IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDING AT MAITAMA
BEFORE HIS LORDSHIP: HON. JUSTICE H. B. YUSUF

CHARGE NO: FCT/HC/CR/67/2008

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA……COMPLAINANT

AND

MR. ROTIMI OPEMO……..DEFENDANT

JUDGMENT

The Defendant, **Mr. Rotimi Opemo** is standing trial before this Honourable Court on a six count charge, bothering on one count of fraudulently attempting to obtain property by false pretence contrary to Section 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act of 2006, three counts of forgery contrary to Section 364 of the Penal Code, one count of offence of using a forged document as genuine contrary to Section 366 of the Penal Code and knowingly pretending to be one **Ade Michael** contrary to Section 324 of the Penal Code respectfully.

He pleaded not guilty to all the six counts. The matter proceeded to hearing. The prosecution called a total of three witnesses to prove his case. The PW1 is one **Clement Aziegbeme**. He is a staff of the

Aso Savings and Loans Plc, Kubwa Branch. He is a Relationship Officer and a Marketer. His duties include:

(1) Deposit mobilization.
(2) Account management.
(3) Relationship management of the Branch; and
(4) Other duties that may be assigned to him.

He told the Court that in May, 2007 he went to the office of the Head of Service of the Federation for marketing on behalf of the Bank. He met the Defendant and gave him an account opening package which comprised of;

(a) Signature Card.
(b) Mandate Form; and
(c) Account Opening Form.

The Defendant duly filled the forms and returned same to the PW1. The identity card of the Defendant was annexed to the forms together with his photographs. The name on the identity card was **Ade Michael**. The PW1 then opened the account for the Defendant. The PW2 is **Abdulaziz Ibrahim**, also a staff of the Aso Savings and Loans Plc. He is the Loan Manager of the Branch. His duty involved recovery of nonperforming loan from the customers. When the incident happened in 2007 he was in charge of Internal Control and Compliance Department. He told the Court that about October, 2007

an Oceanic Bank draft was lodged at the Area 8 Branch of Aso Savings Bank. The draft was issued by the Salaries and Wages Commission Department of the office of the Head of Service for payment to an account domiciled with Kubwa Branch of the Bank. According to the PW2 the draft was presented at the Central Bank of Nigeria (CBN) for clearing. After it was cleared, the money was paid into the account. Someone attempted to withdraw the fund but when he was asked to present his identity card he ran away.

The PW2 then sent for the Defendant who came to the Bank and informed him that the fund was his pension as he had retired from service. The PW2 told the Court that he requested for the Defendant's identity card and driver's licence which the Defendant promised to present but failed to show up. The PW2 then compiled his report to the Managing Director of the Bank and reported the case to the Economic and Financial Crimes Commission (EFCC) for investigation. The PW2 also testified that the amount involved was N1, 674, 000. 00 (One Million, Six Hundred and Seventy-Four Thousand Naira) and was paid into the account of **Ade Michael** which was opened by the Defendant.

The PW3 in this case is **Yusuf Dauda**. He is an operative with the EFCC. He testified that sometimes in October, 2007 a petition was written to the Chairman of the EFCC from Aso Savings and Loans against the Defendant involving fraudulent lodgment of pension

fund in the sum of N1, 674, 000. (One Million, Six Hundred and Seventy-Four Thousand Naira) into the Defendant's account. The matter was referred to his team for investigation. He told the Court that his team wrote to the Bank for the particulars of the Defendant and the Bank furnished them with the account opening package in respect of the account. The package was carrying the passport photograph and signature of the Defendant. The PW3 then visited the office of the Defendant and invited him to the EFCC for investigation. According to the witness he obtained the statement of the Defendant under words of caution which he signed at the end. The witness also told the Court that the Defendant made an additional statement on the 14/12/2007. In the course of investigation the PW3 wrote to the office of the Head of Service to request for details of **Ade Michael** and got a reply that he had since retired and collected his gratuity. He was also informed that the Defendant was still in service. At the end of the testimony of the PW3, the prosecutor applied and was allowed to close his case.

I need at this point to state that all the three witnesses who testified for the prosecution were fully cross examined by **Esume Esq** for the Defendant. The prosecutor also tendered some documents which were admitted and marked as exhibits P1 to P8 and P8 (a).

