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

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT KUBWA, ABUJA

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

SUIT NO.: FCT/HC/CR/11/2010

BETWEEN:

COMMISSIONER OF POLICE ----------} APPLICANTS

AND

ENGR. JEDIDIAH EZENWA ----------} RESPONDENTS

RULING/JUDGMENT

On the 18th of November, 2010 the Defendant Engineer Jedidiah Ezenwa was in an eight (8) count charge, charged for obtaining goods/properties by unlawful procedure a crime contrary to S. 2 of Miscellaneous Offence Act CAP 410 LEN as well as dishonest misappropriation issuing of stolen Managers Cheques – all these crimes/offences are detailedly contained in the charge attached to the case file. He was arraigned and he pleaded NOT GUILTY to all the charges.

Sometime in 2015, about five (5) years after the matter was transferred to this Court and naturally it started

de novo. The Defendant was arraigned he took the same plea of NOT GUILTY as before. Trial started. The Court had refused to grant him bail giving its reason. Shortly after trail commenced he wrote Petition against the Judge which was copied to all even the presidency. All these bodies ask that I should continue with the trial of the case. This has taken about two (2) years sojourn of the Petition before the trial restarted on the 30th of November, 2017.

The charge was amended. The Defendant was re-arraigned on a five (5) count charge. He pleaded NOT GUILTY again.

On the 19th of February, 2018 the Prosecution opened its case, called their 1st Witness PW1. Between 19th February, 2018 to 19th April, 2018 the Prosecution Counsel called three (3) Witnesses.

On the 1st of June, 2018 the Prosecution Counsel filed a Motion to amend the charge against the Defendant. On the 27th day of November, 2018 the 8 count charge was read out as the Defendant was arraigned. He pleaded Not Guilty to all the counts.

Defendant Counsel made an oral application for bail, the Court in the detailed reason in its Ruling granted bail to the Defendant. It is imperative to state that the Defendant had been in detention at the Kuje Prison facility for over fifty three (53) months before he was arraigned in 2015. He continued to be in detention awaiting trial until the 27th of November, 2018 when this Court granted bail to him. He had diligently made

himself available and had attended Court all the years and particularly after the last bail was granted on the 27th day of November, 2018.

Between 21st January, 2019 and 20th January, 2020 the Prosecution absented itself from Court. No reason was given. Meanwhile the long adjournments granted by it were at the instances of the Prosecution. On the 20th of January, 2020 the Defendant Counsel applied that the Prosecution be foreclosed on the new charge so that the Defendant can open its defence on the next adjourned date. The Court in its reasoned Ruling granted then and foreclosed the Prosecution from opening its case on the new charge. It is imperative to point out that the Prosecution had on five (5) occasions/adjournments absented itself from Court without giving any reason. Court adjourned for Defendant to open its defence and adjourned the matter to 25th March, 2020. Then came the Covid-19 Pandemic. The matter was further adjourned to 22nd of June, 2020. All the parties were served with Hearing Notices. On the said day the Prosecution team were absent. No reason given as the always do. The Court adjourned the case to 2nd July, 2020. Meanwhile the Defendant Counsel filed a No Case Submission and the Prosecution Counsel was served on the 19th of June, 2020. As at 2nd July, 2020 the Prosecution Counsel had not responded to the No Case Submission filed by the Defendant Counsel which was served on Prosecution since 19th June, 2020. The Prosecution Counsel applied for extension of time to file their response to the No Case Submission, the Court refused

to grant extension of time because since 21st January, 2019 the Prosecution Counsel and his team never attended Court and never give any reason why they were absent. The Court had adjourned the matter at their instances even against the objection by the Defendant Counsel and his team. The refusal was based on the fact that there should be a limit to what the Court can stomach. Again it is the duty and fundamental responsibility of the Prosecution who dragged the Defendant to Court to ensure that it diligently prosecute the case against the Defendant by ensuring that it appears in Court to prove the case against the Defendant. Being absent from Court for more than a year and half is a period far too long.

Having not responded to the No Case Submission in writing the Court allowed the Prosecution to respond orally on Points of Law. And they did after the Defendant team moved their No Case Submission. The Court reserved this case for Ruling on the No Case Submission.

In the said No Case Submission the Defendant Counsel raised an Issue for determination which is:

> **"Whether having regard to the evidence submitted by Prosecution this No Case Submission should not be upheld?"**

They submitted that the Prosecution has failed to place sufficient evidence/materials before the Court to warrant calling the Defendant to enter defence. The Prosecution has placed evidence that is so manifestly

unreliable that this cannot safely convict the Defendant upon such evidence. They referred to the case of:

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

Taking the testimony of the PWs one after the other count by count, the Defendant attached the evidence of the Prosecution.

