

IN THE HIGH COURT OF THE FEDERAL

CAPITAL TERRITORY, ABUJA

HOLDEN AT ABUJA

ON WEDNESDAY, 7TH DAY OF DECEMBER, 2022

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.**

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DEFENDANTS

JUDGMENT

On 24/3/2017, the prosecution filed an Amended Information of 11 counts against the defendants. When the defendants were arraigned before the Court on 30/3/2017, they respectively pleaded not guilty to the 11 counts. All through the proceedings, 1st defendant represented the 3rd defendant.

The Amended Information reads:

STATEMENT OF OFFENCE - 1ST COUNT

Conspiracy to obtain money under false pretences contrary to section 8[a] and punishable under section 1[3] of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

PARTICULARS OF OFFENCE

Adegbite Adetoye 'M', Ponnle Abiodun 'M', whilst being Directors of Origin Oil and Gas Limited and Origin Oil and Gas Limited on or about 8th day of October 2010 to December, 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja and with intent to defraud, conspired to obtain the sum of [N735,152,076.18] Seven Hundred and Thirty Five Million, One Hundred and Fifty Two Thousand, Seventy Six Naira, Eighteen Kobo only 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.

STATEMENT OF OFFENCE - 2ND COUNT

Obtaining money under false pretences contrary to section 1[1][a] and punishable under section 1[3] of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

PARTICULARS OF OFFENCE

Adegbite Adetoye 'M', Ponnle Abiodun 'M', whilst being Directors of Origin Oil and Gas Limited and Origin Oil and Gas Limited on or about 8th day of October 2010 to December, 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja and with intent to defraud, obtained the sum of [N735,152,076.18] Seven Hundred and Thirty Five Million, One Hundred and Fifty Two Thousand, Seventy Six Naira, Eighteen Kobo only 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.

STATEMENT OF OFFENCE - 3RD COUNT

Criminal conspiracy contrary to section 97 of the Penal Code and offence punishable under the same section, Cap. 532 Laws of the Federation of Nigeria [Abuja] 1990.

PARTICULARS OF OFFENCE

Adegbite Adetoye 'M', Ponnle Abiodun 'M', whilst being Directors of Origin Oil and Gas Limited and Origin Oil and Gas Limited on or about 8th day of October 2010 to December, 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja and with intent of defraud, conspired to obtain the sum of [N735,152,076.18] Seven Hundred and Thirty Five Million, One Hundred and Fifty Two Thousand, Seventy Six Naira, Eighteen Kobo only 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 Silveriewhich representation you knew to be false.

STATEMENT OF OFFENCE - 4TH COUNT

Forgery contrary to section 364 of the Penal Code Act, Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

That you Adegbite Adetoye 'M', Ponnle Abiodun 'M', whilst being Directors of Origin Oil and Gas Limited and Origin Oil and Gas Limited on or about 8th day of October 2010 to December, 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja did forge a document to wit: "Shore tank quantity certificate" dated 17th 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] Seven Hundred and Thirty Five Million, One Hundred and Fifty Two Thousand, Seventy Six Naira, Eighteen Kobo only 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.

STATEMENT OF OFFENCE - 5TH COUNT

Using as genuine a Forgery document contrary to section 366 of the Penal Code Act, Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

That you Adegbite Adetoye 'M', Ponnle Abiodun 'M', whilst being Directors of Origin Oil and Gas Limited and Origin Oil and Gas Limited on or about 8th day of October 2010 to December, 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja did forge a document to wit: "Shore tank quantity certificate" dated 17th 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] Seven Hundred and Thirty Five Million, One Hundred and Fifty Two Thousand, Seventy Six Naira, Eighteen Kobo 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.

STATEMENT OF OFFENCE - 6TH COUNT

Forgery contrary to section 364 of the Penal Code Act, Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

That you Adegbite 'M', Ponnle Abiodun 'M', whilst being Directors of Origin Oil and Gas Limited and Origin and Gas Limited on or about 8th day of October 2010 to December, 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja did forge a document to wit: "Shore tank quantity certificate" dated 17th 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] Seven Hundred and Thirty Five Million, One Hundred and Fifty Two Thousand, Seventy Six Naira, Eighteen Kobo only 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.

STATEMENT OF OFFENCE - 7TH COUNT

Using as genuine a forged document contrary to section 366 of the Penal Code Act, Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

That you Adegbite Adetoye 'M', Ponnle Abiodun 'M', whilst being Directors of Origin Oil and Gas Limited and Origin Oil and Gas Limited on or about 8th day of October 2010 to December, 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja did forge a document to wit: "Shore tank quality report" date 17th February, 2011 for MT. Silverie purporting the said document to name [sic: 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] Seven Hundred and Thirty Five Million, One Hundred and Fifty Two Thousand, Seventy Six Naira, Eighteen Kobo only 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.

STATEMENT OF OFFENCE - 8TH COUNT

Forgery contrary to the section 364 of the Penal Code Act, Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

That you Adegbite Adetoye 'M', Ponnle Abiodun 'M', whilst being Directors of Origin Oil and Gas Limited and Origin Oil and Gas limited on or about 8th day of October 2010 to December, 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja did forge a document to wit: "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, with intent to defraud and in order to facilitate obtaining the sum of [N735,152,076.18] Seven Hundred and Thirty Five Million, One Hundred and Fifty Two Thousand, Seventy Six Naira, Eighteen Kobo only by false pretence from the Federal Government of Nigeria by presenting the document to Petroleum Product Pricing Regulatory Agency [PPPRA] which representation you knew to be false.

STATEMENT OF OFFENCE - 9TH COUNT

Using as genuine a forged document contrary to section 366 of the Penal Code Act, Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

That you Adegbite Adetoye 'M', Ponnle Abiodun 'M', whilst being Directors of Origin Oil and Gas Limited and Origin Oil and Gas Limited on or about 8th day of October 2010 to December, 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja did forge a document to wit: "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, with intent to defraud and in order to facilitate obtaining the sum of [N735,152,076.18] Seven Hundred and Thirty Five Million, One Hundred and Fifty Two Thousand, Seventy Six Naira, Eighteen Kobo only by false pretence from the Federal Government of Nigeria by presenting the document to Petroleum Product Pricing Regulatory Agency [PPPRA] which representation you knew to be false.

STATEMENT OF OFFENCE - 10TH COUNT

Forgery contrary to section 364 of the Penal Code, Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

That you Adegbite Adetoye 'M', Ponnle Abiodun 'M', whilst being Directors of Origin Oil and Gas Limited and Origin Oil and Gas Limited on or about 8th day of October 2010 to December, 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja did forge a document to wit: "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, with intent to defraud and in order to facilitate obtaining the sum of [N735,152,076.18] Seven Hundred and Thirty Five Million, One Hundred and Fifty Two Thousand, Seventy Six Naira, Eighteen Kobo only by false pretence from the Federal Government of Nigeriaby presenting the document to Petroleum Product Pricing Regulatory Agency [PPPRA] which representation you knew to be false.

STATEMENT OF OFFENCE - 11TH COUNT

Using as genuine a forged document contrary to section 366 of the Penal Code Act, Laws of the Federation of Nigeria 2004.

PARTICULARS OF OFFENCE

That you Adegbite Adetoye 'M', Ponnle Abiodun 'M', whilst being Directors of Origin Oil and Gas Limited and Origin Oil and Gas Limited on or about 8th day of October 2010 to December, 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja did forge a document to wit: "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, with intent to defraud and in order to facilitate obtaining the sum of [N735,152,076.18] Seven Hundred and Thirty Five Million, One Hundred and Fifty Two Thousand, Seventy Six Naira, Eighteen Kobo only 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.

Prosecution called 5 witnesses in proof of its case: Omolara King [PW1]; Mohammed Abubakar Ghide [PW2]; Irene Moses Osatohanmwun [PW3]; Nweke Cyril Chidi [PW4]; and Joshua Isitua [PW5].

In his defence, the 1st defendant called 4 witnesses, to wit: Abioye Oyewusi [DW1]; Godwin Uwodi [DW2]; the 1st defendant [DW3]; and Chief Reginald Odunze [DW4]. After the evidence of DW4 on 10/3/2022, O. I. Olorundare, SAN, learned senior counsel for the 1st defendant, announced the close of the case of the 1st defendant. Alex Akoja Esq., who appeared for the 2nd defendant, informed the Court thus: *“We rely on the evidence of the 1st defendant’s DW1 to DW4”*. Similarly, Chidera Mgbe Esq., who appeared for the 3rd defendant, informed the Court thus: *“We rely on the evidence of DW1 to DW4.”*

Evidence of Omolara King [PW1]:

The evidence of PW1, a staff of Petroleum Products Pricing Regulatory Agency [PPPRA], is that in 2011, the 3rd defendant applied to PPPRA to import PMS popularly known as petrol. The application was granted. The 3rd defendant brought a vessel, MT Silverie, to Lister Oil and Gas in Apapa, Lagos. When the vessel berthed, she notified the then Zonal Head of PPPRA in Lagos who instructed her to board the vessel as long as other parties were around. The other parties were a staff of Department

of Petroleum Resources [DPR], Akintola Williams [i.e. the Auditor of the Federal Ministry of Finance], Lister Oil Depot surveyor and Origin Oil and Gas surveyor. When they got on board, the ullage was done and calculations were done by the surveyors.

After the calculations, she was given the arrival figure which she sent by text message to the Zonal Office of PPPRA. Three days later, she was notified that the vessel had completely discharged. The shore tank certificate, which was prepared by Lister Oil surveyor, was brought to her to be signed. She did not sign at that time because other necessary documents were not included. About a month later, the representative of the 3rd defendant brought the complete documents to her at the Zonal Office of PPPRA and she signed the shore tank certificate.

PW1 further stated that in 2013, she was invited by EFCC and she was shown a shore tank certificate issued by another surveyor. She discovered that there was variation in the figures of the shore tank certificate prepared by Lister Oil which she signed and the certificate the other surveyor signed. She wrote a statement in EFCC. Ullage is the process whereby a metre rule is dipped into the tanks of the vessel to take measurements. PPPRA has a checklist of 31 items or documents that would be provided by the marketer. Most of the documents on the

checklist were not included at the time she was asked to sign the shore tank certificate. There should not have been any variation on the shore tank certificate. She said the surveyor who prepared the other shore tank certificate would be in a better position to explain why there is a variation.

During cross examination of PW1 by O. I. Olorundare, SAN, learned senior counsel for the 1st defendant, she stated that she stands by the shore tank certificate prepared by Lister Oil surveyor, which she signed; she signed the shore tank certificate as an eye witness.

When PW1 was cross examined by K. K. Eleja, SAN, learned senior counsel for the 2nd defendant, she stated that having seen her statement to the EFCC dated 27/3/2014, she confirmed that apart from the Lister Oil surveyor, the surveyors of Quality Marine Service Ltd. and Port Cargo Ltd. were present when they boarded the vessel. She was satisfied with the documents presented before she signed the shore tank certificate on 15/3/2011.

During cross examination of the PW1 by Olalekan Ojo, SAN, learned senior counsel for the 3rd defendant, she said the figure calculated and given to her after the ullage of the vessel was 14,259.143 metric tons as she stated in her statement to EFCC. She witnessed the arrival ullage

calculations but she did not participate in the calculations. Her job was to witness the whole operation. She thinks that it is PPPRA that has the final say on the accuracy or otherwise of the arrival ullage figure.

Evidence of Mohammed Abubakar Ghide [PW2]:

The PW2 stated that he is a staff in the operations department of PPPRA. His primary responsibility is computation and processing of marketers' subsidy claims. He knows the name of Origin Oil and Gas Ltd. Sometime in 2011, the Petroleum Subsidy Fund [PSF] Unit now called Reconciliation and Archival Unit processed subsidy claims for the 3rd defendant and payment was made to the tune of N1.1 billion. On 6/9/2016, the Agency received a letter from EFCC requesting for re-computation of 3rd defendant's subsidy claims for a volume of 6.7 million litres. The subsidy processed earlier based on the 3rd defendant's submission was for 19.1 million litres. The 6.7 million litres amounted to the sum of N402 million subsidy claims. They wrote back to EFCC and attached the computation highlighting a difference of N735 million.

PW2 tendered the letter from EFCC dated 6/9/2016 addressed to the Executive Secretary, PPPRA as Exhibit 1; and the letter from PPPRA to the Executive Chairman, EFCC dated 6/9/2016 as Exhibit 2. He further stated that from Exhibit 2, there are two computations. The first was for a

volume of 19.1 million litres of PMS [as submitted by the 3rd defendant] amounting to N1.1 billion. The second computation was for a volume of 6.7 million litres [as requested by EFCC] amounting to N402 million. The 2 amounts computed are called under-recovery, which is the difference between the marketer's landing cost and the official pump price for PMS. Under-recovery means the amount the marketer is reimbursed by Government.

When PW2 was cross examined by O. I. Olorundare, SAN, he said the stamps they look out for in the office were those of DPR, PPPRA and Federal Ministry of Finance. When 3rd defendant submitted its claim in 2011, all these stamps must have been there since the claim was processed. His Agency [i.e. PPPRA] did not know how EFCC arrived at 6.7 million litres stated in the letter [Exhibit 1]. The processes for payment of subsidy claims were followed; that was why PPPRA authorized the subsidy claim of the 3rd defendant.

