

IN THE HIGH COURT OF LAGOS STATE  
IN THE IKEJA JUDICIAL DIVISION  
HOLDEN AT COURT NO. 61 (CRIMINAL DIVISION)  
BEFORE THE HONOURABLE JUSTICE ISMAIL O. IJELU  
TODAY, THURSDAY THE 26<sup>TH</sup> DAY OF SEPTEMBER, 2024.

BETWEEN

CHARGE NO ID/11251C/2020

THE FEDERAL REPUBLIC OF NIGERIA

PROSECUTION

AND

1. MARK OBISESAN
2. OLUMIDE MCINTOSH
3. BOLAJI BAKARE
4. GOODLUCK BAZUNU

DEFENDANTS

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### JUDGEMENT

Upon an amended Information dated 22<sup>nd</sup> of January, 2020 and filed the same date the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants herein were charged for an eleven counts charge of Purchasing Forged Bank Notes and Conspiracy to Purchase Forged Bank Notes Contrary to Section 370 of the Criminal Law of Lagos State of Nigeria No. 11 of 2011 and Section 410 of the Criminal Law of Lagos State of Nigeria No. 11 of 2011. The charge is as follows:

#### STATEMENT OF OFFENCE - 1<sup>ST</sup> COUNT

Purchasing Forged Bank Notes Contrary to Section 370 of the Criminal Law of Lagos State of Nigeria No. 11 of 2011

#### PARTICULARS OF OFFENCE

MARK OBISENSAN, OLUMIDE MCINTOCH, BOLAJI BAKARA, GOODLUCK BAZUNU, JOSIAH NTEKUME (at large) sometime in 2018 at Lagos within Ikeja Judicial Division receives and have in your possession forged United States dollar Travelers Cheque no. GA908-981-564

#### STATEMENT OF OFFENCE - 2<sup>ND</sup> COUNT



Purchasing Forged Bank Notes Contrary to Section 370 of the Criminal Law of Lagos State of Nigeria No. 11 of 2011

#### PARTICULARS OF OFFENCE

MARK OBISESAN, OLUMIDE MCINTOCH, BOLAJI BAKARE, GOODLUCK BAZUNU, JOSIAH NTEKUME (at large) sometime in 2018 at Lagos within the Ikeja Judicial Division receives and have in your possession forged United States dollar travelers Chequ no. GA908-981-566

#### STATEMENT OF OFFENCE - 3<sup>RD</sup> COUNT

Purchasing Forged Bank Notes Contrary to Section 370 of the Criminal Law of Lagos State of Nigeria NO. 11 of 2011

#### PARTICULARS OF OFFENCE

MARK OBISESEN, OLUMIDE MCINTOCH, BOLAJI BAKARE, GOODLUCK BAZUNU, JOSIAH NTEKUME (at large) sometime in 2018 at Lagos within the Ikeja Judicial Division receives and have in your possession forged United States dollar travelers Cheque no. GA908-981-560.

#### STATEMENT OF OFFENCE - 4<sup>TH</sup> COUNT

Purchasing Forged Bank Notes Contrary of Section 370 of the Criminal Law of Lagos State of Nigeria No. 11 of 2011

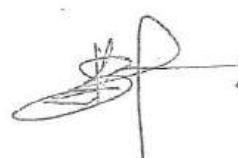
#### PARTICULARS OF OFFENCE

MARK OBISESEN, OLUMIDE MCINTOCH, BOLAJI BAKARE, GOODLUCK BAZUNU, JOSIAH NTEKUME (at large) sometime in 2018 at Lagos within the Ikeja Division receives and have in your possession forged United States dollar travelers Cheque no. GA908-981-558.

#### STATEMENT OF OFFENCE - 5<sup>TH</sup> COUNT

Purchasing Forged Bank Notes Contrary to Section 370 of the Criminal Law of Lagos State of Nigeria NO. 11 of 2011.

#### PARTICULARS OF OFFENCE



your possession forged United States dollar travelers Cheque no. GA908-981-548.

#### STATEMENT OF OFFENCE - 9<sup>TH</sup> COUNT

Purchasing forged Bank Notes Contrary to Section 370 of the Criminal Law of Lagos State of Nigeria No. 11 of 2011.