On whether Prosecution have proved the Essential ingredient of the offences charged, they submitted count by count as follows: that the Defendant was charged with offence under S.1 (1) & (2) & 8 Advance Fee Fraud. S. 320 & 321 punishable under S. 324 and S. 366 of the Penal Code.

On Count 1 the Defendant Counsel submitted that the offence bothers on conspiracy to commit fraud – obtaining property by false pretence under S. 8 of the Advance Fee Fraud and other fraud related offences Act. That by the decision of the Courts in the cases of:

Posu & Anor V. State
(2010) LPELR – 4863 (CA)

Sheriff Ogunleye V. State
(2016) LPELR – 40090

holds that Prosecution must establish that there was agreement between 2 or more persons to do unlawful act or an act which is not in itself illegal but by illegal means. They submitted that the Prosecution has failed to establish from the evidence before the Court the agreement between the Defendant and any other

person so identified by the Prosecution. That PW1, Peter C.J, had stated that his conversation was with one person whom he later identified as Solomon. That Defendant identified was acknowledged by PW1 at the Delta State Liaison office and there was no communication between the PW1 and the Defendant at the said Liaison office; neither was there any further communication between the PW1 and Defendant. The Defendant neither identified himself as a staff of Liaison office nor admit to PW1 that he was the one speaking on phone with the person who constantly spoke on phone with the PW1 asking him PW1 to come to the said Liaison office.

That the calls, going by the Statement of PW1 on record were to one Solomon and the PRO of Jonathan Campaign Organization. That the PW1 did not mention the name of the Defendant as one person he was conversing on phone with.

That there was nothing in the exhibited Defendant's Confessional Statement that remotely shows that there was an agreement between them and the persons mentioned in the Statement to obtain the Jeeps by false pretence. That the Statement revealed that one Fred had grudges against the owner of Ineh Mic Motors Company. Again, that the Defendant's presence at the said Liaison office was on request of the Chief Aham together with CSP Evans Abbey – a Senior Police Officer to give direction to the supply of the Jeeps and not as a Co-conspirator, because according to Chief Ahams the car they came with had a flat tire. Most importantly

that under cross-examination PW2 confirmed that the Jeeps were all recovered. That from the totality of the evidence of the Prosecution Witness, there is no conclusion that the Defendant was a conspirator or conspired with others to perpetrate the crime of obtaining the said Jeeps from Ineh Mic Motors Company by false pretence. That the Prosecution had ample opportunity and leverage to call Witnesses, to tender the Statement of all the persons mentioned by the Defendant in his Confessional Statement since the phone calls he knew about were made by Fred Yusuf, Chief Ahams all talked with the phone calls. PW1 stated in his evidence in chief and statement admitted in Court in this trial. But the Prosecution failed to do so.

Again that Captain or Corporal Abdul who the Prosecution have in their custody was neither called to testify nor was his Statement brought before Court to corroborate the charge of conspiracy. That PW1 in his evidence in chief stated that PW1 and the Captain /Corporal Abdul were all in the custody of the Prosecution and they made Statement but those Statements were never tendered. They referred to the case of:

Alake V. State
(1992) NWLR (PT. 265) 269

They submitted that the Prosecution's failure to call the CSP Evans Abbey whose residence the Prosecution is and has always been aware of with his team and Captain/Corporal Abdul who the Prosecution have

always had in their custody as Witness to support this charge of conspiracy is fatal to its case. That the Prosecution has by their action suppressed evidence in this case. They referred to **S.167 (d) Evidence Act 2011 as amended.** That the Prosecution has refused to supply the Statement of Abdul in proof of evidence and during testimony of PW2 which was taken by the Prosecution to show whether or not the Defendant was part of the conspiracy. They urged the Court to hold that the Prosecution refused to bring before this Court the said Statement by Abdul because it will be unfavourable to its case on charge of conspiracy. They referred to the case of:

Moh. V. State
(1991) LPELR 1901 – SC

They urged Court to hold that Prosecution failed to prove the ingredient of conspiracy. They urged the Court to dismiss the charge.

Count 2 & 4 – forgery with intent to deceive under S.1 (2) (a) & (c) Miscellaneous Offences Act 1983 and S. 366 Penal Code CAP 105 LFN 2004 the Defendant submitted and referred to the case of:

Duru V. FRN
(2018) 12 NWLR 20 @ 44 Paragraph F – H

They contended that Prosecution has not provided credible to discharge the burden that the 6 Cheques in this case were forged by the Defendant and that the same Defendant intended to use them either by himself or through others to deceive Ineh Mic Motors Company

Limited to obtain the said Jeeps illegally. That by the evidence adduced by Prosecution shows that the forged Cheques were reportedly sent to the mail of PW1 who then forwarded them to the Financial Accountant of his company. But Prosecution has failed to present any documentary evidence showing any connection between the Defendant and the said forged Cheques.

