

IN THE HIGH COURT OF JUSTICE
FEDERAL CAPITAL TERRITORY OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON WEDNESDAY 9TH MAY 2018
BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI
SITTING AT COURT NO. 19 APO - ABUJA

CHARGE NO: FCT/HC/CR/49/14

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA COMPLAINANT

AND

OKO VICTORIA INAKU DEFENDANT

JUDGMENT

The Defendant was, at the material period, a staff of the Medical Records Department of the Maitama District Hospital, Maitama Abuja. She was alleged to have forged a medical report and a laboratory test

result purported to have been genuinely issued by the hospital sometime in October, 2014. She was arraigned before this Court on 23/03/2015, on a four-count charge of forgery and being in possession of forged documents punishable under the extant provisions of **sections 364** and **368** of the **Penal Code Act**.

At the Plenary trial, the prosecution called four (4) witnesses in proof of its case, namely:

- **PW1** – **Isioma Okolo**, Investigator with the Independent Corrupt Practices and Other Related Offences Commission (ICPC);
- **PW2** – **Terzungwe Felix Ibye**, student of the National Open University and a photographer;

- **PW3** – **Charles Okara**, Investigator with the Independent Corrupt Practices and Other Related Offences Commission (ICPC);
- **PW4** – **Joel Tobi**, staff of the Federal Capital Territory Hospitals Management Board.

In all the prosecution witnesses tendered six (6) documents in evidence as exhibits. The prosecution witnesses were in turn cross-examined by the Defendant's learned counsel.

In her defence, the Defendant testified in person, but called no witnesses. She was equally cross-examined by the prosecution learned counsel.

At the close of plenary trial, parties filed and exchanged written final addresses, as agreed to by

them. In the final address filed on behalf of the Defendant on 15/01/2018, her learned counsel, **E. E. Ekpo, Esq.**, formulated three issues as having arisen for determination in this suit, namely:

1. Whether the prosecution has proved their case beyond reasonable doubt to warrant the “safe” conviction of the Defendant by this Honorable Court?

2. Whether the prosecution was able to prove and discharge the burden that was shifted to Aniwkwu Richard Chinonso whose name was in the medical reports tendered before the Court?

3. Whether the charges against the Defendant and her extra judicial statement obtained

under duress in the ICPC office without discharging same by trial within trial by the prosecution can be safely relied upon by this Honorable Court to convict the Defendant?

In turn, the learned prosecution counsel, **E. O. Akponimisingha, Esq.**, filed his final address on behalf of the Complainant on 29/11/2017 wherein he raised a sole issue for determination, namely;

Whether the prosecution has, from the evidence laid before the Hon. Court, proved its case beyond reasonable doubt?

I have given proper consideration to and taken due benefit of the 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, to the effect 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 legal principles as espoused in the authorities cited in the foregoing, I now proceed to examine 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 commission of the offences in the Charge against the Defendant beyond reasonable doubt.

For ease of reference, the four-Count Charge is reproduced as follows:

COUNT 1

That you OKO VICTORIA INAKU (F) on the 5th of November, 2014 or thereabout, at the Maitama District Hospital, Abuja, had in your possession a forged document to wit: Medical Report in the name of one Aniwku Richard Chinonso with reference number FCTA/HHSS/MDH/GEN/281, allegedly signed by Dr. O. A. Balogun, dated 29th October, 2014, knowing same to be forged and intending that the same shall be dishonestly used

as genuine and you thereby committed an offence contrary to and punishable under section 368 of the Penal Code CAP 532 Laws of the Federal Capital Territory, Abuja 2006.

COUNT 2

That you OKO VICTORIA INAKU (f) on the 5th of November, 2014 or thereabout, at the Maitama District Hospital, Abuja, had in your possession a forged document to wit: Chemical Pathology Laboratory Report Form in the name of one Aniwkwu Richard Chinonso with Hospital No. 444068 dated 29th October, 2014, knowing same to be forged and intending that the same shall be dishonestly used as genuine and you thereby committed an offence contrary to and punishable under section 368 of the Penal Code CAP 532 Laws of the Federal Capital Territory, Abuja 2006.

