

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE PETER O. AFFEN

THURSDAY, OCTOBER 15, 2015

CHARGE NO: FCT/HC/CR/130/2013

BETWEEN

THE FEDERAL REPUBLIC OF NIGERIA PROSECUTION

AND

MOMOH YUNUS JIMOH ACCUSED PERSON

J U D G M E N T

THE FIVE (5) COUNTS of the charge preferred against the accused person, *Momoh Yunus Jimoh*, are as follows:

- 1. That you, Momoh Yunus Jimoh, sometime in March, 2011 at Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory, with intent to defraud, obtained the sum of ₦6,200,000.00 (Six Million, Two Hundred Thousand Naira) from one Deacon Daniel Okhionkpmwonyi by false pretence, that the said amount was for the sale of a landed property titled "Plot No. CP 1492, five hectares and Plot No. MF719D one hectare, Lugbe 1 Extension Layout, along Airport Road, Abuja", which you knew to be false, and thereby committed an offence contrary to s. 1 (1) (a) of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14, 2006 and punishable under s. 1 (3) of the same Act.*

2. *That [you], Momoh Yunus Jimoh, sometime in March, 2011 at Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory, fraudulently made a forged document titled "Plot No. CP 1492, Lugbe 1 Extension Layout, along Airport Road, Abuja", and thereby committed an offence contrary to s. 363 and punishable under s. 364 of the Penal Code, Cap 532, Laws of the Federation of Nigeria (Abuja) 1990.*
3. *That [you], Momoh Yunus Jimoh sometime in March, 2011 at Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory, fraudulently used as genuine a forged document titled "Plot No. CP 1492, Lugbe 1 Extension Layout, along Airport Road, Abuja", and thereby committed an offence contrary to s. 366 and punishable under s. 364 of the Penal Code, Cap 532, Laws of the Federation of Nigeria (Abuja) 1990.*
4. *That [you], Momoh Yunus Jimoh sometime in March 2011 at Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory, fraudulently made a forged document titled "Plot No. MF719D, Lugbe 1 Extension Layout, along Airport Road, Abuja", and thereby committed an offence contrary to s. 363 and punishable under s. 364 of the Penal Code, Cap. 532, Laws of the Federation of Nigeria (Abuja) 1990.*
5. *That [you], Momoh Yunus Jimoh sometime in March 2011 at Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory, fraudulently used as genuine a forged document titled "Plot No. MF719D, Lugbe 1 Extension Layout, along Airport Road, Abuja", and thereby committed an offence contrary to s. 366 and punishable under s. 364 of*

the Penal Code, Cap 532, Laws of the Federation of Nigeria (Abuja) 1990.

The Prosecution called four (4) witnesses and tendered documentary exhibits in proof of the charge, whilst the accused person testified in his own defence and called one other witness.

The PW1, *Daniel Okhinkpamwonyi* stated that he is a former Administrator of Word of Faith Group of Schools, Durumi, Abuja; that he does not know the accused person; that in the 1st Quarter of 2011, he purchased two (2) plots of land, namely (i) Plot CP 1492; and (ii) MF 719D situate at Lugbe 1 Extension Layout from one *Mrs. Elizabeth Agboga* who is a parent of one of his students at ~~N~~6.2m; that the said Mrs. Agboga told him that she had two plots of land to sell on behalf of her boss at Abuja Municipal Area Council (AMAC); that he paid Mrs. Agboga ~~N~~2.5m and ~~N~~1m in cash on 28/1/11 and 31/1/11 respectively, as well as issued her a Skye Bank cheque in the sum of ~~N~~2.5m from his personal account on 18/3/11. He further stated that the payments made to Mrs. Elizabeth Agboga as at 18/3/11 amounted to ~~N~~6m and that it was when he pleaded with her to forgo the balance of ~~N~~200,000 that she gave him the title documents of both plots of land and told him that he would need to do change of name and chart the papers by putting it into cartography at a cost of ~~N~~170,000.00 whereupon he issued her a cheque of ~~N~~170,000.00 from his *Jodeb & Ted Nig. Ltd* account which is domiciled at Zenith Bank. The PW1 further stated that when Mrs. Agboga returned two or three days later to demand for the balance of ~~N~~200,000.00 which he had earlier pleaded with her to forgo, he had to issue a cheque of ~~N~~200,000.00 drawn on his *Jodeb & Ted* account at Zenith Bank, making a total of ~~N~~6.2m for the two plots of land; and that he returned the original title documents to Mrs. Agboga

to enable her effect change of name. He maintained that he visited Mrs. Agboga at home as she was not forthcoming with the documents after two weeks as promised, whereupon she pleaded with him to exercise some patience; and that it was not until six (6) months later that Mrs. Agboga brought the title documents bearing *Jodeb & Ted Nig. Ltd* for the two plots of land and he proceeded to engage someone to undertake recertification at AGIS towards the end of 2011. His further testimony is that he met another parent called Mr. Segun who introduced him to Barrister (Mrs). Mladi who charged him ₦500,000.00 to regularise/formalize his title documents, but she called a few days later to inform him that his documents were fake and not genuine; that he then called Mrs. Agboga who met with one Barr. Mladi and promised to replace the two plots of land; that he insisted on seeing Mrs. Agboga's boss but much to his disappointment, he was asked to see one Mr. Sanni; that he subsequently met with one Yahaya Onipe who told him that the problem might be that no cartography had been done and he paid him ₦780,000.00 to do the charting, but it turned to be another fraud; and that when he became convinced that the transaction was not genuine in the sense that the documents he was given by Mrs. Agboga were fake, he wrote a petition on 4/9/12 to Economic and Financial Crimes Commission (EFCC) and attached records of the payments he had made to Mrs. Agboga, Mr. Olike, etc.; and that the EFCC responded swiftly by inviting him and he made a statement. The petition dated 4/9/2013 tendered was admitted in evidence and collectively marked as **Exhibit P1**; whilst the extra-judicial statement made by PW1 on 18/9/12 was marked **Exhibit P2**.

