

IN THE COURT OF APPEAL
HOLDEN AT ASABA JUDICIAL DIVISION
ON FRIDAY THE 4TH DAY OF SEPTEMBER, 2020
BEFORE THEIR LORDSHIPS

AYOBODE OLUJIMI LOKULO - SODIPE
MOHAMMED AMBI - USI DANJUMA
ABIMBOLA OSARUGUE OBASEKI - ADEJUMO

JUSTICE, COURT OF APPEAL
JUSTICE, COURT OF APPEAL
JUSTICE, COURT OF APPEAL
APPEALNO: CA/AS/364C/2016

BETWEEN

FEDERAL REPUBLIC OF NIGERIA

APPELLANT

AND

ENGR. VALENTINE OKONKWO

RESPONDENT

JUDGMENT

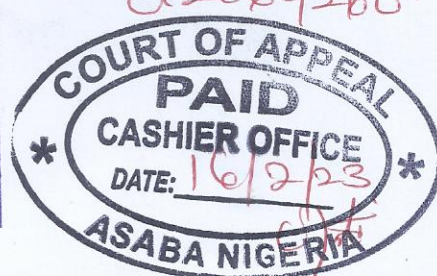
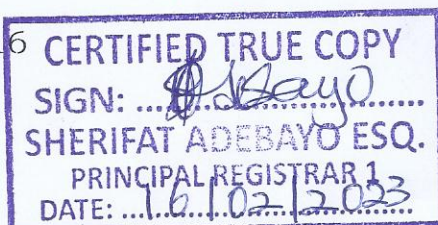
(DELIVERED BY ABIMBOLA OSARUGUE OBASEKI - ADEJUMO, JCA)

This Appeal flows from the decision of **HON. JUSTICE C. M. A. OLATOREGUN - ISHOLA** of the Federal High Court, Asaba delivered on 19th of February 2016, wherein the learned judge found the Respondent NOT guilty in all three counts of forgery, uttering forged document, and fraudulent inducement filed against him by the Economic and Financial Crimes Commission (EFCC) in suit No. FHC/ASB/24c/2013 and discharged and acquitted him in all the counts.

The preface of this matter as adjudicated in the lower court, originated when the Appellant received a complaint through a petition dated 19th September 2011, written by Westar Engineering Ltd, through its legal practitioner, Kwunume Anamanya Esq, alleging that the Defendant/Respondent committed forgery, uttered forged document and fraudulent inducement by means of forged

CTC fees — ₦1,000.00

CA. AS. 364C. 2016



document. The Respondent was arraigned before the lower court after a detailed investigation by the Economic and Financial Crimes Commission (EFCC).

Dissatisfied with the judgment of the lower court, the Appellant filed its Amended Notice of Appeal on 16th September, 2016. The Appellant's brief was filed 2nd June, 2017 and the Reply brief was filed 12th October, 2017 but deemed 22nd June, 2020, both were settled by U. R. Ewoh Esq., where the following issues were raised for determination:

1. Whether the learned trial judge was right in holding that Sharper Image Limited and not Sharper Industry Image Ltd owns the international Bank (now Access Bank Plc) account no. 0051001000091250 stated in Exhibit 'J', a letter dated December 7th 2011 written by the said Intercontinental Bank (now Access Bank Plc) to Economic and Financial Crimes Commission (EFCC) when the evidence before the Court revealed otherwise?
2. Whether from the facts and circumstances of this case, the trial court was right to hold that "Sharper Industry Images Ltd has no nexus to the present charge as constituted and the evidence led thus leading to the acquittal of the Defendant?
3. Whether the Learned Trial judge was right in holding that there was no forgery of attachment to Exhibit 'U1' Exhibit 'CC2' despite the preponderance of evidence to the effect that the said exhibits are false?
4. Whether the Learned Trial Judge was right when he failed to properly evaluate evidence led before the Court in respect of Sharper Industry Image Ltd, Sharper Image Ltd and Account nos. 0057001000091250 and 0101480906?
5. Whether the trial judge was right in holding that there is no evidence that the domiciliation of contract payment dated 10/1/2007 purportedly issued by the Financial and Accounts Department of Delta State Ministry of Works, Asaba was forged, and the forgery emanated from the Respondent despite the sufficient evidence before the Court to that effect?
6. Whether the trial judge was right in holding that there is no evidence of a forged document, uttering of forged document, and/or that the Respondent authored a forged document, and/or that the Respondent authored a forged document, uttering of forged document, and/or that the Respondent authored a forged document despite the evidence in pages 2 & 3 of Exhibit 'U1' & Exhibit 'CC2' used to divert six million, seven hundred and fifteen thousand, three hundred and eighteen Naira (N 6, 715, 318. 00) to the Sharper Industry Image Ltd account no. 0057001000091250 was false?
7. Whether the Trial Judge was right when it held that he found no evidence that the Respondent induced Intercontinental bank now Access Bank Plc to make payment in the sum of six million, seven

hundred and fifteen thousand, three hundred and eighteen Naira (N 6, 715, 318. 00) to the Sharper Industry Image Ltd's account no. 0057001000091250 by means of a letter of domiciliation of contract payment despite the abundant evidence before the court relating to such inducement?

8. Whether considering the totality of evidence before the trial Court, the judgment of the trial court is not against the weight of evidence?

The Respondent's brief was filed on 16th August, 2017 and settled by Ikhide Ehiguelua, Esq of Ikhide Ehiguelua & Co, where three issues were raised:

1. Whether the prosecution can succeed on evidence which is at variance with the charge before the court (Grounds 1& 2)
2. Whether the prosecution was able to prove its allegation of forgery and uttering of forged document beyond reasonable doubt? (Grounds 3, 5, 6 and 7)
3. Whether the judgment of the lower court is not sustainable same having been based on the evidence put before the court? (Grounds 4 and 8).

The Respondent raised a notice of objection to the competence of issue No. 8. He submitted that issue 8 was culled from Ground 8; "*The judgment is against the weight of evidence*", and an Omnibus ground of appeal in a criminal appeal can never be couched in that manner, **IGHALO v THE STATE (2013) LPELR - 20962 (CA)** was cited in aid, that it is incompetent and should be struck out.

Respondent further submitted that the Appellant's brief was incompetent for being in excess of the mandatory 35 pages allowed by rules of the court, Order 19 Rule 3 (6) (a) of the Court of Appeal Rules, 2016 and **CHARITY LUBA CONSULTANCY v FRN (2016) ALL FWLR (PT. 817) 696** was relied on.

The Appellant in reply to the Respondent's preliminary objection on issue 8, submits that ground 8 of the appeal is not an omnibus ground and issue, as the Appellant means that the judgment is not within what was presented in evidence before the court below. That the Appellant wants the Court to determine whether considering the

totality of evidence before the trial court, the judgment of the trial court is not against weight of evidence. **ADAMU v STATE (2017) 14 NWLR (PT. 1575) 463 @ 468 PARA 6** was relied on in submitting that ground 8 of this appeal is valid and competent, because it relates to the decision being appealed.