#### PARTICULARS OF OFFENCE

MARK OBISESAN, OLUMIDE MCINTOCH, BOLAJI BAKARE, GOODLUCK BAZUNU, JOSIAH NTEKUME (at large) sometime in 2018 at Lagos within the Ikeja Judicial Division receives and have in your possession forged United States dollar travelers Cheque no. GA908-981-547.

#### STATEMENT OF OFFENCE - 10<sup>th</sup> COUNT

Purchasing Forged Bank Notes Contrary to Section 370 of th Criminal Law of Lagos State of Nigeria No. 11 of 2011

#### PARTICULARS OF OFFENCE

MARK OBISESAN, OLUMIDE MCINTOCH, BOLAJI BAKARE, GOODLUCK BAZUNU, JOSIAH NTEKUME (at large) sometime in 2018 at Lagos within the Ikeja Judicial Division receives and have in your possession forged United States dollar travelers Cheque No. GA908-981-567.

#### STATEMENT OF OFFENCE - 11<sup>TH</sup> COUNT

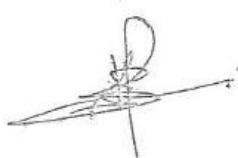
Conspiracy to Purchase Forged Bank Notes contrary to Section 410 of the Criminal Law of Lagos State of Nigeria No. 11 of 2011

#### PARTICULARS OF OFFENCE

MARK OBISESAN, OLUMIDE MCINTOCH, BOLAJI BAKARE, GOODLUCK BAZUNU, JOSIAH NTEKUME (at large) sometime in 2018 at Lagos within the Ikeja Judicial Division conspired to purchase and receives and have in your possession forged United States dollar travellers Cheques

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The defendants were re-arraigned in this Court on February 16, 2023, on an amended Information and pleaded Not Guilty. They were permitted to continue their earlier bail conditions granted by Solebo J. (retired), and the case was set down for trial. Trial commenced on April 3, 2023. The Prosecution called three witnesses and tendered 22 exhibits, including:

1. Exhibits P1 and P2: Letters dated January 7 and 29, 2020
2. Exhibit P3: Letter from the EFCC to the Legal Attachee US Consulate dated January 6, 2020
3. Exhibit P4 (1 & 2): Statements of the 1st defendant dated December 19 and 23, 2019
4. Exhibit P5 (1, 2, and 3): Statements of the 2nd defendant dated January 3 and 6, 2020, with attachments
5. Exhibit P6: Statement of the 3rd defendant dated January 16, 2020
6. Exhibit P7: Statement of the 4th defendant dated January 16, 2020
7. Exhibit P8 (a-j): Alleged fake American Express Traveler's Cheques
8. Exhibit P9: Thomas Cook Traveler's Cheque number PE 55850819
9. Exhibit P10: Halifax Visa Card belonging to Miss Simisola O. Hughes
10. Exhibit P11: RBS Visa Card belonging to Miss Simisola Hughes
- 11-18: Various credit cards belonging to the 1st defendant
11. Exhibit P19: Grey Samsung phone belonging to the 1st defendant
12. Exhibit P20: iPhone belonging to the 1st defendant
13. Exhibit P21: Alcatel phone belonging to the 1st defendant
14. Exhibit P22: N500.00 note.

The 1st defendant tendered the following documents:

1. Exhibit D1: Stanbic IBTC Bank account statement of Mark Obisesan generated on January 17, 2024

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2. Exhibit D2: Email exchanges between DW1 and another person, with a certificate of compliance
3. Exhibit D3: WhatsApp message
4. Exhibit D4: Facebook message.

## CASE OF THE PROSECUTION

### PW1: Olukinni Olufemi

PW1, an investigator with the EFCC, led the investigation into the defendants suspected of internet fraud. In December 2019, PW1 and his team searched the first defendant's house, recovering items like traveler's checks, a Ferrari car, phones, passports, and other documents. The first defendant claimed the traveler's checks were fake and purchased from the second defendant. PW1's team arrested the second defendant, who stated that he obtained the traveler's checks from the third defendant. The third defendant and a fourth defendant were subsequently arrested. PW1's investigation involved writing to banks and the forensic department to verify the authenticity of the traveler's checks. The findings revealed that the 10 American Express Traveler's checks were fake, while a \$100 Thomas Cook Traveler's check was genuine.

During cross-examination by the 1st defendant's counsel, PW1 acknowledged that they didn't find conclusive evidence of internet fraud and hadn't prosecuted the 1st defendant for it. PW1 also admitted that they didn't investigate the ownership of various items seized from the 1st defendant thoroughly and that some items might not belong to the 1st defendant.

