

**IN THE HIGH COURT OF THE FEDERAL**

**CAPITAL TERRITORY, ABUJA**

**HOLDEN AT ABUJA**

**ON TUESDAY, 10<sup>TH</sup> DAY OF NOVEMBER, 2020**

**BEFORE HON. JUSTICE SYLVANUS CHINEDU ORIJI.**

**CHARGE NO.FCT/HC/CR/50/2016**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA      ....      COMPLAINANT**

**AND**

**1. ADEGBITE ADETOYE  
2. PONNLE ABIODUN  
3. ORIGIN OIL & GAS LTD.      }      DEFENDANTS**

**RULING**

The prosecution filed an Amended Information of 11 counts against the defendants on 24/3/2017. When the defendants were arraigned before the Court on 30/3/2017, they respectively pleaded not guilty to the 11 counts.

In count 1, the defendants are charged with conspiracy to obtain money under false pretence; in count 2, they are charged with obtaining money under false pretence; and in count 3 [similar to count 1], they are charged with conspiracy to obtain money under false pretence.

The particulars of the offences in counts 1, 2 & 3 are that on or about 8<sup>th</sup> day of October, 2010 to December 2011 in Abuja, the 1<sup>st</sup> & 2<sup>nd</sup> defendants whilst being directors of 3<sup>rd</sup> defendant and the 3<sup>rd</sup> defendant with intent to defraud conspired to obtain [and did obtain] the sum of N735,152,076.18 “*from the Federal Government of Nigeria under the false pretence that the said sum represented subsidy accruing to you, whereas the sum is above the actual subsidy payment for the importation of 15,000mt of premium motor spirit [PMS] which you claim to have purchased from Vitol SA and imported into Nigeria through MT Silverie which representation you knew to be false.*”

In count 4, the defendants are charged for forgery of a document to wit: *Shore tank quantity certificated dated 17<sup>th</sup> February, 2011 for MT. Silverie “purporting the said document to have been issued by an officer of Port Cargo Experts Ltd., with intent to defraud and in order to facilitate obtaining the sum of N735,152,076.18... by false pretence from the Federal Government of Nigeria knowingly and fraudulently use as genuine by presenting the document to Petroleum Product Pricing Regulatory Agency [PPPRA] which representation you knew to be false.”*

In count 5, the defendants are charged with the offence of using as genuine a forged document. The particulars of the offence in this count are the same as the particulars in count 4. Count 6 is the same as count 4.

The charge against the defendants in count 7 is using as genuine a forged document. The particulars of the offence in this count are the same as count 4 except that the document in count 7 is *“Shore tank quality report dated 17<sup>th</sup> February, 2011 for MT. Silverie purporting the said document to have been issued by an officer of Port Cargo Experts Ltd.”*

In count 8, the defendants are charged with the offence of forgery. The particulars of the offence are similar to the particulars in count 4 except that the defendants are alleged to have forged: *“Quality Marine Services Limited - quantity certificate for 14208.944 metric ton” dated 14-17/02/11 for MT. Silverie, purporting the said document to have been issued by an officer of Quality Marine Services Limited.*

In count 9, the defendants are charged with the offence of using as genuine a forged document; in count 10, they are charged with the offence of forgery; and in count 11, the defendants are charged with the offence of using as genuine a forged document. The particulars of the offences in counts 9, 10 & 11 are similar to the particulars stated in count 8.

The prosecution called five [5] witnesses. Omolara King, a staff of Petroleum Products Pricing Regulatory Agency [PPPRA] testified as PW1. Mohammed Abubakar Ghide, a staff of PPPRA gave evidence as PW2 and tendered Exhibits 1 & 2. PW3 was Irene Moses Osatohanmwun, the terminal manager of O.V.H. Energy [formerly Oando Marketing Plc.] at Lister Oil

Jetty. PW3 tendered Exhibit 3. Nweke Cyril Chidi, an operative in EFCC, testified as PW4 and tendered Exhibits 4, 5, 6A, 6B, 7, 8, 9 10A-10E, 11A-11D & 12.

During cross examination of PW4 by O. I. Olorundare, SAN, learned senior counsel for the 1<sup>st</sup> defendant, Exhibits 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24& 25 were tendered through him. During cross examination of PW4 by K. K. Eleja, SAN, learned senior counsel for the 2<sup>nd</sup> defendant, Exhibits 26 & 27 were tendered through him. When the PW4 was cross examined by Olalekan Ojo, SAN, learned senior counsel for the 3<sup>rd</sup> defendant, Exhibits 28, 29 & 30 were tendered through him. Joshua Isitua, a petroleum surveyor working with Beta Shipping Ltd., was the PW5. He tendered Exhibit 31.