On the second objection which relates to the volume of the Appellant brief, the Appellant submits that the actual volume of the brief is 33 pages, commencing from the beginning of the brief which is the introduction in page 3 to the conclusion in the sealed, signed and dated page 35 but it snowballed to page 37 because the pages of the brief were numbered along with the preliminary/cover pages and the appendix, which includes cover & designed pages, list of authorities used respectively, which do not form parts of the brief; **DANIEL v FRN (2014) 8 NWLR (PT. 1410) 570 @ 599 PARAS D - G & 600 PARAS. A- B.**

Appellant urges the Court to disregard the Respondent's contention and submissions and accept its brief.

RESOLUTION

The contention of the Respondent is that Issue 8 culled from Ground 8, which is an omnibus ground of appeal and in criminal matters, omnibus ground cannot be couched in that manner.

In **LAGGA v SARHUNA (2008) LPELR - 1740 (SC)**, an omnibus ground of appeal was defined as;

"...a general ground of appeal in either civil or criminal appeal. In a civil appeal, it postulates that there was no evidence which if accepted would support the finding of the trial Court or the inference which is made. It always has to do with evidence led and evaluation thereof by the trial Court."

per **MUHAMMAD, JSC (P. 12, PARAS A - C)**



Also, in **BISIRIYU AKINLAGUN & ORS v TAIWO OSHOBOJA & ANOR (2006) LPELR – 348 (SC)**, an omnibus ground of appeal was defined as;

“...a general ground of fact complaining against the totality of the evidence adduced at the trial. It is not against a specific finding of fact or any document. It cannot be used to raise any issue of law or error in law. See *Ajibona v Kolawole (1996) 10 NWLR (PT. 476) 22.*”

Per **KALGO, JSC (P. 19, PARAS. A – B)**

As gleaned from the above cited cases, an omnibus ground can be in either a civil or criminal appeal. However, in criminal matters there are prescribed forms or manner an omnibus ground would take. This honourable court in **JAURO AHMADU ALI & ANOR v AHMADU ADAMU DANDOGARI (2013) LPELR – 21919 (CA)** distinctly differentiated an omnibus for Civil and Criminal matter thus;

“I must say that ground four of the Appellants’ Notice and grounds of Appeal viz: - “The whole decision is unreasonable, unwarranted and cannot be supported having regard to the weight of evidence” is unknown and it is an incompetent ground of appeal in a civil matter. The said ground of appeal may be an appropriate ground of appeal in criminal matters. The permissible omnibus ground of appeal in civil matters is “JUDGMENT IS AGAINST THE WEIGHT OF EVIDENCE.”

Per **IGE, JCA (P. 40, PARAS. A – C).**

See also; **BASSEY v STATE (2013) LPELR – 20696 (CA); DUNU MERCHANTS LTD v OBANYE & ORS (2014); SHEHU v STATE (2010) LPELR – 3041 (SC).**

Ground 8 and issue 8 are thereby struck out for being incompetent. On the second issue raised by the Respondent, Order 19 (3) (6) (a) of the Court of Appeal rules provides that;

“Except where the court directs otherwise, every brief to be filed in the Court shall not exceed 35 (thirty – five) pages.”

This is the law!. However, the Appellant's brief before me is made up of 37 pages but I observed that unlike the Respondent's brief , the proper way of numbering a brief, the Appellant numbered the cover/preliminary pages. If (after) these unnecessary pages that were numbered are removed, the brief will fall within the required pages as prescribed by the rules of this court.

On that note, the preliminary objection succeeds in part.

Having resolved the issues in the preliminary objection the appeal, I shall proceed to hear the appeal on the other grounds of the appeal

APPELLANT'S SUBMISSION

On issue 1, the Appellant citing **AGBAREH v MIMRA (2008) 2 NWLR (PT. 1071) SC 378 @ 385; IKOLI VENTURES LTD v SPDCN LTD (2008) 12 NWLR (PT.1101) 422 @ 425 PARA 2; MAITSIDAU v CHIDARI (2008) NWLR (PT. 1114) 559** submits that the court is bound by its record and that from the totality of evidence as indicated by the exhibits, the account number 0057001000091250 into which the induced money was paid does not belong to Sharper Image Nigeria Limited as against the decision of the trial court. It belongs to Sharper Industry Images Limited.

It is also the Appellant submission that the trial court erred in law when it held that Sharper Image Limited and not Sharper Industry Images Ltd owns the intercontinental Bank (now Access Bank Plc) account no 0057001000091250, that where such wrong presumption exists, leading to injustice, the court of Appeal has a duty to intervene with a view to correcting injustice; **FIRST**



AFRICAN TRUST BANK v PARTNERSHIP INVESTMENT CO LTD (2003) 18 NWLR (851) 35 @ 40 - 41 PARA. 10.

On issue 2, the Appellant submits that there are sufficient pieces of evidence that Intercontinental Account No. 0101480906 is the same as account no. 0057001000091250, while the later is the original number assigned to the account when it was opened, the former is a NUBAN number assigned to the account as a result of Central Bank of Nigeria's policy of "review of operation of bank accounts". That Exhibits P - P3 and K1 - K2 speak for themselves, **OSI - ODU v DUKE (2006) 1 NWLR (PT. 961) 375 @ 382 PARA. 12** and **FIRST AFRICAN BANK LTD v PARTNERSHIP INVESTMENT CO. LTD (SUPRA).**

The Appellant further submits that the Respondent's testimony under cross examination amounts to admission or rather a voluntary confession. That admitted facts need no further proof and in our criminal jurisprudence, a court of law is entitled to convict on the confession of an Accused person, if it comes to the conclusion that the confession is voluntary. **OKEKE v STATE (2013) 15 NWLLR (PT. 842) @ 51 - 52; UTB (NIG) LTD v AJAGBULE (2006) 2 NWLR (PT. 965) 447 CA** and **NATIONAL BANK OF NIG. v OPEOLA (1994) 1 NWLR (PT. 319) 126** was cited in aid.

OGBORU v IBORI (2006) 17 NWLR (PT. 1009) 542 CA; AGBO v STATE (2006) 17 NWLR (PT. 977) 545 SC and **UDO v STATE (2006) 15 NWLR (PT. 1001) 179 SC.**



It is the submission of the Appellant on issue 3, that the contents of the documents attached to Exhibit UI and Exhibit CC2 used to induce the payment of the sum of N 6, 715, 318. 00 (Six million, seven hundred and fifteen thousand, three hundred and eighteen Naira) into International Bank (now Access Bank Plc) account No. 005001000091250 (now account No. 0101480906) belonging to Sharper Industry Images Limited of which Respondent was and is still the Managing Director and Chief Executive Officer is false and so forged.

Appellant further contends that there are sufficient evidences before the court below to prove the falsity of these documents. **UBANI v STATE (2003) 18 NWLR (PT. 851) 244 @ 279 - 280 PARA 3; OKEKE v STATE (2003) 15 NWLR (PT. 842) 25 @ 51 - 52; AGBO v STATE (2006) 17 NWLR (PT. 977) 545.**

It is the contention of the Appellant in issue 4 that the actual owners and operators of Sharper Image Nig. Ltd as indicated in Exhibit O1 and its attachments, are; Temi Searea Raymond, Adamu Mahmoud Atta and Bawa Omatseye. The Respondent and his family are not inclusive, and the company - Sharper Image Nig. Ltd are not the owners of Access Bank Plc account no. 0101480906.

