IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
HOLDEN AT ABUJA

ON FRIDAY 7TH DAY OF JULY 2017
BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 20 APO – ABUJA

CHARGE NO: FCT/ABJ/CR/154/14

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA … … … … COMPLAINANT

AND

1. NWOKOBIA CHRIS
2. BIOTEC LABORATORY PRODUCTS LTD } DEFENDANTS

JUDGMENT

The 1st Defendant is the Managing Director of the 2nd Defendant Company. The two parties were arraigned before this Court on 25/10/2014, upon two-count Charge filed on 04/07/2014 bordering on

forgery and uttering forged documents contrary to the provisions of **sections 364** and **366** of the **Penal Code Act**.

At the plenary trial, the prosecution called five (5) witnesses, namely – **Madaki Yakubu**, *Investigator with the Economic And Financial Crimes Commission (**EFCC**)*, (**PW1**); **Aisha M. Usman**, *Procurement Officer, Kebbi State Agency for Control of AIDS* (**PW2**); **Uyoyou Ewhe**, *staff of Access Bank Plc., Head Office, Lagos* (**PW3**); **Uche Okere**, *Branch Manager, Access Bank, Maitama Branch, Abuja* (**PW4**); and **Kelechi Njoku-Akowuba**, *Relationship Manager, Access Bank Plc*. (**PW5**). The **PW1** and **PW2**, between them, tendered a total of twenty-five (25) sets of documents as exhibits, in the course of plenary trial,

in order to proof the Charge. All the prosecution witnesses were cross-examined in turn by learned counsel for the Defendants.

At the close of the case for the prosecution, the Defendants made a no-case submission, which was overruled by the Court on 11/05/2016. Subsequently, the Defendants entered their defence, with the 1st Defendant testifying on their behalves. They called no other witnesses. The 1st Defendant tendered three (3) sets of documents in evidence as exhibits. He was equally cross-examined by learned counsel for the prosecution.

After the close of plenary trial, parties filed and exchanged their written final addresses, as agreed to by them. In the final address filed on behalf of the

Defendants on 19/04/2017, their learned senior counsel, **Prof. Joash Amupitan, SAN**, formulated three issues as having arisen for determination in this suit, namely:

1. ***Whether the prosecution has proved its case against the Defendants beyond reasonable doubt?***

2. ***Whether the 1st Defendant is criminally liable for the offences charged?***

3. ***Whether the 2nd Defendant, being a corporate entity, can be made liable for the offence charged?***

In turn, the prosecution learned counsel, **Benjamin Lawan Manji, Esq.**, filed his final address on behalf of

the Complainant on 26/04/2017, whereby he raised a sole issue for determination, namely:

> ***Whether the prosecution has proved the case against the Defendants beyond reasonable doubt as required by law.***

The Defendants' learned senior counsel also filed a Reply address on 11/05/2017, in response to the final address of the learned prosecution counsel.

I have also given proper consideration to and taken benefit of the impressive arguments canvassed by both learned counsel in their respective written and oral final submissions; to which I shall make specific reference as I consider needful in the course of this Judgment.

I consider it pertinent, as a starting point, to re-state the fundamental principles of a criminal trial, alluded to by the prosecution learned counsel, which is that the prosecution could discharge the burden placed on it by the provisions of **section 135 (2)** and **(3)** of the **Evidence Act**, to prove the guilt of an accused defendant beyond reasonable doubt, in any of the following well established and recognized manners, namely:

1. By the confessional statement of the accused defendant which passes the requirement of the law; or

2. By direct evidence of eye witnesses who saw or witnessed the commission of the crime or offence; or

3. By circumstantial evidence which links the accused defendant and no other person to or with the commission of the crime or offence charged.

See Lori Vs. State *[1980] 8 - 11 SC, 81;* Emeka Vs. State *[2001] 14 NWLR (Pt. 734) 668;* Igabele Vs. State *[2006] 6 NWLR (Pt. 975) 100*.

On the basis of these well settled principles as espoused in the authorities cited in the foregoing, I now proceed to examine each count of the instant Charge, in the light of the evidence adduced by both parties and the issues formulated by the respective learned counsel, in order to determine whether or not the prosecution has proved the

Charge against the Defendants beyond reasonable doubt.

COUNTS ONE AND TWO

Count one of the Charge states as follows:

> ***"That you, Nwokobia Chris "M" and BIOTEC LABORATORY PRODUCTS LTD. on or about the 5th day of July, 2013, at Abuja, within the jurisdiction of the High Court of the Federal Capital Territory did fraudulently make a false document to wit: ACCESS BANK PLC. PERFORMANCE BOND dated 5th day of July, 2013, and purportedly signed by Shirley Ugolee and Uche Okere as the authorized signatories of Access Bank Plc. which you knew to be false and sent same to KEBBI STATE AGENCY FOR THE CONTROL OF AIDS with the intention of causing it to be believed that the said document***

was genuine and emanated from Access Bank Plc., Maitama Branch, Abuja, and thereby committed an offence punishable under section 364 of the Penal Code Cap 532 Laws of the Federation of Nigeria (Abuja) 1990."

Count two also states as follows:

"That you, Nwokobia Chris "M" and BIOTEC LABORATORY PRODUCT LTD on or about the 5th day of July, 2013, at Abuja, within the jurisdiction of the High Court of the Federal Capital Territory did fraudulently use as genuine a forged document to wit: ACCESS BANK PLC. PERFORMANCE BOND dated 5th day of July, 2013, and purportedly signed by Shirley Ugolee and Uche Okere as the authorized signatories of Access Bank Plc. knowing it to be forged and sent same to KEBBI STATE AGENCY FOR THE CONTROL OF AIDS thereby

committed an offence contrary to Section 366 of the Penal Code Cap 532 Laws of the Federation of Nigeria (Abuja) 1990 and punishable under section 364 of the same Act."

