

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

ON THE 28TH DAY OF JUNE, 2017 SUIT NO. FCT/HC/CR/27/13

**BEFORE HIS LORDSHIP:
HONOURABLE JUSTICE FOLASADE OJO - JUDGE**

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

APPLICANT

AND

OKONKWO JOHNBUSCO CHUKWUMERUAH TEMPLE

RESPONDENT

JUDGMENT

The defendant was arraigned before this Court on the 14th of November 2013 on a 6-count charge alleging the offence of forgery contrary to Section 363 of the Penal Code and punishable under Section 364 of the same law. He pleaded not guilty to all the counts of the charge.

The case went on to trial with the prosecution calling three witnesses who testified as P.W.1, P.W.2 and P.W.3 respectively. The three witnesses were cross examined by the defence counsel. After the close of evidence of the prosecution but before the defendant opened his case the prosecution filed an amended charge.

The amended charge which is a 6-count charge reads as follows:

COUNT 1:

That you Okonkwo Johnbosco Chukwumerah Temple (m) and one Chris (now at large) on or about the month of June 2013 at Abuja forged statement of account of First Bank of Nigeria Plc in the name of Arkleen Oil and Gas Nig Ltd with the intent that the forged document will be used for the purpose of fraudulently procuring India visa from India High Commission in Abuja for Mrs. Okeke Chinyere Faith contrary to Section 363 of the Penal Code and punishable under Section 364 of Penal Code.

COUNT 2:

That you Okonkwo Johnbosco Chukwumerah Temple (m) and one Chris (now at large) on or about the month of August 2013 at Abuja forged letter of introduction of Arkleen Oil and Gas Nigeria Ltd in favour of Mrs. Okeke Chinyere Faith to the High Commission of India Abuja with the intent that the forged document will be used for the purpose of fraudulently procuring India visa from the High Commission of India in Abuja for Mrs. Okeke Chinyere Faith contrary to Section 363 of the Penal Code and punishable under Section 364 of Penal Code.

COUNT 3:

That you Okonkwo Johnbosco Chukwumerah Temple (m) and one Chris (now at large) on or about the month of June 2013 at Abuja forged medical reference letter of Sagar Hospitals in favor of Maduabuchukwu Nwamaka Marcelina with the intent

that the document will be used for the purpose of fraudulently procuring India visa for Maduabuchukwu Nwamaka Macelina from the High Commission of India Abuja contrary to Section 363 of the Penal Code and punishable under Section 364 of Penal Code.

COUNT 4:

That you Okonkwo Johnbosco Chukwumerah Temple (m) and one Chris (now at large) on or about the month of June 2013 at Abuja forged medical reference letter of Sagar Hospitals in favor of Mrs. Okeke Chinyere Faith with the intent that the document will be used for the purpose of fraudulently procuring India visa from High Commission of India Abuja for Mrs. Okeke Chinyere Faith contrary to Section 363 of the Penal Code and punishable under Section 364 of Penal Code.

COUNT 5:

That you Okonkwo Johnbosco Chukwumerah Temple (m) and one Chris (now at large) on or about the month of August 2013 at Abuja forged medical reference letter of Domino Medical Centre of Maitama Abuja in favor of Mrs. Maduabuchukwu Macelina with the intent that the document will be used for the purpose of fraudulently procuring India visa from the High Commission of India Abuja for Maduabuchukwu Macelina contrary to Section 363 of the Penal Code and punishable under Section 364 of Penal Code.

COUNT 6:

That you Okonkwo JohnboscoChukwumerah Temple (m) and one Chris (now at large) on or about the month of August 2013 at Abuja forged medical reference letter of Submit Medical Centre of Jimoh Akowonjo Kogi in favor of Mrs. Okeke Chinyere Faith with the intent that the document will be used for the purpose of fraudulently procuring India visa from High Commission of India Abuja for Mrs. Okeke Chinyere Faith contrary to Section 363 of the Penal Code and punishable under Section 364 of Penal Code.

The defendant pleaded not guilty to all the counts of the amended charge. The defendant gave evidence on his own behalf. He was cross examined by the prosecuting counsel. The Court ordered counsel to file their respective written addresses which they did.

P.W.1 is an investigator with the Independent Corrupt Practices Commission (ICPC) whose duties include investigating petitions assigned to him, and any other assignment within the mandate of the ICPC.

