

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

ON THE 21ST DAY OF JUNE 2018 SUIT NO. FCT/HC/CR/83/14

BEFORE HIS LORDSHIP:

HONOURABLE JUSTICE FOLASADE OJO - JUDGE

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT

AND

MARY OKOH

DEFENDANT

JUDGMENT

The defendant was arraigned before this Court on a three-count charge to which she pleaded not guilty. The charge reads as follows:

“CHARGE

COUNT ONE:

That you Mary Okoh on or about February 29, 2012 within the jurisdiction of the High Court of the Federal Capital Territory with intent to defraud did obtain the sum of N30,000,000 (Thirty Million Naira only) from Okon Amasi (Director, Mutual Alliance Property Development Co. Ltd) purportedly for the sale of a property at Plot 10, Federal Government Layout, Gwarimpa, FCT, Abuja under the false pretence that you own the said property which pretence you knew to be false and thereby committed an offence contrary to Section 1(1)(a) of the

Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.

COUNT TWO:

That you Mary Okoh on or about February 29, 2012 in Abuja within the judicial Division of the High Court of Justice of the FCT forged a certain document captioned FEDERAL GOVERNMENT CERTIFICATE OF OCCUPANCY with no. 77/77/73 dated 7th August, 2001 and did commit an offence contrary to Section 362(a) and punishable under Section 364 of the Penal Code LFN (Abuja) 1990.

COUNT THREE:

That you Mary Okoh on or about February 29, 2012 in Abuja within the judicial Division of the High Court of Justice of the FCT forged a certain document captioned FEDERAL GOVERNMENT CERTIFICATE OF OCCUPANCY with no. 77/77/73 dated 7th August, 2001 and caused the said document to be acted upon as emanating from Federal Housing Authority and you thereby committed an offence contrary to Section 366 and punishable under Section 364 of the Penal Code LFN (Abuja) 1990.”

The prosecution called three witnesses who testified as P.W.1, P.W.2 and P.W.3 respectively. The three prosecution witnesses were cross examined by counsel to the defendant. The defendant gave evidence on her own behalf. She was cross examined by the prosecuting counsel. At the close of the case of the prosecution and the defence, written addresses of Counsel were ordered. Counsel to the prosecution and that

of the defendant filed their respective written addresses which they adopted as their oral submission.

P.W.1 is one Ayodele Oniemola who works with the Federal Ministry of Lands, Housing and Development and is currently the secretary of the Land Use Allocation Committee of the said Ministry. His work schedule includes allocation of land and preparation of certificates of occupancy. His sworn testimony is as follows:

That sometimes in 2013, one operative of the Economic and Financial Crimes Commission (EFCC) came to their office to investigate a case of fraud in respect of a parcel of land allocated to the defendant. The operative came with a letter from the EFCC. Attached to the letter were two certificates of occupancy. The certificates of occupancy were marked Appendix A and Appendix B respectively. The EFCC requested the Ministry to verify the documents. P.W.1 said he was the leader of the team in the Abuja office of the Ministry that worked on the documents.

He said upon verification, it was discovered that Appendix A was an authentic Certificate of Occupancy while Appendix B was the cloned copy. The report of the verification was forwarded to the EFCC. He said he worked with Mrs. A. A. Adegoke who signed the letter of report of the investigation. The letter and the attachments thereto were tendered and admitted in evidence as Exhibit 1.

He went further to say that the Ministry issued a Certified True Copy of the authentic C of O. His evidence is as follows:

“The Ministry issued a Certified True Copy of the authentic C of O. The C of O is a copy of what we have in the registry. It carries the stamp and signature of the registrar on every paper and has a cover page that indicates what it is.”

The CTC of the C of O was tendered and admitted in evidence as Exhibit 2.

In answer to questions put to him under cross examination, P.W.1 testified as follows:

“The Hon. Minister in charge of land matters issues and signs certificates of occupancy. I can see Exhibit A shown to me. I have seen the signatures on Appendix A and Appendix B. The names of the Minister on the two documents are the same but the signatures are not the same. I know the signature of the Minister having worked with him and familiar with his signature. I can see page 3 of the search report in Exhibit 1 particularly the remarks.

Description of property can be by plot number or survey number. I deny the suggestion that the names and signatures on Appendix A and B are the same.”

P.W.2 is one Akinyinka Ahmed Olurotimi. He is the facility manager of Lead British International School. His sworn testimony is as follows:

That the land in question originally belonged to the defendant who sold it to one Dyna Ladejj Investment Ltd. That Dyna Ladejj Investment Ltd sold the land to Lead British School. That at the time of the purchase the following documents were handed over to the school:

1. Original certificate of occupancy of the land.
2. Power of Attorney transferring the land from Mary Okoh to Dyna Ladejj & Co.
3. A deed of Assignment between Lead British International School and Dyna Ladejj Investment.

