saudi Prison. I requested for all the documents of the land for verification. Everything was shown to me with the name of the owner and that of her son Moshood Feranmi. I asked why 2 names and who is the real owner. They said

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the property was bought in the name of her son who is Moshood Feranmi. After some weeks, we agreed on how to make the payment and I agreed to pay N8 (Eight Million Naira) for the land. I sent the money into Rahman Makinde Account and he transferred it into the Defendant's Account with N6.5M remaining N1.5M.

After some weeks of the payment, I heard from a reliable source that the owner of the land had arrived from Saudi and the woman heard about the disposal of the house and denied asking anyone to sell it for her. The documents were with the Agent, so after making the payment, I collected the documents. So when I heard that the woman denied the sale, I arrested the Defendant through the Police after the sister, the owner, Alhaja arrested me to Ikotun Police Station where I was detained for several hours. The following day after my arrest, the file was filed at Idimu Police Command, Area 'M'. The Defendant was detained there for a week and he made an undertaking to pay back the money between September and December, 2016, i.e. within 3 (Three) Months. From there, I haven't received anything from him. When I realised the way the case was being handled by the Police, I wrote a Petition to EFC through my lawyer, Yekinni. The Defendant was granted bail at the Police Station and 2 of his friends stood surety for him.

The Petition is Exhibit 1.

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Under cross-examination, he testified further thus:-

Yes, I know the Defendant. I got to know him through a Property Agent, Mr Rahman Makinde. No, the Defendant never introduced himself to me as an Agent. There is a document where the Defendant said he was transferring the land to me. He said the land belonged to his elder sister. No, there is no document where he said he was transferring the land to me as the owner. I did not see any document where he showed that he was the owner. He said the Power of Attorney was given to him and Moshood Feranmi by Alhaja Bilikisu Abass to sell the land. Yes, I saw a Power of Attorney shown to me by the Property Agent. Yes, I live at 12, Oladunjoye Street, Ikotun, Lagos. I have been living there for over 30years. Yes, I am very conversant with that area. The Property in dispute is located at Oladunjoye Street. It is not far from where I stay. Yes I must have known a brief history of the property. The first owner was Mrs Musediku before she sold it to Alhaja Bilikisu Abass. Yes, I confirm that I knew that Alhaja Bilikisu was the owner. No, I did not involve any lawyer in the transaction. The Deed of Assignment was prepared by Emmanuel. Yes, his name is there as the person who prepared it. We agreed that I should pay N8M for the land. I paid N6.5M. Yes, I still have a balance of N1.5M to pay. Yes, the title has not been passed to me because I have not finished payment. Yes, I wrote a Petition to EFCC. It was written by my lawyer by name Yekinni Kolawole. Yes, the Defendant had earlier been arrested before I gave my lawyer instruction to write the Petition. Yes, I remember the Defendant was charged to court at the Ejigbo Magistrate Court. Later on that date, the senior sister and members of the Defendant's family including his wife begged me to pardon him in order to withdraw the case from the court and that we should arrange a civil arrangement and settlement. Yes, based on that, the charge was withdrawn.

Yes, I had an agreement with them that the charge be withdrawn. The agreement was that he would pay me my money but he never did. During the Sitting, he promised and pledged to pay the money

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to the 2nd Defendant's Account and that it was registered as the school where the 1st Defendant is the Principal and Proprietor. On 13/10/16, the 1st Defendant was arrested in Ikotun and brought to the office and during the interview, he stated that he actually collected the money from the Complainant for the property which was given to him by his nephew, Bolale Feranmi Moshood and he is aware the property belonged to Alhaja Bilikisu, his elder sister. He said he gave the complainant all the assurance based on the information he received from Moshood that the property can be sold to him. He said he signed the Deed of Assignment as a witness and the Power of Attorney as what Moshood gave to him to act on his behalf. He also confirmed that he did not receive any instruction from Alhaja Bilikisu to sell the property. I asked him if he was ready to reduce it into writing and he said yes. I cautioned him in English language he said he understood and signed the words of caution. He then volunteered his own statement in writing himself. He read it over and he signed it. All the documents recovered were registered as exhibits in the case. Then Alhaja Bilikisu reported to our office and was arrested, cautioned and her statement was recorded. She told us she was out of the country in Saudi Arabia at the time of the transaction and presented her International Passport. She said she had not communicated with the Defendant nor gave him authority to sell her property on her behalf. She said she had not received a kobo from the Defendants in respect of the said sale and that she reported the 1st Defendant to a Police Station on her return alleging that the 1st Defendant broke into her house, stole her cheque book and withdrew N4M which she said Eco Bank is investigating. That a lot of her properties were carted away besides the title documents of the property sold by the 1st Defendant. A Party-interview was conducted with Alhaja Bilikisu and the 1st Defendant where all these allegations were re-narrated to him and he confirmed doing same. The Survey Plan of the land was recovered when we wrote to the Land Bureau of Lagos to confirm the true position of the land. The documents she presented on how she bought the property in 2005 from one Mrs Rabi. We also discovered that the Deed of Assignment the 1st Defendant used to sell the property was said to have been prepared by one Barrister Deji Juba. We invited him and he made statement that he did not prepare any Deed of Assignment for the 1st Defendant and he did not know or ever met him or had any transaction or involved in the sale of the said property. He only confirmed preparing the Deed of Assignment between Mrs Rabi and Alhaja Bilikisu in 2016 but this very one was not prepared by him and therefore was forged. I identify the Petition as Exhibit P1 date 22/08/2016.

(The letter to Sterling Bank and their Reply are Exhibits 2 and 3 respectively).

In the analysis, I highlighted the credits made by the complainant to the 2nd Defendant's Account on 8/07/16 and on same date, N200,000 was transferred to the 1st Defendant's personal Account with First Bank. On same date, he made a cash withdrawal of N900,000 and several other withdrawals also highlighted the second payment by the complainant.

(The 1st Defendant's statements of 13/10/16, 18/10/16 and 29/09/16 are Exhibits 4, 5 and 6 respectively).