When PW2 was cross examined by K. K. Eleja, SAN, he stated that Mrs. Omolara King was the representative of PPPRA present during the ullage taking of the product imported by the 3rd defendant. Mrs. Omolara King signed the appropriate PPPRA checklist concerning the product in issue in this case, which showed a receipt of 19,179,999 litres of PMS.

During cross examination of PW2 by Olalekan Ojo, SAN, he listed the import vessel documents that are processed by PPPRA in order to ascertain the marketer's claim for subsidy payment. Ideally, the duty of the witnesses to the ullage taking is to authenticate the quantity of PMS discharged by the vessel. The witnesses include officials of PPPRA and Federal Ministry of Finance.

PW2 further stated that in respect of the quantity of PMS brought into Nigeria by the 3rd defendant, PPPRA received import documents from the field with names and signatures of staff of PPPRA and other agencies that "*supposedly witnessed*" the discharge of PMS. To the best of his knowledge, Oando Nigeria Ltd. or any of its staff did not have anything to do with the witnessing of the arrival ullage imported into Nigeria by the 3rd defendant. The defendants had nothing to do with the preparation of the shore tank certificate; and the quality and quantity certificates were not prepared by the defendants.

Evidence of Engineer Irene Moses Osatohanmwun [PW3]:

PW3 stated that he works with O. V. H. Energy [formerly Oando Marketing Plc.]. He was the terminal manager since 2007 when he joined the company. Part of his functions is to ensure that vessels come into their berth to discharge petroleum products timely and the volumes properly

reconciled and recorded. A vessel called MT Silverie berthed at Lister Jetty while he was terminal manager of Oando and discharged 2 parcels of premium motor spirit [PMS] to Oando from 2 suppliers namely: Shield Energy and Nepal Oil. They discharged about 6.4 million litres and 6.7 million litres respectively. When converted to metric tons, these come to 10,000 metric tons.

At the time he was terminal manager for Oando at Lister Oil Depot, there was a lease agreement between Lister Oil and Oando Plc. The agreement gave Oando exclusive right to use the Depot. Lister Depot has a Jetty. Sometime in 2013, EFCC wrote to his company that it was investigating one MT Silverie in connection with product discharged into Lister Depot. The legal adviser of his company then [Mr. Dayo Panox] responded to EFCC's letter and forwarded the requested document on that vessel. PW3 tendered the letter from Oando Marketing Plc. to EFCC signed by Mr. Dayo Panox dated 25/4/2013 and the attached documents as Exhibit 3.

Engineer Irene Moses Osatohanmwun further testified that as Oando terminal manager at Lister Depot at that time, he was invited to EFCC and he made a statement. EFCC showed him some discharge documents, which were at variance with the quantity of PMS received from MT Silverie. He stated his observations in his statement to EFCC. They have

tried to reach Mr. Dayo since he left the company to no avail. On close examination of the documents that EFCC shared with him in their office and the documents sent in by Oando Plc., it was clear that the volumes in the other set of documents were about twice the volumes that the vessel discharged as contained in the shore tank report submitted by Oando Plc.

When O. I. Olorundare, SAN cross examined the PW3, he said Lister Oil team was still in operation at Lister Terminal when he was posted there as terminal manager; Lister Oil team operated the terminal for Oando Plc. Lister Oil Team had a surveyor at the terminal. Oando "*ullager*" was present at the ullage shore inspection for Oando Plc. Oando stamp is not on the shore tank quantity report from PPPRA.

During cross examination of PW3 by learned senior counsel for 3rd defendant, he stated that the Depot owner and the cargo owner appointed their respective surveyors for the purpose of the discharge of the consignment in this case. He cannot recall the name of the surveyor used by Oando but the name of the company is Q & Q Inspection Services. He could not recall the number of surveyors that were involved in the discharge operation of the consignment, subject matter of this charge. He did not sign or authenticate any of the documents prepared by the appointed surveyors that carried out the discharge operation.

PW3 further testified under cross examination by Olalekan Ojo, SAN that it was Lister Oil that attested to the quantity in the shore tank certificates prepared by the appointed surveyors; as long as Oando appointed surveyors had signed. Upon completion of the discharge exercise, the reports prepared by the quantity surveyors were submitted to Oando and the cargo owners. His evidence as to the quantity of cargo received at Lister Tank Farm was based on the entries in the shore tank certificates made available to Oando by the surveyors appointed by Oando.

Evidence of Nweke Cyril Chidi [PW4]:

The evidence of PW4, a Senior Detective Superintendent in EFCC, is that he is a member of Team D in the Special Team on Petroleum Subsidy established in 2012 to investigate the petroleum subsidy regime, which later became the Extractive Industry Fraud Section. In January 2012, EFCC received a petition from the Hon. Minister of Petroleum Resources at that time against petroleum importers/marketers and some government officials that participated in the Petroleum Support Fund [PSF] Scheme. The 3rd defendant [with its directors] featured as one of the companies that participated in the importation of petroleum products under the PSF Scheme. PSF was administered by PPPRA. He narrated the importation process under the PSF Scheme.

The said importation process enables the marketer to obtain an import permit from DPR. Thereafter, the marketer contacts his international supplier who issues a Proforma Invoice [PFI]. The marketer will take the DPR permit and the PFI to a commercial bank in Nigeria to open Form M. Form M has 2 modes of payment i.e. bills for collection and letters of credit. After this, the marketer nominates a vessel or ship that will load the petroleum product. There are 2 types of vessels or ships. The first is the mother vessel, which loads the product outside the country and transports same to off-shore countries in Africa. The second is the daughter vessel, which takes from the mother vessel and transports same to Nigeria for discharge at the nominated depot.

PW4 explained that there are inspection agents or marine surveyors that work on these vessels and depots to determine the quantity and quality of petroleum products trans-shipped. They issue documents which evidence the transaction including certificate of quantity, certificate of quality, ship to ship transfer certificate and shore tank certificate. The ship operators issue documents such as bill of lading, cargo manifest, certificate of origin. After the loading of the vessel, it is expected to proceed to Nigeria and discharge the entire cargo into the depot for onward trucking and transportation to filling stations across Nigeria. After the discharge, the marketer will compile its documents and

forward same to PPPRA for computation of subsidy. PW4 narrated the procedure for payment of the subsidy amount to the importer/marketer.

Nweke Cyril Chidi further stated that the team investigated the fourth quarter 2010 Import Allocation given to the 3rd defendant [operated by the 1st& 2nd defendants] by PPPRA for the importation of PMS. The importation was executed by the defendants using MT Silverie who loaded from MT Champion Express, the mother vessel. MT Silverie was purported to have loaded offshore Cotonou in February 2011 and discharged her entire cargo with 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 same to PPPRA for subsidy claim. The subsidy was computed by PPPRA and the 3rd defendant was paid the sum of N1,137,565,760.69 into its Union Bank account in May 2011 for purportedly discharging 19,179,999 litres of PMS.

They discovered that defendants' claim that MT Silverie discharged 19,179,999 litres was false; it discharged only 6,784,921 litres of PMS at Lister Depot. The team contacted Oando Plc., the operator of Lister Depot, who confirmed that MT Silverie discharged 6,784,921 litres at Lister Depot. Oando Plc. forwarded documents to show discharge of 6,784,921 litres and the Lease Agreement between it and Lister Depot, to show that

it [Oando Plc.] was the sole operator of Lister Depot as at the time of the transaction. They interviewed the terminal manager of Oando Plc. in charge of Lister Depot [Irene Moses], who confirmed the discharge of 6,784,921 litres for MT Silverie imported by the defendants.

They wrote letters to the inspection agents/surveyors that participated in the discharge operation of MT Silverie, i.e. Quality Marine Services Nig. Ltd. [QMS], Q & Q Control Services Ltd. and Port Cargo Experts for details of MT Silverie discharge operations at Lister Depot in 2011 and for authentication of documents of MT Silverie used for subsidy claim by the defendants. In its response, QMS denied the shore tank quantity certificate evidencing the discharge of 19,179,999 litres claimed by the defendants. QMS also forwarded certified true copies of documents of MT Silverie discharge operation which confirmed that the quantity of PMS discharged was only 6,784,921 litres. The response from Q & Q Control Ltd. was that MT Silverie discharged only 6,784,921 litres of PMS.

In its response, Port Cargo Experts denied participating in the operations of MT Silverie as well as MT Silverie documents bearing 19,179,999 litres. The team also contacted the ship owner of MT Silverie [Union Maritime Ltd.] represented by the manager of the vessel in Nigeria [Beta Shipping Ltd.] for MT Silverie loading and discharge documents.

The response from Beta Shipping Ltd. is that although MT Silverie loaded over 19,000,000 litres [equivalent of over 14,000 metric tons] of PMS in January 2011 at offshore Cotonou, they received instruction from the charterer of MT Silverie [i.e. Nepal Oil & Gas Ltd., the business partner of the defendants] to transfer over 9,000 metric tons or over 12,000,000 litres to another vessel at offshore Cotonou in the name of MT TDT2. The said quantity of the PMS was transferred to MT TDT 2at off-shore Cotonou and the destination of the vessel was said to be offshore Lome.

The above confirmed that a part of PMS meant to be imported into Nigeria was transferred out of the vessel at offshore Cotonou. The response equally revealed that MT Silverie only discharged 6,784,921 litres at Lister Depot for the transaction of the defendants. MT Silverie also loaded another marketer called Shield Petroleum Co. Nig. Ltd.

PW4 further testified that they interviewed the 1st& 2nd defendants and they made voluntary statements. The 1st& 2nddefendants stated that they executed the MT Silverie transaction through Nepal Oil & Gas Ltd., their business partner.The team invited and interviewed the managing director of Nepal Oil & Gas Ltd., Mrs. Ngozi Ekeoma. She told members of the team that she bought the entire cargo on board MT Silverie from the defendants in 2 parts. The first part was sold to her offshore Cotonou

which she sold to a foreign company. The quantity was over 9,000 metric tons; equivalent of over 12,000,000 litres. The second part was sold to her in Nigeria with a quantity of 6,784,921 litres which she sold to Oando. Mrs. Ngozi Ekeoma also submitted documents relating to the transaction with the defendants.

Based on the above facts, they wrote to PPPRA for re-computation of the subsidy. The response from PPPRA 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 to the defendants. The difference amounted to the sum of N735,152,076.18. During investigation, they recovered N124,000,000 from the defendants. He concluded that investigation revealed that defendants defrauded the Federal Government of N735,152,076.18 on the false pretence of purportedly discharging over 19,000,000 litres [equivalent of over 14,000 metric tons] of PMS into Lister Depot in 2011 by MT Silverie. Also, the documents of the inspection agents i.e. QMS and Port Cargo Experts were altered or forged and same were used to claim and collect subsidy from the Federal Government.

PW4 tendered the following documents in evidence:

1. The letter from the Honourable Minister of Petroleum Resources to the Chairman EFCC dated 12/1/2012: Exhibit 4.

2. The Lease Storage Agreement between Lister Oil Ltd. and Oando Marketing Ltd. dated 23/2/2010: Exhibit 5.
3. The letters/documents from QMS dated 23/8/2013 and 11/9/2013: Exhibits 6A & 6B respectively.
4. The letter from Port Cargo Experts Ltd. dated 24/6/2013 together with the attached documents: Exhibit 7.
5. The letter from EFCC dated 5/9/2016 to the managing director of Union Bank of Nigeria Plc. together with the attached documents: Exhibit 8.
6. The letter from Corporate Affairs Commission dated 25/1/2012 and the attached documents: Exhibit 9.
7. The statements of the 1st defendant dated 26/1/2012, 6/6/2012, 21/6/2012, 29/11/2016 [numbered B1J] and 29/11/2016 [numbered B1K]: Exhibits 10A, 10B, 10C, 10D & 10E respectively.
8. The statements of the 2nd defendant dated 29/4/2014 [numbered B4], 29/4/2014 [numbered B4F], 9/12/2014 and 11/6/2015: Exhibits 11A, 11B, 11C & 11D respectively.
9. The letter from EFCC to QMS dated 5/6/2013 and the attached documents: Exhibit 12.

During cross examination of PW4 by O. I. Olorundare, SAN, these documents were tendered through him:

1. PPPRA Checklist for Import Documents (P.S.F.) dated 15/2/2011 [as arrival date]: Exhibit 13.
2. Certificate of Quantity dated 17/2/2011 from Lister Oils Ltd.: Exhibit 14.
3. The document/letter dated 24/2/2011 and the attached documents from Union Bank Plc. to PPPRA: Exhibit 15.
4. Statement of Alhaji Samuel Shaibu at EFCC dated 31/3/2014: Exhibit 16.
5. The letter from Lister Oil Ltd. dated 14/3/2011 signed by Abdullahi Alao [the Finance Director] addressed to PPPRA: Exhibit 17.
6. The statement of Obi Nzekwe Ifi [a staff of DPR] to EFCC dated 31/3/2014: Exhibit 18.
7. A letter from Origin Oil & Gas Ltd. to Executive Secretary of PPPRA, Abuja dated 10/2/2011: Exhibit 19.
8. Letter from Union Bank to Executive Secretary of PPPRA dated 24/2/2011 and the attached documents: Exhibit 20.