A summary of his sworn testimony is that a petition from the Indian High Commission, Abuja was assigned to his team in August 2013 for investigation. The petition was tendered and admitted in evidence as Exhibit 1. According to him, the petition was a complaint against one Chinyere Okeke Faith and one Miss Maduabuchukwu Amaka Macellina who were alleged to have presented forged documents to the Indian High Commission, Abuja with a view to obtaining visas for medical treatment in India. He said he went with his team to the Indian High Commission where the two ladies earlier mentioned were arrested. He said some documents were recovered from them when they were arrested.

He tendered the documents which were admitted in evidence as follows:

First Bank Statement of Account for Arkleen Oil & Gas Nig. Ltd. with account No. 3098725340 is Exhibit 2

An Introduction letter in favour of the two ladies written on Arkleen Oil and Gas Ltd letter headed paper and signed by one Dr. Arinola Williams addressed to the Indian High Commission is Exhibit 3.

A medical referral Letter from Domino Medical Centre signed by one Dr. Musa Suleman is Exhibit 4.

A Medical Referral letter from Submit Medical Centre signed by one Dr. Williams issued to Chinyere Okeke Faith is Exhibit 5.

Letter from Sagar Hospitals in favour of Okeke Chinyere Faith is Exhibit 6.

Letter from Sagar Hospitals in favour of Maduabuchukwu Nwamaka Marcellina is Exhibit 7.

Application form for Maduabuchukwu Nwamaka Macellina is Exhibit 8.

Visa Application form for Chinyere Okeke Faith is Exhibit 9.

His further testimony is that the two ladies were interrogated at their office where they made voluntary statements in which they said the defendant procured exhibit 2 to 9 for them for a fee of N180,000. The defendant was invited to their office where he made a statement. He admitted collecting the sum of N180,000 from the mother of the two ladies but that the documents were procured by one Chris who is at large. The defendant said he gave Chris the sum of N120,000 out of the money he collected. P.W.1 tendered the statement of the defendant which was

admitted in evidence as Exhibit 10. He testified further that all efforts to get the said Chris by members of his team proved abortive. He stated further that their investigation revealed that Arkleen Oil and Gas exists but that Domino Medical Centre and Submit Medical Centre do not exist.

P.W.2 is one Mrs. Amaka OKeke. A summary of her sworn testimony is as follows:

That her daughter by name Okeke Chinyere Faith who wanted to travel to India with a friend of hers by name Maduabuchukwu Nwamaka Marcellina informed her the defendant was assisting the two of them with their visas. She collected the defendant's phone number from Nwamaka and got in touch with him. She called the defendant who confirmed to her he was in the business of helping people process travel documents. She said she travelled to Abuja with her daughter and her friend where they met with the defendant. They explained their mission to him in his office from where he took them to the Immigration office for the processing of passport for her daughter and her friend. She said they paid the sum of N40,000 to the defendant for the two passports. They returned to the defendant's office after the passports were issued where he told them the documents for the visas would cost each of the ladies N90,000. They paid him the sum of N180,000 for the documents after which he told them to return two days later. She said the defendant called them after two days and they all agreed to meet at Gwarinpa junction from where he took her, her daughter and her friend to the Indian High Commission. She testified further that at the High Commission the defendant handed over the two passports and some other documents to the two ladies and told them to join a queue which they did. She identified Exhibits 2, 3, 4, 5, 6, 7, 8 and 9 as the documents the defendants handed over to the

ladies. She went on to say that while on the queue and in her presence the two ladies were taken out of the queue and taken away in a coaster bus by some people she did not know. She said she later got in touch with her daughter who told her the people were from ICPC and were taken away on the ground that the documents handed over to them by the defendant were fake. According to her she was with the defendant when she got this information.

Part of her testimony is as follows:

"I can see Exhibit 3. My daughter and her friend are not members of staff of the company as stated on it. My daughter told me they were informed by the officers of the ICPC that the documents they were given are fake and that they should produce the person who gave them. I was with the accused person when I got this information.

I can see Exhibit 4, 5 and 6. The information contained on these documents is not true. My daughter and her friend are healthy. They are not sick."

In answer to questions put to her under cross examination by the defence counsel, she stated as follows:

"I saw the documents that were handed over to my daughter. When I saw the documents saying my daughter and her friend were sick I challenged the accused person. I asked why he said my daughter and her friend were sick. He told me not to worry. He said the important thing was for them to get their visas. I did not know the information on the document was false. He told me it is his business and not mine."