At the close of the case of the prosecution on 19/2/2020, the three learned senior counsel for the defendants expressed their intention to make no case submissions on behalf of their respective clients. The following written addresses were filed in respect of the no case submissions:

- i. 1<sup>st</sup> defendant's 23-page written address filed on 17/3/2020 by E. G. Shaibu Esq.;
- ii. 2<sup>nd</sup> defendant's 41-page written address filed on 17/3/2020 by K. K. Eleja, SAN;
- iii. 3<sup>rd</sup> defendant's 39-page written address filed on 17/3/2020 by Thomas Ojo Esq.

- iv. 14-page written address of the prosecution filed on 8/5/2020 by Sir Steve EhiOdiase Esq.
- v. 1<sup>st</sup> defendant's 12-page reply on points of law filed on 18/5/2020 by E. G. Shaibu Esq.;
- vi. 2<sup>nd</sup> defendant's 16-page reply on points of law filed on 18/5/2020 by A. D. Atanda Esq.; and
- vii. 3<sup>rd</sup> defendant's 18-page reply on points of law filed on 19/6/2020 by Thomas Ojo Esq.

On 16/9/2020, O. I. Olorundare, SAN adopted the 1<sup>st</sup> defendant's written addresses; Alex Akoja Esq. adopted the 2<sup>nd</sup> defendant's written addresses; Olalekan Ojo, SAN adopted the 3<sup>rd</sup> defendant's written addresses; while Sir Steve EhiOdiase Esq. adopted the written address of the prosecution.

The law is trite that a submission that there is no case to answer may properly be made and upheld: [a] when there has been no evidence to prove an essential element of the alleged offence; and [b] when the evidence adduced by the prosecution has been so discredited as a result of cross examination or is manifestly unreliable that no reasonable tribunal could safely convict on it. See **Ekpo v. The State [2001] 7 NWLR [Pt. 712] 292.** The grounds upon which a no case submission could be upheld by the Court have been codified in section 303[3] of the Administration of Criminal Justice Act, 2015.

In considering a no case submission, the credibility of witnesses and the weight to be attached to their testimonies do not arise. In **Fidelis Ubanatu v. C.O.P. [2000] 2 NWLR [Pt. 643] 115**, it was held that *prima facie* case means that there is a ground for proceeding. In other words, that something has been produced to make it worthwhile to continue with the proceedings. It is not the same as proof, which comes later when the Court has to find whether the accused person [or defendant] is guilty or not guilty. The evidence of the prosecution is said to disclose a *prima facie* case when it is such that if uncontradicted and if believed, it will be sufficient to prove the case against the accused person [or defendant]. See also the case of **Duru v. Nwosu [1989] 1 NWLR [Pt. 113] 24**.

In **Ajisogun v. State [1998] 13 NWLR [Pt. 581] 236 @ 257**, the Court of Appeal [*per Nsofor, JCA*] aptly stated the essence of no case submission. It was held that in a no case submission, what the accused person is saying is to this effect: “Accept all that the prosecution has said through its witnesses, yet it [*the prosecution*] cannot secure a conviction either of the offence charged or any other alternative offence of which I may possibly be convicted, upon the evidence...” It was further held that at the stage of no case submission, there ought to be some evidence direct or indirect against the accused person, which evidence, unless and until it be displaced or explained off, would be enough to support a conviction either of the offence charged or of any other alternative offence the accused person may possibly be convicted of.

In a nutshell, the case of the prosecution against the defendants - especially as narrated by PW4, the EFCC operative- is that the 3<sup>rd</sup> defendant [with its directors, i.e. the 1<sup>st</sup> & 2<sup>nd</sup> defendants] participated in the importation of petroleum products under the Petroleum Support Fund Scheme operated by PPPRA. The fourth quarter 2010 import allocation given to the 3<sup>rd</sup> defendant by PPPRA for the importation of premium motor spirit [PMS] was carried out by defendants using the vessel called MT Silverie. MT Silverie was purported to have discharged a quantity of 19,179,999 litres of PMS at Lister Depot Apapa, Lagos in February 2011. The defendants collated the documents relating to this importation and forwarded them to PPPRA for subsidy claim and the 3<sup>rd</sup> defendant was paid N1,137,565,760.69 in May 2011 into its Union Bank account for purportedly discharging 19,179,999 litres of PMS.

