

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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

ON FRIDAY, THE 3RD DAY OF JULY, 2020

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

JUDGE

SUIT NO.: FCT/HC/CR/29/15

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIACOMPLAINANT

AND

ADEKUNLE ADEBOWALE..... DEFENDANTS

JUDGMENT

Adekunle Adebowale was Charged with 3 Count Charge which is:

1. That he sometime in January 2012 and December 2013 forged 79 piece of Documents captioned Access Bank Deposit slips filed in favour of Nig. Institute of Building A/C No. 0044605391 and did commit an offence which is contrary to Section 362(a) and punishable under Section 364 of the Penal code.
2. That he between the same period forged 79 documents of Access Bank slip filed in favour of the Nig. Institute of Building herein after called the (Institute) in the Account No. 0044605391 –herein after called the account and caused the

said documents to be used as genuine and therefore allegedly committed the offence contrary to Section 366 and punishable under section 364 of Penal code LFN 1990.

3. He is also Charged with committing an offence within same period as an Accountant of the Institute and in that capacity did dishonestly misappropriate the sum of N2,451,900.00 (Two Million, Four Hundred and fifty one thousand, nine hundred naira only) which was part of the money he was entrusted to receive on behalf of the Institute and thereby committed an offence contrary to section 308 punishable under section 309 of the same Act.

The Prosecution called 4 witnesses while the Defendant testified in person as Defence witness. At the close of their respective cases the Defendant filed his Final Address and raised an issue for determination which is:

“Whether the Prosecution has proved three Counts of Forgery, using as genuine forged document and criminal misappropriation against the Defendant beyond reasonable doubt”.

The Defendant submitted that the Prosecution has not proved the Charge which deals with forgery against the Defendant beyond reasonable doubt. That prosecution failed to prove the allegation of forgery and misappropriation. As such the burden still remains with them. Since the Defendant in this case did not raise issue of Insanity. He referred to the case of:

Osuagwu Vs State (2017) All FWLR (PT.872) 1475 @1512

They have not proved the ingredient of the said offence beyond all reasonable doubt. He referred to:

Bello Vs C.O.P (2018) 2 NWLR (PT.1603)267

That by the testimony of PW4, the documents was not forged but that the stamp in the document was forged. The document in question is Exhibit A 1-85. That the stamp used by the banking spherical while in A 1-85 is rectangular. That the stamp was not found on the Defendant when a search was conducted. That the Prosecution did not tender any stamp spherical or rectangular. That the Exhibits tendered as slips were more than the 79 referred to in Count No.1. that Prosecution failed to present before the Court the said documents allegedly forged. That its not the duty of the Court to sieve through the bundle of documents to ascertain the ones that were forged. He referred to:

Ogundele Vs Agiri (2010) Vol.9 WRN 1@ 35 line 40-15

That Prosecution having dumped Exhibit A 1-85 the Court is not duty bound to act on the Exhibit as they are deemed not to be before the Court. They cited the case of:

Ucha Vs Elechi (2012) 13 NWLR (PT.1317) 330 @360

That the said alleged documents are not before the Court by virtue of the decision in the case of:

Ucha Vs Elechi (Supra).

That inability of prosecution to place before the Court the documents allegedly forged means that they have failed to prove the essential ingredient of the offence of forgery and it is fatal to there case.

On the evidence of PW3 the Forensic Examiner the Defendant Counsel submitted as follows:- that the testimony of the PW3 did not link the Defendant with the forgery as it did not have the name of the Defendant on it and there is a tendency to mix the specimen of the Defendant with that of other people from the other organization. Where the PW 3 also analyze other peoples specimen from other government organizations. That there is no evidence to show that PW 3 obtained the specimen from the

Defendant. He told Court that they never met the Defendant before he came to court. Again PW 2 who presented the specimen was not part of or was present when the analysis was made to ascertain whether the specimen was what was used by PW 3. That there is a disconnect between the testimony of PW 2 & PW 3 as it relates to Exhibit 92-94 which raises doubt how the prosecution came up with Exhibit 95. The Defendant urged Court to refuse to ascribe probative value to the said documents Exhibit 92-95 and resolve the doubt in favour of the Defendant.

On the testimony of PW 4 on the stamps not being the stamp of the Access Bank. That PW 4 did not lead evidence to show he was availed with the genuine spherical stamp of the Bank which is one of the key point the prosecution relied their allegation of forgery on.