His further testimony is that sometimes in the year 2013, the school commenced construction on the land but they were stopped by some

people who destroyed the development. The matter was reported to the police. The people who carried out the destruction were invited to the police station. They claimed to have also bought the land. The case was transferred to the Force Headquarters and thereafter to the EFCC. His further testimony is that the certificate of occupancy given to the school was given to their banker as security for a loan but that a CTC of the said certificate was given to the EFCC. He identified Appendix A attached to Exhibit 1 as the certificate of occupancy given to EFCC. He tendered the Deed of Assignment between Dyna Ladejj Investment and Lead British International School and the Power of Attorney between Mrs. Mary Okoh and Dyna Ladejj which were admitted in evidence as Exhibits 3 and 4 respectively.

He testified further that the school paid for the land with a manager's cheque. The cheque for Thirty Seven Million Naira was tendered and admitted in evidence as Exhibit 5. He was cross examined on the discrepancy in the description of the property in Exhibits 3 and 4.

P.W.3 is one Ekundayo Gideon Olayinka, a detective with the EFCC whose schedule of duties include investigation of cases assigned to him by his superior officers. His testimony is as follows: That sometimes in the year 2012 the EFCC received a petition from Ogbeide Associates on behalf of one Amasi Okon. The petition was tendered and admitted in evidence as Exhibit 6. He said Exhibit 6 was minuted to him and his team for investigation. He stated as follows:

"The petitioner alleged that sometime in the same year the defendant approached him for an assistance of funds in the sum of N30million for her to execute a contract awarded to her. The petitioner told her he is not a lender organisation but after so much pressure he gave a sum of N30million to her

through Skye Bank cheques and Ecobank cheque. The defendant dropped her certificate of occupancy as collateral which she would collect after paying back the money. They also had an agreement that if the money was not repaid within the agreed time, the nominal complainant can go ahead and take possession of the property. The defendant also promised to buy back the property as soon as she gets the money. This was their agreement.”

P.W.3 testified further that he wrote a letter of investigation to Skye Bank to confirm the payment of 30million Naira from the petitioner's account to the defendant. Exhibit 8 is the bank's response. He said in the course of investigation, the petitioner brought the certificate of occupancy given to him by the defendant to their office. He said their investigation revealed there were two certificates of occupancy in respect of the same property. He said they forwarded the certificates from the petitioner and the one from British Lead School to the Federal Ministry of Lands, Housing and Urban Development for verification. They marked the two certificates as Annexure A and B respectively. Annexure A was the certificate submitted by Lead British International School, Gwarimpa while Annexure B is the certificate of occupancy submitted by the petitioner. The Ministry responded vide Exhibit 1 wherein it was stated clearly that Annexure A was authentic while Annexure B is a cloned copy. The defendant was thereafter arrested and confronted with the two certificates. He said the defendant confirmed to them at the EFCC that the certificate marked Annexure A is the one she gave to Lead British School and was aware of the sale of the land by Dyna Ladejj to the school.

P.W.3 testified further that when he discovered the disparity in the description of the property in Exhibits 3 and 4, he personally sought

explanation from the Ministry. The Ministry confirmed to him that the two documents refer to the same property. He said the defendant told him that after she sold the land to Lead British School she laid a complaint at the Ministry that she misplaced her C of O consequent upon which she was issued another certificate of occupancy. Upon inquiry from the Ministry he said he was told that where a loss of C of O is reported what is issued is a CTC and not another original copy. P.W.3 said from his investigation he came to the conclusion that the defendant obtained the petitioner's money by false pretence. P.W.3 tendered the voluntary statements of the defendant which were admitted in evidence as Exhibits 7A and 7B respectively.

P.W.3's further testimony is that EFCC invited the petitioner Okon Amasi who adopted his petition in writing and wrote a statement. He tendered the statement of Okon Amasi which was admitted in evidence as Exhibit 9. He said Okon Amasi underwent a major surgery and is presently bedridden.

The defendant testified on her own behalf. Her testimony is as follows:

"I am Mrs. Mary Okoh. I am a business woman. I am standing trial for forgery and obtaining money by false pretences. Sometimes ago I had a job to do. I cannot remember the date and year. I was looking for a financier for the job. I met a friend by name Barrister Onuchie whom I discussed my predicament with. He told me he had a friend with a finance company who he could introduce me to. The friend's name is Mr. Amasi. I agreed with Barrister Onuchie that I would pay him 10% of whatever loan I get. We met Amasi. His company name is Mutual Loan and Savings Ltd.

He agreed to give me a loan of N30million at an interest of 30%. I told him I would secure the loan with my property. He told me to bring my title documents of the property. I took the title documents to him. When I handed over the documents to him he said he would conduct a search on the property. He did a search and showed me the search report. This was after about a month. He told me he was satisfied with the search and that I should come back the following day because he was travelling to Calabar. He gave me the money on the following day.

