IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU
ON TUESDAY THE 12TH DAY OF MAY, 2020
BEFORE HIS LORDSHIP
HON. MR. JUSTICE I.N. BUBA

CHARGE NO: FHC/EN/CR/01/2019

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA - **COMPLAINANT**

AND

MADU NNAMDI - **DEFENDANT**

JUDGMENT

On the 15/1/2019, the defendant was arraigned before my learned brother, Hon. Justice Liman .J.; on the 11/2/19 when this suit came up denovo before this court, the defendant was re-arraigned and plead not guilty to all the 9 counts charge which reads as follows:

COUNT ONE
That you Madu Nnamdi, on or about the 17th day of December 2018, in Enugu, Enugu State, within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud had in your possession a document titled 'CERTIFICATE OF INCORPORATION OF A PRIVATE COMPANY' containing false pretences and you thereby Committed an Offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under Section 1 (3) of the same Act.

COUNT TWO
That you Madu Nnamdi, on or about the 17th day of December 2018, in Enugu, Enugu State, within the jurisdiction of the Federal High Court of

Nigeria, with intent to defraud had in your possession a document dated 11/12/2018 and titled 'SPANISH HASTINGS WARD CAREY & CHAMBERS' containing false pretences and you thereby Committed an Offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under Section 1 (3) of the same Act.

COUNT THREE

That you Madu Nnamdi, on or about the 17th day of December 2018, in Enugu, Enugu State, within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud had in your possession a document dated sun dec 2 titled 'HELLO ANDREA HOW ARE YOU DOING IM JANET' containing false pretences and you thereby Committed an Offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under Section 1 (3) of the same Act.

COUNT FOUR

That you Madu Nnamdi, on or about the 17th day of December 2018, in Enugu, Enugu State, within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud had in your possession a document titled 'OKEY I'M THE FUND MANAGER OF BRITWILL INVESTMENTS containing false pretences and you thereby Committed an Offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under Section 1 (3) of the same Act.

COUNT FIVE

That you Madu Nnamdi, on or about the 17th day of December 2018, in Enugu, Enugu State, within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud had in your possession a document dated 13 September, 2018, and titled 'BRITWILL INVESTMENT LIMITED' containing false pretences and you thereby Committed an Offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under Section 1 (3) of the same Act.

COUNT SIX

That you Madu Nnamdi, on or about the 17th day of December 2018, in Enugu, Enugu State, within the jurisdiction of the Federal High Court of

Nigeria, with intent to defraud had in your possession a document titled 'INVITE ANNE TO MESSENGER containing false pretences and you thereby Committed an Offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under Section 1 (3) of the same Act.

COUNT SEVEN

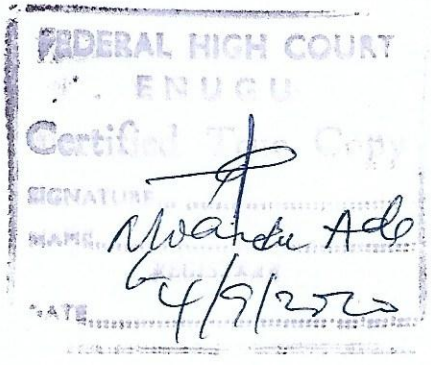
That you Madu Nnamdi, on or about the 17th day of December 2018, in Enugu, Enugu State, within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud had in your possession a document titled 'GEORGE ROBERT containing false pretences and you thereby Committed an Offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under Section 1 (3) of the same Act.

COUNT EIGHT

That you Madu Nnamdi, on or about the 17th day of December 2018, in Enugu, Enugu State, within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud had in your possession a document titled 'GRACIAS' containing false pretences and you thereby Committed an Offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under Section 1 (3) of the same Act.

COUNT NINE

That you Madu Nnamdi, on or about the 17th day of December 2018, in Enugu, Enugu State, within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud, had in your possession a document titled 'INVITE ANNE TO MESSENGER' containing false pretences and you thereby Committed an Offence contrary to Section 6 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under Section 1 (3) of the same Act.



On the 26/2/20, both parties adopted their final written address and the reply thereto and urged the Court to do justice in the case.

The Defendant in its final address of 7/2/20 raised 3 issues for determination by this court; to wit:

1. Whether the offences with which the defendant was charged were proved beyond reasonable doubt by the prosecution with the evidence of her two witnesses.
2. Whether the Honourable Court can place any reliance on Exhibits; **P1A, P1B, P1C, P1D, P3** and **P3A** and/or rely on any as a proof of any of the offences in which the Defendant is charged.
3. Whether this charge is not otiose and incompetent to activate the jurisdiction of this court in the face of it and Exhibits; **P1A, P1B, P1C, P1D, P3** and **P3A**

All issues were argued seriatim.

Learned counsel submitted that it is presumed the defendant as innocent until his guilt is proved beyond reasonable doubt; notwithstanding the gravity of the offence he is accused of and/or charged with. The law therefore, places an onerous burden on the Prosecution in every criminal case, to establish the guilt of an accused person beyond reasonable doubt. This burden does not shift to the accused person unless and until the burden on the prosecution is defrayed totally by the prosecution. See Section 138 of the Evidence Act, 2011. See also the case of **EGWUMI V. THE STATE (2013) 13 NWLR (PT.1306) 41; AMAREMOR V. STATE (2014)10 NWLR (PT 1414)1; NWATURUOCHA V, THE STATE (2011)6 NWLR (PT. 1242)170.**

That the burden lies on the Prosecution to establish the allegation that;

(i) The Defendant on or about 17th day of December, 2018, in Enugu, Enugu State within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud had in his possession a document titled 'CERTIFICATE OF INCORPORATION OF A PRIVATE COMPANY' containing false pretences...

(ii) The Defendant on or about 17th day of December, 2018, in Enugu, Enugu State within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud had in his possession a document dated 11/12/2018 and titled 'SPANISH HASTING WARD CAREY & CHAMBERS' containing false pretences....

(iii) The Defendant on or about 17th day of December, 2018, in Enugu, Enugu State within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud had in his possession a document dated Sun Dec 2 titled 'HELLO ANDREA HOW ARE YOU DOING IM JANET containing false pretences..,

(iv) The Defendant on or about 17th day of December, 2018, in Enugu, Enugu State within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud had in his possession a **do**cument titled WEY I'M THE FUND MANAGER OF BRITWILL INVESTMENTS' containing false pretences...

(v) The Defendant on or about 17th day of December, 2018, in Enugu, Enugu State within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud had in his possession a document dated 13 September 2018 and titled 'BRITWILL INVESTMENT LIMITED' containing false pretences...

(vi) The Defendant on or about 17th day of December, 2018, in Enugu, Enugu State within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud had in his possession a document titled 'INVITE ANNE TO MESSENGER' containing false pretences...

(vii) The Defendant on or about 17th day of December, 2018, in Enugu, Enugu State within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud had in his possession a document titled 'George Robert' containing false pretences../.

(viii) The Defendant on or about 17th day of December, 2018, in Enugu, Enugu State within the jurisdiction of the Federal High Court

of Nigeria, with intent to defraud had in his possession a document titled 'GRACIAS' containing false pretences../.

(ix) The Defendant on or about 17th day of December, 2018, in Enugu, Enugu State within the jurisdiction of the Federal High Court of Nigeria, with intent to defraud had in his possession a document titled 'INVITE ANNE TO MESSENGER' containing false pretences../.

That the above allegation as enumerated above from number **(i) to (ix)** are as extracted from Count One to Nine respectively of the charge before the court; and that Count Six and nine are exactly the same hence same are multiplied in contravention of the principle of multiplicity of charges.

That all the count charges are brought pursuant to Section 6 of Advance Fee fraud and other Fraud Related offences Act 2006 and it provides as follows;

> **"A person who is in possession of a document containing a false pretence which constitutes an offence under this Act commits an offence of an attempt to commit an offence under this Act if he knows or ought to know, having regard to the circumstances of the case, the document contains the false pretence."**

It is further submitted that the charge states that the punishment section for all the count charges is Section 1(3) of Advance Fee fraud and other Fraud Related offences Act 2006 whereas the entire Section 1 of the Act provides as follows;

> (1) 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 in any other country for himself or any other person;

(b) induces any other 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.

It is further argued that the documents alleged to contain false pretences which were allegedly in possession of the defendant are the bundle of documents admitted in evidence as Exhibit P3A. The said documents are computer generated which either original or its secondary evidence are admissible as respectively provided for in Sections 83 and 84 of Evidence Act 2011.

That the Prosecution by tendering and admission of the certificate of identification by this court as Exhibit P3, purports to have complied with the provisions of Evidence Act 2011 as it relates to admissibility of electronic generated evidence in the category of the documents which the prosecution tendered and which were admitted in evidence as Exhibit P3A.

Further that the provisions of Section 84(3) of the Evidence Act 2011 was not complied with as the primary source of the documents were not stated in the certificate, one will wonder therefore, the link of the said documents to this charges against the Defendant, the certificate having stated same but having stated that they emanate from the computer and printers of the Commission.

That the said documents would have been proved to have a link with the Defendant, when it is shown by the prosecution by demonstrating how each of the documents was obtained, that is to say, distinguishing the ones that were printed from emails and stating the email account, showing those that were printed from whatsapp chat and stating the phone line with which the correspondence was printed; stating the accounts and social media platform from which any of the document or correspondence contained in the bundle of documents emanate from.

That the prosecution failed to prove same and did not even do that by oral evidence they merely tendered the documents through the PW2 who merely said that they printed some documents from the Defendants gadgets without doing more by identifying the documents one after another in view of standard of proof required in criminal cases as in the nature of the instant charge.

The prosecution did not also state which of the defendant's gadgets from where the said and or each of the said documents were printed. That documents in whatsapp cannot be printed directly from phone without first passing through email or forwarded to a computer so also iPhones' which the defendant as well as prosecution are in agreement that iPhone

7 was recovered from defendant, one cannot also print from the apple hone without moving the document to a mail or the said information passing through other several processes these were neither explained in the certificate nor by oral testimony as required by the Evidence Act.

