IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT COURT NO. 20 ABUJA
BEFORE HIS LORDSHIP: HON. JUSTICE A. S. ADEPOJU
ON THE 18TH DAY OF DECEMBER, 2020

SUIT NO: FCT/HC/CR/93/16

BETWEEN:
FEDERAL REPUBLIC OF NIGERIA ---------- COMPLAINANT
AND
ADEOLU ADEYANJU (M) ---------- DEFENDANT

JUDGEMENT

The accused/defendant was arraigned on a three (3) count charge of making false statement contrary to section 25(1) (a) and 25 (1) (b) of the Independent Corrupt Practices And Other Related Offences Act, and impersonation Contrary to the Provision of Section 179, and making of false document contrary to the Provision of Section 364 of the Penal Code Respectively. The charge reads as follows:

COUNT 1: That you ADEOLU ADEYANJU (M) sometime in September, 2015 or thereabout, in Abuja falsely personated one Ahmed Musa and in that assumed character opened a bank account with Zenith Bank and you thereby committed an offence contrary to and punishable under Section 179 of the Penal Code CAP 532 Laws of the Federal Capital Territory Abuja 2006.

COUNT 2: That you ADEOLU ADEYANJU (M) sometime in September, 2015 or thereabout, in Abuja knowingly made false documents in name of one Ahmed Musa with your passport seize photograph affixed therein and

which false documents you dishonestly used to open an account with Zenith Bank with the intention that it may be acted upon as genuine and you thereby committed an offence contrary to Section 363 and punishable under Section 364 of the Penal Code CAP 532 Laws of the Federal Capital Territory, Abuja 2006.

<u>COUNT 3</u>: That you ADEOLU ADEYANJU (M) sometime in September, 2015 or thereabout at the office of the Independent Corrupt Practices and Other Related Offences Commission (ICPC), Abuja knowingly made false statement to Messrs Eric Anona and Isioma Okolo when you informed them in the course of their duty that you did not bear the name Ahmed Musa to open an account with Zenith Bank (A/C 1013503438), when you knew that you used the said name Ahmed Musa to open the said account with your passport seize photograph affixed to account opening packages and thereby committed an offence contrary to Section 25 (1) (a) and punishable under Section 25 (1) (b) of the Corrupt Practices and Other Related Offences Act 2000.

In proof of its case, the prosecution called two (2) witnesses and tendered thirteen (13) exhibits marked as Exhibit numbering (A1-A13).

The testimony of the Pw1 is hereby summarized thus: the PW1 is Olufemi Ayodele DSP Rtd. A forensic document examiner and a handwriting expert. He informed the Court that on the 20th of October 2011, a letter dated 15th October 2015 was minuted to him from the office of the Deputy Commissioner of Police Annex Kaduna and attached to the letter are two sets of documents, the first set is the disputed Zenith

Bank Individual Mandate Form marked X1 and the 2nd set consist of Specimen of handwriting marked A-A1. That using Forster Freeman ID model document comparator machine and other magnification equipments he discovered that there was a recurring characteristic of a writer between the specimen submitted and some aspects of the handwriting of the disputed Zenith Bank mandate Form. He wrote a report of his findings with a covering letter, signed same with his logo and sent a copy to ICPC, and kept one for his personal use. The report was admitted as Exhibit A2. Also admitted as Exhibit is CTC of his qualification certificate (Exhibit A1).

Under cross examination by the defence Counsel, the witness confirmed that it was possible for a person to sign another person's signature and on the mandate he had as an expert, witness testified that he was mandated to identify similarities of the two (2) specimen handwriting submitted to him. He also confirmed that he is a signature expert. He was not re-examined by the prosecuting counsel.

PW2, Anona Eric Nnamdi, is an investigator with the Independent Corrupt Practices Commission, he informed the Court that sometime in November, 2011, the commission received a petition from the Federal Ministry of Environment alleging that about =N=920 Million was fraudulently withdrawn from their account from a forged payment mandate and transferred to a certain beneficiary Detwin & Global Services Limited. And upon investigation it was revealed that Detwin & Global Services got =N=450 Million and money transferred to account

domiciled at Zenith Bank. They requested for the account statement of Detwin & Global Services limited from the bank and upon analysis of the said account, it was revealed that so many individuals transacted with Detwin & Global Services including one Ahmed Musa. It was also revealed that the account of the said Ahmed Musa was domiciled at Zenith bank. They further requested for the account opening document of the said Ahmed Musa where it was discovered that the passport photograph used in opening the account of Ahmed Musa is the same as the passport used in the account of Detwin & Global Services Ltd. in the same Zenith Bank, which they confirmed belong to defendant. Another document they got from the bank was a driver's license in the name of Ahmed Musa and the passport on the license is that of the defendant. They wrote a letter to the office of the **Federal Road Safety Commission** to confirm the authenticity of the license and they replied that the license did not emanate from them. They also got a Power Holding company of Nigeria bill attached as utility bill bearing the name of Ahmed Musa with address as 27, Aso Area Mararaba, they equally went to PHCN Mararaba to confirm if the bill came from them. And they declined that the bill did not emanate from them. They also went to verify the address but could not find it. The defendant was there and then brought in to record his statement. The witness also testified that they recovered a voter's card from the defendant with the name Adeolu Olusegun Adeyanju. And on the face of the Card, the defendant claimed that he was a public servant.

