IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY IN THE ABUJA JUDICIAL DIVISION HOLDEN AT THE HIGH COURT 9 GUDU, ABUJA

BEFORE HIS LORDSHIP: HON. JUSTICE A.M TALBA

SUIT NO: FCT/HC/CR/24/2009 ON THE 7th DAY OF JULY 2017

BETWEEN

FEDERAL REPUBLIC OF NIGERIA-----COMPLAINANT

VS

PRINCE PHIL TERIBO WILLIAMS & 10R -----ACCUSED

JUDGMENT

Two defendants were initially standing trial before this court pursuant to an amended charge dated the 10^{th} day of May 2010 and filed on 11^{th} day of May 2010. They are;

- 1. Prince Phil Teribo Willaims
- 2. Unity Osaghe.

They were brought on a five count charge which reads;

Count 1

That you Prince Phil Teribo Williams and Unity Osaghe on or about the 30th day of June 2006 in the Abuja Judicial Division of the High Court of the Federal Capital Territory agreed to do an illegal act to wit: forgery of a bid bond of Guaranty Trust Bank Plc dated 30th June 2006 purportedly signed by the Director and Secretary of Guaranty Trust Bank for Guaranty Trust bank and that the same act was done in pursuance of the agreement and that you thereby committed an offence punishable under section 97 of the Penal Code.

Count 2

That you Prince Phil Teribo Williams and Unity Oseghe on or about the 30th day of June 2004 in the Abuja Judicial Division of the High Court of the Federal Capital Territory fraudulently made a forged bid bond of Guaranty Trust Bank Plc dated 30th June 2006 titled BID BOND purportedly signed by the Director and Secretary of Guaranty Trust Bank for Guaranty Trust Bank with intent to commit fraud and thereby committed an offence contrary to section 363 of the Penal Code Act Cap 532 laws of the Federation of the Nigeria (Abuja) 1990 and punishable under section 364 of the same Act.

Count 3

That you Prince Phil Teribo Williams and Unity Osaghe on or about the 30th day of June 2006 in the Abuja Judicial Division of the High Court of the Federal Capital Territory fraudulently used as genuine a forged bid bond of Guaranty Trust Bank Plc dated 30th June 2006 titled BID BOND purportedly signed by the Director and Secretary of Guaranty Trust Bank for Guaranty Trust Bank by presenting same as bid document to the Bureau of public Enterprise Abuja which you knew was forged and thereby committed and offence contrary to section 366 of the Penal Code Act Cap 532 laws of the Federation of Nigeria Abuja 1990 and punishable under section 364 of the same Act.

Count 4

That you Prince Phil Teribo Williams and Unity Osaghe on or about the 30th day of June 2006 in the Abuja Judicial Division of the High Court of the Federal Capital Territory did have in your possession a forged document to wit bid bond of Guaranty Trust Bank Plc dated 30th day of June 2006 knowing the same to be forged and intending that same shall fraudulently be used as genuine and thereby committed an offence punishable under section 368 of the penal Code Act Cap 532 LFN Abuja 1990.

Count 5

That you Prince Phil Teribo Williams and Unity Osaghe on or about the 30th day of June 2006 in the Abuja Judicial Division of the High Court of the Federal Capital Territory did conspire amongst yourselves to commit a felony to wit: forgery and thereby committed an offence contrary to section 97(1) and punishable under section 97 (1) of the Penal Code Law Cap 532 LFN Abuja 1990.

The two defendants pleaded not guilty to all the five count charge. After the close of the case of the prosecution on the 14th day of February 2012, the case was adjourned for defence. And on the 5th June 2012 learned counsel for the 2nd defendant Unity Osaghe, informed the court that he had filed a written address on no case submission, which is dated 12th March 2012 and filed on 16th March 2012. The Learned Counsel adopted hiss written address. In response to the submission of the learned defence counsel. The learned prosecution counsel stated thus;

We were served with the address on no case submission. We have no opposition to the no case submission.

Consequently, based on the strength of the submission made by the learned prosecution counsel, the 2nd defendant Unity Osaghe was discharge.