Yes, I also saw the forged Deed of Assignment and the Power of Attorney.

Under cross-examination, he testified thus:-

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I have been an IPO for 2 years now. I have a diploma in Law. I have a Certificate as a Detective from Police Detective College, Enugu.

The complainant, the 1st Defendant and Bolanle Feranmi Moshood who signed the Power of Attorney were involved in the transaction. We couldn't find Bolanle Feranmi Moshood. Yes, we attempted to apprehend him based on the claim of the 1st Defendant that Bolanle gave him the Power of Attorney. We went to the address used by Bolanle in the document but we did not find him. The 1st Defendant also confirmed that even before the return of Alhaja Bilikisu, he had not been seeing Bolanle and he could not find him at the address. The complainant said it was the 1st Defendant who came to him and introduced the land to him and took him there. The Investigation was completed. All the claims by the 1st Defendant that he transferred all the money he received to Bolanle Feranmi Moshood are all false as there was no trace that any kobo was transferred to him. The 1st Defendant himself withdrew it himself. The 1st Defendant said he had a Power of Attorney to sell the land as the Agent and as a witness because he signed at a place as a witness. The Investigation commenced on 6/9/16 till it was charged in Court.

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There was no re-examination.

PW3, was Nkiru Anosike 'F', an Operative of the EFCC of the Land and Property Fraud Unit, Team 'B'. Her evidence in chief is thus:

My Team members are Ariyo Muritala, Idi Mohammed Tuku and myself. Yes, I know the Defendant in the dock from a Petition against him by one Ibrahim Mahmud Miqdad. In the course of the Investigation, the Defendant brought a Deed of Assignment on which he claimed one Moshood Feranmi gave him a Power of Attorney to sell the property. We investigated and discovered that the document is forged. One Barrister Juba Adedeji came and said the Defendant told him to prepare the Deed of Assignment.

(A Deed of Assignment dated 20/03/15 together with the annexed Power of Attorney became Exhibit 7).

Her further evidence under cross-examination is thus:-

Yes, I was part of the Team that investigated this case.

(The CTC of the Information dated 14/11/18 with the Proofs of Evidence is Exhibit 8).

Yes, in the course of the Investigation I met Alhaji Ibrahim Mahmud Miqdad. Yes, his lawyer wrote the Petition to EFCC. Our Investigation proceeded from the Petition. I don't know if he testified in this case or not. My Investigation is in the area I testified to in court. Yes, I confirm that it was the Defendant that gave me Exhibit 7 in the course of investigation. We cannot acknowledge receipt of the original document. The attachment to Exhibit 1 was received in another Section of our office. The land Purchase receipt was attached to the Petition assigned to my Team Leader. My own area of Investigation is the forged document. The attachment to Exhibit 1 was not prepared by me and I don't know if it is different from Exhibit 7. I was around when the Defendant brought it. Yes, the Defendant handed Exhibit 7 to me. I cannot remember the date. The lawyer Deji Juba volunteered

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his statement to us. When we asked if he was the one that prepared Exhibit 7 and he said he did not prepare it. Yes, his statement is part of our record. I don't know whether the Defendant's reaction was sought on the lawyer's statement.

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There was no re-examination.

The Defence opened and closed before Barrister Adedeji was recalled as Prosecution witness and therefore for the sake of sequence I will reproduce his evidence before the Defence.

Juba Adedeji, now as PW4 testified thus:

I am a Legal Practitioner. I know Alhaja Bilikisu Abass. She was a client. She approached me for the documentation of her property at Ikotun, precisely a Deed of Assignment. I prepared the Deed of Assignment in respect of the property she wanted to buy at a point in time. This was some years ago but I can't remember exactly when, though I can identify it. I never prepared any other document apart from it.

Learned defence counsel did not cross examine the witness and this closed the Prosecution's case.

The 1st Defendant opened his defence and stated thus:-

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I am an Educationist and the 2nd Defendant is my school. It was founded by me as the Proprietor on September, 22nd 2008. The school is located at 27 Ahmed Odejayi Street, Abaranji, Ikotun, Lagos.

Yes, I know why I am in court. I have seen the charge against me and the content is false. Yes, I know Abolanle Moshood Feranmi. He is my nephew. I don't know Alhaji Ibrahim Mahmud. Alhaja Bilikisu Oluwabunmi Abass is my elder sister. The allegation is that I collected N6.5M (Six Million Five Hundred Thousand Naira) from one Alhaji Ibrahim Mahmud who I never in one day came across. All the dealings and transactions were between him and Abolanle Moshood Feranmi on the sale of the landed property Alhaji Ibrahim Mahmud claimed through his Estate Agent, one Ramon Makinde.

I was arrested by EFCC officials in my office in August 2017. In their office at Awolowo Road, Ikoyi, a Petition written by the same Alhaji Ibrahim dated 23/08/2017 was shown to me. I read it and I told them I am not the one who transacted business with Alhaji Ibrahim. The sum of N6.5M was paid into the school's Account when Bolanle Moshood Feranmi put a call to me that he needed my Account number and being my nephew I sent the Account number to him. That same date the money was paid in 2 instalments of N4M and N2.5M through Ramon Makinde's Account, the Estate Agent. It was paid by the instruction of Abolanle Moshood Feranmi because he has no Bank Account. He ordered the Estate Agent, Ramon Makinde to pay the sum into my Account. Abolanle Moshood Feranmi and Rahman Makinde agreed on N8M on the said landed property. Yes, I am aware of what led to the payment for the landed property. It occurred to me that Abolanle Moshood Feranmi was living with my sister Alhaja Oluwabunmi Bilikisu Abass who travelled to Saudi Arabia and after some months, I was at my office at Abaranje Ikotun when Abolanle Moshood Feranmi brought news to me that my sister Alhaja Oluwabunmi Bilikisu was arrested in Saudi Arabia. Immediately, I took up my phone to confirm, but all her lines were not going through. After 3 months to the incident, my

