

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI - ABUJA
BEFORE HIS LORDSHIP HON. JUSTICE D.Z. SENCHI.
HON. JUDGE HIGH COURT NO.11
COURT CLERKS –T.P. SALLAH & ORS
DATE: 24 /02/2021**

FCT/HC/CR/244/2018

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA-----

COMPLAINANT

AND

1. PRINCESS .O. KAMA

2. CHIEF ONNY .S. IGBOKWE

DEFENDANTS

JUDGMENT

On the 21st June, 2018 the prosecution filed a four (4) count charge against the 1st and the 2nd Defendants. The four count charge reads as follows:-

COUNT ONE

That you Princess O. kama and Chief Onny S. Igbokwe sometimes between April, and December, 2012, within the jurisdiction of this Honourable Court, agreed between yourselves to commit an illegal act to wit: forgery and thereby committed an offence contrary to section 96 of the Penal Code Cap 532 LFN Abuja (1990) and punishable under section 97 of the same Act.

COUNT TWO

That you Princess O. kama and Chief Onny S. Igbokwe sometimes between April, and December, 2012, within

the jurisdiction of this Honourable Court, did make a false Board Resolution of Citadel Oracle Concept Limited dated the 14th December, 2012, while opening an account with number 0059202675 at Access Bank Plc, with intent to commit fraud and thereby committed an offence contrary to section 363 of the Penal Code Cap 532 LFN Abuja (1990) LFN (1990) and punishable under section 364 of the same Act.

COUNT THREE

That you Princess O. kama and Chief Onny S. Igbokwe sometimes between April, and December, 2012, within the jurisdiction of this Honourable Court, agreed between yourselves to do an illegal act, to wit: using as genuine a forged document, and thereby committed an offence contrary to section 96 of the Penal Code Cap 532 LFN Abuja (1990) and punishable under section 97 of the same act.

COUNT FOUR

That you Princess O. kama and Chief Onny S. Igbokwe sometimes between April, and December, 2012, within the jurisdiction of this Honourable Court, fraudulently or dishonestly used as genuine a forged Board Resolution of Citadel Oracle Concept Limited dated the 14th December, 2012 which you knew or had reason to believe to be forged and thereby committed an offence contrary to section 366 of the Penal Code Cap 532 LFN Abuja (1990) and punishable under section 364 of the same Act.

On the 24th October, 2018 the fourth count charge was read and explained to both the 1st and 2nd Defendants. The 1st and 2nd Defendants individually pleaded not guilty to the four count charge.

Then on the 22nd May, 2019 the prosecution opened its case for hearing and concluded same on 12th November, 2019. Four

witnesses testified on behalf of the prosecution. Exhibits 1-11 were tendered and admitted in evidence through PW1, Abel Princewill Omagbitse, a detective officer with the Economic and Financial Crimes Commission (EFCC). PWs 2 and 3 are Christian Eze Ozims, the company secretary and staff of Technology Distribution Limited and Chioma Eke also a staff of Technology Distribution Limited in its Lagos office respectively. PW4, Dabi Gideon Dashon is a staff of the Economic and Financial Crimes Commission (EFCC) and attached to Forensic Science Department. Exhibits 12, 13-13(d), 14, 15, 16, 17, 18, 19, 20 and 21 were admitted in evidence through PW4.

At the close of the prosecution's case on 12th November, 2019 on 30th January, 2020 and 15th September, 2020, the 1st Defendant testified as DW1 while DW2 is a forensic examiner called by the defence. Exhibits 22, 22 (a), 22(b), 23, 23 (a) and 23 (b) were received in evidence through DW2.

Thus, at the close of the prosecution's case and that of the Defendants, the documents admitted in evidence and marked as exhibits are as follows:-

1. Exhibit 1:- Letter dated 21st December, 2015 signed by one Ade Ipaye and accompanied by a bundle of attached document.
2. Exhibit 2:- Statement of nominal complainant (one Joseph Benjamin) to the Economic and Financial Crimes Commission (EFCC).
3. Exhibit 3:- Letter of Economic and Financial Crimes Commission (EFCC) dated 2nd May, 2016.
4. Exhibit 3A:- Letter of Economic and Financial Crimes Commission (EFCC) dated 22nd July, 2016.
5. Exhibit 3B:- Letter of Economic and Financial Crimes Commission (EFCC) dated 23rd March, 2016.

6. Exhibit 3C:-Letter of Economic and Financial Crimes Commission (EFCC) dated 13th April, 2016.
7. Exhibit 3D:- Letter of Economic and Financial Crimes Commission (EFCC) dated 15th February, 2016.
8. Exhibit 3E:- Letter of Economic and Financial Crimes Commission (EFCC) dated 19th May, 2016
9. Exhibit 3F:- Letter of Economic and Financial Crimes Commission (EFCC) dated 25th April, 2016
10. Exhibit 4:- 1st Defendant's statement to the Economic and Financial Crimes Commission (EFCC) dated 21st July, 2016.
11. Exhibit 4A:-1st Defendant's statement to the Economic and Financial Crimes Commission (EFCC) dated 12th October, 2016.
12. Exhibit4B:-1st Defendant's statement to the Economic and Financial Crimes Commission (EFCC) dated 14th August, 2017.
13. Exhibit 5:- 2nd Defendant's statement to the Economic and Financial Crimes Commission (EFCC) dated 9th June, 2016.
14. Exhibit6:- Statement of Chris EzeOzims dated 2nd August, 2016 to the Economic and Financial Crimes Commission (EFCC).
15. Exhibit 6A:- Statement of Mrs. Shade Oyebode dated 2nd August, 2016 to the Economic and Financial Crimes Commission (EFCC).
- 16.Exhibit 6B:- Statement of ObiloOnuoha dated 22nd August, 2017 to the Economic and Financial Crimes Commission (EFCC).
17. Exhibit 6C:- Statement of Charles Adigwe dated 13th October, 2016 to the Economic and Financial Crimes Commission (EFCC).
18. Exhibit6D:- Statement of ChiomaEkeh dated 13th October,

2016 to the Economic and Financial Crimes Commission (EFCC).

19. Exhibit 7:- Photocopy of data page of International Passport of nominal complainant (Benjamin Joseph).
20. Exhibit 7A:- Photocopy of letter of Acceptance and Authority by Benjamin Joseph.
21. Exhibit8:- Comprehensive bidding document i.e store vouchers of Federal Inland Revenue Services (FIRS) names of recipients and extracts of minutes.
22. Exhibit 9:- Letter of Access Bank dated 29th December, 2016 in response to the Economic and Financial Crimes Commission (EFCC)
23. Exhibit9A:- Letter of Access Bank dated 25th February, 2016 in response to the Economic and Financial Crimes Commission (EFCC)
24. Exhibit 9B:- letter of Access Bank dated 29th April, 2016 in response to the Economic and Financial Crimes Commission (EFCC).
25. Exhibit10:- Letterof Corporate Affairs Commission dated 21st July, 2016 with attached documents in response to the Economic and Financial Crimes Commission (EFCC).
26. Exhibit 11:- Letter of TD (Technology Distributions) dated 27th July, 2016 in response to the Economic and Financial Crimes Commission (EFCC).
27. Exhibit 12:-Citadel Oracle Concept Limited Board Resolution dated 18th December, 2012.
- 28.Exhibit13-13D:-Pages of account opening forms of Access Bank Plc
29. Exhibit14:- Citadel Oracle Concept Limited letter head paper.
30. Exhibit 15,15A-15F:- Series of documents previously marked "A"

31. Exhibit16,16A-16F:- Series of documents previously marked B.
32. Exhibit17,17A-17F:- Series of document previously marked "C"
33. Exhibit18,18A-18F:-Series of document previously marked "D"
34. Exhibit19,19A-19E:- Series of document previously marked "E"
35. Exhibit20,20A-20F:- Series of document previously marked "F"
- 36.Exhibit:-21:- Report of Forensic Document examiner dated 20th July, 2017.
37. Exhibit 22:- Certified true copy of letter to Commissioner of Police dated 12th November, 2013.
38. Exhibit 22A:- Certified true copy of letter Acceptance and Authority dated 13th December,2012.
39. Exhibit 22B:- Certified true copy of Board Resolution dated 18th December, 2012.
- 40.Exhibit 23:- Certified true copy of forwarding of Forensic Document Examiner's Report dated 12th March, 2014.
41. Exhibit23A:-Result of document examination dated 12th March, 2014.
42. Exhibit 23B:- Comparative table.