COUNT 3

That you OKO VICTORIA INAKU (f) on the 29th of October, 2014 or thereabout, at the Maitama District Hospital, Abuja, made a false document to wit: Medical Report in the name of one Aniukwu Richard Chinonso with reference number FCTA/HHSS/MDH/GEN/281, allegedly signed by Dr. O. A. Balogun dated 29th October, 2014, knowing same to be forged and intending that the same shall be dishonestly used as genuine to support a visa application to enable Aniukwu Richard Chinonso (now at large) to travel to India for medical treatment and you thereby committed an offence contrary to section 363 and punishable under section 364 of the Penal Code CAP 532 Laws of the Federal Capital Territory, Abuja 2006.

COUNT 4

That you OKO VICTORIA INAKU (f) on the 29th of October, 2014 or thereabout, at the Maitama District Hospital, Abuja, made a false document to wit: Chemical Pathology Laboratory Report Form in the name of one Aniukwu Richard Chinonso with Hospital No. 444068, knowing same to be forged and intending that the same shall be dishonestly used as genuine to support a visa application to enable Aniukwu Richard Chinonso (now at large) to travel to India for medical treatment and you thereby committed an offence contrary to section 363 and punishable under section 364 of the Penal Code CAP 532 Laws of the Federal Capital Territory, Abuja 2006.

The provision of **section 362 (a)** of the **Penal Code Act**, 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 363** of the **Penal Code Act**, under which the Defendant is charged with Counts 3 and 4, states as follows:

***“363. Whoever makes a false document or part of a document, with intent to cause damage or injury to the public or to a person or to support a claim or title or to cause any person to part with property or to enter into an express or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery; and a false document made wholly or in part by forgery is called a forged document.*”**

Whilst **section 362** provides the various ways in which a document regarded in law as false may be made; **section 363** more or less affirms the making of a false document as the offence of forgery.

The provision of **section 368** of the **Penal Code** under which the Defendant is charged with the offences in Counts 1 and 2 states as follows:

“368. Whoever has in his possession a forged document knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.”

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.

In order to sustain Counts 3 and 4 of the Charge, the prosecution is duty bound, on the basis of the provisions of **sections 362** and **363** of the **Penal Code Act**, to establish as against the Defendant the following ingredients:

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

2. That the defendant 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.

With respect to Counts 1 and 2, all that the prosecution requires to prove is that the defendant is in possession of a document he knew to be forged and had intended that the same be used fraudulently or dishonestly as if it is genuine.

In determining whether or not the prosecution has clearly established the presence of the ingredients enumerated in the foregoing in the instant case, I now turn to the relevant portions of the testimonies of the prosecution witnesses.

In her evidence-in-chief, the **PW1** testified that the **ICPC** received intelligence report that led to the arrest of the Defendant at the Maitama District Hospital, Maitama, Abuja on 29/10/2014; and that in her possession were found two documents, namely –

Medical Report dated 29/10/2014, purportedly issued by one **Dr. O. A. Balogun**, for Consultant Physician, Maitama District Hospital. The Medical Report, admitted in evidence as **Exhibit P1**, states in part:

“TO WHOM IT MAY CONCERN

MEDICAL REPORT

RE: ANIUKWU RICHARD CHINONSO, MALE, AGE:36 YEARS

HOSPITAL NO: 444068

The above named Thirty six (36) years old is a patient in our hospital.

He is been (sic) managed for pulmonary carcinoma (Lung Cancer) after undergoing chest radiographs computed tomography (CT) scan.

He has been on regular check-up for consultant monitoring and treatment.

He is therefore referred to India for more chemotherapy and radiotherapist treatment.

Please accord him all help courtesy.

Thanks for your understanding.

