IN THE HIGH COURT OF JUSTICE OF THE F.C.T.

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON TUESDAY, THE 26TH DAY OF FEBRUARY, 2021

BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA
JUDGE

SUIT NO.: FCT/HC/CV/284/16

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ------- APPLICANT

AND

ABBOUD NAJIB MICHAEL ------ RESPONDENT

RULING/JUDGMENT

The Defendant in this criminal case was charged with the offence of forgery under **S. 364 of the Penal Code** and obtaining document fraudulently under **S. 6** and punishable under **S. 8 of Advance Fee Fraud and other Fraud Related Offences.** He was also charged for using forged document as genuine contrary to **S. 366 of the Penal Code Law of Federation of Nigeria 2004.** He pleaded Not Guilty. Bail was granted to him. He applied for release to allow him go to his country of birth, Lebanon, for treatment. This Court in a well

reasoned Ruling declined to allow him travel since the sickness is what could be treated in Nigeria.

On the 21st of February, 2017 the Prosecution opened its case, called its Witness PW1. On the 27th February, 2020 they called their last Witness, PW5, who testified and was Cross-examined by the Defendant Counsel. The Defendant then applied for No Case Submission in that the Prosecution has not been able to establish a prima facie case against him and as such the Court should dismiss the case and discharge him, setting him free and ending the case. That the Prosecution has not established and proved the essential ingredients of each count of the offence charged against him. That there is no sufficient evidence adduced by the Nominal Complainant linking him with the commission of the crimes alleged against him. That he is therefore entitled to be discharged on all the said three (3) count charges. That there is no need for him to put any defence to the case as the evidence do not link him to any of the offences alleged. Again, that the evidence is not sufficient to justify the continuation of the case against him. That the evidence is manifestly unreliable having been so discredited by the Cross-examination, so much so that the Court cannot safely convict on it.

They sought for an Order discharging the Defendant and acquitting him of the offences alleged in Count No. 1, 2 & 3 as the Prosecution failed to disclose prima facie case against him.

It is based on the ground that evidence adduced by Prosecution has no nexus linking the Defendant to any of the 3 offences contained in the Charge. That the said evidence is not sufficient to justify continuation of the Trial. That no evidence is laid by Prosecution to prove

essential ingredients of elements of the offences charged against the Defendant and that the evidence adduced by the Prosecution are manifestly unreliable and has been discredited by Defendant during Cross-examination so much so that the Court cannot safely convict the Defendant on them and there is no point or need to call the Defendant for explanation on those issues.

In their Written Address the Defendant team analyzed all the offences and the ingredients thereof. They submitted that the Prosecution was not able to establish/show that the passport was obtained fraudulently with intention to defraud. That the Prosecution did not lead any evidence, documentary or oral, as to the intent of the Defendant to use the document to defraud any one. Again that none of the Prosecution Witnesses (PWs) led evidence on false pretence. That they only merely led evidence on forgery but never on false pretence. That PW2 demonstrated that the passport was genuinely issued. That the **S. 8 Advance Fee Fraud** referred to by the Prosecution as the punishment section is not a punishment section as the section contains no punishment. That it only contained offences which this case is not predicated on. That Prosecution did not led evidence in respect of the offences created by the said section. That there is a disconnect between the Count No.1 and the Section of the alleged offence and the punishment section. The Prosecution has duty to prove the ingredients of the offence in the Count No.1 beyond a reasonable doubt. But they failed to do so in this case.

On Count No. 2 & 3 the Prosecution Counsel submitted that the Count is predicated on **S. 364 Penal Code** –

Using forged document as genuine. That the ingredients are dishonest and fraudulent use of the forged document as genuine and that the Defendant knows or ought to know that the document was forged. That in allegation of forged signature No expert was called to show that the signature was forged. There was no 2nd signature too. That there was no wrong signature. That the file bearing the name of the Defendant exists in the Ministry of Interior; that they found that in the Index file. That the passport was genuinely issued by the NIS. Again, no NIS personnel was called as a Witness to testify that the passport was fraudulently gotten by the Defendant. That the PWs failed to present or challenge the issue of Antonio Menessie who procured the passport for the Defendant. Besides, there is no evidence to show that the Defendant forged the passport or that he knew the passport was forged.