I do not know any company called Mutual Alliance Property Development Co. Ltd. The property I used to secure the loan is Plot 10 Block 6. I had no Sales Agreement with anybody over Plot 10 Block 6. What I was given is a loan.”

In answer to questions put to her under cross examination, she stated as follows:

“I am a business woman. I have been in business since 1998. I am into supplies of petroleum products and I also do civil engineering work. I can see Exhibit 8 now shown to me. It is my statement of account. I agree I entered into the transaction with Okon Amasi in the year 2012. It is not true that before I gave the property Plot 10, Block 6 as security of the loan I had used the property in a transaction with Dyna Ladejj. I do not know Dyna Ladejj.

It is also not true that I had sold the same property to Lead British School. I have no relationship with Lead British School over the property and I had no transaction with the school. I can see Exhibit 7A now shown to me. It is my statement. It

was made on the 21st of January 2013. I can see the back page of the statement line 11.

I still insist I did not sell the property to Lead British School.

I do not know Lead British School.”

Learned counsel to the defendant in his written address formulated a sole issue for determination to wit:

“Whether in the circumstances of this case, the Prosecution has failed to proof (sic) its case beyond reasonable doubt against the Defendant, thereby necessitating her discharge and acquittal.”

On the first count of the charge which is an allegation of obtaining by false pretences contrary to Section 1(1)(a) of the Advance Fee Fraud Act, defence counsel submitted that the prosecution failed to establish the ingredients of the offence to the satisfaction of the Court. He submitted further that the prosecution failed to establish or prove the essential ingredients of the offence of forgery under Section 362(a) and 366 of the Penal Code. He submitted that the prosecution failed to prove that the defendant intended to defraud Mutual Property Development Co. Ltd. or committed forgery. He submitted further that there was no evidence that the defendant carried out the alleged forgery and that there was contradictions in the prosecution’s evidence in the description of the property. He urged me to hold that the prosecution has failed to prove the offences for which the defendant is charged beyond reasonable doubt and discharge and acquit her accordingly.

For his part, learned counsel to the prosecution submitted one issue for determination to wit:

“Whether the Prosecution has proved its case beyond reasonable doubt as required by Section 135 of the Evidence Act.”

He argued that the vital evidence of all the prosecution witnesses was not discredited under cross examination and urged me to hold that the prosecution has established all the ingredients of the offences for which the defendant is charged. He submitted that the combined effect of the testimony of all the prosecution witnesses is that the defendant actually forged the document described in Count 2 of the charge. He submitted that the free and voluntary statement of the defendant is sufficient proof of her guilt. He craved in aid of his submission the case of AKPAN VS. THE STATE (2000) 12 NWLR Pt. 682 Pg. 607.

He submitted further that from the statement of the defendant it is clear she was aware that the certificate of occupancy she gave Amasi Okon was forged. He finally urged me to hold that the prosecution has proved all the ingredients of the offences proffered against the defendant and convict her accordingly. He further urged me to order that the defendant refund the sum of N30million to Amasi Okon as restitution pursuant to the provision of Section 11 of the Advance Fee Fraud and Other Related Offences Act 2006.

It is trite that in criminal trials, the prosecution has the unshifting burden and duty to prove all the ingredients of the offence charged beyond reasonable doubt. The standard of proof is such that if there is any element of doubt in relation to any of the ingredients the doubt is resolved in favour of an accused person. See TANKO VS. STATE (2008) 16 NWLR Pt. 1114 Pg. 597 at 636 - 637 Paras. D - B. as well as Section 135 of the Evidence Act 2011.

The defendant under Count one of the charge is accused of committing the offence of obtaining by false pretence contrary to Section 1(1)(a) of the Advance Fee Fraud and Other Related Fraud Offences Act.

Section 1(1) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 provides as follows:

"1. Obtaining property by false pretence, etc.

(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) induces any other person, in Nigeria or in any other Country, to deliver to any person; or

(c) obtains any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence.

commits an offence under this Act."

In order to succeed in a charge of obtaining property by false pretence the prosecution must prove the following ingredients.

- (a) That there was a pretence;
- (b) That the pretence emanated from the defendants;
- (c) That it was false;
- (d) That the defendant knew of the falsity or did not believe in its truth;
- (e) That there was an intention to defraud;
- (f) That the thing is capable of being stolen and
- (g) That the defendants induced the owner to transfer the property.

See AMADI VS. F.R.N. (2008) 18 NWLR Pt. 1119 Pg. 259,
ONWUDIWE V. F.R.N. (2006) 10 NWLR (Pt. 988) Pg. 382 at 431 - 432
G - H and ALAKE VS. THE STATE (1991) 7 NWLR Pt. 205 Pg. 567.