Cross-examined by *Nuhu Usman, Esq.* of counsel for the accused person, PW1 confirmed that he had never met the accused person; that the accused did not receive any money directly from him under the pretext

of selling land nor did he meet the accused in the course of his dealings with Mrs. Agboga; and that it does not occur to him that the accused authored the letters of offer attached to his petition. He stated that *Mr. Yahaya Onipe* prepared the TDP and cartography; that he was shown the two plots of land which were vacant before he made payment; and that he did not go looking for the author of the letters of offer because *Mrs. Agboga* informed him that her boss gave her the two plots of land to sell.

The PW2, *Mrs. Elizabeth Agboga* stated that she is an accountant at AMAC. She denied knowing the accused person but knows the PW1 as the Administrator of her daughter's school (i.e. Word of Faith School). She stated that when she took her daughter to school on a certain day in 2010, the PW1 (*Daniel Okhinkpamwonyi*) approached her and stated that he needed land whereupon she gave him photocopies of title documents of some plots of land for sale to enable him conduct search; that he returned to her about after about three (3) months in 2011, and paid her ₦5m and ₦1.2m in installments for Plots CP 1492 and MF 719D respectively, making a total of ₦6.2m. She stated further that in 2012, the PW1 called on phone to complain of encroachment by an unknown person into part of Plot CP 1492 and that as she was trying to put heads together with one Mr. Sanni Audu (who gave her the land documents) on what to do, she was invited by EFCC sometime in September 2012 and detained till the next day after making her statement; and that she was asked to produce Sanni Audu who gave her the plots of land to sell and she did so. The extra-judicial statements made by PW2 on 18/9/12, 19/9/12 and 29/10/12 were admitted in evidence as **Exhibit P3^A**, **P3^B** and **P3^C** respectively.

The PW2 insisted under cross-examination by *Nuhu Usman, Esq.* of counsel for the accused that the allocation letters in respect of the two plots are neither fake nor forged. When pressed to reconcile her extra-judicial statement in **Exhibit P3^C** (wherein she wrote that the allocation letters are fake) with her oral testimony in court, the PW2 maintained that she wrote **Exhibit P3^C** under duress as she was told pointedly that she would not be released unless she wrote the statement; and that it was an official of the EFCC, *Mrs. Janet [Arua]* who wrote the statement and asked herself, Sanni Audu and the accused person to copy it out.

Under re-examination, the PW2 maintained that Mrs. Janet Arua asked her to copy out the content of **Exhibit P3^C** from what she had written, but did not write out her other statements, notably Exhibit **P3^B**, for her to copy out.

The **PW3**, *Mrs. Janet Arua* stated that she has been an investigator with EFCC for seven (7) years and knows the accused person; that on 7/9/12, the Commission received a petition written by Deacon Daniel (PW1) against Mrs. Elizabeth Agboga alleging that he bought two (2) plots of land – one was a 5-hectare plot which he bought ~~N~~5million and the other, a 1 hectare plot which he bought for ~~N~~1.2million; that he also alleged that he gave Mrs. Elizabeth Agboga ~~N~~170,000.00 for change of name and for charting; that he alleged that after he had paid these monies to Mrs. Elizabeth Agboga, he did not hear from her; that upon receipt of the petition, the EFCC wrote to Abuja Municipal Area Council (AMAC) to confirm the genuineness of the documents and the response they got from AMAC was that the documents were not genuine. The PW3 further stated that upon being invited, Mrs. Elizabeth Agboga (PW2) claimed that she got the documents from her boss without disclosing his name, but subsequently mentioned the name of Sanni

Audu when they sought to detain her; that she made statements under caution and offered her with bail conditions as it was after work hours and the day was far spent; and that Mrs. Agboga she wrote her statements by herself without duress. Testifying further, the PW3 stated that the said Sanni Audu was apprehended and he made statements under caution admitting that gave the documents to Mrs. Elizabeth Agboga and explained that he got them from the accused person who was his friend; that Mr. Sanni Audu produced the accused person who made statements acknowledging the documents which he claimed to have received them from a certain Surveyor Akinyemi whom he promised to produce but failed to do so. The PW3 tendered the following documents in evidence:

- (i) Certified true copy of a letter dated 15/10/12 from EFCC to AMAC - **Exhibit P4**;
- (ii) First reminder dated 16/11/12 from EFCC to AMAC - **Exhibit P4^A**;
- (iii) Response from AMAC dated 4/3/13 - **Exhibit P4^B**;
- (iv) Extra-judicial statements of Sanni Audu dated 17/10/12 and 29/10/12 - **Exhibits P5^A** and **P5^B** respectively; and
- (v) Extra-judicial statements of the accused dated 17/10/12 and 29/10/12 - **Exhibits P6^A** and **P6^B** respectively.