That the evidence adduced by the Prosecution has no nexus linking Defendant to any of the offences contained in the Charge.

The Defendant Counsel further submitted that under Cross-examination the PW1 confirmed that Ministry of Internal Affairs is also the Ministry of Interior. That the Prosecution equally did not lead evidence to show that the signature of PW1 was forged by the Defendant. That he only claimed that the signature was not correct. He equally failed to show that the Defendant forged or had knowledge that the letter marked EXH 1 upon which the passport was issued was forged which is the crux of the case. PW1 never tendered the document from which the forgery was made. He did not supply the particulars to prove that. Again, the

evidence of the PW1 contradicted that of the PW3 & PW4, who claimed that there is Reference Number and a File for the Defendant in the Ministry of Interior. The evidence of PW1 is irrelevant and bereft of any evidential weight to sustain the conviction of the Defendant.

That the 2nd Witness testified that the passport was genuinely issued. That he was not aware when the NIS has queried certificate or passport to have been issued by them. That he confirmed that NIS wrote to inform Prosecution that they could not locate the file used in processing the International passport because of the number of application handled. That it was difficult to locate files before the archival Electronic System. That the process of procuring passport of the Defendant was not different from others. That they did not commit any offence in the charge as the PW2 did not lead evidence to that effect.

The Defendant further submitted that the passport was genuinely issued in line with the procedure of NIS. Contrary to testimony of PW1 & PW3, the PW2 confirmed that the Letter of Confirmation of the Defendant was acted upon in the issuance of the Defendant's Nigeria International Passport. That there was no abnormality in the issuing of the Defendant's passport contrary to the evidence of PW5. The PW2 did not lead evidence to the effect that Defendant forged the documents or had knowledge of the forgery of EXH 1.

Again, the testimony of PW2 totally exonerated the Defendant of the allegation of intent to defraud, forgery and fraudulently/dishonestly using forged documents. PW2 testimony is against Prosecution's case. It created

a huge doubt in the case of Prosecution and ought to be resolved in favour of the Defendant.

That PW3 did not lead any evidence to the fact that Defendant committed any of the offences.

That EXH 4 is a documentary hearsay which cannot be countenanced as it was in existence before the Ministry of Interior. PW3 is not the maker of the document – EXH 4 and cannot therefore tender the document. She could not tender the document where the EXH 4 was made from. That evidence of PW3 is totally disconnected from the Charge. That she testified and confirmed that the Defendant has record in the Ministry in File No. MIA/NAT/6471. That she was not with the Ministry when the document was treated.

She also confirmed that the Defendant had a record with the Ministry and that the document was treated in 2007, she was not with the Ministry. Her evidence are facts which are not within his knowledge. Her evidence is speculative, hearsay and bereft of evidential value. It did not establish that the Defendant forged the documents.

The PW5 confirmed that Defendant was consistent in his Statement. That Antonio Menessie processed the document and application of the passport. He failed to investigate if Antonio is dead or alive. That the fact that Antonio Menessie processed the documents should be believed since that fact was not contradicted.

On the Charge, the Defendant Counsel submitted that the Defendant can only be charged for an offence defined in written law. That the Prosecution failed to state the law under which the Defendant will be punished – convicted. That Exhibit 1, 2, 3 & 4 failed to

meet the admissibility test. That the documents were all photocopies. That Exhibit 3 is electronically generated document and no certification was presented before the Court as required by S. 84 Evidence Act 2011. That EXH 4 is equally a photocopy. He urged Court to expunge the documents. That the EXH 1, 2 & 4 were public documents, photocopies and they were not certified when they were tendered. He urged Court to expunge them as they failed to meet the admissibility test and proper foundation was not laid. Also that EXH 3 failed to meet the requirement of S. 84 Evidence Act 2011.