In an effort to establish its case the prosecution called for witnesses. These are; PW1 Abdullahi Alhassan a staff of Bureau of Public Enterprises (BPE) who are the nominal complainants. PW2 Kayinde Olubenga Ogundipe, who was a senior Manager with Guaranty Trust Bank as at the time of the alleged crime. PW3 Agwueye Benedict a Forensic document examiner with the EFCC Forensic Science laboratory. And PW4 Halima Alwali Kazir, a Senior Investigation Officer with the EFCC. The prosecution tendered in evidence thirteen (13) Exhibits marked as Exhibits A, A1 to A5, B1 and B2, C1 and C2, D, E and F.

- 1. Exhibit A is a letter dated 24th February 2011, titled "forwarding of documents for examination comparison and the head of forensic unit of the EFCC.
- 2. Exhibit A1 is a Guaranty Trust Bank BID BOND dated 30th day of June 2006 and signed by the Director and Secretary it is the alleged forged document.
- 3. Exhibits A2 to A5 are specimen signatures
- 4. Exhibit B1 is the report of the Forensic document examiner Agweye Benedict of the EFCC Abuja. And Exhibit B2 is the attached signature comparative table.
- 5. Exhibit C1 is a letter dated 3/10/2006, written by the Director General Bureau of Public Enterprises addressed to the Chairman EFCC wherein the Director General Bureau of Public Enterprises complained about the Guaranty Trust Bank forged Bid Bond.

Attached to the said letter Exhibit C1 are copies of documents these are;

a) A letter dated 5th September 2006 addressed to the Managing Director Deltagate Group Ltd, signed by Director General, Bureau of Public Enterprises it is titled;

"Privatization of Abuja International Hotel limited payment of the purchase price of USD #144, 000, 999: 05."

- b) Copy of the Guaranty Trust Bank Bid Bond dated 30th June 2006.
- c) A letter dated September 25th 2006 addressed to the Manager Guaranty Trust Bank, signed by the Director General Bureau of Public Enterprises. It is titled.

"Privatization of Abuja International Hotel limited Execution of Bid Security Bond".

d) A Guaranty Trust bank letter dated September 28, 2006 addressed to the Director General Bureau of Enterprises. It is titled;

"Re-Privatization of Abuja International Hotel Limited Execution of Bid security Bond".

In the said letter Guaranty Trist Bank informed Bureau of Enterprises that the Bid Bond did not emanate from the Bank. It is clearly a forgery.

6. Exhibit C2 is a letter dated September 29, 2006 written by Guaranty Trust Bank and addressed to the Executive Chairman EFCC. It is titled;

"Re-complaint against Deltagate Group limited (DGL) attached to Exhibit C2 are two letters;

- (a) The Bid Bond dated 30th June 2006.
- (b) Copy of the Bureau of Public Enterprises letter addressed to the Manager Guaranty Trust Bank dated September 25th 2006.
- 7. Exhibit D is a Guaranty Trust Bank letter dated 28th September 2006, addressed to the Managing Director Deltagate Group.

 In the said letter Guaranty Trust Bank wrote to inform the defendant Prince Phil Teribo Williams of its intention to terminate banking relations with Deltagate Group and Wenpscon Nigeria Limited.
- 8. Exhibit E is the statement of the defendant Prince Teribo Williams.
- 9. Exhibit F is the statement of PW2 Mr. Kehinda Olubenga Ogunchipe.

In criminal matters the standard of proof required is proof beyond reasonable doubt and it never shifts. The burden of proof lies on the prosecution to prove its case beyond reasonable doubt see Fredrick fasheun & ors Vs AG Fedn (2008) ALL FWLR (pt 423) 1396 at 14 11. The proof is not beyond all shadow of doubt. However, once the proof drowns the presumption of innocence of the accused, the court is entitled to convict him although there could exist some shadows of doubt. It means the prosecution must establish the guilt of the accused person with compelling and conclusive evidence. See Mohammed Ibrahim Vs State (2015) 61 NSCQR 1706. Once there is doubt in the case of the prosecution the benefit of doubt must be resolved in favour of the defendant.