P.W.3 is one Omotosho Ebeminiyi Stephen who is an investigator with the Independent Corrupt Practice Commission (ICPC). His testimony is that based on a report made to ICPC in August 2013 by the Indian High Commission, one Faith Okereke Maduabuchukwu Marcellina and Amaka Okeke were arrested. He said some documents were found with them. He identified Exhibits 2, 3, 4, 5 and 6 as documents found with them. He said a letter was written to First bank, Abuja on the statement of Account of Arkleen Oil and Gas to which the bank responded did not emanate from them. He said they also wrote to the Indian High Commission to confirm the existence of Sargah Hospital in India. The High Commission replied that the letter of reference was fake. He tendered the letter to First bank which was admitted in evidence as Exhibit 11. The reply from First bank was admitted as Exhibit 12. He said the response from the High Commission is that Exhibits 6 and 7 were fake. He testified further that efforts were made to trace both Domino Medical Centre and Submit Medical Centre where Exhibits 4 and 5 were alleged to have emanated. Their investigation revealed that the two hospitals did not exist. He said there were no CAC numbers on the letter heads of the Hospitals used as such there was no way they could trace the registration of the two hospitals. Attempt was also made to trace the address of Arkleen Oil and Gas Ltd as contained in Exhibit 3 but it was discovered the address did not exist.

In answer to questions put to him under cross examination P.W.3 said the claim of the defendant that the documents were made by some other person named Chris was investigated by him. He said the whereabouts of Chris is unknown as the defendant who mentioned him did not provide any lead to trace him.

The defendant gave a sworn testimony in his defence. His testimony is as follows:

"I am Okonkwo Johnbosco Chukwumerah. I am into interior decoration. I have been in the business for over five years. I know the charge against me. It is for the offence of forgery. I know one Maduabuchukwu Marcelina and Okeke Chinyere. I knew them through the husband of Okeke Chinyere, Mr. Owo who resides in India. I have been to India on several occasions. I went there for surgery and on holidays.

I remember I made a statement at the ICPC office wherein I said I took two ladies to the Indian Embassy. The ladies wanted to procure visas to India. Mr. Owo instructed me to take the ladies to the Indian Embassy. I am not a visa agent. Mr. Owo asked me if I knew anybody who could assist to procure visas, and I said 'yes'. I told him I knew one Mr. Chris at the Indian Embassy who could help to procure the visas.

I met Mr. Chris at the Indian Embassy when I went to collect my visa for my trip to India. Mr. Chris has never procured a visa for me in the past. Mr. Owo asked me for the process. I contacted Mr. Chris who told me he would charge the sum of N120,000. I gave Mr. Owo the information and he agreed.

I am aware that some documents were procured to facilitate the visa. I don't know who procured the documents but I know Mr. Chris handed over the documents to the ladies and their mother in front of the Embassy that morning. I saw the documents at the ICPC after my arrest. No document was

found on me after the arrest. My house was searched by the officers of the ICPC. No incriminating report was found in my house. They found only my medical report from my surgery was found (sic).

The two ladies called me that they were arrested at the Embassy by the officers of the ICPC. I went to the ICPC to confirm their arrest. It was then that I was arrested and detained. I told the investigators at ICPC about Mr. Chris. They told me the documents were forged. I immediately told them I did not procure the documents but that Mr. Chris did. I do not have any idea about the whereabouts of Mr. Chris.”

In answer to questions put to him under cross-examination by the Prosecution Counsel, he said he knew the ladies were coming to Abuja for visa and saw them on arrival. He said he linked them with Mr. Chris who he met at the Indian embassy. He said Mr. Chris used to call him to inquire if he (the Defendant) knew anybody who needed visas. He admitted collecting the sum of N180,000 from the ladies out of which he gave Chris N120,000. He denied giving the ladies any documents and insisted the documents were from Mr. Chris.

At the close of evidence, counsel on both sides filed their respective written addresses. For his part, learned prosecuting counsel formulated the following sole issue for determination:

Whether Prosecution proved the alleged offences against the Defendant beyond reasonable doubt.

Learned counsel to the defendant in his written address formulated the following four issues for determination:

1. *Whether criminal liability under our law can be transferred.*
2. *Whether in order to secure a conviction an accused person must be linked to the crime.*
3. *Whether a trial court can convict an accused based on inconsistent evidence of the Prosecution.*
4. *Whether considering the totality of the evidence adduced, the Prosecution has proved its case beyond reasonable doubt.*