9. Certificate of Marine/Aviation Insurance from Union Assurance Co. Ltd. in favour of Origin Oil & Gas Ltd.: Exhibit 21.
10. Shore Tank Quantity Report from Port Cargo Experts dated 17/2/2011: Exhibit 22.
11. PPPRA Checklist for Import Documents [P.S.F] dated 15/2/2011 [as arrival date]: Exhibit 23 [same as Exhibit 13].
12. Lister Oils Ltd. letter dated 14/3/2011 signed by Abdullahi Alao [the Finance Director] addressed to PPPRA: Exhibit 24 [same as Exhibit 17].
13. Bill of Lading dated 12/1/2011: Exhibit 25.

The evidence of DW4 when cross examined by O. I. Olorundare, SAN is that in Exhibit 6A, the managing director of QMS did not indicate who was present at the shore tank ullage discharge or inspection on behalf of QMS. From Exhibit 13, those who witnessed the PPPRA Import checklist are: Mrs. Omolara King [a staff of PPPRA]; Godwin Uwodi [a staff and surveyor of Lister Oils Nig. Ltd.]; Onyeka I. O.; and Danjuma Edegbo [a staff of Deloitte, a firm of auditors engaged by the Government]. The arrival quantity of PMS stated in Exhibit 13 is 14,259.143. The vessel, MT Silverie arrived at Lister Jetty, Apapa. From Exhibit 15, the defendants paid for 14,000 metric tons of PMS through the letter of credit.

In Exhibit 16, the name of the surveyor stated by Alhaji Samuel Shaibu of DPR is Mr. Godwin. They made effort to interview Mr. Godwin but they could not. The Finance Director of Lister Oil signed Exhibit 17. The arrival quantity stated in Exhibit 17 is 14,259.143 metric tons while the shore tank figure is 14,208.908 metric tons or 19,179,999 litres. In Exhibit 18, Obi Nzekwe Ifi stated that in the documents given to him, the quantity of PMS brought by MT Silverie at Lister Jetty on 15/2/2011 was 14,267.674 metric tons.

The further evidence of the PW4 during cross examination by O. I. Olorundare, SAN is that the Charter Party Agreement he recovered was between Nepal Oil and Gas and the operator of MT Silverie. In oil and gas industry practice, the charterer of the vessel controls the vessel. In Exhibit 22 issued by Port Cargo Experts, there is PPPRA stamp, which is dated 15/03/2011 and signed. Exhibit 22 was also signed by a Lister Oil Depot surveyor. In Exhibit 22, it was stated that 19,179,999 litres were discharged at Lister Depot; but Port Cargo Experts denied issuing the document. Exhibit 25 is the Bill of Lading for MT Silverie Ex MT Champion Express with 14,267.674 metric tons VAC.

When PW4 was cross examined by K. K. Eleja, SAN, he stated that Abdullahi Alao made a statement at EFCC relating to discharge at

ListerJetty and a letter of affirmation; he stated that the signature on the document [Exhibit 17] is not his own. He obtained statement from Mr. Daniel and another person from QMS.They recovered N124,000,000 from the defendants. The defendants wrote letters forwarding drafts for the payments. The letters dated 13/7/2015 and 16/2/2016 from 3rd defendant to EFCC together with the attached documents were tendered through PW4 and admitted as Exhibits 26 & 27 respectively.

When the PW4 was cross examined by Olalekan Ojo, SAN, these 3 documents were tendered through him:

1. The letter from EFCC to Peak Shipping Agency Ltd. dated 12/8/2013: Exhibit 28.
2. Empty Tank Certificate dated 17/2/2011:Exhibit 29.
3. The statement of OmolaraKing to EFCC dated 27/3/2014: Exhibit 30.

The evidence of PW4 when he was cross examined by Olalekan Ojo, SAN is that Mrs. Ngozi Ekeoma made statement and denied running the transaction on behalf of the defendants. Dayo Panox, who signed Exhibit 3, did not mention the name of any Oando staff that took part in the discharge operations of MT Silverie at Lister Jetty.The name on the Quantity Certificate issued by QMSat page C20d in Exhibit 6B is Ben O;

he made a statement in their Lagos office and confirmed that he signed the said Quantity Certificate at page C20d in Exhibit 6B.

PW4 further stated under cross examination by Olalekan Ojo, SAN that Ben O. denied signing the document attached to Exhibit 12[i.e.QMS Quantity Certificate showing 19,179,999 litres or 14,208.944 metric tons]. In the statement of Omolare King [PW1] to EFCC dated 27/3/2014, she stated that the Port Cargo Experts' surveyor was present at the discharge operations at Lister Jetty where MT Silverie discharged PMS between 14/2/2011 and 15/2/2011.

Evidence of Joseph Isitua [PW5]:

The evidence of PW5 is that he is a petroleum surveyor and he works with Beta Shipping Ltd. In November 2016, his company received a letter from EFCC, which requested for information on its transactions with a vessel called MT Silverie. They responded to the letter in December 2016. In the course of their interaction with officers of EFCC, the officers informed them that they were interested in the transaction which involved Nepal and Origin Oil & Gas Ltd. The PW5 tendered the letter from Beta Shipping Ltd. to EFCC dated 14/12/2016 together with the attached documents as Exhibit 31.

When PW5 was cross examined by senior counsel for the 1st defendant, he stated that Nepal Oil & Gas was the charterer for the transaction. Nepal directed that the cargo should be delivered to the 3rd defendant at Apapa Port. There was no direct transaction between Beta Shipping Ltd. and 3rd defendant. Beta Shipping Ltd. received another instruction after loading to discharge part of the cargo to a vessel named MT TDT 2 off-shore Cotonou; the instruction was given by Nepal Oil and Gas Ltd.

PW5 further stated that in order to execute the instruction, they received a letter of indemnity from Nepal to discharge cargo at a Port other than the Port stated in the bill of lading. They discharged about 9,200 metric tons of PMS to the vessel MT TDT 2. The letter of indemnity and bill of lading for executing the instruction to discharge about 9,200 metric tons of PMS to the vessel MT TDT 2 were attached to their response to EFCC.

During cross examination of the PW5 by learned senior counsel for the 2nd defendant, he said there was a staff of Beta Shipping who monitored the operation both on board the ship and at the shore terminal [i.e. Lister Jetty, Apapa]. He stated that he will need to look at the report they received for the operation to know the name of the staff. The instruction to deliver part of the cargo to MT TDT 2 in Cotonou was in writing. He joined Beta Shipping Ltd. in July 2011.

When the PW5 was cross examined by learned senior counsel for the 3rd defendant, he said his knowledge about the loading and discharge of the PMS, subject of the charge is based on the documents in their records.

Evidence of Abioye Oyewusi [DW1]:

The evidence of DW1 is that he is a lecturer at Adeleke University, Osun State. Between 2007 and 2015, he worked at Lister Oil Ltd., Apapa, Lagos. He started as a Finance Executive and Personal Assistant to the Finance Director. In late 2010, he was promoted to Business Development Manager and worked in that position till 2015. His Identity Card in Lister Oil Ltd. is Exhibit 32. Oando Plc. was one of the customers that utilized Lister Oil Depot facility. Irene Moses, the Oando Product Manager, was the representative of Oando Plc. The facility was owned by Lister Oil Plc. Oando did not have exclusive use of the facility. Other customers used the facility and brought products there. He knew Origin Oil & Gas through Nepal. Nepal had a transaction at Lister Oil Depot.

DW1 further testified that when cargo arrived at the Depot facility, the product surveyors of Lister Oil took charge of the products and verified the quality and quantity of products discharged into the tank. As at January and February of 2011, the head quantity surveyor of Lister Oil was Mr. Godwin Uwodi. The Finance Director of Lister Oil in 2011

was Abdullahi Alao. He can identify any correspondence from Mr. Abdullahi Alao through his signature. He worked with Abdullahi Alao for 4 years. Abdullahi Alao signed the letter, Exhibit 24.

When DW1 was cross examined by K. K. Eleja, SAN, he stated that in February 2015, Lister Oil Depot facility became a subject of litigation with First Bank Plc. The facility was closed and the staff were denied entry; that was how he stopped working in Lister Oil. Some of the companies that brought products to Lister Oil Depot facility included Tubs Marine, Yanty, Venro, Nepal, Axxe Energy, etc. Oando played no role when other companies brought products to the Jetty. Oando only played role when it brought in products to the facility.

During cross examination of DW1 by Olalekan Ojo, SAN, he explained what ship to ship trans-shipment [i.e. STS] means. In Exhibit 31, the documentations for STS are not complete; there is no bill of lading and remainder on board [ROB] of the mother vessel. Oando did not take any part in the discharge of the product at Lister Oil Depot facility between 14/2/2011 and 17/2/2011 belonging to Origin Oil & Gas Ltd.; only the Lister Oil surveyors did. During the discharge operations at Lister Depot facility, the documentations relating to the discharge of the products must be signed by the captain of the vessel.

When DW1 was cross examined by Elizabeth Alabi Esq. who appeared for the prosecution on 30/6/2021, he said he was not present when MT Silverie discharged 14,208.908 metric tons [of PMS] at Lister Depot. Lister Oil had an agreement with Oando. He has never witnessed any vessel loading operation either at Port of loading or during ship-to-ship trans-shipment [STS].

Evidence of Godwin Uwodi [DW2]:

The evidence of DW2 is that he is practising as a cargo surveyor. He worked at Lister Oil Ltd., Apapa, Lagos as a Terminal Surveyor. In February 2011, MT Silverie arrived Lister Jetty. As a Terminal Surveyor, it was his responsibility to notify all government agencies such as DPR, PPPRA, the auditor and the supplier's surveyor. When the agencies sent their representatives, they boarded the vessel to ascertain the arrival ullage through ullage and calculation. When they calculated the arrival volume of MT Silverie, which was approximately 29,000 metric tons of PMS, the figure was given to the representative of DPR for the final clearance from DPR for the discharge of the vessel.

The figure was 29,000 metric tons of PMS because there were 2 suppliers that used the vessel MT Silverie i.e. Origin Oil & Gas and Shield Petroleum. The 2 suppliers had about 14,000 metric tons and 15,000

metric tons respectively. Moses Irene was Oando product representative at Lister Oil. Oando surveyor was not used for the discharge of MT Silverie at Lister Jetty. DPR and PPPRA have offices at Lister Terminal. The DW2 explained that once a vessel berths, the captain issues notice of readiness to the Lister surveyor and the surveyor will sign it to indicate whether the terminal is ready to receive the vessel or not. The Notice of Readiness in respect of MT Silverie dated 14/2/2011 is Exhibit 33.

When he contacted DPR with the Notice of Readiness, DPR responded by coming to the ship to issue DPR clearance for discharge. The document titled: *Jetty Vessel Report* dated 15/2/2011 is Exhibit 34. EFCC wrote to Lister Oil Ltd. As the head surveyor of Lister Oil Ltd., he was mandated by the management of the company to go to EFCC to explain how Shield Petroleum's transaction was. He explained to EFCC operative, Yidi, that the documents shown to him which emanated from Lister Oil Ltd. were for bulk buyers i.e. those that bought from Shield Petroleum. EFCC never invited him or Lister Oil Ltd. in respect of Origin Oil & Gas Ltd.

DW2 explained that the documents at pages C21d to C21f in Exhibit 3 are part parcel of the volume received on behalf of Origin & Gas Ltd., which was 14,208.908 metric tons. C21d, which originated from Lister Oil Ltd., is used for different purposes such as inter-tank transfers and bulk buyer

sales. The volume stated in C21d is not the volume received from MT Silverie; that is why the captain of MT Silverie did not sign it. It was only signed by Oando representative and Lister representative and it was for Oando volume.

DW2 also testified that all the documents in Exhibit 31 are in agreement with the volume received by MT Silverie from MT Champion Express at offshore Cotonou, which is 14,244.701 metric tons. DW2 further stated that there was no second STS on the said vessel. There is no document to support Exhibit 31 where it stated that there was a second STS. There should be time log, certificate of quantity transferred, cargo manifest, bill of lading, certificate of origin and ullage report to support a second STS. He maintained that to the best of his knowledge, Lister Terminal received 14,208.908 metric tons of PMS on behalf of Origin Oil & Gas Ltd.

When DW2 was cross examined by K. K. Eleja, SAN, he stated that different marketers brought products to Lister Oil Depot. After receiving the marketer's product including Oando, the marketer paid throughput i.e. money paid to Lister Oil for storing their product. There was no time when only Oando used Lister Depot. Lister Oil was still in operation until 2015. EFCC did not make any effort to reach him or Lister Oil in connection to this transaction.

During cross examination of DW2 by Olalekan Ojo, SAN, he stated that where there is STS transfer and a new bill of lading is generated, it is the quantity in the new bill of lading that will be declared at the point of discharge of the product.