The provision of **section 362 (a),** the definition section of the offence in the instant Charge states as follows:

"**362**. ***A person is said to make a false document -***

(a) Who dishonestly or fraudulently makes, signs, seals, or executes a document or makes a mark denoting the execution of a document with the intention of causing it to be believed that the document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed or

at a time at which he knows that it was not made, signed, sealed or executed;..."

The provision of **section 364** of the **Penal Code Act**, the punishment section relevant to Count one of the Charge, states as follows:

"364. Whoever commits forgery shall be punished with imprisonment for a term which may extend to fourteen years or with fine or with both."

The provision of **section 366** of the **Act** under which the Defendants were charged with Count Two of the offence also states as follows:

"366. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be forged document shall be

punished in the same manner as if he had forged such document."

In *Smart Vs. State [1974] 11 SC 173 @ 186*, the Supreme Court defined forgery as follows:

"In Nigeria, forgery consists of the making of a false document or writing knowing it to be false and with intent that it may be used as a genuine document."

Again, in *Osondu Vs. FRN [2000] 12 NWLR (Pt. 682) 483*, cited by the prosecution learned counsel, forgery is also defined as follows:

"Forgery is an act of fraudulently making a false document or altering a real document to be used as if genuine."

Those definitions or pronouncements were based on the statutory definition of forgery provided in **Section 362** of the **Penal Code Act**. See also *Alake Vs. State [1991] 7 NWLR (Pt. 205) 567*.

Learned counsel on both sides are *ad idem* that, in order to sustain this Charge, the prosecution must establish as against the Defendants, the following ingredients:

1. That the accused dishonestly or fraudulently made or procured the making, signing, sealing or execution of a false document;

2. That the accused intended the false document to be believed to have been made, signed, sealed or executed by or on the

authority of a person he knows not to have so made, signed, sealed or executed it;

3. That making of the false document was with the intention to cause damage to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or to commit fraud.

Learned senior counsel for the Defendants further submitted that the ingredients stated in the foregoing constitutes both the *mens rea* and the *actus reus* of the offence charged and that it is incumbent on the prosecution to establish the presence of both in order to sustain the Charge against the Defendants.

In seeking to prove the Charge, certain basic facts seem to me to have been established by the prosecution, from the evidence of its witnesses and documents tendered, namely:

1. That by letter of notification of contract, dated June 7th, 2013, tendered in evidence as **Exhibit P2** by the **PW1**, the Kebbi HIV/AIDS Programme Development Project, and Agency under the Office of the Executive Governor, Birnin-Kebbi, Kebbi State, notified the 2nd Defendant, **Biotec Laboratory Products Limited**, of the award to her of contract to supply **2,700 units** of **Test of Double Check Gold (LOT 2)** for a total sum of **₦1,215,000.00**.

2. That as part of the terms contained in the Letter of Notification of award of contract, as set out in **Exhibit P1**, is that the 2nd Defendant shall, within 28 days thereof, provide a Performance Security for 10% of contract price from a reputable Bank, as a prerequisite for signing the contract.

3. That by letter dated and signed by the 1st Defendant on behalf of the 2nd Defendant on 26th June, 2013, tendered in evidence as **Exhibit P4**, by the **PW1**, the 2nd Defendant accepted to undertake the supply contract.

4. That the 2nd Defendant, in compliance with the requirements of **Exhibit P1**, submitted to the

State Agency for the Control of AIDS (SACA), Kebbi State, original Performance Bond purportedly issued at her instance on 5th day of July, 2013, by Access Bank Plc., Maitama Branch, 50, Gana Street, Maitama, Abuja, addressed to Kebbi HIV/AIDS Programme Development Project (HPDP 2), Birnin-Kebbi, Kebbi State, in satisfaction of the requirement contained in **Exhibit P1**. The said Performance Bond, tendered in evidence as **Exhibit P19A**, by the **PW1**, was forwarded to the Economic and Financial Crimes Commission (**EFCC**), by letter, **Exhibit P19**, dated 25th February, 2014, also tendered in evidence by the **PW1**.

5. That on 20th August, 2013, the **Kebbi HIV/AIDS Programme Development Project**, and Agency executed with the 2nd Defendant, formal contract in pursuance of the award contained in **Exhibit P2**. The contract was tendered in evidence as **Exhibit P3** by the **PW1**.

6. That the 1st Defendant, **Nwokobia Chris**, signed the said contract on behalf of the 2nd Defendant, in his capacity as her Managing Director.

7. By letter dated 8th July, 2013, signed by the 1st Defendant, the 2nd Defendant informed the Project Manager of Kebbi HIV/AIDS Programme Development Project (HPDP) that she had completed the supply of the items

requested by the Agency and requested for payment for the supply through her Account with Access Bank Plc, with Account No. 0045825518. The letter was tendered in evidence as **Exhibit P25**, by the **PW2**.

8. That by the documents tendered in evidence by the **PW1** as **Exhibits P9, P9^{A}, P9^{B}, P9^{C} and P9^{D}**, respectively, the Corporate Affairs Commission, confirmed to the Head, Economic Governance of the Economic and Financial Crimes Commission (EFCC), that the 2nd Defendant, **Biotec Laboratory Products Limited,** with **No. RC. 395,534**, was incorporated on 15th November, 2000; and that **Nwokobia Christopher Ikechukwu** is the Managing

Director and holds 90% of the shares of the company.

9. That the 2nd Defendant, **Biotec Laboratory Products Limited** operates an account No. 0045825518 with Access Bank Plc., with the 1st Defendant as the sole signatory, as confirmed by the documents tendered by the **PW1** as the **Exhibts P7, P7A- P7P**.