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Nephew Abolanle Moshood Feranmi visited me in my office and told me that my sister Alhaja Bilikisu Oluwabunmi called him from Saudi prison that she had been in detention for some months and she had been charged to court and she needed money to settle the case and perfect her Bail conditions. Abolanle Moshood said my sister Oluwabunmi Bilikisu Abass told him to sell the landed property that she bought in his name. I now called him to give me the phone number she used to contact him. He gave me the number and said the line goes once in a month or whenever she has time to call. He claimed that she has only his number off hand and that we cannot reach her but she is the only one who in the prison that can contact us. I asked him where are the documents of the landed property he claimed she bought. He brought some documents; survey plan, Deed of Assignment and all in Abolanle Moshood Feranmi's name. I told him to act on our sister's order because he said her hands and legs can be amputated if serious action is not taken. So he left my office with those documents. After some weeks, he called me on phone that he had met with an Estate Agent called Alfa Adejoro through whom he met Ramon Makinde, Alhaji Ibrahim Mahmud's Agent. Abolanle Moshood and Ramon Makinde went to the landed property to verify. I have never been to the site of that landed property. Ramon Makinde and Abolanle Moshood Feranmi negotiated on the price. After, he called me on phone to brief me on their discussion. I told him as far as he is the one in charge of that property and the one my sister called, that he should hold on to negotiate the price with her and come and feed me back.

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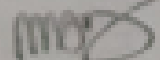
I was not present at the time of their negotiation. I never interacted with them on the negotiation. I don't have any other business aside being an Educationist. After some weeks, Abolanle Moshood came to my office and told me that they had agreed on N8M (Eight Million Naira) for the purchase of the land. So one afternoon, Abolanle called me on phone and demanded for my Account number.

The case was first investigated at Area 'M' Police Station, Idimu where I was detained for 21 days and during which time Abolanle Moshood was nowhere to be found and the case was charged to Ejigbo Magistrate court where my family members and friends pleaded with Alhaji Ibrahim Mahmud to exercise patience for us to find Abolanle Moshood and settle the case being a family matter. The family promised to do all to search for Abolanle Moshood. On that same date at Ejigbo Magistrate court, the case was not called and Alhaji accepted the plea and I was taken back to Area 'M' Idimu Police Station.

The N6.5M was withdrawn to Abolanle Moshood in instalment for the case of my sister abroad as the need arose. I made an Undertaken at Area 'M' Police Station based on the repayment of N6.1M as N400,000 was given to Alhaji's Agent. I decided to make the repayment instalmentally after which Abolanle was nowhere to be found and I was dying in the Police cell. Thereafter I was released on bail. When I was in custody, I believe Abolanle had heard the information and ran away. So I now made the Undertaken for the repayment of the N6.1M.

The landed property was sold on Alhaja Bilikisu Oluwabunmi's instruction and I believed what Abolanle Moshood said. Yes, I met Alhaja Bilikisu when she came back from abroad and I made her to understand the order she gave to Abolanle and she denied that she ever gave him such an instruction to sell the landed property she bought for him. She confirmed to me that she was truly

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...ed and detained but that she did not tell Abolanle to sell the land. I supplied the Account of the
...ool to EFCC. Since when I was in Area 'M' Police Station, I have not seen Abolanle Feranmi.
...ck, I volunteered a Statement at EFCC. I signed the Deed of Assignment attached to Exhibit 8 with
...y name as a Witness.

I stand by what I have written in my Statement.

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His further evidence under cross-examination is thus:-

I finished secondary school in Community Grammar School, Mokola Ibadan with Senior Secondary School Leaving Certificate, then Tai Solarin College of Education with NCE certificate and Lagos State University LASU with 1st Degree in English Education at the Isolo Annexe on Part-time.

Yes, Abolanle Moshood Feranmi is my nephew. Yes, I don't have any transaction with PW1, Alhaji Mahmud. I met him at Area 'M' Idimu Police station when I was arrested. Moshood Abolanle Feranmi was the one who met an Estate Agent Alfa Adejoro who is a friend to Ramon Makinde the Estate Agent to Rahmon Omokayode. Yes, it was Abolanle Moshood who negotiated the price of the property with the Estate Agents. After the negotiation he came back to me and explained their negotiation and showed me the documents with his name and I told him to do whatever my sister said. I never witnessed the transaction.

Yes, I volunteered my statement at EFCC. The attachment to Exhibit 1 where I signed with my name as a witness; this document was produced by Alhaji Mahmud's lawyer and brought to me by Makinde, the Estate Agent. That is my signature. (Witness read Exhibit 7, the Power of Attorney)- No, Abolanle Moshood Feranmi did not give me this power to sell the property. He did not give me this Power of Attorney. The name of the Seller is mine but not my signature. Exhibit 4, in my statement states, "I tried all my possible means to communicate with my sister...to no avail. Abolanle brought the landed property documents...heard his name and I personally introduced him to Alfa Hakeem Adejoro who is a clergy..." Alfa Makinde introduced him to Alfa Adejoro.

Abolanle called me for my Account number which I gave to him. In my Statement in Exhibit 4, I wrote "after some months, Alhaji Mahmud's Agent, i. e. Alfa Makinde Ramon called me that he needed an account number where he would make payment then I submitted my Account number..."

I am not aware of a Petition written against me by Alhaja Bilikisu. I was taken to Area 'M' Idimu and detained because Abolanle Moshood Feranmi has absconded. It is not correct that I was arrested because my Account was used to receive the purchase price of the property.

There was no re-examination and this ended the Trial.

