

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

COURT CLERKS: T. P. SALLAH & ORS

COURT NUMBER: HIGH COURT NO. 14

DATE: 11/03/2019

CT/HC/CR/40/14

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

**1. MRS. TOKONI AJE
2. ALH. UMARU FAROUK
3. MRS. VERA JOHNSON
4. MR. ADEKUNLE AJE
5. OPTIONS SOLUTIONS GLOBAL
RESOURCES LIMITED**

DEFENDANTS

JUDGEMENT

The 1st, 2nd and 3rd Defendants were on 10th March, 2014 arraigned on a three count charge of having committed the offences of criminal conspiracy and obtaining money under false pretence contrary to Sections 8(a) and 1(1)(a) of **the Advance Fee Fraud and Other Fraud Related Offences Act 2006**. The charge was subsequently amended with leave of this Court to include the 4th and 5th Defendants. All the Defendants pleaded 'not guilty' to the amended charge. Trial commenced with the Prosecution opening its case and calling three witnesses i.e. PW1 (Ise name Alfred Omomena), PW2 (Aliyu Mohammed Jungudu) and PW3 (Sylvester Kwalmuk) respectively. The Prosecution Witnesses were cross-examined by the various Counsel to the

Defendants. At the end of the evidence of its witnesses the Prosecution closed its case on the 23rd January, 2018.

The 1st, 2nd and 4th Defendants opened their defence and concluded same on 17th May, 2018. The 1st Defendant testified as DW1 in support of her defence while the 2nd Defendant testified as DW2 in support of his own defence. The 4th Defendant testified on behalf of himself and the 5th Defendant. The Prosecution cross-examined these witnesses and they were equally discharged.

Documents were tendered and admitted in evidence through the witnesses at the trial. The said exhibits are as follows;

1. Exhibit 1:- Petition dated 19th February, 2013 with attached photocopies of four Manager's cheques all dated 4th October, 2011, photocopies of two bank cheques in favour of Options Solution Global Resources Limited both dated 6th October, 2011, acknowledgment receipt dated 28th January 2012 and acknowledgment of regularization of title documents dated 25th July, 2007.
2. Exhibit 2:- Letter of invitation dated 3rd July, 2013 by the Economic and Financial Crimes Commission.
3. Exhibit 4:- Letter dated 20th March, 2013 by the Corporate Affairs Commission.
4. Exhibit 5:- Letter dated 11th June, 2013 by United Bank of Africa Plc with attached certificate of compliance and statement of account No. 1011542022 of Options Solutions Global Resources Limited.
5. Exhibit 6:- Letter dated 10th July, 2013 by Ad-hoc Committee on Sale of Federal Government Houses with attached documents of Zenith Bank Plc and Oceanic Bank Plc.
6. Exhibit 7:- Statement of Mrs. Sonia Victor dated 5th March, 2013 made to EFCC.
7. Exhibit 8:- Statement of the 1st Defendant to EFCC dated 15th March, 2013.

8. Exhibit 8A:- Statement of 1st Defendant dated 20th March, 2013.
9. Exhibit 8B:- Statement of 1st Defendant dated 27th July 2013.
10. Exhibit 8C:- Statement of 1st Defendant dated 17th June 2013.
11. Exhibit 9:- Statement of the 2nd Defendant dated 20th March, 2013.
12. Exhibit 9A:- Statement of the 2nd Defendant dated 28th March, 2013.
13. Exhibit 9B:- Statement of the 2nd Defendant dated 16th May, 2013.
14. Exhibit 9C:- Statement of the 2nd Defendant dated 28th May, 2013.
15. Exhibit 9D:- Statement of the 2nd Defendant dated 12th September, 2013.
16. Exhibit 10:- Statement of the 3rd Defendant dated 27th May, 2013.
17. Exhibit 10A:- Statement of the 3rd Defendant dated 15th July, 2013.
18. Exhibit 10B:- Statement of the 3rd Defendant dated 31st July, 2013.
19. Exhibit 11:- Two statements of the 4th Defendant dated 2nd July, 2013 and 12th July, 2013.
20. Exhibits 12 & 12A:- Two application letters, with attachments, both dated 5th October, 2011 by one Ebikabowie Victor and addressed to the Chairman, Ad-Hoc Committee on Sales of FGN Houses.
21. Exhibit 13:- Letter of complaint dated 5th December, 2012 addressed to the Director Lands, AGIS.
22. Exhibit 14:- Letter dated 30th May, 2014 requesting release of title documents.
23. Exhibit 15:- Six Departmental Receipts issued by Abuja Municipal Area Council.
24. Exhibit 16:- Regularization of Land Titles and Documents of FCT Area Councils Acknowledgment dated 25th July, 2007.
25. Exhibit 16A:- Offer of Terms of Grant/Conveyance of Approval dated 1st March, 2004.

26. Exhibit 16:- Photocopy of Power of Attorney donated by Alh. Musa Ibrahim.
27. Exhibit 16A:- Photocopy of Power of Attorney donated by Francis Lee Nigeria Limited.
28. Exhibit 16B:- Original Power of Attorney donated by Bu-Laz Ventures.
29. Exhibit 16C:- Original Power of Attorney donated by Francis Lee Nig. Ltd.
30. The photocopy of a letter dated 10th July, 2013 addressed to the Chairman Economic and Financial Crimes Commission was rejected in evidence and marked R3.

At the close of the case of the respective Defendants, final written address was ordered to be filed and exchanged between the parties in this case.

Counsel to the 1st, 2nd and 3rd Defendants adopted his final written address dated and filed on 3rd July, 2018 while the 4th and 5th Defendants' Counsel's written address is dated and filed 4th July, 2018.

Prosecution Counsel adopted her written address filed on 23rd July, 2018 as her oral arguments in respect of the case.

Mr. Innocent Ugbade Agala Esq, Learned Counsel to the 1st, 2nd and 3rd Defendants formulated three issues for determination of this case, to wit;

- a. Whether the Court is cloth (sic) with jurisdiction to entertain an incompetent charge against the 1st, 2nd and 3rd Defendants in the circumstance which amount to an abuse of court process.
- b. Whether the evidence of PW1 and PW3 and the exhibits tendered through PW3 amount to hearsay.
- c. Whether the prosecution has discharge (sic) the burden of proof required in criminal cases in the circumstance.

In his final written address, Mr. Earnest Olenyi Esq, the Counsel to the 4th and 5th Defendants formulated the sole issue for determination to be as follows;

"Whether the prosecution has discharged the burden of proof required of them in the case."

For her part, learned Prosecution Counsel Fatsuma Mohammed appearing with Yetunde Alabi Esq formulated the issue for determination thus:-

"Whether from the quantum of evidence adduced by the Prosecution, it could be said that it has discharged the burden on it by proving the offences of conspiracy and obtaining money by false pretences for which the Defendants are charged beyond reasonable doubt."

Then having perused the issues distilled for determination by the Counsel to the respective parties I shall adopt the issue formulated by the Prosecution as it is apt and it will help to resolve the contending issues raised by Counsel in their various addresses. I therefore hereunder reproduce once again the issue as set out by the learned prosecuting Counsel:-

"Whether from the quantum of evidence adduced by the Prosecution, it could be said that it has discharged the burden on it by proving the offences of conspiracy and obtaining money by false pretences for which the Defendants are charged beyond reasonable doubt".

Now the offences for which the 1st, 2nd, 3rd, 4th and 5th Defendants were charged before this Court read as follows (as per the Amended Charge dated 15th September,2014);

AMENDED CHARGE

That you, Mrs. Tokoni Aje, Alhaji Umaru Farouk and Mrs. Vera Johnson, sometimes in 2011 in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory did conspire to do an illegal act to wit; Obtaining Money under False Pretence from one Mrs. Sonia Victor and thereby committed an offence contrary to section 8(a) of the Advance Fee Fraud and other Fraud Related Offences Act, 2006 and punishable under section 1(3) of the same Act.

COUNT TWO

That you, Mrs. Tokoni Aje, Alhaji Umaru Farouk, Mrs. Vera Johnson, Adekunle Aje being a Director of Options Solutions Global Resources Limited and Options Solutions Global Resources Limited a company registered in Nigeria sometime in 2011 in Abuja within the Abuja Judicial Division of the High Court of the Federal Capital Territory with intent to defraud, obtained the sum of Ten Million Naira (N10,000,000.00) from one Mrs. Sonia Victor vide a Stanbic IBTC cheque number 06676307 issued by Ebikabowei Victor Ben in favour of Options Solutions Global Resources Limited under the false pretence that the money was to be used as commitment and processing fee for the Ad hoc Committee on the sale of Federal Government Houses at Abuja Geographic Information System, and you thereby committed an offence contrary to Section 1(1)(a) of the Advance Fee Fraud and other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT THREE

That you, Mrs. Tokoni Aje, Alhaji Umaru Farouk, Mrs. Vera Johnson, Adekunle Aje being a Director of Option Solutions Global Resources Limited and Option Solutions Global Resources Limited a company registered in Nigeria sometimes in 2011 in Abuja within the Abuja Judicial

Division of the High Court of the Federal Capital Territory with intent to defraud, obtained the sum of Ten Million Naira (N10,000,000.00) from one Mrs. Sonia Victor vide a Stanbic IBTC cheque number 06676308 dated 6th October, 2011 issued by Ebikabowei Victor Ben in favour of Option Solutions Global Resources Limited under the false pretence that the money was to be used as commitment and processing fee for the Ad hoc Committee on the sale of Federal Government Houses at Abuja Geographic Information System, and you thereby committed an offence contrary to Section 1(1)(a) of the Advance Fee Fraud and other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

In his written address learned Counsel to the 1st, 2nd and 3rd Defendants submitted on his first issue that this Court lacks the jurisdictional competence to try the 1st, 2nd and 3rd Defendants on the incompetent charge upon which the Defendants were arraigned before the Court. He contended that counts 2 and 3 of the charge against the Defendants are based on speculation, suspicion and non-existence of substantial evidence to sustain the alleged offences. He posited that the three counts are incompetent, amount to an abuse of court process and are liable to be struck out. He further submitted that Count 3 is a duplication of Count 2 and is grossly incompetent.

