

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT HIGH COURT NO. 14 APO ON THE 28<sup>TH</sup> DAY OF JUNE, 2017.**  
**BEFORE HIS LORDSHIP, HON. JUSTICE U. P. KEKEMEKE**  
**SUIT NO:FCT/HC/CR/222/15**

**COURT CLERK: JOSEPH BALAMI ISHAKU**

**BETWEEN:**  
**FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT**  
**AND**  
**NOSA OHENHEN ERICSON .....DEFENDANTS**

**J U D G M E N T**

The Charge against the Defendant is a six Count Charge filed on 01/06/15.

It states:

**COUNT ONE**

“That you Nosa Ohenhen Ericson and Abraham Adasah sometime in April 2014 in Abuja, in the Abuja Judicial Division of the High Court of the Federal Capital Territory did agree amongst yourselves to commit an illegal act, to wit: to make a false Diamond Bank Statement of Account bearing Account Name Nosa Ohenhen and Account No. 0025683395 and thereby committed an offence contrary to Section 97 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 TWO**

That you Nosa Ohenhen Ericson and Abraham Adasah sometime in April 2014 in Abuja, in the Abuja Judicial Division of the High Court of the Federal Capital Territory did agree amongst yourselves to commit a felony to wit: to make a false letter from one Hon. Ohenhen Nosakhare, allegedly the Chairman of Edo State Oil

& Gas Producing Areas Development Commission and thereby committed an offence contrary to Section 97(1) 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 THREE**

“That you Nosa Ohenhen Ericson and Abraham Adasah sometime in April 2014 in Abuja, in the Abuja Judicial Division of the High Court of the Federal Capital Territory did make a false Diamond Bank Statement of Account bearing Account Name Nosa Ohenhen and Account No. 0025683395 with the intent to cause the British High Commission to issue Nosa Ohenhen Ericson a U.K. Visa and thereby committed 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 FOUR**

“That you Nosa Ohenhen Ericson and Abraham Adasah sometime in April 2014 in Abuja, in the Abuja Judicial Division of the High Court of the Federal Capital Territory did make a false letter from one Hon. Ohenhen Nosakhare, allegedly the Chairman of Edo State Oil & Gas Producing Areas Development Commission with the intent to cause the British High Commission to issue Nosa Ohenhen Ericson a U.K. Visa and thereby committed 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 FIVE**

“That you Nosa Ohenhen Ericson and Abraham Adasah sometime in April 2014 in Abuja, in the Abuja Judicial Division of the High Court of the Federal Capital

Territory did fraudulently use as genuine a forged Diamond Bank Statement of Account bearing Account Name Nosa Ohenhen and Account No. 0025683395 by presenting it to the British High Commission, knowing it to be forged and thereby committed an offence punishable under Section 366 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.

#### **COUNT 6**

“That you Nosa Ohenhen Ericson and Abraham Adasah sometime in April 2014 in Abuja, in the Abuja Judicial Division of the High Court of the Federal Capital Territory did fraudulently use as genuine a forged letter from one Hon. Ohenhen Nosakhare, allegedly the Chairman of Edo State Oil & Gas Producing Areas Development Commission \* (0025683395) by presenting it to the British High Commission, knowing it to be forged and thereby committed an offence punishable under Section 366 of the Penal Code Act Cap 532 Laws of the Federation of Nigeria (Abuja) 1990.

The Charge was read to the two Defendants. The 1st Defendant pleaded not guilty to the Six Count Charge while the 2<sup>nd</sup> Defendant entered into a plea bargain agreement with the Prosecution. He admitted the facts as stated by the Prosecution and 2<sup>nd</sup> Defendant was accordingly convicted and sentenced.

The Prosecution called two witnesses in proof of the Six Count Charge against the 1<sup>st</sup> Defendant.

The 1<sup>st</sup> Prosecution Witness is Ebelo Friday. He is an Operative of the Economic & Financial Crimes Commission (EFCC) , a Principal Detective Superintendent, and team leader of Advance Fee Fraud Team 2.