At the end of the case for the prosecution, the Defendant made a "no case submission" on behalf of the Defendant and urged the Court to

discharge the Defendant as no 'prima facie" case had been made out against the Defendant in respect of all the six counts. This was opposed by the learned prosecutor. At the end of the day, the submission of "no case to answer" was overruled and dismissed in a considered Ruling delivered by this Court on the 17/11/2015.

As a result of this development, the Defendant entered his defence, testified as DW1 and called one other as DW2. They were fully cross examined by the learned counsel for the prosecution. In his evidence, the Defendant told the Court that in 2007 some staff of Aso Savings and Loans came to his office and advised him to open an account with the Bank. He agreed to open an account with the Bank in the name of **Ade Michael**. He told the Court that about three weeks later, the Manager of Kubwa Branch called him and asked if he was expecting a payment and he agreed. He also told the Manager that he did not send anybody to collect money from the account. He was invited to the Bank where he showed to the Bank his identity card which the Bank issued to him. He further testified that two weeks later he was arrested and made to write a statement. The Defendant told the Court that he was maltreated and threatened to confess. That exhibit P8 and P8 (a) were dictated to him by the IPO. The Defendant told the Court that he did not know who lodged the disputed fund into his account and he never pretended to be a retired civil servant.

The DW2 is one **Johnson Abogan**. In his evidence he told the Court that the Defendant's name is **Ade Michael** and that **Michael** is his grandfather's name. The witness did not give any testimony about the facts concerning the offence under trial. After the Defendant closed his case, the learned counsel to the parties filed their final written addresses which they adopted before this Court on the 03/12/2019.

In his final written address **F. Esume Esq** for the Defendant listed two issues for determination of this case. They are:

(1) Whether the prosecution has discharged the burden of proof required of it in criminal trial for the conviction of the Defendant.

(2) Whether the six counts charge preferred against the Defendant is defective and liable to be terminated.

On the other hand the final written address filed on behalf of the prosecution which was settled by **A. Amedu** listed a lone issue for determination of this case. That is:

> **"Whether from the overwhelming oral and documentary evidence adduced by the prosecutor, the prosecution has proved the ingredient of the offence as contained in the charge against the Defendant beyond reasonable doubt as**

required by Section 135 of the Evidence Act 2011 (as amended).”

I have considered the evidence led at the trial of this case and painstakingly read the final written addresses of the learned counsel for the parties and I think that one issue will conveniently determine this case. The only issue submitted by the prosecution and issue one submitted by the Defendant are similar and can determine the case. That is; **whether the prosecution has established the essential elements of the offences charged beyond reasonable doubt to warrant conviction upon them**. To me, all the issues raised about defects with the charges can be taken and treated in this case.

The law is settled that in criminal cases, the prosecution must establish the essential elements of the offence charged to secure conviction. The standard prescribed by Section 135 of the Evidence Act 2011 is proof beyond reasonable doubt. The meaning of this phrase has been given in several cases. It means the production of evidence to establish the implication of the accused in the offence charged with a degree of certainty. A few cases will suffice. **See OSENI VS STATE (2012) 5 NWLR (PT. 1293) 351; BAKARE VS STATE (1987) 1 NWLR (PT. 521) 579.**

In MILLER VS MINISTER OF PENSIONS (1947) 2 ER 372 it was held that:

"Proof beyond reasonable doubt does not mean proof beyond all shadow of doubt and if the evidence is strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence" "of course it is possible but not in the least probable" then the case is proved beyond reasonable doubt."

According to **Oputa JSC** (of blessed memory) in the case of **BAKARE VS STATE (1987) 3 SC 1,** the phrase stems from the compelling presumption of innocent in our adversary system of criminal justice and that to displace the presumption, the evidence of the prosecution must prove beyond reasonable doubt, not beyond the shadow of any doubt that the person accused is guilty of the offence charged.

There are six counts of offences against the Defendant. If the prosecution must secure conviction against him in any or all of the charges, it must lead evidence in support of the counts in a degree that leaves the Court with no doubt that the Defendant committed the offences.

The first count of the amended charge alleges that the Defendant with intent to defraud attempted to obtain the sum of N1, 674, 000. 00 (One Million, Six Hundred and Seventy-Four Thousand Naira)

only from the office of the Head of Service of the Federation as gratuity under the pretence that he is a retired civil servant. The offence is punishable under Section 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006. Learned counsel to the Defendant has argued that this count is wrong in the sense that while the charge talks of attempt to obtain, the provision of Section 1 (1) of the Act prescribes for the offence of obtaining fraudulently. He submitted that the count was bad in that the offence was committed against money and not property as mentioned in the Section under which the Defendant was charged.