The Pw2 further testified that they went further to invite the account officer, one Uzoma Akparanta who confirmed on presentation of the

account opening document to her that the defendant actually opened the account with her.

The account opening officer produced a certificate in line with the provisions of section 84 Evidence Act. In respect of the account of the said Ahmed Musa attached to the account opening documents and statements of account of Ahmed Musa. The said certificate was handed over to the PW2 by the account officer who is terribly ill and had to travel abroad for medical treatment. The documentary evidence adduced by the PW2 were admitted is Exhibits A2-A13.

Under Cross Examination the witness stated that he is conversant with facts of this case. He confirmed that some other persons transacted with Detwin & Global Services Limited. He is a specialist in investigation of bank related issues. He is aware that before opening account customers submit to his bank premises verification result. That Detwin & Global services is a limited liability Company. He has a document from Corporate Affairs Commission that authenticated the defendant as owner of Detwin & Global Services Limited but it is not before the Court. That the evidence of the account officer is part of their investigation. He did not investigate the B.V.N. contained in the account of Ahmed Musa if it is the same as that of the defendant because the defendant used a different name and identity. He did not have the B.V.N. of Ahmed Musa off hand. He further stated that Ahmed Musa's account is a savings account. When shown the account statement of Ahmed Musa which he tendered and asked to confirm the transaction between Ahmed Musa and Detwin & Global

Services Ltd. he stated that "it is not …." Continuing with his evidence, the witness stated **they did not obtain** statement of account of Detwin & Global services but obtained all they needed for the investigation. He confirmed that a particular person may have similar resemblance but sometimes they are not the same. He is aware that before a current account is opened, the person who intends to open the account must provide at least two guarantors. When asked why he did not contact the guarantors of Ahmed Musa, he stated that the account is a savings account. The witness was re-examined by the prosecuting Counsel and on this note, the prosecution closed its case.

The defence filed a no case submission, which was overruled by the Court and the accused was directed to open his defence accordingly.

DEFENCE:-

The accused opened his defence on the 12th day of December, 2019. He narrated how he was invited by the prosecuting Counsel (Mr. Akpos through his lawyer Mr. Ofeoshi). He was taken before one Mr. Udofia, the boss to Mr. Akpos, and was informed by Mr. Udofia that they needed him to help in a case they are investigating. He was handed over to one lady called Sylvia, who took his statement. The said Sylvia brought out some documents from the Zenith Bank and started interrogating him if he knew any Ahmed Musa and if he had any account with Zenith Bank. He told her that he, the defendant had two accounts with Zenith, one in his personal name Adeolu Adeyanju and the other one is a corporate account **Detwin & Global Services**. The two accounts, he said are current accounts. And

that he does not have any account in the name of Ahmed Musa. He drew the attention of the investigator to the details of the account of Ahmed Musa particularly the B.V.N and the phone numbers for verification. His house was searched twice by Mr. Akpos and nothing with respect to Ahmed Musa's account was found. The items taken away from his house are his driver's license, his baptismal certificate, some foreign currency and voter's card. He denied giving his statement to the PW2. And that outside the account details of Ahmed Musa, the I.C.P.C. did not confront him with any other documents except presented to him by Sylvia. The defendant ended his examination in chief on this note, he was cross examined by the prosecuting counsel. His testimonies under cross examination shall be referred where necessary in the course of the Judgment.

Both parties filed and exchanged their final written addresses in accordance with the direction of the court. The defendant's address was filed and dated 31st December, 2019, while the prosecution's address was filed and dated 24th January, 2020. The defence further filed a Reply on point of law dated 3rd February, 2020. The parties adopted their final addresses on the 20th of February, 2020 while the case was adjourned to 8th May 2020 for Judgment. Incidentally, the Judgment could not be delivered because of the break out of corona-virus pandemic which led to a lock-down of the economy of the country.

The defendant's Counsel in his written address formulated two issues for determination by the Court to wit (a) whether the material and

unresolved contradiction in the evidence of the prosecution witnesses were not sufficient to cast doubt on the guilt of the defendant. (b) Whether taking into account the ingredients of the charge against the defendant, the prosecution has made out a case beyond reasonable doubt to warrant the conviction of the defendant on any of the counts charged.