Appellant went on to submit that Exhibits 'P', 'P1 - P3', K1 - K2, W1 - W2 and their attachments disclosed the nexus between Sharper Industry Images Ltd to the present charge as constituted and evidence led. That the trial judge did not examine and evaluate these evidences properly in view of Exhibits 'J', 'J1 - J70' & O1, P1, P2, K1 - K2, W1, X and their attachments; instead the trial court

muddled or mixed up the whole evidence. **MABOGUNJE v ADEWUNMI (2006) 11 NWLR (PT. 991) 224 CA; ELERAN v ADERONPE (2008) 11 NWLR (PT. 1097) 50 @ 61; IGAGO v STATE (1999) 6 NWLR (PT. 688) 56; MAKUIKE v CHUKWU (1977) 11 MSLR 202 @ 206; FIRST AFRICAN TRUST BANK LTD v PARTNERSHIP INVESTMENT CO LTD (SUPRA); OKPALAEKE v NEPA (2003) 14 NWLR (PT. 840) 383 CA; AKPAN v UBN PLC (2003) 6 NWLR (PT. 816) 79; SANNI v ADEMILUYI (2003) 3 NWLR (PT. 807) 381 SC** was called in aid.

In Issue 5, the Appellant submits that the trial judge erred in holding that there is no evidence that the domiciliation of contract payment dated 10th January, 2007 purportedly issued by the Financial and Account Department of Delta State Ministry of works, Asaba was forged, and the forgery emanated from the Respondent. That it is clear that the statement in Exhibit CC2 i.e the "*Domiciliation of Contract Payment*" dated 10 January 2007 purportedly issued by the "Financial & Account Dept of Delta State Ministry of Works, Asaba, referred to, by the learned trial judge in his judgment, is false or fake and so forged. **ADEKOLU v STATE (1981) 2 NCR 240 @ 250; GARBA v COP (2007) 16 NWLR (PT. 1060) 378 CA; AREBI v GBABIJO (2010) ALL FWLR (527) 710 CA; NIGERIA AIRFORCE v KAMALDEEN (2007) 7 NWLR (PT. 1032) 164 SC; UTB NIG LTD v AJAGBULE (2006) 2 NWLR (PT. 965) 447 CA** and **NATIONAL BANK OF NIGERIA v OPEOLA (SUPRA)**.

The Appellant in Issue 6, opines that there is a preponderance of evidence that there are forged documents; Exhibits UI (pages 2 & 3), CC2 and CC3 attachments were forged.

Appellant went on to submit that a document that bears or contains false statement or tell lies about itself is forged. That the proposal for domiciliation of Contract payment purportedly issued by the purported Financial Accounts Department of Delta State Ministry of Works, Asaba (Exhibit CC2), with which money meant for Westar Engineering Nig. Ltd account no. 0011167572001 in Intercontinental Bank Plc (now Access Bank Plc) was diverted into, was also forged.

It is the contention of the Appellant in Issue 7 that there is a genuine contract between the Ministry of Works, Delta State and Westar Engineering Nig. Ltd, the owner of Account no. 0011167572001, this fact alone could confer legitimacy of the ownership of the contract sum to them.

Appellant further contends that the relationship between the parties of which the Respondent was involved is an Agency and not partnership. The principal being Westar Engineering Nig. Ltd, and Sharper Image Nig Ltd being the agent is represented by the Respondent. That the trial court failed to properly evaluate the evidence to see how the Respondent induced the Intercontinental Bank Plc (now Access Bank Plc) to deposit the sum of six million, seven hundred and fifteen thousand, three hundred and eighteen Naira (N6,715, 318. 00) into his account No. 0057001000091250, instead of his Principal – Westar Engineering Nig. Ltd account no.



0011167572001 in the same bank, Intercontinental Bank Plc now Access Bank Plc. **AYANKOYA v OLUKOYA (1996) 4 NWLR (PT. 440) 1 C; ROSENJE v BAKARE (1973) 5 SC.**

Relying on **FBN LTD v AP LTD (1996) 11 NWLR (PT. 443) @ 442 PARA. 8 CA**, Appellant submits that the acts of the Respondent, who instead of doing the bidding of his principal, he did what was pleasing to him and thus defrauded his principal by cornering the contract money into his hurriedly incorporated company's account, and diverting same to his personal use. That his failure to return the money to his principal, Westar Engineering Nig Ltd and account for it makes the Respondent liable to that act. **FBN LTD v AP LTD (1996) 1 NWLR (PT. 443) 438 @ 442 PARA. 8 CA.**

In conclusion, the Appellant submits that the totality of the evidence before the trial court, the Appellant proved its case beyond all reasonable doubts that the Respondent committed the offences he was charged.

RESPONDENT'S SUBMISSION

The Respondent on issue 1 submits that the lower court was right in holding that the evidence produced at the trial is at variance with the charge. That the star witness of the prosecution named William Okonji in his testimony stated that the money was paid into Sharper Image Nigeria Ltd account whereas the charge states that the money was paid into the account of Sharper Industry Image Ltd.



The Respondent further submits that both companies exist and have been duly incorporated under the Laws of the Federal Republic of Nigeria. That the law recognizes the sanctity and distinctness of companies once incorporated; **MARINA NOMINEES LTD v FIBR (1986) NWLR (PT. 20) 48; SALOMON v SALOMON (1897) AC 22 AT 51; LEE v LEE AIR FARMING LTD (1961) AC 12; MAERSK LINE & ANOR v ADIDE INVESTMENTS LTD (2002) 11 NWLR (PT. 778) 317; UNION BEVERAGES LTD v PEPSI COLA INT. LTD (1994) 3 NWLR (PT. 330) 1** was cited in aid.

OSUAGWU v STATE (2016) NWLR (PT. 1537) 31; STATE v EMINE (1992) NWLR (PT. 256) 658; IGBO v THE STATE (1975) 11 SC 129; BUBA v STATE (1994) 7 NWLR (PT. 355) 195 was cited in submitting that the prosecution is bound to prove his guilt beyond reasonable doubt and where the prosecution produces evidence which is at variance with the charge, the accused is entitled to be discharged.

That the lower court clearly and properly evaluated the evidence before it arrived at its conclusion and where the evaluation of evidence as carried out by a trial court is not shown or demonstrated to be perverse, an appellate court cannot be invited to set the findings or conclusion of the trial court aside. **IGAGO v THE STATE (1999) 14 NWLR (PT. 637) 1; SUGH v THE STATE (1988) NWLR (PT. 77) 475.**

It is the submission of the prosecution failed to prove the allegation of forgery against the Respondent and the lower court was therefore perfectly right when it so held. That the allegation of forgery was

never proved or established as PW2 whose signature was alleged to have been forged in his testimony never identified any signature as a real or forged signature and by so doing did not prove that allegation;

ACN v LAMIDO (2012) LPELR - 7825 (SC); DURIMINIYA v COP (1961) NRNLR 70; QUEEN v WILCOX (1961) 1 SCNLR 296, (1961) ALL NLR 633; NDOMA - EGBA v ACB PLC (2005) 14 NWLR (PT. 944) 79; SURE v AJANI (1980) ALL NLR 170 was relied on.