The case of the prosecution as disclosed from the evidence before the court is that sometime in 2001 there was privatization exercise for Abuja

International Hotel. Deltagate Group limited was among those who bidded for the hotel. The defendant Prince Phil Teribo Williams is a director and share holder of Deltagate Group Limited. There was a pre data room conference with all the bidded. PW1 Abdullahi Alhassan a staff of Bureau for Public Enterprises (BFE) was in attendance. At the first meeting all the companies met the condition which qualifies them for the final stage which is called financial bid opening. The financial bid opening was conducted on the 14th August 2006. At the end of the 2nd round of the financial bid opening Deltagate Group Limited emerged as the winner. The chairman of the bidding exercise declare Deltagte Group Limited as the preferred bidders, subject to confirmation by National Council on Privatization Deltagate Group Limited offered to 90% for the Abuja International Hotel in the sum of #144 million upon the approval of the National Council on Privatization. Bureau of Enterprises wrote to Deltagate informing them of the council approval and for the company to commence payment of the bid price in three installments. The said letter is Exhibit C1 (a). The first installment was to be paid within 10 working days which is 10% of the bid price. On 19th September 2006, the ten working days elapsed and Bureau of Public Enterprises called Deltagate Group limited to inform them that failure to pay the 10% of the bid price will result to the execution of the bid bond that was submitted along with the financial bid. On 25th September 2006 Bureau of Public Enterprises wrote to Guaranty Trust Bank on the execution of the bid bond exhibit C1 (b) and A1. On the 28th September 2006 Guaranty Trust Bank replied to Bureau of Enterprises letter of 25th September 2006, stating that the bid bond was not issue by Guaranty Trust Bank and is clearly a forgery. Guaranty Trust Bank advised bureau of Public Enterprises to take urgent steps to investigate the matter. Bureau of Public Enterprises then reported the matter to National Council on Privatization and Bureau of public Enterprises were advised to report the matter to EFCC. Bureau of Public Enterprises wrote a letter to the Chairman EFCC on 3rd October 2006 Exhibit C1, and complained to EFCC about the Guaranty Trust Bank letter of 28th September 2006, wherein Guaranty Trust Bank declined liability because the bid bond dated 30th June

2006 Exhibit A1 was forged. Bureau of Public Enterprises ask EFCC to verify the claim by Deltagate Group Limited and Guaranty Trust Bank PW1 Abdullahi Alhassan told the court that he never had any contact with any staff of Deltagate Group Limited in all their dealings except the defendant Prince Phil Teribo Williams.

When he was Cross-examined PW1 said

"I was not the person who received the bid document from the 1st accused. I would not say with certainty who physically submitted the bid bond. There is a register in the office which confirms that the documents were submitted by Mr. Teribo Williams 1st accused. The register shows the writing of Mr. Williams. The register shows the name, email address, telephone number and the company he is representing when the bid documents were opened I was outside the country. The issue of bank guarantee was as was told to me and as was sighted later by me".

PW 2 is Kehinde Olubenga Ogundipe he is a staff of Guaranty Trust Bank. He told the court that he can remember the two dealings with 1st and 2nd defendant. One was when he needed a short term overdraft of N1million and he approached the bank. The request was granted. The second one was when Bureau of Public Enterprises wrote to the bank that the bank issued a bid bond for N2million dollars. And that Deltagate Group limited failed to meet the bond conditions. And Bureau of Public Enterprises requested the bank to pay. The letter got to Unity Osaghe who informed him about the letter. He then called Prince Teribo Williams for a meeting. Himself and Unity Osaghe met Prince Teribo Williams and confronted him about the letter from Bureau of public Enterprises. PW 2 said at that time he did not deny it and the response he gave to them was that he was working on a facility with 1st Inland Bank. And he has some foreign investors. And that he will take quick steps to pay. PW2 said Mr. Teribo

Williams did not at any point in time make an application for a bid bond to Guaranty trust Bank.