That the spherical stamp used by the Access bank was never tendered in evidence. That Bank cannot conclude on its determination of the allegation of forgery since there was no such spherical stamp tendered in evidence before this Court by the prosecution. So also no Access Bank teller in spherical shape was tendered in evidence too. That it means that no spherical stamp or teller so stamped exist. He referred to the provision of **Section 167 Evidence Act**. That the prosecution did not show or establish that Defendant had any intention to commit fraud by presenting the documents as genuine to the detriment of another. They did not lead evidence to that effect. They did not proved that he presented the said tellers to anyone to be used as genuine. That prosecution failed to link the Defendant with the act of making the false document or the forgery. The prosecution failed to establish the essential ingredient in the change of making the forged document as genuine. They failed to establish the mens rea. They urged the Court to so hold. In relation to Count No. 2

the Defendant Counsel submitted that the inability of the prosecution to place the alleged forged document before the Court, the Court cannot speculate on whether the defendant used as genuine any forged document. That they did not place any of the genuine tellers the spherical shaped stamp used by the Access Bank Plc or establish any forgery as perpetrated by the Defendant or show that Defendant used as genuine the alleged forged documents.

That PW 1 testimony is not credible as he had some serious financial indictment during his “reign” as the Honorary General Secretary of the Institute. That he will be hell bent to ensure that the Defendant is convicted so as to clear him of any alleged impropriety. That the PW1 is a tainted witness. He referred Court to Exhibit 86- the disciplinary committee’s Report particularly 8, 9-10.

That the Defendant has no reason to forge any document to cover up any illegal and unauthorized spending. He urged the Court to so hold. He referred to the case of:

Ochani vs State (2017) LPELR 42352 (SC)

Omotola V State (2009) LPELR 2663 (SC)

ON ISSUE No.3- criminal misappropriation, the Defendant Counsel submitted that the evidence of PW 2&3 cannot link the Defendant with the misappropriation of any sum of money let alone sustain conviction for criminal misappropriation. It is imperative to state that the PW1 said the Council asked him to engage another auditor to audit the account of the Institute because the institute was not comfortable with the audit by Nath Kolo and partners. The second auditors discovered that monies paid on some bank tellers did not reflect in the statement of Account of the Institute as those monies paid to the Institute was

not taken to the bank by the Accountant. That was when the issue of corruption was noted, came to the fore and emanate from. The PW2 had testified that he went through the Statement of Account of the Institute and confirmed that it was true in that 84 tellers forwarded to Access bank did not reflect on the said statement of Account of the Institute. These tellers were admitted in evidence as Exhibit 1-84. He the Defendant Counsel submitted that the Defendant is not in any way to be linked with the misappropriation notwithstanding that he is the Accountant of the Institute. Because the PW2 testimony is what he was told by the auditor and as such is hearsay.

Note: it is imperative to note that the audit report was admitted in evidence. He referred to Section 126 Evidence Act. He urged Court to discard the evidence as such. He cited the case of:

OJO v. Gharoro (2006) ALL FWLR (PT316) 197 @ 218-219 para G-B

That evidence of PW2 that he did not know the value of the monies contained in the Tellers and that it was misappropriated by the Defendant. There was no evidence laid on criminal intention to misappropriate. On his own part the Defendant in his testimony as DW1 submitted relating to allegation of Forgery that he was the assistant Accountant and was promoted just before the external auditor was engaged. That the auditing by Nath & Co was presented to the Institution where he was promoted as assistant Accountant. He referred to Exhibit 87- Report of Disciplinary Committee which was presented to the extra-ordinary general meeting of the Institute held on 8/11/14. In which he claimed indicted the erstwhile President of the Board. Chuck Omeife. Omeife invited another auditor who found the forgery and Defendant was confronted with the alleged forgery.

That the Institute did not oblige the Defendant the several documents the wanted to use in defence of his case. That since they did not lay hands on those document e Defendant closed his case and presumed that the nominal complainant withheld the document because it content may be favorable them. He referred to **Section 167 (d) Evidence Act** and **Obasanjo Vs. Buhari (2005) 13 NWLR (PT.941) 1@ 198**

Ekaidam Vs. State (2012) ALL FWLR (PT.631) 1587 @ 1612 G-H

That the Defendant acted under the instruction of his Superior who usually ask him to disburse merely in cash and use- is cash collected for transportation accommodation during general meeting. That this cash is collected from members of the Institution and vendor too.