That PW1 had stated in his testimony that he could not remember the person who sent him the e-mail. Again PW2 stated that the extensive investigation they carried out could not show any findings linking the Defendant to the forged Cheques or that Defendant has any idea that they were sent to the PW1 for purpose of securing the Jeeps from Ineh Mic Motors Company.

Again that there was no evidence to show that the Defendant communicated anyone at WEMA Bank whose Managers Cheques were forged and sent to PW1 or that Defendant operated an Account with WEMA Bank or that he visited the Branch of the Bank at Wuse whose address was endorsed at the back of the Cheques. The same Prosecution did not find anything connecting the Defendant to the forged Cheques or its mailing to the PW1 and to Zenith Bank Utako Branch. They failed to prove that the Defendant delivered the Cheques at Zenith Bank Utako Branch after the PW2 had admitted that he was not at Zenith Bank the date the Cheques were sent to the Bank.

Again they also admitted that there was no video evidence or picture evidence which captured the Defendant at Zenith Bank Branch at Utako. Also no

staff of the Bank was called or subpoenaed to testify or tender evidence that Defendant was in that day. That Court should disregard the evidence of PW2 over facts he did not witness and not privy to. They relied on the case of:

Adegbite V. Ogunfaolu
(1990) 4 NWLR 578 @ 590 Paragraph B

Okon V. Offeideh
(2013) LPELR – 2189 (CA)

That Prosecution has failed to sufficiently show that Defendant forged the 6 Cheques and used same to deceitfully obtain the said Jeeps from Ineh Mic Motors Company Limited. That on Count 2 & 4 the Prosecution failed to prove the essential Elements of the offence for which the Defendant is charged. They urged Court to discontinuance the evidence led by the Prosecution and discharge and acquit the Defendant.

On **Count 3, 5 & 8** – obtaining goods by false pretences under **S.1 (1) & (2) Advance Fee Fraud and other Fraud Related Offences Act 2006 and S. 179, 320 and 321, punishable under S. 324 Penal Code CAP 105 LFN 2004.** The Defendant referred to the case of **Duru V. FRN Supra.**

They contended that the Defendant has equally failed to present before the Court sufficient evidence that should warrant Defendant to enter and open defence in this case.

That the Defendant admits that there is in existence of some form of false pretence from the evidence of PW1 especially with the experience of PW1 receiving phone calls from one Solomon who according to him claimed to be S.A (Special Adviser) to the Governor of Delta State and the person who presented himself to the PW1 as the PRO of Jonathan Campaign Organization.

That the above evidence is weak since the Prosecution could not call and neglected to approach the Delta State Government to ascertain whether there was such a request for Jeeps or not. That PW2 confirmed under cross-examination that they did not carry out any investigation to ascertain that at the Delta State Liaison Office, at Abuja or in Asaba. That the PW2 reason is that he was sure that the Defendant was the false S.A (Special Adviser). That it is glaringly clear that the PW2 team did not carry out impartial investigation as their investigation was very impartial in the instant case. That PW2 testimony shows biased investigation given the Statement of PW2. That he knew the Defendant earlier when he, (the PW2) worked in SARS.

They submitted that the Prosecution failure to conduct proper and thorough investigation without just cause is fatal to the case of the Prosecution. They urged the Court to so hold. They also referred to the case of:

Adama V. State
(2018) 3 NWLR (PT. 1605) 94

Ikufariji V. FRN
(2018) 6 NWLR (PT. 1614) 142

The Defendant also submitted that Prosecution failed to show by evidence that it provided that the Defendant falsely presented an identity to Ineh Mic Motors or its staff for the purpose of obtaining the Jeep in this case. That the PW1 only stated in his testimony in chief that he identified the Defendant the Defendant as the person who made the gate at the Delta State Liaison Office Abuja to be opened for him only and nothing more. That Defendant explained fully in his Statement already before the Court as Exhibit in the circumstance which led to his going to the Delta State Liaison Office. That Prosecution failed to show any evidence that Defendant presented himself to PW1 as either the S.A (Special Adviser) to the Governor of Delta State or PRO of the Jonathan Campaign Organization or both. That this is also clearly stated in the Defendant's Statement made to the Prosecution. That from the above there is no basis for charging the Defendant with the offence of false identity in order to obtain the Jeeps from PW1's company.

They submitted that Prosecution has not provided any evidence to show that Defendant presented himself in one identity to the PW1 or his company and it turned out to another one. Moreover, that there is nothing to show that the PW1 or Ineh Mic Motors Company Limited supplied the 6 Jeeps to the Delta State Liaison Office or Jonathan Campaign Organization was based on any communication with the Defendant.

