

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT COURT NO. 4, MAITAMA ON THE**

**28<sup>TH</sup> DAY OF FEBRUARY, 2023**

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

**CHARGE NO. FCT/HC/CR/23/2017**

COURT CLERKS: *JOSEPH ISHAKU BALAMI & ORS.*

**BETWEEN:**

FEDERAL REPUBLIC OF NIGERIA ..... PROSECUTION

AND

MUSTAPHA UMAR MADAWAKI ..... DEFENDANT

**JUDGMENT**

The Charge against the Defendant dated 27/11/2017 is of 17 Counts. The Charge is a record of this Court. I do not intend therefore to reproduce the said Charge.

Counts 1, 2, 3, 4, 5 and 6 deal with the offence of forgery contrary to Section 362 (a) of the Penal Code while Counts 7, 8, 9, 10 and 11 relate to the offence of using as genuine a forged document contrary to Section 366 of the Penal Code Act Cap 532, Laws of the Federation of Nigeria (Abuja) 1990.

Counts 12, 13, 14, 15 and 16 deal with obtaining money by false pretences contrary to Section 1 (1) (a) of the Advance Fee Fraud and other Fraud Related Offences Act, 2006.

Count 17 is about attempt to obtain money under false pretence contrary to Section 8 (b) of the Advance Fee Fraud Act.

Section 362 (a) of the Penal Code under which the Defendant was charged in Counts 1, 2, 3, 4, 5 & 6 is as follows:

Section 362 (a)

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

Section 366 of the Penal Code under which the Defendant was charged in Counts 7, 8, 9, 10 and 11 states:

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

The Defendant was charged under Section 1 (1) (a) of the Advance Fee Fraud and Other Fraud Related Offences Act in Counts 12, 13, 14, 15 and 16. Section 1 (1) (a) of the Advance Fee Fraud states:

*“Notwithstanding anything contained in any other 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.”*

Count 17 is brought under Section 8 (b) of the Advance Fee Fraud and Other Fraud Related Offences Act. It states:

*“A person who  
(b) attempts to commit or is an accessory to an act or offence commits the offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act.”*

Forgery as in Counts 1, 2, 3, 4, 5 and 6 is committed when a document tells lie about itself. The offence is proved where the lie is exposed and confirmed before a Court.

See **NIGERIA AIRFORCE vs. JAMES (2002) 18 NWLR (PT. 798) 295 SC.**

The ingredients of forgery or altering are:

- (1) The Defendant forged a document.
- (2) He knew the document to be false.
- (3) He presented the said document to the other party with the intention that it could be acted upon.
- (4) The document was acted upon by the other party to his detriment. This ingredient is not always necessary once the 1<sup>st</sup> - 3<sup>rd</sup> ingredients are proved.

It is an act of making a false document or altering a genuine document for same to be used.

See **ADAMU vs. F.R.N (2021) LPELR-54598.**

**ODIAWA vs. F.R.N (2008) LPELR-4230.**

**ALAKE vs. STATE (1991) 7 NWLR (PT. 205) 567.**

Similarly the ingredients of the offence of using as genuine a forged document contrary to Section 366 of the Penal Code are:

- (1) The Defendant used as genuine a forged document.

(2) That the Defendant knew and had reason to believe that the document was forged.

(3) That he did so fraudulently or dishonestly.

See **MUSTAPHA vs. F.R.N (2018) LPELR-46565.**

On obtaining money under false pretence, the ingredients of the offence are:

(1) That there was a pretence.

(2) That the pretence emanated from the Defendant.

(3) That the pretence was false.

(4) The Defendant knew of its falsity.

(5) There was an intention to defraud.

(6) The thing is capable of being stolen.

(7) The Defendant induced the owner to transfer the property in question.

See **ENWUDIWE vs. F.R.N (2006) 10 NWLR (PT. 988) 382.**

**AMADI vs. F.R.N (2008) 18 NWLR (PT. 119) 259.**

The above ingredients need to be proved conjunctively and not disjunctively. The ingredients of the offence created in Section 8 (b) of the Advance Fee Fraud and Other Fraud Related Offences Act is similar to the main offence under Section 1 (1) (a) of the same Act.

In order to prove the 17 Count Charge against the Defendant, the Prosecution called five (5) witnesses. The first Prosecution witness is Remigius Ugwu, a Compliant Officer with Zenith Bank. He tendered Exhibits A - A4, four (4) original cheques of Zenith Bank. He further tendered Exhibits B - B2:

- (1) Account Opening Package and details of account. Appendix I.
- (2) Statement of Account from inception to date. Appendix II.
- (3) Certificate of Identification. Appendix III.

Certified True Copy (CTC) of Zenith Bank cheque dated 08/04/2014 for ₦40 Million.

That Exhibit B1 has the Defendant as signatory. His evidence is that the second account opening package has the Defendant and Abdulwaheed Umar as signatories. That both should sign which said account is 1013399671 - i.e. Exhibit B2.

He said the cheques were transferred to the beneficiaries. That the cheques were checked with the mandate of the customer. The signatories of the account owners and condition for payment were checked.