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The Defendants' Final Address by their counsel, Victor Opara esq. is dated 22nd January, 2019. In highlighting the evidence of PW1, learned counsel stated that negotiations were completed and sealed with the land Property Agent and not the Defendants. He sought to point out what he considered a vital procedural gaffe committed by the Prosecution which according to him raises fundamental, material and reasonable doubt against the case of the Prosecution. It is his view that

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PW1 is the star witness of the Prosecution and he remains the alleged victim of the alleged fraud apart from the Petition by Yekini Kolawole. He contended that the Prosecution did not show him any document for identification, be it a Deed of Assignment, Power of Attorney and Purchase Receipt for identification reflective and suggestive of what was allegedly shown to him by Rahman Makinde in the course of negotiation for the property. It his contention that the court cannot fill in this gap, therefore that Exhibits 2-7 having not been identified by PW1, reduce their evidential weight. Learned counsel argued that aside from Exhibit 1, no other Exhibit was shown to PW1 for identification even though he claimed that the 1st Defendant said a Power of Attorney was given to him and Mashood Feranni said to be at large by Alhaja Bilikisu Abass. That he also stated that he saw a Power of Attorney shown to him by the Property Agent but he never took custody of any, he never stated that DW1 showed him any and he also did not give any to the EFCC.

Learned Counsel further highlighted what he considered contradictions in the evidence of PW2 as against that of PW1 and observed that he never stated that either of PW1 or DW1 gave him any document wondering where he got the documents tendered from. Counsel also wondered why Alhaja Bilikisu Abass who was said to have volunteered her statement was not called by the Prosecution.

On the evidence of PW3, another operative of the EFCC, in the Land and Property Fraud Unit, Team B, who he stated confirmed that the 1st Defendant gave her Exhibit 7 in the course of the Investigation but against the usual practice and could not remember the date. Again, learned counsel argued that it was not shown to PW1.

He noted that PW4 was not cross-examined and after the repeat of the evidence of the defence, submitted a sole issue for determination, thus:-

Whether the prosecution has proved the ingredients of the offences of conspiracy, obtaining money under false pretences and forgery beyond reasonable doubt as required by law?

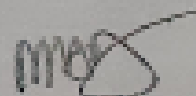
After citing a number of authorities on what constitutes conspiracy, learned counsel conceded that conspiracy could be proved through circumstantial evidence which however must be irresistibly, unquestionably and unequivocally point to the commission of the crime by the accused person. He submitted that the burden on the prosecution can only be discharged in the following ways:

- i. By direct eye-witness account.
- ii. By circumstantial evidence from which the guilt of the accused can be inferred.
- iii. By a free and voluntary confessional statements of guilt which is direct and positive.
- iv. By a combination of any of the 3 modes aforementioned.

He submitted that a meticulous examination of the evidence of the prosecution will reveal that same cannot establish the ingredients of conspiracy. He considered it strange that Rahman Makinde who according to him is central to the entire transaction was neither called as a prosecution witness nor charged with the Defendant.

He argued that Section 1 (3) of the Advance Fee Fraud and other Fraud Related Offences Act relating to the Count of Conspiracy merely creates a punishment for the commission of the offence

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under false pretence and therefore that where a person has not been charged for conspiracy to commit a particular offence, he cannot be punished for conspiracy under the penalty Section as in Section 1 (3) above.

On the 2nd Count of Obtaining Money under False Pretence, he submitted that the ingredients are;

- a. That there was pretence.
- b. That the pretence emanated from the accused person.
- c. That it was false.
- d. That the accused person knew of its falsity.
- e. That there was an intention to defraud.
- f. That the thing is capable of being stolen.
- g. That the accused person induced the owner to transfer his whole interest in the property.

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He submitted that the ingredients of this offence must be established contemporaneously jointly, conjunctively and not in the alternative and thus submitted that the prosecution has failed to prove the ingredients of this offence.

It is his contention that the falsity of Exhibit 7 was not proved as the 1st Defendant merely signed same as a witness and Alhaja Bilikisu Abass, the alleged owner was not called as a witness to deny or confirm whether indeed she bought the property in the name of her son or not.

He submitted that the Defendants have earned their freedom.

On the Count of Forgery and Uttering, the ingredients he stated are:

- i. That the accused utters or forges a document.
- ii. That he knew the document to be false.
- iii. That he presented the said document to the other party with the intention that it could be acted upon.
- iv. That the document was acted upon by the other party to his detriment (the 4th ingredient is not always necessary to prove once the other 3 have been established).

The elements of forgery he stated are:

- i. That there is a document in writing;
- ii That the document or writing is forged.
- iii. That the forgery is by the accused person.
- iv That the accused person knows that the document or writing is false.
- v That the accused intends that the forged document to be acted upon to the prejudice of the victim in the belief that it is genuine.

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He submitted that at no time did the Defendants present any alleged forged document to PW1 while PW1 said the documents were presented to him by the Property Agent. According to learned counsel the 1st Defendant never prepared any document in relation to the said land and that all he did was to



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...witness the signature of his nephew. He submitted that the 1st Defendant was not cross-examined on this piece of evidence failure of which he said is clearly indicative of the acceptance of the truth of such statement.

It is his contention that the author on the face of the Deed of Assignment is Yekini Kolawole, said to be PW1's Solicitor was never called to deny the preparation of that document. He argued that it would be unthinkable that PW1's Solicitor would prepare a document and it would be claimed that it was the 1st Defendant that forged it. He contended that there is nothing indicative of submission of any Deed of Assignment by the 1st Defendant to the EFCC or else he would have so stated in his extra judicial Statement. He wondered how the 1st Defendant would have presented any document to them when his position is that he was never part of the transaction and that he only played a limited role.

He urged the court to hold that the ingredients of forgery have not been established and to discharge and acquit the Defendants.

He finally submitted that none of the aforementioned material witnesses were called to testify by the Prosecution and that more damaging is the fact that no single document was tendered by the Prosecution showing that Alhaja Bilikisu Abass is the owner of the disputed property. He cited 19 cases in support of his submissions.

The Prosecution's Final Address by F. Ofoma Esq. is dated 25th February, 2019. He also submitted a sole issue for determination; to wit, whether the prosecution has proved beyond reasonable doubt the essential elements or ingredients of all the offences alleged against the 1st and 2nd Defendants.

