IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT JABI

THIS THURSDAY, THE 28TH DAY OF MARCH, 2024.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

CHARGE NO: CR/151/2020

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA .....COMPLAINANT

AND

1. MOHAMMED BELLO ADOKE
2. ALIYU ABUBAKAR
3. RASKY GBINIGIE
4. MALABU OIL AND GAS LIMITED
5. NIGERIA AGIP EXPLORATION LIMITED
6. SHELL NIGERIA ULTRA DEEP LIMITED
7. SHELL NIGERIA EXPLORATION PRODUCTION COMPANY LIMITED

... DEFENDANTS

JUDICIARY N300 HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

Seal

RULING

The Defendants were charged with varying offences and arraigned on a **Forty (40) Counts** Further Amended charge dated 1st February, 2023 and filed on 3rd February, 2023 at the Court's Registry. The Defendants all pleaded not guilty to the Counts contained therein.

Fee – ₦2,000
R/N – 12839007
Date – 4/4/24
Seal – ₦200

Federal Republic of Nigeria
F.C.T. Judiciary
Certified True Copy
M. J. Sado
Registrar Court 11
Sign. ... 4/4/24
High Court of Justice Abuja

A summary of the Amended Forty (40) Counts charge shows that the 1st, 4th, 5th, 6th and 7th **Defendants** were charged under **Count 1** with conspiring to commit an offence in April 2011, to wit: Public Servant disobeying direction of law with intent to cause injury contrary to the provision of **Section 97 (1) of the Penal Code**. Cap 532 LFN (Abuja) 1990 and punishable under **Section 123** of the same Act.

The **1st Defendant** was solely charged under **Count 2** with the offence of knowingly disobeying the direction of the law to wit: the Companies Income Tax Cap. Cap C21 LFN (2004) by seeking to save 5th, 6th and 7th Defendants from charges of Taxes to which they are liable by law to the Federal Government of Nigeria through the OPL 245 Resolution Agreement contrary to the provision of **Section 123 (c) of the Penal Code** and punishable under the provision of **Section 123** of the same Act.

The **4th, 5th, 6th and 7th Defendants** were jointly charged under **Count 3** with the offence of abetting the 1st defendant to disobey the direction of the law by saving them from charges of taxes to which they are liable by law to the Federal Government contrary to the provision of **Section 85 of the Penal Code** and punishable under **Section 123** of the same Act.

The **2nd Defendant** was charged alone under **Count 4** of offering gratification in the sum of N300, 000, 000 (Three Hundred Million Naira) to the 1st Defendant contrary to and punishable under **Section 118 of the Penal Code**.

Following from **Count 4**, the **1st defendant** was charged under **Count 5**that whilst being the Attorney-General and Minister of Justice of the Federation of having accepted gratification in the sum of N300, 000, 000 (Three Hundred Million Naira) in the exercise of his official functions contrary to the provision of **Section 116 (b) of the Penal Code** and punishable under **Section 116** of the same Act.

The **3rd Defendant** was charged with others now at large in **Counts 6-40** with offences ranging from conspiracy to commit criminal breach of trust; abetting others now at large to dishonestly convert various sums of monies from Malabu Oil and Gas (MOGL) accounts domiciled with Keystone Bank and First Bank of Nigeria Ltd; conspiracy to commit felony to wit: forgery; conspiracy to make false documents; making false documents and using them as genuine which are offences contrary to the provisions of **Sections 363** and **366 of the Penal Code** and punishable under **Section 364** of the same Act.

Thereafter, the matter proceeded to trial on 4th **November, 2021.** The prosecution called in total **ten (10) witnesses** and **23 documentary** Exhibits were tendered through them in evidence and marked as **Exhibits P1a** and b to P23. Indeed seven (7) of the Exhibits were admitted during the cross-examination of some of the witnesses of the prosecution. The prosecution finally closed its case on **19th October, 2023.**

At the close of the prosecution's case, all Senior learned Counsel for the defendants elected to make a no case to answer submission and with the agreement of all counsel in the matter, the court ordered for the filing of written addresses in respect of the no case to answer submissions.

The 1st **defendant's** address is dated 3rd November, 2023 and filed same date at the Court's Registry. In the address no issue was distilled as arising for determination but the address which forms part of the Record of Court dealt at length with the principles guiding the no case to answer submission in relation to the evidence led by the prosecution at trial and it was contended that absolutely no prima facie case has been made out against 1st defendant requiring him to enter a defence.

The 2nd **defendant's address** is dated 6th November, 2023 and filed on 7th November, 2023. In the address, one issue was distilled as arising for determination:

"Considering Count 4 of the Further Amended charge dated 1st February, 2023 as framed, the terse evidence presented by the prosecution, the applicable laws and judicial precedents, whether this Honourable Court will not accede to the applicants humble application of a no case submission."

Submissions were equally made on the above issue which forms part of the Record of Court to the effect that on the facts and the applicable principles of law, the prosecution has not made out a prima facie case against 2nd defendant requiring him to enter a defence.

On the part of the **3rd defendant**, his address is dated 7th November, 2023 and filed same date at the Court's registry. In the address, one issue was raised as arising for determination:

"Whether the 3rd defendant is not entitled to be discharged and acquitted on a no case submission in this suit."

Submissions were equally made on the above issue which also forms part of the Record of Court and it equally projects the case that on the evidence, nothing has been proffered that will necessitate the 3rd defendant putting in his defence.

The address of **4th defendant** is dated 8th November, 2023 and filed on 9th November, 2023. In the address, three (3) issues were raised as arising for determination:

a. **Having regard to the evidence of the Prosecution Witnesses (PW1-PW10) and the facts elicited from cross-examination as well as the exhibits tendered in the course of the proceedings, whether the Prosecution has made out a case to warrant the 4th Defendant to enter a defence in this case.**

b. **Having regard to the facts and circumstances of this case as well as the provisions of Sections 302, 303 and 357 of the Administration of Criminal Justice Act (ACJA) 2015, whether the Prosecution has discharged the evidential burden of proof to warrant the 4th Defendant to enter a defence in this case.**

c. **Whether the Prosecution Witnesses (PW1-P10) were able to link Malabu Oil and Gas Ltd (the 4th Defendant) with the commission of any crime.**

Submissions were equally made on the above issues which similarly forms part of the Record of Court to the effect that the prosecution has not discharged or made out a case as required by law to warrant the 4th defendant to enter a defence in this case.

The address of **5th defendant** is dated 9th November, 2023 and filed same date at the Registry of Court. In the address, one issue was distilled as arising for determination, to wit:

"Whether having regard to the evidence adduced by the prosecution in this case, a prima facie case has been made out so as to warrant the court to call on the 5th defendant to enter its defence."

Submissions were equally made on the above issue which forms part of the Record of Court and it was contended that on the evidence led by the prosecution, a prima facie case has not been made as required by law to warrant the court to call on the 5th defendant to enter its defence.

On the part of 6th **and** 7th **defendants**, the address is dated 9th November, 2023 and filed same date. In the address, a sole issue was framed as arising for determination:

"Whether having regard to the evidence adduced by the complainant in this case, a prima facie case has been established against the 6th and 7th defendants."

Here too, as in the addresses of all the other defendants, the submissions made which also forms part of the Record of Court are essentially to the effect that having regard to the evidence adduced by the complainant, a prima facie case was not made out against the 6th and 7th defendants to warrant their having to enter a defence.

In response to the addresses of all the defendants, the complainant filed a **joint composite response dated 20th December, 2023** and filed same date. In the address, one issue was distilled as arising for determination:

"Having regard to the evidence adduced and exhibits tendered at the trial and all the facts and circumstances of this case, whether the prosecution has made out a prima facie case against the defendants to warrant them being called upon to enter their respective defences."

In the submissions of the complainant on the above issue, the complainant would appear to have **conceded** the fact that it did not on the evidence **proffer or make out a prima facie** case against the **1st, 2nd, 4th, 5th, 6th and 7th** Defendants requiring them to enter a defence.

This **rather candid and rare concession particularly in our clime** can be situated in **paragraph 2.4, page 5 of the address** as follows:

"Having evaluated the evidence adduced by the ten prosecution witnesses including the exhibits tendered during the trial, the prosecution has no desire to arguing against the no case submission made by the 1st, 2nd, 4th, 5th, 6th and 7th defendants with regard to counts 1, 2, 3, 4 and 5. The decision is anchored on paucity of evidence available to sustain any of the ingredients required to establish each of the offences preferred against the six defendants. In that wise, it is needless to analyze the evidence adduced vis-à-vis the ingredients of the offences charged in counts 1-5 respectively. Nevertheless, the prosecution shall contend against the no case submission made by the 3rd defendant in regard to counts 6-40, as overwhelming

evidence abounds to warrant this Honourable Court to call upon the 3rd defendant to enter his defence on all the 35 counts."

Flowing from the above, the address of complainant accordingly projected the point that they made out a **prima facie case** against **only** the 3rd **defendant** requiring him to enter his defence. **With respect to the other defendants, the implication of the clear position taken by the complainant is that they should be discharged.**

The 2nd **defendant** and 3rd **defendant** filed Replies on points of law to the address of the complainant dated 8th January, 2024 and 10th January, 2024.

At the hearing on **12th January, 2024**, all Senior Counsel for the parties relied and adopted the submissions contained in their very well articulated written addresses and all made further oral submissions in amplification of the points made or contained in the addresses. While counsel on behalf of the defendants urged upon court to uphold the no case submissions made as legally availing, on the other side of the aisle, the prosecution as stated earlier conceded that the no case submissions made by 1st, 2nd, 4th, 5th, 6th **and** 7th defendants has merit and ought to be sustained; the court was however urged to dismiss the submission of 3rd defendant and call upon him to enter his defence.

I have carefully considered the **40 counts charge**, the evidence led by the prosecution witnesses and the Exhibits tendered along with the submissions made herein to which I may refer to in the course of this Ruling where necessary.

It appears to me and as captured by all Counsel that the issue to be resolved is whether the **prosecution has made out on the evidence led, a prima facie case against the defendants requiring all or any one of them to enter a defence to the charge.**

The principles that guides the court in either upholding or dismissing a no case to answer submission are now fairly well settled and these have been properly set out in all the addresses of the respective learned Senior Counsel.

The court in exercising its statutory powers within the ambit of **Sections 302**, and **303 (3)** of the **Administration of Criminal Justice Act (ACJA) 2015** must exercise utmost circumspection in this delicate judicial exercise. The court must necessarily play its part in ridding the society of crimes and related vices,

but it must also ensure at the same time that a defendant is not made to face the rigors of a criminal trial without some justification or valid basis.

Now as rightly submitted by all counsel in this case, a no case to answer submission may properly be made and upheld when there has been no evidence to prove an essential element of the alleged offence(s) or when the evidence adduced by the prosecution has been so discredited under the force of cross-examination or is manifestly unreliable that no reasonable tribunal could safely convict on it. See **Ibeziako V. C.O.P (1963) 1 SCNLR 99, Ekpo V. State (2001) FWLR (pt.55) 454 and State V Emedo (2001) 12 NWLR (pt.726) 131.**

All that the law requires a court to determine at this stage is whether the prosecution had made out a **prima-facie case**; it is not to evaluate evidence or consider the credibility of witnesses. See **Daboh V State (1977) 11 NSCC 309 at 315 and State V Emedo (supra). In Tongo V C.O.P (2007) 12 NWLR (pt.1049) 523,** the Supreme Court stated as follows:

"Therefore, when a submission of no prima facie case is made on behalf of an accused person, the trial court is not thereby called upon at that stage to express any opinion on the evidence before it. The court is only called upon to take note and to rule accordingly that there is before the court no legally admissible evidence linking the accused person with the commission of the offence with which he is charged. If the submission is based on discredited evidence, such discredit must be apparent on the face of the record. If such is not the case, then the submission is bound to fail."

