

**IN THE HIGH COURT OF JUSTICE, FEDERAL CAPITAL  
TERRITORY ABUJA  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT MAITAMA, ABUJA  
BEFORE HIS LORDSHIP: HON. JUSTICE M.M. DODO  
DATED 25<sup>TH</sup> NOV. 2016**

**SUIT NO.CR/47/2011**

**BETWEEN:**

**FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT**

**AND**

**OLUFEMI OJO.....DEFENDANT**

***Appearance:***

*Accused in Court & Speak English*

*J. Bwala Miss appearing for the prosecution*

*Esther Akugue Miss. appearing for the Defendant.*

**JUDGMENT**

The Accused person, Olufemi ojo is standing trial before this Honourable Court on two count charge of Forgery punishable under SECTION 364 OF THE PENAL CODE ACT, CAP. 532 LFN and using as Genuine contrary to SECTION 366 of the same law. He pleaded not guilty to the charges wherein trial begins and the prosecutor called three witnesses to prove their case. They all testified in support of the prosecution's case and tendered a total number of Eight (8) documents which were admitted in evidence and marked as Exhibits A, B, C, D, E, F, G and H respectively.

The defence Counsel in the first instance filed a No case submission before this Court whom he eventually lost leading the application to be dismissed by this Court and the accused person entered his defence by testifying and calling one other witness. He

also tendered documents, which were admitted in evidence and marked as Exhibits 1, 2, 3, 4, 5 and 6 respectively. After the close of the trial, the learned respective Counsels for both the Complainant and the accused person submitted and adopted their final written addresses as their respective arguments in this case. One single issue is raised for the final determination of this Court and it is as follows:-

*Whether the prosecution has proved the case against the accused person beyond reasonable doubts as required by law.*

The onus of proof as it is trite law, in criminal cases, lies on the prosecution to prove the offence charged beyond all clouds of doubt. This means that the prosecution must prove the ingredients of the offence. This is an evidential burden on the prosecution which does not shift. See GALADIMA VS STATE (2012) 18 NWLR (PART 1333) PAGE 610 AT 631 PARAGRAPHS C – D.

Before proving every ingredient of the offence in this case, the prosecution Counsel first drew my attention to the definition of “*forgery*” as provided in SECTION 363 OF THE PENAL CODE, as follows: -

*“Whoever makes any false document or part of a document, with intent to cause damage or 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 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”.*

The prosecution Counsel refers me to the Supreme Court case of BABALOLA VS THE STATE (1989) 4 NWLR (PART 115) 264 where Nnaemeka Agu JSC (*as he then was*) stated on forgery that, “they include not only document, which tells a lie, but also

one that tells a lie about itself and document made with intent to defraud. The following are the elements of forgery: -

- (a) That there is a document in writing
- (b) That the document or writing is forged
- (c) That the forgery is from the accused person
- (d) That the accused person knows that the document or writing is false
- (e) That the accused intends that the forged document be acted upon to the prejudice of the victim in the belief that it is genuine.

The prosecution Counsel submitted that a document is said to be forged, if the whole or part of it is made by a person with all falsity and knowledge and with the intention that it may be acted upon as genuine to the prejudice of the victim. See the following cases: -

- (a) ALAKE VS STATE (1991) 7 NWLR (PART 205) 56 AT 59 PARAGRAPHS A – C.
- (b) OSONDU VS FRN (2000) 12 NWLR (PART 682) 483 AT 504 PARAGRAPH A.