Learned prosecuting counsel in his written address which he adopted as his oral submission in support of the case of the prosecution submitted that the standard of proof required of the prosecution in a criminal trial is proof beyond reasonable doubt which does not mean proof beyond every shadow of doubt. He relied on the case of LORI VS. STATE (1980) 8-11 SC 81. He submitted that the prosecution has proved all the ingredients of the offence for which the defendant is charged. On the ingredients to be proved for the offence of forgery, he relied on the cases of IMAM VS. SHERIF (2005) 4 NWLR Pt. 914 Pg. 80 and BABALOLA VS. THE STATE (1989) 4 NWLR Pt. 115 Pg. 264 as well as the book Encyclopedia of the Penal Code and Criminal Procedure of the Northern Nigeria and Abuja by Sir T.A. Nwamara on the meaning and ingredients of the offence of forgery. He submitted that the prosecution proved that Exhibits 2, 3, 6, 7 4 and 5 recovered from Faith Chinyere Okeke and Maduabuchukwu were fraudulently made by the defendant for the purpose of procuring visa to India.

He submitted further that the defence of the defendant that the documents were made by someone else would not relieve him of criminal liability because he gave the documents to the ladies. He urged me to

hold that the prosecution has proved his case against the defendant and convict him accordingly.

Learned counsel to the defendant in his written address submitted that the prosecution has failed to prove the offence of forgery and urged me to so hold. He submitted that liability for criminal acts must accrue only to the offender and no one else. He submitted that a principal feature of this case is that it was one Chris who procured the forged documents. This being so, he said the defendant cannot be held liable for the forgery of the documents. His position is that the prosecution failed to establish any link between the defendant and the forged documents. He contended further that there are contradictions and inconsistencies in the evidence of the prosecution which must be resolved in favour of the defendant. He craved in aid of his submission the case of RUFUS VS. STATE (2014) LPELR-22797(CA) and a plethora of other cases. He finally urged me to quash the charge against the defendant and discharge and acquit him.

The defendant is standing trial on a 6 count charge for the offence of forgery contrary to Section 363 of the Penal Code and punishable under Section 364 of the same law.

Section 363 of the Penal Code provides as follows:

“363. Whoever makes any false document or part of a document, with intent to cause damage injury to the public or to any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract 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.”

Section 364 of the Penal Code provides as follows:

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

In the case of YOHANNA DALYOP VS. THE STATE (UNREPORTED) decision of the Court of Appeal (Jos Judicial Division) delivered on Thursday, the 16th day of May 2013, 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.”

It is trite that in criminal trials the prosecution has the unshifting burden and duty to prove all of the ingredients for which a defendant is charged beyond reasonable doubt. See TANKO VS. STATE (2008) 16 NWLR Pt. 1114 Pg. 597 at Pg. 636 - 637 PARAS. D - B and Section 135 of the Evidence Act 2011.

In the 6 count charge against the defendant he is alleged to have forged the following documents:

In count one, he is alleged to have forged a statement of account of First Bank of Nigeria Plc in the name of Arkleen Oil and Gas Nig. Plc which statement was tendered and admitted as Exhibit 2.

In count two of the charge he is alleged to have forged letter of introduction of Arkleen Oil and Gas Nigeria Ltd in favour of Mrs. Okeke Chinyere Faith which letter was tendered and admitted in evidence as Exhibit 3.

In count three of the charge he is accused of forging a medical reference letter of Sagar Hospitals in favor of Maduabuchukwu Nwamaka Marcelina which was tendered and admitted in evidence as Exhibit 7.

In count four of the charge he is accused of forging a medical reference letter of Sagar Hospitals in favor of Mrs. Okeke Chinyere Faith which was tendered and admitted in evidence as Exhibit 6.

In count five of the charge he is accused to have forged a medical reference letter of Domino Medical Centre of Maitama Abuja in favor of

Mrs. Maduabuchukwu Macelina which letter was tendered and admitted in evidence as Exhibit 4.

In count six of the charge he is accused of forging a medical reference letter of Submit Medical Centre which was tendered and admitted in evidence as Exhibit 5.

It is the case of the prosecution that Exhibits 2, 3, 4, 5, 6 and 7 were forged and were made fraudulently with the intention to procure Indian visas for Maduabuchukwu Marcelina and Faith Chinyere OKeke.

The evidence of P.W1. and P.W.3 who are investigating officers with the ICPC is that the said documents were recovered from Maduabuchukwu Marcelina and Okeke Faith Chinyere who were arrested at the Indian High Commission pursuant to a petition written to the ICPC.

Exhibit 1 is a petition dated September 02, 2013 from the High Commission of India. It reads in part as follows:

"2. The under mentioned documents were scrutinized by the visa section of the India High Commission at Abuja and found to be fake:

(c) letter of invitation No: SH/MR 0308 dated August 08, 2013 from Sagar Hospitals, Tilak Nager, Banagalore (India) addressed to Visa section, India High Commission Nigeria issued in favour of Maduabuchukwu Nwamaka (Passport No: 04951194).

