

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 4, MAITAMA ON THE
5TH DAY OF OCTOBER, 2022

BEFORE HIS LORDSHIP: HON. JUSTICE U. P. KEKEMEKE

SUIT NO. FCT/HC/CR/23/2017

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA PROSECUTION

AND

MUSTAPHA UMAR MADAWAKI DEFENDANT

RULING

The Prosecution filed an Information before this Court dated 27/11/2017 against the Defendant on a 17-Count Charge.

Count 1, 2, 3, 4, 5 and 6 were brought pursuant to Section 362 (a) of the Penal code Act, which is forgery.

Count 7, 8, 9, 10 and 11 borders on using as genuine a forged document contrary to Section 366 of the Penal Code.

While Count 12, 13, 14, 15, 16 and 17 deal with obtaining money by false pretence contrary to Section 1 (1) (a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

I shall proceed to reproduce the laws under which the Prosecution charged the Defendant.

Section 362 (a) of the Penal Code states:

*"A person is said to make a false document –
(a) who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document or makes any mark denoting the execution of a document with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed or at a time at which he knows that it was not made, signed, sealed or executed."*

Section 366 of the Penal Code Act states:

"Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document."

Section 1 (1) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 states:

"Notwithstanding anything contained in any other enactment or law, any person who by any false pretence and with intend to defraud.

(a) obtains, from any other person in Nigeria or in any other country, for himself or any other person... commits an offence under this Act.

In proof of the above offences, the Prosecution called five (5) witnesses. The 1st Prosecution Witness is Remy Remigus Ugwu, a Compliant Officer with Zenith Bank Plc.

The 2nd Prosecution Witness is Nsan Ogar. He is the team leader, Branch Compliant Officer of the Access Bank.

The 3rd Prosecution Witness is Agweye Benedict. He is a Forensic Document Examiner with the Economic and Financial Crimes Commission (EFCC).

Abdulwaheed Ibrahim Umar of Block B, Flat 7, Games Village, Abuja is the 4th Prosecution Witness, while the 5th and last Prosecution Witness is Abubakar Buba. He is an operative of the EFCC. He is a member of the team that investigated the case.

At the end of the Prosecution's case, the Defendant opted to make a No-Case Submission. The No-Case Submission was dated and filed on 25/03/2022.

Learned Counsel to the Defendant submits that he relies on Sections 302 and 303 of the Administration of Criminal Justice Act to make the said No-Case Submission. He canvasses that the essential elements of the offences of which the Defendant was charged have not been proved.

That there is no evidence linking the Defendant with the commission of the offences. That the evidence led so far as argued by the Learned Senior Counsel is such that no reasonable Court would convict on it.

That nobody made a complaint against the Defendant. That it is an outright witch-hunt and persecution. The EFCC is Complainant, Investigator and Prosecutor.

He argued that the above is an additional ground upon which the Court could find that no prima facie case has been made out against the Defendant for him to be called to answer.

He submits that the Prosecution failed to prove that the Defendant forged any bank instrument as charged. That the Prosecution also failed to prove that the Defendant used the bank instruments for withdrawal of money, i.e. Exhibits C, A1, A2, A3 and A4.

Learned Counsel submits that the admission of PW1 that the signatures were verified before the transfers were made, the Prosecution's case hit the rock.

That PW1 clearly demonstrates that Defendant did not use the instrument for withdrawal, an ingredient of the offence in the particulars of the offence charged whereas the instruments were for transfer of funds to several companies.

That PW5 admitted under Cross-Examination that the transfers are for land owners. That withdrawal element of the offence is shattered.

The evidence of PW3 is discredited and self-contradictory and no reasonable tribunal would convict on it.

The Written Statement of PW3, Exhibit K shows that he was not given any specimen signature. That specimen signature B – B10 do not show on the face who signed it.

There is also no evidence on the record that Exhibit E4, the letter or request by the Company Kriston-Lally for transfer of

the interest element of its account with Access Bank was forged.

That Exhibit F is spurious. Irregularity of signature does not gravitate to forgery of signature.

Learned Counsel further canvasses that the Prosecution failed to prove the ingredients of the offence as contained in Section 366 of the Penal Code. The Defendant did not take any personal benefit of the cheques in issue.

Investment of Company funds for the purchase of land for the execution of Company contract is not fraudulent or dishonest.

In respect of Count 12 – 17, the Prosecution failed to establish the ingredient of the offences charged. No evidence of pretence was led. The Prosecution also did not lead any fraudulent intention. None of the transaction brought any personal benefit to the Defendant. A man cannot steal from himself. He is the alter ego of the Company.

Learned Senior Counsel finally urges the Court to uphold the No-Case Submission.