That the PW2 claimed in his evidence in chief that he traced the phone call which conversed with him while

in Lagos was traced to Karu and later in the house of the Defendant. That his claim was bereft of any form of proof. The PW2 did not prove or establish that he as Police Officer is a Communication Technologist or Scientist. There was no computer evidence in support of that claim. That being the case without any computer evidence tracing location, pointers and identity confirmed it is marvelling how the PW2 assertion can hold any water. They urged the Court to discontinuance the assertion as the claim is unsubstantiated and therefore goes to no issue. They referred to the case of:

Adegbite V. Ogunfaolu Supra

Count No.6

That the charge against the Defendant borders on theft by virtue S. 287 of the Penal Code CAP 105 LFN 2004. That the Prosecution has not been able to provide sufficient evidence to warrant the Defendant to be called upon to enter defence. The Statement of Defence tendered through PW2 explains how the 6 Jeeps left the Jonathan Campaign Organization on the morning the Jeeps were driven out of CSP Evans Abbey's house in Kubwa, FCT Abuja. That there is no evidence to forward by Prosecution that the Defendant took the Jeeps to or ordered the Jeeps to be driven or drove the Jeeps to the Campaign Organization or to elsewhere. That the image of Defendant tendered by the PW2 was neither a footage or produced from a footage of CCTV at the Campaign Organization Office. That the entire recording of the CCTV was neither brought before the

Court in evidence nor formed part of proof of evidence against the evidence. That whole evidence as stated above are all a way to suppress and withhold evidence that will turn unfavourable for the Prosecution case.

They urged Court to hold that failure to produce the CCTV footage and recordings at the Campaign Organization office is because it will be unfavourable to the case of the Prosecution. That this point alone is enough for Court to dismiss the charge against the Defendant. They urged Court to so hold. They referred to the provision of **S. 167 Evidence Act 2011** and the case of **Mohammed V. State** Supra.

On Count No.7 – the charge on possession of stolen property reasonably believed to have been stolen under **S. 319A Penal Code LFN 2004.** The Defendant Counsel contended that Prosecution has not been able to establish with sufficient evidence that Defendant has in possession or had control of the Jeeps to warrant presumption of the S. 167 Evidence Act and to call upon the Defendant to provide worthy explanation.

That PW2 stated that the Jeeps were recovered from the house of Senior Police Officer in Kubwa who the Defendant identified in his Statement tendered by PW2, as CSP Evans Abbey. Again the car keys were recovered from a Church in Bwari. That Defendant does not stay in the said house in Kubwa, nor worship in the Church or had any control over the 2 addresses/places. Again he does not own any of those places. That Defendant has no effective, physical or manual control or occupation of the Jeeps at any time. That the PW2 has

stated that he had been and knew the house of the Defendant having gone there to arrest the Defendant's sisters. He had confirmed that the Jeeps were recovered from the house of the Senior Police Officer. But it is strange that the Senior Police Officer is not on trial for possession of the Jeeps as a Co-Defendant in this trial or any other trial. That Defendant was never at any material time in possession of the Jeeps. They urged the Court to so hold.

On unreliable evidence of Prosecution the Defendant Counsel submitted that there are material contradictions and inconsistencies in the testimony of PW1 and PW2. That Court should not rely on them.

On the identification – parade where PW2 claimed that PW1 identified Defendant and Corporal Abdul, that the Prosecution never called Corporal Abdul to confirm the claim by PW2. That the claim of pictures taken was equally unsubstantiated. That Defendant submits that there was no identification parade conducted as required by law. They referred to the case of:

Ndidi V. The State
(2007) 13 NWLR (PT. 1052) 633

Ekwe V. State
(2018) LPELR 45987 – CA

That the inconsistencies and the contradictions in the case of the Prosecution has rendered the evidence on the identification parade and all other evidence of Prosecution grossly unreliable and created a doubt in the mind of the Court. They referred to the case of:

Yakubu V. Tauroyel & Ors
(2014) 11 NWLR (PT. 1318) 205

Abacha V. FRN
(2014) 6 NWLR (PT. 1402) 43

On unreliable evidence of PW2 they submitted that the evidence of PW2 is unreliable and that Court should discontinuance the testimony of the PW2 for lack of credible evidence to support same.

That PW1 never confirmed the claim of PW2 that he PW2 brought images from footage from the Campaign Organization Office where the PW1 and Abdul identified the Defendant as the person who asked the gateman of the Delta State Liaison Office to be opened for him (PW1) and Corporal Abdul identified Defendant as the person who instructed him to collect the keys of the Jeeps at the Campaign Organization Office. That PW1 did not state that in his Statement to Police or in examination in chief. That there is equally no evidence in writing or oral before the Court by Corporal Abdul to corroborate or confirm this assertion too. Again the footage from the Campaign Organization office was never tendered before the Court by Prosecution. That this casts doubt about the existence of the CCTV Footage and recordings.

