

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON THE 12TH DAY OF JANUARY 2018 SUIT NO. FCT/HC/CR/105/2013

BEFORE HIS LORDSHIP:
HONOURABLE JUSTICE FOLASADE OJO - JUDGE

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT

AND

SULEIMAN SEIDU

DEFENDANT

JUDGMENT

The defendant was arraigned before this Court on a two count charge for the offences of obtaining by false pretence and forgery. He pleaded not guilty to the charge which reads as follows:

“COUNT 1

That you Suleiman Sheidu sometime in 2009 in Abuja, within the jurisdiction of this Honourable Court, with intent to defraud, obtained the sum of two million one hundred thousand naira (N2,100,000.00) from Antonius Johan Meuleman through one Comfort Basseff Effiong on the false pretence that you will help him invest the money through securing government contracts, which you knew is 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 2

That you Suleiman Sheidu sometime in 2010 in Abuja, within the jurisdiction of this Honourable Court did fraudulently forge a contract paper titled 'Award of contracts to Mueleman and Suleiman International Limited' dated 19/11/10 purportedly awarded by the Federal Ministry of Finance which you knew to be forged and thereby committed an offence contrary to Section 362 of the Penal Code Act and punishable under Section 364 of the Penal Code Act."

The case went on to trial. The prosecution called four witnesses who testified as P.W.1, P.W.2, P.W.3 and P.W.4 respectively. All the four witnesses were cross examined by the defence counsel. At the close of evidence of the prosecution, the defence counsel made a no case submission on behalf of the defendant. In a considered ruling delivered on the 10th of May 2016, this Court upheld the defendant's no case submission in respect of the first count of the charge and discharged him on same. He was called upon to enter his defence in respect of the second count of the charge. The defendant testified on his own behalf and called no witness. He was cross examined by the prosecuting counsel.

At the close of evidence, written addresses of counsel was ordered. Counsel on both sides filed their respective written addresses which they adopted as their final oral submissions in support of the case of parties.

Learned counsel to the defendant formulated a sole issue for determination to wit:

"Whether the Prosecution has made out its case against the Accused Person beyond reasonable doubt."

For his own part, the prosecuting counsel formulated the following issues as arising for determination:

“Whether the Prosecution has proved the case against the Defendant beyond reasonable doubt as required by law.”

The contents of the issues identified by both counsel are practically the same. I adopt the issue formulated by the prosecuting counsel as mine. The charge against the defendant is for the offence of forgery contrary to Section 362 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 to cause any person to part with property or enter into any express or implied with or intend to commit fraud may be committed, commits forgery; and a false document made wholly or in part by forgery is called a forged document.”

The object of forgery has been held to be to cheat others by wrongful acts of make belief as genuine a 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 law is settled that in criminal trials, the prosecution has the unshifting burden and duty to prove all of the ingredients of the offence charged beyond reasonable doubt. See Section 135 of the Evidence Act.

The prosecution in the instant case called four witnesses who testified as P.W.1, P.W.2, P.W.3 and P.W.4 respectively. P.W.1 is one

Antonous Joseph Johan Meuleman, a resident of the Kingdom of the Netherlands and a consultant in telecommunications, post and energy. A summary of his sworn testimony is as follows: That he carried out consultancy work for NIPOST between the years 2007 and 2011 and currently a subcontractor for a project of Central Bank of Nigeria. He said he met the defendant who was a taxi driver sometime in the year 2007 around Nicon Luxury Hotel, Abuja. They later became friends and business partners. They incorporated a company known as Meuleman and Suleiman International Ltd. In the course of running the business he transferred a total of about thirteen thousand US Dollars to him as working capital for the company. The money he said was transferred to the account of his fiancé, one Comfort Bassey Effiong who handed it over to him. The exchange rate at the time was N150 to the dollar. The total money sent came to between Two Million Naira and N2.1Million Naira.

