IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP, HON. JUSTICE A.A.I. BANJOKO-JUDGE
DELIVERED ON THE 7TH OF APRIL 2017

CHARGE NO: FCT/HC/CR/9/12
BETWEEN:

FEDERAL REPUBLIC OF NIGERIA……. COMPLAINANT

AND

1. **JUBRIL ROWAYE**
2. **ALMUNNIR RESOURCES LIMITED**
3. **BRILA ENERGY……DEFENDANTS**

SYLVANUS TAHIL FOR THE PROSECUTION
R.A. OLOYEDE WITH BABS AKINWUNMI FOR THE 1ST AND 3RD DEFENDANTS
ZAIDU ABDULLAHI FOR THE 2ND DEFENDANT

JUDGMENT

Initially, four defendants were arraigned on the 17th day of October 2012 under a Seventeen (17) Count Charge dated the 26th of September 2012, but with the death of Alhaji Saminu Rabiu, the 1st defendant during the trial, the remaining three defendants on record were re-arraigned under an Amended Charge dated and filed on the 12th of February 2015, which consists of One Count of Conspiracy brought under Section 8 (a) and punishable under Section 1 (3) of the Advanced Fee Fraud and Other Related Offences Act 2006, Five Counts of Conspiracy under Section 97 of the Penal Code Act, One Count of False Pretence under Section 1 (1) (a) of the Advanced Fee Fraud and Other Related Offences Act 2006, Five Counts of Forgery under Section 364 of the Penal Code Act and Five Counts of Using as Genuine a Forged Document under Section 366 of the Penal Code CAP 532 Laws of the Federation of Nigeria (Abuja) 1990 and the following are the aggregate Counts of Offences: -

COUNT 1

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD sometimes in May 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud, did conspire to do an illegal act, to wit: to obtain the sum of N1, 051, 030, 434.63 (One Billion, Fifty One Million, Thirty Thousand, Four Hundred and Thirty Four Naira, Sixty Three Kobo) only from the Federal Government of Nigeria by the false pretence that the said sum represented subsidy payment accruing to ALMINUR RESOURCES LTD for the purported importation of **10,000 MT** of Premium Motor Spirit (PMS) which you claimed to have purchased from Napa Petroleum Trade Inc. and imported into Nigeria through the **MotherVessel, MT Kriti Akti,** which representation you knew to be false and thereby committed an offence contrary to Section 8 (a) of the Advanced Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1 (3) of the same Act.

COUNT 2

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about March 2012 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud obtain the sum of N1, 051, 030, 434.63 (One Billion, Fifty One Million, Thirty Thousand, Four Hundred and Thirty Four Naira, Sixty Three Kobo) only from the Federal Government of Nigeria by the false pretence that the said sum represented subsidy payment accruing to ALMINUR RESOURCES LTD for the purported importation of **10,000 MT** of Premium Motor Spirit (PMS) which you claimed to have purchased from Napa Petroleum Trade Inc. and imported into Nigeria through the **MotherVessel, MT Kriti Akti,** which representation you knew to be false and thereby committed an offence contrary to Section 1 (1) (a) of the Advanced Fee Fraud and other Fraud Related Offences Act, 2006 and punishable under Section 1 (3) of the same Act.

COUNT 3

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 14th June 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja

with intent to defraud, did conspire to do an illegal act, to wit: made a forged document captioned: "**Bill of lading"** dated 14th June 2011 containing **Form M No: CBO6920090010249 – MF 0481139** and **LC NO: IBF0747/09904** purported in respect of importation of Premium Motor Spirit (PMS) on board the **MotherVessel, MT Kriti Akti** and thereby committed an offence punishable under Section 97 of the Penal Code Cap. 532 Laws of the Federation of Nigeria (Abuja) 1990.

COUNT 4

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 14th June 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud, did fraudulently make a forged document captioned: "**Bill of lading"** dated 14th June 2011 containing **Form M No: CB06920090010249MF0481139** and **LC NO: IBF0747/09904** purported in respect of importation of Premium Motor Spirit (PMS) on board the **MotherVessel, MT Kriti Akti** with the intention of causing it to be believed as genuine and thereby committed an offence punishable under Section 364 of the Penal Code Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.

COUNT 5

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 14th June 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud and in order to facilitate your obtaining money from the Federal Government of Nigeria did use as genuine a forged document captioned: "**Bill of Lading"** dated 14th June 2011 containing **Form M No: CB06920090010249MF0481139** and **LC NO: IBF0747/09904** by presenting same to the Petroleum Products Pricing Regulation Agency (PPPRA) purported in respect of importation of Premium Motor Spirit (PMS) on board the **MotherVessel, MT Kriti Akti** and thereby committed an offence contrary to Section 366 of the Penal Code Cap. 532 Laws of the Federation of Nigeria (Abuja) 1990 and punishable under Section 364 of the same Act.

COUNT 6

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 9th July 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud, conspired to do an illegal act to wit: made a forged document captioned: "**Certificate of Quantity Transfer" dated 9th July 2011** purportedly issued by **MGI Inspections Ltd** as proof of the transfer of **10003.279 Metric Tons (Vac)** of PMS from the **MotherVessel, MT Kriti Aktito the Vessel, MT Althea (1st Daughter Vessel)** at offshore Cotonou and thereby committed an offence punishable under Section 97 of the Penal Code Cap. 532 Laws of the Federation (Abuja) 1990.

COUNT 7

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 9th July 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud, made a forged document captioned: "**Certificate of Quantity Transfer" dated 9th July 2011** purportedly issued by **MGI Inspections Ltd** as proof of the transfer of **10003.279 Metric tons (VAC)** of PMS from the **MotherVessel, MT Kriti Aktito the Vessel, MT Althea (1st Daughter Vessel)** with the intention of causing it to be believed as genuine and thereby committed an offence punishable under Section 364 of the Penal Code Cap. 532 Laws of the Federation (Abuja) 1990.

COUNT 8

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 9th July 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud and in order to facilitate your obtaining money by false pretence from the Federal Government of Nigeria did use as genuine document to wit "**Certificate of Quantity Transfer" dated 9th July 2011** purportedly issued by **MGI Inspections Ltd** as proof of the transfer of **10003.279 Metric tons (VAC)** of PMS from the **MotherVessel, MT Kriti Aktito the Vessel, MT Althea (1st Daughter Vessel)** with the intention of causing it to be believed as genuine and thereby committed an offence

contrary to Section 366 of the Penal Code Cap. 532 Laws of the Federation (Abuja) 1990 and punishable under Section 364 of the same Act.

COUNT 9

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 9th July 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud, conspired to do an illegal act to wit: made a forged document captioned: "**Certificate of Origin" dated 9th July 2011** purportedly issued by **MGI Inspections Ltd** as proof of importation of Premium Motor Spirit (PMS) through the Marketer, Napa Petroleum Corporation on board the **MotherVessel, MT Kriti AktiEx**, **MT Althea (1st Daughter Vessel)** at offshore Cotonou and thereby committed an offence punishable under Section 97 of the Penal Code Cap. 532 Laws of the Federation (Abuja) 1990.

COUNT 10

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 9th July 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud did fraudulently make a forged document captioned: "**Certificate of Origin" dated 9th July 2011** purportedly issued by **MGI Inspections Ltd** as proof of importation of Premium Motor Spirit (PMS) through the Marketer, Napa Petroleum Corporation on board the **MotherVessel, MT Kriti AktiEx**, **MT Althea (1st Daughter Vessel)** at offshore Cotonou and thereby committed an offence punishable under Section 364 of the Penal Code Cap. 532 Laws of the Federation (Abuja) 1990.

COUNT 11

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 9th July 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud and in order to facilitate obtaining money by false pretence from the Federal Government of Nigeria did use a genuine a forged document to wit: "**Certificate of Origin" dated 9th July 2011** purportedly issued by **MGI Inspections Ltd** as proof of importation of Premium Motor Spirit (PMS) through the Marketer, Napa Petroleum Corporation on board the

MotherVessel, MT Kriti AktiEx, **MT Althea (1st Daughter Vessel)** at offshore Cotonou and thereby committed an offence contrary to Section 366 of the Penal Code Cap. 532 Laws of the Federation (Abuja) 1990 and punishable under Section 364 of the same Act.

COUNT 12

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 26th August 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud, conspired to do an illegal act to wit: made a forged document captioned: "**Certificate of Quality Transfer" dated 26th August 2011** purportedly issued by **MGI Inspections Ltd** as proof of transfer of **5246.102 Metric Ton (Vac)** of Premium Motor Spirit (PMS) from the **1st Daughter Vessel MT Althea** to the **Vessel, MT Brila Keji (2nd Daughter Vessel)** at offshore Cotonou and thereby committed an offence punishable under Section 97 of the Penal Code Cap. 532 Laws of the Federation (Abuja) 1990.

COUNT 13

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 26th August 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud did fraudulently make a forged document captioned: "**Certificate of Quality Transfer" dated 26th August 2011** purportedly issued by **MGI Inspections Ltd** as proof of transfer of **5246.102 Metric Ton (Vac)** of Premium Motor Spirit (PMS) from the **1st Daughter Vessel, MT Althea** to the **Vessel, MT Brila Keji (2nd Daughter Vessel)**with intention of causing it to be believed as genuine and thereby committed an offence punishable under Section 364 of the Penal Code Cap. 532 Laws of the Federation (Abuja) 1990.

COUNT 14

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 26th August 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud and in order to facilitate your obtaining money

by false pretence from the Federal Government of Nigeria did use a genuine a forged document to wit: "**Certificate of Quality Transfer" dated 26th August 2011** purportedly issued by **MGI Inspections Ltd** as proof of transfer of importationof Premium Motor Spirit (PMS) through the **Marketer, Napa Petroleum Corporation** on board the **1st Daughter Vessel, MT Althea** to **MT Brila Keji (2nd Daughter Vessel))** at offshore Cotonou and thereby committed an offence contrary Section 366 of the Penal Code Cap. 532 Laws of the Federation (Abuja) 1990 and punishable under Section 364 of the same Act.

COUNT 15

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 14th June 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud, conspired to do an illegal act to wit: made a forged document captioned "**Certificate of Quality " dated 14th June 2011** purportedly issued **SGS Netherland BV** as proof of the quality of Premium Motor Spirit (PMS) loaded on board the **Mother Vessel MT Kriti Akti** at Amsterdam, the Netherlands to West Africa and thereby committed an offence punishable under Section 97 of the Penal Code Cap 532 Laws of the Federation (Abuja) 1990.

COUNT 16

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 14th June 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud made a forged document captioned "**Certificate of Quality " dated 14th June 2011** purportedly issued **SGS Netherland BV** as proof of the quality of Premium Motor Spirit (PMS) loaded on board the **Mother Vessel MT Kriti Akti** at Amsterdam, the Netherlands to West Africa with intent of causing it to be believed as genuine and thereby committed an offence punishable under Section 364 of the Penal Code Cap 532, Laws of the Federation (Abuja) 1990.

COUNT 17

That you, Jubril Rowaye, Alhaji Saminu Rabiu (now deceased), ALMINUR RESOURCES LTD and BRILA ENERGY LTD on or about 14th June 2011 in Abuja within the jurisdiction of the High Court of the Federal Capital Territory, Abuja with intent to defraud and in order to facilitate your obtaining money by false pretence from the Federal Government of Nigeria did use as genuine document to wit: captioned "**Certificate of Quality " dated 14th June 2011** purportedly issued **SGS Netherland BV** as proof of the quality of Premium Motor Spirit (PMS) loaded on board the **Mother Vessel MT Kriti Akti** at Amsterdam, the Netherlands to West Africa and thereby committed an offence punishable under Section 366 of the Penal Code Cap 532 Laws of the Federation (Abuja) 1990 and punishable under Section 364 of the same Act.

During the trial of the case by the Prosecution, Twelve (12) Witnesses were called to testify in their regard and a total of Two Hundred and Thirty Two documentary Exhibits were tendered in proof, marked and identified as Exhibits A-FF in the Court's records.

Prosecution Witness (PW) 1, Mr. Wole Adamolekun, the General Manager Operations of the Petroleum Products Pricing Regulatory Agency (hereinafter referred to as the PPPRA) testified essentially as to the purposes and functions of the Agency and his schedule of duties within the Agency. He also testified at great length about the Subsidy Scheme under the Petroleum Support Fund Programme, which came into existence in Year 2006. He described the Paths or Channels as well as the Stages a Marketer would need to follow right from Registration to Allocation, through financing to eventual discharge of the Product at the Pumps.

His Schedule of Duties includes ensuring that there are adequate supply and distribution of Petroleum Products Nationwide. The PPPRA determines the pricing as well as the quantum of Petroleum Products Nationwide and builds the Database for the Down Stream Sector Activity as relating to Petroleum Products, Supply and Distribution. It also receives and stores Feedbacks on details of payments made to a Marketer by the Central Bank of Nigeria.
The regulatory function of the PPPRA includes ensuring that all the Stakeholders, Operators and Marketers conform to the Rules and Guidelines of the Agency.

The PPPRA also plays a role in administering the Petroleum Support Fund (PSF). The PSF Programme is a Federal Government Initiative put in place to cushion the immediate impact of the volatility of oil prices that may be felt by the Citizenry. This is because the prices of Petroleum Products changes every minute, every hour and every day, and requires some form of regulatory management.

Under this Programme is the Subsidy Scheme, which has two facets namely "Under Recovery" and "Over Recovery".

In the instance of Over Recovery, which occurred only once in 2008, and lasted for three months, the price at which the Petroleum Products were imported into Nigeria was lower than the Regulated Price for Premium Motor Spirit (hereinafter referred to as PMS or Petrol as commonly known), and in this circumstance, the Marketer is expected to pay the difference between the Regulated Price and the Actual Cost into Government Coffers. For example, if the Federal Government pegs PMS at Ninety-Seven Naira (97) per litre but the actual cost of the Product is Ninety Naira (90), the Marketer pays to the Federal Government the difference of Seven Naira (7).

In the second facet commonly experienced as Under Recovery, the Price of the Imported PMS is over and above the Fixed Regulated Price, which difference creates a gap and the filling-in of that gap by the Federal Government is called the Subsidy. This is where the Federal Government pays to the Marketer the difference, as the Marketer would find it difficult to recover the cost of the PMS at the pump, based on the fixed Regulated Price. An example of this is where the Fixed Regulated Price for Consumers is Ninety-Seven Naira (97) but the actual cost to the Marketer for importation of the PMS is, One Hundred and Forty-Five Naira (145), and then the Federal Government pays to the Marketer the difference of Forty-Eight Naira (48) as Subsidy Payment.

Mr. Wole Adamolekun described the Procedure for obtaining Subsidy Payments to be that, when a Registered PPPRA Marketer secures an allocation from the PPPRA, it would then proceed to source for funds from a Bank to purchase the PMS, and supply the Product. Subsequently, it forwards Photocopies of all the Documents relating to the purchase to them, because the Original Documents are lodged with the Financing Bank until the Loan granted is redeemed. Thereafter the Agency verifies the substance and

content of the submitted Documents vis-à-vis the Guidelines governing the PSF Scheme.
After its verification, the PPPRA forwards the result of their verification to the Federal Ministry of Finance and issues a Sovereign Debt Statement (SDS), which is an indication of the Subsidy Sum the Marketer would receive, and this marks the first stage of the payment process.

The Auditors at the Ministry of Finance then conduct their own independent verification exercise and arrive at a specific sum, which sum, must be paid notwithstanding the PPPRA's recommendation, in other to form checks and balances in the entire scheme.

After this exercise at the Ministry of Finance, the course of processing continues to flow into the Debt Management Office (DMO), which is responsible for issuing the Sovereign Debt Note (SDN), which marks the second payment process. This SDN issued by the DMO is the actual instrument that the Marketer would present to the Central Bank of Nigeria (CBN) to redeem its Subsidy Exposure, which is the money representing the difference between the money the Marketer was able recover when it sold the Product and the Government's commitment to pay the difference. After the payment, the CBN then informs the PPPRA of the details of the sum paid, which are recorded in their database. In the event of contentious issues, reconciliation meetings are usually held.

PW1 further testified that there are about Thirteen (13) Separate Government Agencies involved in the processing from the arrival of the Ship at the High Seas to the Jetties, through to the discharge of the product at the Depot, and distribution to the final consumer and these Agencies includes amongst others the Nigeria Ports Authority (NPA), the Department of Petroleum Resources (DPR), the Nigeria Navy (NN), Nigeria Customs Service (NCS), Federal Ministry of Finance (FMF) Appointed Auditors, Office of the Accountant General of the Federation (OAGF), Debt Management Office (DMO), Central Bank of Nigeria (CBN) and the Petroleum Products Pricing Regulatory Agency (PPPRA).

PW1 stated that the PSF Scheme started with only Six (6) Marketers in 2006, rose to approximately One Hundred and Twenty (120) Marketers in 2011 that brought in products, which includes the 2nd Defendant Alminnur Resources

Limited. However, as at 2012 the number dropped to thirty-nine (39) Marketers on record.

He testified as to not knowing the deceased Alhaji Saminu Rabiu and Jubril Rowaye but by virtue of the schedule of his duties, is aware of the 2ndDefendant as a Marketer. In the second quarter of 2011, the 2nd Defendant secured PPPRA's Permit to import 10,000 Metric Tonnes (MT) of PMS, which specified the volume to be imported and the conditions guiding the transaction. The 2nd Defendant subsequently supplied the PMS in two trenches of 5000plus MT and 4000plus MT and was paid in two trenches of about Half a Billion each. The 2nd Defendant had submitted over thirty-five (35) required documents from PPPRA's Checklist, which include the Bills of Lading of both Mother and Daughter Vessels, the Permit by the PPPRA, the Permit by the Department of Petroleum Resources (DPR), the Certificate of Quality, the Certificate of Quantity, their Letter of Credit, Form M, Shore Tank Certificate, the Shipping Documents and all the other documents through which their claims are processed.

When questioned about the relationship between the 2nd Defendant and the 3rd Defendant on the one hand, and the 3rd Defendant and the PPPRA on the other hand, his response was that the benefit of the Permit issued by PPPRA was to the benefit of the 2nd Defendant only and he believed that it was the 2nd Defendant who had the relationship with the 3rd Defendant.
He testified that the prevailing Ruling Guidelines would govern every transaction, for example, in 2012 there was the introduction of the Independent Cargo Inspectors, which were not in existence in 2011.

Following an investigation conducted by the Economic and Financial Crimes Commission (EFCC), the PPPRA were approached and requested to forward the List of all Participating Marketers, the Guidelines for the PSF and some of the documents used to process the PSF. All the documents were basically sourced from the PPPRA's database and were sent through the PPPRA's forwarding Letter to the EFCC.

He tendered into evidence and without objection the following documents: -

1. The PPPRA Permit on the PPPRA Letterhead Paper as Exhibit A
2. The Checklist, which is a Public Document on PPPRA's Website as Exhibit B

3. The EFCC's Letter of Request for Documents dated the 16th day of January, 2012 as Exhibit C1
4. The PPPRA's Letter of Response dated the 16th day of January, 2012 as Exhibit C2
5. Paginated bundle of documents of 89 pages in respect of 5,246.102 MT as Exhibit D
6. Paginated bundle of documents of 87 pages in respect of 4,966.191 MT as Exhibit E

Under Cross-Examination by Learned Counsel to the 2nd Defendant, he stated that he had assumed Office of General Manager (Operations) in December 2011 and had worked with the PPPRA for Nine years. In response to a question asked as to whether the PPPRA permitted third-party transactions, he answered in the affirmative but this was subject to the primary recipient of the allocation/permit notifying them in writing of their constraints which necessitates a third party engagement.

He was not too clear what relationship existed between the 2nd and 3rd Defendants, but conjectured on possibilities, giving an example that when a Marketer, the holder of the Permit is unable to execute the Permit granted, the usual practice in the Industry is to enter into a Memorandum of Understanding (MOU) with a 3rd Party and he believed that is what played out in the relationship between the 2nd and 3rd Defendants. From his experience, the MOU, which usually determines the way and manner the transaction is executed, usually has no specific and determinable set/stable terms, as it all depends on the parties themselves.

He agreed that there were Processes and Documents that flowed from the stages of Permit through to Shipment and then on to the eventual Discharge of the PMS and they were all submitted to his Office for verification. The verification essentially is to determine the volume of products imported, and to ascertain the financial wherewithal of the Marketer to import the Product. Upon sighting the Letter of Credit from the Bank as well as the Form M submitted to the CBN they are assured of the Marketer's commitment to fund the transaction.

In specific response to the question in regard to Form M, where Learned Counsel for the 2nd Defendant had referred to the inclusion of the name of the 3rd Defendant in Form M, his response was that what the PPPRA would only

take as relevant in that Form, are the value of the Loan from the CBN and the Foreign Exchange granted as well as its value. He further stated that the CBN would probably not have an account for the two parties as stated in Form M and they certainly would not capture "Alminnur Resources Limited c/o Brila Energy Limited" as an Account.
He agreed that the 2nd Defendant on face value had met the set requirement in the Permit.

As regards the Sovereign Debt Note issued by the DMO, this witness stated that he was not aware of who supplied the PMS and who got paid. He further added that he would have to check from their records, the documents supplied by the DMO and the CBN, which documents are not before the Court. He reasserted that the terms of the MOU would determine the above facts. In the stated MOU, it is usual to see situations where the transfer of title from the Primary Recipient to a 3rd Party is either a full or partial transfer. Even when a 3rd Party executes, the Primary Recipient/Owner sometimes gets the Sovereign Debt Note and sometimes payment is made to the 3rd Party. It was as a result of discrepancies experienced in these types of transactions that necessitated the Agency outrightly cancelling all 3rd Party transactions in 2012.
Based on the records supplied to their Head Office, this witness could say that the supply of the PMS was done in two trenches, but could not say whether either the 2nd or the 3rd Defendant supplied the PMS, as there are Scheduled Officers stationed at the point of arrival of the vessel, and at the point of discharge and sometimes through the truck-out, which is the distribution from the Depot, and such specific issues are handled by these Officers, who report back to him.

When asked, he was unsure if there were any documents to show any relationship between the 2nd and 3rdDefendants. He explained that for the avoidance of doubt, he became the General Manager in December 2011 and was neither privy to the documents evidencing a relationship between the 2ndas the Primary Recipient and the 3rdas the 3rd Party and was not in possession of these documents at the time of his testimony, even though he was not sure that there were documents evidencing their relationships in the first place. However, he admitted seeing such documents from his years of experience and stating that he would only make statements he was sure of the circumstances.

There were no further questions and the Learned Counsel for the 1st and 3rd defendants began his Cross-Examination.

PW1 reiterated his statement about the essence of the PSF Scheme and added that the Federal Government of Nigeria, for the benefit of Nigerians, fixes the regulated price. He confirmed knowing two of the Defendants as Importers who operate on the basis of Ex-Depot Price for the products they import and the PPPRA's focus is to verify that the products were real products and actually got to the consumers.
He gave instances of how a Supplier can discharge his responsibility under the Permit to be: -

1. He could sell the product at the High Seas;
2. He could sell it at the Tank Farm (Depot), for which he would not be involved in the distribution; or
3. He may participate in the actual distribution.

This witness stated that the EFCC made no complaint to them about the 3rd Defendant and had only asked for documents, which they provided. The EFCC had also interviewed their Field Officers, Depot Owners, DPR and NPA Officials, as well as the Marketers nominated Inspectors, but he was not privy to what transpired during the investigation.
Finally, he stated that the Report of the Inspectors became necessary before payment could be recommended by the PPPRA, only under the 2012 Guidelines.
There was no Re-Examination of this witness.

PW2, Mr. Chidi Onyejekwe the Lagos Branch Manager of Inspectorate Marine Services Nigeria Ltd, principally conducting business in Lagos, Offshore Lagos, Warri, Calabar, Port Harcourt, Offshore Cotonou and Offshore Lome testified on Oath as follows: -
His Oil Inspection Company carries out quality and quantity inspections on petroleum products. They basically check quantities of cargo before and after transfer from one ship to the other or from a ship to a shore-tank.
His schedule of duties includes being in charge of manpower distribution and handling the Reports and signing vouchers for the Staff.

PW2 stated that he did not know any of the Defendants on Record. In August of 2012, his Office received a Letter from the EFCC, which had attached two documents namely: - a Certificate of Quality and a Certificate of Quantity

purportedly issued, endorsed by signature and stamped by the Inspectorate. The Letter requested authentication of the genuineness of the two attached Letters. A search was conducted through their records and they discovered that these documents did not emanate from the Inspectorate, was not endorsed and a Reply Letter was written in September 2012 to that effect.

In the same month of September 2012, the Inspectorate received yet another Letter from the EFCC, which also had attached one document, the Certificate of Origin purportedly endorsed by the Inspectorate. Yet again, they went through their Records and discovered that this document did not emanate from the Inspectorate.
This fact was communicated to the EFCC in November 2012.
He tendered into evidence the following Documents, namely: -

1. The 1st Letter from the EFCC dated the 23rd of August 2012 was admitted without objection as Exhibit F
2. The 2nd Letter from the EFCC dated the 26th of September 2012 was admitted without objection as Exhibit G
3. The Inspectorate's Response Letter dated the 4th of September 2012 was admitted with the objection raised overruled as Exhibit H
4. The Inspectorate's Response Letter dated the 14th of November 2012 was admitted with the objection raised overruled as Exhibit I

He was shown Page 25 of Exhibit E, the Certificate of Origin, which he confirmed to be the same document that did not emanate from the Inspectorate Marine Services.

Under Cross Examination by Counsel to the 2nd Defendant, he maintained his point of not knowing and not having any dealings with the deceased and the 2nd Defendant. Upon being shown Exhibit H and I by Defence Counsel he restated that the Certificate of Quality did not emanate from the Inspectorate, as well as the Certificate of Origin and they did not endorse the Certificate of Quantity.
The sphere of their authority covers up to Offshore Cotonou and he was sure that as at the 9th of July 2011 he had no dealings with the 2nd Defendant based on the documents attached.

Under Cross Examination by Counsel to the 1st and 3rd Defendants which centred principally on the Website of the Inspectorate and Email Addresses of Staff, this witness stated that it was not necessary that he be copied, if any of

his Staff scanned and sent to a recipient any of these documents, but the Inspectorate had made enquiries in that regard.
However, they did not make enquiry as to whether any of their Staff forwarded these documents by email to another recipient.

Their Inspectorate also carries out Laboratory Services and he identified the past Branch Manager and the present Head of the Laboratory Services.

Under Re-Examination, he agreed that the ultimate authority rests with the Managing Director, and in his absence, the authority would rest with him. He explained for every official dealing any member of staff has with an outside body or client, the group email address must be put in and copied to all the persons in that group. The members of the group email addresses are the Managing Director, the Branch Manager, the Laboratory Manager and two Coordinators named Mr. Tony and Mr. Bankole.

PW3 Mr. Ifeanyi Iheanyichukwu Iroegbu, a Marine Cargo Superintendent and Managing Director of MGI Inspections Ltd testified as the third witness. His company is into Cargo Inspection Services and into P & I (Protection and Indemnity) Club Cargo Underwriting, which is a Shipping Club for Shipping Insurance. His Company further carries out Cargo Draft Surveys and Petroleum Hydro-Carbon.

His schedule of duties is to receive Letters of Instructions from Clients, handle and detail the Operations Manager on the jobs to be done as requested. He also handles day-to-day activities of the Company. He knows both the 1st and 3rd Defendants but not the 2nd Defendant and the deceased.
Between the 20th – 25th of June 2012, he had received a Letter from the EFCC, requesting authentication of operations carried out on three vessels, and a series of Haulage Reports, Certificate of Quantity and Transfer Certificate, about six or seven in number and amongst others, are as follows: -

1. The Haulage Certificate from MT Althea;
2. The Transfer Certificate from MT Althea; and
3. A Bill of Lading.

Upon receipt, the Company set out to authenticate the documents and found out that they never carried out any of the above operations on MT Althea and MT Kriti Akti except MT Brila Keji, and replied the Commission to that effect.

He explained that normally in the Maritime Sector and as regards the Maritime Vessels and description of Vessels, Operations and as regards the Ship-to-Ship (STS) Operations, he had sent his boy (Surveyor) to go on board MT Brila Keji at Offshore Cotonou to verify the quantity only.

He tendered into evidence the following: -

1. The Letter from the EFCC dated the 25th of June 2012, which was admitted as Exhibit J without objection
2. MGI Inspections Ltd.'s response dated the 11th of August 2012 was admitted without objection by Counsel to the 2nd Defendant, and with an overruled objection on the contention of Counsel to the 1st and 3rd Defendant, as Exhibit K.

This witness in identifying Exhibit D, confirmed seeing the rubber stamp of his Company on documents at Pages 44 – 49; 54; 61; 63; 65; 73 and 74, commented that all these rubber stamps on the referred Pages did not emanate from the Company, except that on Page 49 titled "Vessel Ullage Report", which is the Operation "STS after loading MT Brila Keji at Offshore Cotonou".
He was also shown Exhibit E, particularly at Pages 39; 41; 42; 44; 45; 54; 56; 57; 59 and 63; 64; 70 and 71, whereupon he identified the rubber stamps as affixed to those documents as belonging to his Company but stated that these purported stamps did not emanate from them.

Under Cross Examination by Learned Counsel 2nd Defendant, and upon being shown Exhibit K and J, he maintained his stance that the rubber stamp did not emanate from their Office. According to him, the Surveyor, who attended on board the ship to witness the haulage, usually stamps all documents from his Office.

As regards the Certificate of Origin attached to Exhibit J, he stated that he saw his Company's purported stamp on it, but he did not know where the Cargo originated from and added that in this operation, they never issued any Certificate of Origin as they only issued the Haulage Report taken by his Surveyor on board MT Brila Keji at Cotonou Offshore. He recalled that this operation was carried out at two different times, with the first being sometime in October 2011, with the quantity of about 4,900 MT and some fractions, and the second in November 2011, with the quantity being

approximately 5,005 MT. He did not know any consignee or any consignor of this Ship-to-Ship transaction.