The prosecution Counsel's submission with regard to the present case in line with the above cited authorities is that, PW1 – 3 in their evidences before this Court, testified to the uncontradicted facts that the accused person presented to the EFCC, a University of Ilorin Certificate/Statement of Result showing that he graduated with a second class lower Division based on which he was employed, whereas investigation by PW1 clearly revealed that the accused person graduated with a Third Class Degree in Business Administration. Exhibits A, B and F are tendered before the Court and admitted in evidence. The prosecution Counsel argued that the exhibits are correspondences between the EFCC and the University of Ilorin stating clearly that the accused graduated with a Third Class Degree. The prosecution Counsel postulates that Exhibit F is a letter received from the university, annexed to which are copies of the Order of convocation proceedings and transcript of the accused person, which are all consistent that the accused

person graduated with a third class degree and not a second class lower degree. Thus, the accused fraudulently presented the said certificate/Statement of Result knowing full well that it bore “*second class lower*” which he did not graduate with, intending it to be acted upon by the complainant to employ him.

The prosecution Counsel maintained that the accused person knew that the certificate he presented “*told a lie*”, yet he went ahead to present it in order for it to be acted upon. The fact that the accused person graduated with a third class degree is well within his knowledge. Thus, the conclusion to be drawn here is that the certificate or statement he presented indicating a class of degree other than the third class, points to the fact that he forged same. Accordingly, PW2 whose signature was purportedly on the statement of result and who was the Registrar of the University at the time material to this case testified that the signature is not hers. This, according to the prosecution was further corroborated by the evidence of the Forensic Examiner, PW3.

From the forgoing, the prosecution Counsel submitted that, he has proved all the ingredients of the offence of forgery in count one and that none of the evidence of the prosecution witnesses were discredited through cross-examination. In proving that a document is forged, see *AGWUNA VS A.G.F.* (1995) 5 NWLR (PART 396) 418 AT 438 PARAGRAPHS F – G. The accused person also gained unfair economic advantage. He was employed based on his false document and has received salary from government based on same. This, according to the prosecution is a clear indication of his intention to defraud and to deceive. This also puts his act within the ambit of economic and Financial Crimes. The prosecution Counsel argued that the EFCC Act, 2004 empowers the Commission to investigate and prosecute cases under the Penal Code and indeed any other laws. According to the prosecution, SECTION 7 OF THE EFCC ACT, 2004 empowers the EFCC to enforce other laws and regulations relating to economic and financial crimes, including the Criminal Code and Penal Code. See SECTION 7 (2)(a)-(e).

According to the prosecution Counsel, SECTION 46 OF THE EFCC ACT lists a catalogue of offences that constitute “*economic and financial crimes*”. However, the use of the phrase “*et cetera*”, which simply means “*and so on*”, in the section, connotes the elasticity and in exhaustiveness of the list. This implies in effect that “*economic and financial crimes*” could include other criminal offences, although not listed specifically, but which in the opinion of the commission may constitute “*economic and financial crimes*”.

The prosecution Counsel postulates that by SECTION 363 OF THE PENAL CODE, all that he is required to show is that there is a document in writing (the statement of result) and the forgery is by the accused person and that the accused person knows the document was forged. See AWUNE VS STATE (1995) NWLR (PART 516) 418 AT 438. Thus, having proved beyond reasonable doubt that the document presented by the accused person (Exhibit G) and which was examined by an expert, and which was not signed by PW2 being the authorized officer, but was used by the accused person to commit fraud, the onus now shifts to the accused to show that the document was indeed made by PW2 and that the document is not a “*he*”. The prosecution Counsel urged the Court to hold that he proved the offence of forgery against the accused person.

**USING AS GENUINE: SECTION 366 OF THE PENAL CODE.**

This offence is contained in the second count of the charge. The prosecution Counsel submitted on this count that the purport for which Exhibit G was forged by the accused person was to be used and indeed was used as genuine. This, the accused person achieved when he presented Exhibit G, which actually is a “*lie*” in order to get a job. He presented it as though he actually graduated with a second class lower, knowing full well that he graduated with a third class.

In charge of using as genuine, the presenting Counsel submitted that he must prove that: -

- (a) The document or writing is false
- (b) That it was lettered knowingly or fraudulently.

The prosecution urged this Court to hold that the act of fraudulently presenting the statement of result to gain employment from the complainant amount to using as genuine, and for the complainant to offer him employment based on same made the offence of using as genuine to be completed. He urged the Court to hold that the prosecution has proved this count also.