That he investigates cases that are assigned to his team which involves gathering evidence, effecting arrest, carrying out surveillance, conduct of search and other assignments.

That he knows the Defendant. The Commission received a Petition dated 26/01/15 signed by one Girdeep Purewal, the Immigration Liaison Officer of the British High Commission.

The Petition had some attachments which are letters from Edo State Oil & Gas Development Commission and a Diamond Bank Statement bearing the Defendant's name.

The documents from Edo State Oil & Gas Development Commission was signed by one Hon. Nosa Ohenhen as Chairman of the Commission requesting the High Commission to grant the Defendant entry visa into the United Kingdom. The Petitioner alleged that the attached documents were forged and requested the Commission to investigate and prosecute the culprits.

Based on the above, the team sent two letters to the said Commission and Diamond Bank to ascertain the genuineness of the letter and to confirm if the said Nosa is the Chairman of the Commission. The response from the Commission is to the effect that the letter was forged and the Chairman of the Commission is not Nosa Ohenhen Nosakhare

The Diamond Bank letter is to authenticate the Statement of Account while the follow up letter is to search the data base to give genuine Statement of Account and Opening Package of the Defendant.

The first response from Diamond Bank is that the Statement of Account did not emanate from the bank. They later responded by sending the genuine Statement of Account and the Account Opening Package which includes signature, names, addresses and phone numbers.

In analysing the Statement of Account, there is great discrepancies in the narrative of the accounts attached to the Petition and the one sent to the bank.

That on the fake one, it has a closing balance of N3,035,000 while the genuine one has a closing balance of N700,000 --N750,000. The team proceeded to Benin, Edo State to trace the address used in opening the account at Upper Sakpoba Road. The address was traced to a Church building. They decided to meet the resident of the next building. None of them was able to identify the Defendant. They called the 1<sup>st</sup> Defendant using the phone number in the Account Opening Package. He told them he was at Upper Sapoba Close to the bye pass in a Secondary School. As the witness walked out, his colleagues were behind him. He was apprehended. They conducted search at his mother's house. He was later taken to the Edo State Police Command.

He was cautioned, he understood same and he volunteered a statement. He mentioned 2<sup>nd</sup> Defendant in the statement. The 2<sup>nd</sup> Defendant was arrested around 8:30 p.m. within the New Benin Area of Edo State. They were given bail conditions and transported to Abuja for further investigation. They went through the E-mail address. They saw the letter from Edo State Oil & Gas Development Commission sent to him by the 2<sup>nd</sup> Defendant. The letter was printed out. He signed and dated these letters. A Certificate of Identification was produced by witness stating the condition of the operating system, name of computer and the printer that was used. The name of the printer is HP. The soft ware is micro soft

word window SP. That he signed the certificate of identification. That the systems are used in their daily routine work. They were in perfect condition. That at the end of investigation a report was written.

The Petition dated 26/01/15 and attachment is Exhibit A – A2.

1. Letters from EFCC to Chairman Edo State Oil & Gas Producing Areas Development Commission dated 24/02/15.
2. Letters to Diamond Bank dated 28/01/15 and 9/03/15 are Exhibits B, B1 and B2.

The replies from Edo State Oil & Gas Producing Commission are Exhibits C – C1.

Letters of Introduction allegedly printed from Defendant's E-mail box are Exhibits D and D1.

The Defendants' two statements are Exhibits E and E1.

That after recording the statement, he instructed one of his officers to take the Defendant before a Superior Officer to endorse the statement being a Confessional Statement. That for purposes of accuracy and balance, the Commission designed an Attestation Form. The Form has questions 1 – 8. The witness signed the Attestation Form and the Superior Officer also signed. It was done by SINI JOHN UMAR.

Under Cross-examination, the witness answered as follows:

That he has worked as IPO for about 11 years. That he has experience. That he knows the 2<sup>nd</sup> Defendant/Convict.