Under Cross Examination by Learned Counsel to the 1st and 3rd Defendants, he gave a broad overview of the shareholdings and membership of his Company. He and some of his Surveyors were invited by the EFCC, where they all made Statements. He agreed he wrote a Letter to the EFCC dated the 25th of July 2012, but seem to disagree with himself as to whether he trashed the Letter or retrieved it from the EFCC, or whether it was trashed by the EFCC or still with them. He could not say where the Letter was and stated that the EFCC did not give him back the Letter or a Copy of it.
When shown a Photocopy of this Letter by the Defence Counsel he agreed that it was the Copy of said Letter, and when the Defence Counsel sought to tender through this witness, the Copy of the Letter dated the 25th of July 2012, the Prosecution raised an objection that the document was not properly certified and a date was given for an application of Subpoena, which was addressed to the Director of Operations EFCC.

On the next adjourned date, the Court's witness Mr. Adegbite Olaolu the Director of Operations at the EFCC tendered the Copy of the Subpoena as Exhibit L and the Certified Document as Exhibit L1.
Thereafter, the Cross Examination of PW3 continued with a final question from the Defence, where he confirmed that Exhibit L1 is the document he wrote.

Under Re-Examination, he was given both Exhibit K and L1, and agreed that he signed both. When asked to explain the seeming differences and why he wrote two Letters, he answered that after sending the 1st Letter dated the 25th of July 2012, his Office invited the Surveyor who did the job. The Surveyor confided in him that he only participated in only one of the documents, and at that point, he informed the Commission that he would write another response.

PW4, Mr. Abubakar Sanni Kulo is the Chief Operations Officer in the Portfolio Management Department of the Debt Management Office (DMO). He testified that the DMO is saddled with the job of raising funds for the Financing of Government Budget Deficit, and also saddled with the issuance of Government Securities, for example FGN Bonds, Nigeria Treasury Bills and any other jobs that may be assigned, relating to the above.

His schedule of duties includes the participation in the auctions of FGN Bonds and Treasury Bills. His other schedule includes the issuance of the Sovereign Debt Notes (SDN) for the Oil Marketers.

The issuance of the Sovereign Debt Notes (SDN) entails giving a guarantee for payment in respect of the Subsidy Claims for the Oil Market. The DMO is advised by the PPPRA through a Sovereign Debt Statement (SDS), to issue Sovereign Debt Notes (SDN) for the payment of Subsidy Claims.
The SDS sets out the name of the Beneficiary/Oil Marketer, the amount of Subsidy Claimed to be paid and the Maturity Date for the payment of the Instrument. He confirmed PW1's evidence that the DMO is the agency that determines the amount to be paid as Subsidy. However, the DMO is not involved in the verification and determination of the Subsidy Claims to be paid to the Oil Marketer.

Immediately the SDN is issued to the Oil Marketer, the DMO then notifies the Office of the Accountant General of the Federation, the Budget Office, the Office of the Honourable Minister of Finance as well as the PPPRA, of the List of all the Oil Marketers in a particular batch. Then two days to the Maturity of the Instruments, the DMO writes another Letter to the CBN Governor, informing him about the due date of that particular Instrument.
The 1st Letter the DMO wrote to the Accountant General of the Federation is addressed to the Governor of the Central Bank of Nigeria, and then copied to the Director General Budget Office of the Federation, the Accountant General of the Federation, Executive Director of PPPRA and the Honourable Minister of Finance.
Then it becomes the responsibility of the CBN to redeem, or pay off the Subsidy amount to the Marketers.

He personally did not know the deceased and the 1st Defendant, but knew of their Companies, the 2nd and the 3rd Defendants, in the course of his duties as the DMO deals with Oil Marketers that have Claims as far as the Oil Subsidy is concerned.

Sometime in January 2012, the DMO received a Letter from the EFCC requesting them to furnish the Bonds (which at the DMO Office are referred to as Notes) issued to the Oil Marketers from the Years 2006 – 2011, which they did in their Reply Letter in February 2012, annexing all the copies of the SDNs

issued out by them to Oil Marketers as at that date, and which included those relating to the 2nd and 3rd Defendants.

He gave an account that Alminnur Resources Limited was paid a total of about Three Billion Naira (N3, 000,000,000.00), and in respect of this case, the DMO have issued about One Billion Naira (N1, 000,000,000.00) in two batches of Five Hundred Million Naira (N500, 000,000.00) each.

PW4 Mr. Abubakar Sanni Kulo further testified that the DMO is not saddled with the responsibility of paying cash to Marketers. The SDNs are discounted at the CBN upon presentation for settlement and upon the DMO's Letter notifying the CBN that the Companies have completed all necessary documentations for payment.

As it occurred in this case, Marketers can authorize a Representative in writing to collect the SDN on their behalf and the DMO keeps the records of all the Representatives that collect the SDNs on behalf of the Oil Marketers. In all cases, whoever appears, as a Representative must produce his Identification Card, which the DMO uses and places on the Original SDN, and photocopies the ID onto the SDN, which would then be signed by the collector. In addition the DMO has a Register wherein they document all the Representatives who will sign as Collectors.

He identified the Letters from the EFCC addressed to the Director General of the DMO, as well as the DMO's Response to the EFCC, which was admitted without objection as Exhibit M and N1-14 respectively.

Under Cross Examination by Learned Counsel to the 2nd Defendant, he restated that the payments were made in two batches and stated that the 1st batch with a maturity date of the 5th of December 2011 (Exhibit N2) was collected by one Mr. Dotun and he also received the 2nd Batch of the payment of the SDN dated the 20th December 2011. Of all the payments made to the 2nd Defendants, the deceased MD did not collect the SDN, but he introduced Mr. Dotun to collect the SDNs on his behalf.

There was no Cross Examination by Learned Counsel to the 1st and 3rd Defendants.

Under Re-Examination, he was referred to Exhibit N12 and he identified this document as the authority to collect but stated that the picture contained therein was the photograph of the deceased Alhaji Saminu Rabiu.

PW5, Ms Folashade Onyia, the Chief Operating Officer of Oando Supply and Trading, a Subsidiary of Oando Plc. testified under Oath as to her schedule of duties. Her duty is to oversee the Finance and Operations Department. The Finance Department posts entries into the Accounting System of all transactions that the Company Oando, enters into, to ultimately produce the Financial Statements for the Company. She further stated that her Company is into the importation of Petroleum Products from the International Markets, which they sell in Nigeria. They also buy to sell locally purchased Petroleum Products. They liaise with Banks for opening Form M's, apply for Letters of Credit, and apply for Facilities from Banks to Fund the transactions, liaising with External Auditors to prepare Financial Statements.
The Operations Department on the other hand, monitors the movement of Cargo from Load Port to Discharge Port. They obtain Clearances from the Nigeria Navy, Nigeria Customs Service and the Department of Petroleum Resources, and this Witness ensures all the work goes according to plan.

Sometime in September 2012, her Company received a Letter from the EFCC dated the 12th of September 2012 titled "Investigation Activities on MT Kriti Akti" signed by the Director of Operations. They were requested to send a member of their Operations Team to attend a meeting at the EFCC on the 20th of September 2012. She attended that meeting, taking with her all relevant documentations concerning the Vessel MT Kriti Akti. She was asked to go through all the documentations and bring out all Bills of Lading of MT Kriti Akti and then there were the Bills of Lading of the two shuttle Vessels namely MT Halifax and MT Meriom Iris, and also other all documents relating to that transaction. She wrote a Statement about all she knew from about the transaction from the point of purchase to its discharge in Nigeria.
According to this witness, the Vessel MT Kriti Akti loaded its Cargo from Amsterdam, Netherlands on the 8th of August 2009 and arrived Offshore Cotonou on the 26th of August 2009. Between the 29th and 30th of August 2009, it discharged approximately 12, 900 Metric Tonnes into MT Halifax, which then went on to further discharge the Cargo at Magcobar Facility Depot in Port Harcourt on the 8th of September 2009.
Between the 1st and 2nd of September 2009, MT Kriti Akti discharged approximately 20,000 MT of PMS into MT Meriom Iris. MT Meriom Iris in turn

discharged the Cargo into three Facilities at BOP Apapa. Approximately 5,000MT were discharged to Mobil Oil, 9,000 MT to Total Nig. Plc. and balance of 6,000 MT were discharged to Oando Plc., and all these discharges took place between the 5th and 9th of September 2009.
This transaction enumerated above, was financed with Intercontinental Bank Plc. now Access Bank Plc. via Letters of Credit (LC), LC IBF0747/09904 and they had opened a Form M Number CB06920090010249/MF0481139. She testified that the Form M was valued at Twenty Four Million, One Hundred and Three Thousand plus or minus 5% US Dollars.

As regards the transaction with MT Kriti Akti, she had shown the EFCC the Bill of Lading with the same Vessel name MT Kriti Akti. It looked similar to the Bill of Lading of 2009, but it was dated 14th of June 2011. The destination for Oando was Apapa, but the destination on the one showed to her was West Africa, and then the signatures on the Bill of Lading was different from that of 2009, which is that of Oando's Bill of Lading. However, she further noted that the Letters of Credit and Form M Numbers were identical to that of the 2009 Cargo, which Cargo volume was 32999.938MT and she was not sure of the other Cargo volume.

She tendered into evidence the following documents: -

1. Letter from the EFCC, RE: MT KRITI AKTI admitted without objection as Exhibit O.
2. PW5's Statement to the EFCC admitted without objection as Exhibit P
3. Bundle of documents regarding MT Kriti Akti and MT Halifax admitted as Exhibit Q1-Q49 without objection.
4. Bundle of documents regarding MT Kriti Akti and MT Meriom Iris admitted as Exhibit Q2 (1) - Q2 (37) without objection.

PW5 identified Page 21 of Exhibit E, Page 27 of Exhibit D and Page 1 of Exhibit Q2 as the documents shown to her by the EFCC. She made a comparative analysis of the two Bills of Lading presented by Oando and that presented by the Defendants, by stating that the Bill of Lading shown by the EFCC was dated the 14th of June 2011, whereas that of Oando Plc. was dated the 8th of August 2009. Both vessels were MT Kriti Akti and the Products were unleaded Gasoline 91 RON. As regards the volume, that of Oando is 32,999.938 Metric Tonnes VAC, with the Delivery Port at Apapa whereas the other Bill of Lading was 32,436.399 Metric Tonnes VAC with the Delivery Port at West Africa.

However, both Bills of Lading had the Original Loading Port as Amsterdam, and were made to the Order of Fortis Bank (Nederland) N.V. Amsterdam. The Form M Numbers as well as the Number on the Letters of Credit were identical. The signatures were slightly similar but they were different.

Under Cross Examination by Counsel to the 2nd Defendant, PW5 stated that she has been in the employ of Oando since the year 2004, and from then till now, neither hernor Oando have ever had any cause to transact any business with the Late Alhaji Saminu Rabiu or Alminnur Resources Ltd. She was referred to Exhibit D1 at Page 26, the Letter of Credit Application from Spring Bank, and she noted that the Company stated in that Application was Alminnur Resources Ltd c/o Brila Energy Ltd. By this Exhibit she stated she never dealt with Spring Bank and further had never opened a Letter of Credit with Spring Bank, as she knows the Application Forms of the Banks Oando uses. She set out the two scenarios for payment of importation of products into Nigeria, to be: (1) By Letter of Credit, where the Importer applies for Foreign Exchange and (2) By Cash.

Under Cross Examination by Counsel to the 1st and 3rd Defendants, she stated that she has never been on the High Seas to meet a Vessel bringing Cargo for Oando or any other Company. According to her, Oando played a role in regard to Form M but played NO role in the issuance of the Bill of Lading. However, the Form M Number and the Letters of Credit Number would have been sent by advice from Oando to the Supplier, who must ensure that those numbers are reflected on the Bill of Lading, otherwise they would not be given Foreign Exchange to pay the Supplier by the CBN, according to the CBN's Regulations. The Supplier would receive money from the Customer via the Customer's Nigerian Bank and based on the information made by the Customer to the Bank.

For Oando, the issuer of the Bill of Lading in 2009 was Oiltanking, a Company based in Amsterdam, and the Supplier of the Cargo is Oando Trading, which is not a British Virgin Island Company as it is registered in Bermuda and is part of Oando Plc. Company.

According to her, the Bill of Lading is transmitted to the Paying Bank, usually an Offshore Bank who advises the Supplier's Bank that a Letter of Credit has been issued in favour of the Supplier. On this basis, the Supplier releases the goods for shipping, and the Shipper on the advice of the Supplier issues the

Bill of Lading in the name of the Buyer/Consignee. The Supplier cannot take benefit from the Letter of Credit unless the information as contained on the Bill of Lading is correct, and correlates with the information in the Letter of Credit issued by the Buyer's Bank and the Bill of Lading issued by the Shipper. It is the information text in the Letter of Credit issued by the Buyer's Bank, which has been accepted by the Supplier's Bank that determines whether or not documents should be presented before payment is made.
She stated that Oando does not own the Vessel MT Kriti Akti or any other Shipping Vessel. In Oando's transaction, it was the Supplier who nominated MT Kriti Akti, and they were so advised. Oando's only role played in this instance was to nominate the Daughter Vessels, such as MT Halifax and MT Meriom Iris.

She stated that she did not go to the High Seas to meet MT Kriti Akti, but they had Inspection Agents and Operation Staff that go to the High Sea, and their Cargo was discharged into Halifax Ex Kriti Akti.

As Chief Operating Officer she believes the Notifications and Documents sent to her in regard to Shipments and she was informed that Kriti Akti was around, having been nominated earlier and it was for her Daughter Vessel to take the stock. As a result of the trail of cash and its flow, she could be certain about the products that come in, because if the Supplier did not receive the funds, she would have reason to believe that Kriti Akti never sailed. As long as money passed, there was no reason to doubt the documentation provided.

The Letter of Credit Number usually begins with the acronym of the Bank that issued the Letter of Credit, and in this instance Intercontinental Bank (IB) was the issuer of Oando's Letter of Credit. It is inconceivable that Spring Bank (SB) would issue a Letter of Credit with the acronym that starts with that of Intercontinental Bank, as that would be very wrong. She was in this business since 2011 and could say that as at 2011 and in any year, the Bill of Lading was the most critical document required by the PPPRA for processing under-recovery subsidy payment. Finally she stated that she has seen the 2011 Guidelines for Processing Subsidy Payments.

PW6, Mr. Osamede Osayomore, a Trade Officer Supervisor at Access Bank Plc. described his schedule of duties as including the facilitation of imports and exports of products from Nigeria, and his job function also includes processing Form M and the NSP, which are Forms for Exports, Issuance of Letters of

Credit, and the Bills of Collection Remittances. He also supervises the negotiation of shipping documents presented on Letters of Credit and authorizes payments when documents are compliant to the terms of the Letters of Credit. Further, he supervises the endorsement of shipping documents to customers and liaises with their Correspondent Bank to negotiate interests on their lines, and so many other functions.
He testified that Intercontinental Bank Plc. was acquired by Access Bank Plc. and stated that he did not know any of the Defendants.

Sometime in August 2012, Access Bank received a Letter from the EFCC dated the 9th of August 2012, requesting confirmation of a certain Form M, and asking whether the Bank processed that particular Form.
They were also to provide relevant shipping documents relating to the Form M and details of the customer. Access Bank responded to this Letter on the 24th of August 2012, confirming the details of their Form M, which Number is, 0481139. They provided the EFCC with the Certified Copies of the related shipping documents to the Form M.

Access Bank from their Records, discovered that this Form M was processed by the former Intercontinental Bank now Access Bank for the purchase of 33,000 Metric Tonnes of unleaded Gasoline in August 2009, by Order of Oando Supply and Trading Ltd, with the value of about $24, 000, 000.00.
The related Letter of Credit was issued and advised through BNP Paribas, the Correspondent Bank and subsequently documents were presented via the same Bank, and were negotiated by the same Bank. Copies of the shipping documents presented were the Bill of Lading, the Commercial Invoices, the Certificates of Quantity and the Certificate of Quality via the Bank.

He tendered into evidence and without objection the following documents: -

1. The EFCC Letter dated 9th of August 2012 as Exhibit R.
2. Access Bank's Reply Letter dated the 24th of August 2012, which had documents attached as Exhibit S Pages 1 to 78.

Under Cross Examination by Learned Counsel to the 2nd Defendant, he could not say whether there exists any banking relationship with the deceased Alhaji Saminu Rabiu and the 2nd Defendant. When shown Exhibits R and S, he could not say whether the Letter of Credit opened by Intercontinental Bank Plc. was in favour of the Defendants.

Under Cross Examination by Learned Counsel to the 1st and 3rd Defendants, he stated that his Department would issue the Letter of Credit on behalf of their Customer to the Supplier of their choice, and the Bill of Lading is issued outside the Country and comes through the Corresponding Bank. For the purpose of the discharge of the product, the Banks in most cases would not give the documents to the Customer.
PW6 stated that especially for Oil practices, there is always an arrangement between the Supplier and the Importer/Customer as to how to take the discharge of the product. Usually in most cases, the Shipping Documents are always with the Bank and at the Customer's request the Shipping documents can be endorsed to the Customers.

In response to the question asked if the Bill of Lading is amongst the documents sent to the PPPRA, he answered that unless the PPPRA requests for a confirmation of the Bill of Lading and other Shipping Documents, such documents are not usually sent to the PPPRA.
It is not his function to produce the Sovereign Debt Notes, however he recalled that whenever Letters of Credits are established, the Banks always write to the PPPRA, confirming to them that a Form M has been issued with relevant details which include the Customer/Importer's name, Beneficiary/Exporter's name, the Quantity of Imported Item, and as well as the value to the PPPRA. In this case, the Bank would attach a copy of the Form M to their Letter to the PPPRA stating that the Bank financed the transaction. Sometimes this request would come from the customer. In any event, his Section does not handle the issue or aspect of processing PPPRA's Subsidy claims.

As regards Oando's transaction, he could not say whether the Bank forwarded or delivered the Bill of Lading to Oando.
There was no Re-examination.

PW7 Olanubi Tolulola, an EFCC Operative and Member of the Commission's Special Team on investigating Petroleum Subsidy, testified as to her schedule of duties at the EFCC, and acknowledged knowing the late Alhaji Saminu Rabiu and the three Defendants on record. One of her job functions was to search the Lloyds List Intelligence Database, which is an online interactive service that provides information about ships, vessels, their names, owners, position and movements. To access the Lloyds List Intelligence database, the user must subscribe to the Website, create an account and pay a fee. The Director of Operations at the EFCC Mr. Olaolu Adegbite created the Commission's Account

and was given a Username and a Password, to which he had access to being a member of the investigative subsidy team.

According to her, the 2nd and 3rd Defendants claimed they imported PMS through a Mother Vessel named 'Kriti Akti', with a Bill of Lading dated the 14thof June 2011. She accessed the Lloyds List around June 2012, using a Computer with Internet Access.
As a result of her enquiry into the Lloyds Database she discovered the following: -

1. That the Vessel Kriti Akti was dead, i.e. inactive
2. As at 17th of April 2010, the last known position of Kriti Akti was at the Gadani Beach, Pakistan, and no other movement was recorded beyond that date.
3. That on the 17th of April 2010, the name 'Kriti Akti' had changed to 'Akti'
4. On the Bill of Lading, 'Kriti Akti' had the flag of Greece, which was confirmed by the Lloyds List Intelligence Database.

Thereafter PW7 demonstrated the evidentiary foundation for the Computer and the Printout it generated, as well as demonstrated the content of her report.

She identified the Bill of Lading in Exhibit D, at Page 25, and referred to the Printed out information of the movement, the name, the flag, International Maritime Organization (IMO) Number and details of the history of the name change.
This computer generated information met no opposition from Counsel to 2nd Defendant as regards its admissibility, but was objected to by Counsel to the 1st and 3rd Defendants on the basis of Section 84 of the Evidence Act, which objection was upheld but the document was not marked 'tendered and rejected'. However, this Witness adequately demonstrated the contents of the Report by describing the system and the process, and the means of which she was able to enter into the Website,www.lloydslistintelligence.com.
According to her findings, in respect of MT Kriti Akti, its last position was on the 17th of April 2010 and the status was listed as "dead". Therefore, from her investigation it was impossible for this vessel, dead since as at April 2010 to set sail on the 14th of June 2011.

Under Cross-Examination by Counsel to the 2nd Defendant, she could say that she took part only in the investigation as regards the Lloyds List Intelligence Database, and was aware of only one Vessel that changed its name from 'Kriti Akti' to 'Akti'.
She did not know and therefore could not answer any further questions as regards the relationship between the Defendants and their respective Companies.

Under Cross-Examination by Learned Counsel to the 1st and 3rd Defendants, she testified as to her competence to conduct a computer generated investigative enquiry. The Commission arrived at the conclusion derived from the Lloyds List that Kriti Akti, being a Dead Vessel could not have brought in the Petroleum Product attributed to it by the Defendants. She identified the Supplier of the PMS, Form M, Bill of Lading, the Invoice as well as the Beneficiaries from Exhibit D, and maintained the point that her investigation was only in regard to the Status of the Vessel and not as to Shipper, Supplier, Mode of Payment or any other details aside of her internet probe.

Finally,she stated that she did not contact the owners of Kriti Akti to confirm the legitimacy of the information on the Website.
There was no further Re-Examination

PW8, Mr. Stanley Ambi a Legal and Compliance Officer working with SGS Inspection Service Nig Ltd, an inspection, testing, verification and certification Company carrying on business in Lagos, Warri, Calabar and anywhere else assigned to perform their designated task. The SGS Group is in 150 Countries and has 150 Affiliates that he is aware of. Mr. Ambi is the Company Designate for receiving correspondences between the EFCC and the SGS.

On the 30th of July 2012, SGS received a Letter from the EFCC, which contained an attached Copy of a Certificate of Quality purportedly issued by SGS Netherlands B.V., requesting a confirmation on the authenticity of the attached document.
SGS Nigeria forwarded the enquiry to the SGS Corporate Security in Geneva to ascertain the genuineness of the document from SGS Netherlands B.V.
On the 8th of August 2012, SGS Nigeria received an Email Feedback from SGS Geneva, and through a Covering Letter signed by the General Manager of the Oil, Gas and Chemical Division of SGS, forwarded the outcome of the Enquiry to the EFCC.

He explained that the queried Certificate bore a resemblance with a Certificate that would emanate from SGS Netherlands B.V., but this queried Certificate was tampered with, and its contents altered.

After laying the evidentiary foundation, he tendered into evidence the following documents: -

1. Letter dated the 30th of July 2012, by the EFCC to SGS admitted without objection as Exhibit T
2. SGS Reply Letter dated the 8th of August 2012, attaching a Copy of the Email received from SGS Corporate Security admitted without objection, which included a Copy of the Quality Certificate and Certificate of Compliance with the Evidence Act admitted as Exhibit U1 to U5.

He identified already tendered Exhibits D, E, S, U4 and T, and stated that there are noticeable differences between the disputed documents and the Oando Documents, and highlighted those differences before the Court.

As an Industry Player, he could say as far as the SGS Group Operation is concerned, Reference Numbers are Numbers given to Certificates, and that no two Reference Numbers are the same as each transaction has its unique Reference Number. The Email Feedback was sent along with two Reports, and finally he referred to the concluding Paragraph of Exhibit U3.

Under Cross Examination by Learned Counsel to the 2nd Defendant, he testified that he did not know or have any dealings with the deceased or his Company, and he was not aware whether Exhibit U3 referred to them.

Under Cross Examination by Learned Counsel to the 1st and 3rd Defendants, he confirmed that the Certificate in question was not issued by SGS Nig and so therefore did not know what transpired with regard to the probe of that Certificate of Quality and Quantity, and did not know at whose instance the Certificate of Quality was written, even though he knew the process of acquiring them.

These Certificates are usually used for importation, for which the Consignee would be interested in obtaining them, to ascertain what was loaded, at which Load Port and the purpose for the importation. To an extent the Consignor

too, or even the Consignee's Bank could instruct an Inspection Agency to conduct the investigation on its behalf. Usually there are more than one Inspection Agency conducting quality and quantity analysis.

He stated that it is not in all instances that the request of quality is made at the instance of the Supplier, it could be made by any person who walks in with a sample of a product taken from a ship, shore tank, truck or any receptacle in which he received the product and request for a specific test to be carried out on the sample.
The Certificate of Quality therefore has to do with the specification of goods being inspected for quality, and based on a particular criteria or specification, the Certificate would be issued verifying or negating the quality of the product.

If the client seeks for SGS's services, and the product is being shipped from Amsterdam, SGS Nigeria would instruct SGS Netherlands to carry out the Inspection, and issue the Certificate. To this extent a Certificate of Quality does not necessarily derive from a destination inspection.
According to him, a Certificate of Quantity and Quality issued at Load Port, is insufficient for the purpose of payment, as there is a further quantification and quality analysis on arrival, which would result in subsequent Ship-to-Ship Transfer, and would be only relevant when payment of the product becomes an issue.
In this particular instance, the inspection was conducted at the Load Port while the Consignee was waiting to conduct his own at Arrival Port.
There was no Re-Examination of this Witness.

PW9, Isa Tafida, is a Manager of the Downstream Division of the Department of Petroleum Resources (DPR), an Agency of the Federal Government, saddled with the responsibilities of monitoring, regulating and enforcing the Rules and Regulations in the Petroleum Industry. He testified as the Schedule Officer in charge of receiving and processing Applications from Marketers and granting Permits for the importation of Petroleum Products such as Premium Motor Spirit (PMS), Dual Purpose Kerosene (DPK), Automatic Gas Oil (AGO), Base Oil, Bitumen and Low Power Fuel and Industrial Chemical into Nigeria. The DPR interfaces with PPPRA, Petroleum Equalization Fund (PEF), the Central Bank of Nigeria (CBN) and the Nigeria National Petroleum Corporation (NNPC).

He acknowledged knowing the deceased, Alhaji Saminu Rabiu, who he claimed visited his Office to follow up on his Import Permit Application as well as knowing the 2nd Defendant, Alminnur Resources Limited, which Company applied to import 10,000 Metric Tonnes of PMS in the Third Quarter of 2011. Similarly, he knew Brila Energy Limited, the 3rd Defendant, to be one of the Companies granted Permit to import Petroleum Products but denied knowing the 1st Defendant, Jubril Rowaye.

On the 11th of September 2012, he was invited by the EFCC to shed light on an on-going investigation on Companies that were issued Petroleum Import Permits to import PMS under the Petroleum Support Fund (PSF), one of which was Alminnur Resources Limited, the 2nd Defendant. He was detailed by his Office to confirm whether Alminnur Resources Limited was granted the Importation Permit, which he did confirm to be granted on the 15th of June 2011 for the importation of 10,000 Metric Tonnes of PMS for the Third Quarter of 2011 with a Permit Validity period of 90days.

He gave testimony as to the relationship between the Management of Petroleum Support Fund (PSF) and the Petroleum Product Pricing Regulatory Agency (PPPRA) to be that the PSF is under the control, supervision and jurisdiction of the PPPRA.

He explained the procedure to be followed by a Company interested in participating in the Petroleum Support Fund for the grant of an Import Permit. The Marketer/Importer was to secure an Approval and Permit from the PPPRA for the quantity of PMS, which would be for a specific quarter. The Marketer is also required to obtain a DPR Permit and DPR Storage Licence or Throughput Agreement with a Licensed Tank Farm (Depot) for the importation of the quantity approved by the PPPRA.
With these, the Marketer approaches the DPR, makes a formal application on its Company's Letterhead Paper, pays the Application Fee, fills out the Forms, and attach relevant Company Formation Documents, Tax Clearances and the Bank Reference Letter.
Upon compliance with the above, the Marketer is given the go-ahead to import with the DPR Licence.

Under Cross-Examination by the Counsel to the 2nd Defendant, he maintained that Alminnur Resources Limited applied for and was granted the Permit to

import PMS which means that Alminnur Resources Limited complied with the Regulations governing the grant of the said Permit.
He testified that the role of the DPR in regard to the Petroleum Support Fund also includes Certification of the Quality of the imported product upon arrival at the Jetty.
Being a Scheduled Officer, he was not in Operations, and as such did not know the Quality of the product imported by Alminnur Resources Limited, neither was he in the position to ascertain whether the products were supplied.
He did not know of any relationship between Alminnur Resources Limited and Brila Energy Limited in regard to the importation of the 10,000 Metric Tonnes issued by the DPR.
He stated that a Marketer/Importer granted Permit to import petroleum products could not transfer such Permit to a Third Party.

Finally, he stated that the DPR is not in any way involved in the payment for imported PMS brought into the Country by a Company and added that the DPR has no dealings with the CBN as regards such payments.

There was no Cross-Examination of this witness by Learned Counsel to the 1st and 3rd Defendants and there was no Re-Examination.

PW10, Captain Iheanacho Ebubeogu, presently the General Manager, Public Affairs of the Nigeria Port Authority (NPA) was previously the General Manager (Marine) of the NPA.
His testimony was simply to explain in detail the workings of the Nigeria Port Authority, in monitoring, recording, directing, clearing ships for berthing and basically everything to do with administration and management of ships or shipping affairs. Further, the duties of the NPA includes ensuring that ships are brought in safely, remain at berth or anchorage safely and they depart safely with due consideration to Maritime Security, environmental protection and the expeditious movement of vessels in and out of the Ports, all to reduce ship turn-around-time.

As a former Manager Marine Ports Authority, he stated that through the Office of the Harbour Master, that is, the Marine Office at Port Level, the procedure is to ensure that all ships that arrive the Port, deposit both Ship and Voyage Particulars for further processing to prospect their berthing in order to discharge or load, as the case may be.

He did not know both the Deceased and the other Defendant on Record or their Companies as he was then the General Manager Marine at the Corporate Headquarters and this was because such detailed transactions involving the Defendants and their Companies, are captured at Port Level.

In September 2012, the NPA was invited by the EFCC, and he was detailed as General Manager Marine to accompany the Acting Executive Director Marine and Operations in order to complement his explanation on the NPA's procedure in playing host to vessels from arrival, right from when they report for berthing, to when they discharge their cargo and finally, then to sailing.
He testified on the said procedure from arrival to berthing and to the point where the ship will be allocated a jetty or a terminal or a berth and concluded that their responsibility ends at this stage till the vessel is about to sail.
A Vessel upon arrival at the NPA's jurisdiction, would in the first instance, be required to submit both the ship and voyage details which comprise of: the name of the vessel, the call sign of the vessel which normally comes in 4-5 digits, the port of registry, the owner/charterer (as the case may be), the length and breadth of the vessel, the arrival draught and the agent.