Cross-examined by *Nuhu Usman, Esq.* of counsel for the accused person, the PW3 stated that she did not get across to Surveyor Akinyemi because they could not trace him; that the accused stated that Surveyor Akinyemi used to be in a Plaza in Area 3 but was no longer there; that the accused then gave her Surveyor Akinyemi's telephone number which

they called but did not go through to him and that was where she stopped with the surveyor since the accused could not produce him. When pressed further as to whether the EFCC did not go beyond merely putting a call through in trying to ascertain the identity of Surveyor Akinyemi, especially in this era of SIM card registration, the PW3 stated that they did not write to the telecommunication company with a view to tracing Surveyor Akinyemi, but insisted that the accused promised to produce the surveyor and was given ample time to do so; that in the intervening period, they were served with a Court Order restraining them from re-arresting the accused and they did not see him again until this criminal charge was filed. When pressed further by counsel to identify the specific title document her investigation revealed to be fake, the PW3 maintained that they wrote to AMAC and attached all the documents and AMAC's response was that the entire documents relating to the two (2) plots of land were fake; that investigation revealed that it was the accused person that issued the documents. She conceded that she did not get across to *Lugard I. Edegbe* whose name and signature appears on the letters of offer to confirm whether or not he issued them but insisted that they wrote to AMAC attaching the documents for them to confirm and AMAC's response was that are not genuine. The PW3 was not sure whether it was the person that issued the offer letters that also wrote **Exhibit P4^B** saying that they are fake, but she conceded that the basis of the belief that the accused forged the title documents is because he could not produce Surveyor Akinyemi. On whether she found in the course of investigation that the accused obtained money by false pretences, the PW3 conceded that the complainant (PW1) did not say he paid any money to the accused. She however maintained the accused person is being held responsible because the title documents emanated from him.

The PW4, *Mr. Sanni Audu* stated that the accused person who is his friend and business partner brought two allocation papers to him for sale and he agreed to help him to sell them; that he took the documents from him and gave to Madam Elizabeth who eventually got a buyer; that the documents were with Madam Elizabeth and the buyer for over three (3) months before they confirmed the land and an agreement was reached on the purchase price; that he dealt with Madam Elizabeth who paid him the purchase price of ₦3.4m in installments; that he gave the accused person ₦2.5m for the 5-hectares and ₦300,000 for the 1-hectare as they had agreed, and the accused person paid him ₦200,000.00 and ₦30,000 respectively as agency fee. The PW4 stated further that Madam Elizabeth called him one fateful day to complain that there was an encroachment on the plots of land and he accompanied her to AMAC to confirm the genuineness of the allocation letters held by the lady who encroached on the land but she did not show up; that it was on that day that he met the buyer, Mr. Daniel (PW1) and that he then asked Mr. Daniel to go ahead to develop the land since he has already processed his documents; that some weeks later he got a call from Madam Elizabeth who told him that she was detained by EFCC; that the accused person and himself went to EFCC and insisted that they did not sell fake land documents to anyone and that he got the land documents from the accused person; that he wrote a statement in his own handwriting and was detained; that his aunt, *Victoria Aherovoh* took him on bail the following day; and that they were asked to refund the money based on the allegation that they sold fake allocation papers.

Under cross-examination by *Nuhu Usman, Esq.* of counsel for the accused person, the PW4 stated that he has known the accused for about 6 years. He confirmed his earlier statement that the land

documents the accused gave to him are not fake papers. When pressed by counsel to reconcile the discrepancy between his oral testimony in court and the content of his extra-judicial statement in **Exhibit P5^B** wherein he referred to those same documents as fake, the PW4 maintained that he wrote **Exhibit P5^B** in that manner because they were told they had to make an undertaking before they could be released, and because others were writing it he too also wrote **Exhibit P5^B** by copying from a script given to them. He said he is aware that change of ownership was effected on these two plots of land at AMAC and that he has been dealing with property for more than 10 years. He maintained that the at the time the allocations were given to him, the accused did not tell him how he got the two plots of land, but when this problem arose he (the accused) told him he got it from Surveyor Akinyemi Festus. He confirmed knowing Surveyor Akinyemi Festus and that he went to the office of Akinyemi Festus in the company of the accused person but was told that he (Akinyemi) was no longer there.

At the close of the Prosecution's case, the accused person, *Momoh Yunus Jimoh*, testified in his own defence as **DW1**. He stated that he is an estate agent and a student at the University of Abuja; that between May-June 2010, one Mr. Sani Audu told him that a client of his needed a plot of land along Airport Road Lugbe about 6 hectares, whereupon he contacted Surveyor Akinyemi Festus who said he had land along Airport Road, but not up to 6 hectares in one place; that he (Surveyor Akinyemi) said he had a 5 hectare land in one place and 1 hectare in another location – both in Lugbe 1 Extension Layout; that he met with Surveyor Akinyemi Festus at Okaugu Plaza, Area 3 Garki, Abuja and then contacted Sani Audu who requested for the land documents and he (the accused) collected photocopies from Surveyor Akinyemi and gave to Sani Audu who took the documents to his client (whom he did not

know); that he (the accused) conducted a search at AMAC before he gave the documents to Sani Audu and asked him to conduct search too, which he (Sani Audu) told him that he did and confirmed to him that the documents are okay.