For the sake of clarity, a **prima facie case is not the same as proof, which comes later when the court is to make a finding of guilt of the accused.** It is evidence which if believed and un-contradicted, will be sufficient to prove the guilt of the accused. See **Ajidagba V I.G.P (1958) SCNLR 60 and Emedo V State (supra) at 151-152.**

May I also say at this stage that in a no case to answer submission, a defence counsel relying on the absence of evidence to prove an essential ingredient of the alleged offence stands on a surer footing than one relying on the unreliability or lack of credibility of the prosecution's witnesses. This is mainly because at the stage of no case to answer submission, only one side of the case has been heard and it would be premature and prejudicial to comment on the

evidence or facts of the case at that stage. See **Criminal Procedure in Nigeria, Law and Practice by Oluwatoyin Doherty (of blessed memory) at 272-273.**

Indeed on this point as already alluded to, the court must not concern itself with the credibility of witnesses or the weight to attach to their evidence or to make observations on facts. The wise counsel of the **Apex Court** in situations like this readily comes to mine. The court stated as follows:

"At the stage of no case submission, trial is not yet concluded and the court should not concern itself with the credibility of witnesses or the weight to be attached to their evidence even if they are accomplices. The court should also at this stage be brief in its ruling as too much might be said which at the end of the case might fetter the court's discretion. The court should at this stage make no observation on the facts."

Per **Kutigi JSC** (as he then was and of blessed memory) in **Ajiboye V State (1995) 8 NWLR (pt.414) 408 at 413** relying on **Chief Odofin Bello V The State (1967) NWLR 1 at 3** where **Ademola CJN** (of blessed memory) stated as follows:

"Whilst it is not the aim of this court to discourage a judge from discussing matters of interest in his Judgment, we would like to warn against any ruling of inordinate length in a submission of no case to answer, as too much might be said, as was done in this case, which at the end of the case might fetter the judge's discretion... It is wiser to be brief and make no observation on the facts."

Having set out the above guiding principles, the basic responsibility or focus of court now is to examine the evidence led by the prosecution witnesses in the light of the critical elements required to sustain the offences for which the defendants are charged and in doing so determine whether the evidence has failed to link the defendants with the offences they are charged with.

I shall endeavor to treat each count as it affects each defendant separately but where the counts cover different defendants and treats or deals with the same or related offences, those counts will be taken together and a **clear position taken with respect to the defendant affected.**

Before proceeding with the exercise, let me quickly respond to some peripheral matters arising from the addresses of parties. **Firstly**, the suggestion canvassed

by some of the defendants that the **concession by complainant** earlier referred to that a case was not made out against some of the defendants translate automatically to the success of the no case submission made and that those defendants affected be discharged and acquitted without much ado.

With respect, I don't share the enthusiasm in such proposition and it has no legal support within the purview of the relevant sections governing the application under the **ACJA 2015**. **Section 302 of ACJA** provides thus:

> **"302.The Court may, on its own motion or on application by the defendant after hearing the evidence for the prosecution, where it considers that the evidence against the defendant or any of several defendants is not sufficient to justify the continuation of the trial, record a finding of not guilty in respect of the defendant without calling on him or them to enter his or their defence and the defendant shall accordingly be discharged and the court shall then call on the remaining defendant, if any, to enter his defence."**

The above provision is clear and unambiguous. The provision offers clear, plain and specific direction. On the basis of the positions taken by some Counsel in this case, it appears that we see the situation and legal consequences of this provision differently. The fulcrum of the provision projects a decision to be made by the court after **considering the evidence proffered** by the prosecution. The court could *suomotu* activate the exercise or act on the basis of an application by the defendant(s). A decision is then made one way or the other, by the Court **"after hearing the evidence of the prosecution, (and) where it considers that the evidence against the defendant or any of the defendants is not sufficient to justify the continuation of trial, record a finding of not guilty in respect of the defendant without calling on him or them to enter his or their defence..."** Inherent in this provision is the duty on court to consider the evidence led, determine its sufficiency before making a decision on whether the trial will continue or not.

The provision of **Section 357 of ACJA 2015** reinforces this position wherein it provided as follows:

> **"Where at the close of the evidence in support of the charge, it appears to the court that a case is not made out against the defendant sufficiently to require him to make a defence, the court shall, as to that particular charge, discharge him being guided by the provisions of Section 302 of this Act."**

The above provision is equally clear.

Therefore, notwithstanding the **concession by complainant**, the court has a duty to perform within the clear remit of the provisions of **Section 302, 303 (3) and 357 of ACJA**. That duty or responsibility cannot therefore be legally abdicated on the basis of the concession made. With or without the concession, the court must do its duty as statutorily prescribed. This position should not be taken to mean that the concession in the address is completely of no value. I think we are all on the same page that the principle now of wide application is settled that an address of counsel no matter how well articulated is not a substitute for or cannot take the place of evidence. The **concession** on its own, therefore does not aggregate to a fulfillment of the legal requirements of a no case to answer submission. It is also now generally accepted that there is nothing that precludes the court from relying on admitted facts contained in an address to the clear extent that it is borne out of the evidence on record and supported by the applicable law. Consequently, concessions made by counsel in an address which is supported by the evidence on record and the applicable laws are as good as an admission and the court is entitled to rely on such conceded facts in reaching a decision. See **Aliyu V Kano State (2021) LPELR – 54797 (CA).**

The bottom line is that the concession, while helpful where it is constructive in the sense that it has material support from the evidence led on record and the applicable laws, it however really has no significant material bearing with respect to the duty that the court is now about to undertake or commence.

Secondly, it is observed that in the very well written addresses and the elaborate and extensive submissions made therein, some appear to have proceeded on the rather faulty premise or basis that the court is dealing with the **guilt or otherwise** of the defendants. That approach with respect appears to me flawed. The point to underscore is that at this stage, the issue is not whether the evidence is sufficient to ground a **conviction**. This can only come about after hearing from both sides where the court will then have the invaluable opportunity of testing the versions of the incident presented from both sides of the aisle. Accordingly **a prima facie case means that there is a ground for proceeding with the trial**, but it is not the same as proof which comes later when the trial court has to find whether the accused is guilty or not. See **Ajidagba V I.G.P (1958) SCNLR 60.**

Because of the nature of the **40 Counts charge** and for a fair and proper resolution of whether the prosecution has made out **prima facie case** against the defendants, requiring them to enter their defence, it would be apt and necessary to situate and **summarise the essence of the evidence led by the prosecution witnesses and then relate them to the counts and the applicable legal principles.**

This would then make for a fairly lengthy ruling, which on point of principle, is not particularly encouraged for a ruling on a no case submission as already alluded to. Indeed it is even suggested by **Oputa JSC** (of blessed memory) that a ruling on a no case should be couched in a simple statement upholding or rejecting the submission. See **Atano V A.G. Bendel State (1988) 2 NWLR (pt.75) 201.**

Now to the substance. I will start by summarizing the essence of the evidence presented by the prosecution.

Mohammed Sani Abacha also known as **Mohammed Sani** testified as PW1. That he is a business man. He knows the 1st defendant as Company Secretary of Kabo Airlines and former A.G. of the Federation. That he visited him on assuming office and informed him of his problems with OPI.245 owned by Malabu Oil and Gas and that he told him to write a petition stating his complaints which he did in 2010.

That he knows 2nd defendant based on the irregularities perpetrated against him in 3rd defendant. He knows 3rd defendant, who was the foundation secretary of 4th defendant. He knows 4th defendant as he was a founding member, shareholder and director in the company. That he knows 5th, 6th and 7th defendants based on irregularities committed in 4th defendant.

PW1 testified further that as a member and shareholder of 4th defendant, it was incorporated in 1998 to seek allocation for Oil prospecting licence and that subsequent to the registration of the company, they sought for oil prospecting licence in the petroleum ministry and they were granted OPL 214 and 245. That at the time of the incorporation, the company had a total shareholding of 20, 000, 000 with himself having 10, 000, 000 shares; Kweku Amafaga – 6, 000, 000 shares and Hassan Hindu – 4, 000, 000 shares.

He stated that **KwekuAmafaga was a pseudo name for Chief Dan Etete while Hassan Hindu was a pseudo name for Alhaji Hassan Adamu**, wakilin Adamawa.

On the complaints of irregularities, PW1 stated that after the death of his father, General Sani Abacha, he was harassed and imprisoned and that while in prison, he heard that alterations were made in 4th defendant and he gave a Power of Attorney to late Air Vice Marshall Muktar Mohammed to oversee and participate in the affairs of 4th defendant on his behalf.

That despite all his efforts, he could not get to or communicate with Chief Dan Etete who had then fled the country. He then caused **Abubakar Malami SAN** to conduct a search on 4th Defendant at the Corporate Affairs Commission (CAC) and when there was no response, he caused another lawyer, **R.A. Atabo** to conduct the search.

PW1 said it was then that he discovered that there were several alterations in 4th Defendant, sometimes in June 1998, November 1998 and his names removed from 4th defendant and that by the year 2000 when the final alteration was effected, his shares were altered and converted and that his name no longer appears as a director. He stated that it was at that point he noted that a company Pecos Energy Ltd. was introduced into 4th defendant.

PW1 stated that he never authorized any alterations and when he discovered the alterations, he filed a case at the **Federal High Court** seeking the court to assert his ownership of 10, 000, 000 shares which is 50% of 4th defendant.

PW1 said that he also instructed his lawyers in London to write both Shell and ENI AGIP cautioning them into going for OPL 245 Block and not to enter into any agreement or joint venture with 4th defendant. That he informed them that he is a director and shareholder in 4th defendant.

PW1 said that he also instructed his lawyer to write to the Netherlands and Italian Embassy which are home countries for Shell and ENI AGIP seeking them to pass the information to the companies not to participate in any agreement or joint venture with 4th defendant.

PW1 stated that he also caused his lawyers to publish in two (2) Newspapers, a general caveat warning the public from entering or negotiating any joint partnership with 4th defendant. That all his complaints fell on deaf ears.

On the alterations at CAC, he added that sometime in 2000 or 2001, one Ayodeji went to CAC to make changes in Form C.02 of 4th defendant. On hearing this, his lawyers wrote a petition again to CAC who responded saying that they had forwarded a letter to EFCC to investigate the issues raised in his petition. That while his case was pending at the Federal High Court, Chief Dan Etete and his cohorts sold 4th defendant to Shell and ENI AGIP and that all these were done without his consent or approval as a shareholder and director of 4th defendant.

Ambassador Hassan Adamu testified as **PW2**. He is a retired diplomat and a business man. He knows some of the defendants. He knows 1st defendant as former A.G. of the Federation.

PW2 testified that his involvement with 4th defendant started in 1998. That Dan Etete, the former Minister of Petroleum called him that he was incorporating a company, 4th defendant and wants him to be a shareholder and that he should give him a name. That he gave him a pseudo name, **Hassan Hindu** and that he will call him back after reflecting on the issue to confirm and give him a real name.