The Guaranty trust Bank did not at any time give a bid bond to Mr. Teribo Williams Guaranty Trust Bank contacted their Legal Department and Internal Control Department. Based on their advise a letter was written to Bureau of Public Enterprises denying knowledge of any transaction with the bank. During Cross-examination PW2 said as at 2006 when he was with Guaranty Trust Bank correspondence with the bank are not received or delivered by him. He said he was not the manager of Deltagate Group Limited account as at 2006. He said as at 2006 Deltagate Group limited account was running a credit balance. He said a customer can make a request orally but at the time of processing he should put it in writing. He said he was not in a position to sign bid bond on behalf of the bank. He also said as at the time the bank was making inquiries on the geniuses of the bid bond he did not see a copy. PW3 is Mr. Agwueye Benedict he is a Forensic document examiner with EFCC Forensic Science Laboratory. He has acquired professional qualification through training within and outside the country in forensic document examination. He is therefore an expert in forensic document examination. He told the court that on 25th February 2011 he received a letter signed by Sunday Babaji for the head of operations EFCC. The letter dated 24th February 2011 is headed;

"Forwarding of documents for examination, comparison and report".

The letter had five attachments. The attachments were classified in two. The first one is the disputed document marked X with awowed signature of a secretary which was in dispute. The second classes of documents were known signature specimen marked A to A3. The letters and the documents were marked as Exhibits A, A1 to A5.

After examining the documents he aimed at an opinion and he issued a report with a comparative chart. The reports were marked as Exhibits B1 and B2. PW 3 said at the end of his examination his opinion is that the

author of the known specimen signatures marked A to A3 is not the author of the disputed awowed signature on document marked X. he said by pictural appearance it is also very obvious that the author of the known specimen signatures marked A to A3 bears no resemblance at all with the disputed awowed signature on the document marked X. he therefore came to the opinion that the disputed signature awowed on the disputed document marked X is a forged signature in the class known as free hand forgery with no attempt to made in simulating the known signature PW4 Halima Alwali Kazeer is a Deputy Detective Supretendant with the EFCC. She is attached to Bank fraud and other financial institutions unit. She is also the team leader of capital market fraud. She told the court that a petition was received from Bureau of Public Enterprises dated 3rd October 2006 signed by Irene Chiqwe the Director General Bureau of Public Enterprises. And a second petition from Guaranty Trust Bank dated 29th September 2006, signed by Tunde Dawudu and Kehinde Ogundipe. Both petitions alleges that the defendant Prince Teribo Williams through his company submitted a fake Guaranty Trust Bank Bid Bond in the sum of #2million dollars Exhibits C1 and C2 are the two petitions respectively.

In the course of investigation PW4 interviewed Abdullahi Shuibu (PW1) and he gave a statement. The defendant was arrested and he also volunteered a statement. A search warrant was executed in the office and at the house of the defendant. Some items were recovered including a cheque book in the name of Deltagate Group limited and statement of account. A letter from Guaranty Trust Bank advising the defendant to close his account with Guaranty Trust Bank. And a technical bid by Deltagate Group Limited for the 90% stake of Abuja International Hotel. A letter was written to Guaranty Trust Bank as a result PW2 Kehinde Ogundipe went to the EFCC office and he adopted their petition. Unity Osaghe was later arrested and he and also volunteered a statement. He denied knowledge of the bid bond. The secretary of Guaranty Trust Bank was invited and his signature samples were taken and forwarded to the forensic unit for forensic analysis.

During Cross-examination PW4 stated that they did not find a written agreement between the 1^{st} and 2^{nd} defendants to forge a bid bond. PW4 further stated that

"Exhibit A is the bid bond in contention. I do not know who signed the bid bond. From what is written on Exhibit A yes I know who issued it. Guaranty Trust Bank issued Exhibit A. From my investigation only the signature of the secretary is challenged from my investigation the signature of the Director is in the I obtained the specimen signature of the secretary to the bank and was sent to forensic unit. We did not obtain the sample signature of the Director. We approached the bank and we requested for the specimen signature of the Director. And they told us that they had so many Directors at various times. But the secretary is always one at a particular time. The signature could be that of one of the Directors at that time because they are so many. It could be the director's signatures or not. I cannot remember the name of the secretary of Guaranty Trust Bank as at I don't know who delivered the bid bond to 2008. Bureau of Public Enterprises. I conducted search on the 1st accused company and we recovered several The bid bond was not part of the documents. documents recovered. I did not find a copy of the bid bond with the 1st accused but I sighted a copy of it in his computer."