On issue 3, the Respondent submits that the lower court is based on evidence which was tendered and demonstrated before the lower court and that the court was perfectly right in reaching its decision and conclusion and in dismissing the charge brought against the Respondent; **SLEE TRANSPORT LTD v OLUWASEGUN (1973) ALL NLR 668.**

On the whole, the Respondent submits that appeal ought to be dismissed because; the notice of appeal is incompetent, the prosecutor presented contradictory evidence before the Trial court and the judgment of the Trial court was based on evidence put before and ably demonstrated before the Lower court.

APPELLANT'S REPLY

In reply to the Respondent's submission on the testimony of PW1, the Appellant contends that the alleged contradiction that exists between the testimonies of PW1 and others in relation to the name of the company that has the bank account of which the said ₦6, 750, 0318. 00 was paid into, is a mere discrepancy which does not



go to root of the charge, and that is not enough to displace the truth.

That the evidence as testified by PW5 – Emmanuel Okeibunor, the Investigating Officer, is that the money in question ₦ 6, 750, 0318. 00 was paid into the Access (formerly Intercontinental) Bank Account No. 0057001000091250 operated by Sharper industry Image Ltd and controlled by the Respondent as stated in the charge.

The Appellant further submits that there is no contradiction whatsoever in the evidence before the trial court, PW5 stated his evidence clearly supporting the charge, and corroborated by Exhibit J1 – J70.

In response to the Respondent's assertion in his brief in paragraph 2.25, it is the contention of the Appellant that it does not lie in the mouth of the Respondent to say that he never forged any documents and he never diverted any monies. **SALOMON v SALOMON (SUPRA)** and **LEE v LEE AIR FARMING LTD (1961) AC 12** were cited in submitting that even if the Respondent fell out with Westar Engineering ltd, not the company, Sharper Image Nigeria Limited is different from him – Engr. Valentine Okonkwo.

On the evidence of PW2, it is the submission of the Appellant that though PW2 did not specifically state that his signature was forged by the Respondent, there are sufficient evidence that the document that induced the bank to pay the money meant for Westar Engineering Nig. Ltd into the Sharper Industry Image Ltd was false. **GARBA v COP (2007) 16 NWLR (PT. 1060) 378 CA** and



NIGERIAN AIRFORCE v KAMALDEEN (2007) 7 NWLR (PT. 1032)

164 SC were cited in submitting that forgery also occurs when a document speaks false of itself.

The Appellant further submits that PW6, who is a handwriting expert gave vivid account on how the document used in the inducement was forged and urged the court to allow the appeal and set aside the judgment of the lower court.

RESOLUTION

The Appellant issues would be adopted in resolving this appeal, however, issues 1, 2, 4 would be answered together under the heading of "Issue 1", issues 3, 5, 6 under "issue 2" heading and issue 7 under the heading of "issue 3."

ISSUE 1

For clarity purposes, I shall reproduce the three counts on which the Respondent was charged on vide the Further Amended Charge dated 30th April, 2014;

COUNT 1

That you Engr. Valentine Okonwo 'M' on or about the month of August 2011 at Asaba, Delta State within the jurisdiction of this Honourable court did make a document titled "Domiciliation of Contract payment" dated 10th January, 2007 purportedly issued by the Financial and Accounts Department of Delta State Ministry of Works, Asaba with intent that it may be acted upon as genuine which you knew to be false and thereby committed an offence contrary to Section 1 (2) (c) of the Miscellaneous Offences Act CAP M17 of the Revised Edition (Laws of the Federation of Nigeria) 2007, and punishable under Section 1 (2) of the same Act.

COUNT NO. 2

That you Engr. Valentine Okonwo 'M' on or about the month of August 2011 at Asaba, Delta State within the jurisdiction of this Honourable court did utter a forged document titled "Domiciliation Contract Payment" dated 10th January, 2007 purportedly issued by the Financial and Account Department of Delta State Ministry of Works, Asaba to the Intercontinental Bank now Access Bank Plc, Asaba with intent that it may be acted upon genuine which you knew to be false and thereby committed



an offence contrary to Section 1 (2) (c) of the Miscellaneous Offences Act CAP M17 of the Revised Edition (Laws of the Federation of Nigeria) 2007, and punishable under Section 1 (2) of the same Act.

COUNT NO. 3

That you Engr. Valentine Okonkwo 'M' on or about the 24th day of August, 2011 at Intercontinental Bank, now Access Bank Nigeria Plc, Asaba, Delta State within the jurisdiction of this Honourable Court, with intent to defraud WestStar Engineering Limited did fraudulently induce Intercontinental Bank, now Access Bank Nigeria Plc, Asaba Delta State to make payment in the sum of Six Million, Seven Hundred and Fifteen Thousand, Three Hundred and Eighteen Naira into Sharper Industry Images Limited's Intercontinental Bank Account No. 0057001000091250 by means of a letter of "Domiciliation of Contract Payment" dated 10th January 2007 purportedly issued in favour of WestStar Engineering Limited and thereby committed an offence contrary to Section 1 (1) (a) (b) and punishable under Section 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

See pages U93 – U95 of the Record.

The bane of the Appellant's contention in its issue 1 is based on the ownership of the Intercontinental Bank (now Access Bank) account No. 0057001000091250 and he relied heavily on Exhibits J1 – J70 to prove that the account is owned by Sharper Industry Image Ltd.

I have critically studied Exhibits J1 – J70 at pages A35 – A64r of the record, the Appellant requested for information on account No. 0057001000091250 – Sharper Image Nig Ltd, account No. 0011167572001 and in response to EFCC letter, Intercontinental bank attached alongside its reply letter the bank balance sheet (opening & closing balances) of SHARPER INDUSTRY IMAGES LTD with account No. 0101480906 and its first transaction date showing 06- 01 -2011 and other documents in relation to Sharper Industry Image Ltd.

The Appellant has further submitted that 0101480906 is the Nuban number of the account.

Nigeria Uniform Bank Account (Nuban for short) scheme was first issued by Central Bank of Nigeria in August, 2010. It is a 10 – digit bank account numbering system created in 2011.

An Old 16 digits Account number would reflect the same name with the ‘new’ Nuban Account number. It is the same account. The Central Bank of Nigeria Circular released on NUBAN scheme in August, 2010 provides at page 3, paragraph 3 thus;

“With this transition method, the present account numbers and NUBAN codes would co – exist in the electronic payment and cheque clearing systems from January 2011 to June 2011. This implies that banks have to build in the required intelligence in their respective in – clearing systems to distinguish NUBAN codes from old account numbers while processing inward cheque items and electronic payment instruments, during this transition period.”

At this junction, it is imperative to state here that the life wire of this case and possibly the entire appeal is whether the Intercontinental Bank (now Access Bank Plc) Account number 0057001000091250 is the same as the account number 0101480906 as pleaded by the Appellant.

Exhibit J which is the reply letter to EFCC letter of enquiry; titled;

**RE: ACCOUNT NAME: SHARPER IMAGE NIG LTD – 0057001000091250.
ACCOUNT NAME: WESTAR ENGINEERING LTD – 0011167572001.**

And as earlier stated attached to it were bank statements of the Sharper Industry Image Ltd. It is not in the body of the letter why the account’s names are different, neither did the Appellant deem it fit to clear up the discrepancy through the Account officer one Ifediegwu Benedict – PW4.

