

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT LUGBE – ABUJA
ON, 6TH DAY OF FEBRUARY, 2019.
BEFORE HIS LORDSHIP:- HON. JUSTICE A. O. OTALUKA.

CHARGE NO.: -FCT/HC/CR/44/15

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA:.....COMPLAINANT

AND

1. EMMANUEL MADUBUEZE
2. SABO ZABWAMI AUTA
3. MARK EGWUMA OGWU } :.....**DEFENDANTS**

Ngozi Onwuka holding the brief of Michael Adesola with Eno Ighodaro Yahaya for the Prosecution.

Charles H. T. Ughagbu for the 1st Defendant.

Odion Oyo Etem Ubana for the 2nd Defendant.

Rodney Adzuanaga for the 3rd Defendant.

JUDGMENT.

By a “2nd Amended Charge”, dated 23rd January, 2017 and filed on 1st February, 2017, the Defendants were charged as follows;

COUNT 1.

“That you Emmanuel Madubueze (M), Sabo Zabwami Auta (M), Mark Egwuma Ogwu (M), and Mohammed Sanni Abdu (now at large) on or about the month of May, 2015 at Abuja formed common intention to forge a title document bearing Plot 1693 Guzape, Cadastral Zone A09, Abuja FCT with the name of Mohammed Sanni Abdu with the intent to fraudulently use same to defraud one Tobias Tobechukwu Obiechina the sum of N7,000,000.00 (Seven Million Naira)

the document which you claimed to be genuine title document when you know it was forged and you thereby committed an offence contrary to Section 79 and punishable under Section 364 of Penal Code Act.”

COUNT 2.

“That you Emmanuel Madubueze (M), Sabo Zabwami Auta (M), Mark Egwuma Ogwu (M), and one Mohammed Sanni Abdu (now at large) on or about the month of May, 2015 at Abuja, forged a title document of Plot 1693, Guzape Cadastral Zone A09, Abuja, FCT with the name of Mohammed Sanni Abdu with the intent to fraudulently use same to defraud one Tobias Tobechukwu Obiechina the sum of N7,000,000.00 (Seven Million Naira) the document which you claimed to be genuine title document when you know it was forged or have reasons to know it was forged and you thereby committed an offence contrary to and punishable under Section 364 of Penal Code Act.”

COUNT 3.

“That you Emmanuel Madubueze (M), Sabo Zabwami Auta (M), Mark Egwuma Ogwu (M), and one Mohammed Sanni Abdu (now at large) on or about the month of May, 2015 at Abuja formed common intention to use forged title document of Plot 1693, Guzape Cadastral Zone A09, Abuja, FCT with the name of Mohammed Sanni Abdu which you fraudulently sold to Tobias Tobechukwu Obiechina for the sum of N7,000,000.00 (Seven Million Naira) which you claimed to be genuine title document when you know or have reason to know that it was forged and you thereby committed an offence contrary to Section 79 and punishable under Section 366 of Penal Code Act.”.

COUNT 4.

“That you Emmanuel Madubueze (M), Sabo Zabwami Auta (M), Mark Egwuma Ogwu (M), and one Mohammed Sanni Abdu (now at large) on or about the month of May, 2015 at Abuja fraudulently used as genuine forged title document of Plot 1693, Guzape Cadastral Zone A09, Abuja, FCT with the name of Mohammed Sanni Abdu by selling same to Tobias Tobechukwu Obiechina for the sum of N7,000,000.00 (Seven Million Naira) which you claimed to be genuine title document when you know or have reasons to know that it was forged and you thereby committed an offence contrary to Section 366 of Penal Code Act.”.

COUNT 5.

“That you Emmanuel Madubueze (M), Sabo Zabwami Auta (M), Mark Egwuma Ogwu (M), and one Mohammed Sanni Abdu (now at large) on or about the month of May, 2015 at Abuja, with intention to defraud, conspired to defraud by false pretences one Tobias Tobechukwu Obiechina the sum of N7,000,000.00 (Seven Million Naira) by falsely claiming that a title document bearing Plot 1693, Guzape Cadastral Zone A09, Abuja, FCT with the name of Mohammed Sanni Abdu is a good title document which you know to be false or have reason to know that it was false and you sold same to the said Tobias Tobechukwu Obiechina for the sum of N7,000,000.00 (Seven Million Naira) and you thereby committed an offence contrary to Section 8(a) and punishable under Section 1(3) of Advance fee fraud and other fraud related offences Act, 2006.”

COUNT 6.

“That you Emmanuel Madubueze (M), Sabo Zabwami Auta (M), Mark Egwuma Ogwu (M), and one Mohammed Sanni Abdu (now at large) on or about the month of May, 2015 at Abuja, by false pretences and with intention to defraud one Tobias Tobechukwu Obiechina the sum of N7,000,000.00 (Seven Million Naira) falsely claimed that a title document bearing Plot 1693, Guzape Cadastral Zone A09, Abuja, FCT with the name of Mohammed Sanni Abdu is a good title document and you sold same to Tobias Tobechukwu Obiechina for N7,000,000.00 (Seven Million Naira) when you know it was false or have reason to know that it was false and you thereby committed an offence contrary to Section 1(1)(a) and punishable under Section 1(3) of Advance Fee Fraud and Other Related Offences Act, 2006.”

Upon arraignment, the Defendants pleaded not guilty to the charges preferred against them whereupon the case proceeded to trial.

In the course of the trial, the prosecution presented two witnesses. One Anona Eric Nnamdi, an investigator with the Independent Corrupt Practices and Other Related Offences Commission (ICPC) testified as PW1. He testified to having investigated the matter following a complaint to the Commission by the nominal complainant.

The PW1 testified that during the investigation, the ICPC wrote a letter to the Abuja Geographic Information System (AGIS) to confirm the authenticity of the title document given to the nominal complainant by the Defendants, to which Abuja Geographic Information System replied stating that the document was fake.

He stated that in the course of the investigation, each of the Defendants admitted collecting N7m from the nominal

complaint and also narrated how the said sum was shared among the Defendants, with one Mohammed Sani Abdu, now at large, getting N3m; 1st Defendant, Emmanuel Manubueze, N1.5m, 3rd Defendant, Mark Egwuma, N1.5m and 2nd Defendant, Sabo Auta got N1m.

PW1 stated that the Defendants eventually started paying back the monies they collected from the nominal complainant, with the 3rd Defendant paying N1,380,000.00 out of his share of N1.5m; the 1st Defendant paid back N1m out of his share of N1.5m and the 2nd Defendant paid back his entire share of N1m; and that the Defendants agreed to jointly set off the N3m received by Mohammed Abdu.

According to PW1, the 1st Defendant got the forged title document from the 3rd Defendant and procured the 2nd Defendant to source for potential buyers.

The alleged forged title document was tendered in evidence as Exhibit PW1A. Letter from Independent Corrupt Practices and Other Related Offences Commission to Abuja Geographic Information System requesting confirmation of the authenticity of the title document was admitted in evidence as Exhibit PW1H. While the reply thereto from Abuja Geographic Information System asserting that the said title document is fake and did not emanate from its custody was admitted as Exhibit PW1J.

The statement of the 3rd Defendant was admitted in evidence as Exhibit PW1C upon confirmation from the 3rd Defendant that he made the statement to Independent Corrupt Practices and Other Related Offences Commission. The 1st and 2nd Defendants' statements were admitted in evidence respectively after trial within trial established that the two statements were made voluntarily and not under duress as alleged by the 1st and

2nd Defendants. 1st Defendant's statements were marked Exhibits PW1D, PW1E and PW1F while that of the 2nd Defendant was marked Exhibit PW1G.