That he is part of the team that arrested him. That the Convict confessed committing the offence but not alone. At this stage the statement of the Convict was admitted as Exhibits G-G1. That Defendant's mother contacted the Convict and the Defendant and convict went together.

That he recorded the statement of the Defendant's mother. She contracted the 2<sup>nd</sup> Defendant/Convict. They did not join her because, the 2<sup>nd</sup> Defendant/Convict said that he had finished the contract with her but the 1<sup>st</sup> Defendant still went to the Cyber Café to reproduce the same documents with which they went to the Embassy.

To another question, he said, he does not know if the mother is aware that the documents are forged. That the transaction was between the mother, 2<sup>nd</sup> Defendant and the 1<sup>st</sup> Defendant. That he recorded the statement of the mother. The statement is Exhibit H. That is the evidence of PW1.

The 2<sup>nd</sup> Prosecution Witness is Chidi Nujurika. That he works with Diamond Bank as a Manager. That he has worked for 10 good years. That he works at the Internal Control Department. That he is to ensure compliance to rules and regulations both internal and external. That he does not know the Defendant. That the bank got a letter of EFCC informing it of this case and requesting that they should provide the Account Statement of Nosa Ohenhen and his account opening package. They complied with the request by sending same through a covering letter. The statement was printed from the Computer HP Compact which the bank uses day by day. The computer was in excellent condition. They compared the hard copy with the computer and certified that they are the same. He did a certificate which he signed.

He said he made mention of a Reply, a Cover Letter and an Account Opening Package. They are Exhibits 1-12. That he compared Exhibits A2 with 1- 12. That Exhibit A2 is not from Diamond Bank. That the front of their logo 'Diamond' is thicker than as it is in 12. That the logo in A2 is faint. That the nature of the narration is not the same. The balances in the Accounts are not the same.

The transaction figures in A2 are burgoos. The dates of transactions are also not the same.

In Exhibit 11, the customer did not provide E-mail address and cannot operate on line. The customer has a mobile number. He can receive alert which will show the nature of transaction and available balance.

That on 25/05/12, there was an alert of N5. He received an SMS. It is a Savings Account. The customer as in this case must be present for account statements. The system cannot generate any printable statement to be sent to his E-mail. Exhibit C1 states – Statement of Account  
Exhibit A2 is the real Statement of Account.

Under Cross-examination, the witness said Nosa Ohenhen is one of their customers. That the account is domiciled in Benin.

On a further question, he answered that he does not know who forged Exhibit A2. The above is the case of the Prosecution.

The Defendant opened its defence and called two witnesses. The first Prosecution Witness is Princess Abieuwa Ehue of Utazi Community, Abraka Road, Ubaorka Benin City, Edo State. That she is a business woman. That she knows the Defendant. That he is her son. That she also knows Abraham Adasah.



On one fateful day, she went to her uncle's house Pa Solomon at 3<sup>rd</sup> Cemetery off, New Lagos Road. They were sitting outside near a restaurant. She heard Adasah and his gang talking about travelling. She went to him and called him out and said she heard him talking about travelling. That she has interest. That she wants her son to travel out. He said it was okay and that he can do it as it is his business. That his gang are those they do the business together. That she asked him how much it would cost her and he told her. She said she does not have money but she has land that she could give to him. He agreed. She then left him to inform her uncle who encouraged her to go on. She showed Adasah the land.

She wanted her son to travel to the U.K. That the land was to be used for Visa, ticket and everything . That her son is a Pastor. That her son was eventually arrested. That she took Police to Adasah. That her son does not know how. That what she gave him land for was not done. That he should give her the land back.

That her son does not know anything about it. That it was when one got to State CID that she know Adasah used fake papers. That the conversation as to data processing is between her and Adasah. That he told her to bring her son's passport. He did not tell her of any difficulty. He processed the visa. He did not give her the visa before her son was arrested. That her son maintains an Account with Diamond Bank. That her son does not know anything about forging a paper. That Adasah is in America.

