IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON TUESDAY 16TH JANUARY 2018
BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 19 APO – ABUJA

CHARGE NO: FCT/HC/CR/253/16

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA . . . . . COMPLAINANT

AND

ADEDEJI CHARLES TAIWO . . . . . DEFENDANT

JUDGMENT

The Defendant was, at the material period, a Principal Executive Officer, Passage and Protocol of the University of Ibadan, Ibadan, Nigeria. He was arraigned before this Court on 04/08/2016, on a four-Count Charge of knowingly making a false

statement, conferring of corrupt or unfair advantage, making a false document and forgery contrary to the extant provisions of **sections 25 (1) (a)** and **19** of the **Corrupt Practices And Other Related Offences Act, 2000**; and **section 363** of the **Penal Code Act**.

At the Plenary trial, the prosecution called three (3) witnesses in proof of its case, namely:

- **PW1** – ***Eric Nnamdi Anona***, Investigator with the Independent Corrupt Practices and Other Related Offences Commission (ICPC);

- **PW2** – ***Prof. Julius A. Okojie***, former Executive Secretary, National Universities Commission (NUC); and

- **PW3** – ***Oluwakemi Ogunbanjo***, staff of the Consular and Immigration Affairs Division of the Federal Ministry of Foreign Affairs.

The **PW1** tendered three (3) sets of documents in evidence. The prosecution witnesses were in turn cross-examined by the Defendant's learned counsel.

In his defence, the Defendant testified in person, but called no witnesses. He was equally cross-examined by the prosecution learned counsel.

At the close of plenary trial, parties filed and exchanged written final addresses, as agreed to by them. In the final address filed on behalf of the Defendant on 23/11/2017, his learned counsel, ***E. J. Onema, Esq.,*** formulated two issues as having arisen for determination in this suit, namely:

1. ***Whether the evidence adduced at the trial was sufficiently cogent to discharge the burden of proof beyond doubt as required by law?***

2. ***Whether it is safe to convict on evidence when the prosecution failed to call material witnesses whose evidence is material to the resolution of the vital issue in this case?***

In turn, the learned prosecution counsel, ***E. O. Akponimisingha, Esq***., filed his final address on behalf of the Complainant on 27/11/2017, whereby he raised a sole issue for determination, namely:

Whether the prosecution has, from the evidence laid before the Hon. Court, proved its case beyond reasonable doubt as required by law?

I have also given proper consideration to and taken due benefit of the arguments canvassed by both learned counsel in their respective written and oral final submissions; to which I shall make specific reference as I consider needful in the course of this Judgment.

I consider it pertinent, as a starting point, to re-state the fundamental principles of a criminal trial, to the effect that the prosecution could discharge the burden placed on it by the provisions of **section 135 (2)** and **(3)** of the **Evidence Act**, to prove the guilt of an accused defendant beyond reasonable doubt, in any of the following well established and recognized manners, namely:

By the confessional statement of the accused defendant which passes the requirement of the law; or

2. By direct evidence of eye witnesses who saw or witnessed the commission of the crime or offence; or

3. By circumstantial evidence which links the accused defendant and no other person to or with the commission of the crime or offence charged.

See Lori Vs. State *[1980] 8 - 11 SC, 81;* Emeka Vs. State *[2001] 14 NWLR (Pt. 734) 668;* Igabele Vs. State *[2006] 6 NWLR (Pt. 975) 100*.

On the basis of these well settled legal principles as espoused in the authorities cited in the foregoing, I

now proceed to examine the counts of the instant Charge, in the light of the evidence adduced by both parties and the issues formulated by the respective learned counsel, in order to determine whether or not the prosecution has proved the Charge against the Defendant beyond reasonable doubt.

For ease of reference, the four-Count Charge is as follows:

COUNT 1

That you ADEDEJI CHARLES TAIWO (M), sometime in July, 2016 or thereabout at Abuja, while being in the employment of the University of Ibadan knowingly made false statement to the Director, Consular and Immigration Department, Ministry of Foreign Affairs, Abuja to wit: :REQUEST FOR NOTE-

VERBALE" ref. NUC/ES/439/VOL.10/152 dated 12/07/2016 purporting same to be signed by the Executive Secretary of the National Universities Commission, Professor Julius A. Okojie with intention to mislead when you knew the statement is false and thereby committed an offence contrary to section 25(1)(a) and punishable under section 25(1)(b) of the Corrupt Practices and Other Related Offences Act 2000.

COUNT 2

That you ADEDEJI CHARLES TAIWO (M), sometime in July, 2016 or thereabout at Abuja, while being in the employment of the University of Ibadan used your position as Principal Executive Officer Passage and Protocol to confer unfair advantage on one Mr. Jegede Lukmon Adedeyemi by introducing the said Mr. Jegede Lukmon

Adedeyemi to the Director, Consular and Immigration Department, Ministry of Foreign Affairs, as staff in the Department of Psychology, Faculty of Social Sciences, University of Ibadan via a letter captioned "REQUEST FOR NOTE-VERBALE" ref. NUC/ES/439/VOL.10/152 dated 12/07/2016, when you knew he is not a staff of the said University and thereby committed an offence contrary to and punishable under section 19 of the Corrupt Practices and Other Related Offences Act 2000.

<u>COUNT 3</u>

That you ADEDEJI CHARLES TAIWO (M), sometime in July, 2016 or thereabout at Abuja, within the jurisdiction of this Honourable Court made a false document to wit: "REQUEST FOR NOTE-VERBALE" ref. NUC/ES/439/VOL.10/152 dated 12/07/2016, on the Letter head of National Universities Commission

purporting same to have emanated from the office of the Executive Secretary of National Universities Commission with the intention that it may be acted upon as genuine and you thereby committed an offence contrary to section 363 and punishable under section 364 of the Penal Code CAP 532 Laws of the Federal capital Territory Abuja 2006.