For ease of reference I shall reproduce Count one of the charge against the defendant.

“COUNT ONE:

That you Mary Okoh on or about February 29, 2012 within the jurisdiction of the High Court of the Federal Capital Territory with intent to defraud did obtain the sum of N30,000,000 (Thirty Million Naira only) from Okon Amasi (Director, Mutual Alliance Property Development Co. Ltd) purportedly for the sale of a property at Plot 10, Federal Government Layout, Gwarimpa, FCT, Abuja under the false pretence that you own the said property which pretence you knew to be false and thereby committed an offence contrary to Section 1(1)(a) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006 and punishable under Section 1(3) of the same Act.”

The particulars of the above offence is that the defendant with intent to defraud obtained the sum of N30million from Okon Amasi purportedly for the sale of a property at Plot 10, Federal Government Layout, Gwarimpa Abuja FCT, Abuja under the false pretence that she owns the property which she knew to be false.

Upon a consideration of the evidence of all the prosecution witnesses, it is only P.W.3 that gave evidence on the alleged transaction between the defendant and Okon Amasi. His evidence of the transaction is not an eye witness account. His evidence is a recount of the allegations in the petition (Exhibit 6). What is contained in Exhibit 6 are allegations which the law requires must be backed by proper evidence. P.W.3's evidence is that Okon Amasi came to EFCC to adopt Exhibit 6 and made a written statement which was tendered and admitted in evidence as Exhibit 9. Okon Amasi was not called as a witness and was therefore not

cross examined by the defendant. In the case of EKPENYONG VS. THE STATE (1991) 6 NWLR Pt. 200 Pg. 683, Kolawole JCA at page 696 paragraphs D - G held as follows:

“The learned trial judge was clearly wrong to have used Exhibit H for two reasons. Learned counsel for the appellant in the Court below did not ask that the Court should make use of Exhibit H in his address for any purpose. Exhibit H was not tendered for the purpose of cross examination as to previous statement made in writing in pursuance of Section 198 of the Evidence Act or for the purpose of impeaching the credit of the witness in pursuance of Section 209 of the Evidence Act.

In LAYONU & OTHERS VS. THE STATE (1967) 1 ALL NLR 198 Brett JSC observed at page 207 thus:

“In our experience the principle has always been applied, as it was in R VS. ADEBANJO 1935 2 WACA 315, to any written statement in the possession of the prosecution which was made by a witness called by the prosecution and relates to any matter on which the witness has given evidence. Such a statement is not evidence of the facts contained in it and the only use to which the defence can put it is to cross-examine the witness on it and then if it is intended to impeach his credit, to put the statement in evidence for that purpose.”

The authorities therefore have established that in a situation like the instant one where the witness whose statement has been admitted never testified at all, the statement Exhibit H should never have been considered as evidence of the facts

contained in it. Exhibit H was not used to cross examine Jeremiah Ekpenyong and neither was it used to impeach the credit of her witness.”

Okon Amasi who made Exhibit 9 and who the prosecution alleged the defendant defrauded was not called as a witness. It follows therefore that Exhibit 9 cannot be considered as evidence of the facts contained therein and I so hold. Apart from Exhibit 9, the prosecution did not adduce any other oral evidence in support of Count one of the charge. It however tendered the statements of the defendant which were admitted in evidence as Exhibits 7A and 7B respectively.

It is a firmly established principle of law that a person accused of committing a criminal offence may be convicted solely on his confessional statement freely and voluntarily made. See IKEMSON VS. THE STATE (1989) 3 NWLR Pt. 110 Pg. 455 and GBADAMOSI VS. THE STATE (1991) 6 NWLR Pt. 196 Pg. 182.

In MUSTAPHA VS. THE STATE (2007) 12 NWLR Pt. 1049 Pg. 637 it was held that a confessional statement is an extrajudicial statement made by the accused person to the police containing an assertion or admission showing that he participated in the commission of the offence for which he stands accused. The Court further held that once an accused person makes a statement under caution saying or admitting the charge or creating the impression that he committed the offence charged, the statement becomes a confession.

The defendant admits making Exhibits 7A and 7B. The question now is whether the contents of the said statements can be held to be an admission of the offence alleged in Count one of the charge. The defendant in Exhibit 7A gave her own account of the transaction between her and Amasi Okon. She said she obtained a loan of N30million from

him for which she gave him the C of O of her property as security. She stated categorically in the statement that she did not sell her property to Amasi Okon and that she attempted to repay the loan by making a part payment of Ten Million Naira which Amasi Okon refused to collect from her but insisted on full payment.