P.W.1 testified further that he visited Nigeria at the end of November 2009. He met with the defendant who showed him a letter of award on the letter head of their company but signed by the Ministry of finance. He said he became suspicious of the defendant after going through the letter which contained many grammatical errors. The content of the letter made him feel the defendant was perpetrating some fraud. He insisted on going to the bank with him to check the account balance of the company. At the bank he discovered the defendant did not deposit the money he sent into the company account. He said he presented to the bank officials a deposit slip for a sum of M2million scanned to him by the defendant as evidence of payment into the account. He was told the deposit slip was forged. He was convinced the defendant had duped him. He made a report in writing to the EFCC. He testified further as follows:

“The evidence I showed to the EFCC were a copy of the accused person’s passport, scan of the Deposit slip of 1st

Bank which the accused person sent to me as evidence that he deposited money into the bank, a certificate of the Corporate Affairs Commission which showed that our company was formally established. A letter from the commission in which the directors of the company were mentioned and a letter on the letter head of Meuleman and Suleiman Company on winning a tender signed by the Ministry of Finance.”

P.W.2 is one Comfort Bassey. Her evidence is that P.W.1, the complainant is her fiancée and that the defendant is her fiancée’s driver. She said when P.W.1 came to Nigeria in the year 2009 he instructed the defendant to open a company account for him where monies he would send would be paid. She said P.W.1 made a first transfer of 8,000 US dollars to her on the 18th of November 2009. She went with the defendant to the bank to withdraw the money which was subsequently changed into Naira. The Naira equivalent of the money was N1.2Million which she handed over to the defendant as instructed by P.W.1. P.W.1 later sent another sum of 8,000 US dollars which also came to N1.2Million. She handed over the second sum of N1.2Million to the defendant upon the directives of P.W.1. The total money she gave the defendant was N2.4Million. She testified further that P.W.1 visited Nigeria in March 2010. He met with the defendant in her presence at Nikon Luxury Hotel, Abuja. During the meeting she said P.W.1 signed some First Bank documents given to him by the defendant. P.W.1 visited Nigeria again in December 2010. She said it was during that visit that P.W.1 discovered that the defendant did not deposit the sum of N2.4Million she gave him into the company account as agreed. This she said prompted him to report the matter to the EFCC.

P.W.3 is one Chikezie Agyocha a staff of First Bank. He stated as follows:

“My duties include managing accounts of customers, booking of loan request and processing same. I also sell products of the bank. I know a company known as Suleiman and Meuleman (Nig.) Ltd. The company is one of the accounts we have in our Bank, Main Branch, Abuja. The Company account is a Corporate account. The account was opened on the 30th of December 2009. It is a sole signatory account. The sole signatory is Suleiman Sheidu. It was opened with an initial deposit of N10,000.

Sometime in the year 2011, EFCC wrote a letter to First Bank requesting for some information and documents relating to this account. On the 18th of November 2011, the bank responded to the request. We attached to our response CTC of the account opening documents, the mandate card as well as the statement of account. The response was addressed to the Deputy Director (Operations) of the EFCC. It was on the bank’s letter headed paper. On the 12th of December 2011 the bank respondent to another letter from the EFCC where they requested for information about a particular letter purportedly issued by the bank. Our response was directed to the Deputy Director of EFCC. In our response we stated that the date on the teller predates the date the account was opened. The teller was dated 8th December 2009. While the account was opened on the 30th of December 2009. We stated that the teller could not have emanated from First Bank as payments cannot be made into an unopened account. I can see a letter shown to

me. It is our first response to EFCC with the attachments. It is dated 18th November 2011.”

P.W.3 tendered some documents which were admitted in evidence and marked as follows:

1. Letter of 18/11/11 from First Bank with attachments is Exhibit 1.
2. Letter of 12/12/11 from First Bank with an attachment is Exhibit 2.