Under Cross-Examination, the witness said before the cheque was honoured, the teller confirms the signatories. That all

Exhibits A - A4 were paid. That they confirmed the signatories. He said he has been in the service of the bank for 13 years. He further said they confirmed by contacting the signatories.

Under Re-Examination, he explained that cheques were confirmed by contacting any of the signatories.

The 2<sup>nd</sup> Prosecution witness is Nga Ogar of PPPRA Building, Central Business District. He is a banker with Access Bank. He described himself as the Team Leader, Branch Compliance Officer in the FCT.

That in 2017, the EFCC wrote the bank requesting for Statement of Account, Account Opening Packages for three accounts viz:

- (1) Kriston Lally EPC Nig. Ltd
- (2) Kriston Lally EPC Nig. Ltd (NLC)
- (3) Kriston Lally EPC Nig. Ltd (NLC) fixed deposit

That they also requested for BVN and Certificate of Compliance. The witness tendered Exhibits E, E1, E2, E3(a), E3(b), E3(c) and E4, which are covering letter of Access Bank, Certificate of Identification, Account Opening Packages of Kriston Lally EPC Nig. Ltd, three (3) Statements of Account, copy of letter from Kriston Lally EPC Nig. Ltd dated 1/08/2014 titled "Transfer of interest into Kriston Lally EPC Limited."

That Exhibit E3 (b) is a current account. That the account name is Kriston Lally EPC Nig. Ltd. That the transaction of 7/02/2014 is an inflow of ₦2.5 Billion from Zenith Bank. That Exhibit E3 (c) is a fixed deposit account. The name of the account is Kriston Lally EPC Nig. Ltd (NLC Project).

The transaction of 10/02/2014 moved the ₦2.5 Billion from the current account to the fixed deposit account, i.e. from Exhibit E3 (b) to Exhibit 3 (c). That the accrued interest as at 31/07/2014 was ₦57,717,350.59k (Fifty-Seven Million, Seven Hundred and Seventeen Thousand, Three Hundred and Fifty Naira, Fifty-Nine Kobo).

Exhibit E4 is a letter of request to transfer the interest on the fixed deposit account. Exhibit E3 (a) is a Kriston Lally EPC account. It does not have NLC Projects. The instruction to transfer was not honoured because the second signature was irregular. The name of the second signatory is Abdulwaheed I. Umar.

Under Cross-Examination, he answered that one Account Opening Package serves the three accounts. That two of the accounts have NLC Project while the third does not have. That the account numbers are also different. The one that does not



have NLC Project has the Defendant as the sole signatory while the others are operated by the Defendant and Abdulwaheed Umar. See Exhibit E2.

To a question, he said there are no account number and account name on the mandate card.

The 3<sup>rd</sup> Prosecution witness is Agweye Benedict. He works in the EFCC at Plot 301/302 Institution and Research District, Abuja. He described himself as a Forensic Document Examiner. He is a staff of the EFCC.

That sometime on 24/02/2015, he received a letter of request from one Abdul Suleiman, Head Intelligence and Special Operation Section of the EFCC with an attachment of two categories of documents:

- (1) Disputed documents, i.e. Zenith Bank cheque leaflets.
- (2) Non-Specimen handwriting and signatures.

That the nature of the request is contained in the letter. It is to determine whether or not the author of the non-specimen signature on the document also made the handwriting and signatures on the disputed documents. He commenced analysis using three methodologies.

At the end, he formed an opinion which he reduced into a report that the author of the non-specimen signatures and handwriting on the documents marked B - B10 also made the handwriting and signatures of one of the authorized signatures on the disputed document marked X - X4 while the author of the non-specimen signatures and handwriting marked A - A26 also made one of the authorized signatures on the document marked X and not on the other documents marked X1 - X4. That Exhibits A - A4 are the documents he referred to as X - X4.

The witness tendered Exhibit F which is the Forensic Document Examination and Comparison Report dated 20/04/2015 with attachment and appendixes. That Exhibit A is authored by the author of non-specimen signature marked A - A26.

That the author of A - A26 did not sign Exhibits A1, A2, A3 and A4. The author of the non-specimen signature and handwriting marked B - B10 made the writing and second signature on Exhibits A1, A2, A3 and A4. He cannot remember the name of the second authorized signature.

The 4<sup>th</sup> Prosecution witness is Abdulwaheed Ibrahim Umar. He is a retiree. In 2013 he was the President of the Nigerian Labour Congress.

That sometimes in 2013, the Defendant was introduced to him by one of his deputies as an entrepreneur. That he has a project with Nigerian workers working in partnership with foreign partners/financiers to construct affordable houses for workers on instalmental payment basis.

The condition is that every subscriber will deposit 10% of the cost of the house which will only be withdrawn by the financier on delivery of the house.

He introduced the Defendant to the National Executive Council of the NLC where Defendant explained the whole concept. It was endorsed by the National Executive Council of the Congress. A Committee was set up to liaise with him on the modalities of the project.

They also jointly put up adverts and opened a joint account which is Kriston Lally/NLC Project account. That subscribers kept depositing monies in the joint account. They were also paying money for the forms in a separate account. Both accounts were opened in Zenith Bank. That the money for the form is exclusive to Defendant. It was his own personal account.

