**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY**
**IN THE ABUJA JUDICIAL DIVISION**
**HOLDEN AT MAITAMA – ABUJA**

BEFORE HIS LORDSHIP: JUSTICE SALISU GARBA
COURT CLERKS: JIMOH I. SALAWU & OTHERS
COURT NUMBER: HIGH COURT TWO (2)
CASE NUMBER: FCT/HC/CR/61/09
DATE: 14TH JUNE, 2017

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT**

**AND**

**ENGR. TONY OSAS - ACCUSED PERSON**

Defendant in court

Sir Steve Ehi Odiase for the prosecution.

Mike Ugwuanyi for the Defendant.

Prosecution's Counsel – The matter is slated for judgment and we are ready to take same.

# J U D G M E N T

The Defendant was charged with five (5) count charge, reproduced as follows:

**COUNT 1:**

That you Engr. Tony Osas and one Senator Obi Babalola (now at large) on or about the 23rd Day of July, 2009 in the Abuja Judicial Division of the High Court of the Federal Capital Territory did agree among yourselves to do an illegal act to wit: Forgery of the signature of Senator A.O. Babalola, a serving senator of the

Federal Republic of Nigeria, by signing same on a UBA Cheque No. 10361801 purportedly issued by the said Senator, the account holder for the sum of N4.8 Million dated 23rd July, 2009 and thereby committed an offence contrary to Section 97 of the Penal Code Law Cap 532 Laws of the Federation of Nigeria (Abuja) 1990 and punishable under Section 364 of the same Act.

**COUNT 2**:

That you Engr. Tony Osas and one Senator Obi Babalola (now at large) on or about the 23rd Day of July, 2009 in the Abuja Judicial Division of the High Court of the Federal Capital Territory did fraudulently make a UBA Cheque No. 10361801 belonging to one Senator A.O. Babalola, a serving senator of the Federal Republic of Nigeria dated 23rd Day of July, 2009 for the sum of N4.8 Million with the intention of causing it to be believed that the said cheque was made by the account holder which you knew did not make it and thereby committed an offence punishable under Section 364 of the Penal Code Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.

**COUNT 3:**

That you Engr. Tony Osas and one Senator Obi Babalola (now at large) on or about the 23rd Day of July, 2009 in the Abuja Judicial Division of the High Court of the Federal Capital Territory did agree among yourselves to do an illegal act to wit: Using as genuine a forged UBA Cheque No. 10361801 dated 23rd Day of July, 2009 for the sum of N4.8 Million, purportedly issued by Senator A.O. Babalola a serving senator of the Federal Republic of Nigeria with the intention of causing it to be believed that the said cheque

was made by the said account holding which you knew to be forged and presented same for payment at Gateway Plaza of the UBA Branch, Abuja and thereby committed an offence punishable under Section 364 of the Penal Code Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.

**COUNT 4:**

That you Engr. Tony Osas and one Senator Obi Babalola (now at large) on or about the 23rd Day of July, 2009 in the Abuja Judicial Division of the High Court of the Federal Capital Territory did agree among yourselves to do an illegal act to wit: Theft of a UBA leave cheque No. 10361801 belonging to Senator A.O. Babalola a serving senator of the Federal Republic of Nigeria and thereby committed an offence contrary to Section 97 of the Penal Code Law Cap 532 Laws of the Federation of Nigeria (Abuja) 1990 and punishable under Section 319A of the same Act.

**COUNT 5:**

That you Engr. Tony Osas on or about the 23rd Day of July, 2009 in the Abuja Judicial Division of the high Court of the Federal Capital Territory did an illegal act to wit: Presenting a UBA Cheque No. 10361801 for payment of N4.8 Million dated 23rd July, 2009 at the Gateway Plaza of the UBA Branch, Abuja, that the said cheque was purportedly issued to you by the account holder Senator A.O. Babalola, a serving Senator of the Federal Republic of Nigeria, which you know is not true and thereby committed an offence contrary to Section 95 of Penal Code Law 532 Laws of the Federation of Nigeria (Abuja) 1990 and punishable under the same section.

In proof of the charge, the prosecution called three witnesses. The PW1 is one Mr. Bassey Prince Effiong, a detective with the EFCC.

In his evidence-in-chief, the PW1 stated that he got to know the Defendant in the cause of investigating a case assigned to him by his team.