The PW1 in evidence said that the 3rd Defendant admitted giving the title document to the 1st Defendant on his request for same but that the document he gave to the 1st Defendant was not in the name of Mohammed Sani Abdu, albeit, he could not remember the name on the title document he gave to the 1st Defendant.

PW1 further stated in evidence that, the 1st Defendant admitted having land transactions with the nominal complainant. That the 1st Defendant also admitted having transactions with Mohammed Sani Abdu and having procured a Soldier to help the said Mohammed Sani Abdu collect his balance of the purchase price of the land from the nominal complainant, as well as receiving N1.5m from the said Mohammed Sani Abdu.

That the 1st Defendant further admitted per Exhibit PW1E, that he printed the cloned paper at the Accelerated Area Council Title Registration Office in Abuja Geographic Information System. That the 1st Defendant stated that the alleged forged document, exhibit PW1A, was given to him at his request, by the 3rd Defendant at the office of the Abuja Geographic Information System (AGIS) and that the document was sold for N7million out of which he got N1.5m; Mohammed Sani Abdu got N3m; 2nd Defendant got N1m and 3rd Defendant got N1.5m.

The PW1 testified that the 2nd Defendant acted as agent to Mohammed Sani Abdu in the sale of the property to the nominal complainant for which he got the sum of N1m from the said Mohammed Sani Abdu.

The cross examination of the PW1 proceeded extensively by the 1st, 2nd and 3rd Defendants' counsel respectively.

The prosecution's witness No.2 (PW2) was the nominal complainant, Tobias Tobeckukwu Obiechina. He gave evidence on 23rd March, 2017. The summary of his evidence was that he informed the 1st Defendant, who represented to him that he works at Abuja Geographic Information System and had helped him conduct search on two previous land transactions at Abuja Geographic Information System, that he was interested in buying. That the land situates at Guzape District. The PW2 testified that he later got a call three days after, from someone who latter turned out to be the 2nd Defendant, telling him that he learnt that he PW2 was looking for land in Guzape and that he had one for sale.

According to the PW2, at the end of the negotiations, they agreed on N10m as the price of the land and he then demanded for a copy of the title document which he eventually gave to the 1st Defendant to conduct search for him at Abuja Geographic Information System. Thirty (30) minutes later, the 1st Defendant came back and told him to proceed to make payments, that the "Plot was clean".

The PW2 testified further, that not satisfied with the speed with which the 1st Defendant conducted the search, he told the 1st Defendant that he would not be satisfied until he sees for himself from the Computer System at Abuja Geographic Information System, whereupon the 1st Defendant took him to the office of the 3rd Defendant in Abuja Geographic Information System where the 3rd Defendant opened the System and showed him all the documents relating to the land including the passport photograph of Mohammed Musa, the purported owner of the land. With the phone number he saw in the system, he

was able to confirm that the person whose details were on the system was the same Mohammed Abdu who had been introduced to him by the 2nd Defendant as the owner of the land. He stated that with this confirmation, he proceeded to make the initial payment of N7m which was witnessed by the 1st Defendant who signed as a witness.

Further the PW2 stated that while waiting to make up the balance of N3m, he began to frequent Abuja Geographic Information System, during which he got to know more about how search is conducted in Abuja Geographic Information System. He then decided to personally conduct search on the document, which search revealed that the title document sold to him by the Defendants was cloned. Consequently, he petitioned the Inspector General of Police, Commissioner of Police, Economic and Financial Crimes Commission and Independent Corrupt Practices and Other Related Offences Commission and eventually the Independent Corrupt Practices and Other Related Offences Commission responded to his petition.

He further stated that before the Independent Corrupt Practices and Other Related Offences Commission came into the matter, the 1st Defendant had procured one Ibrahim Salisu, a Soldier, who came to his house with the 2nd Defendant and threatened to deal with him mercilessly if he failed to pay the balance.

The PW2 was duly cross examined by the respective defence counsel. In the course of cross examination, the PW2 said helped him to conduct search because he presented himself with that knowledge. Further that it was the 1st Defendant that arranged for the Soldier at large to threaten him. He further stated that it was the 1st Defendant that initiated forged documents.

The 1st Defendant, Emmanuel Madubueze on the 30th of November, 2017 opened his defence as he testified for himself as DW1. He told the Court in his evidence in chief regarding his involvement with the alleged forged document that the nominal Complainant, the PW2 came to him and asked him to help confirm the status of the forged document. That after the confirmation, he told the PW2 that the plot had no issues on the system but that he advised the PW2 to go for legal search before paying for the land, as that had been the way he usually advised the PW2 in their previous transactions. He stated that after the search, he did not hear from the PW2 again until he was arrested by the Police and accused of fraud.

DW1 alleged that the statement he signed (Exhibit PW1D) was not made by him but that the investigators brought a statement sheet, turned the back of same not allowing him to read the contents, and demanded that he should sign. That because of his deteriorating health condition, he was compelled to sign the statement as demanded by the investigators. He stated that prior to the incident that led to this case, that he had been working with the PW2 for about two years by helping him to verify the status of lands on PW2's request.

When reminded by his counsel that he is charged with forgery of document and selling of same to the PW2, the DW1 asserted that he has never sighted the original forged document, neither did he collect money from the PW2. He said that he sold his car and brought the proceed of N1m to the investigators when he was shown the content of the statement of 30th October, 2015. That he saw the amount written therein, and because his health condition was critical, he had to comply.

He stated that he does not know Mohammed Sani who collected money from the PW2. He stated in conclusion, that he does not know anything about the forged document.

Under cross examination by the Prosecution, the DW1 stated that he does not know the 2nd Defendant. He stated that having worked at the Abuja Geographic Information System (AGIS), he got to know the 3rd Defendant who is a staff of Abuja Geographical Information System (AGIS). When asked how he used to confirm information about land, the DW1 stated that whenever the PW2 needed his help, he usually sent details of the land to him (DW1) and he would go to Abuja Geographic Information System (AGIS) and plead with any available staff to help him check the status of the plot, to know if it is a double allocation or whether it has any problem. That if he gets information that the land has no incumberances, he would inform the PW2 and also advice him to go for legal search.

Under cross examination DW1 denied ever meeting the 2nd Defendant.

The 3rd Defendant's counsel had no cross examination questions for the DW1.

The 2nd Defendant, Sabo Zabwami Auta also testified as DW2 on the 30th day of November, 2017. He told the Court that he is a security guard attached to AGIP under the employment of Hallogeen, a private security company. He stated that he knew the 1st Defendant (DW1) through one Joseph Sabo, a former staff of Abuja Geographic Information System (AGIS), who introduced the 1st Defendant to him as his friend and colleague.

The DW2 stated that he combines his security work with agency business, and that one day he met the 1st Defendant and the 1st Defendant gave him a photocopy of land document

and told him that the land was for sale and that he should look for a buyer. That after about a week, the 1st Defendant called him and told him that he had found a buyer, namely, the PW2, and directed him to contact the PW2 on a phone number provided by the 1st Defendant, stating that he, the 1st Defendant was busy.

He stated that when he contacted the PW2, he indicated interest in the land and requested for the plot number, size and the price which details he provided to the PW2. That later the PW2 called him and requested that they meet at Abuja Geographic Information System (AGIS), and that when he got there, he met the PW2 in a car and gave him a photocopy of the land document and then left.

That after about three days, the PW2 called him again and asked if he knew the particular location of the land and he answered the PW2 in the negative. Again the PW2 called him and then agreed to meet at a bus stop at ACO Estate. The PW2 picked him from ACO Estate alongside with somebody he introduced to be his wife and brother in-law. That the PW2 located the land with GPS and showed him the 2nd Defendant the land.

