

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY ABUJA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

DELIVERED THE 11th DAY OF JULY 2023

BEFORE HIS LORDSHIP: JUSTICE ASMAU AKANBI - YUSUF

CHARGE NO: CR/151/2019

BETWEEN

COMMISSIONER OF POLICE COMPLAINANT

AND

1. JESSE SAMUEL

2. BLESSING EDET OKON DEFENDANTS

3. MATHEW OBIORA USUWA

RULING

On the 6/3/2019, the defendants were arraigned before this Hon. court on a seven-count charge filed the 24/01/19. The defendants pleaded not guilty to the charge. In the course of hearing, the prosecutor on the 23/6/2020, filed an amended charge against the defendants. The charge against the defendants reads thus:

Count 1

That You Jesse Samuel "m" 40 years old Banker of no: 9 Terra St. karu site FCT Abuja, 2. Blessing Edet Okon "F" 32 years old Banker of House 2 Chidum Ozohill close off Airport junction, FCT Abuja and 3. Mathew Obiora Usuwa "m" 40 years old legal practitioner of suite 042 Garki shopping complex FCT Abuja, between the month of March 2018 to June 2018 within the jurisdiction of this honourable

court did conspire among yourselves to commit an offence to wit Falsification of Account, you thereby committed an offence contrary to section 97 of the Penal code law

Count 2

That You Jesse Samuel "m" 40 years old Banker of no: 9 Terra St. Karu Site FCT Abuja, 2. Blessing Edet Okon "F" 32 years old Banker of House 2 Chidum Ozohill close off Airport Junction, FCT Abuja and 3. Mathew Obiora Usuwa "m" 40 years old legal practitioner of suite 042 Garki shopping complex FCT Abuja, between the month of March 2013 to June 2018 within the jurisdiction of this honourable court did conspire among yourselves to commit an offence to wit Forgery, you thereby committed an offence contrary to section 97 of the Penal code law

Count 3

That You Jesse Samuel "n" 40 years old Banker of no: 9 Terra St. Karu Site FCT Abuja, 2. Blessing Edet Okon "F" 32 years old Banker of House 2 Chidum Ozohill close off Airport Junction, FCT Abuja and 3. Mathew Obiora Usuwa "m" 40 years old legal practitioner of suite 042 Garki shopping complex FCT Abuja, between the month of March 2018 to June 2018 within the jurisdiction of this Honourable court dishonestly forged the signature of One Mr. Chukwudo Nwoko Umekwe and fraudulently collected loan from Hasal Microfinance bank, which you are not entitled to, you thereby committed an offence of Forgery punishable under section 364 of the Penal code law

Count 4

That You Jesse Samuel "m" 40 years old Banker of no: 9 Terra St. Karu Site FCT Abuja, and 2. Blessing Edet Okon "F" 32 years old Banker of House 2 Chidum Ozohill close off Airport Junction, between the period of March 2018 to June 2018 or there about within the jurisdiction of this honourable court willfully and with intent to defraud falsified Hasal Microfinance bank documents to

qualified people who were not qualified by making false entries, you thereby committed an offence of Falsification of Account Contrary to section 371 of the Penal code law

Count 5

That You Jesse Samuel "m" 40 years old Banker of no: 9 Terra St. Karu Site FCT Abuja. 2 Mathew Obiora Usuwa "n" 40 years old legal practitioner of suite 042 Garkishoppingcomplex FCT Abuja, on or about the month of June 2018 within the jurisdiction of this honourable court dishonestly conspired together and used the name of One Chukwuledo Nwoko Umekwe as the beneficiary of the Loan in Hasal Microfinance bank and fraudulently collected loans on his behalf without his knowledge, you thereby committed an offence of Cheating by Personation Contrary to section 324 of the Penal code law

Count 6

That You Jesse Samuel "m" 40 years old Banker of no: 9 Terra St. Karu Site FCT Abuja between the period of January 2014 to June 2018 or there about within the jurisdiction of this honourable court, while working for Hasal Microfinance bank Ltd, with intent to defraud committed Theft by dishonestly diverted money meant for Hasal Microfinance bank into the following account belonging to your family members as follows: 1. Global Fleet Resources, 2. OCC. Interest Concept Int. 3. Don Wizzy Nig Ltd, 4. Akod Consolidated Co. Ltd and 5. JAAC Ltd, you thereby committed an offence of Theft by Servant Contrary to section 289 of the Penal code law

Count 7

That You Jesse Samuel "m" 40 years old Banker of no: 9 Terra St. Karu Site FCT Abuja, between the month of June, 2018- August, 2018 within the jurisdiction of this honourable court with intent to

defraud dishonestly fabricated a document with passport of an old man in the name of Victor Luka and collected loan on his behalf, you thereby committed an offence of Forgery punishable under section 364 of the Penal code law

Thereafter, the pleas of the defendants were taken as required by law wherein they pleaded not guilty to the offences.