According to the Defendant that audit report by Oteye Emah & co showed there was a fraud of N7.5 Million. But after EFCC investigation it reduced to N2.5 Million which culminated to the amount in issue that translated into Count No.3 in this case. The remaining balance was discovered in the institute Account.

The Defendant tendered Exhibit 97-100 with one bank teller memos, payment receipts from vendors evidencing transaction he made on behalf of the institution which he claims covers the amount allegedly misappropriated. He also tendered the Annual Report of the Institute for 2013 which contains Report of the Nath & Kolo & Co.

In answer to the question he submitted that the evidence adduced by him and Exhibit tendered through him were not dislodged, controverted, destroyed or challenged under cross-examination and as such his testimony remain unblemished and reliable. The Defendant Counsel urged the Court to rely on the DW1 evidence and attach heavy probative value on them. He urge Court to hold that the testimony of the prosecution is riddled with

doubt and suspicion and that the Prosecution has failed to prove its allegation of forgery and misappropriation against the Defendant beyond all reasonable doubt. He relied in the case of:

Amobi Vs. Nzegwu (2014) 3 WRN 1@42

Military Governor of Lagos Vs. Adeyiga & Ors (2012) 30 WRN 1@46

He urged Court to discharge and acquit the Defendant as the Prosecution failed to prove their case against him.

On their part the Prosecution called 4 witnesses PW1-PW4

PW1 had testified. He was executive Secretary of the Institution from 2012-2014. He confirmed that the Institute was not satisfied with the Audit Report of Nath Kolo & Co.

so the invited another firm to carry out the auditing after the institute was dissatisfied with NATH KOLO & Co. the new firm drew their attention to the anomaly – that bank statement of the institute reveals that the teller did not reflect in the said Account. The anomaly was put across to the Defendant and he denied any knowledge of what transpired. Then the institute contacted the EFCC. He tendered the tellers as **Exhibit A1-85** that Defendant has the right to maintain the book of Account of the institute and he is not supposed for any reason to accept cash from members of the institute. He told Court about the rectangular stamp used for **Exhibit A1-85** against the right stamp that is spherical used by the bank. He pointed out that the said **Exhibit A1-85** were tellers of different people paid at different times/date but have continuous serial numbers. That the institute does not at any time interfere with the workings of the external auditors.

That since the 1st Auditor did not detect the fraud that prompted the institute to hire the service of the 2nd Auditor to do forensic Auditing for the institute, to check the book again.

On his own side, the PW2 stated that sometimes in 2013 a petition was received by EFCC and it was assigned to him to investigate. That the petition alleged that Defendant was involved in a fraud amounting to about N7 Million naira, a fact which the Defendant confirmed in his own testimony. PW2 also stated that the investigation involved some tellers **Exhibit A1-85**. In the course of his investigation he wrote to Access Bank and received a reply stating that **Exhibit A1-85** was not authentic and did not emanate from the bank. That the monetary value of the teller did not reflect in it.

The Plaintiff also called the Branch Manager of the Access Bank who threw more light on the matter especially as it pertains to the teller and the stamp. Again that the stamp of Access Bank usually has 2 stamps impression. He brought before the Court some controlled tellers which were posted on the same date **Exhibit A1-85** were purportedly posted. PW2 said that 32 members volunteered their statement and furnished EFCC with cash receipt issued to them by the Defendant. He obtained a handwriting specimen of the Defendant and that of Chidinma, the assistant to the Defendant (she is now late) may her soul rest in peace. Their document was labeled **A-A354** and the statement of the deceased specimen handwriting were **B-B210**. PW2 also sent a report and it was marked as Exhibit **85- A1-85**. That the Defendant misappropriated the said N 2,451,900 belonging to the institute. And forged Exhibit 83 to cover up the fraud. He also tendered Exhibit 88-94 and identified Exhibit 1-85 as the bank teller he investigated. That though the petition was on fraud of N7,500,00 they uncovered only N2,451,900 after a holistic investigation of the teller. That "A-series was given to the tellers given to Defendant while B-series were those of the late Chidinma".

PW3 the questioned document examiner with the Forensic Department of EFCC, a security expert with vast experience and training submitted that he got a request to examine document labeled X-85-(Exhibit1-85) A-354, B-B210- Exhibit91- 94 which he did and forwarded the forensic report which was admitted as Exhibit 95. He was not part of the EFCC team that investigated the case. And that he does not deal with names. He only deals with markings.