He submitted that the evidence so far adduced by the prosecution has established the offences with which the 1st and 2nd Defendants are charged beyond reasonable doubt. He submitted that **Section 11 of the Evidence Act** buttresses the position of their case that where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or actionable wrong, anything said or done or written by any one of such persons in execution or performance of their common intention after the time when such intention was first entertained by any one of them, it is a relevant fact as against each of the persons believed to be so conspiring for the purpose of showing that any such person was a party to it. That once there is reasonable ground for believing in the existence of conspiracy, evidence of act done by the conspirators would be used against each of the persons believed to be so conspiring as well as for the purpose of showing that any such person was a party to it.

He contended that it is trite principle of law that for there to be conspiracy, the co-conspirators may not even have known each other nor sat together physically to agree to the crime. That it is also trite that there must not be a physical meeting of the minds in a predetermined place but since it requires a subjective proof, the court can only infer the agreement to do the wrong from the circumstances of the case. He urged the court to hold that the 1st and 2nd Defendants in this case conspired with themselves to commit the offence.

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Relying on Section 7 of the Criminal Law of Lagos State, he submitted that conspiracy postulates the doing or omitting to do something for the purpose of making it possible or easier for another person to commit the offence. That in this case, the evidence of the prosecution witnesses has established the fact that the 1st and 2nd Defendants made it possible for the offence to be committed. This Section he submitted, envisages the complicity of a person and actually committing the offence himself and that to bring a person within this Section, there must be clear evidence that either prior to or at the time of the commission of the act, he did something to facilitate the commission of the offence.

(3rd Defendant)

Learned counsel noted that the 1st Defendant admitted that he withdrew the said money paid into the 2nd Defendant's Account on behalf of one Mr Moshood Abolanle Fernami (at large) for onward transfer to his sister in Saudi Arabia in order to secure her bail from prison.

He relied on several authorities on what the ingredients of conspiracy are.

On the Count of Obtaining by False Pretence, after listing the elements to be established, he submitted same can be committed by oral communication, or writing or even by conduct of any of the defendants. He also submitted that the defendants in this case pretended to PWI that they had a land for sale and same was sold to him for N6.5M at the time. That the 1st defendant knew that the pretence was false and the false pretence was believed by the victim which caused him to part with money, he had an intention to defraud the victim because after being paid, he made up stories claiming that he withdrew the money and paid to another person who disappeared and till date has only paid back the sum of N400,000 (Four Hundred Thousand Naira) only to the victim as well as an Undertaken on how to repay the money. He submitted that the money is capable of being stolen and the pretence they initiated induced the victim to transfer the money to them.

On Forgery, he stated what the ingredients are and submitted that a document is said to be forged if the whole or part of it is made by a person with all the falsity and knowledge of the falsity and with intention that it may be used or acted upon as genuine to the prejudice of the victim. Furthermore that it is trite law that where a document is shown to be used as an intermediate step in a scheme of fraud in which an accused person was involved; if it was shown that such document was false and was presented or uttered by an accused person in order to gain advantage, an irresistible inference exists that either the accused person forged the document with his own hand or procured someone to commit the forgery.

He concluded that either the accused persons forged the document, the Deed of Assignment or procured someone to forge it and submitted that the Prosecution has proved the essential elements to sustain the Count of Forgery of the Deed of Assignment against the 1st Defendant. He further submitted that the confessional extra judicial Statement of the 1st Defendant alone is enough to secure a conviction and is the best evidence. The 1st Defendant's confessional Statement, learned counsel submitted ends the need to prove the guilt of the Accused.

He also submitted that it is not the name that parties give to an act that makes it civil or criminal in nature but the outcome of the investigation into the conduct and the charge or allegation against the

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signatures on them are not his and are forged. These documents he argued are what the Defendants used to obtain money from their victim under the guise that they were donated power of attorney to sell and that the victim believed the documents, Exhibit 7 to be true and subsequently acted on it and thereafter transferred money them.

He finally submitted that from the foregoing evidence, the Prosecution has established all the ingredients or elements of the offences alleged against the Defendants. Moreover, that the 1st Defendant confessed in his extra judicial statement and also confirmed in his oral testimony coupled with, according to him, sufficient circumstantial evidence which linked the Defendants with the commission of the offences alleged against them. He supported his submissions with a number of authorities without a list of same.

The Defendants' Reply is dated 4th March 2019.

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There is indeed only one issue which is whether the Prosecution has proved any or all of the 3 Counts of the offences of conspiracy, obtaining money under false pretences and forgery against the Defendants beyond reasonable doubt.

The 3 issues are from the facts and evidence before the court are so interwoven that one cannot be separated from another.

It is trite law that what is admitted needs no further proof. Section 20 of the Evidence Act, 2011 provides that, "An admission is a statement, oral or documentary, or conduct which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and in the circumstances hereafter mentioned..." The Defendants in this case have admitted that N6.5m was received into the 2nd Defendant's Account which is solely operated and run by the 1st Defendant as Proprietor of the school.

The 1st Defendant also admitted his signature on the Power of Attorney dated 10th February 2016, as the Donee of Abolanle M. Feranmi in Exhibit 7 while in the same vein admitting that no such power to sell the property therein, which is the subject-matter of this suit was given to him by the said Abolanle Moshood Feranmi said to be at large in this case. If therefore no such Power was donated by Abolanle Moshood Feranmi, then it means that the Power of Attorney speaks or tells a lie about itself even by the admission of the 1st Defendant.

What then was the purpose for the procurement of this Power of Attorney?

PW1 stated in his evidence that when he was negotiating for the landed property at 25 Oladunjoye street, off Igando Road, Ikotun Lagos State, he requested for all the documents of the land and everything was shown to him and in particular the Power of Attorney which ultimately induced him to part with N6.5M which was traced to the Account of the 2nd Defendant and all withdrawals made by the 1st Defendant. It is immaterial that the said documents were shown to PW1 by the property Agent and not the 1st Defendant. What is important is that the 1st Defendant acknowledged that he signed the Power of Attorney as the Donee whereas no such power was donated to him to sell the property therein.