PW2 said he later called him to say that it was not advisable for him to be a shareholder of a private company and that he should drop his name and find another name.

PW2 said that Dan Etete pleaded with him to give him another name, a northerner who is in logistics and shipping in a private company so he gave him Aliyu **Mohammed Jabu** and told him to contact him directly to confirm if he wants to be a director and shareholder in the company. That he now called Alhaji Jabu and informed him of the developments and told him to contact Dan Etete himself.

PW2 said that later on, Mohammed Jabu called to inform him that he has accepted to be a shareholder and director in 4th defendant. PW2 said he told Dan Etete to replace the pseudo name he gave with that of Alhaji Jabu and that he was not interested in the business. That since then, Dan Etete never contacted him again to either sign or attend any meeting with respect to 4th defendant.

PW2 said that in his re-collections, Dan Etete told him that S. Munamuna, Mohammed Sani and Aliyu Jabu are the shareholders and directors of 4th

defendant. That Alhaji Jabu told him that he sold his shares in 4th defendant to Pecos Energy. That he did not authorize anyone to sign any document on behalf of Hindu.

Alhaji Aliyu Jabu Mohammed testified as PW3. He used to be in the shipping business but retired in 2006. He does not know **1st, 2nd, 4th, 5th, 6th and 7th defendants.** He knows 3rd defendant very well.

PW3 stated that sometimes around 1998, Dr. Hassan Adamu (PW2) called him and told him to see Dan Etete, the then Honourable Minister of Petroleum and he went and saw him.

PW3 stated that Dan Etete informed him that he formed a company, the 4th defendant and offered Dr. Adamu shares who rejected same but told him that he could send someone who may be interested and that the minister gave him 20% shares in 4th defendant. That Dan Etete told him that the company is into oil and gas and told him to see 3rd defendant in Lagos. He then went to Lagos and met 3rd defendant who told him that the minister, Dan Etete had informed him that he will be a shareholder with 20% shares in 4th defendant.

PW3 said that in a subsequent meeting, 3rd defendant informed him that he is the company secretary/legal adviser of 4th defendant and that he, PW3 has been appointed as a non-executive chairman of 4th defendant and that his 20% share in 4th defendant is equivalent to 4, 000, 000 unit shares.

PW3 said he was not given any appointment letter and that they never had any board meetings. Further that if there was any company document to be signed, the 3rd defendant calls him as chairman to come and sign.

PW3 said 3rd Defendant never told him who the other directors or shareholders of the company were and he has never met them. That he acted as non-executive chairman for 2 years when 3rd defendant told him he has been removed and that he was now to act as Managing Director. That here too, there was no appointment letter, no office or schedule.

PW3 stated that he stayed in Malabu Oil for 3 years and he then sold his 4, 000, 000 unit shares (20% of 4th defendant shares) to Pecos Energy at 5, 000, 000 US Dollars.

That he does not know from where 3rd defendant was getting instructions to run the company as no meetings were held. That since he left **4th defendant in 2001**, he does not know anything about the company.

Otunba Oyewole Fasawe testified as **PW4**. He is a business man. He knows 1st defendant as former A.G. of the Federation. He does not know the 2nd, 3rd, 5th to 7th defendants. He knows 4th defendant through one late Barrister Chike Chigbue who spoke to him about OPL 245. That the discussion was for them to invest in OPL 245. That he liked the idea and they examined how to approach the issue.

PW4 said that three (3) of them set up a company **Pecos Energy Ltd** and after having a meeting decided to invest in the project. He stated that Chief Chigbue gave them an insight into 4th defendant and informed them that one of the shareholders is selling his shares and that 50% of the shares of 4th defendant was been given up.

PW4 said they were given 50% of shares which translated to 10, 000, 000 shares in the sum of 5, 000, 000 dollars which they paid by draft through their lawyer to the Malabo group selling the shares.

PW4 testified that after paying the 5, 000, 000 Dollars, they met and started discussing on the way forward. That he expected there will be a successful end but there was no such successful end.

PW4 said they were not sure that the people that gave them the 50% shares really had the shares but that in their anxiety to make money, they paid. PW4 said he then called Mohammed Sani and told him about the challenges they were facing who told him on phone that those who sold the 50% shares of Malabo to them do not own the shares.

PW4 stated that when they paid the money for the shares, they were given Corporate Affairs Commission (CAC) forms which they signed. That he was nominated to serve on the board of 4th defendant. That at the time he signed the CAC forms, there were only 2 directors of 4th defendant; himself and one Seidougha Munamuna. That the CAC forms has 3rd defendant's name on it as Company Secretary.

PW4 said that since he was nominated as a director, no meetings have held.

PW4 said that when Mohammed Sani told him that the people who sold to them had only 20% of 4th defendant; he called their lawyer to tell him to inform those who sold to them that they were buying 20% and not 50% of the shareholding of 4th defendant.

PW4 said they now discussed with his partners and decided that since they have made payments for 50% shares but they don't have the 50%, that it is better they hang on to the 20% since they cannot retrieve their money. PW4 stated that that is how they became 20% shareholders in 4th defendant.

PW4 stated that as time went on, they heard of the sale of Malabo Oil Block and he called Mohammed Sani who told him to write to those buying the block and complain.

PW4 said that they don't know what happened to their 20% shares in 4th defendant and even the 5, 000, 000 dollars they paid for the shares. That even after Malabo was sold, they derived nothing.

Peter Terkaa Akper testified as **PW5**. He served as Special Assistant (SA) to the A.G. and Minister of justice between 2007-2015, serving three AG's.

He knows the defendants and that his schedule of duty to the ministers is to assist the A.G in the discharge of his duties and take on any responsibility as may be directed by him. That some of the duties include preparing of memorandum for the A.G., proffering of legal opinion for his attention, attending meetings with him or without him as he so directs.

PW5 stated that his knowledge of the companies is as a result of their involvement in **OPL 245 resolution agreement** which was facilitated by the Federal Ministry of Justice.

PW5 said he first got involved in the OPL 245 transaction when the ministry was served with a notice of arbitral proceedings commenced by Shell Ultra Deep Ltd against the Federal Government of Nigeria where they were claiming 2 Billion damages for alleged expropriation of their investment in OPL 245. The then Minister appointed 1st defendant as an arbitrator but he could not take up the appointment because of nationality issues.

PW5 stated that his next involvement with OPL 245 was when 4th defendant requested the Federal Government through the President that the settlement reached between 4th defendant and the Federal Government dated 30th

September, 2006 be implemented and they drew attention of the Government to the subsisting consent judgment between the parties which was yet to be given effect by the Federal Government.

The Honourable Minister then, **1st defendant,** was directed by the president to advise on the issue. PW5 recalls that a memorandum was prepared by the office of the A.G intimating the president of these facts – the fact that there was a settlement agreement, the fact that there was a subsisting judgment of the FHC and lastly that effect has not been given to the agreement or judgment.

PW5 recalled that the then **President, Goodluck Jonathan** directed that the A.G should explore ways of resolving the lingering dispute.

PW5 said that the Minister, 1st defendant then invited 4th defendant to explore ways of implementing the settlement agreement that was brought to the attention of the President and there was a resolution to implement the settlement agreement of 2006 which restored the interest of 4th defendant in OPL 245 100%.

PW5 stated further that when 4th defendant's interest in OPL 245 was restored by the Federal Government, in compliance with the settlement agreement in 2006, 4th defendant sought to dispose of their interest in OPL 245 and that is how the other companies became involved.

PW5 stated that negotiations then took place between the party that 4th defendant was interested in selling to, Shell Nigeria Ultra Deep Ltd but that there were challenges that needed to be addressed. That there was distrust between them because of their previous dealings. PW5 stated that when 4th defendant was issued with OPL 245 licence between 1998-1999, they were expected to develop the block with the assistance of their technical partners and they approached Shell. That when the Federal Government purportedly revoked 4th defendant's interest in OPL 245 and awarded same to Shell Ultra Deep, 4th defendant contended that Shell Ultra Deep was their technical partners so it was unfair for the Federal Government to take their interest in OPL 245 and give to another party who happened to be their technical partners and supposed to be on their side.

PW5 stated that the Federal Government was interested in this settlement because Shell Ultra Deeps arbitration was still subsisting and the Federal Government was anxious to be relieved of that contingent liability arising from

the arbitration. That at the end of the day, it was necessary to get all the parties to the table so that the Federal Government will take advantage of the desire of 4th defendant to sell their interest in OPL 245 and resolve 3 main issues:

1. The arbitration dispute between Federal Government and Shell;
2. The claim between Malabo and the Federal Government;
3. Ensure that Block OPL 245 became operational to enable the Government derive tax revenues and royalties from the operation.

PW5 stated that the parties accordingly entered into negotiations facilitated by the office of the A.G. and they reached a resolution vide **OPL 245 Resolution Agreement** which was then forwarded to the President for him to append his signature for execution by parties. That Chief Dan Etete and 3rd defendant represented the interest of 4th defendant while Shell Ultra Deep and other companies had their representatives.

PW5 stated that the A.G's office got the **presidential approval** for the execution and implementation of the resolution **OPL 245Agreement, ExhibitP3.**

Femi Ogunleye, a staff with **Corporate Affairs Commission** testified as PW6. He does not know any of the defendants but he has heard of 1st and 4th defendants.

Between 2010 – 2012, he was in the records department of CAC precisely verification and assessment unit. He was then principal manager handling manual verification of post incorporation documents and also supervised staff under him. That sometime in 2010, it was brought to his knowledge that two (2) applications to wit: **Forms CAC2** containing particulars of sharcholders and CAC7 containing particulars of existing Directors were approved by the CAC for **4th defendant** on **10th June, 2010** without following due procedure.

He stated that the practice at the time was that before the verification of the application, the physical file containing registration documents and previously filed applications of the company must be seen before the verification or approving officer to enable him confirm the signatures of those who signed the application brought before him.

PW6 stated further that the process is that the customers will present their application in the customer service department where the applications will be

recorded in the list of applications for the day. That a staff from his unit, the verification and assessment unit will later go and collect the list containing the applications and make photocopies. That the original copy will be left in the department while the photocopy and the application submitted will be taken by the staff of CAC to the file room where all physical files in the commission are kept.

He stated further that the photocopy and the application taken from the customer service department will be given to the various teams according to their series. That the teams will go to the shelf and bring out the files, the documents will then be inserted into the file, recorded and taken to the approving officer.

PW6 stated that the **Forms CAC2** and **CAC7** for the **4th defendant** were not filed following due process because at the time they were approved, the **files** were in the office of the Registrar General (R.G) of CAC on caveat and there was no record of application to the R.G. for the file of 4th defendant to be retrieved for use.

PW6 said he did not know what the commission did when they found out that the forms CAC2 and CAC7 of 4th defendant was not properly filed as he was not part of the management.

PW6 further testified that in addition to the fact that the forms CAC2 and CAC7 of 4th defendant were not properly filed, they also found out that a corper, one **Smith Ukpong** serving in his unit approved the two (2) documents because his signature was on the two applications of 4th defendant and that he confirmed that the signature was his.