Then on the landside, the Agent who husbands the Ship whilst in the Nigerian Port, will do anapplication attaching the Manifesto of the Cargo or Ship to the Port Manager, who will in turn send the whole documents to the Commercial Department at the Port Level to raise the appropriate Bill.
The Agent then pays to the Bank and takes the evidence of the payment to the Port Manager, who minutes on it directing the Harbour Master to berth the Vessel.

After this payment, a Berthing Meeting will be held, which is where the Agents meet with the Harbour Masterto seek for berthing prospects for their Vessels and it takes place every working day of a week, that is, Mondays-Fridays. In this meeting, the Agent will declare his Ship to be stemmed for berthing.

According to the witness, it is at this stage that the Harbour Master will allocate a Pilot to bring in the Ship to a designated Jetty or Terminal or Berth. He stated that the business of the NPA ends at this point until the Ship is about to set sail and added that other issues concerning the cargo are handled by Customsand other Agencies, as the case maybe.

It was also his testimony that in the business of importation in the Maritime Industry, there are various kinds of Vessels e.g. the Mother Vessel, Daughter Vessel, Shuttles, etc.
He explained how these Vessels operate as regards importation of petroleum products, the purpose and function of each vessel.
It is only as regards importation of Petroleum Products that you have Mother, Daughter and Child Vessels. This is because from the particulars taken from the arrived vessel, there is the Arrival Draught, meaning that which sets out that part of the ship that is below water and is useful to determine whether the depth of Nigeria's Channel is greater than the draught of the ship to ensure smooth passage.

He testified that the Nigeria Port Authority has three locations for Ship-to-Ship (STS) Transfer so that the cargo from Mother Ships can be transferred into lighter vessels, such as Daughter or Child Vessels with shallower or shorter draughts, which can manoeuvre in Nigerian Shores/ Channels. The Ship-to-Ship (STS) designated areas are within the territorial sovereignty/ jurisdiction of the Federal Republic of Nigeria and therefore, regardless of the type of Ship, there must be a Report issued to the Nigeria Port Authority, except in the instance a Mother Ship arrives outside the jurisdiction of the Federal Republic of Nigeria, in which case, it is then referred to as Offshore Cotonou.
For each of the designated Ship-to-Ship (STS) areas, each Pilot District has a Harbour Master and two or more Signal Stations, which ensure vessels, are received with signals. This enables all Agencies to plan for the Ship and monitor its movement.

He testified that when faced with challenges in the Maritime Industry such as, arrested ships running away, some abandoned, some attempting to sail without paying required bills, they use the assistance of agents like Lloyds Register. He testified that there are two sources of Lloyds Publications they use: - One is called the Lloyds Register, which is a comprehensive inventory of all the ships in the world; the other is called the Lloyds List, a daily report, which shows the global movement of ships all over the world, i.e., where they are coming from and where they are going, etc.
The Collection of both the Register and the List are with each Harbour Master and are known as "Fixed Information".

However, Lloyds is not allowed to put on their List or make Reports of Nuclear Vessels, Aircraft Carriers and Uranium Carriers and their movements as their operations are "classified" due to the sensitivity of the cargo.
It was his testimony that though every system has its flaws, the NPA's long experience with the Lloyds Search Engine, demonstrates that the Lloyds List can be trusted for information and that Lloyds, is a reliable Partner with the NPA, with the accuracy of the Lloyds Search Engine rated at 99 per cent.

Under Cross-Examination by Learned Counsel to the 2nd Defendant, PW10 stated that at the Corporate Headquarters, there are no records on the Deceased and the 2nd Defendant but the exact Port of Entry may have the details.

He could not say which Port the Defendants' ship was berthed, as he did not have their details specifically requested for by the EFCC. He also could not answer whether the 1 per cent left of the 99 per cent accuracy can go in favour of the Defendants.

Under Cross-Examination by Learned Counsel to the 1st and 3rd Defendants, he stated that upon arrival of a Ship, different Government Agencies are activated to perform various duties for example, Port Health would check for quarantine, Nigeria Immigration, Nigerian Marine Safety, Nigerian Navy, PPPRA and DPR Officials would check the quantity and quality of cargo and give clearance from their Abuja Headquarters and the Nigeria Customs performing fiscal duties and also checking for contraband arms and ammunitions and goods. If satisfied with the quantity and quality of cargo, they will now perform "breaking the bulk", marking the beginning of the discharge of the cargo.

Upon discharge, other Agencies such as the Navy, Quarantine PPPRA and DPR return to verify that the Product has been fully discharged and a Certificate of Dryness would be issued.
He stated there were many methods of ascertaining whether a vessel arrived the Nigerian Port or not, through many Government Agencies such as Navy Ports, Immigration and Customs, who are all partakers and participants of ships coming into the Ports.
He explained the role of an Agent, what it means to husband a ship, the berthing meetings, and the radio station and stated that he was in Court to explain berthing procedure.

PW10 further stated that any ship that arrives into the jurisdiction of the NPA would signal its arrival and the NPA would investigate and start covering them. He pointed out that the arrival of a vessel and the notification of its arrival are two separate things and he had never been privy to a vessel that did not announce its arrival.
The NPA keeps statistics of derelict and abandoned ships and he could not say how Lloyds List data are compiled. He did not work at Lloyds and so did not know the sources of their data and could also not say whether EFCC went to Lloyds.
There was no Re-Examination of this witness.

The prosecution summoned Mr. Lawal Hammed a Detective with the EFCC and a member of the EFCC Special Team on Petroleum Subsidy to testify as PW11.
He explained his duties were to investigate general activities on cases assigned to the team and most specifically, cases relating to the importation of Petroleum Products under the Petroleum Support Fund (PSF). He identified the members of his team, which included himself as: - (1) Ibrahim Yidi; (2) Abdulrasheed Bawa; (3) Abdullahi Shehu; and (4) Mrs. Tolu Olanubi, the Desk Officer in charge of the Lloyds List Intelligence.

The team reports to the Director of Operations and then to the Executive Chairman of the EFCC. He testified knowing the Late Alhaji Saminu Rabiu as the Managing Director of the 2nd Defendant and the 1st Defendant as the Managing Director of the 3rd Defendant.
It was his testimony that sometimes in January 2012, the EFCC received a Petition signed by the Honourable Minister for Petroleum Resources Mrs. Diezani Alison-Madueke and other Civil Society Groups calling for an investigation into the importation of petroleum products and payments of Subsidies. This, he said, prompted the Chairman of the EFCC to set up a Special Team on Petroleum Subsidy (STPS) to investigate allegations in the Petitions and report back.

He testified on how the investigation started with intelligence gathering of all relevant information on process of importing petroleum products into Nigeria most especially Premium Motor Spirit (PMS) and Dual Purpose Kerosene (DPK). In gathering this information, the team reached out to all relevant Government Agencies, which includes: PPPRA, NPA, Debt Management Office

(DMO), and various Banks including Enterprise Bank, Inspection Agencies such as SGS Inspection Services Ltd, MGI Inspection Ltd and Inspectorate Marine Services Ltd as well as the Corporate Affairs Commission.

It was his testimony that, in the course of the investigation, a letter was written to the PPPRA demanding that it furnish the Commission with the list of Nigerian Oil Marketers, who participated in the subsidy scheme along with all the shipping documents submitted by the Marketers for the processing of the subsidy.
He testified that, it was in compliance with the aforesaid letter that the name Alminnur Resources Limited came up in which the Late Alhaji Saminu Rabiu is the Managing Director. He said Alminnur Resources Limited was granted permit to import PMS in 2010 and 2011 and that the 2011 allocation was for the importation of 10,000 Metric Tonnes of PMS.
He further testified that, the Late Saminu was invited to their office where he made a voluntary statement obtained under words of caution and where he stated that the 2nd quarter 2011 allocation to his company was assigned to the 3rd Defendant, Brila Energy Limited.
It was his further testimony that the Managing Director of Brila Energy Limited was also invited and in his voluntary statement made under caution, he confirmed that the allocation granted Alminnur Resources Ltd in 2011 was executed by his company Brila Energy Limited.
The team recovered the Memorandum of Understanding entered between the two Companies, and signed by the Late Alhaji Saminu Rabiu and 1st Defendant.

PW 11 testified that the transaction documents submitted to PPPRA was recovered and was analyzed by his team. He narrated the content of the said document viz:

- That the 10,000 Metric Tonnes of PMS was brought into the country through a vessel called MT Kriti Akti, which is the "Mother Vessel''. That a 1st daughter vessel MT Althea loaded the product from the mother vessel before they were transported into the 2nd daughter vessel in Offshore Cotonou.
- That in the course of these movements, different inspection agents were involved who issued different documents stating their role and what transpired between the vessels. These documents include: Certificate of Quality Transfer (from one vessel to another); Certificate of Origin; Vessel Haulage Report and the Bill of Lading.

- All these documents were analyzed and sent to various Inspectorate Services for authentication.

PW11 testified that the Bill of Lading of the Mother Vessel MT Kriti Akti submitted to the PPPRA stated therein that the Cargo was loaded at Amsterdam on Saturday 14th June 2011.
It was discovered that the Form M Number and the Letters of Credit (LC) Number did not relate to the transaction stated on it, and the team traced the said Form M and LC numbers to the then Intercontinental Bank, now Access Bank. This Bank, upon an invite, furnished the team with all documents relating to these numbers, wherein it was discovered that these numbers related to Oando Plc.
Oando Plc. was subsequently invited and they furnished documents in respect of the Form M, which included the Bill of Lading of MT Kriti Akti, showing that the Cargo was loaded from Amsterdam on Saturday 8th August 2009.
A comparative analysis was made of the two Bills of Lading said to have been issued by MT Kriti Akti and for which a search was eventually conducted through the Lloyds Intelligence List, with a Report released, showed the following: -

- As regards the Oando transaction, the Bill of Lading was correctly dated Saturday 8th August 2009 and MT Kriti Akti was alive in Amsterdam at the time of the transaction.
- As regards the Defendants' transaction, the Bill of Lading was incorrectly dated Saturday 14th June 2011, which date ought to have been Tuesday 14th June 2011, and MT Kriti Akti was dead at the time of their transaction.
- The Report revealed that MT Kriti Akti was dead as at April 2010.

A Request Letter for Information was forwarded to the Lloyds List Intelligence by the Commission and their Reply, was sent electronically through the Director of Operations to the Commission.
In the Reply Letter the List of Vessels scrapped in 2010 was provided, in which the name of MT Kriti Akti featured as scrapped at Gadani Beach, Pakistan in April 2010. Other documents obtained in regard to Alminnur Resources Ltd were sent to various agencies for confirmation.

The SGS Inspections Services confirmed that the Certificate of Quality of the Mother Vessel MT Kriti Akti was not genuine.

The Inspectorate Marine Services Ltd, when called upon to identify the Certificate of Origin of the 1st Daughter Vessel MT Althea, notified the team that the Certificate was not genuine in that it did not emanate from their office.

The Certificate of Origin of MT Althea the 1st Daughter Vessel as well as the Certificate of Quantity Transfer between the Mother Vessel and the Daughter Vessel, the Certificate of Quantity Transfer Between the 1st Daughter Vessel MT Althea and the 2nd Daughter Vessel MT Brila, the Vessel Haulage Report of the Mother Vessel MT Kriti Akti and Vessel Haulage Report of the 1st Daughter Vessel MT Althea were all sent to the MGI Inspectorate for authentication, who in reply, confirmed that all the above stated documents, did not emanate from them.

According to PW11 the Defendants submitted all these shipping documents to the PPPRA, who computed the amount of money and issued a Sovereign Debt Statement, in the sum of over One Billion Naira, that was subsequently released by the DMO, via a Sovereign Debt Note (SDN) into the account of Alminnur Resources Ltd opened at Enterprise Bank.

PW11 recounted the procedure of the grant from the allocation of Import Permit, to the submission of a Through-Put Agreement, which is an agreement between the storage facility owner, in this instance Fatgbems Petroleum Ltd and the Importer Alminnur Resources.

According to PW11, the last Daughter Vessel MT Brila Keji discharged the product at Fatgbems Depot in two voyages. The transaction was done through an Account opened in the name of Alminnur Resources Ltd at Enterprise Bank, where Form M and the Letter of Credit was opened in favour of Napa Petroleum Inc.
Napa Petroleum Inc. was the offshore trader from whom the product was said to have been bought, and efforts were made to reach Napa through the PPPRA, but it all proved abortive and the Mutual Legal Assistance Treaty handled by the Office of the Attorney General of the Federation in this respect, is still ongoing.

Investigations continued with the NPA revealing the operations of vessels within the Nigerian Waters and also the credibility and reliability of the Lloyds List Intelligence for information on vessels.

He explained why the Mother Vessel MT Kriti Akti and the Daughter Vessel MT Althea could not berth in Nigerian Waters due to their wide draught.
An enquiry as to their corporate status was also made to the Corporate Affairs Commission of Alminnur Resources Ltd and Brila Energy Ltd, which revealed that Late Saminu was the Director of Alminnur Resources Ltd, while Jubril Rowaye is the Director of Brila Energy Ltd.

The findings of their investigation revealed that the PMS imported by the Defendants did not originate from the source and location they claimed due to the fact that the Mother Vessel MT Kriti Akti had been scrapped in April 2010 and therefore could not have brought in the product since it was a dead vessel by the transaction date. He stated that this formed the basis for the computation of the Subsidy by the PPPRA and the subsequent release of the Sovereign Debt Note by the Debt Management Office.

The Investigation Team also discovered that all the mentioned documents submitted by the Defendants to the PPPRA were forged documents and the PPPRA acted on all these documents as presented.
The subsidy claim would not have been entertained in the first place by the PPPRA, if the origin of the product were not genuine. He tendered into evidence the following documents: -

1. The Signed Petition from the Minister of Petroleum dated the 12th of January 2012, and addressed to the Chairman of the EFCC was admitted without objection as Exhibit V1.
2. The Petition by the Civil Society Groups signed by Dino Melaye and others, addressed to the Chairman of the EFCC was admitted without objection as Exhibit V2.
3. The Petition from Falana & Falana's Chambers addressed to the Chairman of the EFCC was admitted without objection as Exhibit V3.
4. The Memorandum of Understanding executed between Alminnur Resource Ltd and Brila Energy Ltd dated the 20th of May 2011, and signed by the 1st Defendant and the Late Saminu, was admitted without objection as Exhibit W.
5. Statement of Late Alhaji Saminu Rabiu dated the 23rd of February 2012 was admitted without objection as Exhibit X1

6. Statement of Late Alhaji Saminu Rabiu dated the 30th of June 2012 was admitted without objection as Exhibit X2
7. Statement of the 1st Defendant Jubril Rowaye dated the 17th of July 2012 was admitted without objection as Exhibit Y1
8. Statement of the 1st Defendant Jubril Rowaye dated the 19th of July 2012 was admitted without objection as Exhibit Y2
9. Certified True Copy of EFCC Letter to the Lloyds List Intelligence dated the 25th of June 2013 with no objection by the 2nd Defendant, but with an overruled objection from Counsel to the 1st and 3rd Defendants as Exhibit Z1.
10. Certificate of Compliance from Lloyds List Intelligence admitted with no objection by the 2nd Defendant, but with an overruled objection from Counsel to the 1st and 3rd Defendants as Exhibit Z2
11. EFCC's Certificate of Identification was admitted, after laying proper foundation as Exhibit Z3.
12. Lloyds List Intelligence Email Correspondence in response with attachments admitted as Exhibit Z4.

PW11, identified earlier tendered Exhibits such as Exhibits A, B, C1, C2, D, E, F and G.

Under Cross Examination by Counsel to 2nd Defendant, he restated that Napa Petroleum Inc. the claimed source of the PMS is still being addressed through the Mutual Legal Assistance Treaty in the Office of the Attorney General of the Federation. According to PW11, there were Four Marketers who are said to have transacted with them, and their issues are not yet resolved. A tripartite meeting was organized by the team through the PPPRA with the Offshore Traders that transacted with the Nigerian Marketers. While other Offshore Traders honoured the invitation, Napa Petroleum Inc. did not.
He agreed that there was a discharge through the last Daughter Vessel MT Brila Keji at Fatgbems Petroleum Depot, but stated they were not imported products, and not from the origin as presented by the Defendant.
He reasserted that the claim that the Product was sent from Amsterdam via the Vessel MT Kriti Akti was not correct. He maintained his stance that everything pertaining to the transaction was effected in the name of Alminnur Resources Ltd, but executed/performed by Brila Energy Ltd.
The Sovereign Debt Note was released in the name of Alminnur Resources Ltd, received by a person introduced by Alminnur Resources Ltd and

cleared in the account of Alminnur Resources Ltd domiciled at Enterprise Bank.
He did not know the name of the officer on ground at the time the products were being discharged.

Under Cross Examination by Counsel to the 1st and 3rd Defendants, he stated that the Petition received by the Commission was on the general importation of Petroleum Products and not specifically in regard to the 2nd and 3rd Defendants. It was a Petition on the misappropriation of the Petroleum Support Funds.
Upon formation, the team were educated by the relevant stakeholders as to the workings of the importation of petroleum products under the PSF Scheme. For each importation, there were five parties, which would include the Refinery and could include a Spot Trader, at least Two Banks and the Nigerian Importer.
The individual team members, who were assigned different tasks, generated a Report on their findings, which were all forwarded to the Head of the Team, for onward transmission to the Director of Operations. This witness could not say whether the Director compiled all their individual Reports as one.

His team specifically dealt with the investigation into the affairs of Alminnur and he collated the findings of his team members based on all the reply correspondences and came to the conclusion that the PMS was delivered by Brila Keji twice. He did not conclude that the cargo on Brila Keji was received from MT Althea, as there was no evidence that Brila Keji received the cargo from MT Althea. This is because the Certificate of Quantity Transfer from MT Althea to MT Brila Keji was a forged document, which was submitted to the PPPRA by the Defendants.

He stated that there was no personal job in compiling the Team Report, everything was done on behalf of the Team, with every team member accepting the results of each other's enquiry and a team analysis was conducted. Thereafter, he restated again that he personally wrote the Report on behalf of the Team.

According to their findings, the shipping documents were confirmed forged by the Inspection Companies, where these documents were purported to have emanated from.

He stated that the forged documents, which were acted upon by the PPPRA, were submitted by the Defendants and this conclusion reached, is based on the investigation report received from the team, the documents they came across in the course of their investigation and other evidence.
He reasserted that the PMS was not imported from where the Defendants claimed they imported from and from the purported vessels the Defendants claimed the products arrived on. He maintained his stance that a discharge of products indeed took place, but the origin and genuineness of the product and the documents relating to the products submitted to the PPPRA for verification, and which formed the basis for computation of subsidy, were false.

According to him, based on the findings of fact by the team, the Certificates of Quantity from 1st Daughter Vessel to 2nd Daughter Vessel, the Certificate of Origin of the 1st Daughter Vessel submitted by the Defendant claiming that an operation of transfer took place, were confirmed forged by the Inspection Agency where the documents were purported to have emanated from. This shows that there was no transfer of petroleum products between these two vessels.

In addition, the purported Mother Vessel in which the Defendants claimed lifted the products from Amsterdam has been a scrapped vessel as far back as 2010, showing that a dead vessel cannot convey petroleum products from Amsterdam to Cotonou.

Further, the Certificate of Quality Transfer between the confirmed dead Vessel MT Kriti Akti to the 1st Daughter Vessel MT Althea was also confirmed forged by the Inspection Agency, the Defendants claimed had supervised the operation.

All these facts informed his conclusion that the product was not imported. It was not because there was a discrepancy in the amount discharged. He stated that the payment was made on the discharged quantity and the calculation of such, is based on the value of the petroleum product on the Bill of Lading dates of the Mother Vessel, 1st Daughter Vessel MT Althea and the last Daughter Vessel MT Brila Keji. Therefore, what was important was the date on the Bill of Lading and not just the discharge of the product.

PW11 stated that he did not investigate the production levels of PMS at the refineries in Nigeria, as his investigation was on the imported PMS as claimed by the Defendants. He could not recall whether Oluwole Adamolekun in his Statement had stated that Nigeria Refineries were not producing PMS.
He knew under-recovery to mean the difference between the landing cost and the ex-depot price, which is the subsidy. The landing cost at every point in time is determined by a template formed by PPPRA and not the Bank.
He acknowledged that Spring Bank now Enterprise Bank financed the transaction and provided the team with documentation. He confirmed that the bank official involved in the transaction is Mr. Uzo Aghaegbuna, and he made several statements to the EFCC. He was questioned whether the team were told by Mr. Uzo on the 24th of February 2012 that the Bank processed Form M for the issuance of Letters of Credit to the Suppliers of this product, and he answered in the affirmative.

The payment was made based on the Letters of Credit to the Overseas Suppliers of the product and he could not remember what percentage contribution Brila Energy Ltd paid as equity on the total amount.
Through this witness, the Statements of Mr. Oluwole Adamolekun dated the 13th and 16th of January 2012 duly certified by the EFCC were tendered without any objections as Exhibits AA1 and AA2 respectively. The Statement of Mr. Uzo Aghaegbuna was also admitted without objection as Exhibit BB, and the clearer Certified Copy was admitted as CC.

When questioned in regard to Mr. Uzo's Statement, that the Inspectorate Marine Service supervised the Ship-to-Ship transfer of the product from the Mother Vessel to the Daughter Vessel, PW11's answer was that, it was what the Bank Official said, and he understood from the Statement that the Bank implied that they appointed Inspectorate Marine Service.

According to this witness, under normal circumstances, the Supplier issues documents including the Bill of Lading of its Vessel, which is usually the Mother Vessel. He agreed that the Bank said that the Bill of Lading, they received from Brila Energy Ltd and Alminnur Resources Ltd, with regard to the product was issued by the Supplier and they had received such documents. According to the Bank, they delivered the documents to Brila Energy Ltd, which were forwarded to PPPRA.

However, PW11 stated that in the Statement of the 1st Defendant, he said he received the documents he had forwarded to PPPRA from his Inspection Agent.

Under Re-examination, PW11 clarified the point that the Statements of Mr. Uzo stands over more companies and did not just relate to transactions strictly between Brila Energy Ltd and Alminnur Resources Ltd. It cuts across the transactions executed by Brila Energy Ltd independent of the Alminnur Resources Ltd transactions.

The Prosecution tendered into evidence a Copy of the PPPRA's Revised Guidelines, which was admitted as Exhibit DD.

The Prosecution's next witness was Mr. Uchenna Aduaka who testified as PW12. He is a Banker working at the Enterprise Bank Ltd and acknowledged knowing all the Defendants. His schedule of duties as Deputy Manager working in the Energy Group of the Bank, include financing people that are into Oil and Gas Business. He testified that he knew Mr. Uzo Aghaebuna as his former boss in the Energy Group of the Bank and who has since resigned.

He knew the Late Alhaji Saminu Rabiu when Alminnur Resources Ltd.'s Account was transferred from their Apapa Branch to the Head Office Energy Group. He also knew Jubril Rowaye and Brila Energy Ltd, following the consolidation that took place in the Banking Industry. He was a customer to the then ACB International Bank and was into Oil and Gas Business. According to him, Five Banks merged to form Spring Bank and they are customers to his current employer.

In the 2nd Quarter of 2011, Alminnur Resources Ltd was given "Triple PPPRA Permit" to bring in 10,000 Metric Tonnes of PMS.

Alminnur Resource Ltd and Brila Energy Ltd entered into a Memorandum of Understanding because Alminnur Resources Ltd did not have a Line of Credit with his Bank, but Brila Energy Ltd did, for which an approval was sought and granted by the Management of the Bank.
The Bank established a Letter of Credit in favour of the Supplier of the PMS, Napa Petroleum Inc. and he explained that the Customer supplies certain documents such as a Proforma Invoice issued to him by the Supplier and Form M, which he collects from the Bank. When the Customer supplies these

documents, the Bank attaches an Insurance Certificate in order to establish the Letter of Credit in favour of the Supplier, in this instance Napa Petroleum Inc.

PW12 stated that ordinarily in this type of transaction, either the Bank or Customer could appoint an Inspection Agent to monitor the transaction, however, in this instance, the Bank did not appoint any Agent but the Customer did, as the Bank does not have any evidence of any appointment of an agent in this case.

He described the workings of the Letter of Credit to be that, after shipment of cargo, shipping documents were sent to the Bank that established the Letter of Credit, through a Correspondent Bank, which in this instance was Union Bank, United Kingdom. The Correspondent Bank sends hard copies of the shipping documents to the Bank via DHL Courier Service, which documents included, Covering Letter from the Ultimate Beneficiary's Bank i.e. Credit Suisse, the Bill of Lading of the Mother Vessel, the Bill of Lading of the Daughter Vessel, the Commercial Invoice i.e. the Final Invoice, the Certificate of Quality and the Certificate of Quantity.

After receiving the shipping documents, the bank receives money into the Customer's Bank for the products.

Due to the fact that there was going to be an element of Subsidy in the transaction, their Customer collates the documents, which in this case the Customer was Alminnur Resources Ltd but the actual Customer the Bank gave the money to was Brila Energy Ltd.
Alminnur collated the documents and gave a copy of the bound documents to Spring Bank now Enterprise Bank and submitted other copies to PPPRA.

Alminnur was subsequently issued the Sovereign Debt Note by the Debt Management Office, which they brought to the Bank. A Representative of the Bank accompanied them to the Central Bank of Nigeria where the Sovereign Debt Note was submitted.
There were Two Sovereign Debt Notes, in the sum of Five Hundred Million Naira and some few fractions, totalling about a Billion and Fifty One Million thereabouts.

The Central Bank of Nigeria thereafter credited the subsidy amount into Alminnur's account. The Bank utilized the funds to pay back their Correspondent Bank, Union Bank, in the United Kingdom, who subsequently paid the Supplier Napa Petroleum Inc. for the Letter of Credit that was established in their favour.
When questioned as to the relationship between Enterprise Bank and Napa Petroleum Inc., he replied that there was no direct relationship with the Supplier as well as Credit Suisse.

In the chain of the transaction, Credit Suisse has a relationship with Napa Petroleum Inc. and reiterated the point that the Bank did not appoint any agent but the Customer did.

According to him, the Bill of Lading of the Mother Vessel, MT Kriti Akti as well as that of the Daughter Vessel MT Althea were received from their Correspondent Bank, who forwarded them through courier services. Other documents received included the Covering Letter from Credit Suisse with a DHL number on it, the Certificate of Quantity, Certificate of Quality, and the Commercial Invoice. The Bank has the Certified True Copies of these documents received from the Correspondent Bank. Altogether, for the PPPRA transactions, the Bank had done one PMS transaction for Brila Energy Ltd in the 1st Quarter of 2012, and this instant case, which makes the second transaction, he was again involved.
These documents also form part of Exhibits D and E.

Through this Witness, the following documents were admitted without objection into evidence: -

1. Covering Letter as Exhibit EE1
2. Commercial Invoice as Exhibit EE2
3. Bill of Lading of Mother Vessel as Exhibit EE3
4. Bill of Lading of Daughter Vessel as Exhibit EE4
5. The Certificate of Quantity admitted as Exhibit EE5
6. The Certificate of Quality admitted as Exhibit EE6

The Certificate of Quantity in Exhibit EE5 and Quality in EE6, both bear the stamp of Inspectorate Marine Services Ltd.
He finally stated that the Bank did not appoint the Inspectorate Marine Services Ltd to carry out the Inspection Services.

Under Cross-Examination by Learned Counsel to the 2nd Defendant, he reiterated the fact that he knew the Late Saminu and Alminnur Resources Ltd prior to this transaction. He also stated that a Credit Line was not granted to them in regard to this transaction. He explained that because the PPPRA Permit was in the name of Alminnur, a Memorandum Account was opened in the Bank in the name of Alminnur Resources Ltd, which was just for the purpose of this transaction.
It was expected that at the end of this transaction, and because it is a Memo-Account, the balance would be zero, with no more activity on the Account since it was solely for the transaction and confirmed that till date, the Account balance is zero.

He further stated that the Defendants did not have a hand in the documents sent to Spring Bank by the Correspondent Bank, which were as sent by the Supplier's Bank.
They did not appoint an agent, but received money into the Account, which shows that the products were delivered.

Under Cross-Examination by Learned Counsel to the 1st and 3rd Defendants, he stated that in 2011, Mr. Uzo, the Head of the Energy Group was directly in charge of these transactions. After the departure of Mr. Uzo he was approached by the EFCC around February 2014 on this matter, and the evidence rendered by him is based on documents he was able to locate in his file.
He gave a Statement to the EFCC on the 17th of March 2014. He was shown Mr. Uzo's Statement by the Commission and noticed something incorrect in it and he addressed it, in his own Statement.
He agreed that he referred to Napa Petroleum Inc., as Supplier and did not think they are a Refinery. He surmised that Napa, Alminnur and Brila traded on the basis of documents but not products.
He agreed also that the transaction was initiated by Letters of Credit, which is a mode of payment and stated that payments on Letters of Credit are made by the sighting of Compliant Documents and it was those documents that were sent to his Bank.

When asked what documentary evidence he would rely on to show the Origin of the Imported Product, PW12 answered that he would rely on the Supplier, since the Supplier is the person bringing in the product. Documents from the Supplier through the Correspondent Bank to the Local Bank, simply evidences

a transaction and that is what the Letters of Credit is all about. It is payment on the Client's documents.

Under Re-examination, he identified the Statement he made to the EFCC, which was admitted into evidence after a strong objection as to its admissibility was overruled and the Statement was tendered and admitted as Exhibit FF.
He explained the difference between his Statement and that of Mr. Uzo to be that while Mr. Uzo stated that the Bank appointed an Inspection Agent and he had promised to bring the documents showing the appointment of the Agent and had further stated that the Bank paid the Inspection Agent to monitor the transaction, his own Statement was to the effect that, the Bank did not appoint or pay any Inspection Agent, for the simple reason that had there been an appointment or payment for an Inspection Agent, there would have been documentary evidence.

Further, there would also have been a Report from the Inspection Agent to the Bank, which to the best of his knowledge the Bank did not possess.
When this issue was brought to the attention of Mr. Uzo, Mr. Uzo replied, explaining that it was a mix-up.

Both Defence Counsel were given an opportunity to Re-Cross-Examine this witness based on the evidence elicited under Re-Examination but they declined stating that they had no further questions.