That his use of the words 'some documents' and thereafter bringing in these documents into the court leaves a question of what they want the court to do with the documents. Of course, it is not the duty of this court to verify the documents and state its authenticity or source which they prosecution has failed to do and these riddled the case of the prosecution with doubts as to what to believe or as to what to make out of the documents which we make bold to say are now dumped in court.

It is learned counsel further position that all the documents tendered by the prosecution are computer generated and for the court to properly admit them they must meet the conditions in Section 84 of the Evidence Act 2011 and what the prosecution has done and as we have earlier stated does not amount to compliance with the said Section 84 of Evidence Act 2011. **See the cases of LAWSON V AFANI CONSTRUCTION COMPANY (2002) 2 NWLR (PT.752) 585 A T 614; KUBOR V DICKSON (2013) 4 NWLR (PT.1325) 534 A T 577 -578**

That the Supreme Court pronounced on section 84 of the Evidence Act 2011 in the cases of **OMISORE V. AREGBESOLA (2015) 15 NWLR (PT. 1482) 205 AT 295; APGA V. OHAKIM (2009) 4 NWLR (PT. 1130) 116 AT 165:** that the bulk of documents tendered having not complied with Section 84 of Evidence Act is inadmissible. He maintained that even if the documents

are admissible, the prosecution has still failed to prove their case beyond reasonable doubt.

That it is the law that the guilt of an accused person can be proved by one or more of three ways to wit: Confessional Statements, Evidence of eye witness to the crime and circumstantial evidence. See the case of **ADENIYI ADEKOYA V. THE STATE (2012)9 NWLR (PT 1306)539 AT 566-567.** Whereas, none of the witnesses has shown that he saw the defendant commit any of the offences charged and at the course of investigation never got any information as pertaining obtaining by false pretence and there was no prove that PW1 and **PW2** did inquired whether the accused committed all and/or any of the offences being charged. It is thus submitted that, the only category of evidence to be given in respect of this charge by the prosecution are the statements of the accused and circumstantial evidence. It is argued that whereas the Prosecution is purporting that the Defendants made statements which were admitted in evidence as exhibit PI A, P1B, PIC and P1D has not in any way linked the accused to the offence charged.

Learned counsel further argued that the defendant in his statement and testimony in this court on the 07/10/2019 and 16/10/2019 stated that he inherited his father's property, sold and realized money therefrom, the prosecution did not investigate this claim of the Defendant as such cannot go ahead to posit that the defendant is enjoying ill-gotten wealth and or proceeds of crime especially when there is no complainant of any offence against the Defendant and the commission revealed that there communications and investigation did not reveal that the defendant has

committed the crime of obtaining money by false pretence and or any other crime against anybody at all. It is the law that the defendant cannot be called upon to prove his innocence. See **Section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).**

That PW1 during cross-examination when asked;

> **Question;** Throughout your investigation you did not discover the Defendant obtain any property belonging to anyone by false pretence?
> **Answer;** We saw a suspicious inflow of money in the Defendant's account.

It is submitted that the above shows that the prosecution did not investigate to confirm whether their suspicion is true but went ahead to charge the Defendant based on their suspicion. It is settled law that speculation cannot ground conviction. See **ADEKUNLE V. STATE (2006) 14 NWLR (PT 1000) 717.**

The Prosecution through the PW1 on cross-examination, confirmed that he know the Defendant as a man of means, being a professional Laboratory Scientist and a currency trader. Viz;

> **Question;** Part of the information the Defendant gave you is that he is a Professional Medical Laboratory Scientist and a currency trader?
> **Answer;** Yes

Learned counsel thus argued that it is not in doubt that the Defendant is a person of means, he trades on currency, crypto-currency (bitcoin), he is a Professional Medical Laboratory Scientist and also deals in oil and gas as the Defendant who testified in this court demonstrated, if the prosecution were in doubt of these facts they would have investigated these claim.

The account statement was not produced in this court to show the suspicious money inflow though the circumstance has made it apparent that money must of course be flowing in the account of a person who deals with money[1] and other businesses as testified by the defendant.

Further that it is the Defendant claim that he sold his inheritance from his father to purchase a car, the said inheritance was said to be in Enugu here, the Prosecution failed to investigate this fact but decided to bring this charge prematurely and half-baked to this court, probably to intimidate the defendant and to tarnish the image of the hardworking young man with promising future, no wonder the Silverbird Television published the photograph of the defendant and his friend as snapped by the men of the Economic and Financial Crime Commission which has been in the commission's website, parading the Defendant as having been convicted with his friend for PONZI SCHEME FRAUD while no such thing happened and the Defendant still standing trial in this court for the charges as contained in the charge sheet, none bothering on any PONZI SCHEME, neither is he at any time convicted.

That it is trite taw that; Court is duty bound to resolve any ambiguity created by the testimonies of the prosecution and the witnesses in favour of the accused person, **AIGUOREGHIAN V. STATE [2004] 3 NWLR (PT 860)396.** That where the prosecution has opportunity to investigate and such duty became neglected by them, the defendant cannot be convicted in the face of the doubt created by their inability to carry out their duty as required by law.

That meanwhile the Defendant in his testimony on 07/10/19 and upon offering answer to cross examination questions put to him on the 16/10/2019 denied being in possession of some of the documents he was forced to acknowledge as emanating from his gadget, the publication of his photo snapped by the commission as having been convicted for !PONZI SCHEME FRAUD as reported to this Court on the 22/01/2019 is a proof that the commission can mix up documents to detriment of parties under their investigation as in the instant case. The DW1 on 7th October testified in chief as follows; During Examination In Chief on 07/10/2019 and 16/10/2019;

Q. What and/or who is Gracias as it concern one of the count charges against you especially count 8?

A. Gracias means I thank you but I don't know who they were referring to that is not my document, because in the bulk of document printed, some of the document are not mine just like the Gracias.

Q. Recall that the main allegation against you in this charge is that you possessed document alleged to contain false pretense with intent to defraud, is that true?

A. No my lord, for any document that were printed from my phone I have explanation, except some documents mixed in the bulk that was not from my phone and I was made to sign on it because I had no option than to sign it, they printed bulk of document on the Monday the 17th of December and I was asked to sign on all of them, they said it was part of the condition for granting me bail which I did.

Q. Tell us what you know about the document, that document form count 2 of the charge against you and also count 8?

A. I can see the title of the document page 22 and 25 and 40, in page 40 is where it was sent from an e-mail to an e-mail, I will like to tell this honourable court that this is not my document and neither

do I wish the owner of both e-mails, it was in the bulk of document I was made to sign on and was not given time to read through and 17th of December was a Monday morning, so page 40 is where it was sent from an e-mail to an e-mail so I am telling the court honestly that this is not my document because they did not give me enough time to go through the bulk of document in the EFCC zonal office, while I was going through it, they insisted that I should sign it that they had other things to do, in this document I signed it on 17th of December being on a Monday and taking a look at the document page 40, it spam time said yesterday 9:17 pm and the yesterday of a 17th Monday is a 16th which is Sunday and I was already In custody and I was not with my phone on the Sunday they alleged. I was arrested on the 14h December, a Friday morning and my gadgets including my phones, laptop confiscated till date, I had no access to them from the point of my arrest till now, I couldn't have sent documents to anybody via e-mail or any medium when my gadgets was already with them.

Q. Look at page 31, who is George Robert and tell this honorable court what is that document?

A. George Robert is my trade username in the Brithwill Investment platform; I have an official e-mail of Brithwill, that Is **madunnamdi georgerobert@brithwillinvestment.com.**

During cross examination on 16/102019.

Q. Now tell this honorable court who is the Ann you referred to in one of those documents attached?

A. My Lord, the Ann referred to in one of the documents, I don't know and was not printed from my account, the Ann was printed from Janet face book which is not showing the profile of the owner of the account..."

It is argued that the above extract shows especially that the document which is contained in pages 12, 25 and 40 of Exhibit PSA which PW2 upon

cross-examination identified as one and the same, is not the defendant's documents, the confusion and doubt become more when the document was sent to an email on the yesterday of 17th December, 2018. My lord no piece of evidence contradicted this fact, the prosecution does not also cross-examine on those facts and it is part of evidence elicited in the witness box and same is reliable.

That in respect of circumstantial evidence, the Supreme Court has held that for a circumstantial evidence to ground a conviction, it must lead only to one conclusion, namely, the guilt of the accused; but where there are other possibilities in the case than that it was the accused person that committed the offence alleged, but that other persons than the accused had an opportunity of committing the offence, the accused cannot be convicted of that offence. See the celebrated case of **CHIEF VINCENT DURU (ALIAS OTOKOTO) V. THE STATE (2017)4 NWLR (PT.1554)1 SC**, where **ARIWOOLA, JSC stated in Page 34 paragraphs F-H** that: '...for circumstantial evidence to support a conviction, it must be cogent, complete, and unequivocal, but must be compelling and lead irresistibly to the conclusion that the accused person and none else is the offender'.

That the circumstance of this case has not revealed the possibility of the Defendant committing any of the offences charged as the prosecution has not shown by an iota; of means that the Defendant had intent to defraud anybody of any money and or property.

That PW2 confirmed; that one can check the status of a company online when he was asked;

> Question; **You are aware that one can check the status of a company through google search?**

Answer; **Yes, through legal assistance.**

That one will wonder what he meant when he answered yes but went ahead to say, through legal assistance, when google is a private website from where you satisfy their condition of use online and assess same at the comfort of your home, this answer can therefore be taken as yes.

That it is clear that the prosecution is aware that the Defendant can through google or request from the website of a company their incorporation document to confirm their authenticity, hence there is no more suspicion on how an incorporation document reaches the Defendant assuming without conceding that he is in possession of same.

