

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

**ON WEDNESDAY 3RD DAY OF FEBRUARY 2016**  
**BEFORE HIS LORDSHIP: HON JUSTICE O. A. ADENIYI**  
**SITTING AT COURT NO. 20 APO - ABUJA**

**CHARGE NO: FCT/ABJ/CR/239/13**

**BETWEEN:**

FEDERAL REPUBLIC OF NIGERIA ... .. COMPLAINANT

**AND**

VINCENT BULUS VENMAN ... .. ACCUSED DEFENDANT

**JUDGMENT**

The accused Defendant was arraigned before this Court on 25/09/2013, upon an original Charge filed on 27/07/2013 and later amended pursuant to order of Court granted on 18/02/2015, whereupon he stood trial on a six (6) count Charge bordering on personation, obtaining under false pretenses and attempt to obtain under false pretenses.

At the plenary trial, the prosecution called four (4) witnesses, who, between them, tendered a total of seventeen (17) sets of documents, in order to proof the Charge. All the prosecution witnesses were cross-examined in turn by learned counsel for the accused Defendant.

At the close of the case for the prosecution, the accused Defendant made a no-case submission, which was overruled by the Court. Subsequently, the accused Defendant entered his defence. He testified in person and called no witnesses. He did not also tender any documents in evidence. He was equally cross-examined by learned counsel for the prosecution.

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

I shall proceed to determine this Charge on the basis of the similar sole issue formulated by learned counsel for the contending sides in their respective final addresses, which essentially is:

*Whether, from the totality of the evidence adduced at the trial, it could be said that the prosecution has discharged the burden placed on it to prove the offences for which the accused Defendant is charged beyond reasonable doubt.*

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

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

1. By the confessional statement of the accused 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 and no other person to or with the commission of the crime or offence charged.

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

On the basis of these well settled principles as espoused in the authorities cited in the foregoing, I now proceed to examine each count of the instant Charge, in the light of the evidence adduced by both parties, in order to determine whether or not the prosecution has proved the Charge against the accused Defendant beyond reasonable doubt.

### COUNTS ONE AND TWO

By these two counts, the Defendant was accused of personating one **Ambassador Fidelis Tapgun**, former Governor of Plateau State and in that assumed character requested for the mobile phone (GSM) number of one **Senator Bukar Abba Ibrahim** from one **Bukar Abba**, pretending that the said Senator was his former colleague as Governor; and that he did call and also forwarded a text message to the said **Senator Bukar Abba Ibrahim** to solicit for financial assistance and thereby committed an offence punishable under **section 324 Penal Code Act**.

**Section 321** of the **Penal Code Act** provides as follows:

*"A Person is said to cheat by personation if he cheats by pretending to be some other person or by knowingly*

*substituting one person for another or representing that he or any other person is a person other than he or such other person really is."*

**Section 324** of the Act further provides as follows:

*"Whoever cheats by personation shall be punished with imprisonment for a term which may extend to five years or with fine or with both."*

Learned counsel for the prosecution contended that a person is said to personate, if he cheats by pretending to be some other person or by knowingly substituting one person for another or representing that he or any other person is a person other than he or such other person really is. Thus, to personate simply means to pretend to be another person; and it is immaterial whether the individual personated is real or imagined. See Iyorliam Vs. State [1973] 12 S.C. (Reprint) 1.

On the basis of the foregoing exposition therefore, it is my view that in order for the prosecution to sustain the offences for which the accused Defendant was charged in these two counts, the following ingredients must be proved beyond reasonable doubts, namely:

1. That the accused Defendant personated in that he assumed the character of or pretended to be **Ambassador**

**Fidelis Tapgun**, a former Governor of Plateau State of Nigeria, when he knew he was not; and in that assumed character he contacted one **Bukar Abba (PW1)** and requested from him, the mobile telephone number of one **Senator Bukar Abba Ibrahim**, who was also a former Governor;

2. That he, the accused Defendant, also in the assumed character of **Ambassador Fidelis Tapgun**, did call and sent a text message to the said **Senator Bukar Abba Ibrahim**, (assumed former colleague Governor), to solicit financial assistance.

Invariably, in order to prove counts one and two of the Charge, the prosecution must establish that the accused Defendant initiated a call to the **PW1** in the assumed character of or in the guise of being **Ambassador Fidelis Tapgun**, with the intention to obtain phone numbers of **Senator Bukar Abba Ibrahim**. Secondly, the prosecution must further go to establish that the accused Defendant did in fact, in the same assumed character of **Ambassador Fidelis Tapgun**, who he was not, put a call through and sent a text message to **Senator Bukar Abba Ibrahim**, to solicit for financial assistance under the guise that they were both former Governors.

The first vital and crucial question to be resolved in the circumstances therefore is – *how did the accused Defendant and the complainant, PW1 meet?*

There seems to be two incongruous versions from the evidence tendered by the prosecution. The accused Defendant rendered another version in his oral testimony. The first version is as rendered by the PW1, who stated that he received a strange phone call on 10<sup>th</sup> April, 2013, from an unknown caller. His oral testimony in this regard is reproduced as follows:

*“It all started on or about 10<sup>th</sup> April, 2013, when I received a call from an unknown telephone number. When I answered the call, the caller at the other end addressed me as “Your Excellency”. I said, “No, I am an ordinary Nigerian.” He said he might be speaking with a wrong person. He then asked if I was Senator Bukar Abba Ibrahim, former Governor of Yobe State. I said I was not but only happen to bear the same name with him. He then introduced himself to me as Ambassador Fidelis Tapgun, former Governor of Plateau State, a former Minister and a former Ambassador, now a close ally of President Olusegun Obasanjo. He then mentioned a number of political re-alignments former President Obasanjo and President Jonathan were engaging in, in the build up to the 2015 General Elections. He said that was why he was trying to reach out to Senator Ibrahim as a former colleague. He then asked if I knew him and I answered in the affirmative. He then*

*asked if I was related to him, to which I answered in the negative. He requested me to assist him with Senator Ibrahim's telephone contacts. I said to him that I did not have his contacts but that I had a friend who happened to be the Senator's disciple and that I could get the contact from him. I got the Senator's telephone contacts from that friend of mine and I placed series of calls to the Senator, seeking to obtain his consent before giving out the numbers to the accused person. The Senator did not pick my calls at that time, I then sent him a text message but there was no response. So I said to myself that a politician is a public property and therefore decided to forward the telephone contact numbers to the accused person, believing that he was indeed Ambassador Fidelis Tapgun...*

*A few days later the accused person called me again and requested me to assist him with Senator Ahmed Yerimah's telephone number. I contacted the Permanent Secretary, Zamfara State Government House, to obtain Senator Yerima's telephone numbers for him... and I gave him the number just as I did in the case of Senator Ibrahim... The accused person also requested me to provide him with the telephone numbers of Governor Wammako of Sokoto State. I obtained Governor Wammako's telephone numbers from a friend and former colleague, Mr. Okaro, who is a Director General of the Nigerian Governors' Forum. He also requested me to provide him with Governor Kashim Shetima's contacts (of Borno State). Since I had the Governor's number in my contacts, I sent it to him immediately. ..."*



The extra-judicial statements obtained from the accused Defendant were tendered in evidence by the PW3, as Exhibits P16, P16<sup>A</sup>, P16<sup>B</sup> and P16<sup>C</sup> respectively. Relevant to the question at hand is the statement, Exhibit P16, from which I take liberty to reproduce the purported account of the accused Defendant of his encounter with the complainant, PW1, as follows:

*“Sometimes last year, 2012, I met Bukar Abba, a staff of EFCC at a dinner organized for PDP Chairman, Bamanga Tukur, at the International Conference Centre, Abuja. He met me and told me that I am the youngest there but a lot of people were greeting me. After the introduction, he collected my phone number and said he is (sic) going to call me within April. I cannot remember the date. Bukar Abba the man from EFCC called me April this year. I asked him who is that he said he was is (sic) the one we met at International Conference Centre who collect (sic) my number. He asked me how is (sic) politics and I told him there is no problem. He asked me which State I came from and I told him I am from Jos and he said he liked Jos but there is crisis there. He said he want (sic) us to talk something very confidential, that am (sic) I alone and I told him I am with person but will called (sic) him when I am alone and I called him latter (sic) in which he told me that he was working with EFCC, he don’t (sic) want what will be discussed to be open, that he will send me his boys, one Badamasi and Reuben but that he want it to be confidential that he want to send me some money to buy a plot and build it for him but he*

*don't (sic) want anybody to know it. I asked him why did he have confidence in me but he said I should not worry. He later told me that he heard that there will be resolvement (sic-reshufflement) in Ministers Cabinet if there is any way I can put his name through the big men I know. I told him probably it may be possible and asked if he will send me money for transportation, that he will give me Five Million and I said there is no problem. He sent One Million on Monday 6<sup>th</sup> May, 2013 and another One Million Naira on 7<sup>th</sup> May, 2013. He told me by the nature of his job he cannot pay Five Million at a time, he have (sic) to send it in different installments. As I went to the bank to withdraw the money to buy a (sic) land for him, I was arrested. There was agreement between us that we should meet today 8-5-2013 by 4pm.*

*Senator Bukar Abba Ibrahim issue. He told me that I should discuss with him and I asked him to give me Bukar Abba Ibrahim's number and he send (sent) it to me and he told me that he is going to call Bukar Abba Ibrahim and told him that I Fidelis Tapgun requested for his number and is going to call him. Fidelis Tapgun is former Governor of Plateau State. I called Senator Bukar Abba but he didn't pick his call so I text him and told him that "Your Excellency this is Ambassador Fidelis Tapgun a former Governor of Plateau State I have an urgent information for you from Presidency. Thanks". After seen (sic) the text he called me back and I told him that I had (sic) that he has an ambition of becoming Vice President there is one Youth Committee set by the President Youth*

*Organization that can champion his cause. When he said I should send him the Youth Leader's number the number I sent to him is 08187888777. I gave him the name as Hon. John, but the number belong (sic) to me which I am the same person bearing Hon. John. So he, Senator Bukar Abba called me on that number and I change my voice, he now told me that he was interested in becoming Vice President, that when he come (sic) back we will talk but he continued calling me while he was there...."*

The other version of the first encounter between the accused Defendant and the PW1, is as he (the accused Defendant) rendered in his oral testimony. For purposes of completion and abundance of clarity, I also reproduce his evidence-in-chief on the issue as follows:

*"In 2012, I was a national delegate in my Local Government - Lagtang South Local Government Area, Plateau State. We came for dinner for the outgoing National Chairman of the Peoples Democratic Party at the International Conference Centre, Abuja. He is Alhaji Bamanga Tukur. Each Local Government of the Federation had representatives at the dinner. At the event, I recognized about five to seven sitting Governors who were present at the occasion. I came together with the present Governor of Plateau State. In the process of interacting with some of these Governors, I met with one Bukar Abba, a Director with the EFCC. He asked me curiously*

*what I did for a living that I knew all of these big personalities, I then told him that I was a politician and a businessman. He now stated that he would like to discuss a confidential matter with me. He then gave me his phone number and collected my own too. At that point, the President of the Federal Republic came and everybody ran to their seats. The next day I returned to Jos. About two weeks later, I saw a phone call on my mobile phone. After I picked, he told me that we met at the International Conference Centre at the PDP dinner. I retorted that I met a lot of people. He now asked if I was alone which I answered in the affirmative. He then mentioned his name to me again (because I did not store his name originally when he gave me his phone number). He now told me that he wanted to discuss a confidential matter with me, that he wanted me to help him talk to a big man who could assist him to position his brother as running mate to Goodluck Jonathan in the 2015 Presidential elections. I asked who the person was. He then mentioned the name of Senator Bukar Abba Ibrahim, former Governor of Yobe State and sitting Senator for Yobe North Central. He is still alive. He now said he will text his number to me so that I could discuss with the Senator the issue of his ambition... He then gave me the telephone number of the Senator that I should call him. But I refused. He then said he would ask the Senator to call me. In the next three hours, around 8pm of the same date, I saw a phone call. When I picked, he introduced himself as Senator Bukar Abba Ibrahim. He said he wanted to discuss an issue*

*with me, but that he would be going to Dubai the following day and that when he returns, he will reach me again...."*

Also relevant for consideration here are statements credited to the accused Defendant by the **PW3** and **PW4**. The **PW3 - Haruna Dauda**, testified that he was an investigator with the EFCC. He confirmed that he was involved in the investigation of the petition written against the accused Defendant by the **PW1**; that in response to the petition, the accused Defendant requested him (the **PW3**), to assist in writing his statement since he could not write in English language; that upon obtaining his written authorization, the accused Defendant dictated his statement in response to the petition, which he helped him to put into writing; that upon writing the statement, he gave the same to the accused Defendant to read over and he did; and that he also explained the contents of the statement to him and he confirmed it after which he gave him to sign, which he did and that he also countersigned the statement. The witness further stated that the same procedure was adopted and followed with respect to the subsequent statements that the accused Defendant made in response to the petition. The witness further stated that on 21/05/2013, the accused Defendant was taken before a Superior Officer, who read over all his statements to him and before whom he confirmed that the statements were voluntary and never obtained under duress

or inducement of any sort; and that thereafter the Superior Officer endorsed and countersigned the statements. The statements were admitted in evidence as **Exhibits P16, P16<sup>A</sup>, P16<sup>B</sup> and P16<sup>C</sup>** respectively. The aspect of the testimony of the **PW3**, which I consider also significant to the resolution of the question at hand, is reproduced as follows:

*“On 12/05/2013, the accused person was taken before the complainant in the complainant’s office. We asked the accused if he knew the complainant and he answered in the negative. He was also asked if he had ever met the complainant before to which he also answered in the negative. The complainant then said to the accused person: “Your Excellency, after I spent my money sowing agbada, waiting for swearing in as a Minister, am yet to hear the announcement.” Then the accused went down on his knees and said in Hausa Language that: “Allah will give you Minister.” And he started pleading with the complainant that he was sorry. After he was taken back to our office we asked him why he stated that he never met the complainant before after initially stating that he met him at the International Conference Centre, Abuja, at the occasion of the dinner party for Alhaji Bamanga Tukur, the former PDP Chairman. He said his former statement was a lie; that he actually never met with the complainant. We therefore saw no reason to further investigate the aspect whether they had met before or not.”*

The **PW4 - Garba Kaugama**, also testified along the same lines. He testified that he was a Deputy Superintendent of Police attached to the Operations Department of the EFCC, as a Team Leader, Advance Fee Fraud Section. He confirmed that his team investigated the petition written by the **PW1** against the accused Defendant. He further confirmed that he took the accused Defendant before the **PW1** on 12/05/2013. He stated further as follows:

*“On 12/05/2013, I took the suspect before the complainant. As we got in he was engaged on the phone. After he finished, I asked the suspect if he knew him, he answered in the negative. Then the complainant said to the accused person in his own words, which I paraphrase as follows: “Your Excellency, I spent money to sow agbada in preparation for my swearing - in as Minister, why now?” Then the suspect fell on his knees and began to beg the complainant and told him in Hausa Language that God will make him Minister. He also begged for pardon. Then I took him back to my office.”*

Before I proceed, it is pertinent at this stage to allude to the argument of the prosecution learned counsel regarding the purported “confessional” extra-judicial statements of the accused Defendant. Learned counsel submitted that extra-judicial statements made by a person in the course of investigation, where made voluntarily, become admissible against him. Learned

counsel further argued that **Exhibits P16, P16<sup>A</sup>, 16<sup>B</sup> and 16<sup>C</sup>** respectively, voluntarily made by the accused Defendant in the course of investigation, are confessional and as such were sufficient to convict him of the offences charged. Learned counsel submitted further that a confessional statement is the best evidence in our criminal procedure; that it is a statement of admission of guilt by the accused; and that once the confessional statement is admitted in evidence, the prosecution needs not prove the guilt of the accused person beyond reasonable doubt, as the confessional statement ends the need to prove the guilt of the accused. Learned counsel relied on the authority of Solola Vs. State [2005] All FWLR (Pt. 269) 1751 @ 1782.

It is, without doubt, a correct affirmation of the established legal principle that confessional statement of an accused, where it is direct, positive, and unequivocal as to the commission of the crime charged, is the best evidence and can be relied upon solely, without any corroborative evidence, for the conviction of the accused. See Akpan Vs. The State [1992] 6 NWLR (Pt. 248) 439 @ 468; Sule Vs. State [2009] 17 NWLR (Pt. 1169) 33 @ 60; Ogedengbe Vs. State [2014] LPELR-23065 (SC).

However, in the course of proceedings, learned counsel for the accused Defendant objected to the statements credited to him on



the grounds that he did not make the statements. However, the objection did not sail through for the reason that whether or not a statement ascribed to an accused person was indeed made by him or not does not affect admissibility; rather it is a matter of fact, which can only be resolved by evidence and determined by the Court at the end of the trial. See Nwangbomu Vs State (1994) 2 NWLR (Pt. 372) 380; Aiguorehian Vs. State [2004] 1 SCNJ 65; Dega Vs. State [2014] LPELR-24197(CA).

From his evidence at the trial, the accused Defendant seemed to have set up a plea of *non est factum*, with regards to the extrajudicial statements ascribed to him as tendered by the prosecution. In other words, he stoutly denied making the said statements. His testimony on this point is reproduced as follows:

*“We arrived Abuja past midnight that day and I was taken to the EFCC cell. By the next morning, I was taken out and was asked that I should write my statement, which I did by myself. I was asked to sign it and I did. The next day, they brought me out again, that the statement I made the previous day was not what they wanted. They told me I had to write another statement and I must write what they wanted.....*

*With respect to my statements, the EFCC officials wrote another statement and asked me to sign, which I did because I was desperate to leave the cell. I can see the statements now*

*shown to me (Exhibits P16, P16<sup>A</sup>, 16<sup>B</sup> and 16<sup>C</sup>). I did not make the statements. I signed the statements shown to me but I was not the one that wrote it. The statement I said I wrote by myself was not produced in Court."*

Questioned further under cross-examination by **Mr. Ndifon**, of counsel for the prosecution, the accused Defendant had this more to reveal about the circumstances under which the statements were made:

*"I can see all the statements now shown to me - Exhibits P16, P16<sup>A</sup>, 16<sup>B</sup> and 16<sup>C</sup> - I can see my signatures on all the statements. The statement I wrote with my hand was made on 07/05/2013, which they did not bring to Court. It was in the morning but I cannot say the specific time. It was in the office of the EFCC that I wrote the statement. I was arrested in Jos on 06/05/2013.... It is that statement I wrote with my hand on the 7<sup>th</sup> May, 2013, that was not tendered in Court. All the other statements I signed were written by the EFCC investigators. I cannot remember the name of the officer who wrote the statements for me....*

*I am not an illiterate. It is correct that I can read very well. I can also write very well. I can see Exhibit P16 now shown to me. I now read out the cautionary statement. I signed the statement though I was not allowed to read the statement before I was asked to sign it. I did not explain anything to the writer, he wrote it and asked me to sign it. I signed it because I*

was desperate to leave the EFCC cell.... The First Bank account number written in Exhibit P16 belongs to me. It is correct that Haruna Dauda was not present when I opened the account. I gave him the account number. I was born in Langtang South in 1979. Haruna was not there when I was born. All of these information are contained in the statement that I wrote by myself which was not tendered, so he could have picked the information from there....

*The portion of Exhibit P16 now read out to me about how I met Bukka Abba of EFCC was what I wrote in my statement that was not tendered in Court....*

I did not write all the statements tendered in Court, as such I cannot admit to what is attributed to me therein just because I signed it. I signed the documents in desperation"

(Underlined portions for emphasis)

In resolving the question as to the weight to be placed on **Exhibits P16, P16<sup>A</sup>, 16<sup>B</sup> and 16<sup>C</sup>**, considering also the weight of the evidence adduced by the accused Defendant in denying making the statements, particularly under cross-examination, I must first of all recall the remarks made by the Court on 09/03/2015, in assessing the comportment of the accused Defendant in the witness box, in the course giving his testimony. The Court made a side note in the record of proceedings, which I consider germane

to the resolution of the question at hand, which is reproduced as follows:

*“The Court must put on record at this stage that it is observed that the accused person spoke in intelligible and fluent English language. He is also confident and unruffled.”*

The law is settled that the trial judge is entitled to assess the veracity and demeanour of witnesses in the course of trial. In Onuoha Vs. State [1989] NWLR (Pt. 101) 23, the Supreme Court, commenting on the duty of the Court to assess the demeanour of witnesses held as follows:

*“The function of assessing the veracity of witnesses is that of the trial Judge. It is the trial Judge who saw and heard the witnesses and who watched their demeanour in the witness box and is therefore in the best position to assess the veracity of the witnesses.”*

See also Ige Vs. Akoju [1994] 4 NWLR (Pt. 340) 535, where the Supreme Court held that even though demeanour of a witness may not be a guide to the truth, the conclusions of a trial Judge on how a witness behaved in the box should not be lightly disregarded.

Flowing from the Court’s remarks with respect to the demeanour of the accused Defendant in the course of giving his testimony, I

did not find it difficult to believe his testimony, when he said under cross-examination that he was not an illiterate and that he could read and write very well. In the same vein, I disbelieve the testimony of the **PW3**, when he said that the accused Defendant informed him that he could not write in English language, and that he (the **PW3**) should write on his behalf; and his entire testimony on how the statement was obtained. In my estimation, these are mere fabrications.

Further, I believe the testimony of the accused Defendant that he wrote a statement by his own hand the morning of the next day after his arrest, which the prosecution failed to produce and from which he stated that some of the information provided in **Exhibit P16** were recalled.

