

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

BEFORE HIS LORDSHIP:	HON. JUSTICE S.E. ALADETOYINBO
COURT CLERKS:	M.S. USMAN & OTHERS
COURT NUMBER:	HIGH COURT THREE (3)
CASE NUMBER:	FCT/HC/CR/254/2017
DATE:	11TH DECEMBER, 2017

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA	-	COMPLAINANT
AND		
1. EMEKA UKOR 2. ANTHONY UZONKWANNE 3. BABAYEMI BUKOLA	}	ACCUSED PERSONS

The three accused persons present in court.

Counsel to the prosecution absent in court.

Ogodi J.A. appearing for the 1st accused person.

Arinze Ekwunife appearing for the 2nd Defendants.

Ore Olugbenga appearing for the 3rd Defendant.

J U D G M E N T

The three accused persons were arraigned before this court on the 25th Day of November 2009 on seven counts charge which includes conspiracy to commit theft contrary to Section 96 of the Penal Code, including theft contrary to Section 286(1) of the Penal Code which is Count No. 2. Counts No. 3 and 4 relate to forgery contrary to Section 363 of the Penal Code and fraudulently using as genuine forged document knowing same to be forged

contrary to Section 366 of the Penal Code. Counts No. 5, 6 and 7 relate to forgery contrary to Section 363 of the Penal Code.

The prosecutor called eight witnesses and closed its case and the three accused persons made a no case submission through their defence counsel. The court upheld the no case submission in respect of counts No. 1 and 2. The three accused persons were discharged and acquitted on Counts 1 and 2. Counts No. 5, 6 and 7 were described as duplicity same were struck out by the court.

The court ruled that all the three accused persons should defend themselves in respect of Counts No. 3 and 4; the said Counts No. 3 and 4 read as follows:

Count 3

That you Emeka Ukor Anthony Uzonwanne and Babayemi Bukola, on or about the 5th October 2009, within the jurisdiction of the High Court of the Federal Capital Territory fraudulently forged a Fin Bank of Nigeria Plc Cheque No. 00684074 dated 28th August 2009 drawn in favour of Aeromagnetic Fisher's Limited on the account of Honourable Brigadier General David Mark (Rtd) in the sum of N45,000,000.00 (Forty Five Million Naira) with intent to commit fraud and thereby committing an offence contrary to Section 363 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990 and punishable under Section 364 of the same Act.

Count 4

That you Emeka Ukor, Anthony Uzonwanne and Babayemi Bukola, on or about the 5th October 2009 within the jurisdiction of the High Court of the Federal Capital Territory fraudulently used as genuine a forged Fin Bank Nigeria Plc Cheque No. 00684074 dated 28th August 2009 drawn in favour of Aeromagnetic Fishers Limited on the account of Honourable Brigadier General David Mark (Rtd) in the sum of N45,000,000.00 (Forty Five Million Naira) knowing it to be forged and thereby committing an offence contrary to Section 366 of the Penal Code Act Cap 523 Laws of the Federation of Nigeria (Abuja) 1990 and punishable under Section 364 of the same Act.

After the plea of the accused persons were taken, the prosecution called eight witnesses and with the permission of this court the prosecutor called the 9th witness who gave evidence as to who lodged the forged cheque into the account of Aeromagnetic Fishers Limited with Aso Saving and Loans Plc. The facts of this case can be summarized as follows:

The 3rd accused persons whose name is Babayemi Bukola was contacted by one Taiwo who was not charged along with the accused persons and who is alleged to be at large, the 3rd accused received telephone call from Taiwo to the effect that he has a cheque for clearing and enquired from the 3rd accused as to whether he has a Banker as friend. The 3rd accused then called the 1st accused Emeka Ukor on phone telling him what he heard from Taiwo, 1st accused is a staff of Aso Savings and Loans Plc. The 3rd accused had also worked in Aso Savings and Loans Plc

with the 1st accused before the 3rd accused left Aso Savings and Loans Plc, the 3rd accused eventually gave the telephone number of Taiwo to the 1st accused, what they eventually discussed the 3rd accused claimed not to know.

The 1st accused eventually contacted the 2nd accused who is the owner of the company known as Aeromagnetic Fishers Limited which has its account number 005002111775018 with Aso Savings and Loans Plc. The 2nd accused gave the name and account number of his company to the 1st accused based on the understanding that the 1st accused friend wanted to use the company to supply goods to FCDA.

The name of Aeromagnetic Fishers Limited along with the account number was sent to Taiwo through text to his telephone number by the 1st accused person. The cheque that was eventually paid into the account of Aeromagnetic Fishers Limited No. 005002111775018 is a cloned and forged cheque purportedly belonging to Brigadier General David Mark (Rtd). The forged cheque is drawn on Fin Bank valued Forty Five Million Naira (N45,000,000.00). The number of the forged cheque is 00684074; it was admitted in evidence as Exhibit B1.