The prosecution on the other hand formulated one issue for determination by the court to wit "whether the prosecution has from the evidence laid before this Honourable Court proved its case beyond reasonable doubt as required by law". The court will adopt the issue formulated by the prosecution which is whether the crime against the defendant was proved beyond reasonable doubt by the prosecution. It is a trite principle of law that in criminal trial, the prosecution is required to prove the guilt of the defendant beyond reasonable doubt. See the provision of Section 135(1) of the Evidence Act. The prosecution in order to secure a conviction therefore has to discharge the burden placed on it by the provision of Section 135(1) of the Evidence. The question now is how far the prosecution has been able to discharge that burden in the light of the evidence adduced by his witnesses in support of the Counts against the defendant.

Before I delve into the assessment and evaluation of the testimonies for the prosecution and the defence, I observed that both counsel in their addresses did not follow the Order in which the counts were arranged in the charge.

Their count 1 is count 3 in the charge sheet, count 2 is count 1 in the charge sheet, while count 3 is count 2 in the charge sheet. The arrangement brought a bit of confusion and stress to the Court. Learned counsel while evaluating the testimonies of the witnesses should ensure that the order in which the prosecution framed the charge should advisedly be adhered for coherence and uniformity while the court is pronouncing its verdict and not for parties to alter the arrangement of the charge in order to suit their convenience. The prosecution in his address argued that he needed to prove its counts 2 and 3 as contained in his address as the success thereof determines the success of Count 1. This argument is not the correct provision of the law. In criminal trial each offence is to be proved separately beyond reasonable doubt by adducing credible and admissible evidence in proof of the elements of each count. Failure to prove the element of an offence undoubtedly leads to the discharge of an accused person save and except in proof of offence of criminal conspiracy where the prosecution needs to prove same before the proof of the commission of the substantive offence. Be that as it may, I shall turn to the charge as read and pleaded to by the defendant.

The count 1 the defendant was charged under section 179 of the penal code for the offence of false personation. The prosecution in order to succeed must prove the following elements

(1) That the accused falsely personated another.

(2) That he made an admission etc. whilst in the character and in the name of the other person.

(3) That the admission was made in a civil suit or criminal proceedings.

The defence counsel submitted that all the ingredients of the offence are conjunctively constructed and must be proved to sustain a conviction.

The learned defence counsel further argued that the prosecution has failed to prove that the defendant made any admission or statement or caused any process to be issued or become said or does any act in any suit or criminal proceeding. He further contended that the only person who could resolve the vexed question of whether it was the defendant that is the maker of the disputed Zenith Bank account opening form was not called as a witness. That it was only the bank official who was present when defendant made the documents and affixed the passport that ought to have been called as a witness and that failure to call this material witness is fatal to the case of the prosecution. It is important to state that before the prosecution could invoke the provision of section 179 of the Penal Code against a defendant there must be a proceeding either civil or criminal whereat the defendant falsely personate or make an admission in the character personated. Even if the prosecution succeeded in proving that the defendant personated the said "Ahmed Musa" while opening an account with Zenith bank, the circumstance under which the defendant was allegedly said to have personated is not in tandem with the provisions of section 179 of the Penal Code. I therefore endorse the argument of defence counsel that the Evidence of the PW1 and PW2 did not support all the ingredients of the offence

charged in Count 1. The defendant is therefore discharged of the offence of false personation under section 179 of the Penal Code.

Count 2: the defendant was charged under section 364 of the Penal Code. The provisions of section 362 (a) of the Penal Code defines making false document thus " a person is said to make a false documents who dishonestly or fraudulently makes, signs seal or execute a document or part of a document or makes any mark denoting the execution of a documents with intention of cause 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 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 363 goes further to define forgery and forged documents where it states 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 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 documents made wholly or in part by forgery is called a forged document" The elements of the offence of forgery are (1) that the accused made , signed, sealed or executed the documents in question or any part thereof or that it was made by someone else (b) That it was made under any of the circumstances stated in part 363 (c) That the accused made it dishonestly or fraudulently or with any of the specific counts enumerated in Section 362.

The defence Counsel argued that the word “dishonestly” used to open an account with Zenith bank was not stated in section 363 of the Penal Code as one of the elements the offence. He argued that the prosecution has no authority to add to the elements of a charge. He urged the court to strike out the charge, according to him, the prosecution has failed to prove an element of the offence which they have added to the charge. He relied on the case of Alabi Vs. State(1993)7 NWLR pt 307, Agrochem Vs. FRN (2009) 7NWLR part 1141 pg 489. He argued further that the prosecution has failed to prove the dishonest intent which is the mensrea required in any criminal prosecution. He further contended that the prosecution failed to call the person whose signature was forged as witness. He relied on the case of Agsanimu Vs. FRN(2018)LPELR 43924 CA, Aleke Vs. State(1992) 9MLR(pt265) 260. Also on the admitted extra judicial statement of Uzoma Akparanta, the defence counsel argued that the Court cannot convict on this statement, because the maker was not called as a witness. He further argued that the account opening Form Exhibit A8 to which the passport photograph of the defendant was affixed as Ahmed Musa ought to have been tendered by an official of the bank. He contended that Exhibit A8 is hearsay evidence and the testimony of the PW2 is also hearsay.