The particulars of the offence of Count one of the charge is that the defendant sold a property to Amasi Okon under the false pretence that she owned same. The false pretence alleged is that she sold a property allegedly owned by her under the pretence that it belonged to her. In the case of FARO VS. I.G.P (1964) LEPLR 25223 (SC), Brett JSC held as follows:

“It is well established that if there is a difference in substance between the pretence alleged in the charge and the pretence by means of which the property was obtained an accused person is entitled to be acquitted, and in deciding whether such a difference exists, what the Courts have to do is to compare the substance of the pretence alleged with that of the operative pretence.”

I have found earlier that the prosecution did not give any evidence in support of Count one of the charge except Exhibit 9 which I have held cannot be relied upon as proof of the offence. The statement of the defendant is that she took a loan from Amasi Okon. She denied selling a property to him as alleged in the charge. The statement of the defendant is not an admission of the commission of the offence alleged in Count one of the charge and I so hold. In the circumstance, I find the prosecution has failed to establish the offence of obtaining by false pretence contrary to Section 1(1)(a) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 beyond reasonable doubt and I so hold.

The prosecution has therefore failed to discharge the burden placed on her by law. I find the defendant not guilty of Count one of the charge against her. She is accordingly discharged and acquitted on Count one of the charge.

Count two of the charge is as follows:

"COUNT TWO:

That you Mary Okoh on or about February 29, 2012 in Abuja within the judicial Division of the High Court of Justice of the FCT forged a certain document captioned FEDERAL GOVERNMENT CERTIFICATE OF OCCUPANCY with no. 77/77/73 dated 7th August, 2001 and did commit an offence contrary to Section 362(a) and punishable under Section 364 of the Penal Code LFN (Abuja) 1990."

Section 362(a) of the Penal Code provides as follows:

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

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

In YOHANNA DALYOP VS. THE STATE (UNREPORTED) delivered by the Court of Appeal (Jos Judicial Division) on Thursday, the 16th day of May, 2013 in Suit No: CA/J/234C/07 Ige JCA held as follows:

"It is therefore necessary to find out the meaning of forgery and its ingredients under the penal code in order to see

whether the Respondent has established a case of forgery against the Appellant. Sections 363 and 364 of the Penal Code read:

“363 whoever makes any false document or part of a document with intent to cause damage or injury to any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, commits forgery, and a false document made wholly or in part by forgery is called a forged document.

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

The object of forgery is to cheat others by wrongful acts of make belief as genuine document the accused knows is not genuine but only calculated to deceive in order to obtain unmerited and unconscionable favour and benefits to the detriment of the person to whom the document may be presented.”

The document alleged to be forged is a Federal Government Certificate of occupancy with No: 77/77/73 dated 7/8/2001.

In the offence of forgery, the prosecution must prove the following:

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.

5. That he intends the forged document to be acted upon to the prejudice of the victim in the belief that it is genuine.

See ALAKE VS. THE STATE (1991) 7 NWLR Pt. 205 Pg. 567.

In SMART VS. THE STATE (1974) 1 SC 173, Coker JSC held at page 185 as follows:

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

In ALAKE VS. THE STATE (SUPRA), Niki Tobi JCA at page 592 paragraph C held as follows:

“In effect, the prosecution must prove that the document was made to tell a lie about itself and the accused person was a brain behind it and knew at the material time that the information he conveys in the document is false and that he intends the false document to be acted upon as genuine anywhere in the world.”

The certificate of occupancy allegedly forged is in writing. The next question is whether the prosecution has proved that it is forged.

P.W.3's evidence is that upon investigation by the EFCC on a petition received by it, it was discovered that two certificates of occupancy were generated over one parcel of land. The certificates were tendered in evidence. P.W.2's evidence is that the two certificates were marked by the EFCC as Annexure A and B respectively and were sent to the Federal Ministry of Lands, Housing and Urban Development which is the issuing authority. The Ministry carried out a verification exercise on the two documents and sent a report which was tendered as Exhibit 1. Exhibit 1 is a report from the Federal Ministry of Lands, Housing and Urban Development on Appendix A and B sent to

them by the EFCC. The conclusion on Appendix A at page 3 of the report reads as follows:

“Remarks: I hereby confirm that the original of the certificate of occupancy presented personally for verification registered as No. 77 at page 77 in volume 73 at the Federal Lands Registry Office, Ikoyi - Lagos issued in favour of Mrs. Mary Okoh (Appendix A) is AUTHENTIC and it is an exact Counterpart copy lodged at the Federal Lands Registry office, Ikoyi, Lagos.”

The conclusion on Appendix B in the report is at pages 4 to 5 of Exhibit 1. It reads thus:

“Remarks: In view of my observations in the document marked Appendix B, I hereby state that the certificate of occupancy No. 77 at page 77 in volume 73 alleged to have been registered at the Federal Lands Registry, Ikoyi, and marked “Appendix B” is NOT AUTHENTIC. It is also not the exact counterpart copy lodged at the Federal Lands Registry office, Ikoyi, Lagos.”