<u>Count 4</u>

That you ADEDEJI CHARLES TAIWO (M), sometime in July, 2016 or thereabout at Abuja, within the jurisdiction of this Honourable Court forged the signature of the Executive Secretary of National Universities Commission, Professor Julius A. Okojie on the letter titled "REQUEST FOR NOTE-VERBALE" ref. NUC/ES/439/VOL.10/152 dated 12/07/2016, with the intention that it may be acted upon as genuine and you thereby committed an offence

contrary to section 363 and punishable under section 364 of the Penal Code CAP 532 Laws of the Federal capital Territory Abuja 2006.

Now, upon proper appreciation of the Charge before the Court and evidence led by the prosecution in proof thereof, it is clear to me that the document tendered in evidence by the **PW1** as **Exhibit P2**, is central to the proof of the entire Charge. The said document with Ref. No. NUC/ES/439/VOL.10/152 dated 12th August, 2016, and titled **"REQUST FOR NOTE VERBALE"**, was purportedly issued by the National Universities Commission (NUC), under the purported signature of ***Professor Julius A. Okojie, OON***, its Executive Secretary. The letter is addressed to the Director, Consular and Immigration

Department, Ministry of Foreign Affairs, Central Area, Abuja.

For ease of reference and appreciation, I hereby reproduce the content of the letter as follows:

> ***"I write to inform your good offices that the under-listed name is an academic staff of Department of Psychology, Faculty of Social Sciences, University of Ibadan, Nigeria.***
>
> ***Name Designation Passport No.***
> ***Mr. Jegede Lukmon Adedeyemi Asst. Lecturer A05964995***
>
> ***He has been invited to participate in the International Society for Quality of Life (ISQOLS) Annual Conference for 25th – 27th August, 2016, at Seoul National University, Seoul.***
>
> ***Consequently, the Commission will appreciate it if your good offices could issue Note-verbale to the South***

Korea High Commission, to enable he (sic) obtain visa to attend the conference.

Attached herewith, are copies of his invitation letter and data page of International Passport for your kind consideration."

Attached to the letter, **Exhibit P2**, are four other documents, namely:

- Conference Registration Confirmation issued to Jegede Lukmon Adedeyemi-**Exhibit P2^{A}**;
- (2) Copy of Data Page of the Nigerian International Passport bearing the name Jegede, Lukmon Adeyemi, issued on 23 July, 2014, with No. A05964995-**Exhibit P2^{B}**;

- (3) Copy of University of Ibadan Staff Identity Card bearing the name, passport inscription and

signature of Mr. Adedeji, Charles Taiwo, Principal Executive Officer, Passage and Protocol, issued in April, 2013-**Exhibit P2C**; and

- (4) Copy of Data Page of the Nigerian International Passport of Adedeji, Charles Taiwo, issued on 27 August, 2012, with No. A04134246-**Exhibit P2D**.

Now, the summary of the case of the prosecution against the Defendant is that, as alleged in Count 1 of the Charge, the Defendant, sometime in July, 2016, whilst being in the employment of the University of Ibadan, knowingly made false statement, being **Exhibit P2**, to the Director, Consular and Immigration Department, Ministry of Foreign Affairs, Abuja, when he knew that the statement is false.

With respect to Count 2 of the Charge, the allegation is that the Defendant used his position as Principal Executive Officer, Passage and Protocol, University of Ibadan, to confer unfair advantage on one ***Mr. Jegede Lukmon Adedeyemi*** by introducing him to the Director, Consular and Immigration Department of the Ministry of Foreign Affairs, *via* letter, **Exhibit P2,** when he knew that the said ***Mr. Adedeyemi*** is not a staff of the University of Ibadan.

With respect to Counts 3 and 4, the allegation against the Defendant is that he made a false document, being **Exhibit P2**, purporting the same to have emanated from the office of the Executive Secretary of the National Universities Commission with the intention that it may be acted upon as genuine;

and that he forged the signature of the Executive Secretary of the NUC, ***Professor Julius Okojie*** on the letter, **Exhibit P2**, with the intention that it may be acted upon as genuine.

I will proceed at first to examine Counts 3 and 4 of the Charge.

COUNTS 3 AND 4:

The provision of **section 362 (a) of the Penal Code Act,** the definition section of the offence in the instant Charge states 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 makes a mark denoting the execution of a document with the intention of causing

it to be believed that the document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed or at a time at which he knows that it was not made, signed, sealed or executed;..."

The provision of **section 363** of the **Penal Code Act**, under which the Defendant is charged with Counts 3 and 4, states as follows:

"363. Whoever makes a false document or part of a document, with intent to cause damage or injury to the public or to a person or to support a claim or title or to cause any person to part with property or to enter into an 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.

Whilst **section 362** provides the various ways in which a document regarded in law as false may be made; **section 363** more or less affirms the making of a false document as the offence of forgery.

In *Smart Vs. State [1974] 11 SC 173 @ 186*, the Supreme Court defined forgery as follows:

"In Nigeria, forgery consists of the making of a false document or writing knowing it to be false and with intent that it may be used as a genuine document."

Again, in *Osondu Vs. FRN [2000] 12 NWLR (Pt. 682) 483*, cited by the prosecution learned counsel, forgery is also defined as follows:

"Forgery is an act of fraudulently making a false document or altering a real document to be used as if genuine."