Testifying further, the DW2 stated that three days later, the PW2 called and informed him that he had confirmed that the land was genuine. To confirm this, the PW2 showed him an MTN phone number he got from the system in Abuja Geographic Information System (AGIS) belonging to the owner of the land, one Sani Abdu Mohammed but refused to tell him how he got the number. He stated that that was when he discovered that the PW2 and the owner of the land were communicating directly.

The DW2 further stated that the 1st Defendant gave him a phone number and directed him to call Sani Mohammed, and when he called as directed, the said Sani Mohammed told him that the PW2 was willing to pay and that a date had been fixed for the payment. That on the said date, the PW2 called him to meet up with him at a “Joint” in ACO from where they proceeded to the bank where the PW2 withdrew N3m and paid to Sani Mohammed. The next day the PW2 withdrew N2.5m and paid to Sani Mohammed and on another day, the sum of N1.5m was paid to the said Sani Mohammed by the PW2 at Abuja Geographic Information System (AGIS) park – all totalling N7m as part payment of the agreed N10m. After which the original document was handed over to PW2 by Sani Mohammed. The DW2 stated that after the PW2 had paid N7m to Sani Mohammed, he decided to demand for his commission/agency fee from the 1st Defendant as it is usually difficult to get his fees after the entire transaction had been concluded. According to him, he was entitled to 5% of the price of N10m from the PW1 who was dealing directly with Sani Mohammed and 5% from the PW2; thus the sum of N1m, making up 10% was given to him by the 1st Defendant, with the promise that when the PW2 pays him the 5% consisting of N500,000.00, he would return same to the 1st Defendant.

Testifying further, the DW2 told the Court that when he subsequently called the PW2 to demand for the outstanding N3m, the PW2 became evasive. And then on a particular Friday, he met the PW2 at Abuja Geographic Information System (AGIS) and there he was arrested.

On his involvement with a Soldier who was also arrested by the ICPC, the DW2 stated that on one particular evening, the 1st Defendant called him and requested that they meet at a bus stop and when he got there, he met the 1st Defendant with the

Soldier who demanded that the DW2 took him to the PW2 in connection with the outstanding N3m of the price of the land he bought. He stated that he took the Soldier to Mr. Tobias Tobeckukwu's (PW2) Joint at ACO where they met the PW2. That the Soldier demanded for the N3m balance and the PW2 requests for more time as he was not having money then. That the Soldier threatened to arrest the PW2, but that he pleaded on behalf of PW2. Thereafter, that they were arrested subsequently by the ICPC who explained to him that his arrest was in connection with the land they sold.

The DW2 told the Court that the first time he saw the 3rd Defendant was when they were brought to Court. He denied participating in the forgery of the document, stating that the photocopy he was given did not show whether it was original or forged. He also stated that he has refunded the N1m he received from the transaction.

Under cross examination by the prosecution, the DW2 stated that he had known the 1st Defendant for about a year before the transaction in issue, and that before that particular transaction, he had been involved in about four land transactions.

He stated that he did not demand for the original title document when he was given the photocopy as it was customary for them to just collect photocopy with which they source for buyers. That he asked the 1st Defendant about the owner of the land and the 1st Defendant told him that the owner is in Abuja but that he was not told the address of the owner.

When asked why he did not demand his agency fee from Sani Mohammed, the DW2 stated that he demanded for his fees from Sani but he was told to wait until the whole payment had been made by the PW2.

Under cross examination by counsel to the 1st Defendant, the DW2 told the Court that he decided to collect his full fee of N1m even though only N7m had been paid because he was no longer being carried along in their communications.

The 3rd Defendant declined cross examining the DW2.

On the 25th day of January, 2018, the 3rd Defendant, Mark Egwuma ogwu opened his defence. Testifying as DW3, he told the Court that he is a catographer and a Geographic Information System Analyst, with E-Angel Consortium who are contractors to Abuja Geographic Information System (AGIS). He stated that his schedule of duties involved receiving of Area Council Files, doing of quality control and sorting out the files, as well as plot matching and making of recommendations.

He told the Court that his statement to the ICPC, Exhibit PW1C reflects what happened in respect of the plot in issue.

The DW3 stated that he worked as the team head and the C of O production office inside Abuja Geographic Information System (AGIS). That at a certain time, the 1st Defendant who was a former contract staff of Abuja Geographic Information System (AGIS), approached him and asked him to help him (the 1st Defendant) with a copy of a land document from their system. That because the 1st Defendant had once worked with them, he didn't suspect any foul play as he said he only wanted to see if he could get an interested buyer and then he would contact the owner of the plot, and he therefore, obliged the 1st Defendant with a land document as requested.

He denied knowing any Mohammed Sani Abdu and stated that the document he gave to the 1st Defendant did not bear the name of Mohammed Sani Abdu. He however, claimed that he could not remember the name on the document he gave to the

1st Defendant. The DW3 also denied receiving any money or the sum of N1.5m from the 1st Defendant, and that he did not give the contact to the document to the 1st Defendant as contacts are only accessible from the database.

On the refund of N1,380,000.00 to ICPC, he stated that he accepted to pay the money so that the matter would “go away.”

He denied any involvement in the production of Exhibit PW1A.

The DW3 was duly cross examined by the prosecution during which Exhibits DW3A and DW3B, being acknowledgements of the part payments made by the DW3, were tendered in through him.

Under cross examination, by the Defence counsel, the DW3 denied the existence of 2nd Defendant until the commencement of this case.

One Micheal Chidi Chibuzo also gave evidence for the 3rd Defendant as DW4. He told the Court in his evidence in chief that he is a consultant at Abuja Geographic Information System (AGIS) and that he was 3rd Defendant’s supervisor at Abuja Geographic Information System (AGIS) when he was doing his internship.

He stated that while he worked with the 3rd Defendant, the 3rd Defendant was tasked with recovering vetted Area Council files, G.I.S., plot matching of the files and general recommendation. He further told the Court that the 3rd Defendant had access to secured Area Council documents on the system.

Under cross examination by the prosecution, the DW4 identified Exhibit PW1A as a copy of Right of Occupancy. He stated however, that the said exhibit PW1A is a copy of title document relating to land in Guzape, in the city centre where

they do not have access to. He however admitted being aware that Rights of Occupancy are applicable to Area Councils and that their consultancy contract is only limited to Area Councils.

He denied that his unit prints title documents, but stated that they produce “reprints” to Abuja Geographic Information System (AGIS) to print Certificate of Occupancy. He also said he could tell by looking at Exhibit PW1A that same was forged as the signature thereon looks shaky and the prints at the bottom are not legible.

The DW4 was equally cross examined by counsel for the 1st Defendant. 2nd Defendant’s counsel on his part, told the Court he had no cross examination question for the DW4.

At the close of evidence, the parties filed and exchanged final written addresses.

The learned counsel for the 1st Defendant, Charles H.T. Uhegbu, Esq., in his final written address raised three issues for determination, namely;

- a. Whether the alienation of land, Plot No. 1693 Guzape, Abuja in the Federal Capital Territory between Mr. Mohammed Sani Abdu and the nominal complainant, Mr. Tobias Obiechina without the consent of the Minister was not an unlawful transaction?
- b. If issue (a) is resolved in the negative, whether the prosecution and the nominal complainant should be allowed to benefit from the nominal complainant’s illegal and unlawful transaction?
- c. Considering the facts and circumstances of this case, whether the prosecution has not failed in proving its case against the Defendants?

Profering arguments on issue A, learned counsel argued that land in the Federal Capital Territory is vested in the President who in the exercise of powers conferred on him by Section 302 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), appointed the Minister of the Federal Capital Territory to oversee the land in the Federal Capital Territory. That before any alienation of land covered by Certificate of Occupancy granted by the Minister, the consent of the Minister must first be sought and obtained.