The original cheque that was cloned and forged belonged to Brigadier General David Mark (Rtd) with same cheque No. 00684074 same was admitted in evidence as Exhibit B2. When Exhibit B1 was paid into Aeromagnetic Fishers Limited Account No. 00500211177508 in Aso Savings and Loans Plc Kuje Branch Abuja, same was sent to Zenith Bank Plc for clearing on behalf of Aso

Savings and Loans Plc. In the process of clearing Fin Bank discovered that the said cheque was cloned and forged and same was returned to Zenith Bank Plc who presented the forged cheque on behalf of Aso Savings and Loans Plc for clearing. Zenith Bank Plc returned the forged cheque to Aso Savings and Loans Plc.

PW9 one Shuaibu Umar was called by the prosecutor after the leave of court was obtained. He tendered the deposit teller with which the Fin Bank Cheque valued N45,000,000.00 (Forty Five Million Naira) was paid into the account of Aeromagnetic Fishers Limited. The deposit teller was admitted as Exhibit I while the clearing schedule was admitted as Exhibit J. From the deposit teller Exhibit I it becomes clear that the name of the person that deposited the cloned cheque into the account of Aeromagnetic Fishers Limited is Jude. PW9 confirmed to the court that Jude who deposited the cheque into Aeromagnetic Fishers Limited in Aso Savings and Loan Plc is not among the three accused persons. If PW9 gave evidence before the no case submission made by the three accused persons, all the accused persons would have been discharged and acquitted.

DW1 Emeka Ukor in his defence claimed that he did not conspire with the other two accused persons to forge Exhibit B1, the clone or forged cheque, he further claimed that he has never seen Exhibit B1 before and neither did he plan with anybody to share the proceed of the cheque with other accused persons.

DW2 Anthony Uzonwanne gave evidence to the effect that 1st accused person called him on phone to the effect that his friend wanted to use his company name Aeromagnetic Fisher Limited to supply goods to FCDA. On reaching the office he then gave the 1st accused the letter headed paper of the company and the 1st accused person went away with the letter headed paper. Seven days after the branch manager of Aso Saving and Loans Plc came to his office to ask what he knew about Exhibit B1, he told the manager that he has nothing to do with Exhibit B1 and Brigadier General David Mark (Rtd), later the EFCC came and arrested the 2nd accused person.

DW3 Babayemi Bukola described himself as a teacher by profession. He told the court that Taiwo Omotosho called him on phone to the effect that he wanted to execute contract and therefore need company name.

DW3 confirmed that he gave the Phone Number of 1st accused person to Taiwo Omotosho because he was no longer working in Aso Savings and Loans Plc, two months after, the 1st accused called him to locate Taiwo because of forged cheque. Two days later as he was teaching in the class, the EFCC official came and arrested him and was later charged to the court.

After the conclusion of evidence for the defence of the three accused persons the three accused persons and the prosecutor filed final written addresses. The court had gone through the final written addresses of the prosecutor and the three accused

person, it is needless summarizing same as they form part of the record of this court.

For the charge of forgery contrary to Section 363 of the Penal Code and punishable under Section 364 of the same Penal Code the prosecutor is required to establish the following:

- (a) (i) That the accused made, signed, sealed or executed the document in question or any part thereof:
- (ii) That it was made by someone else.
- (b) That it was made under any of the circumstances stated in Section 363.
- (c) That the accused made it dishonestly or fraudulently or with any of the specific intents enumerated in Section 362.

The 4th count charge relates to Section 366 of the Penal Code which state 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 prosecutor is required to establish the following ingredients of the offence namely:

- (a) That the accused used forged document as genuine.
- (b) That the accused knew or had reason to believe that the document was forged.

(c) That he did so fraudulently or dishonestly.

What the prosecutor need to establish against the three accused persons is that the accused forged Exhibit B1 or that they knew that Exhibit B1 or that they knew that Exhibit B1 was forged and they went ahead to present same to the Bank as genuine. Exhibit B1 is a forged cheque belonging to Brigadier General David Mark (Rtd) in favour of Aeromagnetic Fishers Limited valued N45,000,000.00. The cheque Number is 00684074. The genuine cheque was tendered as Exhibit B2; it has the same features with the forged cheque, it only gives credence to the fact that Exhibit B1 is forged cheque, the question that demands for answer is who forged Exhibit B1 the forged cheque?. See AITUMA v STATE (2007) 5 NWLR (Pt 1028) 466 at 473 where the court held as follows:

“On a charge of forgery, it is essential for the prosecution to prove that the accused person forged the document in question”

See also ZONKWA GARBA v POLICE 1967 N.N.L.R. 100 at 101 where the court held as follows:

“The phrase “uses as genuine” within the meaning of Section 366 Penal Code means “the use for which the document is normally employed and a driving licence can only be used for driving a motor vehicle, the appellant procured the forged licence to enable Muhammadu Bida to use it as a licensed driver, and therefore he could not be said to have “used it” himself within the meaning of Section 366 but he

abetted the offence under Section 366 by virtue of Section 83 and 84 of the Penal Code and such abetment was punishable under Section 92(1) of the Penal Code”