It is thus learned counsel submission that the circumstantial evidence of PW1 and PW2 as to the involvement of the Defendant in the alleged crime are not cogent, complete, unequivocal and compelling. The Supreme Court has held that courts are enjoined not to speculate on any possibilities not supported by evidence before it, as to do that will really endanger the course of justice for the accused. See the case of **FRANK UWAGBOE V. THE STATE (2008)12 NWLR (1102)621.**

Learned counsel also adopts the question and answers of PW1 during cross examination;

> **Question Nobody complained any case against the defendant in the dock to you?**
> **Answers: the case was built on an intelligent report.**
> **Question: that intelligent report did not reveal that the defendant defrauded anybody to your knowledge?**

Answer: the information we got that the defendant is living above his means.
Question: throughout your investigation you did not discover he (Defendant) obtained any property belonging to anyone falsely?
Answer: we saw a suspicious flow of income in the defendant account.
Question: as a professional investigator did you confirm the source?
Answer: yes we did.
Question: did any source said, that it was not legitimate?
Answer: we could not confirm the source.
Question: are you trying to tell this court that it was the defendant statement that the incriminated him?
Answer: no we got it through an intelligent report
Question: part of the information the defendant told you is that he is a professional medical scientist and a currency trader?
Answer: yes"

It is argued that from the above evidence the prosecutor has failed in establishing a prima facie case against the defendant but relying solely and strictly on the so called intelligent report. That assuming though, without conceding that if the intelligent report be giving credence by this court it still cannot sustained the charge as it has abysmally failed to link the defendant to the crime charged as it's only emphatically about the defendant living above his means which was a mere speculation and the prosecution could not investigate all that would have cleared the doubts even when they have the opportunity.

The law is elementary that hearsay evidence is not admissible in law. See Sections 37 and 38 of the Evidence Act, 2011. See **JAMB V. ORJI (2008) 2 NWLR (PT 1072) 552.**

Meanwhile, evidence of a person who was not cross-examined cannot be accorded any weight in law. The prosecution has nothing to rely on in proving their case, as the Defendant also told them that he has a white girl friend who is a trade analyst, the address was supplied to the prosecution, the Defendant claimed that one of the facebook account logged on his device is the girlfriend's email, Agent Janet. That the failure of the Prosecution to investigate any of the facts distilled while interrogating the Defendant creates a doubt that punctures the case of the prosecution and urge the court to so hold.

In the case of **AIGBADION VS THE STATE (2007) 7 NWLR PT. 666 PG 700,** the court held that any defence put up by an accused person must be investigated thoroughly in order to render it false or unlikely because it is only when this happens that the trial court will be able to reject it.

It is further argued that the defendant raised a number of defences that were not investigated;

(i) Issue of being a currency trader and trade manager of his account,
(ii) Issue of being a professional laboratory scientist,
(iii) Issue of inheritance from his late father,
(iv) Issue of him trading for people and people trading for him,
(v) His being a co-investor though a minority shareholder in petroleum business,
(vi) His owing a loan with which he maintain the petrol station and so on.

That the defendant's answer to questions upon cross examination on 16/10/2019 reaffirmed this fact; that it is the law that evidence elicited

during cross-examination forms part of evidence of defence. See the case of **AKOMOLAFE & ANOR, V. GUARDIAN PRESS LTD & 3 ORS. (2010)1 SC (PT. 1) 58 AT 74** is apt wherein W.S.N. Onnoghen JSC pronounced on evidence adduced under cross examination and which could constitute evidence in support of the case or defence of that party." Per OGUNBIYI, J.C.A (P. 39, paras. E-G).

Further that all the documents alleged to be in possession of the Defendant were all printed from the commission's gadgets on the 17th day of December, 2018. See the Charge sheet as well as Exhibit P3A; that on 17th day of December, 2018, the Defendant's devices are already at the Custody of the commission for 4 (four) days same having been confiscated from the Defendant on the 14th day of December, 2018. That the above goes to say that no offence was in existence at the time of arrest of the Defendant as none of the prosecution witness has proved any and there is no complainant to also establish same. Evidence of a computer analyst would have gone a long way to say when document came into the device of the Defendant, what it was used for and when it was used. And that the prosecution in failing to do this has created a doubt which shall of course be resolved in favour of the defendant. See **AIGUOREGHIAN V. STATE (SUPRA) AT P396**

It is learned counsel contention that such expert evidence would have revealed the source of the documents and where they have been used, that the prosecution failed to lead evidence in that direction and did not even tender in evidence the devices of the defendant ceased from him for reasons best known to them. The availability of the

device would have created a direct answer as to which particular document emanated from the Defendant's gadgets in the absence of which it remains a doubt which document emanated from the defendant's device and the said doubt is bound to be resolved in favour of the defendant.

Learned counsel thus urged this court to hold that the prosecution has not proved their case to warrant the defendant being convicted; that the law remains that the burden of proof in all criminal trials lies on the prosecution. See the cases of **AMEH VS. THE STATE (1978) 6- 7 SC, 27, ALSO IN OKOH VS. STATE (2014) LPELR-2589(SC)** the Supreme held as follows "...the law is trite that the standard of proof required of the prosecution in a criminal case is a heavy one. The prosecution must prove its case beyond reasonable doubt the burden of proof remains on the prosecution throughout and does not shift to the accused person..." There is no obligation on an accused person to prove his innocence. In, order to discharge the onus on it, the prosecution must establish all the ingredients of the offence charged. See **YONGO VS. C.O.P (1992) 4 SCNJ113.**

That the prosecution did not prove any of the alleged false pretence contained on any of the documents presented to this court, none of the prosecution witness demonstrated what constituted the alleged false pretence in any of the documents tendered in this court, as such has not proved any of the alleged offences.

It is argued further that the law is clear as pronounced in the case of **Akomolafe & Anor. V. Guardian Press Ltd & 3 Ors. (2010)1 SC (PL1) 58** that a party relying on bundles of documents in proof of his case must specifically relate such documents to that part of his case in respect of which the bundles of documents were tendered. This responsibility does no fall on the Court as if would be aiding and conducting a case on behalf of a party who has failed to discharge the onus placed on him. "Per OGUNBIYI, J.C.A (P. 29, paras. C-E).

That the prosecution failed to link any of the pages of the document to any of the counts of the charges against the Defendant and this is indeed fatal to the case of the prosecution.

On the competency of the charge, it is argued that the charge is incompetent same not bearing stamp and seal of the prosecutor who is a lawyer. That this defect is not one that can be cured, being the origin of the proceeding before this court; that the Supreme Court affirms that failure to affix NBA stamp & seal on a legal document renders such legal document incompetent in a judgment delivered in Appeal No. **SC/722/15 ALL PROGRESSIVES CONGRESS (APC) V. GENERAL BELLO SARKIN YAKI,** the Supreme Court upheld the 2nd Cross-Appellants Cross appeal against the decision of the Court of Appeal, Sokoto Division which summarily dismissed the 2nd Cross-Appellant's preliminary objection which challenged the Appellants' Notice of Appeal for failure to bear the stamp/seal of the legal practitioner who signed it. See **(2015) 18NWLR (PT. 1491) 288, SC; LER (2015) SC 722/2015.** On the Issue of Dumping of documents in Court See; **UNION BANK v. ONWUKWE (2017) LPELR - 43279**

(CA), also; EDWARD NKWEGU OKEREKE V. NWEZE DAVID UMAHI & 2ORS delivered by Supreme Court on 5th February, 2016 in Appeal Number SC. 1004/2015.

That assuming without conceding that the documents are to be considered and/or relied upon, the Defendant has given evidence in this court as to the source of some of the documents purportedly found in his possession. The Defendant testified as DW 1, said that he is a currency (crypto-currency) trader, a Medical Laboratory Scientist and a businessman that deals on oil and gas. He stated the source of kick off capital as the funds realized from the sales of his late father's property in Enugu, this fact is contained in the defendant's statement but the prosecution did not investigate this fact.

And that on the 5th day of March, 2019, PW 2 identified the documents contained in pages 22, 25 and 40 of the bulk of documents admitted in this court as Exhibit P4 as one and the same and were printed from the same sent page of the e-mail as you can see in page 40 where it was sent from an email to another email. That the above referred documents form Counts; Two and Eight the nine count charges preferred against the defendant, on the face of the said document at page 40, one will see that the said document was sent to a destination on the yesterday of 17th December, 2018 when the defendant was already under detention at the EFCC custody without access to his said gadgets.

That the defendant identified Gorge Robert as his trade name and the said name form count Seven of the charge, the prosecution did not show how the said document contain any false pretence and or even any of

the bulk of documents. Defendant has also explained how to have a foreign account of Chess Bank in his phone and same is unchallenged and uncontroverted; that this will leave the court with the option to believe that the said document is not the defendant's document as he said in his evidence, if not, what will be the interest of the person ' sending out same when he (the defendant) was already detained and his gadgets in the commission's custody.

The defendant states that he is a trade manager in Britwill Investment Company and this fact was confirmed by the information obtained by DW2 upon his communication to Britwill Investment Company to inform them about the arrest the defendant over possession of documents purporting to contain false pretences and the said documents include Britwill Investment Company incorporation documents. The said DW 2 testified as reduced below;

Q. Please tell this honorable court, the role you played?

A. During my several visit to the Economic & Financial Crime Commission (EFCC) I was opportune to speak with the defendant and he told me that one of the document they said contained false pretense belong to a company called Brithwill investment and he said that once Brithwill Investment can confirm that it belong to them that he will be granted bail and he gave me their website which I got their e-mail and I wrote to them telling them about the arrest of the defendant and they later replied me telling me that they are yet to hear from any agency concerning the situation, I came back some few days later and told the defendant what was going on and said if I could reach to the defendant and tell the agency to contact them so they can know where to come in from, after I had informed the defendant then in the commission's custody, that Brithwill did not get any message from their agency, he told me that he will plead with them to communicate them from

their office here in Enugu, I think they later did because Brithwill later sent me another e-mail that they received a message from the agency and have replied them and attached their reply to the commission to e-mail sent to me.
Q. Do you have the conversation with the Brithwill in court?
A. Yes, my lord.

DW2 in the person of Odo Jude Chukwuka testified on the 13/11/2019 his testimony was as to the role he played during the detention of his friend at the commission, he communicated Britwill Investment Company on the instruction of the defendant, the correspondence of the said witness with Britwill Investment Company was printed and tendered as exhibit in this case, it is a confirmation that the Defendant actually have valid relationship with the said Britwill company whose cope of certificate of incorporation was found in his custody.

That the said conversation of the DW 2 and Britwill Investment Company including their letter to the commission which they attached for the perusal of the DW 2 are admitted in evidence as **Exhibits D2** and **D3.** This piece of evidence corroborates the evidence of PW1 when he said that they communicated the company without bringing the reply or even their sent page to this court. That the Britwill Investment Company documents forms part of count one, count four, and count five of the charge, the defendant having identified the name Gorge Robert as his trade name with Britwill.