The PW4 is the Branch Manager of the Access Bank at Garki Abuja Branch. He ensured that all deposits are properly documented. He confirmed that the Bank replied the letter-inquiry of the EFCC concerning the teller stating that it did not emanate from the bank. The said letter is Exhibit91. He demonstrated and clarified to the Court on the spherical and rectangular stamp showing that the Exhibit1-85 tellers have no posting stamp as stated in Exhibit 91.

The Plaintiff raised a sole issue for determination which is

“Whether the Prosecution has proved the essential element of the offence, alleged against the Defendant herein beyond reasonable doubt to warrant his being found guilty and consequently convicted”.

In answer the Prosecution examined what the ingredients of the offences are and submitted that from the evidence of PW2 the Defendant was custodian of all the accounts of the institute. The tellers have several amounts but were not reflected in the institute statement of account. Which he received from the Access Bank and which were analyzed. The specimen handwriting of the Defendant were taken Exhibit 92 & 93. In the receipt he issued in the normal course of his work and others obtained from the Defendant during the investigation. He sent the specimen handwriting to the Forensic Department of EFCC.

The PW3 answered the questions of what document were forged and who forged them. The PW3 compared the handwriting on the specimen, handwriting of the Defendant and those used in the filling of the tellers Exhibit A1-85. He submitted that they are same and that it was authored by the person who has A-A354- the Defendant. That Prosecution proved beyond all reasonable doubt the property in question and the misappropriation which was done dishonestly. He referred to the case of :

Bakare V. State (1968) 1 All NLR 394.

That the property in issue is movable and monetary in nature. The amount is certain – N 2,451,900- that the Prosecution shows that the Defendant misappropriated the said sum-

Count NO 1. The sum is the aggregate sum of money written in the forged bank tellers. That it is not in doubt that the Defendant is the accountant of the institute. And he is responsible for receiving and accepting bank tellers from members of the institute ensuring that monies has been paid into the relevant account and issue receipt accordingly. But instead the Defendant received the money/ payment and misappropriated same and forged the tellers to cover up the misappropriation. That the forensic report proves he forged the documents to cover up monies he misappropriated dishonestly. That in his own testimony the Defendant stated he collected money from various members by cash in his office and issued them receipt. That the defendant also said in his testimony that he equally spent the money albeit alleged instruction of the members of the EXCO. That Defendant was dishonest in the sense that he caused a wrongful gain to himself and dishonestly misappropriated the money he received from members of the institution and forged the said teller in a bit to cover his crime/fraud. They urged Court to find

Defendant guilty of the 3 count charge on the ground of misappropriation of the sum of money in the teller totaling up to N2,451,000.

That Prosecution has proved its case beyond reasonable doubt as per Section 138 Evidence Act. The referred to:

Miller V. Min. of Pension (1974) All ER 372@373

Alake V. State (1991) 7 NWLR (PT. 205) 567

In response the 3 count they submitted that Defendant was accused of or charged with forging/ marking 79 false documents – Access Bank deposit slips. He referred to Section 362 (a) on making of false document. That count 2 is on Defendant use of the said documents-tellers. He referred to Section 366 Penal Code. That there is a forged document the accused knows the documents is forged and has reason to believe it to be forged and he had dishonestly used same as genuine. That the testimonies of PW1-4 shows or established that the documents were forged. They referred to:

Pearce Henshaw V. COP (1963) 7 ENLR 122

That testimony of PW1 shows that the Defendant submitted the forged documents- tellers along with other documents from the account department to the Forensic Auditors. The Defendant confirmed that he collected money from the members and issued them receipts. That Defendant knew that the tellers were forged but he submitted it to the Forensic Auditors in guise that they were genuine.

They urged Court to hold that Prosecution has proved count 1 &2 of the charge beyond reasonable doubt. In response to the issues raised in the Defendant's Address on the tellers not being forged because it has only the stamps which he claims is genuine the

Plaintiff refer Court to Section 362 (a) Penal Code. He submitted that by the said Section 362 (a) Penal Code the tellers were forged and were properly identified by the Prosecution witnesses by Exhibit 1-85, Forensic Report Exhibit 95, Exhibit A6, 32 A56..... And the testimonies of the PW1- PW4. That all the tellers were forged and properly pleaded and duly tendered in Court.