He contended that the purported sale of Plot No.1693 was without the consent of the Minister of the Federal Capital Territory, and that as such, the transaction between the nominal complainant and Mr. Mohammed Sani Abdu was an illegal transaction, and therefore null and void and of no effect.

He urged the Court to dismiss the charges and acquit the Defendants as there was no sale, the purported sale of Plot No. 1693, Guzape having been void ab initio.

On issue B, he posited that the law is settled that a party cannot be allowed to benefit from his illegal and unlawful transaction. Relying on **Seriki v. Arc (1999) 3 NWLR (Pt 595) 469**, he contended that no person involved in any form of illegal deal or transaction shall seek redress in any Court.

He argued that the nominal complainant is a party to the failure to obtain the consent of the Minister of the Federal Capital Territory, in an alienation of land in Federal Capital Territory which amounts to an illegality, and that all the exercise carried out in this case by the prosecution and the documents tendered in evidence, are products of the same base and immoral transaction which amount to illegality. He contended that the prosecution and the nominal complainant should not be allowed

to benefit from their base, illegal and fraudulent transaction by maintaining this action.

Arguing issue C, on “**considering the facts and circumstances of this case, whether the prosecution has not failed in proving its case against the Defendants?**”

Learned counsel contended that the testimonies of PW1 and PW2 were based on suspicion as Mohammed Sani Abdu, the purported owner of the plot who sold same to the nominal complainant was not in Court to state how he came about his documents. On the charge of forgery, he argued that the prosecution could not prove the charge as it merely alleged that the 1st Defendant was among the people that forged the title document. He contended that the prosecution failed to carry out forensic investigation or engage the services of writing and signature experts to confirm who actually did the forgery. That the equipment or devices used for the forgery were not recovered by the prosecution during their investigation.

Learned counsel further argued that neither of the prosecution witnesses saw the 1st Defendant forge the said title document of Plot 1693, Guzape, Abuja, nor did they hear when the 1st Defendant was conspiring to forge the document. He referred to Section 126 (a)(b) of the Evidence Act.

While positing that in criminal cases, the guilt of a Defendant is established by proof beyond reasonable doubt, he contended that the prosecution in the instant case failed to prove beyond reasonable doubt that the 1st Defendant forged the said title document as it relied only on suspicion. He referred to **Ifejirika v. State (1999) 3 NWLR (Pt 593) 59 CA; Akinyemi v. State (1999) 6 NWLR (Pt 607) 449 CA.**

Arguing further, learned counsel contended that the PW1 was a tainted witness as his testimony which were hearsay reveal that

he came to Court to serve a different purpose. According the learned counsel, the PW1 made so much effort to convince the Court about what he never saw or heard. He urged the Court to declare the PW1 a tainted witness and to expunge his testimony from the record.

Placing reliance on **Iko v. State (2001) FWLR (Pt 68) 1161**, he further contended that the testimonies of PW1 and PW2 were not corroborated and that the Court cannot therefore rely on them.

Furthermore, learned counsel argued to the effect that contrary to the allegation that the 1st Defendant fraudulently sold Plot No. 1693, Guzape, Abuja to the PW2, that the 1st Defendant did not sell the said Plot to the PW2. That the evidence of the PW2 before the Court was that he did not buy the land from the 1st Defendant and that he did not pay any money to the 1st Defendant. He contended that the prosecution failed to discharge the burden of proving beyond reasonable doubt, that the 1st Defendat sold the Plot to the PW2.

He further contended that it was a contradiction for the prosecution to charge the 1st Defendant for fraudulently selling the Plot to PW2 and for the PW2 in his evidence to state that he did not buy the said plot from the 1st Defendant. He urged the Court to resolve the contradiction in favour of the 1st Defendant. He referred to **The State v. Fatai Azeez (2008) 14 NWLR (Pt 1108) 439**.

In conclusion, learned counsel urged the Court to resolve issue 'C' in favour of the 1st Defendant and to dismiss the charges and discharge and acquit the 1st Defendant.

In his reply to the prosecution's final written address, learned 1st Defendant's counsel posited that the prosecution's contention

that the Defendants do not have title to Plot 1693 Guzape District, Abuja, and as such, could not give what they do not have goes to help the case of the Defendants. He contended that the Defendants could not have sold what did not belong to them. That the Defendants were only land agents working for commission and that the said land was sold to the nominal complainant by one Mohammed Sanni Abdu.

He further posited that the allegation by the Prosecution that the fact that the 2nd Defendant gave the PW2 the purported forged title document is indicative of the fact that they must have forged it, amounts to speculation and suspicion on the part of the Prosecution. He contended that this raises doubt which must be resolved in favour of the Defendants.

For the 2nd Defendant, his counsel, Okokpujie Odion, Esq., raised a sole issue for determination in his final written address, to wit;

“Whether the Prosecution has proved its case against the 2nd Defendant beyond reasonable doubt to warrant a conviction?”

Proferring argument on the said issue, learned counsel argued that PW1 in his evidence told the Court that the 2nd Defendant was an agent in the transaction, and that this assertion was corroborated by the PW2 and the 2nd Defendant himself. Relying on Section 22 of the Evidence Act, he posited that fact admitted needs no proof.

In respect of count one; learned counsel posited that to warrant a conviction, the Prosecution must prove that there was joint act by the Defendants. He contended that the 2nd Defendant acted as agent and that there was no time the 2nd Defendant agreed to obtain a fake title document and sell same to the

nominal complainant. He argued to the effect that the Prosecution failed to prove common intention as required by Section 79 of the Penal Code. He contended that the Court is bound in the circumstances to acquit the 2nd Defendant. He referred to **Amusa v. State (2002) FWLR 382; Sani v. State (2015) NWLR (Pt.1483) 522 at 547.**

On Count two, learned counsel contended that there is nothing linking the 2nd Defendant to the forgery of Exhibit PW1A as both PW1 and PW2 never mentioned that the 2nd Defendant forged the said Exhibit.

In respect of Count three, which is conspiracy to use forged title documents contrary to Section 79 of the Penal Code, learned counsel posited that for the Prosecution to prove this offence, it must show that the Defendants dishonestly used fraudulent documents as genuine. He contended that the evidence of PW2, the nominal Complainant, is clear that the 2nd Defendant gave him a photocopy to confirm if the Plot is genuine. That it was even the PW2, after the confirmation, who informed the 2nd Defendant that the land is genuine.

Learned counsel posited that to warrant a conviction of an accused person, the evidence must be cogent and compelling and that there must not be any aspect of the case which weaken or destroy any inference as to the guilt of the accused person.

He urged the Court to take cognizance of the evidence of the investigating officer, the PW1, that the 2nd Defendant did not know that the title document of Plot 1693, Cadastral Zone, Abuja was forged.

Learned counsel argued against Count four to the effect that the Prosecution failed to show that the 2nd Defendant took part

in the forgery of the title document as what he handed to the PW2 was a photocopy which was subject to confirmation in AGIS.

That on the contrary, the evidence of the PW1 and PW2, were to the effect that the 2nd Defendant acted merely as an agent and that the PW2 carried out confirmation of the title document without the knowledge of the 2nd Defendant and had interactions with the alleged owner of the Plot Sanni Mohammed without the knowlegde of the 2nd Defendant.

He further argued that the Prosecution failed to prove Count five beyond reasonable doubt as it failed to prove common intention on the part of the 2nd Defendant. He contended that the evidence before the Court is that the 2nd Defendant never met the 3rd Defendnat until he was arrested. He referred to **Sani v. State (2015) 15 NWLR (Pt.1483) 522 at 547.**

In respect of Count six, he contended that the Prosecution failed to prove the elements of the offence charged. He argued that the copy of acknowledgement of receipt of N7,000,000.00 attached to Exhibit PW1B does not make any mention of the name of 2nd Defendant.