The prosecution in prove of its case, called five (5) witnesses. The following documents were tendered and admitted. They are;

1. Letter of Hasal Micro Finance Bank dated 19th September 2018 marked as I.D 1;
2. The PW1 statement dated the 27/12/18 marked as Exhibit A
3. Statement of witness dated the 20/12/18 and 26/9/2918 marked as Exhibit PW 3ai and PW3aii
4. The photocopy of the Hasal Microfinance Bank Ltd documents in the name of Sa'a yam dealers Association of Nigeria marked as Exhibit PW3b;
5. Audit and Inspection Department dated the 15th September 2018, the one from audit and inspection dated the 27th September 2018 marked Exhibit PW5a and PW5b;
6. Letter resignation dated the 28th September 2018 marked as Exhibit 6;
7. Internal Memo, to Audit and Inspection Department dated the 17th October 2018 marked as Exhibit PW7
8. Internal Memo, to Audit and Inspection Department dated the 25th October 2018 marked as Exhibit PW8
9. Hasal Micro finance Bank Ltd Facility Approval Memo dated the 10th May 2019(9 pages) marked as exhibit PW9
10. Statement of the PW4 taken by the police on the 4/10/2018 marked as Exhibit 10

The Evidence of Pw1 Julie Ogiwu (Mrs.) is that she works at Hasal Micro Finance Bank. That the police showed her the letter of 19th September 2018 purported to have originated from her and one of her colleagues to Sayam sellers association. She denied signing

the letter, stating that she had no knowledge of the letter until it was shown to her on the 27th December 2018 by the police.

PW1 was cross examined by counsel for the defendants.

The PW2 Mohammed Abubakar is a staff of Hasal Microfinance Bank. It is his evidence that on the 7/11/2018, during a review of all default loans, he discovered that Sa' Yam were in default and as a result of that, a meeting was set up with the excos of Sa' Yam association; that the purpose of the meeting was to understand why the association was still in default; that he was informed by the Chairman of the association that the members were not indebted to bank; that the chairman equally showed him the letter of non-indebtedness sent to his phone through WhatsApp by the 1st defendant. The PW2 continued that the chairman of the association showed him the soft copy of the letter, wherein he noticed some irregularities in the signature. He testified that he reported the issue to the MD of the bank. He stated that he received a call from the 1st defendant pleading with him over the phone that he wants to see him; that upon obtaining the permission of the bank's MD, he agreed to meet with the 1st defendant; that at the meeting, the 1st defendant confirmed to him that he signed the letter but pleaded with him not to show the Bank the letter; that he had their conversation recorded; that he showed the MD the video recording. He stated that he used his phone to record the conversation; that the recording is with the police; that he also made a statement to the police.

PW2 was also cross examined by the respective counsel.

The PW3, Salami Saliu is also a staff of the bank. He gave evidence that he works with Hasal Micro Finance Bank and that he knows the 1st and 2nd Defendants. He testified that based on the fictitious transaction going on in the bank, the bank directed his department to do a routine examination. That in the process of getting to their customers, they decided to pay a visit to the Sa' Yam dealer association and fruit & vegetable sellers association.

That at the meeting with the association, the chairman of the association showed them the list, passports and identity cards of members, that were given loan but the Chairman informed him that only 12 of the persons on the list are its members. He stated that two of the members of the association denied receiving any loan from the bank; that in December 2018, the Sa' Yam Association denied being indebted to the bank; that the soft copy of a letter which purportedly emanated from the bank was shown to him and his team via WhatsApp; that the matter was subsequently lodged at the police station; he volunteered his statement to the police.

Also, the PW3 was cross examined

The PW4, one Muwagun Franklin gave evidence to the effect, that he met the 1st and 2nd Defendant in the bank; that sometime in 2018, his friend, the secretary of Sa' Yam Farouk introduced him to Hasal Micro Finance Bank; that he met with the customer service to open an account; that his friend informed him that once he opens an account with the bank, he would be able to obtain a loan from the bank; that he was given a form by the customer service to fill for loan; that after he filled the form, he was taken to the 1st defendant's office, who signed the form. He stated that even though the loan was delayed, he was eventually given the loan; that he serviced same every month; that sometime in October 2018, the police came to his office to obtain his statement.