On the issue of whether the staff of EFCC can prosecute the instant case without a fiat from the Attorney General of the Federation, the prosecution Counsel brought the Court's attention to the provision of SECTION 174(1) OF THE 1999 CONSTITUTION. It reads:

*“The Attorney General shall have power to take over and continue any such criminal proceedings instituted by any other authority or person and to discontinue at any stage before judgment is delivered of any such criminal proceedings instituted or undertaken by him or any other person”.*

On this issue, it is the contention of the accused person that the complainant or its officers cannot legally prosecute him without showing this Court the requisite fiat of the Attorney General of the Federation under SECTION 174 OF THE CONSTITUTION. The accused contends also that the offences which he is charged do not constitute an economic or financial crime as to bring it under SECTIONS 6 AND 7 OF THE EFCC ACT.

The prosecution's argument on this issue is that the provisions of SECTION 7(2) (F) OF THE EFCC ACT, relates to the powers of the EFCC, which she can imminently prosecute offences under the Penal Code. The provision according to the Counsel, not only makes the EFCC the coordinating agency for the enforcement of the provisions of

the enactments specifically set out there under but also any other law or regulations relating to economic and financial crimes including the criminal and Penal, Code. It is therefore, the prosecution Counsel's submission that the EFCC is competent to prosecute offences under the Penal Code by virtue of SECTION 6(C ) AND (M) OF THE EFCC ACT. The prosecution postulates that in view of the high premium attached to speedy disposal of criminal cases, the Attorney General of the Federation delegates his powers to the various law enforcement agencies of the Federal Government, therefore, the charge is not defective in anyway, nor is the officer who initiated it incompetent to do so because the EFCC prosecutor qualifies as "*authority*" under SECTION 174 OF THE CONSTITUTION and on the authority of FRN VS OSAHON (2006) 5 NWLR (PART 97) SC 361. The prosecution Counsel added that by SECTION 2 OF THE 1999 CONSTITUTION, Nigeria operates cooperative Federalism as opposed to dualist Federalism, and under cooperative Federalism, some agencies such as the EFCC are common agencies for both Federal and State. He buttressed his point by further arguing that other security and law enforcement agencies, like EFCC, can on their own without an express fiat prosecute criminal cases, forinstance, the Nigerian Prison Service has the power to prosecute criminal cases. He placed reliance on the case of COMPTROLLER, NIGERIAN PRISONS SERVICE LAGOS VS ADEKANYE (2000)15 NWLR (PART 790) 318. He added that it is clear from the authority of AMADI VS FRN (2008)18 NWLR (PART 119) SC 259 and FRN VS OSAHON (SUPRA), the EFCC indeed does not need any express fiat from the Honourable Attorney General of the Federation or any other person in order to prosecute criminal cases. He urged this Court to so hold.

On objection to the charge, the prosecution Counsel relied on various authorities to contend that it is settled law than any objection to a charge for any formal defect on the face of the charge for any perceived irregularity relating to procedure shall be taken immediately after the charge has been read over to the accused and not later. See AMADI VS FRN (2008)18 NWLR (PART 119)259 AT 277 PARAGRAPHS B – F; OKAROH VS STATE (1990)1 NWLR (PART 125)128; MOGAJI VS NIGERIAN

ARMY (2008) ALL FWLR (PART 420)603 AT 629 PARAGRAPHS B – D; FRN VS ADEWUNMI (2007) ALL FWLR (PART 368)978 AT 999 PARAGRAPHS A – D. The prosecution Counsel relied on the record of this Court of 28/03/2011 and submitted that neither the accused person nor his Counsel objected to the charge before taking his plea. His contends that, where an accused person or his Counsel fails to object to a defect in a charge, he cannot raise that objection later in the trial or on appeal as pleading to a charge is submission to the jurisdiction of the Court. See OBAKPOLOR VS STATE (1991) 1 NWLR (PART 165) 113. He postulates that the instant charge was read to the accused in the Language he understands and explained to him by the Court and when asked to take his plea, he pleaded not guilty to each of the two counts. The accused thus submitted himself to the jurisdiction of this Court by taking his plea. See SALUADE VS COP (2001) 7 NWLR (PART 712) 432 AT 434 RATIO 2. He urged the Court to hold that the arraignment was done according to law.