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The 1st Defendant on 8/07/2016 also allegedly witnessed the payment of the said N6.5M by PW1 to the elusive Abolanle Moshood Feranmi also in Exhibit 1. It has been stated above that this same N6.5M is the same that has been traced to the Account of the 2nd Defendant and disbursed only by the 1st Defendant.

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From the evidence before the court, and confirmed by the 1st Defendant in his extra-Judicial Statement in Exhibit 4, the 1st Defendant stated how his nephew Abolanle Moshood Feranmi told him that his mother, the 1st Defendant's sister in Saudi Arabia instructed that her property, the subject matter of this suit be sold to help in securing her release from custody in Saudi Arabia. He stated that he tried to reach his said sister without success, but went ahead to scout for a buyer for the property. His statement inter alia is thus, "Abolanle Moshood Feranmi brought the landed property documents and those documents beared (sic) his name and I personally introduced him to Alfa Hakeem Adejoro who is a clergy and has connections to some estate Agents who brought Alhaji Ibraheem Mahmud, those landed documents were brought to me by Abolanle Moshood Feranmi... After some months, Alhaji Ibrahim Mahmud's agent called me for a meeting that he needed an account where he would make payment, then I submitted my Account number. Four Million Naira (N4,000,000.00) was deposited into my account on 8th June, while 2,500,000.00 (Two Million Five hundred thousand) was deposited on 8th of July, 2016. I paid Four hundred thousand to those agents. Abolanle Moshood Feranmi who was claim (sic) to be the owner of the land signed some documents with the agents. He has no account but whenever he needed money to transfer to the agent or our elder sister, I always used my check book for him or I withdraw any amount needed to him by myself. He sent some money to some account through my account for his own needs. He said the balance which is N1,500,000 will be our share. But the balance has not been paid before Alhaja returned from Saudi Arabia and the case started. I have been planning all possible means to arrange for Alhaji Ibrahim Mahmud's balance", dated and signed by him on 13/10/16.

In his 2nd statement in Exhibit 6 dated 29/09/2017, he stated inter alia thus, "Am not aware that Abolanle Moshood Feranmi paid any sum of money to Alhaja Bilikisu Abass..."

Even from the 1st Defendant's statements, it is clear that the 1st Defendant had the knowledge that the money he received into his school's account, the 2nd Defendant was disbursed other than for the alleged need for the release of the said Alhaja Bilikisu Abass. He admitted he sent monies to people dictated to him by Abolanle Moshood Feranmi and to the said Feranmi's needs, feeding and house rent. The fact also that he admitted that he and the said nephew agreed to share the balance of N1.5M they were still expecting from PW1 is further proof of the criminal intention on the whole transaction.

Moreover, there is no single proof of all the allegations of the 1st Defendant that the money he disbursed was either given to the said Abolanle Moshood Feranmi or his nominees. He who asserts has the burden of proof.

It is interesting to note that the said Alhaja who purportedly assigned the property in issue to her son Abolanle Moshood Feranmi in the Deed of Assignment and a purported Purchase Receipt in Exhibit 7, did so on the same consideration of N6.5M on 20/03/2015 as what the said Abolanle Moshood

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Feranmi assigned to PW1 in the purported Deed of Assignment of 2016, though N8M was the agreed price.

The court also in further search for the truth observed that the purported signature of the said Alhaja Bilikisu Abass is just the name "Bunmi" on the said Deed of Assignment and Purchase receipt she purportedly issued to her son for the purchase of the property in Exhibit 7. The handwriting of the name "Bunmi" is that of a confident literate person whereas in the statement of the said Alhaja Bilikisu included in the Proofs of Evidence before the court, she stated that she was an illiterate and could not write and the said statement was recorded on her behalf while all she could do was to thumb-print! She could neither sign nor write her name.

Also noted is the purported signature of Abolanle Moshhod Feranmi in the purported Deed of Assignment between him and his mother in Exhibit 7 which is also the writing of the name "Abolanle" though with what looks like the loss of the last letter 'e'. Whereas, his purported signature in the Deed of Assignment between him and PW1 attached to Exhibit 1 is a proper signature clearly emanating from his name "Moshhod". The 1st Defendant signed as a witness to Abolanle Moshhod Feranmi's signature. A closer observation of the purported Purchase Receipt and Deed of Assignment between mother and son in Exhibit 7 reveals that the date inserted against the purported signature of Alhaja Bilikisu Abass as 20-03-15 is exactly the same way the date was inserted against the name of Abolanle Moshhod Feranmi. In other words, the person who wrote "Bunmi" in the Purchase Receipt and the Deed of Assignment in Exhibit 7 and dated it 20-03-15 is the same person who signed "Abolanle" and dated it as 20 March, 15. Although by writing the date in a different manner against the 2 signatures under reference, the Maker of these documents attempted to create a difference between the Parties, yet it is very clear that the '15' of the 2 dates against the purported signatures of mother and son are exactly by the same and one person who signed against the two parties of mother and son.

The signature of Abolanle Moshhod Feranmi in the Deed of Assignment and Purchase Receipt executed with PW1 in Exhibit 1 is the same as an offshoot of his name "Moshhod" whereas the purported signature ascribed to him in Exhibit 7 "Abolanle", with the loss of 'e'.

In the documents in Exhibit 7 above, the 1st Defendant admitted he witnessed the signature of Abolanle Moshhod Feranmi, his nephew and signed as such.

The 1st Defendant also admitted that the Address of his sister, Alhaji Bilikisu Abass given as 18, Ilesanmi Idowu Street, Ogudu in the purported Purchase Receipt and Deed of Assignment in Exhibit 1 is not the Address known by him and yet these were the very documents used to induce the victim PW1 to part with the 6.5M found in the Account of the 2nd Defendant owned and run by the 1st Defendant alone. The 1st Defendant alone disbursed the funds without tendering any cheque by which some part of the money was released to Abolanle Moshhod Feranmi as he alleged.