With the evidence of PW12, the Prosecution closed its case.

The Defence Counsel at this stage notified the Court that they intended to file a No-Case Submission in regard to all the Defendants and the Court ordered for Written Addresses.

On the 27th of October 2014, Learned Counsel Mr. Zaidu Abdullahi notified the Court that one of his Clients Alhaji Saminu Rabiu died on the 7th of October 2014 and the Prosecution had been informed.

On the 10th of March 2015, the Amended Charge, which deleted the name of the Late Alhaji Saminu Rabiu, was read over and explained to each of the Defendants (the 2nd Defendant was represented by Nura Rabiu, a Director of Alminnur Resources Ltd), to which, they all pleaded 'Not Guilty'.

On the 16th of November 2015, all Written Addresses were argued and a considered Ruling was delivered on the 25th of February 2016 overruling both No-Case Submissions raised by the Defendants and they were ordered to enter into their defence.

On the 15th of March 2016, Learned Counsel for the 1st and 3rd Defendants Babs Akinwunmi Esquire sought for another date to assemble his witnesses whom he said were not ready.

On the 8th of April 2016, Prosecution was absent and the case was further adjourned to the 12th of April 2016 for defence. On that day, Babs Akinwunmi Esquire notified the Court that the 1st and 3rd Defendants have reappraised their case and believe that the Prosecution have failed to prove the essential ingredients of the case against the defendants and therefore, they would rest their case on that of the Prosecution.

Learned Counsel for the 2nd Defendant, Zaidu Abdullahi Esquire also notified the Court that the 2nd Defendant would also rest their case on that of the Prosecution and the case was adjourned to the 20th of October 2016 for the adoption of Final Written Addresses.

The Prosecution, on the 28th of September 2016, filed his Composite Final Written Address, dated the same day and he initially reviewed the Charge as well as the Oral and Documentary Evidence and gave a brief background of the facts.
He raised a sole issue for determination, namely: -

"***Whether the Prosecution has proved the essential ingredients/elements of the offences alleged against the Accused Persons beyond reasonable doubt to warrant their being found guilty and consequently convicted.***"

Learned Counsel to the 2nd Defendant filed his Closing Address and Reply to the Prosecution/Complainant's Composite Final Written Address, on the 19th of October 2016, which was dated the 18th of October 2016. He raised therefore a sole issue for determination, namely: -

"**Whether from the facts of the case the Prosecution has proved its case to enable the Defendant enter his defence and for the Court to make a decision on the Charges against the Defence**"

Learned Counsel to the 1st and 3rd Defendants filed their Final Written Addresses on the 28th of November 2016, even though, as observed with disdain by the Prosecuting Counsel, the address was dated the 27th of June 2016. In it, learned counsel set out the history of the case, including the list of tendered Exhibits, comprehensively reviewing the evidence led during Trial by the Prosecution and raised a sole issue for determination, namely: -

"Whether the Prosecution has proved the alleged offences against the 1st and 3rd defendants beyond reasonable doubt".

On 27th of March 2017, the Prosecution filed the Complainant's Reply on Points of Law, dated the 24th of March 2017, responding on Four Issues of the 1st and 3rd Defendants, namely that: -

1. The Prosecution failed to call Napa Petroleum Inc. to give evidence.
2. The Prosecution failed to call Lloyds List Intelligence to give evidence
3. On the evidence of PW3
4. The Subsidy Payment is not on the basis of the Bill of Lading.

After a careful consideration of the evidence led during trial, the Exhibits tendered and the Written Submission of Counsel, which shall be considered alongside the issues formulated by this Court, the Court is satisfied that the following issues would settle the questions regarding the innocence or guilt of the Defendants in this Charge: -

1. ***What is the legal implication of a Defendant resting his case on that of the Prosecution?***
2. ***Whether there was a 'dumping' of documents by the Prosecution.***
3. ***Whether the evidence led in regard to the Lloyd's List Intelligence Report constitutes hearsay, rendering the testimonies of PW7 and PW11 in this respect, inadmissible.***
4. ***Whether the Prosecution has successfully established the offences of forgery of documents contained in Counts 4, 7, 10, 13 and 16 and using them as genuine as contained in Counts 5, 8, 11, 14 and 17, under the Subsidy Scheme.***

5. ***Whether the Prosecution established beyond a reasonable doubt, the offences of Obtaining by False Pretence as charged principally under Count 2 and relatively under Counts 8 and 14 of the Charge.***
6. ***Whether the offences of Conspiracy as charged under Counts 1, 3, 6, 9, 12 and 15 have been sufficiently proved to the satisfaction of the Court.***

The facts supporting Conspiracy charged under Counts 1, 3, 6, 9, 12 and 15, which were brought pursuant to the Advanced Fee Fraud and Other Related Offences Act 2006 as well as under Section 97 of the Penal Code are interwoven with the actual facts supporting the commission of the other offences charged and so, it is expedient to consider the other Counts of Offence before a determination of Conspiracy would be made.

It is important before the issues for determination are delved into, that the submissions of Counsel asrelating to the requisite burden of proof to discharge in this matter are set out.

On the part of the 1st and 3rd Defendants, Learned Counsel submitted on the required burden of proof citing Section 135 (1) (2) and (3) of the Evidence Act 2011, and the case of **ODU VS THE STATE (2001) 10 NWLR PT 722 PAGE 668 S.C.**
He argued that the Prosecution had failed to discharge the burden placed on it by both Statutory and Judicial Authorities to warrant the conviction of the 1st and 3rd Defendants. In conclusion, Learned Counsel for the 1st and 3rd Defendants urged the Court to dismiss the Charge in its entirety and dischargeand acquit them.

Learned Counsel to the 2nd Defendant on his own part, submitted that the case of the Prosecution is one that is not only weak but that the evidence, if any, creates doubt in the mind of the Court and in his considered view, cannot shore up conviction and urged the Court to discharge and acquit the 2nd Defendant.

Learned Counsel to the Prosecution urged the Court to take a critical look at the evidence led by the Prosecution, which in his belief has proved the case against the Defendants beyond reasonable doubt as set out in Section 135 of the Evidence Act 2011. He cited the cases of **MILLER VS MINISTER OF**

PENSIONS (1974) 1 ALL ER, 372 @ 373 and ALAKE VS THE STATE (SUPRA) and submitted that the Prosecution has proved all the ingredients of the offences against the Defendants and he urged to the Court to find them guilty as charged.

Now, in the case of **ALHAJI MUAZU ALI VS THE STATE (2015) LPELR-24711 (SC),** it was held thatthe general principle of law is well entrenched and also enunciated in our Constitution that proof of criminal responsibility is solely placed on the prosecution who is accusing the accused person of having committed an offence. The underlying reason is to ensure that the prosecution satisfies for certainty that the accused and no other person committed the alleged offence. It is not therefore required of an accused person to prove his innocence or that he did not commit the offence with which he is charged. **Section 36(5) of our Constitution** is very clear that every person who is charged with the commission of an offence shall be presumed innocent until proven guilty. He who asserts must prove and that must be beyond reasonable doubt. By **Section 138 (3) of the Evidence Act,** once the proof of a crime beyond reasonable doubt is discharged, then the burden of proving reasonable doubt is shifted on to the accused person. See also the cases of **NASIRU VS THE STATE (1999) 2 NWLR PT 589 PG 87 AT PG 89(SC); IMHANRIA VS THE NIGERIAN ARMY (2007) 14 NWLR PT 1053 PG 76(CA).** See **SECTION 135 (1) OF THE EVIDENCE ACT, 2011; WOOLMINGTON V. D.P.P (1935) AC 462; ESANGBEDO V. THE STATE (1989) 4 NWLR (PT. 113) 57; UDO V. THE STATE (2006) 15 NWLR (PT. 1001) 179; MICHAEL V. THE STATE (2008) 13 NWLR (PT. 1104) 361; AKINFE VS THE STATE (1988) 3 NWLR PT 85 PG 729(SC); AIGBADION VS THE STATE (2000) 4 SC PT 1 PG 1 AT PG15, 16 (SC).SIMEON NEBEIFE OBIDIKE VS THE STATE(2014) LPELR-22590 (SC) YONGO V. COP (1992) 4 SCNJ 113, OGUNDIYAN V. THE STATE (1991) 3 NWLR (PT.181) 519, ALONGE V. IGP (1959) 4 FSC 203, WILLIAMS V THE STATE (1992) 10 SCNJ 74." Per OKORO, J.S.C. (P. 61, paras. B-F). IGABELE V. STATE (2006) 6 NWLR (PT.975) 100 PER OGUNTADE, J.S.C. (PP.30-31, PARAS E-A)**

It is also trite that proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. **SEE OSENI V. THE STATE (2012) 5 NWLR (PT. 1239) 351 @ 388 F-G,** and in the case of **ULUEBEKA VS THE STATE (2011) 4 NWLR PT 1237 PG 358 AT PG 361,** it was held thatproof beyond reasonable doubt is not attained by the number of witnesses fielded by the

Prosecution. It depends on the quality of the evidence adduced by the Prosecution.

As regards the ***First Issue*** formulated by the Court, the Principles of Law submitted by both Learned Counsel for the Defence and the Prosecution are not at variance with the state of the law relating to resting a case on that of the Prosecution. Learned Counsel for the Prosecution concentrated the initial part of his Address on the Legal effect of a Defendant resting his case on that of the Prosecution, and cited the following case; **MAGAJI VS NIGERIAN ARMY (2008) 8 NWLR PT 1089 SC 338 @ PG 379, PARA G; BABALOLA VS THE STATE (1989) 4 NWLR PT 115 SC 264 @ PG 276, PARAS B-C; ALI VS THE STATE (1988) 1 NSCC 14 @ PG 25; ABOGEDE VS THE STATE (1995) 1 NWLR PT 372 CA 473 @ 487, PARAS C-D; NWEDE VS THE STATE (1985) 3 NWLR PT 13 444 @ 455, PARAS G-H.**

Learned Counsel for the 1st and 3rd Defendants, submitted that upon a further perusal of the evidence adduced, its paucity in respect of material elements of the offences charged in establishing proof of the offences beyond reasonable doubt, the 1st and 3rd defendants did not call any witness at the trial and had decided to rest their case on that of the Prosecution.

According to him, the oral evidence adduced against the 1st and 3rd Defendants, was manifestly unreliable and has been so discredited by Cross-Examination that this Court cannot safely convict the 1st and 3rd Defendants thereon.

Learned Counsel to the 2nd Defendant argued that the case of the Prosecution was manifestly weak and had been discredited as a result of Cross-Examination to the extent that the innocence of the Defendants is obvious. He relied on the case of **SHUROMO VS THE STATE (2010) 19 NWLR PT 1226, PAGE 73 @ 107.** He further stated that the burden of proof imposed on the Prosecution is proof beyond reasonable doubt, and the Defendants are not compellable witnesses to prove their innocence. He cited the case of **ADEKUNLE VS THE STATE (2006) ALL FWLR PT 332 PAGE 1452 @ 1472.** He distinguished the facts of this case with that of **MAGAJI VS THE STATE (SUPRA)** in regard to resting a case, as the Prosecution failed to prove Conspiracy and the actual offence of Obtaining Money by False Pretence.

Learned Counsel further stated that the Prosecution led evidence to show actual delivery of the goods.

According to Learned Counsel's obvious deep research, he came up nicely with the case of **STATE VS STATE,** which has no citation whatsoever, to submit, that "***the Court's duty to do justice in the circumstance of the case is paramount as Judge is expected to be just in determining the matter before him."*** There is little wonder that he cannot find a citation for this quote!!!

Learned Counsel further examined the offences for which they are charged alongside the required ingredients to prove the offences, and argued that none of the witnesses summoned by the Prosecution established the offences, coupled with the fact that the evidence led was manifestly weak. He relied on the cases of **YAKUBU VS THE STATE (2014) 8 NWLR PT 1408, PG 111 @ 123 and SHUROMO VS THE STATE (SUPRA)** to argue that the Defendant can conveniently rest his case on that of the Prosecution.

Now, the Court finds as held in the case of **UMARU ADAMU VS THE STATE (2014) 8 SCM1; 10 NWLR PT 1416 AT 441; LPELR-22696 SUPREME COURT, PER ARIWOOLA JSC, at Page 24 Paragraphs D-G,** the law is generally settled that a Defendant who at the close of the Prosecution's case, decided to rest his case on that of the Prosecution as presented against him, is only exposing himself to risk and gamble. The reason being that if the case is such that even if all the Prosecution Witnesses are believed, yet the offence as charged is still not proved, then the Defendant may get away with the risk of resting his own case on that of the Prosecution. By that choice, the Defendant would have decided not to explain any fact in rebuttal of the allegation made against him. See also the cases of **NWEDE VS THE STATE (1985) 3 NWLR PT 13, PAGE 444; ALI & ANOR VS THE STATE (1988) 1 SCNJ AT PAGE 17; MAJOR BELLO M. MAGAJI VS THE NIGERIAN ARMY (2008) 34 NSCQR PT 1, PAGE 108,** where **AKINTAN JSC** went further to say "Again, merely resting his case on that of the Prosecution amounts to nothing less than admission of the evidence led by the Prosecution."
The Privy Council's decision of **QUEEN V. SHARMPAL SINGH (1962) 2 W.L.R. 238 AT PP. 243-245,** was cited and relied on in the case of **SEGUN AJIBADE VS THE STATE (2012) LPELR-15531 SUPREME COURT, MUNTAKA COOMASIE JSC** held at Page 17 Paragraphs A-E that "…If the Defence rests and refuses to put a Defendant into the witness box to depose to his own version

of the events, then the Learned Trial Judge is denied the opportunity of listening to the Defendant tell his story, of watching his demeanour or assessing his credibility and of making the necessary choice between his story and that of the Prosecution. In the final result, the Trial Court will have to decide the case on the evidence before it undeterred by the incompleteness of the tale, from drawing all inferences that properly flow from the evidence of the Prosecution. The Defence has shut himself out and will have himself to blame. The Court will not be expected to speculate on what the Defendant might have said if he testified.

RHODES-VIVOUR JSC, IN BELLO SHURUMO VS THE STATE (2010) NSCQR VOLUME 44, PAGE 135 held at Pages 176-177 that "Resting the Defendant's case on the Prosecution's case is only appropriate where the case of the Prosecution is weak, and has been so discredited by Cross-Examination to such an extent that the innocence of the Defendant is obvious. Resting Defendant's case on the Prosecution's case means that the Defendant accepts the Prosecution's case completely and would not testify or call evidence in his Defence."

In **ALI AND ANOTHER V. THE STATE (1988)LPELR-421 (SC)**

It was held that the legal effect of that is this, that if in the course of the hearing, Prosecution Witnesses had given evidence which called for rebuttal or some explanation from the Appellants, and that rebuttal and/or explanation was not forthcoming, then the Court would be free to accept the uncontradicted evidence of the Prosecution Witnesses. See the cases of **THE STATE V. NAFIU RABIU (1980) 1 N.C.R.47, IGBO V. THE STATE (1978) 3 S.C.87.Craig JSC** held that it means no more than that the accused does not wish to place any facts before the Court other than those, which the Prosecution had presented in evidence. It also signifies that the accused is satisfied with the evidence given and does not wish to explain any fact or rebut any allegations made against him. This of course does not prevent the accused (or his Counsel) from making legal submissions on the evidence before the Court. He could for instance, say that even if all the evidence were believed, it would not support the charge before the Court, he could submit that the evidence was so conflicting or had been so discredited that it is not credit-worthy. **Per Oputa JSC.**

Therefore the Court will consider the evidence proferred before it on the above principles and the implication will be deciphered in the consideration of the issues raised for determination.

The ***Second Issue*** raised for determination concerns Dumping, and Learned Counsel to the 2nd Defendant centered his Address and Oral Adumbration on the fact that the Prosecution, in a bid to prove that the 2nd Defendant did commit the act, tendered Documentary Exhibits A to FF. According to him, the Prosecution did not in any way tie the documents to the alleged offence committed apart from dumping them before the Court. He argued as settled law, that for documents to have any probative value, the person tendering the document must tie them to a particular aspect of the case, and he made reference to the case of **INIAWA VS AKPABIO (2008) 17 NWLR PT 1116 PG 225 AT PG 299**.
Learned Counsel to the 1st and 3rd Defendantsalso strenuously arguedin his oral adumbration along the same lines, while Learned Counsel to the Prosecution argued otherwise.

The Court will follow the dictum in the case of **SENATOR RASHIDI ADEWOLU LADOJA VS SENATOR ABIOLA ADEYEMI AJIMOBI & 3 ORS SC.12/2016,** where **His Lordship Ogunbiyi JSC**, held that, "…the law is settled on documents tendered in Court which purpose and worth must be demonstrated through a witness. It is settled also that the duty lies on a party who wants to rely on a document in support of his case to produce, tender and link or demonstrate the documents tendered to specific parts of his case. The fact that a document was tendered in the course of proceedings does not relieve a party from satisfying the legal duty placed on him to link his document with his case. See also the case of **C.P.C V. INEC (2011) 18 NWLR (Pt 1279) 493 at 546 - 547.**

The Court has had a careful scrutiny of the evidence led, particularly in relation to the documents tendered and finds out that evidence in regard to Exhibits A through to E were led by PW1, the Official from the PPPRA and were copiously cited and relied on by the other Prosecution Witnesses, explaining their content.
As regards Exhibits F to I, tendered through PW2, from Inspectorate Marine Services, these documents were merely to verify whether the documents emanated from their Agency. By their response to the EFCC's Enquiry, they have already vindicated the entry of these documents into evidence. PW2 also confirmed Exhibits D and E, tendered by PW1 and identified their own documents in them.

Under Cross-examination by Counsel to the Defence, PW2 reasserted his earlier submission, and was positive that he had no dealings with Alminnur Resources based on those documents. Through intensive Cross-Examination, the veracity and weight of each document was tested.
PW3, from MGI on his own part, tendered Exhibits J to L1, which consists of Enquiries into MGI's relationship with the Defendants. They also identified their own documents in the bundle of documents in Exhibits D and E.
A look at the evidence led in Chief, Cross-Examination and Re-examination, would show that these sets of documents were comprehensively scrutinized and the Witness in identifying Exhibits D and E, demonstrated several Pages in them, which is set out in the Body of the Judgment under Analysis.

PW4, an Official from the DMO, tendered Exhibits M, and N1 to N14, and during his testimony, identified the Letter of Enquiry from the EFCC, and Exhibits N1 to N14 served as validation and proof of the content of his rendition before the Court.
Examples are when he had discussed PPPRA's Computation of Subsidy Payments, particularly explaining the Sovereign Debt Note in detail, specifically referring to Exhibits N1 to N14 and when he discussed the PPPRA's Assessment of Subsidy Computation as demonstrated from Exhibit N5.
It is worthy of note that none of these documents were objected to when sought to be tendered.
Through the Cross-examination, he even demonstrated Exhibits N2 and N3, and under Re-examination, he was specifically referred to Exhibit N12, where he identified the Picture of Late Alhaji Saminu, in the Letter of Authorised Signatories.

PW5, the Official from Oando, tendered Exhibits O to Q2 and intensely demonstrated Exhibits Q1 to Q49, and Q2 (1) to Q2 (37). She was taken through the bundles of Exhibits D and E, and made detailed comparative analysis between Oando's transaction in 2009, and that of the Defendant's transaction in 2011.
The Cross-examination of this Witness as a whole was thoroughly conducted, referring to the same documentary evidence tendered before the Court, and more evidence were elicited from her in regard to them.

PW6, the Banker from Access Bank, tendered Exhibits R and S. He identified Exhibits R as the Letter of Enquiry from the EFCC, and Exhibit S as their

Response Letter, wherein they confirmed Shipping Details regarding Form M and forwarded Certified True Copies of the documents to the EFCC.
PW7, an EFCC Operative involved in the Investigating Team on Petroleum Subsidy was specifically assigned to search the Lloyds List Intelligence Database. She explained in detail, discussing the background, modus operandi, means of access and her investigative activities in regard to the Defendants' transaction.
She was taken through Exhibits D and E, where she identified some documents. Her attempt to tender her findings was disallowed, even though she had set out the background of the information therein. She demonstrated her evidence in great detail, and did visual projections using her Laptop and a Projector Screen. She was also Cross-Examined on her evidence, which invariably led to more extraction of evidence from her.

PW8, an Official from SGS, identified EFCC'S Letter of Enquiry and their Response in Exhibits U1 to U5 and demonstrated their own documents in Exhibits D and E, both in Chief and under Cross-examination. Learned Counsel to the 1st and 3rd Defendants, specifically took him through questions regarding multiple or diverse Load Points, their Organisational Network, the process of Issuance of Certificate of Quality, its relevance and the rationale for the testing of the product and its quality.

PW9, a DPR Official confirmed their document in ExhibitsD and E to be their Import Permit granted to Alminnur. He laid foundation on the process of obtaining the Permit, further stating that the Grant presupposes Alminnur had complied with their Regulations. Under Cross-Examination, PW9 stated that a Party issued with a Permit could not transfer to a Third Party.

PW10, an NPA Official, only discussed the Lloyds List Intelligence but did not tender any document.

PW11, the IPO, tendered Exhibits V1 to V3, all the way to Exhibit Z4, and ably demonstrated the documents both in Chief and under Cross-Examination. Under Cross-Examination, he tendered Exhibits AA1 and AA2; BB1 to BB7; CC and under Re-examination, tendered Exhibit DD, the PPPRA Guidelines.

PW12, the Banker from Spring Bank, now Enterprise Bank, tendered Exhibits EE1 to EE6, the DHL Documents,and under Re-examination he tendered Exhibit FF.

This being the state of evidence, both oral and documentary, the Court has not found anything that says the documents were dumped in this particular case. The Prosecuting Witnesses referred to the relevant documents and the fact that some of the Witnesses did not hold them in their bare hands, does not mean that they did not demonstrate the documents.

The demonstration of these Exhibits through their evidence is as comprehensively set out above, when each witness for the Prosecution testified and spoke to the documents. Further, what constitutes evidence is not only the oral testimony before the Court but encompasses any electronic demonstration of evidence, and Documentary Evidence tendered before the Court, which met the test of admissibility.
Once admissible, the Court must peruse all admissible evidence presented before it and will relate all other evidence to the documents before it, as long as the witness acknowledged it, owned the document or knew it and talked in depth about it. Learned Counsel should have set out which documents were dumped and which were not or in the event that all were dumped, he should have been more explicit.

In any event, the Court is satisfied that these Documents were not dumped and will treat them as viable evidence before the Court.

The ***Third Issue***for determination has to do with the reliability and admissibility of the Lloyd's List Intelligence Report. Learned Counsel to the 1st and 3rd Defendants canvassed that Officials of the Lloyd's List Intelligence were not called as Witnesses, even though their evidence was pivotal to proving that Kriti Akti had been destroyed and could not have imported the products.
Further, he argued the testimonies of PW7 and 11, who were merely informed on the Lloyd's List Website constituted hearsay, which was coupled with the fact that this Report did not meet the basic requirements of the Law. He had also referred to the testimony given by PW10, Captain Iheanacho, the General Manager, (Marine) Nigeria Ports Authority who stated that the Lloyd's List was not 100% fool proof and that they did not have details of any Ship that berths outside Nigeria's territorial jurisdiction.

The Prosecution, on the other hand submitted that the Lloyd's List Intelligence Report has a world-class reputation and is conclusive on the status of the Mother Vessel Kriti Akti.

In their further response by way of Reply on Points of Law, although the Court notes that this response centered on facts and not law, Learned Counsel to the Prosecution restated that at the time of visit of the Representative of the Lloyds List Intelligence, the Court could not sit and due to the state of insecurity in the Country at that time, the witness travelled back to the United Kingdom and was never willing to return to Nigeria. He referred to the evidence of PW7, and Exhibits Z1, Z2, Z3 and Z4.

As regards the issue raised by Counsel to the 1st and 3rd Defendants, in regard to the Merchant Shipping Act 2007, at Sections 28 (a) (b) and (c), he argued that this was not the only way to prove the death of a Ship, and pointed out that MT Kriti Akti did not carry a Nigeria Flag and did not sail into Nigerian Territorial Waters, because of its Draught, and he relied on the evidence of PW10.

Now, a close look at the Report from the Lloyd's List Intelligence, admitted as Exhibit Z4, will show that it is a Vessel Report for Akti. It focused on its characteristics, movements, ownership and hull risk and was dated the 7th of October 2013. This List came about through Exhibit Z1, a Certified Letter dated the 25th of June 2013, written by the Director of Operations of the EFCC and addressed to Mr. Simon Bane, General Council, EMEA, Lloyd's List Intelligence, requesting for information and details regarding the Movement of the Vessel, Current Status and a Certified True Copy of the Vessel Report.

From Exhibit Z2, a Certificate of Compliance dated the 5th of December 2013, the Lloyd's List responded that Exhibit Z4 was a verified extract of data entered and stored in the ordinary course of business by the Company. The Report was produced from the Company's Database covering a period over which the database was used regularly to store or process information for the purposes of activities or transactions regularly carried on over the period under reference. The Server was also functional.

Exhibit Z3, is a Certificate of Identification dated the 4th of February 2014 written by Mr. Olaolu Adegbite, the Director of Operations of the EFCC

confirming the fact that the Report emanated from his email inbox and had been sent to him by Mr. Donald Justin of Maritime Procurement Team of the Lloyd's List Intelligence through his email on the 15th of August 2013. This Certificate was to reinforce the earlier certification from Lloyd's and simply was the Director of Operation's further certifying his Email Address, the Email Address of the sender, the Desktop Computer and the Printer through which the Report was printed.

Before considering the probative value of the content of the Report, it is essential to consider the **Admissibility Issues** involved in the Report, bearing in mind that there were two different Computers involved, the **Processes of Extraction of the Report,** the **Question of Hearsay** and the **Reliability of Electronically Generated Evidence**.

The first Computer from Lloyd's List Intelligence has a Certificate of Compliance in conformity with the requirement of **Section 84 of the Evidence Act.**
In the English case of **CASTLE VS CROSS (1984) 1 WLR 1372 AT 1377, BROWN L.J.** held that there is a presumption that, in the absence of any contrary evidence, a Mechanical Instrument is working accurately.
In the United States of America, this presumption is also assumed as seen in the case of **UNITED STATES VS VELA 673 F.2D 86, 90 (5TH CIRCUIT 1982),** where the Court further held that the fact that it is possible to alter Data contained in a Computer is plainly insufficient to establish untrustworthiness.

In these two instances, the Prosecution provided evidence of compliance with the provisions of the Evidence Act by ensuring the Certification of these Documents by the maker or extractors of the information contained therein. The evidence on Record further shows that the Report was derived from an Email correspondence between the Prosecution and an Official of the Lloyd's List.
As regards the **Admissibility of Email Evidence**, concentration is placed on the authentication of the device and their outputs. In the case of **CONTINENTAL SALES LIMITED VS R. SHIPPING INCORPORATED (2012) ALL FWLR PT 630 AT 1377, OGUNWUNMIJU JCA** held inter alia that, email is a form of communication that is set down in writing. It is not oral. The fact that it is electronic is immaterial. It is not thin air. It can be downloaded and is as real as a hard copy of the letter or mail in your hand."

Now, the test of admissibility of this Electronically Generated Document is in its authenticity and trustworthiness and the relevance of its content to the Proceedings.
The Certificate of Identification from the Director of Operations stated that the contents of the Report was an attachment in his email correspondence with the Lloyd's List and that is as seen in the front page of Exhibit Z4, which displayed a chain of communication between the Director of Operations and Justin Donald of the Lloyd's List Intelligence.

The documents containing email correspondences were produced from the Director of Operation's email inbox through an Apple Desktop Computer and he named the Serial Number and the Model of the Printer and Computer, certifying that the Computer and Printer were used regularly to store, process and print information. During the period of use, there was regularly supplied to the Email Address and Computer in the ordinary course of those activities, information of the kind contained in the inbox of his email address, from which the information, so contained, was derived through the Computer and Printer. He further certified that throughout the period, the Email Address, Computer and Printer were operating properly and the information contained in the documents reproduced was derived from the information supplied to the Email Address.

This piece of evidence provided by the PW11 was not controverted by any evidence adduced by the Defence, challenging the trustworthiness of the process in obtaining the Report.

Therefore the **Process of Obtaining**this Report is deemed properly derived in compliance with the requirements of the Law.

As regards the fact that the Report is stated to be **Hearsay Evidence**, the provisions of Section 84 (5)(a) and (c) of the Evidence Act 2011 has settled the issue of hearsay by providing that, with or without human intervention, both the supply of information to the Computer and the production of a Document by a Computer are to be taken to be appropriately done.
The Settled Law in Nigeria, by this provision, therefore, is that Hearsay has little or no role to play in admissibility of Computer Evidence. This Section permits without qualification, human intervention in the supply of

information to the Computer and even in the Printout coming from a Computer.

As regards the **Reliability** of the information supplied by Lloyd's List Intelligence, it is seen in Exhibit Z4 that the Lloyd's List is an Informa Business, and one of the world's leading providers of specialist information and services for the academic, scientific, professional and commercial business communities. In their Report submitted to the EFCC, they relied on the Vessel AIS Box, Satellite Sightings and Conventional Movements (verified by Agents in Ports), and further claimed to correctly reflect real events.
It is their summary that no Vessel, whether Kriti Akti or Akti, was reported to have arrived at Amsterdam between the 12th and 15th of June 2011, and it was highly unlikely that Kriti Akti could have been at Cotonou in July 2011, because there is sufficient evidence to support the fact that the Vessel was demolished at Gadani Beach in April 2010.

PW10, the General Manager, Marine, of the Nigeria Ports Authority had testified that when faced with challenges in the Maritime Industry, the Nigeria Ports Authority use the assistance of Agents like Lloyds Register. According to him, the Lloyds List is a daily report showing global movement of Ships all over the world.
The Collection of both the Lloyd's Register and Lloyd's List are with each Harbour Master and are known as "Fixed Information".
He stated that even though every system has its flaws, the NPA's long experience with the Lloyds Search Engine, demonstrates that the Lloyds List can be trusted for information and the Lloyds is a reliable Partner with the NPA, with the accuracy of the Lloyds Search Engine rated at 99 per cent. However, he could not answer whether the 1 per cent left of the 100 per cent accuracy goes in favour of the Defendants.