He stated further that after 3 months, Sani Audu came back to him and requested for the original documents and he then went to Surveyor Akinyemi and collected the original, and showed it to Mr. Sani Audu and that they then made payment; that the 5 hectares were sold for ~~₦~~2.5million whilst the 1 hectare was sold for ~~₦~~300,000.00; that himself and Surveyor Akinyemi agreed that the 5 hectares would be sold for ~~₦~~2million, so he gave him ~~₦~~2million for the 5 hectares and shared the ~~₦~~500,000.00 with *Mr. Sani Audu* whom he gave Sani Audu ~~₦~~200,000.00 as commission and took ~~₦~~300,000.00; that the 1 hectare was sold for ~~₦~~300,000.00 and Sani Audi and himself got ~~₦~~30,000.00 each whilst ~~₦~~240,000.00 was given to Surveyor Akinyemi; that the search he conducted showed that the land was genuine.

He confirmed that **Exhibit P6^B** is his handwriting, but when Mrs. Elizabeth and Sani Audu were arrested, Mrs. Elizabeth called him and he went to EFCC on his own to say what he knew about the matter; that he introduced himself and was asked to make a statement in writing which he did; that Mrs. Janet, the Investigating Officer then asked them to copy what she wrote in another statement and he did so because he had no choice; that she (Mrs. Janet) said that if they do not write the second statement, they will not be released – that is, himself, Mrs. Elizabeth and Sani Audu.

He stated further that he has tried on several occasions to get in touch with Surveyor Akinyemi since the problem started, but to no avail; that

himself and Sani Audu went to Surveyor Akinyemi's office but he was not there; that he was told that he (Surveyor Akinyemi) has left that office to Sintak Filling Station along Kuje Road; that he went there but did not meet him; and they confirmed that Surveyor Akinyemi used to come there but that he did not meet him.

Under cross-examination by *Mrs. Jamila Shata* of counsel for the Prosecution, the accused person (DW1) stated that he is 36 years old. He confirmed that he conducted a search at AMAC June 2010 but could not remember the exact date; that he submitted the document in the morning and returned the following day for collection, but he did not know the name of the Secretary to the Zonal Manager – a woman. He stated that he has known Surveyor Akinyemi for about 8-9 years; that he was not given any written report of the search she conducted but that the documents were released to him and that if it were not genuine they would have ceased the documents and got him arrested. He confirmed that *Mrs. Janet* was neither holding a gun over her his head nor is she an army officer. He maintained he had collected land documents from Surveyor Akinyemi more than 4 times and they have jointly transacted business several times but he does not know why Surveyor Akinyemi is evading him. He maintained that Sani Audi did not tell him at anytime that the documents he gave to him were fake and when he was invited to EFCC that Sani Audu did not ask him any question at EFCC about the documents. He finally stated that when the Investigating Officer told him that the documents he gave to Audu Sanni were fake, he insisted that the documents were not fake

The **DW2**, *Kayode Ajidahun* stated that he is a property agent and that he has known the accused person, who is also a property agent, for about 6 years; and that he has also known one Surveyor Akinyemi who

also into property business and resides in Abuja, for about 7 years, that sometime in February 2010, Surveyor Akinyemi called him one evening and asked him to meet him in the office the following morning at Nkeugwu Plaza in Area 3, Abuja by Old Secretariat; that he went there the following morning and he met the accused person there; that Surveyor Akinyemi then brought out land documents from his drawer and the documents were letters of offer in respect of plots of land at Lugbe 1 Extension Layout, Airport Road, Abuja; that Surveyor Akinyemi gave him two copies and also gave the accused two copies of the same land documents and the documents were for 2 separate plots of land; that Surveyor Akinyemi asked both the accused and himself to go and market the plots of land; that one plot was 5 hectares at ₦2million whilst the one of 1 hectare was to be sold for ₦200,000.00 and that if they sell for more, they were to keep the excess.

He confirmed that the names on the Letters of Offer were Larties Nig. Ltd (5 hectares) and Addas Nig. Ltd (1 hectare). He also identified the two offer letters attached to **Exhibit P1** and stated that he was not able to sell the plots of land, because when he eventually got buyers and went to Surveyor Akinyemi, he was told that the accused had already found buyers and so he left.

Under cross-examination by *Mrs. Jamila Shata* of counsel for the Prosecution, the DW2 maintained that he had known the accused for 6 years, the very day he and the accused met at Surveyor Akinyemi's office was not their first meeting. He stated that when he took the documents from Surveyor Akinyemi, he conducted a search before putting it on the market. On whether he has anything to prove that he conducted a search, he said that he did a window search and the result was "okay" and that he will be surprised to learn that the window search was not

okay; that the meaning of window search is that a document is presented at the search office and you return the following day to get the search result: a copy [of the documents submitted] is marked either "Okay" or "Bad"; that he conducted the search in February 2010 and was not given any other document in confirmation of the search.

The trial wound to a close with the testimony of the DW2, and the final written address filed and exchanged pursuant to the orders of this court were subsequently adopted in open court by learned counsel on both sides of the divide. The final address filed on behalf of the accused persons by *B. L. Tebira, Esq.* is dated 19/3/15 but filed on 23/3/15, whilst the Prosecution's final address settled by *Jamila Mamman Shata* was filed on 2/4/15. The following four (4) issues are distilled in the written final address filed on behalf of the accused person:

1. *Whether Exhibit P1 is a forged document?*
2. *Whether Exhibit P1 was forged by the accused person?*
3. *Whether the accused person had any intention to defraud one Deacon Daniel Okhionkpamwonyi with the intention of obtaining by false pretence the sum of ₦6.2m?*
4. *Whether the accused person used as genuine a purported forged document?*

On the part the Prosecution, a sole issue for determination is formulated as follows:

Whether the Prosecution has proved its case beyond reasonable doubt against the accused person as required by section 135 of the Evidence Act?