The Defendants are therefore inextricably linked with the charges preferred against them by the following proofs upon the admission of the 1st Defendant; 1. He admitted he could not reach his sister, Alhaja Bilikisu Abass in Saudi Arabia to confirm that it was her instruction that the property in issue should be disposed of.

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2. He admitted he personally introduced Alfa Hakeem Adejoro who brought PW1. This is proof that he deliberately facilitated the commission of the offences with which he has been charged.

3. He admitted that Abolanle Moshhod Feranmi brought those landed documents to him, i.e. the Purchase Receipt and the Deed of Assignment in Exhibit 1. The documents have been established not to have been executed by Alhaja Bilikisu Abass and therefore forged.

4. He admitted that the N6.5M part-payment from the aborted transaction ended up in his school 2nd Defendant's account. This is proof of doing something for the purpose of making it possible or easier for another person to commit the offence of obtaining money under false pretences.

5. He alone had access to the said account and disbursed same for reasons other than the purported assistance to his sister, the owner of the property in Saudi Arabia.

6. The address stated to be that of his sister in Exhibit 1 is not her address that he knew.

Yet in spite of all these, the 1st Defendant went ahead to facilitate the phantom disposal of the property and received the money from PW1 into his school's Account.

He admitted he signed an Undertaken at the Magistrate Court in favour of PW1 to pay back the money by instalment. He actually stated that he had been planning and doing all that was possible to arrange for the balance of PW1 in his statement in Exhibit 4.

The Supreme court in **SUNDAY ONUNGWU Vs. STATE 1976 2 S.C 169 @ 173** held that an admission made at any stage by a person charged with a crime suggesting the inference that he committed the offence is a relevant fact against the Maker and if voluntary, is admissible in evidence.

There is therefore no gainsaying that the 1st Defendant in conjunction with the 2nd Defendant received N6.5M from PW1 using concocted documents in Exhibits 1 and 7 to induce the victim, PW1 to part with the said amount under the pretext that it was meant for the release of his sister from custody in Saudi Arabia. All the documents highlighted in Exhibits 1 and 7 were forged.

Apart from the admissions of the Defendant as highlighted in the foregoing, the circumstantial evidence against the Defendants is positive, cogent and irresistible and leaves no room for other explanations except the guilt of the Defendants. See the Supreme Court's decision in **MBENU Vs. STATE 1988 3 NWLR PT. 84, 615**.


The 3 Counts of conspiracy, obtaining money under false pretences and Forgery are established by the Prosecution beyond any reasonable doubt.

Section 8 of the **Advance Fee Fraud and other Fraud Related Act, 2006** provides that;

A person who-

- (a) conspires with, aids, abets or counsels any other person to commit an offence;
- (b) Attempts to commit or is an accessory to an act or offence; or
- (c) Incites, procures or induces any other person by any means whatsoever to commit an offence,

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Under this Act, commits the offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act.

What this provision portends is that once conspiracy is proved for the commission of any of the offences under the Advance Fee Fraud and other related offences Act, the punishment is the same as that of the offence itself which may or may not have been proved.

The 2nd Count is under Section 1 (3) of the Act which is the punishment or penal Section for the offence of obtaining by false pretences which is alleged against the Defendants in this case. The Defendants quite understood same not only at the stage of arraignment but also throughout the trial of the case. They have not therefore been misled by a wrong Section of the Act as in this instance.

Section 1 (1) of the Act provides that-

Notwithstanding 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 any other country for himself or any other person; or
- b. induces any other person, in Nigeria or 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.

(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.

What therefore is applicable as punishment for this Section 1 under Count 2 is what is applicable for its Conspiracy under Count 1, although the sentences do not have to be exact.

From the foregoing, Section 1 (1) (a) is clearly established against the Defendants for obtaining N6.5M from PW1 either for himself or Abolanle Moshood Feranmi under the pretence that they had the instruction to dispose of a property that did not belong to either of them.

The 1st and 2nd Defendants are therefore convicted on both Counts 1 and 2 as charged.


Forgery is defined under Section 363 of the Criminal Law of Lagos State, 2015 and in particular subsection (1) thus;

A person who knowingly makes a false document or writing with the intention that;

- (a) it may in any way be used or acted on as genuine, to the prejudice of another or;
- (b) any person may, in the belief that it is genuine, be induced to do or refrain from doing any act, whether in the State or elsewhere, is said to forge the document or writing.

Section 365 of the Law is the punishment Section and the relevant subsection is (3) (d) which reads thus;

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of the thing forged purports to be, or is intended by the offender to be understood to be or to be used as any of the following:

a document which by any Law in Nigeria, or Law of any other country is evidence of any title or interest in land in Nigeria or any other country, or an entry in any register or book which is such evidence, the offender commits a felony and is liable on conviction to imprisonment for seven (7) years.

This Section therefore clearly captures the act of the 1st Defendant herein and he is therefore convicted as charged.

Any Allocutus?

Opara: The Defendant is a young man of 43 years and married with 2 children. I urge your lordship to impose a reformatory sentence and temper justice with mercy. He is a remorseful fellow. He has been on bail and there is no day that he missed trial at all. I urge your lordship to take all these into consideration

I have listened to the allocutus on behalf of the 1st Defendant and I am persuaded that who has since been admitted to bail on 19th December, 2017 has been faithful in attending trial without fail. This is a factor that will weigh in the mind of the court in sentencing the Defendant.

The offences for which the Defendant have been convicted are very grave and are almost becoming the Country's brand name globally to the shame and embarrassment of the few innocent citizens who have been denied so many opportunities in life due to this trend. Therefore sentiments have no role to play as such. His family should learn a lesson that their father's actions are not justified and the law will always take its course. The children should learn also that crime does not pay and will always be judged by man and God.

The 1st Defendant is therefore hereby sentenced to 7 years imprisonment from today which is the minimum prescribed under the Advance Fee Fraud and other Fraud Related Offences Act, 2006 on each of the 3 counts to run concurrently.

The Defendants shall also in restitution, refund the sum of N6.5M fraudulently received from PW1 back to him by whatever means as may be employed by the Prosecution.