P.W.4 is one Adetiloye Koyejo who is an operative of the EFCC Abuja office. His testimony is as follows:

“My schedule of duties include investigation of reported petitions. I conduct search, conduct interviews, arrest and any other lawful duties attached to me by my superiors. I know the accused person. His name is Suleiman Seidu. We received a petition dated 20th December 2010 at the commission from one Antonous Joseph Johan Meuleman. The petition bordered on obtaining by false pretences. The petition also came with some attachments. The attachments are certificate of incorporation of Meuleman and Suleiman International Ltd. Data Page of the International Passport of the accused person and that of the complainant.

Letter of Award of contract on the letter head paper of Meuleman and Suleiman purported to have emanated from the Ministry of Finance stamped the procurement unit.

A First Bank Deposit slip dated 8th December 2009 in favour of Meuleman and Suleiman for about Two Million Naira. The case was referred to bank fraud unit for investigation and report. We have the contact of the petitioner which includes his telephone number and e-mail address. These were contained in the petition. We immediately called the petitioner.

He could not be reached on phone. We sent e-mails to him to intimate him of the receipt of his petition by the commission and the need for him to come and adopt it.

We commenced investigation. Letter of investigation activities was sent to First Bank requesting for account details of Meuleman and Suleiman International Ltd. The bank responded. We received the response. Our investigation revealed that the company account was opened by the accused person about the 31st December 2009. This means that the account was opened after the date of the transaction of the sum of Two Million Naira purportedly paid by the accused person to the company account. The deposit slip in question carried the stamp of the bank. We wrote to the bank for a confirmation of the genuineness or otherwise of the slip and the said transaction even though the statement of the account of the company already revealed that no such money was paid into the said account. The response from the bank indicated that the date on the deposit slip precedes the opening of the account hence they were not aware of that transaction.

We also wrote to the Federal Ministry of Finance attaching the letter of award of contract requesting the Ministry to confirm the genuineness or otherwise of the contract and the authenticity of the letter even though it was on the letter of Meuleman and Suleiman Ltd. but stamped by the Ministry. The response from the Federal Ministry of Finance indicated that the letter of award was fake. On a visit to the Federal Ministry of Finance we were referred to the anti corruption unit. One Mr. Felix Nweke reported to our office and volunteered statement

in support of their response that the letter of award of the contract was fake.

In the course of our investigation one Comfort located our office that she was directed by the complaint. She was interviewed and shown a copy of the petition and all the attachment. She recognised the accused person through the data page of the International Passport of the accused person attached to the petition. She said she had something to say on the petition. She was given a statement form. She volunteered her statement. She said the complainant sent money to the accused person through her Fidelity Bank Account sometimes in 2009. We wrote to Fidelity Bank requesting for the account details of Comfort. The bank responded. The statement of account indicated that about 18th and 19th November 2009 the account was credited with separate inflow of 8,275 US dollars each. In the course of the investigation on the 28th November 2011 the accused person was arrested by a team of operatives and brought to the EFCC office. He was shown a copy of the petition written against him and the attachment. He read through it and he said he would like to react. I administered the words of caution to him. I asked him if he understood. He said yes. I wrote the cautionary words on the EFCC statement form. He read it and signed. He volunteered his statement. His statement was read to his hearing. He said he had nothing to add. I countersigned as a witness. He was later taken before a superior police officer for the attestation of his statement. On

the 12th of June 2012 the complaint reported to the EFCC office where he volunteered a statement adopting the petition. The investigation was open to reconciliation of parties with the hope the parties could settle and the accused person takes advantage. On 31st of January 2013 the accused person was re-invited. He reported with an army officer to our office. I took him to our information department. We requested for his e-mail details. The internet was switched on. He logged in his e-mail address. He input his password. He was navigated to homepage of the inbox of his e-mail account. The e-mail account was Suleimanseidu@gmail.com. Documents were printed out in his presence by the IT officer. I obtained the statement form again and I administered the words of caution. He said he had no comments to make. I carried out an investigation on the company. We wrote to the Corporate Affairs Commission requesting for the company details of Meuleman and Suleiman International Company Ltd. the response received indicated that the accused person and the complainant are both directors of the company. The petition was addressed to the commission with receiving stamp of the commission with all the documents I earlier mentioned. I can see a document now shown to me. It is the petition and the attachments.”