That Court has power to expunge such document suo motu. That the Prosecution's case cannot stand in the absence of these documents/evidences upon which their case is built. They urged the Court to dismiss the case and hold that the Defendant has no case to answer.

In their Written Address they raised three (3) Issues for determination which are:

1. **"Whether the Prosecution has led any evidence or sufficient evidence to prove essential ingredients of the alleged crime against the Defendant."**

2. **"Whether the evidence adduced by Prosecution is sufficient to justify the continuation of this trial."**

3. **"Whether the evidence has not been discredited by the Cross-examination so much so that Court cannot convict the Defendant on them."**

On Issue No. 1 – 3 they submitted that under **S. 302, 303 & 357 ACJA 2015,** the Defendant has right to make a No Case Submission after close of the Prosecution case. That Court has a right to enter a finding of Not Guilty for the Defendant if it is clear that evidence of the Prosecution cannot convict the Defendant. That the Prosecution failed to establish prima facie case against the Defendant to require Defendant to testify and call any evidence in defence. They referred to the case of:

Subara V. State supra

Dabor V. State

The Prosecution failed to lead evidence before the Count on Intent to Defraud and False Pretence. They urged Court to hold that they have not established that offence against the Defendant. No prove that Defendant committed any of the crimes alleged. The referred to the cases of:

Ani V. State
(2003) 11 NWLR (PT. 830) 142

Ihejirika V. State
(1999) 3 NWLR (PT. 593) 59

That no evidence was laid to show that Defendant was aware that the document he held was forged or that he had false pretence. They did not show that he had any knowledge of the falsity of the document.

That the PW1 – PW5 did not establish that Defendant intended to cause damages to the public or any person or to cause any one to part with his property or enter into contract or intended to commit fraud.

That Defendant did not personally apply for the passport and was consistent that Antonio Menessie processed the passport and acquired same on his behalf. They referred to the 6th Statement of the Defendant especially Statement of 27/11/2015. That Prosecution did not lead evidence to contradict those Statements – EXH 6. PW5 confirmed that Defendant maintained and consistently stated that Menessie got the documents in issue for the Defendant. That the Defendant is not criminally liable as Prosecution alleged. They relied on the case of:

Hope Uzodinma V. Ihedioha
Unreported case SC/1462/19 (SC)

That no evidence was led to show that Defendant committed the crime alleged. The testimonies of all the PW1 – PW5 are contradictory and inconsistent. They urged Court to discontinuance the testimonies of the Prosecution Witnesses. They referred to the cases of:

Ogunye V. State
(1999) LPELR 2356 SC

Ibrahim V. State
(1991) 4 NWLR (PT. 186) 399

Nweze V. State
(1996) 2 NWLR (PT 428) I

That Defendant never worked in the Ministry or NIS. No evidence to show that Defendant colluded with the Ministry or NIS to commit the alleged crime. The passport was genuinely issued to the Defendant based on the report derived from the Ministry of Interior in the normal course of Business which is regular. That PW1 never signed another signature to show or disprove the alleged signature. That EXH 7 – Affidavit

of the Defendant, where he averred to correct the mistake in his place of birth and to get same to the NIS and general public to take note.

They urged Court to hold that allegations against the Defendant has not been proven and resolve the issue in favour of the Defendant and hold that the Prosecution failed to establish a prima facie case against the Defendant.