The document examiner PW6 only compared the known signatures of Brig. General David Mark (Rtd) to the forged signature in Exhibit B1 and therefore come to the conclusion that Brigadier General David Mark (RTD) was not the person who signed Exhibit B1 and therefore Exhibit B1 was a forged document. The document Examiner did not request for the specimen signatures of the accused person to examine same as to whether any of them could have forged the signature of David Mark in Exhibit B1, since non of the specimen signatures of the accused person was analyzed by the forensic document examiner to link them with the forged signature in Exhibit B1; the forged cheque, it therefore follows that non of the accused persons could have been said to have forged Exhibit B1 as there is no nexus between the forgery and the accused persons. See MAJOR HAMZA AL-MUSTAPHA v STATE (2017) 14 NCC 460 at 472 where the court held as follows:

“In IKOMI v STATE (1986) LPELR 1482 (S/C) it was held inter alia that there must be some evidence, which links the accused with the offence, but certainly, not suspicion or mere conjecture. There must be evidence to meet all the essential elements of the offence”

Non of the prosecution witnesses claimed to have seen any of the accused with the forged cheque Exhibit B1 and all the accused

persons denied ever seen Exhibit B1 the forged document. The three accused persons are hereby discharged and acquitted for the offence of forgery contrary to Section 363 and punishable under Section 364 of the Penal Code.

As regard the 4th count against the accused persons which relate to Section 366 of the Penal Code, the prosecution established that the forged cheque Exhibit B1 was paid into the account of Aeromagnetic Fisher Limited, a company that belonged to the 2nd accused person. The 2nd accused had given evidence to the effect that 1st accused requested for the name and account number of his company for the purposes of securing contract, subsequently the 2nd accused gave the letter headed paper of his company to the 1st accused including the account No.9 the company with Aso Savings and Loans Plc; he did not know when Exhibit B1 was paid into his company account, neither did he know the person who paid Exhibit B1 into his company account, none of the accused person can therefore be said to have fraudulently or dishonestly paid the forged cheque into the account of the company belonging to the 2nd accused person, all the accused person are hereby discharged and acquitted for the offence in Count 4 which is contrary and punishable under Section 366 of the Penal Code.

The court had examined the specimen signatures of Brigadier General David Mark in Exhibit B4 and compared same with the forged signature in Exhibit B1, the conclusion of the court is that the two signatures are very similar. The Account Officer of

Brigadier General David Mark in Fin Bank did not know that the signature in Exhibit B1 was forged, the Account Officer who gave evidence as PW2 told the court that it was in the process of confirmation that David Mark told her that he did not issue Exhibit B1 to anybody, the evidence that David Mark did not issue Exhibit B1 and that his signature in Exhibit B1 was forged should have come from David himself, even though the court has the power to compare the specimen signatures of David Mark in Exhibit B4 to his purported signature in Exhibit B1, this does not exclude the prosecutor from establishing the ingredients of the offence of forgery. See THE QUEEN v WILCOX (1961) All NLR (Pt 4) 631 at 633 where the court held as follows:

“A trial court is entitled in dispute over handwriting to compare personally the questioned writing with other writings which re acknowledged to be genuine and to find from such comparison whether the questioned is or is not forgery”

The specimen signatures of the three accused who were alleged to have forged Exhibit B1 were not in evidence to compare same with the forged signature in Exhibit B1.

The document examiner PW6 did not request for the specimen signatures of the accused persons to examine same as to whether any of them could have forged the signature of David Mark in Exhibit B1, this omission is fatal to the case of the prosecution. See AITUMA v STATE (2007) 5 NWLR (Pt 1028) 466 at 482 where the court observed as follows:

“On a charge of forgery the prosecution to make out a prima facie case needs to call a handwriting analyst to show that the handwriting of the person who is alleged to have forged the documents is the same as the once on the forged documents where the supposed alteration was made”

The failure of the prosecution to call Brigadier General David Mark (Rtd) to deny or confirm his signature on the cheque Exhibit B1 is fatal to the case of the prosecution. See ALAKE v STATE (1992) 9 NWLR (Pt 265) 260 at 270 where KUTIGI JSC observed as follows:

“I ought to add that I agree with Prof. Kasumau that Ajadi and Lawsweerde were vital and material witnesses in the case. They were persons whose signatures were alleged to have been forged. I think failure to call them to deny or confirm their signatures on the cheques was clearly fatal to the case of the prosecution, the evidence of handwriting analyst (PW6) notwithstanding their evidence would have settled the point in issue once and for all. (See R. v KUREE WACA 175; WAMBAL & ANOR v KANO N.A. (1965) NMLR 15. Appellants Conviction for forgery cannot therefore stand”.

See also the case of AITUMA v STATE (2007) 5 NWLR (Pt 1028) 466 at 482 where the court observed as follows:

“Furthermore the person whose handwriting is forged is a material witness”

All the three accused persons are hereby discharged and acquitted for the offence of forgery contrary to Section 363 of the

Penal Code and punishable under Section 364 of the Penal Code, all the accused person are further discharged and acquitted for an offence of using as genuine a forged document contrary to Section 366 of the Penal Code and punishable under Section 364 of the Penal Code.

(Sgd)
Hon. Justice S.E. Aladetoyinbo
(Presiding Judge)
11/12/2017