Finally, the defence argued that the said Uzoma Akparanta is a person interested and did not do her due diligence as a staff of zenith bank before opening the Ahmed Musa’s account. That her failure to verify certain documents will affect her competence and employment with zenith bank and will therefore be affected by the outcome of the charge.

From the oral & documentary evidence tendered by the prosecution, there is no doubt that the defendant is the same person known as Ahmed Musa in zenith bank mandate form. Even a one eyed man looking at the defendant and seeing the passport photograph attached to the mandate form will know that the passport photograph belongs to the defendant. Under cross examination, the defendant confirmed that Exhibit A5 & A6 being driver's license and voter's card belong to him. When however he was asked to compare the photos in Exhibits A5 & A6 with the one on the mandate form, he denied that it is the same person i.e him whose pictures are on the documents. Let me also reiterate that the defence did not challenge the report of the hand writing expert where he stated thus "it is my conscientious opinion therefore that the handwriting in the columns of the customers seeking the mandate on the disputed mandate form marked X-X1 could not have been written by another person other than the writer of known submitted standard specimen handwriting marked A-A1". The argument of learned defence Counsel urging the court not to attach probative value to the report of the handwriting expert cannot fly on the face of the unchallenged and uncontradicted testimony of the handwriting expert (Pw1). The defence did not challenge his skill or the competence of the handwriting expert (Pw1). I therefore do not find it difficult in believing the testimony of the PW1 and his opinion that the handwriting on the mandate form is that of nobody else but the defendant. See the case of Akusobi & Ors Vs. Obinechie & Ors(2003) 1 LPELR 7242 CA. where the Court of Appeal held that courts are bound to accept an unchallenged expert evidence. The learned

Justice of the Court of Appeal held "The evidence of Pw1 which I reproduced above was clearly that of an expert. The respondents did not call any other experts evidence to contradict or challenge his evidence. If the learned trial judge had properly evaluated the evidence, he would have relied on it, being the only expert evidence before him". See the case of **Anya Vs. Anya & Ors(2014) LPELR 22479 CA**, **selsmography service Ltd. Vs. Onokpasa(1922) LPELR 3027 SC.**

On the contention of the defence Counsel that the PW1 admitted under cross examination that he was requested by the complainant to compare handwriting and not signature. This defence is shallow, this is because the question as to whether the PW1 is a handwriting or signature expert is a matter of commonsense, that as an expert, he can examine both handwriting and signature on documents depending on his instruction. The fact that he admitted that he is a signature expert therefore does not derogate from the fact that he is an expert in examination of handwriting. The defence further argued that the official who interacted with the defendant and who were present when the defendant opened the account were not called. He argued that failure to call this vital witness is that the prosecution had failed to discharge the burden of proof upon it. His argument was that the court cannot rely on exhibit A7, the statement of the account officer of the defendant which was admitted by the court through the PW2, the investigator. The said witness of the crime Uzoma Akparanta was said to be at the court at the earliest stage of the trial before she fell ill and could not attend court again, this fact was not disputed by the defendant. The prosecution on the contrary relied on the

provision of Section 39 of the Evidence Act 2011 as amended which reads " statement, whether written or oral of facts in issue or related facts made by a person (a) who is dead, (b) Who cannot be found, (c) who has become incapable of giving evidence or (d) whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable are admissible under section 40 to 50". He further relied on section 57 of the Independent Corrupt Practices and Other Related Offences Act 2000 which provides: "Notwithstanding any written law to the Contrary in any proceedings against any person for an offence under the Act --**(a)** any statement made by any person to an officer of the Commission or any other person in the course of an investigation under the Act, or any other law prohibiting Fraud, bribery or corruption and,

(b) Any documents, or copy of documents or photographic or electronic evidence or thing seized from any person or however obtained by an officer of the Commission or any other person in exercise of his power under or by virtue of this Act or any other relevant law shall be admissible in evidence in any proceedings under this Act before any court where the person who gave the thing, made the statement, document or the copy of such document is dead, or cannot be traced or found or has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense which appears to the court unreasonable".

(C) Without prejudice to the foregoing provisions or the provisions of any other rules of law or evidence all photographic or electronic evidence however obtained shall be admissible in evidence"

The prosecution urged the court to admit the statement of the said Chima Akparanta and also hold that the procurement of the attendance of the said Chima Akparanta cannot be done without an amount delay or expense in view of the circumstances surrounding the case as explained by the PW2 in his evidence in chief. He further submitted that nobody else apart from the Chima Akparanta could have testified in court on behalf of zenith bank, because she is the account officer who had a one on one contact with the purported Ahmed Musa in the course of opening the alleged account.