(d) letter of invitation No: SH/MR 0328 dated August 10, 2013 from Sagar Hospitals, Tilak Nager, Banagalore (India) addressed to visa section, Indian High Commission, Nigeria issued in favour of Okeke Chinyere Faith (Passport No. A04951245)"

The evidence of P.W.1 and P.W.3 is that the documents recovered were investigated and found to be fake. Exhibit 2 is a First Bank statement of account with No: 3098725340 in the name of Arkleen Oil and Gas Nig. Ltd. The name and logo of First Bank is on the document. P.W.3's testimony on the statement of account is as follows:

"We wrote to First Bank Abuja. The bank replied that the statement of account of Arkleen Oil and Gas recovered did not exist in their record and that same did not emanate from them."

A copy of the letter to First bank and the reply were tendered and admitted in evidence as exhibits 11 and 12 respectively.

Exhibit 11 reads as follows:

"The attached statement of account No: 3098725340 purportedly belonging to one Arkleen Oil and Gas Nig. Ltd was allegedly issued by your organisation. Kindly confirm whether the statement of account emanated from your organisation and whether the company is one of your customers"

Exhibit 12 which is the response reads thus:

"We refer to your letter dated March 13, 2014 reference ICPC/CSU/H/Q13/14 on the captioned and advise that the account does not exist in our records and the attached documents did not emanate from us."

The evidence of P.W.1 and P.W.3 on the status of exhibit 2 was not discredited in any way. Exhibit 2 which has the logo of First bank was presented as a document of First bank whereas it is not and I so hold. Section 362(a) of the Penal Code defines a false document.

I find the evidence of P.W.1 and P.W.3 and the reply from First bank, exhibit 12 credible and sufficient to establish that exhibit 2, the Bank statement was forged and I so hold.

Exhibit 3 is a letter from Arkleen Oil and Gas signed by one Dr. Arinola Williams. It is a letter of introduction for Mrs. Maduabuchukwu Nwamaka Marcelina and Okeke Chinyere Faith.

The letter was recovered from the two ladies at the Indian High Commission as part of the documents presented in support of their visa applications. The evidence of P.W.3 on the document is as follows:

"I tried to trace the address of Arkleen Oil and Gas as stated on their letter head which is an address in Kaduna.

I discovered that such address did not exist."

The letter exhibit 3 is a letter introducing Marcelina and Okeke Chinyere was purported to have been issued by Arkleen Oil and Gas which investigation reveal does not exist. The evidence of P.W.3 is not contradicted in any way. I find exhibit 3 not to be what it was presented to be and I so hold. It is a false document by virtue of Section 362(1) of the Penal Code and I so hold.

Exhibits 4 and 5 are medical reports from Domino Medical Centre, 16, Unity Crescent, Maitama, Abuja and Submit Medical Centre, 16, Thomson Street, off Medical Road, Jimoh Akowonjo, Kogi State. The uncontradicted evidence of P.W.1 on the two documents is as follows:

"Domino Medical Centre does not exist.

Submit Medical Centre does not exist."

The evidence of P.W.3 on exhibits 4 and 5 is as follows:

“We attempted to trace Domino Medical Centre, Submit Medical Centre. We discovered that the centers do not exist. There is no CAC No. on the letter heads of the medical centres so there was no way we could trace their registration.”

Exhibits 4 and 5 were presented as medical reports to back up the visa application of Marcellina and Chinyere Okeke. They are medical reports presented for the grant of medical visas for a trip to India. There is evidence and which I believe that the makers of exhibits 4 and 5 do not exist. This is the credible evidence of P.W.1 and P.W.3. I find them to be false documents and I so hold.

Exhibit 6 and 7 are letters to the visa section of the Indian High Commission, Nigeria from Sagar Hospitals with an address in Bangalore, India. The High Commission where the letters were sent to confirmed that the documents were fake. The documents were presented at the Indian High Commission for medical visa. On the face of it they were made based on exhibits 4 and 5 which have been found to be fake. P.W.2's evidence is that Marcellina and Chinyere her daughter were not sick but that the documents were part of those handed over to them for presentation at the Indian High Commission for the purpose of procurement of visas to India.

From all of the above I find that the prosecution has been able to prove that exhibits 2, 3, 4, 5, 6 and 7 are forged documents within the meaning of Section 363 of the Penal Code and I so hold.