Again that during Cross-examination PW2 admitted that he did not carry any investigation at Delta State Liaison Office in Abuja or Asaba but only believed that the Defendant is the person pretending to be the S.A to the Delta State Governor. Meanwhile, that PW2 had

claimed that he knows the Defendant very well prior to the incidence of these Jeeps. That the PW2 acted on bias rather than on investigated evidence brought before the Court. That he was neither there at the time of the incident nor privy to communication at the time.

That PW2 claimed that Defendant delivered the forged Cheques at Zenith Bank Utako branch, he claimed under Cross-examination that he was in the bank on the day the Cheques were delivered to the bank. He claimed that he has not privy to any video evidence from the bank showing the Defendant. The Prosecution did not call any staff from the bank to testify as to seeing the Defendant deliver the forged Cheques or that the Defendant was around the bank surroundings on the said date.

That the testimony of the PW2 on the above is hearsay as the sources has not been provided and it therefore renders the evidence as unreliable. They referred to the case of:

Osho V. State
(2012) 8 NWLR (PT. 1302) 243

Emmanuel V. State
(2017) LPELR 43550 – CA

That the hearsay and inconsistency and unreliable evidence of PW2 should be dismissed as it has cast doubt in the mind of Court. They also referred to the case of:

Okonji V. State

(1987) 1 NWLR (PT.52) 659

They urged Court to discontinuance the evidence of PW2 as it was discredited badly under Cross-examination and it is unreliable too. That the evidence of the PW1 & PW2 failed to nail the Defendant to the offences charged and it failed to prove the ingredient of the offences charged against the Defendant.

That evidence of Prosecution has not incriminated the Defendant and the Defendant should not be called to give any evidence to rebut same as doing so will be a breach of the Defendant's Fundamental Right of Presumption of Innocence. They referred to **S. 36 of the 1999 Constitution as amended.** That it is for the Prosecution to prove the Defendant guilty beyond reasonable doubt. The referred to the case of:

Seburu V. State
(2010) 1 NWLR (PT. 1176) 515

Tongo V. COP
(2007) 12 NWLR (PT. 1049) 525

That it is very clear that the Prosecution has not made any prima facie case against the Defendant. That that renders any further proceedings on exercise in futility as the Prosecution has failed to adduce enough evidence which would enable Court make valid conviction at the end of the trial. They urged Court to resolve the sole issue in favour of the Defendant.

That by virtue of S. 302 ACJA 2015 and S. 357 ACJA that the proper order which this Court can make in the

circumstance of this case is discharge the Defendant on merit. The referred to:

Seburu V. State @ P 511.

They urged Court to uphold the No Case Submission.

Though the Defendant did not file any response the Court will do a summary of the testimony of the PW1 & PW2 and go on.

The Prosecution had alleged that the Defendant forged the Managers Cheques which was delivered to Ineh Mic Motors Company Limited and fraudulently secured the 6 Jeeps – Prado valued at Seventy Eight Million Naira (₦78, 000,000.00) without paying for them. Again that the Defendant carried out the fraud in conjunction with other accomplices who are not brought before this Court as Witness or Co-Defendants.

It is imperative to state that the Prosecution has awarded the charges against Defendant on 3 different occasions within the last 4 years. All these while the Defendant had been in prison custody and bail was granted on 27th November, 2018.

Prosecution called 2 Witnesses, PW1 – Peter C.J. Amagbogu the Executive Marketing Manager at the Ineh Mic Motors Company Limited. PW1 testified that one Mr. Solomon presented himself as S.A to Delta State Governor. He made inquiries about the Jeep – Prado 4.0 services. PW1 agreed for the price with Mr. Solomon. They agreed as to mode of payment too, the place of delivery and the number of Jeeps to be

supplied. That the Solomon wanted the Jeeps to be delivered at Asaba but later at the Delta State Liaison Office.

That the person later sent the Managers Cheques – WEMA BANK CHEQUES. That PW1 forward same to their company Accountant. But WEMA Bank was unable to confirm the Cheques that Friday and it was to be done on Monday. PW1 left Lagos with 2 of the Jeeps in order to compliment the 4 Jeeps in their Abuja office. PW1 agreed and insisted to supply the Jeeps upon confirmation of the Cheques. But he PW1 later told their drivers to take the vehicle to the Delta State Liaison Office in Abuja.

He claimed he met the Defendant at the Liaison Office after Solomon told him on phone that he will instruct someone to open the gate for them at the Liaison Office. He claimed that the Defendant came later – 10 minutes after to instruct that the gate be opened. That the Jeeps were driven into the office, they were locked and PW1 took the keys to his hotel room. That he refused to hand over the keys to someone unnamed who claimed to be the PRO of the Campaign Organization. Later he took based on the plea of the person calling him on phone took the Jeeps to the Campaign Organization office. That one Policeman Sergeant Usman Danjuma came to the Campaign Organization office. He handed over the keys of the Jeeps to him. The Sgt. Usman Danjuma signed the delivery note and he went back to his hotel at 2 am.