During cross-examination by the 2nd defendant's counsel, PW1 confirmed that the 1st defendant claimed to have purchased the traveler's checks from the 2nd defendant and later discovered they were fake. PW1 also acknowledged that they relied on forensic analysis to confirm the checks were fake.

During cross-examination by the 3rd defendant's counsel, PW1 stated that they didn't find any prior relationship between the 1st defendant



and the 3rd defendant. PW1 also acknowledged that they didn't find direct communication or connections between the 1st defendant and the 3rd and 4th defendants, but noted an indirect chain relationship through the 2nd defendant.

During cross-examination by the 4th defendant's counsel, PW1 confirmed that they interacted with the 4th defendant in Lagos but didn't take any further statements beyond the one made in Abuja. PW1 also acknowledged that they didn't establish any relationship between the 1st and 4th defendants.

PW2: Ayotunde Solademu

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PW2, a Foreign Service National Investigator with the FBI, received a letter from the EFCC requesting assistance in verifying the authenticity of 11 traveler's checks. He worked with his team to send the checks to the American Express Traveler's Cheque Authentication Center. After discussing the matter with the center's fraud department, they confirmed that the checks were not genuine. The FBI sent a response to the EFCC, dated January 29, 2020, stating that the checks were not genuine and did not appear to be so.

During cross-examination by the 1st defendant's counsel, PW2 confirmed that the FBI contacted the American Express Traveler's Cheque Authentication Center to verify the checks and that they responded that the checks were not genuine. PW2 also stated that they couldn't have concluded the checks were fake without sending them for analysis.

During cross-examination by the 2nd defendant's counsel, PW2 stated that they don't personally conduct examinations and rely on experts. When shown the traveler's checks (Exhibit P8 and P9), PW2 couldn't determine their authenticity without proper analysis.

During cross-examination by the 3rd defendant's counsel, PW2 replied that they didn't receive the original checks, only photocopies. PW2 explained that they relied on the numbers and phone calls to the authentication center to determine the checks were fake.

During cross-examination by the 4th defendant's counsel, PW2 stated that they only received photocopies of the checks and not the original checks.

PW3: Bamaiyi Haruna Meriga

PW3, a Forensic Document Examiner with the EFCC, analyzed 10 American Express traveler's checks and 1 Mastercard traveler's check. He found that the American Express checks were counterfeit, lacking security features such as watermarks, security threads, and microprints. In contrast, the Mastercard check possessed all the expected security features and was deemed genuine.

During cross-examination by the 1st defendant's counsel, PW3 acknowledged that the manufacturers of the traveler's checks may have their own procedures for authentication, different from those used by the witness. PW3 also stated that a normal person may not be able to determine authenticity by touch alone.

During cross-examination by the 2nd defendant's counsel, PW3 explained the process of watermarking and security printing, highlighting the differences between commercial paper and security paper.

During cross-examination by the 3rd defendant's counsel, PW3 acknowledged that they had not consulted the FBI but had consulted the American Embassy, which was not reflected in the report.

The prosecution ended its case after the PW3 evidence. However, on the 18<sup>th</sup> of January 2024 when the defence was to open, counsel to the 4<sup>th</sup> defendant informed the Court that the 4<sup>th</sup> defendant was deceased.

Although, the prosecutor said he would confirm the death of the 4<sup>th</sup> defendant, he never informed the Court of the result of his confirmation.

Therefore, in the absence of any evidence to the contrary, the Court accepts as true that the 4<sup>th</sup> defendant is deceased. Consequently, his name is hereby struck out of this charge.

CASE OF THE DEFENCE

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W1: Mark Obisesan

DW1, the first defendant, testified that he purchased traveler's checks from DW2, paying him through bank transfers. He sent the checks to a friend in the UK, who reported that they were fake. DW1 then asked DW2 for a refund, but DW2 did not respond.

During cross-examination by the prosecution, DW1 admitted that he had no expertise in determining the authenticity of currency or traveler's checks. He stated that he could not tell if the traveler's checks or a 500 naira note were genuine or fake just by looking at them.

During cross-examination by the 2nd defendant's counsel, DW1 stated that he had no prior dealings with the 2nd defendant before purchasing the traveler's checks. DW1 also acknowledged that he didn't verify the authenticity of the checks before sending them to the UK.