(signed)

DR. O. A. BALOGUN

For: Consultant Physician”

The other document purportedly recovered from the Defendant on the said date is a Chemical Pathology Laboratory Report Form, purportedly issued by Maitama District Hospital, Abuja, also on 29/10/2014. The report, issued with respect to **Aniukwu, Richard Chinonso** with Hospital No. 444068, is purportedly signed and stamped by Medical Laboratory Scientist on the same date. The report was admitted in evidence as **Exhibit P2**.

The **PW1** further testified that the Defendant was arrested at the premises of the Maitama District Hospital and taken to the office of the **ICPC**, where she volunteered her statement. The statements, respectively dated 29/10/2014 and 05/11/2014, were admitted in evidence as **Exhibits P3** and **P3A** respectively.

Now, upon proper appreciation of the totality of the evidence led by the prosecution in proof of the instant Charge, it is clear to me that the documents tendered in evidence by the **PW1** as **Exhibits P1** and **P2**, as well as the statements volunteered by the Defendant, **Exhibits P3** and **P3A**, respectively, are central and crucial to the determination of Charge before the Court. Whilst **Exhibits P1** and **P2** are the

documents purported to have been forged and found in the Defendant's possession; **Exhibits P3** and **P3^A** are her voluntary extra-judicial statements which, in my view, are in the nature of a confession.

Confession is defined in **section 28** of the **Evidence Act** as follows:

“A confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed that crime.”

Section 29(1) of the **Evidence Act** further provides that:

“29 (1) In any proceeding, a confession made by a defendant may be given in evidence against him in so far as it is relevant to any matter in issue

in the proceedings and is not excluded by the court in pursuance of this section.”

For its crucial relevance to the determination of this Charge, I take liberty to reproduce the material portions of the said **Exhibits P3** and **P3^A** as follows:

“I have read the above cusionary (sic-cautionary) statement and I understand it that my statement is going to be given freely (signed) 29/10/2014.

I’m from Cross River State Yala L. G. A. I work at Maitama District Hospital...

I met this guy in the Hospital some months ago his name is Felix. He use (sic) to come for treatment in COPD Unit. So he came yesterday that I should help him with a medical report which I told him to follow the processes. But I later agreed to help to get it done. He called me this morning that he will be sending

someone to come and collect it which he now send (sic) one man from ICPC to me. Felix gave me N4,000 for medical report so I gave the person the report with ref. No. 281 ANIUKWU RICHARD CHINONSO Ref No FCTA/HHSS/MDH/GEN/281 DATED on 29/10/2014 sign (sic) by Dr. O. A. Balogun. It was produced by me Victoria Inaku. The hospital is not aware of it. I formed the name of the Doctor he does not worked (sic) in the hospital. Doctor O. A. Balogun I gave somebody to sign it for me.

The Chemical Pathology Laboratory Report Form with Hospital No. 444068 name Aniuoku Richard Chinonso was forge (sic) by Victoria Inaku. I never met the person Aniuoku Richard Chinonso. No medical examination was conducted. I'm a records staff. It is not my duty to write a report. I forge (sic) this report & laboratory result....

The paper that I use (sic) in writing this report I found it in a folder stamp already that is the one I use (sic) to make this letter.”

From the above-reproduced voluntary extra-judicial statement of the Defendant, she established, by her own showing, the following salient facts:

1. That she was a Records staff of the **Maitama District Hospital** at the relevant period.
2. That she met someone by the same, Felix, a regular caller at the hospital, who asked for her assistance to procure a medical report.
3. That she agreed to offer the assistance to procure the said medical report and that said Felix paid her an amount of **N4,000.00**.

4. That, without the knowledge of the hospital, and without meeting the person at whose instance the said medical report was made, and without the person undergoing any medical examination, she forged and produced two documents, namely – Medical Report with Ref. No. FCTA/HHSS/MDH/GEN/281 dated 29/10/2014 in the name of **Aniukwu Richard Chinonso**, signed by one **Dr. O. A. Balogun**; and Chemical Pathology Laboratory Report Form with **Hospital No. 444068** issued in the same name of **Aniukwu Richard Chinonso**.
5. That she formed the name of the doctor that purportedly signed the Medical Report.