The brief facts and evidence of the prosecution case is as presented by its witnesses as well as documentary evidence whereinPW1 a detective with the Economic and Financial Crimes Commission (EFCC) testified that on 22nd December,2015, the EFCC received a letter signed by one Ade Ipaye from the office of the Vice President of Federal Republic of Nigeria. The said letter was admitted in evidence at the trial of this matter as Exhibit 1. PW1 testified that a letter of Complaint by one Joseph Benjamin (nominal complainant) against the Inspector General of Police

(IGP) was attached to the said letter which complaint was to the effect that the IGP refused to release a case file of an allegation of conspiracy, impersonation and fraudulent withdrawals of a sum of over N216,000,000.00 from the Federal Inland Revenue Services (FIRS). That it was alleged that this money was withdrawn in connivance of officials of Federal Inland Revenue Services (FIRS), the Defendants and some fraudsters. Thus, the said Exhibit 1 was referred to PW1's team for investigation and upon being invited to adopt his complaint, the nominal complainant came and made a statement to the Economic and Financial Crimes Commission (EFCC). The said nominal complainant's statement to the Economic and Financial Crimes Commission (EFCC) was admitted in evidence as Exhibit 2. After analysing the petition, PW1 testified that his team wrote letters of investigation to various bodies such as HP(Nig) Limited, Access Bank (Nig) Limited, Corporate Affairs Commission, Federal Inland Revenue Services, and Technology Distribution (Nig) Limited. The said letters were admitted in evidence as Exhibits 3, 3A, 3B, 3C, 3D, 3E and 3F. Considering the nominal complainant's allegation that the Defendants connived with fraudsters and FIRS officials to withdraw sums of money, the Defendants were investigated. Investigation revealed that the nominal complainant actually gave a letter of authority and acceptance to the 1st Defendant to act as a staff of his company and on behalf of his company and proceed with the bidding. The Defendants were thus invited to the Economic and Financial Crimes Commission (EFCC) and upon reading the petition, they volunteered written statements. Exhibits 4, 4A and 4B are the 1st Defendant's statement to the Economic and Financial Crimes Commission (EFCC) while Exhibit 5 is that of the 2nd Defendant's. Other persons were also invited to the Economic and Financial Crimes Commission (EFCC) during the course of the investigation and these persons volunteered

written statements which were all admitted in evidence as Exhibits 6, 6A, 6B, 6C and 6D respectfully.

It is PW1's testimony that investigation revealed that as a result of being in a relationship with the 1st Defendant, the nominal complainant had given the 1st Defendant the data page of his international passport and a letter of authority to act on behalf of his company. Exhibits 7 and 7A were admitted in evidence as copies of the said documents. PW1's testimony is that investigation further revealed that the documents were given to the 1st Defendant to bid for a contract with the Federal Inland Revenue Services (FIRS). That the 1st Defendant continued with the bidding and eventually won but there was a little problem in the sharing formula. The said bidding was in respect of lots of contract to supply computers and laptops to the Federal Inland Revenue Services (FIRS) for distribution to staff nationwide. Exhibit 8 contains the said bid documents obtained from the Federal Inland Revenue Services (FIRS) response to the Economic and Financial Crimes Commission (EFCC) investigation. Access Bank's responses to the Economic and Financial Crimes Commission (EFCC) regarding investigation into proceeds of the contract paid into accounts with it were admitted in evidence as Exhibits 9, 9A and 9B. The response of the Corporate Affairs Commission (CAC) was also admitted in evidence as Exhibit 10 while the response of HP i.e. Technology Distribution Nigeria (Exhibit 11) contains the extent of its involvement in the supply of the laptops as the actual company who bank-rolled the supply and ensured that they were supplied. On the nominal complainant's allegation that the contracts were not executed, PW1 testified that his team discovered that the contracts were duly executed. They also discovered that Federal Government was not defrauded as opposed to the nominal complainant's allegation that it was. In respect of the nominal complainant's allegation that his Board of Resolution was forged to open an account with Access bank into which the proceeds of the contract were paid, PW1 testified that his team's investigation revealed that there was a Board Resolution which the nominal complainant

handed over to the 1st Defendant as part of the account opening and investigation further reveal a bone of contention between the nominal complainant and the 1st Defendant on how the proceeds of the contract should be shared. The allegation of forgery of the Board Resolution and the account opening package however prompted the documents being sent to the forensic unit for their expert opinion.

Under cross-examination, PW1 admitted that he is aware of CCTV cameras in banks and that he requested from Access Bank the CCTV footage where the transaction took place but it could not be produced because the documents were submitted at the information desk. He admitted that the 1st Defendant had stated in her statement that she and the nominal complainant i.e Benjamin Joseph had proceeded to Access Bank together and submitted the account opening package documents. That the 1st Defendant's younger brother Tochukwu had also accompanied them. PW1 stated that Benjamin Joseph never denied the 1st Defendant's statement of going to Access Bank together. He admitted that the 1st Defendant's younger brother Tochukwu confirmed that they all proceeded to Access bank together with the 1st Defendant and Benjamin Joseph and that Benjamin Joseph issued and signed the Board Resolution and also signed all the account opening package. That although the said Tochukwu's statement was taken by the Economic and Financial Crimes Commission (EFCC), it is not contained in the proof of evidence before this Court. According to PW1 under cross examination that Exhibit 7A was signed by Mr. Benjamin Joseph, the nominal complainant but his complaint did not include the making of Exhibit 7A.

PW2 also gave sworn testimony. He works with Technologies Distribution Limited (TD Ltd) and has been its Company secretary for 13 years. His duty includes advising the Board of the company on its statutory obligations etc. The company is a major distributor of ICT products and represents many manufacturers including HP. PW2 testifies that he knows the two Defendants in the dock as the representatives of two companies which are

Admas Digital Technologies Limited and Citadel Oracle Concept Limited. According to him Sometime in December, 2012, the 2nd Defendant brought two transactions in the name of each of the companies to Technology Distribution Limited Abuja branch. PW2 stated that the 2nd Defendant has been Technology Distribution Limited customer for more than 10 years and is the owner of Admas Technology Limited, while Technology Distribution Limited had not done business with Citadel Oracle Concept Limited before. PW2 testified that 2nd Defendant said he was representing both companies and he was working with the 1st Defendant in respect of Citadel Oracle Concept Limited whom he said had issued a letter of authorization. Technology Distribution Limited verified the genuineness of the contracts with the Federal Inland Revenue Services (FIRS). As the representatives of the two companies had no cash to purchase, they applied for the laptops on credit pending payment by Federal Inland Revenue Services (FIRS). PW2 testified that this was normal and Technology Distribution Limited's policy on granting credit included requiring such customers to open an account in their name into which the proceeds of the contract would be paid, but with two of Technology Distribution Limited's staff appointed as signatories to such account. PW1 stated that this was thus what the two companies Admas Digital Technology and Citadel Oracle Concept did by appointing PW2 and one Mrs. Shade Oyeboode as signatories to each of the two companies' accounts. It is PW2's testimony that apart from being a signatory to the accounts of the two companies, he did not play any other role.