In response to argument canvassed above, the learned prosecutor submitted that the objection to the charge on account of defect must be taken at the earlier opportunity after the Defendant has pleaded to the charge and that the learned counsel to the Defendant having waited until the prosecution has closed his case before complaining is deemed to have waived the right. On this point the following cases were called in aid: **AMADI VS FRN (2008) 18 NWLR (PT. 119) 259 at 265 ratio B and KALU VS FRN (2014) 1 NWLR (PT. 1389) 479 at 535.**

I think I should dispose of this point quickly. In doing so, it is my respectful view that the learned prosecutor is not correct. The case of **AMADI (Supra)** and **KALU (Supra)** which the learned prosecutor relied upon to state that the objection based on defective charge is

belated were decided under Lagos State Criminal Procedure Law which does not apply to the Federal Capital Territory. The point is that Section 167 of the Criminal Procedure Law of Lagos State which specifically provides that objection to a charge for any formal defect shall be taken immediately after the charge has been read over to the accused and not later does not have equivalent provision in the Criminal Procedure Code which is applicable to the Federal Capital Territory. As a matter of fact the Administration of Criminal Justice Act 2015 which governs Criminal Procedure in the FCT has cleared the controversy by providing specifically in Section 221 that "objection shall not be taken or entertained during proceeding or trial on the ground of imperfect or erroneous charge." By the foregoing provision the learned counsel to the Defendant is not allowed to complain about any defect in the charge in this trial until the end of the trial. On this account the complaint raised on the defects of the 1st count in this charge is timeous not belated and therefore valid.

As a matter of fact the provision of Section 221 of the Administration of Criminal Justice Act of 2015 applicable to the FCT is the opposite of Section 167 of Criminal Procedure Law of Lagos State, in that while objection on defective charge must be taken immediately after the plea of the accused is taken under the Lagos

State Act. Under the Administration of Criminal Justice Act, such objection can only be taken at the end of trial.

Another leg of the learned counsel's complaint is that Section 1 (1) of the Advance Fee Fraud Act provides for obtaining by false pretence and not attempt to obtain by false pretence. Counsel has asked the Court to strike down the charge on the account that the count was framed under a wrong provision. To facilitate due understanding of this point, the provision of Section 1 (1) of the Act is hereby reproduced:

> **(1 Notwithstanding anything contained in this enactment or law, any person who by any false pretence and with intent to defraud:**
>
> **(a) Obtains from any other person in Nigeria or in any other Country for himself or any other person.**
>
> **(b) Induces any other person in Nigeria or in any other Country to deliver to any person, or**
>
> **(c) Obtain any property whether or not the property is obtained or its delivery is induced through the medium of a contract induced by false pretence is guilty of an offence under this Act."**

I must say without any equivocation that the argument of learned counsel to the Defendant that the above provision talks of property and not money does not take into account, the provision of Section 7 (5) (g) of the Advance Fee Fraud which defines property to include money. It states:

> **"Property includes asset, monetary instruments and instrumentalities used in the commission of an offence under this Act."**

Thus, it is clear from the above definition that property under the Act includes money. Counsel is therefore not correct. Similarly his grudge that Section 1 (1) of the Act does not provide for attempt to obtain is wrong. A careful reading of the provision under Section 1 (1) would reveal that paragraph (c) talks of "**whether or not the property is obtained**." If there is a false pretence to obtain which has not materialize then the offence of attempt to obtain is constituted. To me that is the implication of paragraph (c) under Section 1 (1). So clearly, there was nothing wrong in charging the Defendant under Section 1 (3) which is the punishment Section except the learned counsel can show that the Defendant was misled. Here in this trial the Defendant pleaded not guilty to the charge after the charge sheet was read and explained to him. He thereafter defended himself and called witness. I am satisfied that the first

count of the charge is in order and that the complaints raised by the learned counsel to the Defendant are unfounded.

Under count one which is for an attempt to obtain property by false pretence, the prosecution must establish the following to secure conviction:

(i) That there was a false pretence.

(ii) That the false pretence was made by the Defendant to his victim.

(iii) The false pretence operated in the mind of the victim from whom the money was to be obtained.

(iv) The Defendant had knowledge that the pretence was wrong; and

(v) That the accused did same with intent to defraud.