Those definitions or pronouncements were based on the statutory definition of forgery provided in **Section 362** of the **Penal Code Act**. See also *Alake Vs. State [1991] 7 NWLR (Pt. 205) 567*.

In order to sustain Counts 3 and 4 of the Charge, the prosecution is duty bound, on the basis of the provisions of **sections 362** and **363** of the **Penal Code Act**, to establish as against the Defendant the following ingredients:

1. That the defendant dishonestly or fraudulently made or procured the making, signing, sealing or execution of a false document;

2. That the defendant intended the false document to be believed to have been made, signed, sealed or executed by or on the authority of a person he knows not to have so made, signed, sealed or executed it;

3. That making of the false document was with the intention to cause damage to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or to commit fraud.

In determining whether or not the prosecution has clearly established the presence of the ingredients enumerated in the foregoing in the present case, I

now turn to the relevant portions of the testimonies of the prosecution witnesses.

The **PW1**, ***Mr. Eric Anona***, testified that he was part of the team of officers of the ICPC that investigated the case at hand. He testified that on 13/07/2016, he received a telephone call from the Director of Consular Affairs, Ministry of Foreign Affairs, to come to his office and on getting there he met a number of people, including the Defendant and other persons the Director introduced to him as the Protocol Officer from NUC, the Chief Security Officer of the Foreign Affairs Ministry, one ***Madam Oluwakemi*** and one ***Mr. Ifeoma***. He testified further that after the Director narrated his discoveries, the Defendant was handed over to him and he was taken to the ICPC

Headquarters for further investigations. He further testified that his team wrote a letter to the NUC to confirm the authenticity of the suspicious request letter for *Note-Verbale*. He also confirmed that the **PW2**, ***Professor Julius A. Okojie***, was also interrogated. He tendered the statement obtained from the **PW2** as **Exhibit P1**. He tendered the *Note-Verbale* (and attachments), which he stated was recovered at the point of arrest of the Defendant, as **Exhibit P2-P2^{D}**. He further tendered as **Exhibits P3** and **P3^{A}**, letter written on 15 July, 2016, by the **PW2**, in his capacity as the Executive Secretary of NUC, to the Chairman of ICPC, to which a prototype *Note-Verbale* was attached. In the said letter, the **PW2** denied authoring the contentious *Note-Verbale*, **Exhibit P2**.

It should be added that the attempt by the **PW1** to tender the purported confessional statement made by the Defendant to the ICPC was resisted by the Defendant on the ground that it was not voluntarily made. After a full-blown trial within trial, the Court rejected the said statement.

Under cross-examination by the Defendant's learned counsel, the witness confirmed that it was the Director of Consular, Ministry of Foreign Affairs that handed over **Exhibit P2** to him in the Defendant's presence.

The **PW2**, ***Professor Julius A. Okojie***, was the Executive Secretary of the National Universities Commission (NUC), at the material time. He testified that he completed his ten (10) year tenure on 10th August,

2016. The contentious letter, **Exhibit P2**, was alleged to have been fraudulently issued under the signature of the said ***Professor Julius A. Okojie***, in his capacity as the Executive Secretary of the NUC on 12th July, 2016. When he was shown the document, **Exhibit P2**, the **PW2** testified thus:

> ***"The document shown to me – Note-Verbale purportedly written by me is very strange. Ordinarily, the Universities make requests for any staff going on overseas trip through my office, NUC, to the Embassy of the said country. In the present case, the Note-Verbale was directed to the Ministry of Foreign Affairs… I always sign in red colour or occasionally in black ink. The document purportedly written by me is not mine. The colour of the signature on that document is neither red nor black. That was my first observation. I also found***

out that there was a memo we sent to the Foreign Affairs Ministry on 18/02/2016, on behalf of three staffs of the University of Ibadan. I noted that the Ref. No. on that memo is the same with the letter now in contention which was purportedly written by me in July, 2016.

We also did not receive any request from the Principal officers of the University of Ibadan for memo to be issued to Foreign Affairs Ministry for Note-Verbale. I was very convinced that I did not append my signature to the document in question.

…

I can see Exhibit P1 now shown to me, it is my statement to the ICPC. I can see Exhibit P2 now shown to me. The signature on Exhibit P2 is not mine. I did not append it. The letter did not originate from me. …

I can see Exhibits P3 and P3A. The letters were from my office. I can compare the letter headed papers on which Exhibits P2 and P3 were written. The Crest of NUC on the two letters are different. The logos are different. Exhibit P2 was certainly not written on the genuine NUC letter heading. Exhibit P3 was written on the genuine NUC letter headed paper."

The **PW2** was not cross-examined on his testimony that he was not the author of **Exhibit P2**.