On the original tellers not presented in Court the Prosecution referred to Exhibit 91- the controlled bank teller's copies. The PW4 also specifically identified the said Exhibit- tellers. He took his time to identify the feature and difference between A1-85 and Exhibit 91. On the PW3 not being able to identify the Defendant as the person responsible for the forgeries, the PW3 stated that he does not work with person or on persons by work with documents called specimen and figure presented to it by the appropriate department of the EFCC. He told us that he worked with documents Access Bank tellers and the handwriting of the person who wrote Exhibit A354. Purportedly PW2 identified that the handwriting on the said A354 were that of the Defendant. It is not in doubt the Forensic Analyst- PW3 should not have access to the Defendant or to his name to maintain neutrality. That the Defendants submission or missing documents in the institute goes to no issue in determining the present charge before the Court.

That in conclusion the Defendant misappropriated the amount in issue- N 2,451,900- belonging to the institute and forged the bank tellers to cover his fraud- Exhibit A1-85. The forensic report nailed the Defendant as the writing on the tellers are sent with the specimen signatures. That the Prosecution ably established the case against the Defendant. The Prosecution also proved the ingredients of the offences of the fraud, misappropriation and forgery through

the witness testimonies beyond reasonable doubt. They cited the case of **Abeke V. State**.

That the evidence of the PW1-4 were credible and uncontradicted. They urged Court to discountenance the testimony of the Defendant as it lacks value and substance. And also not to attach any probative value to it. They urged Court to order the Defendant to repay the amount in issue in line with Section 319 ACJA 2015. And also order appropriate compensation by the Defendant. They urge Court to find Defendant guilty, convict him and sentence him appropriately.

In reply on point of law, the Defendant Counsel

That the testimony and submission of PW1 & PW2 to the effect that the money was not found in the account of the institute shifted the burden on the Defendant but that the Defendant's testimony discharged that evidential burden showing that the money was accounted for showing how he expended the money he received from members- the amount in issue as per the authorization of his superiors on behalf of the institute. He referred to paragraph 2.65 of the Defendant's final address. That PWs did not infer any dishonest or criminal intention to misappropriate any sum of money by the Defendant. That Defendant discharge the evidential burden on him that he did not misappropriate any sum of money as confirmed in the charge. That by so doing the burden shifted to the prosecution. He referred to the provision of **Section 137 Evidence Act**. That Prosecution did not discharge that burden so shifted. He referred to:

Military Governor of Lagos V. Adeyiga (2012) 30 WRN 1 @ 46

He urged the Court to so hold and attach evidential and probative value to the evidence of the Defendant as it remains uncontroverted and unchallenged. He also referred to:

Amobi V. Nzegwu (2014) 3 WRN 1 @ 42 line 41- 43

That Prosecution could not establish that funds were criminally misappropriated and as such the Defendant has no reason to forge documents and use same as genuine. That as such the Prosecution failed to prove the necessary mental element. That the Prosecution failed to establish that the sample sent to forensic actually belonged to the Defendant- since the PW3 said he never collected the samples from the Defendant.

On issue of ascertaining the signature that Court is only allowed to do comparison of signature and handwriting which has been proved. That it is done in open Court and not in Chambers. He referred to Section 101 Evidence Act and case of:

Yongo V. COP (1992) NWLR (Pt. 257), 36, 57, 63-64.

NOTE

Please note that the above submission of the Defendant Counsel is highly misleading and disappointingly misconceived and misinterpreted. The Court has the power and right to access and evaluate every evidence- Exhibit which was admitted in the course of proceedings particularly so when all parties were given chances to inspect and have their say before the Court admitted the document in evidence as an Exhibit. It is up to Counsel to do all they can to stand for their Client but that right does not extend to deceiving themselves, their Client and unsuspecting public who look up to lawyers to serve them in a litigation. More so with the advent of forensic evidence which has become globally the norm and has become part of our jurisprudence the Court has a right and all the powers to evaluate forensic evidence in a report that is brought before it. All is done in the interest of Justice and not at the whims

and caprices of a Counsel who thrive in being – grammar- happy in a proceeding. Again, it is misleading for Defendant Counsel to submit that witnesses were not called to demonstrate that Defendant authored the alleged forged documents because that is what the PW2 & PW3 testified on. This Court shall not discountenance the documents or the testimonies of the PW2 & PW3 before their testimonies threw a big light in the case before this Court. So this Court cherishingly hold. The Defendant Counsel urge Court to resolve the issue in favour of Defendant as case of the Prosecution is based in suspicion as Prosecution failed to prove the essential ingredient of forgery and criminal misappropriation. The urge Court to discharge and acquit the Defendant.