The PW1 is one **Clement Ajiegbemi**. He was a staff of Aso Savings and Loans Bank. He was the one who opened the account for the Defendant. He testified that he gave exhibits P1 to P4 to the Defendant which he filled before he opened an account for him. The PW2 is **Abdulaziz Ibrahim.** He gave evidence about the payment of the disputed cheque to the Defendant's account. He told the Court how someone attempted to withdraw the fund but ran away when he was asked to present his identity card. He also told a story that when asked the Defendant told him that the money transferred was

his gratuity. The PW3 is the operative of the EFCC who investigated this case. During investigation he was furnished with exhibits P1 to P4 by Aso Savings and Loans. He obtained the statement of the Defendant under caution, exhibits P8 and P8 (a). He also wrote to the office of the Head of Service to request for details of **Ade Michael** and he got a reply that the subject had retired and collected his gratuity. The Defendant has denied committing the offence. The learned counsel representing him has argued that the essential elements of the offences has not been established from the evidence led by the prosecution. According to him, the material witnesses from the office of the Head of Service of the Federation and the Accountant General of the Federation were not called to tell whether the Defendant made any pretence and to whom. That these are material witnesses and that failure of the prosecution to provide this vital evidence has affected the case of the prosecution adversely. It was also his contention that no document was tendered to show how the pretence was made. On the effect of failure of the prosecution to call vital witness, learned counsel cited the cases of **USMAN ISA & ORS VS THE STATE (2010) 16 NWLR (PT. 1218) 132 at 163 paragraphs E to F; and ADEREMI OMOTAYO VS THE STATE (2013) 2 NWLR (PT. 1338) 235 at 255** where it was held that although in criminal cases prosecution has discretion to call whichever witness it considers necessary to prove the offence

charged, its failure to call very vital witness whose evidence may determine the case one way or the other will be fatal to the case.
On the other hand the learned counsel to the prosecution has argued that the case against an accused could be established through:

(i) Confessional statement.
(ii) Circumstantial evidence.
(iii) Evidence of prosecution witnesses.

That in this case the Defendant confessed to the crime in his extra judicial statement to the police which was admitted as exhibit P8. Learned counsel quoted from the statement of the Defendant in exhibit P8, thus:

> **"I initiated the opening of an account in Aso Savings and Loans with N5000 (Five Thousand Naira) under Ade Michael name in Kubwa Branch for the purpose of getting out excess money for pensioners which was opened for me by one Clement Ajiegbemi. I have never used any pensioner's file to defraud apart from Ade Michael own. I planned it alone, if I carried people along I will not run into problem. I did it all alone, all one needs do is to fill a pension form and submit it for processing. The file will be submitted and it will go on its own from Director's office to**

the last officer and where the voucher will be prepared according to the normal routine."

Counsel further submitted that a voluntary confession of guilt if direct and properly established is sufficient proof of guilt and enough to sustain conviction. He therefore urged me to convict the Defendant on his confession.

At this point it is necessary for me to consider the statement of the Defendant. In doing this, what I simply need to do is to advert my mind to the essential elements of the offence of attempt to obtain by false pretence and determine if exhibit P8 has admitted the commission of the offence as canvassed by the learned prosecutor so as to amount to confession.

Looking at the statement in exhibit P8 the salient points are that the Defendant:

(a) Opened an account with Aso Savings and Loans into which the pension fund was paid.

(b) The purpose was for getting excess money for pensioners.

(c) That he used Ade Michael's file to defraud.

(d) He did it alone by filling pension form and submitting it for processing.

What has emerged from the facts of the above is that the Defendant used **Ade Michael's** file to defraud. The statement does not state that the Defendant made any representation to anybody. It does not state that the false pretence operated on the mind of the victim leading to payment of the money. An inference cannot even be drawn from the statement that the offence committed must be the one charged.