The Prosecution's Written Address in opposition to the No-Case Submission is dated 8/04/2022 but filed on 11/04/2022. He adopts same and argued that a prima facie case is not proof beyond reasonable doubt as Learned Senior Counsel appeared to be doing. The credibility of the witnesses is neither an issue nor does it arise at this stage.

In respect of Count 1 – 6, Learned Prosecuting Counsel canvasses that the offence of forgery is committed when a person is said to make a false document.

Learned Prosecuting Counsel argues that PW4 was shown Exhibit E4 in EFCC's office, which he identified as a copy of the letter written by the Defendant to Access Bank claiming to have also been signed by him but he denied signing same

and that Exhibits G & G1 are his signatures which are different from the one in Exhibit E4.

PW4 also identified Exhibits A – A4 & C. He admitted signing only Exhibit A. That the signatures in Exhibit A1 – A4 and C purportedly signed by him were forged.

Where an alleged maker of a document raises the issue of forgery, the onus is on the person asserting that same was made by the other person to prove the execution.

That in the instant case, PW4 denied signing the instruments, the onus is now on the Defendant to prove that Exhibits A1, A2, A3, A4 and C and E4 were signed by PW4.

Prosecuting Counsel argues that it is the law that a person who uses or possesses or deals with a forged document is guilty of forgery even if he is not the maker.

In respect of Count 7 – 11, a document is used as genuine when a person dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document.

That Defendant presented the said Exhibits A1 – A4, C & E4 as genuine. He knew the signatures on the said instruments are forged. He was in custody of the cheque booklet. He used the cheque books dishonestly.

That Defendant admitted in Exhibit J1, particularly the last 5 lines that the said cheques were used in the transaction and that they were presented to the Bank by himself and that the cheque book was in his custody.

In respect of Count 12-17, Learned Counsel argues that the Defendant issued and presented to Zenith Bank, Exhibits A1 – A4 & C purported to have been signed by PW4 as a co-signatory.

That Defendant through his Company, Engas obtained the sums of ₦25 Million and ₦10 Million. He canvasses that the Prosecution has made out a prima facie case to enable the Court call on the Defendant to enter his defence.

I have also read the Defendant's Reply to the Prosecution's submission. The Defendant's contention in his No-Case Submission is to the effect that there has been throughout the trial no legally admissible evidence linking him in anyway with the commission of the offence with which he had been charged, which will necessitate his being called upon for his defence.

The Defendant also contends that there is no evidence to prove essential elements of the alleged offence. That the evidence adduced has been discredited as a result of Cross-Examination and that it is so manifestly unreliable that no reasonable tribunal or Court can safely convict on it.

See **AITUMA vs. STATE (2007) 5 NWLR (PT. 1028) 466.**

The law is that when a No-Case Submission is made on behalf of a defendant, the Court is not being called at this stage to express any opinion on the evidence before it. The Court is only called upon to take note and to rule accordingly.

At this stage, the Court is only enjoined to make a brief ruling without making any observation on the facts. Evidence cannot be evaluated. I am not concerned with credibility of witnesses or weight of evidence.

I have earlier in this Ruling stated that the 17 Count Charge against the Defendant borders on forgery, using a forged document as genuine and obtaining money under false pretences.

In a charge of forgery, it is essential for the Prosecution to prove that the Defendant forged the documents in question.

In the instant case, the instrument alleged to have been forged are Exhibits A1 – A4, C and E4. I have noted the evidence of the handwriting analyst, PW3. I have also noted the evidence of PW4 whose handwriting is alleged to have been forged.

I also note Exhibits J and J1, the Statements of the Defendant which are his Extra-Judicial Statements. I note the fact contained in the Defendant's Extra-Judicial Statement to the effect that the PW4 signed all the instruments he is alleged to have forged.

He further said in the said Exhibit J that only one of the instrument was signed in his presence while others were put in an envelop and transmitted to him for signature which he would later return.

I have also considered the elements of the offences of using as genuine a forged document contrary to Section 366 of the

Penal Code and obtaining and attempt to obtain money under false pretences contrary to Section 1 (1) (a) of the Advance Fee Fraud and Other Fraud Related Offences Act.

I have noted the evidence of PW1, PW2, PW3, PW4 and PW5 and all Exhibits tendered. It is my view and I so hold that the Prosecution has made a prima facie case against the Defendant to warrant him being called to explain his own side of the allegation contained in the Charge.

The No-Case Submission fails and it is dismissed. The case is hereby placed on Fast Track.

Case is adjourned to 26th and 27th October, 2022 by 12noon for defence.

HON. JUSTICE U. P. KEKEMEKE
(HON. JUDGE)
05/10/2022

Defendant present.

T. N. Ndofon, Esq. with Y. Y. Tarfa, Esq. for the
Prosecution.

J. C. Njikonye, SAN with I. A. Nnanna, Esq. for the
Defendant.

COURT: Ruling delivered.

(Signed)

HON. JUDGE

05/10/2022