Relying on **Uzoka v. FRN (2010) 2 NWLR (Pt.1177) 18,** he posited that the Prosecution has the onus of proving all the essential ingredients of the offence as contained in the charge. He argued that the Prosecution failed to discharge this burden. He urged the Court to discharge and acquit the 2nd Defendant.

The 3rd Defendant's counsel, John Erameh, Esq., raised a lone issue for determination in his Final Written Address, to wit;

“Whether the Prosecution has proved the essential elements of the offences charged against the 3rd Defendant?”

In his arguments, he posited that the offences for which the 3rd Defendant was co-charged for are categorized into conspiracy to forge, forgery, intention to defraud by false pretense and conspiracy to defraud contrary to Sections 79, 362 and 363 of the Penal Code and Sections 1(1) (a); 1(3) and 8(a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006.

In respect of the offences of common intention and conspiracy, learned counsel contended that no evidence was led by the Prosecution to suggest that the 1st and 2nd Defendants and Mohammed Sani Abdu ever met with the 3rd Defendant to hatch or concoct any intention to forge a document.

Further, that there is no evidence before the Court to suggest that the 3rd Defendant printed any title document in respect of Plot 1693 Guzape, Cadastral Zone A09, Abuja.

He argued that if the 3rd Defendant was involved in the alleged forgery, the nominal Complainant, PW2, would have expressly mentioned it in his petition, Exhibit PW1B.

Relying on Section 167(d) of the Evidence Act, learned counsel urged the Court to hold that the refusal of the Prosecution to tender the statement made by the PW2 to the Police amounts to withholding of evidence which could have been against the Prosecution and could have exonerated the 3rd Defendant if it had been tendered.

Arguing further, he contended that the character of evidence placed before the Court is grossly insufficient to establish the essential ingredients of common intention to commit the offences, especially so in the absence of;

1. Any evidence of expert analysis of the finger print of the 3rd Defendant showing contact with the purported title document.
2. Credible evidence whatsoever that the 3rd Defendant knew the PW2 during the transaction.
3. Involvement of the 3rd Defendant in the execution of the sale agreement and transfer documents.
4. Any instruction from PW2 to the 3rd Defendant to get him a plot of land.
5. The phone number and passport photograph purportedly gotten through the 3rd Defendant.

He urged the Court to dismiss this charge against the 3rd Defendant as there is no evidence connecting the 3rd Defendant with any common intention to do an unlawful act or a lawful act through unlawful means.

While conceding that conspiracy may be established through circumstantial evidence, learned counsel posited that the circumstantial evidence must be such that leaves no room for doubt or equivocation. He referred to **Posu v. State (2009) LPELR-3125 (SC); Yakubu v. State (2014) LPELR-22401 (SC).**

He argued that there is no such evidence placed before the Court as to warrant a conviction for conspiracy.

Profering argument in respect of the charge for forgery in Counts 2, 3 and 4, learned counsel referred to Sections 362 and 363 of the Penal Code on the definition of forgery, and contended that in order to prove the offence of forgery as defined in the said Sections, the Prosecution must prove the following;

- a) That the document was forged.

- b) That it was in possession of the accused person.
- c) That he had it in his possession knowing it to be forged and knowing that it would be used fraudulently and dishonestly as a genuine document.
- d) That the document was one described in Sections 362 and 363 of the Penal Code.

He referred to **Brown v. State (2012) 3 NWLR (Pt 1085) 207; Katto v. CBN (1991) 11-12 SC; Igabele v. State (2006) 6 NWLR (Pt 975) 100 at 111.**

Learned counsel urged the Court to discountenance Exhibits PW1J1 and PW1J2 on the grounds that failure of the Prosecution to call the maker thereof to be cross examined as a witness is a denial of the 3rd Defendant's right to fair hearing. He referred to **A.G. Federation v. Abubakar (2007) 10 NWLR (Pt 1041) SC 1.**

Relying on **Alao v. State (2015) 17 NWLR (Pt 1488) 245 at 264.** he posited that the conditions for proof of forgery must co-exist, and that where any one ingredient is missing or tainted with doubt, the Court is urged to deem the charge as not proved.

It was further contended by learned counsel, relying on Section 29(4) of the Evidence Act, that the burden of proving the actus reus and mens rea of the offence of forgery against the 3rd Defendant beyond reasonable doubt by the Prosecution is not eroded by the confessional statements of the 1st and 2nd Defendants as the confessional statement of a co-accused person is not admissible against other accused person in the absence of the person adopting the said confessional statement. He referred to **Ozaki & Anor v. State (1990) LPELR-2888 (SC) P.26.**

With respect to the offence of false pretence, learned counsel contended that the prosecution failed to prove that the offence was indeed committed. He referred to **Amusa v. State (2002) FWLR (Pt 85) 382 and Sani v. State (2015) 15 NWLR (Pt 1483) 522 at 547** on the burden on the prosecution to prove the commission of an offence beyond reasonable doubt.

He urged the Court in conclusion to discharge the 3rd Defendant based on the failure of the prosecution to prove the charges preferred against him.

Learned prosecuting counsel, Adesola Michael, Esq., in his own final written address, raised two issues for determination, namely;

1. Whether Prosecution had established the alleged offences against the Defendants beyond reasonable doubt as required by law?
2. Whether the refund of the money alleged to be fraudulently obtained can serve as a ground to discontinue the case against the Defendants?

While issue one deals with the substantive suit, issue two is in response to the motion on notice No. M/7540/18 by the 1st Defendant seeking an order of Court to discontinue the case and acquit the Defendants.

Adumbrating on issue one, learned counsel categorized the charges preferred against the Defendants into four, to wit; Counts 1 - 4: forming of common intention to forge title documents of Plot 1693, Guzape, A09 District, Abuja; forgery of the said Plot document and use of same as genuine; Counts 5 and 6: Conspiracy to obtain the sum of seven million naira by false pretences and obtaining the said sum by false pretences. He submitted, with reference to Section 135(1) of the Evidence

Act, 2011 and the case of **FRN v. Sanni (2014) 16 NWLR (Pt 1433) 299 at 337**, that the legal burden to prove the alleged offences against the Defendants beyond reasonable doubt is on the prosecution.

Learned counsel posited that under Section 79 of the Penal Code, if two or more persons intentionally do a thing jointly in furtherance of a common object, it is the same as if each of them had done it individually. That each person is not only liable for his own act, but also the acts of the others in furtherance of the common intention. He referred to **Buje v. The State (1991) 4 NWLR (Pt 185) 287 @297-8; Ebenezer Aje v. The State (2006) 8 NWLR (pt 982) 345 at 359-360.**

He asserted that the Prosecution can prove the case against the Defendants by eye witness account, confessional statement and or circumstantial evidence, or by all of the above as laid down in judicial authorities such as **Maigari v. State (2013) 17 NWLR (Pt 1384) 425; Igri v. State (2012) 16 NWLR (Pt 1327) 522** and **Abirifon v. The State (2013) 13 NWLR (Pt 1372) 587.**

After reiterating the pieces of evidence adduced before the Court in the case, learned counsel argued that the fact that the Defendants have all refunded in full the various amounts they received as their shares from the N7million collected from the nominal complainant, is sufficient proof that the Defendants knew of the evil act, planned it, executed it and consented to the production of Exhibit PW1A for the sole purpose of selling same to PW2 as genuine title document. He urged the Court to so hold and to convict the Defendants accordingly.

On the allegation of forgery of title document, learned counsel argued that Exhibit PW1G which is a confirmation by the Director of Lands that Exhibit PW1A is fake, is proof that Exhibit PW1A was forged. Further, that the evidence of DW4 to the

effect that Exhibit PW1A is a forged document goes a long way to strengthen the case of the Prosecution.