It is also submitted that the Defendant stated that he is a trade manager with Britwill Investment; this fact was not contradicted during cross-examination. The prosecution did not prove that false pretence is

contained in any of the document constituting any of the count of charges against the Defendant.

Learned counsel submits that it is natural that upon Britwill Investment Company confirming their genuine relationship with the defendant, the documents so possessed and belonging to them but found in the custody of the defendant cannot be said to contain false pretence(s). That assuming same was not confirmed, the prosecution did not also prove that same contain any false pretence by having not presented before this court what they called the correct certificate of incorporation of the company which PW2 said he saw on the company's website.

That DW3, who testified on 22/01/2020 via video call identified herself as Janet Lynn manning and the owner of one Facebook account logged on the defendants phone, she went ahead to state that the defendant is her friend as well as business partner. The said DW 3 stated the reason why her Facebook account was logged on in defendant's gadget as to the effect that there are some group she belong in, due to her location being America which the defendant cannot access and she allowed the defendant to be accessing her said Facebook account to learn and gain information for their trading from those group. That piece of evidence was not dispelled, contradicted neither was same diminished in weight upon cross examination.

That the documents emanating from the Janet's, DW3 conversation form count three, count six and count nine of the charge and DW3 has given evidence as to the reason why her Facebook account was logged in on the defendant's gadgets hence defendant cannot be said to be in

possession of DW3's documents the owner having identified that on the 22/01/2020.

It is further pointed out the extract from the evidence in chief of the DW3 on the 22/01/2020, which state as follows;

> Q. Can you also tell this honorable court why your Facebook account was logged on his device?
> A. Because there was some professional post trading group on Facebook which I was in and I wanted him to learn from them because he could be joined, he was reading the trading news on my account to get the update, and I wanted him to learn,
> Q. Can you tell this honorable court why it is not possible for him to join this trade group?
> A. Because he didn't have access and I wanted him to learn, I let him have access to my account.
> Q, Are you aware that he sees your conversation in his device when your Facebook ID is logged on?
> A. Yes, I am aware of that.

In all learned counsel urged the court to resolve all the issues raised in favour of the Defendant and against the prosecution and hold that Exhibit P3A cannot be relied upon having not complied with the Evidence Act and same having been dumped at the court, the Prosecution has failed to prove the guilt of the Defendants beyond all reasonable doubt; and to discharge and acquit the Defendant.

The prosecution filed its address on the 26/2/20 and raised a sole issue for determination, viz:

> Whether from the totality of the evidence, the Prosecution has proved its case beyond reasonable doubt against the Defendant to warrant his conviction?

Learned counsel for the prosecution submits that in criminal cases, the standard or burden of proof is beyond reasonable doubt and same is expected to be proved by the Prosecution. See Section 138 of the Evidence Act, 2011 and to the case of **IKARIA v. STATE (2014) 1 NWLR (PART. 1389) 639, PP. 668 ~ 669, PARAS C-A.**

That in proving her case beyond reasonable doubt, the Prosecution is not expected to prove her case beyond the shadow of doubt. See the case of **JUA v STATE (2010) 4 NWLR (PART. 1184) 217, p. 243 paras. D-F**, where the Supreme Court held that;

> "While our adjectival law places on the prosecution the duty to prove a criminal case beyond all reasonable doubt, the prosecution has not the duty to prove the case, beyond all shadow of doubt. The shadow of doubt could be reflected in the case of the prosecution but that cannot in law stop or inhibit conviction. The court can convict an accused person the moment the prosecution proves its case beyond reasonable doubt. And here, the proof beyond reasonable doubt does not mean the same thing. The latter places a heavier burden on the prosecution, a burden not known to our adjectival law".

That it follows from the above that, what is expected of the Prosecution is to prove the offences upon which the Defendant is charged beyond reasonable doubt. Thus the next pertinent question to answer at this point is what does it mean, what does it entail to prove a case beyond reasonable doubt? The answer to this question was given/supplied by the Apex Court in the case of **JUA v. STATE (SUPRA) PP. 263-264, PARAS. H-A**, where the Court stated that;

> "Proof beyond reasonable doubt is not proof to a hilt. It is not proof beyond all iota of doubt. Where all the essential ingredients of the

offence have been proved by the prosecution, as in the instant case, the charge has been proved beyond reasonable doubt".

That in the instant case, the Defendant is charged for being in possession of document containing false pretences contrary to Sections 1(1) (a) and 6 respectively of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

Now the most pertinent question to be resolved at this point is how the guilt of a Defendant can be established? What means, medium or criteria can be used to establish the guilt of a Defendant. The Apex Court has held in the case of **IDOWU OKANLAWON v. THE STATE (2015) LPELR-24838 (SC); P. 48 PARAS. B-C,** that;

"It is trite law that the guilt of an accused person charged with the commission of an offence can be established by any or all of the following:-

(i) The confessional statement of the accused:
(ii) Circumstantial evidence:
(iii) Evidence of an eye witness".

See also the case of **EMEKA v STATE (2001) 14 NWLR (Pt. 734) 666.**

It is further argued that it is settled law that the guilt of a Defendant can be proved by either or all of the ways mentioned above. In this instant case, the Prosecution has proved the guilt of the Defendant beyond reasonable doubt, in the course of the trial through the following method:

1. The testimony of eye witness, and
2. Circumstantial evidence.

That counts One to Nine of the Charge borders on the Offence of being in possession of document containing false pretence. In the case of **FRN v**

ODIAWA (2006) Vol. 3 KF.C.L PG 97, the court painstakingly outlined the ingredients for the offence of being in possession of document containing false pretence. These consist:

> "Of existence of a document or letter containing false pretence, which document or letter must have been found in possession of the accused person who must know or ought to know that the said document or letter contains the false pretence"

That in the instant case, the necessary ingredients to be proved by the Prosecution as regards count three-nine include;

a) That there is a document.
b) That the said document contains false pretence.
c) That the Defendant knew or ought to know that the document.

And that the next milestone to cross is to define the word, "possession". That is, what does it mean for someone to be in possession? The Black Law Dictionary, 6th Edition, P. 1163 defines possession as;

> "Having control over a thing with the intent to have and exercise such control. It implies not only physical power or custody over res, but most importantly the power to exclude others".

See the case of **EZE vs. STATE (1985)3 NWLR (Pt. 13) 42 at P. 83 PARA. E.**

That having the above stated elements in mind, what evidence has the Prosecution led to establishing the elements of obtaining money by false pretences and being in possession of document containing false pretence? PW1 stated that in 2018, the Economic and Financial Crimes Commission (EFCC) the defendant and some of his cohorts were arrested by the economic and financial crimes commission and brought to him to take their statement which he did under word of caution. That he cautioned the Defendant and took his statement under camera. The

statement was admitted in evidence as Exhibits P1A, B, C and D. Under cross examination he stated that there was intelligence report against the defendant and his cohorts and that there was suspicious inflow of monies into the Defendant's Account.

It is further pointed out that Nnamdi Madu testified as DW1 in this case. He stated that he was arrested in December: 2018, that he was made to reveal his Iphone password and he also gave his statement, he also stated that Agent Janet is his friend and business partner. He went further and stated that he does not know Ann and that her name came from Face Book that was logged from his phone but not his Chats. He also admitted that most of the documents tendered were his except some that were not his but he was made to sign then. He also claimed that the chat belongs to Janet and not his. He also stated that he is fund manager at Britwill that he manages the fund of some Investors as an analyst and he was verified on their platform. As regards the company certificate he asked for it from the company to proof to the people that he operates within the investment platform of the company, so they can know that it is real.

That under cross examination, he stated that the documents were printed from his Iphone. He also stated that he was asked leading question by EFCC, that the documents on page 40 of the exhibited documents was not his.

It is further argued that DW2 stated that he is a childhood friend to the Defendant and during his incarceration he visited him in EFCC and was told of what happened, he gave him the email address of Britwiill

company, that he got in touch with Britwill through mail and they said they have not heard from any agency in Nigeria, that they later sent him an email attached with the reply they sent to the Complainant he tendered the certificate of identification, urgent notice and second urgent letter which were admitted in evidence as exhibit D1,D2 and d3 respectively.

Learned counsel argues that the Defence learned Counsel submission that section 84 of the evidence act was not complied with is not true. That Exhibit P3 were print outs from the HP laser jet P2055dn using a laptop system windows 10 pro, the certificate of identification stated that: the computer was in a perfect working condition and that the information was supplied in the ordinary course of activities. And that the documents mentioned in counts one to nine and tendered in evidence by this honourable court and admitted as exhibit P4 series are all documents containing false pretences and same were found in the possession of the Defendant.

Further that the documents mentioned in counts one to nine and tendered in evidence by this court and admitted as exhibit P4 series are all documents containing false pretences and same were found in the possession of the Defendant. That on the whole, the Prosecution has been able to discharge the burden on it by proving her case against the Defendant beyond reasonable doubt and on the strength of same, the court should convict the Defendant.

From the totality of the evidence led, it is clear that the case of the prosecution is one brought upon suspicion and not hard facts. The law is

quite clear on the point. Suspicion, however placed, does not and cannot amount to evidence. See **ABACHA .V. STATE (2002) 7 SCNJ P.35: OHWOVORIOLE .V. FRN 13 NSCQR P1.** See also the case of **STATE .V. ONAH (1956).**

In criminal trials, the prosecution has a weighty burden to prove the guilt of the accused by placing extraneous materials and evidence before the Court linking the alleged crime to the defendant. This burden cannot be shifted to the defendant. See Section 36(5) of the Evidence Act.

Moreso, the nine count charge before this court bothers on possession of documents containing false pretences with intention to defraud. The courts have over the years made pronouncements on the Ingredients necessary to establish in a charge of this nature. See **ADEROUNMU .V. FRN LER/2019/CA/L/782C/2018; BELLO V. FRN LER/2018CA/L/405C/2011; ONWUDIWE .V. FRN SC/4i/2003 etc.**

Moreso, the Interpretation section of the Advance Fee Fraud Act under which the defendant is brought in S. 20, defines false pretence as:

> "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".

The operative phrase here is 'knows to be false'.