That on Monday the Financial Controller of their office informed them that the Cheques were forged and instructed the PW1 to retrieve the Jeeps.

That on returning to the Liaison Office the Jeeps were not there. He and the company raised alarm. He was subsequently arrested and taken to the Police Station. That it was while he was in the detention he learnt that the Jeeps had been recovered but he did not know from who as he was still at the SARS detention facility. That a man whom he identified as the Defendant was brought to his cell at SARS. He claimed that it was the Defendant who asked the gateman to open the gate at the Liaison Office. He delivered the delivery note, Cheques and the letter of Release of the vehicles as EXH 1 – 3.

He confirmed Sgt. Umar Danjuma signed the Delivery Note and not the Defendant. He confirmed he did not confirm payment before supplying the Jeeps which was against their company policy and their Chairman instruction. He did not know who deposited the Cheques. That it was someone who called and informed him about that. Defendant tendered PW1 Statement – EXH 4. He did not mention the Defendant in his Statement. He confirmed that he cannot the PRO of the Campaign Organization who had asked for the keys of the Jeeps.

EVIDENCE OF PW2

Hyginus Uba is the PW2. He is a Policeman – Inspector attached to CID of SARS. He stated that he know the

Defendant long before this incidence. He claimed that the case file was handed over to his team for investigation. The Defendant and 4 others involved narrated how they went to the Liaison Office, took CCTV Footage, showed it to PW1 and Abdul who identified the Defendant.

They traced Defendant to his house through phone trace to Karu arrested and detained Defendant's sisters in order to get the Defendant. That Defendant directed them to 3 car garages in Lagos. But they could not recover the Jeeps. That they later arrested the Defendant in an empty house in Kano at gun point when he was trying to escape. He claimed Defendant informed them about the whereabouts of the Jeeps and the keys. That the vehicles were traced as packed at the house of a Police Officer. That they spoke to the Senior Police officer and promised that they will not get the person officer into trouble with the Police. That they collected the keys from a Church in Bwari in a polythene bag. Drove the vehicles from the Kubwa address to police custody. That he went to WEMA Bank sought to confirm the issuer of the Cheque to see if Defendant got involved but that WEMA Bank said that they do not know the Cheques issued were forged.

That Zenith wrote to WEMA to give value to the Cheques. WEMA declined that Cheques are not from them. That the vehicles had long been returned to Ineh Mic Motors after a bound was issued and filed. PW2 tendered the Statement of the Defendant and images

from CCTV at the Campaign Organization as EXH 5 & 6.

Under Cross-examination PW2 stated that there was no picture on the identification parade showing the Defendant in the midst of other criminals – 8 persons paraded or the PW1 and Abdul identifying the Defendant as required by law. That he is surprise that the PW1 did not mention the identification parade or mention that he identified the Defendant from the CCTV Footage at the Campaign office. He confirmed that he was not at the Complainant's office in the evening the vehicle were driven to be delivered but claimed that the Complainant's drivers that drove the vehicles out of the Complainant's premises.

He confirmed that the keys and Jeeps were discovered at Bwari and recovered at Kubwa respectively. Yet he claims that the vehicles were in possession of the Defendant who does not live in the premises at Kubwa or worship at the Church in Bwari.

He admitted that he was not at Zenith Bank the day the Wema Cheques were deposited. He did not have footage of the Zenith Bank CCTV before the Court to show what actually transpired that day. He claimed that it was Defendant who deposited the Cheques in Zenith Bank Utako Branch.

He confirmed that what was tendered before Court is the images and footage of the CCTV as he said in his examination in chief. He claimed that the footage was not in their office. He admitted that no investigation

was carried out at Delta State Liaison Office and no Statement obtained from the S.A to Governor of Delta State or any of its officials. He only insisted that Defendant is the person who claims to be the S.A to the Governor. That since they apprehended the Defendant, there was no point carrying out any investigation at the Delta State Liaison office as the Jeeps did not stay long there. He admitted that he did not know that pro-forma invoices were set out by the company.

It is imperative to state that though the Prosecution were served the No Case Submission they did not file any responds.

The Court gave the Prosecution Counsel chance to respond orally. It is imperative to state what the Defendant Counsel said in Court in response. Hear him:

> **"The legal argument on the No Case Submission cannot be located in the issue for determination. It is different from the argument proffered. The argument laid is different as it is different and as it has no bearing to the case at hand. We urge the Court to refuse the No Case Submission."**

COURT:

The Court had summarized the evidence of the Prosecution and the submission of the Defendant Counsel on the No Case Submission. The question is given the evidence and testimony of the PW1 & PW2

and the documents tendered through them, should this Court hold that the Prosecution has so far been able to establish the case against the Defendant by establishing the ingredients of the offences of forgery, obtaining stolen goods, issuing forged documents and fraud and hold that there is a case to answer and that Defendant should open its Defence?