The **PW3**, ***Oluwakemi Ogunbanjo***, also testified as to what she witnessed in the office of her Director, ***Ambassador Rabiu Dangari***, on 13 July, 2016, where the alleged forgery was said to have been detected. She testified as follows:

"I met the Defendant on 13th July, 2016, in the office of my Director. My Director called me into

his office to see two documents. They were requests for Note-Verbale for issuance of appropriate visas. The two documents were bearing the letter headed papers of NUC. My Director asked me if I noticed any discrepancy in the signatures on the documents. The name of my said Director is Ambassador Rabiu Dangari. On the two documents, one was signed with Red ink whilst the other one was signed with Purple ink…. He informed me that he has asked the two Protocol officers that brought the requests be invited to his office. The two Protocol officers who submitted the two requests were actually within the premises and were invited into the Director's office. The officers that submit requests always write their phone numbers on the requests so that they could be traced. They were not our staff. My Director asked them to identify the requests that they both

submitted when they did. Mr. Adedeji, the Defendant, confirmed that he was the one that submitted the request with the Purple ink signature of the NUC Executive Secretary. Ambassador asked him the source of the request; he first said that it was from NUC. When Ambassador insisted on knowing the truth, that he knew that the NUC Executive Secretary does not sign with Purple ink, he said that actually he procured the document at a Business Centre. He said it was because their requests always get delayed at NUC, that was why he wanted to fast track the procurement of the Note-Verbale. He then started pleading for forgiveness that it was the first time he did such. …

It was the phone number on Exhibit P2 that we used in calling the Protocol officer that submitted the request and the Defendant responded."

I observed, from the nature of questions put to both **PW2** and **PW3** under cross-examination by the Defendant's learned counsel, that the Defendant seemed not to have contested that the letter, **Exhibit P2**, was a false or forged document. The case of the Defendant and indeed the arguments of his learned counsel seemed to be that even though the document, **Exhibit P2**, may have been forged; however, that the forgery was not perpetrated by the Defendant.

It is not in question that the purported signature ascribed to ***Professor Julius A. Okojie***, the Executive Secretary of the NUC, as it appears in the face of **Exhibit P2**, was appended in Purple ink.

The said **Professor Okojie**, in his letter, **Exhibit P3**, written to the Chairman of the ICPC; his extra-judicial statement, **Exhibit P1** and in his oral evidence, stoutly and categorically denied making or signing **Exhibit P2**. His testimony was neither challenged nor contradicted by the Defendant under cross-examination.

I agree with the submissions of the prosecution learned counsel that forgery could be proved by direct or circumstantial evidence. See *Osondu Vs. FRN [2000] 12 NWLR (Pt. 682) 483*. It is also the position of the law that it is not rocket science that a forensic examination must be conducted in order to prove forgery. See *Akinbisade Vs. State [2006] 17 NWLR (Pt. 1007) 184*, where the Supreme Court held as follows:

"It is not in all cases that the absence of evidence of handwriting expert is prejudicial to the case of the prosecution. While such evidence could be a desideratum in some cases, it is not invariably so. Where there is a strong connecting link between the accused and the document to the extent that the circumstances zero on the commission of the offence by the accused, the court is entitled to draw the inference circumstantially that the accused was the author of the document and therefore the author of the crime."

It must be re-stated that each case is decided upon its peculiar facts and circumstances. In *Aituma Vs. State [2006] 10 NWLR (Pt. 989) 452*, the decision of the Court of Appeal that there was a need to call a hand writing expert or forensic analyst was premised on the fact that there was a handwritten alteration

on the document alleged to have been forged, which necessitated an expert to determine whether it was the author of the document that also added the alteration. That is not the situation in the present case.

Also in *Alake Vs. State [1992] 9 NWLR (Pt. 265) 260 @ 270*, where the signature of a person is alleged to have been forged, the Supreme Court set a different test to prove forgery when it held that it is crucial and material to call the person whose signature was allegedly forged as a witness to either confirm or deny his signature on the document in contention.

In the present case, the prosecution had passed this crucial test. I therefore find and hold that the prosecution has proved beyond reasonable doubt

that the letter, **Exhibit P2**, was a false and forged document.

Further circumstantial evidence to establish that the letter, **Exhibit P2** was a false document is a comparison of the reference No. contained in the letter. As correctly noted by the **PW2** in his oral testimony, it was the same reference number that is contained on the document, **Exhibit P3A**, which was an authentic request for *Note-Verbale* which he made to the Foreign Affairs Ministry, as far back as 18th February, 2016, that is also contained on **Exhibit P2**. The witness further testified that no two official letters could contain the same reference numbers.

The Defendant also agreed to this assertion in his testimony under cross-examination by the

prosecution learned counsel, when he stated that from his experience, two different official documents do not bear the same reference numbers.

The prosecution having satisfactorily proved that the document, **Exhibit P2**, was a false and forged document, the next question, which was also chorused by learned counsel for the two sides is – Who forged the document? Or put directly, has the prosecution established that it was the Defendant that forged the letter, **Exhibit P2**?

In determining this issue, the testimony of the **PW3, Oluwakemi Ogunbanjo**, already reproduced in the foregoing, is very crucial. She claimed that she witnessed the scenario where her Director confronted the Defendant with **Exhibit P2**, signed with

Purple ink; and how he admitted that he was the one that submitted the document and that he made it at a business centre; and how he began to plead for forgiveness when his bubble was burst; and that it was his first time of doing such a thing. The evidence of the **PW3** in this regard was unshaken under cross-examination by the Defendant's learned counsel. She had this to say under cross-examination:

> ***"I was not present when the Note-Verbale request was submitted but I was present when my Director questioned the Defendant. The two officers identified the requests they submitted. In my presence, the Defendant identified that he submitted Exhibit P2."***

I have examined the testimony of the Defendant on the same point. In his evidence-in-chief, the

Defendant agreed that he was in Abuja on 13th July, 2016, the date he was alleged by the **PW1** and **PW3** to have had the encounter with the Director, Consular and Immigration Department of the Foreign Affairs Ministry. He agreed that a call was put through to him from the Foreign Affairs Ministry, on the said date, requiring his physical presence to see the said Director in his office. He also confirmed that when he got to the office of the Director, he met the Protocol Officer of the NUC. He again confirmed that the Director asked the Protocol Officer to confirm the request for *Note-Verbale* that he submitted, which he did. He also confirmed that the Director asked him to identify if he submitted the letter **Exhibit P2**, but that he only confirmed that only **Exhibits P2C** and **P2D**, being copies of his Staff Identity Card and Data Page

of his International Passport, attached to the letter **Exhibit P2**, belonged to him.