It is trite that documents or items recovered by the investigators and the prosecution in the course of investigating an alleged crime if relevant are admissible in law. It is a general rule that documents should be tendered through the maker. However the exceptions to the rule are (1) Where the maker is dead (2) The maker can only be procured by involving the party in so much expense that could be outrageous in the circumstances of the case. In these instant a document could be admitted in the absence of the maker. The weight to be attached to the documents is also a different thing entirely. Relevance is the key to admissibility, Exhibit A7 and A8 are relevant and admissible in the circumstance of the case. Furthermore oral evidence may be given by another person of the content of a document if such statement contain in the documents are in ……relevant facts. See the

case of Aregbesola V Oyinlola (2011) 9 NWLR pt.1253458 at 587. In addition the court is to evaluate totality of the evidence adduced by the prosecution witnesses. A cursory look at the testimony of the PW1, the handwriting expert lends weight and relevance to the statements made **by the said Uzoma Akparanta in Exhibit A7, and the mandate forms**.

In the case of **Amosoru Vs. State (1976) LPELR 649 SC** where the Supreme Court held "We agree with the submission of learned Counsel for the appellant that the use of a false name only Constituted forgery if identity was an immaterial factor and or that the appellant purported to be some specific other person real or fictitious. But is that not the case here? The appellant is known to all the bank official who testified not as G-Ola Coker, but as Christopher A. Amosola. His residential address differs from that stated of G-Ola Coker. There is no evidence that in the books of the bank that he held himself out to the bank as the owner of the account of G-Ola Coker. There was no person known to the bank as G-Ola coker. He was therefore a fictitious person. A person can be convicted for forging the name of a fictitious person. That was this court's decision in the case of **R V. Domingo (1963) FSC 286/1962 (unreported).** G- Ola Coker having been found to be a fictitious person, the learned trial Judge was perfectly justified in holding that the cheque exhibit F5, bearing his name is forged. The appellant at no time held himself out as G Ola coker and no bank official know him to go by the to be name of G Ola coker, as was the case of the appellant in **Kabua Bukie Odu Vs. State(1965) 1 ANLR 25".**

As would be seen in the latter part of this Judgment in the exhibits tendered by the prosecution the identity cards and the driver's license of the defendant, the defendant held himself out to be of different names, different date of birth etc.

Furthermore the investigator(PW2) informed the court as follows "we went further to invite the account officer of Ahmed Musa, her name is Uzoma Akparanta when we presented the account opening document to her, she confirmed that the defendant actually opened the account with her. To further confirm that it was the defendant that opened the account, we took a copy of the account opening form opened by him and a copy of the statement he recorded with his hand at the commission. And we sent the two documents to a handwriting expert. The report confirmed that one person is the author of the two documents. The documents confirmed are the statement recorded by the accused himself and the account opening forms. I will also add that the account officer had to produce a certificate in line with Section 84 of the Evidence Act for the said account of Ahmed Musa and attach the account opening document with the account statement". In the instant case, the admitted statement of account, Exhibit A8, with the name Ahmed Musa with the attached certificate of compliance prepared by the account officer were undisputedly part of the documents which were possessed by the investigator (PW2) in the course of investigation. It is trite that relevance is the key to admissibility. These documents are also relevant and admissible in the circumstance of this case. They are computer generated documents, accompanied with certificate of compliance in accordance

with Section 84 of Evidence Act. A careful evaluation of the testimony of the PW1 the handwriting expert lends weight and support to the statement of the said Akparanta Uzoma in Exhibit A7, when she said "I hereby confirm that the information and picture shown on the documents presented are of the same Ahmed Musa who walked in and approached the bank to open an account". ***In conclusion, I hold that it is of no moment that the account statement of the said Ahmed Musa was not tendered by the maker. Also the PW2 in his evidence –in –chief informed the court that the maker of Exhibit A7, was ill and could not attend trial to tender her statement or give oral evidence. The PW2 is allowed under the Evidence Act to tender same in her absence. The court having found that the said Exhibit A7, has probative value, I hold that it is admissible and could be acted upon by the court***.

The mandate forms admitted as Exhibits. The prosecution can prove its case either by direct evidence of eye witness, circumstantial or confessional statement of the accused person. In the instant case, the evidence of the prosecution lean more on circumstantial evidence and for circumstantial evidence to ground a conviction it must be strong and irresistibly point to the guilt of an accused person and nobody else. The handwriting expert was not there when the defendant filled out the mandate form and the specimen. He was however able to deduce the similarity in the writing in the mandate forms and the specimen handwriting of the defendant in his statement to the police. The mandate

form has affixed to it the photograph of the defendant who claimed that his name was Ahmed Musa in the mandate form.