COURT

He who asserts must prove. It is incumbent on the Prosecution to establish the case against the Defendant beyond reasonable doubt. That's done by ensuring that the main or key element Mens Rea and Actus Reus of the cases established. To succeed in establishing fraud-criminal misappropriation, there must be evidence and establishing that the Defendant dishonestly misappropriate and convert the property to his own use. Such property must be moveable and has been taken out by the Defendant and converted by Defendant-dishonestly. This is the decision of the Court in the case of:

Alabi V. State (1993) 7 NWLR (Pt 307) 511 @ 523

In this case the allegation is on misappropriation of N2,451,900- by the Defendant based on the money he collected cash from members of the institute. Ordinarily by the provision of the institute laws, their Accountant- Defendant is not suppose to collect money cash from

the members. All payments were to be made by payment into the bank account of the institute by members who will only present the teller or evidence of payment to the Accountant of the institute but in this case, the Defendant collected cash unauthorizingly from the members without any legal backing. He had confirmed this in his testimony in the course of this case. He only lamely stated that he used part of the said cash he collect to run the meeting and of the institute. He did not call any witness to confirm that he collected the money based on authorization of his superiors.

Meanwhile, the charge is base on the forgery of documents- bank tellers belonging to Access Bank which going by the report of the EFCC, some of the tellers showing various payments and supposed lodgment by members never saw the light of the day in the accounts of the institute as the monies did not reflect in the said institute account. Hence the allegation of misappropriation and forgery. In order to establish this ground, the Prosecution had called the PW1 who testified as to the working of the institute and reiterated that all payment were done legally by payment into bank by members themselves. The Defendant did not deny that fact and could not convince this Court that he is Justified to have collected cash from members of the institute. The Prosecution also called PW2 the Detective staff of EFCC who informed Court about the investigation of the account of the institute and document as well as the discovering of the fraud and forgery.

It is in the course of the investigation that the PW3 came into the scene. The forensic report puts no one in doubt about the handwriting on the tellers. The presentation by PW4 the Branch Manager of the Bank also threw more light on the issue of forged bank tellers and the stamps thereon. He stated in his testimony about the spherical nature of the stamp of the bank. Again he

pointed out that the Exhibit1-85 does not bear the spherical stamp but the rectangular stamp which is not known for or used by the bank. This Court believed him. Moreover he pointed out that every teller bearing 2 stamps all spherical showing that there is a real and complete transaction that was not present in the Exhibit A1-85 which was the alleged and established forged teller. By the difference in the tellers shows that there was fraud and crime as well as forgery.

It is important to point here that once the material/ property is moveable, it false into the category of the property that can be misappropriated by the Defendant. In this case the money in issue- N2,451,900 is a moveable property. The said amount not reflecting in the account of the nominal complainant shows that there is a misappropriation ongoing by the definition in the Evidence Act. Because is the fraudulently doing with all purpose to convert the money to the position of the person involved, it is said to be criminal misappropriation. In order to establish a criminal offence of forgery against the Defendant, the prosecution called the PW2 who discovered the false teller identified by the Forensic Auditors who had alerted the Prosecution-nominal Complainant about the tellers. PW2 had written to the bank to confirm if the documents emanated from them. The Bank in the letter to the EFCC which was tendered in Court told the EFCC that it did not point out the defects in the documents. In order to establish and find out the truth about the whole allegation obtained naturally.

The signature of the Defendant and that of his late assistant who mysteriously died after volunteering a statement to the EFCC. This documents were sent to the Forensic Department of EFCC to ascertain the correlation or resemblance of the writing in the teller and the sample signature of the Defendant. The PW3 sent its reports. It is important to point that the challenge put up the Defendant over

the forensic report in that the PW3 had never seen or interacted with the Defendant cannot hold water because world over forensic experts and forensic reports does not work or rely on person. They rely on specimen sent to it for analysis. So the forensic report must not be based on physical interaction and contact with the Defendant cannot vitiate or make the forensic report not to be credible. This Court believes the report and accepts the testimony of the Forensic Expert PW4. Without doubt, it is that forensic report that nailed the allegation of forgery on the Defendant because of the undoubted resemblance and clear..... between the specimen handwriting from the signature of the Defendant and the handwriting in the teller. It is important to reiterate and point out that the writings in the tellers are undeniably that and same as the specimen signature of the Defendant.