I had noted the submission of the senior learned counsel for the Defendants that the prosecution merely dumped the documents tendered at the trial on the Court, particularly **Exhibits P1-P24** and as such the documents constituted documentary hearsay. This submission does not however represent the correct position at the trial in that in the course of

their testimonies, the attention of each of the witnesses of the prosecution was drawn to the documents relevant to the roles they individually played with respect to the case at hand and they in turn identified and gave evidence with respect to the specific documents.

In her testimony, the **PW2**, **Aisha M. Usman**, the Procurement Officer, Kebbi State Agency for the Control of HIV/AIDS, confirmed that she knew the 2nd Defendant, but not the 1st Defendant in person; that the 2nd Defendant won the bid to supply **2,700** test kits at the cost of **₦1,215,000.00**. She further testified that the 1st Defendant signed the contract documents on behalf of the 2nd Defendant and that the 2nd Defendant submitted a Performance Security

from Access Bank Plc.; and that the said document was sent to Access Bank for verification but that no response was received from the Bank. She further confirmed that the 2nd Defendant supplied the goods and that payment was also made to her. She confirmed all the documents relating to the contract tendered in evidence by the **PW1,** which were shown to her. The witness also confirmed **Exhibit P19A**, which was shown to her, as the Performance Bond provided by the 2nd Defendant as required by the contract documents. She confirmed that all correspondence received from the 2nd Defendant with respect to the transaction were signed by the 1st Defendant. She further tendered the documents, **Exhibits P24** and **P25**, to further buttress this point. She further testified

that it was when the Agency got an invitation from the **EFCC** sometime in November, 2013, for the Agency to state her side of the case of forgery of Performance Bond being investigated against the 2nd Defendant that she realized that the Performance Bond provided by the 2nd Defendant was not genuine.

She further confirmed, under cross-examination by the Defendants' learned counsel, that she never met the 1st Defendant throughout the transaction, but that they exchanged correspondence; that the Performance Bond and the goods ordered for were brought by another staff of the 2nd Defendant, not the 1st Defendant. She further confirmed that she signed the contract document, **Exhibit P3**, on behalf

of the Agency. She further confirmed that Access Bank did not do the verification of the Performance Bond before the Agency paid the 2nd Defendant; and that the Agency did not bother to pursue the verification any further since the 2nd Defendant had already supplied the goods and payment made. She also confirmed the statement she made to the EFCC, *vide* **Exhibit P11**, that the Defendants sent another Performance Bond to the Agency from First City Monument Bank.

The evidence of the **PW4**, **Uche Okere**, the Maitama, Abuja Branch Manager of Access Bank, is also very critical. He testified that he knew the two Defendants; that sometime in July, 2013, he got a mail from the Kebbi Branch of the Bank requesting

him to confirm if he prepared and signed a Performance Bond on behalf of the 2nd Defendant; that upon examining the said Performance Bond which was forwarded to him, he saw on the document, his purported signature and that of his back up staff who was no longer in the Bank's employment; that he realized that his signature on the document must have been forged or cloned, since he did not prepare any Performance Bond for the 2nd Defendant or signed the document. He testified further that he raised an alarm and that he sent a mail to the Compliance Unit of the Bank to investigate the matter.

He testified further that earlier on, a staff of the 2nd Defendant had approached him to sign a reference

letter for the company for the award of contract, but that he declined. He testified further that sometime later, the 1st Defendant came to the Bank to apologize, that it could be one of the 2nd Defendant's staffs who forged the Performance Bond; and that he told the 1st Defendant at that point that he had already reported the matter to his superiors.

When shown **Exhibit P19A**, the **PW4** confirmed that it was the Performance Bond that was forwarded to him by mail for verification. He confirmed that the document contained his name but that the signature ascribed to him in the document was not his own. He further testified that when the 1st Defendant came to the Bank, he was not accompanied by anyone else.

Under cross-examination by the Defendants' learned counsel, the **PW4** further testified that he was the one that alerted the Compliance Unit of the Bank in Abuja, which subsequently reported the same to the Bank's head office in Lagos. He further confirmed that even though he had all the while been handling transactions involving the company, 2nd Defendant, since 2012, when he was posted to the Maitama, Abuja Branch of the Bank; he had never met the 1st Defendant physically until the day he came to the Bank to see him on the Performance Bond issue. He further confirmed that it was a female staff of the 2nd Defendant that had earlier requested him for a reference letter, which he declined.

The evidence of the **PW5**, **Kelechi Njoku**, is also very crucial. He was Relationship Manager in Access Bank. He knew the 1st Defendant to be the Managing Director of the 2nd Defendant. He testified that sometime in July, 2013, he was at a meeting at the Aminu Kano, Abuja Branch of the Bank when the 1st Defendant visited and requested to see the most senior member of the Business Banking Group, who happened to be his boss, one **Mr. David Aluko**, who the 1st Defendant did not know before then. Since the said **Mr. Aluko** was not available, he had to attend to the 1st Defendant, which he did. He stated that the 1st Defendant informed him that his company had a contract with the Kebbi State Government but that for some reasons his company

was not being paid; and that his company had done something which was not right. In his words, the **PW5** further states as follows:

> ***"He then told me that Biotec had cloned a Performance Bond of the Bank and that he had come to own up so that we could give him a proper one so that they could submit and get paid for the job."***

The **PW5** further testified that the 1st Defendant did not state specifically, which member of staff of the 2nd Defendant perpetrated the act he came to own up to.

Under cross-examination by the Defendants' learned counsel, the **PW5** further testified as follows:

"To use the 1st Defendant's exact words, he said "we cloned Access Bank Performance Bond.""

He was further shown **Exhibit P19A** and he stated that it looked like a Performance Bond that emanated from Access Bank.