The Defendant was brought to the office by the Compliance Officer of the U.B.A. Plc, he was brought along with a letter of complaint and a driver's licenses, U.B.A. cheque belonging to one Senator A.O. Babalola; in the petition it was alleged that the Defendant was apprehended trying to cash money from the Senator's account, using the senator's cheque. It was discovered that the senator did not issue that cheque.

PW1 further stated that he obtained the statement of the complainant one Kelvin Achi of U.B.A. Plc, the statement from the teller where the Defendant was supposed to cash the said cheque and also statement from the Account Officer of the said senator working with the U.B.A. Plc.

It is the evidence of PW1 that the senator was also invited and he gave his statement and his specimen signature which was sent to forensic examiner along with the cheque for examination. The senator said his MTN line was also cloned. The Defendant's statement was also obtained by the PW1.

It is the evidence of PW1 that at the end of investigation, it was established that the Defendant got a copy of the cheque (UBA) belonging to one Senator Aje Babalola, he filed the cheque, forged the signature of the senator and took the cheque to the

bank to cash, where he was apprehended and reported to EFCC. Investigation further reveals that the cheque was not issued to the Defendant by the senator and be did not sign same.

Under cross-examination, the PW1 stated that he carried out investigation into the matter. At the end of his investigation, he prepared investigation report which he handed over to the team leader.

That Senator Babalola was the person whose cheque was supposed to be cashed by the Defendant. The Senator did not write a petition to the EFCC that his cheque is missing or his signature was forged because he was not aware until investigation was commenced.

The senator identified the cheque in question as a cheque originating from his cheque book. The senator stated that he never met the Defendant.

The PW1 finally stated under cross-examination, that he was not at the bank when the Defendant presented the cheque for cash. The evidence he gave was based on information and documents he received.

No re-examination, PW1 was accordingly discharged.

Mr. Achi Kelvin, an Investigation Officer with U.B.A. Plc testified as PW2.

In his evidence-in-chief, he stated that on 23/7/09 he received call from the Branch Manager at Gateway Business Office of UBA Plc that there was somebody in their office with a cheque of N4.8 Million ready to cash and they got confirmation from the account holder one Senator Babalola Bidemi and he denied issuing the

cheque and that the beneficiary should be arrested. The Defendant was arrested and handed over to the EFCC for further investigation. The Defendant is the beneficiary of the cheque.

Under cross-examination, PW2 stated that it was the business office of U.B.A. Plc that arrested the Defendant. He was not there when the Defendant was arrested. He was called by the Gateway Branch and was informed that they have arrested the Defendant; they also told him that the Defendant presented a cheque of N4.8 Million.

No re-examination, PW2 discharged.

Andrew Abidemi Oluwagbenga Babalola testified as the PW3. In his evidence-in-chief, he stated that on 23/7/09 while he was still on active member of the 6th Senate of the Federal Republic of Nigeria and in the morning they were having committee meeting at about 10:00 a.m. that day, he noticed that his mobile was unusually salient. After about an hour into the meeting he saw a lady rushed into the venue of the meeting, she was from U.B.A. National Assembly Branch. The lady was his Account Officer, she asked whether the PW3 gave somebody a cheque of N4.8 Million and he said No. she said somebody is trying to cash a cheque of N4.8 Million in the name of the PW3 and they have been calling his telephone number. The lady told him that his phone had been cloned; that the PW3 should go back to his meeting and they will set a trap to catch whoever is doing that.

The PW3 further stated that when they finished the meeting, he went back to his office and sent for the Account Officer who told

him how everything that happened and that they were going to EFCC.

The EFCC came to his office the same day and the PW3 was invited to the EFCC where he offered his statement; that he never had anything about the case until he was invited to court to testify.

It is the evidence of PW3 that he did not issue a cheque of N4.8 Million to anybody. He met the Defendant in the EFCC Office. The signature on the cheque was not his signature but was forged.

Under cross-examination, PW3 stated that he has a son bearing Charles Babalola; that his son was not invited for questioning in respect of this matter; he never met the Defendant.

That he keep his cheque books inside his bag or in his office. The PW3 further stated that he did not know whether the cheque used in an attempt to get N4.8 Million was from his cheque book or not.

That when the attempt to take money from the account, he was not at the bank. All the information he got were given to him by the Account Officer and that it was the same information that he related to the court.

No re-examination, PW3 discharged and that is the case for the prosecution.