In February, he came to NLC to say there is a problem in Zenith Bank. That Zenith Bank reneged in its promise to issue bank

guarantee that would enable financiers to bring in money. They asked for solution. -

He said Access Bank has already agreed to cooperate. The Defendant raised a cheque. Two of them signed and the Access Bank account was opened. It is Kriston Lally/NLC account.

In 2014 while he was in the USA, he got a call from his office that Access Bank wanted him to confirm the authorization of transfer of the accrued interest on the said account to an unknown account.

On his return, they went to Access Bank where they were shown an authorization letter purported to have been signed by two of them, i.e. himself and Defendant. He was not aware of it and never signed it. It prompted them to visit Zenith Bank.

On-going through the printed Bank Statement, he discovered that some withdrawals and transfers were not to his knowledge and cheques he never signed. They requested to see the instruments used in the withdrawals.

Some cheques were brought out. Only the cheque of ₦2.5 Billion was recognized as having been signed by him. That the other

instruments purported to be signed by him were not signed by him. That prompted NLC to report the matter to EFCC.

He made a Statement to EFCC. He was also shown some cheques which he never signed. He was also shown a purported authorization letter instructing the bank to move the interest from Kriston Lally/NLC account to an account unknown to him.

He explained that he never signed the authorization letter. His signature was forged on it. He was also made to sign specimen signatures in several places on a plain sheet of paper and on plain cheques.

The Statements of the witness to EFCC are Exhibits G and G1. That Exhibit E4 is the alleged authorization he did not sign. That his signature in Exhibits G and G1 are different from the signature in Exhibit E4 which is not his signature.

That Exhibits A - A4 and C are the cheques he was shown in Zenith Bank. It is only the cheque bearing ₦2.5 Billion which is Exhibit A that he signed. He did not sign the rest.

That his signature in Exhibits G and G1 are not the same as the signatures on Exhibits A - A4. That Exhibit C is also not his

signature. That specimen signatures A - A26 attached to Exhibit F are his.

The witness said in evidence that there was a Memorandum of Understanding between Defendant and NLC. That he takes the said memorandum as the contract. He cannot recall NLC contributing anything. That the joint account are subscribers' deposits which are not meant to be touched until the houses are delivered.

The Defendant got land which the NLC is aware of. Nobody contacted him for the confirmation of the cheques. That it is the forgery that prompted them to report to DSS and EFCC.

The fifth Prosecution witness is Abubakar Buba. He works as an operative with EFCC. He got to know the Defendant by virtue of a Petition written and signed by one Adiza Afegbua and two others to EFCC alleging criminal conspiracy, diversion of public funds and obtaining money by false pretence against the NLC and a private developer Kriston Lally EPC Nig. Ltd for which the Defendant is standing trial as a Group MD and CEO.

That the Defendant conspired with NLC to defraud them to the tune of ₦15 Million under the guise of providing them affordable houses.

Upon receiving the Petition, the team wrote letter to Access and Zenith Banks. The team received responses. Upon analysis of the Statement of Account, the team realized that the Defendant withdrew the sum of ₦104 Million out of the project account.

The team also analysed the personal account of the Defendant and found that subscribers were making payment into his personal company account which was unusual.

In order to protect subscribers, a Post-No-Debit was placed on the accounts. The Defendant's company, Ergas benefited about ₦40 Million from the ₦104 Million that was withdrawn from the project account of NLC and Kriston Lally. The PW4 said he did not sign the above cheque transferring the said sum to Ergas.

That in his presence, the Defendant volunteered a Statement in writing. On 23/03/2015, he volunteered another Statement. He cautioned him personally and reduced his words of caution in writing. He was no longer in custody when the said Statement was made.

That on 24/03/2015, he volunteered a further Statement. That the specimen signature of PW4 was obtained. They are marked A - A26. The Defendant's signatures were also obtained and

marked B - B10. They had before then obtained the originals of the instruments of withdrawal from the project account.

That five original cheques were forwarded to them with one of the cheques having the sum of ₦2.5 Billion which represented the total of subscribers' funds as at 2014/2015. Three of the other cheques had the sum of ₦10 Million each.

The last cheque had ₦25 Million. They wrote to the Forensic unit together with the specimen signature obtained from the Defendant marked B - B10 and from PW4, Abdulwaheed Ibrahim Umar marked A - A26 and the original Zenith Bank cheque of ₦2.5 Billion marked as X and the remaining four cheques marked X1 - X4.

The report of the analysis was sent back to them. The analysis is that the signature of PW4, Abdulwaheed Umar on documents marked A - A26 was forged on Zenith Bank cheques marked X1 - X4 by the Defendant. But on specimen signature marked X both PW4 and Defendant signed. There was therefore no dispute.

They found that the Defendant presented the forged cheque of N10 Million for payment. The Petition written to EFCC is Exhibit H. The Statement of the Defendant as Exhibits J - J2.



Under Cross-Examination, he said withdrawal without consent is not contained in Exhibit I, the Memorandum of Understanding. That the banks did not say that Exhibits A1, A2, A3 and A4 are forged. They did not write on the face of the cheques that the signature on the cheques is irregular.

In paragraph 17.0 of Exhibit I, disputes are to be resolved through a dispute resolution mechanism.

