

**SUPREME COURT OF NIGERIA**  
19TH DECEMBER, 2008. SC. 331/2007  
**CORAM:- A. I. KATSINA-ALU, A. M. MUKHTAR,**  
**M. MOHAMMED, F. F. TABAI,**  
**C. M. CHUKWUMA-ENEH, JJSC**

MIKE AMADI ..... APPELLANT  
AND  
FEDERAL REPUBLIC OF  
NIGERIA ..... RESPONDENT

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ADMINISTRATIVE LAW - Delegation of powers - Attorneys-General  
- 1999 Constitution, s. 211 - Power of State Attorneys-General to  
delegate their powers under section 211 - Is not limited to delegation  
to officers of their department (H1)

CRIMINAL PROCEDURE - Prosecution - Delegation of powers -  
Attorneys-General - 1999 Constitution, s. 211 - Power of State  
Attorneys-General to delegate their powers under section 211 - Is not  
limited to delegation to officers of their department (H1)

CHARGES - Signing & filing - Fiat to EFCC - Any staff of EFCC can  
exercise the power delegated to EFCC by any Attorney-General -  
Subject to the general powers of the respective Attorneys-General to  
take over proceedings (H2)

CHARGES - Formal defects - Objections thereto - Time to take - Any  
objection to a charge for formal defect on the face thereof - Shall be  
taken immediately after charge is read over to accused - Not later (H3)

EVIDENCE - Offences - Proof - Having proved the ingredients of the  
offences for which appellant was charged - Prosecution has proved  
the offences beyond reasonable doubt (H4)

***FACTS***

The appellant was arraigned and tried at the High Court of  
Lagos State holden at Ikeja for the offences of obtaining money by  
false pretence, forgery and uttering of forged document. He was

charged under Federal Law on some of the counts while he was charged under the Laws of Lagos State on the others. Appellant was prosecuted by officials of the Economic and Financial Crimes Commission 'EFCC' on all the counts.

At the end of hearing, the appellant was convicted on three out of the five counts on which he was tried. In place of the offence of obtaining money by false pretence, he was convicted and sentenced for the offence of attempt to obtain money by false pretence. Aggrieved, appellant appealed to the Court of Appeal, which court dismissed the appeal. He has brought this further appeal to the Supreme Court.

**ISSUES FOR DETERMINATION**

*“1. Whether the Court of Appeal was right when their lordships held that the trial court was right in assuming jurisdiction to try the Appellant for the offences of forgery and uttering and imposing punishment on the Appellant for the offence of Attempt to obtain money by false pretence when the Advance Fee Fraud and other Fraud Related Offences Act No. 13 of 1995 under which the Appellant was charged, does not prescribe any punishment for the said offence?*

*2. Whether the Court of Appeal did not err in law when their lordships held that from the totality of the evidence before the trial court, the conviction of the Appellant for the offences for which he was charged could be justified?*

**HELD** (Unanimously dismissing the appeal per **MUKHTAR JSC**)  
***Delegation of powers - Attorneys-General***

1. It is the argument of learned counsel for the appellant that the delegation in the above letter offended the spirit of the provision of Section 211 of the Constitution *supra*, which confers power of delegation only on officers of the states Attorney-General, and as such the purported delegation to the Federal Attorney-General and the Economic and Financial Crimes Commission was invalid, null and void. Learned counsel for the Respondent has argued that the use of the word ‘may’ in the said Section 211 *supra* does not restrict the delegation of the Attorney-General’s powers to only officers of his department, and that this court has in the past held that an Attorney-

General's powers under Sections 174 and 211 of the Constitution of the Federal Republic of Nigeria cannot be questioned even by the court. I endorse the argument of the learned counsel for the respondent and hold that Exhibit 'A' is valid. (p. 3410 D)

### ***CHARGES - Signing & filing***

2. The EFCC is a common agency for both the Federal and State economic and financial crimes, and as such it qualifies as any other authority to institute criminal proceedings under Section 211 (1)(b) of the 1999 Constitution. That being the case Mr. Hassan being a staff of the EFCC who signed the charge was competent to do so. Any staff of EFCC can exercise the power delegated to the EFCC in Exhibit 'A'. That is why I am in fact in agreement with the learned Justice of the Court of Appeal when in his judgment he stated the following:-