On whether PW1 is bound to tender the statement of PW2 who testified as a witness in Court. The prosecution Counsel contends that he is not bound, as PW2 came in person to testify in Court. According to the prosecution, PW2 made a statement as a witness and came to Court, testified and was cross examined by the defence. He argued that her statement which was annexed to the charge is the reason why she came to testify, and moreover, if the defence needed the statement to be part of the trial, all they needed to do was to ask prosecution for the original, in the absence of which they were at liberty to tender the photocopy annexed to their charge.

On the issue of withholding evidence, as alleged by the defence, the prosecution Counsel submitted that, he is not bound to tender all documents, only those relevant to its case, just as it is not bound to call a host of witnesses. The duty of prosecution is to prove the ingredients of the offence which we have done. The prosecution urged the Court hold that the accused person is in Court for the forgery of the statement of Result and not the endorsed copy and the prosecution has proved that.

On forensic comparative chart, made during the pendency of trial, the prosecution submitted that it is on record that the comparative chart is a pictorial guide only and does not state anything outside the Forensic Report. On the submission that the Forensic Examiner failed to tender his certificates in Court, the prosecution submitted that it is never the procedure for the expert to tender his certificates in Court. According to the prosecution, the forensic examiner stated his qualification extensively before this Court, and the basis for his analysis and his qualifications was not impeached in anyway by the defence. The prosecution contends that the fact that the expert could not state the meaning of KPMG does not affect his credibility in any way as this Court can take judicial notice of the meaning of same and also the fact that it is not in English but in a foreign language.

On the evidence of PW2 that the University does make mistakes, the prosecution's response on this issue is that, the statement was in response to a general question.

On the documents tendered by the defence, the prosecution contended that they are all irrelevant to the case at hand. He urged this Court to discountenance them. According to the prosecution Counsel, Exhibits 1 – 5 merely show that the accused indeed graduated from the University of Ilorin, which is not in contention, nor is it the charge against him. According to the prosecution, exhibit 6, dated 1/12/2008 is a statement made by the accused person, where he stated thus: -

*“In addition to my earlier statement on getting to the University of Ilorin we went to Deputy V.C. and Registrar Academics, they said that the Result I produced or submitted to EFCC that they did not issue the result to me that it was third class issued to me not 2<sup>nd</sup> class...”*

The prosecution Counsel submitted that this clearly shows the fraudulent intent and knowledge by the accused who was categorically told by the University authorities that he was given a third class certificate and not a second class lower.

On Exhibit 7 the affidavit of DW2, the prosecution Counsel submits that, the witness under cross examination said he was never cited the document sent to EFCC, which means he doesn't even know why he was in Court. Moreso, he curiously could not remember who the Registrar was at the time. The prosecution Counsel argued that, the witness also admitted that once a document is signed by the Registrar it is authentic. Thus, the prosecution re-iterate that this confirms his case to be established that since evidence shows that the statement of result (exhibit G) was not signed by the Registrar, it is certainly not authentic. He urged this Court to so hold. The prosecution Counsel argued further that, the University stated that from all available record, the accused graduated with third class and the accused said he had second class lower it is now the burden on him to show to this Court how and where he got the second class lower statement of result. See SECTION 136 (1) OF THE EVIDENCE ACT, 2011. The prosecution Counsel urged the Court to hold that the accused person forged the document in line with the earlier cited case of AGWUNA VS A.G. FEDERATION (1995)5 NWLR (PART 396) 418 AT 438 PARAGRAPHS F – G.