He further referred to **Okosun v. A.G. Bendel State (1985) 3 NWLR (Pt 12) 283 and Agwuna v. Attorney General Federation (1995) 5 NWLR (Pt 396) 418 at 438,** to the effect that all persons who are *participies criminis* to a crime in whatever capacity are guilty of the offence.

He argued that the pieces of evidence before the Court have ably demonstrated common intention of the Defendants to forge Exhibit PW1A and that they fraudulently used same as genuine.

On the charges bordering on conspiracy to obtain by false pretences and fraudulently obtaining the sum of Seven Million Naira from PW2 by false pretences by selling fake land title document of Guzape district to PW2, learned counsel contended that the Prosecution has demonstrated the culpability of the Defendants beyond reasonable doubt with the pieces of evidence presented before the Court. He referred to **Onwudiwe v. F.R.N. (2006) 10 NWLR (Pt. 988) 382** on the ingredients of the offence of obtaining by false pretences, to wit;

- That there is a pretence;
- That the pretence emanated from the accused persons;
- That it was false;
- That the accused persons knew of its falsity or did not believe in its truth;
- That there was an intention to defraud;
- That the thing is capable of being stolen;
- That the accused person induced the owner to transfer his whole interest in the property.

He argued that the Defendants would not have shared the purchase price collected from PW2 if they were not involved in the transaction and would not have secured the services of a soldier to recover the balance of three million naira from the nominal complainant.

On the arguments of learned counsel for the 1st Defendant on the illegality of the contract of sale of land for failure to obtain FCT Minister's consent, learned prosecution counsel contended that the Defendants do not have any title to the plot they purportedly sold and so cannot give what they do not have. That the prosecution of this criminal case is by the State (Federal Republic of Nigeria) who was not a party to the transaction. That the nominal complainant is not suing for the enforcement of the contract of sale of Plot 1693 and also not claiming damages from the Defendants. And that the nominal complainant is only a witness to the state and not a party to the instant criminal case. He thus described the arguments of learned 1st Defendant's counsel in that respect, as stamping logic in the head.

Learned counsel further contended that it is not in all cases that the prosecution have to produce forensic expert or handwriting analyst to sustain a charge of forgery. That the prosecution can prove the charge by cogent, unambiguous and unassailable witness as, according to him, was done in this case.

He argued that the PW2, in evidence, stated that the 2nd Defendant gave him the forged document to buy. That the 1st Defendant took him to the 3rd Defendant who confirmed that the document given to him by the 2nd Defendant was genuine. That the 2nd Defendant stated in evidence under oath that the forged document was given to him by the 1st Defendant who equally

gave him the telephone number of the nominal complainant, (the PW2).

Furthermore, that the evidence of DW4 as well as Exhibit PW1J confirmed that Exhibit PW1A is a forged document.

He contended that with the foregoing, the Prosecution has discharged the burden placed on it. He referred **Agwuna v. Attorney General, Federation (supra)**.

It is trite law that in criminal cases the burden of proof is on the Prosecution and the standard of proof is proof beyond reasonable doubt.

In **Nnajofofor v. People of Lagos State (2015) LPELR-24666 (CA)** the Court of Appeal, per Ndukwe-Anyanwu, JCA, held thus;

“The burden of proof in criminal cases lies throughout on the Prosecution and never shifts. Failure to discharge this burden renders the benefit of the doubt in favour of the accused.”

Also in **Owolabi v. State (2014) LPELR-24039 (CA)**, it was held by the Court of Appeal, per Oniyangi, JCA, that;

“... the standard of proof in criminal cases is proof beyond reasonable doubt. See Section 135(1) of the Evidence Act 2011 as amended. That is to say that the requirement of proof beyond reasonable doubt is a policy of law, which is derived from the fact that human justice has its human limitations. It is not given to human justice to see and know as the great external knows the thoughts and actions of all men. Human justice has to depend on evidence and

inferences, hence the Court gives the benefit of any reasonable doubt to an accused person.”

Proving the guilt of an accused person beyond reasonable doubt however, does not connote proof beyond every shadow of doubt. It denotes proof with compelling and conclusive evidence. This was well settled by the Supreme Court in the case of **Akinlolu v. State (2015) LPELR-25986 (SC)** where the apex Court, per Rhodes-Vivour, J.S.C. held that;

“Proof beyond reasonable doubt does not mean proof beyond all doubt, or all shadow of doubt. It simply means establishing the guilt of the accused person with compelling and conclusive evidence. A degree of compulsion which is consistent with a high degree of probability.”

It follows therefore, that for a Defendant to be found guilty by the Court, the Prosecution must present before the Court, credible and compelling evidence that demonstrate a high degree of probability that the Defendant committed the offence with which he was charged.

In the instant case, the Defendants were charged with the offences of forming common intention to forge title document to Plot 1693 Guzape, Cadastral Zone A09, Abuja, forging of the said title document and use of same as genuine contrary to Section 79 of the Penal Code and punishable under Sections 364 and 366 of the same code, as well as conspiracy to obtain the sum of seven million naira by false pretences and obtaining the said sum by false pretences contrary to Sections 8(a) and 1(1)(a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and Punishable under Section 1(3) of the same Act.

The question for consideration in the determination of this case is **whether the Prosecution has discharged the burden of proof as to secure the conviction of the Defendants?** In discharging the burden placed on it by the law to prove the guilt of the Defendants beyond reasonable doubt, the Prosecution is required to adduce cogent, credible and compelling evidence to substantiate or prove the elements of the offences charged. See **Abirifon v. State (2013) LPELR-20807 (SC).**

This burden on the Prosecution may be discharged in any of the following ways;

- (a) Through the confessional statement of the Defendant(s), or
- (b) By circumstantial evidence which leads to the irresistible conclusion that the Defendant(s) is or are guilty of the offences; or
- (c) Evidence of an eye witness to the commission of the offences.

See **Olomo v. State (2014) LPELR-22517 (CA).**

The 1st, 2nd and 3rd Defendants have however, been charged with having formed common intention to forge Exhibit PW1A. By this charge, it is imputed that the acts of each of the Defendants was done in furtherance of the propagation of their unlawful common purpose. See **Adio & Anor v. The State (1986) NWLR (Pt. 264) 581.**

The 3 Defendants are facing same charge with essential ingredients as follows;

- (1) Forming common intention to forge a title document with intent to defraud. This ingredient aimed at prosecution of an unlawful purpose – **Adekola Mustapha v. The State (2016) LPELR 40081 CA.**

- (2) Forgery of the title document. The essential ingredients are that the Defendants actually forged the documents in question – **Idowu v. The State (1998) LPELR 1427 (SC).**
- (3) Forming a common intention to USE the said forged title document as genuine and sold same to nominal complainant.
- (4) The Defendants within themselves deceitfully used the alleged forged title document of the land as genuine and sold same to nominal complainant at N7m.
- (5) The Defendants in conspiracy, among themselves by false pretences defrauded the nominal complainant of N7m. The conspiracy lies in the bare agreement and association to carry out an unlawful act contrary to the law – **Kayode v. State – LPELR 40028 SC.**
- (6) The Defendants by false pretence and with intent to defraud, falsely claimed that the title document of land was good and sold same to nominal complainant at N7m.

The Prosecution's case was that the ICPC in receipt of a petition, then set investigation in process, wrote Abuja Geographic Information System (AGIS) to confirm the authenticity of the said land title document. That Abuja Geographic Information System (AGIS), confirmed the alleged title document to be fake – The Prosecution led elaborate evidence through their witness and tendered these exhibits among others;

- 1) Exhibit PW1A – the alleged forged document.
- 2) Exhibit PW1H – letter written to AGIS by ICPC for search on the land.
- 3) Exhibit PW1J – Reply from AGIS confirming that the alleged land title document was fake.