It is not stated that subscribers' funds cannot be used for the execution of projects. He cannot confirm if Exhibit C was forwarded to the Forensic Examiner. The witness answered that Exhibit A - A4 were payments made to property owners.

That investigation revealed that the Defendant and his company made attempt to acquire land with subscribers funds without the knowledge and consent of NLC. That Exhibit A is signed by PW4. Specimen signature A - A26 were signed by Abdulwaheed Umar, PW4 in his office. That they obtained the mandate card of PW4. That it was also forwarded to the Forensic Team but there is nothing to prove that assertion.

That Exhibit F is the Forensic Report. It is not correct that specimen signature A - A4 was photocopied in four places. Exhibits A5 - A16 attached to Exhibit F are not the documents photocopied.

Signing a signature and photocopying same into ten places to give an impression of consistency may not be fraudulent. That there was no withdrawal of N40 Million in a single transaction. There was also no withdrawal of ₦25 Million in one transaction. There was no withdrawal of ₦57,717,350.59k in one single transaction.

The recipient of the ₦10 Million of 25/09/2013 is Patrick Agbe. The transaction of 20/12/2013 which is ₦10 Million was payment to Abdulfatai & Co. He is not standing trial before this Court.

Exhibits A - A4 do not show on the face of them that signature is irregular. It is also not indicated that the signatures are forged. That there was nowhere in Exhibits E - E4 where the Defendant presented, withdraw or took benefit of ₦57,717,350.59k in the transaction. There is no complaint from Kriston Lally that its instrument was forged. That it was in the course of investigation that PW4 said in his Statement that ₦104 Million was removed. That he complained his signature was forged. They therefore commenced investigation on the forgery.

That before then, there was no complaint on Exhibits A - A4. They are not made payable to the Defendant. The Statement of Agweye Benedict is Exhibit K. That the ₦104 Million was paid to land owners. The above is the case of the Prosecution.

The Defendant opened his defence and gave evidence on his own defence. He is Mustapha Umar Madawaki of 12/14 Karim Lamido Street, Madawaki. He is a businessman and a politician. He denied knowing the Nominal Complainant who wrote a Petition against him. He does not know the writers of Exhibit H, they are all staff of EFCC. They are not subscribers of the project. They never contributed money. They are simply agents of destruction hired by EFCC against him.

That none of the Nominal Complainants testified against him. That in respect of Count 1 - 6, he did not forged any document. That the Counts are all false. That he never withdrew any money as charged.

That when NLC failed to provide land, he decided to buy land for the project. That Kriston Lally is a legal entity. That funds expended are for the project. He never withdrew or benefited from the money.

That he did not forge Exhibit C, A1, A2, A3 and A4. That PW4, Abdulwaheed is a very dishonest man. That he duly signed all those cheques. That account officer said he confirmed and verified the signature of Abdulwaheed Umar otherwise payment would not have been made.

PW3's evidence, the Forensic Examiner, Benedict Agweye is a continuation of the conspiracy. That EFCC generated Exhibit H. He is a staff of the EFCC. That he lied to this Court.

That he did not forge Exhibit E4. The letter is written signature irregular on the face of it.

In Count 7 - 11, he was charged for using a forged document as genuine. He did not forge any document.

In respect of Count 12 - 17, obtaining money under false pretence, he said he did not withdraw any money as charged. He did not benefit. Kriston Lally paid the money to land owners for the purpose of acquiring land.

No Director of Kriston Lally accused him of embezzlement. That he had a Memorandum of Understanding with NLC. In the Agreement, NLC was to provide land and encourage their workers to subscribe. He was to provide funding and bring in competent construction companies to do the construction work. NLC failed to provide land.

Kriston Lally with Abdulwaheed went out to look for land. They entered into agreement and made payment to land owners to

the tune of ₦104 Million. Kriston Lally did not have the cooperation of NLC. When he told them that subscribers' fund was now over ₦1 Billion, they set up a committee and technically took over the operation of the business from him.

They wanted him to transfer the subscribers' money to them, i.e. NLC. He refused because the money was paid into Kriston Lally account and Kriston Lally is responsible for the safety of the money. They initially used DSS against him.

PW4 said they should get down to iron out the issues. The meeting was to take place at Transcorp Hilton by the swimming pool not knowing that DSS was already there. He was arrested along with him. At their headquarters, PW4 was released while he was detained till 11.00 p.m.

They tried to force him to accept that he withdrew ₦104 Million which he refused to accept. They chained him. His lawyer filed a fundamental human right application. The case was transferred to EFCC which persisted the money should be transferred to them and he refused.

The money was as at then about ₦3 Billion. They are subscribers' fund. The EFCC threatened him. They detained him for about four to five days.

The land owners came to EFCC. He also submitted all the Memoranda of Understanding in respect of the land agreements. They wrote statement to EFCC.

Exhibit I is the Agreement. It says Exhibit I says the mechanism for dispute resolution is the arbitration. The subscribers went to Court. He also appeared before the Court. There was a Settlement Agreement. The Settlement Agreement is Exhibit L. It formed the Judgment of the Court. The Judgment is Exhibit M.

All subscribers were paid their funds. No single subscriber complained. He does not know PW5. That it is Kris that investigated the matter. He is trying to survive the conspiracy against him.