Under Cross-examination, she answered that her husband's name is Ohenhen Johnson. He is the father of the Defendant. He is the Community Chairman for land. That she followed the Defendant to Abuja but did not follow him to the British High Commission to submit the document. She does not know if Adasah has an office. That she did not see the documents which Defendant and Adasah

(Convict) submitted at the British High Commission. That she is a Christian. Her Church is Dominion Fire Ministry but forgot the name of her son's church. That he is assisting her Pastor now. That she did not give Adasah (Convict) any land document.

On a further question, she answered that she paid Adasah N10,000 to post the documents. That she does not know of Edo State Oil Producing Development Commission. That her husband did not work there.

The 2<sup>nd</sup> Prosecution Witness is the Defendant, Ohenhen Nosa Ericson. That he is an Assistant Pastor to a church called Dominion Fire Deliverance Ministry in Benin. That he presently resides at Utazi Community at Upper Sakpoba Benin- Abraka Road. That he knows one Abraham Adasah. He also know the DW1. He knew Adasah (the Convict) through his mother.

He received a call from his Mum that she went to her uncle's place at 3<sup>rd</sup> Cemetery and said she met a man called Adasah discussing about travelling and said she was interested. She asked if I was interested in travelling. He told her he would call back. He got home and told her he was interested. His mother called him the next day and passed the phone to Adasah and he asked if he was ready to travel. He further asked if he has an Account. He told him the one he has was opened by the Church for him to pay in his salary. That it is a Diamond Banks Account (Savings). He asked that he brings them to him immediately.

The next day, he called his mother and they went to Diamond Bank together to collect the statement of account. He got the Account Statement which was enveloped for him and gave it to his mother to transfer to Adasah (Convict).

That Adasah (Convict) said he should proceed to Abuja to meet somebody. He said he could not because they were expecting a great man of God. He did not tell him what to do. That he does not have a duplicate copy of the said Bank Statement That he got to know about the documents from Hon. Ohenhen Nosakhare on the day of his arrest by EFCC when Abaraham Adasah (convict) was asked about the document. He answered that he produced it himself. That he was not aware of it. That he has not received his ATM Card from the said Abraham Adasah. That his account statement was for salary. That it was in the bus that he realised his Statement of Account was tampered with. That Prosecution tendered a print out of an E-mail account Exhibit D which was sent by Adasah. That he got to know that when he was arrested and was in EFCC's custody.

That he does not operate E-mail at 500 ft St. Saviour. There was no E-mail. That he made a statement to the EFCC.

Under Cross-examination, the witness answered as follows:

His E-mail address is Ohenhen Nosa at G. Mail. That he has two E-mail accounts. That Exhibit D is from his E-mail Account. He is from Ikpoba-Okha Local Government Council, Benin, Edo State. That Abraham Adasah is not his father. That he had travelled to the U.K., before. That his biometrics was taken. To a question, he answered that he did not support his visa application with fake documents the 1<sup>st</sup> time he travelled. That he did not submit his U.K. visa application. That Adasah (Convict) said he used somebody else ATM to pay. That his ATM Card failed.

That he has not forged any document in his life. He did not forge any Statement of Account. That he never paid for any other person's application for Visa. That he did not forge a Letter of Introduction. That he did not see the said documents

before they were submitted. That he did not submit personally. It was by DHL. That Exhibit E is his statement volunteered to EFCC.

The above is the case of the Defence. Parties were ordered to file Written Addresses. The Prosecution's Final Written Address dated 29/09/16 was filed on 06/10/16. Learned Counsel adopted same as his final oral argument. The sole issue posited for determination by the Prosecution is whether the Prosecution has proved its case against the Defendant beyond reasonable doubt.

The Defendant also adopted his Final Written Address dated 8/06/16 and filed on the same dated. He raised three issues for determination. They are:

1. Whether this court will not expunge the evidence of PW1 and PW2 and discharge to Defendant.
2. Whether the EFCC is competent to prosecute the Defendant.
3. Whether from the available evidence on record, the Prosecution has proved the offence of forgery against the Defendant beyond reasonable doubt.