This is the Judgment of the court.

HON. JUSTICE M.A. DADA (MRS)
JUDGE
(17/05/19).

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Defendant Present.
M.K. Hussein for the Prosecution.
Victor Opara for the Defendants with O.O. Yusuf and

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17/07/19
Akinwande O. P.
Commissioner For Oaths
Court Of Lagos, Ikeja

Defendant. And this, he argued is what the consideration of the court should be on and not a civil transaction.

On the submissions of the learned defence counsel on;

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- A. The witnesses called, he submitted that failure to call one Alhaja Bilikisu Abass or Rahman Makinde or any particular witness is not detrimental or fatal to the Prosecution's case provided it has proved its case beyond reasonable doubt. He urged the court to hold that this is not a civil proceeding where the Plaintiff is the Party that institutes an action.
- B. The issue of hearsay, inconsistency and contradictions, he submitted that there are no contradictions and inconsistencies in the Prosecution's case which are material to dismiss them as unreliable. That assuming without conceding that there is inconsistency in the evidence of PW2, he submitted it has been held that in the normal course of events, it is to be expected that witnesses may not always speak of the same facts or events with equal and regimented accuracy.

In summary, he recalled the story of the 1st Defendant and listed the following as salient points to note thus;

1. That the Defendants never denied the receipt of the said money in question which is the subject of fraud/crime.
2. The 1st Defendant admitted squarely that his level of involvement was only with respect to the provision of the account number which was used to commit the crime as well as the withdrawal and transfer of the said fund for and on behalf of another person who to him has run away and now at large.
3. The 1st and 2nd Defendants admitted giving out their account number for the transaction simply because one Abolanle Moshood (still at large) has no account number, yet in the same breath, the 1st Defendant told the court that upon the receipt of the said money, it was transferred to Abolanle and his appointees. That this is the same Abolanle he said did not have an account number.
4. That the defence linking one Mr Yekini Kolawole and one Mr Rahman Makinde to their crime is just an attempt to frustrate and send the prosecution to a wide goose chase.
5. That the money was traced and found in the 2nd Defendant's account and the 1st Defendant without any form of inducement voluntarily admits the receipt, withdrawal and transfer of same to another person whom according to him has run away and now at large.
6. That the Defendants equally in their final written stated that the 1st Defendant only signed the Deed of Assignment as a witness. This learned counsel submitted is not an excuse in law and as such cannot be a legal defence of his involvement in the crime/offence of conspiracy and obtaining money by false pretence.

He submitted that the Deed of Assignment and Power of Attorney in Exhibit 7 were forged by the Defendants to carry out their illegal acts noting that the Solicitor; Juba Adedeji whose name appeared on the face of the Deed of Assignment and Power of Attorney, Exhibit 7 testified before this court that the documents bearing his name were not drafted, authored and or signed by him. That the

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instalmental payments between October and December, 2016. But I realised that he was just taking me for a fool and that he was doing some spiritual concoctions toward me. Then I took up the case to EFCC through my lawyer. No there was no direct attack against me. I can't remember the date we made the agreement. I can't remember the date I instructed my lawyer to write the Petition. The Deed of Assignment here shows it was prepared by Yekinni Kolawole. He is also the lawyer to the Agent. The date on the Petition is Monday 22, August.

There was no re-examination.

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PW2 was, initially Juba Adedeji. He testified chief thus:

I am a legal Practitioner and I've been so for 25 years. EFCC invited me some time ago to their office and they showed me a copy of the Deed of Assignment I prepared for one Alhaja Bilikisu. I identified it as what I prepared. They now showed me another Deed of Assignment bearing my name showing Alhaja Bilikisu as assignor and I told them it was not prepared by me. I wrote a statement to this effect and they later called me to come and give evidence in court.

At stage of tendering the disputed Deed of Assignment that the defence counsel in objecting on the ground that it was not part of the Proofs of Evidence also stated that the said witness was not even listed. The Prosecution therefore applied to have the evidence expunged to enable them do the needful.

Therefore, the next witness, Idi Musa became PW2. His evidence is thus:-

I am a Police officer, an Operative of the EFCC, attached to the Land and Property Fraud Unit Team B, Lagos. Other members of my Team are Mr Oshodi Johnson, Ariyo Muritala and Mrs Nkiru Anosike. Yes, I know the 1st Defendant, the alter ego of the 2nd Defendant. He is the owner of the 2nd Defendant. On 6/9/2016, I was on duty in the office when a Petition dated 22/08/16 was referred to my Team for investigation by our Zonal head for us to investigate. The Complainant, Alhaji Ibrahim Mahmud complained through his counsel, Kolawole Yekinni and co. that the 1st Defendant approached him and claimed he had a landed property he wanted to sell at 22, Oladunjoye Street, Off Igando Road, Ikotun that he went and visited the property with the 1st Defendant, agreed at the price of N8M and on 6/06/16 he paid N6.5M, and on 8/07/16 a Deed of Assignment was executed by them. He paid the money into the 2nd Defendant's account with Sterling Bank Plc. as instructed by the 1st Defendant. That after the payment, the 1st Defendant took him to the site and he took possession but 2 weeks later he discovered that the property belonged to one Alhaja Bilikisu and not the Defendants when she came to make claim that she did not instruct the Defendants to sell her property. This prompted the Petition to us. The Complainant Alhaji Ibrahim Mahmud was invited and he came and confirmed the Petition with relevant documents, the Deed of Assignment by the 1st Defendant to transfer title, the Power of Attorney the 1st Defendant gave him showing that he had a right to sell the land, a receipt generated by the 1st Defendant of the N6.5M and the proof of transfer payment into the 2nd Defendant's Account. We wrote to Sterling Bank for the Bank Statement of the 2nd Defendant where the money was allegedly transferred into. We received a response and when I went through it, I observed the payment of N4M and N2.5M as alleged by the complainant reflected in it. Also were the Account Opening documents which show the 1st Defendant as the sole signatory

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