Now, let us preface our consideration of this matter by restating the obvious that our adversary criminal justice system is accusatorial in nature and substance, and every person charged with a criminal offence is presumed innocent until he is proved guilty. See *s. 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)*. A necessary corollary of the presumption of innocence is that in a criminal trial such as the present, the burden is always on the prosecution to establish the guilt of the accused person beyond reasonable doubt. Quite unlike civil proceedings, this burden on the prosecution is static and never shifts to the accused. It is if, and only if, the prosecution succeeds in proving the commission of a crime beyond reasonable doubt that the burden of establishing that reasonable doubt exists shifts to the accused. See *ss. 135 and 137 of the Evidence Act 2011*. The Prosecution has the unenviable burden of proving all the material ingredients of the offence(s) charged beyond reasonable doubt. See *STATE v. SADU [2001] 33 WRN 21 at 40, SHEKETE v. N.A.F [2007] 14 NWLR (PT. 1053) 159, IORTIM v. STATE [1997] 2 NWLR (PT. 490) 711 at 732G-H; KALU v. STATE [1998] 13 NWLR (PT. 583) 531 and UDO v. STATE (2006) ALL FWLR (PT. 337) 456 at 457*. Where the prosecution fails to do so, the charge is not made out and the court is bound to record a verdict discharging and acquitting the accused. See *MAJEKODUNMI v THE NIGERIAN ARMY [2002] 31 WRN 138 at 147*. Also, if on the totality of the evidence adduced the court were left in a state of doubt or uncertainty, the prosecution would have failed to discharge the onus of proof cast upon it by law and the accused would be entitled to an acquittal. See *UKPE v STATE [2001] 18 WRN 84 at 105*. However, proof beyond reasonable doubt does not mean proof beyond every shadow of doubt, but such proof as would reasonably and/or irresistibly lead to the inference that the accused committed the offence. See *AKINYEMI v STATE [1996] 6 NWLR (PT 607) 449, ONI v*

STATE [2003] 31 WRN 104 at 122 and ***MILLER v MINISTER OF PENSION (1947) 2 ALL ER 372 at 373.***

Against the backdrop of the foregoing, the straightforward issue arising for determination is ***whether the prosecution has adduced sufficient, cogent, credible and compelling evidence to establish the charge against the accused person beyond reasonable doubt;*** and it is on this basis that we shall proceed presently to consider and evaluate the evidence adduced which has already been set out *in extenso* hereinbefore.

The charge in **Count One** is that sometime in March 2011, the accused person, *Momoh Yunus Jimoh* obtained the sum of ₦6.2m from one *Deacon Daniel Okhionkпамwonyi* (PW1) by false pretence and with intent to defraud by selling landed property known as Plot No. CP 1492 measuring five hectares and Plot No. MF 719D measuring one hectare said to be situate at Lugbe 1 Extension Layout, along Airport Road, Abuja, which he knew to be false, and thereby committed an offence contrary to ***s. 1 (1) (a)*** and punishable under ***s. 1 (3)*** of the of the ***Advance Fee Fraud and Other Fraud Related Offences Act No. 14, 2006.*** It is submitted on behalf of the Prosecution that the PW1 gave a vivid account of how he entered into a failed land deal with *Mrs. Elizabeth Agboga* (PW2) and paid the sum of ₦6.2m for Plot Nos. CP 4192 and MF 719D, Lugbe 1 Extension, Abuja, and since the accused person was the person who gave the land documents to PW4 who in turn handed over to PW2 whom the PW1 dealt with at all material times, it is clear that the accused person obtained the sum of ₦6.2m from PW1 by false pretence through the medium of contract. Citing ***DAGASH v. BULAMA [2004] 4 NWLR (PT. 205) 567,*** the Prosecution further contended that even without the testimony of the prosecution's witnesses, especially that of PW1, which was not in any way discredited

under cross-examination, **Exhibits P6^A** and **P6^B** (being extra-judicial statements made by the accused person to the EFCC) are confessional in nature and consequently sufficient in law both jointly and severally to ground the conviction of the accused, placing reliance on **NSOFOR v. STATE [2004] 18 NWLR (PT. 905) 311 B-D, 313 A-D** and **DIBIE v. STATE [2004] 14 NWLR (PT. 893) 257 at 286 – 287 H-F**.

On behalf of the accused person, it is submitted that the charge is at variance with the evidence led before the Court. Citing **AGBO v. STATE [2006] 6 NWLR (PT. 977) 545** on the proposition that an accused person is entitled to an acquittal when there are discrepancies or contradictions on material points in the prosecution's case which create some doubt in the mind of the court, *B. L. Tebira, Esq.* of counsel submitted that the evidence adduced by PW2, PW4 and DW1 is to the effect that the actual amount eventually received by the accused person from the sale of two plots of land was ~~₦2.8m~~ less ~~₦230,000~~ paid to PW4 as commission, which is at variance with the charge before this Court that the accused obtained ~~₦6.2m~~ from PW1 under false pretences and with intent to defraud, and as such the accused ought to be acquitted.