On his second issue, Counsel to the 1st – 3rd Defendants submitted that the evidence of PW1 and PW3, as well as the exhibits tendered through PW3, amount to hearsay evidence. On the meaning of inadmissible hearsay evidence and duty of prosecution to call vital witnesses Counsel relied on the case of **FRIDAY V. NIGERIAN ARMY (2016) LPELR-41604(CA)** and a plethora of other cases.

On his third issue learned Counsel to the 1st – 3rd Defendants submitted that there is no link between the evidence of the prosecution and the charge against the 1st, 2nd and 3rd Defendants before this Court. Relying on the case of **AMAKERE V.**

NIEGERIAN ARMY (2003) NWLR (pt. 807) P. 526 and a number of other cases, Counsel listed the ingredients to be proved by the prosecution to establish the offence of conspiracy for which the 1st – 3rd Defendants were charged. He contended that from the entire evidence before this Court, the prosecution has failed to sustain the charge of conspiracy against the 1st, 2nd and 3rd Defendants. Referring this Court to the case of **ONWUDIWE V. F.R.N. (2006) ALL FWLR (PT 319) P. 77.** Counsel also listed the ingredients which the prosecution must prove in the charge of obtaining money by false pretence. He submitted that the prosecution has failed to establish pretence by the Defendants jointly or severally. He contended that the evidence of PW2 is unreliable in view of Exhibits 12 and 12A. He contended that the statements of the 1st, 2nd and 3rd Defendants to the EFCC (admitted in evidence as exhibits) do not amount to confessions. He submitted that the essential ingredient of the offence of obtaining money under false pretence was not successfully made out against the Defendants. He submitted that the prosecution thus failed to place relevant facts before the Honourable Court to warrant their conviction on all counts of the charge. He urged this Court to discharge and acquit the Defendants on all the three Counts charge.

In his address, Counsel to the 4th and 5th Defendants submitted that the issue of whether the prosecution has discharged the burden of proof required of them in this case must be answered in the negative. He submitted that the prosecution must prove that the Defendants had an intention to defraud in an allegation of the offence of obtaining by false pretence. He cited the case of **ADIMORE V. AJUFO (1988) 3 NWLR PT. 80 P. 1** and a host of others. He contended that the evidence of PW3 shows that the 4th and 5th Defendants did not in any way defraud or intend to defraud the nominal complainant as there was no transaction between them. He posited failure to call a vital or material witness is fatal to the case of the prosecution. He contended that the nominal complainant was not called to testify to enable the 4th and 5th Defendants cross-examine her. His position is that the presumption of withholding evidence is therefore against the

prosecution. Relying on **EMEKA V. STATE (2001) FWLR (PT. 66) P. 682**, Counsel submitted that in criminal trial, the guilt of an accused person can be established by (a) confessional statement, (b) circumstantial evidence, (c) evidence of eye witness. He submitted that the prosecution in this case has not succeeded in pinning the 4th and 5th Defendants in any of the aforementioned ways. He further contended that the evidence of Mr. Ebikabowei Victor Ben and Mrs. Sonia Victor are very vital to the case of the prosecution and the inability to call either of them is fatal to the prosecution's case. He relied on **JOSHUA V. STATE (2009) ALL FWLR PT. 475 P. 1626**. He urged this Court to discharge and acquit the 4th and 5th Defendants on the 2-count charge against them, the prosecution having failed to establish their case beyond reasonable doubt.

On the sole issue formulated by the learned prosecuting Counsel, she submitted that from the totality of the evidence adduced at trial, the prosecution has proved the ingredients of the offence as contained in the charge against the Defendants beyond reasonable doubt. She relied on the provisions of Section 135 of the Evidence Act 2011. She submitted that where all the essential ingredients of the offences charged have been proved or established by the Prosecution the charge is proved beyond reasonable doubt. She relied on the case of **NWATURUOCHA V. STATE (2011) 6 NWLR PT. 1242 P. 170**. On Count 1 of the amended charge which is on the offence of conspiracy, the learned prosecution contended that this offence is one which can be predicated on circumstantial evidence i.e. based on inference. She submitted that the offence of conspiracy is committed where there is an agreement by two or more persons to do or cause to do an illegal act or legal act by illegal means. Counsel listed the ingredients which the prosecution must prove to establish the offence of conspiracy and submitted that there is abundant evidence before this Court to infer conspiracy between the 1st, 2nd and 3rd Defendants. She referred this Court to the statements of the Defendants admitted in evidence and contended that there was an agreement between the 1st, 2nd and 3rd Defendants to commit an illegal act to wit; defraud the nominal complainant.

She contended that the 2nd Defendant had stated in his examination in chief that he informed the 1st Defendant that the houses were no longer available and yet they went ahead and received the sum of N20,000,000 to process the houses that were no longer available.

Relying on the case of **ALAKE V. STATE (1991) 7 NWLR (PT. 205) P. 557**, the Prosecution Counsel listed the ingredients to prove the offence of obtaining by false pretence. She submitted that the Prosecution in this case has proved all these ingredients beyond reasonable doubt. She said the Prosecution Witnesses' evidence was to the fact that the false pretence emanated from the 1st – 3rd Defendants when they held themselves out as capable of procuring House 11B Vanem Crescent, Abuja and No. 84 Yakubu Gowon Street, Asokoro from the Ad-hoc Committee on the sale of Federal Government Houses for the nominal complainant and premised on this the nominal complainant paid the sum of N20,000,000 as processing fees for the said properties. Counsel contended that this false pretence from the Defendants operated in the minds of the nominal complainants who believed it and parted with N20,000,000 as processing and facilitation fees. She further submitted that it is apparent that the Defendants knew that the properties were no longer for sale as the 2nd Defendant admitted in his examination in chief that as at when he met with the 1st and 3rd Defendants to discuss about the properties, the sale of federal government properties had stopped bidding since 2008. That the 2nd Defendant had shared with the 1st Defendant that the houses were no longer available. Counsel submitted that evidence which is not disputed is before the Court that the sum of N20,000,000 was received vide bank drafts through the account of the 5th Defendant on pretence of purchasing properties. On the ingredient of intent to defraud, Counsel reiterated that the Defendants knew about the false pretence and yet obtained the said sum from the nominal complainants.

Learned Prosecution Counsel submitted that the testimonies of all prosecution witnesses were not contradicted or shaken in cross

examination. She contended that the testimonies of the 1st and 2nd Defendants did not cast any reasonable doubt on the prosecution's case. On the issues raised by the Defendants' Counsel, it is the position of Prosecution Counsel that the Prosecution has led evidence through its witnesses in proof of all the counts of the charge. She posited that two different cheques were contemplated in Counts number 2 and 3. She said the issue of merging counts in a charge has been sufficiently settled by Section 209 of the Administration of Criminal Justice Act 2015. She submitted that PW1 testified on what he witnessed while the Supreme Court in **AJIBOYE V. STATE (1994) 8 NWLR PT. 364 P. 587** has laid to rest the issue of whether evidence of an investigating officer amounts to hearsay. The prosecution Counsel submitted that the fact that the nominal complainant was not called as a witness does not in any way affect the proof of the Prosecution's case against the Defendants. She posited that it is not in all cases that a nominal complainant must give evidence and she relied on the case of **UGWU V. STATE (1998) 7 NWLR (PT. 558) P. 397**. Learned prosecution Counsel therefore urged me to convict the Defendants accordingly as the Prosecution has proved the offences of conspiracy and obtaining money by false pretence against them. She also urged this Court to convict the 3rd Defendant and reserve her sentence until when she is arrested or surrenders herself to the custody of the Court in line with Section 352(4) & (5) of the Administration of Criminal Justice Act 2015.

Now as I said earlier, the learned prosecuting Counsel in order to prove the ingredients of the offences contained in the amended charge against the Defendants, called three witnesses and tendered a number of exhibits. The brief evidence of the prosecution's case is that PW1 is Isename Alfred Omemena, a personal Assistant to one Ebikabowei Victor, the Managing Director of Pensam Mordant and husband of the nominal complainant in the instant case. According to PW1 that sometimes in 2011 his boss, Ebikabowei Victor informed him of the discussions he had with his wife, Mrs. Sonia Victor pertaining to availability of Federal Government Houses for sale. PW1

testified that the houses were houses that the original allottees could not pay up the amount in which the Federal Government put up for sale. He testified that he discussed with the wife of his boss and she then brought the 1st Defendant and both of them briefed him on the availability of the houses with Ad-hoc committee set up by the Honourable Minister for the sale of Federal Government of Nigeria Houses. PW1 testified that he was briefed that what the Ad-Hoc Committee for the sale of the Federal Government of Nigeria Houses needed is somebody with the capacity to pay for the Houses and to show a proof of capacity to pay by depositing the sum of N20,000,000.00 with the Ad-Hoc Committee for the sale of Federal Government of Nigeria Houses. He further testified that for the efforts of the 1st Defendant, she will receive an agency fee of 10% of the eventual cost of the property when allocated and also to give the 1st Defendant N10,000,000.00 up- front as her commission. PW1 testified that the 1st Defendant said to him whenever they are ready, they can go for the inspection of the different houses. PW1 then avers that himself, his boss Victor were taken around the houses by the 1st Defendant at Asokoro and Maitama and the 1st Defendant showed them the houses and that his Boss Victor eventually selected two houses one at Asokoro and one at Maitama.

PW1 testified that the next step was to meet the terms of the 1st Defendant and he then made available to the 1st Defendant two draft cheques of N20, 000,000.00 each for the two houses raised in the name of Ad-Hoc Committee.