What this means is that the prosecution must prove not just the actus reus of being in possession of the document, but it must also prove the mens rea, guilty intention of the accused person. This intention to defraud, to

the mind of this court has not been successfully established; both the act and intention.

This Court agrees with learned counsel to the defendant that the prosecution has failed to prove the false pretences leveled in the charge.

Learned counsel in its Reply on points of law argued that assuming without conceding that it is satisfactory that the said documents emanate from the Defendant's gadgets; none of the documents has been shown to contain any false pretence as the prosecution witnesses are required in law to demonstrate the offending contents (false pretence(s)) of the documents. The certificate of incorporation has not been shown to contain false pretence as the authentic certificate of incorporation is not tendered by the prosecution to show that the one at present does not represent the authentic document. The purported contract document has not been proved to contain false pretence especially as the prosecution witnesses admitted that these firms and companies exist without doing more to reach and obtain statements from them even when it is possible, the letters they claimed they wrote to them without reply were not tendered in evidence in this court. It is not enough to say that the document contain false pretence without showing the false pretences contained by the documents one after another as the proof required in criminal trial is beyond reasonable doubt.

The law is settled that no amount of brilliant address of counsel can make up for lack of evidence to prove or defend a case in Court. See **SEGUN OGUNSANYA V. THE STATE (2011) 12 NWLR (PT. 1261) 401, DONATUS NDU V. THE STATE (1990) LPELR -1975) (SC).**

On the reliance of the evidence of PW2 to the effect that the account statement of the Defendant does not show that he deals on crypto currency, the Defendant's account statement was not tendered as exhibit in this court to prove same especially when the commission has frozen the defendant's account and he cannot access same.

On the fact that the Defendant claimed to be Manager of Britwill Company, the prosecution has not shown that the Defendant does no trade with the Britwill, Company and/or does not manage account with the company, worst on the side of the prosecution the defendant has through his DW 2 shown that the complainant are out to nail the defendant for no just cause when they withheld their communication with the said company which are now admitted in evidence through DW2.

It is argued that the complainant did not obtained any statement from the company which the prosecution admitted that exist but only say that their letter to the said company was not replied, yet the prosecution hurried and brought this charge without any confirmation of the allegation against the Defendant, of course, it is settled that the court cannot speculate.

It is settled law that in criminal trial before an accused person is asked to undergo any sort of sentence, there must be finding by trial court on the concurrence of the two main elements of any crime; that is the actus reus (the physical act containing the crime) and the mens rea (the mental element/the correct criminal mind).

t is settled therefore, that for the prosecution to establish a criminal act against an accused person, it must go beyond establishing the commission of the unlawful act by the accused and establish that the accused had the correct legal criminal mind of committing the act. These wo elements must co-exist. See **Njoku v. State (2013) 2 NWLR (Pt 1339) p. 48.** The prosecution only brought documents and tendered in this court made no demonstration of the content and what they are used or to be used for by the Defendant. This amounts to dumping of documents in court.

hat the prosecution has failed to prove the essential ingredients of the offences alleged against the Defendant and cannot at this stage ask the court to take the position of the investigation officer who has given .in evidence the limit of roles he performed in investigating the allegation against the Defendant.

is the law that where the prosecution fail to prove essential ingredients f offence charged, the case of the prosecution will fail and the accused ot required to prove his innocence that is presumed in law, if the vidence is so manifestly unreliable as in the instant case having been estroyed by cross examination of the witnesses that no reasonable ibunal will convict on that evidence. See **Garba v. State (2011) 14NWLR Pt 1266) p. 98.**

is further rightly argued that the prosecution has not by any piece of vidence before this court nailed the' Defendant to any of the count harges of the offences brought against him. It is all time duty of the rosecution in criminal trial to prove an allegation of commission offence

against the accused person and the standard of proof is beyond reasonable doubt while the burden of proof lies on the prosecution and does not shift until same is successfully discharged by the prosecution. It is the law that where any doubt exists, it must be resolved against the prosecution and in favour of the accused person. See **Garba V. State (2011) 14NWLR (pt 1266) p. 98.** See also **Oseni v. State (2011) 6NWLR (PT. 1242) p. 138.**

The complainant rightly relied on the case of **IDOWU OKANLAWON v. THE STATE (2015) IPELR-24838 (SC); P. 48 PARAS. B-C,** to the effect that it;

> **'It is trite law that the guilt of an accused person charged with the commission of an offence can be established by any or all of the following;-**
> **(i) The confessional statement of the accused:**
> (ii) **Circumstantial evidence:**
> **(iii) Evidence of an eye witness".**

The complainant has failed to show how he proved any of the allegations against the defendant by any of the means stated above. It is the duty of the prosecution to prove all ingredients offence in which the Defendant is charged before inviting the Court to make a finding that an offence has been committed by the accused person. Of course before a trial court come to conclusion that an offence has been committed by an accused person, the court must took for the ingredients of the offence and ascertain critically that acts of the accused person comes within the confines of the particulars of the offence charged. See **Noraturuocha v. State (2011) 6NWLR (Pt. 1242) p, 170.** See also **Amadi v. State (1993) 8NWLR (pt. 314) 644,** the complainant has not shown whose money, the amount, how, where and when the defendant obtained such money by false

presences worst still when he said that his allegation was based on suspicious money inflow noticed in the defendant's account.

That the Defendant laid his evidence explaining his sources of earning and living, complainant does not cross-examine on the facts and same are good evidence and the court should rely on such unchallenged evidence of the defendant through DW 1, DW 2 and DW 3 and dismiss this charge, discharge and acquit the defendant. See the case of **NWOKOLO V. NWOKOLO CITATION: (2018) LPELR-45035(CA) RATIO 4** where it was held as follows;

> **"... When is evidence said to be uncontroverted/unchallenged; effect of same "A piece of evidence is said to be uncontroverted, un-impeached and unchallenged when the opposing party led no credible evidence to the contrary or discredited same as untruth under the heat of cross-examination. In other words, where the evidence of a party is un-rebutted by the adverse party, such evidence is said to be uncontroverted. It does not mean that the adverse party led no evidence at all. It does mean that the evidence led by the adverse party was not credible enough to impeach the truthfulness of the said evidence. And it is trite law that when a piece of evidence Is uncontroverted, the Court can act on same. See: MUSA & ORS. V. YERIMA & ANOR. (1997) 7 NWLR (PT. 511) 27 @ 41 -42; ADELEKE & ORS.V XYANDA & ORS. (2001) 13 NWLR (PT. 729) 1@22- 23; AND USMAN V. ABUBAKAR (2001) 12 NWLR (PT. 728) 685 @ 706".**

Learned counsel to the defendant urged this court to hold that the prosecution has failed in proving their case beyond reasonable doubt as required in Criminal Procedure in Nigeria and to discharge and acquit the Defendant: in this charge, his guilt having not been established by any standard on the trial of this charge.

See also the judgment of this court delivered this morning in **CHARGE NO: FHC/EN/CR/01/2013** between: **THE FEDERAL REPUBLIC OF NIGERIA V. ADEDAPO ADELEYE SOLANKE & 1OR.**

"Let the court take the liberty to quickly state that it read the allegations, the evidence of the Prosecution- PW1 and PW2 and the Exhibits; the court equally read the evidence of the defence.
Afortiori, the court read the address of learned counsel and virtually reproduced verbatim the allegation, the evidence and the address for the appreciation of what took place.
The court shall also quickly say, on issue two as to whether there is valid charge or not in law. The court is guided by the case of **YAKI .V. BAGUDU (SUPRA).**
The amended 7 count charge dated 14/2/19 signed by Habola Jonathan of EFCC, Enugu, even though without a seal, the same will not vitiate the proceedings in this matter that had been in court since 2013; it is on a valid charge.
Accordingly issue two of the defence is dismissed without any finality and the court upholds the Prosecution's arguments.
Having said that, what is the resolution of issue one which is the life wire of this case? Has the prosecution proved its case on all or any of the allegations before this court? A criminal trial is a serious business. Allegation that touches as the liberty of the citizen should be handled seriously with cogent and compelling evidence to enable the court act on same and curtail the liberty of the citizen.
Milfred Savage in his book, The Knives of Justice, alluded to what a criminal trial is liken to at Pp87 and 89 to the affect that-

"A trial is bricklaying to build a wall of proof. Each new bricks is delivered,...set into place, and then it is tested-tapped, thumped, examined in a strong light-to see whether it is sound and solid or full of holes and crushing. By fitting brick on brick the state hopes at the end to be able to say there is a wall you cannot knock down. And the defence mending and probing

for weakness, hopes to be able to counter that's a wall that won't stand up"

The author also likened Evidence in a trial to a ball when he stated:

"The evidence never has there been a more deceptive word. It sounds so exact so definite; in fact it is so nebulous, so relative, so subject to interpretation. The evidence in a trial is like a football-it is displayed, manipulated, kicked around, ditched tight, passed forward and backward and sideways and by the end of the game it can be quite dirty. But it is the thing the game is played with from start to finish, the only thing with which one side or the other can score."

Even though it has never been the law that it is the number of witness that will make a case succeed; No! It is the quality of Evidence and not the quantity of witness.

In the instant case the Prosecution called 2 witnesses, both from the EFCC and tendered copies of Exhibit without more.

This court's understanding of the law as regards the Exhibits dumped on the court, was stated by the Supreme court in the case of **YONGO V. COMMISSIONER OF POLICE (1992) 8 NWLR (Pt. 257) P 36 at 73-74 Para F-G and A-C .**

To this end, let me refer to the law as this court stated in the case of **SUIT NO. FHC/L/CS/455/2013; THE INDUSTRIAL TRAINING FUND GOVERNING COUNCIL V. KPMG PROFESSIONAL SERVICES** judgment of **Hon. Justice I. N. Buba** unreported of 25/5/16 to the effect that:

"It is not the duty of the court when it retires for judgment to start sorting out the case of the parties. Again this is what this court said in the case of **FEDERAL REPUBLIC OF NIGERIA V. NWANESINDU JUSTICE & 4 ORS CHARGE NO:FHC/PH/38C/2007** of 27/6/08 unreported:

"It is the law that where documentary evidence is tendered and admitted in court it is the duty of the prosecution to lead evidence in a criminal trial such as the one before the court to show the effect of the exhibits, their contents vis-a-vis the

charge before the court. It is not the duty of the court when it retire to write its judgment to start inquiring into what happened and what did not happened that is beyond the duty of adjudication but that of investigation.