*"The position in criminal trial is different. In view of the high premium attached to speedy disposal of criminal cases, the Attorneys-General of the States delegate their powers to the various states commissioners of Police who institute and prosecute criminal matters in the name of such commissioners of police. Such powers are also delegated to the Federal Board of Internal Revenue, Nigeria Customs Service and lately EFCC by the Attorney-General of the Federation. This arrangement is made possible subject to the provisions of Section 174 (1)(b)(c) and 211 (1)(b)(c) of the Constitution of the Federal Republic of Nigeria 1999 which provide that the Attorney-General of the Federation or State, as the case may be, 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 any such criminal proceedings instituted or undertaken by him or any other authority or person. (Underlining is mine)."*

That is the correct position of the law. The learned justice has put it down succinctly and he did not err in doing so. (p. 3411 B)

### ***CHARGES - Formal defects - Objections thereto***

3. I will reproduce the provision of Section 167 of the Criminal Law of Lagos State. It reads :-

*"167 Any objection to a charge for any formal defect on the*

*face thereof shall be taken immediately after the charge has been read over to the accused and not later.”*

As can be gathered from what transpired on that 17/3/05, the appellant did not object to the amended charge, but pleaded not guilty. If he had any objection to the form or content of the amended charge that was the point or stage at which he should have raised an objection in consonance with the provision of Section 167 *supra*, and not wait until after the whole proceedings in the trial court has been concluded, and then raise it at an appellate level. It was rather too late in the day to raise the issue of defect in the charge at the stage he did. (p. 3412 A/D)

### ***EVIDENCE - Offences - Proof***

4. The quarrel of the appellant in issue (2) *supra* is that the offences for which the appellant was charged and convicted were not proved beyond reasonable doubt.

As can be seen from the above provisions, ingredients and definitions, and from the discussions under issues (2) (3) in the appellant's and respondent's briefs of argument respectively, the ingredients of the offences for which the appellant was charged had been proved and the case against the appellant established and proved beyond reasonable doubt. As also can be seen from the *supra* provisions, the law recognised the punishment of attempt to obtain money by false pretence, and has made provisions for the punishment. It is very clear that the learned trial judge was very alert on the purport of the provisions, and also wary of the sentence/punishment that comes with the offences the appellant was charged. (pp. 3412 G/3417 A)

### ***REPRESENTATION***

Mr. C. F. Agbu, with him B.B. Lawal and P. Guobadia for the Appellant.

Mr. S. K. Atteh, J. A. Ojogbame, K. M. A. Olusesi, S. Tahir and A.B.C. Ozioko for the Respondent.

### ***CASES REFERRED TO***

A. G. Lagos State v. Dosunmu 1989 3 NWLR part 111 page 552  
Madukolu v. Nkemdilim 1962 2 All NLR 581

Sofolahan v. Fowler 2002 13 W.R.N 1

Anyebe v. The State 1986 1 SC 87

State v. Obasi 1998 9 NWLR part 567 page 686

Queen v. Azu Oweh 1962 2 All NLR 65

Nafiu and Rabi v. State 1980 NSCC 291

State v. Ilori 1983 NSCC 69

B

Ibrahim and Anor v. State 1986 1 NSCC 231

Nigeria Prison Service v. Adekanye 2002 15 NWLR part 790 page 318

FR.N. v. Osahon 2006 NWLR part 973 page 361

C

Adimora v. Ajufo 1988 3 NWLR part 80 page 1

Ebba v. Ogodo 1984 1 SCNLR 372

Obodo v. Ogba 1987 2 NWLR part 541

Tapshang v. Lekret 2000 13 NWLR part 684 page 381

D

### **STATUTES REFERRED TO**

Advance Fee Fraud and Other Fraud Related Offences Act, Cap A6, Vol 1, L. F. N., 2004, ss. 1 (3), s (1) and 8 (b)

Constitution of the Federal Republic of Nigeria, 1999, ss. 174 and 211

Criminal Code Law, cap C 17, Vol. 2, Laws of Lagos State of Nigeria, 2003, ss. 467 & 468

E

### **LEAD JUDGMENT BY MUKHTAR JSC**

In an amended information before the High Court of Lagos State holden at Ikeja, the appellant was arraigned and charged with the following offences :-