The prosecution Counsel argued strongly that, under cross examination, the accused identified Exhibit F and admitted that it is the convocation list of the University. He also admitted that his name falls under third class degree. According to the prosecution, the accused further identified Exhibit G as the statement of Result which he presented to get a job at the EFCC (*the forged document*). Furthermore, the accused admitted that from Exhibit F, the transcript, his GPA was 2.04. The prosecution then urged the Court to take judicial notice of the fact that anyone who has been through the four walls of a higher institution knows that a G.P.A of 2.04 cannot land one in second class lower division. 2.04 according to the prosecution is third class. The prosecution

Counsel wants the accused to be found guilty of forgery and using as genuine, since it is glaring that it is within the accused's knowledge to know what his grade was.

On the defence submission that the Forensic Examiner is biased because he submitted his report to the EFCC and not directly to the Court, the prosecution contends that this is not a procedure known to law, for it is not the practice for an expert to submit his report directly to the Court. The prosecution argued that PW3 in this case conducted his investigation without sentiment. He urged the Court to hold that PW3's evidence is an expert evidence devoid of bias. In conclusion he urged the Court to convict the accused person accordingly.

I have gone through the defence Counsel's reply to the prosecutions Final Address. I need not repeat what the defence Counsel argued word by word but I will compare same with the prosecution's Final Address in order to arrive at a just conclusion of this case.

As it is a trite law that the onus of proof in criminal cases remains on the prosecution and the onus is static throughout, it does not shift unto the accused. See ADEYEYE VS STATE (2013)11 NWLR (PART 1364) PAGE 47 AT 80, PARAGRAPHS G – H. As I have stated earlier, that the accused is standing trial on two count charges of forgery before this Honourable Court, the charges are as follows: -

**COUNT ONE:**

That you Ojo Olufemi on or about the 23<sup>rd</sup> day of December, 2003 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did fraudulently make a document titled UNIVERSITY OF ILORIN, STATEMENT OF RESULT NO. 0402773 dated 23<sup>rd</sup> day of December, 2003 purportedly signed by one Dr.(Mrs.) J.I. Oyebanji awarding you a Bachelor of Science Degree (Business Administration) with Second class Honours (Lower Division) under the authority of University of Ilorin with the intention of causing it to be believed that the said document was made by the

University of Ilorin, which you knew did not make it and thereby committed an offence punishable under SECTION 364 OF THE PENAL CODE ACT CAP. 532 LFN 1990.

**COUNT TWO:**

That you Ojo Olufemi on or about the day of December, 2003 at Abuja in the Abuja Judicial Division of the High Court of the Federal Capital Territory did fraudulently use as genuine a document titled UNIVERSITY OF ILORIN, STATEMENT OF RESULT NO. 0402773 dated 23<sup>rd</sup> day of December, 2003 and purportedly signed by Dr. (Mrs.) J.I. Oyebanji which you knew to be forged by delivering same to the Economic and Financial Crimes Commission for the purpose of employment and thereby committed an offence contrary to SECTION 366 and punishable under SECTION 364 OF THE PENAL CODE ACT, CAP 532 LFN 1990.

Throughout the trial in this Court, it is not in dispute that the accused person has graduated from the said University of Ilorin. The born of contention here is that he graduated with a third class degree as presented to the Court by both the prosecution and prosecution witnesses, whereas, he presented a Second class Lower Division to the complainant and remain adamant to both the complainant and this Court that contrary to their allegation, he graduated with a second class lower division as he presented and represented to them and to the Court.

As it is known and as I have stated and repeated in writing this Judgment, in criminal case the burden is always on the prosecution to prove the guilty of the accused beyond all reasonable of doubt, the issue, which I felt pertinent for the determination of this is: -

*Whether the prosecution has proved the charge of forgery under SECTION 364 OF THE PENAL CODE ACT, CAP. 532 LFN 1990 and whether he has proved the charge of using as genuine contrary to SECTION 366 OF THE PENAL CODE*

*ACT, CAP. 532 LFN 1990 against the accused person beyond all reasonable doubt as required by law.*

SECTION 362 OF THE PENAL CODE sets out when a person is said to make a false document. This includes, amongst others, when a person alters a document in any material part after it has been made either by himself or by any other person without lawful authority. See BROWN VS STATE (2012)3 NWLR (PART 1287)207 AT 248 – 249, PARAGRAPHS H – B.