The PW4 was cross examined by the defendants' counsel.

The PW5, Abubakar Adamu, a yam seller at Orange Market, Mararaba Karu Local Government gave evidence that he knows only the 1st defendant; that he was a leader of the yam sellers at the time the 1st defendant was the branch manager of the bank in 2016; that the association sometime in 2016 and 2018 obtained the loan of ₦10,000,000 and ₦6,000,000 which was repaid; that the association requested for proof of payment of the loan and

after the back and forth, the 1st Defendant sent to him, a copy of the proof of payment via WhatsApp and promised to give him the hard copy; that afterwards, the staff of the bank, informed the members of the association that, they were still indebted to the bank, having not finished repaying the loan but they disputed that fact and showed them the letter from the bank (proof of payment); that the head of the team from the bank requested him to forward the said copy to his WhatsApp so as to take it to the bank's headquarter. He continued that two days after, the police from the FCT Police Command invited them; that they were interrogated to which he confirmed that they were not indebted to the bank. He stated that they requested for the association's bank statement, that the bank refused to give them; that they were told by the bank that it was the duty of the 1st defendant to give them the statement of account; that as of that time, the 1st defendant was in detention. He said, after they had a meeting with the bank, the bank eventually gave them the balance of the loan, which is a little above ₦700,000; that they sourced for the money and took it to the FCT police command; that two weeks after they made the payment, they received a call from the bank informing them of the balance of ₦100,000 or thereabout; that they gathered the money and still took it to the FCT police command. He testified that as of the time he testified in court, the association has not been given the hard copy; that the bank told them they would be given after the end of this case. He stated that his statement was written for him; that his signature is on it.

The PW5 was cross examined.

After the conclusion of the Pw5's evidence, the matter was adjourned for continuation of hearing at the request of the Prosecution. On the adjourned date, the defendants were represented by their respective counsel, while the prosecution was absent in court and without any reason advanced to the court or the defendants' counsel. The prosecution was foreclosed

from calling further evidence in this case and matter was adjourned for adoption of no case submission. On the said date, the prosecution appeared in court; so also, counsel for the defendants; however, the 2nd defendant was absent. Thus, the proceedings of 26/5/2022 couldn't go on. The matter was further adjourned for continuation of hearing. Going further, the prosecution abandoned the matter, despite the service of hearing notices on him as well as the prosecuting agency. (See affidavits of service of 22nd December 2022 and 2nd March 2023, Eventually, the addresses of defendants filed by the respective counsel was adopted on the 27/4/2023. The no case submission addresses of the respective defendants were served on the prosecution. (see acknowledgement copies dated 28th April 2022, 20th May 2022 and 23 May 2022).

The 1st, 2nd and 3rd defendants filed their no case submissions dated the 7/4/22, 10/5/2022 and 23/5/2022 respectively. The 1st defendant's no case submission was settled by VC Nwadike Esq, wherein he raised an issue for determination, that is; *whether*

Considering the contents of the charge vis a vis the evidence before this honourable court, the prosecution/complainant has established a prima facie case of conspiracy, forgery, falsification of account, cheating by personation and theft by servant.

The 2nd Defendant's counsel R. A Olutekunbi Esq. raised a sole issue for determination, to wit: *whether based on the evidence advanced by the prosecution witnesses in this case, can it be said that a prima facie case has been made out against the 2nd Defendant in respect of counts 1, 2, 3 and 4 to require the 2nd Defendant to enter a defense to the counts charges against her before the honourable court.*

Also, the 3rd Defendant's counsel John Ogbulafor Esq raised one issue for determination, which is; *whether the prosecution has made out a prima facie case for which the 3rd Defendant can be called upon to enter his defense.*

The prosecution did not only fail to respond to the no case submission addresses, it equally ignored the hearing notice served on it. Thus, the respective counsel argued and adopted their processes.