Moreover from the testimony of the Branch Manager, it was revealed that the teller which the forensic report was based also has the same serial numbers unlike what the bank uses. According to the PW4 No 2 tellers have the same number but in this case several of the teller have the same number. Again non of the said forged teller have the 2 stamps which normally is seen in the authentic bank tellers. The use of rectangular stamps equally shows an established the forgery of the tellers. It shows the clear intention to defraud by the Defendant. These tellers were presented to the EFCC- PW2 & PW3 by the nominal complainant which is the institute.

The Defendant did not deny that the tellers were date within the time he was the Accountant of the institute. He did not deny that the sample signature from where the Forensic Expert used to compare the handwriting in the teller emanated from him also.

The submission of the Defendant on the missing of documents has no bearing with the issue in this case because the issue is on the forged teller of Access Bank. The issue is also on the amount that is missing which were never credited to the account of the institute. The Defendant could not tell this Court that there was no missing money. He acknowledged that the Forensic external Auditor Otoyó & Co. had informed in their audit that monies were missing and that some money paid did not entered the account. The allegation that the former, present and general Secretary committed fraud during their time in office is not part of the issue before this Court. From the above it is not in doubt that the testimonies of the PW1-PW4, they were able to established the Mens Rea and Actus Reus of the offence of forgery and criminal misappropriation.

The Defendant could not deny or rebut or controvert the fact that the money was missing. The Defence he put up in the Court cannot stand. Rather than tell the Court that he did not forge or misappropriate the said fund, he was busy trying to indict the past president and general Secretary. They noted all his submissions. The Court had earlier summed his written address. But the Court is not convinced and does not buy the submission.

The Defendant had not placed before this Court any credible evidence to justify his accepting cash from members of the institute against the laid down Rule that prohibits collecting of cash from members. As a qualified Accountant, he ought to know that he should not perform his duty outside the laid down rules of operation. Again his blanket allegation/submission that he collected cash based on authorization is highly unsubstantiated. It is his responsibility to notify and advise the authority that payment by cash is not allowed. He did not mention the name of the person who authorized him to

collect cash. He did not deny not having any knowledge or existence of the said tellers.

Meanwhile, when the external Auditor revealed the existence of the tellers and that the payment did not get into the Account of the institute, the Defendant volunteered state to that effect. It is based on that report that the PW2 and PW3 came into the case. So also to establish that the tellers were forged, the PW4 came into the picture.

From all indication there was allegation of forgery of documents- tellers. The testimony of the Branch Manager show and proved that the tellers were forged based on the difference in the shape of the stamp and the fact that One stamp were on the alleged forged teller. That shows and confirm the establishment of the forgery. They non-reflection of the amount in issue in the account of the institute shows and confirm that funds were missing and that money not reflected in the account as at that time when the Defendant was in charge and control. He had in his testimony in chief confirmed to the Court that it is his responsibility to manage and run the account of the institute. He only has an assistant who is late. But before she died she had volunteered statement to the EFCC and her specimen signature taken which was used in the investigation and as specimen given to the forensic expert witness PW3 to analyze. That report are authentic and cannot be faulted by the unnecessary technical logic of the DW1 and his Counsel.

It is important to refer to the document tendered by the Defendant in the course of establishing his defence in this case. By that I mean the audit report contained in the brochure of AGM of the institute. The said report is “good” but has not in any way controverted the allegation that money alleged paid as contained in

the tellers were actually paid into the account of the institute. It did not controvert that the tellers were forged. It did not controvert that the specimen and the result of the forensic expert is real and that it matches the handwriting in the statement volunteered by Defendant as well as his specimen signature which he gave to the EFCC on which the Report and comparison was made. his count 1 must commend tried his best professional capability but the testimony of the PW1- nailed the Defendant to the 2 charge and crime in issue in that there is established forgery of the said tellers by the Prosecution. There is also the establishment of criminal misappropriation of N2,451,900- after which is the fund and monies of the institute as paid by its members. The document- teller came into being while the Defendant is the Accountant.