The duty of the court is to adjudicate and not to investigate on what the prosecution should do when exhibits are tendered in court. See the decision of Wali JSC in the case of **YONGO V COMMISSIONER OF POLICE (1992) 8 NWLR (Pt. 257) P 36 at 73-74 Para F-G and A-C respectively**. See also the case of **DURUMNIYA V. COMMISSIONER OF POLICE (1961) NRLR 70 at 73** while it was stated that:-

"The magistrate examined the books but apparently not in court for the records does not show that he observed or was shown any entries in court except a fair ....have mentioned and in examining them out of court as appears from his judgment he observed numerous points which ought to have been brought out in court at the hearing but were not in this, the magistrate was investigating it. A trial is not an investigation and, investigation is the function of a court. A trial is the public demonstration and testing before the court of the cases of the contesting parties. The demonstration is by assertion and evidence and testing by cross examination and argument"

The above statement of the law in the case of **DURUNYE V. COMMISSIONER OF POLICE (SUPRA).** He was referred to by the Supreme Court in the case of **YONGO V. COMMISSIONER OF POLICE (SUPRA)** by Wali JSC.

Without belabouring the issue n whether a judge can examine documents to sort out parties case outside the court the case of **OBM COMPANY LIMITED V MBAS LIMITED (2005) 10 WRN PI at PP25-26 lines 40** -5 Kalgo JSC held:-

"A Judge cannot sit down out of court on his own and examine documents to sort out the case of a party, it is the duty of the party itself to elicit such evidence in court through its witness especially in this case where various documents are involved. See DURUMUNYA V. COMMISSIONER OF POLICE (1961) NRNLR

70 at 73 (cited also by the appellant in the brief) which was followed by this court in ONUBODU V. AKIBU (1982) 7 SC 60 at 62"

On this issue, see also the case of DOMINIC V STATE (SUPRA) cited by learned counsel to the 1st accused. The case where the Supreme Court held thus:-

"The position of a judge adjudicating in a case in Nigeria adversary system is that of an unbiased umpire. His role is generally to determine from the facts before him whether the charge against the accused person has been proved, it the onus has not been discharged, it is the constitutional and judicial duty of the Judge to so declare. Not being a party, he is bound to do nothing to promote the case of either party. He is bound to do everything to achieve justice in the dispute between the parties before him and on the evidence presented"

I do with respect think it is not enough to say that some mails were printed from a mail box of an accused and that he is in possession of those mails. It is more than that in a criminal trial. The prosecution must go on to show by evidence from the documents that they are indeed seam mails and how they are same. The matter cannot be left to the court to conjecture."

Having said that, no single victim was also called to testify on the counts of AFF in count (4) (5) and (6) and count (7), all on charge as Advanced Fee Fraud.

In the circumstances, this court has no hesitation whatsoever in coming to the inevitable conclusion that they have not been proved, let alone beyond reasonable doubt. Accordingly the counts are hereby dismissed.

The coast is now clear for determination of counts one, two and three said to be in contravention of the Banks and other Financial Institutions Act; the counts had been reproduced at the inception of this judgment.

In a criminal trial, in our accusatorial system of administration of criminal justice, prosecution is a serious business, as stated by Milfred

Savage (supra). Afortiori, the defence of an accused no matter how feeble, the court must consider.

In the case of **FRN V. MUSTERED SEED, CHARGE NO: FHC/ASB/29C/11** unreported Judgment of 7/1/13, learned counsel representing the EFCC, Mr. G.K. Latona did not only frame the right charge, but proceeded to graphically prove every allegation with mathematical precision and exactitude that left this court with no doubt whatsoever and it was argued inter alia:

> "The duty of proving the guilt of the Accused beyond reasonable doubt, rest squarely on the prosecution's head and there is no corresponding duty on the Accused to prove their innocence. See **STEPHEN OTEKI V. A.G. BENDEL (1986) 2 NWLR (Pt. 24) 648; MUMIM V. THE STATE (1975) 6 SC. In Re MAIDUGURI (1961) All NLR 673 (1961) 2 SC NLR 341; OKORO V. STATE (1988) 5 NLR (Pt. 94) 255 and ADEYEMI V. STATE (1991) 8 NWLR 39.**
>
> This Court has no doubt that the law by dint of Section 2(2) of SOFIA is that:
>
> *"Any person who transacts banking business without a valid license under this Act is guilty of an offence and liable on conviction to imprisonment for a term not exceeding ten years or to a fine of N2,000,000, or to both such imprisonment and fine."*
>
> Thus to prove the above offence, the prosecution must show that:
>
> - There is a person, natural or Juristic
> - The person transacts or engages in banking business
> - The banking business is carried on without a valid license issued by the Central Bank of Nigeria.

Section 66 of BOFIA further states that banking business means the business of receiving deposit on current account, savings account or other similar account, paying or collecting charges, drawn by or paid in by customer, provision of finance

or such other business as the Governor may by order published in the Federal Gazette, designate as banking business.
This Court agrees that above definition reveals that banking business is broad and encompasses several areas which include:

- Receipt of deposits on current account, savings account or other similar account.
- Paying or collecting cheques, drawn by or paid in by customers Provision of finance.
- Such other business as the Governor or any of the Deputy

  Governors of the Central Bank of Nigeria may by order publish in the Federal Gazette designate as banking business.

To the prosecution that contention is in essence, the itemized businesses are disjunctive and not inclusive. In recognition of this position, Section 66 provides for the existence of different banks engaged in various aspects of banking business like Commercial Banks, Community Bank, Merchant Bank, Profit and Loss Sharing Bank and Specialized Banks. Counsel for prosecution are fortified in this view by the provision of Section 2(1) of BOFIA which clearly stipulates that no person shall carry on ANY banking business in Nigeria except it is a duly incorporated company which holds a valid banking license from the Central Bank of Nigeria. Thus, transacting banking business without valid license of the extant provisions of BOFIA can only be considered by a community reading of the relevant sections quoted above. As the Court of Appeal noted in **NWAIGWE V. F.R.N.** (2009) **16 NWLR (Pt.1166) at 191 paragraph** E. a court of law construing a statute must consider and give effect to other related provisions of the same enactment in order to interpret the law correctly.

On the other hand, the defence posits and agrees with the ingredients stated by the prosecution and went on to argue that:

"In this case, it is not in dispute that the 1st Accused person is a juristic person and the 2nd and 3rd Accused are natural persons. However, the next ingredient to be proved by the prosecution is whether from the totality of both oral and documentary evidence tendered before this court, the 1st Accused actually carried out or transacted banking business. That takes to the point as to whether if there was any such banking transaction; it was carried out without a valid license. It will be expedient to know what the concept of banking is and what constitutes a banking business for us to be able to appreciate the full import of the provisions of Section 2(2) of the Banks and Other Financial institutions Act which is under reference in this case. This court read the relevant Section in relation to count 1 and the ingredient as agreed by both the prosecution and the defence. Indeed it is true that the law was stated.

In the case **of WEMA BANK PLC. V. OSILARU** (2008) **10 NWLR (Pt. 1094) C A. Page 150 at Page 182, paragraphs D-E Ratio 12** thereof, it was held that:

"The following are the concepts of banking:

(a) That a Bank is a legal entity statutorily regulated and statutorily backed.

(b)That ownership of deposits pass to the bank which can deal with the same without reference to the customer, except as overdraft or loan and except where the bank acts a bailee for the custody of securities like gold, stock and share certificates of depositors etc.

(c) That the bank is profit oriented...

"For the purpose of this Act, a person shall be deemed to be receiving money as deposits.

If the person accepts deposits from the general public as a feature of its business or if it issues an advertisement or solicits for such deposit;

Notwithstanding that it receives moneys as deposits which are limited to fixed amounts or that certificates or other instruments are issued in respect of any such amounts providing for the repayment to the holder thereof either conditionally or unconditionally of the amount of the deposits at specified or unspecified dates or for the payment of interest or dividend on the amounts deposited at specified intervals or otherwise, or that such certificates are transferable."

Section 1(6) of the Banks and Other Financial Institutions Act, provides thus:

> ***"Notwithstanding anything contained in this Section to the contrary the receiving of moneys against any issue of shares and debentures offered to the public in accordance with any enactment in force within the Federation shall not be deemed to constitute receiving moneys as deposits for the purposes of this Act."***

The Defence laboured to submit that from the collective construction of the foregoing provisions of Section 1 (5)(6), 2(2) and 66 of the Banks and Other Financial Institutions Act with regard to the meaning of the word 'deposit', that merely receiving monetary deposit by a person does not constitute a banking business. This is because in the normal course of business people deposit monies with their customers for various purposes. For instance, a customer can deposit a particular sum of money with a car dealer as part payment for a car he intends to buy. This receipt of that monetary deposit by the car dealer from the customer does not, ipso facto, qualify the transaction to be a banking business as contemplated by the provisions of Section 2(2) of the Banks and Other Financial Institutions Act. It is the means of receiving the deposit and purpose for which is in received that qualifies it as a banking business. For instance, in EXHIBIT "D14" is the Bye-laws of the MUSTARD SEED 200 MEGA MULTI-PURPOSE CO-OPERATIVE SOCEITY

LIMITED. Section 37(4) of Mustard Seed 200 Mega Multi-Purpose Cooperative Society Limited stipulates that one of the sources of funds of the cooperative society is receiving 'deposit' and loans from non-members. The Delta State Bye-Laws of Co-operative Societies (which is equally tendered in evidence in this case) also has a similar provision for co-operative societies to accept 'deposits'. That does not automatically transform them into a bank or qualify their business a banking business.