6. That it was not her duty to write medical report and laboratory result.

7. That she found the stamped letter head paper she used in writing the medical report inside a folder.

By my assessment of the Defendant's extra-judicial confessional statements, it is apparent that she confessed to the commission of the offences in the four-count Charge for which she stood trial. From her confessional statement alone, I am satisfied that the ingredients of the offences, as enumerated in the foregoing were clearly established or could be inferred.

In other words, from the confessional statements, **Exhibits P3** and **P3^A** respectively, the following have been established, namely:

1. That the medical report and laboratory test result, **Exhibits P1** and **P2**, were false or forged documents.
2. That the Defendant, without the knowledge and authority of her employers, procured the forged **Exhibits P1** and **P2**.
3. That the Defendant intended **Exhibits P1** and **P2** to be believed as having been made, issued and sealed by and on the authority of her employers who did not issue the documents.

4. That the Defendant issued **Exhibits P1** and **P2** in order that the documents may be used fraudulently, having not caused the proposed patient at whose instance the reports were issued to be examined; and also because of pecuniary interest, having received the sum of **N4,000.00** from **Felix**, at whose instance she procured the false medical reports.

5. That **Exhibits P1** and **P2** were found in the Defendant's possession at the point of her arrest.

The settled position of the law, as correctly canvassed by the prosecution learned counsel, is that the Court can convict a defendant solely on his confessional statement without any corroborative

evidence, so long as the statement is free, voluntary, direct, positive and properly proved. In some instance, depending on the totality of the circumstances of the case, it may be desirable to have some evidence outside the confession which would make it probable that the confession was true. See Adisa Wale Vs. State [2013] 14 NWLR (Pt. 1375) 567; Simon Vs. State [2017] LPELR-41988(SC).

In Ubierho Vs. The State [2002] 5 NWLR (Pt. 819) 644 @ 655, the Supreme Court held, per **Ogunbiyi, JSC**, as follows:

“A man may be convicted solely on his confession. There is no law against it. If a man makes a free and voluntary confession which is direct and positive and is properly proved, the

Court may, if it thinks fit, convict him of any crime upon it.”

In the instant case, the Defendant's said confessional statements, **Exhibits P3** and **P3A** respectively, were tendered and admitted in evidence without any objection from the Defendant or her learned counsel, in the course of trial; which presupposes that the statements were voluntarily and freely made by her.

But then, the prosecution did not rely solely on the confessional statement of the Defendant. The testimony of the **PW2, Felix Ibye**, who, according to the **PW1**, was arrested at the Indian High Commission on 29/10/2014 and gave the lead to the investigators

for the arrest of the Defendant at the Maitama District Hospital, is also relevant.

The said **PW2**, in his extra-judicial statement, which the **PW1** tendered in evidence as **Exhibit P5**, stated how on 28/10/2014, someone, who he later found out to be an officer of the **ICPC**, met him and told him that one **Mr. Josiah Akwu** asked him to contact him to seek his assistance to obtain local medical report for a patient who is to travel abroad for medical check-up for lung cancer; how they agreed to a fee of **₦10,000.00** which was paid to him; and how he went to meet the Defendant at the **Maitama District Hospital** to assist him in procuring the medical report.

The **PW2** further stated that the Defendant did not request for the production of the patient, whose

name he gave as **Mr. Aniukwu Richard Chinonso**, for any medical test and that he gave her the sum of **₦4,000.00** to prepare the report; with the agreement to pay her the balance of **₦5,000.00** after the job had been done.

The **PW2** further stated in his statement that it was after his arrest that he realized that the person who approached him for assistance to procure the medical report was an officer of **ICPC** and that he gave the officers the phone number of the Defendant and that they apprehended her and brought her to the **ICPC** office.

In his oral testimony before this Court, the **PW2** confirmed the contents of his extra-judicial statement, **Exhibit P5**. He further stated that the name

of the **ICPC** officer who contacted him was **Charles** (who gave evidence as **PW3**). He further testified that he saw the medical reports when the Defendant was arrested and brought to the **ICPC** office and he identified **Exhibits P1** and **P2** as the said reports he saw with the Defendant when she was brought to the **ICPC** office.