In his testimony under cross-examination by Defence Counsel PW2 testifies that the 1st and 2nd Defendants are not signatories to the Access Bank account. That the 2nd Defendant has established goodwill over the years with Technology Distribution Limited and as such, Technology Distribution Limited dealt with both companies and granted the credit facility to Citadel Oracle Concept based on trust. PW2 further stated under cross examination that he is aware of a suit filed by the nominal complainant against himself and Mrs. Shade Oyeboode at the Lagos High Court in which the nominal complainant alleged that

his company was fraudulently used to supply laptops to the Federal Inland Revenue Services (FIRS) without his knowledge. PW2 also testified under cross examination that he is aware of a criminal charge against the nominal complainant of giving false information to the police in which PW2 said he testified in the suit.

PW3 also works for Technology Distributions Limited and is currently the Chief Executive Officer of the company. She recalled that there was a contract on 5th December, 2012 from the Federal Inland Revenue Services (FIRS) to four companies two of which were Admas and Citadel for the supply of HP Probook 6470B. Upon being approached by Admas, Technology Distribution Limited granted credit facility for the execution of the Federal Inland Revenue Services (FIRS) contracts to both companies. PW3 testifies that Admas had come with a board resolution that he has been mandated to act for Citadel. That the value of the facility granted was N108,483,200.00 PW3 testified that Technology Distribution Limited then requested the 2nd Defendant's company to open an account to which two of Technology Distribution Limited's staff would be signatories. That the signatories from Technology Distribution Limited to the account were Mr. OzimsEze and Mrs. Shade Oyebode who are both staff of Technology Distribution Limited. That Technology Distribution Limited however did not aid the Defendants in opening the accounts. PW3 testified that she was told that the accounts opened was based on a fraudulent Board Resolution although she was not aware that the accounts were fictitious. She testified that the Federal Inland Revenue Services (FIRS) paid the sum of N145,135.138 while the figure advanced to the Defendants was N108, 483,200.00. By virtue of her position in Technology Distribution Limited, PW3 stated in her evidence that after deducting the products value, Technology Distribution Limited paid the balance/difference to the account designated by Admas as she (PW3) gave the said instruction to do so. She stated that one Chief Eke Stanley who is the owner of Zinox Computers Technology is her husband and has absolutely nothing to do with the transaction in question.

PW3 in her testimony under cross-examination stated that the effective date of the transaction was between 5th December, 2012 and January 2013 and the opening of the accounts, payment by FIRS and the Board resolutions were all concluded between that period. That she became aware of the fraudulent account when Special Fraud Unit of the Nigeria Police Force arrested Mr. Ozims and Mrs. Oyebode but later exonerated them and the Defendants after investigation. She never received any objection from Benjamin of Citadel Oracle in respect of the Board Resolution or complaint that he never signed the board resolution.

The Prosecution's last witness was PW4 who works with the Forensic Science Department of the Economic and Financial Crimes Commission (EFCC) Department in Abuja. His sworn testimony before this Court is to the effect that he has been working with the Economic and Financial Crimes Commission (EFCC) for about 15 years and his qualifications include a B.Sc degree in Microbiology (Unijos) and a Certification Programme in Questioned Document Examination (American Institute of Applied Science in North Carolina, USA). He also attended courses in Modern Techniques for Forensic Document Examination (Forster and Primy, U.K) and other courses for forensic document examiners at Hooke College of Applied Science in the U.S.A. He testified that he does not know the Defendants and has never met them before. That sometime in July 2016, the Procurement Fraud Unit of the Economic and Financial Crimes Commission (EFCC) forwarded a request letter alongside two sets of documents asking for their examination, comparison and report on the two sets of documents. That the first set of documents were the disputed documents marked X-X5 of which X is a letterhead of Citadel Oracle Concept Limited containing a Board resolution while the documents marked X1- X5 were Access Bank account opening form containing writing and signature. The said Citadel Oracle Concept Limited Board resolution was admitted in evidence as Exhibit 12 while the pages of Access Bank account opening form was admitted in evidence as Exhibits 13 - 13D. PW4 testified that the second set of

documents he received were the known specimen handwriting documents and signatures marked A-A7, B-B6, C-C6 and D-D3. Upon registering the case and assigning same to the laboratory, PW4 was detailed by the Head of Forensics to carry out examination on the two sets of documents. In the course of his examination of the documents, PW4 requested for additional specimen from the Procurement Fraud Unit and it was forwarded to him with a specimen letterhead paper of Citadel marked 'H'. The said letterhead paper of Citadel Oracle Concept Limited was admitted in evidence as Exhibit 14.

PW4 testified that in addition to the documents marked A-A7, B-B6, C-C6 and D-D3, further documents were sent to him. These further documents include those marked A8-A88 and additional handwriting specimen marked B7-B90, C7-C90, D4-D87, E1-E84 and F1-F88. The entire series of documents marked 'A' were admitted in evidence as Exhibits 15, 15A – 15F. Those marked 'B' series were admitted as Exhibits 16, 16A – 16F while those in the 'C' series were admitted in evidence as Exhibits 17, 17A – 17F. The set of documents marked 'D' series were admitted as Exhibits 18, 18A – 18F while 'E' series are Exhibits 19, 19A – 19E. Finally, the documents referred to by PW4 as those marked 'F' series were admitted in evidence as Exhibits 20, 20A – 20F.

PW4 testified that he examined all these documents sent to him starting with the known specimen series to determine the handwriting, identifying characteristic or elements. He stated that there are 3 principles of handwriting characteristic and proceeded to analyse same. That he was able to determine the handwriting and signatures of the writers based on these principles. After examining the handwriting on the disputed documents marked x-x5 (Exhibits 12 and 13 – 13D) to determine the individuality of those writers, he then compared the characteristics that exist in the known handwriting series with those found in the disputed handwriting and signature. PW4 testified that he made use of the stereo microscope at high magnification as well as a VSC5000 manufactured by Forester and Seaman. He eventually came up with his report which was admitted in evidence as Exhibit 21. He

testified that his findings as contained in Exhibit 21 is to the effect that the signature on the disputed document marked 'X' (Exhibit 12) was not written in original ink but rather imported into the document through the process of scanning, cut and paste thus rendering the document forensically non-genuine. That a comparison of the specimen letter head-paper marked 'H' (Exhibit 14) with 'X' (Exhibit 12) revealed that the disputed letterhead paper is a scanned document while the specimen letter headed paper marked 'H' (Exhibit 12) is an original document produced via the process of laser jet print process. That the author of known specimen handwriting signature marked B-B90 (Exhibits 16 – 16F) wrote the signature of Oyebode Shade on disputed documents marked X3, X4 and X5 (i.e. Exhibits 13B, 13C and 13D). That it shows similarity of handwriting and signature specimen of the author and the disputed documents. PW4 testified that his report is to the effect that there are similarities that exist in the combination of writing characteristics on the known specimen handwriting marked C-C90 (Exhibits 17, 17A – 17F) and those handwriting characteristics that exist in the disputed signatures of Ozims Chris marked X2, X4 and X5 (Exhibits 13A, 13C and 13D). That the signatures were naturally written.

Under cross-examination by Defence Counsel, PW4 stated that the certificates qualifying him as a forensic expert are in his custody but not with him in Court. He reiterated that it was Exhibit 12 that was produced by scanning although his findings did not say who scanned same. He admitted that the Defendants' names are not all on Exhibit 15 but the 1st Defendant's name is on a signature specimen marked A16 (i.e. a page of Exhibit 15A). He explained that page 2 of paragraph 2(a) of his report (Exhibit 21) does not apply to the three principles he earlier stated in his evidence in chief. He stated that the words 'yours faithfully', the signature and the name Benjamin on Exhibit 12 are all produced by the method of scanning cut and paste while the letterhead itself reveals features of a scanned document. He however admitted that the printer is the one that prints both the original and the scanned copies. He said the signatures on Exhibits 13 -

13D are written in their original form and not scanned or pasted. He specifically stated that he can only identify documents based on forensic examination and he does not identify documents by names. PW4 proceeded to identify the names on Exhibit 16.