I have earlier on held that it was the defendant who claimed to be Ahmed Musa in the account opening form. The argument of the defence that in order to proof forgery, the person whose handwriting was forged must be called as a witness is not applicable in this instance. This is because the said Ahmed Musa is a fictitious person. The making of a false document in the name of a fictitious person intending it to be believed that the document was made by a real person or may amount to forgery. This is because to complete the offence of forgery in Section 363 of the Penal Code it is not necessary that the fraud should actually be committed or damage caused. Proof of the intent of the accused to commit the offence of the making of false document are only required. It follows that it is not necessary that the document in question should have been used or published. The intent proved must be;

a. To cause damage or injury to the public or to a person or

b. To support a claim or title or

c. To cause a person to part with property or

d. To cause a person to enter into contract or

e. To abet another to commit fraud.

The mensrea of the offence of forgery is the proof any of the contents in a-e as contained in Section 363 of the Penal Code.

On the argument of the learned counsel to the defendant that the prosecution failed to prove that the defendant dishonestly used false document to open an account. What does this word dishonestly connotes in law. Section 16 of the Penal code states that a person is said to do a thing "dishonestly" who does that thing with the intention of causing a wrongful gain to himself or another or of causing wrongful loss to any other person. |The operative word is with the intention to causing a wrongful gain to himself or wrongful loss to another person". Intention can be presumed from the consequences of the act as a person is said to intend the natural consequence of his act. What would be intention of someone who used a fictitious name to open an account if not fraud? The defendant had made the account officer to believe that he was the one bearing "Ahmed Musa" and in that name an account was opened for him by the account officer. See the case of Adinnu Vs. Adinnu(2013)LPELR 21251 CA. I am therefore more inclined to hold that the prosecution has proved beyond reasonable doubt, a dishonest intent on the part of the defendant. On whether the prosecution ought to have tendered the petition that triggered the investigation the learned Counsel for the defence relied on Section 167(b) of the Evidence Act and submitted that the prosecution was withholding evidence which if produced would have been in their favour. He further relied on section 27(1) of the ICPC Act which provides that every report (complain) to the Commission shall be reduced into writing and Section 27(2) of the Act which also provides that every report whether in writing or reduced into writing shall be entered in a book kept at the office of the Commission and there shall be

appended to such entry the date and hour at which such report was made. The question for determination is whether non- tendering of the petition that triggered the investigation is fatal to the prosecution's case. As rightly stated by the defence counsel, the genesis of the allegation against the defendant is based on a petition received by the Commission from the Federal Ministry of Environment alleging that about =N=920 Million was fraudulently withdrawn from their account from a forged payment mandate and transferred to a certain beneficiaries, one of the beneficiary one Detwin & Global Services Ltd. The PW2 in his testimony informed the court further " upon investigation it was revealed that Detwin & Global Services Ltd. got =N=50 Million and money transferred to account domiciled at zenith bank. We requested for the account documents including the statements of Detwin & Global Services from Zenith Bank analysis of the said account revealed that many individuals transacted with Detwin & Global Services including one Ahmed Musa. It was also revealed that the account of the said Ahmed Musa was domiciled at zenith bank, we requested for the account document of the Ahmed Musa".

It does appear to me that the allegation that the sum of =N=920 Million was withdrawn from the account of Federal Ministry of Environment is not directly in issue before this court. What is in issue is the allegation of making false document by the defendant to open an account with zenith bank, if the prosecution had wanted to make it an issue before this court it would have formed part of the particulars of the offence stated in the count 1. It would then be necessary to produce and tender the petition.

The defence did not state the true effect of the non-tendering of the petition on its case and how the non-tendering of the petition affects the merit of the prosecution's case. The case of the prosecution before this court is based on implicating facts that emerged in the cause of investigating the petition from the Federal Ministry of Environment by the Independent Corrupt Practices Commission. Furthermore, the tendering or non-tendering of the petition is not material to the proof of any of the ingredients of the offence of forgery with which the defendant is standing trial. The argument of the defence on non-tendering of the petition by the prosecution is a digression from the substantive issue before the court. See the case of OGUON ZEE Vs. STATE(1998) LPELR 2357 SC where the court held that on interpretation of the provision of Section 149(d) of the Evidence Act as to the presumption of withholding evidence and when it applies thus " Section 149(d) provides as follows "149, the court may presume the existence of any fact which it thinks likely to have happened regard being had to the common cause of natural events, human conduct and public and private business, in their relation to the facts of the particular case, and in particular the court may presume (a)…… (b)…….. (c) …… (d) That evidence which could be and is not produced would if produced be unfavourable to the person who withholds it, (e) ……. The first point that needs be emphasized is that the presumption under Section 149(d) of the Evidence Act will only apply against whom it is sought that it should operate where that party has in fact upheld the particular piece of evidence in issue and if he did not call any evidence on

the point it only applies when the party does not call any evidence on the issue in controversy and not because he fails to call a particular witness. See **Bello Kasim(1969)NSCL 228@ 233, OKUNZUA Vs. AMOSU(1992)6 NWLR(pt.248)416 at 435**"…….....