He testified also that he raised a draft cheque of N20,000,000.00 being the 1st Defendant's Commission in the name of the 5th Defendant as directed by the 1st Defendant. PW1 testified that he then gave the draft cheques totally N60,000,000.00 to the 1st Defendant and the 1st Defendant assured him that in two weeks time the letters of allocation would be ready for collection. PW1 testified that after two weeks the 1st Defendant could not deliver and indeed even after three months, the 1st Defendant Could not deliver the letters of allocation. PW1 testified that at this juncture his Boss Victor becomes fully apprehensive. PW1 testified that the 1st Defendant was always giving one story or the other but the

letters of allocation were not forthcoming. PW1 testified that based on the pressure mounted on the 1st Defendant, the 1st Defendant brought the 2nd Defendant to PW1 and introduced him as a member of Ad-Hoc Committee on sale of Federal Government of Nigeria Houses. He testified that the 2nd Defendant tried to comfort him on the veracity of the process and to prove that it is an objective transaction. PW1 stated that the 2nd Defendant then offered and give him his landed title documents in Asokoro behind AIT. He stated that the 2nd Defendant gave him the title documents in the presence of the 1st and 4th Defendants. According to PW1, the 1st defendant told him that the value of the property offered by the 2nd Defendant is worth N40,000,000.00. PW1 then asked his driver to accompany the 2nd Defendant to go and identify the land in Asokoro which the 2nd Defendant did. PW1 testified that they held on to the title documents of the land and when the letters of allocation were not forth-coming, they requested for the N40,000,000.00 draft and the cheque of N20,000,000.00.

He testified that the 1st Defendant brought back the N40,000,000.00 bank draft telling them that the process of allocation is still going on despite the request by PW1 for the N40,000,000.00 bank draft be returned. PW1 also testified that the 1st Defendant later came and told him that the letters of allocation are almost ready with the Chief of Staff and that the Chief of Staff requested for N6,000,000.00 and if it is made available, the Minister will sign the allocation letters but PW1 refused to give out the money.

PW1 testified further that at this point he instructed their client to go to Abuja Municipal Area Council (AMAC) to verify the authenticity of the landed titled documents given to them by the 2nd Defendant.

PW1 testified that he then gave his boss wife Mrs. Sonia the title documents to go to Abuja Geographic Information System for verification. According to PW1, at Abuja Geographic Information System his boss wife called him that she was about being arrested and asked him to come over quickly at Abuja Geographic Information system. PW1 testifies that at Abuja Geographic Information system he was informed that the land title

documents given to him by the 2nd Defendant is a subject of theft in which somebody had lodged a complaint. PW1 then testified that at this point, the nominal complainant, Mrs. Sonia instructed her solicitor to petition the Economic and Financial Crimes Commission. PW1 also stated that the cheque of N20,000,000.00 was cashed as they received an alert.

Finally PW1 testified that part of the documents attached to the petition was an acknowledgment signed by the 1st, 2nd and 4th Defendants that they gave him the landed title documents. The petition and attached documents to the Economic and Financial Crimes Commission was admitted in evidence through PW1 as exhibit 1.

PW2 Aliyu Mohammed Jungudu is the Head of Ad-Hoc Committee for sale of FGN Houses in the FCT. PW2 testified that in 2013 the EFCC wrote him a letter which his office received. The letter requested for some confirmation from the Committee on some names listed in the letter whether they are staff of PW2's office. PW2 testified that he confirmed that none of them is a staff of the Committee. PW2 testified that he was shown some draft cheques and asked whether they were received by the Committee and he stated clearly that the draft cheques were never received by the Committee.

Under cross-examination, PW2 stated that the letter from the Economic and Financial Crimes Commission was addressed to the Chairman of the Committee. He said he is the Chairman. He identified the letter of invitation by the Economic and Financial Crimes Commission dated 3rd July, 2013 and same was admitted in evidence as Exhibit 2. PW2 stated that as at the time Economic and Financial Crimes Commission wrote Exhibit 2 he was the head of the Committee. He stated that he is in a position to know if the bank draft were presented to the Committee because he is the Head of the Committee. He was given copies of the bank drafts written in favour of the Committee but he wouldn't know if the bank drafts emanated from the Defendants because same were shown to him by the Economic and Financial Crimes Commission. He stated that the sale of Federal Government of

Nigeria Houses is a continuous process and it depends on the period in which the sales are on-going. He said that as at the time the bank drafts were issued there might be sales of Federal Government of Nigeria Houses in Abuja. PW2 testified that there might be instances where a draft is returned by the Committee. He stated that not everybody that indicated interest got the property.

Under further cross, PW2 stated that he knows the 2nd Defendant as a staff of FCT and knew him even before PW2 worked with the Committee. That the 2nd Defendant had related with the Committee previously on the sale of Federal Government of Nigeria Houses. PW2 stated that his Committee received expression of interest in writing from anybody and he is not aware that the 2nd Defendant has been applying for sale of houses. PW2 stated that the 2nd Defendant has however been coming to the Committee once a while.

He testified that applications for sale come to the Head. No application would be processed without his directives. He reiterated that the sale is a continuous process and his office does not advertise for sale at all.

PW3 is the investigating police officer in this case together with his team. He is a Deputy Superintendent of Police by rank and works with the Nigeria Police Force. He is however on secondment to the EFCC and posted to Intelligence and Special Section Team 2. He testified that there are five members in Team 2, viz; Ishaku Sharu(as team leader), Ibrahim Abdullahi, Mrs. Oji Kwajofa, Samina Isah and himself as the second in command. PW3 described the main duties of the team to be investigating any financial crime assigned to the team, taking suspects to Court after receiving legal advice from their office and any other duty assigned to the team by the Executive Chairman of the EFCC. PW3 identified all the Defendants in the dock. He testified that sometime in 2013, a petition was received through the office of the Chairman. It was written by one Barr. Maxwell on behalf of the nominal complainant i.e. Sonia Victor against the 1st, 2nd and 3rd Defendants. He said the purport of the petition was the allegation that the 1st, 2nd and 3rd Defendants conspired together

and defrauded the petitioner of the sum of N20,000,000 under the pretext that there were two Federal Government Houses under their care as agents of the Ad-Hoc Committee for the sales of the Federal Government properties. That these houses were located at Asokoro and Maitama and at a cost of N100,000,000 each. That the petitioner indicated interest after inspecting the two houses and was made to raise four drafts of Zenith bank for N10,000,000 each as a commitment fee. That the petitioner raised the 4 drafts and gave the 1st, 2nd and 3rd Defendants. That the four drafts were made in favour of Ad-Hoc Committee for sale of Federal Government Houses. That the petitioner was also made to pay the sum of N20,000,000 and she raised draft cheques of IBTC Bank of N10,000,000 each in favour of Option Solutions Company which were handed over to the 1st Defendant.

PW3 testified that on receipt of the petition, his team invited the nominal complainant through her lawyer Barr. Maxwell and she came to volunteered statement in writing to the Economic and Financial Crimes Commission, shedding more light on the petition. Exhibit 7 is the nominal complainant's statement to the Economic and Financial Crimes Commission. PW3's team also invited the personal assistant to the nominal complainant's husband, one Alfred (PW1) who also came and volunteered statement in writing. The team wrote an invitation letter to the 1st Defendant but she dishonoured the invitation. A call was placed to her and she said she was out of Abuja but she was subsequently arrested at her house on the same day and was brought to their office, interviewed, shown the petition and she volunteered statement upon being cautioned and she appended her signature to her statement. She made four statements all under a words of caution. The said four statements made by the 1st Defendant to the Economic and Financial Crimes Commission were admitted in evidence as Exhibits 8, 8A, 8B and 8C. PW3 testified that the 2nd Defendant came when he was called, was interviewed, shown the petition, was cautioned and wrote five statements in all. The five statements made by the 2nd Defendant were admitted in evidence as Exhibits 9, 9A, 9B, 9C and 9D. PW3 testified that the 3rd Defendant was arrested after a while

and she was interviewed at the team's office, she was cautioned and volunteered three statements under words of caution which were admitted at the trial of this case as Exhibits 10, 10A and 10B. PW3 said a letter of investigation was written to the Ad-Hoc Committee for Sale of Federal Government Houses which was responded to by one AlhajiJ Ungudu (PW2). According to PW2 after PW2 was interviewed and he volunteered a statement in which he stated that the 1st, 2nd and 3rd Defendants were never members of the Ad-hoc Committee on the Sale of Federal Government Houses. That PW2 had also stated that the 1st, 2nd and 3rd Defendants are not their agents. PW3 testified that the Economic and Financial Crimes Commission received a response from the Ad-Hoc Committee on the Sale of Federal Government Houses which was admitted in evidence as Exhibit 6. Then due to the fact that the draft cheque issued by nominal complainant was issued in favour of Option Solution Company, the EFCC wrote to Corporate Affairs Commission and a response was received and PW3's team discovered that one Adekunle Aje (the 4th Defendant) is the Managing Director of that company. Exhibit 4 was the response of the Corporate Affairs Commission. PW3 testified that the 4th Defendant came on the invitation of the ` and volunteered his statement under words of caution. The 4th Defendant's statement to the Economic and Financial Crimes Commission was admitted in evidence as Exhibit 11. PW3 stated in his evidence that Option Solution Company has an account with UBA Plc and the team wrote a letter of investigation to UBA Plc to which the bank responded with the analysed statement of account. The statement of account of the 5th Defendant is exhibit 5.

It is PW3's further testimony that his team discovered after their investigation that the sum of N20,000,000 entered into the account of Options Solutions Company, the 5th Defendant. They also discovered that the sum of N9,000,000 went in favour of the 3rd Defendant while N8,600,000.00 went in favour of the 1st Defendant. PW3 testified that the sum of N500,000 was recovered from the 2nd Defendant. He discovered that the Zenith Bank drafts of N10,000,000.00 each totaling N40,000,000 in favour of Ad-hoc Committee was a trick just to benefit from the

N20,000,000 received from the nominal complainant as the draft cheques were not in their names.