He stated that the records were checked and it was confirmed that the application was not submitted in CAC in the customer service department and there was no record of request for the file from the R.G's office. That the belief of the commission was that the corper was directly approached. That they were invited to the EFCC and the corper was detained. That the presenter of the application is one **Mr. Ayo** who said he submitted the application at the customer service department but that he was shown that there was no evidence of submission of the application. He was invited to the EFCC.PW6 says he does not know where the said Ayo works.

Jibrin Mohammed Lawal a staff and compliance officer with **Keystone Bank** testified as PW7. He does not know 1st, 3rd, 5th – 7th defendants. That he is familiar with 4th defendant and that 3rd defendant is a customer of Keystone Bank. Maitama branch, IBB Way.

He stated that they were in receipt of a letter from EFCC asking for statements of account of 4th defendant and Rocky Top Resources. He then produced the account opening package and statement of accounts of the two companies in evidence and explained the modalities for opening the accounts.

That at the time of the opening of account of 4th defendant, there were three directors:

1. Munamuna Seidougha
2. Amaran Joseph and
3. Fasawe Joseph

PW7 then referred to the statements of account of 4th defendant vide Exhibit P7 (1-5) and referred to some inflows and outflows on the account including the payments/transfer made to Rocky Top Resources Ltd.

He equally referred to the statement of account of Rocky Top Resources Ltd Exhibit P9 (1-49) showing the payment from 4th defendant to its account.

Degwe Elizabeth Ihyuman, a relationship manager with **First Bank** testified as **PW8**. She does not know 1st – 3rd and 5th – 7th defendants. She only became familiar with 4th defendant when she was asked to get the account opening document and statement of account of the company domiciled in their branch which she did.

She stated the modalities for opening of the account and then identified the inflows and outflows on the account particularly the transfer to three (3) companies in dollars. She stated that the signatory to the account is one **Dozie Etete**. That a resolution signed by the chairman, Seidougha Munamuna and the company secretary, the 3rd defendant dated 12th August, 2011 showed that the signatory to the account is one person.

Mr. Dobi Gideon Dashong, a **forensic document examiner or analyst with EFCC Forensic and Crime Laboratory** testified as **PW9**. He stated his qualifications, schedule of duty and job description. He only knows the 1st

defendant as a public officer but has never met him. He has also never meet 2nd and 3rd defendants and is not familiar with 5th – 7th defendants.

He stated that on 24th September, 2012, a letter of request was forwarded to the forensic unit with two sets of documents. The first set of documents contains sample signatures in the original marked as **A-A4** while the second set contains documents marked **X-X9** which were photocopies of CAC documents in the name of 4th defendant containing authorized signatures i.e. signatures that were disputed.

That the request was for the examination, comparison of the signatures and a report with the aim to determine whether or not the author of the known request specimen signatures marked **A-A4** wrote any of the disputed signatures on documents **X-X9.**

He stated that on receipt of the request and the documents, they noted that not all the documents in X-X9 are from CAC: some were on personal letter leads of individual persons.

On receipt of these documents, he carried out the examinations/investigations as requested and carried out the request based on three (3) methodologies:

1. Visual analysis and reconstruction of the disputed signatures on documents marked X-X9 and the sample signatures marked A-A4.

That the essence of the reconstruction is to determine the structural features of both disputed signatures and the known specimen signatures.

2. Use of stereo microscope to examine the disputed signatures and the known specimen signatures at higher magnification in other to determine subtle features that exist within the disputed signatures and the known sample signatures.

3. The use of VSC (Video Spectral Comparator) 5000 series.

He stated that this device has video cameras and different light sources which allow side by side examination of documents. That it has cameras and lenses which aid in magnifying documents and has the capability of capturing the images of documents laid side by side. That the camera of the VSC is digitally controlled by software which captures still images. That the system allow for the capture of images in form of charts and that they can also be printed.

PW9 stated that he applied all these three (3) methodologies in this case and relied on 3 basic principles in the course of the analysis:

1. Handwriting identification. That this principle states that no two (2) persons share the same combination of handwriting identification characteristics e.g. beginning and ending strokes, start of writing, slope of writing, spacing between letter/characters in word, spacing between words in a sentence, connection between letters in a word, and how one letter connects with the other and finally alignment in relation to base line.

2. Natural variations exist in each writers hand; and

3. No writer can exceed their skill level.

PW9 testified further that he applied all these principles and methodologies and arrived at the conclusion based on the findings of the features identified in the course of the examination.

The **conclusions** he arrived at are:

1. There is a "**no-conclusion**" whether the author of known request specimen signature A-A4 wrote the disputed signatures marked X2-X9. That the documents X, X1 and X7 gave rise to the second opinion.

2. The second opinion is that there is a **strong probability** that the authors of known request specimen signature A-A4 did not write the disputed signatures X, X1 and X7.

He stated that the reason for **"no conclusion"** is because the two sets of documents do not bear any pictorial resemblance so there was no basis for the comparison, hence no conclusion.

On the **"strong probability,"** he stated that it is because of the nature of the disputed document and the known signed documents (X, X1 and X7) bear pictorial resemblance with the known request specimen marked A-A4.

He stated that the reason he arrived at the **"qualified opinion"** is because the disputed documents are photocopies. That at the end of their analysis, they prepared and submitted a report along with attachments including the known specimen signatures (A-A4) and the disputed specimen signatures (X-X9). He also stated that the known specimen signature A-A4 is from one individual.

Ibrahim Ahmed, who works with the **counter-terrorism and general investigation/pension section** of EFCC testified as **PW10**. He knows the defendants. That his unit and team was forwarded a petition written by the law firm of **A.A. Umar & Co. on behalf of Muhammed Sani and Pecos Energy** to investigate.

That the petition alleged that Muhammed Sani and Pecos Energy were directors of 4th defendant and owned 50% and 20% shares in 4th defendant. Further that they alleged that Chief Dozie Loya Etete A.k.a Chief Dan Etete, Shell Nigeria Ultra Deep Ltd (SNUD), Shell Nigeria Exploration and Production Company Ltd, Barrister Rasky Gbinigbie and others **forged** documents and removed them as Directors and shareholders in the company. That they also further alleged that the only asset the company had is "OPL 245" which was sold at the rate of 1.3 Billion Dollars and the money misappropriated.

He further testified that when they received the petition, they drew a plan of action and invited the petitioners who came and adopted their petition and shed more light on the petition.

They then extended their investigation to different government institutions like the CAC, Federal Ministry of Justice, Federal Ministry of Petroleum, Accountant General's Office and they were availed documents relevant to the 4th defendant and the allocation of **OPL 245**.

With these documents, that they conducted interviews involving over 80 persons including the defendants who were also interviewed and documents were recovered.

PW10 stated that all accounts linked to 4th defendant were identified and letters written to the Banks who availed them with relevant documents and from their investigations, they found out as follows:

1. 4th defendant was registered as a company in 1998 and that at inception, it has 20, 000 ordinary shares with three directors:

   i. **Mohammed Sani** holding 50% of the shares translating to 10, 000 shares.

   ii. **Kwekwu Amafagha** who owns 30% of the shares translating to 6, 000, 000 shares.

iii. **Hassan Hindu** who holds 20% shares which translates to 4, 000, 000 shares.

That in the course of investigation, they identified **Muhammed Sani as Muhammed Sani Abacha, Hassan Hindu was identified as Ambassador Hassan Adamu.** That they could not identify who was Kwekwu Amafagha.

2. That following the purported resignation letters of Muhammed Sani and Hassan Hindu, form 2.3, particulars of Directors of 4th defendant dated 2nd June, 1998 was filed at CAC by Rasky Gbinigie wherein changes were effected to the Directors and shareholding structures of 4th defendant as follows:

   a. Muhammed Sani was replaced by Muhammed S. Ahmed who now owns 4, 000, 000 shares.

   b. Kwekwu Amafagha was retained with 6, 000, 000 shares.

   c. Hassan Hindu was replaced by Hassan Hindu Wabi with 10, 000, 000 shares.

3. That after the registration of 4th defendant, OPL 245 was allocated to it. That at the time, the Head of State was the late General Sani Abacha and the then Minister of Petroleum was Dozie Loya Etete (A.K.A Dan Etete).

PW10 stated further that following the resignation letters of Muhammed Sani, Kwekwu Amafagha and Hassan Hindu Wabi, a purported Form CAC 2.3, particulars of new Directors was filed at CAC by Rasky Gbinigie and changes were effected in the Board of Directors and share structures of 4th defendant as follows:

a. Muhammed Aliyu Jabu was introduced as a new Director with 70% shares which translates to 14, 000, 000 shares.

b. Seidougha Munamuna was appointed as a Director with 30% Share holding which translates to 6, 000, 000 shares.

That Muhammed Aliyu Jabu was then appointed as M.D. of 4th Defendant following a Board resolution of the company dated 7th January, 2000. Also that Rasky Gbinigie (3rd Defendant) was appointed company secretary and Legal Adviser.

PW10 also stated that their investigation revealed that 4th defendant entered into an agreement with Shell Ultra Deep Ltd as their technical partner in the operation of OPL 245.

That they also found that Pecos Energy Ltd paid 4th defendant 5, 000, 000 dollars and they were given 10, 000, 000 shares in 4th defendant.

That based on this, another purported board resolution of 4th defendant, Form CAC 2.3 particulars of Directors dated 6th March, 2000 was filed by 3rd defendant with CAC and changes were again effected to the structures of 4th defendant with Pecos Energy Ltd becoming a shareholder in 4th defendant and Otunba Fasawe was appointed a director representing Pecos Energy.

That in the course of investigation, Aliyu Muhammed Jabu who was dropped as a Director informed the team that he only sold the shares held by Hassan Hindu Wabi to Pecos Energy which was only 4, 000, 000 shares translating to 20% shares in 4th defendant.

That they also discovered that on 2nd July, 2001, the rights of 4th defendant on OPL 245 was withdrawn by the Federal Government which then called for bids for OPL 245.

PW10 further testified that on 25th May, 2002, OPL 245 was allocated to the technical partner of 4th defendant, Shell Nigeria Ultra Deep Ltd (SNUD) and following this allocation, 4th defendant went to court to challenge the allocation to their technical partners. That the case was on until 2nd December, 2006 when the Federal Government decided to **settle out of court with 4th defendant** on the issue of OPL 245 and restored the right of 4th defendant to OPL 245.

That when the rights of 4th defendant over OPL 245 was restored, it was not implemented immediately and that in 2010, 4th defendant approached the Federal Government to implement the out of court settlement entered in 2006.

PW10 stated that when 4th defendant sensed that the licence will be restored to them, they discovered another resolution letters of Muhammed Sani, Kwekwu Amafagha and Hassan Hindu alongside a purported resolution, Form CAC 2.3 particulars of new Directors were filed at the CAC effecting changes to 4th Defendant's share structures and directors as if it has not been done before.

The changes done were:

1. Seidougha Munamuna became a Director with 50% shares translating to 10, 000, 000 shares.
2. Amaran Joseph was appointed a Director with 50% shares translating to 1, 000, 000 shares.

That these documents were filed at the CAC by one **Barrister Ademola.**

That the CAC later **complained to EFCC that these documents did not follow** due process as such they were expunged and the matter reported to Corporate Affairs Commission (CAC) for investigation.