The money also got missing or not reflected in the account as the time the same Defendant was in charge of the finances of the institute. He did not deny that. He did not tell the Court that another person was in charge. Even if the Defendant has the authorization of his superiors to spend the money he did not show any evidence of how the money was actually expended by him. He did not show what the money was expended on either.

The blanket submission that he used the money to organize the activities of the institute does not justify his action because he did not show that he has any authorization or established he has authorization. He did not lead evidence to that effect, he only nearly mentioned that, the document he present brochure that contained Audited Account is not same as audited Account of the institute. Again the Defendant did not discharge the onus shift to him by the testimony of the PW1-PW4. He was the accountant. He was in charge of the money and lodgements of the institute. He has no right to collect cash. He can only expend the money as authorized as a

professional Accountant. He should not and has no right to collect cash from the members of the institute. And the Defendant knows that his action in that regard was wrong. His submissions are deceptively misconceived and is hereby discountenanced.

The Court belief and strongly uphold that the Prosecution proved the ingredients of the offence of forgery and criminal misappropriation and uphold that the Prosecution has established his case against the Defendant. The Defendant was not able to shift it to the Prosecution who have established his case beyond reasonable doubt.

The question is having gone through a summary of the case of the Defendant and Prosecution and the Prosecution, hearing the testimonies of the 4 witnesses established the ingredient of the offences in issue. Should this Court not be wrong if it holds that the Prosecution has not proved its case against the Defendant and here by discharge and acquits the Defendant?

It is my humble view that the Prosecution having established the main ingredients in the offence of forgery and criminal misappropriation of the sum of N 2,451,900- being money belonging to the institute which were (cash) money collected by the Defendant which he was supposed to pay into the account of the institute but failed to do so by fraudulently forging the tellers of the Access Bank by having it stamped with the Rectangular stamp instead of the spherical or oval stamp. By the forging of the teller of the bank as established by the testimony of the Branch Manager of the Access Bank and confirmed by the testimony of PW2 EFCC investigator and the Report of forensic expert report. Puts no one in doubts that there was forgery and criminal misappropriation of the funds of the institute by the Defendant and under his watch.

This Court having gone through the evaluation of documents tendered by both parties and having listened and gave the recorded testimonies and the written statement of all the witness and parties reason to state that the Prosecution has established and proved its case against the Defendant.

The Defendant Adekunle Adebawale is therefore GUILTY of the offence of forgery of the said document and caused it to be used as genuine. He is also guilty of dishonest misappropriation of the N2,451,900 money belonging to the N10 Billion which money was entrusted to him as the accountant of the said N10 Billion. He is therefore guilty of the 3 count charge. This is the judgment of this Court.

SENTENCING

It is the law that once a Court of competent jurisdiction has, after due Prosecution and conviction of a person, has the duty to allow a convict to do allocutus if he so wish.

Today this Court has delivered its judgment given given its reason for finding the Defendant Adekunle Adebawale guilty of the offences and thereby convicted him of the 3 count charge. The Court heard the allocutus by the Defendant Counsel. It is the law that once a Defendant is convicted, and allocutus taken a Court has no reason not to sentence the convict accordingly. Today the Court had convicted Adekunle Adebawale for offence of forgery, dishonest misappropriation as contained in the 3 count charge. The Court has no reason not to sentence him. The Court had noted that he is a first offender. It is imperative to state that sentencing of a convict whether as first offender or habitual offender is all geared to act as

not just as a punitive measure but also as deterrence on both the convict and the public at large in order to maintain law and order and to command the respect of the laws of our land which is the main fabric of our existence. It is no doubt that the Defendant made or forged those documents-tellers dishonestly with intention for use as genuine documents-tellers.

The Court had heard the Defendant Counsel but the law will always take its natural course. That being the case, this Court therefore hereby sentence you Adekunle Adebowale to 2 years in prison for criminal misappropriation of the money of the N10 Billion.

This Court also sentence you Adekunle Adebowale to 5 years imprisonment without option of fine for the offence of forgery. The 2 sentences shall run concurrently.

Application for the total refund of the money in issue N2,451,900- to be refunded by the convict Adekunle Adebowale.

The convict should be detained at the EFCC facility pending the time there is space in the Prison from now till 31st day of July, 2020.

**This is the judgment of this Court. Delivered today by me
The.....day of..... 2020.**

.....

K N. OGBONNAYA
Hon. Judge