Under cross-examination by the Defendant's learned counsel, the **PW2** insisted that he wrote his extrajudicial statement voluntarily and not because he wanted to be freed from prosecution.

To further corroborate the Defendant's confession, the prosecution also called **PW3**, an investigator with the **ICPC**, who was at the heart of the sting operation that led to the arrest of the Defendant. He testified

that the **ICPC** had received intelligence report which his team investigated; that he visited the Indian High Commission on 24/10/2014, pretending to be applicants for Indian visa for purposes of medical visit; that they were approached by one **Josiah** and **PW2** who gave them a list of the requirements for the visa; that the duo offered to assist in procuring **Yellow Fever Card** and **Medical Report**. He further testified that the **PW2** informed him that he knew someone at **Maitama District Hospital**, who normally assisted them to procure medical reports; that upon negotiation, they agreed to collect the sum of ₦15,000.00 for the medical report, of which he immediately paid them **₦10,000.00**; that on 29/10/2014, they went back to the **Indian High Commission**, Abuja, to collect the

documents; that the **PW2** informed them that he has spoken to the Defendant at the **Maitama District Hospital** who would give them the medical report; and that the **PW2** gave them the Defendant's phone number, and that they contacted her and she asked them to come over to receive the medical reports.

The **PW3** further testified that they proceeded to the hospital, met with the Defendant and that it was in the process of her handing over the medical report and laboratory test result to them that they revealed their identities to her and asked her to come with them. The witness stated further:

“She insisted that she will not follow us until she saw her boss. We were then directed to one Mr. Joel, the Hospital Secretary and Joel took us to Dr.

Oshotimehin, the Chief Medical Director. We informed her of our mission and we showed her the certificates and she confirmed to us that it was fake. The confirmation was done in the presence of the Defendant and Mr. Joel. Thereafter, Dr. Oshotimehin said we could go ahead with our investigation. It was the hospital that handed over the Defendant to us to go and continue our investigation. We then took the Defendant to our office and we took her statement which she voluntarily gave. She confessed that she committed the offence.”

Under cross-examination by the Defendant’s learned counsel, the **PW3** further testified that he was present when the Defendant made her statement and that it was not dictated to her and that no promise was

made to her that she would be freed if she confessed to the offence.

The prosecution also called as **PW4**, the said **Mr. Joel Tobi**, the *Secretary* of the **Maitama District Hospital** at the material time, who was referred to by the **PW3** in his testimony. In his testimony, he confirmed that he knew the Defendant to be a staff of the hospital at the material time; he identified the statement he volunteered at the **ICPC** office when he was invited for interrogation, tendered by the **PW3** as **Exhibit P6**.

He also testified that the **ICPC** wrote to the hospital to formally confirm the authenticity of the medical reports found with the Defendant. He identified **Exhibits P1** and **P2** as the said reports. He further testified that upon receiving the letter from **ICPC**, the

hospital conducted its own internal investigations and found out that both the medical report and the laboratory test result did not emanate from the hospital. He testified that the named **Dr. O. A. Balogun**, who purportedly issued **Exhibit P1** was not in the employment of the hospital in that his name was not on the staff list; that the name of the patient quoted in **Exhibits P1** and **P2** was not registered with the hospital; that the patient card and number quoted in the reports were not found in the hospital's records; and that the letter headed paper on which **Exhibit P1** was written, even though bore the name of **Maitama District Hospital**, did not contain the features of the hospital's regular letter headed paper. He further testified that on the strength of his

findings, he formally replied to the **ICPC's** inquiries. He identified **Exhibit P4** tendered in evidence by the **PW1**, original letter dated 07/11/2014, written to the Chairman of **ICPC**, captioned "**Investigation Activities,**" as the letter he wrote to report the findings of his investigations on the authenticity or otherwise of **Exhibits P1** and **P2** respectively.