Learned Counsel for the 1st Defendant submits that the 1st Defendant was accused of conspiracy, falsification of account, forgery cheating by personation and theft by a servant and for the offences to be sustained, the prosecution has to prove that the 1st Defendant committed the offences charged against him. In his argument, he stated that the prosecution has not led any evidence to establish the elements of conspiracy among the Defendants; that no forged document was found or given to anyone by the 1st Defendant; that no falsified document was presented before this Honourable Court; that there is no evidence that the 1st Defendant cheated anyone by personating any person and no evidence was led to establish that the 1st Defendant stole any property of Hasal Microfinance Bank Ltd. He cited amongst others WAHEED BALOGUN V STATE (2018) LPELR 44215(CA), SEYI OYEYENYE V THE STATE (2016) LPELR-4132, APC V PDP & ORS (2015) LPELR-24587(SC) PP 57-58, IDAGU V THE STATE (2018) LPELR-44343 (SC) PP 18-19, AJIBOYE V FCR (2018) LPELR – 44468 (SC) PP. 33-34, MARTINS V FRN (2018) 13 NWLR PT. 1637 P. 523.

It is the submission of Counsel for the 2nd Defendant that an accused does not need to present evidence if the evidence against him or her is weak because conviction must be based on the strength of the evidence of the Prosecution and not on the weakness of the evidence of the accused. He submits that the prosecution must proof the necessary elements in the offence as charged and in the instant case, no iota of evidence by the prosecution through any witness called in this case established any case against the 2nd Defendant to warrant her making a defence in the instant case. Counsel cited amongst others S. 302 ACJA 2015, SARAKI V FRN (2018) 6-7 SC PT 1 PG 111,

AJULUCHUKWU V STATE (2014) 5-6 SC PT IV PG 91, IKUFORJI V FRN (2018) 6 NWLR PT 1614 PG 142, AJAYI V STATE (2013)2-3 SC PT 1 PG 143 and urged the court to quash the amended charges against the 2nd Defendant on all counts.

On behalf of the 3rd Defendant, Counsel argued that throughout the evidence of the 5 prosecution witnesses that testified in this case, there is no allusion to the fact that the 1st, 2nd and 3rd Defendants entered into any agreement to do anything together and none of the witnesses alleged that the 3rd Defendant played any role in the opening of any account or issuance of loan as he is not one of the approving officers nor was any forged document tendered in evidence. Counsel referred to ODEY V STATE (2019) 2 NWLR (PT. 1655) 97, OMON V EKPA (2019) 15 NWLR (1696) 504, 537, IBRAHIM V STATE (2018) 1 NWLR (PT. 1600)229, 319 and urged the court to discharge the 3rd Defendant.

I have taken into consideration the evidence presented by the prosecution together with the addresses on no case submission and it appears to me that the only issue which calls for the determination is; *whether the prosecution has made out a prima facie case against the defendants to warrant the Hon. Court directing them to enter their defence.*

In determining the sole issue, the court will look into the evidence adduced by the prosecution witnesses in ascertaining whether the prosecution has indeed, made a prima facie case requiring the accused to offer some explanations. See OYEBODE ALADE ATOYEBI V FRN LPELR (2018) SC. 142/2017; It is not for the court to at this stage, evaluate evidence or consider the credibility of witnesses. Also see DABOH V. STATE (1977)11 NSCC 309 AT 315 AND STATE V. EMEDO (SUPRA). In TONGO V. C.O.P (2007)12 N.W.L.R (PT.1049)523; the Supreme Court stated as follows: "Therefore, when a submission of no prima-facie case is made on behalf of an accused person, the trial court is not thereby called upon at that stage to express any opinion on the evidence before

it. The court is only called upon to take note and to rule accordingly that there is before the court no legally admissible evidence linking the accused person with the commission of the offence with which he is charged.

Thus, a prima facie case is not the same as proof, which comes later when the court is to make a finding of guilt of the accused; it is evidence which if believed and uncontradicted, will be sufficient to prove the guilt of the accused. See AJIDAGBA V. I.G.P (1958) SCNLR 60; EMEDO V. STATE (SUPRA) AT 151-152.

Now in counts one & two, the 1st to 3rd defendants were alleged to have conspired together to falsify account as well as forgery. These offences are punishable under section 97 of the Penal Code.

Section 97 of the Penal Code is to the effect that;

- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death or with imprisonment shall where no express provision is made in this Penal Code for the punishment of such a conspiracy be punished in the same manner as if he had abetted such offence.
- (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment for a term not exceeding six months or with fine or with both.