F

#### **“STATEMENT OF OFFENCE - 1st COUNT**

*Attempt to obtain money by false pretence contrary to sections 5(1), 8(b) and 1(3) of the Advance Fee Fraud and other Fraud Related Offences Act Cap A6 Vol. 1, Laws of the Federation of Nigeria 2004.*

#### **PARTICULARS OF OFFENCE**

*Mike Amadi sometime in February 2004, at No. 15 Irepodun Street, Akiode, Ogba Lagos with intent to defraud attempted to obtain the sum of U\$125,000.00 (one hundred and twenty-five thousand United States Dollars) from Fabio Fajans by sending a payment schedule containing false pretence to the said Fabio Fajans to wit:*

H

*requested for money to enable you process the transfer of Two million, five hundred thousand United State Dollars (\$2.5 million USD) being the contract sum for the generators Fabio Fajans was purported to have supplied to the Federal Government of Nigeria for the All African Games 2003 and by falsely representing to the said Fabio Fajans that the said sum of US\$125,000.00 represent the five per cent (5) processing fees of the total contract sum of USD 2.5 million.*

**STATEMENT OF OFFENCE - 2nd COUNT**

*Forgery contrary to section 467(2) (c) of the Criminal code Cap C17 Vol. 2 Laws of Lagos State of Nigeria 2003.*

**PARTICULARS OF OFFENCE**

*Mike Amadi on or about the 6th day of January 2004, at Lagos within the Ikeja Judicial Division with intent to defraud and in order to facilitate your obtaining money by false pretence from Fabio Fajans forged Central Bank of Nigeria International Payment Schedule purported to have been issued by the Central Bank of Nigeria.*

**STATEMENT OF OFFENCE - 3rd COUNT**

*Uttering forged document contrary to section 468 of the Criminal code Cap C17 Vol. 2, Laws of Lagos State of Nigeria 2003.*

**PARTICULARS OF OFFENCE**

*Mike Amadi on or about the 6th day of January 2004, at Lagos within the Ikeja Judicial Division with intent to defraud and in order to facilitate your obtaining money by false pretence from Fabio Fajans knowingly and fraudulently uttered forged Central Bank of Nigeria International Payment Schedule to one Fabio Fajans as genuine.*

**STATEMENT OF OFFENCE - 4th COUNT**

*Forgery contrary to section 467 of the Criminal code Cap C17 Vol. 2, Laws of Lagos State of Nigeria 2003.*

**PARTICULARS OF OFFENCE**

*Mike Amadi sometime in March 2004, at Lagos within the Ikeja Judicial Division with intent to defraud and in order to facilitate your obtaining money by false pretence from Fabio Fajans forged a letter purportedly written by Mr. Gary M. Bald, (acting) Executive Assistant Director U.S. Department of Justice, Federal Bureau of Investigation United State of America.*

**STATEMENT OF OFFENCE 5th COUNT**

*Uttering forged document contrary to section 468 of the Criminal code Cap C17 Vol. 2, Laws of Lagos State of Nigeria 2003.*

***PARTICULARS OF OFFENCE***

*Mike Amadi on or about the 6th day of January, 2004, at Lagos within the Ikeja Judicial Division with intent to defraud and in order to facilitate your obtaining money by false pretence from Fabio Fajans knowingly and fraudulently uttered a forged letter purportedly written by Mr. Gary M. Bald, (acting) Executive Assistant Director U.S. Department of Justice, Federal Bureau of Investigation United States of America as genuine.”*

The appellant pleaded not guilty and the prosecution called four witness who testified and tendered several documents. The appellant gave evidence in his defence. At the end of the day the appellant was convicted on count (1) (2) and (4), but discharged and acquitted on counts (3) and (5). Aggrieved by the judgment, the appellant appealed to the Court of Appeal. At the Court of Appeal the judgment was affirmed, and the appeal dismissed. Again, the appellant was dissatisfied, and he has appealed to this court. Briefs of argument were exchanged and adopted at the hearing of the appeal.