At the conclusion of PW4's evidence, as I said earlier, the 1st Defendant testified as Dw1. In the sworn testimony of DW1, she stated that she is an entrepreneur and knows Benjamin Onyebuchi Joseph (the nominal complainant in this case) who is the Managing Director of Citadel Oracle Concept Limited. According to DW1 that the nominal complainant used to be her friend since 2001 in Enugu and that he had indicated interest in marrying her but she declined. They however continued their relationship until they went apart and she left Enugu to Abuja. DW1 testified that she once represented the company of the nominal complainant. She testified that they ran into each other again in 2010 in Lagos at which time the nominal complainant had informed her that he was into buying and selling of computers. Then DW1 stated that she was into information technology with one Admas Limited at the time and she had told the nominal complainant of how she had been securing Government contracts. DW1 testified that the nominal complainant having expressed interest in and frustration with expanding to Abuja, the 1st Defendant offered to help him partner with HP towards securing government contracts as a preferred HP partner. Both the nominal complainant and the 1st Defendant then parted ways until 2011 when the 1st Defendant's brother Tochukwu Kama informed DW1 that the nominal complainant had plans to relocate to Abuja and she told her brother to assist the nominal complainant as she was busy. The 1st Defendant testified that subsequently, the nominal complainant's company Citadel got a job offer from Millennium Development Goals (MDG) and was asked to pay N500,000.00 up-front to the facilitators but she advised the nominal complainant not to pay but he did and he ended up not getting the job. The 1st Defendant then told the nominal complainant about a contract with the Federal Inland Revenue Services (FIRS) which organization was then pre-qualifying for the award of contracts. She told the nominal

complainant not to worry as she would use her own funds to do the tender bid. She requested him to submit his company profile to her because he was not HP certified and then she used her contacts with Admas Limited to fast track the Citadel certification which was successful within months.

It is the 1st Defendant's further testimony that once the Federal Inland Revenue Services (FIRS) advertised on its website for the pre-qualification for the supply of computers, she tendered bids (using her own funds) on behalf of Citadel and Admas and both companies were successful. She testified that both Citadel and Admas got three (3) slots each to supply computers to Federal Inland Revenue Services (FIRS). As she was already known by the Federal Inland Revenue Services (FIRS) as the contact person for Admas Technologies Limited, she was able to collect Admas letter of award of contract. To collect that of Citadel however, the nominal complainant issued her with a letter of authority identifying her as a member of his company and authorizing her to act on behalf of the company (Citadel) in respect of the award and to execute the contract. She testified that the nominal complainant also attached the front page of his International Passport to authenticate things. It was upon submission of these documents to Federal Inland Revenue Services (FIRS) that she was allowed to collect Citadel's award letter and to execute the contract on behalf of Citadel. She testified that when she collected the award letter, she had a meeting with the nominal complainant (who was excited) as to how to share the profit and it was agreed that he will take the profit of one slot while she would take the profit of two slots of the total award sum of N170,300,000. She testified that the contract was executed and a certificate of completion was issued to her by Federal Inland Revenue Services (FIRS). That at the time of execution however, N154,000,000.00 and some fraction was needed to execute same but Citadel did not have the funds at the material time. That they therefore resorted to Technologies Distribution (TD) for the supply of computers to Federal Inland Revenue Services (FIRS) on terms such as opening an account in the name of the company but making Technology Distribution the sole signatory

of the account to guarantee payment as the Federal Inland Revenue Services (FIRS) does not pay any other company but the awardee of the contract. That this package is however available only to longstanding customers of Technology Distribution but since she has been Technology Distribution's partner for years, she was able to secure the deal with Technologies Distribution (TD) on behalf of Citadel (as well as Admas) and with the 2nd Defendant (the Chairman of Admas Digital) as guarantor for Citadel. The 1st Defendant testified that in accordance with the arrangement, Citadel opened an account at Access Bank with staff of Technology Distribution as signatory to the account. That when she told the nominal complainant, he was excited and brought all the account opening documents to her in Abuja and she had taken the documents with the nominal complainant in the company of her brother Tochukwu (who had picked the nominal complainant from the airport) to the bank in her own car. On getting to Access Bank Garki-Abuja, the 1st Defendant, nominal complainant and Tochukwu submitted the account opening documents there, i.e Access Bank Garki, Abuja Branch.

It is the 1st Defendant's further testimony that Federal Inland Revenue Services (FIRS) eventually paid the contract sum into the said account of Citadel and after the expenses for the execution of the contract, the profit was about N38,000,000.00. That Technology Distribution only took the value of the purchase of the computer (not profit) and after this had been moved to Technology Distribution from the said Citadel account, the profit was moved to Admas Digital account as the guarantor. That when payment was made the 1st Defendant enquired from the nominal complainant as to where he would want his share of the profit. Upon his enquiry as to how much was to be paid to him and the 1st Defendant informing him that he was entitled to N5,700,000.00 as agreed, the nominal complainant insisted that all the contract sum must be moved to his account. Disagreement thus arose between the 1st Defendant and the nominal complainant in January after she informed him that they were left with the profit of the 3 lots of the contract. She subsequently got

a letter from his company lawyer asking her to explain a tax credit of N8,100,000.00 for the job from Federal Inland Revenue Services (FIRS). She testified that she handed the letter over to the Special Fraud Unit of the Police in Lagos where the nominal complainant had laid a complaint of forgery, impersonation and defrauding the Federal Government. DW1 testified further that Chief AfeBabalola SAN, to whom the matter had been reported to, tried to settle the dispute between parties amicably pursuant to which the 1st Defendant was advised to offer the nominal complainant more money and she did offer him a further sum of N10,000,000.00 as his profit from the executed Federal Inland Revenue Services (FIRS) contract. The nominal complainant did not respond to the offer until she started being investigated by the Special Fraud Unit of the police. The 1st Defendant testified that the nominal complainant also sued her, the 2nd Defendant, Technology Distribution Limited, Admas Digital Limited, Access Bank, Zinox Technologies and Chief Chris Ozims in Lagos on the same subject matter. All these occurred according to DW1 before the nominal complainant reported the 1st Defendant to the Economic and Financial Crimes Commission (EFCC).

Under cross-examination by the learned Prosecution Counsel, the 1st Defendant stated that she gave the nominal complainant one lot of the three lots of the contract because she had single-handedly financed everything to do with the contract. She stated that the nominal complainant had, at the material time, told her that he did not have money to finance the contract. She denied offering him N15,000,000.00 as what she offered him was N10,000,000.00. She denied that the nominal complainant told her that he was no longer interested in the contract. She admitted having a meeting with one General Popoola and a Bishop all with the aim of finding a solution to the disagreement. She is however not aware of any forgery of Board Resolution of Citadel nor is she aware of anybody forging the Board Resolution. She stated emphatically that this is because it was the nominal complainant himself that brought the Board Resolution. She denied lifting and pasting any signature to the Board resolution or knowing anybody who did so.

Finally, DW2 was called by the defence and he gave sworn testimony. He is a retired Assistant Superintendent of Police (ASP) and a forensic document examiner. He testified that he has over 28 years' experience in forensic document examination and has been giving evidence in respect of same within and outside Nigeria. He has basic training under Federal Investigation Bureau of the Nigeria police at Kaduna between 1990 to 1991. He received various trainings in VSC/5000, ESDA/RAMA, Survival Awareness Analysis in Service as well as Violent Crime Analysis (United States Department of Justice). He equally has had training under First Digital Computer Techno Law Enforcement (for which he received a certificate). He is a member of Medical Academy of Forensic Science (AAFS), a member of Handwriting Devises Dallas United States of America, and a member of First Digital Computer Techno Law Enforcement. He also has a Bachelor of Arts degree in the area of International Relations.