The next question is whether the prosecution has established that it is the defendant who forged the documents. It is settled law that an

essential ingredient in a charge of forgery is proof that the accused person forged the documents in question. See IDOWU VS. STATE (1998) 11 NWLR Pt. 574 Pg. 354 at 363 Para E, AITUMA VS. STATE (2007) 5 NWLR Pt. 1028 Pg. 466 and ALAKE VS THE STATE (1992) 9 NWLR Pt. 265 Pg. 260.

There is undisputed fact that the defendant who does not work at the Indian High Commission was contacted and he agreed to help to procure visas for one Okeke Chinyere Faith and Maduabuchukwu Marcellina Nwamaka to travel to India. This is the evidence of P.W.3 which was corroborated by the defendant. The defendant in his sworn testimony stated as follows:

"I know one Maduabuchukwu Marcellina and Okeke Chinyere. I know them through the husband of Okeke Chinyere, Mr. Owo who resides in India. I have been to India on several occasions. I went there for surgery and on holidays. I remember I made a statement at the ICPC office wherein I said I took two ladies to the Indian Embassy. The ladies wanted to procure visas to India. Mr. Owo instructed me to take the ladies to the Indian Embassy. I am not a visa agent. Mr. Owo asked me if I knew anybody who could assist to procure visas and I said "Yes." I told him I knew one Mr. Chris at the Indian Embassy who could help to procure the visas."

P.W.2 who is the mother of Chinyere Faith testified that she accompanied her daughter and her friend Marcellina to Abuja where they met the defendant who they had contacted to procure Indian Visas for them. Her further evidence is that they paid the defendant a sum of

N180,000. She said the defendant collected the sum of N90,000 for each of the visas. The defendant admitted collecting the sum of N180,000 for the visas. In answer to questions put to him under cross examination he said:

“The money charged was given to me. The money was N180,000..... I gave the sum of N120,000 out of the money I collected to Mr. Chris. The balance of N60,000.00 is still with me.”

I find established the fact that the defendant collected the sum of N180,000 for the procurement of two Indian visas and i so hold. P.W.2 testified further that after making the payment the defendant took them to the Indian Embassy. Her testimony is as follows:

“After the payment he told us to come back after two days so that he would take my daughter and her friend to the Indian Embassy to do the thumb printing after which they would be issued visas. After two days he called us to meet him at the Gwarinpa junction. He met us there and took us to the Indian embassy. At the Indian embassy he handed over the two passports and other documents to my daughter and her friend and asked them to join the queue. Some people came and met them on the queue. They collected their passports and documents. These people matched my daughter and her friend to a coaster bus.”

The defendant admitted taking the ladies to the embassy on the day they were arrested. He was present when they were arrested

with the fake documents, exhibits 2, 3, 4, 5, 6 and 7. I find the following facts proved:

That the defendant who does not work with the Indian High Commission agreed to assist Okeke Chinyere Faith and Marcellina Maduabuchukwu to procure Indian visas.

That the defendant presented himself to the ladies and their mother as an agent who could help with the procurement of the visas and was paid the sum of N180,000 for his services.

That he went with the two ladies and P.W.3 to the Indian High Commission on the day of their arrest.

P.W.1 and P.W.3 who are investigating officers with the ICPC testified that when the two ladies were arrested based upon a petition from the Indian High Commission, exhibits 2, 3, 4, 5, 6 and 7 which I have found to be forged documents were recovered from them. It is their further testimony that upon interrogation the ladies informed them that the documents were handed over to them by the defendant who they contacted to help with procurement of Indian visas. This they said led to the arrest of the defendant.

The defendant admitted he knew the two ladies and P.W.3. He also admitted he took them to the Indian High Commission on the day they were arrested. It is the case of the prosecution as presented by P.W.3 that the defendant gave the fake documents to Chinyere and Marcellina as documents to be presented for their visa application. P.W.3 was consistent on this even under very rigorous cross examination. She denied knowledge of Chris who the defendant alleged gave the documents to her daughter and her friend. The defendant's defence is that it was one Chris whom he

approached to assist with the visas that handed over the documents to the ladies at the Indian High Commission. His evidence is as follows:

"I am aware that some documents were procured to facilitate the visa. I don't know who procured the documents but i know Mr. Chris handed over the documents to the ladies and their mother in front of the embassy that morning."