Conspiracy has been defined as an agreement by two or more persons to accomplish an unlawful or illegal act or to commit an act which is not unlawful by illegal or unlawful means. The essential elements of conspiracy are therefore:

- (a) the agreement of two or more persons; and
- (b) to do an illegal act, or to do act which is not illegal but by illegal or unlawful means. See FRIDAY V. STATE (2021) LPELR-56623(CA)

To succeed in proving the offence under s.97 of the Penal Code, the prosecution must prove that the defendants agreed amongst themselves to falsify an account and also agreed to commit forgery and upon a careful comparison of the salient ingredients of the offence of conspiracy stated above and the evidence of the prosecution witnesses, there seem to be no prove at all that the defendants had an among themselves agreed to commit the offence of falsification of account and forgery. The PW1 in his evidence stated that she only knows the PW2 as a colleague and that the 1st and 2nd Defendants worked together in the same office; that she has no idea who the 3rd Defendant is. This glaringly shows that there was no form of agreement among the defendants to commit the offence of falsification of account or forgery. Also, there is no document presented by any of the prosecution witnesses showing that the defendants agreed to form a common intention to commit an illegal act. Therefore, I hold that the prosecution failed to establish a prima case against the 1st to 3rd Defendants with regards to the offences in counts 1 & 2.

On count three, the 1st to 3rd Defendants were charged with the offence of forgery punishable under section 364 of the penal code.

Section 364 reads;

whoever makes any false document or part of a document with intent to cause damage or injury to any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery, and a false document made wholly or in part by forgery is called a forged document.

In HAMIDU V. FRN (2022) LPELR-57760(CA), the court held that the ingredients of the offence of forgery under Section 364 of the Penal Code are:

- (a) (i) That the accused made, signed, sealed or executed the document in question or any part thereof; or
- (ii) That it was made by someone else
- (b) That it was made under any of the circumstances in Section 363.
- (c) That the accused made it dishonestly or fraudulently or with any of the specific intents enumerated in Section 362.

The charge on count 3 states that the 1st to 3rd Defendants dishonestly forged the signature of one Mr. ChukwuledoNwokoUmekwe and fraudulently collected loan from Hasal Microfinance Bank. The PW3 in his evidence stated that a certain man one Chukwunedu obtained loan from the bank and each time they went to his office for recovery, they were informed that (*pointing to the 3rd Defendant*) the owner of the account, the person who obtained the loan is in Lagos not knowing that the 3rd defendant was the actual beneficiary of the loan. That they were able to obtain the Chukwunedu's phone number and when a call was put across to him regarding the loan, his response was that he didn't obtain a loan from the bank; that rather he served as a guarantor to one Mr. Mathew. That at the end of the day, the man Chukwunedu came from Lagos and he came in company of the 3rd defendant; that he informed the bank that he served as a guarantor to the 3rd Defendant.

In order to prove the offence of forgery, the prosecution is required to show that Mr. ChukwuledoNwokoUmekwe's signature was forged by the 1st to 3rd defendants. I have taken a careful look at the evidence put forward by the prosecution; and it thus appears to me that there is no evidence which connects the defendants to the alleged offence. Thus, I hold that the prosecution has failed to establish a prima facie case of forgery against the 1st to 3rd defendants.

On count 4, the 1st and 2nd defendants are charged with the offence of falsification of account contrary to section 371 of the penal code.

Section 371 penal code states thus;

Whoever, being a clerk, officer or servant or employed or acting in the capacity of a clerk, officer or servant, willful and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, document of title or account, which belongs to or is in the possession of his employer, or willfully and with intent to defraud makes or abets the making of any false entry in or omits or alters material or abets the omission or alteration of any particular from or in any such book, paper, writing, document of title or account, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

The count reads that the 1st and 2nd defendants willfully and with intent to defraud falsified hasal microfinance bank document to qualify people who were not qualified.

Again, I have taken into consideration the evidence of the prosecution witnesses, particularly pw1, pw2, & pw3, none of them placed before the court the documents said to have been falsified by the 1st & 2nd defendants. The PW3 gave evidence that he and his colleagues had a meeting with Sa'yam Dealers after they found out that Sa'yam dealers had not finished servicing their loan; that the list of ID cards and Passports of about 30 of their members who obtained loan from the bank was shown to them and the chairman stated that only 12 of the names on the list are their members; he denied knowledge of the remaining names on the list. The prosecution failed to present to the court, the document falsified by the 1st and 2nd defendants. The established fact here is that the prosecution failed to link the 1st and 2nd defendants to the offence of forgery.

On count 5, the 1st & 3rd defendants are charged with the offence of cheating by personation contrary to section 324 Penal Code Law.

Section 321 Penal Code states thus;

A person is said to cheat by personation if he cheats by pretending to be some other person or by knowingly substituting one person for another or representing that he or another person is a person other than he or such other person really is.