Under cross-examination, the witness confirmed that he met the Defendant as a staff of the hospital in 2014, when he resumed as the Secretary; that he was not aware of any negative reports against the Defendant for the duration of his posting to Maitama District Hospital, other than the incident that led to her arrest; and that the Defendant was arrested in his presence on the said 29/10/2014.

It is crystal clear, by my assessment, that the totality of pieces of evidence adduced on the record by the prosecution witnesses, which was not impeached under cross-examination, corroborated the confession made by the Defendant in **Exhibit P3**.

Now, I am not unmindful that the Defendant, in her testimony, attempted to retract her confessional statement. She was shown **Exhibits P3** and **P3^A** and she confirmed that it was her statement. She however claimed that the **ICPC** officer who interviewed her dictated to her what she wrote in her statement and to own up to the offence; and that she was promised to be released to go and see her doctor if she wrote whatever she was asked to write.

Again, her story in her oral testimony, contradicts her confessional statement in material terms. Her salient oral testimony is reproduced as follows:

“On 29/10/2014, I was in my office carrying out my duty, then one Mr. Charles Okara (PW3), who I did not know before, came to me, asked if I was Victoria and I answered in the affirmative. He said one Mr. Richard Chinonso sent him to me. The day before, the said Richard had given me one file that he will send someone to pick it the following day. The file contained photocopies of some Certificates of Occupancy, Laboratory Reports, Medical Reports, etc. After giving him the file, he only picked the medical report and the Lab report from the file but asked me to return the file to Richard. The man now brought out a gun, pointed it at me and said I was under arrest.... They told me

that they will be taking me to their office but I asked them to let me inform my boss. I then took them to my boss' office, since I was not allowed to enter, then my boss permitted them to take me to their office."

Under cross-examination, the Defendant attempted to explain her relationship with the said **Richard Chinonso**, in whose name the medical report was issued. She testified further:

"Richard, who gave me the file, was not a staff of Maitama Hospital. I was in my office when Richard came to run HIV test and asked me to keep the file for him, that he will send someone to pick it up. I knew Richard facially."

When shown **Exhibits P1** and **P2**, the Defendant confirmed that they were the documents that

Charles (PW3) came and pick from the file in her possession on behalf of Richard.

She further confirmed that the said **Felix**, who she claimed in her confessional statement, **Exhibit P3**, that she knew as a patient that used to come to the hospital; was the same person she saw at the **ICPC** office, who also testified in the case as **PW2**.

I have carefully evaluated the Defendant's testimony. All she attempted to do was to heap liability of the procurement of **Exhibits P1** and **P2** on a non-existent **Richard Chinonso**. Her testimony contained blatant tissues of lies and afterthoughts.

I find it curious and incredible that the Defendant claimed that one **Richard**, who she had no prior relationship with, asked her to keep a file that

contained sensitive documents as copies of Certificate of Occupancy and other documents; and she accepted the request without asking to know the contents of the file.

But she was unable to deny the fact that the documents were found in her possession.

My finding is therefore that the Defendant's attempt to retract her confessional statement was belated. Indeed it was an afterthought. The statement was admitted in her presence. Her solicitor, who had been served in advance with the statement and who knew or ought to know that it contained positive confession to the offence charged, did not object to its admissibility when the same was sought to be tendered. It is therefore too late in the day for the

Defendant's learned counsel to contend that trial within trial ought to have been conducted with respect to the statements.

It is equally late in the day for the Defendant to turn around, in her defence, to seek to impugn the same statement whose admissibility she did not object to.

The overwhelming testimonies of the four prosecution witnesses which corroborated the Defendant's confessional statement clearly rendered her oral version of what transpired as totally unreliable. I so hold.