During cross-examination by the 3rd defendant's counsel, DW1 stated that he didn't know the 3rd defendant and had no direct dealings with him. DW1 also acknowledged that he didn't report the incident to the police or EFCC.

DW2: Olumide McTouch

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DW2 testified that he met the third defendant in Abuja, who introduced him to American Express traveler's checks. He then contacted his longtime friend, Mark Obisesan (the first defendant), and advised him to purchase a small quantity to verify their authenticity.

During cross-examination by the prosecution, DW2 admitted that he had no previous experience in dealing with foreign negotiable instruments and was not registered with the Nigerian government to deal with such instruments. DW2 also clarified that he had only found that dealing with traveler's checks was not illegal but acknowledged that he had not inquired about the necessary procedures or licenses required to deal with traveler's checks in Nigeria.

During cross-examination by the 1st defendant's counsel, DW2 stated that he didn't know the 1st defendant would send the checks to the UK



or verification. DW2 also acknowledged that he didn't provide any documentation or proof of authenticity to the 1st defendant.

During cross-examination by the 3rd defendant's counsel, DW2 stated that he met the 3rd defendant in Abuja and was introduced to the traveler's checks. DW2 acknowledged that he didn't know the 3rd defendant's source for the checks.

DW3: Bakare Kabir Bolaji

DW3 testified that he is a businessman with various interests. He met the second defendant at a restaurant in Abuja, where they discussed their respective businesses. He mentioned that he could facilitate the sale of traveler's checks if DW2 knew anyone interested. DW2 later contacted DW3 about a friend, Mark Obisesan (the first defendant), who wanted to purchase traveler's checks.

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During cross-examination by the prosecution, DW3 admitted that he had no knowledge or experience in dealing with foreign negotiable instruments. DW3 acknowledged that he was aware of the requirement to deal through a certified agent but claimed he was not aware if he needed to be one himself.

During cross-examination by the 1st defendant's counsel, DW3 stated that he didn't know the 1st defendant and had no direct dealings with him. DW3 also acknowledged that he didn't verify the authenticity of the checks.

During cross-examination by the 2nd defendant's counsel, DW3 stated that he didn't know the source of the traveler's checks and didn't ask DW2 about it. DW3 also acknowledged that he didn't report the incident to the authorities.

During cross-examination by the 3rd defendant's counsel, DW3 stated that he didn't know the 3rd defendant and had no direct dealings with him. DW3 also acknowledged that he didn't know the source of the traveler's checks.

At the conclusion of the trial, counsel for the 1st-3rd defendants filed written addresses of final arguments on May 15, 2024 (20 pages), May

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3, 2024 (10 pages), and May 14, 2024 (17 pages), respectively. The 1st defendant's counsel also filed a reply on points of law on May 29, 2024 (10 pages). The parties adopted their written addresses and presented further oral arguments. These written submissions are incorporated into this judgment, and specific references will be made as needed.

## ISSUE FOR DETERMINATION

Counsel for the 1st-3rd defendants raised several issues, while the prosecution counsel submitted a single issue. After reviewing the evidence and final written addresses, the Court adopts the prosecution's sole issue for determination:

Whether, based on the totality of evidence before the Court, the prosecution has adduced sufficient credible evidence to prove the defendants' guilt beyond reasonable doubt for the offences charged.

## RESOLUTION

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Pursuant to Section 135(1) of the Evidence Act, 2011, the commission of a crime by a party must be proved beyond reasonable doubt in any proceeding, civil or criminal. The burden of proving guilt or wrongful act lies on the person asserting it, subject to Section 139 of the Act. The combined provisions of Section 135(2) of the Evidence Act and Section 36(5) of the 1999 Constitution place the burden of proof in criminal cases on the prosecution, who must prove its case beyond reasonable doubt and rebut the presumption of innocence guaranteed to the accused.

In discharging this burden, all essential ingredients of the crime alleged must be proved beyond reasonable doubt. If the court is left in a state of doubt after reviewing the evidence, the prosecution has failed to discharge its burden, and the defendant is entitled to an acquittal. However, proof beyond reasonable doubt is not synonymous with proof beyond all doubt. Reasonable doubt is a doubt based on reason arising from evidence or lack of it, which would cause prudent men to hesitate.