Or should this Court uphold the No Case Submission to answer and therefore hold that there is no point/need to call the Defendant to open its Defence in that the Prosecution have not proved any of the ingredients of the offences as charged and as such discharge and acquit the Defendant and setting him free after 10 long and excruciating years or incarceration and trial.

It is my humble view that the Prosecution have not been able to prove the ingredients of the case against the Defendant in this case.

In every criminal case the Prosecution is expected to mandatorily prove/establish the guilt of the Defendant with compelling and conclusive evidence as degree of compulsion which is consistent with a high degree of probability. It does not mean proof beyond all reasonable/shadow of doubt. This is the decision of the Court in the case of:

Oseni V. State
(2012) 5 NWLR (PT.1293) 351

Bakare V. State

(1987) 1 NWLR (PT.52) 597

Once an evidence probative of the facts in issue, it is considered relevant. That is Court's decision in the case of:

Haruna V. A-G Federation
(2012) 9 NWLR (PT. 1306) 419

Where after the Prosecution has closed its case and the Defendant is called upon to defend itself, the Defendant has a right to file a No Case Submission in that the Prosecution has not proved the ingredients of the offences against the Defendant to warrant the Defendant to open its defence. That means that there is no point for Defendant to open defence as the Defendant, going by the case of Prosecution and evidence in support as well as the testimony of the Prosecution Witnesses has nothing to defence or no question to clarify.

Once the Court feels that there are issues to be clarified by Defendant after the Prosecution has closed its case the Court will hold that there is indeed a case to answer and Defendant is called to lead evidence and call Witness. Where that is the case, any application of a No Case to answer is held to be unmeritorious. It is discontinuanced and dismissed. However where the Court feels otherwise, after listening to both parties for and against the application will hold that there is indeed no case to

answer. Once that is the case the Defendant is discharged and set free and the case ends there.

In the present case, Defendant Jedidiah Ezenwa who has been standing trial in this case had filed this No Case Submission after the Prosecution has closed its case. He had submitted that he has no case to answer as the Prosecution has not been able to nail him to the offences charged and had not been able to establish the ingredients of the offences of forgery, obtaining stolen goods and conspiracy to commit the crime.

It is very trite and had been held by Court and it is also the law as contained in the Penal Code that it takes more than one person to commit conspiracy. That means that conspiracy as a crime is done by more than one person. So where there is an allegation of conspiracy, it is incumbent on the Prosecution to establish that there are more than one person involved.

In this case, the Defendant is charged with conspiracy to commit a crime – obtaining stolen goods. The Prosecution has not been able to nail and show that or even present before the Court the other person who they claimed committed the act of conspiracy or the person that the Defendant conspired with to commit the crime he is charged with. The Prosecution had only feebly mentioned in passing that there was a nameless police officer from whose premises the stolen Jeeps were retrieved. This

house is the house of the Defendant. There is no evidence that the Defendant drove these Jeeps to that premises. Again there is no evidence that the Defendant has any connection or resided in the said house in Kubwa. The Prosecution did not even mention or describe or give the address of the house where the Jeeps were recovered from. They did not give the phone number of the person they claimed the Defendant called. All these make it clear that in that regard the Prosecution could not establish the ingredients of conspiracy to commit fraud or obtaining stolen goods.

Again on the issue of the issuance of the Cheque and presentation of the Cheque at bank, the Prosecution did not establish that Defendant was the ones that presented the forged cheque. There is no footage or evidence that the Defendant was at that bank that day. There is also no evidence that the Defendant was the one that ordered the Jeeps to be taken to the Delta State Liaison Office or to be driven to the Jonathan Campaign Organization office. The pictures presented did not nail the Defendant to that crime.

Also the identification parade allegedly made by the Prosecution where they claimed that the PW1 identified the Defendant is a sham to say the least. The same PW1 had stated that they brought Defendant to his cell where he identified him as the person he met at the liaison office who ordered that the Jeeps should be driven to the Campaign office.

There is no proof that the Defendant drove the Jeeps. Identification parade has a procedure. That procedure was not followed. It is usually done in the open with recordings showing all the persons and all their names who are paraded during the exercise. It was not established in evidence of the PW2 that that was done. The testimony of PW1 in that case failed to nail and establish proper identification identifying the Defendant in his cell is not proper identification as required by law. Due process and proper procedure was not followed. That makes this Court to hold that the action of the PW1 in that regard was a sham and the Defendant has nothing to explain in that regard. So to that extent as in the case of conspiracy, the Defendant has no case to answer. The Prosecution has not established the ingredients of the offence of obtaining stolen goods proper.