To this extent, the testimony of the Defendant corroborated the evidence adduced by the prosecution through the **PW3**.

The Defendant however testified further as follows:

> ***"He then became hostile and questioned why I submitted such documents and I denied ever submitting such. At that point, I expected him to do some due diligence on the documents, but he did not. The next thing I heard was "Get Akpos' number" He said "I will call ICPC for you now if you do not confess." He looked into his first phone. He could not see Akpos' phone number. He saw a number belonging to one Eric Anona (PW1). He tried the number, the number did not go through.***

All these while I was begging him profusely because I knew once ICPC got involved, it may take long to resolve. …

Eventually, he reached the ICPC officers and invited them to come to his office. At that point, I became so agitated and I began to beg him because I knew what this scenario could cause to my reputation. After a short while, two gentlemen came in who I later knew to be Mr. Akpos and Mr Anona. I still continued to beg and knelt down and after a while, he asked them to take me away.

I state that I knew nothing about the forged documents and I could not have done anything like that."

Under cross-examination by the prosecution learned counsel, the Defendant confirmed that he saw the

PW3, at the office of the Director on the day in question, but that he saw her towards the tail end of his questioning, when he was begging.

From my assessment of the evidence of both the **PW3** and the Defendant, the only crucial area of divergence in their testimonies on the same scenario was the denial by the Defendant that he did not admit to making **Exhibit P2**; whereas the **PW3** testified that she witnessed the Defendant confessing to making the document.

As I have stated earlier on, the testimony of the **PW3** was unshaken under cross-examination. I therefore see no reason to disbelieve her. I further find her testimony more plausible and credible than that of the Defendant, in the circumstances. As the

prosecution learned counsel submitted, there is nothing to show that the **PW3** had any motivation to lie against the Defendant. The record of the Court also bears out the difficulty the prosecution had faced in bringing the **PW3** to Court to testify and how it took issuance of witness summons on her office before she came to Court. Such a witness, in my view, would not have harboured a motivation to give doctored evidence in Court, particularly against the Defendant.

It is interesting to further note that by his own words, the Defendant admitted to kneeling down to beg the Director of Consular when he sent for officers of the ICPC to take over investigation of the forgery matter. This act, in my firm view, lent credence to the

testimony of the **PW3** that the Defendant began to plead for forgiveness after admitting to making the letter, **Exhibit P2**.

The Defendant claimed, under cross-examination that he is a Master's degree holder; and a senior officer of an academic community, in which he also claimed to have staffs working under him. I therefore find it rather incredible, ridiculous and awkward that such a man with such intellectual background would cringe at the feet of another man merely at the invitation of ICPC officers to investigate a matter, if indeed he had no hand in the commission of the crime to be investigated.

I again do not suppose that it was a coincidence that the Defendant was in fact in Abuja on 13th July,

2016, when a call was put through to him to show up at the Foreign Affairs Ministry. The evidence on record was that the letter, **Exhibit P2**, was dated 12th July, 2016 and was acknowledged as received at the Consular and Immigration Services Division of the Foreign Affairs Ministry on 13th July, 2016. I disbelieve the testimony of the Defendant that he came to Abuja on 13th July, 2016, to collect on-going jobs for his principal officers who were going to South Korea and Russia respectively. The inference I draw here is that the Defendant indeed came to Abuja, at least for the purpose of submitting **Exhibit P2**, which he fraudulently packaged, and after submitting the package, he waited around to see the process through. But events to take a sour turn against him when his fraud was exposed.

Again, I note that the name, phone number and signature of the Defendant were handwritten on the top right corner of **Exhibit P2**. The testimony of the **PW3** is that the officers that submit requests for *Note-Verbale* usually write their phone numbers on the request so that they could be traced and that it was through the said handwritten phone number that the Defendant was contacted to come to the office of her Director.

I also took the liberty, as I am entitled by the provision of **section 101 (1)** of the **Evidence Act**, to compare the handwriting of the Defendant as it appears on **Exhibit P2**, with his handwriting as it appears on his purported confessional statement which the Defendant did not deny making, though rejected by

the Court on the ground of involuntariness. I am satisfied that the handwriting on the two sets of documents are similar.

I have also compared the signature of the Defendant as it appears on **Exhibit P2** with his signature as it appears on copies of his Staff Identity Card, **Exhibit P2^{C}** and the data page of his international passport, **Exhibit P2^{D}**. My verdict is also that the signatures appear similar.

I am therefore convinced that the Defendant, and no one else, personally wrote his contact details in long hand as it appears in the face of the forged **Exhibit P2** and that his denial of his own handwriting on **Exhibit P2** is very ridiculous and a mere afterthought.

In coming to the foregoing conclusions resulting from the Court's comparison of the Defendant's handwriting on different documents, I find support in the authority of Gboko Vs. The State *[2007] 17 NWLR (Pt. 1063) 272*, where a similar situation occurred. In that case, the Court of Appeal held as follows:

> ***"108(1) In order to ascertain whether a signature. writing. Seal or finger impression is that of the person by whom it purports to have been written or made, any signature, writing, seal or finger impression admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with the one which is to be proved although that signature, writing, seal or finger impression has not been produced for my other purpose."***

As was pointed out by the lower court, the above provisions gave the court the power to make the comparisons. There is no provision that before the court can invoke that power parties must first address it.