Under cross –examination by the defence Counsel, PW3 stated that he is abreast of the facts of this case. He denied that the nominal complainant never issued a cheque because the cheques issued were in the name of her husband. PW3 however said that he did not have interaction with Victor Ben, the husband of the nominal complainant except with his personal assistant (PW1). PW3 is not aware of any application signed by Victor Ben, the husband of the nominal complainant to Ad-Hoc Committee on sale of Federal Government Houses. He said the nominal Complainant indicated interest in buying the property and she informed her husband. He said she also inspected the property herself. He said it was the nominal Complainant that had direct contact with the Defendant. What the personal assistant to the husband of the nominal Complainant told PW3 were instructions from the husband of the nominal complainant that he should process and raise draft cheques. The personal Assistant to Victor Ben was not the one that signed the draft cheque and PW3 would not know if Mr. Victor Ben applied to the Ad-Hoc Committee for sale of Federal Government Houses. He never interviewed Victor Ben and that is why he cannot know whether he has applied to Ad- Hoc Committee. He stated that the 1st Defendant had in her statement said that the 2nd Defendant is a staff of Ad-Hoc Committee but the 2nd Defendant had in his statement denied this. PW3 is not aware that the 2nd Defendant had in his statement denied this. PW3 is not aware that the 2nd Defendant processed Houses of Federal Government which succeeded nor is he aware that the nominal complainant had said in her statement that her husband paid N100,000.00 each for the two application form.

PW3 denied that the nominal complainant knew that the 1st Defendant was not a staff of the Ad-Hoc Committee right from the beginning. He said there was no property to facilitate in this case. He stated that he was not given a list of houses that were available for sale by the Federal Government but the secretary of the committee told him that the houses which the Defendants

were contracted to purchase were not amongst the list to be sold. PW3 denied that the N20,000,000.00 was for the 1st- 3rd Defendants work. He said that the nominal complainant and her husband did not pay the Defendants for their services. He said he was aware that the 2nd Defendant said that the properties are no longer for sale and that there are other houses for sale if the nominal complainant was interested. He stated that the bank drafts were not issued in the name of the 2nd Defendant nor was N20,000,000.00 facilitation money paid into 2nd Defendant's account. PW3 stated that he is not aware of other properties introduced to PW1 by the 2nd Defendant. He said that the fact that the 2nd Defendant was a member of the Ad-Hoc Committee was in the other Defendants' statement. He said that all parties agreed that the N20,000,000.00 was for processing. PW3 stated under further cross examination that he found out during his investigation that the N20,000,000.00 was paid in the account of 5th Defendant but the 4th and 5th Defendant did not partake in the transaction nor did they benefit therefrom. That the N20,000,000.00 deposited in the account of the 5th Defendant was disbursed in accordance with the instructions of the 1st Defendant.

At the conclusion of evidence by the prosecution the 1st Defendant offered sworn testimony as DW1. She testified that she knows the nominal complainant as her friend from Port-Harcourt where they were living. She got information about the properties for sale from Ogonwuanye and Miss. Franca Sambo who introduced her to the 3rd Defendant, Vera Johnson. DW1 testified that she subsequently met the 3rd Defendant in her office in Jabi in respect of the properties for sale. The 3rd Defendant informed the 1st Defendant that she has known someone who can do it and she then called the 2nd Defendant who she said was aware of the properties put up for sale by the Government. She stated that the 2nd Defendant sources for properties. The 1st Defendant testified that she spoke with a few family friends and some of them became interested in the properties sold by Ad-Hoc Committee. The 1st Defendant spoke with the nominal complainant who introduced the 1st Defendant to her husband. Upon the nominal complainant's invitation, the 1st Defendant

went to meet the nominal complainant's husband and his personal assistant. At the nominal complainant's husband's request, DW1 testified that they went round to identify and inspect the properties for sale. The 1st Defendant showed PW1 and nominal complainant husband about 5 different buildings that were up for balloting and PW1 picked two of them and requested the 1st Defendant to direct the person facilitating the sale of the properties to act quickly. The 1st Defendant met with the 3rd Defendant who gave the price of the houses that Ad-Hoc Committee put up for sale and the amounts for facilitation. Upon being informed, the nominal complainant's husband issued bank drafts for the Ad- Hoc Committee for purchase of the House and cheques for the facilities. The nominal complainant's husband directed the 1st Defendant to forward part of the money to the facilitation upon which he transferred the sum of N10,000,000.00 amount for the forms to the 3rd Defendant. The 1st Defendant testified that the 2nd and 3rd Defendants subsequently told her that the identified properties chosen may not be available but that other properties can be secured.

It is 1st Defendant's further testimony that the nominal complainant's husband called her after two weeks to find out what was happening and she explained to him to exercise some patience that they are still on it. The 2nd Defendant told the 1st Defendant to wait when she got directly in contact with him and she informed the nominal complainant's Husband who told her to allow the 2nd Defendant continue with his effort in getting the properties while she tries her own connection. The 1st Defendant testified that she tried through the younger brother of Chief of staff. At the nominal complainant's husband's request, a meeting was convened with him, the 1st Defendant and the 2nd Defendant.

The 2nd Defendant informed the meeting that it is a bit difficult to still get the properties. The 1st Defendant then informed the nominal complainant's husband of how much she paid to the 3rd Defendant and the chief of staff's people for facilitation. The nominal complainant's husband asked if he could get back his money from the Ad-Hoc Committee to which the 2nd Defendant answer in the affirmative. The nominal complainant's husband

said he lost money but the 2nd Defendant offered to give the nominal complainant's his property at Asokoro. The 1st Defendant testified that the nominal complainant husband said he was interested and enquired how much to which the 2nd Defendant answered N60,000,000.00. The 2nd Defendant produced the title of document of his Asokoro property and gave same to the nominal complainant's husband, although the 1st Defendant testified she wasn't there when he did so. She however testified that PW1 confirmed from Abuja Geographic Information system (AGIS) that the title documents was genuine. The nominal complainant said she likes the land and asked to keep the title documents pending the time he rallied round to get the money for payment. The 1st Defendant testified that the 2nd Defendant had returned the draft cheques to nominal complainant's husband. The 2nd Defendant subsequently reported the returned of the draft cheques to her. The 2nd Defendant subsequently reported the status of the transaction to the nominal complainant who said she will go and verify the property by herself. When the nominal complainant got to Abuja Geographic Information System (AGIS) for the verification, the title documents were seize from her. The 1st Defendant stated in her evidence that the property is situate by AIT Asokoro Extension. She only recalls one of the properties put up for sale by Ad-Hoc Committee which is at Asokoro opposite Skye bank. She testified that the balance of the facilitators' fee was declared to the nominal complainant's husband who told her to hold unto the money until he sort out the 2nd Defendant. She stated in her evidence that when the nominal complainant could not get the properties and the amounts, he accepted the offer of the 2nd Defendant's property. She however does not know whether the nominal complainant executed any agreement with the 2nd Defendant in respect of the 2nd Defendant's property.

Under cross – examination, the 1st Defendant stated that based on the relationship she has with the nominal complainant, she (Nominal complainant) believes in what the 1st Defendant said and what the 1st Defendant brings to her. She is not a staff or agent of Ad-Hoc Committee on sale of Government properties. She admits making several statements to the Economic and

Financial Crimes Commission in respect of the petition by the nominal complainant. She admitted collecting drafts of N40,000,000.00 for Ad-Hoc Committee and N20,000,000.00 in favour of the 5th Defendant for facilitation from the nominal complainant. She admitted that the properties said by the 2nd Defendant are not available. She has not returned the facilitation fees to the nominal complainant's husband.

The 2nd Defendant equally gave sworn testimony as DW2 in his defence. He testified that he is a businessman, contractor and property agent. Sometime in October, 2011 he got a phone call from the 3rd Defendant that the 1st Defendant introduced a business of sale of Government Houses to her from a client. The two properties are located in Asokoro and Maitama. The 1st, 2nd and 3rd Defendants then met and discussed on the two properties. The 2nd Defendant testified that as at this time I,e 2011, the sale of Government properties had stopped public bidding and the last bidding was in 2008 and there was no public bidding. The 2nd Defendant questioned the 1st Defendant as to the source of her information on the two houses and asked to see her client to question them too. A meeting was convened at the house of Mr. Victor at No. 2 Masahit, Off Aminu Kano Way, Wuse II, Abuja where they met his Personal Assistant i.e PW1. PW1 told them to discuss the matter with him as Mr. Victor was in a meeting. The 2nd Defendant questioned PW1 as to the genuineness of the two properties and their sources. The 2nd Defendant testified that he insisted on Mr. Victor filing some forms and affixing his picture for processing by the 2nd Defendant. Exhibit 12 and 12a were admitted in evidence as acknowledgment copies of the forms completed by Mr. Victor. The 2nd Defendant testified that he discovered from the Ad-Hoc Committee that the two houses were no longer available for sale. He informed the 1st Defendant of this and she in turn conveyed it to her clients.

The 1st Defendant informed the 2nd Defendant that she asked her clients if they were interested in Gwarimpa houses and they said yes. The 2nd Defendant then continued the process through people fronting for him. The 1st and 2nd Defendants were however requested by PW1 to come and explain the process involved and

to return the N40,000,000.00 draft and that any time the GWarimpa houses are ready, they can raise another draft. The 1st Defendant later called the 2nd Defendant informing him that PW1 said Mr. Victor wanted a refund as the delay in the process was too long. Before this time, the 3rd Defendant had informed the 2nd Defendant that the 1st Defendant had given her a cheque of N9,000,000.00 as processing fee. The 2nd Defendant testified that he told PW1 to exercise patience and that he has a land at Asokoro which he can give them as collateral pending the time he got the processing fee. He testified that he did give PW1 the title documents of his Asokoro land subject to verification by Mr. Victor at Abuja Geographic Information System. He was told by PW1 to take the 1st Defendant and her husband to the said property. The 2nd Defendant did so.