Now **Section 1 (1) (a) & (3)** of the **Advance Fee Fraud and Other Fraud Related Offences Act, 2006** provides as follows:

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; or*
 - b. *obtains any property, whether or not the property is obtained or its delivery is induced through the medium of a*

*contract induced by the false pretence,
commits an offence under this Act.*

- 2. A person who by false pretence, and with the intent to defraud, induces any other person, in Nigeria or in any other country, to confer a benefit on him or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for commits an offence under this Act.*
- 3. A person who commits an offence under subsection (1) or (2) of this section is liable on conviction to imprisonment for a term of not more than 20 years and not less than seven years without the option of a fine.*

By **s. 20** thereof, false pretence is defined as "*a representation, whether deliberate or reckless, made by word, in writing or conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true*". In order to succeed in a charge of obtaining by false pretences, the Prosecution must establish by credible evidence that: (i) there was pretence made by the accused; (ii) the accused person obtained property as a result of the false pretence; and (iii) the accused person did same with intent to defraud. **See *ONWUDIWE v. F.R.N. [2006] 10 NWLR (PT. 988) 382 at 431 – 432 G-H; ALAKE v. STATE [1991] 7 NWLR (PT. 205) 567 and EDE v. F.R.N (supra) 512 – 513 G-C.***

This case is fraught with several loose ends which the Prosecution has not made the slightest of efforts to tie. The evidence adduced by the PW4 is that in furtherance of the understanding between him and the accused person to sell the 5-hectare piece of land for ₦2.5m and the 1-hectare plot for ₦300,000, the accused was given a total sum of ₦2.8m,

out of which sum the accused paid agency fee of ₦230,000 to PW4. Also, the testimony of the PW1 is that he did not meet with the accused person in the course of his dealings with Mrs. Elizabeth Agboga and that he did not pay any money to the accused person. Yet the accused is being charged with having obtained ₦6.2m from Mr. Daniel under false pretences and with intention to defraud. Judging by the evidence adduced by the Prosecution, it does not seem to me that a criminal charge of obtaining ₦6.2m or any other sum by false pretences and with intent to defraud has been established against the accused person. There is clear evidence before me that the accused person gave the land documents of the two plots to PW4 who in turn gave the documents to PW2 who eventually sold them to the complainant (PW1), after he had taken copies of the documents for over three months. The Prosecution witnesses, notably PW2 and PW4 who played an active role in the transaction vouched for the authenticity of the land documents. We shall grapple with the legal effect of the insistence of both PW1 and PW2 that the land documents were not fake or forged in our consideration of Counts 2, 3, 4 and 5. But for present purposes, it is noteworthy that the PW2 was able to effect change of ownership from the original names on the land documents to Jodeb & Ted Nig Ltd, a company owned by the PW1 and everything seemed to have gone well until an encroachment occurred sometime in 2012. Even though the transaction subsequently went awry, I find no shred of evidence from which any inference of false pretence or intention to defraud on the part of the accused person can be drawn.

It is forcefully contended on behalf of the prosecution that even without the evidence adduced of prosecution witnesses, the extra-judicial statements in *Exhibits P6^A* and *P6^B* are confessional in nature and sufficient without more to ground the conviction. There is no doubt

whatsoever that a confessional statement made by an accused person constitutes potent evidence in the hands of a prosecutor for proving a charge. By s. 28(1) of the **Evidence Act 2011**, “[a] confession is an admission made at anytime by a person charged with a crime, stating or suggesting the inference that he committed that crime.” See **BRIGHT v THE STATE [2012] 8 NWLR (PT. 1320) 297**. Once an accused person makes a statement under caution, admitting the charge or creating the impression that he committed the offence with which he is charged, the statement becomes confessional. See **HASSAN v STATE (2001) 7 SC (PT II) 85 at 93**. It is now well ingrained in our jurisprudence that a free and voluntary confession of guilt made by an accused person, if direct and positive, is sufficient to warrant his conviction without any corroborative evidence insofar as the court has no reservations as to the truth of the confession. See **YESUFU v STATE (1976) 6 SC 167 at 173; IDOWU v STATE (2000) 7 SC (PT II) 50 at 62 - 63; NSOFOR v STATE [2004] 18 NWLR (PT 905) 292; NWACHUKWU v STATE [2004] 17 NWLR (PT. 902) 262; OGOALA v STATE (1991) 3 SC 80 at 88; ADEYEMI v STATE (1991) 7 SC (PT II) 1 at 48, and AKPAN v STATE [1990] 7 NWLR (PT 160) 101**. In the realm of criminal law, a confessional statement is a statement that admits of the commission of the crime charged both in fact and in law. Put differently, a confessional statement must admit of the doing of an act or the making of an omission that constitutes an offence in law, including all the ingredients of the crime or offence confessed. See **NWOBE v STATE [2000] 15 WRN 133 at 141**. Let us therefore condescend on the said Exhibits P6^A and P6^B to ascertain whether they are sufficient without more to ground the conviction of the accused person as has been forcefully urged upon me by the Prosecution.

I have carefully and insightfully examined **Exhibits P6^A** and **P6^B** once and again. In Exhibit P6^A dated 17/10/12, the accused person merely recounted how he gave land documents relating to Plots CP 1492 and MF 719D, Lugbe 1 Extension Layout, Abuja which he got from one Surveyor Akinyemi to Sani Audu (PW4) to sell after he had verified their authenticity at AMAC; that the accused was given a total sum of ₦2.8m for the two plots of land, out of which sum he paid ₦230,000 to PW4 as agency fee; and that he was meeting Mrs. Elizabeth Agboga (PW2) for the first time. **Exhibit P6^A** is clearly not a confessional statement by any description. But in **Exhibit P6^B** dated 29/10/12, the accused wrote that:

"In addition to my earlier statement, I promise that on the 7th day of November 2012, I shall bring [to] the EFCC Office the sum of ₦6.2 million naira (sic) being the payment of the case of OBT and Criminal Breach of Trust established against me for sale of fake land document I sold (sic) to one Deacon Daniel Okhionkpomuwo."