……..

The contention of the defence on non-tendering of the petition by the prosecution is misconceived, as it does not have direct effect on the issue in controversy. The prosecution have been able to prove beyond reasonable doubt the ingredients of the offence of forgery as contained in Section 364 of the Penal Code.

Now coming to the defence. The defence of the defendant is mere denial. Under cross examination the prosecution was able to extract that Exhibits A5 & A6 the driver's license and voters card are the documents of the defendant. When the defendant was asked to compare it with Exhibit A9, the driver's license attached to the account opening form with the name Ahmed Musa the defendant denied the driver's license. The defendant confirmed that from Exhibit A1 –A11 & A13, in his statement to ICPC that his date of birth was 27th day of January, 1972. He further confirmed Exhibit A6, as his but denied the date of birth 29-12-1978 on the said Exhibit saying that it was an error from the vehicle Inspection office. His date of birth on Exhibit A9 was 27th of January, 1975. Also there are inconsistencies in the name of the defendant in Exhibit DW1 a charge No. FCT/HC/CRC/136/ his name was Adeolu Adeyanju, In Suit No. FCT/HC/CR/14/04 also in the Judgment of his His lordship A S Umar of

the FCT High court as he then was, the name of the defendant was Adeolu Olugbenga. He asserted that his names are Adeolu Olugbenga Theophilus while his surname is Adeyanju. Also in Exhibits A11 & A13, he gave his name as Adeolu Adeyanju that the space in the paper cannot contain his name Olugbenga, in the voters card Exhibit A5, his names are Adeyanju Adeolu Olugbenga while in Exhibit A6, his driver's license his name is Theophilus Adeolu Adeyanju. It is obvious that the defendant changed his name when and how he likes to suit his different criminal activities.

The court is allowed to presume that the defendant by his established conduct of changing his name at will caused to be made the account opening forms and the mandate attached to Exhibit A2 (report of the handwriting analyst) See the case of AWANER VS. NTAOM(2011) LPELR 3928 CA, where the Court of Appeal held "the court is permitted to presume under Section 149 of the Evidence Act the existence of any facts which it thinks likely to have happened regard being had to common cause of natural event, human conduct and business in their relation to the fact of a particular case" I therefore find no merit in the defence put by the defendant. It is a sham. The defendant is hereby convicted of the offence of forgery contrary to Section 364 of the Penal Code.

COUNT 3: It is the offence of giving false statement to staff of Independent Corrupt Practices and other Related offences Commission (ICPC) Act by the defendant contrary to Section 25(1) (a) (b) of the ICPC Act. Section 25(1) provides that " any person who makes or cause any

other person to make to an officer of the Commission or any other public officer in the course of the exercise of such public officer of the duties of his office any statement which to the knowledge of the person making the statement, causing the statement to be made (a) is false or intended to mislead or is untrue in any material particular or

(b) Shall be guilty of an offence and shall on conviction be liable to a time not exceeding two (2) years or to both such fine and imprisonment.

In proof of this allegation, the prosecution must establish (a) that the defendant gave false information or made another person to give false information. (b) That the false information was given to a public officer in the course of his duty. (c) That the public officer acted on the false information to the detriment of another person. It is important to state that the person who gave the information must have the knowledge that the information was not true. The particular of the offence as contained in the charge was that the defendant informed Messrs Eric Anioma and Isioma Okolo in the course of their duty that he did not bear the name Ahmed Musa to open an account with Zenith bank when he knew that he used the name and also affixed his passport photographs to the account opening package"

The said Eric Anioma testified as PW2. He is the investigator, he interviewed the defendant, documents recovered from the defendant were tendered and admitted through him. Also the statement of the account officer of the defendant was also admitted through him. Looking at the ingredients of the offence as enumerated above, and assuming

that the statements made by the defendant were proven to be false by the prosecution, did the person to whom the statement were allegedly made acted on them to the detriment of another person. The answer is in the negative. The mere volunteering of false statement to the investigator during interrogation without more does not constitute an offence provided it is not acted upon to the detriment of another person. The false information given by the defendant to the investigator were not against anybody but himself. He did not implicate anybody. The ingredients of the offence of giving false statement as spelt out in the case of **Anyewum Vs. C.O.P. Ogun State**(2004) LPELR(120) CA., where the Court of Appeal held "It is inexplicable to reiterate that the facts and the elements constituting the offence of giving false information punishable under Section 125 A (1) (b) of the Criminal Code Law Cap 29 Volume II Laws of Ogun State of Nigeria 1978. The ingredients are as follows;

1. That the appellant gave information to the Police as in Exhibits A, B, C, D & E.

2. That the information was given to a person in authority employed in the public service.

3. That the said information was or is false

4. That the accused person knows the information to be false.

5. That the information was given to the officer knowing the information to be false with a view of making the officer exercise his authority to the detriment of another. It is our law on proof of

evidence that each of the above ingredients must be proved beyond reasonable doubts. See the provisions of Section 130 Evidence Act Cap 112 Laws of the Federation of Nigeria 1990.