He urges the Court to discharge and acquit him. Each time he wants to bring development, he finds himself in trouble.

Under Cross-Examination, he stated that DSS did not ask him to transfer money to them but to NLC. He said Exhibit H was written by EFCC officials.

To a question, he said he has no knowledge of the attachments to Exhibit H. He answered that he is a signatory to Kriston Lally

account. The cheque booklet was in the custody of the company. He did not present the cheque to the bank but the beneficiary.

He admitted presenting Exhibit A to transfer the said sum of ₦1.5 Billion. That Exhibit A1 was issued by him. That he presented the cheque in the belief that the cheque was duly signed by me and the second signatory.

He also admitted that he issued Exhibit A3 to the Ergas in the belief that the cheque was duly signed. That Ergas is a subsidiary of Kriston Lally. That he is a Director.

He also admitted issuing Exhibit A2. He believed it was duly signed. He also issued Exhibit C in Exhibit J. That Exhibit E4 is the signature of Abdulwaheed Umar (PW4), which the bank said is irregular.

That Exhibits A1, A3 and A4 are payment for land. That Ergas is responsible for transferring money meant for land to the land owners. That is the case of the Defence.

Parties were ordered to file Written Addresses. The Defendant's Final Written Address is dated 28/11/2022. He canvasses that

the case against the Defendant is that of persecution and not prosecution.

That the Nominal Complainant who triggered the investigation through Exhibit H never testified against the Defendant. That all subscribers' funds were returned. That all the ₦104 Million expended by the Defendant's company in acquisition of land for the project was the Defendant's company funds. The Directors and shareholders are not complaining of any missing funds.

The Defendant's Counsel raised three (3) issues for determination. Learned Counsel submits that the Prosecution failed to prove beyond reasonable doubt the offence of forgery against the Defendant in Count 1, 2, 3, 4, 5 and 6 of the Charge.

- (1) That Defendant fraudulently forged the signature of Abdulwaheed Umar.
- (2) That the forgery was for the withdrawal of specific sums of money.

That the Prosecution is duty bound to prove all the elements it included in the particulars of the offence charged whether or not the statute creating the offence included such elements or not.



Learned Senior Counsel submits that the Prosecution failed to prove that the Defendant forged any bank instrument as charged. The Prosecution also woefully failed to prove that the Defendant used the bank instruments for withdrawal of money.

That PW1 said in evidence that the signatories of account owners were checked. That the instrument were confirmed by contacting the signatories. That PW4 lied under oath when he said his signature was forged.

That Prosecution failed to prove that the Defendant withdrew the sums alleged in Count 1 - 5. The sums were payment to land owners. They are for transfer of funds to third parties.

That the withdrawal element forming part of the particulars of Count 1 - 5 is not proved. The company whose cheques were alleged to be forged never complained that its cheques were forged.

The admission of PW5 is that there was no withdrawal of ₦40 Million on each of the dates. That there was also no withdrawal of ₦10 Million each on 25/09/2013 and 20/12/2013 and ₦25 Million in a single transaction show that the trial is an exercise in witch-hunting. He argues that Count 1 - 5 must fail.

That PW3, the Forensic Examiner did not mention Exhibit E4. There is no evidence suggesting that Exhibit E4 was forged. That on the face of it is written Signature 2 irregular, transaction not treated.

Irregular signature does not gravitate to forgery. PW5 in evidence says irregular signature is not a crime. That there is a difference between a forged signature and an irregular signature. That the Prosecution has failed to prove Counts 1 - 6 of the Charge.

That in Exhibit K, PW3 was not given specimen signature B - B10 for forensic investigation. That marker of specimen B - B10 signed only one of the authorized signatures on the disputed documents marked X - X4.

That in Counts 7 - 11, the Prosecution failed to prove the ingredients of the offence beyond reasonable doubt. Even if it succeeds, fraudulent and dishonest use of the documents was not proved. The evidence is that Defendant did not take any personal benefit but was used to purchase land.

In respect of Count 12 - 17 of the Charge, Learned Senior Counsel submits that the Prosecution failed to prove the offences beyond reasonable doubt.

There was no evidence of pretence. The Defendant cannot steal from himself. All subscribers' funds were returned without any iota of complaint. The funds alleged to have been obtained by false pretence belong to the Defendant.

The Court is urged to resolve all issues in favour of the Defendant and discharge and acquit him.

The Prosecution's Written Address which he adopted as his Final Written Argument is dated 4/11/2022 but filed on the 9<sup>th</sup> of November 2022. He posited one (1) issue for determination. It is: *Whether from the evidence adduced by the Prosecution, the Prosecution has discharged the burden on it by proving the offences beyond reasonable doubt.*

Learned Prosecuting Counsel submits that from the totality of evidence adduced at the trial and exhibits tendered, the Prosecution has proved its case against the Defendant as required by law. That all essential elements of the offence have been proved.

That the offence of forgery is committed when a person is said to make a false document. That the onus is on the Defendant to prove that Exhibits A1, A2, A3, A4, L and E4 were duly signed by PW4. The Defendant was in custody of the cheques. The Defendant has failed to discharge the said onus.