In his own testimony, the **PW3**, **Uyoyou Enhe**, a staff of Access Bank at its Lagos Head office, stated that his colleague in the Abuja Branch of the Bank sent a mail to inform him that one of the customers of the Bank, by name **Mr. Chris Nwokobia**, showed up at the Bank to state that his company, **Biotec Laboratory Products Limited**, presented a cloned Performance Bond of the Bank to a Ministry in Kebbi State. He testified further that the Bank deemed the act as wrongful and as a result the Bank mailed a

petition to the **EFCC** in respect of the customer; that thereafter, the **EFCC** demanded for the account opening documents of the customer, which was sent to them; that the **EFCC** also subsequently sent to the Bank, a copy of the forged Performance Bond, asking the Bank to authenticate the same; that the Bank wrote to the **EFCC** to confirm that the document did not emanate from the Bank, that it was a faked Performance Bond of the Bank. The witness further testified that the Bank further forwarded an authentic prototype format of a typical Performance Bond of the Bank to the **EFCC**.

When shown to him, the witness identified the documents he referred to, already tendered in evidence by the **PW1**, as **Exhibits P7** series; **P20** series;

P21 and **P23** series, which he referred to in his testimony. The witness further confirmed, from the documents, **Exhibit P7** series, that the 1st Defendant is the sole signatory to the 2nd Defendant's account with the Bank.

The witness further stated that usually when a customer of the Bank requires a Performance Bond, a formal request will be made in that regard and that there must be a Management approval before the issuance of the document to the customer; that with respect to the 2nd Defendant, there was no record of her having applied to be issued with a Performance Bond; that there was no Management approval for any Performance Bond for the 2nd Defendant; and that the Bank did not issue any such Performance

Bond to the Kebbi State Government on behalf of the 2nd Defendant.

The witness was further shown the Performance Bond in question, **Exhibit P19A**, and he testified further as follows:

> ***"The logo used on Exhibit P19A was no longer being used by the Bank at the time the document was allegedly issued. The logo the Bank used as at then is as contained on Exhibit P23.***
>
> ***Thirdly, we examined the signatures that signed the purported Performance Bond, Exhibit P19A, issued by Access Bank. We observed that the names of the officers contained in the document are staffs that are not ordinarily authorized to sign such documents. Such documents are usually***

signed by the Company Secretary and a Director of the Bank.

Lastly, Performance Bonds are usually issued from the Head Office and not from any Branch.

In the course of our internal investigations, we confronted the officers whose names appear on Exhibit P19A, they told us that they were not aware of it and that they did not authorize the issuance.

Again, we have a standard font which the bank uses for all her correspondences – Aerial 12. What is on Exhibit P19A does not conform to that font. These differences led us to our final conclusion that the Performance Bond, Exhibit P19A, is not genuine and did not emanate from the Bank – Access Bank."

Under cross-examination, the witness confirmed that the name of the Bank staff from Abuja that informed the Head Office about the alleged forgery was **Kelechi**. He said he could not recall his surname - (who testified as **PW5**).

He maintained that the logo of Access Bank on **Exhibit P19^{A}** is not the same as that on **Exhibit P23**. He further confirmed that **Exhibit P23^{B}** is the sample of an authentic Performance Bond of the Bank. He also confirmed that **Exhibit P19^{A}** was not made in the format of Access Bank Performance Bond as in **Exhibit P23^{B}** was made.

On his part, the **PW1, Madaki Yakubu**, the EFCC investigator, testified that his office received an intelligence report from the National Finance

Intelligence Unit **(NFIU)** alleging that the 2nd Defendant doctored and forged Performance Bond of Access Bank Plc., to request for payment for contract awarded to her by the Kebbi State Agency for the Control of HIV/AIDS. He testified as to the investigation activities that the Commission undertook with respect to the matter. He further tendered in evidence, the gamut of documents retrieved and obtained in the course of investigation (including Statements made by him **(PW1)-(Exhibit P16)**, the 1st Defendant-**(Exhibit P10)**, the **PW2**-**(Exhibit P11)**, the **PW3**-**(Exhibit P13)**, **PW4**-**(Exhibit P15)** and **PW5-(Exhibit P14)**), as **Exhibits P1** – **P23C** respectively.

The **PW1** had further testified that investigations revealed that the Performance Bond presented by

the 2nd Defendant to the Kebbi State Agency for the Control of HIV/AIDS was not genuine; and that the 1st Defendant was the Managing Director of the 2nd Defendant. He further stated that he recovered a Company Seal of **Access Biotec Inc**. from the 1st Defendant in the course of investigations, which he tendered in evidence as **Exhibit P17**.

It is pertinent to state that under cross-examination by the Defendants' learned counsel, the **PW1** confirmed that the result of investigation revealed that it was the 2nd Defendant that perpetrated the forgery of the Performance Bond. He further stated as follows:

> ***"In the course of interrogating the 1st Defendant, he accepted that it was the 2nd Defendant that***

committed the alleged offence and that he was the Managing Director of the Company."

I must say that the sum total of the evidence adduced by the prosecution witnesses accords significantly with the statement of the 1st Defendant as in the extra judicial statement made by him to the **EFCC**, **Exhibit P10**. It is also pertinent to state that **Exhibit 10** was admitted in evidence without any objection whatsoever.

In the said statement, the 1st Defendant confirmed that the 2nd Defendant was awarded contract to supply HIV Test Kits by the Kebbi State HIV Agency; that upon supply the Agency requested for Performance Bond. The 1st Defendant further stated in **Exhibit P10**, as follows:

"However, on my return from my trip abroad, I was informed by the delivery and supply department that they doctored a performance bond and submitted with Biotec invoice and delivery note. We then applied to the bank officially for the performance bond. We were however refused issuance following the fact that the delivered bond had stared issues with the bank. We have apologized to the bank and wished this away. I was further informed by the said department that the stamp used is not Access bank stamp but the seal of Access Bio Incorporated. They said the doctored bond was acquired from doctoring provisions reference letters sent to us by the bank (Access) Access Bank….

As explained, our staff said the original reference letter was placed in a copying machine with all

the written content covered except the areas of signature and letter head and it was then typed upon at the point of supply."