The NPA keeps statistics of derelict and abandoned Ships and he could not say how Lloyds List data are compiled since he did not work at Lloyds and also did not know the sources of their data.

PW7, on her own part, stated that one of her job functions was to search the Lloyds List Intelligence Database, which is an online interactive service that provides information about ships, vessels, their names, owners, position and movements. To access the Lloyds List Intelligence Database, the User must subscribe to the Website, create an account and pay a fee. The Director of

Operations at the EFCC Mr. Olaolu Adegbite had created the Commission's Account and was given a Username and a Password, to which she had access, being a member of the investigating team on Subsidy. She accessed the Lloyds List around June 2012, using a Computer with Internet Access, keying in all the above details and then made her findings.

Thereafter PW7 demonstrated the evidentiary foundation for the Computer and the Printout it generated, describing the system and the process, and the means by which she was able to enter into the Lloyd's List Intelligence Website, www.lloydslistintelligence.com, as well as demonstrated the content of her Report.
Under Cross-examination by Learned Counsel to the 1st and 3rd Defendants, she testified as to her competence to conduct a computer generated investigative enquiry, but adding that she did not contact the owners of Kriti Akti to confirm the legitimacy of the information on the Website.

PW11, the IPO on his own part, stated that the Management of the Lloyd's List Intelligence United Kingdom was contacted through the British High Commission for Lloyd's to send a Representative to give evidence at the Trial. Lloyd's List Intelligence did send a Representative on the 16th of December 2013 to Nigeria to testify but unfortunately, the Court was on Vacation. Therefore, this Representative highlighted all the relevant information regarding EFCC's Request, which included the List of Scrapped Vessels at Gadani Beach in Pakistan in 2010 and had provided further information on two Vessels namely, MT Kriti Akti and MT Althea. This information was sent to the Commission through the Official Email of the Director of Operations, which was subsequently printed out from the Central Computer and duly Certified by the Commission. This Representative also furnished the Commission with the physical Copy of the Certificate of Compliance signed by the Director, Commercials of Lloyd's List Intelligence. He testified as to the description, day-to-day use and as to the competency of the computer.

Therefore, the Court is satisfied that proper evidentiary foundation was laid in respect to the Report, and remains admissible.

As to the Probative Value of the Report, a careful perusal of the Lloyd's List Intelligence Report will show that the shipment details of the movement of Kriti Akti in the Oando's Transaction were stated therein, lending strong credence to the fact that the Report was accurate. The Report also contained

the Vessel Movement and Notice of Readiness confirming that the Vessel Kriti Akti was ready to receive Cargo at Amsterdam for the Oando's transaction. From the Oando's Bill of Lading dated the 8th August 2009, it shows that MT Kriti Akti was the Vessel berthed at Oiltanking Amsterdam, and this was confirmed by the Lloyd's List Vessel Report of Kriti Akti, now referred to as Akti. It confirmed that MT Kriti Akti arrived Amsterdam on the 5th of August 2009 at about 21:45 and set sail on the 9th of August 2009. The Lloyds List Report stated that Kriti Akti was renamed Akti in April 2010, therefore any other activity thereafter involving this Ship ought to have been in the name of 'Akti', and not Kriti Akti.

The Report captures Kriti Akti's movement from 28th June 2008 until the 17th of April 2010, when it finally berth at Gadani Beach in Pakistan and was declared inactive and decommissioned to be broken up.

There was no contrary evidence from the Defendants on this point.

Learned Counsel for the 1st and 3rd Defendants had submitted that Registration and/or Deregistration of a Ship is governed by the Merchant Shipping Act, 2007 and therein, at Section 28 (a) (b) and (c), the death of a ship, otherwise known as deregistration, is provided for. He argued therefore, that the only way the Prosecution could successfully prove the death of MT Kriti Akti was to provide the Certificate of Deregistration or a Certified True Copy of the Register of Ships in its Country of Registration.

Whilst this may be so for Nigeria and perhaps for other Countries, the issue is that it is not expected that the Nigerian Authorities would have a copy of the Registration documents of a Foreign Vessel, since it was not registered in Nigeria. This Section referred to has no bearing on the submission of Counsel in regard to the issue of Deregistration.
Section 29 of the same Act provides for Deregistration and Consent of the Registered Holders of Mortgages.

In any event, Kriti Akti could not possibly have been registered in Nigeria, being the Mother Ship, and the proponent of this argument that each and every ship arriving Nigerian Waters must be registered in Nigeria did not show it. There is also nowhere in the cited Legislation that says that every dealing with a Foreign Ship must be registered, albeit, the Ship never sailed into Nigerian Waters.

All in all, after a very careful consideration of the evidence adduced in regard to this issue, the Court will accept the Lloyd's List Intelligence Report as an authentic and reliable piece of evidence, which in any event, stood unchallenged by any contrary facts from the Defence.

The ***Fourth Issue*** for consideration which is,***Whether the Prosecution has successfully established the offences of forgery of documents contained in Counts 4, 7, 10, 13 and 16 and using them as genuine as contained in Counts 5, 8, 11, 14 and 17, under the Subsidy Scheme.***

The Charges of Forgery proferred against the Defendants are in relation to the following: -
a) The Bill of Lading on board MT Kriti Akti
b) The Certificate of Quantity Transfer from MT Kriti Akti to MT Althea
c) The Certificate of Origin issued by MGI Inspections Limited on board MT Kriti Akti
d) The Certificate of Quality Transfer from MT Althea to MT Brila Keji and
e) The Certificate of Quality on board MT Kriti Akti

The Counts regarding Using as Genuine are in relation to the above listed documents, and will be considered simultaneously with the offence of Forgery.

Forgery is defined in Section 363 of the Penal Code Act CAP 532 Laws of the Federation as "Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person or to support any claim or title, or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery; and a false document made wholly or in part by forgery is called a forged document."
The Penalty Section for this offence is found in Section 364 of the same Act, and it provides for imprisonment for a term, which may extend to Fourteen years or with fine or with both.

The Standard of proof of forgery is as stated by His Lordship **PATS-ACHOLONU, J.S.C.** in **ANSA & ORS. V. ISHIE & ORS. (2005) LPELR-497**

(SC)that to prove that it is a forged document, the standard of proof needed is of proof beyond all reasonable doubt.
See also PAM & ANOR v. MOHAMMED & ANOR (2008) LPELR-2895 (SC); TEWOGBADE v. OBADINA (1994) LPELR-3144 (SC)
NDOMA-EGBA v. A.C.B PLC (2005) LPELR-1973 (SC)
IKOKU VS OLI (1962) 1 S.C.N.L.R. 307, ADELAJA VS ALADE (1999) 6 NWLR (PT.608) 544 AT 557 TO 558; NWOBODO VS ONOH (1984) ALL N.L.R. 1 AT 77, (1984) 1 SCNLR 1 AT 72;DOMINGO VS QUEEN (1963) 1 ALL NLR 81, DR. AINA VS JINADU (1992) 4 NWLR (PT. 233) 91;
AIYEDOUN T. JULES VS RAIMI AJANI (1980) LPELR-3123 (SC)ADELAJA VS FANOIKI (1990) LPELR-110 (SC)

It is also clear that if, with intent to defraud a person uses an instrument, which to his knowledge is forged, to start a train of events whereby he intends to obtain and does in fact obtain a propertyhe is guilty of the offence of forgery. Reference is made to the case of **R VS WILLIAMS (1963) 2 ALL E.R. AT PG 254.**

The points requiring proof of evidence for this offence are the following: -

a)
   i. That the Defendant made, signed, sealed or executed the document in question or any part thereof, knowing it to be false; or
   ii. That it was made by someone else;

b) It must be proved that the intention of the Defendant was that such a false document or writing might in anyway be used or acted upon as genuine by some person;

c) That the Defendant made it dishonestly or fraudulently intended that when the false document is used or acted upon as genuine by some person, it must be to the prejudice of any person. This "some person" need not be any person, who in the intention of the defendant would be prejudiced. This person would need to have used or acted upon the false document as genuine. See the case of **C.O.P. VS GBADAMOSI AKANMU & ANOR 1974/75 WSNLR PG 102 AT 108-109; FEDERAL REPUBLIC OF NIGERIA v. MAGAJI IBRAHIM & ANOR LPELR-24231 (CA). R VS WINDSOR (1865) 10 COX PAGE 118 AT PAGE 123**

The forged document must be produced at trial, if possible, but secondary evidence can be given if it is in the defendant's possession and is not

produced. See the case of **OKPALO VS COMMISSIONER OF POLICE (1962) NRNLR PAGE 14 AT 15.**
Further, the mere fact that a document bears a suspicious appearance on the face of it cannot be regarded as prima facie evidence of guilty knowledge of the defendant that it is not a genuine document but a forged one.
His Lordship, **Niki Tobi J.C.A.** (as he then was, and now of blessed memory) in the case of **MICHAEL ALAKE & ANOR VS THE STATE (1991) 7 NWLR PT 205 AT PAGE 567 AT 592** referred to **PER COKER J.S.C.** in the case of **SMART VS THE STATE (1974) 11 S.C 173,** as well as the case of **AWOBOTU VS THE STATE (1976) 5 SC AT PAGE 49** and set out the ingredients of forgery, which in addition to the above stated ingredients were the following: -

a) That there is a document or writing;
b) That the document or writing is forged;
c) That the forgery is by the defendant;
d) That the defendant knows that the document or writing is false; and
e) That he intends the forged document to be acted upon to the prejudice of the victim in the belief that it is genuine.

His Lordship Kutigi JSC.inALAKE v. THE STATE (1992) LPELR-403 (SC), held that it is an essential ingredient to be proved in a charge of forgery that "the accused forged the document in question." See also the cases of **HARUNA & ORS v. STATE (1972) 8-9 S.C. 108; (1972) LPELR-1356 (SC) and IDOWU vs. STATE (1998) 11 NWLR (Pt.574) 354; (1998) LPELR-1427 (SC).**

The Prosecution must prove that the document was made to tell a lie about itself and that the Defendant was the brain behind it, and he knew at the material time, that the information he conveys in the document is false and that he intends the false document to be acted upon as genuine in the world, including Nigeria. His Lordship went further to state, "A document cannot tell a lie by itself. That is both a factual and legal impossibility. A document tells a lie only by human intervention or by human tutoring. A document cannot talk. A document cannot speak. Therefore, where it is made to tell a lie, it is not in a position to point accusing fingers at a particular person…"

In **AWOBUTU'S CASE CITED SUPRA, OBASEKI JSC** held that "the offence of forgery may be complete without any publication or uttering of the instrument. For the very making, with a fraudulent intention and without lawful authority, of any instrument, which by Statute is the subject of forgery, is of itself a sufficient completion of the offence before publication.

Though the publication of the instrument is the medium by which the intent is usually made manifest, yet it may be proved plainly by other evidence."

Even the slightest alteration of a genuine instrument in a material part, whereby a new operation is given to the instrument, it is still termed Forgery. See **OLOWOFOYEKU J.,**in the**STATE VS ISIAKA AGBOOLA (1981) 3 OYSHC AT PP. 521 AT 524.**
A firm intention to commit the offence of forgery is seen by some overt act by the Defendant in furtherance of that firm intention. See the case of **R VS MICHAEL UNAKANJO (1933) 11 NLR PAGE 23.**
It is also not the Law to constitute forgery that the alteration must be the act of the Defendant alone. See **ADEMOLA C.J. (AS HE THEN WAS IN WESTERN REGION) IN SOLOMON OGUNSHOWOBO & 2 ORS VS INSPECTOR GENERAL OF POLICE (1958) WRNLR PAGE 23 AT PAGE 24.**
This principle was confirmed by the Supreme Court in the case of **CHUKWUEMEKA N. AGWUNA VS THE ATTORNEY GENERAL OF THE FEDERATION & ANOR (1995) 5 NWLR PART 396, PAGE 418 AT 438 PER IGUH J.S.C.,** where His Lordship held thus: "…It is certainly not the Law that only persons who manually write or sign forged document may be convicted for the forgery of the document. The law is settled that all persons who are participis criminis, whether as principals in the first degree or as accessories before or after the fact to a crime, are guilty of the offence and may be charged and convicted with the actual commission of the crime. Parties, participis criminis to a crime include inter alia, every person who actually does the act or makes the omission, which constitutes the offence, persons who aid, abet or assist them in the commission of the offence or who counsels or procures others to commit the offence, or knowingly give succour or encouragement to the commission of the crime or who knowing facilitated the commission of the offence."

There is also the presumption of Law that a person who is in possession of a forged instrument is the forger and more so, where there is proof that the Defendant altered it and stood to gain by this alteration and benefitted from the proceeds of his crime. See the cases of **OLA OLU AWOSIKA VS INSPECTOR GENERAL OF POLICE (1968) 2 ALL N.L.R. PAGE 336 AT PAGES 339-340.**
In the case of **GEORGE ABEL SCOTT VS THE KING 13 WACA PAGE 25,** it was held that where a document was shown to be used as an intermediate step in a scheme of Fraud in which a Defendant was involved, then if it was shown

that such document was false, and was presented or uttered by the Defendant in order to gain advantage, an irresistible inference exists that the Defendant either forged the document with his own hand or procured someone to commit the Forgery.

The document must be an instrument for the purpose of creating or modifying or terminating a right. A document usually conveys two distinct kinds of messages: the first is the message about the document itself, and secondly, a message to be found in the words of the document itself that is to be accepted and acted upon, for example, a Bill of Lading on the first part, conveys the fact that it is a Bill of Lading. On the second part, it conveys the message offered for reliance by the recipient of the instrument as the truth, e.g. that property is to be shipped in a particular way, method and destination.

It is also clear as held in the case of **APC v. PDP & ORS (2015) LPELR-24587 (SC) Per NGWUTA, J.S.C.** that to prove forgery or that a document is forged, two documents must be produced: (1) the document from which the forgery was made, and (2) the forgery or the forged document**.**

As regards the Charges of Using as Genuine Forged Documents in Counts 5, 8, 11, 14 and 17, Learned Counsel to the Prosecution submitted by setting out the ingredients of this offence and stated that from the evidence adduced by the Prosecution, it is a fact that all those documents form part of Exhibits D and E submitted by the 2nd Defendant to PPPRA in other to claim Fuel Subsidy Payments. He stated that the PPPRA relied on those documents to process payments and further referred to the evidence of PW1.
Learned Counsel submitted that the Defendants knew or had reason to believe that the documents were forged, and they fraudulently presented the documents to the PPPRA. He cited the case of **ZONKWA VS COP (1968) NNLR 11** to say that the Prosecution has established a prima facie case against the Defendants and urged the Court to find them guilty as charged.

Now, the Court examines Section 366 of the Penal Code Act, which defines the offence thus: "Whoever fraudulently or dishonestly uses as genuine any document, which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he has forged such document. See the case **AJAYI VS COMMISSIONER OF POLICE (1966) NNLR PG 137; GARBA ZONKWA VS COP (1967) NNLR 100 AT 101.** To constitute an offence under this Charge there must be both knowledge and fraudulent

intention. The Court will examine whether the Defendants knew, or had reason to believe that the documents they presented for processing were forged, and whether they still went ahead to use them fraudulently.

Due to the fact that the offences of forgery are in regard to several documents, which were individually addressed in the respective written submissions of counsel, it becomes expedient to consider the question of forgery specifically addressing each Count of Offences.

Beginning with forgery of the **Bill of Lading dated 14th June 2011containing Form M No: CBO6920090010249MF0481139 AND LC NO: IBF0747/09904 on board MT Kriti Akti**, it is clear that a Bill of Lading, being a contract between the Carrier and the Consignee with respect to the goods mentioned therein. It is a written instrument, signed by a Carrier or his Agent describing the Freight so as to identify it, stating the name of the Consignor, the Terms of the Contract for Carriage, and agreeing or directing the order or assigns of a specified person at a specified place.
Therefore, it serves as a Receipt given by the Masters of a Ship acknowledging that the goods specified in the Bill have been put on Board. It also serves as a Document containing the items of the Contract for the Carriage of the Goods agreed upon between the Shipper of the Goods and the Ship Owners (whose Agents, the Master of the Ship is) and finally is a Document of Title of Goods. It is therefore a prima facie evidence of the truth of the statement contained in it and where a party denies the contents; the burden is on the party to prove the error in the Bill of Lading. See the cases of **KAYCEE (NIG) LTD VS PROMPT SHIPPING CORPN & ANOR (1986) 1 S.C. 378 AT 393 PER KARIBI-WHYTE JSC; PACERS MULTI-DYNAMICS LTD VS THE MV "DANCING SISTERS" & ANOR 49 NSCQR PT 1, 284 AT 300 PER RHODES-VIVOUR JSC; AND PER NGWUTA JSC; ALSO NGWUTA IN NIGERIAN PORTS PLC VS B.P.PTE LTD & ANOR (2012) 18 NWLR PT 1333 AT 454 AT PP 486-487. See also Section 172 of the Evidence Act,** as regards conclusiveness of a Bill of Lading.

Learned Counsel for the Prosecution in regard to the Charge of Making False Documents/Forgery, contended that the Bill of Lading dated the 14th June 2014 (sic), containing the Form M Number and the Letter of Credit Number, purportedly issued in respect of importation of PMS on board Vessel MT Kriti Akti, which was claimed to have sailed from Amsterdam, Netherlands to West Africa, was forged. He referred to the evidence of PW5, PW6, PW7 and PW11,

to argue that the Numbers correspond with the Particulars on the Bill of Lading used by Oando Supply and Trading Ltd in a 2009 transaction. Learned Counsel pointed out that the DPR Permit issued to the 2nd Defendant was dated the 15th of June 2011, whereas the Bill of Lading of MT Kriti Akti was dated the 14th of June 2011, which means that the importation was done a day before the DPR Permit was issued.

Learned Counsel for the Prosecution, made further reference to Exhibits O, P, Q1 (1-49), Q2 (1-37), R and S, to highlight the oral testimonies of the Witnesses. He contended that MT Kriti Akti was a scrapped/dead vessel as at the time of importation and referred to the video presentation by PW7 of the Lloyds List Intelligence Website, as well as her oral testimony in this regard. He submitted that there was no contrary evidence in rebuttal by the defence and he urged the Court to hold that the Lloyds List Intelligence is conclusive on the status of the Mother Vessel MT Kriti Akti. He cited the case of **ALI VS THE STATE (SUPRA)** and urged the Court to award appropriate weight.

The 2nd Defendant reacted generally to all the charges of forgery by stating that the Prosecution failed to prove the offences as charged, and he set out the ingredients of the offence, relying on the case of **ODUAH VS FRN (2012) 11 NWLR PART 310 PAGE 76 AT 106 and USEN VS THE STATE (2016) 8 NWLR PART 1515, PAGE 518 AT 534,** to show that proof beyond reasonable doubt must be devoid of hypothesis.

Learned Counsel to the 1st and 3rd Defendants submitted in his Written Address that because the Bill of Lading relates to the Mother Vessel Kriti Akti, which had 32 Million (sic) Metric Tonnes of which the Defendants merely had a fraction hold of 10, 000 Metric Tonnes, they had no total control or authority over this Mother Vessel. Furthermore, he argued that there was no evidence confirming the 1st and 3rd Defendants actually forged the documents or knew they were forged. He referred to the evidence of PW5, PW6 and PW12, and submitted that it was the Shipper, and not the Consignee, that had anything to do with the issuance of the Bill of Lading.

According to him, the Prosecution failed to investigate and ascertain the veracity of the source of the parcelled DHL Documents said to have come from the Correspondent Bank as well as failed to contact Napa Petroleum Incorporated to confirm whether she supplied PMS to the Defendants.

Further, he argued that PW12, Uchenna Aduaka, the Deputy Manager from Enterprise Bank had confirmed that the Shipping Documents particularly the Bill of Lading and concerning the product in question, were sent by a foreign correspondent bank to his Bank by DHL and when Central Bank of Nigeria made payments to the Defendants' Account, it was utilised to repay the correspondent bank, which in turn paid Napa Petroleum Incorporated for the Letter of Credit issued in their favour. He further submitted that the Prosecution had not shown that the Defendants intercepted the DHL documents sent to the Bank by the Correspondent Bank.

Finally, he argued there exists reasonable doubt as to whether it was the Shipper that issued the Bill of Lading because with the failure of the Prosecution to contact Napa Petroleum Incorporated, it cannot reasonably be inferred that the 1st and 3rd Defendants forged the Bill of Lading.

In specific response to the absence of Napa Petroleum from the proceedings, Learned Counsel to the Prosecution referred to Exhibits D and E, the Documents submitted by the Defendants to the PPPRA, to claim purchasing the product from Napa. PW11 had testified that all efforts to bring Napa in to testify proved abortive. He referred to Exhibits EE3, to argue that evidence was rife to prove that it was impossible for the PMS to have been imported by Napa Petroleum Trade Inc., as at the 14th of June 2011 from Amsterdam. An instance of such impossibility was the fact that the Permit issued by the DPR was dated the 15th of June 2011, whilst the importation was said to have been on the 14th of June 2011, as per the Bill of Lading. He reargued the point of the non-existence of the Mother Vessel MT Kriti Akti, and finally argued that the Defence also had the right to summon Napa to demonstrate the truth of their purchasing the PMS from them.

It is worthy of note that the Reply in this regard is a Reply on Facts and not of Law.

Now, some of the above submissions of Counsel to the 1st and 3rd Defendants are merely feeble attempts to introduce evidence not led by the Defence during the Trial, at the stage of Written Addresses, and it is trite that the brilliance of a Written Address cannot and will not be a substitute for actual evidence led during trial. It is also noted that these injections of facts were never subjected or tested under Cross-examination to ascertain their veracity.

In the case of **CYRACUS EZEAMA VS THE STATE (2014) LPELR-22504 (CA),** it was held that addresses do not constitute evidence however brilliantly done, but is just to assist the Court in a speedy determination of a case.

Now, ordinarily, the genesis of the purchase and subsequent Shipment of the Petroleum Motor Spirit (PMS) begins with NAPA Petroleum Incorporated, who the Court would have looked to, in establishing beyond a shadow of doubt what actually transpired between her and Alminnur Resources Ltd. Especially with regard to Payment and Delivery Terms, Bill of Lading, Country of Origin, Loading and Discharge Port, the Mother and Lightering (Daughter) Vessel, Quantity and Quality. In the absence of the evidence of NAPA, which incidentally, the Prosecution claimed were contacted but failed to respond, the Court must of necessity look to other documents and evidence adduced in this regard.

PW5, Mrs Folashade Onyia, the Chief Operating Officer of Oando Supply and Trading, a subsidiary of Oando Plc. testified as to her Company's transaction involving MT Kriti Akti with **Form M No: CBO6920090010249MF0481139 AND LC NO: IBF0747/09904** issued in 2009, contained in Oando's Bill of Lading.
These numbers are unique to each shipping transaction and cannot be duplicated or reused. A comparative analysis made by her showed these identical numbers were subsequently used in 2011 by Alminnur Resources Ltd, which is virtually impossible. However, the details contained in the 2011 Bill of Lading were vastly different from that of Oando, in terms of the daughter vessels, the value, the volume and destination.

The Court notes that the destination of discharge of the product must be specific in a Bill of Lading. The Bill of Lading pertaining to Oando was destined for Apapa, whilst that of the 2011 Alminnur Resources Ltd transaction was stated to be West Africa.
Both Bills of Lading were made in the Order of Fortis Bank (Netherland) N.V. Amsterdam, even though the transaction relating to Alminnur Resources Ltd had banking details from Credit Suisse, a different bank entirely.
The date on the Bill of Lading presented by the 2nd Defendant is 14th June 2011, a day **before** the DPR Permit was issued. The question must now be asked, how then did the Defendants know that the Origin of the PMS would be Amsterdam?

A close perusal of the signatures on both Bill of Lading show similarities but are markedly different. Details of the description of the merchandise Clean on Board were also different.

PW5 had during her testimony stated that her Organization never transacted any business with either the 2nd Defendant or the Late Saminu Rabiu. She also pointed out that the abbreviations of the Bank, which opened the Letters of Credit would be seen clearly on the Form. The bank abbreviation on her own transaction was "IB" denoting Intercontinental Bank, now Access Bank, whilst that on the 2011 transaction involving Alminnur's banker, Spring Bank "SPG", yet still had the "IB" instead of "SPG". In any event, she testified that her Organization never dealt with Spring Bank, Alminnur Resources or the Late Saminu Rabiu.

The value of PW5's testimony as an Oil Marketer was to initially dissociate herself and her Company from the Defendants on Record. Secondly, her testimony revealed the utmost uniqueness of both the Form M and Letters of Credit Numbers, which can never be reused for any future transaction, even if it were by the same party.
Thirdly, she distinguished with precision the two Bills of Lading of 2009 and 2011, pointing out their apparent similarities and differences. Fourthly, she was there to testify about the custom of the Oil Trade, the Banking System and the Subsidy Scheme. Fifthly, in her Statement to the EFCC, Exhibit P, the whole shipment of 32, 999.938MT in the 2009 Oando transaction, was utilized solely by Oando and no one else.

Now, since PMS Importation involved Foreign Exchange, Form M would be required, and because PW5 is familiar with these types of transactions involving the use of Documentary Letters of Credit, her testimony is in as good a position as a Banker. She has now categorically said that the Marketer plays a role in the issuance of Form M, but plays no role in the issuance of a Bill of Lading. She has further said that the Form M Number and the Letter of Credit Number would have been sent by advice from Oando (as Marketer) to the Supplier, **who must ensure that those numbers are reflected nicely on the Bill of Lading.** If this is not complied with, no Foreign Exchange will be given by CBN to pay that Supplier according to the CBN's Regulations.

Therefore, if the Court were to logically place Alminnur Resources Ltd in the position of Oando as a Marketer, then it is reasonable to conclude or expect

that the Defendants had a part to play in the issuance of Form M, and further, would have sent by advice the number of both the Letters of Credit and Form M to Napa, the Supplier **who must also ensure that these numbers are reflected nicely on the Bill of Lading.**

Therefore, to all intents and purposes the written submission by Learned Counsel to the 1st and 3rd Defendants that they played no part in the documents sent via DHL, which incidentally also contained the Bill of Lading, is wrong and misleading.

Since the Letter of Credit Number and Form M Number, were used by Oando in their 2009 Bill of Lading, by the subsequent use of these same Numbers in Alminnur's 2011 Bill of Lading, there can only be the logical conclusion that by the insertion of these 2009 Numbers into a 2011 transaction, the incidences of Fraud kick started.

According to the custom of this type of transaction, the Marketer would have had a direct intervening hand in the contents of the Bill of Lading. Therefore his information to the Supplier was crucial; otherwise the Supplier would not be paid Foreign Exchange by the CBN.

Further, since the Bill of Lading dated the 14th of June 2011 is a Foreign Document, couriered through DHL, also a Foreign Company, delivering Foreign Documents from the location of the Supplier's Bank, which is also Foreign, it is then expected that the Documentary Letters of Credit Numbers and the Form M Numbers sent by the Nigerian Marketer to the Foreign Supplier for insertion into the Bill of Lading, would absolutely correspond with the documents the Supplier's Bank based abroad, sends to the Marketer's Bank in Nigeria. There remains an inexplicable fact that Spring Bank communicated to Credit Suisse through her Correspondent Bank, Union Bank in the United Kingdom as can be seen in Exhibits D and E both at Page 4, where Spring Bank's Letter of Credit Number**SPG/DLC/11/0006,** was also referred to by Credit Suisse, in her response via DHL to Spring Bank as seen in Exhibit EE1.

Credit Suisse who logically is the recipient of the Shipping Documents including the Bill of Lading collated by Napa for onward transmission to Spring Bank, would have raised a Red Flag upon sighting a disparity in the Letter of Credit (LC) Number sent by Spring Bank and that presented by Napa

as contained in the Mother Vessel Bill of Lading in Exhibit D at Page 25 and in Exhibit E at Page 21.

In this instance there was no Red Flag was raised. It is either Credit Suisse ignored the Red Flag to its own peril or it never received the Bill of Lading presented to it by Napa. It stood the risk of not being paid on this transaction, because the CBN would certainly not have paid them on another Bank and Company's Credit Line.
However, what was puzzling or mindboggling, was the fact this Bundle of Foreign Documents all came from Credit Suisse itself and no one else.

Further, Exhibit EE1 demonstrated that Credit Suisse paid Napa based on a Letter of Credit Number **SPG/DLC/11/0006,** which Spring Bank curiously paid from the Subsidy Payment realised from the Federal Government**.**Curiously because the Bill of Lading sent to them by Credit Suisse, bore the Acronym IB indicating Intercontinental Bank with a different Letter of Credit and Form M Numbers.
Although there is no Bill of Lading for a Mother Vessel bearing both Spring Bank's LC Number **SPG/DLC/11/0006 and Form M MF1166492**before the Court, there is a logical presumption of its existence because from the evidence as seen in Exhibit EE4, the Bill of Lading of MT Althea, the Daughter Vessel, is the only Bill of Lading Document bearing these Numbers. Learned Counsel to the 1st and 3rd Defendants had contended that they only purchased a fraction of the whole shipment on Board Kriti Akti but did adduce furnish or even lead any evidence of this fact of purchase. This only came out through the submission of Learned Counsel to the 1st and 3rd Defendant, which no matter how brilliant cannot take the place of evidence and has never been known to change the logical interpretation of documents, no matter how persuasive the argument is. He has rested on the evidence led by the Prosecution in this regard.

Both PW11 and the submission of Learned Counsel to the 1st and 3rd Defendants, supports the fact that Nigeria does not refine PMS locally and only relies solely on imported PMS, which in this instance was imported and utilised by the Nigerian Populace. The PMS certainly was not imported for free or sold for free as there is evidence that a Representative of Spring Bank collected the SDNs and the Defendants on Record took benefit of the SDNs. Had the documents particularly the Bill of Lading containing the Letter of Credit Number **SPG/DLC/11/0006 and Form M MF1166492**,

beenpresented before the Court, it would have spoken in volumes by telling a different story as to the actual origin of the PMS and who were the Consignor and Consignee.

It is incontestable that Napa's Banker is Credit Suisse, who communicated with Spring Bank in a Documentary Letter of Credit. Where then does Fortis Bank (Nederland) NV to whom the Bill of Lading was addressed to as Assigns, come in?
It appears that somebody forgot to change this 'little piece' of evidence to conform to the rest!!