The 2nd Defendant in his testimony further stated that the nominal complainant called sometime later to inform him that she went for verification at Abuja Geographic Information System but the title documents were withheld because they were stolen. The 2nd Defendant testified that he went to AGIS to confirm this and he was told that one elderly Igbo man reported the case. The 2nd Defendant was asked to write a letter of complaint to the Director of Abuja Geographic Information System which he did. Exhibit 13 is the letter of complaint by the 2nd Defendant. The 2nd Defendant testified that he wrote a second letter of complaint to Director Lands, AGIS which said letter was admitted in evidence as exhibit 14. He said he bought the land from one Alhaji Ibrahim Musa Katsina and Power of Attorney was executed in respect thereof. Exhibits 15,16,16A 17,17A and 17 C were admitted in evidence as the title documents relating to the 2nd Defendant's land. He testified that he also deposed to an affidavit and filed at Abuja Geographic Information System after which Abuja Geographic Information System released his title document. He said he never met or knew the 1st Defendant before this transaction. As for the 3rd Defendant, he said he used to see her at the lands registry. He said he is an agent and has been participating in a lot of biddings which he has been winning for people. The last bidding was in 2008. He said he won his personal house and also won for other people although not all transactions are successful. As an

agent, the 2nd Defendant stated that he charges processing fees depending on the location of the property and same is not refundable. He stated that he is not a member of the Ad- Hoc Committee but I am an agent.

Under cross examination, the 2nd Defendant stated that he never had dealings with Mrs. Sonia (the Nominal complainant) and had never seen her in his life. The person he had dealings with was the 1st and 3rd Defendants. He said the 1st Defendant came to his house in 2013 with men of special Anti Robbery Squad. He was shown the nominal complainant's petition who had petitioned against him that he gave her stolen land documents. He was detained and he wrote his statement. He refunded money to the nominal complainant while in detention and surrendered his Golf car valued at N3,000,000.00. He refunded N500,000.00 at the Commission. He never saw Mr. Victor throughout the transaction and never had any dealing with the 4th Defendant.

Under further cross- examination the 2nd Defendant stated that he is not a staff of Federal Capital Development Administration. He said he is a proxy agent of the Ad-Hoc Committee although he is not an appointed agent. He said it is correct that bidding had stopped since 2008 and that he collected money from the 1st and 3rd Defendants in 2011 to process and facilitate for properties. He said two forms (exhibits 12 and 12A) were purchased in respect of properties at Asokoro and Maitama for the nominal complainant. He said the form are free except indication of intent which is N10,000.00. He said no money was received by himself and the 2nd and 3rd Defendants in respect of these forms. On verification, the houses were no longer available and he did not give the nominal complainant any form to fill in respect of Gwarimpa houses. DW2 testified further under cross examination that N9,000,000.00 was given to him and the 3rd Defendant for processing of the properties. The 2nd Defendant stated that despite the fact that the processing fee was non- refundable, he was willing to give his land as collateral.

The 4th Defendant as DW3 testified for himself and on behalf of the 5th Defendant. The 4th Defendant is an architect and also the owner of the 5th Defendant company. His testimony is that sometime in 2011 the 1st Defendant requested for the account

details of his company (the 5th Defendant) to enable her conclude a transaction. The 4th Defendant obliged her and the total sum of N20,000,000.00 was credited into that account. He testified that upon the instruction of the 1st Defendant, he made payment during that period totaling N21,000,000.00. He said the bank charges and other transactional charges on the said amount were not included and he bore those costs. He was however invited in 2013 by the Economic and Financial Crimes Commission to explain the transaction surrounding that money. He made his statement to the EFCC and was told to leave but was however arraigned in 2014 before this Court on an amended charge. It was during the course of the EFCC investigation that he got to know more facts about the transaction involving the money paid into the 5th Defendant's account. He testified that the 1st Defendant was his wife and he had no reason to doubt the transparency of the transaction she was involved in when she requested for the 5th Defendant's bank details. He said there have been precedents and Mr. Victor who made the payment was at that time the 4th Defendant's employer. He was therefore fairly certain that the source of funds and the intended purpose had integrity. The 4th Defendant testified that of the sums disbursed, the sum of N9,000,000.00 cheque was issued to the 3rd Defendant. He said the sums of N6,500,000.00, N2,000,000.00 and N200,000.00 were issued to the 1st Defendant. He said N3,500,000.00 was issued to himself out of which N1,100,000.00 was his own money and the balance of N2,400,000.00 was given to the 1st Defendant. He said although the 1st Defendant is his wife, he only met the 2nd and 3rd Defendants before the trial commenced. He has never had any meeting with the other Defendants as regards the present transaction and was not privy to the transaction until Mr. Victor asked him to visit the site of the 2nd Defendant's plot. The 2nd Defendant testified that he did not benefit from the transaction.

Under cross-examination, the 2nd Defendant repeated that he was not privy to the details of engagement of the 1st Defendant by Mr. Victor. When he asked the 1st Defendant what the money was meant for, she told him that Mr. Victor asked her to act as agent in a property transaction. The 4th Defendant stated that Mr.

Victor had admitted this to him. He said Mr. Victor however did not told him the full story of the transaction although he worked with Mr. Victor at the time. He was merely asked to go and see the 2nd Defendant's plot by Mr. Victor. He said there was no particular resolution reached with Mr. Victor in this matter even though the nominal complainant appears to be Mrs. Sonia and not Mr. Victor. The 4th Defendant stated that he is a Director of the 5th Defendant as well as a signatory to it account. DW3 stated under cross examination that it is correct that the sum of N20,000,000.00 was paid into the account of 5th Defendant on behalf of his wife. He said the 1st Defendant had dealings with the husband of the nominal complainant. That the 1st Defendant is certainly not a staff of Ad-Hoc Committee but an agent. He said he was providing consulting and contracting service to Mr. Victor. He said it will be incorrect to say that he, the 1st, 2nd and 3rd Defendants work as agents. He stated that it will not be correct to say he benefitted from the sum paid in the course of the transaction.

In order to resolve the contending issues in this case, let me first of all address the issue of jurisdiction because any decision taken by this Court on the substantive matter without jurisdiction is a waste of precious judicial time. Counsel to the 1st - 3rd Defendants has raised the issue of this Court's jurisdiction to entertain the charge in this case. Counsel is talking about lack of evidence to sustain the charge against the 1st, 2nd and 3rd Defendants. I have read the amended charge. The Defendants have been alleged to have committed acts recognized as punishable offences under our criminal laws. The issue of failure to adduce evidence to sustain the charge against the Defendants does not affect the competence of charge or render it incompetent. It simply means the Prosecution has failed to prove the allegations contained in the charge on the standard of proof required in criminal cases. This can only be determined after weighing the evidence before the Court. It would therefore amount to turning the law on its head to say that having failed to prove the allegations in the charge then the charge is incompetent. That is not the law. Where prosecution fails to prove

the charge then it will be dismissed not struck out as in the case where the charge is incompetent.

Secondly on the issue of duplication of offences, I have looked at Counts 2 and 3 of the amended charge which I have set out earlier. In each of the mentioned counts the Defendants are accused of receiving N10,000,000 which is the value of each separate and different cheques i.e. cheque no. 06676307 in Count 2 and cheque no. 06676308 in Count 3 of the amended charge. Learned Counsel to the 1st – 3rd Defendants' mind may not have been averted to this difference. Although part of the same transaction, the law permits the offences allegedly committed in respect of the two cheques to be charged differently as two counts. By virtue of Section 215 of the Administration of Criminal Justice Act, 2015 it provides as follows;

215. "Where a single act or omission the fact or combination of facts constitutes more than one offence, the defendant may be charged and tried at one trial for one or more of those offences."

The instant charge is therefore not bad for duplication of offences as argued by Counsel to the 1st – 3rd Defendants. I have read through the provisions of Sections 194 – 222 of the Administration of Criminal Justice Act, 2015 which relate to charges and the requirements thereof. The reasons given by Counsel to the 1st – 3rd Defendants for contending that the instant charge is incompetent and this Court lacks jurisdiction to entertain it cannot be sustained. Under Section 195 of Administration of Criminal Justice Act 2015, the regularity of the amended charge in this case must be presumed. It follows therefore, that this Court have jurisdiction in respect of the amended charge. Counsel to the 1st – 3rd Defendants has failed to rebut this presumption. Hence therefore I hold the view that the instant amended charge is competent and this Court has the requisite jurisdiction to entertain same against the Defendants and I so hold. The 1st – 3rd Defendants' Counsel's first issue is hereby resolved against the 1st, 2nd and 3rd Defendant in favour of the prosecution.

Now that the coast has been cleared, by virtue of **Section 135 of the Evidence Act 2011**, the onus of proving the allegations of commission of criminal offences against the Defendants is on the Prosecution and the standard proof required is beyond reasonable doubt.

I have looked at the evidence of PW1 which I summarized earlier. PW1 is the personal assistant to nominal complainant's husband. He may not have been the one who issued the cheques in question but from his evidence he participated actively in the transaction and represented the nominal complainant and her husband. From his evidence before the Court, he dealt personally with Defendants in the transaction and therefore gave evidence of what he witnessed personally. His testimony does not therefore fall within the definition of hearsay evidence.

Regarding the evidence of PW3, he gave evidence as one of the team of operatives of the Economic and Financial Crimes commission who investigated the allegations against the Defendants. His evidence is in respect of what he discovered in the course of his investigation. His evidence thus does not qualify as hearsay evidence. In **JULIUS BERGER NIGERIA PLC AND ANOR V MRS. PHILOMENA UGO (2015) LPELR 24408 (CA)** the Court of Appeal held as follows;

"What a witness in a case is expected to do is give evidence of what he or she said or did personally or discovered and not what he or she heard or was told by someone else. The evidence of the PW1, therefore as an Investigating Police Officer about what he personally saw or discovered in the course of his investigation into the cause of accident is not hearsay evidence and is admissible."