The PW4 testified that investigation revealed that the defendants' claim that they discharged the entire cargo on board MT Silverie i.e. 19,179,999 litres [equivalent of over 14,000 metric tons] was false as they discharged only 6,784,921 litres of PMS at Lister Depot, Lagos. When it was discovered that defendants discharged only 6,784,921 litres of PMS, EFCC wrote to PPPRA for re-computation of the subsidy claim. The response from PPPRA [i.e. Exhibit 2] revealed that the subsidy for the over 6,000,000 litres amounted to over N402,000,000 and not the sum of N1.137 billion paid by the Federal Government to the defendants. The difference amounted to N735,152,076.18. PW4 stated that in the course of investigation, EFCC recovered the sum of N124,000,000.00 from the defendants.

PW4 tendered Exhibit 12 i.e. the letter from EFCC to Quality Marine Services Ltd. dated 5/6/2013 requesting it to authenticate the genuineness of 2 quantity certificates attached to the letter and marked A-A1. These quantity certificates showed that MT Silverie discharged 19,179,999 litres [or 14,208.944 metric tons] of PMS at Listre Jetty. PW4 tendered Exhibits 6A & 6B i.e. letters and documents from Quality Marine Services Ltd. to EFCC, including Quantity Certificate dated 14-17/2/11 stating that MT Silverie discharged 6,784,921 litres of PMS at Lister Jetty. In its letter, Exhibit 6A, Quality Marine Services Ltd. stated: *"We confirm that the document attached to Economic And Financial Crimes Commission Letter [EFCC] marked A-A1 did not emanate from Quality Marine Services Limited as such not authentic and genuine."*

PW4 also tendered Exhibit 7, which is the letter from Port Cargo Experts Ltd. to EFCC dated 24/6/2013 and the attached documents. In the letter, Port Cargo Experts Ltd. referred to the letter from EFCC dated 23/5/2013 requesting it to authenticate the genuineness of the attached Empty Tank Certificate and Shore Tank Quantity Report showing that MT Silverie discharged 19,179,999 litres of PMS. Port Cargo Experts Ltd. stated in reply that *"we were not engaged in that operation, hence the document is not from us."*

The evidence of PW3, the terminal manager of Oando Marketing Plc. at Lister Oil Jetty, Lagos is that MT Silverie discharged only 6,784,921 litres of PMS. PW3 tendered documents from Oando Marketing Plc. i.e. Exhibit 3, which included Shore Tank Quantity Report dated 14-17/2/2011 in support of his



evidence. PW5 also gave evidence in support of the case of the prosecution and tendered documents marked Exhibit 31.

In the respective written addresses of the defendants in support of the no case submissions, learned senior counsel for the 2<sup>nd</sup> defendant and the learned counsel for the 1<sup>st</sup> & 3<sup>rd</sup> defendants referred to the evidence of PW1 [Omolara King] to the effect that she was among those who witnessed the arrival ullage of MT Silverie at Lister Jetty, Lagos. When they got on board, the ullage was done and calculations were done by the surveyors. She was given the arrival figure. About a month later, the 3<sup>rd</sup> defendant's representative brought the complete documents to her and she signed the shore tank certificate. During cross examination, PW1 said the figure calculated and given to her after the ullage of the vessel was 14,259.143 metric tons; and that she stands by the shore tank certificate prepared by Lister Oil surveyor which she signed.

In their respective written addresses, Mr. K. K. Eleja, SAN, E. G. Shaibu Esq. and Thomas Ojo Esq. also referred to some of the documents tendered through the PW4 when he was cross examined to support the submission that the quantity of PMS discharged by MT Silverie at Lister Jetty, Lagos was 19,179,999 litres. These documents include:

- i. PPPRA Checklist for Import Documents [P.S.F.]: Exhibit 13 [same as Exhibit 23].
- ii. Certificate of Quantity issued by Lister Oils Ltd.: Exhibit 14.

- iii. Statement of Alhaji Samuel Shaibu to EFCC dated 31/3/2014: Exhibit 16.
- iv. The letter dated 14/3/2011 signed by Abdullahi Alao, the Finance Director of Lister Oils Ltd.: Exhibit 17 [same as Exhibit 24].
- v. Letter from the 3<sup>rd</sup> defendant to PPPRA dated 10/2/2011: Exhibit 19.
- vi. Statement of King Omolara to EFCC dated 27/3/2014: Exhibit 30.