There is no proper evidence laid to show and establish that the Defendant was or posed falsely as the S.A to the Governor of Delta State as the Prosecution alleged. There is no evidence from the Delta State government to establish that. The failure of the Prosecution to do so is a fundamental failure to establish that aspect of the crime. They failed also to present a comprehensive CCTV recording from both the Delta State Liaison office, the Campaign Organization office or the bank to show that the Defendant took delivery of the Jeeps and to show that the Jeeps were in his custody too. Yes he led the Defendant to where the keys were but that was after a

call was made through to the undisclosed Police or someone. The Defendant as well as the PW1 all searched for the keys in the Church. There was no call recordings to show that the calls were made from the Defendant's phone and that to show the number of the person whom the call was made.

It is clear that with digital technology the police can trace any call record, such caller and can even see the person making the call and identifying the location. But in this case, the Prosecution through the PW1 & PW2 testimonies could not establish that these calls were made and to whom.

The picture –footage tendered are simply not adequate to nail the Defendant and for Court to ask him to clarify or answer any unexplained actions.

The Prosecution could not prove that the Jeeps were under the control of the Defendant at any stage of the sojourn of the Jeeps from the time it was discovered in Abuja at the Liaison Office to the time it was taken to the Campaign office and the time it was removed from the nameless address at Kubwa. Since the address in Kubwa has an address, it has an occupier, it was built by a person or organization. It must either be rented or owner-occupier. It was not a car dealer place and no evidence laid that Defendant is connected to the said house. To all these extent, the Defendant was not nailed to be in possession of the Jeeps. Prosecution could not proof the ingredients of obtaining goods by fraud or obtaining stole goods.

The Prosecution could not prove that Defendant had under his control the said Jeeps.

The charge was initially against the Defendant and others at large. The Prosecution never mentioned the names of the others at large or particularly the name of the person who live or own the house in Kubwa where the Jeeps were found.

The Prosecution could not establish the main ingredients of theft to show that the Defendant actually stole the 8 Cheques – Managers Cheque valued at Seventy Eight Million Naira (₦78, 000,000.00).

The Prosecution could not establish that the Defendant actually obtained those Jeeps under false pretence as alleged. They could not establish that he collected or at any time received those Jeeps from the PW1 going by the testimony of PW1 who said someone emerged from the dark after some other persons had spoken to him on phone to take the Jeeps initially from the Liaison office to the Campaign office.

In the charge, the Prosecution mentioned one Solomon as one of the persons charged but they never made Solomon as a party to the crime. They never called Solomon or stated that he was arrested and discharged or escaped. They never stated how Solomon disappeared into thin air or absconded. They did not establish the role he played in the whole crime

in issue. This Court finds it and holds that the Prosecution has not been able to establish the ingredients in any of the crimes – conspiracy, obtaining stolen goods, forgery, fraud and false impersonation contrary to S. 179 Penal Code.

The Prosecution were not able to establish the offence under S. 366 of the Penal Code – issuing as genuine or a forged document – the Zenith Bank Cheques. The Defendant never was seen with the Cheques. He never presented the Cheques to the bank. There is no footage to show that he was at the bank to present or draw the Cheques. All these, the Prosecution were not able to present in evidence before this Court. In criminal matters, whoever alleges must prove with cogent, convincing and concrete evidence without a reasonable doubt that any reasonable man is expected to believe that the Defendant had been nailed in the crime so much so that there is no need to call Defendant to put up any defence or to call evidence in defence before the Court can found him guilty.

In this case it is evidently clear that the Prosecution, as already repeatedly stated above, has not been able to establish the ingredients of fraud, conspiracy to commit fraud of obtaining stolen goods or forgery of documents – Cheques and issuing same as genuine document in order to commit fraud. There is therefore no need or any for the Defendant to put up its defence. There is no need or any question which the

Defendant can or is expected to answer. That is why this Court hold that the Defendant Jedidiah Ezenwa has no case to answer in this case since the Prosecution has not established any of the ingredients of the offences he is charged with.

The No Case Submission is meritorious. The Defendant Jedidiah Ezenwa is therefore discharged and acquitted. He is free to go home.

This is the Ruling of this Court.

Delivered today the ___ day of _____ 2020 by me.

_____

K.N. OGBONNAYA

HON. JUDGE

JUDGMENT

The Ruling on No Case Submission filed by the Defendant is hereby adopted and as if set here seriatim.

Based on the merit of the application of No Case Submission filed by the Defendant, jedidiah

Ezenwa, this Court hereby discharge and acquit the said Jedidiah Ezenwa from all the offence charged against him. He is free to go home.

This is the Judgment of this Court.

Delivered today the ___ day of _____ 2020 by me.

_____

K.N. OGBONNAYA

HON. JUDGE