DW2 testified that prior to his retirement from the Police in 2015, he was formerly attached to the Forensic Science Lab, Force CID, Ikoyi, Lagos. In February 2014, his office received a letter from the Commissioner of Police (Special Fraud Unit) Ikoyi, Lagos which letter was accompanied by three documents headed Citadel Oracle Concept Limited marked X1, X2 and X3. The said documents were admitted in evidence at trial as Exhibits 22, 22A and 22B. The case was assigned to DW2's unit i.e. Document Forensic Science Laboratory to treat and as the forensic document examiner and officer in charge of that unit, DW2 carried out scientific examination and comparison through VSC/5000 and other apparatus on the questioned signature of Mr. Benjamin Joseph on the documents. From his scientific examination and comparison of Exhibits 22A and 22B with Exhibit 22 (which is the standard signature), DW2 testified that he found inherent features of identity belonging to one signature. That the features found out are from initial movement, the media movement and the terminal stroke particularly in the media movement, the stroke formation that has a body called loop, that these formations are consistent with all these three signatures

and these signature are devoid of simulation and no evidence of lifting and pasting and also superimposition. He testified that the signature is a difficult one that can be simulated or imitated without mixing the mechanism of these signature. He found the inherent features or master pattern of these signatures intact. DW2 testified that based on his findings, he is convinced that one and same person signed the signatures in Exhibits 22, 22A and 22B. He had written his report which had been forwarded to the Commissioner of Police (Special Fraud Unit). Exhibit 23, 23A and 23B were admitted in evidence as DW2's said report which is recorded particularly at Exhibit 23A. DW2 testified that he received photocopies as Exhibits 22, 22A and 22B which are suitable for examination and comparison. He expatiated that the eligibility of the stress of the signatures portrays clear cut and outright to enable him decipher all the strokes, the master pattern or inherent features. He stated also that under the VSC/5000, it helped him to see all the areas whether there is evidence of lifting and pasting or super imposition and there were no such traces of lifting, pasting or super imposition on the documents.

Under cross-examination, DW2 stated that he has been working with Master Pattern Forensic Services Limited as a forensic examiner since his retirement from the Police in 2015. He can remember some of the cases he dealt with in his 28 years of service with the Police. He stated that the new upgrade of the VSC5000 gives the same results as the previous versions. He is not aware of the Economic and Financial Crimes Commission (EFCC) forensic report although he is aware of lifting and pasting.

Having state the brief facts and evidence of the prosecution's case and that of the defence, Counsel to the respective parties have formulated issues for determination in this instant case. The issue set out for determination by the 1st and 2nd Defendants Counsel reads as follows:-

"Whether the four (4) count charge of forgery contrary to section 96 of the Penal Code; fraud Contrary to section 363 of the Penal Code and

using as genuine a forged Board Resolution contrary to section 366 of the Penal Code has been made out by the prosecution."

The prosecution on its part distilled the following sole issue for determination:-

"Whether by the circumstances of the case, the prosecution has not made out a case of conspiracy, forgery and using as Genuine a forged document."

The two issues submitted or nominated to determine this case by the respective Counsel are practically the same. Thus therefore I will and I hereby adopt the issue for determination as proffered by the prosecution as follows:-

"Whether by the circumstances of the case, the prosecution has not made out a case of conspiracy, forgery and using as genuine a forged document."

Arguing his issue for determination, learned Counsel to the Defendants submitted in his address that the Prosecution has not made out the offences for which the Defendants have been charged against them. He referred this Court to the provisions of Sections 96, 363 and 366 of the Penal Code under which the Defendants were charged as well as the Board Resolution of Citadel Oracle Concepts Limited (Exhibit 12) and Access Bank Account Opening Forms (Exhibits 13 – 13D). On the ingredients of the offence of forgery, he contended that the Prosecution alleged that the 1st and 2nd Defendants forged the signature of one Benjamin Joseph (the Nominal Complainant) on Exhibits 12 and 13 – 13D. He posited that there is no direct evidence called at trial of anybody witnessing the Defendants forging signatures on the documents and neither did the extra-judicial statements of the Defendants show that they confessed to doing this. Counsel submitted that the entire evidence of PW1 who investigated the complaint against the Defendants does not show that the Defendants forged the said documents. According to Counsel, the fact that the 1st Defendant went to submit the allegedly forged documents with her brother and in the company of the nominal complainant himself was brought to PW1's attention. Further, the Defendants Counsel submitted that the failure of the Prosecution

to tender the 1st Defendant's brother's statement (which had been obtained) amounts to withholding evidence. He posited that PW2 did not give an iota of evidence pointing to the fact that the Defendants forged any documents. It is Counsel's submission that the entire evidence of PW4 (the forensic analyst called by the prosecution) does not establish that the Defendants have any relationship with the making of Exhibits 12 and 13 – 13D. He posited that the Prosecution has failed to show that the Defendants forged the documents or used them as genuine knowing them to be false. He contended that the nominal complainant whose signature was alleged to have been forged was not called to give evidence by the Prosecution as he showed unwillingness to do so. He relied on the case of **ALAKE V. STATE (1992) 9 NWLR (PT. 265) P. 260** for the consequences of this and urged this Court to discharge and acquit the Defendants on all counts of the charge.

In his final address, learned prosecuting Counsel copiously set out the facts of this case as he perceived it and he then proceeded to submit that the Nominal Complainant's contention that he didn't make or sign Exhibits 12 and 13 – 13B as well as allegations of fraud is the crux of the charge against the Defendants in this case. He submitted that the Prosecution has placed sufficient materials before the Court to find in its favour. He relied on the case of **STATE V. NJOKU (2010) 1 NWLR (PT. 1175) P. 243** and a plethora of other decided cases.

In the resolution of the issue for determination before this Court, it is trite position of the law that in criminal trials, the prosecution has the unshifting burden and duty to prove all (and not merely some) of the ingredients of the offence charged beyond reasonable doubt. The standard of proof is such that if there is any element of doubt in relation to any of the ingredients, the doubt is to be resolved in favour of the Defendant. Thus in discharging this burden of proof, the prosecution is required to produce credible evidence which may be direct; on admission, or if circumstantial, it must be of such quality or cogency that a court could *safely rely on it in coming to its decision in the case.*

See the case **TANKO V. STATE (2008) 16 NWLR (PT. 1114) P. 597. SUNDAY UDOR V STATE, (2014) LPELR 23064 (SC) and BITO SEMAKA V THE STATE, (2018) LPELR 44001 (CA)** See also **Section 135 of the Evidence Act 2011 (as amended)**.

Under Counts 1 and 3 of the instant charge, the Defendants are accused of committing the offence of conspiracy to commit the offences of forgery and using as genuine a forged document. It must however be noted that Criminal conspiracy to commit the offence of forgery itself is a separate and distinct offence under **Section 96 of the Penal Code** from the offence of forgery. However, to sustain the offence of conspiracy to commit forgery, the main offence of forgery must first be sustained against the Defendants in this case. See the case of **AITUMA V. STATE (2006) LPELR-7647(CA)**.

Further, the rationale that the offence of forgery must first be established or sustained against the Defendants before the offence of criminal conspiracy is not farfetched. It is because criminal conspiracy is hardly proved by direct evidence. In the case of **MRS. MUBO IKOTUN V FRN & ANOR (2017) LPELR 43396**, the Appeal, Lagos judicial Division held thus:-

"The offence of Conspiracy is hardly proved by direct evidence. Conspirators normally shroud their criminal activities with utmost secrecy. Evidence of conspiracy is ordinarily drawn from inference or circumstantial sources showing the criminal acts of the parties concerned done in pursuance of a criminal enterprise in common between the parties so the offence of conspiracy by inference can be proved by circumstantial or inferential evidence."

See also **NJOVENS & ORS V THE STATE, (1973) NWLR (PT 76) page 96- 97. NIKI TOBI JSC (as he then was and of blessed**

memory in the case of **KAZA V STATE (2008) LPELR 1683** said-

"In the offence of conspiracy, the mensrea is not easy to locate as it is mostly, if not invariably buried in secrecy. And so, the actusreus of the offence which is easier to locate can draw the mensrea to the open and make it possible for the Court to find inculpatory evidence."