In this appeal two issues for determination were raised in the appellant’s brief of argument, which are as follows:-

*“1. Whether the Court of Appeal was right when their lordships held that the trial court was right in assuming jurisdiction to try the Appellant for the offences of forgery and uttering and imposing punishment on the Appellant for the offence of Attempt to obtain money by false pretence when the Advance Fee Fraud and other Fraud Related Offences Act No. 13 of 1995 under which the Appellant was charged, does not prescribe any punishment for the said offence?”*

*2. Whether the Court of Appeal did not err in law when their lordships held that from the totality of the evidence before the trial court, the conviction of the Appellant for the offences for which he was charged could be justified?”*

Three issues for determination were formulated in the respondent’s brief of argument, which are as follows:-

*“1. Whether the Court of Appeal was right when, their lord-*

*ships held that the Respondent had the power to prosecute the Appellant for forgery and uttering under the Criminal Code of Lagos State.*

B *2. Whether the Advance Fee Fraud and other Fraud Related Offences Act. Cap A6 Laws of the Federation of Nigeria 2004 provides punishment for attempt to obtain money by false pretences.*

*3. Whether the Court of Appeal erred in law when their lordships held that on the totality of evidence before the trial court, the conviction of the Appellant for the offences for which he was charged*  
C *could be justified."*

I will adopt the issues formulated by the appellant for the treatment of this appeal.

In canvassing argument to cover issue (1), the learned counsel for the appellant set out the conditions that have to be established  
D before a court can assume jurisdiction in a case, as are set out in a plethora of authorities like A. G. Lagos State v. Dosunmu 1989 3 NWLR part 111 page 552, Madukolu v. Nkemdilim 1962 2 All NLR 581 and Sofolahan v. Fowler 2002 13 W.R.N 1. For ease of reference I will reproduce the conditions as per the case of Dosunmu  
E supra reproduced in the appellant's brief of argument, which read as follows:-

- "a. the court has cognizance of the class of cases involved;*
- b. proper parties are present;*
- F *c. the point to be decided is within the powers of the court;*
- d. the court is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another;*
- e. the subject matter of the case is within its jurisdiction and*  
G *there is no feature in the case which prevents the court from exercising its jurisdiction and*
- f. the case comes before the court initiated by due process of law and upon the fulfillment of any condition precedent to the exercise of jurisdiction."*

H The quarrel of the learned counsel for the appellant on this complaint on jurisdiction revolves around condition (b) above i.e. the requirement of the presence of proper parties, which according to him have not been met. Learned counsel's submission is that by

virtue of Section 211 of the Constitution of the Federal Republic of Nigeria, it is only the Attorney General of the State or an officer of his department to whom he delegates such power that has the power to institute and undertake criminal proceedings against a person before any court of law in Nigeria, other than a court martial in respect of any offence created by or under any laws of the State House of Assembly. Reliance was placed on the cases of Anyebe v. The State 1986 1 SC 87, State v. Obasi 1998 9 NWLR part 567 page 686, Queen v. Azu Oweh 1962 2 All NLR 65 etc. He further submitted that on the authority of A. G. Lagos State v. Dosunmu supra that as the Federal Government of Nigeria, the prosecutor in this case lacks the requisite power to prosecute the appellant for an alleged offence committed against the law, the trial court lacks the requisite jurisdiction to entertain the suit and to convict the Appellant on the information. It is the appellant's contention that assuming that Exhibit A containing the fiat of the Attorney General of the State is valid, the power to prosecute so delegated by the fiat specifically is "to the Chairman of EFCC and the Attorney General of the Federation", and it cannot be said to have by any stretch of imagination empowered Mr. Hassan, who is neither the Chairman of the Economic and Financial Crimes Commission nor the Attorney General of the Federation to sign the Information on which the Appellant was charged as this would amount to a further sub delegation of the power so specifically delegated which is invalid in law.

In reply the learned counsel for the respondent has argued that Nigeria is a Federation (as stipulated in Section 2 of the 1999 Constitution of the Federal Republic of Nigeria), consisting of Federal and States governments, and each tier of government has its powers defined in the Constitution. He referred to Section 174 of the said Constitution, cases of Queen v. Owoh and others 1962 NSCC 416, and Anyebe v. State supra. According to him it is based on the authorization required in these cases that the respondent having been granted power of delegation, Exhibit 'A', is empowered to prosecute the appellant for forgery and uttering under the Criminal Code Law of Lagos State.