P.W.4 tendered the following documents which were admitted in evidence:

1. Letter of December 20, 2010 from Antonous Joseph Johan Meuleman with six attachments is Exhibit 3.
2. Letter of 1st December 2011 from the Economic and Financial Crimes Commission is Exhibit 4A.

3. Letter of 14th February 2011 from the Federal Ministry of Finance is Exhibit 4B.
4. Letter of 6th March 2012 to the Managing Director, Fidelity Bank Plc. is Exhibit 5A.
5. Letter of 29th June 2012 from Fidelity Bank Plc with attachments is Exhibit 5B
6. Letter of 21st October 2011 to the Registrar General of the Corporate Affairs Commission with attachments is Exhibit 6A.
7. Letter of 30th November 2011 from the Corporate Affairs Commission with attachments is Exhibit 6B.
8. Statement of Felix Nweke dated 27th August 2012 is Exhibit 7.
9. Statement of the Defendant of 28/11/11 is Exhibit 8.
10. Statement of the Defendant of 31/1/13 is Exhibit 9.
11. EFCC Attestation Form of 8/12/11 is Exhibit 10.

The defendant in his defence testified on oath. He denied the charge of forgery against him. He denied forging any letter of award of contract from the Federal Ministry of Finance. He said he knew nothing about the letter of award which he said was shown to him at the EFCC. He tendered a copy of the letter of award which he said was shown to him at the EFCC. The letter was admitted in evidence as Exhibit 11. He also tendered Exhibit 12 which is a copy of the First Bank deposit slip shown to him at EFCC.

Counsel on both sides filed their respective written addresses which they adopted as their final oral submissions.

Learned counsel to the defendant submitted that the prosecution has failed woefully to prove the case of forgery against the defendant as the ingredients of the offence have not been established by evidence. He submitted that the onus is on the prosecution to prove the culpability of

the defendant. He relied on the provisions of Section 132, 136(1) and 139(3) of the Evidence act as well as the cases of USUFU VS. FRN (2007) 1 NWLR Pt. 1020 Pg. 93, ONWUDIWE VS. FRN (2006) 10 NWLR Pt. 988 Pg. 382 amongst others. He submitted further that the prosecution failed to establish that the defendant made, signed or executed the alleged forged document as required by law.

Defence counsel contended further that the prosecution failed to identify and exclusively tender the alleged forged documents before the Court. This he said is fatal to the case of the prosecution as a Court is not allowed to speculate. He argued further that no foundation was laid for the admissibility of the documents attached to Exhibits 4A, 4B, 5A and 5B and urged me to expunge them from the record. He relied on Section 88 and 89 of the Evidence Act and urged me to hold that the entire case of the prosecution is premised on suspicion which cannot ground conviction of a crime. He further urged me to hold that the prosecution has failed to prove the offence of forgery alleged against the defendant beyond reasonable doubt and discharge and acquit him.

For his part, the prosecuting counsel submitted that the prosecution has proved the essential elements of the charge against the defendant. She relied on the definition of the offence of forgery as set out in Section 363 of the Penal Code. She contended that the uncontradicted testimonies of P.W.1, P.W.2, P.W.3 and P.W.4 is that the defendant forged and was in possession of the letter of award of contract which he also used as genuine. She went on further to say that the defendant admitted in his confessional statement that he forged the document and which admission was corroborated by the prosecution witness. Counsel contended further that the defendant failed woefully to substantiate his claim that he did not forge the document. She urged me to place reliance on the letter from

the Ministry of Finance and the statement of Felix Nweke tendered as exhibits in this case. Counsel further submitted that the Court can safely convict on the confessional statement of the defendant wherein he admitted forging the document and urged me to convict the defendant as charged.