PW10 testified that the rights of 4th defendant with respect to **OPL 245** was restored on 2nd July, 2010 and that when it was restored, it was put up for sale in the market. He stated further that in the process, there was a negotiation that took place between Nigeria Agip Exploration Ltd (NAEP) and 4th defendant. That they offered 4th defendant 1.3 Billion for the Oil Well. That when they conducted due diligence, along with ENI Spa Italy, owners of NAEP in Nigeria, they discovered that Muhammed Sani informed them that he owns 50% of the shares in 4th defendant and further that Shell Nigeria Ultra Deep was interested in Oil Block OPL 245 and that the main person behind it is A.K.A Dan Etete who they did not want to have any relationship with and because of that, the transaction between them and 4th defendant was then suspended.

That at this stage, the Federal Government intervened through the office Attorney General of the Federation and when they inquired as to how the intervention was carried out, they did not **receive any feedback from the Federal Government** or the **parties involved.**

PW10 however stated that at the end, three (3) agreements were reached to wit:

1. Between 4th defendant and the Federal Government.

2. Federal Government of Nigeria and Shell Nigeria Ultra Deep, Shell Nigeria Exploration Ltd, Nigeria Agip Exploration Ltd and NNPC.

3. Exero Agreement No.2.

That based on these agreements, Nigeria Agip Exploration and Shell Exploration Company Ltd agreed to pay 1.0292 Billion Dollars and some Fraction to settle all interest of 4th defendant in the Block to the Federal

Government and also pay signature bonus, to the Federal Government Account domiciled with J.P. Morgan London.

PW10 stated that the interest of 4th defendant was given to these two (2) companies on 50% equal basis. Furthermore that when 4th defendant sensed that money will be given to them, another purported Board resolution dated 11th and 12th August 2011 was used in which 3rd defendant, Amaran Joseph, Seidougha Munamuna opened an account in Keystone Bank and First Bank in the name of 4th defendant. That the documents used to open the account were expunged by CAC and when the accounts were opened, another Board resolution was used making Chief Dozie Loya Etete as the sole signatory of 4th defendant in the two Banks.

That on 29th August, 2011, the Federal Government released 401, 540, 000 dollars to the 4th defendants account domiciled with First Bank. That another 400, 000, 000 Dollars was released to the account of 4th defendant with Keystone Bank, formally Bank PHB.

He then stated that the money in First Bank was transferred to 4 companies:

1. Mega Tech Ltd got 180, 000, 000 Dollars;
2. A-Group Construction got 157, 000, 000 Dollars;
3. Imperial Union got 34,540, 000 Dollars; and
4. Novel Properties got 30, 000, 000 Dollars.

PW10 said that all these 4 companies belong to 2nd defendant, Alhaji Aliyu Abubakar. That the sums of 400, 000, 000 of 4th defendant in Keystone; 336, 000, 000 Dollars and some fraction were transferred to Rocky Top Resources Ltd in the same bank.

PW10 stated that the company Rocky Top Resources was initially owned by Alhaji Aliyu Abubakar. That there was a board resolution removing 2nd defendant and appointing Chief Dozie Loya Etete A.K.A Dan Etete who became the sole signatory to Rocky Top Resources account.

PW10 stated that the moneys in these five accounts were misappropriated. He stated that based on the interaction he had with Mohammed Sani with respect to the purported letters of resignation and board resolutions, they picked samples

of Board Resolutions, the one done in 1998 and 2010, a specimen signature of Mohammed Sani and sent it to forensics to determine whether he signed the documents and that they prepared a report in that regard. He stated that in the course of investigations, the defendants volunteered statements.

That they also tried to search Nigeria Agip Exploration Ltd, ENIP to hear from those who signed the agreements but the companies did not cooperate and so they could not get those who signed the agreements with the Federal Ministry of Justice as they had left the company. He stated that all efforts to trace Amaran Joseph was not successful.

PW10 stated that in the course of investigations, they needed or required about 37 documents from CAC but they were given only 17 documents as they were informed that the file of 4th defendant with CAC containing the other documents was missing.

PW10 stated further that they discovered that in the agreement between the Federal Government and the oil companies tendered as **Exhibit P3**, they saw in it paragraph 10 which has to do with **"forgiveness of taxes."**

He stated that when they saw this paragraph, they wrote to the **Federal Inland Revenue Services**, the **Federal Ministry of Finance** and **Federal Ministry of Justice** to find out if a waiver has been given on Taxes for the transaction. **That till today, they have not received any response/reply as to whether a waiver was given.**

As stated earlier on, **I have deliberately and *in extenso*** produced the evidence of all the prosecution witness at it provides clear factual and even legal basis to determine the key question of whether they met the required threshold of a **prima facie** case that would necessitate a call to the defendants to enter their defence.

On **Count 1**, the 1st defendant is charged along with 4th, 5th, 6th and 7th Defendants that about April, 2011 at Abuja, they conspired among themselves to commit an offence to wit; **public servant disobeying direction of law with intent to cause injury contrary to Section 97 (1) of the Penal Code and punishable under Section 123 of the Penal Code.**

Let me quickly point out that **Section 97 (1) of the Penal Code** is the punishment section for Criminal Conspiracy. In the clear context of the Penal

code. **Section 96 (1) and (2)** delineates what criminal conspiracy is all about. The provision of **Section 123 of the Penal Code** defines or situates the substantial offence of Public servant disobeying direction of the law including admittedly the punishment for the offence but the principle is settled that **conspiracy to commit an offence is a separate and distinct offence from the offence of the actual commission of the offence to which the conspiracy relates. Each is independent and must therefore be established.** In **Atano V A.G. Bendel State (supra)**, the Supreme Court stated instructively as follows:

"Conspiracy and the offence committed in pursuance thereof are two separate and distinct offences. An accused can be found guilty of the one and not guilty of the other or vice versa depending on the evidence. Similarly a discharge on the count of conspiracy must not involve a discharge on the substantive offence or vice versa. Much will depend on the evidence available and the surrounding circumstances of each particular case."

Now back to what Conspiracy means within the purview of the provisions of the Penal Code, particularly **Section 96 (1) and (2)** which provides as follows:

"1. When two or more persons agree to do or cause to be done:

a. An illegal act; or

b. An act which is not illegal by illegal means, such an agreement is called a criminal conspiracy.

2. Notwithstanding the provisions of subsection (1), no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

In the address of parties on both sides, learned Senior Counsel have in an admirable manner succinctly set out the salient ingredients that constitutes the offence of criminal conspiracy under **Section 96(1) of the Penal Code** namely:

1. That there must be an agreement of two or more persons to do an unlawful or a lawful act by unlawful means;

2. That the actual agreement alone constitutes the offence and it is not necessary to prove that the act has in fact been committed;

3. That the external or overt act of the crime of conspiracy is the concert by which mutual consent to a common purpose is exchanged; and

4. That the agreement is an advancement of an intention conceived secretly in the mind of each person. The overt act is the proof of the intention, mutual consultation and agreement.

See Obiakor V. State (2002)1 NWLR (pt.776)612; Gbadamosi V. State (1991)6 N.W.L.R (pt.196)182; Kaza V. The State (2008)7 NWLR (pt.1085)125; Njovens V. The State (1973)NSCC 257.

Before situating whether conspiracy was **prima facie** made out here, it may be relevant, precisely because of the context of the offence charged under Count 1 that "1st **Defendant along with 4th, 5th, 6th and 7th Defendants conspired among themselves to commit an offence to wit: public servant disobeying direction of the law with intent to cause injury,**" to define who a public servant is. **Section 10 (a) – (g) of the Penal Code** defines/denotes who a Public Servant is and there cannot be any argument that it is only the 1st defendant that is a public servant within the ambit of this provision and the 4th, 5th, 6th and 7th Defendants are not public servants.

Now I have carefully related the **constituent elements** of the offence of **conspiracy** stated above vis-à-vis the evidence of the prosecution witnesses. It is to be observed that the **direction of the law** subject of the disobedience and the injury which parties subject of this charge were said to intend to cause was not defined or disclosed in the Count. Furthermore and most importantly, during the trial, none of the witnesses for the prosecution gave evidence or alluded to the nature of the direction of the law that was disobeyed, the facts and circumstances that constituted the disobedience and the nature of the injury that was intended. The narrative of the prosecution really should be one prima facie situating the agreement to do an illegal act by the accused persons and in the context of the extant count the evidence of the agreement situating disobedience of direction of the law and the injury caused. Where nothing is presented to situate elements of the conspiracy, the call to put in a defence will be compromised.

Let me point out at this early stage, even if briefly, but because I will be dealing subsequently with other counts of conspiracy, that the offence of conspiracy is rarely or seldom proved by direct evidence but by circumstantial evidence and inferences drawn from certain proved acts or through inferences drawn from surrounding circumstances. See **Obiakar V. State (2002)36 WRN1; State V. Osoba (2004)21 WRN 131; Erim V. State (1994)5 NWLR (pt.340)522 at 534.**

There thus must be evidence even, if minimal, but with the required sufficiency situating elements of the offence requiring a response from defendants. There is nothing from the evidence that suggest how, in what manner, by what means, where and under what circumstances whatsoever that the alleged conspiracy or agreement to commit the offence subject of Count 1 took place. It is equally to be noted that the alleged conspiracy involves even corporate bodies (4th, 5th, 6th and 7th Defendants) and not one person or officer of these companies was mentioned as having conspired with anybody on behalf of these companies in relation to this Count. See **FRN V Emirates Airlines & ors (2021) LPELR – 54658 (CA).** Indeed none of the witnesses of the prosecution said anything implicating the defendants subject of this count in relation to the offence charged.

Here I have carefully looked at the evidence on record and it is apparent that the narrative or evidence of the prosecution does not prima facie point to any shred of evidence that establishes the ingredients of criminal conspiracy in relation to the Count.

The bottom line is that I have not been directed to any premise from where the court can, prima facie, situate or make inference as to any design, scheme or strategy between the defendants to commit the alleged offence in **Count 1.**

My **conclusion or finding** is that the prosecution has failed to establish a prima facie case against the **1st, 4th, 5th, 6th and 7th** defendants with respect to **Count 1.** They have no case to answer and they are accordingly hereby discharged.

Count 2 charges **1st defendant** that whilst being the Attorney General of the Federation, he knowingly in April 2011 disobeyed the direction of law to wit: **Companies Income tax, Cap. C21** intending thereby to save 5th, 6th and 7th defendants from charges of taxes to which they are liable to pay to the Federal Government through OPL 245 Resolution Agreement contrary to **Section 123 (c) of the Penal Code.**

It is important to take our bearing from the provision of **Section 123 of the Penal Code** which provides as follows:

"Whoever being a public servant knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant intending thereby or knowing himself to be likely thereby –

(a) to cause injury to any person or to the public; or

(b) to save any person from legal punishment or to subject him to a less punishment than that to which he is liable or to delay the imposition on any person of any legal punishment; or

(c) to save any property from forfeiture or from any seizure or change to which it is liable by law or to delay the forfeiture or seizure of any property or the imposition or enforcement of any charge upon any property,

shall be punished with imprisonment for a term which may extend to two years or with fine or with both."

The above provision is clear and situates the ingredients of the offence. My duty here is to examine the evidence led vis-à-vis the ingredients and then situate whether a **prima facie** case requiring a response, from 1st defendant was made out.