See also **MR. UBONG OBOT V THE STATE (2014) LPELR – 23130 (CA)**. In the instant case I hold the view that the evidence of PWs1 and 3 are not hearsay evidence and I so hold. Hence the second issue formulated by Counsel to the 1st -3rd Defendants is hereby resolved against the 1st -3rd Defendants and in favour of the prosecution.

There is also the contention by the Defendants' Counsel that the failure to call the nominal complainant i.e one Mrs. Sonia victor and her husband one Mr. victor is fatal to the prosecution's case. Now the law imposes no obligation on the prosecution to call any number of witness to prove its case. All it needs to do is to call enough material witnesses to prove its case, and in so doing, it has a discretion in the matter. See the cases of **UDO V STATE (2006) 15 NWLR (pt1001) Page 179 and IMHANRIA V NIGERIA ARMY (2007) 14 NWLR (pt 1053)page 76.**

It is not also the law that a nominal complainant must personally testify in a case. Where there is enough material evidence to establish or prove the case then the presence of the nominal complainant can be dispensed with. See **UGWU V STATE (1998)7 NWLR (pt 558. Page 397.**

The proper question is therefore not whether the mere failure to bring the nominal complainant to testify before this Court is fatal to the prosecution's case; but whether there is sufficient material evidence adduced to prove the charges before this Court beyond reasonable doubt?

In the instant case the nominal complainant did not appear before this Court to give evidence. This brings me to exhibit 7 which was admitted in evidence at trial as the nominal complainant's extra- judicial statement to the Economic and Financial Crime Commission. While exhibit 7 is admissible in law, the weight to be attached to same is a different matter which must be considered by this Court as it is the law that the mere fact that a document is admissible does not mean weight must ipso facto be ascribed to it. See **OKECHUKWU NWESI V THE STATE (2011) LPELR 4649 (CA).**

Exhibit 7 was at trial admitted in evidence as the nominal complainant's extra-judicial statement to the Economic and Financial Crime Commission. She however did not appear to give evidence at the trial of this matter. PW3 stated that he discovered she was in America for her Master program when he tried to secure her attendance in Court. What then is the weight to be attached to her statement (exhibit 7) before this Court? The position of the law is that such statement must amount to naught. See **EKPEN YONG V STATE (1991) 6 NWLR (pt 200)**

page 683 where the Court of Appeal held that authorities have established that in a situation where the witness whose statement has been admitted never testified at all, the statement should never be considered as evidence of the facts contained in it. Consequently, the prosecution having failed or was unable to bring the nominal complainant i.e Mrs. Sonia victor before this Court to testify, her extrajudicial statement to the Economic and Financial Crime Commission (exhibit7) ought to be discountenanced by this Court. Accordingly, exhibit 7 is hereby discountenanced.

It is trite position of the law that in criminal trial, the prosecution has the un-shifting burden and duty to prove all (and not merely some) of the ingredients of the offence charged beyond reasonable doubt. The standard of proof is such that if there is any element of doubt in relation to any of the ingredients, the doubt is to be resolved in favour of the accused person. In discharging this burden of proof, the prosecution is required to produce positive and credible evidence which may be direct; or if circumstantial, it must be of such quality or cogency that a Court could safely rely on it in coming to its decision in the case. See the case of **TANKO V STATE (2008) 16 NWLR (pt 1114) page 597 at pages 636- 637 paragraph D-B**. See again section 135 of the Evidence Act 2011 mentioned earlier.

Having said the above, I will now proceed to consider the three counts amended charge against the Defendants. The first count amended charge before the Court relates to the 1st , 2nd and 3rd Defendants accused of having committed the offence of criminal conspiracy contrary to section 8 (a) of the Advance Fee fraud and other Related Fraud Offences Act, 2006. Section 8 of the Act says:-

“ A person who:-

- (a) Conspires with, aids abets, or Counsels any other person to commit an offence; or
- (b) Attempts to commit or is an accessory to an act or offence/or
- (c) Incites, procures or induces any other person by any means whatsoever to commit an offence under this act, commits the offence and is liable on conviction to the

same punishment as is prescribed for that offence under this Act.”

To prove the offence of conspiracy by the prosecution against the 1st, 2nd and 3rd Defendants, the Supreme Court of Nigeria in the case of **IKECHUKWU OKOH V THE STATE (2014) LPELR 22589**, it held thus:-

“It is also well settled that the essential ingredients of the offence of conspiracy 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 also **CLARK V THE STATE, (1986)4 NWLR (pt 35) page 381, GBADAMOSI V THE STATE, (1991)6 NWLR (pt196) Page 182, AJE V THE STATE, (2006) 8 NWLR (pt982) page 345 at 363 paragraph A-C.**

It is clear from the above judicial decisions that the essential ingredients of the offence of conspiracy lies in the bare agreement of two or more persons with a common intention to prosecute an unlawful purpose. But because conspiracy is usually hatched in utmost secrecy amongst the conspirators, to prove agreement and intention is always difficult or practically impossible by the prosecution. However, the Supreme Court in the case of **IKECHUKWU OKOH V THE STATES** (supra) states:-
“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.”

In otherwords, it is sufficient proof if the prosecution can lead evidence from the surrounding circumstances of doing things by the Defendants towards achieving the purpose and as a result an offence is committed. For more understanding as to the duty of the trial Court in inferring from fact of doing things whether

conspiracy exist, in the case of ***USMAN KAZA V THE STATE , (2008) LPELR 1683***, the Supreme Court held further:-

“In the offence of conspiracy, the mens rea is not easy to locate as it is mostly, if not invariably, buried in secrecy. And so, the actus reus of the offence which is easier to locate can draw the mens rea to the open, and make it possible for the Court to find inculpatory evidence.”

Now that the offence of conspiracy is not easily ascertained or proved by any form of agreement and neither can the mens rea be easily located because of the utmost secrecy, by inferential or circumstantial surrounding facts and circumstance, the roles, actions steps taken in doing things by the conspirators would ultimately brought to the open the mens rea.

In the instant case, I have perused the evidence of the prosecution witnesses nos 1, 2 and 3 as well as the exhibits admitted in evidence in this case. I have equally gone through the testimonies of DWs1 ,2 and 3 as well as the exhibits tendered in evidence on behalf of the 2nd Defendant as DW2.

Firstly, by the evidence of PWs2 and 3, the purported houses at Asokoro and Maitama which the 1st Defendant informed PW1 and the nominal complainant, Mrs. Sonia that they were put up by Ad-Hoc Committee for sale was not true and they do not exist. And the picture presented to PW1 and the nominal complainant by the first Defendant was that the houses exist and someone with capacity to pay for the houses was required. The proof of capacity to pay pursuant to the 1st Defendant’s information was what led PW1 and the nominal complainant to issue two bank drafts of N20,000,000.00 each in favour of Ad-Hoc committee for sale of Federal Government of Nigeria Houses and the 1st Defendant promised to deliver letters of allocation within two weeks. The 1st Defendant also demanded the sum of N20,000,000.00 for her services and that the amount be paid in favour of the 5th Defendant’s account. PW1 testified that even after three months of payment for the Houses, the 1st Defendant could not deliver the letters of allocation and it was after the pressure by PW1 on the 1st Defendant that the 1st Defendant introduced the 2nd Defendant as a member of Ad-hoc Committee

on Sale of Federal Government of Nigeria Houses. PW1 testified that the 2nd Defendant tried to persuade and comfort them that the transaction is an objective and then he offered his title documents of his land in Asokoro behind Ait as collateral. The evidence of PW2 in both his oral testimony and exhibit 6 addressed to the Executive Chairman, Economic and Financial Crime Commission stated clearly that the draft cheques received by the 1st Defendant from PW1 was never presented to the Ad-hoc Committee for any clearance. By exhibit 6 also, PW2 being the Chairman of the Ad-hoc Committee on sale of Federal Government of Nigeria Houses stated as follows:-

"We are thereof of the ardent belief that the drafts were raised with the intent of defrauding both the Government and possibly an unsuspecting individual."

And PW2 in his oral testimony stated that the 2nd Defendant is not a staff of Ad- hoc Committee. On the otherhand, PW3 the investigating officer and a member of the team narrated how he obtained statements of the Defendants, gave evidence how the N20,000,000.00 was received from PW1 and shared between the 1st, 2nd and 3rd Defendants and then concluded as follows:-

" I discovered that Zenith bank drafts of N10,000,000.00 each totalling N40,000,000.00 in favour of Ad-Hoc committee was a trick just to benefit from the N20,000,000.00 received from the nominal complainant as the draft cheques were not in their names.

Now when you juxtapose the evidence of PWs1, 2 ,3 exhibit 6 and the statements of the 1st ,2nd and 3rd Defendants to the Economic and Financial Crime Commission especially exhibits 8,9 and 10, the facts and circumstances of the activities or roles played by the 1st , 2nd and 3rd Defendants, the inference that can be drawn was how to deprived the nominal complainant of the sum of N20,000,000.00. The two properties in question, that is situate in Asokoro and Maitama does not exist. Thus, the question of raising the draft cheques of N20,000,000.00 for each property to show capacity to pay was only a ploy to convince the nominal complainant and her husband that the information was real and for them to part with N20,000,000.00 as facilitation fee.

I have gone through the testimonies of DWs 1 and 2 in the witness box. I have also perused the documents, exhibits 12, 12 (a)13, 14,15,16,16(a) 17-17 (c) admitted in evidence through DW2.

I will consider these exhibits first before I proceed to make my findings. Firstly, exhibits 12 and 12(a) are purported application for purchase of Federal Government Houses located at No. 84 Yakubu Gowon, Asokoro and No 11B Vanem Crescent Maitama, Abuja by one Ebikabowie Victor. DW2 also in his evidence testified thus:-

"32222I now told P.A that I cannot proceed except I give him a form to give to the nominal complainant and affix his picture then I will process it."

DW2 identified the two applications and they were received in evidence without objection. However, this is a Court of law and what does the law prescribes before the admissibility of such documents?