Learned Prosecuting Counsel urges the Court to convict and sentence the Defendant. That a person who uses or possesses or deals with a forged document is guilty of forgery. That where exhibits point unequivocally to the guilt of an accused, forensic evidence on same is unnecessary.

On Counts 12 - 17, false pretence means a representation whether deliberate or reckless made by word, in writing or conduct of a past or present which representation is false in fact or in law and which the person making it knows to be false in fact or does not believe to be true.

He submits that the Prosecution has also proved obtaining money under false pretences as contained in Count 12 - 17. That Defendant took and used Exhibits A1, A2, A3, A4 and C which he issued and presented to Zenith Bank as genuine, when he knew that PW4 did not sign them as a co-signatory. He further urges the Court the Court to convict the Defendant on Counts 1 - 11.

I have also read and considered the Defendant's reply to the Prosecution's Final Written Address. The Petition that ignited the investigation which led to the Charge before this Court is Exhibit H. It is dated 26/01/2015. It is titled "Compliant of Fraud Against the Nigerian Labour Congress (NLC) and Kriston Lally Nig. Ltd." It is signed by four officials of the EFCC namely: (1) Hadiza Afegbua (2) Yusuf Musa (3) Babangida Hamman (4) Yusuf Umar.

Their Charge to the Commission as contained in the last paragraph of Exhibit H is to investigate the fraud as many unsuspecting members of the public have fallen victims to it and help recover their hard earned monies from the NLC a body which ought to protect the interest of the Nigerian workers but has turned to defrauding them.

The Prosecution therefore on the 27<sup>th</sup> of November 2017 filed a Charge of 17 Counts against the Defendant. The Charge is part of the record of this Court. I shall therefore not border to reproduce same.

Counts 1 - 6 deal with forgery contrary to Section 362 (a) of the Penal Code. Counts 7 - 11 is using as genuine a forged document contrary to Section 366 of the Penal Code while Counts 12 - 17 of the Charge deal with the offence of obtaining money under

false pretences contrary to Section 1 (1) (a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

Section 362 (a) of the Penal Code states:

*“A person is said to make a false document (a) who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document or makes any mark denoting the execution of a document with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was signed, sealed or executed.”*

By Section 364 of the Penal Code:

*“Whoever commits forgery shall be punished with imprisonment for a term which may extend to 14 years or with a fine or with both.”*

Forgery or making a false statement is the fraudulent making of a writing with intent to defraud or deceive. The tendering of forged document *simpliciter* is not per se the altering or forgery; it is the content that harbour forgery or altering.

See **NWOSU vs. STATE (2004) 15 NWLR (PT. 897) 466.**

To prove the offence, the Prosecution is enjoined amongst others to prove the following:

- (1) That there is a document or writing.
- (2) That the document or writing is forged.
- (3) That the forgery is by the Defendant.
- (4) That the Defendant knows that the document or writing is false.
- (5) That he intends the forged document to be acted upon.

The Counts 7 - 11 is using as genuine a forged document. So once the document is adjudged to be forged and he is proved to have used it, the offence is proved.

Counts 12 - 17 is obtaining money under false pretence. The ingredients of the said offence under Section 1 (1) (a) of the Advance Fee Fraud and Other Fraud Related Offences Act are:

- (1) That there was a false pretence by the Defendant.
- (2) The false pretence is with the intention to defraud.
- (3) The Defendant obtains from any other person.

The particulars of Count 1 is as follows:

*“Mustapha Umar Madawaki, being one of the signatories to Kriston Lally EPC Nig. (NLC Project Account) No. 1013399671 domiciled in Zenith Bank PLC on or about the 8<sup>th</sup> day of April, 2014 at Abuja in*

*the Abuja Judicial Division of the High Court of the Federal Capital Territory did fraudulently forged the signature of one Abdulwaheed Ibrahim Umar on a Zenith Bank PLC cheque No. 88848328 dated 08/04/2014 for the withdrawal of the sum of N40 Million with the intention of causing it to be believed that the said cheque was jointly signed by you and Abdulwaheed Ibrahim Umar who you know did not sign it and thereby committed an offence.”*

The standard of proof is beyond reasonable doubt. By Section 135 (1) of the Evidence Act:

*“If the commission of a crime by a party to any proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt.”*

The burden is on the Prosecution to prove the offence or charge beyond reasonable doubt.

In proof of the Charge, the Prosecution called five (5) witnesses. I have earlier in this Judgment reproduced the evidence of the witnesses but for the avoidance of doubt, I shall summarise same again.



The PW1 is Remy Remigus. He is a Compliant Officer with Zenith Bank PLC. He tendered five (5) original cheques of his bank:

- (1) Cheque dated 04/02/2014 for ₦2.5 Billion.
- (2) Cheque dated 20/06/2014 for ₦25 Million.
- (3) Cheque dated 14/04/2014 for ₦10 Million.
- (4) Cheque dated 25/04/2014 for ₦10 Million.
- (5) Cheque dated 23/06/2014 for ₦10 Million.

The above are Exhibits A - A4. The witness also tendered the account opening details and Statement of Account of Kriston Lally EPC/NLC account as Exhibits B1 and B2. Certified True Copy of Zenith Bank cheque for ₦40 Million is Exhibit C.