The sting of this count projects that the **1st defendant** knowingly disobeyed the direction of the law, to wit; the **Companies Income Tax** by intending to save 5th, 6th and 7th defendants from charges of tax which they are liable to pay to the Federal Government through the OPL 245 Resolution Agreement but **none of the witnesses** for the prosecution led evidence as to the **Tax** which the 5th to 7th defendants were due to pay under the OPL 245 Resolution Agreement and which the 1st defendant "saved" them from paying to the Federal Government.

Again, on the evidence proffered by the prosecution witnesses, absolutely no evidence was led as to the nature and quantum of the tax which 5th, 6th and 7th Defendants were due to pay under the OPL 245 agreement or indeed any other tax. There was equally absolutely no evidence situating the fact that taxes due from 5th – 7th Defendants to the Federal Government on OPL 245 were waived at the direction or instructions of 1st Defendant.

Indeed not a single witness referred to the 1st defendant or made mention of his name in relation to this count. All projected no knowledge of what this count entails. Relevant here is the evidence of the lead investigator **PW10** who stated that in the course of their investigations, they found a clause in the OPI. 245 Resolution Agreement **Exhibit P3** in **paragraph 10** which has to do with "**forgiveness of taxes**". He stated that when they saw this paragraph, they wrote to:

1. Federal Inland Revenue Services.

2. Federal Ministry of Finance and

3. Federal Ministry of Justice

to find out if a **waiver** has been given on **taxes** for the transaction. That till today, they have not **received any response or reply** as to whether a waiver was given. In evidence, this witness also stated that they could not reach all those that signed the agreement to hear from them.

The evidence of PW10 here is self inculpatory with respect to this Count. PW10 clearly is completely in the dark as to what this "**forgiveness of taxes**" was all about. The prosecution really had nothing to go on or to provide factual and legal basis to really proceed with this Count. If the parties to the agreement and the critical institutions that would have given the information with respect to whether any waiver on taxes was given were not forthcoming, how then was this count framed and made subject of this charge? I just wonder.

My finding with respect to **Count 2** is that the prosecution has failed to establish a **prima facie** case against 1st defendant requiring him to enter a defence and he is accordingly discharged.

Flowing from **Count 2**, which has failed, it is clear that **Count 3** related to it, stands fundamentally compromised *ab initio*. For purposes of clarity, **Count 3** charges 4th, 5th, 6th **and** 7th **Defendants** of abetting 1st defendant to disobey the direction of law thereby intending to save them from charges of taxes to which they are liable by law to the Federal Government contrary to **Section 85 of the Penal Code**.

Section 85 of the Penal Code provides thus:

"85.Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by the penal code or by any other law for the time being in force for the punishment of such abetment, be punished with the punishment provided for the offence.

Section 83 of the Penal Code defines what abetment means:

A person abets the doing of a thing, who –

"a. Instigates any person to do that thing; or

b. Engages with one or more other person or persons in any conspiracy for the doing of that things; or

c. Intentionally aids or facilitates by any act or illegal omission the doing of that thing."

See Suleiman V State (2023) 6 NWLR (pt.1880) 201 at 236 E-F.

The decision of the Supreme Court in Oguno V State (2013) 15 NWLR (Pt. 1376) 1 at 27 A-E is instructive on the elements of the offence of abetment. The Court held thus:

"For an accused person to be convicted of abatement under Section 85 of the Penal Code the prosecution must prove the following ingredients:

1. That there was an encouragement, incitement, setting on, instigation, promotion or procurement of an offence.

2. Any of the above acts must be positive and unequivocal specially addressed to the commission of offence.

3. The act abetted must be committed in consequence of abetment.

4. An accused person could be convicted of the offence of abetment on proof by prosecution of any of the acts mentioned in (1) above.

5. In other words, the acts mentioned in (1) above are in the alternative and not cumulative. An encouragement here means an act of making someone to feel brave or confident enough to do something by giving active approval in support of the crime. Incitement also has the

element of encouragement. By incitement, the person is provoked by a strong passion or feeling to commit an offence."

My duty here is to on the basis of these clear ingredients, determine whether the prosecution has prima facie made out a case to allow the call to be made to the defendants subject of this Count to enter a defence.

Here too, it is clear that the direction of the law, which the 4th, 5th, 6th and 7th Defendants were alleged to have abetted the 1st Defendant in disobeying was not exactly formulated or defined. If the abetment is to "save" 4th, 5th, 6th and 7th Defendants from charges of taxes due from them to the Federal Government, there is no evidence of the regime of taxes that 4th, 5th, 6th and 7th Defendants have been saved from and if there was any waiver at all, and that the waiver was at the direction of 1st Defendant and indeed if any injury was occasioned to any person or the public.

As in **Count 2**, **none of the witnesses** for the prosecution led evidence as to how, when and where the Defendants subject of this Count abetted the 1st defendant to disobey the direction of any law with respect to payment of taxes. At the risk of sounding prolix, absolutely no evidence whatsoever was led as to the tax the 4th to 7th defendants were due to pay under the OPL 245 agreement or indeed any other tax and also how they instigated 1st Defendant in a manner geared towards committing the alleged offence of disobeying the direction of the law to shield them from paying taxes.

Indeed as found under **Count 2**, the prosecution through **P10** clearly has no iota or scintilla of evidence to situate this count or provide basis to proceed with this count. They absolutely had no information on the critical and basic question of whether taxes were waived at all or not. The critical institutions that would have provided the necessary information to give **life** to this Count were not forthcoming as already alluded to.

On the basis of the evidence led, there is really nothing disclosing a prima facie offence against **4th, 5th, 6th and 7th defendants** warranting them to offer any explanation in defence. They have no case to answer on **Count 3** and they are accordingly discharged.

Count 4 states that the **2nd Defendant**on or about August 2013 offered gratification in the sum of **N300, 000, 000** (Three Hundred Million) to

Mohammed Adoke contrary to and punishable under Section 118 of the Penal Code.

Now again, it is obvious that the 2nd defendant was charged here under the **punishment Section of the Penal Code** for offering gratification but the offence itself is situated under the provisions of **Sections 115 and 116 of the Penal Code** which provides as follows:

"115. Whoever being or expecting to be a public servant accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification whatever whether pecuniary or otherwise, other than lawful remuneration, as a motive or reward –

(a) for doing or forebearing to do any official act; or
(b) for showing or forbearing to show in the exercise of his official functions favour or disfavor to any person; or
(c) for rendering or attempting to ender any service or disservice to any person with any department of the public service or with any public servant as such, shall be punished –

(i) with imprisonment for a term which may extend to seven years or with fine or with both;
(ii) if such public servant is public servant in the service of the State or of the Government of the Federation acting in a judicial capacity or carrying out the duties of a police officer, with imprisonment for a term which may extend to fourteen years or with fine or with both.

116. Whoever accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification whatever whether pecuniary or otherwise as a motive or reward for inducing by corrupt or illegal means any public servant –

(a) to do or forbear to do any official act; or
(b) in the exercise of the official functions of such public servant to show favour or disfavor to any person; or
(c) to render or attempt to render any service or disservice to any person with any department of the public service or with any public servant as such,

shall be punished with imprisonment for a term which may extend to three years or with fine or with both."

The above provisions are clear and unambiguous.

Also in the **Black's Law Dictionary**, 8th Edition at page 721, Gratification was defined as **"a voluntarily given reward or recompense for a service or benefit; a gratuity."**

The 2nd defendant in his address has situated the critical ingredients of the offence of gratification under **Count 4** as follows:

i. **That the 2nd Defendant offered or gave to the 1st Defendant the sum of Three Hundred Million Naira (N300, 000, 000.00).**

ii. **That the said sum of Three Hundred Million Naira (N300, 000, 000.00) offered or given by the 2nd Defendant to the 1st Defendant was gratification.**

iii. **That the said sum of Three Hundred Million Naira (N300, 000, 000.00) was offered or given to the 1st Defendant by the 2nd Defendant for any of the purposes mentioned in Sections 115 and 116 of the Penal Code.**

iv. **That the offeree or the taker was/is a public officer.**

v. **That the offeree accepted the gratification.**

In the case of **FRN V Ademola (2021) LPELR – 58831 (CA)** the Court of Appeal identified the elements of the offence under **Section 115 (b) of the Penal Code** as follows:

"...As it relates to count 13 which charges the Respondent for attempting to obtain gratification in the sum of N250, 000, 000 from one Sanni Shaibu Teidi as a motive for showing favour in the exercise of his official functions contrary to Section 115(b) of the Penal Code. Section 115 (b) of the Penal Code provides as follows: "115. Whoever being or expecting to be a public officer accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification whatever whether pecuniary or otherwise, other than lawful remuneration, as a motive or reward – (a) for doing or forbearing to do an official act, or (b) for showing or forbearing to show in the exercise of his official functions

favour or disfavor to a person." The ingredients of the offence are: i. That the accused was a public servant ii. That he has, accepts or obtains or agrees to accept or attempts to obtain gratification from any person for himself or for any other person. iii. That the gratification was not legal numeration. iv. That he accepted the gratification as motive or reward for showing or forebearing to show in the exercise of his official functions favour or disfavor to a person."

I have here now sought on the basis of the evidence to situate the above ingredients of the offence under **Count 4**. The evidence must, prima facie, disclose these elements.

I have carefully gone through the evidence led by the prosecution witnesses and nobody alluded to any offer of gratification of **N300, 000, 000** by 2nd defendant to 1st defendant and or that they were privy to 1st defendant accepting any form of gratification from 2nd Defendant as a motive for showing favour in the exercise of his official functions. In addition to the failure to establish if a gratification was offered and accepted, no purpose for which the alleged gratification was given was defined or stated. None of the prosecution witnesses even spoke to this Count at all and this is fatal. There is really nothing on which the court can even rely on to proceed to determine whether a prima facie case was raised *ab initio*.

In evidence PW10 may have tendered the statements allegedly made by 2nd defendant vide **Exhibits P15 (1) – P15 (7)** but a perusal of these statements show no nexus with the extant **Count 4**. Relevant here is the evidence of PW10 when under cross-examination, he completely undermined the very basis of the allegation under Count 4. While being cross-examined, he stated that he cannot recall saying that 1st Defendant gave 2nd Defendant N300, 000, 000 and that he cannot also recall saying that 2nd Defendant gave 1st Defendant N300, 000, 000. It is equally to be noted that again during cross-examination, **Exhibits P19, P20** and **P21** were tendered through him. He conceded that the Exhibits were his earlier testimonies before my learned brother **Ekwo J. of the Federal High Court** in **Charge No: FHC/ABJ/CR/39/2017 – Federal Republic of Nigeria Vs Mohammed Bello Adoke and Aliyu Abubakar**, wherein he was designated as PW8.

In the said **Exhibits P19** (pages 124-125) and **Exhibit P21** (pages 214-215 and 217-218), **PW10** unequivocally admitted that the said **N300, 000, 000** (Three

Hundred Million Naira) was for the purchase of a house sold by 2nd defendant to 1st defendant, which was financed by a temporary overdraft from Unity Bank but which was later retrieved by the 2nd defendant and sold to Central Bank of Nigeria and that he subsequently paid back this sum to the 1st Defendant. Furthermore he agreed that the same amount subject of the extant charge is equally the same amount subject of the charge at the Federal High Court. PW10 is effectively saying here that the sums forming the fulcrum of the allegation of gratification under Count 4 is the **same** sum he agreed at the Federal High Court 1st Defendant got as a temporary overdraft from his Bankers, Unity Bank to pay for a house he bought from 2nd Defendant. PW10 asserted at the Federal High Court that their investigations showed that the 2nd Defendant sold the property to 1st Defendant but that when 2nd Defendant later sold the house to Central Bank, he paid the same sums he collected for the property back to 1st Defendant.