The defence of the defendant is that it was Chris who he admitted he approached and brought into the business that gave the documents to the ladies. He took the ladies to the embassy and according to him the documents were handed over to the ladies in his presence. The consistent evidence of P.W.2 who was present at the embassy is that it was the defendant who handed over the documents in contention to her daughter and her friend. This evidence of P.W.2 was not impeached under cross examination. P.W.2, her daughter and her friend travelled to Abuja to meet with the defendant. The defendant met them on arrival and took them to his office. They discussed their mission which was to procure Indian visas. He charged them the sum of N180,000 which they paid. The defendant did not deny collecting the money from them. There is no evidence that P.W.2 and the two ladies met with Chris before going to the embassy. The evidence from both the prosecution and the defence is that P.W.2 and the ladies met only with the defendant and all negotiations was with him and I so hold.

Learned counsel to the defendant in his written address submitted that there are inconsistencies in the evidence adduced by the prosecution. He submitted that exhibits 13A and 13B which are the written statements made by Maduabuchukwu Marcellina are inconsistent with the case of the prosecution. They are certified true copies of the statement of Marcellina

which were tendered by the defence counsel from the bar. Marcellina who made exhibits 13A and 13B was never called as a witness in this case. The law is that where a witness whose previous written statement has been admitted never testified at all the statement should not be considered as evidence of facts contained in it. See EKPENYONG VS. STATE (1991) 6 NWLR Pt. 200 Pg. 683. Exhibits 13A and 13B which were made by a person who is not a witness in this case cannot be used as evidence of the facts contained therein and I so hold. In the circumstance no weight would be attached to the statements and they cannot be used to establish inconsistency in the case of the prosecution.

Further on the alleged inconsistency in the case of the prosecution, learned counsel to the defendant posited that P.W.2's sworn testimony that the defendant handed over the documents in issue to the two ladies at the High Commission is contradictory and inconsistent with her previous written statement at the ICPC. The defence counsel tendered a certified true copy of the written statement which was admitted in evidence as exhibit 14.

The law is that where a party intends to contradict the evidence of a witness with a previous statement he made, that party must first draw the attention of the witness to the circumstances in which the statement was made and to parts of the statement which the party cross examining wishes to use for the purpose of contradicting the witness. See Section 232 of the Evidence Act and the case of STATE VS EDO (1991) 7 NWLR Pt. 201 Pg. 98. In short where a party intends to contradict a witness with a previous statement made in writing by that witness, the written statement must be produced in Court and the witness duly

confronted with it. In the instant case, P.W.2 was not confronted with exhibit 14. She had no opportunity to explain the contradictions if any. In the circumstance, exhibit 14 cannot be used to discredit or impeach her evidence and I so hold. Her evidence that it was the defendant that handed over the fake documents to Chinyere and Marcellina is unshaken and I find it credible.

The defendant met with P.W.2, Chinyere and Marcelina who agreed to help them to procure Indian visas for the sum of N180,000 which they paid. He acknowledged receipt.. He went with them to the Indian High Commission where the documents were handed over to the two ladies. P.W.2's testimony is that she saw the documents and raised some enquiries to which the defendant responded that she should not worry as it was his business to get the visas. It is also the testimony of P.W.2 that she was with the defendant when Chinyere called her that the people who took them away in the bus were from ICPC and that the documents given to them by the defendant were fake. From the totality of the evidence of the prosecution I find proved the fact that it was the defendant that handed over exhibits 2, 3, 4, 5, 6 and 7 to Chinyere Faith Okeke and Marcellina Maduabuchukwu and I so hold.

The defendant's defence is that he did not procure the documents in question. The law is settled that in a criminal trial, the requirement of proof beyond reasonable doubt does not mean proof beyond shadow of doubt. See UWAGBOE VS STATE (2007) 6 NWLR Pt. 1031 Pg. 606, IGABELE VS STATE (2006) 6 NWLR Pt. 975 Pg. 100 and GARKO VS STATE (2006) 6 NWLR Pt. 977 Pg. 524. It is also settled law that the offence of forgery like other offences may be proved by direct or circumstantial evidence of surrounding circumstances which by undersigning

coincidence is capable of proving a proposition with the accuracy of mathematics.

In OSONDU VS. F.R.N. (2000) 12 NWLR Pt. 682 Pg. 483, Edozie JCA at Pg. 504 - 505 PARAS H - B held as follows:

“In my humble view the circumstantial evidence is overwhelming and pointed irresistibly to the fact that it was appellant himself who forged and uttered exhibits A7, A9 and A11 or that he procured someone to forge and utter them and in either case is guilty of committing those offences by virtue of Section 7 of the Criminal Code.”