In proving his case beyond reasonable doubt, the prosecution brought PW1, PW2 and PW3 who testified against the accused person and tendered Exhibits A, B, C, D, E and F in support of their oral testimony. But sincerely speaking, I have raised a serious doubt on the prosecution's proof beyond reasonable doubt for the following reasons: -

1. Exhibit X as I have carefully observed, is a letter from the complainant (EFCC) to the Vice Chancellor of the University of Ilorin, dated November 25, 2008 for INVESTIGATION ACTIVITIES of the accused person, OJO OLUFEMI. In the said exhibit, the EFCC has confirmed that the statement of Result of the accused person was forged, as the accused graduated with a third class and not a second class lower division as he presented. However, the complainant, EFCC in order to facilitate their investigation, kindly requested from the University to supply to them additional information particularly the following: -
  - a. Duplicate of Statement of Result issued to the accused
  - b. Transcript from year of entry to graduation
  - c. Specimen Signature of the Registrar at the time of his (*the accused*) graduation
  - d. Specimen copy of Statement of Result issued by the University
  - e. Written statement by Registrar or Exam Officer of the University
  - f. Ojo Olufemi Ebenezer's Academic file (*for sighting only*).

PW1 under cross-examination stated that they requested 6 documents from the University of Ilorin which were all made available to them. Unfortunately, there is one vital document to this case, which has not been made available to this Court till the time of writing this judgment. That document is the one mentioned in (a) above by the complainant, that is, a duplicate copy of the statement of result issued to the accused person. Even Exhibit F dated 28<sup>th</sup> February, 2011 addressed to the Chairman of the EFCC, which variously stated in the letter that the accused person graduated with a third class honours, and which a copy of the University convocation and the accused person's transcript was attached, still the copy of the accused's duplicate of statement of result was not include.

2. I am duty bound to tell the prosecution and any person listening to this judgment that, the Serious allegation against the accused person in this Court is that he knew that he graduated with a third class degree, yet he presented a second class lower degree to the EFCC, which they employed him based on what he presented. PW1, who was in charge of investigating the accused person's case and who testified in this Court on 27/03/2012 that he went to the University of Ilorin and met the Vice Chancellor and two DVC'S; the Registrar and the Deputy Registrar and according to him, when he presented the accused person's result that he gave to them, the Vice Chancellor there and then rejected and said it doesn't belong to them. The question is why the rush in rejecting the document? Why didn't the Vice Chancellor call the accused person's record for careful investigation before the outright rejection?

I am astonished when PW1 testified that another result of the accused person's colleague was brought and found it not to be the same with that of the accused person because that of the accused was tippexed; the character and the signature were not the same. That they certified that of the accused person's colleague and gave to PW1. What perplexed me really is that PW1 did not say that a duplicate copy of the accused person's statement of result showing that he graduated with

third class and not second class lower (*as they requested in Exhibit X*) was certified and gave to him. There is no further explanation as to why have the University authority certified the result of the accused person's colleague and gave to PW1 and not copy of the accused's result. There is indeed a question mark yet to be explained here.

3. The Defendant, in his testimony as DW1 stated that he graduated with a second class lower. The University issued to him with the statement of result he presented and before that he had to sign a clearance form, Exhibit 1. DW1 also testified that before collecting the statement of result, he signed a duplicate copy, which is supposed to be with the University. He said that he was in Court when he heard PW1 in his testimony stating that they applied for such duplicate copy and that the University gave it to him.