The Million Dollar Questions are, "where in Heaven's name did the Bill of Lading actually emanate from?" was it really foreign as declared? Or was it actually cloned from an earlier 2009 transaction? Or was the Oiltanking Bill of Lading reproduced here in Nigeria?

It is incredible to believe that the PPPRA with all its years of experience failed to question the above, it is even no wonder that its witness stated that the PPPRA would **ONLY** take as relevant in Form M the value of the Loan from CBN and the foreign exchange granted.
Moreover, it is seen that the destination on the Bill of Lading was not directed to a specific port of a specific country as is expected under Maritime Regulations. All parties are expected to know with precision the path and arrival of their cargo. In this Bill of Lading under contention, the destination is stated to be West Africa, a Sub-Region and it is only to be imagined how this ship would have traversed the length and breadth of the West African waters waiting to hear the siren call as in Odysseus, to tell them were they would berth the ship.

As regards the issue of the **Form M No: CBO6920090010249 MF0481139,** on the 2011 Bill of Lading for Alminnur, it is completely different from the Form M Number issued by Spring Bank, which is **CB08420110010478MF1166492.**
Yet again, it is expected that the numbers be the same since the Defendants were meant to have sent it by the custom of the trade to Napa, for which Napa would have sent a Bill of Lading having these information to Credit Suisse Napa's Bank, who would have then couriered it to Spring Bank.

Another Million Dollar question is how did the Supplier Napa get paid by the CBN's issued foreign exchange through Spring Bank with different irreconcilable numbers of Letters of Credit and Form M, since one is said to be issued by "IB" Intercontinental Bank and the other by "SPG" Spring Bank on a single transaction and involving **ONLY ONE** Mother Vessel's Bill of Lading. Just does not make any logical sense!!!

This yet again, displays another Agency's administrative failures in observing due diligence while performing their paid duties. PPPRA and Auditors of the Federal Ministry of Finance are now left carrying the can.

Moreover, the Application for Form M, which carries a different number is dated the 30th of June 2011, whose Applicant is 1st Defendant Jubril Rowaye, while curiously the date on the Bill of Lading is 14th June 2011. Strange! And Stranger still is the fact that the Application for Foreign Exchange via Form M came 15days or more after the issuance of the Bill of Lading, which the Defendant relied so heavily on to show that the PMS was actually imported. Does that actually mean that the processing of Foreign Exchange took place 16days after the PMS had set sail? That has to be a case of extreme trust of Napa, the Supplier.

Therefore in conclusion, all ten fingers point to the irresistible fact that the Defendants' 2011 Bill of Lading under contention, even though it struggled to resemble and perhaps cloned the Bill of Lading of 2009, succeeded in misrepresenting the state of facts to the various and numerous Government Agencies that were meant to be alert, vigilant and competent to detect through its various vetting stages the discrepancies in the details provided on the Bill of Lading.

The Defendant was then expected to have led evidence to shed light on this aspect, but failed to do so, therefore the evidence is weighted firmly in favour of the Prosecution.

Further, PW7 the EFCC Analyst of the Lloyd's List Intelligence Report and Website, the strongest Maritime Confirming Organisation, verified the fact of the death and demolition of MT Kriti Akti as at 12th of April 2010 at Gadani Beach, Pakistan. There was no contradictory evidence from the Defence to rebut this fact and therefore the 2011 Alminnur Bill of Lading, logically had to be issued by a GHOST SHIP!!!

All in all, it is clear by the presentation of facts, contained in the Bill of Lading under consideration, that there was a deliberate and fraudulent attempt for the facts contained therein to be acted upon as genuine by all the vetting and processing Agencies. This misrepresentation of facts in the Bill of Lading, which told a lie about itself, started the chain of events.

Therefore forgery of this Bill of Lading has been proved beyond reasonable doubt.

The next question has to be: Who stood to gain by this misrepresentation?

There can only be two scenarios created here, both of which still achieved the same criminal purpose, and they are: -

a) Napa Petroleum never participated in the issuance of the Bill of Lading. Napa, in the filling in of the details on the Forms ought to have supplied the Letters of Credit Number and the Form M Number, received from the Defendants. It is not conceivable that Napa would have stated wrong numbers of Form M and the Letters of Credit otherwise they will not get paid by the CBN. There is also an assumption that Napa would also not arrange to load the PMS on a Dead Vessel or even state the Supplier's Name as Gunvor International BV, instead of its own name.

b) To understand this second scenario, one must first break down the preconception that "Anything Foreign is Everything Good and Unquestionable". PW12, Mr Aduaka, the Deputy Manager (Oil and Gas) of Enterprise Bank, in his Statement admitted as Exhibit FF, testified that the Copy of the Bill of Lading of the Mother Ship sent to them by Credit Suisse, through their Correspondent Bank was **UNCLEAR**. In the first place, what they should have received was the Original Bill of Lading and not its Copy. The Bill of Lading at its footer mandates three Originals and five Copies.
   Napa Representatives were not in Court to explain why they would send forth, false information for the benefit of the Defendants.

Therefore, to all intents and purposes it is conceivable that the Defendants themselves, even though not in direct custody were the masterminds and brain behind this forgery.

It is not the Law that only persons who manually write or sign forged documents may be convicted for forgery, as accessories before and after the fact, who counsels, procures, encourages or gives succour to the commission of the offence and who above all stood to gain and did gain from the alterations are deemed to be forgers of the document. All case cited supra in this respect are brought to bear to this conclusion, that indeed, the Defendants forged the Bill of Lading.

The fact that the Bill of Lading was presented as a genuine document to the authorities as seen in Exhibits D and E, the fact that it was acted upon and moreover the fact that they derived a benefit from this false presentation of facts in the Bill of Lading, the Offence of Using as Genuine the Bill of Lading is established against the Defendants.

As regards the allegation of Forgery concerning the Documents reported to have been issued by MGI Inspection, which are:

1. Certificates of Quantity Transfer dated the 9th of July 2011 from MT Kriti Akti to MT Althea, (Counts 7)
2. Certificate of Origin dated the 9th of July 2011 from MT Kriti Akti to Althea at Offshore Cotonou (Count 10);
3. Certificate of Quantity Transfer from MT Althea to MT Brila Keji (Count 13).

These three Counts were brought under Section 97 of the Penal Code for Conspiracy to make a forged document; under Section 364 of the same Penal Code for Forgery of the said Certificate, and finally under Section 366 of the Penal Code for using as genuine a forged document.

As regards the third document from MGI Inspections, the Certificate of Quantity Transfer from MT Althea to MT Brila Keji, Learned Counsel to the Prosecution, curiously on the 10th of March 2015, upon an amendment of the Charge Sheet and the retaking of the Plea of the Defendants, applied orally to the Court to amend portions in Counts 12,13 and 14 of the Amended Charge regarding this Certificate dated the 26th of August 2011, to now read "Certificate of Quality Transfer".

The reason the Court finds these amendments curious is that the evidence led during trial by the Prosecution had everything to do with the Certificate of

'**Quantity'** Transfer, said to have been issued by MGI Inspections Limited and absolutely nothing to do with the Certificate of '**Quality**' Transfer he now substituted for. The length and breadth of the Prosecutions evidence, especially through the extensive documentary exhibits tendered, made no reference to a Certificate of 'Quality' Transfer in regard to **MGI Inspections Limited**. In fact, in their Letter of Investigation Activities, Exhibit J, the Letter written by the EFCC to the Managing Director of MGI Inspections Limited, seeking the authentication of certain attached documents, the "Certificate of Quality Transfer" was not amongst the five documents sent for verification.

Therefore, where Learned Counsel for the Prosecution conceived the notion that an MGI Inspections Certificate of Quality Transfer was up for qualification anywhere in this Charge, is best explained by him.
Had he stuck to the previous Charge of Certificate of Quantity Transfer, the evidence led by PW3, Mr. Ifeanyi Iheanyichukwu, the Managing Director of MGI Inspections Limited Lagos, in this respect would have established that his Company did not issue the Certificate. PW3 had denied carrying out any operation of ascertaining the Quantity Transfer from MT Althea to MT Brila Keji but accepted responsibility for the Vessel Ullage Report after loading MT Brila Keji. However the Court notes that the said Vessel Ullage Report did not state what Ship Brila Keji loaded from. The evidence of PW3 only goes to validate a Certificate of Quantity for operations on board Althea to Brila Keji and not "**Quality**".

Therefore, in the absence of proof of Conspiracy, Forgery and Using as Genuine the **CERTIFICATE OF QUALITY** the Prosecution has failed woefully in establishing the guilt of all the Defendants in regard to the Counts of offences in Counts 12, 13 and 14, and the Defendants are acquitted and discharged in regard to these Counts.

The analysis as regards the **Certificate of Quantity Transfer dated the 9th of July 2011 RE: MT Kriti Akti – MT Althea** and the **Certificate of Origin dated the 9th July of 2011 from NAPA on board MT Kriti Akti Ex, MT Althea (1st Daughter Vessel) at Offshore Cotonou** issued by **MGI Inspections Limited,** is as follows:

Learned Counsel for the Prosecution submitted in his Written Address that these Certificates did not emanate from MGI Inspections Ltd and are therefore

forged documents. He relied on the evidence of PW3, as well as Exhibits J and K to allege forgery.

Learned Counsel to the 2nd Defendant, on his own part, retained his wide sweeping and most general submission in this regard and there is little point in restating it here.

Learned Counsel for the 1st and 3rd Defendants, argued that the only evidence led by the Prosecution in this regard is the unreliable evidence of PW3. PW3 had told the Court under Cross- Examination that Exhibit L1, his initial Statement admitting the genuineness of the forged documents in Counts 6 to 14 of the Charge, was withdrawn and trashed but later had denied trashing L1 under Oath. Reference was made to the case of **OMISORE VS THE STATE (2004) 28 WRN PG 106 AT 126; IBEZIAKO VS C.O.P (1963) 1 ALL NLR PG 61; ONAGORUWA VS THE STATE (1993) 7 NWLR PT 303 PG 49; AND ALMU VS THE STATE (SUPRA).**
He submitted that Exhibit K is inadmissible in evidence because PW3 had admitted under Cross- Examination that he withdrew and trashed Exhibit L1 to issue Exhibit K, because his "boy" confided in him and he termed Exhibit K as hearsay evidence.

In his Reply on Points of Law, Learned Counsel to the Prosecution stated that PW3 had testified that the initial Report was in error, based on actions of his subordinate staff. Moreover, his evidence before the Court was in conformity with the denials from the Inspectorate Marine Services, SGS and Oando's Bill of Lading. Therefore, to say it was authentic, PW3's evidence would have been a departure from the consistent case of forgery, and would have been an isolated case.

The Court after a careful consideration of the above submissions and after a careful look at the evidence adduced by the Prosecution, finds that the evidence from MGI Inspections Ltd is crucial in determining the question of fraud because it involves their job performance as well as their documents.

It is clear that PW3, the Managing Director of MGI Inspections Limited denied issuing five out of the six documents in the bundle of documents sent to them by the EFCC for authentication. Inclusive of these documents were the Certificate of Quantity Transfer and Origin both dated the 9th of July,2011.

It is important at this stage, to address the contention that PW3's evidence was hearsay as argued by Learned Counsel to 1st and 3rd Defendants when referring to the phrase "… his boy confided in him".

It is clear that during Cross- Examination, PW3 had contradicted himself on the point of whether he actually thrashed the initial Letter in Exhibit L1 or whether it was thrashed by the EFCC or whether it was still with the EFCC. All he knew was that he was not given a Copy of Exhibit L1. This flip flops were contradictory and Learned Counsel to the 1st and 3rd Defendants was justified to take him up on it as being unreliable. Had Learned Counsel for the 1st and 3rd Defendants not called for Exhibit L1, the fact of this contradiction would not have been presented by the Prosecution.

However, during Re-examination he clarified the reason why two Contradictory Letters emanated from his Office. He explained that after sending Exhibit L1 dated 25th of July 2012, his Office then invited the Surveyor who did the job and the Surveyor confided in him that he only participated in regard to one of documents. PW3 then communicated to the Commission that he would write another response.

Now, it is clear that being the Marine Cargo Superintendent and Managing Director of MGI Inspections Limited, he is the alter ego of the Company. He is responsible for the general day-to-day activities of the Company and the buck stops at his table.

Therefore, all his Employees are under his control, command and supervision, and are answerable to him. To that extent, the Surveyor's restatement of what actually happened and his subsequent clarification in Exhibit K cannot be said to be hearsay. All it amounts to was putting the cart before the horse in his response to the EFCC and he ought to have initially done due diligence before sending any Report. This also shows up another Agency for its lack of thoroughness and competence.

The Second Report served to correct the first and the oral evidence of PW3 before the Court served to explain the difference of opinions in the Report. This oral evidence was not rebutted by any evidence whatsoever from the Defence, and is weighed against nothing and therefore stands.

As regards the Certificate of Origin by MGI Inspection from Napa on board MT Kriti Akti, PW3 had insisted that the Certificate of Origin attached to Exhibit J did not emanate from his Office. He also did not know where the Cargo originated from, but admitted only issuing the Ullage Report taken on Brila Keji at Offshore Cotonou, where the Operation was carried out twice. This witness also did not know either the Consignor or the Consignee to this Ship Transaction.

The Court finds that the fact that the Defendants claim that MGI is said to have issued a Certificate of Origin on the 9th of July 2011, does not make any sense, for the simple reason that MGI is not located at the Port in Amsterdam. MGI are not the Shippers, they are certainly not the Inspection Agency at Source and even the Certificate of Origin purportedly emanating from them starts its historical enumeration from MT Althea, not tracing the origin of the Cargo from the onset.

This finding is validated by the evidence of PW8 Mr Stanley Ambi the SGS Inspection Compliance Officer, who in his evidence asserted the fact that MGI Inspections NEVER issues out Certificates of Origin BUT only Ullage Report, which were done on Brila Keji at Offshore Cotonou.

Also, PW3 in his evidence denied that MGI issued the Certificate of Quantity Transfer and Certificate of Origin. He also disclaimed the rubber stamp of MGI, his Company affixed on the following documents in Exhibit D, and further denied carrying out any operation whatsoever in respect of these two documents.

Yet again, there was no contradictory evidence to rebut the above, and the Court on a close scrutiny finds that the Stamps on the accepted and disputed documents from MGI are different.

One thing is clear, and that is, that these two Certificates of Quality and Origin did not emanate from MGI and therefore had to have been conjured from somewhere else, by someone else not affiliated with MGI. The fact that the Defendants were in possession of these Certificates and did submit it as part of information to be acted upon by the Government, leads to an irresistible conclusion that the Defendants were the “unseen hands” behind the forgery.

Without further ado, the Court finds that the Charges as contained in Counts 7 and 10 has been satisfactorily proved by the Prosecution.

As regards the Charges under Counts 8 and 11, for using these documents as genuine, the same principles of Law cited Supra, come into play. The evidence demonstrates that the Defendants presented these documents in their Bundle of Documents in order to facilitate payment of Subsidy from the Federal Government and therefore the Defendants are liable under these Counts.

As regards Count 16, dealing with forgery of the Certificate of Quality dated the 14th of June 2011, reportedly issued by SGS Netherland BV, Learned Counsel to the Prosecution relied on the evidence of PW8 as well as Exhibits T and U 1-5, to support his contention that they did not emanate from SGS Netherlands BV.
According to him, by virtue of Section 8 of the Evidence Act, 2011, once conspiracy is established, anything done by the conspirators in execution of their common intention is a relevant fact against each of the co-conspirators. Therefore, the documents forged by the Defendants, and used to facilitate the crime are relevant against each of the Defendants. He cited the cases of **ALAKE VS THE STATE (SUPRA); BABALOLA VS THE STATE (SUPRA); NIGERIA AIRFORCE VS JAMES (2002) 18 NWLR PT 798, 295 @ 322, PARAS F-H; OSONDU VS FRN (2000) 12 NWLR PT 682, 483 @ 505, PARAS A-B** to demonstrate the elements of the offence of forgery. He argued that it was not necessary in the proof of forgery that the Defendant personally and or manually forged the documents, as it suffices if he procured another person to do so.

Further, forgery occurs when a document tells a lie about itself as in this case where in Counts 4, 7, 10, 13 and 16, all told lies about who purportedly issued or stamped them as emanating from their office, all testified disclaiming them. In conclusion on this point he submitted that the Prosecution has established the case of Forgery against the Defendants and he urged the Court to find them guilty as charged.

In response, Learned Counsel to the 1st and 3rd Defendant contended that the only evidence led on this Certificate was by PW8, Stanley Ambi and it amounted to inadmissible hearsay evidence. The SGS Nederland BV was not

summoned to testify and the Prosecution only summoned SGS Nigeria Limited, an entirely separate entity, who was oblivious to the transaction, to testify about information it received from SGS Nederland BV.
Further, this Certificate relates to the Mother Vessel, MT Kriti Akti and his arguments relating to Obtaining by False Pretence were called to bear in the consideration of this issue.

Furthermore, he argued that an essential ingredient to be proved in forgery is that the Defendant forged the documents in question.
Citing the cases of **IDOWU VS THE STATE (1998) 9 SCNJ AT PG 4; ALAKE VS THE STATE (1992) 9 NWLR PT 265 PG 260; AND AFOLALU VS THE STATE (2010) 5-7 S.C. PART II AT PG 93,** he submitted that the Prosecution failed to prove beyond reasonable doubt that the 1st and 3rd Defendants forged the document and the Court cannot reasonably and safely infer that the 1st and 3rd Defendants had the knowledge that the documents were forged and in that knowledge, used it as genuine.

Now, the Court will regard the evidence of PW8, Mr Stanley Ambi, SGS Inspection Compliance Officer where he queried the Certificate of Quality issued by SGS Netherlands BV on Board MT Kriti Akti. According to him, upon verification from SGS Geneva, it was found that the queried Certificate resembled an Original that would emanate from Netherlands, BUT for the fact that the content stated therein were altered.

Mr Ambi testified that the SGS Group to which the SGS Inspections Services Nigeria belong has 150 Affiliates in 150 Countries. Upon receipt of the queried document, his Company forwarded the enquiry to the SGS Corporate Security in Geneva, to ascertain the genuineness of the document from SGS Netherlands B.V.

It is noted that it has to be a Group of Companies affiliated to each other, as the query was sent to their Corporate Headquarters directly, who then made enquiries with the Affiliate in Netherlands B.V.
Through the email correspondence in Exhibit U1- U5, one can see the chain of communication between Affiliates situated in different Countries, from Netherlands to Geneva and then back to Nigeria. Moreover, the email addresses of SGS Staff through the Countries all bear one and the same "@sgs.com" lending credence to a group activity. Therefore the contention of Learned Counsel that the SGS Inspection Nigeria is a separate legal entity and

the information informs hearsay is not the true position because it has a unified Headquarter, Control and Monitoring System, and the response to the query derived from the information provided by SGS Netherlands through the Group Channels cannot in any guise inform hearsay.

In any event, in Exhibit U4, at foot of the SGS Letterhead paper, it states that the SGS Netherlands BV is a member of the SGS Group.
PW8 distinguished and set out the noticeable similarities and differences between the Shipping Documents used in this transaction under query from those used by Oando in 2009.

According to him, the similarities are the Reference Numbers and the fact that it relates to the same Subject, MT Kriti Akti.

Mr Stanley Ambi, confirmed the fact that Reference Numbers of SGS Group issued out Certificates are always different with each transaction having its own Reference Number.

The disparities, which are much more, are as follows: -

1. The destination, on the Oando was stated to be Nigeria, whilst on the disputed it was stated as West Africa.
2. The location is stated be Oiltanking Amsterdam for Oando, whilst on the disputed was stated as "Loadport: Amsterdam"
3. The date for Oando was the 5th – 9th of August 2009, whilst that on the disputed was the 14th of June 2011.
4. The Test Parameter for example, of Benzene C.S. method was D3606 for Oando with the result stated as 1.9, whilst that on the disputed document was still the D3606 but with the result as 1.0.

The conclusion of the Report on the enquiry made in Exhibit U3 was to the effect that the document of the KRITI AKTI was false and when compared to the Original documents, several data were corrected and/or adjusted. He went on to state that the Certificate of Quality was important to show specification of goods, to which Port, and for what purpose.

The evidence of this witness has weight to the fact that the documents are similar and that the original had been tampered with. PW3 also corroborated the evidence of PW8 that there was never any carriage of the specification, its timing, and its Product out from Amsterdam on Board the Vessel claimed.

For there to be a forgery, there has to be an attempt to imitate an original, which is to say the lie is presenting itself to be more truthful than the truth. It would have been expected that since the transaction started off with SGS Inspection in Netherlands, the Defendants would have gone to SGS Nigeria for the Certificate of Quality on arrival, which would have been an easier verification process to ascertain the quality of the product.

What is crucial is the Certificate of Quantity and Quality on arrival for the purposes of payment. However, they chose MGI Inspections Limited, perhaps because they knew that SGS Nigeria would likely contact SGS Netherlands for confirmation, and the falsity of the Certificate of Quality would have been discovered.

The best evidence is the evidence of the primary source, in this case, SGS as a Group, centrally handled by the SGS in Geneva. They have firmly denied the issuance of this document from SGS Netherlands and based on the above disparities, the Court finds this document to be a false representation of the fact of the involvement of SGS, and then of the Quality of the Shipment loaded into KRITI AKTI.
The Defence once again offered no evidence in rebuttal, and therefore it remained uncontroverted and is believed.

Therefore, the Court finds that the Defendants for their benefit, presented this document and this false information was acted upon by the relevant Agencies for the processing of Subsidy Payments.

They are therefore liable as charged.

The ***Fifth Issue*** up for determination is,***Whether the Prosecution established beyond a reasonable doubt, the offences of Obtaining by False Pretences as charged principally under Count 2 and relatively under Counts 8 and 14 of the Charge.***

Section 1(1)(a) of the Advance Fee Fraud And Other Fraud Related Offences Act 2006 states: -

1. “Notwithstanding anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud-

a) Obtains, from any other person, in Nigeria or in any other country for himself or any other person;

Is guilty of an offence under this Act"

Subsection 3 prescribed that a person who commits an offence under subsection (1) of this Section is liable on conviction to imprisonment for a term of not more than ten years without the option of a fine.

The word "false pretence" is defined in the Black's Law Dictionary Seventh Edition as, "The Crime of knowingly obtaining title to another's personal property by misrepresenting a fact with intent to defraud."

In the case of **MICHAEL ALAKE & ANOR VS THE STATE (1991) 7 NWLR PT 205 PAGE 567 AT PAGE 591,** His **Lordship Niki Tobi J.C.A.** (as he then was and now of blessed memory) defined "Pretence" to mean, the act of pretending, means to make a person believe in a situation, which in reality is not true. It also means an appearance or show to hide a reality; a false show, a false allegation, a sham. It also means pretention or a pretext…"

His Lordship went further to hold that inorder to succeed in a Charge for obtaining by false pretences, the Prosecution must prove the following, namely: -

a) That there is a pretence;
b) That the pretence emanated from the Defendant;
c) And that it was false;
d) That the Defendant knew of its falsity or did not believe in its truth;
e) That there was an intention to defraud;
f) That the thing is capable of being stolen;
g) That the Defendant induced the owner to transfer his whole interest in the property.

False pretence can be a representation made by words, writing or conduct or a fact, which may be past or present and which is known to the person making it to be false. Depending on the circumstances of each case, pretence can be inferred from the conduct of the Defendant. See the case of **LAMIDI LADIPO & ANOR VS THE INSPECTOR GENERAL OF POLICE (1964) 2 ALL NLR PAGE 49,** where **His Lordship De Lestang C.J**. held, "evidence which reasonably supports the inference that an offence has been committed can be used to support a conviction where no direct evidence is available.

In **AWOBUTU VS STATE CITED SUPRA His LordshipObaseki J.S.C. AT PAGES 33-34 PARAS G-C,** described 'Intent to Defraud' to mean with intent to practice fraud on someone or other. It need not be anyone in particular. Someone in general will suffice. If anyone may be prejudiced in anyway by the fraud, that is enough."

In **DANIEL OKWEJI VS FEDERAL REPUBLIC OF NIGERIA (2003) LPELR-12387 HisLordship Acholonu J.C.A. (as he then was)** held that, "it is settled law that what the Prosecution should prove is the intent to defraud by taking into consideration the totality of the circumstances in respect of a particular case. If one obtains money from another by a representation which later facts reveal that it was made to deprive someone of his money illegally, then it means that right from the word go, he had intent to defraud."

In **DR. EDWIN V. ONWUDIWE VS FEDERAL REPUBLIC OF NIGERIA 26 NSCQR PAGE 257 AT PAGE 306, His Lordship Niki Tobi J.S.C**. held that, "For the offence of obtaining by false pretences to be committed, the Prosecution must prove that the Defendant had an intention to defraud and the thing is capable of being stolen. An inducement on the part of the Defendant to make his victim part with a thing capable of being stolen or to make his victim deliver a thing capable of being stolen will expose the Defendant to imprisonment for the offence."
However, an honest belief in the truth of the statement on the part of the Defendant which later turns out to be false, cannot found a conviction on false pretence.

Further Reference on obtaining by false pretence is made to the cases of **ONWUDIWE VS FEDERAL REPUBLIC OF NIGERIA (2006) ALL FWLR PT 319 PAGE 774 AT PAGE 812, 813 PARAS G-F; ODIAWA VS FEDERAL REPUBLIC OF NIGERIA (2008) ALL FWLR PT 439 AT PG 436; His Lordship Balonwu J in THE STATE VS BASSEY EDET& ANOR 8 ENLR PAGE 41 AT PAGE 49; HARRISON ODIAWA VS FEDERAL REPUBLIC OF NIGERIA (2008) LPELR- 4230 (C.A.) Per Adamu J.C.A.**

Learned Counsel for the Prosecution on the Charge of Obtaining Money by False Pretence submitted by setting out the essential ingredients of this offence as outlined in the case of **ALAKE VS THE STATE (1991) I NWLR PT 205 @ 567, 592.**

He submitted that the Subsidy Regime is on the basis of importation of PMS, and argued that the Federal Government of Nigeria paid over One Billion Naira to the Defendants as Subsidy for PMS that was in fact not imported from the Country of Origin.
Referring to the evidence of PW1, PW4 and PW11, and the Documentary Exhibits tendered, he submitted that the Subsidy money paid to the Defendants was obtained fraudulently, because of the Dead Vessel used, and the fact that the products were not imported, and certainly not from the Country of Origin, Amsterdam, Netherlands.

He counted it as important for an understanding on the entire economics of the Fuel Subsidy Payment under the Petroleum Support Fund. It is rooted upon importation of PMS by Oil Marketers, and he referred to Exhibit A the Permit, placing emphasis on the word "Import", and the specific mention of the Country of Origin, from where the product was to be imported.

According to Counsel, the Defendants being conscious of the fact that the Origin of the Product was of the essence in guaranteeing the payment of subsidy, had to procure documents to make it appear as if the products supplied really emanated from Amsterdam. The Subsidy payments were on the basis of importation from the Origin, which point was stressed upon by PW11 while testifying.

Therefore, any payment outside the mandate of the PPPRA and DPR Permits, amounts to obtaining money by false pretences.
He concluded by suggesting that the Prosecution has proved the essential elements of the Offence of Obtaining by False Pretence.

Learned Counsel for the 2nd Defendant, on his part started off by defining the offence of Obtaining Money under the Advanced Fee Fraud Act, citing the case of **STATE VS AJULUCHUKWU (2011) 5 NWLR PT 1239, PG 78 @ 92 and ONWUDIWE VS FRN (2006) ALL FWLR AT 774.**

Learned Counsel argued that the tendered documents in Exhibits A to FF7 were dumped before the Court without tying them to the offence charged, and therefore have no probative value. He cited the case of **INIAWA VS AKPABIO (2008) 17 NWLR PT 1116 AT 225 AT 229 and UDOM VS UMANA (NO1) (2016) 12 NWLR PAGE 179 AT 244.** He stated that the Prosecution's case was discredited by Cross-Examination, in that the innocence of the

2nd Defendant is obvious. He referred to a statement credited to PW11, which acknowledged that the investigation was not concluded. After resolving the doubt in his mind, created by his own argument that the evidence of the IPO is discredited, Learned Counsel urged the Court to follow suit. He cited the case of **OMOTOYA (sic) VS THE STATE (2013) NWLR PT 1338 AT 288**.

Learned Counsel for the 1st and 3rd Defendant on his own part submitted that inducement by pretension is the crux of the offence of false pretence. He set out the essential ingredients for proof of the offence of false pretences and commended the cases of **ONWUDIWE VS FRN (2006) 10 NWLR PT 988 PG 382 AT 429, 430; ODIAWA VS FRN (2008) ALL FWLR PT 439 PG 436; AND OSHUN VS DPP (1965) NMLR PG 357 AT PG 358.**

He submitted it is in evidence as led by PW1 and PW11 that the Defendants actually discharged 10, 000 Metric Tonnes of PMS at Fatgbems Facility and there was no dispute as to their quantity and quality. According to Counsel to the 1st and 3rd Defendants, PW11, Ahmed Lawal, the EFCC Detective, had notified the Court of the Commission's reliance on the Report of the Lloyd's List Intelligence and the fact that the Kriti Akti and Althea Vessels did not enter Nigerian Waters to berth at the Depot. Further, he had stated that Napa Petroleum Trade Incorporated was the Supplier of the product bought but they were not contacted to enquire whether the product was actually shipped or not. Lloyd's List Intelligence Officials were not called to testify as witness. Learned Counsel contended that even though the Prosecution is not bound to call every available witness, Lloyd's List Intelligence, which is pivotal to proving that Kriti Akti had been destroyed and Napa Petroleum Incorporated actually supplied the product, were important witnesses and the failure of the Prosecution to call them is fatal to its case.

He reviewed the evidence led during trial. According to him, the PW1, Mr. Wole Adamolekun from PPPRA, stated that the required quantity of PMS was supplied in two trenches, having been imported and PPPRA's Officers were present at the Ports where the products were discharged and utilised by the Nigerian public. **According to him, under the 2011 Guidelines, Report of Inspectors was not necessary for PPPRA's recommendation for Payments.**

PW6, the Access Bank Trade Officer, had during his testimony stated that the Bill of Lading was issued by the Shipping Company, which documents were

received by the Defendants through the Chain of Banks. It was therefore the bank that handed copies to the defendants.