Suffice to also add that part of the items recovered from the 1st Defendant, as stated in his Statement, **Exhibit P10**, is the Seal of ***"Access Biotec Inc."*** In his testimony, the **PW1** confirmed recovery of the said seal, **Exhibit P17**, from the 1st Defendant.

I have noted the arguments of learned senior counsel for the Defendants that **Exhibit P10** cannot be relied upon as a confessional statement and that it was a documentary hearsay since it contained a narration of acts done other persons.

Even if it is accepted, as contended by the learned Senior Advocate for the Defendants, that some

aspects of the statement contained a report of what the 1st Defendant claimed was narrated to him by the *"delivery and supply dept.,"* and as such could be regarded as documentary hearsay; some other aspects of the statement contained direct and positive admissions which in my view accords with the requirement of the provision of **section 28** of the **Evidence Act**.

Part of the statement, **Exhibit P10**, states as follows:

> ***"On my return from my trip abroad, I was informed by the delivery and supply dept. that they doctored a performance bond and submitted with Biotec invoice and delivery note. We then applied to the bank officially for the performance bond. We were however refused issuance following the fact that the doctored bond had stared issues with***

the bank. <u>We have apologized to the bank and wished it away</u>…"

(Underlined portions for emphasis)

The inference I reasonably drew from these statements is to the effect that the 1st Defendant did not seem to be perturbed or shocked when he was informed by his staff that a crime had been committed in his company. All he did, after being informed of the crime, was to visit the Bank with a view to obtaining another Performance Bond to replace the faked one. As expected of a patriotic citizen, he failed to report commission of crime by his so-called staff to the Police for appropriate action. He merely condoned the act and was more keen to get paid for job done to the Agency. That was what

gave him the temerity to approach the Bank with the view of obtaining a genuine Performance Bond.

Again, wherever the 1st Defendant used the word "we" in his statement, by the ordinary dictionary meaning of that word, that necessarily denotes either himself alone or himself and one other or others.

Therefore, when the 1st Defendant stated that *"we then applied to the bank officially for the performance bond,"* and that *"we have apologized to the bank,"* the necessary inference is that he was referring to himself alone.

This finding is made further clear when one considers the evidence of the **PW5** who attended to the 1st Defendant on the day he visited the Bank. The

relevant portion of the testimony of the **PW5** states as follows:

> ***"He told me that he had a contract with the Kebbi State Government and for some reasons he was not being paid but that they had done something that was not right. He then told me that Biotec had cloned a Performance Bond of the Bank and that he had come to own up so that we could give him a proper one so that they could submit and get paid for the job….. The 1st Defendant was not very specific as to who in particular forged the document. He used the word "we""***

Under cross-examination by learned counsel for the Defendants, the witness further stated:

"The 1st Defendant told me, to use his exact words, that "we cloned Access Bank Performance Bond.""

The evidence of the **PW4**, **Uche Okere**, whose name is on the cloned Performance Bond, is also relevant. He stated in part, as follows:

"The 1st Defendant came to our office to apologize, that it could be one of his boys who forged my signature…. The 1st Defendant did not come to my office with anybody; he only exclaimed that "my boys have killed me, oh."

My finding therefore, from the necessary inference drawn from the pieces of evidence highlighted in the foregoing is that the 1st Defendant visited Access Bank at the material time all by himself; and that

reference to "we" in his conversations with the **PW4** and **PW5** was reference to himself alone.

Again, I must further find and hold, by necessary inference, that the 1st Defendant was aware of, was involved in, was part of the arrangement and indeed sanctioned and condoned the cloning of Access Bank Performance Bond.

I must say that I completely believe the *alibi* evidence set up by the 1st Defendant, that between 1st July, 2013 and 10th July, 2013, he was in far away Ghana; and as such could not have been personally involved in forging and or uttering **Exhibit P19A**. I agree that entries in his International Passport, tendered as **Exhibit D3**, support his claim on this point.

But then, my view is that the defence of *alibi* is of no moment and cannot avail the 1st Defendant in this case. This is for the reason that the 1st Defendant needed not be physically present when the acts of forgery and uttering were perpetrated, in order to be guilty of the offences. All he needed do was to have procured and sanctioned the commission of the offence. This is what the evidence on the record established.

It is my further finding that, having regard to the overwhelming evidence that the 1st Defendant was solely involved in executing all documents relating to the contract, being the Managing Director of the 2nd Defendant; it does not appear to me to be plausible that a department in his company that was not

shown to have taken part in negotiating or securing the contract; or that was not shown to be abreast of the contract terms, particularly as regards the need to provide a Performance Bond, would have had the temerity to independently initiate and carry out such a very heinous criminal idea of cloning Access Bank Performance Bond and went all the way to Kebbi State to submit the same to the Agency, without the active authorization, consent or collusion of the 1st Defendant. I so hold.

In *Agwuna Vs. A. G., Federation [1995] 5 NWLR (Pt. 396) 418,* relied upon by the prosecution learned counsel, there was evidence that the Appellant in that case procured the co-accused/co-convict to fabricate documents to be used as genuine and

acted upon by the Nigerian Embassy in Manilla; and he paid the sum of ₦100,000.00 to the co-convict for that purpose. In his appeal against his conviction that it was his co-convict, and not himself that actually wrote and signed the forged document in issue, the Supreme Court, in the contribution of **Iguh, JSC** (now retired), which I find very persuasive and relevant to the case at hand, it was held as follows:

> ***"With respect to the learned Senior Advocate, it is certainly not the law that only persons who manually write and sign a forged document that may be convicted for the forgery of the document. The law is settled that all persons who are participis criminis, whether as principals in the first degree or as accessories before or after the fact to a crime are guilty of the offence and may be charged and***

convicted with the actual commission of the crime. Parties, participis criminis to a crime, include inter alia,….. persons who aid, abet or assist them in the commission of the offence or who counsel or procure others to commit the offence or knowingly give succour or encouragement to the commission of the crime or who knowingly facilitate the commission of the offence."