On its face, **Exhibit P6^B** is an undertaking by the accused person to pay ₦6.2m to PW1 which subsumes an admission that a "*case of OBT and Criminal Breach of Trust*" has been established against him "*for sale of fake land document*". The snag with **Exhibit P6^B** however is that its content is *verbatim ad literatim* with the content of Exhibits **P3^C** and **P5^B** made by Mrs. Elizabeth Agboga (PW2) and Sanni Audu (PW4) on the same 29/10/12, and the accused person as well as PW2 and PW4 were unanimous in their testimony that the Investigating Officer, Mrs. Janet Arua (PW3) asked them to copy what she had written out on a sheet of paper and because she told them pointedly that they would not be released unless they wrote the second statement, they had no choice but to do so. I must state here that I believe and accept the above

account of the circumstances under which **Exhibit P6^B**, **P3^C** and **P5^B** were made and this casts a slur on the voluntariness of the alleged confession; for how else can one interpret a situation in which three adults would make voluntarily statements that are exactly the same, word for word, comma for comma without having to copy from a template! This clearly beggars belief and affords the court the opportunity of taking a vantage peep into what goes on behind the scene during criminal investigations, even as I have always wondered how every suspect invited by the Police or other security agency ends up making so-called confessional statements! This being so, Exhibit P6^B cannot be relied upon as the sole basis for convicting the accused, and I cannot but find and hold that **Count One** has not been made out by the prosecution.

Let us shift attention presently to **Counts 2, 3, 4, and 5** of the charge relating to the offence of forgery, which is *"the act of fraudulently making a false document or altering a real one to be used as if genuine"* - see ***Black's Law Dictionary (8th Edition)***. In Counts 2 and 4, the accused is said to have forged land documents relating to Plots CP 1492 and MF 719D respectively contrary to s. 363 and punishable under s. 364 of the ***Advance Fee Fraud and Related Offences Act, 2006***; whilst Counts 3 and 5 allege that the accused person used as genuine the said land documents contrary to s. 366 and punishable under s. 264 of the same Act. Ss. 363 and 366 of the ***Penal Code*** under which the accused person is charged provide as follows:

"363. Whoever makes any false document or part of a document with intent to cause damage or injury to any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be

committed, commits forgery, and a false document made wholly or in part by forgery is called a forged document."

"366. 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 had forged such document."

By **s. 364** thereof, whoever commits forgery shall be punished with imprisonment for a term which may extend to fourteen years or with fine or both. The term "make" a false document includes uttering a genuine document or writing in any material part, either by erasure, obliteration, removal, or otherwise; and making any material addition to the body of a genuine document or writing, and adding to a genuine document or writing any false date, attestation, seal or other material matter. See ***ODUAH v. F.R.N. (2012) LPELR-9220(CA)***. The object of forgery is to cheat others by wrongful acts of make-belief and projecting as genuine a document the accused knows or ought to know is not genuine, and it is often calculated to deceive in order to obtain unmerited and unconscionable favours and benefits to the detriment of the person to whom the document may be presented. It has been held that in order for the offence of forgery to be established, the prosecution must prove the following essential ingredients beyond reasonable doubt that: (i) there was a document or writing; (ii) the document or writing was forged; (iii) the forgery was by the accused person; (iv) the accused person knew that the document or writing is false; and (v) the accused intended the forged document to be acted upon to the prejudice or detriment of the victims in the belief that it was genuine. See ***BABALOLA & ORS. V. THE STATE*** [1989] 4 NWLR (PT. 115) 264 at 277 (per *Nnemeka-Agu, JSC*; ***SMART v. THE STATE (1974) 11 SC 173; AWOBOTU v. THE STATE (1976) 5 SC 49; MICHAEL ALAKE***

& ANOR v. THE STATE [1991] 7 NWLR (PT. 205) 567 AT 593; IDOWU v. STATE (1998) 11 NWLR (Pt. 574) 354 and AITUMA v. STATE [2007] 5 NWLR (PT. 1028) 466.

In the case at hand, it is noteworthy that the accused is charged with having forged the land documents relating to Plots CP 1492 and MF 719D, Lugbe 1 Extension Layout, along Airport Road, Abuja, FCT, but both PW2 and PW4 called by the prosecution insisted in their oral testimony before this court that the land documents given to them by the accused are neither forged nor fake, whilst PW1 and PW3 insisted that the documents are forged. Since one of the ingredients that must be established in a charge of forgery is that the document was forged, it seems to me that this constitutes a material contradiction in the case put forward by the prosecution which is fundamental to the main issues crying for resolution before the court. See ***EFFA v. THE STATE (1999) 6 SCNJ 92 at 98 (per Ejiwunmi, JSC)***. The relevant enquiry therefore is whether this court is at liberty to accept or act upon these patently contradictory testimonies given by the prosecution witnesses.

The law, as I have always understood it, is that where two or more witnesses testify in a criminal prosecution and the testimony of such witnesses is contradictory and irreconcilable, it would be illogical to accept and believe the evidence of such witnesses. See ***AGBO v. STATE supra at 564; ONUGBOGU v. THE STATE (1974) 9 SC 1 at 20; NASAMU v. STATE (1979) 6-9 SC 153 and AMADI & ORS v. STATE (1993) 11 SCNJ 68 at 78.*** The obvious implication of the foregoing is that the prosecution has not succeeded in establishing one of the essential ingredients in the absence of which a charge of forgery cannot be sustained.