Submitting on the weakness of the Prosecution's case, he stated that the investigation carried out by the Prosecution appeared to hang upon the presumption and or conclusion that MT Kriti Akti died in 2010 and so, could not have been used for the importation in 2011 and their conclusion was premised on the Lloyd's List Intelligence Report. He noted that with the absence of a witness from Lloyd's, there was no direct evidence of the truth or otherwise of the death of MT Kriti Akti and neither was there any cross-examination as the PW7, cannot be cross- examined on the fact of how the information of death of the vessel was obtained by Lloyd's List Intelligence and therefore, PW7's evidence is hearsay and inadmissible. Further reliance was placed on the cases of **OKEREKE VS UMAHI (2016) LPELR-2016204; BUHARI VS OBASANJO (2005) 13 NWLR PT 941, PAGE 1 AT 317; DOMA VS INEC (2012) ALL FWLR PT 628, PAGE 813 AT PAGE 829 AND KASA VS THE STATE (1994) 5 NWLR PT 344, PAGE 269.**

Further, Learned Counsel for the 1st and 3rd Defendants contended that there was contradictory evidence led by the Prosecution on whether the payment was calculated based on the submitted Bill of Lading. He referred to the testimonies of PW1, PW5 and PW11, wherein PW1 had confirmed under Cross- Examination that both the Bill of Lading and Report of Inspectors were not necessary at the material time before recommendation for payment can be made. Whilst this statement was confirmed by PW5, PW11 on his own part asserted to the contrary that the calculation of subsidy is based on the day of the Bill of Lading.

He therefore urged the Court to resolve the contradiction in favour of the 1st and 3rd Defendants and commended the case of **ALMU VS THE STATE (2009) 4-5 S.C. PART II PG33.** From the two Bills of Lading in Exhibits EE3 and EE4, relating to Kriti Akti and Althea, he argued that the Prosecution failed to show which of the Bills of Lading was used and concluded by saying that the relevant Bill of Lading is that of Althea, who carried the 10, 000 Metric Tonnes of PMS and not Kriti Akti, who carried out the 32, 000 Metric Tonnes of PMS. The Prosecution did not question the veracity of the Bill of Lading of Althea in this transaction and he urged the Court not to speculate, citing the case of **FRANK UWAGBUE VS THE STATE (2008) LPELR- 3444 S.C.**

Further from the evidence of PW1 and PW5, these alleged forged documents were not included as basis for the payment of subsidy under the 2011 PPPRA Guideline for payment of Subsidy. Therefore, he submitted that the Offence of Forgery and Use as Genuine did not emanate from the 1st and 3rd Defendants and the Prosecution failed to prove these allegations beyond a reasonable doubt.
Therefore, the Prosecution has the burden of proving that the alleged forged documents, induced the Federal Government to pay the Defendants, citing the cases of **MUKORO VS FRN (2015) LPELR-24439 C.A; AND IJUAKA VS C.O.P. (1976) LPELR-1466 S.C.** The Prosecution failed to prove that the pretence emanated from the Defendants, that the Defendants themselves knew of the falsity of the pretence and did not believe it or knew it to be forged and also that the Federal Government was induced to part with money solely on the alleged false documents.

Further, there were two Bills of Lading in contention, that of MT Kriti Akti and that of MT Althea and Learned Counsel to the 1st and 3rd Defendants wondered which one was forged.

In Reply on Points of Law, Learned Counsel to the Prosecution argued that the evidence of PW1, PW5 and PW11 are in harmony, stating that it is an indisputable fact that Calculation of Subsidy is based on PLAT, a technical term which means the date of the Bill of Lading. As regards which Bills of Lading was used between the Mother and Daughter Vessel in the importation of the PMS, the Prosecution's evidence is clear on this point, and that is, the Bill of Lading of MT KritiAkti submitted by the Defendants to the PPPRA, and therefore there was no speculation.

Now, by virtue of the fact that the Obtaining by False Pretence is alleged, it becomes imperative to consider the genesis or foundation, if you will, of this false pretence with intent to defraud.

The Contract Papers were clearly between the 2nd Defendant on the one hand, and the PPPRA and DPR both on the other hand. It was meant by the Terms of that Agreement that it be fully executed by Alminnur Resources Limited to the exclusion of any other party. PW1 had stated that in the instances where an assignment or transfer of rights and liabilities occur, the Contracting Party was to notify and obtain consent from the PPPRA before any Assignment takes

place. This is because it was not unusual or unheard of, for an Assignment to occur.

In this instant case, no evidence was adduced of the consent, permission or knowledge of the PPPRA of the Assignment of the Contract that took place between the Defendants.

The Assignment without permission from or Notice of Assignment to the PPPRA **may** be an indicator of an intention to obtain benefit under the Contract by false pretences.

By virtue of Exhibit A, the Permit tagged as: -
"PERMIT TO IMPORT PMS UNDER THE PSF SCHEME FOR THE SECOND QUARTER 2011", the Terms and Conditions of the Permit to Import PMS, issued out to Alminnur Resources Limited by the PPPRA dated the 5th day of April 2011, at Clause IV stated that it **was issued subject** to the certain Set Terms and Conditions, one of which, was that "The Title of this Permit resides with the Beneficiary Company and **shall not be assigned to a Third Party under any circumstance**".

At the 3rd Paragraph of PPPRA's letter dated the 23rd of September 2011, wherein they acceded to the request for renewal, the PPPRA had re-affirmed the term that the **revalidated Permit was not transferable to a third party whatsoever and failure to deliver on the Permit shall render Alminnur, the beneficiary company, liable for appropriate sanction under the PSF Scheme**.

Therefore, to all intents and purposes, the Term of Non-Assignment was an important term, which was not waived away formally by the PPPRA. A breach of this term by a subsequent assignment, would no doubt incur liability under the PPPRA's Guidelines.

Learned Counsel to both Defence, did not address the Court on this contention.

On his own part, Learned Counsel to the Prosecution in his Written Address had referred to Exhibit A at Clause 2 (IV), and submitted that contrary to the terms of the Permit, Alminnur Resources Ltd had entered into a Memorandum

of Understanding with Brila Energy Ltd on the 20th of May 2011 to assign her PPPRA's allocation for the importation of 10,000 Tonnes of PMS.

Therefore it is imperative to understand what an Assignment and a Memorandum of Understanding connotes in law.

Black's Law Dictionary (Seventh Edition) at Page 998 defines Memorandum of Understanding by equating it to a Letter of Intent, which is stated to be "A Written Statement detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement; a non-committal writing preliminary to a contract." See the cases of **STAR FINANCE & PROPERTY LTD & ANOR VS N.D.I.C. (2012) 10 NWLR PT 1309, 522 AT 538OKORO JCA (AS HE THEN WAS); AND PRINCE DR. B. A. ONAFOWOKAN & ORS VS WEMA BANK PLC. (2011) LPELR-2665 S.C**

It is also clear that the benefits of a contract may, in certain circumstances, be transferred to a third party.

In this instant case, the Memorandum of Understanding had moved from the domain of a Letter of Intent as it specifically referred to an Assignment, which required certain conducts of parties to occur before the Assignment took effect. Some of which were the fact that Alminnur was conscripted to add the name of Brila Energy Ltd as a Signatory to Alminnur Account with Spring Bank, a Bank used by Brila Energy. A Board Resolution had to be passed to incorporate these requests. There was also the fact that Alminnur was supposed to introduce a Representative of Spring Bank to the PPPRA as her own Representative of the Sovereign Debt Note, and was also requested to execute all necessary documentation as may be required by Spring Bank or any other Institution nominated by Brila Energy to aid the Account Opening in particular and the entire transaction, in general. There is also the fact that Alminnur utilized Brila's credit from Brila's Bank to fund the transaction. Further proof of an assignment can be seen when Alminnur was mandated to present to Brila for inspection, all documents establishing the allocation from PPPRA.

In Clause 4 (a)(ii) of the Memo of Understanding, Alminnur covenanted to furnish to Brila all relevant documents that would enable both parties accomplish the importation of 10,000 Metric Tonnes of PMS and to also

ensure that the subsidy payable in this regard, is promptly paid by signing all documents needed for prompt payments.
In Clause 4(b)(i), Brila covenanted to ensure that the importation of the 10,000 Metric Tonnes of PMS is done within the 2nd Quarter of 2011, and agreed to comply with the terms of the Contract of Assignment.

Therefore, to all intents and purposes, the Agreement between the parties had progressed from a mere intention to contract into an actual performance of the assignment.

In the Memorandum of Understanding dated the 20th of May 2011, at Clause III, its states that Alminnur has agreed by the execution of the MOU, to assign to Brila Energy Limited, its allocation for the importation of 10,000 MT of PMS as per the PPPRA's letter of 5th April 2011 with Reference No: A4/4/599/C.196/1/47.

In Clause 3(i) of this MOU, it was agreed that Brila Energy would pay the sum of Twenty-Six Million, Eight-Hundred and Twenty Thousand Naira (N26, 820, 000.00) as consideration on the importation done using the PPPRA's Allocation.

Further, in Clause III of the Preamble, Alminnur agreed by the execution of the Memorandum of Understanding to assign to Brila Energy, its PPPRA's allocation for the importation of 10,000 Metric Tonnes of PMS dated the 5th of April 2011.

By this, the parties have expressly agreed that an Assignment of Rights automatically came into effect upon the signing or execution of the Memorandum of Understanding and that they were bound to comply with the terms of this Contract of Assignment.

Now, a thorough look at this Memorandum of Understanding would show that, what only made it a Memorandum of Understanding was the Heading. All the Terms and Covenants were in fact far-reaching contractual terms in that they changed their status and took actual steps in order to comply with the terms of their agreement.

To underscore this point, assuming one Party to this Memorandum reneged on any of the terms, what recourse would the other Party have in Law?

Assuming the 2nd Defendant did not remit to Brila, what options would Brila have had in Law and would the Memorandum of Understanding have been enforceable in Law?

From the evidence led during trial, PW1, when questioned about the relationship between the 2nd Defendant and the 3rd Defendant on the one hand, and the 3rd Defendant and the PPPRA on the other hand, responded that the benefit of the Permit issued by PPPRA was to the benefit of the 2nd Defendant only and he believed that it was the 2nd Defendant who had the relationship with the 3rd Defendant and further testified that the prevailing Ruling Guidelines would govern every transaction.

Under Cross-Examination, in response to a question of whether the PPPRA permitted third-party transactions, he answered in the affirmative but this was subject to the Primary Recipient of the Allocation/Permit notifying them in writing of their constraints, which necessitates a third party engagement.

According to PW1, the usual practice in the industry is to enter into a Memorandum of Understanding (MOU) with a 3rd Party and he believed that this is what played out in the relationship between the 2nd and 3rd Defendants. From his experience, the MOU, which usually determines the way and manner the transaction is executed, usually has no specific and determinable set/stable terms, as it all depends on the Parties themselves.

PW11, on his own part, referred to the voluntary statements of the Managing Directors of Alminnur Resources and Brila Energy Limited, wherein they acknowledged executing a Memorandum of Understanding in 2011. More particularly, in the statement of Late Saminu, Alminnur's Managing Director, he had stated that the 2nd Quarter 2011 Allocation to his Company was assigned to the 3rd Defendant, Brila Energy Limited.

Now, where a Contract expressly prohibits the assignment of any rights accruing under the contract, any purported assignment of these rights by one party, would then be invalid as against the other contracting party. See the case of **RUTTLE PLANT LTD VS THE SECRETARY OF STATE FOR THE ENVIRONEMENT AND RURAL AFFAIRS (2007) 2 ALL ER (COMM) 264.** The assignment may however be effective as between the Assignor and Assignee such that it enables the Assignee to sue the Assignor for breach of contract, see the cases of **RE TURCAN (1888) 40 ChD 5; SPELLMAN VS**

SPELLMAN (1961) 1 WLR 921, 928 BUT CF AT 925 and BAWEJEM LTD VS MC FABRICATIONS LTD (1999) 1 ALL ER (COMM) AT 377.

It was important therefore, for the Defendants to have led evidence as to their assignment on the one hand, and as to the express permission granted them by the PPPRA to disregard or waive their express mandate not to assign rights. PW1 had indicated that the PPPRA must be pre-informed and they must have issued the permission to assign. This express permission is absent from the evidence and the Court must of necessity conclude that the assignment was of their own frolic.

By Exhibit X1, the Statement of the Late Saminu Rabiu, tendered without any objection, into evidence, he admitted that he assigned to the 1st and 3rd Defendants his allocation for 10,000MT of PMS in exchange for the sum of N26, 820, 000.00 and acknowledged signing an agreement. He had also stated that he was not aware of the exact amount of subsidy collected because the 1st Defendant carried out the transaction.
The 1st Defendant in his Exhibit Y1 Statement, only conceded to a collaboration agreement for which profit was to be shared between them, and he did not buy the allocation.

In regard to the above, the extent of their true relationship would be seen anon.

Now, it is clear that for the Computation of Petroleum Subsidy, there are several criteria set by the Federal Government to be met by the Marketer, such as the Financial Aspects, i.e., the Documentary Letters of Credit and Form M, everything to do with the Product in terms of its Quality and Quantity, which is continuously checked from Point of Departure of the Mother Ship to the Point of its Final Discharge at the Shore Tank, and finally the Ultimate Utilisation by the Nigerian Consumers.

There are yet some other criteria which each of the Participating Agencies that facilitate Payment, have laid down to ensure probity in the process, and these include the fact that: -

a) The Calculation of the Subsidy Award is computed from **Five (5) Days** around the **Bill of Lading Date** of the **Mother Vessel** (**PPPRA Permit**);
b) The **Shore Tank Quantity** Verified by the **Relevant Agencies.**

c) The **Country of Origin** as specified in the **DPR Permit** must be complied with;
d) The **Collation of Documents** by the Marketer must be in compliance with the **PPPRA's Checklist**; and
e) The **Presentation/Submission** by the **Marketer** of these Documents to **PPPRA and other Agencies** in the consideration of Subsidy Payment.

Learned Counsel to the 1st and 3rd Defendant is of the opinion that the fact that the Quantity and Quality have checked out, the fact that the Prosecution did not establish that Nigerian Refineries were in operation, and the fact that the Nigerian Populace have enjoyed the benefit of the Product, the Government has nothing else to worry about.

Learned Counsel to the 2nd Defendant, on his own part contended that all the documents tendered by the Prosecution were dumped, and their evidence during Cross Examination was discredited and the Prosecution's case was manifestly weak with incompleteinvestigations.

It is important to note that Learned Counsel to the 2nd Defendant did not set out the dumped documents, and he cannot make a general wide sweeping contention, because there is a presumption that he was fully alert during the Trial Process. Each of the Testifying Witnesses talked through their documents and in some instances, there were heavy arguments as documents relating to MT Kriti Akti were sought to be tendered.

While it is not in dispute that the Product was paid for, and 10,000MT was supplied and utilised, there however remains the fact that the existence of the Mother Vessel and the Actual Location of the Origin of the Product is called into question and it becomes imperative that these questions are resolved to determine whether there was Intent and an Actual Obtaining by deception or not.

The fact that the Nigerian Public utilized the Product has no bearing on whether the Product came from Apapa, Cotonou or even Alaska. The issue is, the Origin of the Product is central to the Payment for the Product, and it is clear that the calculation of the Subsidy Payment for Cotonou would be vastly different from the Subsidy Payment for Amsterdam, Alaska or anywhere else.

Therefore, distance in the computation of Subsidy is an important factor that was why the Origin of the Product was crucial. PPPRA's Approved Additional Ground Rules For PSF Implementation in Ground 3, wherein the Rules on Payment Computation of the Bill Of Lading were specifically set out per Region, backs up this finding. For example, if from Northwest Europe, it would be determined Thirty (30) Days from the Bill of Lading Date to Discharge Date, that is, Fifteen (15) Days for Sailing from Bill of Lading Date to Notice of Readiness (NOR) at Offshore, Ten (10) Days for Ship to Ship Operations (STS) and Five (5) Days waiting time to Discharge.

Another important consideration is that according to the PPPRA's Guidelines, the Calculation is made Five (5) Days around the Mother Vessel Bill of Lading Date. Therefore it is imperative that the identity of the Mother Vessel be positively known. If, as established by evidence, the Ship MT Kriti Akti was indeed dead, and there are no other reasonable Mother Ships in the horizon, from which the five days calculation can be made, then there is a very strong indication that there was a concerted intention to disguise or mask the Source of the PMS. Since the Ship is dead, the possibilities of the Source of the PMS are endless!!! It could very well have come from the Back Creeks.

The Court observes that the DPR Permit only mandated the PMS be supplied strictly to the terms of the Permit, which was for 10,000 Metric Tonnes at the estimated value of $8.5 Million US Dollars from the stated Country Of Origin, Amsterdam, Netherlands, and any deviation from these terms would incur a criminal liability of confiscation and a fine and/or imprisonment, and finally the permit's expiry date was the 16th of September 2011.

It can be seen that there was an Application for the Extension of the Deadline written by Alminnur's Letter of Renewal dated 9th September 2011 to the DPR. There is nothing on Record to show the Approval for this Renewal, although it is presumed that it must have been renewed.

It can also be seen from the Records, that a day prior to the expiration of the initial DPR's licence, which was the 15th of September 2011, Alminnur again applied to the PPPRA on the 19th of September 2011, for a renewal of the Permit to import the same quantity of PMS, and an extension was given till the 30th of September 2011. The PPPRA acceded to the request for renewal through a letter dated the 23rd of September 2011.

The Court observes that there was an apparent mistake on the Letter of Renewal because in the First Paragraph, it had referred to the Permit Letter of "5th April 2010" as opposed to "5th April 2011". It bore the same reference number and referred to the same quantity of PMS.

PW3, the MD of MGI Inspections Ltd, Lagos had testified that the following Reports contained in Exhibit D, said to have been issued by his organisation were false, as these Reports never emanated from them, and they are: -

a) The Ullage Report before discharging from MT Kriti to MT Althea dated 5th July 2011(page 44).
b) The Ullage Report after discharging from MT Kriti to MT Althea dated 9th July 2011 (page 45).
c) The Ullage Report after discharging from MT Althea to MT Brila Keji dated 26th August 2011(page 46).
d) The Ullage Report after discharging from MT Kriti Akti to MT Althea dated 5th July 2011(page 47).
e) The Ullage Report after discharging from MT Althea to MT Brila Keji dated 26th August 2011(page 48).

Further, it is in evidence that he also disputed the authenticity of his Company's Rubber Stamp on certain documents in Exhibit E. These documents concerned the second trench of the Oil Shipment, and they are as follows: -

a) The Ullage Report before discharge from MT Kriti to MT Althea dated 5th July 2011(page 39).
b) The Ullage Report before discharging from MT Althea to MT Brila Keji dated 27th September 2011(page 41).
c) The Ullage Report after discharging from MT Kriti to MT Althea dated 9th July 2011(page 42).
d) The Ullage Report after discharging from MT Althea to MT Brila Keji dated 28th September 2011(page 44).
e) The Vessel Ullage Report, STS after loading MT Brila Keji at Offshore Cotonou dated 28th September 2011(page 45).
f) Vessel Experience Factor for MT Althea dated the 26th of August 2011(page 54)
g) Empty Tank Certificate after discharging from MT Althea to MT Brila Keji at Offshore Cotonou dated 28th September 2011(page 56)
h) Empty Tank Certificate for Ex MT Althea at Offshore Cotonou dated 28th September 2011(page 57)

i) Bunker Survey before loading for MT Althea dated 27th September 2011(page 59)
j) Vessel Pumping Log MT Kriti Akti at Offshore Cotonou dated 9th July 2011(page 63)
k) Vessel Pumping Log MT Althea at Offshore Cotonou with Port destination as Lagos dated 28th September 2011(page 64)
l) Certificate of Quantity Transfer from MT Kriti Akti loading port Amsterdam to MT Althea loading port Offshore Cotonou, with discharge port as Lagos dated 9th of July 2011(page 70) and finally,
m) Certificate of Quantity Transfer from MT Althea loading port Offshore Cotonou to MT Brila Keji loading port Offshore Cotonou, with discharge port as Lagos dated 28th of September 2011(page 71)

It is clear from the above that the documents in Exhibits D and E do not tally with the facts thedocuments seek to convey. Some dates as stated in these documentsdo not align with the facts they seek to portray, and are inconsistent with the Defences' subsequent Claim for Subsidy Payments, showing an intention to obtain benefit of Subsidy Payments by false pretences.

These instances are: -

1. The fact that MT Kriti Akti, was presented in Exhibit E at Page 63, the Vessel Pumping Log, as discharging into MT Althea at the Port **OFFSHORECOTONOU**. This is strange indeed in view of the fact that Kriti Akti was said to have to been destined for a "**Port in WEST AFRICA**", but somehow found itself arriving in OffshoreCotonou. The Bill of Lading was not specific in its destination as to Cotonou and this is fundamental.
2. The DPR's Permit to Alminnur Resources is dated Wednesday the 15th of June 2011, while the Bill of Lading is dated Saturday 14th June 2011. There is an outright misrepresentation of facts in that the day of the week is wrong. There is a four-day difference between a Wednesday and a Saturday, which is likely crucial to affect the computation of Subsidy Claim around a five (5) days stipulation of the Bill of Lading. The Big Question would be, how come the DPR's Permit was issued a day after the date of the Bill of Lading? This is very illogical.
3. There were stark similarities between the documents used by Oando on MT Kriti Akti in 2009 and that used by Alminnur in 2011, to the extent

that the Alminnur's Oiltanking Certificate of Origin was the same as Oando in that the Exporter, the Corresponding Bank, the Stamp and Serial Number 30890 were identical. It is highly unlikely that two years later the same Serial Number will pop up again for reckoning by the same Oiltanking.

4. Further there is no where in the facts as presented before the Court that the Bank "Fortis Bank (Nederland) N.V. Amsterdam as stated on the Bill of Lading, had anything to do with the transaction of Alminnur. What Napa presented as its Bank was Credit Suisse, and there was also the fact that the Exporter was listed as Gunvor International BV. The Company Gunvor, was not said to be a subsidiary or a parent company of Napa, whom by the Defendants' showing, the PMS was purchased from.
5. To cap it all, what is mind-boggling is the fact that MT Kriti Akti, by Lloyds List Intelligence Report is dead, demolished and has been deregistered and is lying on the Gadani Beach in Pakistan as at the date it was said to have sailed. From Exhibit Z4, the Certified True Copy of the "List of Vessels Scrapped at Gadani for the Period from 1st April 2010 to 30th April 2010", at No.10, MT Akti was listed as scrapped. This means that the Ghost of MT Kriti Akti resurrected itself, loaded PMS from Amsterdam, sailed across the High Seas to Offshore Cotonou, then started logging, pumping, stamping and discharging "PMS" into MT Althea. True fairy tale!!!
6. The Establishments that could have validated the existence that the origin of the product was from Amsterdam were: -

a) Napa, who refused to come;
b) Oiltanking, who were not called;
c) SGS, who reportedly carried out Quality Inspection of the PMS loaded into MT Kriti Akti, and would have validated not only the quality of the product but the existence of the facts that MT Kriti Akti existed as at 14th June 2011, and that the PMS indeed emanated from Amsterdam, in accordance with the terms of the Permit.It is on Record that SGS Netherlands denied issuing out the Certificate of Quality and;
d) The Captain of MT Kriti Akti, who did two voyages in 2009 and 2011 from Amsterdam, was a relevant Witness for the Defence.

7. There is perhaps a presumption that the PMS was sitting in Cotonou, or somewhere between Cotonou and Nigeria, or somewhere in West Africa from 9th of July 2011 until its eventual discharge in October/November 2011, three to four months later. Very strange indeed. The dates on all

these documents do not tally and are totally inconsistent with the facts. The evidence of the Defence had they testified, would have helped in discharging the burden of a logical explanation, but they failed to justify the timing questions.

8. PW12 had testified that the Bank's Customer/Marketer will supply certain documents, such as the Proforma Invoice, issued to them by the Supplier. Now, the Proforma Invoice dated the 29th June 2011, states the name of the Ship as MT TBN. If this Proforma Invoice was used to process and open a line of Credit with the Bank, then is curious that this Proforma Invoice was dated sometime after the Ship set sail.
9. Exhibit EE2, the Original Invoice dated the 21st of July 2011, states the Country of Origin of the PMS to be Rotterdam, Netherlands and the Mother Vessel as MT Kriti Akti. Curiously, this Original Invoice had Enterprise Bank's Certified True Copy Stamp affixed on it. The Letter of Credit and the Form M Numbers are starkly different from the Numbers stated on the Bill of Lading, which ought to have been detected by Enterprise Bank.

   Question, how would Enterprise Bank, the Financing Bank be able to lay claim to their payment on a Letter of Credit and Form M Numbers that are alien to them? Because the Prefix of the Letter of Credit Number on the Bill of Lading indicated Intercontinental Bank, and not Spring Bank, from whom they evolved. Therefore it is reasonable to question whether the Defendants were the ones who supplied Napa with details identical to the Oando Numbers.
10. In his review, Learned Counsel to the 1st and 3rd Defendants stated that Exhibit CC1, Statement of UzoAghaegbuna, demonstrated that it was the Bank, not the Defendants, who appointed and paid for the Inspection Agents, and that the Prosecution attempted to suppress these facts, which only came to light upon the issuance of a Subpoena.However,from the evidence, it is clear that PW12 testified that his Bank, in this instant case, never appointed the Inspection and Confirming Agents. By this, it is clear that whoever appointed the Agents, was not monitored nor supervised and therefore was Master of the Game with full control over the Collation and Presentation of documents before the PPPRA. In essence, there were no prying eyes over their shoulders and no checks.

    PW 12, had explained out the contradictory claims between his statement that the Bank did not appoint an Inspection Agent and that of Mr. Uzo, the actual banker, who had claimed that the Bank did appoint

an Agent, promising also to bring the evidence of appointment. According to him, had the Bank paid the Inspection Agent to monitor the transaction, there would have been a Report from that Inspection Agent to the Bank.

10. From the Certified True Copy of the Statement rendered by Mr Uzor Aghaegbuna, the Banker who handled the transaction, which informs Exhibit CC1, he had stated that the Shipping Documents received by his Bank through the Correspondent Banks, were endorsed by his Bank, and these endorsed Copies are forwarded to the Marketer/his Customer, which documents, the Marketer now forwards to the PPPRA. It is curious that the documents purportedly received by the then Spring Bank by DHL from Credit Suisse, through their Corresponding Bank, never had any indentation of the Stamp of Spring Bank, which was in operation at the material time of the transaction in 2011. The Court observes that it is the Stamp of Enterprise Bank and not Spring Bank found on all the documents contained in Exhibit EE1 to EE6 tendered by PW12, Mr Uchenna Aduaka.
11. It is instructive to note, that both Exhibits D and E, which contained the same Foreign Shipping Documents presented to the PPPRA by the Defendants never had the endorsements of Enterprise Bank on them. This presupposes that no foreign document came in regard to THIS transaction. This presupposition is also corroborated and harnessed by the evidence of PW12, a fellow Banker who stated that due to the fact that there was going to be an element of Subsidy in the transaction, Alminnur Resources Ltd collated the documents. The 5th Prosecution Witness had also stated that was the practice.
12. From the bundle of documents in Exhibit E, Page 43, it is also noted that the Ullage Report titled "After Discharging to MT Althea", instead of stating that the discharge was from MT Kriti Akti to MT Althea, it stated that it was from MT Kriti Akti to MT Halifax, which again points to Oando's transaction, where MT Halifax and MT Merion Iris were referred to. This misstatement to all intents and purposes is a strong pointer to Forgery and to Obtain by False Pretence. It is also a confirmation of PW1's Statement that the PPPRA are only interested with the figures of money, but not the fact of Compliance of their own Rules. They did not notice the disparity between Pages 39 and 40 of Exhibit E handed to them.

It is in evidence that the Defendants actually received the total sum of One Billion, Fifty-One Million, Thirty Thousand, Four Hundred and Thirty-Four Naira, and Sixty-Three Kobo Only (N 1, 051, 034, 434. 63) which payments were made in two trenches and they benefitted from this transaction. They reaped the fruits of the grand deception perpetrated, and were assisted by the lack of diligence, vigilance, thoroughness and zeal for work by some of the Federal Government Agencies that had the oversight function and duty to monitor, supervise and ensure compliance with their own regulations.

The saddest part of this Subsidy Story is the fact that of all the Federal Government Agencies saddled with vetting of Shipping Documents; none of them, except the DPR, detected the discrepancies in the bundle of documents submitted to them for their checks.
The PPPRA ought to have at first sight detected the differences in the Letter of Credit and Form M Numbers, the date on the DPR Permit and the date on the Bill of Lading, as well as the Unauthorised Assignment evident from the Banking Documents.

The PPPRA's faulty verification of the sum to be paid in the Sovereign Debt Statement and their faulty Data and Record Keeping Management began the domino effect.
The Auditors, both in the Federal Ministry of Finance and those of the Debt Management Office, ought to have detected defects in the documentation and further ought to have, in the computation of the amount they arrived at in the Sovereign Debt Note, detected the anomalies of the Mother Vessel's Bill of Lading.

The Subsidy was obtained through the submission of documents, and aside of witnesses from Napa, Oiltanking and the Captain of Kriti Akti, all other participants in this transaction under question, have all come to disassociate themselves from the input and production of the facts contained in the documentation; right from the Certificate of Origin (purportedly issued by Oiltanking), through to the Bills of Lading, to the Certificate of Quality (by SGS Netherlands) and Certificates of Quantities (by MGI Inspections Limited) through the Ullage Reports to the Banking System, and finally to the Central Bank of Nigeria.

The fact is apparent that the Defendants bought their PMS from Napa. Whether Napa sold the product from Amsterdam or Timbuktu, or whether the PMS was already sitting pretty under the Defendants' dominion, custodyand control in Cotonou, the fact is, "What is with them will stay with them." The answer is very like "what goes on in Vegas stays in Vegas".
There are so many possibilities to this fraudulent exercise and the Court in engaging the different options and possibilities would be conjecturing widely and going on a voyage of discovery, which journey the Court declines the ticket.