Upon receipt of the Defendant's Written Address on a No Case Submission, the Prosecution filed a Response/Reply to Written Address of the Defendant on No Case Submission on the 22nd of May, 2020. In it the Prosecution adopted the submission of the Defendant Counsel in the background of the facts. They also adopted the Defendant's Issues as raised by Defendant and further raised this:

> **"Whether from the overwhelming oral and documentary evidence presented by the Prosecution, the Prosecution has not established a prima facie case of obtaining document under false pretence and using as genuine documents the said International Passport."**

They submitted that the Prosecution has established the essential ingredients of the offence charged against the Defendant to warrant him to offer an explanation as to the allegation levelled against him by the Prosecution in the Charge. They referred to the **three (3) Count Charge and the Statement thereon** as well as the Statement of the Nominal Complainant to the EFCC. They submitted that Defendant has a case to answer since the Prosecution has made a prima facie

case against him. That the Defendant has never denied that the crime took place. That the PW1, 2, 3, 4 & 5 testified to that effect. That the Defendant agreed that the documents were forged in his Statement. That the evidence of the PW5 were not discredited under in Cross-examination and that they are manifestly credible that this Court can convict the Defendant based on them. That the Defendant therefore has a case to answer and he needs to explain how a non-citizen of Nigeria was able to obtain the Nigeria International Passport. The Defendant Counsel had challenged all the Exhibits tendered because according to them they were all photocopies. But they need not be certified because they are all original. That there is no miscarriage of justice occasioned by the said Exhibits. They referred and relied on the following cases:

Oketabe V. Adewunmi
(2010) 8 NWLR (PT. 1195) 63

Okafor V. Okeke
(2007) 10 NWLR (PT. 1043) 521

FBN PLC V. Maiwada
(2013) 5 NWLR (PT. 1348) 143

That the objection to the admissibility of the Exhibits by Defendant Counsel is belated as they failed to object to the admissibility of the documents as at the time Prosecution was tendering them, during trial of the case. That they ought to have done so when the Prosecution applied for tendering them. That once the documents has been admitted the Defendant Counsel cannot challenge them again. They relied on the cases of:

Alade V. Olukade

(1976) 2 SC 183 @ 188 – 189

Suleiman Adamu V. Muhammed Sani Takari & Ors
(2009) LPELR – 3593 AC 23 – 24 Paragraph C – E

That as of the Charge filed against the Defendant, that it is in line with a procedure permitted by law in accordance with **S. 194 ACJA 2015** and **S. 210 ACJA 2015.** That the Charges in Issue are all in line with **S. 109 ACJA 2015** which is by way of information. They also referred to the **S. 378 (1) (a) – (f), S. 378 (3) & (4) and S. 379 (1) a (i) – (x) ACJA 2015.** That Prosecution adhered to the above provisions of ACJA. That the Court should take the Exhibits as been established as to the Charge for which the Defendant need to do some explanation as it linked him to the crime. That since the Defendant had stated that PWs contradicted themselves, it is very important for the Defendant to come before the Court to show how the PWs contradicted themselves. Hence the Defendant has a case to answer and has some explanation to make to the Court.

That if there is any contradiction as the Defendant claims that it is not material to the substance of the case against the Defendant. That the so called contradiction is mere discrepancies. They placed credence in the cases of:

Okereke V. State
(1998) 3 NWLR (PT. 540) 75 @ 80 – 81

Princent V. State
(2003) 87 MSSC 93 Ratio 9

They submitted that the Defendant knew of the offence alleged in the Charge and he is linked to it going by the evidence, documents and Statements of the Witnesses

as presented before the Court. They urged the Court to hold that the admission of the Defendant in his Statement of Defence amounts to a link to the offence. That the evidence of the Witnesses has established the Charge against the Defendant. Again, that the circumstantial evidence clearly pointed to the fact that the Defendant committed the offence charged. That the Exhibits showing what were forged, though the actual maker of the document was not called as a Witness by the Prosecution, shows that the Defendant has a case to answer. The fact that the document was made and tendered by IPO who was not called as a Witness does not make the content of the document inconsequential. That the Court is not bothered about the means of getting an evidence but is only interested and will take into consideration whether what is admitted is relevant to the issues being tried. They relied on the cases of:

Igbinovia V. State
(1981) 2 SC 5

Judicial Service Committee Bendel State V. Omo
(1990) 6 NWLR (PT. 157) 401

That the evidence of the PW5 is not hearsay. They referred to the case of:

Oladejo V. State
(1994) 6 NWLR (PT. 348) 101

That Prosecution does not need any other documentary evidence aside from the Exhibit in order to call Defendant to enter defence. That all the ingredients of obtaining under false pretence, forgery and using as genuine forged documents fit into the present case. They urged the Court to call on the Defendant to enter defence in order to explain why he was linked to

obtaining the passport under false pretence, forgery and using as genuine the forged documents to procure the International passport. Hence he has a case to answer.

That in this case, based on the fact before this Court, the Defendant is linked with the offence. That he committed the offence as alleged. He took step in commissioning and completed the preparation as shown in the evidence of PW1 – PW5. They urged Court to hold that the Prosecution had established a prima facie case against the Defendant in this case. They also urged Court to dismiss the submission made by the Defendant Counsel in this No Case Submission and hold that a prima facie case of the offence has been established against the Defendant which warrants an explanation to this Court. That Court should also dismiss the application for lacking in merit and Order the Defendant to enter his defence and call Witness.

NOTE:

They adopts the Defendant's Reply to Prosecution's Written Address as if it is set out here seriatim.

COURT:

As far back as 1963 the Supreme Court had set out what the Court considered to be principle which must be present before the Court can hold that there is No Case Submission in a criminal matter. Such principle are hold when there has been no sufficient evidence to prove the essential element in the alleged offence; and when the evidence adduced by Prosecution has been so discredited and watered down as a result of the Cross-examination; or that the evidence is so

manifestly unreliable that no reasonable Tribunal or Court can safely convict the Defendant based on such evidence. That is what the Court decided in the case of:

Ibeziako V. COP
(1963) NLR 88 @ 94

Over time these principles have expanded. See **S. 305.** They have also improved. By the advent of the ACJA 2015, the Court is now called upon to exercise its discretion in favour of the Defendant whether or not an application of a No Case Submission is made. Where it is evidently clear that the essential element of the offence has not been proved, where there is no evidence linking the Defendant with the commission of the offence allegedly committed, the Court can on its own volition record a finding of Not Guilty for the Defendant and without calling him to enter its Defence and can discharge the Defendant. In that case, the Court will uphold application for No Case Submission. The other ground is where the Court may find that a prima facie case has not been made out against the Defendant for him to be called upon to defend the Suit against him and in view of **S. 251(1) ACJA 2015.** See **S. 251(1) ACJA 2015.** See also **S. 303(3).** See also the following cases:

Ubanatu V. COP
(2002) 2 NWLR (PT.634) 115 @ 141 Paragraph B – D

Igabele V. State
(2004) 15 NWLR (PT.896) 304 @ 311 Paragraph A – B

In every application where Defendant applied for a No Case Submission he believes that having listened to

the Prosecution Counsel present their case, calling all their Witnesses who have been grilled through the furnace of Cross-examination that the Prosecution had not made any case against him. And that the Prosecution has not, through their evidence established that he actually committed the crime set against him or the crime with which he has been charged or which he has been standing trial for. That the case of the Prosecution is so unmeritorious that he should not be called upon to defend himself. That the Prosecution has not made out any prima facie case against him. To have a prima facie case means that the Prosecution has a ground for proceedings in the Suit. See the case of:

Adeyemi V. State
(1991) 6 NWLR (PT. 1951) 35

Igabele V. State Supra @ 332 – 333

It means that there is no sufficient evidence in existence sufficient enough to support the allegation made against the Defendant. See the case of:

Emeka V. State
(2001) 14 NWLR (PT. 734) 666

In deciding whether there is a No Case Submission and whether there is prima facie case made against the Defendant, the Court takes a whollistic look into the entire evidence already adduced by the Prosecution in the course of their presenting their case against the Defendant as at the time the Prosecution closed their case. So a No Case Submission comes up before the Defendant put up its Defence. That is after the Prosecution has closed its

case. So the Court must critically and dispassionately examine all the aspect of the surrounding circumstances of the case to determine whether or not the Defendant did commit the offence or whether he could have committed the offence for which he was charged. It then entails that the Court considering reviewing of all the evidence proffered by the Prosecution as at the close of its case – evidence in Examination in chief, Cross-examination and Re-examination if any and of course the evaluation of the Exhibit attached and tendered. But the Court is not to express its review as to whether it believes the evidence or not. What Court does is to note and rule whether there is admissible evidence linking the Defendant with the criminal charge. That is what Court decided in the case of:

FRN V. James Onanete Ibori
(2014) ALL FWLR (PT. 753) 272 @ 351 and also in the case of:

Fogoriola V. FRN Supra

In this case, it is not whether crime was committed. It is a matter of linking the Defendant to the crime showing that he is a culprit or part of the culprit and establishing the crime against him and proving that he committed the crime.

The apex Court had outlined fundamental facts which must be established to prove the guilt of an accused person. This includes to adduce and present credible evidence through the testimony of eye witness and or through confessional Statement voluntarily made by the Accused/Defendant. It can also be done through

circumstantial evidence which clearly points to the sole fact that the Defendant and no other person committed the offence charged. That is the decision of the Supreme Court in the case of:

Giki V. State
(2018) 23 WRN 22 Page 35 Paragraph 2

So where the Prosecution had called Witnesses who could not link the Defendant directly with the offence or any aspect of the offence charged, it will be bad for Prosecution and will affect the case and benefit the Defendant's application for No Case Submission. To succeed, the Prosecution had to nail the Defendant through or by the testimonies of the PWs, the circumstantial evidence and Defendant's own Statement. Any documentary hearsay cannot stand. This is the decision of the Court in the case:

FRN V. Bukola Saraki
(2018) 22 WRN 105 @ 116 CA Paragraph 8 – 12

See also the **S. 38 Evidence Act 2011 as amended.**

Okpa V. State
(2014) 13 NWLR (PT. 1424) 225 @ 249

It is the law that where a maker of a document is not called upon to testify on the document he made the document will not have any judicial probative value.

It has been held that it is the duty of the Prosecution to tender every relevant documentary evidence obtained during investigation of an offence whether or not such evidence is in their favour or in the favour of the Defendant. The Court must be satisfied with the voluntariness of the Statement of a Defendant which

must be direct, freely given and voluntarily made before it can regard it as true evidence if the Defendant resiles from it. That is the Court's decision in the case of:

Oluwaseyi V. State
(2018) 12 MJSC (PT. 111) 69 @ Paragraph 3

To show that the Defendant has a case to answer the Prosecution must call credible Witnesses, not necessarily all the listed Witnesses may be called by Prosecution. It can call only the evidence it desired to prove the case. Such evidence should be sufficient to discharge the onus of proof beyond reasonable doubt. See the case of:

Ekpeyong V. State
(1991) 6 NWLR (PT. 200) 683 (CA)

To determine whether Defendant uttered or forged document the Court can do so by the opinion of a Handwriting Expert or by Forensic examination by Forensic Expert or by Court itself on reasonable comparison of other handwriting of the Defendant before the Court. See the cases of:

Akinbisade V. State
(2006) 17 NWLR (PT. 1007) 184

Adeshina V. People of Lagos
(2019) 1 MJSC (PT.1) 33 Paragraph 1

A No Case Submission cannot stand once there is need for the Defendant to make some explanation. It is not a matter of whether or not the Court believe the evidence led by the Prosecution. The credibility of the Witnesses or weight to be attached to the evidence

does not arise. At the point of considering a No Case Submission the trial has not yet concluded for the issue of proof beyond reasonable doubt to arise. All the Court considers is whether the Prosecution has established a prima facie case. This what the Court decided in the cases of:

FRN V. Martins
(2012) 14 NWLR 287

Ajiboye V State
(1995) 8 NWLR (PT. 414) 408

Emeka Ekwenugo V. State
(2008) 15 NWLR (PT. 1111) 630

Having summarized the pro and con of the parties on this application for a No Case Submission, can it be said that the Prosecution has not been able to nail the Defendant to the offences he is charged with and as such the Court should hold that there is no need for the Defendant to enter his defence in this case? Put differently, has the Prosecution so established a prima facie case against the Defendant that there is need for Defendant to enter defence and explain some issues which Prosecution has through its watertight evidence raised? Is there any need for the Defendant to enter his defence in this Suit after the close of the case of the Prosecution?

It is the humble view of this Court that there is no need for the Defendant – Abboud Najib Michael to enter his defence in this case. This is because the Prosecution has not established any prima facie case against him to warrant him to enter his defence. The Prosecution failed to prove the essential ingredients of

each of the offences allegedly committed by the Defendant. The evidence adduced by the Prosecution does not nail the Defendant with the commission of the offence. There is no need to call on the Defendant to enter defence and there is no need to continue the trial against him.

To establish the guilt of a Defendant can be done through direct evidence of the Witnesses relying on the confessional Statement freely made by the Accused person and also by circumstantial evidence which is direct and cogent and which leaves the Court with no doubt that the accused and no other person committed the offence. That is the decision of the Court in the case of:

Daliru V. State
(2018) 14 NWLR (PT. 1640) 567 @ 580 Paragraph D – F

Where the testimonies of the Prosecution Witnesses are contradictory as in this case and does not nail the Defendant to the offence charged, this Court will not attach any credible judicial weight on it rather it will hold that the Prosecution has failed to establish the guilt of the Defendant and as such the Court cannot call on the Defendant to establish his defence or do any explanation whatsoever. There will be no need to do so in this case.

In this case, it is glaringly clear looking at the six (6) Statements of the Defendant which the Prosecution tendered that he consistently stated that he did not apply for the passport. That it is the one Antonio Menessie who was his boss sometime ago who bought a form, asked him to sign and took the form and his

passport pictures and filed the International passport. That he was only later taken to the NIS for biometric capturing after which the passport was brought to him. It is imperative to state that all the Statements made by the said Defendant were all written on his behalf by the men of the Economic and Financial Crime Commission (EFCC), the Prosecution. The Defendant had repeatedly stated that he cannot read or write English Language. This Court believes him. It is glaringly clear from the testimony of the Ngogo that the passport was issued following due procedure permitted by law in that regard. If the said passport was fraudulently obtained the NIS would not have stated that it was lawfully issued to the Defendant. So this Court holds that there is no need for the Defendant who in the first place had consistently stated in all his 6 Statements tendered before this Court, that he did not apply for the passport to come to explain anything concerning the said passport which obviously was not fraudulently obtained. The testimony of the Ngogo actually cleared the issue of allegation of the fraud and also contradicted the allegation that the document was obtained by fraud. The Prosecution was not able to establish that allegation against the Defendant. So in that regard the Defendant has no case to answer.

There was no iota of Intention by the Defendant to obtain the document by fraud. He never intended to obtain such document fraudulently. He did seek to get the document. The document, International passport was obtained for him by Antonio Menessie.

Strangely, the Prosecution never called John Barret, the man who wrote the petition, as a Witness. Though the Court was meant to understand that he is late, the Prosecution never made attempt to track him even before he died. If actually the Defendant had any iota of Intention to forge the documents, the said International passport he would not have notified the NIS about the mistake in his place of birth. He never claimed to be born in Nigeria. He stated in all his 6 Statements and the document he presented that he was born in Mezyere in Lebanon. If he had intention to forge the document he would not have noted the mistake and pointed same out to the NIS. The same argument applies to the Nigeria Citizenship by Confirmation which the Prosecution also alleged that the Defendant forged. The failure to call John Barret as a Witness to testify on the allegation based on his petition is worrisome.