When DW2 was cross examined by Sir Steve Ehi Odiase Esq., learned counsel for the prosecution, he stated that the Quantity Certificate dated 17/2/2011 attached to Exhibit 12 was signed by Greg Nwokorowho was his assistant at Lister Terminal.

Evidence of Adetoye Adetokumbo Adegbite; the 1st Defendant [DW3]:

The evidence of the DW3 is that the charges against him and the other defendants are not true. When they were invited by EFCC, it was alleged that during investigation, they found that 6,000,000 litres [of PMS] were discharged instead of 19,000,000 litres. He made it clear that it was impossible because Origin Oil & Gas Ltd. established a Form M for 19,000,000 litres and also established a letter of credit for the purchase of 19,000,000 litres from Vitol SA. After the purchase of the product, they agreed with Nepal Oil & Gas to purchase the 19,000,000 litres in Lagos. Part of the agreement was for Nepal to charter and operate the vessel MT Silverie for onward discharge into Lister Jetty, Lagos. He made it clear to EFCC that they were not going to refund any money.

It is not true that he forged QMS and Port Cargo Experts Ltd. documents so as to claim the subsidy. He made it clear to EFCC that Origin Oil & Gas did not have any contractual relationship with the companies that Nepal Oil & Gas engaged and that it was not possible for the documents to be forged. That was why they requested EFCC to invite all the parties involved in the transaction.

In the light of the allegation, they engaged forensic experts to analyze all the documents. He informed EFCC that the documents allegedly forged were handed over to them by Nepal Oil & Gas through Mrs. Ngozi Ekeoma, its managing director. The documents were handed over to them for onward forwarding to PPPRA. EFCC invited Mrs. Ngozi Ekeoma. They were brought together but the meeting lasted for about 3 minutes.

The 1st defendant further stated that EFCC made it clear to them that while they are investigating the matter, they need to start making refunds. That was why they refunded a total of N124 million. He prayed the Court to discharge and acquit them of the charges and order the refund of the *"borrowed money"* EFCC collected from them.

During cross examination of DW3 by K. K. Eleja, SAN, he said they refunded N124 million because on each time they were invited to EFCC,

it was a case of refund or they were detained. The payments were not made at once; Exhibits 26 & 27 are some of the letters that accompanied some of the payments made to EFCC. It is not correct that about 9,000 metric tons of the product [PMS] were sold to Nepal at offshore Cotonou. Over 14,000 metric tons were sold in-tank in Lagos at Lister Jetty. Nepal processed the documents from QMS and Port Cargo Experts.

When DW3 was cross examined by Olalekan Ojo, SAN, he said EFCC did not show him any document of the alleged sale of part of the PMS offshore Cotonou to Nepal as allegedly claimed by Mrs. Ekeoma. If such transaction took place, it would have generated lots of shipping documents such as bill of lading and STS certificate. The Quantity Discharge Certificate attached to Exhibit 12 is from QMS which they collected from Nepal.

During cross examination of the DW3 by Sir Steve Odiase Esq., he explained that under recovery is where the importer's landing cost is over the regulated price while over recovery is where the landing cost is under the regulated pump price. In the course of the investigation, he was arrested with some documents that were allegedly forged. He was extremely shocked because it is not possible for those documents to be forged.

Evidence of Chief Reginald Odunze [DW4]:

The evidence of the DW4 is that he is a Deputy Inspector General of Police [retired]. He is a forensic document examiner and handwriting expert. He has experience for 31 years. He stated his qualifications. Before his retirement from the Nigeria Police Force on 1/12/2016, he was the Head of Disputed Document Unit at Force CID, Alagbon Close, Ikoyi, Lagos. He is presently a Consultant to Nigeria Police Force on Forensic Investigation. He is also the Chief Consultant of Apex Forensic Science Laboratory Nig. Ltd. He has trained 11 Police officers who are practising as document examiners such as the current Commissioner of Police in charge of Forensic and Crime Data, Alagbon Close, Ikoyi, Lagos. He listed the 3 books he wrote on Forensic Science.

DW4 testified that he received a letter dated 15/1/2021 and the attached documents marked A1-A2, B1, C, D, E, F from Mr. Okunade Olorundare, SAN Chambers; the letter and the attached documents are Exhibit 35. The letter requested Apex Forensic Science Laboratory Nig. Ltd. to conduct forensic examination and comparison on the attached documents and to find out if the handwritings and signatures on the said documents were written and signed by one person or different persons. He carried out the examination as requested and issued a report; the Forensic Report of the DW4 dated 18/1/2021 is Exhibit 36.

DW4 further stated that page C20e in Exhibit 6B titled: *Vessel Survey Report Before Discharge* dated 15/02/11 is the same as the document marked Annexure A1 in Exhibit 35. The document marked Annexure B1 in Exhibit 35 and page C14a in Exhibit 12 titled: *Quantity Certificate* are the same document. The document marked Annexure C in Exhibit 35 is the same as the document marked C20d in Exhibit 6B.

The document marked Annexure D in Exhibit 35 is the same as the document marked 13b in Exhibit 25. The document marked Annexure F in Exhibit 35 is the same as Exhibit 34. The document marked Annexure A2 in Exhibit 35 is the same as the document titled: *Vessel Survey Report Before Discharge* from Quality Marine Services Ltd.; the said document is Exhibit 37.

DW4 concluded that from his Report [Exhibit 36], his findings were that: [i] the handwriting in the documents marked A1, A2, B1 and C were written by the same person; and [ii] the signatures in Annexures D, E & F in Exhibit 35 were by one person. He used QDX 630B Spectral Comparator and Highly Illuminating Fox VM and other Scientific Equipment to carry out the examination of the documents. The equipment were in good order and are among the modern equipment used in forensic document examination and they were functioning well.

When DW4 was cross examined by learned counsel for the prosecution, he said as far as the examination he did on these documents are concerned, there is no fallibility. He maintained that the equipment were in good shape at the time of his exercise and conclusion.

Issues for Determination:

At the conclusion of trial on 10/3/2022, the Court directed the parties to file and exchange their final written addresses. The following final written addresses were filed on behalf of the defendants and the prosecution:

1. The 1st defendant's 44-page final written address filed on 26/4/2022 by E. G. Shaibu Esq.
2. The 2nd defendant's 41-page final written address filed on 30/3/2022 by K. K. Eleja, SAN.
3. The 3rd defendant's 56-page final written address filed on 27/4/2022 by Olalekan Ojo, SAN.
4. The prosecution's 26-page final written address filed on 28/4/2022 by Sir Steve Ehi Odiase, Esq.
5. The 1st defendant's 6-page reply on points of law filed on 8/9/2022 by E. G. Shaibu Esq.

6. The 2nd defendant's 8-page reply on points of law filed on 5/5/2022 by K. K. Eleja, SAN.
7. The 3rd defendant's 6-page reply on points of law filed on 11/5/2022 by Olalekan Ojo, SAN.

On 20/9/2022, O. I. Olorundare, SAN adopted the 1st defendant's final written addresses; Patricia Ikpegbu Esq. adopted the 2nd defendant's final written addresses; Olalekan Ojo, SAN adopted 3rd defendant's final written addresses; while Sir Steve EhiOdiase Esq. adopted prosecution's final written address.

Learned counsel for the 1st defendant formulated these three issues for determination:

1. Whether Exhibits 3, 6A, 6B and 7 are legally admissible and or has any probative value or weight that can be used by this Honourable Court.
2. Whether in the light of the available credible and legally admissible evidence before this Honourable Court, prosecution has established beyond reasonable doubt the case of criminal conspiracy/conspiracy to obtain money under false pretence and obtaining money under false pretence all contrary to sections 1[1][a]

and1[3] of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006, and section 97 of the Penal Code Act.

3. Whether the offences of forgery and using of forged document as genuine all contrary to sections 364 and 366 of the Penal Code Act have been established against the 1st defendant.

Learned senior counsel for the 2nd defendant distilled the following four issues for determination:

1. Whether the prosecution has been able to prove the allegations of forgeries as contained in counts 4, 6, 8 and 10 of the charge against the 2nd defendant beyond reasonable doubt as required by law.
2. Whether the prosecution has been able to prove the allegations of using as genuine forged documents as contained in counts 5, 7, 9 and 11 against the 2nd defendant as required by law.
3. Whether the prosecution has been able to prove the allegations of obtaining by false pretences as contained in count 2 against the 2nd defendant as required by law.
4. Whether the prosecution has been able to prove the allegations of conspiracy as contained in counts 1 and 3 against the 2nd defendant as required by law.

Learned senior counsel for 3rd defendant posed one issue for resolution, to wit:

Whether the prosecution has established beyond reasonable doubt the guilt of the 3rd defendant in respect of the eleven-count charge laid against the 3rd defendant as contained in the Information dated 5th December, 2016 filed against the defendants before the Honourable Court having regard to the evidence adduced by the prosecution and the defence before the Honourable Court.

For his part, learned counsel for the prosecution submitted one issue for the Court's determination, which is:

Whether the prosecution has proved the essential ingredients/elements of the offences alleged against the defendants beyond reasonable doubt to warrant their being found guilty and consequently convicted.

By virtue of section 36[5] of the 1999 Constitution [as amended], every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. It is trite law that the prosecution has the duty to prove the guilt of the accused person [or defendant] beyond reasonable doubt.

In State v. Muhammad [2020] All FWLR [Pt. 1034] 879; [2019] LPELR-48122 [SC] cited by K. K. Eleja, SAN at page 39 of the 2nd defendant's final address, it was restated that it is an elementary principle of criminal law that prosecution has the duty to prove its case beyond reasonable doubt, and reasonable doubt is the *"doubt that prevents one from being firmly convinced of a defendant's guilt or the belief that there is a real possibility that the defendant is not guilty"*.

In the light of the foregoing, the Court is of the considered opinion that four issues call for resolution. These are:

1. Whether the prosecution had proved beyond reasonable doubt that the quantity of premium motor spirit [PMS] discharged by MT Silverie at Lister Oil Jetty, Apapa, Lagos for the 3rd defendant was 6,784,921 litres [or about 5,040.163 metric tons] and not 19,179,999 litres [or about 14,208.944 metric tons].
2. Whether the prosecution proved the charges or allegations against the defendants contained in the 11-count Amended Information filed on 24/3/2017 beyond reasonable doubt.
3. Whether the choice of the 2nd defendant not to testify personally amounts to admission of guilt.

4. If Issues 1, 2 & 3 above are resolved against the prosecution, are the defendants entitled to the refund of the sum of N124 million which they paid to the EFCF in the course of investigation?

ISSUE 1

Whether the prosecution had proved beyond reasonable doubt that the quantity of premium motor spirit [PMS] discharged by MT Silverie at Lister Oil Jetty, Apapa, Lagos for the 3rd defendant was 6,784,921 litres [or about 5,040.163 metric tons] and not 19,179,999 litres [or about 14,208.944 metric tons].

The starting point in dealing with this issue is to refer to the foundation of this case. By the evidence of the PW4, the letter from Diezani Alison-Madueke [Mrs.] CON, the Hon. Minister of Petroleum Resources dated 12/1/2012 [Exhibit 4] to Mr. Ibrahim Lamorde, Acting Chairman of EFCC gave rise to the investigation by EFCC into the amount paid by the Federal Government of Nigeria to the 3rd defendant as subsidy claim. In the letter, Exhibit 4, Diezani Alison-Madueke [Mrs.] was “*extremely concerned*” that the amount paid as subsidy to marketing companies and importers of petroleum products over the years “*has grown exponentially to unsustainable levels.*” The letter stated in paragraph 3 thus:

“To now deepen my reforms and ensure that we root out all forms of corruption and abuse within the subsidy regime, I have sought and obtained the approval of President Goodluck Ebele Jonathan to formally invite the EFCC to immediately review and investigate all payments made in respect of subsidies checked against actual importations and to take all necessary steps to prosecute any person[s] involved in any incidence of malfeasance, fraud, over-payments and related illegalities.”

Based on the directive in Exhibit 4, EFCC wrote the letter dated 6/9/2016 [Exhibit 1] to the Executive Secretary of PPPRA. The letter referred to the sum of N1,137,565,740.69 paid to the 3rd defendant as subsidy for PMS discharged by MT Silverie on 15th to 17th February, 2011. Part of the letter reads:

Preliminary investigation revealed that the actual quantity discharged at Lister Depot by MT Silverie Ex Chamion [sic] Express on 15th to 17th February, 2011 was 6,784,921 liters.

You are accordingly requested to re-compute the subsidy based on the above quantities to enable us conclude our investigation.”

In response to the request in Exhibit 1, PPPRA wrote the letter dated 6/9/2016 [Exhibit 2] to the EFCC and forwarded *“a re-computation of the transaction in question ... based on the shore tank volume of 6,784.921 litres as*

requested in your letter under reference [see attached]." The re-computation attached to the letter stated the details of the computation based on 19,179,999litres as the quantity discharged by MT Silverie Ex MT Champion Express for which the sum of N1,137,565,740.69 was the "*SUBSIDY DUE AND PAID*"to the 3rd defendant.