In other words, if the actusreus of the Defendants is established in the offence of forgery, then it is easier to locate and draw mensrea in the open for the offence of criminal conspiracy.

Having said the above, now under Count 2 of the charge before this Court, the Defendants are accused of making a false Board Resolution of Citadel Oracle Concept Limited dated the 14th December, 2012, while opening an Account with number 0059202675 at Access Bank Plc, with intent to commit fraud. While count 4, the Defendants were alleged to have fraudulently or dishonestly used as genuine a forged Board Resolution of Citadel Oracle Concept Limited which they knew or had reason to believe to be forged.

Section 362(a) of the Penal Code provides as follows:-

362. A person is said to make a false document –

(a) who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document or mark denoting the execution of a document with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by the authority of a person by whom or by whose authority he knows that it was not made signed, sealed or executed;

Section 363 of the Penal Code further provides as follows:-

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

See the case of **BROWN & ANOR V. THE STATE (2011) LPELR-4465(CA)** where it was held thus by the Court of Appeal;

"The Penal Code under Section 363 defined forgery as when a person makes any false document or part of a document with intent to support any claim or cause damage to the public or person."

See also **GARBA V. C.O.P. (2007) 16 NWLR (PT. 1060) P. 378** and **DALYOP V. THE STATE (2013) LPELR-21898(CA)**.

Section 364 of the Penal Code further provides that:-

Whoever commits forgery shall be punished with imprisonment for a term, which may extend to fourteen years or with fine or with both.

The ingredients or essential elements of the offence of forgery which must be established by cogent and reliable evidence in order to ground conviction are:

- (a) That there is a document in writing.
- (b) That the document or writing is forged
- (c) That the forgery is by the accused person.
- (d) That the accused person knows that the document or writing is false.

(e) That the accused intends the forged document to be acted upon to the prejudice of the victim in the belief that it is genuine.

See the cases of ***ALAKE V. STATE (1992) LPELR-403(SC) and MUSTAPHA V. FRN (2018) LPELR-46565(CA). DURU V FRN (2018) 12 NWLR (PT.1632) page 20 At 44, ONTARIO OIL& GAS (NIG)LTD V FRN (2015) LPELR 24651 (CA)***

I have looked closely at the evidence adduced by the Prosecution in support of its case particularly the evidence of PW1 and PW4. Let me state for the record that there is nothing in the evidence-in-chief of PW2 relating to the allegation of forgery of a board resolution. Secondly, the only part of PW3's testimony on forgery of board resolution is where she stated in her evidence in chief that she was 'told' that accounts were opened based on a fraudulent Board Resolution. This piece of evidence however amounts to hearsay evidence and cannot be relied upon by this Court to establish the fact of forgery of any board resolution. See the cases of of ***OKHUAROBO V. AIGBE (2002) 9 NWLR (PT. 771) P. 29 and JOLAYEMI V. ALAOYE (2004) 12 NWLR (PT. 887) P. 322.***

Regarding the evidence of PW1, his evidence-in-chief on allegation of forgery of Board Resolution is simply that allegation of commission of various crimes was made by the nominal complainant which, from his investigation as an investigator with the Economic and Financial Crimes Commission (EFCC), was unfounded. The nominal complainant's allegation of forgery of Board Resolution and account opening package however prompted the said documents to be sent to the forensic unit of the Economic and Financial Crimes Commission (EFCC) for their expert opinion.

However, PW4's evidence appears relevant. He testified as an expert in forensic document examination with the Economic and Financial Crimes Commission (EFCC) who had examined the allegedly forged Board Resolution of Citadel Oracle Concept Ltd

which was tendered in evidence through him as Exhibit 12. Let me note that although an account opening package was also tendered through PW4 as Exhibits 13 – 13D, there is nowhere in Count 2 of the charge where the Defendants are accused of forging account opening documents. There is a specific document the Defendants were accused of forging in Count 2 and this is a 'Board Resolution of Citadel Oracle Concept Limited dated 14th December,2012'. I shall therefore ignore Exhibits 13 – 13D for now.

Now I have said that the charge against the Defendants in Count 2 is that they made a false Board Resolution of Citadel Oracle Concept Ltd dated the **14th December,2012**. Exhibit 12 the Board Resolution of Citadel Oracle Concept Limited which was admitted in the Prosecution's evidence through PW4 and which he led extensive evidence on purporting to be false is however dated **18th December,2012**. Having alleged in the charge that the Defendants made a false document specifically dated 14th December,2012, the Prosecution must establish that allegation and cannot rely on evidence of a document dated 18th December,2012 to establish same. Such evidence will naturally be at variance with the fact pleaded in the charge and cannot amount to proof of such pleaded fact. See the case of ***IBRAHIM V. STATE (2015) LPELR-40833(SC)*** where the Supreme Court held that the law is that where the charge laid is at variance with the evidence tendered, conviction cannot lie.

Thus, even if the evidence before this Court shows that the Defendants did indeed forge Exhibit 12 dated 18th December,2012, they nevertheless cannot be convicted for forging a document dated 14th December,2012 for which allegation they have been charged. This was the position of the Court of Appeal per Agim JCA (delivering the lead Judgment) in the case of ***YANDOTO V. NIGERIAN ARMY (UNREPORTED)*** delivered by the Court of Appeal (Abuja Judicial Division) on Friday, the 17th day of February, 2017 in Suit No: CA/A/356C/2015. The Court of Appeal had held in that case that even though there was evidence that the appellant had

committed the offence of fraternization in Kaduna weeks before the date he was alleged to have committed same in Kaduna, the appellant couldn't have been convicted for either of those dates as they were different dates.

On this ground alone, the 1st and 2nd Defendants ought not to be found guilty and be discharged and acquitted of the counts of offences of forgery, using forged documents as genuine and criminal conspiracy.

Assuming however that Exhibit 12 could be relied on as relevant proof of the charge of forgery against the Defendants, is there sufficient proof before this Court that the Defendants forged Exhibit 12?

Now Exhibit 12 was tendered as a document purported to have been made by the nominal complainant with his signature, his name and his company letter-head. PW4 (the expert forensic document examiner called by the Prosecution) testified as to his examination of Exhibit 12 and comparison with sample specimen Exhibit 14. His evidence is that the signature and letter-head on Exhibit 12 were produced by scanning and pasting thus rendering it forensically non-genuine. His report is Exhibit 21. The crucial fact which PW4 however did not say is; what is the origin and source of the specimen letterhead Exhibit 14 with which he compared Exhibit 12 to arrive at the conclusion that the letterhead on Exhibit 12 was not authentic? From where was Exhibit 14 obtained from? It is relevant to his testimony as to why Exhibit 14 should be a yardstick to measure the genuineness of Exhibit 12. PW4 however did not disclose this.

Nevertheless, DW2 is another expert forensic document examiner this time called by the defence. Having also examined a copy of Exhibit 12 (admitted in evidence through him as Exhibit 22B), he gave a conclusion quite contrary to PW4 on the genuineness of the document. His report is in Exhibit 23. His conclusion is that there is no evidence of lifting, pasting or superimposition of signatures.

It is apparent from the oral evidence of both experts and their reports (Exhibits 21 and 23A) that they both made use of the same mechanism in their examination i.e. VSC-5000. Yet they came to different conclusions. It is however trite law that the main function of an expert witness is merely to assist the Court to arrive at the truth in the judicial process, and the Court is not bound to accept or act on expert evidence. See the cases of ***IDEN V. STATE (1994) LPELR-14608(CA) and MATRACO INVESTMENT (NIG) LTD & ANOR V. STERLING BANK (2013) LPELR-21865(CA)***. Thus, this Court must still form its opinion as regards the issue of forgery of Exhibit 12 based on the entire facts before it, with or without reliance on the expert opinion of both or either of PW4 and DW2.