PW4 also stated that as at 30th June 2006 they did not obtain the list of the Directors of Guaranty Trust Bank. They did not request or the specimen signature of Directors as at 30th June 2006.

This is the sum total of the evidence adduced by the prosecution. Now reference was made to the 1st accused Prince Phil Teribo Williams and the 2nd accused Unity Osaghe. It is important to note that on the 1st of December 2015, when the 2nd defendant Unity Osagie was discharged pursuant to no case submission. The 1st defendant Prince Phil Teribo Williams was left to stand trial. Count one and count five were also struck out, hence one person cannot conspire to commit an offence. Therefore what is left for the prosecution to establish against the defendant are count two has to do with the offence of forgery. Count three has to do with offence of using a forged document, while count four has to do with offence of being in possession of forged document.

On count two the defendant is charge with the offence of forgery. He is alleged to have forged a Guaranty Trust Bank bid bond. For the prosecution to succeed on this count, it must establish the following ingredients;

- 1. That there is a document or writing.
- 2. That the document or writing is forged.
- 3. That the forgery is by the accused person.
- 4. That the accused person knows that the document or writing is false and the forged document to be acted upon to the prejudice of the victim in the belief that it is genuine.

From the evidence before the court it has been established that there is a document or writing. And that the document is a forged document ie the Guaranty Trust Bank Bid Bond Exhibit C1 (b) or A1 herein.

However, there is a fundamental question which has to be answered thus; who forged? In other words did the defendant forged the Bid Bond? The prosecution had strenuously labored to establish the fact that the Guaranty Trust Bank Bid Bond ie Exhibit C1 (b) or A1 was forged.

This fact was PW1, PW2, PW3 and PW4 and particular through PW3 and the forensic examination report Exhibits A1 to A5. But ironically there is no iota of evidence to show that the defendant was the one who forged the bid bond.

At the best the evidence tends to suspect the defendant as the person who forged the bid bond, in criminal trial it is unsafe to convict an accused on speculative finding or suspicion for a conviction to stand it must be based on credible or reasonable inference. See Amadi Vs State (1993) 8 NWLR (pt 314) 644 and State Vs Ogbanjo (2001) 2 ACLR 527 at 538-540 PW2 Kehinde Ogundipe told the court that;

"They met with the defendant and they confronted him about the letter from BPE. And at that time he did not deny it. And the response he gave to them was that he was working on a facility with First Inland Bank. And he has some foreign investors. He will take quick steps to pay".

This piece of evidence is matter direct nor positive as to the fact that the defendant forged the bid bond.

There is also no evidence to show that the defendant did an act or omission aid abet or assist in the commission of the alleged offence of forgery. In Agwumga Vs AG Federation (1995) 5 NWLR (pt 396) 418 at 438 the court held thus;

"It is not the law that it is only the person who manually writes or signs a forged document that may be convicted for the forgery of the document. The position of the law is that all persons who are participis criminus to a crime include inter alia every person who actually does the act or makes the omission which constitute the offence, person who aid abet or assist them in the commission of the offence or knowing by give succor or encouragement to the

commission of the crime or who knowingly facilitate the commission of the offence".

In this instant case there is no evidence to show how the defendant took part in any way howsoever in the act of forging the bid bond. The defendant being the Director and Share Holder of Deltagate Group Limited, the assumption is that he forged the document.

The court does not work on assumptions but on credible evidence. Suspicion no matter how grave it is, it cannot grand a conviction.

In view of the above findings I hold that the prosecution has failed to establish the alleged offence of forgery against the defendant.

The third count charge is that the defendant used as genuine a forged document ie the Guaranty Trust Bank bid bond, purportedly signed by a Director and Secretary of Guaranty Trust Bank for Guaranty Trust Bank by presenting same as a bid document to BPE knowing that it is a forged document, an offence contrary to section 366 of the Penal Code.

In order to establish this offence the prosecution must prove the following;

- 1. That the accused used a document as genuine.
- 2. That the accused knew or had reason to believe that the document was forged.
- 3. That he did so fraudulently or dishonestly.