On the arrest of the Defendants, the 1st Defendant made a confessional statement, Exhibit PW1D. In his confessional statement, Exhibit PW1D – the 1st Defendant admitted knowing the nominal complainant and in his evidence in chief confirmed that he had been assisting the nominal complainant (PW2) to verify the status of land before purchasing.

The 1st Defendant admitted knowing the Mohammed Sani who is at large and the 3rd Defendant who is a staff of Abuja Geographic Information System (AGIS).

1st Defendant had in Exhibit PW1D, examination in chief and cross examination also admitted that he introduced Mohammed Sani to a Soldier friend of his whom he, 1st Defendant introduced to 2nd Defendant and instructed 2nd Defendant to take the Soldier to the PW2 to collect the remaining balance of N3m. Exhibit PW1D the confessional statement of 1st Defendant showed that the idea of bringing in a Soldier to assist the Defendants in collecting the balance of N3m was originated by the 1st Defendant. Such was confirmed in his evidence in chief and cross examination. In his additional statement PW1E, 1st Defendant not only admitted having the title document cloned but indicted one Mark Egwuma to have done the cloning. See Exhibit PW1E and F.

He further admitted receiving N1.5m from Sani Mohammed as his own share of the transaction for the role he played. The 1st Defendant finally admitted refunding N1m out of the N1.5m he received and later on refunded the balance during the proceedings of the case.

On the part of the 2nd Defendant, he equally made a confessional statement. In summary, the 2nd Defendant stated that he met Mohammed Sani at the Abuja Geographic Information System (AGIS) car park where they exchanged

numbers. Later the said Sani Mohammed gave him a land document for sale.

In his evidence in chief, the 2nd Defendant told the Court that it was the 1st Defendant that gave him the contact of PW2, the nominal complainant a prospective buyer. That he got in touch with PW2 who indicated interest and made a payment of N7m to Sani Mohammed. That he got his own cut of 10% i.e. N1m from 1st Defendant with a promise to refund N500,000.00 to him when final payment of N3m is made.

In DW2's (2nd Defendant) evidence he admitted he led the said absconding military officer to PW2 on the instructions of 1st Defendant to collect the remaining N3m. The evidence of DW2 was straight forward that he never met the 3rd Defendant at any time except in this Court.

He further stated under cross examination that he never was given the original copy of the title document but the photocopy with which they source for buyers. Also that he has long refunded the N1m he collected.

On the part of the 3rd Defendant, he stated that 1st Defendant had worked in his office at AACTRIS and was also a contract staff of Abuja Geographic Information System (AGIS).

In other words it means that, both the 1st and 3rd Defendants knew each other. Both admitted same in their statements. 3rd Defendants (DW3) in his statement Exh PW1C admitted producing a copy of the title document in respect of the land on request of 1st Defendant though he did not suspect foul play.

He clearly stated in his statement of Exh PW1C that he did not know 2nd Defendant nor Mohammed Sani. He denied giving any contact number to 1st Defendant. He denied receiving any N1.5m from any body but that he refunded N1.380,000 just to

let the matter 'go away' Exh PW3A&B show the receipt signed by the 3rd Defendant as part of the refund of N1.5m. Also in the course of hearing, the 3rd Defendant made efforts to totally refund the entire N1.5m he received.

The ingredients of the offence as charged are that the Defendants must have a common intention to commit the offence. Secondly, it must be in their knowledge that they are using as genuine a forged document. Thirdly, they must have a reason to believe that the document is a forged document.

The evidence account of 1st and 3rd Defendants corroborated and established that both were working together. 1st Defendant said it was 3rd Defendant who cloned the document.

Even though the 3rd Defendant denied having knowledge of whose name the document was made, 1st Defendant categorically stated that 3rd Defendant cloned the document.

It is clear from the evidence that the 1st and 3rd Defendants worked with common intention had common knowledge that they are using the forged document as genuine and sold same to the nominal complainant. In addition it is my finding that they have reason to believe that the document is forged.

It is my finding that both 1st and 3rd Defendants had worked together and known each other. Let us have a look at the 1st Defendant's statement which the 3rd Defendant never denied, and it categorically stated thus, excerpt from Exh PW1F,

“Mark Egwuma gave me the clone paper. ... I met him, told him that I needed the clone document of the said plot, he accepted and promised to do it the following day. Only for him to call me that same day to come and pick it up ... we discussed about payment, I told him that all monetary aspect is not an issue until we

finish the deal first, the payment was N7m only, Sabo Auta N1m only, Mark Egwuma N1.5m, Sani Abdu N3m only...”

The denial of the 3rd Defendant that he did not know what the document was for was an after thought.

The 3rd Defence counsel never cross examined the 1st Defendant on this piece of evidence. From this uncontroverted evidence, it is clear to me that both the 1st and 3rd Defendant are the brain behind this fraud. It is my opinion and findings that they had a common intention to produce a cloned title document, which is a forged document, use it as genuine, deceive the PW2, Tobias Tochukwu Obiechina into purchasing a none existent land under a forged title document. The 1st and 3rd Defendant had a common intention to use the forged title document with the name of Mohammed Sani Abdu fraudulently sold it to PW2.

It is my finding that the 1st and 3rd Defendant falsely presented forged document with intention to defraud PW2 and indeed did defraud the PW2 of N7m.

Assuming and without conceding that the 1st Defendant lured the 3rd Defendant to clone a document, the 3rd Defendant who claims to be a HND holder ought to know that such act was criminal and was not among the general duties in his office, particularly when the instruction came from an ‘outsider’ i.e. the 1st Defendant. The one feature which strongly suggests mutual agreement was the receipt of the money by the 3rd Defendant and the 3rd Defendant’s effort to refund such.

3rd Defendant admitted refunding N1,380,000.00, and later the entire N1.5m for the reason that the matter would ‘go away’. The consistency of evidence of the prosecution and 1st and 2nd

Defendants in the sharing of the N7m was for the purpose of refunding the PW2 the money fraudulently collected from him not for the case to 'go away'. 3rd Defendant cannot be a father christmas to dole out money to people he never owed.

By the 1st and 3rd Defendants agreeing that the title document was cloned, meaning unauthorised copy or imitation of the original copy, thus falsifying and altering the document and representing it as original. This amounts to forgery. Thus in **Onyemaechi Obuladike v. Gabriel E. Nganwuchu (2013) LPELR 2126565 CA**, Owoade JCA held,

“Generally speaking, an alteration of a document is forgery with or without fraudulent intention.”

In the instant case, the meeting of mind of the 1st and 3rd Defendants even without having a close circuit meeting but even if it were telephone discussions, such discussions work together for a common purpose, that is acting in concert and there is clear evidence in their oral evidence and statements, Exh PW1D and PW1C. Moreso, it is from their evidence that both of them in conjunction with one another had a common intention to prosecute the act of forgery and the probable consequence of such act is fraud. It is again, my finding that the 1st and 3rd Defendants formed a common intention to prosecute an unlawful purpose which is inferred from conspiracy, which is an expression of the meeting of minds to carry out an unlawful act or carry out a lawful act by unlawful means. Sankey, JCA in **Kinsley Adijeh v. COP Nasarawa State (2018 LPELR 44563 (CA))**, rephrase that the agreement in conspiracy may be express or implied but the offence is to effect an unlawful purpose. As in the present case of the 1st and 3rd Defendants, it is implied by their actions of falsifying and altering the title document to suit their purpose which end result is fraud,

concludes the essence of conspiracy. See Section 96(1) Penal Code.

I am in strong belief that the prosecution has proved beyond reasonable doubt against the 1st and 3rd Defendants. The conspiracy as a crime was complete upon the common intention of the 1st and 3rd Defendants and it was necessary for the two of them to complete the offence. The statements of the 1st and 3rd Defendants coupled with their independent evidence provided ample evidence upon which their guilt is obvious.