The bottom line is that, again prima facie, there is nothing presented by the prosecution on this Count situating the critical elements of the offence that would put the court in a commanding position to call on 2nd defendant to offer some explanation. There is no nexus or link between the evidence led and the offence as charged under **Count 4** as no witness mentioned the name of 2nd Defendant in relation to this Count or said anything which implicated him.

My conclusion or finding is that the prosecution has failed to establish a prima facie case against the 2nd defendant with respect to **Count 4.** He has no case to answer and he is accordingly discharged.

On **Count 5**, the 1st defendant is charged with accepting gratification of N300, 000, 000 in the exercise of his official functions contrary to **Section 116 (b) of the Penal Code.**

I had under **Count 4** situated the ingredients of the offence under **Section 116 of the Penal Code.** See also **FRN V Ademola (supra).** I need not repeat the elements.

Again on the evidence, the functions of the office that 1st Defendant is alleged to have been exercising was not specified. There is nothing on the evidence indentifying who offered any gratification and the amount to 1st defendant and or who was there who witnessed the offer and who saw when it was accepted. There is equally absolutely nothing in evidence situating the purpose for which

the alleged gratification was issued. Not one purpose within the purview of **Sections 115** and **116 of the Penal Code** was identified or specified by any witness.

Indeed not a single witness mentioned the name of 1st Defendant in relation toor in connection with this offence or said anything implicating 1st Defendant in relation to this **Count.**

There is really nothing on the evidence linking 1st defendant with the offence under Count 5. Again it is interesting to note that under cross-examination, and just as in Count 4, PW10 agreed that the **N300, 000, 000** in Count 5 is the same amount, in respect of which 1st defendant is facing trial at the Federal High Court and that he informed the court in that other proceeding that the N300, 000, 000 was an overdraft granted by Unity Bank to enable 1st Defendant pay for a property he bought from 2nd Defendant and that when 2nd Defendant later sold the property to Central Bank of Nigeria, he refunded the amount back to 1st Defendant which compromises the very essence of Count 5.

Again, under cross-examination, PW10 stated that he cannot recall saying 1st defendant gave 2nd defendant N300, 000, 000 and also that he cannot recall saying 2nd defendant gave 1st defendant N300, 000, 000.

With respect to **Count 5**, the conclusion I must necessarily come to is that from the almost palpable dearth of evidence on record in relation to this Count, it is clear that the prosecution has not made out any case by any means against 1st defendant requiring him to enter a defence on **Count 5.** The 1st defendant has no case to answer on Count 5 and is discharged accordingly.

The remaining **Counts 6 – 40** involves only the 3rd defendant and other persons at large. As indicated earlier, the counts that contain the same allegations shall be considered together and clear findings made with respect to each count for purposes of clarity.

Counts 6, 10, 15 and **23** are all counts of Conspiracy contrary to the provision of **Section 97 (1) of the Penal Code.**

Count 6 states that 3rd Defendant while being Company Secretary and Legal Adviser of 4th Defendant with (Munamuna Seidougha and Dozie Loya Etete now at large) between 26th August, 2011 and 6th September, 2011 in Abuja conspired to commit an illegal act to wit: **Criminal Breach of trust contrary**

to Section 97 (1) of the Penal Code. **Count 10** situates that 3rd defendant with (Munamuna Seidougha, Amaran Joseph and Dozie Loya Etete, now at large) conspired on or about 2nd June, 1998 in Abuja to commit **felony** to wit; **forgery contrary to Section 97 (1) of the Penal Code. Count 15** charges 3rdDefendant with same persons under Count 10 who are at large of having conspired on or about 27th November, 1998 in Abuja to commit felony to wit; **forgery contrary to Section 97 (1) of the Penal Code** and finally under **Count 23**, the 3rd defendant with the same persons as in **Counts 10** and **15** were charged with conspiracy to commit felony to wit: forgery of a Malabu Oil and Gas Ltd board resolution contrary to **Section 97 (1) of the Penal Code.**

It is to be noted immediately that in all these Counts of Conspiracy it is only in **Count 23** that the particulars of forgery was somewhat streamlined and or identified.

The charges contained in **Counts 6, 10** and **15** are vague and do not disclose precisely the allegations of crime for which the 3rd defendant could be legally called upon to defend. All these Counts posit is that the 3rd Defendant:

1. Conspired with others to do an illegal act to wit:
   "**criminal breach of trust**" (Count 6). No more.

2. Conspired to commit felony to wit:
   "**forgery**" (Counts 10 and 15). No more.

It is therefore difficult on the basis of these **Counts as formulated** to properly discern where and how a proper and meaningful consideration of the evidence can be situated to determine if a prima facie case has been disclosed. It has never been the duty of the court to **speculate** with respect to the nature of the offence a defendant is charged with and the evidence to situate the elements of the offences. This duty as I stated earlier is not and cannot be a function of conjecture or guess work.

Now because there are other **Counts** in the **extant charge** which do not disclose precisely the particulars of the offence the defendants are charged with, it may be necessary to draw attention to the following **provisions of ACJA, 2015.**

Section 194 (1) and **(2)** provides thus:

"194(1) A charge shall state the offence with which the defendant is charged.

(2) Where the law creating the offence:

(a) gives it a specific name, the offence shall be described in the charge by that name only; and

(b) does not give it a specific name, so much of the definition of the offence shall be stated as to give the defendant notice of the facts of the offence with which he is charged."

Section 196(1) Provides thus:

"196(1) The charge shall contain such particulars as to the time and place of the alleged offence and the defendant, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the defendant notice of the offence with which he is charged."

Section 199 provides thus:

"199: Where the nature of the offence is such that the particulars required by sections 194 and 196 of this Act do not give the defendant sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the offence was committed as will be sufficient for that purpose."

The above provisions appear to me self explanatory and projects the imperative of a charge containing all necessary particulars of a particular offence as will be sufficient for that purpose. A Count that is not clear or precise or deliberately ambiguous as in this case creates its own challenges and severely limiting the Courts remit to appropriately deal with the specific criminal conduct. See **FRN & Anor V Ifegwu (2003) LPELR – 3173 (SC)**. How these impact the counts will soon be revealed.

Now I had earlier in this Ruling situated what Conspiracy entails and its elements in the light of extant provisions of the Penal Code.

It may only be apposite as I situate from the evidence whether a prima facie case of conspiracy has been made out to refer to a recent pronouncement of the

Supreme Court in Usman V Kano State (2023) NWLR (pt.1881) 599-623-624 where the court stated as follows:

"The offence of conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act by unlawful means. The gist of the offence is predicated on the formation of the agreement alone, not in doing of the act or purpose for which the conspiracy was formed. Due to the nature of the offence of conspiracy, it is rarely or seldom proved by direct evidence but by circumstantial evidence and inference from certain proved act. The crucial factor in the offence of conspiracy is the meeting of the minds of the conspirators to commit an offence and the meeting of the minds need not be physical."

I had earlier stated **Count 6.** All it says is that the parties conspired to do an illegal act, to wit: **Criminal breach of Trust** without delineating or streamlining with clarity what the **offence** is all about. I think it is safe to again underscore the point that the contents of a charge or count as in this case should not be subject of speculation and inference; rather the essential ingredients of the offence must be disclosed. This is an inalienable right of the Accused under **Section 36 (6) (a) of the 1999 Constitution.** See **Timothy V FRN (2008) ALL FWLR (pt.402) 1136 at 1152 – 1153.**

Again I must underscore the point that **Conspiracy** and the **offence committed in pursuance thereof** are two separate and distinct offences. An Accused can be found guilty of one and not guilty of the other or vice versa depending on the evidence. Similarly a discharge on the count of conspiracy must not involve a discharge on the substantive offence or vice-versa. Much will depend on the evidence available and the surrounding circumstances of each particular. See **Atano V A.G. Bendel State (supra).**

A charge or count in my opinion, shall contain such reasonable particulars as to time and place of the offence and the person, if any against whom or thing, if any in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.

The bottom line is that there cannot be any excuse for a count of conspiracy not to fully contain the essential elements of the offence or reasonable particulars of the offence allowing the accused know the charge he is facing and this then puts

the court in a clear commanding position to determine the key question of whether at this stage, a prima facie case was made out.

The way I understand the law, conspiracy or the formation of the agreement cannot be situated in a vacuum but in relation to the doing of an unlawful act or to do a lawful act by unlawful means. A tenable Count must therefore donate what the conspiracy relates to, to provide a firm basis to situate the elements. To simply state that the Defendants conspired to commit breach of trust and leave it at that, as stated earlier is vague, tenous and does not donate any known or clear offence. This for me undermines this count *ab initio*.

Now **Section 197 of ACJA** provides thus:

"Where a defendant is charged with criminal breach of trust or fraudulent appropriation of property, it is sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of a single offence."

The above is clear. Despite the above observations, but out of abundance of caution, let us see what can be made of the offence as charged under Count 6.

The sting of this **count 6** is that the 3rd defendant with others at large conspired to do an illegal act, to wit: **criminal breach of trust** contrary to **Section 97 (1)** and punishable under **Section 312 of the Penal Code**.

Section 312 is the punishment Section of **Criminal breach of trust** but the offence is precisely defined under **Section 311** as follows:

"311. Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits criminal breach of trust."

A key phrase "**dishonestly**" appears in the above provision and it is defined under **Section 16 of the Penal Code** as follows:

"A person is said to do a thing "dishonestly" who does that thing with the intention of causing a wrongful gain to himself or another or of causing loss to any other person."

The challenge here is that without situating the reasonable particulars of the offence of conspiracy or what the conspiracy is all about in the Count, how does one now situate the ingredients of conspiracy in the light of the evidence on record to determine whether a prima facie case has been made? I just wonder.

As earlier alluded to, by the very nature of the offence of Conspiracy and the attendant difficulty in establishing same, the prosecution has a duty to situate clear particulars of the offence and then place prima facie evidence, that will allow the court draw the necessary inference that there was some sort of plan hatched in secrecy in furtherance of the commission of an illegal act. The situating of these prima facie facts cannot be left to speculation or conjecture or one for address of counsel as stated earlier.

On the evidence, apart from PW3 and PW10 who made reference to 3rd defendant and the role he played as Company Secretary/Legal Adviser of 4th Defendant, none of the other prosecution witness made any specific complaints of any kind to provide factual basis to situate conspiracy under this Count. PW1 may know 3rd defendant as a foundation secretary of 4th defendant but no where did he state or allude to any agreement between 3rd defendant and the others to commit criminal breach of trust. The same position largely holds in respect of the evidence of PW2 – PW9.

It is true that the PW10 may have given a trajectory of the investigations they conducted, but on the evidence, PW10 only directly interfaced with 3rd defendant and stated that he was the company secretary and legal adviser of 4th defendant and that he in turn interfaced between 4th defendant and Corporate Affairs Commission (CAC) as the company secretary/legal adviser but on the evidence there is nothing in real terms situating an agreement between defendants to do an illegal act or an act that is legal but by illegal means. PW10 never had any interaction with the alleged co-conspirators Munamuna Seidougha and Dozie Loya Etete all through the course of investigations. Indeed he indicated that all efforts to get to meet them failed.