For me, there is no direct evidence in the statement in exhibit P8 that the Defendant has admitted the offence of attempt to obtain by false pretence so as to come to a conclusion that he has confessed to any or all of the offences charged. A confession is an admission made at anytime by a person charged with a crime stating or suggesting the inference that he committed the crime. In **SOFOLA VS THE STATE Tobi JSC** held thus:

> **"A confessional statement is the best evidence in our criminal procedure. It is a statement or admission of guilt by the accused and the Court must admit it in evidence unless it is contested at trial... Once a confessional statement is admitted the prosecution need not prove the case against the accused person beyond reasonable doubt as the confessional statement ends the need to prove the guilt of the accused."**

However for this law to apply, the alleged confession must be positive, direct and unequivocal. Thus in **SHURUMO VS STATE (2010) ALL FWLR (PT. 551) 1406** the Court of Appeal held:

> **"That for a confession to amount to an admission of guilt, it must be positive, direct and unequivocal as to the commission of the offence for which the accused is charged."**

In this case five different classes of offences were alleged against the Defendant in the charged sheet. The mere fact that an accused said I did it does not mean that what he did must be the offences charged. As far as am concerned, there is no positive, direct and unequivocal admission of any of the offences charged in exhibit P8 and P8 (a). The fact is that the prosecution must in this case establish the guilt of the Defendant otherwise than through exhibit P8. Exhibit P8 is undoubtedly not a categorical admission of the offence charged.

It appears to me that the investigation of this case was not thoroughly done. The offence of attempting to obtain by false pretence requires that evidence must be given that there was a false representation by the Defendant to named person or persons and that the pretence operated on the mind of the victim to deliver the property. There is no way this can be proved without calling evidence from the office of the Head of Service who would testify

that they were induced by the misrepresentation made by the Defendant to pay and tender a document on which the false pretence was made.

Although the prosecution has liberty or choice to call witness he thinks would prove the offence charged and need not call a host of witnesses to prove a point. However if there is a vital point in issue and there is one witness whose evidence would settle it one way or the other, that witness ought to be called. See **MADI VS AG IMO STATE LPELR 3 (2013) and USUFU VS THE STATE (2007) 1 NWLR (PT. 1020) 84 at 118.**

All the prosecution witnesses i.e. PW1 and PW2 have not given any useful evidence in this case relating to how a false pretence was made to somebody in the office of the Head of Service and with what instrument. This is understandably so as they do not work in the office of the Head of Service. The PW3 was merely satisfied with the statement of the Defendant in exhibit P8 as if the mere fact that the Defendant agreed that he has committed an offence that offence must be an attempt to obtain by false pretence or forgery. The failure of the prosecution to call a vital witness who would testify to what sort of pretence was made to them and with which document is fatal to the case of the prosecution. See also **ALAKE VS THE STATE (Supra).**

To me all that the accused stated in exhibit P8 is meaningless in the absence of a documentary evidence on which the false pretence was made. It could even be taken that the failure of the prosecution to call any witness to prove this point is because the evidence which may be given would be unfavourable to the prosecution's case leading to the operation of Section 167 (d) of the Evidence Act 2011. The effect of all these is that the essential elements of the offence in count one has not been established. The Defendant is discharged.

Counts two, three and four relate to forgery of documents. Count two specifically relate to forgery of Aso Savings and Loans signature card, count three to forgery of account's opening form and count four alleges forgery of mandate form. These documents were variously tendered before the Court and admitted as exhibits P1, P3 and P4. Because counts two, three and four bother on forgery of documents executed in one transaction at the same time, I shall take those counts together. The charges on these counts state that the Defendant forged the respective documents. However contrary to this allegation, the documents so mentioned were made by Aso Savings and Loans and not the Defendant. He merely filled the forms by providing personal details on the forms. Perhaps I should assume in dealing with the charges that it is the information which the Defendant provided in the forms that were allegedly forged.

The evidence led before me undoubtedly show that all the forms were completed by the Defendant. He too admitted before the Court that he completed and provided all the information in exhibits P1, P3 and P4. The point of divergence is that while the prosecution maintains that the name **Ade Michael** and other particulars provided by the Defendant on the forms were forged as they belong to another person, the accused has insisted that they were his particulars and that they were not forged. That being the case, the prosecution has a duty to establish the forgery beyond reasonable doubt.

On the signature card the Defendant affixed his personal photograph with the name **Ade Michael**, his place of work, telephone number and his signature. He also provided the name of his son as **Sola Ade Michael** and his wife's name as **Yinka Ade Michael**. In exhibit P4, the account opening form he stated his name as **Ade Michael,** that he is a civil servant, his residential address and signature. Exhibit P2 is his official identity card said to have been issued by the Presidency.

Now count two states that the Defendant made a forged document titled Aso Savings and Loans Plc Signature Card with intent to commit fraud contrary to Section 364 of the Penal Code Law. In order to sustain conviction for the offence of forgery the prosecution must proof the following elements:

(1) That there is a document.

(2) That the document or writing was forged.