In the present case, the 1st Defendant, having admitted and owned up to the **PW5**, that "*we cloned Access Bank Performance Bond,*" cannot be heard to contend, as his learned senior counsel had done, so strenuously, that since he was out of the country when the crime was committed, therefore could not have had a hand therein. The evidence on record points to no other conclusion than that the 1st

Defendant encouraged and gave succor to the commission of the crime by his staff. Or at worst, the evidence on records points to the fact that he was an accessory to the commission of the offence and is equally guilty. I so hold.

The Supreme Court defined an accessory after the fact in *Abacha Vs. State [2002] 11 NWLR (Pt. 779) 437*, as follows:

> ***"A person who receives or assists another who is, to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence."***

Again, in the case of *R. Vs. Ukpe [1938] 4 WACA 141,* three men came to the Appellant's house, told

him that they had killed a man and left a bicycle with him. On the following day he went with these men to where the body was lying, when it was dismembered and buried. The Court held that these facts constituted him an accessory after the fact.

In the present case, the 1st Defendant's staff informed him that they cloned Access Bank Performance Bond and uttered it. He took no action. He condoned the offence. He is equally guilty of the offence. I so hold.

I therefore totally disagree with the submissions of the learned SAN for the Defendants that all the prosecution established was that a crime was committed but was unable to fix the crime to anyone in particular.

In addition to the foregoing findings and conclusions, upon further evaluation of the totality of the evidence adduced on the record by the prosecution witnesses as reviewed in the forgoing, taken together with **Exhibit P10**, the extra judicial statement volunteered by the 1st Defendant to the EFCC, I also find and hold as follows:

1. That the 2nd Defendant, through the 1st Defendant, fraudulently procured a Performance Bond, sealed the document, purported it to be issued by the authority of Access Bank which they knew did not issue it.

2. That the 2nd Defendant, through her staff, submitted the said Performance Bond to the Kebbi State Agency for Control of AIDS, in

support of the contract awarded to the company to supply 2,700 units of AIDS Test Kits.

3. That the Agency sent a copy of the Performance Bond to the Kebbi Branch of Access Bank for verification.

4. That whilst Access Bank was still in the process of verifying the document, the 1st Defendant walked into the Bank, owned up that indeed the 2nd Defendant submitted a fake Performance Bond to the Kebbi State Agency; apologized to the Bank for the wrongdoing and sought to procure a genuine Performance Bond for purposes of submitting same to the Agency so that the company could be paid for the job already done.

5. That it was the Management of Access Bank that reported the case of forgery to the **EFCC**, through the National Fraud Investigation Unit (NFIU).

6. That in the course of investigation, the **EFCC** recovered the Performance Bond submitted by the 2nd Defendant to the Agency from the said Agency and tendered it in evidence through the **PW1**, as **Exhibit P19A**.

7. That the **PW2** identified the document, **Exhibit P19A**, as the original Performance Bond submitted to the Agency by the 2nd Defendant.

8. That the testimony of the **PW3**, in comparing the original Performance Bond submitted by the 2nd Defendant to the Agency, **Exhibit P19A**, with the standard Performance Bond of Access Bank, **Exhibit P23B**, to prove that **Exhibit P19A** was not genuine and did not emanate from Access Bank, was not shaken under cross-examination.

9. That the intention of the Defendants in procuring the fake Performance Bond, was for the purpose of supporting their claim for payment for the HIV Kits supplied to the Agency.

I further hold that the arguments of the learned Senior Advocate for the Defendants that the

evidence of an handwriting expert is required to establish a case of forgery, on the authority of *Aituma Vs. State [2007] 5 NWLR (Pt. 1028) 466*, is clearly misconceived.

The position is that a case is usually determined on the basis of its peculiar facts. I am unaware of the law that makes the calling of an expert handwriting analyst, a mandatory pre-requisite for establishing the offence of forgery. What is in issue in this case, is not just the veracity of the signatures of persons contained on **Exhibit P19A**; but the fact that a real document was altered to purport to contain contents that was not originally contained in the document.

In his own words, the 1st Defendant admitted to the **PW5** that the document, **Exhibit P19A** was cloned. The word ***"clone"*** found prominence with the advent of information technology. It is defined by the online Cambridge Dictionary, *inter alia*, as ***"someone or something that looks very much like someone or something else."***

In the present case, according to the evidence on record, including the graphic description, in the 1st Defendant's statement, **Exhibit P10**, of how the Performance Bond was fabricated from an authentic document procured from Access Bank, to make it look like an authentic document emanating from the Bank, a clear case of cloning is established. It is also clear, from the definition of ***"clone"*** as given in the

foregoing, that the process is a hi-tech form of forgery. I so hold. As such, the authority of *Aituma Vs. State (supra)*, cited by the Defendants' learned senior counsel, is clearly inapplicable to the circumstances of the instant case. I so hold.

Upon proper evaluation of the evidence of the **PW3**, **PW4** and **PW5**, therefore, I further hold that the following facts were firmly established by the prosecution, namely:

i. that the 2nd Defendant did not at any time material to the case formally apply to Access Bank for the issuance of Performance Bond at her instance;

ii. that there was no Management decision for such a Performance Bond to be issued for the 2nd Defendant;

iii. that Performance Bond of the Bank is usually issued from the Head Office;

iv. that only the Company Secretary and a Director of the Bank are entitled to sign the Bank's performance Bonds;

v. that the logo of the Access Bank letter headed paper on which the Performance Bond in question, **Exhibit P19A**, was typed; is not the same as the one the Bank was using at the material time, when compared with the logo of Access Bank on **Exhibit P23**;

vi. that the font used in typing the faked Performance bond, **Exhibit P19A** is not the type used by the Bank at all material times"

vii. that the logo of Access Bank as contained on **Exhibit P19A**, was not the one in use by the Bank at the time the Performance Bond was purportedly obtained;

viii. that the Seal inscribed on **Exhibit P19A**, did not belong to Access Bank Plc. .