Nonetheless, the bank ran an investigation of the account number supplied to them and it turned out to be the Respondent/Accused’s company. PW4 in his testimony stated thus;



"...I work with Access Bank Plc, Asaba as a Relationship Officer. I know the Accused. He is the Managing Director Chief Promoter of Sharper Industrial Image Ltd. The company has an account with us. I manage the account. The account officer was sacked. I took over in 2011. The Account was opened in March 2011 with Intercontinental Bank the account number was 0057001000091250."

See pages U16 – U17 of the Record.

The Respondent/Accused person during cross - examination at the lower court also testified thus;

"On the 4th of September, 2006, I entered through Sharper Image Nigeria Limited into an agency agreement with West Star. I tendered the original of the agency to the court. The owner of Account number 0057001000091250 with Access Bank is Sharper Industry Image. ...The Umuokwe Road contract was domiciled in my account number 0057001000091250 with Access Bank..."

The ownership of the account number with Intercontinental Bank (now Access bank), at that stage ceased to be a "*misted fellow*" and became as clear as day, as the Respondent/Accused voluntarily admitted to the ownership of the account in this suit.

A Voluntary confession/admission was held in **IBRAHIM v STATE (2013) LPELR – 21883 (SC)**;

"It is the law, that once an accused person makes a statement under caution saying or admitting the charge or creating the impression that he committed the offence charged, the statement made becomes confessional. See; Patrick Ikemson and Ors v. Usman Isha & Ors (2012) 7 S. C 93 at 117; (2012) 16 NWLR 9PT. 1327) 613 at 632, (2012) 12 SCM (PT. 2) 425."

Per **ARIWOOLA, JSC (PP. 40 – 41, PARAS. F – A)**

See also; **ONWUMERE v STATE (1991) LPELR – 2723 SC; SHALLA v STATE (2007) LPELR – 3034 (SC); ADELEKE v STATE (2013) LPELR – 20971 SC.**

Also a cursory look at Exhibits P – P3 and K1 – K2 attached to the corresponding letters between EFCC and Access Bank Plc with the subject matter of discuss being; *RE: INVESTIGATION ACTIVITIES:*



SHARPER INDUSTRY IMAGE LTD ACCOUNT NO: 0101480906, shows on the face of the Zenith Bank Plc cheques paid on 24th August, 2011 the account number- 0057001000091250.

These documentary evidence (Exhibits) are before the court and it is within the court's discretion to consider the weight to be attached so such documents.

In **GOYANG KAYIL v ESLY YILBUK & ORS (2015) LPELR - 24323 (SC)**; where the Apex court held on the weight to be attached to the content of a document in evidence and oral evidence thus;

"The considering factor in the circumstance is the weight to be attached to the evidence as tendered. In the case of *Ayeni v Dada* (1978) SC 35 at for instance, this court held in a similar circumstance that while admissibility of a document may be made under the Evidence Act, the weight to be attached to its contents is another matter. The law was very well stated and expounded per Aghaje, JSC in the case of *Attorney - General of Oyo State & other v. Fair lakes Hotels Ltd & Other* (1989) 5 NWLR (pt. 121) 255 at 282 - 283 as follows: - "Oral evidence and a document in evidence under Section 90 of the Evidence Act, cannot on the authorities receive the same treatment when it comes to the matter of evaluating such evidence. The former, if unchallenged, must, on the authorities, be accepted as establishing the facts therein stated. As regards the latter, documents admitted by the consent or by the court in the absence of their maker under Section 90 of the Evidence Act, the court still has, on the authorities, a duty to consider the weight to be attached to such documentary evidence before coming to the conclusion as to whether or not it establishes the facts stated therein"

Per **OGUNBIYI, JSC (PP 54 - 54, PARA. D - C)**

Also, in **OMEGA BANK NIGERIA PLC v O. B. C LTD (2005) LPELR - 2636 (SC)**, the Apex court held on the test for determining the weight to be attached to a document before it becomes an acceptable documentary evidence;

"It ought to be borne in mind that although a document may be admissible in evidence under the provisions of Evidence Act, the weight to be attached to its content is another matter, for every piece of evidence that has been admitted in the course of proceedings is subject to be tested for credibility, weight or cogency by the trial court before it becomes acceptable documentary evidence: See *Ayeni v. dada* (1978) 3 SC 35 at 61."



Per **EDOZIE, JSC (P.41, PARAS. A - C)**

See also; **AYENI & 3 ORS v DADA & 3 ORS (1978) LPELR - 673 (SC); A G OYO STATE & ANOR v FAIRLAKES HOTEL LTD & ANOR (1989) LPELR - 625 (SC).**

The relevancy of the documentary evidence in establishing the facts in this matter outweighs the slip of PW1 in his testimony, where he stated thus;

"We had a certificate for 7.4 million naira for Umuokwo. The payment did not come until August, 2011. I called the Ministry to pay into our account. I went to the Accountant General's office and found that N 6. 7million naira had been paid. I went to the man who prepared the voucher and he told me that the money had been paid to Weststar. On checking the file I saw another letter of domiciliation different from the one we wrote I raised an alarm. The man who prepared the voucher called him to report to the office immediately. The accused told the man he could not come. He promised to come, I waited he did not turn up. The later (sic) never reached our accountant. It was paid into Sharper Image Nigeria Limited with Access Bank. I called him many times he did not turn up. I contacted my lawyer, he advised we report the case to Economic and Financial Crime Commission (EFCC) and we did. (Underlining mine)

See page U 13 of the Record.

The above testimony of PW1 coupled with his deposition to the Economic and Financial Crimes Commission (Exhibit N) led the learned trial court judge to hold thus;

"Prosecution had through its witness stated that the defendant opened another account into which money, which ought to have gone into the account of Weststar Engineering Nig. Ltd with Access Bank was paid was(sic) diverted to. While the charge and Mr. Ewoh in his written address referred to the company as Sharper Industry Images Ltd belonging to the Defendant, evidence of PW1 in particular, who reported the matter to the EFCC gave the name of the company into which money was diverted as Sharper Images.

...PW1 said money was paid into the account of Sharper Images Ltd and not Sharper Industry Images Ltd. Exhibit J a letter dated December 7th, 2011 written from the bank also show that the owner of Account No. 0061001000091250 is Sharper Image and not Sharper Industry Images Limited."

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At this point, it is time we address the white elephant in the room, what is the nexus between Sharper Image Industry Ltd and Sharper Image Nigeria Ltd.

Sharper Image Limited and Sharper Industry Image Ltd are both registered and incorporated companies, Sharper Image Limited was incorporated in 1990 while Sharper Industry Image Ltd was incorporated 21st February, 2007.

PW1 who is Mr. William Okonji, who wrote the complaint to EFCC, complained against-**Sharper Image Nigeria Limited**, which is the name of the company that has an agency with them (Weststar Engineering Ltd). It was during EFCC investigation of the complaint that it was uncovered that the Respondent/Accused had a parallel company with a similar name - **Sharper Industry Image Ltd**, which owns the account No-0057001000091250. It is also before the court in Exhibit A (the agency agreement between Weststar Engineering Ltd & Sharper Image Nig Ltd), that the relationship PW1 had was with Sharper Image Nig Ltd, and the parallel company of Sharper Industry Image only came about after EFCC investigation. The contradiction of PW1 does not go to the root of the charge or displace the truth in this situation.