It is further submitted that for the receipt of deposit to qualify as banking business as contemplated by the provisions of Section 2(2) of the Banks and Other Financial Institutions Act, such a deposit must have been received by the recipient on current account, saving accounts or other similar account like Executive Savings Account opened with the recipient. Therefore, it is the mode/means by which the deposit is received in a given transaction and the purpose for which the money is being deposited that determines whether the transaction is a banking business of not. It is submitted also that deposit can be made for the purpose of buying a house or any other chattel. That type of deposit does not qualify as a banking business. On the other hand where a person deposits money with somebody on either current accounts, saving accounts or other similar account like Executive Savings Account for safe keeping and with the intention of withdrawing the money whenever he desires, that may qualify as banking business under Sections 2(2) and 66 of the Banks and Other Financial Institutions Act. In the instant case, PWs 1 and 2 admitted that they issue cheques and paid the monies into the accounts they opened with the 1st Accused. That is the position of the defence.

In the case of **C.B.N** V. **UKPONG (2006) 13 NWLR (Pt. 998)** 555 **at 571, paras. C-E,** ***Fabiyij*** *J.C.A(as* he then was) observed that:

> ***"In construing a statute all sections must be taken into consideration to arrive at a right interpretation of the same. A section of the statute should not be taken in isolation because doing so will occasion violence on the law. In the instant case,***

the respondent in interpreting the Central Bank Act stated that the duties of the appellant was purely commercial or for profit purposes without adverting his mind to section 2 of the Central Bank Act, which states the purpose for establishing Central Bank of Nigeria"

From the totality of the oral and documentary evidence before the court the *following* facts are evidence and beyond any argument and beyond any doubt. *By* Exhibit P24 particularly the memorandum of the company. The objects for which the company is established include;

1) Acceptance of various types of deposits, including savings, time, target and demand deposits from individuals, groups and associations, except public sector deposits (government).
2) To act as agents for any person or persons, whether for the purpose of collecting and paying monies, or for any purpose whatsoever.
3) Provision of credit to its customers, including formal and informal self-help groups, individuals and associations.
4) To provide all financial services which the Company may wish to provide and which it may lawfully provide,

In Exhibit P18, 3rd Accused (DW1) also wrote thus:

"Mustard Seed Micro Investment Ltd is registered with the Corporate Affairs Commission as a micro finance institution to receive debentures from the public and invest same in micro loans and micro businesses, Debentures are deposits from investors or specified interest rates to be paid monthly or annually whether on a short term or a long term basis. The business was carried out from June 2008 when the company was registered".

Similarly in Exhibit P16, DW1 also freely wrote:

"The company run two schemes under the mass partnership scheme one for time deposits for three, six and twelve months and a daily savings scheme for a minimum of six months all

with a 4% monthly interest and later changed to 3% percent. The money received were applied to loans and invested in business ventures like Solace Fast Food Ltd, Solace Micro Finance Bank and Vision Global Building Concept Ltd all of which were to raise funds to pay the interest and repay the capital at maturity".

It is true and as rightly submitted that DW1 admitted the aforesaid facts. Also on record, 2nd Accused person confirmed DW1 (3rd Accused person) as a truthful, reliable and trustworthy person who has no cause to lie against him and the 1 Accused Company.

It is also true and as rightly argued by the prosecution that PW4 and PW5 also testified that investigations established that the 1st Accused Company accepted deposits from members of the public to which it paid interest.

So it is clear that the principal business of 1st Accused Company is acceptance of deposits for which it paid interest initially at 4% per month and later at 3% and giving out of loans to members of the public. This is one of the business of banking under BOFIA and by dint of Section 1(5) of BOFIA clearly provides:

"a person shall be deemed to be receiving money as deposits -(a) If the person accepts deposits from the general public is a feature of the business or if it issues an advertisement or solicits for such deposit purposes.

(b)Notwithstanding that it receives moneys as deposits which are limited to fixed amounts or that certificates or other instruments are issued in respect of any such amounts providing for the repayment to the holder thereof either conditionally or unconditionally of the amount of the deposits at specified or unspecified dates or for the payment of interest or dividend on the amount deposited at specified intervals or otherwise, or that such certificates are transferable"

Section 66 of the same law further reinforces that deposit:

"Means money lodged with any person whether or not for the purpose of any interest or dividend and whether or not such money is repayable upon demand upon a given period of

notice or upon a fixed date" This court agrees that in this respect, the reference to Section 1(6) of BOFIA by defence serves no useful purpose. DW1 above clearly explained that their own debenture means deposits of money with 1st Accused company. So Section 1 (6) is inapplicable. The same goes for his reference to the definition of deposit in the Oxford Advanced Learners Dictionary.

This court agrees with Mr. G.K. Latona, that the cases of WEMA BANK PLC V. OSILARU and G.E.B PLC V. ODUKWU (SUPRA) are not relevant to the present situation. They deal with facts different from the situation herein. As the Supreme Court noted in **OKOYE V. CENRE POINT MERCHANT BANK LTD (2008) 15 NWLR (Pt.1110) 335 at 362, paragraphs A - B,** the principles of precedent and stare decisis cannot be determined in isolation of the facts of a case. As a matter of law, the facts of a case denote the principle of stare decisis. In the instant case, the Court of Appeal was right when it refused to apply the decision of the Supreme Court in **BEN THOMAS HOTELS LTD V. SEBI FURNITURE** as that case was decided on facts different from those before the Court of Appeal. This court agrees that the argument of Learned Counsel for the defence in relation to Exhibit P24 also amounts to raising red herring. Firstly, they were in court when PW6, a staff of the Corporate Affairs Commission tendered Exhibit P24 a public document in their custody. The law is that once a public document is signed and certified as required by law, it becomes admissible on production and it is unnecessary to call a witness to prove custody or to verify the document. Such a **AREGBESOLA V. OYINLOLA (2009)4 NWLR (Pt. 1162) 429 at 472.** document is presumed to be genuine. See

It is also apposite rightly submitted in my view that 2nd and 3rd Accused in spite of their protestations failed to produce their own version of the memorandum and articles of the 1st Accused Company. Though there is no duty on them to proof their innocence. A party who puts up a case, the proof of which

requires some evidence that is within its reach, and which it has refused to produce can be presumed to believe that such evidence if produced would be unfavourable to the party. See **FIRST BANK V. ASSOSCIATED MOTORES (1998) NWLR (PT. 570) 485; KUINAGANAM V. KYARI (2012) FWLR (PT. 126) 817 AT 834.**

However, in the circumstances of this case, beyond PW1 saying the defendants were running a Ponzi Scheme, and the exhibits dumped on the court, nothing was done with a view to showing how the defendants contravened the provisions of the BOFIA.

To this court, heads or tail, the Prosecution has not been able to proof the allegations in counts (1, (2) and (3) before this court. The court upholds the evidence and argument of the defence.

What is this court saying ultimately?

This court holds that the Prosecution failed to proof the case on all the 7 counts against the defendants; therefore the defendants be and are hereby discharged and acquitted from the 7 counts amended charge.

It is better for a 99 criminals to escape than for one innocent man to be punished, for that will bring calamity to the society. Kayode Eso JSC says, law and justice are twin lions, born on the same day, which is stronger depends on the judge."

To this court, what the prosecution seeks is a conviction based solely on speculation and 'circumstantial evidence'. The said circumstances were not placed before this court; moreso when it is on record that the prosecution has in place a PND on the account of the defendant; thus restricting access there to. No statement of account was placed before this court to prove the suspected suspicious inflow; the only argument of learned counsel to the prosecution is that there is circumstantial evidence.

This line of argument to the mind of this court is over-reaching and an attempt to overstretch the hands of our prosecutorial laws. See the views of Sylvester Udemezue Esq. on the decision of the Supreme Court in **DAUDA .v. FRN (2018) 10 NWLR (pt. 1626) 169**, which this court finds to be apt.

> **"HAS THE RECENT SUPREME COURT DECISION IN DAUDA V. FRN CHANGED THE SYSTEM OF CRIMINAL JUSTICE ADMINISTRATION IN NIGERIA?**
>
> The decision of the Supreme Court of Nigeria in the recent case of **DAUDU v. FRN (2018) 10 NWLR(Pt.1626)169, 183 E -F (2018) LPELR-43637(SC),** has generated so much debate and divergent opinions and interpretations. While some lawyers and politicians appear to believe that it has substantially changed the coloration and established position of our criminal justice system, others believe it has merely reinforced and restated the position of the law, and did not upstage or overturn it.
>
> Same Judgment, different interpretations. In the light of these conflicting views therefore, it becomes expedient to try and see what the Apex Court has decided. Therein lies the necessity and relevance of this paper.
>
> In the case under consideration, the Supreme Court of Nigeria is reported to have declared that "the burden lies on an accused person to explain properties he acquired which are disproportionate to his KNOWN legitimate earnings."
>
> Some lawyers have interpreted this declaration to mean that "once it is shown that one has much more than one should have had, THEN IT IS FOR ONE TO EXPLAIN," further implying that an accused person now has the burden to prove his innocence, instead of the evidential burden of a fact within his knowledge as us usually the case; or else he would be thrown into jail.
>
> With due respect, that's not what the judgment has said. Besides, I do NOT think the judgment has CHANGED the adversarial or

accusatorial nature of Nigeria's criminal justice system as entrenched in the provisions of the Constitution of the Federal Republic of Nigeria, 1999, dealing with the presumption of innocence of accused persons in criminal proceedings in Nigeria. The principle is not anything new, that "one may be held to give an account if one's amount or source of income/wealth is suspicious." The Money Laundering (Prohibition) Act (Nigeria) is littered with provisions in this respect.

In my opinion, what the apex court has done in DAUDA v. FRN (Supra) was merely to restate the extant position of law. Now, however, it is noticed that some politicians and lawyers are trying to twist this clearly unambiguous judgment with a view to achieving some ends unconnected to the judgment and obviously unknown to law — perhaps that of wrestling rule of law and due process to the ground, to make way for the possible enthronement of individual predilections and the personal whims and caprices of leaders and prosecutors as the major or sole determinants of criminal guilt in Nigeria.