Proof beyond reasonable doubt means establishing all essential ingredients of the offense, justifying the conviction of the accused. A case can be proved beyond reasonable doubt through:



- 1. Direct eyewitness account
- 2. Circumstantial evidence from which guilt can be inferred
- 3. Free and voluntary confessional statement of guilt, direct and positive

See relevant case law: Ebenezer v. State [2020] 8NWLR 583, Uzoka Vs Federal Republic of Nigeria (2010) 2 NWLR (Pt 1177) 118, Jua Vs State (2010) 4 NWLR (Pt 1184) 217, Ike Vs State (2010) 5 NWLR (Pt 1186) 41, Gabriel Vs State (2010) 6 NWLR (Pt 1190) 280, Amah v. State (1978) 6-7 SC 27, Afolalu v. State (2010) 16 NWLR (Pt.1220) 584, Smart v. State (2016) 9 NWLR (Pt.1518) 447, Emeka Vs State (2001) 14 NWLR (Pt 734) 666, Nigerian Navy Vs Lambert (2007) 18 NWLR (Pt 1066) 300, Mbang Vs State (2010) 7 NWLR (Pt 1194) 431, Dele Vs State (2011) 1 NWLR (Pt 1229) 508.

The prosecution has relied on circumstantial evidence to discharge its burden of proof in this case, as there was no direct oral and confessional evidence presented. The prosecution contends that its evidence was not controverted by the defense, thereby discharging its burden. However, the defense counsel argue that the prosecution has failed to prove all offences charged beyond reasonable doubt.

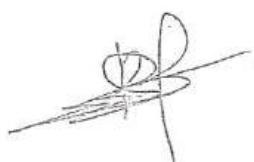
The prosecution has alleged that the 1<sup>st</sup> - 3<sup>rd</sup> defendants have run afoul of the law in conducting a business transaction involving purchasing of Traveler's Cheques. Consequently, the defendants were charged for a two - pronged offences contained under section 370 of the Criminal Law of Lagos State, 2011 which law is replicated under section 372 of the Criminal Law of Lagos State, 2015, which provides as follows:

"Any person who, without lawful authority or excuse, the proof of which lies on him, purchases or receives from any person, or has in his possession, a forged bank note, whether filled up or in blank, knowing it to be forged, is guilty of a felony, and is liable to imprisonment for seven years."

Section 361 of the Criminal Law of Lagos State, 2015 defines "bank note" to include among others, any negotiable instrument.

Furthermore, this law also places the onus of proof of lawful authority or excuse to purchase or possess forged bank notes on the defendant

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After the prosecution has proved purchase and possession of forged bank notes against him.

What the prosecution has to proof specifically in this case beyond reasonable doubt, is purchase and possession of forged bank notes.

It must be stated that there is no dispute by the parties in this case about the fact that Exhibit P9 (Thomas Cook Traveler's Cheque) is genuine and not forged.

It is also not in contention that Exhibits P8 (A-J) are forged. The 1<sup>st</sup> defendant unequivocally narrated how after purchasing them from the 2<sup>nd</sup> defendant, he discovered through his friend that Exhibits P8 (A-J) were fake.

The question that will be resolved in this judgment centers on whether given the admission of the 1<sup>st</sup> defendant and the circumstances of this case, the prosecution proved beyond reasonable doubt the requisite mental element (mens rea) against the defendants for possessing forged Exhibit P8 (A-J)?

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In this connection, in view of the denial by the defendants of the knowledge of awareness that Exhibits P8 (A-J) were forged as at the time of purchase and possession of same, the duty squarely rests on the prosecution to establish knowledge on the part of the defendants beyond reasonable doubt. The task of the Court therefore, is to turn its search light on the evidence adduced by the prosecution and discover if this important duty has been performed by the prosecution.

It must be pointed out that all the evidence adduced by the prosecution witnesses is pointed at establishing that Exhibits P8 (A-J) are not genuine; a fact already found out by the 1<sup>st</sup> defendant through his friend he handed Exhibits P8 (A-J) to. The 1<sup>st</sup> - 3<sup>rd</sup> defendants stated that they did not know that Exhibits P8 (A-J) were false when they were purchased.

The prosecution expert witness admitted under cross - examination that it was difficult to identify fake travelers' cheques through the ordinary eyes even by forensic experts unless brought under the radar of machines designed for such purpose. The implication of this expert



vidence is that credence was further accorded to the denial of awareness by the defendants to the effect that there was no way the defendants would have known that Exhibit P8 (A-J) were fake or forged. This is a profound doubt in the mind of the Court.