In the instant case, a careful perusal of the two exhibits show that the two exhibits were presented to Ad- Hoc Committee and the Committee affixed their official stamp on 5th October, 2011 on the duplicate copy. Thus, by the Ad-Hoc Committee affixing its official stamp on the return copy or duplicate copy, even though the exhibits 12 and 12 (a) are in the position of a public document, the endorsement by Ad-Hoc committee with its official stamp makes the two exhibits primary evidence. See **AJOR ENEJI V THE STATE, (2013) LPELR 20393 (CA), NWOBODO V ONOH (1984) 1SC1.**

Now that exhibits 12 and 12 (a) are admissible, was it proper in law to tender same and admit them in evidence through DW2 who was not the maker of the documents i.e exhibits 12 and 12(a)?

In the recent case of **ABDULATEEF ABDULSALAM V THE STATE, (2018) LPELR 45371**, the Court of Appeal Jos Judicial division held:-

"The law is well settled that documents produced by parties in evidence in course of hearing are to be tested in open Court before the Court can evaluate them to determine their relevance in the determination of the case upon which the documents are

relied upon. For this reason, any document tendered by a witness other than the maker thereof attracts no probative value in the absence of opportunity given to the other party for cross examination for the purpose of testing its veracity. **EMMANUEL V UMNA & ORS (2016) LPELR 40659 (SC), OMISORE V AREGBESOLA, (2015) NWLR (pt 1482) page 205.**

By the combined reading of section 1 (b) 37, 38, and 83 of the evidence Act, a document which is to establish a fact in a proceeding can only be admissible as evidence of that fact if the maker of the document (statement) is called as a witness otherwise the document(statement) will amount to hearsay for which no probative value shall be ascribed to because the opposing party was denied the opportunity of cross examining the maker of the document. The purpose of a witness is not merely to tender document. A witness needs to be cross examined on the document he tendered and as such he must be the maker. This is why a trial Court cannot dispense with the personal appearance of the person who recorded the contents of a document such as an investigating police officer.”

See **MAGAJI V NIGERIA ARMY (2008) LPELR 1814(SC).**

In the instant case the maker of the documents exhibits 12 and 12(a) was not called as a witness. Secondly, if the 1st, 2nd and 3rd Defendants are sincere that it was Ebikabowie Victor that was the author of these documents and DW2 had actually submitted them to Ad- Hoc Committee, certified true copies of such documents, the documents being public document within section 102 of the Evidence Act would have suffice without the rigor or necessity of calling the maker. Thirdly, the DW2 or its Counsel had the opportunity of putting these documents through PW2, the Head or Chairman of the Ad-Hoc Committee whether they have received the documents but he failed to do so. And PW2 testified under cross examination by the 4th and 5th Defendants Counsel as follows:-

“Applications for sale come to the head and when it comes I direct for investigations. No application would be process without my directives.”

This would have been best opportunity for the 1st, 2nd and 3rd Defendants to put across the documents to PW2 but they failed to

do so because it appears from the facts and circumstances of the case of sale of the properties it was a sham and as rightly pointed out by PW2 in exhibit 6, these were part of the game to lure the unsuspecting individual, as in this case, the nominal complainant and her husband to part with their well earned N20,000,000.00. In any event, exhibits 12 and 12 (a) admitted in evidence in this case, I hold the view that they were wrongly admitted and I so hold. Accordingly exhibits 12 and 12(a) are hereby expunged from the records of this case.

In respecting of exhibits 13-17 (a), the documents relates to a piece of land situate at Kuruduma District while the evidence of PWS1, 3 and indeed DWs1 and 2, the evidence is consistent to the effect that the title documents referred to by the 2nd defendant was a piece of land in Asokoro District, Abuja. I am therefore of the view that the documents, exhibits 13-17 (a) are not relevant in the instant case and I so hold.

In the instant case therefore, by the actus reus of the 1st, 2nd and 3rd Defendants in this case, it is easier for me to locate and draw the mens rea to the open of the 1st, 2nd and 3rd Defendants. In otherwords, by the evidence and circumstances of doing things by the 1st, 2nd and 3rd Defendants, conspiracy can be inferred.

Further, by section 8 (a) of the Act, for the offence to be establish or proved, another important requirement of obtaining under false pretence is the elements of the falsity of information and the knowledge of the falsity of the information. See the cases of ***BENNETH UZUEGBUNAM V. C.O.P (2018) LPELR 43931 (CA)***.

In the instant case the information given to the nominal complainant, her husband, Mr. Victor and PW1 that Houses Nos 84 Yakubu Gowon Asokoro and 11B Vanem Crescent Maitama, Abuja, by the evidence of PWs2 and 3 and indeed PW1, such Houses never existed for sale by the Ad-Hoc Committee on sale of Federal Government Houses. Furthermore, by the actus reus of the Defendants for failing to deliver the letters of allocation within two weeks and even after three months and then offering the nominal complainant alternative at Gwarimpa clearly establishes the facts that the 1st, 2nd and 3rd Defendants have or had knowledge of the falsity of the information. The draft cheques

they lured the nominal Complainant and her husband, by the evidence of PW3 was a trick to convince the nominal complainant and her husband to part with N20,000,000.00, the purported facilitation fee. Accordingly to PW3 the 1st, 2nd and 3rd Defendants refused or failed to present the draft cheques to Ad-hoc Committee as confirmed by PW2.

Accordingly I hold the view that the prosecution has adduced credible evidence to prove the offence of conspiracy contrary to section 8 (a) and punishable under section 1(3) of the Advance Fee Fraud and other Related Offences Act against the 1st, 2nd and 3rd Defendants beyond reasonable doubt and I so hold.

Count two (2) and three (3) of the amended charge, the Defendants are alleged to have committed an offence contrary to section 1(1) (a) of the Advance Fee Fraud and other related Offences Act, 2006 and punishable under section 1(3) of the same Act. Section 1(1) of the Act provides:-

"1(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) Induces any other person, in Nigeria or in any other country to deliver to any person/or
- (c) Obtain 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.

For the prosecution to succeed against the Defendants, the following ingredients must be established by the prosecution against the Defendants beyond reasonable doubt:

- (1) That there was a pretence;
- (2) That the pretence emanated from the accused person;
- (3) That it was false
- (4) That there was intention to defraud;
- (5) That the thing is capable of being stolen
- (6) That the accuse person induce the owner to transfer his whole interest in the property.

See **ALAKE V THE STATE (1991) 7 NWLR (pt 205) Page 567, FRN V AMAH (2016) ALL FWLR (Pt818) page 889 at 909 and SEGUN ADELODUN V FRN (2017) LPELR 42356 (CA).**

In the instant case by the evidence of the prosecution witnesses, there is no evidence at all linking the 4th and 5th defendants in the commission of the offence of intent to defraud or obtain money by false pretence contrary to section 1(1) (a) of the Act. By the evidence of PW1 under cross examination by the Counsel for the 4th and 5th Defendants, he testified thus:-

"I know the 4th and 5th Accused persons. The 4th Accused works with us and the 5th Accused was given to me by the 1st Accused to write a cheque of N20,000,000.00 in the name of the 5th Accused."

Also by the testimony of PW3, based on the draft cheques issued in the name of the 5th Defendant, they wrote a letter of investigation activities to Corporate Affairs Commission and they received a response which indicated that the 4th Defendant is the Managing Director of the 5th Defendant company. According to PW3, they also wrote to UBA plc where the 5th Defendant maintain and operate an account. The response of UBA Plc and the statement of account of 5th the Defendant was analysed as to the disbursement of the sum of N20,000,000.00 to only the 1st, 2nd and 3rd Defendants as beneficiaries. Under cross examination by the 4th and 5th Defendants Counsel, PW3 testified as follows:-

"It is correct based on the draft cheque, I wrote to Corporate Affairs Commission and found that the 4th Defendant is the Managing Director. I equally found out that the N20,000,000.00 was paid in the account of the 5th Defendant."

"The 4th and 5th Defendants did not partake in the transaction. In the course of my investigation I did not find where the 4th and 5th Defendants benefitted from the transaction."

Now by the evidence of the prosecution witnesses, virtually all the ingredients of the offence in which the 4th and 5th Defendants were charged have not been proved against the 4th

and 5th Defendants. And it is in evidence by the PWs1 and 2 that the 4th and 5th Defendants were not aware of the transaction in the instant case. In other words there was no pretence of any such by the 4th and 5th Defendants neither was there any pretence emanating from them. This is to say there was no pretence that makes such pretence false and the nominal complainant or her husband never parted with any property, in this case, money to the 4th and 5th Defendants. The crime of the 4th and 5th Defendants appears to hinged on the fact that the account of the 5th Defendant was used to lodge the N20, 000,000.00. There is no evidence by the prosecution that the 4th and 5th Defendants were aware that the N20, 000,000.00 was a product of fraudulent transaction. The 1st defendant, from the evidence before the Court was the wife of the 4th Defendant and the N20, 000,000.00 was disbursed in accordance with the 1st defendant's instruction. PW3 testified under cross examination thus:-

"It is correct that the N20, 000,000.00 deposited in the account of the 5th Defendant was disbursed in accordance with the instructions of the 1st Defendant."