The trial judge also made reference to Exhibit J (a reply letter from Intercontinental bank). EFCC in its letter of enquiry to intercontinental bank, headed its letter;

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INVESTIGATION ACTIVITIES

1. A/C NAME: SHARPER IMAGE NIG LTD - 0057001000091250

2. A/CNAME:WESTAR ENGINEERING LTD - 0011167572001

And in the normal parlance in letter writing when writing a reply/corresponding letter, the heading of the first letter is referred to and use as the subsequent heading. Intercontinental bank Plc's letter was headed thus;

INVESTIGATION ACTIVITIES

RE:ACCOUNT NAME: SHARPER IMAGE NIG LTD - 0057001000091250

ACCOUNT NAME:WESTAR ENGINEERING LTD - 0011167572001

See pages A 35 & A 36 of the Record.

This doesn't translate to the bank stating that account no 0057001000091250 belonged to Sharper Image Nig Ltd, much less when the attached documents all have the details of Sharper Industry Image Ltd.

I am therefore of the stance that from the totality of the evidence before the court (Exhibits J - J70) the account number 0057001000091250 into which the induced money was paid, does not belong to Sharper Image Nigeria Limited but to Sharper Industry Image Ltd.

It is crucial that I state that when a company has been used as a vehicle of fraud to the clear eyes of investigation such cannot escape under the mistaken belief that the names are similar and must be on point. The nuban number compared with the former number together with activities in that account is sufficient to put a nail on the coffin. The forensic Investigation was sufficient to link/show the meaning.

In recent times the activities of fraud/forgery are getting more intrincating to the simple eyes and it takes an ardent forensic piercing to unveil the methodology and ingenuity of a crime.

See **SURJI ADEJUMO v STATE (2019) LPELR - 46833 CA.**

In **AMINU AMUSA OYEBANJI v THE STATE (2015) LPELR - 24751 (SC)** per **GALADIMA, JSC (P. 21, PARAS. A - F)** held thus;

“...Where the veil is lifted, the law will go behind the corporate entity so as to reach out to individual member of the company whose conduct or act is criminally reprehensible.”

See; **DR. OLADELE AJAYI v THE STATE (2015) LPELR - 25851 (CA).**

In **UABOI G. AGBEBAKU v THE STATE (2015) LPELR - 25763 (CA)**, it was held by this honourable court thus;

“It is also well settled that directors, officers and employees of a company can be held criminally liable for any criminal acts that they personally commit regardless of whether they were acting in furtherance of corporation’s interests. The directors, officers and or employees must answer for any personal wrongdoing and cannot be shielded by the corporate entity. The Court will, when the occasion demands, lift the veil of incorporation to identity wrongdoers. See: **FDB Financial Services Ltd v Adesoza (2002) 8 NWLR (PT. 668) 170 at 173** relied upon in **Alade v. ALIC Nig. Ltd. (supra).**; **Adeyemi v. Lan & Baker (Nigeria) Ltd (supra).**”

Per **OTISI, JCA (P. 24, PARAS C - F).**

I resolve issue 1(issue 1 and 2) in favour of the Appellant.

ISSUE 2

This issue borders on whether or not the allegation of forgery and uttering forged document was proved?

In proving its allegation of forgery, the Appellant relied on Exhibits UI, Exhibit CC2, Exhibit B and Exhibit C.

First and foremost, forgery in **ALL PROGRESSIVE CONGRESS v PEOPLES DEMOCRATIC PARTY & ORS (2015) LPELR - 24587 (SC)** as;

"Forgery is the noun form of the verb "forge" and to forge means, inter alia, to make a copy or an imitation of something in order to deceive people. See Oxford Advanced Learner's dictionary p. 462. It means to fabricate by false imitation. See Black's Law Dictionary Special Deluxe Fifth Edition p. 585."

per **NGWUTA, JSC (PP. 57 – 58, PARAS. F – A)**

This honourable court also in **MOBIL PRODUCING (NIG) UNLTD v HOPE (2016) LPELR – 41191 (CA)**, define forgery thus;

"The term forgery denotes the act of fraudulently making a false document or altering a real one to be used as if genuine. In other words, forgery means a false or altered document made to look genuine by someone with the intent to deceive. According to Black's Law dictionary, forgery denotes – The act of fraudulently altering, authenticating, issuing or transferring a writing without appropriate authorization. SEE BLACK'S LAW DICTIONARY 8TH Edition, 2004 @ 677."

Per **SAULAWA, JCA (P. 26, PARAS. C – E)**

See also; **OGODO v GORY & ANOR (2016) LPELR – 40149 (CA); IBE & ANOR v IGBOKWE & ORS (2012) LPELR – 15351 (CA); TURAKI & ANOR v SANKARA & ORS (2011) LPELR – 9203 (CA); BABALOLA & ORS v STATE (19989) LPELR – 695 (SC)**

Having laid the foundation of what forgery is, I can delve into the issue properly now.

Before the Court is Exhibit CC2 and attached to it is "*Domiciliation of Contract payment*" dated 10 January, 2007, which is purportedly issued by the Financial & Accounts Department of Delta State Ministry of Works. From that document two things stand out;

1. There is no department in the Ministry of Works, Asaba named; "Financial & Account Department", it is Finance & Accounts Department which PW2 was said to have been a director.

2. That it is dated 10th January, 2007 and neither the Intercontinental bank Plc (now Asaba Bank Plc) account number – 0057001000091250 (with Nuban account number- 0101480906) nor Sharper Industry Images Ltd was in existence as at that date.

Exhibit W1 – W2 (Corporate Affairs Commission reply letter to Economic and Financial Crimes Commission (EFCC) enquiry) confirms that Sharper Industry Images Ltd was incorporated on 27th February, 2007.

Among the attachments in Exhibit J – J70 is Exhibits J5 & 9 that shows the Respondent is the sole signatory to the account, and Exhibit J4, 5 & 8 shows that the account was opened around March, 2007.

The above raises serious suspicion as it is impossible that the payment of a genuine contract of road construction such as the one between Weststar Engineering Nigeria Ltd and the Delta state Government would have been domiciled into a non – existent bank account owned by a non – existent company – Sharper Industry Images Ltd who is not a party to the contract or even an agent of a party to the contract.

In **JOHN BABANI ELIAS v FEDERAL REPUBLIC OF NIGERIA & ANOR (2016) LPELR – 40797 (CA)**, this honourable court expounded on what amounts to a false document;

“In addition, I agree with the 1st Respondent that making any material addition to the body of a genuine document or writing, and adding to a genuine document, or writing any false attestation or endorsement on a document, amounts to making a false document. A document is said to be false if the whole or part of it is made by a person (personally or by proxy) with all falsity and knowledge. Where a document is said to be forged or



false, it tells a lie about itself, and it is proved where it is exposed and confirmed. See *Osondu V FRN* (2000) 12 NWLR (Pt. 682) 483 at 504. In *Nigeria Air Force V James* (2000) 18 NWLR (Pt. 798) 295 at 321 - 322, para H, a case with similar facts, the Supreme court, per Onu, Jsc, held: The Court below failed to take cognizance of the fact that the expressed purpose of exhibits 9A - C did not exist a no finding was made on this. Fourthly, contrary to the speculative finding of the Court below, the reality of the matter is that exhibits 9A - C were demonstrated to be false representations with intention to defraud on the part of all the conspirators. It is irrelevant to contend as done by the respondent that because the forms were prepared by the officers whose duty it was to prepare them in the ordinary course of duty, there could be no offence committed. As each document was in itself telling a lie about itself and the lie was exposed and confirmed, thus culminating in the sharing of the money by the accused persons, the respondent inclusive, what further proof of forgery was needed?"