To sustain a charge of fraudulently using as genuine a false document contrary to section 366 of the Penal Code, the prosecution must present evidence of user or uttering of the document See AG Vs Hamun (1983) 1 NLR 86 at 97-98.

In this instant case there is evidence to show that the Guaranty Trust Bank bid bond was forged and that it was used by Deltagate Group Limited to bid for Abuja International Hotel. But there is so much doubt in the evidence of the prosecution as to who submitted the bid bond to Bureau of public Enterprises. PW1 Abdullahi Alhassan told the court that he was not the person who received the bid document from the defendant. He said he would not say with certainty who physically submitted the bid bond. He said there is a Register in the office which confirms that the documents were submitted by Mr. Teribo Williams the accused. The register shows the writing of Mr. Williams. The register show the name, Email address, Telephone number and the company he is representing.

PW1 finally said when the bid documents were opened he was outside the country. He said the issue of Bank Guarantees was as was told to him and as was signed later by him.

May I observe here that the last statement made by PW1 has destroyed the totality of his evidence. It is crystal clear that the evidence as it relates to bid documents is hearsay evidence. And again the office register which he referred to in his evidence is not before the court. He said the register confirms that the defendant submitted the bid documents.

It is a vital piece of evidence which should have been produced in court. The failure to produce the register amounts to withholding of evidence. There is therefore no any credible evidence to show who submitted the bid documents. In Garba Zonkwa Vs Police (1968) NWLR 11 CA.

The appellant received money from an unlicensed motor-driver and in exchange provided him with a forged driving license. The driver did not know that the license was forged. The appellant was convicted of an offence against section 366 of the Penal Code by issuing the forged document as genuine. The court held that there was no evidence that the appellant issued the license.

This case is in all forms with the instant one. There is no evidence to show that the defendant submitted the bid bond.

Consequent to the above findings I hold that the prosecution has failed to establish the offence of using as genuine forged document against the defendant.

In count four the defendant is charge with the offence of being in possession of a forged document knowing the same to be forged and intending that the same shall fraudulently be used as genuine. In order to succeed in establishing count four the prosecution must establish the following ingredients.

- 1. That the document was forged.
- 2. That it was in possession of the accused.
- 3. That he held its possession knowing it to be forged and knowing that it would be used fraudulently or dishonestly as a genuine document.
- 4. That the document was one described in section 362 and 363.

It is not in doubt that a Guaranty Trust Bank bid bond was forged there is no dispute about it. But I have critically examined the entire evidence before the court and I am unable to find where it is stated that the forged Guaranty Trust Bank bid bond was in possession of the defendant. And that he held its possession knowing that it will be used fraudulently as a genuine document. PW4 Halima Awali Kazeer told the count that;

"I don't know who delivered the bid bond to Bureau of Public Enterprises. I conducted search in the 1st accused company and we recovered several documents. The bid bond was not part of the document recovered. I did not find a copy of the bid bond with the 1st accused but I sighted a copy of it in his computer".

This piece of evidence lies clearly exonerated the defendant of any liability on count four. The bid bond was not found in possession of the defendant except that PW4 said she sighted a copy of the bid bond in his computer. This piece of evidence is neither direct nor positive. It lives a room for doubt. Sighting a copy of the bid bond in a computer cannot be tantamount to being in possession of the document. The computer itself is not before the court and there is no evidence led as to the workings of the computer. And the copy that was sighted was not printed out from the computer and tendered in evidence. This piece of evidence is not credible and it cannot be relied upon.

In conclusion it is my finding which I so hold that the prosecution has failed to establish all the five count charges against the defendant beyond reasonable doubt. Therefore I find the defendant not guilty on all the five counts charge. Accordingly, the defendant is discharged and acquitted. Appeal allowed to the Court of Appeal.

Signed: HON. JUSTICE A.M. TALBA – PRESIDING JUDGE 7/7/2017

Def. Counsel: We appreciate the well reserved judgment. We thank the

court for giving full effect to the prisms of the constitution

and the liberty of the defendant.

PW1: We are grateful for the well considered judgment.

Signed: HON. JUSTICE A.M. TALBA – PRESIDING JUDGE 7/7/2017