The Defence entered a no-case-submission, however, in the wisdom of the court the Defendant was asked to enter his defence. Defendant himself testified as the sole witness DW1. In his evidence-in-chief, he stated that on 2/7/09 he went to U.B.A. at the Central Area to open an account. Before then, on 21/7/09 he was at the bank to make enquiry about opening an account

with them. He was told to bring NEPA Bill, Identity card and on 23/7/09 he went to the bank for the account opening.

The DW1 stated that in the process of filling the account opening form, a lady walked towards him and accusing him of presenting a cheque and the DW1 told her that he did not know anything about what she was talking about. In the process he was taken to EFCC by the Bank Officials of United Bank for Africa at the National Assembly. The lady that accused him of issuing a cheque did not follow them to EFCC.

At the EFCC's office, the bank officials that took him there informed the EFCC staff that their colleague at the Central Area Branch told them that the Defendant presented cheque. The EFCC asked him to write a statement, which he did and denied issuing the cheque.

The DW1 also stated that after making the statement he was detained for a month. While in detention, a man came in with statements contained in about 4 sheets of papers and said if the DW1 want to live that place he should sign the statement. The Defendant stated that he was not giving the chance to read the statement. The Defendant signed the statement because he wanted to leave that place. The Defendant further stated that he did not know Senator Andrew Babalola; he was never shown the cheque that he was alleged to have issued to the bank by the senator and the EFCC officials.

After the Senator Babalola visited the EFCC, the Defendant was taken to the court.

The DW1 also stated that he had no transaction with Senator Babalola.

Under cross-examination of DW1, he stated that he was at the bank on 23/7/09 for the purpose of opening an account; that documents which include Saving Account Opening Form was given to him from the Customer Service Section; that where he was filing the form was not where people lined up to present their cheques to the cashier; that as he is filling the forms, a lady came to say that he presented a cheque. The Defendant told her that he did not present any cheque and drew the attention of the lady to the forms he was filing.

The DW1 also stated that the form given to him to open the account is with the bank and that he did not present any cheque to the bank for payment.

No re-examination, DW1 was accordingly discharged and that is the case for the defence.

The Defence counsel filed 10-page final written address dated 22/2/17 wherein counsel formulated an issue for determination, thus:

> ***"Whether the prosecution has proved the charge against the accused person beyond all reasonable doubt to secure his conviction"***

On this sole issue it is the submission that for the prosecution to prove the offence of forgery against the accused, it must establish that the accused forged the said U.B.A. cheque No. 10361801 in question with intent that it may be in any way be used or acted

upon as genuine as held by the Supreme Court in the case of ALAKE v STATE (1992) 3 NSCC VOL. 23 at 365.

It is submitted that the prosecution was not able to tender any admissible evidence of the cheque in question and the position of the law is that where inadmissible evidence is tendered in proof of a case, the position is that there was no evidence at the trial to prove the case. See CHIOKWA v STATE (2003) 3 ACLR 28 at 43.

If an admissible evidence of the cheque had been tendered, it would have been examined by the court *vis-a-vis* the evidence of the prosecution and evidence of the defence to determine whether or not it was forged and by who?

It is further submitted that the prosecution has failed woefully to prove the charge of forgery brought against the accused person and as such he is entitled to be discharged and acquitted. Court is urged to so hold.

It is the submission that on the charge of conspiracy, the prosecution did not lead any evidence at all to prove that the accused person conspired with anybody to forge the cheque which was not before the court. It is settled law that to secure a conviction for conspiracy, the prosecution must prove that two or more persons are found to have combined and this may be established by proof of existence of direct evidence of consp0iracy or by leading evidence from which court could draw inference from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them. See ONOCHIE & ORS v THE STATE (1966) 1 All NLR 86.

The contention of the Defence is that the testimonies of PW1, PW2 and PW3 were that they were told by an unnamed account officer of PW3 that the accused presented the cheque to the Bank for payment and that it was discovered that it was forged and consequently he was arrested. The evidence of what they were told by the unnamed account officer does translate to the truth otherwise; it amounts to hearsay which is not admissible in law. See MSUGHANDO v STATE (1980) 2 NLR 23 at 32.

It is the submission that the plea of not guilty by the accused person is, among others, a denial of the allegation that he presented the cheque in question to the Bank for encashment. He has stated that he went to the bank for the purpose of opening an account, which evidence was never countered by the prosecution. The unnamed account officer and teller who the prosecution alleged saw the accused present the cheque to the bank were never called to testify on behalf of the prosecution.