Per **SANKEY, JCA (PP. 121 - 122, PARAS B - D)**

The allegation of forgery by the Appellant from the documentary evidence before this court seemingly proves this allegation. However at this point, recourse would be had to the oral evidence given in court in furtherance of this allegation.

PW2- Innocent Nwanze, who was the Director of the Finance & Accounts Department in the Ministry of work as at the time the alleged forgery took place in his testimony stated thus;

"I am Innocent Nwanze Azukaego, I live at Ogwashi-Uku, Delta State. I retired from the Ministry of Works Asaba. I was a Director of finance and Accounts. I used to process documents for payment of government jobs like contraction of Road etc.

I know the accused person. He used to come to my office to process documents for jobs done. He was coming for Weststar Engineering Ltd. Witness is shown Exhibit B and C

I don't know what I can say about these documents I made statements to the EFCC."

See pages U14 and U15 of the Record.

PW2's statement however flippant confirmed the he made statement to EFCC, but failed to shed light on the 'genuine - ity' or otherwise

of the documents. PW2 was also in the best position to state whether or not his signature was forged.

On this point, I am in agreement with the decision of the trial judge where it held at follows;

“PW2 Mr. Innocent Nwanze was Director of accounts and finance at the Ministry of Works when the alleged/forgery took place. It was his documents and signature that were alleged to have been forged. He ought to have identified his signature and the forged one in court. He never did. His statement in court was different from his statement to the EFCC I have examined his deposition or statement to EFCC made on 22nd May, 2013 and 30th May, 2013 and considering the fact that he feigned ignorance of what happened in court, he ought to have been treated as hostile witness and Cross - examined by the prosecution. See the case of IBEH V THE STATE (1997) 1 NWLR (PT. 484) 632 on the contrary Mr. Ewoh in his statement made excuses for PW2, that he is an old man. It is not prosecution’s duty to make excuses for a witness who deliberately turns around to give a different testimony in court.” (Underlining Mine)

My agreement is however limited to the underlined paragraph, I don’t believe that PW2 was in the position to identify his signature and the forged one as, this was not handwritten but lifted with use of inject print, the lifted signature would have been originally signed by PW2. He however, would have been able to attest whether or not he signed the domiciliation of the contract payment into Intercontinental Bank Plc (now Access Bank Plc) account number – 0057001000091250, hence the Appellant’s Counsel should have treated him as a hostile witness.

PW6 -- Dabi Gideon Dashung, who is a Forensic document Examiner and works with EFCC in his testimony stated that;

- “I carried out examination analysis of the 2 (two) set of documents. I applied three principles of hand writing identification*
- (1) No two writer bears the same combination of hand writing characteristics.*
 - (2) A writer cannot write the same way twice Normal variations exists for every writer.*
 - (3) No one can exceed a skill level.*



I applied three methods

- (1) Macroscopic and visual*
- (2) Microscopic*
- (3) The VSC 500*

I came up with a number of opinions

- 1. The disputed documents Exhibits CC to CC5 are products of photocopying.*
- 2. Exhibit CC4 is a photocopy of DD5. The disputed signature on CC4 is a genuine signature of the author (PW2).*

The disputed document marked CC2 is a product of a digital print process known (sic) as inkjet print. The disputed signature on CC2 through microscopic was discovered to be mechanically introduced signature a scan cut and paste process signature was exported to the document..."

See pages U29 & U30 of the Record.

The learned trial judge failed to bear in mind the above unchallenged testimony of PW6, who is an expert witness, who demonstrated the fraud technology.

I am of the stand that PW2's failure to identify the documents does not negate or take away from the compelling evidence before the court that Exhibit CC2 and its annexures are forged. I hold so.

The second question that needs to be answered is "*Who made the forged documents?*"

In answering this question, there is no need to go back and recount the documents stacked up or even the testimonies of other material witnesses as the Respondent in his own testimony stated thus;

"...On the 4th of September, 2006, I entered through Sharper Image Nigeria Limited (not Sharper Industry Images Ltd, the ignoble beneficiary of the N 6, 715, 318. 00) into an agency agreement with Westar. I tendered the original of the agency agreement with Westar. I tendered the original of the agency agreement to the Court. The owner of Account Number 0057001000091250 with Access Bank is Sharper Industry Image, I was appointed a director of Sharper Image Nigeria Limited. I am not signatory of the account with Access Bank.

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By 4th of September, 2006, Sharper Industry Image was not incorporated. It was incorporated on the 21st of February, 2007. Sharper Image Nigeria Limited was incorporated in 1990...

The directors of sharper Industry Images Limited are (1) Valentine Okonkwo (2) Tina Okonkwo (3) Rejoice Okonkwo (4) prosper Okonkwo. It is not a family business. I received the account number on the 29th of December, 2006. I don't know when the account was opened. The account number is 0057001000091250 with Access Bank...

On the 29th of December, 2006 I wrote a letter to the commissioner, Ministry of Works, Asaba. On 13th of January, 2007 the Ministry replied me. Exhibit CC and CC1 are properties of Ministry of Works; only the Ministry of works can speak about it. As far as I am concerned both documents are fake.

CC2 and CC3 are documents from the Ministry of Works. My signature is on CC3. I align myself with it. It is my account number. CC3 I cannot say anything about it. Only the maker can talk about this.

The Umuokwe Road contract was domiciled in may account 0057001000091250 with Access Bank. I don't know if West Star had an account number with Access Bank. I was not directed to domicile the contract money into Weststar account. For the N 6, 715, 318. 00 (Six million, seven hundred and fifteen thousand, three hundred and eighteen Naira), part payment of Umuokwe contract, I did not pick the cheque. The Bank picked the cheque. The Bank picked the cheque. I did not inform the Bank to go and pick the cheque up. The N 6, 715, 318. 00 (Six million, seven hundred and fifteen thousand, three hundred and eighteen Naira) was paid into my account. The money is no longer in the account. I have used the money. The cheque was addressed to Sharper Industry Image Account. West Star and Sharper Industry Image do not share the same account."(UNDERLINING MINE)

See pages U78 – U81 of the Record.

The above constitutes an admission against interest and admitted facts need no further proof. He admitted the money in his account and that he had used it knowing fully that it did not belong to him.

See; **KOMOLAFE v FRN LPELR – 44496 (SC); AWETO v FRN (2018) LPELR – 43901 (SC); DURU & ORS v DURU & ORS (2017) LPELR – 42490 (CA); FUTMINA & ORS v OLUTAYO (2017)**

LPELR - 43827 (SC); OUR LINE LIMITED v S. C. C NIGERIA LIMITED & ORS (2009) LPELR - 2833 (SC).

Juxtaposing this with the testimony of PW2 (failure to identify the forged document), the evidence stacked up against the Respondent are circumstantial in nature, bearing in mind that the Respondent was known in the Ministry as the agent of West star Engineering and was responsible for the preparation of such document that was forged.