It will be improbable, in my view, on the basis of the evidence of the accused Defendant under cross-examination and the observations of the Court on his demeanour and comportment in the course of his testimony, to suggest that someone who demonstrated such fluidity in the delivery of his oral testimony would have opted for his statements to be written on his behalf when he was not so constrained by disability to write.

I am further convinced that the accused Defendant was coerced into signing the statements purportedly written on his behalf by

the **PW3** and that the purported endorsement of the statements by a superior officer, by name **Abdulrahman Mohammed**, was a farce to cloak the entire exercise with legality. This is more so if it is considered that the accused Defendant was kept in custody at the mercy of the EFCC investigators for a total of twelve days. All through the period his statements were purportedly obtained, he was not given access to legal counsel against all known norms and practices.

Considering the circumstances and atmosphere under which the accused Defendant was arrested and brought to Abuja, as described by him in his testimony, like a common criminal, hurled in the cell, disallowed access to his family and legal services, which constrained him to have to sign statements out of desperation to be left off the detention hook, cast serious doubts in my mind as to fidelity of the procedure the **PW3** and **PW4** stated that the statements were obtained; and further casts doubts as to the integrity and credibility of those statements. I so hold.

What is more, looking at the so-called confessional statement, **Exhibit P16**, I find that the statements credited to the accused Defendant therein did not accord with the oral testimony of the **PW1**, the nominal complainant, particularly as to the circumstances in which they had initial contact. The position of

the law is that even though the confessional statement of an accused may conflict with his oral testimony in Court, it will not be rejected but rather relied on if it is positive, direct and in accord with other proved facts. See Akpan Vs. State [2001] FWLR (Pt. 75) 428 at 443.

For a confessional statement to solely sustain a Charge, it must point unequivocally to the guilt of the accused. It must not admit of any doubt. If there remains some doubt in the mind of the Court, in spite the confessional statement, then there must be corroborative evidence adduced by the prosecution to support the confessional statement.

Even if it is accepted in this case that the accused Defendant indeed authored **Exhibit P6**, it is very apparent on its face that there is clear disharmony with the oral testimony of the **PW1**. As such, the statement, in my view, cannot be categorized as confessional. In this regard, I also find it unsafe to rely solely on **Exhibit P6**, in establishing the guilt of the accused Defendant with respect to the counts under determination.

As a result of the doubts that assail me, on the basis on the evidence on the record, as to the clear authorship of the statements attributed to the accused Defendant; and lack of positive and unequivocal admission of guilt, particularly in

**Exhibit P16**, I find it unsafe to rely on the said statements or attach any weight thereto, in arriving at a decision one way or the other in this case. I so hold.

Having discredited **Exhibit P16**, it is now left for the Court to resolve, as between the conflicting evidence of the **PW1** and the accused Defendant, as to the circumstances under which they both met. In this regard, I must find that I prefer the testimony of the accused Defendant to that of the nominal complainant, **PW1**. I find it rather curious, incredible and improbable that someone of the status, office and exposure of the **PW1**, the Accounts Director of EFCC, would easily be swayed by a strange anonymous caller, under whatever guise, who mistakenly called him on the phone, assuming him to be **Senator Bukar Abba Ibrahim**; and yet he was propelled to quickly disclose the telephone contacts of the Senator to the stranger, without inhibitions and without caution. I find the position of the prosecution rather self contradictory in that it was the same person that the **PW3** claimed could not write down his own statement, who was said to have successfully deceived the **PW1** on the phone to believe that he was someone of the status of an Ambassador and former Governor of Plateau State.



Again, I note that the **PW1** did not state in his evidence-in-chief that he ever disclosed who he was to the accused Defendant other than the fact that he bore the same name with **Senator Bukar Abba Ibrahim**; yet the fake **Ambassador Tapgun**, without knowing who he was talking to on the phone comfortably discussed issues of political re-alignments former "*President Obasanjo and President Jonathan*" were engaging in in the build up to the 2015 general elections. Up until this point, the **PW1** did not state that he had disclosed his identity to the fake **Ambassador Tapgun**, yet he was not suspicious when the man on the other side of the phone was engaging him in these kinds of sensitive discussions.

I must remark that the **PW1** should be ashamed of himself, considering the high office he held, to posture that he went out of his way to look for and released the telephone number of a distinguished Senator of the Federal Republic and a host of other politicians, to a stranger who purportedly disguised as **Ambassador Fidelis Tapgun**, without first verifying how the said "*Ambassador*" came across his own phone number. He had admitted under cross-examination that prior to that time, he had never met the real **Ambassador Tapgun** before, and as such a person of his status and exposure ought to have been reasonably curious and circumspect enough to find out how the so-called

*“Ambassador Fidelis Tapgun”* got his phone number, even if he believed the person to be the real **Ambassador Tapgun**. When questioned as to why he did not query the strange caller how he got his phone number, his laughable response was:

*“I did not ask him how he got my phone number because it was not necessary since he addressed me as “Your Excellency””*

I reckon that a reasonable man would have ended the conversation with the strange caller once he found out that stranger called him upon the mistaken impression that he was **Senator Bukar Abba Ibrahim**, once he disclosed to him that he was not the person the stranger sought to speak to, rather than entertaining further so-called elaborate conversation with the stranger on political re-alignments in Nigeria, let alone offering to get the telephone contacts of the Senator for the stranger. To make matters worse, the **PW1** claimed he went ahead to obtain the phone contacts of the distinguished Senator from a third party; and transmitted the same to the stranger without obtaining the consent of the Senator. Even though I disbelieve this cooked up story; it would have been the height of irresponsibility for someone of the status of the **PW1** to engage in such a hoax with the strange caller.

I hold that the **PW1** lied on oath when he testified that his first contact with the accused Defendant was through a phone call placed to him on 10<sup>th</sup> April, 2013. He admitted under cross-examination that he did not know how or where the accused got his phone number from.

Right on the other hand, I accept the fluid, probable and plausible evidence of the accused Defendant that his first encounter with the complainant was at the dinner party organized by the Peoples Democratic Party in honour of its erstwhile Chairman, **Alhaji Bamanga Tukur**, at the International Conference Centre, Abuja, sometime in 2012, where they exchanged phone numbers.

I found the testimonies of the **PW3** and the **PW4** rather incredible, and I disbelieve the same, that the accused Defendant conceded that he was meeting the **PW1** for the first time in his office on 12/05/2013; and that he lied in his statement that he met him at the International Conference Centre. It is rather strange that even though the accused Defendant purportedly made that significant oral retraction, he was not made to write a further statement to restate the purported correct position. The testimony of the **PW3** that the accused Defendant refused to make a further statement to confirm that he had never met the **PW1** before the date he was taken to his office in order not to incriminate himself is very

incongruous. I reckon that a man who had purportedly made confessional statements could not have refused to make further statements to further clarify his earlier purported confessional statements. That testimony did not make any sense to me.

It is also pertinent to remark that it was not difficult for the investigators to confirm if indeed the accused Defendant placed a call to the **PW1** on the stated date; or who called who first between the two of them; and at what time? The evidence of the **PW1** was that the accused Defendant called him for the first time on 10<sup>th</sup> April, 2013; whereas the accused Defendant testified that it was the **PW1** who first placed a call to him weeks after they met at the International Conference Centre. In fact, the **PW4** testified under cross-examination by **Mr. Bello**, of counsel for the accused Defendant, on that point, as follows:

*"I am aware that telephone numbers were sent to MTN for investigation. I do not know the numbers off hand. It is correct that we got call details from MTN. I believe that the call analysis were correct."*

The prosecution listed as No. 3 on the list of witnesses attached to the proof of evidence, a representative of **MTN**. Copies of call log analysis of the relevant phone numbers for the material times were also attached to accompany the proof of evidence. I

therefore find it rather strange that the prosecution failed to call the **MTN** representative as a witness or tender the call log analysis in evidence. In my view, the evidence from the network provider would have shed more light on or pinpoint who called who first as between the two parties.