It is submitted that the failure of the prosecution to call the unnamed account officer and the teller who were said to have seen the accused present the cheques to the bank, to testify on whether or not they saw the accused person present the cheque at large to the bank is fatal to the case of the prosecution. See OPAYEMI v STATE (1985) 2 NWLR (Pt 5) 101 at 103 ratio 1. Court is urged to resolve this sole issue in favour of the accused person, to the effect that the p0rosecution has not been able to prove the guilt of the accused person beyond reasonable doubt as no ingredient of the offence charged was proved at all as required by law and discharge and acquaint the accused person.

The prosecution counsel on his part filed 18-page final written address dated 17/3/17 wherein counsel formulated an issue for determination, to wit:

> ***"Whether the prosecution has proved its case beyond reasonable doubt as required by Section 135 of the Evidence Act, 2011"***

On this singular issue, it is the submission that from the totality of evidence adduced at the trial and exhibits tendered before this court, the prosecution has proved its case beyond reasonable doubts as required by law.

On the count of conspiracy, it is the submission that conspiracy is the meeting of two or more minds to carry out n unlawful purpose or to carry out a lawful purpose in n unlawful way.

The prosecution does not need to show the exact point where they agreed but this could be inferred from the circumstances of the case. Furthermore, the law does not necessarily require the physical presence of the two because the offence could be committed by communication. See ERIM v STATE (1994) 5 NWLR (Pt 246) 522 at 533 Paras C – D.

It is the contention that there is evidence before the court that the Defendant was in the bank on the 23/7/2009. He admitted that he was in the bank. Court is urged to held that the sole reason for the Defendant to be in Bank on that day 23/7/2009 was not for any other reason but to cash the cheque. See ONOGORUWA v STATE (1993) NWLR (Pt 303) 49 at 85.

It is the submission that the court can convict the Defendant based on the evidence and circumstantial exhibits/evidence

before the court and on the Defendant's statement, provided the court is satisfied that the circumstantial evidence is true. See YUSUF v THE STATE (1976) 6 SC P. 167.

On the issue of not calling the unnamed bank official, it is the submission that the prosecution is not bound to call a host of witnesses; it is only incumbent on it to prove the case beyond reasonable doubt. See ALIYU v STATE (2013) VOL. 6 – 7, MJSC Pt 111 Pg 64 at 70.

That the absence of the original forged documents are not in any way prejudicial to the prosecution's case where the said document and the accused person are strongly linked. See OGUONZEE v THE STATE (1997) 8 NWLR (Pt 518) 566.

On the issue that the Accused/Defendant was not identified by the Bank staff is on called for and not essential to the issue; since he was identified before taking to the EFCC's office where he made his statement. See AJAYI v STATE (2014) VOL. 6 – 7 MJSC (Pt 1) 21 Paras 1 & 2.

On the issue of hearsay, it is submitted that information given by a witness to the court in evidence as to what he was informed about when he was not at the scene of a crime is "Not Hearsay" evidence. See ODOGWU v STATE (2013) VOL. 7, MJSC (Pt 1) Pg 37 Para 1.

In the instant case, the evidence of PW1, 2 and 3 was not a hearsay evidence as it was meant to establish the truth.

It is in evidence that the Defendant was found with a UBA cheque No. 10361801 belonging to Senator A.O. Babalola. This piece of evidence was never impeached or contradicted by the Defence

and should be taking as established. See DAGGASH v BULAMA (2004) 14 NWLR (Pt 89) Pg 144 at 240 Paras A – G. Court is urged to hold that the prosecution have discharged the burden placed on it by law by proving its case beyond reasonable doubt and convict the accused person.

I have carefully considered the processes filed, evidence of PW1, PW2, PW3 and DW1 and the submission of learned counsel on both sides, I hold the view that the sole issue that calls for determination is whether the prosecution has proved the charge against the Defendant beyond reasonable doubt to secure his conviction?

It is settled law that the standard of proof in a criminal trial is proof beyond reasonable doubt. This means that it is not enough for the prosecution to suspect a person of having committed a criminal offence. There must be evidence, which identified the person accused with the offence and that it was his act, which caused the offence. See AIGBADION v STATE (2000) 4 sc (Pt 1) at 15.