The above testimonies of PW1 and PW3 especially the conclusion of PW3 under cross examination to the effect that "we included the 5th Defendant in the charge because the cheque was raised in its name." In my mind should not be the yard stick of putting the 4th and 5th Defendants to go through the rigours of this criminal trial. By the evidence adduced by the prosecution witness the elements of the offence have not been established against the 4th and 5th Defendants by the prosecution and certainly, there is no way the prosecution would secured a conviction against the 4th and 5th Defendants. In the instant case, the prosecution having failed to prove the ingredients of the offences under counts 2 and 3 against the 4th and 5th Defendants, the 4th and 5th Defendants are entitled to be discharged and acquitted on the 2nd and 3rd counts. Accordingly, the 4th and 5th Defendants are hereby discharged and acquitted on counts two and three of the amended charge. In respect of the 1st, 2nd and 3rd Defendants, by the evidence of PWs1,2,4 exhibits 8,9 and 10 as well as exhibits 6,1 and 5

especially the statement of account of the 5th Defendant that showed disbursement of N20,000,000.00 to the 1st, 2nd and 3rd Defendants, it is crystal clear from the prosecution evidence that there was a pretence by the 1st, 2nd and 3rd Defendants of the existence of Houses nos 84 and 11B earlier mentioned in this judgment. And it is also in evidence that the pretence emanated from the 1st, 2nd and 3rd Defendants that such Houses had been put up for sale by the Ad-Hoc Committee on sale of Federal Government of Nigeria Houses and that the nominal complainant and her husband to prove capacity to buy the Houses which information or pretence they know or knew to be false. And by the evidence of PWs1,2 and 3 and the statements of the Defendants, the non-presentations and keeping of the N40,000,000.00 draft cheques without the knowledge of the Ad-hoc Committee for onward of about three months while the 1st, 2nd and 3rd Defendants had already shared the sum of N20,000,000.00 and they kept on requesting for further sums of money to pay to Government officials as facilitation fee is a clear manifestation of intention to defraud the nominal complainant and her husband, Mr. Victor Ben.

On the 5th ingredient, there is no doubt that the cheque of N20,000,000.00 paid into the 5th defendant's account on the instruction of the 1st Defendant is capable of being stolen and indeed, the false pretence by the 1st, 2nd and 3rd Defendants induced the nominal complainant and her husband, Victor to transfer the sum of N20,000,000.00 into the account of the 5th Defendant.

I have painstakingly perused the entire evidence of the 1st, and 2nd Defendants as DWs 1 and 2. The testimonies of DWs1 and 2 are not helpful to their course or defence. I therefore disbelieve their testimonies and believe the evidence of the prosecution witnesses in this case. I therefore hold the view that the prosecution has proved the ingredients of the offences contained in counts 2 and 3 of the amended charge against the 1st, 2nd and 3rd Defendants beyond reasonable doubt and I so hold. Accordingly, the 1st, 2nd and 3rd Defendants are hereby

convicted of the offences on counts 1,2 and 3 of the amended charge.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
11/03/19

SENTENCE

Plea of allocutus

Agala:- I thank the court for a well considered judgment. The 1st convict is a nursing mother and she has children solely under her care. This issue has also led the 1st convict to separate with her husband. The 1st convict is a first offender. I also believe that she has learnt her lessons. We urge the court to temper justice with mercy.

In respect of the 2nd convict, he is the bread winner of his family. His children and wife are under his protection and care. The 2nd convict has started making payments or refunds to the tune of about N4,000,000.00 out of the N8,000,000.00 he received. Life will become miserable for his family and the future of his family will be in abeyance.

In the circumstances I plead with the Court to be lenient on the 1st and 2nd convicts as they have shown sufficient remorse.

Olenyi:- I also lend my voice to the submissions of the Counsel for the 1st and 2nd convicts.

Alabi:- I appreciate the court. As the Counsel for the 1st and 2nd convicts submitted, there is no record of previous conviction against the two convicts. I will however urge the Court to make an order of restitution pursuant to section 321 (a) Administration of Criminal Justice Act, 2015. The convicts made a total refund of N1,600,000.00 only leaving a balance of N18,400,000.00.

However in respect of the plea of allocutus by the learned Counsel for the convicts', I urge the Court to

take into account section 416 of the Administration of Criminal Justice Act, 2015. Thus, based on section 416 the Court can still exercise discretion.

COURT:-

In passing the sentence on the 1st and 2nd convicts, I take into account the plea of allocutus presented by their counsel to the effect that both convicts have families and they are the bread winners. Secondly I also take into account the consequences that the children of both convicts would suffer especially their well-being and education if the minimum sentence is impose on the convict. More importantly, the convicts are first offenders and they have really shown great remorse in their actions. Thus, as rightly submitted by the learned prosecuting Counsel, by virtue of section 415 (2) (a) and (b) of the Administration of Criminal Justice Act, 2015, it provides:-

(2) In exercising its discretion of sentencing or review of sentence, the Court shall take into consideration the following factors, in addition to the provisions of section 401 of this Act.

(a) Each case shall be treated on its merit,

(b) The objectives of sentencing, including the principles of reformation, shall be borne in mind in sentencing a convict.

Now taking into account the plea of allocutus of the 1st and 2nd convicts by their counsel and the provisions of the Administration of Criminal Justice Act, 2015, it appears the purpose of sentence on any convict is to serve a particular purpose that will be beneficial not only to the society and victims but also to the convict himself. In the circumstance of this case, by the plea of their Counsel, the 1st convict's marriage has suffered separation and the children of the marriage are under her custody. These are innocent persons and leaving them open to the society without proper care, they may fall victims of societal ills. We do not want that to happen. Thus, the convicts having shown remorse to the actions they got themselves involved in and have repented not to engage in such nefarious activities again and they are willing to retribute the victim, and they are also first offender,

I will be lenient on the convicts. The 1st and 2nd convicts are hereby sentenced to a term of imprisonment of two months on the first count and a term of three months imprisonment on count 2nd and 3rd of the amended charge. The term of imprisonment to run concurrently. Further, in respect of the 3rd convict, her sentence is hereby reserved until when she is apprehended or she surrenders herself to the Honourable Court.

The 1st and 2nd convicts in accordance with the provision of section 321 of the Administration of Criminal Justice Act, 2015, the convicts to retribute the victim of crime with the sum of N20,000,000.00 had and receive.

HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
11/03/19

1st, 2nd, 4th and 5th Defendants present in Court.

Yetunde Alabi (Mrs) with me is Diane Nkwap (Mrs) for the prosecution.

I.U. Agala :- For the 1st, 2nd and 3rd Defendants.

E.o Olenyi:- For the 4th and 5th Defendant

Sign
Judge
11/03/19

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI, ABUJA**

BEFORE HIS LORDSHIP: HON. JUSTICE D. Z. SENCHI

COURT CLERKS: T. P. SALLAH & ORS

COURT NUMBER: HIGH COURT NO. 14

DATE: 20/03/2019

FCT/HC/CR/40/14

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

**6. MRS. TOKONI AJE
7. ALH. UMARU FAROUK
8. MRS. VERA JOHNSON
9. MR. ADEKUNLE AJE
10. OPTIONS SOLUTIONS GLOBAL
RESOURCES LIMITED** } **DEFENDANTS**

Convict:- Present in Court.

Alabi Yetunde:-With me is Diane Nkwap for the prosecution.

I.U Agala:- For the 3rd Convict.

Yetunde:- The case is slated today for sentencing on the 3rd convict. The convict is now before the Court. The convict was produced from our Uyo office to Abuja where she has been in custody. I therefore apply that the convict be sentenced accordingly.

Agala:- The convict is a first offender. The convict is a bread winner of her family and also responsible for the welfare of her 78 year old mother and her siblings. The convict has been seriously battling with ailment that has defiled medical attention and she has been seeking herbal and traditional

medicines. And that explains her absence in the number of adjournments in this case and the convict right now, she is in bad shape. As a result of this matter and the health of the convict, the convict has suffered separation from her husband. The convict is greatly remorseful of all actions leading to her conviction. We urge the Court to temper justice with mercy and to consider the fact that the convict has been in detention with the prosecution since 29th January, 2019. This fact only got to me after the proceedings of 11th March, 2019. I urge the Court to temper Justice with mercy and be lenient to the convict and grant the convict a respite of two weeks imprisonment or option of fine of N50,000.00 only.

Yetunde:-

Although there is no record of previous conviction, the law is clear that where the law imposes mandatory sentence, the Court cannot hold otherwise. See the case of **EZEANI V FRN (2019) LPELR 56800**. The convict since May, 2016 has been at large and only recently arrested in another matter at our Uyo office. I also urge the Court to make an order of restitution under section 321 (a) Administration of Criminal Justice Act, 2015.

SENTENCE

In passing the sentence on the 3rd convict, I take into account the plea of leniency presented by her Counsel, I.U Agala Esq. I note that the convict is a first offender and she has dependants that rely on her for their daily bread. I also take into account the fact of separation of the convict with her husband even though there is no evidence of marriage as well as separation. I will be lenient on the convict. However, in being lenient with the convict and the passionate appeal of Counsel to evoke section 416 (2) (a) and (b) of the Administration of Criminal Justice Act, 2015, the facts and circumstances of this case that led to the conviction of the convict in absentia are crystal clear from the records of this case.

The convict was released on bail together with the other convicts on terms friendly to the convicts. The present convict was granted bail on 10th March, 2014. Then trial began on the 5th May, 2015. After the 5th May, 2015, the convict never appeared again in this Court to face her trial until today when she was brought to Court by the Economic and Financial Crimes Commission after being arrested at Uyo, by Economic and Financial Crimes Commission Uyo Office on another complaint. In otherwords, from the 5th May, 2015 to 11th March, 2019, the convict disappeared and she was evading arrest by prosecutory agencies. It also appears that the convict in order to avoid trial of the charge against her relocated to Uyo, Akwa Ibom State under the pretext that she is receiving herbal and traditional healing of her strange ailment. The attitude of the convict did not depict the convict as a remorseful and repentant person. And the prevalence of these type of offences in our society today is becoming really worrisome. And therefore appropriate punishment in form of sentence ought to be imposed to serve as a deterrent to like minds of the convict. Thus, by the provision of section 1(3) of the Advance Fee Fraud and other Related Offences Act, the Maximum prescribed for the offence in which the convict was convicted is a maximum of 20 years and a minimum of 7 years without an option of fine.

I will therefore be lenient on the convict. The convict is hereby sentenced to seven (7) years imprisonment without an option of fine. Further, in line with section 321 of the Administration of Criminal Justice Act, 2015, the three convicts are to collectively retribute the victim of crime of the sum of N20, 000,000.00.

**HON. JUSTICE D.Z. SENCHI
(PRESIDING JUDGE)
20/03/19**