The prosecution also had the opportunity to confront the accused Defendant under cross-examination with these call logs, which were attached to the proof of evidence, but failed to do so.

In the circumstances, it will be appropriate for the Court to presume, in line with the provision of **section 167 (d)** of the **Evidence Act**, that the evidence relating to the call log analysis of the telephone numbers of both the **PW1** and the accused Defendant was withheld by the prosecution because it would have been unfavourable to the complainant if it had been produced. I so hold.

Having held that I disbelieved the testimony of the **PW1** that the accused Defendant placed a call to him on 10<sup>th</sup> April, 2013, it follows invariably that his other testimony that the accused Defendant introduced himself on the phone as one **Ambassador Fidelis Tapgun**, former Governor of Plateau State and in that assumed character requested for the telephone contacts of

**Senator Bukar Abba Ibrahim** from the **PW1**, would not add up. I so hold.

It is significant to also remark that even in the so called confessional statement of the accused Defendant, he did not unequivocally or anyhow admit to placing a call to the **PW1** on the stated date whereby he introduced himself as **Ambassador Fidelis Tapgun**.

In order to establish count two of the offence, in the absence of the discredited **Exhibit P16**, the only evidence that could establish that the accused Defendant did personate **Ambassador Fidelis Tapgun**, and in that assumed character did place a call and forwarded a text message to **Senator Bukar Abba Ibrahim**, pretending to be his former colleague Governor, and in the process solicited for financial assistance from the Senator, is that of the Senator himself.

Although the prosecution listed **Senator (Dr.) Bukar Abba Ibrahim**, as its first witness on the list of proposed witnesses, he was not called to testify at the trial. It is also significant to note that it is not on record that the said Senator lodged any complaint or petition against the accused. The **PW1** was not privy to whatever transpired between the accused Defendant and the

Senator, so he could not have given any significant evidence in that respect.

The **PW4** testified that the said Senator was invited in the course of investigation and narrated what happened in writing. He further gave oral evidence of the story the Senator narrated to him as to how the accused Defendant called him whilst he was in Dubai and introduced himself as **Ambassador Fidelis Tapgun** and solicited for assistance as ex-Governor; and how, being a former colleague, he supported him with ~~₦~~5,000,000.00, thinking that he was dealing with the real **Ambassador Tapgun**. He further testified that the Senator narrated to him further that he deposited the money in two installments of ~~₦~~2,000,000.00 and ~~₦~~3,000,000.00 respectively into the accused Defendant's account. The **PW4** also tendered the said statement of the Senator as **Exhibit P17**.

What then is the status of the statement of the said Senator who was not called as a witness and the oral narration of the contents of the statement rendered by the **PW4** in his testimony?

I have noted the argument of the learned prosecution counsel that it is not mandatory to tender a statement through its maker. No doubt, that is good law. However, the applicable legal position here is that both **Exhibit P17** and the oral narration given by the

**PW4** constitute hearsay evidence. It was held in Atutu Vs. State [2013] LPELR-22161(CA) as follows:

*“The law is also firmly established that hearsay evidence is not admissible in evidence as proof of the facts stated therein. Hearsay evidence simply put, is the statement by a person, oral or written, who is not called as a witness in a trial, civil or criminal, given by a witness as proof of the facts contained therein. It arises where a witness in a trial and in his testimony, repeats a statement made by another person who was not a witness in the case, in order to prove the truth of the facts stated. Thus to prove that an accused person committed an offence with which he was charged before a court, a witness will not be allowed to offer as evidence or testify that he heard someone else say that the accused had committed the offence.”*

See also Subramanian Vs. Public Prosecutor [1956] 1 WLR 965 @ 969; Oguko Vs. State [1991] 2 NWLR (Pt. 175) 578; Utie Vs. The State [1992] 2 SCNJ (Pt. 1) 183.

In the present case, the **PW4** testified of the narration he obtained from the distinguished **Senator Bukar Abba Ibrahim**, for purposes of establishing the truth of the narration. He also tendered **Exhibit P17**, the statement purportedly obtained from the Senator to also establish the truth of the contents of the statement. As such, in law such evidence is hearsay and accordingly inadmissible. I so hold.



It must be stressed that in a criminal trial, it is not for the accused person to prove his innocence, but for the prosecution to establish beyond reasonable doubt, the guilt of the accused for the offence charged. In the circumstances, I find and hold that the prosecution has failed woefully to establish the vital ingredients of the offences for which the accused Defendant was charged in counts one and two. Accordingly, I hereby discharge and acquit the accused Defendant of those counts of the Amended Charge.

### **COUNTS THREE AND FOUR**

These counts accused the Defendant of obtaining the respective sums of ~~₦~~2,000,000.00 on 22/04/2013 and ~~₦~~3,000,000.00 on 26/04/2013, from **Senator Bukar Abba Ibrahim**, under the false pretence that he was **Ambassador Fidelis Tapgun**, former Governor of Plateau State in need of financial assistance, which he knew was false; but with intent to defraud the distinguished Senator.

The provision of **section 1 (a)** of the **Advance Fee Fraud and other Fraud Related Offences Act, 2006**, under which the accused Defendant was charged with these offences states as follows:

*“1. Notwithstanding anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud:*

*a. obtains, from any other person, in Nigeria or in any other country for himself or any other person; or*

*b. ...*

*c. ....*

*commits an offence under this Act.”*

The provision of **section 20** of the **Act** further defines false pretence as follows:

*““false pretence” means a representation, whether deliberate or reckless, made by word, in writing or by conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true.”*

As correctly submitted by the prosecution learned counsel, in order to prove the offences for which the accused Defendant was charged under this provision, the prosecution must establish the following ingredients:

1. That there was a false pretence made by the accused Defendant;

2. That the accused Defendant obtained property as a result of the false pretence from the victim; and
3. That the accused obtained the property with intent to defraud.

Learned prosecution counsel further relied on the authority of *Ijuako Vs. COP* [1976] 6 SC 99, where the Supreme Court, relying on the English decision of *R Vs. John Sullivan* 30 CAR 132, where the burden on the prosecution to prove the intend of the accused to defraud, was further reechoed, to the extent that the prosecution must prove to the satisfaction of the Court that there was a mis-statement which in law amounts to a pretence, that is, a mis-statement as to existing fact made by accused, that it was false and false to his knowledge; that it acted upon the mind of the person who parted with the money; and that the proceeding on the part of the accused was fraudulent.

There seem to be no contention between the parties that indeed the distinguished **Senator Bukar Ibrahim** paid the stated sums to the accused Defendant through his bank account with First Bank Plc. This fact was clearly established by the prosecution witnesses and not denied by the accused Defendant. The **PW1** tendered in evidence **Exhibits P1<sup>A</sup>** and **P1<sup>B</sup>**, which were copies of the deposit

slips with which the sums of money were paid into the bank account of the accused Defendant.