The court is entitled to examine all disputed writings and form its own opinion without the necessity of calling on parties to address it on that point. I have also looked at the statements in issue and came to the conclusion as was done by the lower Court that there were similarities therein. The appellants' right of being heard was in no way infringed upon."

Suffice to note that the provision of **section 108(1)** of the **old Evidence Act** cited in that authority is *in pari materi* with the provision of **section 101 (1)** of the extant **Evidence Act.**

See also *Lawal Vs. Commissioner of Police [1960] WRNLR 75; Iliyasu Vs. The State [2013] LPELR-20766(CA)*.

I should further state that case law supports the Court's recourse to the Defendant's purported extra-judicial confessional statement, only for the purpose of looking at the Defendant's handwriting, even though the statement has been rejected in the course of trial. The settled position is that a trial Court is entitled to refer to and make use of documents in the case file in resolving issues between parties in any given case before it. See *West Africa Provincial Insurance Ltd. Vs. Nigeria Tobacco Co Ltd. [1987] 2 NWLR (Pt. 56) 299 @ 306; Texaco (Nig.) Plc Vs. Lukoko [1997] 6 NWLR (Pt. 510) 651.*

On the basis of the foregoing analysis therefore, I find and hold that the prosecution has established beyond reasonable doubts, by both direct and circumstantial evidence, that the Defendant indeed forged or caused to be forged, the document **Exhibit P2**. The totality of the evidence adduced on record points to the fact that the Defendant, and no one else, forged **Exhibit P2**. The Court therefore finds him guilty of Counts 3 and 4 of the Charge. I find that the Defendant, sometime in July, 2016, dishonestly or fraudulently procured the making and signing of the letter being *REQUEST FOR NOTE-VERBALE* with Ref. No. NUC/ES/439/VOL.10/152, dated 12/07/2016, on the letter head of the National Universities Commission (NUC), being a false and forged document, purporting the same to have been issued by or

emanated from the office of the Executive Secretary of NUC at the material period, ***Prof. Julius A. Okojie***, with the intention that the Consular and Immigration Services Division of the Federal Ministry of Foreign Affairs may act on it as genuine in order to process the issuance of *Note-Verbale* for the person named on the document.

I reject the totality of the evidence of the Defendant and the submissions of his learned with respect to the procedure followed in normal circumstances, for the submission and processing of requests for *Note-Verbale*, both at the NUC and the Foreign Affairs Ministry, as they relate, not to live issues in this case, but on hypothetical and academic situations. In *Eperokun Vs University of Lagos [1986] 4 NWLR (Pt. 34)*

162, the Supreme Court held that it is not part of the function of the Court to entertain and decide hypothetical questions, that is, questions not arising from the facts of the case.

In the present case, the duty of the Court is to make findings of facts as to what actually transpired at the material time as presented by evidence; not as what procedure ought to have been followed in the submission of request for *Note-Verbale* both at the office of the NUC and at the Foreign Affairs Ministry, as the Defendant and his learned counsel laboured very hard to establish. Those procedures were meant to be the ideal situations under normal circumstances, which indeed had no bearing on the

cold evidence laid before the Court as to the events that actually transpired at the material time.

I also reject the submissions of the Defendant's learned counsel that the prosecution failed to call material witnesses or withheld material evidence from the Court. I am satisfied that the totality of the evidence adduced by the prosecution, particularly the testimonies of the **PW2** and **PW3** were sufficient in the circumstances, to establish the guilt of the Defendant for the offences contained in Counts 3 and 4. I so hold.

COUNTS 1 AND 2:

Turning to Count 1, I hold that my findings in establishing the guilt of the Defendant for Counts 3 and 4 of the Charge is abundantly sufficient to find

the Defendant guilty of Count 1 of the offence. It is established beyond reasonable doubt that the Defendant is a public officer in the employment of the University of Ibadan at the material time. It is also overwhelmingly established that the Defendant made **Exhibit P2**, knowing the same to false, and presented the same to the Director, Consular and Immigration Division of the Ministry of Foreign Affairs. I therefore also find the Defendant guilty of the offence charged under **section 25 (1) (b)** of the **ICPC Act, 2000**.

With respect to Count 2, the Defendant is accused of using his position as Principal Executive Officer, Passage and Protocol, to confer unfair advantage on one Mr. Jegede Lukmon Adedeyemi, by introducing him to the Director, Consular and

Immigration Department of the Ministry of Foreign Affairs, as a staff in the Department of Psychology, Faculty of Social Sciences, University of Ibadan, vide the letter, **Exhibit P2**, when he knew that the said Mr. Jegede Lukmon Adedeyemi was not a staff of the University of Ibadan.

The provision of **section 19** of the **ICPC Act** under which the Defendant is charged with the instant Count states that:

> ***"19. Any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer or any other public officer shall be guilty of an offence and shall on conviction be liable to imprisonment for five (5) years without option of fine."***

An essential ingredient that the prosecution requires to prove to sustain this Count of the Charge is that the person on who the public officer used his office to gratify or confer any corrupt or unfair advantage upon, apart from himself, must either be a relation or associate of the public officer or any other public officer.

This Court has already held that the document, **Exhibit P2**, was a false and forged document. The Court has also found and held that the Defendant was responsible to the procurement of the forged document. In the face of the forged document, Mr. Jegede Lukmon Adedeyemi is described as an academic staff of the Department of Psychology, Faculty of Social Sciences, University of Ibadan,

Nigeria. As such, in the face of **Exhibit P2**, it is presumed or presupposed that the said Mr. Jegede, is equally a public officer, even though the prosecution did not adduce any further independent evidence to establish this fact.