It also does not seem to me that the prosecution succeeded in proving that the accused actually forged the land documents. The evidence adduced before me reveals that the Prosecution did not follow through on the lead given by the accused person that it was one Surveyor Akinyemi that gave him the land documents to sell. The PW3 merely stated that she called the telephone number furnished by the accused person but could not get through to Surveyor Akinyemi, and that the accused is being held responsible because he could not produce Surveyor Akinyemi. The PW3 equally conceded that she did not get across to *Lugard I. Edegbe* whose name appears as the signatory of the offer letters to confirm whether or not he signed them but insisted that they wrote to AMAC attaching the documents for them to confirm the genuineness and AMAC's response was that they are not genuine, even as the PW1 testified under cross examination that it does not occur to him that the accused person authored the letters of offer attached to his petition (i.e. Exhibit P1).

In a criminal prosecution alleging forgery of documents, it is needful for the prosecution to call a handwriting analyst to show that the hand writing of the person who is alleged to have forged the documents is the same as the one on the forged documents where the supposed alteration was made, even as the person whose signature or handwriting is forged is a material witness. See ***ALAKE v. STATE (1992) 9 NWLR (PT. 265) 260 at 270 (per Kutigi, JSC); WAMBAI & ANOR. v. KANO N. A. (1965) NMLR 15*** and ***WAMBAI v. KANONA (1965) NMLR 15."*** ***OBIOMA v. STATE (2013) LPELR-20647 (per Okoro, JCA as he then was).*** In the instant case, since the prosecution neither called a handwriting expert nor the persons whose signatures appear in the land documents allegedly forged, it is obvious that they have failed to establish that the accused person forged the documents as alleged. I

should hasten to point out that although the usual practice in a charge of forgery is to call in evidence the person whose signature is alleged to have been forged or someone familiar with it to testify that the signature on the document in question is not his own, or generally to call evidence showing that it is the signature of a person who does not exist, such practice may be dispensed with where the evidence is so overwhelming that the document is a spurious fabrication. See ***ODULERE v. QUEEN (Digest of Supreme Court Cases, Vol. 10, pp. 139 – 140)***. But the land documents involved in the instant case have not been shown to be spurious fabrications, and this is certainly not a proper case in which to dispense with the necessity of calling the named persons whose signatures appear in the documents allegedly forged to disavow the document and settle the matter once and for all.

What is more, as rightly submitted by learned counsel for the accused person, the original land documents allegedly forged by the accused person are not in evidence before the court. The PW1 testified that Mrs. Agboga (PW2) (who works with AMAC) collected ₦170,000 from him and effected change of ownership from the names on the original title documents. In effect, Plot CP 1492 measuring about 5 hectares in the name of *Lartis Nigeria Limited* was changed to *Jodeb & Ted Nig. Ltd*, whilst Plot MF 719D in the name of *Adas Nig. Ltd* measuring 1 hectare was equally changed to *Jodeb and Ted Nig. Ltd*. The question that arises, and which the Prosecution did not address, is how their own witness, Mrs. Agboga (PW2) was able to effect change of ownership, if the original documents handed over to her were allegedly forged by the accused. Especially is this so when it is borne in mind that both Mrs. Agboga (PW2) and Mr. Daniel (PW1) stated in evidence that they neither knew nor met the accused person in the course of the transaction. In a charge of forgery, the primary document allegedly forged constitutes

real evidence that ought to be produced in evidence to give the court first hand opportunity of examining the alleged forgery, but this was not done and this is fatal to the case of the prosecution.

Again, the submission of *B. L. Tebira, Esq.* of counsel for the accused person that **Exhibits P4^B** upon which the prosecution has heavily relied did not say the land documents attached to **Exhibit P1** are forged resonates with me. There is nothing in Exhibit **P4^B** which suggests even remotely that the land documents were not duly issued and signed by *Mr. Lugard Edegbe* and *Ishaq M. B.* as shown on the photocopies of the land documents annexed to *Exhibit P1*. **Exhibits P4^B** merely stated that *"... from our records, plot numbers mentioned above are NOT within the approved/authorised AMAC layouts and in the list of allottees";* that *"in the light of the above, the attached allocation letters cannot be genuine";* and that *"...this information is based on the records available to this office"*. Quite clearly therefore, **Exhibits P4^B** ought not to constitute the sole basis for alleging forgery without more.

In respect of **Counts 3** and **5**, since the prosecution has not established by credible evidence that the land documents the accused gave to PW4 who in turn passed them to PW2 to sell are forged, it goes without saying that the counts alleging that the accused person *'fraudulently used forged documents as genuine'* have equally not been made out. The documents must first be shown to be forged before any charge of fraudulently using or projecting them as genuine can arise.

From whatever perspective this matter is looked at, the conclusion is inescapable that the prosecution has not succeeded in establishing the charge beyond reasonable doubt as dictated by *s. 135(1) and (2) of the Evidence Act, 2011*. The only course open to the court in the

circumstance is to record an order of discharge and acquittal in favour of the accused person, *Momoh Yunus Jimoh* on all the five (5) counts of the charge preferred against him. I so order.

PETER O. AFFEN

Honourable Judge

Counsel:

Mrs. Jamila Mamman Shata for the Prosecution.

B. L. Tebira, Esq. for the Accused Person.