It is my view therefore, that these pieces of positive evidence, which were not challenged or in any manner contradicted under cross-examination by the defence counsel, assessed together with the consistent portions of the 1st Defendant's statement, as contained in **Exhibit P10**, point irresistibly to only

one conclusion, that **Exhibit P19A** was forged at the instance of the Defendants. Expert evidence is clearly dispensable in the circumstances.

The correct position of the law is that where there is positive evidence that points unequivocally to the guilt of an accused person, forensic evidence on the same is not necessary. See *Jua Vs. The State [2010] 4 NWLR (Pt 1184) 277; Akinbisade Vs. State [2006] 17 NWLR (Pt. 1007) 184*.

I should comment on the point made by the learned senior counsel for the Defendants that the complainant, in the course of investigation, did not confront the persons interrogated with the original Performance Bond that was alleged to have been forged; that it was only photocopies of the

document that the interrogators used in questioning the persons invited, including the 1st Defendant.

As much as that statement is correct, it must however be appreciated that the process or procedure of investigation of allegations of crime is not circumscribed by law. What is important is for the prosecution to adduce credible evidence in the course of trial in order to establish the offence for which a defendant is standing trial. In other words, the investigation process cannot be equated with the trial process.

It is not in dispute that the prosecution tendered the original document alleged to have been forged as **Exhibit 19A**, which gave the Defendants the opportunity to cross-examine the prosecution

witnesses on the document. The document emanated from the Defendants. The **PW2** confirmed that it was the Performance Bond submitted by the representative of the 2nd Defendant. The **PW4**, whose signature appeared on the document identified the same and was equally questioned on it. As such, I see no prejudices that the Defendants could claim to have suffered for the failure of the prosecution to confront them with the original document in the course of investigation. I so hold.

This leads to another critical dimension of the case, which in my view, puts the matter beyond doubt that the 1st Defendant was intricately involved in the fabrication of **Exhibit P19A**.

In his evidence-in-chief, the **PW1** testified that he recovered a seal with the inscription ***"Access Biotec Inc."*** from the 1st Defendant. His testimony in this regard is as follows:

> ***"We invited the 1st Defendant for interrogation. I cautioned him and explained to him the allegations leveled against him and the 2nd Defendant. He volunteered to make a statement….. I also recovered a Company Seal of Access Biotec Inc. from him in the course of investigation."***

In **Exhibit P10**, the 1st Defendant's extra-judicial statement, he listed as (No. 11), part of the items he stated that he submitted to the **EFCC,** as ***"Seal for Access Bio."***

Again, apparent in the face of the forged document, **Exhibit 19A** is the inscription of the Seal of **"Access Bio Inc."**

Indeed, in his evidence-in-chief, the **PW3** confirmed that the seal affixed on **Exhibit P19A**, does not belong to Access Bank. This is more or less stating the obvious, since ***"Access Biotec Inc"*** cannot be said to be the same as ***"Access Bank Plc."*** that purportedly issued the document.

The obvious conclusion, upon proper assessment of these pieces of evidence, is therefore that the inscription of the company seal recovered from the 1st Defendant is the same that was affixed on **Exhibit P19A**. The question then is, if the 1st Defendant, as he claimed, had no hand in the forgery of **Exhibit P19A**,

what then was the seal affixed on the document recovered from him doing in his possession? After all, ***"Access Biotec Inc."*** is not the same with the 2nd Defendant - ***"Biotec Laboratory Products Limited."*** The 1st Defendant offered no explanation at the trial as to how he came about the seal or how the seal found its way to the face of **Exhibit P19A**. The **PW1**, who tendered the seal and gave evidence that he recovered the same from the 1st Defendant, was not cross-examined on the point.

I now turn to the culpability of the 2nd Defendant to the Charge. I have found in the foregoing that documentary and oral evidence abound on the record, and the learned Senior Advocate for the Defendants is also in agreement, that the 1st

Defendant is the *alter ego* of the 2nd Defendant. See *Trenco (Nigeria) Limited Vs. African Real Estate [1978] 7 LRN 146 @ 153* where it was held as follows:

> ***"But a company, although a legal person is an artificial one which can only act through its human agents and officers."***

Again, in the English decision of *Lennard's Carrying Company Vs. Asiatic Petroleum Company Limited [1915] AC 705 stated:*

> ***"My Lords, a Corporation is an abstraction. It has no mind of its own any more than it has a body of its own. Its active and directing will must consequently be sought in the person of somebody who for some purpose may be called an agent; but who is really the directing mind and***

will of the Corporation, the very ego and centre of the personality of the Corporation".

At the material time relating to this case, the 1st Defendant was the directing mind and will of the company, the 2nd Defendant, who controls and directs her activities.

Section 65 (not **s. 64** as cited) of the **Companies And Allied Matters Act**, cited by the Defendants' learned senior counsel, makes provision as to both the civil and criminal liability of a company. It states that:

"Any act of the members in general meeting, the board of directors, or of a managing director while carrying on in the usual way the business of the company, shall be treated as the act of the company itself and the company shall be

criminally and civilly liable therefore to the same extent as if it were a natural person."

Learned senior counsel had contended that the 2nd Defendant can only be found guilty of forgery in the instant case, if its directing mind, is found guilty.

I had found in the forgoing, that the 1st Defendant was instrumental to the fabrication of the forged document, **Exhibit P19A**. That being the case, it is not difficult in the circumstances to further hold that the act of the 1st Defendant, with relation to the forgery of **Exhibit P19A**, as I had found, is necessarily the acts of the 2nd Defendant. I so hold.