No doubt that Section 211 of the constitution supra empowers a state Attorney General to institute and undertake criminal pro-

ceedings in respect of an offence under any law of the House of Assembly. Subsection (2) of the said Section stipulates thus:-

*“(2) The powers conferred upon the Attorney General of a State under Subsection (1) of the Section may be exercised by him in person or through officers of his department.”*

B At this juncture it is imperative that I reproduce a pertinent excerpt of the letter of authorization. It reads :-

*“I therefore have his further instructions to inform you that in the spirit of our collective resolve to reverse the country’s negative image, he does FORMALLY DELEGATE his prosecutorial powers in relation to offences under the criminal Code Law and Criminal Procedure Law of Lagos State to both the Attorney-General of the Federation and the Economic and Financial Crimes Commission effective from the date of this letter.”*

D First **it is the argument of learned counsel for the appellant that the delegation in the above letter offended the spirit of the provision of Section 211 of the Constitution supra, which confers power of delegation only on officers of the states Attorney-General, and as such the purported delegation to the**  
 E **Federal Attorney-General and the Economic and Financial Crimes Commission was invalid, null and void. Learned counsel for the Respondent has argued that the use of the word ‘may’ in the said Section 211 supra does not restrict the delegation of the Attorney-General’s powers to only officers of**  
 F **his department, and that this court has in the past held that an Attorney-General’s powers under Sections 174 and 211 of the Constitution of the Federal Republic of Nigeria cannot be questioned even by the court.** He relied on the cases of Nafiu and

G Rabiu v. State 1980 NSCC 291, State v. Ilori 1983 NSCC 69, and Ibrahim and Anor v. State 1986 1 NSCC 231. **I endorse the argument of the learned counsel for the respondent and hold that Exhibit ‘A’ is valid.** As for the argument that Exhibit A specified the

H delegates and that it did not empower Mr. Hanssan, learned Counsel for the respondent has replied that the charges against the appellant at the lower court were not defective because the prosecutor of the Economic and Financial Crime Commission on behalf of the Federal Republic of Nigeria qualifies as authority under Section 211 (1)(b) of

the 1999 Constitution Learned Counsel cited the case of comptroller Nigeria Prison Service v. Adekanye 2002 15 NWLR part 790 page 318, and E.R.N. v. Osah on 2006 NWLR part 973 page 361, and further submitted that Nigeria operates cooperative Federalism as opposed to dualist Federalism, and under cooperative federalism as practiced in Nigeria, some agencies are common agency for both the Federal and State governments. Indeed, ***the EFCC is a common agency for both the Federal and State economic and financial crimes, and as such it qualifies as any other authority to institute criminal proceedings under Section 211 (1)(b) of the 1999 Constitution. That being the case Mr. Hassan being a staff of the EFCC who signed the charge was competent to do so. Any staff of EFCC can exercise the power delegated to the EFCC in Exhibit 'A'. That is why I am in fact in agreement with the learned Justice of the Court of Appeal when in his judgment he stated the following:-***

***"The position in criminal trial is different. In view of the high premium attached to speedy disposal of criminal cases, the Attorneys-General of the States delegate their powers to the various states commissioners of Police who institute and prosecute criminal matters in the name of such commissioners of police. Such powers are also delegated to the Federal Board of Internal Revenue, Nigeria Customs Service and lately EFCC by the Attorney-General of the Federation. This arrangement is made possible subject to the provisions of Section 174 (1)(b)(c) and 211 (1)(b)(c) of the Constitution of the Federal Republic of Nigeria 1999 which provide that the Attorney-General of the Federation or State, as the case may be, 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 any such criminal proceedings instituted or undertaken by him or any other authority or person. (Underlining is mine)."***

***That is the correct position of the law. The learned justice has put it down succinctly and he did not err in doing so.*** It is also the contention of learned counsel for the respondent that by virtue of Section 167 of the Criminal Procedure Law of Lagos State,

objection to a charge for any formal defect shall be taken immediately after the charge has been read over to the accused and not later. He placed reliance on the case of *F.R.N. v. Adewunmi* 2007 10 NWLR part 1042 part 104 page 399. Now ***I will reproduce the provision of Section 167 of the Criminal Law of Lagos State.***

B ***It reads :-***

***“167 Any objection to a charge for any formal defect on the face thereof shall be taken immediately after the charge has been read over to the accused and not later.”***

C On page 209 of the printed record of proceedings can be found the following proceeding:- ;