From the evidence of PW1 on his investigation, it is evident that the nominal complainant and the 1st Defendant are no strangers to themselves. This is also the evidence of the 1st Defendant. The nominal complainant and the 1st Defendant know each other very well and have been in a cordial relationship over a decade before things went awry between them regarding the profit of the contract from Federal Inland Revenue Services (FIRS). In fact, the evidence of both PW1 and the 1st Defendant is to the effect that the nominal complainant had formally authorized the 1st Defendant to act on his behalf and his company (Citadel Oracle Concept Limited) in respect of said contract awarded by Federal Inland Revenue Services (FIRS) to the nominal complainant's said company. Exhibit 7 and 7A are said letters and are not disputed by any of the parties in this case.

The 1st Defendant's evidence is that circumstances arose in the course of executing the contract of supply of computers to FIRS that necessitated obtaining computers on credit from a HP distributor i.e. Technologies Distributions Limited to be supplied to the Federal Inland Revenue Services (FIRS). That the nominal complainant had informed the 1st Defendant that he had no money to supply the computers and had agreed to obtaining the computers on credit from the said distributor on condition that his company would open an account with Access Bank to which the

distributor's staff will be signatories in order to safeguard payments from Federal Inland Revenue Services (FIRS) for the execution of the contract. This part of the 1st Defendant's evidence appears to have been corroborated by the Prosecution's witnesses i.e. PW2 and PW3 who are staff of the major distributor Technologies Distributions Limited. The 1st Defendant's evidence before this Court is that the nominal complainant himself had thus given her a Board Resolution of his company for the purpose of the transaction.

Now on the face of it, Exhibit 12 carries the name and signature of the nominal complainant and his company name. It is however curious that the nominal complainant, who had complained that Exhibit 12 is false, did not appear before this Court to give evidence. In fact, the records show that the nominal complainant's name is listed in the Prosecution's proof of evidence as the first witness to be called to give evidence in support of the prosecution's case. Records also show that the Prosecution was supposed to open its case on 21st February, 2019 but was granted an adjournment as its witnesses were not in Court despite the fact that the matter was stood down to ensure the attendance of prosecution witnesses. On 8th April, 2019 when the matter came up for hearing, the nominal complainant was again absent from court and the Prosecution Counsel informed the Court that the nominal complainant had refused to make himself available. Having called four of its witnesses, the Prosecution Counsel informed this Court on 12th November, 2019 that the nominal complainant who had been informed to come and testify before this Court on that date had failed to appear. The prosecution was thus constrained to close its case on that date.

Although the nominal complainant's extra judicial statement to the Economic and Financial Crimes Commission (EFCC) was tendered before this Court through PW1 and admitted in evidence as Exhibit 2, it does not change the fact that he refused to appear before this Court to give evidence or even adopt his said

statement. See the case of **AGBANIMU V. FRN (2018) LPELR-43924(CA)** where it was held thus:-

"It is actually surprising that the persons who were defrauded and who were given the alleged forged Letters of Administration were not called to testify. Their extra judicial statements which were not made on oath, cannot take the place of their evidence on oath in open Court."

What then is the weight to be attached to the nominal complainant's extra judicial statement (Exhibit 2) before this Court? The position of the law is that such statement must amount to naught. See the case of **EKPENYONG V. STATE (1991) 6 NWLR (PT. 200) P. 683** where the Court of Appeal held that authorities have established that in a situation where the witness, whose statement has been admitted, never testified at all the statement should never be considered as evidence of the facts contained in it. Consequently, I hold the view that having refused to appear before this Court to testify, the extrajudicial statement of the nominal complainant Benjamin Joseph to the Economic and Financial Crimes Commission (EFCC) admitted in evidence as Exhibit 2 must be discountenanced by this Court and exhibit 2 is accordingly discountenanced.

Further, the position of the law regarding allegations of forgery pertaining to signatures is that the person whose signature is alleged to have been forged is an indispensable, vital and material witness and the prosecution's case is fatal without his evidence. See the cases of **ALAKE V. STATE (SUPRA), AITUMA V. STATE (SUPRA), IBRAHIM & ANOR V. DOGARA & ORS (2015) LPELR-40892(CA) and AGBANIMU V. FRN (2018) LPELR-43924(CA)**.

It has however also been held that this is not a hard and fast rule, as each case has its peculiar facts and must be considered based on such facts. Thus, where there is sufficient direct and compelling circumstantial evidence linking an accused person with the alleged forgery, the failure to call the person whose signature

was forged will not be fatal to the prosecution's case particularly where it would be impossible or impracticable to call such a person. – see the cases of **OBIOMA V. STATE (2013) LPELR-20647(CA)** and **C.G.G. (NIG) LTD V. AYOVUARE & ORS (2015) LPELR-24437(CA)**.

In the instant case, I have looked at the facts and evidence before this Court. There are two conflicting expert opinion on the same issue of forgery of Exhibit 12. I have also considered the 1st Defendant's evidence that it was the nominal complainant himself that handed over alleged false board resolution of his company to her. She also explained the circumstances in which he gave her the document. I have considered this against the backdrop of the established fact of their relationship at the material time and Exhibits 7 and 7A which he had issued to authorize her to act on his behalf.

It is my firm position that the peculiar facts in this case does not show that there is any direct evidence or sufficient circumstantial evidence to establish the ingredients of the falsification of Exhibit 12 or that the Defendants were responsible for such falsification. In the circumstances, the evidence of the nominal complainant whose signature was allegedly forged on Exhibit 12 is crucial to the Prosecution's case. He however refused to testify in this case even though there is absolutely no reason why he couldn't have. The nominal complainant having refused and failed to testify as to the falsification of his signature on Exhibit 12, the Supreme Court of Nigeria in the case of *Alake v State*, (supra) page 260 at page 270 held thus:-

"In a charge of forgery of signature the person whose signature is alleged to have been forged is a vital and material witness. Failure of the prosecution to call such a person as a witness is fatal to its case. It is not sufficient that the evidence of a handwriting analyst called as witness showed that the accused person authored the disputed signature. It is the evidence of

the person whose signature is alleged to have been forged that settles the point in issue once and for all."

As I said earlier, records and proceedings in this case show that despite the efforts of the learned prosecuting Counsel to ensure the attendance of the nominal complainant, one Benjamin Joseph to testify in the case, he blatantly failed or refused to come to Court and testify. The nominal complainant however continued to send his Counsel one Bob-James Esqto watch brief on his behalf. In fact on the 12th November, 2019, the prosecution submitted thus:-

"My last witness is not in Court. On the last adjourned date this Honourable Court ordered that the witness be Court but he not in Court and the witness is the nominal complainant. I have informed him of today's date and the witness himself is fully aware of today's date."

Be it as it may, by the testimonies of the prosecution witness nos 1-4 I hold the view that the prosecution has failed to prove the essential ingredients of the offence of forgery of exhibit 12 against the 1st and 2nd Defendants in the circumstances of this case and I so hold.

As I earlier said also in the course of this judgment, proof of forgery of exhibit 12 is essential ingredient to establish both the offences of criminal conspiracy to commit forgery and using a forged document as genuine which are the other offences the Defendants have been charged with. See the cases of **AITUMA V. STATE (SUPRA)** and **MUSTAPHA V. FRN (SUPRA)**. Having failed to prove the forgery of the alleged Board Resolution of Citadel Oracle Concept Limited, I hold the view that the Prosecution has equally failed to prove the ingredients of the offences of conspiracy to commit forgery and using a forged document as genuine against the Defendants and I so hold.

I now return briefly to Exhibits 13 – 13D which are Account opening documents of Access Bank Plc. There is nowhere in the Charge against the Defendants where these documents are mentioned. Counts 2 and 4 of the Charge against the Defendants

are specific as to which document the Defendants are alleged to have forged and used as genuine. It is a Board Resolution of Citadel Oracle Concept Limited dated 14th December, 2012. Hence, the Defendants have not been charged for forgery of Exhibits 13 – 13D (Account opening documents of Access Bank Plc) and using same as genuine. Also, Counts 1 and 3 of the Charge (on conspiracy to commit forgery and conspiracy to use as genuine a forged document) did not specify exactly what document the Defendants are alleged to have conspired to forge and use as genuine. By virtue of Counts 2 and 4 which state the main offences and for which I have said specified only a Board Resolution dated 14th December, 2012, the implication is that Counts 1 and 3 on conspiracy only refer to the alleged Board Resolution dated 14th December, 2012. Consequently, the Defendants have not been charged before this Court for forgery of Exhibits 13 – 13D, using forged Exhibits 13 – 13D as genuine and conspiracy to commit those two offences in respect of Exhibits 13 – 13D.