Learned counsel to the defendant in his written address urged me to expunge Exhibits 4A, 4B, 5A and 5B and the attachments thereto from the record. The said Exhibits were admitted in evidence without any objection from him. The law is that no Court is permitted to admit and act on legally inadmissible evidence and where such evidence has been admitted the Court must reject it when giving its final judgment. See SHANU VS. AFRIBANK (NIG.) PLC. (2002) 17 NWLR Pt. 795 Pg. 185 and SHITTU V.s FASHAWE (2005) 14 NWLR Pt. 946 Pg. 671.

Exhibit 4A is an acknowledgment copy of a letter dated 1st December 2011 from the Economic and Financial Crimes Commission to the Honourable Minister of Finance.

Exhibit 4B is a letter from the Federal Ministry of Finance to the Chairman, Economic and Financial Crimes Commission.

Exhibit 5A is a letter dated 6th March 2012 from the Economic and Financial Crimes Commission to the Managing Director, Fidelity Bank Plc.

Exhibit 5B is a letter from Fidelity Bank Plc to the Deputy Director of Operations, Economic and Financial Crimes Commission.

P.W.4 testified that Exhibits 4A and 5A are letters written to the Federal Ministry of Finance and Fidelity Bank respectively. It is clear from the face of the letters that they are acknowledged copies which presuppose that their originals are with the recipients. They are admissible by virtue of Section 89(a)(ii) of the Evidence Act and I so hold.

Exhibits 4B and 5B are letters written to the EFCC by the Federal Ministry of Finance and Fidelity Bank Plc respectively. They are original documents. They are primary evidence and therefore admissible in law.

Learned counsel to the defendant is opposed to the admissibility of the attachments to Exhibits 5B. In admitting the tendered documents in evidence, the Court made it clear that the letter and the attachments thereto are admitted in evidence as Exhibit 5B. The letter Exhibit 5B reads as follows:

“The above subject refers.

We are in receipt of your letter dated 12th June 2012 and referred CR:3000/EFCC/ABJ/BF.11 Vol. 66/100 requesting for information on the above subject.

Please find attached copies of the following documents in line with your request:

- 1. Certified true copy of the specimen Signature Card/Application Form.*
- 2. Certified true copy of the statement of account from inception to date.*

We do hope that these information and particulars supplied will meet your requirements.

Thank you.

Yours faithfully,

Signed

For Fidelity Bank Plc.”

The attached documents admitted in evidence were mentioned in the letter. They are copies of statements of account and application form. By virtue of Section 89(h) of the Evidence Act 2011, secondary evidence of documents which form entries in a bankers' book are admissible in evidence upon compliance with conditions stated in Section 90(1) of the Evidence Act. The attachments to Exhibit 5B are certified by the bank. They are therefore

compliant with the conditions for their admissibility. I find the attachments admissible in evidence and I so hold.

The objection of counsel to the defendant to the admissibility of Exhibits 4A, 4B, 5A and 5B and its attachments is devoid of merit and I so hold.

Now to the substantive case. The defendant is standing trial for the offence of forgery contrary to Section 362 of the Penal Code and punishable under Section 364. The charge against him is as follows:

“That you Suleiman Sheidu sometime in 2010 in Abuja, within the jurisdiction of this Honourable Court did fraudulently forge a contract paper titled ‘Award of contracts to Mueleman and Suleiman International Limited’ dated 19/11/10 purportedly awarded by the Federal Ministry of Finance which you knew to be forged and thereby committed an offence contrary to Section 362 of the Penal Code Act and punishable under Section 364 of the Penal Code Act.”