The re-computation also stated the sum of N402,413,664.51 as the "*SUBSIDY DUE @ EFCC QUANTITY*" of 6,784,921 litres. In the re-computation, PPPRA stated the sum of N735,152,076.18 as the variation between the amount paid to the 3rd defendant and the re-computed amount. This amount is the basis of the charges or allegations against the defendants.It is important to point out that in the said re-computation, PPPRA referred to the "*Case Review*" as suspected overstatement of discharge volume based on preliminary investigation.

During cross examination of PW2, a staff of PPPRA, he stated that PPPRA did not know how EFCC arrived at 6,784,921 litres of PMS in its letter, Exhibit 1. The evidence ofPW1, another staff of PPPRA,that 19.1 million litres was the quantity of PMS discharged by MT Silverie for the 3rd defendant at Lister Jetty between 15th to 17th February, 2011 supports the evidence of PW2 that PPPRA did not know how EFCC arrived at6,784,921 litres.

In the case of Orji v. State [2008] 10 NWLR [Pt. 1094] 31 cited Olalekan Ojo, SAN at page 30 of the final address of the 3rd defendant, it was restated that in order for the trial court to determine whether the legal duty imposed on the prosecution has been duly discharged, it must consider and scrupulously evaluate the totality of the evidence before it.

Now, from the foregoing, the task before the Court is to evaluate the evidence presented by the prosecution upon which EFCC arrived at 6,784,921 litres as the quantity of PMS discharged by MT Silverie for the 3rd defendant at Lister Jetty between 15th to 17th February, 2011 vis-à-vis the evidence adduced by the defence. The evaluation of the evidence on both sides will enable the Court determine whether the prosecution has proved beyond reasonable doubt the allegation that the quantity of PMS discharged by MT Silverie at Lister Jetty for the 3rd defendant was 6,784,921 litres and not 19,179,999 litres.

The evidence relied upon by the prosecution in support of the said allegation are: [i] evidence of the PW5 and letter from Beta Shipping Ltd. [Exhibit 31]; [ii] evidence of PW3 and letter from Oando Marketing Plc. [Exhibit 3]; [iii] letters from QMS [Exhibits 6A and 6B]; and [iv] letter from Port Cargo Experts Ltd. [Exhibit 7]. These pieces of evidence will be evaluated in turn; [iii] and [iv] will be taken together.

A. Evidence of PW5 and letter from Beta Shipping Ltd. [Exhibit 31]

The prosecution relied on the evidence of PW5 and Exhibit 31 as proof of the allegation that part of the quantity of PMS on board the vessel MT Silverie was transferred to MT TDT 2 at offshore Cotonou. The letter from Beta Shipping Ltd. to EFCC dated 14/2/2016 tendered by PW5 as Exhibit 31 stated in part:

“MT Silverie in accordance to the instructions received from her charterers: NEPAL OIL AND GAS SERVICES LIMITED, loaded 14,244.701 metric tons of MOGAS from MT Champion Express at Cotonou offshore on the 12th of January, 2011 with a Bill of Lading figure of 14,267.674 metric tons in vacuum/ BL No. 1 as shipped by Vitol S.A. GENEVA and consigned to the order of VITOL S.A., GENEVA, notify address as ORIGIN OIL AND GAS LIMITED for delivery at the port of APAPA, LAGOS NIGERIA.”

From the above, it is not in dispute - and as confirmed by the PW4 - that the 3rd defendant bought about 14,244.701 metric tons of PMS [i.e. about 19,179,999 litres]. The same was loaded from MT Champion Express [the mother vessel] to MT Silverie [the daughter vessel] by the charterer of the vessel [Nepal Oil and Gas Services Ltd.] for delivery at Apapa Port, Lagos.

The case of the prosecution as conveyed by Exhibit 31 and the evidence of PW5 is that the 3rd defendant discharged about 9,200 metric tons of PMS from MT Silverie to MT TDT 2 offshore Cotonou and the balance was discharged at Lister Jetty, Apapa. In this regard, Exhibit 31 reads:

“MT Silverie received further instructions for lightering same cargo to another vessel and she delivered 9,198.330 metric tons in vacuum of MOGAS to MT TDT 2 at offshore Cotonou on the 22nd of January, 2011 in accordance with NEPAL OIL AND GAS SERVICES LIMITED’s instructions hence, the vessel has 5,029.762 metric tons in vacuum remaining onboard.

As stated in the Bill of Lading the cargo was meant to be discharged at Apapa port but we were issued a Letter of Indemnity [LOI] for discharging cargo in a port other than that stated in the Bill of Lading and for discharging cargo without the production of the original Bill of Lading [Please see attached].

On completion of this discharge operation, MT TDT-2 loaded 9,214.939 metric tons in vacuum from MT Silverie and the Bill of lading figure was stated as 9,206.636 metric tons in vacuum.”

Let me also refer to the evidence of PW4 that Mrs. Ngozi Ekeoma, the managingdirector of Nepal Oil and Gas Services Ltd., informed the

investigators that she bought the entire cargo on board MT Silverie from the defendants in two parts; and that she submitted documents relating to the transaction. The first part was sold to her offshore Cotonou which she sold to a foreign company and the quantity was over 9,000 metric tons; equivalent of over 12,000,000 litres. The second part was sold to her in Nigeria with a quantity of 6,784,921 litres, which she sold to Oando.

At pages 38 &39 of the 3rd defendant's final address, Olalekan Ojo, SAN made submissions on the issues relating to Exhibit 31 and the evidence of the PW4 and PW5 on the alleged trans-shipment of part of the cargo from MT Silverie to MT TDT 2 at offshore Cotonou. The learned senior counsel for the 3rd defendant submitted that:

“It is significant to state that the Prosecution did not produce before the Honourable Court the alleged instruction and indemnity that Beta Shipping Limited received from NEPAL to discharge about 9,200 metric tonnes of premium motor spirit [PMS] off shore Cotonou. The Prosecution did not call the Managing Director of NEPAL, Mrs. Ngozi Ekeoma, to give evidence with regard to the alleged instruction and indemnity given to Beta Shipping Limited.

There is uncontradicted evidence from DW1 and DW2 to the effect that if there had been any S.T.S. transfer, fresh shipping documents including

time log, certificate of quantity transferred, bill of lading, cargo manifest, certificate of origin and ullage report should have been generated.

Exhibit 31 does not have the above shipping documents or attachments. ... It is submitted that failure of the Prosecution to produce all the documents said to have been attached to exhibit 31 in proof of the transshipment or STS transfer renders exhibit 31 incomplete, unreliable and incapable of proving the allegation ... that there had been a discharge of 9,200 metric tonnes of premium motor spirit [PMS] from MT Silverie off shore Cotonou.

It is further submitted that the failure of the Prosecution to produce all the documents said to have been attached to Exhibit 31 will warrant the Honourable Court coming to the irresistible conclusion that the said documents do not exist or that if they exist, their production would have been unfavourable to the case of the Prosecution. ...

*It is further submitted that Exhibit 31 having been tendered by PW5 who admitted under cross examination that ... his knowledge about the transaction subject matter of Exhibit 31 is solely based on the documents in the record of Beta Shipping Ltd., the said Exhibit 31 ought not to be accorded probative value by the Honourable Court. See the following cases: *Abraham v. F.R.N.* [2018] LPELR-44136 [CA]; *Adesina v. People of Lagos State* [2014] LPELR-23091 [CA]; ...”*

At page 23 of the 1st defendant's final address, E. G. Shaibu Esq. argued that there is no document to prove the alleged STS transfer off shore Cotonou of a part of the PMS on board MT Silverie. He also pointed out that PW5 admitted that he was not in the company as at January, 2011 and that he had no direct knowledge of the loading and discharge of PMS for the 3rd defendant at Lister Jetty. It was submitted that his evidence is hearsay and without value.

Similarly, at page 13 of the final address of the 2nd defendant, K. K. Eleja, SAN argued that the inability of PW4 to tender any document in support of the alleged STS transfer from MT Silverie to MT TDT 2 at Offshore Cotonou rendered the entirety of his evidence on the alleged trans-shipment worthless. Also, the evidence of PW5 that he was not in the employment of Beta Shipping Ltd. as at January 2011 when the alleged trans-shipment took place rendered his evidence hearsay and valueless. The prosecution did not adduce any direct evidence of the alleged trans-shipment from MT Silverie to MT TDT 2.

Sir Steve Ehi Odiase Esq. did not put forward any argument on the evidential weight or value of Exhibit 31 and the testimony of PW5 except submitting that the prosecution is not bound to call any particular witness. He cited the cases of **Adeyemo v. State [2015] 16 NWLR [Pt.**

1485] 11 and Iliyasu v. State [2021] 1 NWLR [Pt. 1756] 1 in support. It was argued that the failure of the prosecution to call Mrs. Ngozi Ekeoma is not a basis to discharge the defendants.

I am completely in agreement with the submissions made on behalf of the defendants. I hold that the prosecution failed to prove the allegation that part of the 14,244.701 metric tons [or 19.1 million litres] of PMS loaded by MT Silverie for delivery at Lister Jetty for the 3rd defendant was transferred to MT TDT 2 at offshore Cotonou. The allegation of STS transfer in Exhibit 31 was not established as no document was produced by the prosecution in support.

The law is that the prosecution has a duty to call material or vital witnesses in order to prove the charge against the defendants beyond reasonable doubt. In this case, Mrs. Ngozi Ekeoma who, according to the PW4, made allegations against the defendants, is a vital witness to prove the truth of what she told the PW4. The failure of the prosecution to call Mrs. Ekeoma who is a vital or material witness to prove the assertion that part of the 19,179,999 litres of PMS on board MT Silverie was sold to her [or NEPAL] offshore Cotonou is fatal to the case of the prosecution.

There is need to emphasis the point that the PW5 was not a staff of Beta Shipping Ltd. when Exhibit 31 and the documents attached to it were

made. What this means is that PW5 cannot give any explanation of the contents of Exhibit 31 and the attached documents and be cross examined on them. The law is well established that the maker of a document is the proper person to tender it in evidence. If a person who did not make a document tenders it, as he is permitted to do, the trial court will not attach probative value to it because that person cannot be cross examined on the document since he is not the maker. See Flash Fixed Odds Ltd. v. Akatugba [2001] 9 NWLR [Pt. 717] 46 and Ogoro & Ors. v. Seven-Up Bottling Co. Plc. [2015] LPELR-24424 [CA].

B. Evidence of PW3 and letter from Oando Marketing Plc. [Exhibit 3]:

The PW3 tendered the letter dated 25/4/2013 from Oando Marketing Plc. signed by Dayo Panox [the Legal Adviser]. PW3 stated during cross examination that his evidence as to the quantity of cargo received at Lister Tank Farm was based on the entries in the shore tank certificates made available to Oando by the surveyors appointed by Oando. The PW3 did not sign any of the documents attached to the letter, Exhibit 3. There is also no evidence that PW3 was present during the discharge operations of MT Silverie at Lister Jetty between 15th and 17th February, 2011. What then is the evidential value or weight of the evidence of PW3 and Exhibit 3?

Learned counsel for 1st defendant argued that Exhibit 3 is documentary hearsay and lack any probative value. He cited the case of Ogoro v. Seven-Up Bottling Co. Plc. [supra]; [2016] 13 NWLR [Pt. 1528] 30 to support the view that a document not tendered through its maker lacks probative value. He stressed that the person who signed Exhibit 3 [Dayo Panox] was not among the persons that witnessed the ullage inspection and discharge of the cargo on board MT Silverie. It was submitted that PW3 and PW4 lack the legal standing to prove the truth of the content of Exhibit 3. Failure to present the person who signed Exhibit 3 to testify denied the defendants the opportunity to test the veracity and accuracy of how he came about the information therein.

Learned senior counsel for the 2nd defendant submitted that the failure of the prosecution to call any of the surveyors appointed by Oando who made the entries in the shore tank certificates made available to Oando makes the evidence of PW3 to be hearsay and worthless.

In the same vein, learned senior counsel for the 3rd defendant submitted that the evidence of PW3 and Exhibit 3 do not constitute proof of the quantity of PMS that was discharged by MT Silverie at Lister Jetty for the 3rd defendant because: [i] PW3 did not witness the discharge operations of MT Silverie; [ii] PW3 is not the maker of Exhibit 3 and the documents

attached to it; and [iii] Dayo Panox who signed Exhibit 3 did not mention the name of the Oando staff that took part in the discharge operations of MT Silverie. Olalekan Ojo, SAN urged the Court not to attach any weight to the evidence of PW3 and Exhibit 3.

For his part, Sir Steve Ehi Odiase Esq. relied on the letters from QMS, Exhibits 6A and 6B, and submitted that PW3 confirmed that MT Silverie discharged 6,784,921 litres of PMS at Lister Jetty for the 3rd defendant.

As I said before, the law is that the court may admit a document not tendered by the maker but will attach no or little evidential value to it. Where a document is tendered through a person other than the maker, no evidential value or weight will be given to its contents except the maker subsequently called to give evidence as to the veracity of the contents of the document. See the cases of Ogoro & Ors. v. Seven-Up Bottling Co. Plc. [supra] and Lawrence v. Olugbemi & Ors. [2018] 45966 [CA].