Yet there was evidence on record of the person who allegedly forged Exhibits P8 (A-J) which the prosecution did not investigate and prosecute.

The essential elements of the offence of forgery are:

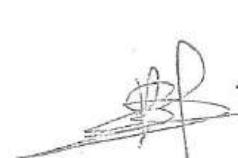
- (a) That there is a document in writing.
- (b) That the document or writing is forged
- (c) That the forgery is by the accused person.
- (d) That the accused person knows that the document or writing is false.
- (e) That the accused intends the forged document to be acted upon to the prejudice of the victim in the belief that it is genuine. See the case of Mustapha V. FRN (2018) LPELR-46565 (CA) 3, Alake v. The State (1991) 7 NWLR (Pt. 205) P. 95.

In the instant case, the Court is of the view that it is not useful for the prosecution to establish the essential elements stated above. However, if must, it would have failed, given the evidence on record, to establish that that the forgery was by the accused person, that the accused person knows that the document or writing is false and that the accused intends the forged document to be acted upon to the prejudice of the victim in the belief that it is genuine.

The prosecution has submitted that its evidence before the Court were not controverted. Counsel must be reminded that it is not the business of the defendants to establish their innocence by denying the evidence of the prosecution. In the instant case, it is the prosecution who must prove its case beyond reasonable doubt that even if the defendant does not defend himself at all, the evidence of the prosecution would be sufficient to secure conviction. By its failure to prove mental element of the charge against the defendants, the threshold of proof beyond reasonable doubt has not been attained.

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The Court must say that the investigation done by the prosecution in this case leaves so much to be desired. It is an incomplete investigation. The actual culprit that forged the documents (Exhibit P8A-J) for which the defendants were charged, was not brought before the court and no reason was given. From the evidence before the Court, the 1<sup>st</sup> defendant can be likened to an innocent purchaser for value without notice that he purchased fake products.

It was the evidence of the prosecution that the deceased 4<sup>th</sup> defendant consistently mentioned one Josiah Itekume as the person he procured Exhibits P8 from. Prosecution witness testified under cross - examination that he was aware that this person was arrested at some point during investigation. No reason was adduced for not bringing him to court as the culprit in this case and the implication is that the defendants herein are standing trial for offences which investigations were incomplete. It is left to be seen how the prosecution expected to succeed when the actual culprit who is the genesis of crime is left loose and not brought to Court to face justice and probably also assist the court one way or the other to do effective justice.

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This Court is aware that the prosecution is at liberty as to which witness to be called to testify in Court however, this Court is of the firm view that Josiah Itekume is a vital witness in this case and failure to call him to give evidence is fatal to the case of the prosecution. The prosecution has a duty to present a complete and sensible investigation outcome before the Court. It has a discretion on which witness to be called but not on carrying out half investigation.

This position was well adumbrated, in the STATE V ONWUERIAKU & ANOR (2017) LPELR - 42613 (CA) where the Court of Appeal held that:

"Now, the onus of proof is on the prosecution to prove the guilt of the accused beyond reasonable doubt. The onus to prove the guilt of the accused does not shift. It always remains on the prosecution See ONUBOGU v THE STATE (1974) 9 S.C. 1; Stephen v THE STATE (1986) 5 NWLR (pt.46). According to Ejiwunmi J.S.C in Nigerian air force v EX SQUADRON LEADER A. OBIOSA (2003) 4 NWLR (PT.810) 233. "It is settled law that in a criminal case, the onus throughout the