(3) That the forgery was done by the Defendant.

(4) That the Defendant knew that the document or writing is false.

(5) That the Defendant intends that the forged document to be acted upon to the prejudice of the victim in the believe that it is genuine.

See **BABALOLA VS THE STATE (1989) 4 NWLR (PT. 115) 264.**

Now the question to be asked is whether there is evidence before me that exhibit P1, P3 and P4 were forged. A document is forged if a person makes a false document with the intention that it be believed by another to be genuine.

I have gone through the evidence of the prosecution witnesses and it would appear that there is none. The PW1 who processed the documents filled by the Defendant testified before this Court that he verified the Defendant's identity card and he found it to be genuine. The identity card bears the name **Ade Michael.** The ID Card is the property of the Presidency. There is no evidence that the PW3 who investigated the case doubted the genuiness of the ID Card. I say so because he did not visit the employer of the Defendant to find out if the ID Card was issued by the Presidency. If the identity card i.e. exhibit P2 was issued to the Defendant then it cannot be said to have

been forged. If the employer recognized the Defendant as **Ade Michael** and identified him as such then where is the forgery? If there is no evidence that the ID Card was forged or that the name on it does not belong to the Defendant then am entitled to presume that the identity card was regularly issued by the Presidency and that all the information in it are correct. For this proposition I rely on Section 168 (1) of the Evidence Act 2011. I can also presume that because there is no contrary evidence against the ID Card it was properly and rightly issued to the Defendant.

This presumption is commonly expressed in the Latin Maxim of **OMNIA PRESSUMUNTUR RITE ESSE ACTA**. This presumption is usually commonly resorted to and applied especially with respect to official act. See **SHITTA BEY VS AG FEDERATION AND ANOR (1998) 10 NWLR (PT. 570) 392; and OGBUANYINYA VS OKUDO (1990) (NO. 2) 4 NWLR (PT. 146) 551 at 570 paragraphs D to E.**

Furthermore, the Defendant has testified that his other name is **Ade Michael** and DW2 also said so to corroborate his evidence. As things stand am bound to come to a conclusion that the prosecution has not led credible evidence to demonstrate that exhibit P1, P3 and P4 in respect of which the charges in counts 2, 3 and 4 were raised are forged.

The facts contained in the exhibits are the names of the Defendant, his address at home and office as well as names of his wife and son.

They also carry his signature. Those facts were never investigated by the prosecution to be false. For me they must be taken as given as there is no contrary evidence that the facts he stated therein were false or relate to a different person. The evidence before me is that after the Defendant filled exhibits P1, P3 and P4, the PW1 verified the information he gave therein before he opened a savings account for the Defendant. Indeed what I observe is that no evidence has been given to the effect that the facts in exhibit P1, P3 and P4 are false and I am not going to speculate. As a matter of fact the presumption of due regularity operates in favour of the Defendant. For example, when the PW3 who investigated this case was cross examined, he agreed that it was possible for there to be multiple people with the name **Ade Michael** apart from the retiree. The position of the law as handed down in a plethora of cases is that the prosecution has the un-shifting burden to establish the guilt of the accused to the satisfaction of the Court. The opposite is that the law does not place burden on the accused to prove his innocence. There is clearly absence of any evidence to support the charge in counts two, three and four in this trial. On this account the Defendant is discharged upon them.

Count 5 is predicated on Section 366 of the Penal Code. The charge alleges that the Defendant fraudulently used as genuine a document

titled Aso Savings and Loans Plc Signature Card in the name of one **Ade Michael**. The evidence called by the prosecution is to the effect that the Defendant filled the document with the name **Ade Michael** and supplied other particulars such as that he is working in the Salaries and Wages Commission in the office of the Head of Service of the Federation in the Presidency. On completing the form he submitted it to PW1, a staff of Aso Savings and Loans for it to be used in opening account for him.