In the case of Okpara v. FRN [1977] NSCC Vol. II, 166; [1977] LPELR-2517 [SC] cited in the final addresses of the 1st & 2nd defendants, the major evidence relied upon in support of an allegation of currency counterfeiting was a letter written by the Central Bank of Nigeria in which it conveyed the opinion of the Department of Trade of the United States of America that the notes were forged.

In allowing the appeal and setting aside the conviction of the appellant, the Supreme Court held that the official of the Central Bank [PW3] is neither an expert nor a credible witness in the circumstances of the case because he did not testify on the falsity of the bank notes in question from his own general knowledge of currency and bank notes. He simply conveyed to the trial court the opinion of the Department of Trade of the United States of America. In the result, there was no credible evidence proving the bank notes in question to be false or counterfeit.

Based on the above principles, in the instant case, the Court cannot attach any value or weight to the evidence of PW3 and Exhibit 3, which respectively constitute oral and documentary hearsay.

It is necessary to add that PW2 testified that Oando Nigeria Ltd. or any of its staff did not have anything to do with the witnessing of the arrival ullage of PMS imported into Nigeria by the 3rd defendant. Also, the evidence of DW1 and DW2 is that Oando surveyor was not used for the discharge of MT Silverie at Lister Jetty. Prosecution did not adduce any evidence that Oando surveyor played any role in the discharge operation of MT Silverie at Lister Jetty from 14/2/2011 to 17/2/2011. In other words, the prosecution was unable to challenge or controvert the evidence of PW2, DW1 and DW2 in this regard.

Also, DW2 explained that pages C21d to C21f in Exhibit 3 are part parcel of the volume received on behalf of Origin & Gas Ltd. [i.e. 14,208.908 metric tons]; and that the volume stated in C21d is not the volume received from MT Silverie; that is why the captain of MT Silverie did not sign it. The prosecution did not cross examine DW2 on this piece of evidence. In **Gaji v. Paye [2003] LPELR-1300 [SC]**, it was restated that the effect of failure to cross examine a witness upon a particular matter is a tacit acceptance of the truth of the evidence of the witness. See also the case of **Zenith Bank Plc. v. Nacoil Int'l Ltd. [2017] LPELR-44973 [CA]**.

It is noteworthy that the documents numbered pages C21d and C21f attached to Exhibit 3 have the names of Taiwo Awolesi [who signed for Terminal Mgr/Supv.], Ekanem P. Udoudo [who signed for Q & Q] and Ben O. [who signed for QMS]. None of them was called as a witness to explain the contents of the documents. Sir Odiase argued that the prosecution is not bound to call a particular witness to prove its case and its failure to call Ben O., etc. is not a basis to discharge the defendants.

I had stated the position of the law on the need for the prosecution to call vital or material witnesses to prove its case. In the instant case, Taiwo Awolesi, Ekanem P. Udoudo and Ben O. whose names and signature appeared on the documents attached to Exhibit 3 are vital witnesses and

the prosecution ought to have called all or any of them to testify. Since none of them gave evidence, I hold that prosecution did not adduce any evidence to controvert, or impugn the credibility of, the evidence of the DW2 on the nature or essence of the documents attached to Exhibit 3.

For the reason I have given, the decision of the Court is that the evidence of PW3 and Exhibit 3 are not proof that MT Silverie discharged 6,784,921 litres of PMS at Lister Jetty between 14/2/2011 and 17/2/2011 for the 3rd defendant.

**C. Letters from Quality Marine Services Ltd. [Exhibits 6A and 6B];
and Letter from Port Cargo Experts Ltd. [Exhibit 7]:**

Exhibits 6A and 6B tendered by PW4 are letters from QMS to EFCC. In Exhibit 6A, QMS Ltd. informed EFCC that the document attached to its letter dated 5/6/2013 and marked A-A1 “*did not emanate from Quality Marine Services Limited as such not authentic and genuine.*” The letter from EFCC to QMS Ltd. dated 5/6/2013 and the attached document are Exhibit 12. The document attached to Exhibit 12 is the Quantity Certificate in the name of QMS dated 14 -17/2/2011, which shows 19,179,999 litres [or 14,208.944 metric tons] as the quantity of PMS discharged by MT Silverie at Lister Jetty for the 3rd defendant.

In Exhibit 6B, QMS forwarded documents for MT Silverie that discharged at Lister Jetty between 14 - 17/2/2011; the Quantity Certificate numbered C20d therein has the quantity of PMS discharged as 6,784.921 litres.

Exhibit 7 is a letter dated 24/6/2013 from Port Cargo Experts Ltd. informing EFCC that *"we were not engaged in that operation, hence the document is not from us."* The documents referred to are Empty Tank Certificate and Shore Tank Quantity Report, which were attached to the letter. The documents are in respect of PMS discharged by MT Silverie at Lister Jetty.

Learned counsel for 1st defendant submitted that since the authors of Exhibits 6A, 6B and 7 were not called to testify, PW4 lacks the legal capacity to testify as to the truth or otherwise of the contents of these documents. Exhibits 6A, 6B and 7 are documentary hearsay and the Court should not attach any weight to them. He referred to **Saraki v. FRN [2018] 16 NWLR [Pt. 1446] 406** and other cases. E. G. Shaibu Esq. posited that failure to present the authors of Exhibits 6A, 6B and 7 to testify denied the defendants the opportunity to test the veracity and accuracy of the contents of the Exhibits.

Similarly, K. K. Eleja, SAN submitted that the evidence of PW4 on these documents is hearsay since the makers were not called to testify. Learned

Senior Advocate of Nigeria relied on the case of Ekpo v. State [2001] 7 NWLR [Pt. 712] 292 in urging the Court not to attach any weight to the evidence of PW4 regarding the contents of Exhibits 6A, 6B and 7.

At pages 45 and 46 of the 3rd defendant's final address, Olalekan Ojo, Senior Advocate of Nigeria, submitted that Exhibits 6A, 6B & 7 which were tendered through PW4 do not constitute evidence of the truth of the contents of the said documents since the makers or authors were not called as witnesses by the prosecution. He also relied on the case of Saraki v. FRN [supra] and submitted that the evidence of the PW4 concerning Exhibits 6A, 6B & 7 is admissible as to what he did in the course of investigation but inadmissible to establish the truth of the contents of the documents.

On the other hand, Sir Steve Odiase Esq. relied on the documents from QMS to support the position of the prosecution that MT Silverie discharged 6,784,921 litres of PMS at Lister Jetty for the defendants and not 19,179,999 litres.

The position of the law is that evidence of statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not

hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. See Utteh v. The State [1992] LPELR-6239 [SC]. It is also the law that the evidence of an investigating police officer on what a prospective witness told him in the course of investigation is hearsay evidence, which is inadmissible. See the cases of Ekpo v. State [supra] and Odogwu v. State [2013] 14 NWLR [Pt. 1373] 75.

The evidence of the PW4 is like the evidence of Michael Wetkas, Principal Detective Superintendent of EFCC, who testified as the PW1 in Saraki v. FRN [supra]. Michael Wetkas tendered practically all the documents in that case and no witness was invited from the companies/organizations to establish the assertion he made in his testimony. The Supreme Court held that the evidence of Michael Wetkas in these issues is admissible only as to what he carried out in the process of investigation but it is hearsay and totally inadmissible for proving the truth of the contents of the exhibits tendered.

It was further held that the major part of his evidence and that of PW3 in that case consisted of what they were told or what they gathered from documents forwarded to them by persons not called to testify. The major part of their evidence amounted practically to either oral hearsay or

documentary hearsay evidence. The evidence of PW1 and PW3 is not admissible as to prove the truth of the assertions therein.

It is worthy of note that the documents attached to Exhibit 6B have the name and/or signature of Ben O. and the stamp of QMS. Also, the quantity certificate [attached to Exhibit 12] - which QMS said in Exhibit 6A did not emanate from it - has a signature which is like that of Ben O. and the stamp of QMS Ltd. The PW4 testified during cross examination by Olalekan Ojo, SAN that Ben O. told him that he did not sign the QMS quantity certificate attached to Exhibit 12. As I said above, this piece of evidence of PW4 on what Ben O. told him is hearsay evidence and therefore inadmissible.

In his Report [Exhibit 36] and oral evidence, DW4 gave evidence that the handwriting in the Quantity Certificate attached to Exhibit 6B as page C20d showing 6,784,921 litres as the quantity of PMS discharged and in the Quantity Certificate attached to Exhibit 12 showing 19,179,999 litres as the quantity of PMS *“was written by one and the same person.”* The expert evidence of DW4 was not challenged in any way by the prosecution and the Court is bound to rely on it especially as the prosecution did not call any handwriting expert to discredit his evidence. See the case of **Ronke v FRN [2017] LPELR-43584 [CA]**.

Since the name of Ben O. featured in the documents attached to Exhibit 6A and Exhibit 12 bearing different figures as the quantity of PMS discharged by MT Silverie, the least the prosecution would have done was to call Ben O. to give evidence to explain the disparity. I hold the view that failure to call Ben O. is fatal to the case of the prosecution. I also note that PW4 said he recorded statements from one Daniel and another person from QMS. However, he did not tender the said statements.

With respect to Exhibit 7 where Port Cargo Experts Ltd. informed EFCC that "*we were not engaged in that operation*", PW1 stated in her statement to EFCC [Exhibit 30] and her evidence in Court that the surveyor of Port Cargo Experts Ltd. was present when they boarded the vessel MT Silverie. The Empty Tank Certificate and Shore Tank Quality Report attached to Exhibit 7 have the stamp of Port Cargo Experts Ltd. and a signature. Prosecution ought to have called a staff of Port Cargo Experts Ltd. to deny or accept the authenticity of the stamp and to testify whether or not any of its surveyors has the signature on the documents. I also hold that failure to call a staff of Port Cargo Express Ltd. as a witness is fatal to the case of the prosecution.

From the evaluation of the evidence and the decisions referred to above, I agree with the submissions made on behalf of the defendants that the

evidence of the PW4 on Exhibits 6A, 6B and 7, which seeks to prove the truth of the contents of the documents, is hearsay evidence. The Court holds that Exhibits 6A, 6B and 7 and the evidence of the PW4 to prove the truth of the contents of the documents do not qualify as proof that the quantity of PMS discharged by MT Silverie at Lister Jetty for the 3rd defendant was 6,784,921 litres [or about 5,040.163 metric tons].

Before I conclude Issue No. 1, let me highlight the pieces of evidence which clearly show that the quantity of PMS discharged by MT Silverie at Lister Jetty between 14th- 17th February, 2011 for the 3rd defendant was about 19,179,999 litres [or about 14,208.944 metric tons]. These are:

- a) PPPRA checklist [Exhibit 13; also Exhibit 23] signed by King O. A. [PW1], Godwin Uwodi [DW2], Onyeka I. O. and Danjuma Edegbo.
- b) The evidence of PW1 and DW2 who were present when the ullage figure of MT Silverie was taken at Lister Jetty.
- c) Certificate of Quantity issued by Lister Oils Ltd. [Exhibit 14].
- d) Letter dated 14/3/2011 [Exhibit 17; same as Exhibit 24] signed by Mr. Abdullahi Alao, the Finance Director of Lister Oils Ltd. Although PW4 testified that Mr. Abdullahi Alao made statement to EFCC and stated that the signature on Exhibit 17 is not his own, PW4 did not tender the said statement. The effect of failure of the prosecution to

tender the statement or call Mr. Abdullahi Alao to testify is that the alleged denial by Mr. Alao was not supported by any evidence.

e) Statement of Obi Nzekwe Ifi to EFCC dated 31/3/2014 [Exhibit 18].

f) Bill of lading [Exhibit 25].

g) Jetty Vessel Report signed by the Captain of MT Silverie [Exhibit 34] which stated the arrival quantity on board the vessel as 29,251.609 metric tons for both Origin Oil and Shield Petroleum. Be it noted that this figure tallies with the evidence of the DW2 that the arrival volume of MT Silverie was approximately 29,000 metric tons of PMS for the 2 suppliers that used the vessel i.e. Origin Oil & Gas and Shield Petroleum.

It is instructive to remark that from the evidence of PW4 when he was cross examined, he came across most of the documents listed above such as Exhibits 13 [same as Exhibit 23], 14, 17 [same as Exhibit 24], 18 and 25. However, PW4 chose not to tender them. The documents were tendered through him during cross examination and form part of his evidence.

I am in agreement with E. G. Shaibu Esq., learned counsel for the 1st defendant, that the evidence of the prosecution against the defendants is both exculpatory and inculpatory. The effect is that the evidence of the

prosecution creates doubt because, as was held by the Apex Court in **Bello v. State [2020] 3 NWLR [Pt. 1710] 72**, the burden to prove an offence beyond reasonable doubt is not discharged when the prosecution puts before the court both exculpatory facts and inculpatory facts.

From all that I have said, the decision of the Court on Issue 1 is that the prosecution failed to prove beyond reasonable doubt that the quantity of PMS discharged by MT Silverie at Lister Oil Jetty for the 3rd defendant was 6,784,921 litres [or about 5,040.163 metric tons] and not 19,179,999 litres [or about 14,208.944 metric tons] upon which the 3rd defendant's subsidy claim from the Federal Government of Nigeria was based. Rather, there is credible evidence as highlighted above that MT Silverie discharged 19,179,999 litres [or about 14,208.944 metric tons] of PMS at Lister Jetty between 14th – 17th February, 2011 for the 3rd defendant.