In the instant case, for the prosecution to succeed in the charge of conspiracy and forgery, it must prove all the essential ingredients of forgery; that is, there must be a document and that the document in question was forged by the Defendant with the intention that it should be acted upon knowing it to be false. See ALAKE v THE STATE (Supra); IDOWU v STATE (1998) 9 – 10 SC 1 at Pages 5 – 6 Lines 43 – 5.

For the prosecution to secure a conviction against the Defendant on a charge of conspiracy, it must show evidence of any agreement between two or more persons including the

Defendant, to embark on the illegal act. In the case at hand, there is no shred of evidence in the entire gamut of evidence of the prosecution to show that the Defendant agreed with any person whatsoever to commit the alleged offence.

It is settled law that in a charge of conspiracy, the prosecution has the burden to prove, not only the inchoate or rudimentary nature of the offence but also the meeting of the minds of the Defendant with a common intention and purpose to commit a particular offence. See the Supreme Court case of GBADAMOSI & OTHERS v THE STATE (1991) 6 NWLR (Pt 196) 182.

With respect to Count 2 of the charge i.e. that the Defendant did fraudulently make a UBA cheque No. 10361801 belonging to Senator A.O. Babalola. To secure a conviction, the prosecution must tender in evidence the allegedly fraudulently made cheque which must be legally admissible in evidence.

In the instant case, no legally admissible evidence of the allegedly fraudulently made cheque was tendered in evidence before this court.

It is also instructive to state that for the prosecution to prove the offence of forgery against the Defendant, it must establish that the Defendant forged the said UBA cheque in question with intent that it may be in any way be used or acted upon as genuine as was held in ALAKE v STATE (Supra).

As stated earlier the prosecution was not able to tender any admissible evidence of the cheque in question and the position of the law is that where inadmissible evidence is tendered in proof of

a case the position is that there was no evidence at the trial to prove the case. See CHIOKWA v STATE (2003) 3 ACLR 28 at 43.

Accordingly I hold that there was no evidence of the cheque which the prosecution alleged to be forged by the Defendant. The failure of the prosecution to produce admissible evidence of the alleged forged cheque is fatal to their case because the cheque is the foundation upon which the entire charge is built upon.

It is without doubt that from the avalanches of evidence adduced the prosecution has failed to prove the charge of forgery brought against the Defendant, I so hold.

It is the evidence of PW1, PW2 and PW3 that they were told by an unnamed Account Officer of U.B.A. that the Defendant presented the cheque to the bank for payment and that it was discovered that it was forged.

For instant, under cross-examination, PW1 stated thus:

> ***"I was not at the bank when the accused person presented the cheque for cash. The evidence I gave was based on information and documents I received".***

Also the PW2 under cross-examination stated as follows:

> ***"I was not there when the accused person was arrested.... I was called by the Gateway Branch and informed me that they have arrested the accused person; they also told me that the accused person presented a cheque of N4.8 Million"***

The PW3 under cross-examination stated thus:

> ***"All the information I got were given to me by the Account Officer, it was the same information that I relate to the court"***

It is on record that the Defendant denied all the allegation on the charge sheet by pleading not guilty. One begins to wonder why the prosecution failed to call the unnamed Account Officer and Teller who the prosecution alleged saw the Defendant presenting the cheque to the bank.

It is settled law that the prosecution is not obliged to call all witnesses interviewed but it has a duty to call such witnesses as are necessary to establish its case and prove the guilt of the Defendant. See OPAYEMI v STATE (Supra).

In the instant case, the failure of the prosecution to call the unnamed Account Officer and the Teller who were said to have seen the Defendant present the cheque to the bank is fatal to the case of the prosecution.

In conclusion, the sole issue for determination is resolved in favour of the Defendant. Accordingly, I hold the considered view that the prosecution has not be able to prove the guilt of the Defendant beyond reasonable doubt s no ingredient of the offences charged was proved beyond reasonable doubt as required by law. It follows then the Defendant must as a matter of cause be discharged and acquitted and he is accordingly discharged and acquitted of all count charges against him.

**(Sgd)**
**JUSTICE SALISU GARBA**
**(PRESIDING JUDGE)**
**14/06/2017**

Prosecution's Counsel – We are grateful for the well-considered judgment.

Defendant's Counsel – We are most grateful for the well-considered judgment. I am most grateful for giving me the opportunity to defend the Defendant.

**(Sgd)**
**JUSTICE SALISU GARBA**
**(PRESIDING JUDGE)**
**14/06/2017**