It is also not in question that the intention of the Defendant, as crystallized in the letter, **Exhibit P2**, is to use his office as the Protocol Officer of the University of Ibadan, who is charged with the responsibility of processing requests for *Note-Verbale* and visas for the staffs of the University of Ibadan who propose to embark on overseas trips, *inter alia*, to confer corrupt advantage upon the said Mr. Jegede, by seeking to use fraudulent and unlawful means of procuring visa for him to attend a conference at Seoul National

University, Seoul, South Korea, from 25th – 27th August, 2016.

Without any much ado, I further find and hold that the prosecution has established the necessary ingredients to find the Defendant guilty of Count 2 of the Charge.

In the final analysis my judgment is that the prosecution has proved the entirety of the 4-Count Charge in the instant suit against the Defendant. I therefore return a verdict of guilty against the Defendant on each and every Count of the Charge.

OLUKAYODE A. ADENIYI
(*Presiding Judge*)
16/01/2018

SENTENCE

The Court has listened attentively to the *allocutus* most soberly and passionately rendered on behalf of the convict by **O. H. Harrison-Isa, Esq**., of counsel. I had also carefully evaluated evidence adduced by **Professor Abiola Sanni**, a Professor of Law of the University of Lagos, as to the good character of the convict, in pursuance of the provision of **section 310(1)** of the **Administration of Criminal Justice Act, 2015 (ACJA)**.

According to the learned Professor, he has known the convict for well over forty (40) years; that they grew up in the same *Obalufon Compound*, in Ile-Ife, Osun State, Nigeria. The witness further testified that he and the convict were in – laws, in that he is

married to his first cousin. The witness further described the convict, who he claimed had lived with him in Lagos sometime back, as a man of integrity; a devoted family man and a doting father to his three children; a religious man and a man of good character. The witness also stated that to the best of his knowledge, the convict had never been involved in any criminality.

The convict's learned counsel urged the Court to accept the testimony of the learned Professor, as a true reflection of the convict's character.

Learned counsel further submitted that the convict had been interdicted and suspended by his employers, the University of Ibadan; and that in consequence of his being convicted by this Court, he

is facing an imminent dismissal from work, which may also render all the years he had put in service wasted.

Learned counsel further submitted that the convict is a first offender, the bread winner of his family, with an aged mother and other dependants; and that he is not enjoying the best of health, as a diabetic and hypertension patient.

Learned counsel therefore urged the Court, on the basis of the totality of the convict's circumstances, as narrated in the foregoing, to be compassionate and to temper justice with mercy by giving the convict a light sentence with an option of fine on all the Counts for which he had been convicted.

With respect to Count 2 of the Charge, learned counsel cited in aid the provision of **section 223** of the **ACJA**, to urge the Court that, notwithstanding that the provision of **section 19** of the **ICPC Act**, under which the Defendant was convicted, which prescribes five (5) years imprisonment without an option of fine, that the Court has a discretion to apply the punishment under **section 25(1)** of the **ICPC Act**, under which the Defendant was convicted for Count 1 of the Charge, which carries an option of fine, on the ground that the offences under those sections are kindred offences.

Learned counsel further commended to the Court, the authority of *Price Control Board Vs. Ezema and EKwem [1982] 1 NCR 7*, for the submission that

notwithstanding the mandatory provision of the law which prescribes a definite term of imprisonment, without an option of fine, the Court has jurisdiction to impose an option of fine.

Learned prosecution counsel, in his contribution, urged the Court to sentence the convict in accordance with the law. He further confirmed that investigation revealed that indeed the convict was a first offender.

Now, with respect to the offences for which the Defendant had been convicted, Count 1 imposes punishment of fine not exceeding **₦100,000.00 (One Hundred Thousand Naira)** only, or a term of imprisonment not exceeding **two (2) years; or both**,

as prescribed by the provision of **section 25(1)(b)** of the **ICPC Act**.

With respect to Count 2, the provision of **section 19** of the **ICPC Act**, prescribes a mandatory term of imprisonment for **five (5) years without an option of fine**.

Counts 3 and 4 attract similar punishment, as prescribed by the provision of **section 364** of the **Penal Code Act**, of a term of imprisonment not exceeding **fourteen (14) years**, **or with fine or with both**.

In imposing what I consider as the appropriate sentence in the circumstances of this case, I have been adequately guided and given due consideration to the factors and parametres

enumerated in the provisions of **sections 311, 312** and **416** of the **ACJA.** These include the consideration that each case ought to be treated on its own merit; a consideration of the objectives of sentencing, which is not necessarily to punish, but also for reformation and deterrence; and the fact that the convict is a first offender.

I have equally been properly guided by the **Federal Capital Territory Courts (Sentencing Guidelines) Practice Direction, 2016**, which was made pursuant to the provisions of **sections 416** and **311** of the **ACJA**.

It is clear that the statute creating the offences in Counts 1, 3 and 4, allows the Court to exercise sentencing discretion; whereas, it does appear that the punishment prescribed by provision of **section 19**

of the **ICPC Act**, under which the Defendant is convicted for Count 2, is mandatory and thus does not permit the exercise of sentencing discretion.

The position of the law is that where the statute or section of the law creating or defining an offence expressly prescribes that there is no option of fine; the Court is precluded from imposing fine. Where however the statute prescribes a term of imprisonment but is silent on the option of fine, the Courts have been held to have discretion to impose a fine in *lieu* of imprisonment. See *Alhaji Lasis Apamadari Vs. The State [1996] LPELR-21461(CA)*.