*“Amended charge dated 15th of March 2005 is read and explained to the accused person in English language by the court Registrar. The accused person says he understands the charge and pleaded*

D ***NOT GUILTY to each of counts 1,2,3,4 and 5.”***

***As can be gathered from what transpired on that 17/3/05, the appellant did not object to the amended charge, but pleaded not guilty. If he had any objection to the form or content of the amended charge that was the point or stage at which he should have raised an objection in consonance with the provision of Section 167 supra, and not wait until after the whole proceedings in the trial court has been concluded, and then raise it at an appellate level. It was rather too late in the day to raise the issue of defect in the charge at the stage he did.***

For the foregoing reasoning I answer issue (1) for determination supra in the affirmative and hold that ground (3) of appeal to which the issue is related fails and it is dismissed.

G ***The quarrel of the appellant in issue (2) supra is that the offences for which the appellant was charged and convicted were not proved beyond reasonable doubt.*** In the case of the offence of forgery, learned counsel for the appellant submitted that before a conviction can be sustained all the ingredients for that offence must co-exist, and it must be established that the forged document was from the accused. Learned counsel cited the case of *Alake v. The State* 1991 7 NWLR part 205 page 568, which states the ingredients as follows:-

H

- (1) That there is a document or writing;
- (2) That the document or writing is forged;
- (3) That the forgery is by the accused person;
- (4) That the accused person knows that the document or writing is false;
- (5) That he intends the forged document to be acted upon to the prejudice of the victim in the belief that it is genuine. B

According to learned counsel it was not proved that the Central Bank of Nigeria International Payment Schedule said to have been forged and uttered by the appellant was ever in the possession of the appellant. Learned counsel for the respondent on the other hand responded that there were pieces of evidence which positively linked the appellant with the commission of the count of attempt to obtain money by false pretences, forgery, and uttering. Indeed there were ample evidence, and I will reproduce some of them here below:- C

PW2 - *"On 29/2/04, Mr. Chukkol based on his investigations informed me that the Internet Service provided for the cloned EFCC website is Multi links. On 2/3/04, I wrote a letter to Multi links requesting them to provide the details of the subscriber to that number. They gave me the printout of the number 7946846. Based on this information, on 30/3/2004, the accused person was arrested at his residence at No. 15 Irepodun Street Akiode Ogba Lagos. On that same day, when we got to his residence, we met the accused person using his computer. We arrested him and recovered the computer system. We recovered the Internet telephone No 7946846. We recovered receipts for the purchase of the Internet number..... On 4th June 2004 I wrote a letter to Central Bank of Nigeria to authenticate a document called "Internal Payment Schedule" which was one of the documents given to me by Mr. Abdulkarim Chukkol PW1. I received their reply on 11th June 2004".* E

The Receipt for Multi links Telecommunication and reply from Central Bank were admitted in evidence the receipt of the Multi Link phone bearing No. 7946846, which bears 13/2/04, and which the appellant confirmed he bought from Multi Link in his caution statement was also admitted in evidence. Exhibit P14 and Exhibit P11 and 12. Exhibit P11 reads as follows:- F

*“Authentication of Document*

*Re: Case of Impersonation and attempt to obtain money under false Pretences*

B *This commission is investigating a case of impersonation and attempt to obtain money under false pretences. Operatives of this commission at Lagos have apprehended the principal culprit behind this crime.*

C *2. The suspect alleged that the attached document emanated from the Central Bank of Nigeria. You are therefore requested to confirm if the said document actually emanated from your department.....”*

Then the reply to the above, Exhibit P12 reads thus:-

*“Dear Sir,*

D *AUTHENTICATION OF DOCUMENTS RE-CASE OF IMPERSONATION AND ATTEMPT TO OBTAIN MONEY UNDER FALSE PRETENCES*

*We are in receipt of your letter dated June 4, 2004, forwarding a document marked A4 which was purported to have emanated from the Central Bank of Nigeria.*

E *Please be informed that the said document did not emanate from central Bank of Nigeria. It is fake.....”*

F There was also evidence that linked many of the ‘E’ mails documents involved in the particular transaction that led to the arrest of the appellant to the said multilink number 017946846 and its corresponding service provider, etc. The evidence of the appellant himself on page 197 of the printed record of proceeding, supports the above evidence. It reads:

G *“They took my computer, my handset, my photograph, Tenancy Agreement with my landlord, my starcom telephone line and Multilinks telephone line. They took the printer, computer back up light. These are all the things they recovered.”*

H The appellant did not deny that the Multilinks telephone line was not removed from his house. The learned counsel for the appellant in his argument made heavy weather of the evidence of P.W.3 that the telephone was actuated sometime in August i.e. well after the period the crime was committed. I don’t know why learned counsel would hold firmly to this, when the evidence of P.W.3 on this was not

categorical, as can be seen from the answers elicited in the course of his cross-examination, which states:-

“The phone was activated sometime in August last year. I am not specific about the date unless I check my record.” This is neither here nor there. There was also evidence that the appellant registered the website efcnigeria.com, Rediff.com.India limited, and princemike 2001 @yahoo.com, and that all the e-mails, exhibits PI were linked with the telephone Number 7946846 log supplied by Multi Links Communication ltd. In the light of all the evidence adduced by the prosecution I subscribe to the excerpt of the judgment of the lower court which reads:-

*“The Appellant knew that the Central Bank International Payment Schedule was a worthless instrument yet he passed it on to the recipient with the intent to defraud or injure the recipient. By so doing the offence of uttering a forged document is complete and the Appellant was rightly convicted under the count. The Appellant’s argument that the offence for which the Appellant was charged occurred before the telephone line No. 7946846 was acquired and activated is without basis, having regard to the date on the receipt that was issued in satisfaction to the payment of the said line. The line was acquired on 13th February, 2004 while the 1st E-Mail that complained against the Fake E-mails that were purportedly sent by Alhaji Nuhu Ribadu from Graham Rouse was received on the 22nd February, 2004.”*

On the offence of attempt under which the appellant was charged the learned counsel for the appellant has submitted that before a conviction can be sustained for the offence of attempt to obtain money by false pretences, there must be a fraudulent pretence contained in a document from an accused to another clearly identifiable person. It must be clear that the document emanated from the accused and it was meant to be received by another clearly identifiable person and was in fact received by the victim if such pretence is contained in a letter or other documents. Learned counsel for the respondent has argued that Section 5(1) stipulates what the prosecution must prove. I will now reproduce the provision of the said Section 5 of the Advance Fee fraud and other fraud Related Offences Act No. 62 of 1999. It reads:-

*“5(1) Where a false pretence, which constitutes an offence under this Act is contained in a letter or other document, it shall be sufficient in a charge of an attempt to commit an offence under this Act to prove that the letter or other document was received by the person to whom the false pretence was directed.*

B *(2) Notwithstanding anything to the contrary in any other law, every act or thing done or omitted to be done by a person to facilitate the commission by him of an offence under the Act shall constitute an attempt to commit the offence.*

C *(3) In this section -*  
*“Other document” includes a document transmitted through a fax or telex machine or any other electronic or electrical device, a telegram and a computer print out.”*

By virtue of section 8 -

D *“A person who .....  
 (a) conspiracy with, aids, abets, or counsels any other person to commit an offence; or*

*(b) attempts to commit or is an accessory to an act or offence;*

*or*

E *(c) incites, procures or induces any other person by any means whatsoever to commit an offence; under this Act, is guilty of the offence and liable on conviction to the same punishment as is prescribed for that offence under this Act.”*

F The ingredients of the offence of obtaining property by false pretence as contained in Section (1) of the Advance Fee Fraud and other Fraud Related Offences Act supra reads as follow:-

G *“(1) Notwithstanding anything contained in any other enactment or law, any person who by any false pretence, and with intent to defraud-*

*(a) obtains, from any other person, in Nigeria or in any other country, for himself or any other person;*

*(b) induces any other person, in Nigeria or in any other country, to deliver to any persons, or*

H *(c) obtains any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence is guilty of an offence under this Act.*

*Then the punishment -*

*(3) A person who is guilty of an offence under subsection (1) or (2) of this section is liable on conviction to imprisonment for a term of not less than ten years without the option of a fine.”*