Appendix A and Appendix B are attached to Exhibit 1. In the report Exhibit 1, the Director of Legal Services who signed the report gave a detailed analysis of the investigation carried out on the documents before the conclusion on the authenticity was reached. The two documents were compared with the counterpart copy in the custody of the Ministry before the conclusion. This is evident from the report. P.W.3 identified Appendix A to Exhibit 1 as the certificate of occupancy given to Lead British International School at the time the school purchased the Land and Appendix B as that given to Okon Amasi by the defendant when he had a transaction over land with her.

P.W.1 who is a staff of the Federal Ministry of Lands, Housing and Urban Development identified Exhibit 1 as the report issued by the Ministry after verification of Appendix A and Appendix B. His unchallenged testimony is that he was part of the team that worked on the documents. His schedule of work includes allocation of land and preparation of certificates of occupancy for lands allocated. His testimony is as follows:

“Sometimes last year, the EFCC wrote a letter to my Ministry. One of the operatives of the EFCC came in person to investigate a case of fraud pertaining to the said parcel of land which was allocated by the Ministry to one Mary Okoh. Two certificates of occupancy were attached to the letter. Both of them were purported to be the originals. One was marked Appendix A and the other marked Appendix B. The Ministry was asked to verify which was the original. I was the leader of the team in our Abuja office that worked with the Federal officer of Deeds to verify the documents. Upon verification, we found that Appendix A was the authentic document while Appendix B was a cloned copy of the original. The Ministry through the Registrar wrote a letter to the EFCC indicating that Appendix A was the authentic document while Exhibit B was a clone.”

P.W.2 who worked with Lead British International School identified Appendix A as the document given to the school when it purchased the land. He also tendered a Power of Attorney transferring the land from Mary Okoh to Dyna Ladejj & Co. and a Deed of Assignment executed between British International School and Dyna Ladejj Investment.

Count two of the charge allege the offence of forgery of a certificate of occupancy with No. 77/77/73 dated 7th August 2001. Appendix A and

Appendix B on the face of it are two original certificates of occupancy both with No. 77/77/73 dated 7th August 2001 in respect of property described as Plot 10, Block VI Federal Government Layout at Gwarimpa FCT, Abuja Municipal Area Council, Abuja. Both of them on the face of it are signed by the Honourable Minister of Works and Housing. The two documents were sent to the Ministry of Lands, Housing and Urban Development, the issuing authority for verification. The Ministry carried out a detailed investigation and verification exercise on the documents. They came out with their report which was tendered and admitted in evidence as Exhibit 1. It is stated clearly in Exhibit 1 that Appendix A given to Lead British International School is Authentic while Appendix B given to Amasi Okon is not. The two documents cover the same property. I find the evidence of P.W.1 and P.W.3 on the genuineness or otherwise of the two documents, Appendix A and Appendix B credible. Exhibit 1 which is the report of the issuing authority of the certificate of occupancy is not challenged in any way. I find it sufficient proof that Appendix B was forged. The prosecution has proved that a Federal Government Certificate of Occupancy with No. 77/77/73 is forged and I so hold.

The next ingredient to be proved to sustain Count 2 of the charge is that the defendant forged the Certificate of Occupancy in question.

The evidence of the prosecution as given by P.W. 2 and P.W.3 is that the piece of land in question is located at Plot 10, Block VI and covered by a Certificate of Occupancy with No. 77/77/73. P.W.2's evidence is that the land was originally owned by the defendant who sold it to one Dyna Ladejj Investment Ltd. who in turn sold same to Lead British International School. He tendered Exhibits 3 and 4. Exhibit 3 is a Deed of Assignment executed between Dyna Ladejj Investment Ltd and Lead British

International School. Exhibit 4 is a Power of Attorney between the defendant and Dyna Ladejj.

Learned counsel to the defendant has made a heavy weather of the description of the property in Exhibits 3 and 4. The property covered by both exhibits is described as Plot No. 4, Block 4. He submitted that the property covered by the certificate of occupancy No. 77/77/73 is Plot 10, Block VI and not Plot 10, Block IV. His contention is that this discrepancy is fatal to the case of the prosecution. P.W.3 while giving his evidence in chief gave an explanation on the discrepancy. His evidence is as follows:

"I laid my hand on the agreement made between the defendant and Dyna Ladejj where the plot number was clearly stated as Block 10, Flat 4. On the C of O we have block 10, Flat VI. I therefore went to the Ministry of Lands personally to confirm what really happened on the agreement and the certificate in question. I was told we were talking of the same property. I was told that the error was in the interpretation of the Roman numeral by the person who drew up the agreement. I was told that IV means Six. The person who signed the agreement interpreted VI as number four but that it is the same plot as that covered by the C of O."