From the totality of the evidence from the prosecution and the defendant, it is established that P.W.1 and the defendant became business partners and incorporated a company called Meuleman and Suleiman International Ltd. by which they agreed to do business in Nigeria. P.W.1 is the complainant in this case. His evidence was not discredited under cross examination. I find his evidence credible and it represents the background of the transaction between him and the defendant which led to the instant action. P.W.1’s evidence is that in furtherance of the agreement between him and the defendant to do business together and for which they incorporated a company he sent some money to him through P.W.2 as working capital for the company. His further testimony and which I believe is that he visited Nigeria and wanted to check the company account but

the defendant was evasive. He testified further that the defendant showed him a letter of award which according to him emanated from the Federal Ministry of Finance purporting to award a contract for the supply of vehicles to their company. He said the letter of award contained many grammatical errors. This and the antecedents of the defendant on the money he sent made him suspicious. He wrote a petition to the EFCC.

The letter of award was forwarded to the EFCC with the petition. The petition and the attachments were admitted in evidence as Exhibit 3. The letter of award allegedly forged by the defendant is an exhibit before this Court having been so admitted. P.W.4 gave a report of their investigation which included investigation of the letter of award forwarded alongside the petition. The letter of award was forwarded to the Ministry of Finance. The letter of award is before the Court and I so hold. The defendant tendered Exhibit 11. Exhibit 11 is the same as the letter attached to Exhibit 3. The defendant cannot therefore be held not to have knowledge of the document and I so hold. Whether he forged the document or not is the main issue for determination in this case. The argument of counsel to the defendant that the letter of award allegedly forged by the defendant is not before the Court and not identified by any prosecution witness cannot fly and I so hold.

P.W.4's evidence is that the letter of award was forwarded to the Federal Ministry of Finance for confirmation of its authenticity vide Exhibit 4A. The response of the Ministry of Finance is Exhibit 4B. The content of Exhibit 4B is that the letter did not emanate from the Ministry. It was signed by one Nweke Felix.

The prosecution relied on the statement of Felix Nweke as part of the evidence relied upon in proof of the offence of forgery against the

defendant. The statement is Exhibit 7. Felix Nweke was not called as a witness at the trial. I would therefore not attach any weight to Exhibit 7. See EKPENYONG VS. THE STATE (1991) 6 NWLR Pt. 200 Pg. 683 where the Court held that in a situation where the witness whose statement has been admitted never testified his statement should not be considered as evidence of the facts contained therein. See also LAYONU & ORS VS. THE STATE (1967) 1 ALL NLR 198.

The defendant is charged with the offence of forgery. A document is said to be forged if the whole or part of it is made by a person with falsity and knowledge of the falsity and with intention that it may be used or acted upon as genuine to the prejudice of the victim. To secure a conviction for 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 defendant.
4. That the defendant knows that the document or writing is false.
5. That he intends the forged document to be acted upon to the detriment of the victim in the belief that it is genuine.

See ALAKE VS. THE STATE (1991) 7 NWLR Pt. 205 Pg. 567 at 592.

In SMART VS. THE STATE (1974) 11 SC 173, Coker JSC at page 185 held 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 the instant case, the document in question is a letter of award. It is in writing. It is a letter purportedly written, signed and stamped by the

Director of Procurement, Ministry of Finance on the letter head of Meuleman and Suleiman International Limited. The letter reads as follows:

"1. We hereby congratulate your company for awarding you a contract of the following items from this Ministry from the date of your letter you are requested to supply these items within 90days.

2. The items are as follows:

a) HILUX Toyota Jeep @ 15,000,000.00 each = N45,000,000.00

b) 9 End of Discussion 2006 Model @ N5,000,000.00 each = N45,000,000.00

Sub Total = N90,000,000.00

NINETY MILLION NAIRA ONLY

3. You are advice not to sell this job to any company if not the company that was awarded by the Ministry. Once again congratulations.

4. Your cheque will be ready immediately after two weeks of delivery your goods. Ensure the storekeeper received your goods and knowledge by stamping your award letter before delivery.