The Supreme Court considered the issue of retraction of confessional statement by a defendant in Azabada Vs. State [2014] LPELR-23017(SC), and held, per **Onnoghen, JSC** (now **CJN**) as follows:

“...where an accused person later retracts his confession at trial, the practice has evolved whereby the court (trial) must look for some evidence outside the confession which would make the confession probable - see Kopa Vs State (1971) 1 All NLR 151: Onochie Vs The Republic (1966) NWLR 307. The above rule is a rule of practice. The practice is designed to determine which of the two versions of events relating to the commission of the crime given by the accused concerned is likely to be the correct one - the version in the confessional statement and the new version presented by him at the trial proper. Where, in examining the surrounding facts and circumstances revealed in evidence by the witnesses, the court finds relevant facts and circumstance supporting or verifying the facts

confessed to by the accused in the retracted statement, it means the confessional statement is reliable and can be so relied upon in convicting the accused person, his retraction notwithstanding the Supreme Court held .”

In the present case therefore, notwithstanding the spirited, though belated attempt by the Defendant to retract her confessional statement, the prosecution had established beyond conjecture, that the unimpeached testimonies of the prosecution witnesses, are materially consistent with the account contained in **Exhibit P3 and P3^A**, the confessional statements, thereby rendering the confession believable and as such the Defendant can be safely convicted upon the said statement.

The Defendant confessed to forging **Exhibits P1** and **P2**. The **PW2** testified to paying the Defendant an initial deposit of ~~₱~~**₱4,000.00** to make the document which fact she admitted in her confessional statement. The documents were found in her possession which fact she also admitted under cross-examination by learned counsel for the prosecution. The Defendant confessed that she did not see or examine the patient for whom she procured the medical report and laboratory test.

The **PW4**, Secretary of the Hospital at the material time, also corroborated the fact of forgery, *vide* **Exhibit P4**, and his uncontroverted oral testimony, to establish that the documents were not issued by the

Maitama District Hospital, from where the documents purportedly emanated.

I agree with the submissions of the prosecution learned counsel that forgery could be proved by direct or circumstantial evidence. See Osondu Vs. FRN (*supra*). It is also the position of the law that it is not rocket science that a forensic examination must be conducted in order to prove forgery. See Akinbisade Vs. State [2006] 17 NWLR (Pt. 1007) 184, where the Supreme Court held as follows:

“It is not in all cases that the absence of evidence of handwriting expert is prejudicial to the case of the prosecution. While such evidence could be a desideratum in some cases, it is not invariably so. Where there is a strong connecting link between the accused and the document to the extent that

the circumstances zero on the commission of the offence by the accused, the court is entitled to draw the inference circumstantially that the accused was the author of the document and therefore the author of the crime.”

It must be re-stated that each case is decided upon its peculiar facts and circumstances. In Aituma Vs. State [2006] 10 NWLR (Pt. 989) 452, the decision of the Court of Appeal that there was a need to call a hand writing expert or forensic analyst was premised on the fact that there was a handwritten alteration on the document alleged to have been forged, which necessitated an expert to determine whether it was the author of the document that also added the alteration. That is not the situation in the present case.

In the present case, my finding is that all available evidence pointed to the fact that the Defendant forged **Exhibits P1** and **P2**, for which she confessed to collecting a fee of ₦4,000.00. I further find that her criminal and fraudulent intent can be inferred from the fact that she went ahead to fraudulently procure document as important as medical report, purported to be authored by a Consultant Physician; and a Laboratory test Result, purported to be signed by a Medical laboratory Scientist, when in fact no medical tests were conducted on the patient whose name appeared on the documents. It is apparent and I so hold, that the Defendant had intended from the onset, to commit forgery and to utter the documents

as if they were genuinely issued by Maitama District Hospital.

I had considered the submission of the Defendant's learned counsel, which I believe is misplaced, that the prosecution failed to call the nominal complainant, who he referred to **Aniukwu Richard Chinonso**, mentioned in the Charge to be at large, which omission, according to learned counsel, was fatal to the case of the prosecution.

By my understanding, it is not the law that there must be a nominal complainant in every criminal matter before the prosecution can prove their case. Even where there is nominal complainant, the prosecution is not bound to call such a nominal complainant in order to establish criminal liability of the Defendant. In

the present case, the issue of nominal complainant does not arise whatsoever, for the reason that the Defendant was caught in the act of the offence for which she was charged.