In the Supreme Court decision of *State Vs. Okechukwu [1994] 9 NWLR (Pt. 368) 273*, it was held as follows:

"The question however, is whether the inclusion of 'without option of fine' should be construed as depriving the court of exercising its discretion to impose a fine in lieu of imprisonment. That is definitely the intention of the law in this respect."

It is noted that the position of the Court of Appeal in the decision of *Price Control Board Vs. Ezema and EKwem (supra),* cited by the convict's learned counsel, is not in consonance with the decision of the Supreme Court in the authority of *State Vs. Okechukwu (supra)*, even though the two decisions construed the provisions of **section 382(1)** of the **CPA** or **CPL**, which provides as follows:

"382(1) Subject to the other provisions of this Section, where a court has authority under any written law to impose imprisonment for any offence

and has no specific authority to impose a fine for that offence the court may, in its discretion, impose a fine in lieu of imprisonment."

Even though contrary views were expressed by the two higher Courts in these two authorities, it is needless to state that on the principles of *stare decisis*, the decision in *State Vs. Okechukwu (supra)* prevails.

Now, it is pertinent to note that the **CPA** and **CPC** have been repealed by the provision of **section 493** of the **ACJA** and is thus rendered inapplicable in the **Federal Capital Territory**. It is to be further noted that there is no provision similar to the provision of the repealed **section 382(1)** of the **CPA** in the **ACJA**. As such, the authorities both of the Supreme Court and

the Court of Appeal, cited *supra*, which were decided on that provision may not necessarily bind the case at hand. I so hold.

Now, the provision of **section 416(1)** of the **ACJA**, applicable to the proceedings at hand, states as follows:

> ***"416(1) On conviction, a court <u>may</u> sentence the convict to a term of imprisonment as prescribed by the law."***

(Underlining for emphasis).

The law proceeds further to provide in **section 416(2)(d)** of the **Act** as follows:

> ***"416(2) In exercising its discretion of sentencing or review of sentence, the court shall take into***

consideration the following factors, in addition to the provision of section 401 of this Act:

(a) ……

(b) ……

(c) ……

(d) a trial court shall not pass the maximum sentence on a first offender."

My understanding is therefore that the use of the permissive word ***"may,"*** in **section 416(1)**, gives the Court the discretion to determine the term of imprisonment to which it shall sentence a convict, notwithstanding that the statute creating the offence mandates sentence of a specific term of imprisonment.

The provision of **section 416(2)(d)** seems to me to further clarify the power of the Court to exercise discretion not to impose maximum sentence, especially where the convict is shown to be a first offender. My understanding is therefore further that even though the Court may not be empowered to substitute a term of imprisonment with fine; the provision of **section 416(2)(d)** however gives the Court the discretion not impose the maximum term of imprisonment, particularly where the convict is a first offender.

In the present case therefore, having taking cognizance of the current position of the law; I have also taken account of the totality of the peculiar

mitigating circumstances of the convict, which include the following:

1. The fact that he is a first offender, as confirmed by learned prosecution counsel;

2. The fact that by his conviction alone, he faces imminent dismissal from the service of the University of Ibadan and the years he had put into service will be rendered wasted;

3. The fact that from his sober comportment throughout the trial, he is remorseful and must have learnt his lessons that crime does not pay;

4. The fact that there is no evidence before the Court that he committed the crime for which he had been convicted for pecuniary gains or

for purposes other than to assist a fellow public servant;

5. The fact that he is a family man and the bread winner of his family, with an aged mother; and whose prolonged incarceration might entail ripple consequences for his dependants;

6. The fact that even though he deserves to be punished for his criminal infractions, the objective is not to be punitive, but to impose sufficient punishment that shall serve as deterrence on others with similar criminal proclivities;

7. The fact that his conviction alone has already exposed him to sufficient stigma, shame and

reproach, particularly within the University community where he worked and the society at large; so that a protracted prison sentence shall serve no useful purpose to the society who is the victim of his offences;

8. The fact that as a middle aged man, he should be afforded the opportunity, by a light sentence, to amend his ways and pick up the pieces of his life as soon as lawfully affordable.

Having therefore taking into account the totality of the foregoing factors and considerations, I hereby sentence the convict as follows:

- ***<u>On Count 1</u>, the convict is hereby sentenced to pay a fine of ₦100,000.00 (One Hundred***

Thousand Naira) only or a term of imprisonment for one (1) year.

- ***<u>On Count 2</u>, the convict is hereby sentenced to a term of six (6) months' imprisonment <u>without an option of fine</u>.***

- ***<u>On Count 3</u>, the convict is hereby sentenced to a term of imprisonment for one (1) year with an option to pay fine of the sum of ₦100,000.00 (One Hundred Thousand Naira) only.***

- ***<u>On Count 4</u>, the convict is hereby sentenced to a term of imprisonment for one (1) year with an option to pay fine of the sum of ₦100,000.00 (One Hundred Thousand Naira) only.***

Pursuant to the provisions of **section 416(2)(i)** of the **ACJA**, the sentences in Counts 1, 3 and 4 are hereby ordered to run concurrently; and pursuant to the provisions of **section 416(2)(d)** of the **ACJA**, the period the convict had spent in prison custody whilst awaiting his sentence shall be taken into account in computing the time he shall spend to serve in sentence with respect to Count 2 of the **Charge**.

OLUKAYODE A. ADENIYI
(*Presiding Judge*)
01/02/2018

Legal representation:

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