ISSUE 2

Whether the prosecution proved the charges or allegations against the defendants contained in the 11-count Amended Information filed on 24/3/2017 beyond reasonable doubt.

The defendants are charged with the offences of conspiracy, obtaining money under false pretences, forgery and using as genuine a forged

document. In Alufohai v. State [2015] 3 NWLR [Pt. 1445] 172, it was held that it is a proper approach to an indictment that contains a charge of conspiracy and a substantive charge to deal with the substantive charge first and then proceed to see how far the conspiracy count has been made out. Therefore, I will consider the substantive charges before the charge of conspiracy.

Count 2 - Obtaining money under false pretences:

It is alleged that the defendants with intent to defraud, obtained 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 ...*”

Section 1[1][a] of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 under which the defendants are charged provides:

Notwithstanding anything contained in any enactment or law, any person who by any false pretence, and with intent to defraud –

[a] obtains, from any other person, in Nigeria or in any other country, for himself or any other person;

[b]

[c]

is guilty of an offence under this Act.

Section 1[3] of the said Act provides:

A person who is guilty of an offence under subsection [1] or [2] of this section is liable on conviction to imprisonment for a term of not less than ten years without the option of a fine.

In the case of **Aguba v. F.R.N. [2014] LPELR-23211[CA]**, it was held that the ingredients that are required to be proved to establish the charge of obtaining money by false pretence are that: [i] there was a pretence; [ii] the pretence emanated from the accused person; [iii] the pretence was false; [iv] the accused person knew of the falsity of the pretence, or did not believe its truth; [v] there was an intention to defraud; [vi] the property or thing is capable of being stolen; and [vii] the accused person induced the owner to transfer his whole interest in the property. See also the case of **Onwudiwe v. F.R.N. [2006] 10 NWLR [Pt. 988] 382.**

The totality of the submissions of the defendants is that the prosecution failed to prove the elements of this count because there is overwhelming evidence that MT Silver discharged 19,179,999 litres of PMS at Lister Jetty for 3rd defendant as opposed to the quantity alleged by

prosecution[i.e. 6,784,921 litres], which it failed to prove beyond reasonable doubt.

E. G. Shaibu Esq. referred to the evidence of PW5 that it was Nepal that had dealing with Beta Shipping Ltd. and not the 3rd defendant. He argued that the defendants cannot be linked with the offence of obtaining under false pretence since they relied on Nepal to deliver over 14,000 metric tons of PMS for them at Lister Jetty. There is no proof that the defendants had knowledge or reason to believe that the documents handed over to them by Nepal were not genuine. Learned counsel for the 1st defendant concluded that the amount paid to the 3rd defendant is what it is entitled to claim going by the contract with PPPRA.

K. K. Eleja, SAN also stated that in the light of the overwhelming evidence of DW2 that Liter Oil and Gas Ltd. received 14,208.908 metric tons of PMS on behalf of the 3rd defendant, it will be wrong to say that the 3rd defendant obtained subsidy for that quantity by false pretence. The testimonies of PW1, DW1, DW2 & DW3 have established the entitlement of the 3rd defendant to the money paid to it as subsidy claim. The Learned Senior Advocate of Nigeria reasoned that a person cannot be accused of obtaining by false pretence what he is legitimately entitled to. Olalekan Ojo, SAN made similar submissions in respect of this count.

The viewpoint of learned counsel for the prosecution is that from the evidence of PW1, PW3, PW4 & PW5 and from Exhibits 4, 5, 6A, 6B, 7, 8, 9 and 10, the money paid to the 3rd defendant as subsidy was obtained fraudulently as the PMS discharged by MT Silverie was 6,784,921 litres at Lister Depot and not 19,179,999 litres. He cited the case of Alake v. State [1991] 1 NWLR [Pt. 205] 567 for the elements of the offence of obtaining money under false pretence; and submitted that all the ingredients of the offence fit into the case at hand.

Sir Steve Ehi Odiase Esq. prayed the Court to find the defendants guilty as charged and, in addition to any other penalty prescribed under the law, order them to make restitution of the sum of N735,152,076.18 to the victim of the false pretence i.e. the Federal Government of Nigeria in accordance with section 11 of the Advance Fee Fraud and Other Fraud Related Offences Act.

Now, based on the decision of the Court under Issue 1 that there is credible evidence that MT Silverie discharged 19,179,999 litres [or about 14,208.944 metric tons] of PMS at Lister Jetty between 14th- 17th February, 2011 for the 3rd defendant and that the prosecution failed to prove that only 6,784,921 litres [or about 5,040.163 metric tons] was the quantity discharged, I hold that there is no basis to hold that the defendants

obtained the sum of N735,152,076.18 under false pretences. There is no evidence that the defendants made any false pretence or representation upon which the 3rd defendant was paid its subsidy claim. As rightly stated by K. K. Eleja, SAN, a person cannot be accused of obtaining by false pretence what he is legitimately entitled to.

Also relevant is the unchallenged evidence of the 1st defendant [as DW3] that they agreed with Nepal to charter and operate the vessel MT Silverie for onward discharge into Lister Jetty. PW5 admitted that it was Nepal that had dealing with Beta Shipping Ltd. The 1st defendant further testified that the documents used for subsidy claim - which form the basis for the allegation of obtaining by false pretences - were handed over to them by Mrs. Ngozi Ekeoma to forward to PPPRA. The evidence of DW3 was not challenged. In these circumstances, there will be no basis to hold that the defendants made false pretences to obtain the sum paid to the 3rd defendant as subsidy claim.

Counts 4, 6, 8 and 10 - Forgery:

Section 364 of the Penal Code under which the defendants are charged in counts 4, 6, 8 and 10 reads:

“Whoever commits forgery shall be punished with imprisonment for a term which extends to fourteen years or with fine or with both.”

Forgery is defined in section 363 of the Penal Code thus:

Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery; and a false document made wholly or in part by forgery is called a forged document.

In **Aina v. Jinadu [1992] 4 NWLR [Pt. 233] 91**, it was held that the offence of forgery is committed when a person knowingly makes a document or writing which is false with intent that it may in any way be used or acted upon by another as genuine to his prejudice. See also the case of **FRN v. Ibrahim [2015] 4 NWLR [Pt. 1450] 411**.

In count 4, the document allegedly forged by the defendants is Shore Tank Quantity Certificate [or Shore Tank Quality Report] dated 17/2/2011 for MT Silverie *“purporting the said document to have been issued by an officer of Port Cargo Experts Ltd., with intent to defraud ...”*In count 6, the document alleged to have been forged by the defendants is the same document in count 4. In other words, counts 4 and 6 are the same. The

document allegedly forged in counts 4 and 6 is attached to Exhibit 7 as number C13 [2] and was tendered through PW4 as Exhibit 22 when he was cross examined by learned senior counsel for the 1st defendant.

In count 8, it is alleged that the defendants forged "*Quality Marine Services Limited - quantity certificate for 14208.944 metric tons*" dated 14-17/02/11 for MT Silverie, purporting the said document to have been issued by an officer of QMS, with intent to defraud. The document allegedly forged by defendants in count 10 is the same document in count 8; so, counts 8 and 10 are the same. The document allegedly forged in counts 8 and 10 is attached to Exhibit 12. Sir Steve Ehi Odiase Esq. conceded that counts 6 and 10 are bad for duplicity and urged the Court to strike out the two counts.

The submissions made on behalf of the defendants are to the effect that the prosecution failed to prove the allegations of forgery in counts 4, 6, 8 and 10. There are three grounds or reasons for the submission.

The first ground or reason is that the persons whose signatures were allegedly forged on the two documents - who are vital and material witnesses - were not called to testify to deny or accept their signatures. The case of **Alake v. State [supra]** was relied upon in support. Failure to

call representatives of Port Cargo Experts and QMS whose names and signatures are on the documents allegedly forged is fatal to the charge.

Secondly, a forensic expert or handwriting analyst was not called by the prosecution. The case of Aituma v. State [2006] 10 NWLR [Pt. 989] 452 was cited to support the principle that in a charge of forgery, prosecution needs to call a handwriting analyst to show that the handwriting of the person who is alleged to have forged the documents is the same as the one on the forged documents where the supposed alteration was made.

The third ground for the submission is that assuming there is evidence that the documents were forged, there is no evidence or proof that the forgery was done by the defendants because the transaction in this case was handled by Nepal Oil and Gas Ltd. and its managing director, Mrs. Ngozi Ekeoma, on behalf of the 3rd defendant.

On the other hand, Sir Odiase argued that prosecution led evidence through PW3, PW4 & PW5 to show that the Shore Tank Certificate and the Quantity Certificate, which the defendants presented to PPPRA for processing subsidy payment were indeed forged and used as genuine as the documents did not emanate from the companies that allegedly issued them. He cited the case of Nigeria Airforce v. James [2002] 18 NWLR [Pt.

798 295 to support the view that forgery occurs when a document “*tells a lie about itself.*” It is proved where the lie is exposed and confirmed.

The prosecuting counsel submitted that the forgery of the documents subject of the counts has been exposed and confirmed. The documents tell lies about themselves as those who purportedly issued and/or stamped them disclaimed them in evidence. He posited that in proof of forgery, it is not necessary that the defendant must have personally or manually forged the documents; it suffices if the defendant procured another person to do it. He also submitted that the defendants knew or had reason to believe that the documents were forged and they fraudulently presented them to PPPRA.

Under Issue 1, the Court held that Exhibits 6A, 6B and 7 and the evidence of PW4 which were aimed at discrediting the Quantity Certificate from QMS [attached to Exhibit 12] and the Shore Tank Quantity Report from Port Cargo Experts Ltd. [attached to Exhibit 7; and tendered as Exhibit 22] are not credible or reliable. One of the reasons was that the persons whose signatures were allegedly forged on the documents were not called to testify and no staff of the companies was called as a witness.

I agree with the above submissions made on behalf of the defendants and the reasons thereof. It is trite that the persons whose signatures are alleged to have been forged are vital, material and indispensable witnesses. In the case of Alake v. State [supra], the appellant was alleged to have forged cheques. It was held that Ajadi and Lawsweerde who were the persons whose signatures were alleged to have been forged were vital and material witnesses in the case; they were the persons whose signatures were alleged to have been forged. Failure to call them to deny or confirm their signatures on the cheques was fatal to the case of the prosecution.

Also, assuming there is proof that the documents were forged, there is no evidence that they were forged by the defendants or any of them. In Aituma v. State [supra], it was restated that to sustain a charge of forgery, it is essential to prove that the accused person forged the document in question. See also the case of Al-Haleel v. FRN [2015] LPELR-25902 [CA].

The unchallenged evidence of the 1st defendant is that the transaction that led to this charge was handled by Nepal Oil and Gas Ltd. and its managing director, Mrs. Ngozi Ekeoma, on behalf of 3rd defendant and the documents allegedly forged were handed over to them by Mrs. Ngozi

Ekeoma. Also, PW2 stated that the defendants had nothing to do with the preparation of the shore tank certificate.

In my respectful view, thesetestimonies of the 1st defendant and the PW2 negate any inference that thedocuments were forged by the defendants [or any of them] or that they knew or had any reason to believe that the documents were forged;assuming they were forged.

The decision of the Court is that the prosecution failed to prove the charge of forgery against the defendants in counts 4, 6, 8 and 10 beyond reasonable doubt.

Counts 5, 7, 9 and 11 - Using as genuine a forged document:

Section 366 of the Penal Code provides:

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

The elements of this offence under section 366 of the Penal Code are that: [i] the accused person used a forged document as genuine; [ii] the accused person knew or had reason to believe that the document was

forged; and [iii] the accused person did so fraudulently or dishonestly. See Mustapha v. State [2018] LPELR-46565 [CA].

Counts 5 and 7 are in respect of the Shore Tank Quality Certificate [or Shore Tank Quality Report] of Port Cargo Express Ltd. [in counts 4 and 6]; while counts 9 and 11 are in respect of QMS Quality Certificate [in counts 8 and 10]. The arguments put forward on behalf of the defendants and the prosecution in respect of these counts are the same arguments put forward on the counts for the offence of forgery.

As correctly stated by the prosecuting counsel, this offence is “*co-related*” to the offence of forgery or making a false document. Since, as I had found, the prosecution failed to prove that the documents stated in the counts are forged and if the documents are forged, that the defendants knew or had reason to believe that they were forged, I hold that the offence of using as genuine a forged document in counts 5, 7, 9 and 11 was not proved beyond reasonable doubt.

Counts 1 and 3 - Conspiracy:

In count 1, the defendants are charged with conspiracy to obtain money under false pretences contrary to section 8[a] of the Advance Fee Fraud and Other Fraud Related Offences Act. In count 3, they are charged with

conspiracy contrary to section 97 of the Penal Code. Section 8[a] of the Advance Fee Fraud and Other Fraud Related Offences Act provides:

A person who –

[a] conspires with, aids, abets, or counsels any other person to commit an offence; or

[b]

commits the offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act.