The evidence of PW4 on these documents is in the record of proceedings. It must be noted that the PW4 maintained that investigation revealed that the actual quantity of PMS discharged by MT Silverie at Lister Jetty, Lagos for the defendants between 14/2/2011 and 17/2/2011 was 6,784,921 litres and not 19,179,999 litres.

My understanding of the submissions made on behalf of the defendants is that the Court should attach credibility and probative value to the evidence of the PW1 and the above documents tendered during the cross examination of PW4. On the other hand, arguments were canvassed to urge the Court not to rely on, or attach probative value to, the evidence of PW3, PW4 & PW5 and the documents they tendered in support of the charges preferred against the defendants. In other words, the Court was urged to reach a decision that the evidence of the prosecution to the effect that the quantity of PMS discharged by MT Silverie at Lister Jetty was 19,179,999 litres was discredited during cross examination and is manifestly unreliable.

As I said before, in considering a no case submission, the credibility of witnesses and the weight to be attached to their testimonies do not arise. In paragraph 5.12 at page 24 of the 3<sup>rd</sup> defendant's written address, Thomas Ojo Esq. rightly stated that: *"The law is nevertheless well settled that in considering a submission of no case to answer, the trial court should not concern itself with the credibility or weight of the evidence by the Prosecution witnesses."*

In paragraph 3.39 at page 12 of 1<sup>st</sup> defendant's written address, E. G. Shaibu Esq. contended that Exhibits 6A & 6B [the documents from Quality Marine Services Ltd.] and Exhibit 7 [the letter from Port Cargo Experts Ltd.] did not state that the documents forwarded to them were forged or that 1<sup>st</sup> defendant forged them. Learned counsel urged me to adopt my decision in *Charge No. FCT/HC/CR/107/2014: Federal Republic of Nigeria v. Olaitan Bamidele* delivered on 30/5/2014 to hold that the prosecution has not established *prima facie* case of forgery against the 1<sup>st</sup> defendant. Also, in paragraph 3.57 at page 16, Mr. Shaibu urged me to adopt my decision delivered on 23/4/2018 in *Charge No. FCT/HC/CR/48/2014: Federal Republic of Nigeria v. Mmadile Celestine Eze*.

In my considered opinion, the evidence adduced by the prosecution in the above cases is markedly different from the evidence in the instant case. In Exhibit 6A, Quality Marine Services Ltd. stated that the documents in issue did not emanate from it; and that the documents are *"not authentic and genuine."* Prosecution also tendered documents from Quality Marine Services Ltd. as Exhibit 6B to show *prima facie* that the quantity of PMS discharged by

MT. Silverieat Lister Jetty for the defendants was 6,784,921litres, which is different from 19,179,999litresi.e. the quantity for which the 3<sup>rd</sup>defendant was paid N1,137,565,760.69 by the Federal Government as subsidy claim.

It is important to emphasize the point that the probative value to be attached to Exhibits 6A & 6B and the other documents tendered so far can only be determined by the Court at the end of the trial. Also, a decision on whether or not the documents tendered by the prosecution have proved the chargesagainst the defendants beyond reasonable doubt can only be reached by the Court at the end of the trial. In this regard, the decision of the Supreme Court in the case of **Bello v. State [2020] 3 NWLR [Pt. 1710] 72**, cited by Mr. Shaibuon the effect of “*both exculpatory facts and inculpatory facts*” in the case of the prosecution may be relevant in determining whether or not the prosecution has proved the charges against the defendants beyond reasonable doubt but not at this stage of determining if a *prima facie* case has been made out against the defendants.

## **CONCLUSION**

From all that I have said, the decision of the Court is that from the evidence adduced by the prosecution, a *prima facie*case has beenestablished or made out against the defendants. In other words, there is a ground for proceeding or something has been produced by the prosecution to make it worthwhile to continue with the proceedings.

Accordingly, the no case submissions of the defendants are hereby overruled. The defendants are called upon to enter their defence to the charges against them.

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HON. JUSTICE S. C. ORIJI  
[JUDGE]

**Appearance of Counsel:**

1. AkosaEgbunike Esq. for the prosecution.
2. O. I. Olorundare, SAN for the 1<sup>st</sup> defendant; with A. Ogbontolu Esq.
3. K. T. Sulyman Esq. for the 2<sup>nd</sup> defendant; with K. O. Lawal Esq. with HafsatGarba Esq.
4. OlalekanOjo, SAN for the 3<sup>rd</sup> defendant; IstifanusYunana Esq.