In Exhibit B2, the Defendant and PW4 are signatories. That on the transaction of 9/04/2014, there is a transfer of ₦40 Million from Kriston Lally to Lifewin Property & Investment. The cheque is Exhibit C.

That Exhibit A1 for ₦25 Million was transferred to Ergas Engineering Ltd.

Exhibit A2 dated 16/04/2014 is also for a transfer to Lifewin Properties.

Exhibit A3 dated 25/04/2014 was a transfer of ₦10 Million to Ergas Engineering Ltd.

Exhibit A4 is also a transfer of ₦10 Million to Ergas Engineering Ltd.

The evidence is that the cheques were transferred to beneficiaries. The witness said the cheques were checked with the mandate of the customer. That the signatures of the account owners and condition for payment were checked.

Under Cross-Examination, the witness answered that before a cheque is honoured, the teller confirms the signatures. That all Exhibits A - A4 were paid. He insisted they confirmed the signatures. He said emphatically again, “In this case, I confirmed the instruments.”

The PW2 is also a banker with Access Bank. He tendered the account opening package of Kriston Lally EPC account, three (3) Statements of Account and copy of letter from Kriston Lally EPC Nig. Ltd dated 1/08/2014 titled: Transfer of Interest into Kriston Lally EPC Ltd” which are Exhibits E2, E3(a) - (c) and E4.

He stated that the transaction of 7/02/2014 is an inflow of ₦2.5 Billion from Zenith Bank. There is no contention in respect of this transaction except Exhibit E4 the letter of request for the transfer of interest on the fixed deposit account. The evidence

is that the request to transfer was not honoured because the second signature was irregular.

The 3<sup>rd</sup> Prosecution witness is Agweye Benedict, the Forensic Document Examiner. His report is Exhibit F. He is also a staff of EFCC just as the Nominal Complainant who instigated the investigation.

The PW4 is the former President of the NLC. He testified that signatures on Exhibits A1 - A4 are his. He denied the signature in Exhibit C. That he admitted that he signed Exhibit A.

I have also earlier reproduced the evidence of PW5, an Operative of the EFCC. He narrated the investigation activities carried out by his team. He narrated how funds were withdrawn from the project account totaling N104 Million using six Zenith Bank cheques.

He obtained the Statement of the Defendant. He obtained his specimen signature marked A - A26. The Defendant specimen signature was also obtained for investigation and analysis - Exhibits B - B10. That all the above were sent to the Forensic Document Examiner.

The question therefore is whether the Prosecution has proved all the elements of the offences charged to enable the Court hold that it has proved its case beyond reasonable doubt.

I have earlier reproduced the element of the offence of forgery. I agree with Learned Counsel to the Defence and of course, I have no choice that the Prosecution has an additional duty to prove not only the element of the offences as created by statute but the particulars of the offence as charged.

I have perused Counts 1 - 6. The new particulars in the said Counts are:

- (1) “Fraudulently forged”. The Prosecution must prove that the Defendant fraudulently forged the Exhibits A1 - A4 and Exhibit C.
- (2) The cheques must be fraudulently forged for the purpose of withdrawing ~~₦~~40 Million, ~~₦~~10 Million as contained in Counts 2, 3, 4 and ~~₦~~25 Million.

In Counts 7 - 11, the additional burden on the Prosecution is to prove the new element created by the offence which is “fraudulently use as genuine a forged document.” In essence, the Prosecution must prove that the Defendant fraudulently use as genuine a forged document.

In Counts 12 - 17, the Prosecution must prove intention to defraud as an element of the offence and same must be proved.

In **CHIEF OLABODE GEORGE vs. F.R.N (2013) LPELR-21895 SC**, the Supreme Court held following its earlier decision in **AGUMADU vs. THE QUEEN (1963) 1 ANLR 203** thus:

*“It should be stressed that the correct statement of the law as pronounced by this Court in AGUMADU vs. STATE (supra) is that the Prosecution must prove the offence as charged irrespective of the provisions of the statute creating the offence.*

*Once the Prosecution made intention to defraud an element of the offence, they must prove same. They cannot be heard to say that it is not an element in the statute creating the offence.”*

By Section 17 of the Penal Code Act, a person is said to do a thing fraudulently or with intent to defraud who does that thing with intent to deceive and by means of such deceit to obtain some advantage for himself or another or to cause loss to any other person.

The second signature in Exhibits A1 - A4 and Exhibit C is the signature alleged to have been forged. Exhibits A1 is a Zenith

Bank cheque for ₦25 Million. On the face of it are two signatures. On the right hand corner of the cheque, the Manager wrote *“Ok to treat, reconfirmed by Busola Hannah 01/07/14 (Mgr). One signatory present.”*

On Exhibit A2, a cheque for ₦10 Million. On the right hand corner is written the word “Ok”. It is dated 16/04/2014.

Exhibit A3 is dated 25/04/2014. It is also for ₦10 Million. On the top right hand side is written “Reconfirmed, Hannah Busola”.

Exhibit A4 is a cheque for ₦10 Million dated 23/06/2014. At the top right side is written “Confirmed by Branch Head”.