The Prosecution could not establish that the said Defendant had any link with the application of the document and its forgery. They had stated in their own testimony that there is evidence of the application in their Index file. There is no how there will be an index file without the main file which was indexed. They had repeatedly stated that they could not lay hand on the said file and all other file for the 2007 batch.

The testimony of the PW1 narrating the way an application for Citizenship is made did not establish that the document the Prosecution claimed was forged or irregular was forged by the Defendant. The Witness only stated document allegedly forged is

different from the so called unforged ones. The Prosecution did not present any original of the document – Letter of Citizenship by Confirmation. They only presented the photocopies. There was contradiction in the evidence presented by the Witness and the claim made by the Prosecution. Those contradictions made it clear that those testimonies should not be trusted. It is the duty of the Prosecution to present an original document to establish that the one allegedly forged was actually forged. Failure to do so shows that they have not been able to establish vividly the allegation of forgery against the Defendant to warrant the Defendant to explain anything in that regard.

There is no crime committed without an intention to commit such crime. It is incumbent on the Prosecution to establish intention to commit the crime by the Defendant and the actual commission of such crime. Failure to do so naturally jeopardized and fundamentally affected the case of the Prosecution. Hence no need to call the Defendant to present his defence. I so hold.

In this case, the Prosecution failed to establish that the Defendant had any intention to forge the document or use the forged document as genuine which is an offence contrary to **S. 366 of the Pena Code.** Since they failed to do so the Defendant has no reason to be called upon to explain why he had intention to use the so called unestablished allegation of using forged documents as genuine. If there was such intention he would not have notified the NIS

about the error in place of birth as contained in the International Passport.

Evidence of the Index file in the record of the Prosecution, Ministry of Interior, does not need the Defendant to explain why the original file was nowhere to be found and why his name was reflected and evidenced in the Index file. It is not his business to do so. It is the business of the Prosecution. He has no reason to explain that. He is not a staff of the Ministry. After all, the application was made on his behalf.

The Prosecution did not also show or establish how the Defendant defrauded or intended to defraud or commit fraud by being in possession of the said International passport. The Defendant never intended to defraud or used the document to defraud anyone.

Throughout the length and breadth of the testimonies of the Prosecution Witnesses they could not state or lay evidence to show when, how and where the Defendant used this document or intended to use this document to defraud. There can be no fraud without intention to commit fraud. The inability of the Prosecution through the documents presented and the testimonies of their five (5) Witnesses, to establish the Defendant's intention to defraud with the said alleged forged documents leave no room for the Defendant to be called upon by this Court to give any explanation in that regard. That means that the Defendant has no case to answer in that regard. So this Court holds.

Failure of the Prosecution to establish that the Defendant actually forged the document – MIA/NAT/6471 with intent to use it to commit fraud also gives no room for this Court to call the Defendant for any explanation in that regard. So the Defendant has no case to answer in that regard too. So this Court holds.

Their failure to establish how the Defendant used the said alleged forged document fraudulently as genuine document casts a big doubt in the allegation against the Defendant by Prosecution. This also makes unnecessary to call on the Defendant to give any explanation in that regard. So he has no case to answer on that too. So this Court also holds.

This Court therefore hold that the Prosecution has not been able to establish any of the ingredients of the offence against the Defendant and never established a prima facie case against the Defendant.

ABBOUD NAJIB MICHAEL the Defendant in this Suit has No Case to Answer. The Prosecution has failed to establish the case against him.

That being the case, this Court therefore hereby **DISCHARGE** and **ACQUIT** him today the ___ day of _____, 2021 by me.

_____

K.N. OGBONNAYA
HON. JUDGE