Section 97[1] of the Penal Code provides:

Whoever is a party to a criminal conspiracy to commit an offence punishable with death or with imprisonment shall where no express provision is made in this Penal Code for the punishment of such a conspiracy be punished in the same manner as if he had abetted such offence.

Criminal conspiracy is the agreement of two or more persons to do or cause to be done an illegal or unlawful act or a legal act by illegal or unlawful means. The actual agreement alone constitutes the offence and it is not necessary to prove that the act has in fact been committed. The offence of conspiracy is rarely proved by direct evidence but by

circumstantial evidence or inference from certain proved facts. See **Yahaya v. State [2018] 5 SC [Pt. II] 87.**

The summary of the submissions on behalf of the defendants is that the offence of conspiracy in counts 1 and 3 has not been proved against the defendants as there is no proof beyond reasonable doubt that the defendants agreed to do an illegal act or a legal act by an illegal or unlawful means. Reliance was placed on the arguments canvassed in respect of the substantive charges.

The submissions of E. G. Shaibu Esq. are in paragraphs 6.91 to 6.95 of the 1st defendant's final address; the submissions of K. K. Eleja, SAN are found in paragraphs 8.01 to 8.05 of the 2nd defendant's final address; while the views of Olalekan Ojo, SAN on conspiracy are in paragraphs 5.19 to 5.28 of the 3rd defendant's final address.

For his part, learned counsel for the prosecution submitted that there exists direct and inferential evidence that the defendants were in agreement to do a legal act *albeit* illegally. The 4th defendant gave evidence that PPPRA granted a Permit to the 3rd defendant to import and discharge PMS. The Permit contains the terms and conditions, which include that the beneficiary [i.e. 3rd defendant] was enjoined not to assign

the Permit to a third party. In contravention of the terms, 3rd defendant assigned the Permit under an MOU to Nepal.

Sir Steve Ehi Odiase Esq. further submitted that in order to convince PPPRA that the product was imported so as to obtain payment of substantial amount as subsidy, *“a Bill of lading previously utilized by Oando Supply and Trading Ltd. was cloned. While some other information on the Bill of lading such as the volume/quantity of product were varied.”* In the documents presented to PPPRA, there is *“consistent denial of the issuance of the documents by the companies who allegedly issued them.”* It means that logically, the defendants conspired to forge the documents. He concluded that there is reasonable inference that the defendants conspired to obtain and to forge the documents, therefore, the prosecution has proved all the ingredients of criminal conspiracy.

Let me briefly comment on the submission of the learned counsel for the prosecution that the Permit granted to the 3rd defendant enjoined it not to assign the Permit to a third party but it assigned the Permit under an MOU to Nepal. It was also submitted that *“a Bill of lading previously utilized by Oando Supply and Trading Ltd. was cloned”*. As correctly stated in the defendants’ respective replies on points of law, these arguments are not founded or based on the evidence before the Court. It is trite that the

address of counsel will not take the place of evidence. Therefore, these arguments are hereby discountenanced by the Court.

It is clear from the evaluation of the evidence under Issue No. 1 that the foundation of the charges in this case revolves around the quantity of PMS discharged by MT Silverie at Lister Jetty for the 3rd defendant, which the prosecution alleged to be 6,784,921 litres. Flowing from the decision of the Court that the prosecution failed to establish the said foundation and the allegation of forgery, the inevitable conclusion is that the charge of conspiracy has not been proved beyond reasonable doubt.

ISSUE 3

- *Whether the choice of the 2nd defendant not to testify personally amounts to admission of guilt.*

Sir Steve Ehi Odiase Esq. argued that in spite of the overwhelming oral and documentary evidence presented by the prosecution, 2nd defendant opted to rest his case on that of the prosecution. He described the option as “a risky course ... which has profound and significant implications.” It was submitted that since the 2nd defendant did not give any evidence rebutting the evidence of the prosecution, the Court has no option than to accept all the material allegations levelled against him.

From paragraphs 4.5 to 4.14 of the final address of the prosecution, Sir Steve Ehi Odiase Esq. made submissions on the effect where a defendant elects not to give evidence in his trial and rests his case on that of the prosecution. He relied on the case of Magaji v. Nigerian Army [2008] 8NWLR [Pt. 1089] 338 where it was held that the defendant resting his case on that of the prosecution amounts to nothing less than admission of the evidence led by the prosecution. He referred to other cases including Babalola v. State [1989] 4 NWLR [Pt. 115] 264 and Abogede v. State [1995] 1 NWLR [Pt. 372] 473.

The prosecuting counsel reminded the Court that the no case submission of the defendants failed; meaning that prosecution made out a *prima facie* case against them, which demands an explanation. The 2nd defendant's failure to make the necessary explanation to rebut the case of the prosecution gives the Court the power to make necessary inferences that he has accepted the allegations or that he is shielding himself from giving evidence "*in order not to be rubbished in cross examination or both.*"

In the 1st defendant' reply on points of law, E. G. Shaibu Esq. stated that the witnesses presented by the prosecution and the 1st defendant were duly cross examined by the senior counsel for the 2nd& 3rd defendants and certain pieces of evidence were elicited from them. It is trite that cross

examination is used to challenge the evidence adduced by the adverse party or to cast doubt on the case of the adverse party by rendering the evidence unreliable and lacking in probative value. It was submitted that the 2nd& 3rd defendants challenged every material allegation of the prosecution during cross examination and rendered them unreliable and unfounded.

In the 2nd defendant's reply on points of law, K. K. Eleja, SAN argued that even though the 2nd defendant did not testify in person, the testimonies of the DW1 to DW4, which debunk the case of the prosecution, inure with equal force to him. In the course of cross examination, the 2nd defendant elicited evidence debunking the case of the prosecution. A party can adduce evidence in a judicial proceeding without necessarily testifying or calling a witness. This may be attained by either eliciting favourable evidence from the witnesses called by the other parties or by tendering documents in support of his case. He relied on the cases of **Akomolafe v. Guardian Press Ltd. [Printers] [2010] 3 NWLR [Pt. 1181] 338** and **Gaji v. Paye [supra]; [2003] All FWLR [Pt. 163] 1.**

Learned senior counsel for the 2nd defendant submitted that the 2nd defendant adduced evidence by other means in support of his defence even though he did not call any witness of his own. He noted that there is

no credible evidence adduced by the prosecution that this Court can draw inferences from because the evidence of the prosecution was “*seriously contradicted and terribly battered*” under cross examination by the 2nd defendant’s senior counsel. He also posited that establishing a *prima facie* case is not tantamount to proving the guilt of the defendant beyond reasonable doubt as required by law.

For his part, Olalekan Ojo, SAN argued in the 3rd defendant’s reply on points of law that where a defendant in a joint trial cross examined the witnesses called by one of the defendants and told the trial court that he [or it] will rely on the evidence of the defendant who gave evidence and called witnesses, it cannot be said that such a defendant has failed to call evidence at the trial. He relied on **Akomolafe v. Guardian Press Ltd. [Printers] [supra]** to support the view that calling of evidence is not exactly the same thing as calling witnesses. It was submitted that the evidence elicited under cross examination and the evidence of DW1 to DW4 constitute the evidence of 3rd defendant in the case.

From the submissions of Sir Odiase and the cases cited, the foundation of his views is that the 2nd defendant rested his case on the case of the prosecution. With due respect, this is not correct. As I said earlier in this judgment, at the close of the 1st defendant’s case, learned counsel for the

2nd defendant told the Court that the 2nd defendant will rely on the evidence of DW1 to DW4. The learned counsel for the 3rd defendant did the same. This is the peculiar fact that distinguishes this case from the cases relied upon by the prosecuting counsel.

Also, as rightly argued on behalf of the defendants, since 2nd defendant cross examined the witnesses for the prosecution, elicited evidence and tendered documents, it means that he adduced evidence even though he did not testify. In the case of **Akomolafe v. Guardian Press Ltd. [Printers]** **[supra]** @ 351, F-H, His Lordship, Hon. Justice Walter Samuel Nkanu Onnoghen, JSC [as he then was, and later Chief Justice of Nigeria] clearly stated the principle thus:

“It is settled law that evidence elicited from a party or his witness[es] under cross examination which goes to support the case of the party cross examining, constitutes evidence in support of the case or defence of that party. If at the end of the day the party cross examining decided not to call any witness, he can rely on the evidence elicited from cross examination in establishing his case or defence. In such a case, you cannot say that the party calls no evidence in support of his case or defence.

One may however say that the party called no witness in support of his case or defence, not evidence, as the evidence elicited from his opponent

under cross examination which are in support of his case or defence constitute his evidence in the case.”

Finally, learned counsel for the prosecution relied on the fact that the no case submissions made by the defendants were overruled by the Court. Be it noted that the quality of evidence required to establish a *prima facie* case is markedly different from the quality of evidence required to prove an allegation beyond reasonable doubt. It is trite law that in a no case submission, the Court is not required to evaluate the evidence adduced by prosecution in deciding whether a *prima facie* case has been made out. On the other hand, the Court is required to evaluate the evidence before it in order to determine whether the charge has been proved by the prosecution beyond reasonable doubt. Having scrupulously evaluated the evidence before the Court, I arrived at the decision that the prosecution failed to prove the charges against the defendants beyond reasonable doubt. There is no doubt that the decision applies to all the defendants since they are jointly charged in the 11 counts. My decision under Issue 3 is that the choice of the 2nd defendant not to testify personally did not amount to admission of guilt.

ISSUE 4

If Issues 1, 2 & 3 above are resolved against the prosecution, are the defendants entitled to the refund of the sum of N124 million which they paid to the EFCC in the course of investigation?

Now, having found that the prosecution failed to prove the charges against the defendants beyond reasonable doubt, are the defendants entitled to the refund of the sum of N124 million which they paid to the EFCC in the course of investigation?

The PW4 testified that the defendants refunded the sum of N124 million during investigation. DW3 explained the circumstance that led to the refund of the said sum. He stated that EFCC told them that while the matter was being investigated, they need to start making refunds. That was why they refunded a total of N124 million.

During cross examination of the 1st defendant [DW3] by learned SAN for the 2nd defendant, he stated that on each time they were invited to EFCC, it was a case of refund or they were detained. Each payment was accompanied by a letter; two of such letters are Exhibits 26 & 27. Exhibits 26 and 27 made it clear that the sums were paid *“pending the conclusion of your investigation without admission of any culpability of the allegations.”*

In concluding his evidence, the 1st defendant [DW3] prayed the Court to discharge and acquit them of the charges and order the refund of the “*borrowed money*” EFCC collected from them.

In paragraph 7.08 of the 1st defendant’s final address, E. G. Shaibu Esq. urged the Court to order the immediate refund of N124 million “*extorted under duress*” from the defendants in accordance with the Administration of Criminal Justice Act [ACJA], 2015. In paragraph 6.03 of the 3rd defendant’s final address, Olalekan Ojo, SAN urged the Court to acquit and discharge the 3rd defendant and make a consequential order for the refund of the sum of N124 million paid by the defendants to EFCC in the course of investigation in this case.

In the light of the decision of the Court that the prosecution failed to prove the guilt of the defendants beyond reasonable doubt, I hold the considered view that there is no basis or justifiable reason for the EFCC to continue to keep or retain the sum of N124 million belonging to the defendants. It is trite law that the Court has inherent powers to make consequential orders as the justice of the case may require. The purpose of a consequential order is to give effect to the decision or judgment of the Court. See Nyako v. Adamawa State House of Assembly [2016] LPELR-41822 [SC] and Awoniyi v. Registered Trustees of AMORC [2000] 10 NWLR [Pt. 676] 522.

I hold that this is an appropriate case for the Court to make a consequential order to give effect to the decision that the defendants are not guilty of the charges against them.

Also, section 341 of ACJA 2015 makes provision for restitution of property as follows:

Where, on the arrest of a defendant charged with an offence, any property, other than that used in the commission of the offence, is taken from him, the court before which he is charged may order that the property or any part of it be:

- [a] restored to the person who appears to the court to be entitled to it, and, where he is the person charged, that it be restored either to him or to such other person as he may direct; or*
- [b] applied to the payment of any costs or compensation directed to be paid by the defendant charged.*

I am of the considered view that by this provision, the Court has power to make an order for the sum of N124 million to be restored or returned to the defendants by the EFCC. I so order.

Conclusion:

All said and in conclusion, the verdict of the Court is that the defendants are not guilty of the allegations in the 11 counts of the Amended Information. The defendants are discharged and acquitted.

It is further ordered that the Economic and Financial Crimes Commission [EFCC] shall refund or pay to the defendants the sum of N124 million which was collected from them in the course of investigation on or before 31/12/2022.

HON. JUSTICE S. C. ORIJI
[JUDGE]

Appearance of Learned Counsel:

1. Sir Steve Ehi Odiase Esq. for the prosecution; with Elizabeth Alabi Esq.
2. E. G. Shaibu Esq. for the 1st defendant.
3. Olalekan Ojo, SAN for the 3rd defendant with Chidera Mgbe Esq.; and holds the brief of K. K. Eleja, SAN for the 2nd defendant.