The above evidence was not challenged under cross examination. The number of the certificate of occupancy of the land covered by Exhibits 3 and 4 are clearly stated as No. 77/77/73. I have no doubt that the land referred to in Exhibits 3 and 4 is the same as that covered by certificate of occupancy No. 77/77/73 and the subject matter of this suit and I so hold. I find the difference in the block number immaterial to the case at hand and I so hold. There is clear and credible evidence that Exhibits 3 and 4 refer to the same property which is that covered by

certificate of occupancy No. 77/77/73 and I so hold. I have no doubt Annexure A came from the defendant to Lead British School and I so hold. P.W.3's evidence is that Annexure B was given to Amasi Okon. This evidence of P.W.3 was not discredited under cross examination. All questions put to P.W.3 by defence counsel were geared towards establishing that the transaction between the defendant and Amasi Okon was a loan transaction and not on the sale of land and the documents given by the defendant. I find the fact that the defendant gave Annexure B to Amasi Okon proved and I so hold.

P.W.3 in his evidence stated that the defendant admitted in her statement that she committed the offence of forgery. In Exhibit 7A, the defendant stated as follows:

"When I collected the loan I gave him my C of O of (my) property situated at Gwarimpa Estate, Plot 10, Federal Government Layout, Abuja like I wrote before that I gave him 10million he refuse saying he wants the hole (sic) money am still trying to put money together to pay him like I said British School has nothing the said property belong to them, they have nothing to doing in this matter as far as am concern. The one that was (said) sold to British school was the one that came out first. The second one I applied say that I lost the original and I was giving (sic), that was the one I used in getting the loan, why was that was the only thing I have to get what I want, like I said I do not say I will not pay. I want to pay, all I need is time."

The defendant in her statement admitted that she gave both Lead British International School and Amasi Okon certificates of occupancy over her land. In her oral testimony in her defence she stated clearly that she gave

Amasi Okon her title documents. The defendant who said in her statement that she sold her land to Lead British International School in a transaction different from that she had with Amasi Okon, denied knowing the school and having any transaction with her in her oral testimony before the Court. Her evidence before this Court that she did not know Dyna Ladejj Investment Ltd. or British International School is an afterthought and an attempt to resile from her statement which she made voluntarily and I so hold. The law is settled that the Court can convict on a retracted confessional statement as long as it is satisfied of the truth of the statement. In BATURE VS. THE STATE (1994) 1 NWLR Pt. 320 Pg. 267, Onu JSC held as follows:

Indeed, as this court held recently in the case of EGHOGHONOME VS. THE STATE (1993) 7 NWLR (Pt.306) 383, where an extra-judicial confession has been proved to have been made voluntarily and it is positive and unequivocal and amounts to an admission of guilt, as in the instant case, it will suffice to ground a finding of guilt regardless of the fact that the maker resiled therefrom or retracted it altogether at the trial, since such a u-turn does not necessarily make the confession inadmissible."

The statement of the defendant has been proved to be one that was voluntarily made and I so hold. The defendant cannot therefore resile from its contents and I so hold.

The defendant's oral testimony is that Okon Amasi conducted a search when he received Appendix B. Her counsel also made heavy weather of the failure of the prosecution to produce the search report. My considered view is that failure to produce the search report would not make Appendix B a genuine document and I so hold. The fact that Okon Amasi did not discover the fraud in the document does not make it any

less of fraud and I so hold. That the defendant was able to use the forged document to convince and hoodwink Okon Amasi does not make it an authentic document.

From all the foregoing, it is my view that the defendant gave Okon Amasi the certificate of occupancy, Appendix 'B' to Exhibit 1 and I so hold. Furthermore, at the time she gave Okon Amasi the Certificate, she knew she had given the authentic copy, Appendix A to British International School as part of her title documents for the sale to Dyna Ladejj Investment Ltd. who eventually sold to the school and I so hold. I have no hesitation in coming to the conclusion that the defendant knew that the certificate of occupancy she gave to Okon Amasi as collateral for a loan was a fake document which she knowingly presented as a genuine document and I so hold. She presented the forged document as an authentic title document for the property it purportedly covered. She admitted the document was made under her direction in her statement. It follows therefore that the defendant either forged the document herself or procured someone else to do it. She derived benefit from using the fake document as a genuine one. She used it as collateral to secure advantage in a transaction she had with Okon Amasi over the land covered by the document. Okon Amasi received the document and acted on it under the belief that it was genuine.