Exhibit A1 - A4 are made payable to Ergas Engineering Ltd while Exhibits A2 and A3 are made payable to Zenith Bank with an instruction to transfer the said funds to Lifewin Properties and Investment and Ergas Engineering Nig. Ltd respectively.

The cheques the subject of this Charge, i.e. Exhibits A1 - A4 were tendered by PW1.

In Exhibit B2, there is a transfer of ₦40 Million by Defendant to Lifewin Properties and Investment. The Court’s copy of the cheque is Exhibit C.

In PW1’s testimony in evidence-in-chief, he said:

The cheques were transferred to beneficiaries. The cheques were checked with the mandate of the customer. The signature of the account owners and the condition for payment were checked.

Under Cross-Examination, he said:

Before the cheque is honoured, the teller confirms the signatures. All the Exhibits A - A4 were paid. We confirmed the signatures.

On further Cross-Examination, he said he has been in the service of the bank for 13 years. That they confirm by contacting the signatories.

He said further emphatically, *“In this case, I confirmed the instruments.”*

PW2 tendered amongst others Exhibit E4, a letter of request to transfer interest on fixed deposit account. PW2 in his evidence said the said instruction on the said letter to transfer interest was not honoured. PW2 said pointedly *“The instruction to transfer was not honoured because the 2<sup>nd</sup> signature was irregular.”*

It is apparent the evidence of PW3, PW4 and PW5 contradict the evidence of PW1, the primary source of Exhibits A - A4 and C. The PW1 and PW2 did not give evidence of an iota of forgery.

The PW3, the Forensic Document Examiner in his report said the signature of PW4 was forged on the said Exhibits A1 - A4 and C, which PW5 relied upon in his investigation. PW3 and PW5 and the Complainants are all staff of the Economic and Financial Crimes Commission.

The PW1 did not identify the cheques as forged. I can also not find anything on the face of the said exhibit as cheques that were forged. They were all confirmed and authenticated.

In Exhibit E4, the signature of the PW4 was said to be irregular. The law is that an irregular signature is one in which the features are not regular.

See **ODUNEWU vs. MARTINS (2011) 8 NWLR (PT. 1250) 574 at 588.**

It is clear that the evidence of PW1 and PW2 contradicts the evidence of PW3, PW4 and PW5. PW4 was the President of NLC also was indicted in Exhibit H as those who defrauded subscribers. PW4 was the head of NLC at the time. I shall be careful in weighing his evidence.



If the Zenith Bank and Access Bank on which the cheques were drawn did not see any forgery, I wonder what the problem could be. This Court cannot therefore pick and choose which evidence to believe and which one not to believe.

The ingredient of the offence as contained in the particulars “fraudulently forged” is not proved. There is no evidence to suggest that the Defendant issued and presented the cheques Exhibits A1 - A4 and C and E4 with intent to deceive and by means of such deceit to obtain some advantage for himself or another or cause loss to any other person.

The evidence is that the Defendant did not obtain any benefit. The funds were transferred to land owners for the purchase of land.

There is also uncontroverted evidence that the subscribers were all refunded their deposits. There was no gain and there was also no loss to anyone. In the circumstance, this particular of the offence was not proved and I so hold.

The Prosecution also failed to prove withdrawal of the various sums in Counts 1 - 5. The Chambers 21<sup>st</sup> Century Dictionary defines “withdrawal” as a removal of funds from a bank account

while a transfer is to move from one place, person or group to another.

In the instant case, the funds were not removed but transferred to another account. It is my view and I so hold that the Prosecution also failed to prove withdrawal.

Since forgery is not proved, Counts 7 - 11 fail.

In totality, the Prosecution failed to prove Counts 1 - 11 beyond reasonable doubt and I so hold.

As regards Counts 12 - 17, there is no iota of evidence from the Prosecution witnesses of the Defendant's intention to defraud neither is there evidence to suggest that he induced subscribers to part with their properties.

The funds are not Zenith Bank funds as could be found in the particulars of the Charge. The funds are actually depositors/subscribers' funds, which Zenith Bank was holding in trust.

The beneficiaries are artificial persons and not the Defendant. None of the subscribers gave evidence that their funds were obtained under false pretence. The Defendant did not obtain as

it were. In the circumstance, Counts 12 - 17 also fail like a pack of cards.

In totality, the Prosecution fails to prove the 17 Count Charge against the Defendant beyond reasonable doubt and I so hold.

I have also taken time to painstakingly read the Defence of the Defendant. I am persuaded by that evidence. The Prosecution did not find any iota of truth in the Exhibit H, the Petition which ignited the Charge. None of the four Petitioners was called to testify.

Having found nothing, the Economic and Financial Crimes Commission veered off to investigate forgery which led to the present Charge. However, having failed to prove the Charge beyond reasonable doubt, I shall say no more.

The Defendant is found Not Guilty. He is therefore accordingly discharged and acquitted.

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**HON. JUSTICE U. P. KEKEMEKE**  
(HON. JUDGE)  
28/02/2023

Defendant absent.

Y. Y. Tarfa, Esq. for the Prosecution, holding the brief of

T. N. Ndifon, Esq.

J. C. Njikonye, SAN for the Defendant with me is L. O.

Samuel, Esq.

**COURT:** Judgment delivered.

(Signed)  
**HON. JUDGE**  
28/02/2023