Also relevant here is the evidence of the **PW2 – Oguma Comfort Odor**, a staff of First Bank Plc, where the account of the accused Defendant was domiciled. She was on *subpoena*, tendered in evidence as **Exhibits P2 – P2<sup>C</sup>**. She confirmed that the accused Defendant (**Mr. Vincent Bulus Venman**), opened an account with the bank on 01/02/2013 and tendered in evidence his account opening package as **Exhibits P3 – P3<sup>C</sup>**. She also tendered the original First Bank deposit slips by which the sums of ~~₦~~2,000,000.00 and ~~₦~~3,000,000.00 were respectively deposited into the accused Defendant's account with No. 306756581 on 22/04/2013 and 26/04/2013, by **Senator Bukar Abba Ibrahim**, as **Exhibits P4 and P5** respectively. She further tendered the accused Defendant's Statement of Account with the bank from 01/02/2013 – 09/05/2013, as **Exhibit P8**. The witness further identified the deposits made to the accused Defendant as reflected in his Statement of Account, **Exhibit P8** and the withdrawals made therefrom by the Defendant as also reflected in the Statement of account.

The salient testimony of the PW1 in proof of the offences in counts three and four, as gathered from his evidence-in-chief, are reproduced as follows:

*“I did nothing again until much later when I received a call from the distinguished Senator that was about three (3) days after I had forwarded his numbers to the accused person. The Senator confirmed to me that he was in Dubai, United Arab Emirates, at that time and that he had spoken with the accused person to whom he referred as Ambassador Fidelis Tapgun. The following day, the accused person also called me and confirmed to me that he had spoken with the Senator, who was still in Dubai at that time and that they had arranged to meet when he returns to the country on Wednesday, 17/04/2013....*

*He then said at his age he did not need any more things since he already had houses in Canada, America and Germany, and that he only needed to give a push to younger people like us. I then became suspicious that I might not be speaking with the real Ambassador Tapgun because the Governor Tapgun that I had admired at a much younger age and heard so much about might not boastfully talk to me about his assets abroad. So, I contacted my colleague, who is the liaison officer to the National Assembly to reach out to Senator Victor Lar, who is from Plateau State and get me Governor Tapgun’s telephone numbers. He got the numbers for me from Senator Lar’s Special Assistant and I quickly established contact with Governor Tapgun. I mentioned to him that someone had been speaking with me claiming to be him. He then told me that the Deputy Governor of*

*Adamawa State and the Governor of Niger State have both called him seeking to confirm if he was trying to speak with them....*

*I then visited Senator Bukar A. Ibrahim and also informed him that the purported Ambassador is fake and that I had established contact with the genuine Ambassador Tapgun, and therefore warned him not to give the purported Ambassador anything should he request for any favours. He then said he had already given him ₦5,000,000.00, believing him to be Ambassador Tapgun, in form of financial assistance and that he was arranging to send him a further ₦2,000,000.00 that same day that I visited him... I cautioned him about sending any more money to him and then I asked about the ₦5million he sent whether it was in cash or through bank transfer. He said he sent the money through a bank account in two installments of ₦3million and ₦2million respectively. I required from him if he had the bank deposit slips, he said he had them and I requested him to give them over to me, which he did after about two days."*

On his part, the accused Defendant, under cross-examination, denied the charge. He stated as follows:

*"It is correct that Senator Abba Ibrahim gave me ₦5million to mobilize the youth. I did not know who Hon. John was. The money was given to me by the Senator to mobilize youths for him in Plateau State. I am not Hon. John. I am not Ambassador Fidelis Tapgun. ... I did not send any text message*

*to Senator Ibrahim referring to myself as Ambassador Fidelis Tapgun...."*

On the basis of the evidence highlighted in the foregoing, I have no difficulty in finding, and as correctly submitted by learned counsel for the accused Defendant, that the totality of the evidence of the **PW1** as to what transpired between **Senator Bukar Ibrahim** and the accused Defendant, is sheer hearsay evidence which should not have adorned the record of the Court. See **section 37** of the **Evidence Act** and the authority of *Atutu Vs. State (supra)*.

The evidence as to how the accused Defendant approached **Senator Bukar Ibrahim** under a false pretence that he was **Ambassador Fidelis Tapgun**; how under that false pretense obtained the said sum of ~~N~~5million from him with the intention to defraud him could only have come from no other than the distinguished Senator himself.

It is also pertinent to note that under cross-examination, the **PW1** testified that **Senator Bukar Ibrahim** did not make any formal complaint to the EFCC against the accused Defendant; and that he did not make any complaint on behalf of the Senator and neither did he request him to make any complaint on his behalf.

I concede to the argument of the prosecution learned counsel that there is no rule of law compelling a complainant to adduce evidence personally and that the prosecution needed not call all witnesses listed or tender all documents attached in the proof of evidence, for the reason that an accused person could be convicted solely on his confessional statement. However, that principle would be inapplicable in the circumstances of this case for the reason that after casting so much doubt as to the veracity of the confessional statement, **Exhibit P16**, purportedly made by accused Defendant, his guilt with respect to the Charge, and in particular, counts three and four under consideration could not possibly be proved without the direct testimony of **Senator Bukar Ibrahim**, the purported victim of the false pretence.

In other words, I am of the firm view that no person, other than the distinguished **Senator Bukar Ibrahim**, the giver of the ~~N~~5million involved in counts three and four, could have established under what circumstances and the purpose for which he paid the money into the account of the accused Defendant. As such, he was the only person who could have validly laid a complaint or make accusations of any offence, if indeed there was any, against the accused Defendant with respect to counts three and four of the Charge. In the absence of any such accusation and first hand evidence in proof of the same coming directly from



**Senator Bukar Ibrahim**, namely that the accused Defendant approached him whilst pretending to be **Ambassador Fidelis Tapgun**, and in that guise sought financial assistance from him, which he responded to for the fact that he believed the Defendant to be the real **Ambassador Tapgun**; and that for that reason the Defendant had defrauded him; this Court cannot by any means attribute any wrongdoing to the accused Defendant with respect to those counts. I so hold.

In this regard, I must therefore hold that the action of the EFCC investigators, in arm twisting the Defendant, whilst still in their custody, to force him to withdraw sums of money totaling ~~₦~~2,500,000.00, from his banks accounts, purporting the sum to be a part-refund of the ~~₦~~5,000,000.00 paid by **Senator Bukar Abba Ibrahim** to him (as shown by **Exhibits P13, P14, P16<sup>B</sup> and P16<sup>C</sup>** respectively), when there was no complaint to the Commission by the Senator that he was in any way defrauded by the Defendant, is clearly unlawful and an unjustifiable demonstration of abuse of power. The action is hereby condemned in the strongest terms.

In the same token, this Court also condemns in the strongest terms, the high handed action of the EFCC investigators in impounding the Defendant's Prado Land Cruiser vehicle, (as shown by **Exhibit P16<sup>A</sup> and P15**), since 7<sup>th</sup> May, 2013 when he

was arrested, up to date, which vehicle was not shown to have been linked to the commission of the offences charged or any offence whatsoever.

Without any further ado therefore, I must hold that the prosecution have failed woefully to adduce any evidence whatsoever in proof of counts three and four of the Charge. I therefore hereby discharge and acquit the accused Defendant of those two counts of the Charge.