See ODUTA Vs. C.O.P. (2012) LPELR 19947 CA, ADEJUYIGBE VS. FRN 2017 LPELR 4381 CA, UZOEGBUNUM VS. C.O.P.(2018) LPELR 43931 CA.

It is common knowledge that during interrogation of defendants by prosecuting agencies, false information are given. The truth or falsity of it is revealed by investigation. If the claim of the prosecution that the defendant gave false information to the interrogators is upheld then every defendant would be charged with the offence of giving false information. It is the trite principle of law that in criminal trial, the onus is on the prosecution to prove all the element of the offence for which an accused is charged beyond reasonable doubt by adducing cogent and credible evidence. I uphold the submission of the defence that the prosecution has failed to establish the elements of the offence as charged in court. The defendant is thus discharged and acquitted of the offence under Section 25(1) (a) (b) of the I.C.P.C. Act.

The summary of the conviction of the defendant are as follows:

Count 1- the accused is discharged & acquitted.

Count 2- The accused is found guilty and convicted

Count 3- The accused is discharged & acquitted.

SIGN

HON. JUDGE

SENTENCING:

The court in compliance with the provisions of Section 311 of the Administration of Criminal Justice Act 2011 and Order 8 the Federal Capital Territory Courts custodial and non custodial sentencing guidelines Practice Direction 2020 conducted a sentencing hearing on the 15th of December, 2020. The convict called two witnesses who claimed to be pastors One Pastor Enoch Lable Taborondo and Apostle Onieni Philip Ubani, they both testified to the activities of the convict in custody which include his successful participation and conclusion of programes organized by the Yes to Christ Club facilitated by the two witnesses. The D1, Pastor Taborondo tendered certificate for different courses which the convict was claimed successfully took part and evidenced by the certificate. Both witnesses testified that the duration of each class with the activity was 12 weeks.

Both witnesses under cross examination by the prosecuting Counsel admitted that they didn't know the mind of the convict. I also add that there is a popular saying that even the devil does not know the intention of a man. To me the whole essence of the program which the convict was said to have participated was geared towards his reformation and rehabilitation. The record of the Court showed that the convict was sentenced for similar offences in 2012 by my learned brother Hon. Justice A.S Umar now of the court of Appeal to various term of imprisonment, ranging from 10 years imprisonment, 3-6 months imprisonment and 5

years imprisonment for the offences on a nine Count charge for the offences criminal Conspiracy, obtaining under false pretence, forgery and fraudulently using forged documents as genuine. The convict obviously from record is not a first offender, in sentencing a convict who is not a first offender the objective should be to rehabilitate by providing him with treatment or training that will make him a reformed citizen, in addition to the deterrent objective of the sentencing. The convict in the instant case in my mind needs to be subjected to serious reformatory programmes, being a serial offender. The initial imprisonment term served appeared not to have any effect on him and his psyche. Perhaps he needs to stay much longer in detention for further rehabilitation. Furthermore, his chance of having a lighter punishment have been negated by his antecedent before his detention that he was an ex convict. I am mindful the allocutus of the learned counsel to the convict that in all there was no financial gain. The offence of forgery is complete with proof of intention of an accused person, notwithstanding that there was no financial gain.

That there was no financial gain may be a mitigating factor, if the convict was a first offender. The Correctional Authority must work on the Psychological well being of the convict while in their custody. He needs Psycho –therapy treatment in addition to the spiritual expositions. His family background should be investigated, his lifestyle, friends, spouse should be consulted for detailed information about his past activities to chart a new course and lease of life for the convict at post-conviction, and release from custody.

Consequently, the convict is hereby sentenced to 7 years imprisonment with effect from 21st April, 2016 when he was remanded by this court in the custody of the Kuje Correctional Centre. Secondly, the Correctional Centre is to assign to the convict a Pastor or any person ordained by God to work closely with the convict, mentor him and minister into him the word of God why crime does not pay and the need for the convict to turn a new leaf after serving his jail term. (The Court paused to find out from the Correctional officer his antecedents while in Correctional custody.)

Court: - What are his antecedents while in custody since 2016?

ASC Eze Kizito:- He has been of good character, and as well helped in lecturing open University students.

Court:- In view of the antecedents of the convict as attested to by the Correctional officers this court hereby Order that as part of the rehabilitation and post conviction engagement of the convict, a social integration programme be designed for him whereby he comes back to the Correctional Centre to share and lecture the other inmates at the Centre about his experience while in custody. He should be made an agent of reform to other inmates while in custody after serving his sentence.

SIGN

HON. JUDGE

18/12/2020.