The above count states that the 1st & 3rd defendants conspired together and used the name of one ChukwuneduNwokoUmekwe as the beneficiary of the loan in Hasal Micro Finance Bank and fraudulently collected loans on his behalf without his knowledge.

In HUSSAINI V. C.O.P. GOMBE STATE (2022) LPELR-58217(CA), it was held that the ingredients the prosecution is required to prove in order to establish the offence sanctioned by Section 323 (supra), are spelt out as follows:

1. "Prove

(a) that the accused cheated some person (see Section 322).

(b) that he was under a legal obligation to protect the interests of that person.

(c) that the cheating was related to the legal obligation.

(d) that the accused knew that he was likely to cause wrongful loss to such person.

I do not hesitate to state that the Prosecution also failed woefully to prove that the 1st & 3rd defendants conspired together, to use Mr. Chukwuledo's name to obtain a loan with the bank without his knowledge. I am not unmindful of the fact that we are at the prima facie stage, however the duty placed on the prosecution must first be established before crossing to the next stage. It appears to me that the prosecution failed to present any shred of

evidence to prove that the 1st & 3rd defendants conspired together to fraudulently obtain loan in the bank in the name of one Chukwuledo Nwoko Umekwe without his knowledge. Again, the prosecution failed to link the 1st & 3rd defendants to the offence of cheating by personation.

On count 6, the 1st defendant is charged with the offence of theft by a servant contrary to section 289 Penal Code Law.

Section 289 of the Penal Code states;

Whoever, being a clerk or a servant or being employed in the capacity of a clerk or servant commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

It is alleged that the 1st defendant with intent to defraud committed theft by dishonestly diverting money meant for Hasal Microfinance bank into the following account belonging to his family members. The account numbers are as follows: 1. Global Fleet Resources, 2. OCC. Interest Concept Int. 3. Don Wizzy Nig Ltd, 4. Akod Consolidated Co. Ltd and 5. JAAC Ltd

In *AJIBOYE V. FRN (2018) LPELR-44468(SC)*, PETER-ODILI, J.S.C stated thus "*I shall recast here under the provisions of the said Section 289 of the Penal Code thus: "Section 289: Whoever, being a clerk or servant or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both."* The essential ingredients of the offence of theft or stealing are well set out in the case of:- *Muhammed v State (2000) 12 NWLR (Pt.682) page 596 at 603* where *Omage JCA* held thus: "*The definition of the offence against property of theft is contained in Section 286 (1) of the Penal Code, it reads: Whoever intending to take dishonestly any moveable property out of the possession of any*

person without that person's consent, moves the property in order to take it is said to commit theft. From the above definition, the vital elements of the offence of theft are: (1) Absence of the consent of the owner of the moveable property. (2) movement of the said property. (3) Intention to take the moveable property."

I have combed the entire evidence presented by the prosecution, and I must say that I agree with the 1st defendant's counsel that the prosecution failed lead any credible evidence. There is totally no evidence establishing a prima facie case against the 1st Defendant that money meant for Hasal Microfinancebankwas diverted to the listed accounts. Therefore, the prosecution failed to link the 1st Defendant to the offence of theft by a servant.

On count 7, the 1st defendant is charged with the offence of forgery punishable under section 364 of the Penal code law.

Section 364 Penal Code Law states thus;

whoever makes any false document or part of a document with intent to cause damage or injury to any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery, and a false document made wholly or in part by forgery is called a forged document.

It is alleged that the 1st defendant with intent to defraud dishonestly fabricated a document with the passport of an old man in the name of Victor Luka and collected loan on his behalf.

Also, I do not hesitate to state that no evidence wastendered to prove the said offence. The established fact here, is that the prosecution failed to link the 1st defendant to the alleged offence of forgery.

In all, I find and hold that the prosecution has failed to establish a prima face evidence of the offences in counts 1 – 7 against all the

defendants. Also, I hold that the prosecution failed to establish a prima facie case against the 1st & 2nd defendants in count 4. Equally, there is no prima facie case against the 1st & 3rd defendants in counts 5. Finally, I hold that the prosecution failed to establish a prima facie case against the 1st defendants in counts 6 & 7.

Accordingly, I hereby uphold the No case submission filed by their respective counsel. The 1st, 2nd & 3rd defendants are hereby discharged.

ASMAU AKANBI- YUSUF
[HON. JUDGE]

APPEARANCES:

R. A Olutekunbi Esq, 2nd defendant

A. J Ukah Obasi Esq and C. P Madu Esq, for the Defendant.

K. C Chimamkpa Esq, for the 3rd Defendant