### **COUNTS FIVE AND SIX**

By counts five and six, the accused Defendant was charged with the offence of attempt to obtain the sum of ₦1,000,000.00 on 6<sup>th</sup> May, 2013 and another sum of ₦1,000,000.00 7<sup>th</sup> May, 2013, from the **PW1**, whilst pretending to be **Ambassador Fidelis Tapgun** and under the false pretence that he will use the money to facilitate the nomination and appointment of the **PW1** as a Minister of the Federal Republic of Nigeria, which he knew to be false.

**Section 8 of the Advance Fee Fraud and other Fraud Related Offences Act**, under which the accused Defendant was charged here provides as that:

*“8. A person who -*

*a. ....*

*b. attempts to commit or is an accessory to an act or offence;*

*or*

*c. ...*

*under this Act, commits the offence and is liable on conviction to the same punishment as is prescribed for that offence under this Act.”*

As a starting point, it is very instructive to note that **Exhibit P1**, the petition submitted by the **PW1** against the accused Defendant, which kick started investigation of the case and leading eventually to his prosecution, did not capture or mention anything about the offences allegedly committed by the accused Defendant in counts five and six of the Charge. This is for the simple reason that whilst **Exhibit P1** was written by the **PW1** and received by the Executive Chairman of the EFCC on the same 30<sup>th</sup> April, 2013; the offences were allegedly crystallized on 7<sup>th</sup> May, 2013. In other words, the accused Defendant was charged with offences for which the complainant received no complaint or petition. As such, when the **PW3** claimed that on 8<sup>th</sup> May, 2013, he confronted the accused Defendant with the petition (**Exhibit P1**) against him, there was nothing in the petition with respect to counts five and six of the instant Charge, for which there was need for the Defendant to respond.

Be that as it may, I shall proceed to examine the evidence led on the record as related to these two counts.

The testimony of the **PW1** in proof of these counts is reproduced as follows:

*“His Excellency was impressed with the level of assistance I provided for him in getting him the telephone numbers of these eminent Nigerians and therefore said he was going to make me a Minister. ...*

*While all of these were going on, I have briefed my colleague, the Director of Operations, of the EFCC and he asked me to play along with the purported Ambassador whilst I arranged a formal complaint. The eventual demand then came with the purported Ambassador claiming that there was a team of five (5) that Mr. President had put in place for the purpose of reconstituting the Federal Cabinet. He said he had spoken to Bamanga Tukur, the National Chairman of the PDP, and that he was going to send me his number so that I could contact him....*

*Thereafter the accused person called me and said that he offered the team responsible for reconstituting the Cabinet the sum of ₦5million on my behalf; but that four (4) of the members of the team, excluding the team leader, were insisting on ₦10million, and that being a retired public servant he could not afford ₦10million, and was therefore reluctantly shifting the burden of the other ₦5million to me. I appreciated the gesture and in*

*playing along, made him believe that I was in fact being unfair to him by letting him pay the initial purported ₦5million; and that with the foundation he had laid for me, I will be able to see myself through. He was later to inform me that the Finance Minister, Dr. Okonjo Iweala, was supportive of my candidature and that my name was number two (2) on the list of nominees. We then agreed that he should send me one of the team members' account numbers into which I would pay the ₦5million. He then sent me a mobile cash number which in fact was the very telephone number with which he had been speaking with me, that is +2348034429449. He also gave the account name as Taju Lasisi. I quickly inquired about the account number from my contacts in United Bank for Africa Plc and they told me that the mobile cash account had been suspended. I then called him to tell him what I gathered from the bank and he said he would send me another account number. He did send a First Bank account number with the account name of Venman Vincent Bulus. I then approached our operatives and gave them the account number. They then wrote a letter to the bank informing them of an upcoming operational procedure and requested that the account be placed on embargo. They also informed the bank that they will make some cash lodgments into the account which must not be allowed to be withdrawn. They further requested the bank to arrest anybody seeking to make withdrawals from that account, and hand him over to the nearest Police Station. They then made a first deposit of ₦1million to the account on Monday, 6<sup>th</sup> May, 2013.*

*The accused person called me and acknowledged the money and requested that the balance of ₦4million be made available in due course. I then pleaded with him for understanding, explaining that being a Director with the EFCC, it will be wrong for me to send other people to make such deposits; and exceeding the cash deposit limit of ₦1million to a private account would also expose me should the bank raise suspicious transaction alert. I therefore assured him that we would do it in installments of ₦1million each.*

*On Tuesday, 7<sup>th</sup> May, 2013, while I was at the Abuja airport, waiting to depart for Calabar, the accused person called me, urging me to expedite action on the balance of ₦4million. I then said to him that one of my trusted boys was already on his way to the bank for a deposit of another ₦1million and I assured him that we would conclude the transaction soon. After I touched down in Calabar, our operatives called me to say that "His Excellency" the purported Ambassador Tapgun had been arrested at a branch of First Bank Plc in Jos. The purported Ambassador is the accused person."*

The **PW2**, the First Bank staff, tendered in evidence as **Exhibit P6**, the original deposit slip by which the sum of ₦1,000,000.00 was deposited into the accused Defendant's account on 06/05/2013; and as **Exhibits P7-P7A**, the original deposit slip by which the sum of ₦1,000,000.00 was lodged into his account on 07/05/2013.

The sums were lodged into the accused Defendant's account by one **Garba Kaugama (PW4)**.

The **PW4**, in his testimony, confirmed that he was the one that made the deposits in the account of the Defendant, *vide* the said **Exhibits P6, P7-P7A**. In that connection, he testified further as follows:

*"The letter, Exhibit P10 speaks for itself. We deposited the sum of ₦1million to enable us bait the suspect to appear at the bank so as to apprehend him. By letter Exhibit P11, I made another payment of ₦1million to the bank to bait the accused person... On 7<sup>th</sup> May, 2013, I got a call from First Bank, Jos, that the suspect had been arrested."*

Again, in the present circumstance, the issue is not whether or not the sum of ₦2million was lodged into the accused Defendant's account at the material period, as the **PW1** had claimed. This fact had been clearly established by the concurring testimonies of the **PW2** and **PW4**. The pertinent questions that arise for resolution here is - In what guise did the accused Defendant demand for money from the **PW1** (if indeed he did); and for what purpose. The prosecution must go further to establish that the sums of money the Defendant attempted to obtain belonged to the purported victim, the **PW1**. The resolution of these questions will

essentially determine the guilt or otherwise of the accused Defendant with respect of these two counts.

In this connection, I consider it pertinent to observe, firstly, that there is nothing in **Exhibit P16**, the so-called confessional statement purportedly made by the accused Defendant, where he admitted or confessed unequivocally and positively, or howsoever, that he, under the assumed character of **Ambassador Fidelis Tapgun**, offered to make the **PW1** a Minister, and in that regard demanded for the sum of ~~₱~~5,000,000.00 to settle a committee put in place for that purpose by the Presidency. In the said statement, the accused Defendant was purported to have stated that it was the **PW1** who offered to give him the sum of ~~₱~~5million, out of which he sent ~~₱~~1million to his account on 06/05/2013 and sent another ~~₱~~1million on 07/05/2013.

I must hold that, on the basis of the earlier findings of the Court in the foregoing, that I find it very unsafe to convict the accused Defendant solely on the evidence of the **PW1** with respect to counts five and six of the instant Charge. Apart from the fact that I disbelieve the testimony of the **PW1** that he was easily swayed by the purported disguise of the accused Defendant, as **Ambassador Fidelis Tapgun**, when he claimed that he initiated a call to him, I find it further laughable that he still was not



suspicious of the strange caller up to the point that he promised to make him a Minister; but only became suspicious that he might not be speaking with the real **Ambassador Tapgun** only when the stranger boastfully spoke about his assets abroad. I find it totally ludicrous and unbelievable that a person of the status, office and exposure of the **PW1** would readily believe that someone he had never met before, but had only been engaged with on telephone would promise to make him a Minister out of the blues, just because he assisted him to obtain telephone contacts of certain politicians.