On the part of the 2nd Defendant, the three Defendants were charged with counts of conspiracy, common intention to defraud and to forge title documents. I am strongly convinced that the prosecution has not sufficiently led evidence against the 2nd Defendant. Firstly, the Prosecutor has failed to link the 2nd Defendant to the act of conspiracy between 1st, 2nd and 3rd Defendants. The 2nd Defendant had said that he never knew the 3rd Defendant and his evidence was corroborated by 3rd Defendant. 2nd Defendant's relationship with 1st Defendant was generally on business platform of giving the 2nd Defendant photocopies of title documents to source for buyers. 2nd Defendant was not in a position to know that the title document was forged. There is no evidence linking the 2nd Defendant to the cloned forged document. The 1st and 3rd Defendants isolated the 2nd Defendant from the forgery saga. The 2nd Defendant was innocently working with 1st Defendant. It is therefore my finding that the Prosecutor had failed to prove the ingredients of the various offences against 2nd Defendant.

There are shreds of doubts arising in the evidential burden in the proof of the conspiracy, common intention and false pretence to defraud. In the effect of doubt in the prosecution's case the law required the Court to give the benefit of doubt to

that Defendant. – **Raphael Nwabueze & Ors v. The State (1998) LPELR 2080 SC.** May I add a few more words on the conspiracy and common intention.

Having a cursory look at the **Alarape & Ors v. State (2001) LPELR-412 (SC)**, the Supreme Court, per Iguh, JSC, held that;

“‘Common intention’ in criminal law may be inferred from circumstances described in the evidence led before the Court and need not be provable only by the agreement of the accused persons.”

See also **Nwankwoala & Anor v. State (2006) LPELR-2112 (SC)**.

Thus, even though there is no evidence that the three Defendants had meetings or sitting together to agree to the commission of the offence, their common intention can be inferred from the surrounding circumstances as described in the evidence led before the Court.

Admittedly, conspiracy is an agreement between two or more persons to commit an offence followed by overt action or acts. Of course the agreement is generally inferred from the associations between the conspirators. Emphatically, it is to be noted that all conspirators should not be in the plot from the beginning in order to complete the offence. Other conspirators could join at later stage and it is not also required that any one of the conspirators should know the other parties.

In this regard, the evidence of 2nd Defendant was that he was given a photocopy of title document to seek for buyers. Along the line from my finding, the 2nd Defendant received the number of Mohammed Sani Abdu, at large from the 1st Defendant to contact the Mohammed Sani Abdu. On getting in touch with Mohammed Sani, the said Mohammed Sani who I am

convinced was in touch with 1st Defendant, informed the 2nd Defendant that one Tobias Tochukwu, PW2 was interested in buying the land and that he should contact PW2. It is necessary to note that the initial evidence and statement of 1st Defendant was that he has been helping PW2 to do search and purchase land.

Unknown to 2nd Defendant of the common intention of 1st Defendant, Mohammed Sani and 3rd Defendant, he called PW2 who quickly arranged for money and made a payment of N7m.

Again it is in evidence that the 2nd Defendant did not know the 3rd Defendant. 2nd Defendant was innocently without any common intention dealing with 1st Defendant who again in his greed to collect the balance of N3m arranged for a Soldier and instructed 2nd Defendant to take the Soldier to PW2 who threatened PW2 to release the N3m. I am convinced from the evidence that the 2nd Defendant all through was not in conspiracy with 1st and 3rd Defendants to defraud the PW2. The demeanor of the 2nd Defendant consistently expressed innocence. I have observed that.

I conclude that, the 2nd Defendant unknown to him was merely used as a channel to link the fraud. He was particularly used by the 1st Defendant. By reason of the above, I am accordingly in view of the fact the Prosecution has failed to prove beyond reasonable doubt the Counts 1, 2, 3, 4, 5 and 6 of the charge against the 2nd Defendant, 2nd Defendant is hereby discharged and acquitted.

On the contrary, the Prosecution has adduced cogent, credible and compelling evidence to convict the 1st and 3rd Defendants. The Court accordingly finds the 1st and 3rd Defendants guilty of Counts 1, 2, 3, 4, 5 and 6 respectively.

ALLOCUTUS.

1st Defendant's counsel:

We plead with the Court to temper justice with mercy. The 1st Defendant has a young family and has refunded every kobo, which he collected. We pray the Court to severally warn the 1st Defendant against such further actions.

We pray the Court for option of fine for the 1st Defendant and order for compensation.

3rd Defendant's counsel:

On behalf of the 3rd Defendant we plead for leniency on the following grounds;

- 1) He is a first offender. There is no record in any Court of his involvement in crime.
- 2) 3rd Defendant is a family person with wife and two children.
- 3) 3rd Defendant had made effort to pay all the money. It is on the strength of the submission that I ask for option of fine as necessary punishment on the established guilty.

Court reminds the learned counsel on behalf of the 1st and 3rd Defendant that they can take advantage of Section 310 of ACJA in calling a witness to testify as to their good character.

1st Defendant's counsel:

We do not have any witness. I wish to add that 1st Defendant has no criminal records.

3rd Defendant's counsel:

The wife of the 3rd Defendant has a plea in mitigation based on character.

3rd Defendant's wife:

Witness based on Section 310(1) ACJA, sworn on the Bible and states in English; My name is Victoria Egwuma. The 3rd

Defendant is my husband and I have known him since 1997. I know him as an obedient and God fearing person. He has been content. I know him when he had nothing. He never had peers that would lead him astray. He was brought up by a very disciplined parents. As a mother and as a wife, I urge the Court to be lenient to the 3rd Defendant who is my husband on behalf of myself and the two children at home.

Sentencing of 1st Defendant who played the major role:

Having heard the plea for leniency on behalf of the 1st Defendant and also in consideration of his status and having paid the amount, it serves as a mitigating factor I pronounce the following sentence:

Count 1:

The 1st Defendant is sentenced to 1 year imprisonment or pay a fine of N100,000.00 in the alternative.

Count 2:

The 1st Defendant is sentenced to 1 year imprisonment or pay a fine of N50,000.00 in the alternative.

Count 3:

The 1st Defendant is sentenced to 1 year imprisonment or pay a fine of N50,000.00 in the alternative.

Count 4:

The 1st Defendant is sentenced to 1 year imprisonment or pay a fine of N50,000.00 in the alternative.

Count 5:

1st Defendant is sentenced to 1 year imprisonment without option of fine.

Count 6:

1st Defendant is sentenced to 1 year imprisonment without option of fine.

The sentences are to run concurrently. While the fines are to run consecutively.

In respect of the 3rd Defendant who also paid the amount of N1.5m in full which serves as a mitigating factor, considering also the fact that the wife has testified to his good behaviour.

Also considering the role he played the Court pronounces the sentences as follows:

Count 1:

3rd Defendant is sentenced to 1 year imprisonment or pay a fine of N50,000.00 in the alternative.

Count 2:

The 3rd Defendant is sentenced to 1 year imprisonment or pay a fine of N50,000.00 in the alternative.

Count 3:

The 3rd Defendant is sentenced to 1 year imprisonment or pay a fine of N50,000.00 in the alternative.

Count 4:

The 3rd Defendant is sentenced to 1 year imprisonment or pay a fine of N50,000.00 in the alternative.

Count 5:

The 3rd Defendant is sentenced to 6 months imprisonment without an option of fine.

Count 6:

The 3rd Defendant is sentenced to 6 months imprisonment without an option of fine.

Sentences to run concurrently while the fines are consecutive.

HON. JUSTICE A. O. OTALUKA
6/2/2019.