In **SIMEON v STATE (2018) LPELR - 4438 (SC)**, the conditions that must be met before a conviction can be sustained by circumstantial evidence was held;

“Where, as in this case, the prosecution relies on circumstantial evidence, the facts relied upon must be incompatible with the innocence of the accused and must be incapable of any other explanation upon any other reasonable hypothesis than that of his guilt. The evidence must be so compelling that from the entire circumstances of the case, none other than the accused person must have committed the offence. See: *Obosi Vs The State* (1965) NMLR 119; *ORJI v THE STATE* (2008) 10 NWLR (PT. 1094) 32 @ 61; *CHUKWU v THE STATE* (2013) 4 NWLR (PT. 1343) 1; *Iliyasu v The State* (2015) LPELR - 24403 (SC) @ 39 - 40 B - A.”

Per **KEKERE - EKUN, JSC (PP. 18 - 19, PARAS. F - C)**

This honourable court also held in **ENWEREMADU v STATE (2017) LPELR - 42488 (CA)**, thus;

“To found a conviction on circumstantial evidence, the law requires the Court to be extremely cautious. In the case *State Vs Okpala* (2012)LPELR - 7845 (SC), it was held that:

“For circumstantial evidence to be invoked, it must always be narrowly examined as evidence of this kind may be fabricated to cast suspicion on another. Other co - existing circumstances, that could weaken the inference to be drawn, must be considered.” The rule is that: “to sustain a conviction in a criminal trial, circumstantial evidence must be cogent, complete and unequivocal.” See *The State Vs Okpala* (supra); *R Vs Tailor & Ors* (1928) 21 CAR 21; *Nweke Vs The State* (2001) 4 NWLR (pt. 704) 588 at 603.”

Per **MBABA, JCA.**

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See also; **AYINDE v STATE (2017) LPELR - 42176 (CA); UBANI v THE STATE (SUPRA); ANYASODOR v STATE (2018) LPELR - 43720 (SC); STATE v AJAYI (2016) LPELR - 4063 (SC).**

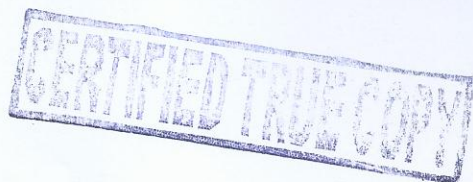
I resolve issue 2 in the favour of the Appellant.

ISSUE 3.

Flowing from the above postulations in Issue 1 and 2, the question as to whether or not the Respondent induced Intercontinental Bank now Access Bank to make payment in the sum of six million, seven hundred and fifteen thousand, three hundred and eighteen Naira (N 6, 715, 318. 00) to the Sharper Industry Image Ltd account no. 0057001000091250 by means of a letter of domiciliation has been laid to rest. I therefore adopt them in resolving issue 3. Issue 3 is resolved in favour of the Appellant.

On the whole having resolved issues 1, 2 & 3 in favour of the Appellant; the appeal succeeds and is allowed. The decision of Hon. **Justice C. M. A. Olatoregun - Ishola** of the Federal High Court, Asaba delivered on 19th of February 2016, is hereby set aside. I find the Respondent guilty as charged of the allegations levelled against him in respect of all the counts.

I have examined the punishment section under the Miscellaneous Offence in Section 1 (2) (C) of the Revised Miscellaneous, 2007 in counts 1 & 2 of the charge and find that it states that the sentence liable on conviction to a term not exceeding 21 years without the option of Fine while the offence under count 3 is contrary to Section 1(1)(a)(b) and punishable under the Advance Fee Fraud And Other Offences Related Act, Section 1 (3); which carries a sentence of a



conviction to imprisonment for a term not more than 20 years and not less than 7 years without the option of a fine.

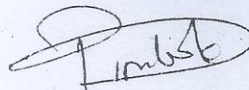
Therefore, in the light of the above statutory provisions, I hereby make the following orders;

1. In respect of **COUNT 1**, That the Respondent; **ENGR VALENTINE OKONKWO**, committed an offence contrary to Section 1 (2) (C) of the Miscellaneous Offence Act, Revised Edition of 2007 and is thereby sentenced to 8 years imprisonment without the option of fine.

2. In respect of **COUNT 2**, that the Respondent; **ENGR VALENTINE OKONKWO**, committed an offence contrary to Section (2) (C) of the Miscellaneous Offence Act, Revised Edition of 2007 and is thereby sentenced to 8 years imprisonment without the option of fine

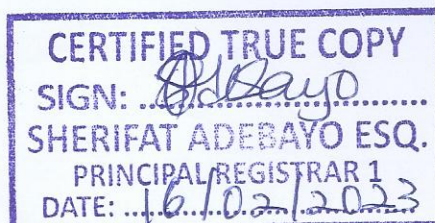
3. In respect of **COUNT 3**, that the Respondent; **ENGR VALENTINE OKONKWO**, committed an offence contrary to Section 1 (3) of the Advanced Fee Fraud and Other Fraud Related Offences Act, 2006 and is hereby sentenced to 9 years imprisonment without the option of fine.

The three sentences are to run concurrently.



ABIMBOLA OSARUGUE OBASEKI-ADEJUMO
JUSTICE, COURT OF APPEAL

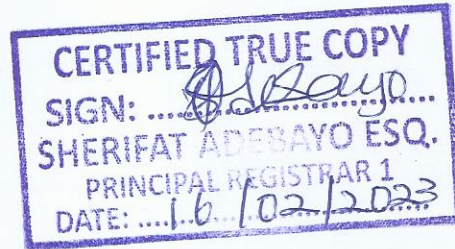
CA. AS. 364C. 2016



APPEARANCE OF COUNSEL

M. T. Iko (Senior Detective Superintendent) for the Appellant

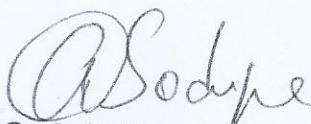
O. J. Obodaya for the Respondent.

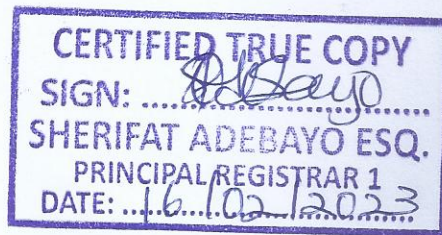


APPEAL NO: CA/AS/364^C/2016
AYOBODE OLUJIMI LOKULO-SODIPE, JCA

I had the privilege of reading in draft the leading judgment prepared by my learned brother, **ABIMBOLA O. OBASEKI-ADEJUMO**; in the instant appeal.


This is to state that I am in total agreement with the judgment of his lordship in the appeal and have nothing useful to add by way of contribution.


AYOBODE O. LOKULO-SODIPE
JUSTICE, COURT OF APPEAL



CA/AS/364C/2016

I agree that the appeal be allowed and the Judgment of the trial court be set aside. The conviction and sentence is substituted as ordered in the lead Judgment.


MOHAMMED A. DANJUMA, JCA
JUSTICE, COURT OF APPEAL

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SIGN:.....
SHERIFAT ADEBAYO ESQ.
PRINCIPAL REGISTRAR 1
DATE: ...16...102...2023...