I shall determine this case on the three issues submitted by Defence Counsel as they encompass the lone issue posited by the Prosecution.

On the issue whether the Court will not expunge the evidence of PW1 and PW2 and discharge the Defendant, Learned Counsel to the Defendant canvassed that there is no evidence before this court to convict the Defendant of the alleged offence of conspiracy and forgery preferred against the Defendant. That Prosecution did not attach the statement of witnesses to the proof of evidence. He urges the Court to expunge the evidence of PW1 and PW2 from the records. He also refers to the mandatory requirement for filing a Charge. That an application

for leave must be made pursuant to the provision of the Criminal Procedure Code. The Prosecution canvassed that the case relied upon by Learned Counsel to the Defendant does not apply having been overtaken by the Administration of Criminal Justice Act 2015.

That Section 109(1) of the Administration of Criminal Justice Act 2015 is the applicable law.

By Section 109 of the Administration of Criminal Justice Act 2015 states that criminal proceedings may be instituted in accordance with the provisions of the Act.

As it relates to this Court by information of the Attorney General of the Federation subject to Section 104 of the Act or as in the instant case by Information or Charge filed in the Court by any other prosecuting authority. The Administration of Criminal Justice Act 2015 also prescribed what a 'Charge' should contain.

By Section 194 of the Act, it shall state the offence with which the Defendant was charged, the specific name of the offence or so much of the definition of the offence, the Section of the law and the punishment section. Section 195 states that the fact that a charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case. That the charge shall contain such particulars as to the time and place of the alleged offence and the Defendant if any, against whom or the thing if any, in respect of which it was committed as are reasonably sufficient to give the Defendant notice of the offence with which he was charged. Section 377 of the ACJA also describes 'information' and what it should contain.

Section 379(1) states that an information shall be filed in the Registry of the High Court. It shall contain:

1. List of witnesses.
2. List of Exhibits.
3. Copies of Statement of Defendants.
4. Any other document, report or material that the Prosecution intends to use to support its case, etc.

The Prosecution may at any time before judgment file and serve Notice of Additional Evidence.

The Charge before this Court is dated 1/06/15. It is supported by Verifying Affidavit, Names and Addresses of Prosecuting Witnesses, Statement of Defendants and Documents the Prosecution intends to rely upon.

In my humble view, the Charge before the Court complied with the extant law and fulfilled all the conditions necessary for a valid Charge. There is no compulsion placed on Prosecution to attach the evidence of the Prosecution witnesses to the Charge served on the defence. The Defendant was not prejudiced by the non attachment of the evidence of the Prosecution witnesses to the Charge. He was fully aware of the Charge he was coming to Court to meet. He was familiar with PW1 the Investigating Police Officer while the PW2 was a bank official who merely came to tender the Account Opening Package of the Defendant and identify if need be the Account Statements put in evidence. He had opportunity of cross-examining the Witnesses. When served, he failed to complain that the witness statements are not attached. He failed to raise it at the earliest opportunity. He cannot therefore make it an issue. There is no miscarriage of justice. The issue is therefore resolved in favour of the Prosecution against the Plaintiff.

On the second issue whether the EFCC is competent to prosecute the Defendant, the Learned Counsel to the Defendant canvassed that the Defendant is not standing trial for a financial crime or a matter related thereto. That Defendant is standing trial for forgery and criminal conspiracy. That the EFCC is not competent to prosecute the Defendant.

The Prosecution submission is that the Constitution does not vest absolute prosecutorial powers in the office of the Attorney General. That any agency created with power to prosecute can rightly do so without recourse to the Attorney –General. That the EFCC is charged with the responsibility of enforcing the provisions of amongst others the other laws relating to economic and financial crimes including the criminal and penal code. Learned Counsel canvassed that economic and financial crime is defined in Section 46 of the EFCC Act and it includes any form of fraud.