TheSixth and Final Issue for consideration is, "***Whether the offences of Conspiracy as charged under Counts 1, 3, 6, 9, 12 and 15 have been sufficiently proved to the satisfaction of the Court."***

The Prosecution, in his Written Address submitted that evidence abounds both directly and inferentially showing that the Defendants were in agreement to perform a Legal Act, by illegal means. He referred to the common thread running through all the documents presented to the PPPRA, which was the consistent denial of the issuance of the documents by the Companies who allegedly issued them. Further, he referred to the Bank Transactions, Letters of Credit, Bill of Lading, Form M and other Shipping Documents, as well as other documents purportedly issued by the Inspectorate Companies, MGI Inspection and SGS Inspectorate to illustrate his contention of Conspiracy. References were made to the documentary exhibits tendered during trial, as well as relying on the evidence of PW1, PW3, PW5, PW6, PW8 and PW11. He contends that there is a reasonable inference to be made, that the Defendants conspired to obtain and forge the documents contained in the above-referred Counts.

According to Counsel, all the Defendants used the above mechanisms to obtain by false pretence, the sum of over One Billion Naira, as Fuel Subsidy from the Federal Government of Nigeria. Further, he discussed the Assignment of the PPPRA Permit, which Permit clearly forbade its Assignment to a Third Party, and referred to the Defendants' Memorandum of Understanding.

He submitted that the Offence of Conspiracy consist of the agreement between two or more persons to achieve an unlawful act, or to do a lawful act by unlawful means, and urged the Court to infer complacency from the facts of doing things toward a common end. He relied on the following cases of **PAUL**

ONOCHIE VS THE REPUBLIC (1966) NMLR 307, (1966) 4 NSCC 73 @ 74, IKWUNNE VS THE STATE (2000) 5 NWLR PT 658 @561 PARAS A, OKOSUN VS A.G. BENDEL STATE (1985) 3 NWLR PT 12, 283 @ 299 PARA H in support of the above proposition.

Finally, he relied on Section 8 (1) of the Evidence Act 2011 to submit, that evidence exist in the circumstances, to infer the offence of Conspiracy. What was said, done or written by any of the Conspirators are relevant facts against each of them, and he urged the Court to hold that the Prosecution has proved all the ingredients of Criminal Conspiracy and convict them accordingly.

Learned Counsel representing the 2nd Defendant set out the essential elements of the offence of Conspiracy and referred to the case of **YAKUBU VS THE STATE (2014) 8 NWLR PART 1408, PAGE 111 AT 123.** Hecontended that through the host of witnesses and tendered documents, none were able to establish the ingredients of commission of conspiracy and the Prosecution failed to show a meeting of the minds for the Charge of Conspiracy citing the case of **GEORGE VS FRN (2014) 5 NWLR PT 13 @ 91.** In his Reply to the Prosecution's Address on the Charge of Conspiracy, he argued that the Prosecution did not prove the essential elements of Conspiracy and have not discharged the burden, relying on the case of the **STATE VS GWANGWAN (2015) 13 NWLR PART 1477 PAGE 600 AT 622.** He failed to establish elements of an agreement. It is only when the evidence is before the Court that the Court would make inference on it and such inference could only be made when the Prosecution ties the document to a particular aspect of the case. According to him, the documents were dumped at the Court and as such no evidential value can be placed on them. He referred to the case of **UDOM VS UMANA NO. 1 (2016) 12 NWLR PAGE 179 AT 244.**

As regards the Offence of Conspiracy contrary to Section 97 of the Penal Code, it is contended by Learned Counsel to 1st and 3rd Defendants, that the Prosecution failed to directly or by inference of Law establish a consensus ad idem between the Defendants. He set out the ingredients of Conspiracy citing the cases of **USMAN KAZA VS THE STATE (2008) 7 NWLR PT 1085 PG 125 S.C. AND POSU VS THE STATE (2011) 2 SCNJ PG 37 AT PG 48.**
According to him, the Prosecution has failed to put anything of quality or irresistible cogent evidence before the Court to make the Court hold that the defendants conspired to do an illegal act. It was further submitted that the Prosecution failed to adduce evidence or prove any essential ingredients of

conspiracy against the 1st and 3rd defendants and further proving criminal agreement amongst the Defendants to commit the criminal acts they are charged with. He aligned himself with the arguments of Counsel to the 2nd Defendant in his oral adumbration.

Now, in this case, there are Two Separate Legislations upon which the Defendants are charged in regard to the Offence of Conspiracy, and they are: (1) **SECTION 8 (A) OF THE ADVANCED FEE FRAUD AND OTHER FRAUD RELATED OFFENCES ACT**, which is punishable under **SECTION 1 (3) OF THE SAME ACT**; and (2) **SECTION 97 OF THE PENAL CODE ACT**.

Section 8 (a) of the Advanced Fee Fraud and Other Related Offences Act provides as follows: -

> A person who –
> a) Conspires with, aids, abets, or counsels any other person to commit an offence; or
> b) …
> c) …

Under this Act, commits the offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act.
See the cases of **AMADI v. FEDERAL REPUBLIC OF NIGERIA (2008) LPELR-441 (SC) andNWANKWO V. F.R.N. (2003) 4 NWLR (Pt. 809), (2002) LPELR-7089 (CA)**

Section 96 of the Penal Code Act, on its own part, defines Criminal Conspiracy thus:

96. (1) When two or more persons agree to do or cause to be done-
a) An illegal act; or
b) An act, which is not illegal-by-illegal means, such an agreement is called a criminal conspiracy.

(2) Notwithstanding the provisions of subsection (1) of this section, agreement except an agreement to commit an offence shall amount to a criminal conspiracy, unless some act besides the agreement is done by one or more parties to that agreement in pursuance thereof.

It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

'**Section 97 of the Penal Code Act** provides thus:
(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death or with imprisonment shall, where no express provision is made in this Penal Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted that offence.
(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment for a term not exceeding six months or with fine or with both.

In regard to the offence of Conspiracy, the following are attendant ingredients: -

a. There must be two or more persons;
b. Who agree or cause to do or to be done
c. An illegal act or
d. An act which is not illegal by illegal means
e. No overt act in pursuance of the conspiracy is necessary. Where the agreement is other than an agreement to commit an offence, that some act beside the agreement was done by one or more of the parties in furtherance of the agreement.
f. The Prosecution must establish that each of the defendants individually participated in the conspiracy.

In **OYEDIRAN V. REPUBLIC (1967) NMLR P. 122 COKER JSC** explained Conspiracy as follows:

1. Conspiracy may be formed in one of the following ways:

   (a) The Conspirators may all directly communicate with each other at a particular place and time and enter into an agreement with a common design.

   (b) There may be one person who is the hub around whom the others revolve, like the centre of a circle and the circumference.

   (c) A person may communicate with A and A with B, who in turn communicates with another and so on. This is what is called the Chain Conspiracy.

In order to establish Conspiracy therefore, it is not necessary that the Conspirators should know each other. They do not have to know each other so long as they know of the existence and the intention or purpose of the Conspiracy.
See further the cases of **STATE V. SALAWU VOL. 48 NSCQLR P.290, ERIN V. STATE 1994 5 NWLR PT.346 P.522, OLADEJO V. STATE 1994 6 NWLR PT. 348 P.101**

In the case of **OBIAKOR V. STATE (2002) LPELR-2168 (SC)KALGO JSC** discussed the nature of the offence of conspiracy as set out above and added that the actual agreement alone constitutes the offence as it is not necessary to prove that the act has in fact been committed. Because of the nature of the Offence of Conspiracy, it is rarely or seldom proved by direct evidence but by circumstantial evidence and inference from certain proved acts... and for circumstantial evidence to ground conviction, it must be consistent, cogent and must irresistibly lead to one and only one conclusion i.e. the guilt of the Defendant. See further the cases of **POPOOLA V. COMMISSIONER OF POLICE (1964) NMLR 1; R. V. ROBERTS (1913) 9 CAR 189 RAPHAEL ARICHE V. STATE (1993) 6 NWLP (PT.302) 752.**
Therefore the quality of the evidence must be such as to leave no reasonable grounds for speculation that some other person other than the accused committed the offence. See: **AKINMOJU V. THE STATE (2000) 6 NWLR (PT.662) 608 @ 626 D - E; NNAMDI OSUAGWU V. THE STATE (2013) LPELR-19823 (SC)**

In **OKAFOR V. THE STATE (2016) LPELR-26064 (SC) KEKERE-EKUN, JSC,** held that the essential ingredient of the offence lies in the bare agreement and association to do an unlawful thing, which is contrary to or forbidden by law, whether that thing be criminal or not and whether or not the accused persons had knowledge of its unlawfulness. Evidence of Conspiracy is usually a matter of inference from surrounding facts and circumstances. The Trial Court may infer conspiracy from the fact of doing things towards a common purpose. See further the cases of **R. V. CLAYTON (1943) 33 CR. APP. R 113; CLARK V. STATE (1986) 4 NWLR (PT. 35) 381**, **LPELR-21159 (CA) PER KOLAWALE (JCA);GBADAMOSI VS THE STATE (1991) 6 NWLR (Pt.196) 182; AJE VS THE STATE (2006) 8 NWLR (Pt.982) 345 @ 363 A-C**.
See also, the cases of **PATRICK NJOVENS VS THE STATE (1973) 5 SC 17; DABO & ANOR VS THE STATE (1977) 5 SC 22; KAZA VS THE STATE (2008) 1 - 2 SC 151 @ 164 - 165; ONYENYE VS THE STATE (2012) ALL**

FWLR (PT.643) 1810.

NGWUTA, J.S.C. in the case of **JOHN V. STATE (2016) LPELR-40103 (SC)** added to the above principles by stating that people who agree among themselves to embark on an illegal venture or to achieve a legitimate end by an illegal means do not invite a witness or witnesses to attest to their agreement. Usually the facts surrounding the execution of the intention expressed in the agreement will determine whether those charged with the commission of the crime acted individually or in pursuance of a prior agreement to effect an unlawful purpose or to effect a lawful purpose by unlawful means, and so bare agreement to commit an offence, suffices. While the actual commission of the offence is not a necessary ingredient of the offence of conspiracy, the actual commission of the offence may show common intention formed before it. See further the cases of **PATRICK IKEMSON & ORS VS THE STATE (1989) 3 NWLR (PT.110) 455 AT 477; CLARK VS THE STATE (1986) 4 NWLR (PT.35) 381; ARINZE V. THE STATE (1990) 6 NWLR (PT.155) 158 andYAKUBU v. THE STATE (2014) LPELR-22401 (SC)**
See also **KALGO, JSC IN OBIAKOR VS THE STATE (2002) 6 SC (PART II) 33 @ 39 - 40 AND ACHIKE, JSC IN ODUNEYE VS THE STATE (2001) 1 SC (PART I) 1 @ 6 – 7**

Furthermore in **YARO VS STATE (1972) LPELR-3515 (SC)** it was held that once the Prosecution succeeds in proving the existence of Conspiracy, evidence admissible against one Conspirator is also admissible against the other. See also the cases of **ERIN VS THE STATE (1994) 6 SCNJ 104, 106 AND MUMINU VSTHE STATE (1975) 6 S.C. 79,PER OGUNTADEJ.S.C.;ENAHORO VS QUEEN (1965) LPELR-25238 (SC)PER IDIGBE, J.S.C.**

As regards Conspiracy under Count 1 for obtaining property by false pretence, it is worth reminding that the offence of conspiracy is rarely proved by direct evidence but by circumstantial evidence and inference from certain proved acts.

The summary of evidence led by the Prosecution in support of this Count, shows that there was no Notification in writing of any constraints experienced by Alminnur that would have necessitated a Third Party involvement, which

evidences the fact that their Assignment in the Memorandum of Understanding was an unauthorised alliance.

It was expected that the Defendants would testify in their regard as relating to the Memorandum of Understanding, the Applications for the Form M and Letters of Credit, and why both their names where contained in certain documents. However, the Defendants chose not to testify in rebuttal of the Prosecution's evidence. Their silence, therefore gives the Court the right to ascribe probative value to these documents. If the Defendants elected not to speak to these documents, the Documents will certainly speak for themselves, and on the Defendants behalf. See Section 83 of the Evidence Act 2011.

The Court further observes that the Memorandum of Understanding has the words of an Assignment and from it one can see that the monetary value of consideration in the sum of Twenty Six Million, Eight Hundred and Twenty Thousand Naira (N26, 820, 000.00) had passed from Brila Energy to Alminnur Resources Limited. Brila Energy on its own part covenanted to Import the 10, 000MT of PMS within the Second Quarter of 2011.

In this Memorandum of Understanding,which is dated the 20th of May 2011, all the elements of a valid contract are present, and from these terms a Loan or Financing Agreement is not evident anywhere in it. It was plainly stated to be an "Assignment" as, "Alminnur agreed by the execution of the MOU to 'assign' to Brila its Allocation for the Importation of 10,000MT of PMS as per the PPPRA Letter, of the 5th of April 2011".

This Clause was the only inclination of an Assignment, properly so called, as it is clear that other terms in this Document required the continued and active participation of Alminnur in this Importation. Alminnur needed to participate with Brila's Bank in the Opening of Lines of Credit for Napa and also in Form M. One can see that the Form M has as the Addressee 'Alminnur C/O Brila Energy' and this was the same on the Application for the Letters of Credit, and the Proforma Invoice. This is another indicator of an alliance, and complicity is in the fact that Form M had the Applicant's Name and Signature as "Rowaye Jibril", the 1st Defendant and the Applicant's Name is listed as "Alminnur", the 2nd Defendant.

Alminnur Resources cannot detach liability as its name is in all documents from Shipping Documents, the Proforma Invoice, Original Invoice and

Documents relating to Calculation, Collections and Payment of the Subsidy Payment under review. The Photographs of Late Alhaji Saminu and that of Jubril Rowaye are affixed on the documents introducing them as Signatories to the Account, as well as Joint Names in the Banking Documents, Account Opening Forms and the CBN Documents.

From the Memorandum of Understanding, Alminnur covenanted to **"furnish Brila with all relevant documentation that will enable both parties accomplish the importation of the 10,000MT of PMS and it shall also ensure that the Subsidy Payable in the 10, 000MT by PPPRA is promptly paid by signing all documents needed for prompt payment."**

Under the General Clauses at 3.VII, they agreed that Alminnur will present to Brila all documents establishing the Allocation from PPPRA, including ones for the Account Opening.

Clause 3. III, provided where a Board Resolution was required to be passed by the Board of Alminnur, making Brila Energy Limited a Co-Signatory to their Account and which is expected to remain in force until the facility is fully liquidated. This therefore ties the Parties together till the end and shows an apparent and concerted joint participation and effort to achieve a common goal, which is the Payment of Subsidy.

The continuation of participation of Alminnur into the process of Subsidy shows that there was Alliance and not an Assignment. It was not an outright assignment, even though it was stated thus, and Alminnur cannot at this point back out from knowledge and active participation of all actions taken in pursuit of the Subsidy Claims.

The Court notes that the Statements of both Late Saminu and the 1st Defendant, Jubril Rowaye, conflicts materially with each other, showing a different understanding of their relationship. It was imperative therefore for the Defence to have led evidence before the Court clarifying their varying positions, since one party had stated that it assigned its rights, whilst the other stated that it was a Financing Agreement with the rights intact. Moreover, had there been an Assignment, there would have been a complete disconnect between the Defendants and especially between their duties, responsibilities and liabilities.

Had there been an Authorized Assignment, a Letter from the PPPRA acceding to the Assignment would have been presented by any of the Defendants before the Court and the name of Brila Energy would have replaced Alminnur's name on the Permit,andon all the Shipping and Banking Documents.

Next was the fact that PW2, in his testimony, dissociated Inspectorate Marine Services Limited (IMS) from the issuance of the Certificate of Quality and Quantity on board MT Althea, Offshore Cotonou dated the 9th of July 2011. The Certificate of Quantity Transfer from MT Kriti Akti to MT Althea, purportedly issued by IMS was also stated not to have emanated from them, and the signature and stamp were forged; in the Letter IMS sent to the EFCC, admitted in evidence as Exhibit H and I.

This is questioned, in view of the fact that MT Althea was projected to have received PMS from MT Kriti Akti at the Port Offshore Cotonou. Then, Althea was stated to have discharged its own Cargo to MT BrilaKeji at the same Offshore Cotonou!!
By Exhibit E at Page 37, the Notice of Readiness of MT Althea dated the 8th day of July 2011, Althea was in Offshore Cotonou and not at the High Seas, and further from the same document, MT Kriti Akti was also in Offshore Cotonou, as it is said to have discharged its cargo to Althea at Offshore Cotonou. This does not make any sense whatsoever, why there should be two sets of unloading and loading at the same port, a month apart!!

The Ullage Report after discharge for MT Althea dated the 26th of August 2011, in Exhibit D at Page 46, the"Ship-to-Ship Transfer" of MT Brila Keji, said to have been issued by MGI Inspections, shows that the PMS was discharged between the Mother Vessel and the First Daughter Vessel a month after, which is rather unusual for Vessels that were located at the same Port of Offshore Cotonou.

The Defence, had they testified, would have aided the Court in resolving the necessity for another Daughter Ship and the question of timing regarding Ship-to-Ship Transfer.

A careful perusal of the DPR's Jetty Vessel Report dated the 18th of

September 2011 shows that it states the Mother Vessel as MT Althea, and there was a Query raised that there were No CERTIFICATE OF QUALITY, MOTHER VESSEL BILL OF LADING as well as the CERTIFICATE OF ORIGIN. In view of these observations, Alminnur was ordered not to discharge until the issues were resolved and the outstanding documents submitted.

There are so many explanations, but it is reasonable to surmise that it was as a result of this DPR's Query that prompted the fraud and deception, as the dates on the documents eventually presented preceded the 18th of September 2011. It was only logical, that had the documents been in existence at the time claimed, it ought to have been presented at the get-go!

The same Report, with another ink pen writing subsequently cleared the Vessel for Discharge, as it stated "all outstanding documents submitted". The date of this eventual clearance is however, not stated in the Report.

From the Original Invoice, from Napa (even though Napa was absent from Court to confirm or deny the Invoice) it can be seen that the Mother Vessel is listed therein as MT Kriti Akti, which is very strange in view of the fact that Kriti Akti was dead at this time. Whether it was a case of complicity or conspiracy on the part of Napa, is questionable, but the Court will not go into this question, because Napa is not charged before it.

As regards Conspiracy under Count 3, to forge the Bill of Lading dated the 14th of June 2011 on board MT Kriti Akti, the evidence in support of this, is as elaborately set out under the offence of Forgery of the Bill of Lading, and there is no need to restate it here. Suffice to say that the Court will utilise that evidence in the consideration of this. Since there was an understanding amongst the Defendants, they bear equal liability for this offence. One could not have acted without the direct intervention and contribution of the others to project the presented Bill of Lading to the Authorities as authentic.

As regards Conspiracy under Count 6, to forge the Certificate of Quantity Transfer from MT Kriti Akti to MT Althea issued by MGI Inspections, same applies here and from the facts, reliance will be placed on the evidence led for the main offence in determining this issue. From the facts, MGI Inspections denied issuing this Certificate of Quantity Transfer and so the presented Certificate in this instance had to be forged.

Going by one of the Principles of Forgery, the fact of Possession and Presentation of a Forged Document, does not the exempt the Presenter from liability and there is no need for any direct evidence of complicity between the Parties, and so therefore this Offence is established against the Defendants.

As regards Conspiracy under Count 9, to forge a Certificate of Origin on board MT Kriti Akti to MT Althea issued by MGI Inspections, the evidence led in support of the actual offence has been copiously set out in the consideration of the Main Offence, and little purpose is served by restating them again. The same analysis as for Count 6 applies and the Offence is established against the Defendants.

As regards Conspiracy under Count 12, to forge a Certificate of Quality Transfer on board MT Althea to MT Brila Keji issued by MGI Inspections, the Prosecution had applied for an Amendment of the Charge to exclude from the Court's Records and reckoning Counts 12, 13 and 14, on Certificate of Quality Transfer and therefore, there was no evidence on Record, whether viva voce or by documentary evidence on this Certificate of Quality Transfer issued by MGI Inspections Limited, and therefore without further ado, the Prosecution failed to establish this Count of Offence, and the Defendants are discharged and acquitted on this Count.

As regards Conspiracy under Count 15, to forge a Certificate of Quality on board MT Kriti Akti issued by SGS Netherlands BV, yet again a comprehensive analysis has been done in respect of the Main Offence, and the evidence is still the same, and would be called into reckoning in this instance. It was expected that the Defence lead some form of evidence in rebuttable of the Prosecution's case in regard to this Count. But they remained silent by resting their case.

For the simple reason that SGS Group denied issuing out this Certificate, and for the simple reason that it was presented by the Defendants for processing, and further for the fact that they obtained financial benefit as a result of this deceit, the Court is satisfied that there was a meeting of the minds to misrepresent facts, which facts were vital for the approval of their subsidy requests from the Federal Government.

There is no doubt that the benefit of this escapade was enjoyed by all the Defendants on Record, and the Court does not need Direct First Hand Account of this conspiracy.

It is clear as held in the Locus Classicus Case of **DIRECTOR OF PUBLIC PROSECUTION VS KENT & SUSSEX CONTRACTORS LIMITED (1944) KB 146,** that it is true that a Corporation can only have knowledge and form an intention through its Human Agents, but circumstances may be such that the knowledge and intention of the Agent must be imputed to the Body Corporate. If the responsible Agent of a Company, acting within the scope of his authority, puts forward on its behalf a document which he knows to be false and by which he intends to deceive, his knowledge and intention must be imputed to the Company. Reference is also made to the cases of **R VS I.C.R. HAULAGE LIMITED (1944) KB 551; R VS ZIK PRESS (1947) 12 W.A.C.A. AND MANDILAS AND KARABERLES VS C.O.P. (1958) WNLR.** There is no exoneration so long as the Manager or Controller of the affairs of this Business Concern used the Company as a vehicle for Criminality through Criminal Conduct or Activity.

Therefore, the 2nd and 3rd Defendants will bear Criminal Responsibility where found liable on each Count of the Charge.

In Conclusion and in Summary, the Court determines that: -

A. In regard to the **Offences of Forgery** as contained in **Counts 4, 7, 10, 13 and 16**, the Court finds as follows: -

Count 4----------1st Defendant----------Guilty as charged
2nd Defendant----------Guilty as charged
3rd Defendant----------Guilty as charged

Count 7----------1st Defendant----------Guilty as charged
2nd Defendant----------Guilty as charged
3rd Defendant----------Guilty as charged

Count 10----------1st Defendant----------Guilty as charged
2nd Defendant----------Guilty as charged
3rd Defendant----------Guilty as charged

Count 13----------1st Defendant----------Not Guilty as charged
2nd Defendant----------Not Guilty as charged
3rd Defendant----------Not Guilty as charged

Count 16----------1st Defendant----------Guilty as charged
2nd Defendant----------Guilty as charged
3rd Defendant----------Guilty as charged

B. In regard to the **Offences of Using As Genuine** as contained in **Counts 5, 8, 11, 14 and 17**, the Court finds as follows: -

Count 5----------1st Defendant----------Guilty as charged
2nd Defendant----------Guilty as charged
3rd Defendant----------Guilty as charged

Count 8----------1st Defendant----------Guilty as charged
2nd Defendant----------Guilty as charged
3rd Defendant----------Guilty as charged

Count 11----------1st Defendant----------Guilty as charged
2nd Defendant----------Guilty as charged
3rd Defendant----------Guilty as charged

Count 14----------1st Defendant----------Not Guilty as charged
2nd Defendant----------Not Guilty as charged
3rd Defendant----------Not Guilty as charged

Count 17----------1st Defendant----------Guilty as charged
2nd Defendant----------Guilty as charged
3rd Defendant----------Guilty as charged

C. In regard to the **Offence of Obtaining by False Pretence** as contained in **Count 2,** the Court finds as follows: -

Count 2----------1st Defendant----------Guilty as charged
2nd Defendant----------Guilty as charged
3rd Defendant----------Guilty as charged

D. In regard to the **Offence of Conspiracy under Section 8(a) of the Advanced Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under Section 1 (3) of the same Act** as contained in **Count 1,** the Court finds as follows: -

Count 1----------1st Defendant----------Guilty as charged
2nd Defendant----------Guilty as charged
3rd Defendant----------Guilty as charged

E. In regard to the **Offences of Conspiracy punishable under Section 97 of the Penal Code Act CAP 532 Laws of the Federation (Abuja) 1990** as contained in **Counts 3, 6, 9, 12 and 15,** the Court finds as follows: -

Count 3----------1st Defendant----------Guilty as charged
2nd Defendant----------Guilty as charged
3rd Defendant----------Guilty as charged

Count 6----------1st Defendant----------Guilty as charged
2nd Defendant----------Guilty as charged
3rd Defendant----------Guilty as charged

Count 9----------1st Defendant----------Guilty as charged
2nd Defendant----------Guilty as charged
3rd Defendant----------Guilty as charged

Count 12----------1st Defendant----------Not Guilty as charged
2nd Defendant----------Not Guilty as charged
3rd Defendant----------Not Guilty as charged

Count 15----------1st Defendant----------Guilty as charged
2nd Defendant----------Guilty as charged
3rd Defendant----------Guilty as charged

F. In respect of Counts 12, 13 and 14, the three Defendants having been found Not Guilty as charged, are accordingly discharged and acquitted on these Counts.

ALLOCUTUS

Learned Counsel for the 1st and 3rd Defendants
The analysis of this Judgment has revealed a pervasive culture within the Oil and Gas Industry and further the Judgment has pointed fingers at some Agencies of Government. The question is, would that culture end merely end by taking one or two persons and visiting them with some immense punishment?
As Your Lordship has already considered what Justice is in this case, I urge Your Lordship to be very lenient in the Sentencing of these Defendants, who appear to be representing the entire Oil and Gas Industry.

I urge my Lord to tamper Justice with Mercy.

Learned Counsel for the 2nd Defendant
I aligned myself with submissions of Learned Counsel for the 1st and 3rd Defendants and urge Your Lordship to tamper Justice with Mercy.

PREVIOUS CONVICTIONS
The 1st Defendant is already a Convict, serving his Jail Term at the Kirikiri Maximum Security Prison in Lagos State.

SENTENCING

1. For the **Offences of Conspiracy**punishable under Section 97 of the **Penal Code Act,** the Court finds thus: -

Count 3----- 1st Defendant-------7years Imprisonment or Fine of N5Million
2nd Defendant------7years Imprisonment or Fine of N5Million
3rd Defendant-------7years Imprisonment or Fine of N5Million

Count 6----- 1st Defendant-------7years Imprisonment or Fine of N5Million
2nd Defendant------7years Imprisonment or Fine of N5Million
3rd Defendant-------7years Imprisonment or Fine of N5Million

Count 9----- 1st Defendant-------7years Imprisonment or Fine of N5Million
2nd Defendant------7years Imprisonment or Fine of N5Million
3rd Defendant-------7years Imprisonment or Fine of N5Million

Count 12---1st Defendant-------7years Imprisonment or Fine of N5Million
2nd Defendant------7years Imprisonment or Fine of N5Million
3rd Defendant-------7years Imprisonment or Fine of N5Million

Count 15--- 1st Defendant-------7years Imprisonment or Fine of N5Million
2nd Defendant------7years Imprisonment or Fine of N5Million
3rd Defendant-------7years Imprisonment or Fine of N5Million

2. For the **Offence of Conspiracy** under Count 1 punishable under Section 1(3) of the **Advanced Fee Fraud and Fraud Related Act 2006**, the Court finds thus: -

1st Defendant----------10years Imprisonment without Option of Fine
2nd Defendant---------Due to the death of Alhaji Saminu Rabiu the Managing Director of the 2nd Defendant, no term of imprisonment shall be made
3rd Defendant----------10years Imprisonment without Option of Fine

3. For the **Offences of Forgery** under Counts 4, 7, 10, and 16 punishable under Section 364 of the **Penal Code Act,** the Court finds thus: -

Count 4----- 1st Defendant-------7years Imprisonment without Option of Fine
2nd Defendant------7years Imprisonment or Fine of N5Million
3rd Defendant-------7years Imprisonment or Fine of N5Million

Count 7----- 1st Defendant-------7years Imprisonment without Option of Fine
2nd Defendant------7years Imprisonment or Fine of N5Million
3rd Defendant-------7years Imprisonment or Fine of N5Million

Count 10----- 1st Defendant------7years Imprisonment without Option of Fine
2nd Defendant------7years Imprisonment or Fine of N5Million
3rd Defendant-------7years Imprisonment or Fine of N5Million

Count 16---1st Defendant-------7years Imprisonment without Option of Fine
2nd Defendant------7years Imprisonment or Fine of N5Million
3rd Defendant-------7years Imprisonment or Fine of N5Million

4. For the **Offences of Using As Genuine** under Counts 5, 8, 11, and 17 punishable under Section 364 of the **Penal Code Act**

Count 5----- 1st Defendant-------7years Imprisonment without Option of Fine
2nd Defendant------7years Imprisonment or Fine of N5Million
3rd Defendant-------7years Imprisonment or Fine of N5Million

Count 8----- 1st Defendant-------7years Imprisonment without Option of Fine
2nd Defendant------7years Imprisonment or Fine of N5Million
3rd Defendant-------7years Imprisonment or Fine of N5Million

Count 11----- 1st Defendant------7years Imprisonment without Option of Fine
2nd Defendant-------7years Imprisonment or Fine of N5Million
3rd Defendant-------7years Imprisonment or Fine of N5Million

Count 17---1st Defendant-------7years Imprisonment without Option of Fine
2nd Defendant------7years Imprisonment or Fine of N5Million
3rd Defendant-------7years Imprisonment or Fine of N5Million

5. For the **Offence of Obtaining by False Pretence** under Count 2 punishable under Section 1(3) of the **Advanced Fee Fraud and Fraud Related Act 2006**, the Court finds thus: -

1st Defendant---------10years Imprisonment without Option of Fine
2nd Defendant---------Due to the death of Alhaji Saminu Rabiu the Managing Director of the 2nd Defendant, no term of imprisonment shall be made
3rd Defendant---------10years Imprisonment without Option of Fine

The Defendants are, jointly and severally, to pay back to the Victim, that is, the Federal Government the sum equivalent to the loss sustained.

These Custodial Sentences are Ordered to run CONCURRENTLY, Penalty Sentences are to run CONSECUTIVELY.

HON. JUSTICE A.A.I. BANJOKO
JUDGE