The duplicate copy of the accused/Defendant's statement of result has up till this moment not presented to this Court to enable the Court form its opinion. DW1 further stated that his lawyer (*the defence Counsel*) also applied for the copy from the University (Exhibit 2). I have carefully studied Exhibit 2 tendered in Court and dated 29<sup>th</sup> January, 2015. The Exhibit, it reads as follows: -

*"We refer to our letter dated 8<sup>th</sup> December, 2014 in respect of the above, through which we requested for the certified true copies of (a) Duplicate of Statement of Result issued to our Client and (b) his Certificate to enable him present his case to the honourable Court in Abuja. You are yet to respond.*

*Please be advised that the matter has been further adjourned to Tuesday the 10<sup>th</sup> day of February, 2015 for hearing. You are therefore required to bring before the honourable Justice Dodo of the High Court of Federal Capital Territory, Maitama Abuja on*

*10/2/2015 at the how of 9 O clock in the for noon, since you seem not to want to make them available to us.*

*TAKE NOTICE HOWEVER that if you do not make the document available to us on or before Friday the 6<sup>th</sup> day of February, 2015 or physically bring them to Court on 10<sup>th</sup> February, 2015, we shall move the honourable Court to subpoena you”.*

In view of Exhibit 2, I noticed that the University is not willing to clarify this issue by sending the duplicate copy of the statement of result, which the accused person signed before collecting the original. I feel it is only through that this Court should in the interest of justice be convinced as to whether the statement of result, which the accused presented to the EFCC is forged or not. The prosecution to my mind is not willing to assist the Court in achieving the justice of this matter as such I see no reason why the Accused/Defendant should be incarcerated for a fault that is not his. My argument here is that PW1 in his testimony before this said that have applied through Exhibit X and all the documents (*that means including the duplicate copy of the defendant's statement of result*) were given to them. Even by Exhibit 7, the deponent in that exhibit, Akanbi Dare, the Acting Director Legal Services Unit of the University of Ilorin deposed on oath that some documents were released to the EFCC among which were the statement of result issued to the Defendant but that particular document was not tendered in evidence. The only document tendered in Court is Exhibit D, which is a copy of another statement of result belonging not the Defendant. If at all, the duplicate copy of the accused/Defendant's statement of result is in the EFCC custody why shouldn't they tender it to contradict the one which the accused/defendant presented?

The University also is not willing to help in this case, because the defence Counsel, by Exhibit 2 wrote to them demanding the same duplicate copy and they refused to give him. He even urged them to send a copy to this Court at the next adjourned date, yet they refused. I believe therefore, that DW1 showed his innocence in this case through his

testimony and the exhibits he tendered. Thus, benefit of doubt, if any, is resolved infavour of the accused person. Therefore, if the accused person gives an account of the event or incident which is consistent with his innocence and could be true or is not proved to be otherwise, such an accused person is entitled to be discharged and acquitted. This is because, in such an instance, a doubt has been raised with regards to his guilt as the same will be incapable of being proved beyond reasonable doubt. See UGWANYI VS FRN (2010) 14 NWLR (PART 1213)397 AT 409 PARAGRAPHS D – F. In the instant case, the prosecution has not satisfied the requirement of SECTION 135 OF THE EVIDENCE ACT, 2011 (AS AMENDED) with tendering the duplicate copy of the accused person's statement of result to compare with the one he presented to them. Since the allegation is that he graduated with third class and he presented a second class lower and there is uncontradicted evidence of DW1 that before he was presented with the statement of result he signed a duplicate copy which must be with the University. There is before this Court no explanation as to the whereabouts or non availability of the duplicate copy or that he did not sign any duplicate copy at all.

In view of the above, the prosecution has not proved the offence beyond reasonable doubt therefore; I so hold that the accused person/Defendant be and is hereby discharged and acquitted accordingly. This is my judgment.

Signed

Judge

25/11/2016

Defendant Counsel: - We thank the Court for the erudite Judgment.

Prosecution: - We thank you for the Judgment and appreciate the Court for its industry.

Court: - You are all most welcome.

Signed

Judge

25/11/2016.