With respect to the issue of *mens rea*, raised by the learned SAN for the Defendants, I make reference to the testimony of **PW5** who gave evidence that the 1st

Defendant informed him that the Kebbi State Agency was not paying him for the contract he executed for them, that he had owned up to submitting a fake Performance Bond to the Agency and would require a genuine one to be submitted so that the Agency could pay him.

The **PW2** also testified that the Agency paid him after he provided a Performance Bond from another Bank, FCMB; after Access Bank refused to issue a proper Bond for him. The criminal intent in all of these, in my view, is the fact that, it was clear to the 1st Defendant, that without providing the Agency with a Performance Bond, the 2nd Defendant would not be paid for the contract he had already executed. This invariably led the Defendants to devising the

fraudulent plot to fabricate a fake Performance Bond, and submitted the same to the Agency, in order to facilitate payment for the contract. I therefore hold, in the circumstances, that the prosecution established the presence of not only the *acteus reus*, but also the *means rea* on the part of the Defendants in committing the offences.

The concept of inference of *mens rea* by an artificial person accused with a criminal offence was again amplified by the famous **Lord Denning, MR**, (now late), in the English decision of *Bolton Engineering Company Limited Vs. Graham & Sons [1957] 1 QB 159 @ 172-173*, where he postulated as follows:

> ***"A company may in many ways be likened to a human body. It has a brain and nerve centre***

***which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what it does. The state of mind of those managers is the state of mind of the company and is treated by law as such...*"**

In the instant case therefore, the state of mind of the 1st Defendant, in orchestrating the fabrication of **Exhibit 19A**, as I had found, is as much the state of mind of the 2nd Defendant, of which he is the operating mind and will. I so hold.

I must again emphasize that the 1st Defendant, having gone on his own volition to the Bank to own up to the commission of the crime, as testified by the **PW5**, it becomes needless for the prosecution to look elsewhere for the staff of 2nd Defendant who actually perpetrated the details of the fabrication of the **Exhibit P19A**.

Flowing from the findings of fact I have made in the foregoing, on the basis of the evidence led on record, I am firmly satisfied that the prosecution has proved beyond reasonable doubt that ingredients of the offence for which the two Defendants were charged, in that the 2nd Defendant, Biotec Laboratory Product Limited, through the 1st Defendant, her Managing Director, fraudulently

procured and facilitated the making of the document, being Access Bank Plc. Performance Bond, dated 5th July, 2013, purported to be made by and with the authority of the Access Bank Plc. and whilst knowing that the document was not made by Access Bank Plc., caused the same to be presented to the Kebbi State Agency for the Control of AIDS, with the intention of causing the Agency to believe that the document was genuinely issued by Access Bank Plc.

I am further satisfied that the prosecution has proved beyond reasonable doubt that the two Defendants indeed used and caused to be uttered, the said forged Performance Bond of Access Bank Plc., as genuine when they caused the same to be

presented to the Kebbi State Agency for the Control of AIDS, in further satisfaction of the requirements for the execution of the contract of supply awarded to her by the Agency; which led the Agency to part with or pay the contract sum to the 2nd Defendant.

I must not wrap up this judgment without sparing a few lines to commend the industry displayed by learned counsel both for the prosecution and the defence in the conduct of this trial. I commend in particular, the learned SAN for the Defendants, who displayed rare candour and extended remarkable courtesy to Court throughout the trial proceedings.

In the final analysis, I hereby find and pronounce the two Defendants guilty of the two Count Charge.

OLUKAYODE A. ADENIYI
(*Presiding Judge*)
11/07/2017

S E N T E N C E

I had listened attentively to the *allocutus* most passionately and soberly rendered by learned senior counsel on behalf of the convicts.

Pursuant to the Charge, the punishment on each count for which the 2 convicts stood trial and were convicted, as set out in the provision of **Section 364** of the **Penal Code Act,** is a term of imprisonment for fourteen**(14) years** or with fine or with both.

In determining the appropriate sentence to be applied in the totality of the circumstances of the

case, I have also been well guided by the relevant sentencing parameters, as provided in the **Federal Capital Territory Court (Sentencing Guidelines) Practice Direction, 2016,** which the learned senior counsel ably made reference to.

In applying these guidelines, I have taken into proper consideration the following factors, namely:

1. The level of culpability of the convicts;
2. The severity of the harm the actions of the convicts caused to the Nigerian state and public; and
3. Any aggravating or mitigation factors that could help in determining the appropriate sentence.

As the learned senior counsel had observed, the convicts are said to be first offenders, a point I had also taken into consideration.

I had also taken into consideration the present family circumstances of the 1st convict, which the learned senior counsel also alluded to.

The essence of applying punishment in a situation as this is not necessarily to punish the convict, *per se*, but to ensure that justice is seen to be done to the society at large, that will be the worse off, if there are no appropriate sanctions for offences.

Punishments also serve to deter those who may have such intentions of committing similar or other crimes in future.

Having regard to the parameters set out in the sentencing guidelines, which in my view, and as also submitted by the learned senior counsel, weighs in favour of applying a mitigated sentence, taken together with the comportment of the 1st convict, who I remark had shown sufficient remorse in the course of trial proceedings, I hereby pass sentence on the two convicts as follows:-

With respect to the 1st convict, he is hereby sentenced to an imprisonment of One (1) year with an option to pay fine of ***₦500,000.00 (Five Hundred Thousand Naira)*** *only, with respect to each of the two counts of the charge. These sentences shall run concurrently.*

With respect to the 2nd convict, being an artificial entity, she is hereby sentenced to pay a fine of ***₦500,000.00 (Five Hundred Thousand Naira)*** *only, with respect to each of the two count charge.*

The sentences shall also run concurrently.

Subject to availing himself of the option of fine, the 1st convict shall remain in the custody of Kuje Prisons.

OLUKAYODE A. ADENIYI
(*Presiding Judge*)
11/07/2017

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