Furthermore, the prosecution had the opportunity to investigate the veracity of the gamut of telephone calls purportedly exchanged between the parties at the material time in order to further verify the claim of the **PW1**. Even though certain call logs were attached to the proof of evidence, which I reckon could have aided the case of the prosecution, if indeed the claims of the **PW1** were true, but they opted to leave out these very vital corroborative pieces of evidence.

Furthermore, the **PW1** made certain claims or mentioned the names of certain persons which were not verified one way or the other by the investigators. Some of these unverified statements of the **PW1**, are, namely:

1. That he obtained the telephone contact of **Senator Bukar Abba Ibrahim** from a friend who happened to be the Senator's disciple;
2. That upon the request made by the accused Defendant for the telephone contacts of **Senator Sani Ahmed Yerima**, he contacted the Permanent Secretary of Zamfara State Government House, to obtain **Senator Yerima's** telephone numbers which he transmitted to the accused Defendant;
3. That upon the request made by the accused Defendant for the telephone contacts of **Governor Wammako** of Sokoto State, he obtained the numbers from a friend, named **Mr. Okaro**, who was Director General of the Nigeria Governors' Forum;
4. That he contacted the Liaison Officer to the National Assembly, to reach out to **Senator Victor Lar** and that the Liaison Officer got **Senator Lar's** phone numbers for him from his Special Assistant;
5. That he established contact with **Ambassador Fidelis Tapgun**;

6. That he spoke with **Senator Yerima** to disregard any further calls from the purported **Ambassador Tapgun**;
7. That he sent a text message to **Governor Wammako** asking him to disregard any calls or text messages from the accused Defendant;
8. That he visited **Senator Bukar Ibrahim** to alert him that the accused person was a fake **Ambassador Tapgun**;
9. That the accused Defendant sent to him the phone number of **Alhaji Bamanga Tukur**, the National Chairman of PDP (at the material time); and that at the accused Defendant's instance he (the **PW1**) also called and sent a text message to **Alhaji Bamanga Tukur**.

I find the contention of the prosecution that these lines of investigation were not towed or necessary on account of the so-called confessional statement of the accused Defendant, which, as has been demonstrated, did not contain any positive admission of commission of the offences charged by counts five and six. I hold that without proper investigation of these various other aspects of the case, thrown up by the **PW1** in the course of his oral testimony, it cannot be said that the prosecution has presented a water tight case.

Furthermore, even though the prosecution alleged, by count five, that the Defendant attempted, *inter alia*, to obtain the sum of ~~N~~1million from the **PW1** on 6<sup>th</sup> May, 2013, there is no evidence of any such attempt on the record. Even though the sum of ~~N~~1million was allegedly planted in the account of the Defendant on the said date in order to bait him, there is no evidence that the Defendant visited the bank on that date with the intention to withdraw the money. What is more, there is no evidence whatsoever on the record that the said respective sums of ~~N~~1million each, purportedly planted in the account of the Defendant, both on the 6<sup>th</sup> and 7<sup>th</sup> May, 2013, belonged to or was the property of the **PW1**, which is vital ingredient the prosecution must prove to sustain the two counts. The evidence of the **PW2** and **PW4** are very unequivocal on this point. It was the EFCC that directly planted the money in the Defendant's account (*vide Exhibits P6, P7, P10 and P11* tendered by the **PW2**), as such the Defendant could not have attempted to obtain money which the **PW1** did not pay into his account or did not belong to him. It cannot be the duty of an investigating agency to plant evidence on behalf of a complainant to nail an impending suspect.

In this regard, I must again remark that the action of the EFCC in invading the bank account of the Defendant, to plant and to withdraw the sum of ~~N~~2million purportedly used as bait against

him, without Court order or the consent of the account holder, was clearly unlawful. The provision of **section 34** of the **EFCC Act**, clearly sets out the procedure the Commission must follow, in order to freeze the account of any person who is suspected to have used the account to perpetrate crime. Certainly, such a step could not be taken without Court order. See *Onagoruwa Vs. IGP [1991] 5 NWLR (Pt. 193) 593 @ 634*, cited by learned counsel for the Defendant. So, when, by letter **Exhibit P12**, tendered by the **PW2**, the EFCC requested from the First Bank Plc., to retrieve or withdraw the sum of ₦2,000,000.00 from the Defendant's account, without his consent or Court order, they had clearly infringed on the rights of the Defendant and committed grave illegality. I so hold.

In the overall circumstances, I must resolve the doubts created by the gaping holes created in the case of the prosecution, particularly in the testimony of the **PW1**, in favour of the accused Defendant.

I must not wrap up this judgment without putting a word for **Bukar Abba**, the **PW1**. The conduct of the **PW1**, as he demonstrated by his testimony and the totality of the surrounding circumstances of the case leave so much to be desired of a personality holding the exalted office of the Director

of Accounts of Nigeria's foremost anti-graft agency. As he demonstrated in his self-confessed testimony, the manner and ease with which he parleyed political exposed persons, who ordinarily ought to be on the watch list of the anti-graft agency, was disturbing. Apparently, he introduced **Senator Bukar Abba Ibrahim** to the Defendant, to enable the Defendant assist the Senator in furthering his political ambition. This, the Defendant endeavoured to do for which the Senator paid him. It could also be inferred from the testimony of the Defendant that a disagreement arose between the Defendant and the **PW1**, when the Defendant refused to share the cash of ~~N~~5million, he received from the Senator, with him. This led to series of witch hunting and using his influence as a Director in EFCC to plant evidence in the account of the Defendant with First Bank Plc., in order to nail and trap him, apparently to teach him a lesson for his refusal to share the **PW1** from the proverbial "loot" the Defendant collected from **Senator Bukar Ibrahim**. But then, how come the Senator refused to press any charges against the Defendant, if indeed he defrauded him as the **PW1** would want the Court to believe with his orchestrated falsehood? If anything, it should be the **PW1** who ought to have been prosecuted for using the instrumentality of his office to orchestrate the Defendant's indefensible, unlawful

and unjustifiable arrest, protracted detention in the EFCC cell, and futile prosecution as these proceedings have turned out.

In the final analysis, my judgment is that the prosecution has failed woefully to prove the instant Charge against the accused Defendant beyond reasonable doubt. Accordingly, the accused Defendant is hereby discharged and acquitted of the entire Charge.

In consequence, I hereby order, pursuant to the provisions of **section 33** of the **EFCC Act**, that sum of ~~₦~~2,500,000.00 (Two Million, Five Hundred Thousand Naira) only, seized by the EFCC from the accused Defendant, and tendered in this Court as **Exhibits P13** and **P14** respectively, be released to the accused Defendant forthwith.

I further hereby order that the Toyota Land Cruiser vehicle belonging to the accused Defendant, impounded by the EFCC on 7<sup>th</sup> May, 2013, and which had remained in their custody ever since, be released to him forthwith.

**OLUKAYODE A. ADENIYI**

*(Presiding Judge)*

03/02/2016

**Legal representation:**

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