In the case of OSONDU VS. F.R.N. (2000) 12 NWLR Pt. 682 Pg. 483 at 505 Paras. A - D Edozie JCA held as follows:

"It is the law that where a document was shown to be used as an intermediate step in a scheme of fraud in which an accused person was involved, then if it is shown that such document was false and was presented or uttered by an accused in order to gain advantage an irresistible inference

exists that either the accused forged the document with his own hand or procured someone to commit the forgery. See GEORGE ABEL SCOTT VS. THE KING 13 WACA 25; PEARCE HENSHAW VS. COMMISSIONER OF POLICE (1963) 7 ENLR 120 at 122. As it is obvious that it was the appellant who uttered the forged documents Exhibits A7, A9 and A11 and derived benefit therefrom it goes without saying that he forged those documents or procured someone to do so. The failure by the prosecution to call a handwriting expert to show that by comparing the appellant's admitted writing and signature in his written statement to the Police Exhibit A1 and the disputed signatures on Exhibits A7, A9 and A11 to show that appellant is the author of the latter is not fatal to the prosecution's case because even if there was such evidence which is negative, from the special circumstances of this case it will still be open to the court to draw the inference that the appellant procured someone else to forge and utter Exhibits A7, A9 and A11. It is therefore my view that the convictions of the appellant in Counts 4 and 5 are in order."

From all of the above, that is upon consideration of the oral and documentary evidence from the prosecution and the statement of the defendant, I am of the view that the prosecution has established all the ingredients of the offence of forgery against the defendant and I so hold. The prosecution has proved that the defendant forged a Federal Government Certificate of Occupancy with No. 77/77/73 dated 7/8/2001 which was tendered and admitted as Appendix B annexure to Exhibit 1. The offence of forgery alleged against the defendant in Count 2 of the charge has been proved beyond reasonable doubt. I therefore find you

Mary Okoh guilty of the offence of forgery contrary to Section 362(a) of the Penal Code which is punishable under Section 364 of the same law. You forged a document captioned Federal Government Certificate of Occupancy with No: 77/77/73 dated 7th August 2001 and I convict you of the offence.

Count three of the charge reads thus:

“COUNT THREE:

That you Mary Okoh on or about February 29, 2012 in Abuja within the judicial Division of the High Court of Justice of the FCT forged a certain document captioned FEDERAL GOVERNMENT CERTIFICATE OF OCCUPANCY with no. 77/77/73 dated 7th August, 2001 and caused the said document to be acted upon as emanating from Federal Housing Authority and you thereby committed an offence contrary to Section 366 and punishable under Section 364 of the Penal Code LFN (Abuja) 1990.”

Section 366 of the Penal Code provides as follows:

“Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.”

The particulars of the offence for which the defendant is charged under Count 3 is that she forged the document, Federal Government Certificate of Occupancy with No. 77/77/73 dated 7th August 2001 and caused it to be acted upon as a document from the Federal Housing Authority.

The defendant has been convicted of forgery of the certificate of occupancy with No. 77/77/73. By Count 3 of the charge she is accused

of particularly using the forged document as a document emanating from the Federal Housing Authority. I have gone through the entire evidence adduced by the prosecution in this case, and I do not find any iota of evidence to establish that the defendant used the forged document as a document of the Federal Housing Authority. The defendant has been found guilty of forging the document but to secure a conviction under Count 3 of the charge, the particulars provided in the offence must be proved. That the defendant presented the forged document as one emanating from the Federal Housing Authority is not proved and I so hold. The offence alleged against the defendant in Count 3 of the charge is not proved. She is therefore discharged and acquitted on Count 3 of the charge.

In conclusion, I find you, Mary Okoh guilty of the offence of forgery contrary to Section 362(a) of the Penal Code and punishable under Section 364 of the Penal Code. You are accordingly convicted of the said offence accordance with Count 2 of the charge. I find you, Mary Okoh not guilty on Counts 1 and 3 of the charge proffered against you. You are discharged and acquitted on Counts 1 and 3 of the charge.

The prosecuting counsel in his final written address submitted as follows:

“5.0 RESTITUTION

Prosecution has shown in the course of trial that the defendant defrauded Amasi Okon to the tune of N30million (Thirty Million Naira) which the defendant withdrew through cheques.

In the probable event that the Court finds that the prosecution has discharged its burden of proof and convicts the defendant, Section 11 of the Advance Fee Fraud and other Fraud Related offences Act, 2006

empowers the Court to direct the convict to retribute the victim of the crime. In this regard, the Court may direct that the convict refunds the sum of N30,000,000 (Thirty Million Naira) as restitution to Amasi Okon.”

The defendant has been discharged and acquitted of the 1st Count of the charge which is one where the prosecution allege an offence contrary to Section 1(1)(a) of the Advance Fee Fraud and other Fraud Related offences Act, 2006. The 2nd Count of the charge for which the defendant is convicted is forgery. The issue of how much Amasi Okon parted with was not considered. The application of prosecuting counsel for restitution is not sustainable and it is accordingly refused.

HON. JUSTICE FOLASADE OJO
JUDGE
21/6/2018

Abdullah Faruk appears with A. S. Abuh (Mrs.) for the prosecution.
J. D. Musa with I. C. Essien for the defendant.