Director of Procurement

The Ministry of Finance.

Sgd

Stamped."

P.W.1 gave evidence that himself and the defendant are business partners who incorporated a company called Meuleman and Suleiman International Ltd. He said when he met with the defendant on one of his visits to Nigeria he told him the company had won a tender to supply

vehicles. The letter is Exhibits 3 and 11. The letter was sent to the Ministry of Finance to confirm its genuineness. The Ministry of Finance from whom the letter of award purportedly emanated denied making same.

False document is defined in Section 362 of the Penal Code which provides thus:

“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 makes any 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 or at a time at which he knows that it was not made, signed, sealed or executed.”

The defendant who presented the letter to P.W.1 is not a staff of the Ministry of Finance and does not claim to be so. The Ministry of Finance denied issuing the letter. I find the letter to be a false document by virtue of the provision of Section 362(a) of the Penal Code and I so hold.

The next vital ingredient of forgery is whether the prosecution has proved that the defendant forged the document in question.

It has been held that the offence of forgery may be proved by either direct or circumstantial evidence. See OSUNDU VS. FRN (2000) 12 NWLR Pt. 682 Pg. 483 where Edozie JCA held at page 505 Paras. A-D as follows:

“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 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 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."

P.W.1's evidence and which I believe is that the defendant showed him the letter in question as a letter of award for the supply of vehicles to their company. This piece of evidence was corroborated by P.W.2. He presented the forged document to P.W.1 as a genuine document to support his claim that the company had been awarded the contract and I so hold. It is significant to note that earlier before the issue of letter of award arose, P.W.1 sent some money to the defendant through P.W.2 to be deposited in the company account. He did not do so, When P.W.1 demanded for the statement of account, he dribbled him. This is the evidence of P.W.1 and which I believe. In the present circumstance, I have no hesitation in coming to the conclusion that the defendant either

made the forged letter or procured someone to do so to be used by him as a genuine document and I so hold. All the evidence before me point to one irresistible conclusion that the defendant knew the letter of award was fake and he presented it as genuine. Counsel to the defendant argued that the prosecution failed to establish that the document was made by the defendant which according to him is fatal to their case. I am afraid this argument of counsel would not avail the defendant. The defendant presented the letter to the defendant for the purpose of deceiving him that their company had won a contract for the supply of some vehicles. My firm view is that he either made the document or procured someone to do it for him for the purpose of deceiving P.W.1.

The oral evidence of the defendant before this Court is that he knew nothing about the letter of award. His evidence on the letter is as follows:

“The allegation made against me at the EFCC is that I defrauded my partner of N2.1million. They also said I forged a letter of award of contract from the Federal Ministry of Finance and also a letter from the First Bank. The letter of award shown to me has the name of my company and its logo. This is the copy of the letter of award shown to me at the EFCC office. I do not know anything about the original of the letter. This is what I was shown.”

He proceeded to tender a copy of the letter which was admitted in evidence as Exhibit 11. Can the defendant be held to be telling the truth when he said he knew nothing about the letter? The prosecuting counsel in his written address referred to the voluntary statements of the defendant made under caution to submit that the defendant is guilty of the offence for which he was charged.

P.W.4 tendered the voluntary statements of the defendant which were admitted in evidence as Exhibit 8 and 9 without any objection from him. He also tendered Exhibit 10 which is an EFCC Attestation Form for Confessional Statement of an Accused. The defendant signed Exhibit 10. Exhibit 10 is confirmation that Exhibit 8 and 9 were voluntarily made by the defendant and I so hold. Exhibit 9 which is a statement made voluntarily by the defendant on 28/11/11 reads as follows:

"I Suleiman Sheidu come from Ankpa Local Govt of Kogi State. I joined the Nigerian Army in 1996 which am a serving Sergeant with the Nigerian Army presently in Command Secondary School Suleja in Niger State as a tutor of Account Section. I have read the petition writting (sic) against me by Antonous Meuleman from Netherland Canada as friends through picking him to some Area in Abuja City. Then we started by asking me that he is interested in having a company in Nigeria. Which I told him that I can opened a company which he said we should used (sic) his name and my (sic). He said I should estimate how much then I went to Co-operate (sic) affairs commission to ask and I get back to him with the total amount of the money which is N180,000 one hundred and eighty thousand naira only. Immediately he left he sent me the money through his girl friend. I opened the company name with Meuleman and Suleiman international limited which was opened between me and him. Which I told him that we have to have some money in the account which he ask me for what. I told him for the purpose of awarding contract for the company which he agreed and send (sic) the money through (the) his girl friend which he did. First time he sent

N1,000,000 One Million Naira only. Secondly he said (sic) N8,000,000 eight hundred thousand naira only which was giving (sic) by me through his girl friend and plus the total of the N180,000 one hundred and eighty thousand Naira for the registration of the company which make it to be N2,000,000 two million naira only. After that I scan the teller of the money he ask me to deposit in the company account which I did and sent to him. The reason of that money is to use to get the award of the contract from the federal ministry of finance which I make a letter with the company letter headed paper to send to me that the company have (sic) been awarded a contract sum of N90m.

Sir I will be glad with you and your entire team to help me out to enable me to pay his money before April 2012 or if I get the money before then I will co-operate and paid (sic) immediately which almighty God will continue to bless you and your entire families. The letter of award of contract from ministry of finance and the first bank teller that I sent to Mr. Meuleman were fake.”

The above is a clear confession by the defendant that he made the letter of award in question and that he presented it to the defendant with the knowledge that it is fake. It is thus an equivocal admission by the defendant of his guilt of the offence of forgery for which he is charged and I so hold.

A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he made the crime. See Section 28 of the Evidence Act 2011. Once an accused person makes a statement under caution admitting the charge or creating the impression that he committed the offence charged, the statement

becomes a confession. See MUSTAPHA VS. THE STATE (2007) 12 NWLR Pt. 1049 Pg. 637 and GIWA VS. THE STATE (1996) 6 NWLR Pt. 443 Pg. 375.

The defendant did not deny making Exhibit 8. He did not deny that it was made voluntarily. His oral testimony before the Court is that he knew nothing about the letter of award which he admitted to have made in Exhibit 8. This is a retraction of his admission of guilt. The law is settled that a Court may convict on a retracted confessional statement as long as it is satisfied of the truth of the statement. ONU JSC in the case of BATURE VS. THE STATE (1994) 1 NWLR Pt. 320 Pg. 267 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.”

To my mind, the testimony of the defendant that he knew nothing about the fake letter of award is an afterthought and I so hold. His testimony is far from the truth. His admission of the offence in his statement is unequivocal and he cannot run away from it as that is the truth. The law is that once a confession of guilt is shown to have been freely and voluntarily made, if it is direct, positive and properly established, it constitutes proof of guilty and sufficient to sustain a conviction.

In the instant case, there is also evidence from the prosecution witnesses that the letter of award presented by the defendant to P.W.1 and which is the alleged forged document is a false document. The prosecution proved that the defendant presented it to the defendant as genuine knowing same to be false. I have also found that the defendant either made the letter or procured someone to make it and he used it as a genuine document. The defendant admitted in Exhibit 8 that he made the letter. He made a clean admission of the offence of forgery in his confessional statement, Exhibit 8. The prosecution has proved beyond reasonable doubt the offence of forgery as charged against the defendant and I so hold. I find you Suleiman Seidu guilty of the offence of forgery contrary to Section 363 of the Penal Code and convict you for the offence of forgery as charged which is punishable under Section 364 of the Penal Code.

HON. JUSTICE FOLASADE OJO
JUDGE
12/1/2018

Fatima Ado Gworam appears for the Prosecution.

Alexander Oketa with Goodluck J. Agbo for the Defendant.