Respectfully, I have some questions for our colleagues, especially those who are parading this DAUDA V. FRN with the sole aim of importing into the judgment, what is not there in our laws: 1: Has the judgment in DAUDA V. FRN upturned section 35 (5) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, which upholds an accused person's right to be presumed innocent until his guilt is established beyond reasonable doubt? 2 "Has the judgment changed our system of criminal justice from adversarial and accusatorial (which is the EXTANT system) to inquisitorial or inquisitional? The major object of the adversarial processes is to give very bit of benefit of the doubt to any person or persons suspected of or accused but not yet convicted. It is only in this way that we can be sure that only the guilty is punished. Hence the prosecutor or accuser must necessarily establish the guilt of the accused person by credible evidence independently and freely secured. 3- Has the case changed the provisions of the 1999 Constitution that insist that an accused person must not be made to suffer any infraction to/of his personal liberty unless and until his guilt is established through due process before a court of law? Note for example section 35. (1) (a)& (b) of CFRN, 1999, as amended): "Every person shall be entitled to his

personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law - (a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty; (b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;" 4 Has the case of DAUDA v. PRN altered or overruled the reasoning, ratio and legal principles established in clear terms by the Supreme Court in the case of **CHIBUIKE AMAECHI v. INEC (2008) 5 NWLR (Pt 1080)** where the Apex Court (per George Adesola Oguntade, J.S.C) had declared as follows? "I say again that convictions for offences and imposition of penalties and punishments are matters appertaining exclusively to judicial power.... An indictment is no more than an accusation... once a person is accused of a criminal offence, he must be tried in a court of law or other tribunal where the complaints of his accusers can be ventilated in public and where he would be sure of getting a fair hearing. .. .The jurisdiction and authority of the courts of this country cannot be usurped by either the Executive or the Legislative branch of the Federal or State Government under any guise or pretext whatsoever.... It is not a simple matter to find a citizen of Nigeria guilty of a criminal offence without first ensuring that he is given a fair trial before a Court of Law....It is simply impermissible under a civilized system of law to find a person guilty of a criminal offence without first affording him the opportunity of a trial before a court of law in the country. Even during the trial the burden to prove his guilt beyond reasonable doubt is on the accuser.

Indeed, it is a subversion of the law and an unconcealed attempt to politicize the investigation and prosecution of criminal offences to hold otherwise." 5 Has **DAUDU v. FRN** altered the provisions of Article A of the African Charier on Human and Peoples' Rights (Ratification and Enforcement) Act, CAP A9, LFN, 2004 to the effect that "no one may be arbitrarily deprived of this right?"
Has DAUDU V. FRN erased the effect of Article 7(1)(b) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, CAP A9, LFN, 2004 that "every individual shall have the right to have his cause heard without prejudice? Does this not comprise, as Article 7 slates, the right to be presumed innocent until proven guilty by a competent court or tribunal? From all the

aforesaid, it is clear that the case of DAUDA v. FRN, though a good decision, has not changed anything in our laws, neither has it introduced anything new. Accordingly, we need to be wary of the way we twist some judgments of courts and sections of laws in Nigeria to suit our vested interests. We must realize that the rule of law is *for all and for no one particular.* The process of administration of criminal justice under a civilized constitutional democracy operating the adversarial _ criminal justice system requires as a matter of necessity that everything is and must be done to ensure the safety of citizens and that no one is punished or made to suffer unjustly or prematurely. Further, a major part of the cardinal duties of the state or prosecutor in criminal proceedings as reinforced in the case of **Enahoro v. The State (1965) 1 All NLR 125** is to be just, impartial and fair and to not persecute or victimize accused persons to achieve illegal ends. The prosecutor has an added duty to refrain from trying to obtain conviction at all cost. Hence in **R. Sugarman (1936) 25 Cr. App. R. 109,** the Criminal Appeal Court (UK) had warned that "the business of the state counsel is fairly and impartially to exhibit all the facts to the jury. The crown has no interest in procuring a conviction but that the right person be convicted..." Put differently, the function of the state or the prosecutor under the Constitution is not to tack as many skins of victims as possible against the wall; it is rather to vindicate the rights of the people as expressed in the laws and to give those accused of crime a fair trial (Hon JUSTICE WILLIAMS ORVILLE DOUGLAS). Justice, though due to the accuser and the society, is due to the accused also. The concept of fairness cannot be strained till it is narrowed down to a filament; we are to keep our balance true (HON JUSTICE BENJAMIN CARDOZO in **Snyder v. Massachusetts, 291 U.S. 97, 122 (1934).** The import of all these is that punishment for breach of any law must be done in line with procedures and processes set down by law. Therein lies the indispensability of the supremacy and applicability of rule of law. Anything short of this takes us back to the age of "might is right," which would usher in an end to constitutionalism and decency, civility and order. It might as well be an end to the existence of an organized state. Consequently, any attempt to interpret the judgment in **DAUDA V. FRN** to mean that it is now the accused person that has the statutory burden/duty of proving his innocence (rather than vice versa) would leave us, one and all, at the mercy of the state and the individual whims of the

state leaders, and, believe me, equally leave the leaders at the mercy of the led. Because what's sauce for the goose is sauce also for the gander. If a leader can do to any citizen whatever he or she (the leader) likes, likewise, citizens reserve the right to do to the leader whatever they (the citizens) wish, under the same guise. This is what had informed the following warning by Sir Thomas Moore: "if you cut all the Laws down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake!"

Accordingly, the greatest and safest way to civility and progress for any society is for the society to embrace rule of law as its inviolable creed, to which both the leaders and the led are subject. Any action of the people, the leaders and anyone, however well intentioned, if it runs contrary to the dictates of rule of law is an anathema and constitutes a grave threat to the foundation of society, being an invitation to chaos. A society that ignores rule of law welcomes rule by arbitrariness and the subjective predilections of people in authority. Rule of law is the basis for any functional democracy. And without rule of law in a democracy, chaos becomes the norm. As Mahmoud Abbas once declared, we cannot build the foundations of a state without rule of law. Perhaps, the wise words of onetime American army general, statesman and 34th President of the USA, Dwight D. Eisenhower (1890-1969) would help to drive this point securely home: "the clearest way to show what the rule of law means to us in our everyday life is to recall what could happen when there is no rule of law." Finally on this, the rule of law establishes principles that constrain the power of governments and public bodies, obliging each to conduct himself/herself/itself according to a series of prescribed and publicly known rules. This is why Obaseki, JSC, stated in the **Military Governor of Lagos State vs. Ojukwu (2001} FWLR (Part 50) 1779 at 1802, para B-E**, "the Nigerian Constitution is founded on the rule of law; the primary meaning of which is that everything must be done according to law." I would like to conclude this opinion by drawing, with full endorsement, from a comment made by my respected learned senior and friend, Major Ben Aburime (rtd) on the actual import of the recent decision in DAUDA V. FRN. Says he: "The SC has not overturned the constitutional provision on presumption of innocence or changed the onus, burden and standard of proof in our criminal

jurisprudence. What it has decided is that once the prosecution has proved its case, the defendant has the evidential burden to negative it. The standard of that burden is minimal and once introduced, the duty to prove otherwise reverts back to the prosecution. Let's get it clear that the SC can only interpret our laws as they stand, NOT change it. The burden of proving a case beyond reasonable doubt is on the prosecution, and it never changes. That burden and onus is different from the evidential burden demanded of the defendant in cases such as this. It is not good law to expect a defendant to prove his innocence, instead of the prosecution proving his culpability through known orthodox means...." While it is long established that evidential burden may shift temporarily, where necessary, yet the legal burden (which is on the State/prosecution) to prove the guilt of the accused beyond reasonable doubt does not and will never shift, even if or even where the accused remains mute or refuses to say anything at all in his defence. This is the position that is elucidated upon by respected Major ABURIME in the comment I referred to with unhesitant approval. What more can I say on this? It is a truism already that evidence of suspicion no matter how strong and/or evidence of the opportunity to commit the offence charged does not and cannot replace legal proof of the commission of the criminal allegation against the person charged with the offence (see **Abieke and Anor. v. State (1975) N.S.C.C. 404 at 408; (1975) LPELR-8042(SC).** This position is reinforced in the case of **Samuel Bozin v. The State (1985) 7 SC 450** where the Supreme Court had declared that "suspicion, however grave does not amount to legal proof."

Finally, in another Supreme Court case, **Osarodion Okoro v. The State (1988) SC (Part II) 83,** it was held that "the protection of the accused person who is presumed to be innocent cannot be curtailed by the strength of the case founded on suspicion, however strong. A conviction must be founded on evidence establishing (he guilt of an accused beyond reasonable doubt." It is however unfortunate that all I hear in Nigeria is pretty much of people's calling out to punish the guilty with only very few concerned to clear the innocent. This becomes much more worrisome when such emanates from legal practitioners who are expected themselves to be custodians and advocates of rule of law and due process, irrespective of their political or sectional leanings. The lawyer is not

just a mere citizen, but a minister of justice, a member of an honourable, learned profession and as such is expected by Rule 1 of the Rules of Professional Conduct for Legal Practitioners in Nigeria (2007) to always to uphold and observe the rule of law and to promote and foster the cause of justice. By the very special nature of their calling, lawyers have an added responsibility to educate the public on the core demands of law of evidence, due process, and rule of law. Specifically, the lawyer has a duty to accentuate the difference between a mere "accusation/speculation," and verified information o~ statement. These duties and functions lay on the lawyer a variety of legal and moral obligations towards the public for whom the existence of a free and independent profession itself is an essential means of safeguarding human rights in face of the awesome power of the state and other interests in society (Balin Hazarika: 2012). If Nigerian lawyers for whatever reasons fail in these core duties, our hope of building, sustaining and advancing true democracy and constitutionalism would become a mirage."

Therefore, this court cannot safely convict the defendant herein; the prosecution having failed to prove its case. The Court accordingly resolves all the issue in favour of the defendant against the prosecution.

Accordingly this court hereby discharge and acquits the defendant on all the 9 counts before this court.

HON. JUSTICE I.N. BUBA
JUDGE
12/5/2020

JUDGMENT READ AND DELIVERED IN OPEN COURT.

Defendant in Court
M.A. SHEHU ESQ for the Prosecution
NDUBUSI NWOKPORO ESQ for the Defendant

Court: Forthwith the complaint shall defreeze the account of the defendant: with Account No. 2087526169 with Zenith and Account No. 1005899594 with Zenith Bank.

HON. JUSTICE I.N. BUBA
JUDGE
12/5/2020

FEDERAL HIGH COURT
CASHIER
SIGN
Date
ENUGU.

FEDERAL HIGH COURT
ENUGU
Certified True Copy
SIGNATURE
NAME
DATE 6/9/2020