By my understanding and reasonable inference from the totality of the evidence laid before the Court, the scenario relating to the instant Charge resulted from what is popularly known as a **“sting operation”** orchestrated by the complainant, that is the **ICPC**, following the intelligence report received by the **Commission**. The aim was to trap the Defendant and her cohorts who ran a racket that procures fake and dubious documents for willing customers who use the documents to apply for Indian visa. Unfortunately, this time around, the Defendant did not only walk into

the trap set for her with her two legs, but with her entire body. As it is said: **“Every day for the thief; one day for the owner.”**

Therefore, since it was the **PW3**, who, with others, acted as the intended beneficiary of the forged medical report, as evidence led on the record, revealed, the reasonable inference in the circumstances is that the name **Aniukwu, Richard Chinonso**, who the Defendant claimed gave her the file that contained the fake documents, was nonexistent as far as this case was concerned. I so hold.

As such, the mere fact that it is stated in the Counts 3 and 4 of the Charge that the said **Aniukwu Richard Chinonso** is at large, would not by any means create any doubt in the case of the prosecution or

exculpate the Defendant. What is not in questioned is that the Defendant forged the documents with the intention that the same be used as if it was genuinely issued by her employers and the same were found in her possession. I so hold.

In conclusion, the analyses of the evidence on record as demonstrated in the foregoing have apparently resolved the issues raised for determination by the Defendant's learned counsel against her. My judgment is therefore that the prosecution has proved the entirety of the **4-Count Charge** in the instant suit against the Defendant beyond reasonable doubt. Consequently, I hereby return a verdict of guilty against the Defendant on each and every Count of the Charge.

OLUKAYODE A. ADENIYI

(Presiding Judge)

09/05/2018

SENTENCE

I had listened attentively to the *allocutus* rendered on behalf of the convict by her learned counsel. The convict was convicted of the totality of the four count Charge for which she stood trial. By the provisions of **sections 364** and **368** respectively of the **Penal Code Act**, each count of the offence carries punishment of maximum of **fourteen (14) years** imprisonment with or without options of fine.

In determining the appropriate sentence to be applied in the totality of the circumstances of this case, I have been well guided by the relevant

sentencing parameters provided in the **F. C. T. Court (Sentencing Guidelines) Practice Directions, 2016.**

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

1. The level of culpability of the convict;
2. The severity of the harm the actions of the convict caused the Nigerian State and the General public;
and
3. Any other aggravating or mitigating factors that could hold in determining the appropriate sentence.

On the basis of the foregoing, I had taken into account the fact that the convict is a first offender, as noted by both her learned counsel and learned

counsel for the prosecution. I had also taken into consideration, the present family condition of the convict, as a single mother and also as the bread winner of her family.

I had balanced these considerations with the Court's observation of the convict all through the trial proceedings, who appeared to have already learnt her lessons from her criminal conduct and had comported herself remorsefully all through the trial proceedings.

I must underscore that the essence of applying sentence is not only to punish criminal conduct, but also to ensure that justice is done to the society at large, who most often, is at the receiving end of every unlawful and criminal action.

Sentence is equally applied as a form of deterrence to other persons of like tendencies as the convict, in that there must be a necessary penal consequence for every criminal act.

On the basis of the considerations set out in the foregoing therefore, I hereby sentence the convict to **six (6) months** imprisonment on each of the four count charge without an option of fine. The sentences on each of the counts shall run concurrently.

In calculating the tenor of the **six (6) months** imprisonment term, due account shall be taken of the period the convict had spent in prison custody, from **09/05/2018**, when she was convicted.

OLUKAYODE A. ADENIYI

(Presiding Judge)

25/05/2018

Legal representation:

E. O. Akponimisingha, Esq. (Snr. Legal Officer, ICPC) (with **Blessing Amba (Miss)**) – *for the prosecution*

E. E. Ekpo, Esq. – *for the Defendant*