I have carefully considered the argument of both Counsel on this issue. I am persuaded by the Prosecution's argument. The offence preferred against the 1<sup>st</sup> Defendant is **Conspiracy** and **Forgery**. The conspiracy referred to in Count 1 is to make false Diamond Bank Statement of Account bearing Defendant's name and Account Number.

In Count 3, 1<sup>st</sup> Defendant is alleged to have forged and or altered a false Diamond Bank Statement of Account bearing Account Number 0025683395 with intent to cause British High Commission to issue Nosa Ohenhen Ericson a U.K. Visa and thereby committed an offence.

In the circumstance of this case, the above counts relate to financial crimes. The alleged offence is a form of fraud which the EFCC has power to investigate and prosecute. Diamond Bank is a financial institution while the Diamond Bank Statement of Account is a financial document.

The Operatives of the EFCC are public officers. Although they are specialised, by virtue of Section 4 of the Police Act, they have the general power to investigate arrest and prosecute offenders.

In the circumstance of this case, it is my view that the Economic & Financial Crimes Commission has powers to investigate, arrest and prosecute the 1<sup>st</sup> Defendant.

On whether from available evidence, the Prosecution has proved the offence of conspiracy and forgery against the Defendant beyond reasonable doubt.

Conspiracy is defined as when two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means.

The 2<sup>nd</sup> Defendant was convicted and sentenced upon a plea bargain agreement. The PW1 stated in evidence that he received a Petition Exhibit A from the British High Commission with some attachments amongst which was a Diamond Bank Statement of Account bearing the 1<sup>st</sup> Defendant's name. The Petition alleged that the said document amongst others is forged and requested the Commission to investigate same. Exhibit A2 is the Statement of Account bearing the name of the Defendant.

Exhibit B1 and B2 are letters written by the EFCC to the Managing Director of Diamond Bank. Exhibit C1 is from Diamond Bank stating that the Statement of Account for Nosa Ohenhen which is Exhibit A2 does not reflect the correct



transaction activities on the account. That they proceeded to Benin where 1<sup>st</sup> Defendant was arrested. He made a statement wherein he mentioned the 2<sup>nd</sup> Defendant/Convict. That efforts were made in conjunction with 1<sup>st</sup> Defendant's mother to arrest the 2<sup>nd</sup> Defendant.

Exhibits E and E1 are the statements of the 1<sup>st</sup> Defendant. In Exhibit E1, he said the Visa arrangement was made with his mother and one travelling agent Mr. Adasah. That the said Adasah made all the documents. That he does not know anything about the fake documents. That the Letter of Introduction printed out from his box was sent by Mr. Adasah.

In Exhibit G1, the 2<sup>nd</sup> Defendant/Convict confessed to the altering of the Bank Statement.

The ingredients of conspiracy punishable under Section 97 of the Penal Code are:

- a. An agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal by illegal means.
- b. Where the agreement of one other than an agreement to commit an offence, that some acts besides the agreement was done by one or more of the parties in furtherance of the agreement and
- c. Specifically that each of the accused persons individually participated in the conspiracy.

The above ingredients of the offence of conspiracy as charged in Count one are absent. The Exhibit D which was printed from the E-mail box is not signed or dated contrary to the evidence of PW1 whereas Exhibit A1 attached to the Petition is signed by one Hon. Ohenhen Nosakhare. There is no evidence of agreement. The evidence is that the 2<sup>nd</sup> Defendant/Convict was contracted by 1<sup>st</sup> Defendant's

mother. There is no evidence that he personally presented the said forged documents. The 2<sup>nd</sup> Defendant/Convict said in Exhibit G1 that he altered the documents himself when the 1<sup>st</sup> Defendant and mother said they don't have documents. The count of conspiracy is not proved beyond reasonable doubt. The 1<sup>st</sup> Defendant is therefore discharged and acquitted on Counts 1 and 2.