Be that as it may, Exhibits 13 – 13D are documents for the opening of an Access Bank Account (in the name of Citadel Oracle Concept Ltd) admitted in evidence through PW4 who gave extensive evidence of his comparison of these documents with sample specimen tendered by him and admitted in evidence as exhibits by this Court. It would appear from the evidence of PW4 before this Court that the writings and signatures attributed to 'OzimsEze Chris' and 'Shade Oyebode' on the Access Bank Account Opening documents (Exhibits 13 – 13D) are being disputed. Again, PW4 did not state the source or origin from where he obtained all the specimen samples with which he compared Exhibits 13 – 13D to arrive at his conclusions. Who wrote or signed all these sample specimens? What is therefore the basis for using them as a yardstick to test the genuineness of the writings and signatures of OzimsEze Chris and Shade Oyebode on Exhibits 13 – 13D? Without these answers this Court cannot confidently rely on the conclusions of PW4 as to the genuineness or otherwise of the writings and signatures of OzimsEze Chris and Shade Oyebode on Exhibits 13 – 13D. PW4

appears not to be in a position to know as he specifically stated under cross-examination that he can only identify documents based on forensic examination and not by names. The persons who signed the sample specimens he relied on for his comparison and conclusion were not identified to this Court and neither were the persons who forwarded the sample specimens to him called by the Prosecution. PW4's testimony on the genuineness of Exhibits 13 – 13D is thus not very reliable in the circumstances.

Secondly and most importantly, there is undisputed evidence before this Court that OzimsEze Chris and Shade Oyebode who purportedly signed Exhibits 13 – 13D acted as signatories to the account opened in the name of Citadel Oracle Concept Ltd (the nominal complainant's company). They were appointed to do so by their company Technologies Distributions Limited as a requirement to supplying Citadel Oracle Concept Ltd computers on credit for its execution of its contract of supply with Federal Inland Revenue Services (FIRS). This is the evidence of the Prosecution witnesses (PW2 and PW3) who are staff of Technologies Distributions Limited. This is also the evidence of the 1st Defendant.

PW2 is the aforementioned EzeOzims Chris, a staff of Technologies Distributions Limited. It is curious that in his evidence in chief, he never stated that he did not make or sign his signature on the Access Bank Account opening documents Exhibits 13 – 13D. He never distanced himself from the making of Exhibits 13 – 13D. In fact, he actually confirmed in his evidence in chief that he acted as signatory to the accounts of Citadel Oracle Concept Limited and Admas Digital Technology. In the circumstances, any suggestion of forgery of PW2's signature on Exhibits 13 – 13D falls flat on its face.

Regarding the second disputed signature on Exhibits 13 – 13D i.e. that of Shade Oyebode, I have said that there is evidence before this Court that she acted as signatory to the account opened with Access Bank Plc in the name of Citadel Oracle Concept Limited having been appointed by her employer

Technology Distribution Limited to so act in order to safeguard its financial interests in the contract awarded to Citadel. The said Shade Oyebode whose signature on Exhibits 13 – 13D is being disputed was not called by the Prosecution to testify that she did not sign the said documents or that she is not privy to the making of same. In the peculiar circumstances of this case, the failure to call her is fatal to the Prosecution's case as there isn't sufficient, reliable and cogent evidence that she did not sign Exhibits 13 – 13D. See the cases of **ALAKE V. STATE (SUPRA)**, **AITUMA V. STATE (SUPRA)**, **IBRAHIM & ANOR V. DOGARA & ORS (SUPRA)** and **AGBANIMU V. FRN (SUPRA)**.

Thus, the prosecution having failed to prove the forgery of exhibits 13-13(d), I hold the view that any case of forgery of the said documents i.e exhibits 13-13(d), using them as genuine or conspiracy to commit the offences of forgery of exhibits 13-13 (d), the prosecution failed to establish same beyond reasonable doubt and I so hold.

Thus, in the whole, the four count charge formed and preferred against the 1st and 2nd Defendants, and having closely reviewed and examined the evidence adduced by the prosecution I hold the view that the prosecution failed to establish the offences of criminal conspiracy punishable under section 97 of the Penal Code, forgery punishable under section 364 of the penal code, using as genuine a forged document punishable under section 97 and fraudulently or dishonestly used as genuine a forged document punishable under section 364 of the same Act against the 1st and 2nd Defendants and I so hold. Hence the sole issue for determination is hereby resolved against the prosecution and in favour of the 1st and 2nd Defendants.

Accordingly, the 1st and 2nd Defendants are hereby discharged and acquitted on the four count charge filed against them by the prosecution.

Before I conclude, I have painstakingly perused and gone through the proof of evidence filed by the prosecution, the testimonies of the four witnesses called by the prosecution and critically examined exhibits 1.7,7(a), 12 and 13-13(d); I have also perused the evidence of DWs1 and 2; and I have watch also

closely the frustrations of the learned prosecuting Counsel in this case especially, none co-operation of the nominal complainant towards the prosecution of this case. My mind has been agitating with a number of questions especially in view of the testimonies of PW1, the Economic and Financial Crimes Commission (EFCC) detective officer and the Investigating Police Officer and some of his findings and conclusions. I have also x-ray the testimony of DW1 an else-while good fellow of the nominal complainant that had a smooth relationship of over 10 years and were at one point wanted the courtship to snowball into a marital status but probably, Satan put asunder and the eventual re-union of the nominal complainant with DW1 that manifested into the disputed sharing formula of the profit proceeds of Federal Inland Revenue Services contract.

I have also seen from the records the various steps taken by the nominal complainant against the Defendants. The petition to the office of the Inspector General of Police, the Petition of the nominal complainant to the office of the Vice President of the Federal Republic of Nigeria against the office of the Inspector General of Police, the Arbitration handled by AfeBabalola SAN and the petition of the nominal complainant to the office of the Vice President of the Federal Republic of Nigeria that the Defendants and Federal Inland Revenue Services staff conspired with the fraudsters to defraud the Federal Government of Nigeria. It is this petition that the office of the Vice President of the Federal Republic of Nigeriadirected the Economic and Financial Crimes Commission (EFCC) to investigate the allegations of defrauding the Federal Government of Nigeria the sum N216,000,000.00.

The findings of the Economic and Financial Crimes Commission (EFCC) is that there was no fraud committed against the Federal Inland Revenue Services to the tune of N216, 000,000.00 or any amount. In otherwords, by the facts and evidence in this case, the nominal complainant is bent on punishing the Defendants by his false accusation. And by section 323 of the Administration of Criminal Justice Act, 2015, it provides:-

"Where a person causes the arrest, or arrest and charge of a Defendant or Defendants and it appears to

the Court that there was no sufficient ground for causing the arrest, or that the accusation is false, vexatious or frivolous, it may for reason recorded, order the person to pay reasonable compensation to the Defendant or Defendants arrested and charge."

Hence therefore based on the forgoing and facts and evidence on record, I am of the view that the Defendants are entitled to compensation against the nominal complainant. Accordingly the sum of N20,000,000.00 is hereby awarded to the Defendants as compensation against the nominal complainant. And I hope this will serve as a lesson or deterrent against likes of the nominal complainant.

In conclusion, that is the judgment of this Honorable Court

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
24/02/2021

1st and 2nd Defendant present in Court
A. Obozuwa:- For the prosecution.
T.A Osaji:- For the Defendants

Signed
Judge
24/02/2021