ial is on the prosecution to prove its case beyond reasonable doubt. In view of this settled principle, it is left to the prosecution to call such witnesses as would enable the proof of its case beyond reasonable doubt." In calling witnesses to prove its case, the prosecution has discretion. It only needs to call enough material witnesses to prove its case. See **NIGERIAN AIR FORCE v EX SQUARON LEADER A. OBIOSA** (supra). However in its investigation, the prosecution does not have a discretion. It does not have a discretion, like a Court, to pre-determine the guilt of suspects thereby picking and choosing whom to investigate and whom not to investigate out of the suspects. It needs to be emphasized that an accused does not have to prove his innocence. See **OLUSINA AJAYI v THE STATE** (2013) LPELR - 19941 (S.C) **OKOH v THE STATE** (2014) LPELR - 22589 (S.C) There is a presumption of innocence in favour of the accused. See S. 36 (5) of the 1999 Constitution (as amended). It therefore behoves on the prosecution to present a complete and full picture of the result of investigation in order not to give room for reasonable doubt as to the guilt of the accused. If the accused at the time of his arrest and interrogation points to another person as the culprit who committed the crime, and claims innocence, the police should investigate his side of the story. The constitutional presumption of innocence in favour of the accused has to be dislodged and this can only be done by complete investigation as opposed to haphazard investigation. Every reasonable doubt in the prosecution's case against the accused has to be resolved in favour of the accused. See **WILLIAMS v THE STATE** (1992) NWLR (PT 261) 515, **OGUNDIYAN v STATE** (1991) 3 NWLR (PT 181) 519; **THE STATE v AZEEZ** (200\*) 14 NWLR (PT1109) 439 at 483. An incomplete investigation creates room for reasonable doubt as to the guilt of the accused. Such a doubt therefore has to be resolved in favour of the accused" underlined for emphasis).

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In **Isah v. State** (2022) LPELR-57411, Abiru JCA (as he then was) defined "investigation" as a careful examination, study, inspection, exploration, analysis or appraisal or search in order to discover facts or gain information. It is that process of collecting information, inquiry into the information and a detailed examination of the allegation in order to reach the goal of ascertaining the truth of the allegation. A criminal



Investigation thus, refers to the process of collecting information (or evidence) about a crime in order to (i) determine if the crime has been committed; (ii) identify the perpetrator; (iii) apprehend the perpetrator; (iv) provide evidence to support a conviction on it. It is the process by which sufficient evidence is gathered before an accused person can be prosecuted in Court.

The prosecution has not suggested in this case that the fake Traveler's Cheques (Exhibit P8 A-J) were manufactured by the defendants so as to conclude that the defendants were the culprits of forgery. Incomplete investigation, in the circumstances of this case, is fatal to the case of the prosecution.

It is worthy to mention that the burden placed on the defendants by section 372 of the Criminal Law of Lagos State, 2015, under which the defendants were variously charged, to prove lawful authority and excuse can only arise if and only if the prosecution succeeded in proving the mental element of the offence of forgery beyond reasonable doubt.

The prosecution having thus failed woefully, the defendants shall continue to enjoy the presumption of innocence invested on them by Section 36 (5) of the Constitution of the Federal Republic of Nigeria.

Regarding the eleventh count in this case relating to conspiracy, the law is that conspiracy to commit an offence is a separate and distinct offence and it is independent of the actual commission of the offence to which the conspiracy is related. It is based on common intent and purpose and once there is such evidence to commit the substantive offence, it does not matter what any of the conspirators did. See *Sule Vs State* (2009) 17 NWLR. Therefore, where the prosecution fails to prove the substantive offence in a charge for conspiracy, the offence of conspiracy cannot stand. See also, *Misosonu v. The State* (2021) LPELR - 54418 (CA).

In the final analysis, the finding of the Court is that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants have not been connected to the offences charged. There are no credible evidence from the prosecution on which the offence of forgery and conspiracy could be sustained against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

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and since the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants were charged for the same offences in the case at hand, the irresistible conclusion is that the prosecution has failed woefully to prove any of the eleven counts charge in this case against the defendants beyond reasonable doubt. All the doubts created in this case must be resolved in favour of the defendants.

Consequently, the law is that where the prosecution fails to discharge its burden of proving the commission of a crime beyond reasonable doubt, the necessary verdict that a court must pronounce is one discharging and acquitting a defendant.

Accordingly, the eleven count - charge preferred against the 1<sup>st</sup> - 3<sup>rd</sup> defendants in this charge are dismissed and the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants are hereby discharged and acquitted.

This shall be the order of this court.

HONOURABLE JUSTICE ISMAIL O. IJELU  
JUDGE



E.S Okongwu holding brief of N.K Ukoha for the prosecution

P. Akhilomen with S. Amolegbe for the 1<sup>st</sup> defendant.

B. Akpe for the 2<sup>nd</sup> defendant

N.T Adebagbo with A. O Sotayo for the 3<sup>rd</sup> defendant.

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ES OLUKEMI  
COMMISSIONER FOR CASES  
HIGH COURT, LAGOS