On the counts of forgery in counts 3-6 i.e forgery of the Bank Statements, letter of introduction, and making of a false Statement of Account and Letter of Introduction contrary to Section 363 and 366 of the Penal Code. Section 362 defines a false statement. It reads:

*“A person is said to make a false document 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 by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed or at a time at which he knows that it was not made, signed, sealed or executed or*  
*(b) who without lawful authority dishonestly or fraudulently by cancellation or otherwise alters a document in any material part thereof after it has been made or executed either by himself or by any other person whether such person be living or dead at the time of alteration etc.”*

Forgery under Section 366 states:

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

*A person is guilty if he makes a false statement or instrument With the intention that he or another shall use it to induce somebody to accept it as genuine and by reason of so accepting it to do or not to do some act to his own or any other persons prejudice.”*

See *AKINBISADE VS STATE (2006) 17 NWLR (PT.1007) 184.*

Forgery or altering is the fraudulent making or alteration of writing with intent to defraud or deceive. The tendering of a forged document simpliciter is not per se the altering or forgery. It is the consent that harbours forgery or altering.

See *NWOSU VS. STATE (2004) 15 NWLR (PT.897) 466.*

The offence of forgery is said to have been committed when a document tells lie about itself. The offence is proved where the lie is exposed and confirmed before a Court of Tribunal.

See *NIGERIAN AIRFORCE VS. JAMES (2002) 18 NWLR (PT. 798) SC.*

On a charge of forgery, it is essential for the Prosecution to prove that the Defendant forged the document in question. In order to make out a prima facie case, the Prosecution needs to call a handwriting expert to show that the handwriting of the person who is alleged to have forged the document is the same as the one on the forged document. The person whose handwriting is forged is a material witness. Thus, the failure of the

Prosecution to call a handwriting analyst and the person or persons whose writings were mutilated and forged as witnesses is fatal to its case.

See *ALAKE VS. STATE (1992) 9 NWLR (PT.265) 260 AT 270.*

*AITUMA VS. STATE (2007) 5 NWLR (PT.1028) 466.*

The document said to have been forged are the Letter of Introduction alleged to have been written by the father of the 1<sup>st</sup> Defendant which is Exhibit A1. It is signed by the said Hon. Ohenhen Nosakhare. The father of the 1<sup>st</sup> Defendant was not called to testify. There is no evidence to show that the signature on the Exhibit A1 belongs to the Defendant. No handwriting expert or analyst was called particularly when the Defendant denied signing the said document.

There is no evidence linking the Exhibit A1 with the 1<sup>st</sup> Defendant aside the fact that he presented same to the British High Commission. The 2<sup>nd</sup> Defendant/Convict in his evidence admitted forging the said document.

Exhibit A2 is the alleged forged Diamond Bank Statement of Account. The 2<sup>nd</sup> Defendant/Convict admitted making the document. There is no evidence to show that the said document was manufactured by the 2<sup>nd</sup> Defendant in connivance with the 1<sup>st</sup> Defendant. The said Exhibit is not signed and sealed by any official of the Bank while Exhibit 12 which is the authentic Statement of Account of the 1<sup>st</sup> Defendant's Diamond Bank Account is stamped and signed. There is ample evidence by PW2 that the Exhibit A2 the fake Statement of Account is different from Exhibit 12 but the question is who made Exhibit A2?

The 2<sup>nd</sup> Defendant said in evidence that he did. The PW2 said he does not know the 2<sup>nd</sup> Defendant. The PW1 did not link the Statement of Account to the 1<sup>st</sup> Defendant other than that Exhibit A the Petition states that it was one of the documents presented along with the Visa application of DW2.

The question to determine is whether the 1<sup>st</sup> Defendant had knowledge of the contents of the said documents.

It is my view that the Prosecution failed to prove same beyond reasonable doubt who forged the document that told the lie in the content of the document.

The Prosecution in my respectful view failed to prove the offences of making false document contrary to Section 363 and forgery contrary to Section 366 of Penal Code beyond reasonable doubt.

For the totality of the reasons given, the 1<sup>st</sup> Defendant is discharged and acquitted on all Counts.

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**HON. JUSTICE U.P. MKEKEMEKE.**

**(HON. JUDGE)**

**28/06/17.**