**As can be seen from the above provisions, ingredients and definitions, and from the discussions under issues (2) (3) in the appellant’s and respondent’s briefs of argument respectively, the ingredients of the offences for which the appellant was charged had been proved and the case against the appellant established and proved beyond reasonable doubt. As also can be seen from the supra provisions, the law recognised the punishment of attempt to obtain money by false pretence, and has made provisions for the punishment. It is very clear that the learned trial judge was very alert on the purport of the provisions, and also wary of the sentence/punishment that comes with the offences the appellant was charged.** The case of *Nwankwo v. FR.N.* 2003 4 NWLR part 809 page 1 is an eye opener on this. The Court of Appeal was satisfied that the respondent proved the charges against the appellant, as found by the learned trial judge and rightly too as follows:-

*“The appellant in his evidence at the trial admitted that his photograph, tenancy agreements starcom telephone number; Multi Links telephone line, printer and computer back up light were recovered from his residence by the operatives of the EFCC. He also admitted that he is the owner of the e - mail address efconline.com and his explanation is that the meaning of EFCC in the address is Edmund, Felicia, Chileuzor, Chinyere, which are the first letters of the names of his father, mother, his name and that of his wife. Appellant denied knowledge of the charges against him.*

*The law is settled that assessment of evidence and ascription of probative value to such evidence is the primary duty of the trial court that watched the demeanor of the witnesses and listened to them”.*

Indeed, the latter is the position of the law. An appellate court will not ordinarily disturb the findings of fact of a trial court unless such findings are perverse and not supported by evidence. It is only a trial court that has the singular advantage of seeing and listening to a witness, thereby watching his demeanor as he gives evidence and assessing him. See *Ebba v. Ogodo* 1984 1 SCNLR 372, *Obodo v.*

Ogba 1987 2 NWLR part 541, and Tapshang v. Lekret 2000 13 NWLR part 684 page 381.

In the instant appeal, I do not see that the findings of facts which are now concurrent are neither perverse nor unsupported by evidence. The law is trite that an appellant court will have no justification to upturn judgments that are the products of admissible evidence and based on reasonable conclusions. See Adimora v. Ajufo 1988 3 NWLR part 80 page 1, Lengbe v. Imade 1959 SCNLR page 640, and Echi v. Nnamani 2000 8 NWLR part 667 page 1. In the circumstance this court will not disturb the findings of the lower courts.

The issues under discussion are resolved in favour of the respondents, and grounds 1,2, 4 and 5 of appeal to which the issues are married fail, and they are dismissed. In the final analysis the appeal fails in its entirety and it dismissed. The judgment and sentences of the trial Court and the Court of Appeal are hereby affirmed.

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### **KATSINA-ALU JSC**

I have read before now in draft the judgment delivered by my learned brother Mukhtar JSC in this appeal. I agree with it and for the reasons she has given, I also dismiss the appeal and affirm the judgment of the Court of Appeal.

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### **MOHAMMED JSC**

I have had the privilege of reading in draft, the judgment of my learned brother Mukhtar, JSC, which has just been delivered. I agree with the reasoning and the conclusion reached in dismissing this appeal which has no merit whatsoever.

The backgrounds facts leading to this appeal have been exhaustively set out in the leading judgment and I need not recount them all over again. It is sufficient to state that the law is trite that the burden on the prosecution in a criminal trial which must be discharge in order to secure a conviction, is to prove the offence charged against the accused being tried, beyond reasonable doubt. See Section 138(1) of the Evidence Act CAP 112 Laws of the Federation of Nigeria, 1990 and Duru Vs The State (1993) 3 NWLR (Pt.281) 283 at 290.

In the instant case, I am in no doubt at all that the prosecution had discharged that burden required of it by law as found by the trial court and affirmed by the Court of Appeal. It is therefore my judgment that this appeal shall be and is hereby dismissed. The conviction and sentences passed on the Appellant by the trial court as affirmed by the court below, are hereby further affirmed.

B

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***TABAI JSC***

I had a preview of the lead judgment of my learned brother Mukhtar JSC and I agree with the reasoning and conclusion therein. The judgment of the trial court on the 20th of May 2005 and affirmed by that of the Court of Appeal is in my view supported by the evidence on record. I do not have any reason to disturb the concurrent findings of these courts. The result is that the appeal is also dismissed by me.

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***CHUKWUMA-ENEH JSC***

I have had the privilege of reading in draft the judgment of my learned brother Mukhtar JSC and I agree with her that the appeal is unmeritorious and should be dismissed. I also dismiss it and abide by the order in the lead judgment.

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