Circumstances do exist under which a person who has not been proved to actually forge a document may be convicted of the offence of forging it. See OKORIE VS QUEEN (1957) SCNLR 221.

I have found exhibits 2, 3, 4, 5, 6, and 7 to be forged documents. It has been established that the defendant agreed to assist Chinyere and Marcelina to procure Indian Visas and handed over the documents in issue to them. The defendant was paid the sum of N180,000 to do the “job” which money he admitted collecting. There is also credible evidence that the defendant took the ladies to the Immigration office where he procured International passports for them. This fact was not denied. All this while the said Chris was not in the picture. The defendant admitted he did all these alone. I have no doubt in coming to the conclusion that the defendant orchestrated the visa procurement saga which culminated in the presentation of forged documents by the two ladies and i so hold. He handed over the documents to them to be used as genuine documents to enable them procure Indian visas. The evidence of the defendant is that he brought in Mr. Chris who according to him brought the forged

documents. He said he paid Chris N120,000 out of the sum of N180,000 collected by him. The defendant did not to produce Mr. Chris. I have no hesitation in the present circumstance to hold that the defendant was an active participant in the visa procurement scheme which is presenting false documents as genuine to obtain Indian visas and I so hold.

In the case of OSONDU VS. F.R.N. (SUPRA), the appellant was arraigned on charges of conspiracy, stealing and forgery. In his statements to the police upon arrest his defence was that it was one Charlie who masterminded the fraud and he (appellant) only realized the illegal nature of the transaction when Charlie revealed that money had been paid for same. The appellant stated that Charlie collected a greater part of the proceeds of the fraud leaving only 30% for the appellant. All effort by the police to establish the identity of Charlie or locate his whereabouts however proved abortive. The appellant was convicted for conspiracy, stealing and forgery. On appeal, the Court of Appeal per Edozie JCA held as follows at Pg. 505 PARAS. A-D:

"It is the law that where 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 Letter 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 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.

The essential ingredients of the offence of forgery are as follows:

1. That there was a document in writing.
2. That the document or writing was forged.
3. That the forgery was by the accused person.
4. That the accused person knew that the document or writing is false.
5. That the accused intended the forged document to be acted upon to the prejudice/detriment of the victims in the belief that it was genuine.

The above ingredients have been proved by the prosecution in this case by credible evidence and I so hold. The defendant procured exhibits 2, 3, 4, 5, 6 and 7 which are forged documents for the

purpose of fraudulently obtaining visas for one Okeke Chinyere Faith and one Maduabuchukwu Nwamaka Marcelina for which he was paid the sum of N180,000. Exhibits 8 and 9 are the visa application forms. The defendant clearly intended the use of the forged document to procure visas for the two ladies and I so hold. The defence of the defendant that it was Mr. Chris that procured the document would not avail him as I find same to be an after-thought.

The prosecution has clearly made out a case of forgery contrary to Section 363 of the Penal Code and punishable under Section 364 of the Penal Code against the defendant. The prosecution has proved beyond reasonable doubt the offence for which the defendant is charged and I so hold.

I find the offence in count 1 of the charge proved and I convict you, Okonkwo Johnbusco Chukwumerah Temple for the offence of forgery contrary to S.363 and punishable under S.364 as charged.

I find the offence in count 2 of the charge proved and I convict you Okonkwo Johnbusco Chukwumerah Temple for the offence of forgery contrary to S.363 of the Penal Code and punishable under S.364 of the Penal Code as charged.

I find the offence in count 3 of the charge proved and I convict you Okonkwo Johnbusco Chukwumerah Temple for the offence of forgery contrary to S.363 of the Penal Code and punishable under S.364 of the Penal Code as charged.

I find the offence in count 4 of the charge proved and I convict you Okonkwo Johnbusco Chukwumerah Temple for the offence of forgery contrary to S.363 of the Penal Code and punishable under S.364 of the Penal Code as charged.

I find the offence in count 5 of the charge proved and I convict you Okonkwo Johnbusco Chukwumerah Temple for the offence of forgery contrary to S.363 of the Penal Code and punishable under S.364 of the Penal Code as charged.

I find the offence in count 6 of the charge proved and I convict you Okonkwo Johnbusco Chukwumerah Temple for the offence of forgery contrary to S.363 of the Penal Code and punishable under S.364 of the Penal Code as charged.

HON. JUSTICE FOLASADE OJO

JUDGE

28/6/2017

Michael Adesola appears for the Prosecution.

Chuka Iloeje appears with Chibuike Emezube for the Defendant.