For the prosecution to succeed, it need be proved in the first place that the documents or the information supplied therein were forged. In my findings on counts two, three and four, I remarked that the prosecution has not succeeded in leading evidence to support this allegation of forgery. I premised my reasoning on the fact that the documents are the property of Aso Savings and Loans and the PW1 told the Court so. That in the signature card the Defendant affixed his photograph, wrote his name as **Ade Michael**, that he works with Salaries and Wages Commission in the office of the Head of Service. He also put his signature. Contrary to the submission of the learned counsel to the prosecution, no evidence has been led to show conclusively that the Defendant does not bear the name, that he lied about his place of work or that the picture is not his own. Exhibit P2 which is his official ID Card shows without doubt that the name is **Ade Michael**. Exhibit P1 in my honest view truly contain correct

information about the Defendant and not another person. As a matter of fact the story of the PW2 that the Defendant told him that he is a retiree does not impress me, as a witness of truth. This is because the particulars of the Defendant which he supplied to the Bank clearly show that he was a civil servant. I cannot imagine a person who says he is a civil servant being qualified as a retiree. Flowing from all I have said, it is my view that prosecution has also not proved this head of charge against the Defendant. He is therefore discharged upon it.

The six and final count alleges that he knowingly pretended to be **Ade Michael** contrary to Section 324 of the Penal Code Law. If I understand this charge well it means that the accused pretended to be **Ade Michael** and that his name is something else. Now when the PW1 testified he told the Court how the Defendant filled exhibits P1, P3 and P4 and supplied his name as **Ade Michael** which he verified to be correct. The PW3 who investigated the case did not make any effort to confirm how the Defendant came about the name. During investigation, he was supplied with exhibit P2, the Defendant's official identity card issued by the Presidency. He did not verify the genuiness of the ID Card. According to him when he wrote for particulars of a certain **Ade Michael** he was told he had retired from service and collected his gratuity. No record or document relating to

this person is before the Court. Nobody has appeared before the Court to testify to the existence of this person who had retired.
On the contrary the Defendant has told the Court his name is also **Ade Michael**. DW2 who gave evidence for him also corroborated this story. The office where the Defendant was working recognized him as **Ade Michael** and issued him ID Card. He stated in the exhibits P1, P3 and P4 that he was a civil servant. He did not say that he is a retiree. To me the prosecution has not put anything before the Court to displace the testimony of the Defendant on this fact. Arising from this, I hold that the count has also not been proved and it is dismissed.

In rounding up I need to consider the complaints of the learned counsel to the Defendant on his perceived defects on counts two to six of the amended charge. According to him all the charges in those counts failed to state the Section of the law which creates the offences charged and this omission has affected the validity of those counts. He placed reliance on Section 201 (1) (4) of the Criminal Procedure Code which he quoted as follows;

> **"Every charge under this Criminal Procedure Code shall state the offence with which the accused is charged….(4)… the law and Section of the law against which the offences is**

said to have been committed shall be mentioned in the charge."

Counsel cited the case of **AGF VS ISOONG (1986) QLRN 75** where it was held that where the offence is defined in one Section but the punishment for the offence and other offences are jointly prescribed in a separate Section, the charge sheet shall state both the definition Section and the Section punishing the act. Counsel argued that the failure to reflect the definition Section in the charges against the Defendant amount to fundamental defects. He also referred to Section 202 of the CPC.

Responding the learned prosecutor submitted that the charges were preferred in accordance with the prescription in Section 200 of the CPC and that failure to so comply with Section 201 and 202 has not misled the Defendant as to the offences for which he is standing trial. References were made to appendix B of the Code.

I have considered the submissions made by respective counsel and I think that failure to state the Section of the offence does not vitiate a charge unless such failure has misled the Defendant leading to miscarriage of justice. Section 206 of the CPC is very clear on this position of the law. It provides:

"No error in stating either the offence or the particulars required to be stated in the charge and no omission to

state the offences or particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice."

It is my respectful view that although Section 201, 202 and 203 have not been complied with in the framing of the charges, such omission has not misled the Defendant in this trial and has not occasioned miscarriage of justice. The record of this Court shows that when the Defendant was arraigned he pleaded not guilty to the six count charge and led evidence fully in his defence. Under such a situation he cannot be said to have been misled. And in any case, learned counsel who raised this point has not demonstrated how the Defendant was misled. On this account I hold that the attack on the validity of the charges is lacking in merit and dismissed.

In all, the prosecution is unable to discharge the burden of prove placed on it in this trial and the Defendant is discharged and acquitted.

The evidence before me shows that the sum of N1, 674, 000. 00 (One Million, Six Hundred and Seventy-Four Thousand Naira) paid into the Defendant's account is still there as the fraudster did not succeed in withdrawing it. Since it is the property of the Federal

Government, I hereby direct that the Defendant should return same to the Government Treasury and furnish the Registrar of this Court with evidence of same.

Signed
Hon. Justice H. B. Yusuf
(Presiding Judge)
20/05/2020