Now if as the authorities posit that the offence of conspiracy is hatched in utmost secrecy, then at this stage, the prosecution must be able to place before

the court some basis in relation to the Court to call for a response or further inquiry. Nothing with respect to their interactions, discussions, meetings or any other communication that exists between the 3rd defendant and the co-conspirators that would provide the basis to infer an agreement to commit an offence was placed before the court. This duty is not one for address of counsel as stated earlier but these clues to situate conspiracy must be provided or identified in evidence and clearly streamlined. The statements of 3rd defendant vide **Exhibit P17 (1-4)** where he clearly denied any wrong doing does not equally supply elements that would prima facie situate conspiracy between 3rd defendant with the co-conspirators to commit criminal breach of trust.

The bottom line is that there is really nothing on the evidence, except the court engages in speculative posturing, that suggest how, in what manner, by what means, where and under what circumstances, whatsoever, that the alleged conspiracy or agreement to commit the **unclear and undefined offence** took place under Count 6. At different levels as demonstrated above, this count appears fatally compromised. The **exercise** to even situate the evidence was done out of caution even if might turn out to be academic and with no judicial value to the clear extant that **Count 6** is not specific, clear and precise with respect to the nature of the offence of conspiracy alleged.

On the whole, my conclusion is that the prosecution has failed to establish a prima facie case against the 3rd defendant on **Count 6.**

On **Count 10, 3rd defendant** is charged with (Munamuna Scidougha, Amaran Joseph and Dozie Loya Etete, now at large) on or about 2nd June 1998 conspired to commit felony to wit: forgery contrary to **Section 97 (1) of the Penal Code** and punishable under **Section 364 of the Penal Code.**

Now forgery is defined in **Section 363 of the Penal Code** as follows:

"363. Whoever makes any false document or part of a document, with intent to cause damage or injury to the public or to any person to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that may be committed, commits forgery; and a false document made wholly or in part by forgery is called a forged document."

The judicial authorities from our Superior Court projects the following elements to establish forgery:

"(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 cases of **Alake V The State (1991) 7 NWLR (pt.205) 95; Mustapha V FRN (2018) LPELR – 46565 (CA)** and **Agwuna V A.G. Federation (1995) 5 NWLR (pt.396).**

I must again, even at the risk of prolixity refer to the same debilitating features of this Count same as in **Count 6.**As a prefatory point, I note that what the conspirators were said to have conspired to **forge here** was not **situated or identified** at all. The count simply indicates that they conspired to commit felony to wit: forgery. No more. Without reference to any particular document, this count is equally vague, unclear and imprecise.

As framed, this Count cannot on its own constitute an offence. The commission of offence of forgery within the purview of **Section 363 of the Penal Code** cannot be framed in a vacuum but certainly in relation to a document in writing which projects falsity. **Count 10** does not situate forgery in relation to any document and therefore inherently vague, tenuous and or untenable.

In the event I am even wrong here too as in **Count 6**, the duty of the prosecution is to **prima facie** provide the court with the prima facie evidence that would require the 3rd defendant to put in his defence.

I have again gone through the entire evidence of the prosecution witnesses and I cannot situate a firm factual basis to situate a conspiracy to forge any **undefined document** on about 2nd June 1998. The absence of any clear document subject of the forgery presents a huge challenge here. Any attempt at trying to situate any particular evidence as I attempted under Count 6 will essentially be hugely a speculative exercise which I have no judicial liberties to indulge in.

For whatever it is worth, on the evidence, it was only **PW6** who came from Corporate Affairs Commission, the statutory body charged with incorporation of companies and filing of documents of incorporation related to companies in Nigeria and keeping of records of companies that alluded to the fact that two forms CAC 2 (particulars of shareholders of 4th defendant) and CAC 7 (particulars of directors of existing directors of the 4th defendant) were filed sometime on 10th June, 2010 without following due process.

PW6 mentioned one **Mr. Ayo** as the person who presented the documents and a Corper serving in his unit that processed the documents. No mention was made of 3rd defendant or any of the co-conspirators by this staff from CAC as having anything to do with these documents.

PW10 who clearly does not work with CAC may have referenced in his evidence that a false Malabu Oil and Gas Board Resolution was made appointing certain persons as directors of Malabu Oil and Gas but here again, he did not identify any specific document that the defendants conspired to forge or provide the necessary evidence to situate the elements of forgery. He also could not meet any of the other 3 co-conspirators and could therefore from the evidence not situate or show, if any, the discussions, meetings or any communications between the conspirators that took place or the circumstances providing factual basis to allow for the necessary inference to be made that parties had an agreement to commit an illegal act as alleged.

As stated earlier, **the meeting of the minds of the conspiracy need not be physical**, but the most important point is that however the conspiracy is hatched, there must be basis, even if minimal to situate the conspiracy. The conspiracy must also be predicated on an actual offence with particulars defined and not one at large as done here. This cannot be a matter of guess work or speculation. Again as in **Count 6**, there is nothing from the evidence that suggest, how, in what manner, by what means, where and under what circumstances whatsoever that the alleged conspiracy or agreement to commit the **undefined offence** of forgery took place. These important elements cannot be situated in the statements of 3rd defendant vide **Exhibit P17 (1-4).**

My conclusion here too is that the prosecution on the basis of the **unclear** Count and even the **unclear evidence** related to this Count has not been able to establish a prima facie case against the 3rd defendant with respect to **Count 10**. He is accordingly discharged on this **Count 10**.

Count 15 suffers the same fate as **Counts** 6 and10 and I adopt the reasoning earlier made in relation to these Counts. **Count 15** equally projects that the 3rd defendant and his co-conspirators conspired to commit felony to wit: **forgery.** No more. As stated earlier, this is extremely vague and undermines the Count *ab initio*.

Again, out of abundance of caution, let me say that in addition to the reasons advanced under **Count 10**, here too, the only witness from the superintending authority over company documentation, the CAC, PW6 did not at any time mention 3rd defendant and the co-conspirators with the filing of any Board Resolutions or any CAC forms. The two identified documents filed mentioned by PW6 were done by an identified person and no link or nexus was established between the person and the defendants charged under Count 15.

PW10, may equally have alluded to the fact that certain documents were filed at the CAC but he did not specifically define any forged document relative to this Count and situate prima facie the elements of forgery. He did not also meet any of the co-conspirators charged with the 3rd defendant and there is equally nothing from the evidence that suggest how in what manner, by what means where and under what circumstances whatsoever that the alleged conspiracy or agreement to commit the **undefined offence** under **Count 15** took place. As alluded to already, this exercise of even trying to consider the evidence to determine whether a prima facie case was made out appears entirely academic and an exercise, sadly, with no utilitarian judicial value in the light of the clear situation that these **Counts 6, 10** and **15** did not disclose reasonable particulars of the offence of conspiracy they are predicated on to provide basis to determine meaningfully whether a prima facie case situating the elements of forgery has been made out.

For clear reasons demonstrated above, the prosecution has here too, not made out a prima facie case against the 3rd defendant on this **count 15** requiring him to enter a defence.

Finally **Count 23** unlike **Counts 6, 10** and **15** clearly and explicitly, to a **reasonable extent**, provided particulars or direction of the charge of conspiracy wherein it states **that 3rd defendant with (Munamuna Seidougha, Amaran Joseph and Dozie Loya Etete, now at large) on or about 18th December, 2006 conspired to commit felony to wit: forgery of a Malabu Oil and Gas Limited board resolution.** The provision of the **reasonable particulars of the**

offence to some extent here is a **tacit recognition** by the prosecution itself that Counts 6, 10 and 15 do not contain the necessary elements of the offences of conspiracy.

Now on the evidence, **this board resolution of 4th Defendant** said to have been **made on or about 18th December, 2006** was not produced in evidence and most importantly, there is nothing in the evidence of the prosecution witnesses **linked to this resolution that was not produced** to situate the inference of an existence and the intention or purpose of the conspiracy. Nobody from the Board was presented to situate these complaints. As stated earlier PW10 on the evidence did not lead evidence directly on this particular specific Board resolution subject of this Count to situate the elements of conspiracy and he never met or had any meetings with the other alleged co-conspirators and he did not provide on the evidence anything to project a meeting of the minds to do or cause to be done an illegal act or legal act by an illegal means. PW6 from **CAC** did not impugn or challenge any Board Resolution filed at the CAC by 3rd Defendant or link him to any impugned documents of 4th Defendant filed at the CAC. The point to again make clear is that the conspirators need not be in the same place and they need not necessarily have played their respective roles in the plot at the same time but the evidence must, **prima facie**, situate evidence to allow for a proper inference of conspiracy to be made which I cannot situate in this case beyond the construction of the narrative in the address of the prosecution which as stated earlier is no substitute for evidence.

On the whole, I hold again that the prosecution has not placed before the Court anything tangible situating interactions, discussions, meetings or any communication that existed between 3rd defendant and other co-conspirators that would provide the factual basis to infer any agreement to commit the offence of Conspiracy to forged the **undefined Board Resolution** of 4th Defendant charged under **Count 23**.

Here too, the conclusion I have arrived at is that no prima facie case has been made by the prosecution on **Count 23** against 3rd Defendant and he is accordingly discharged.

Counts 7, 8 and 9 essentially charges the 3rd Defendant with the offences of abetment contrary to **Section 85 of the Penal Code** and punishable under **Section 312 of the same Penal Code**.

I had earlier on **stated the relevant provisions of the Penal Code on abetment and also stated the elements of the offence.** I need not repeat these again.

Let me however here add the case of **Suleiman V State (2023) 6 NWLR (pt.1880) 201 at 236** where the Supreme Court captured the essence of the offence of abetment in the following words as follows:

"In a charge of abatement, the primary element in establishing the guilt is the instigation of a positive act geared towards committing the offence. Therefore a person is said to have abetted the doing of a thing when he **(i) instigates any person to do that thing; or (ii) engages with one or more persons in any conspiracy for the doing of that thing; or intentionally aids or facilitates by any act or illegal omission, the doing of that thing. See Njovens V State (1973) All NLR 371 and Upahar V State (2003) 6 NWLR (pt.816) 230."**

The clear purport or import of the provisions of the Penal Code and the judicial authorities cited are clear, particularly at this stage where we are not dealing with the question of **proof** of the allegation; the prosecution has the responsibility to establish or show prima facie that an offence was abetted and the abetted offence was committed in consequence of the abetment.

Put another way, these sections and cases projects that the prosecution should be able to provide some material or basis to show that apart from the abetment, that the act abetted should have been actually committed. There should therefore be evidence of acts or omissions constituting the abetment and also commission of the act abetted in consequence of the abetment. This then provides the materials even if minimal, providing basis to call on the defendant to enter his defence. See **Kaza v State (2008) 1-2 SC 151 at 194-193; Suleiman V State (supra); Njovens V State (1973) All NWLR 371.**

I shall take **Counts 7-9** together. Now, under **Count 7**, the 3rd Defendant while being the Company Secretary and Legal Adviser of 4th Defendant is said to have between 26th August, 2011 and 6th September, 2011 did abet **Munamuna Seidougha and Chief Danzie Loya Etete** to dishonestly convert to their use the sum of **$396, 456, 906.00** (Three Hundred and Ninety Six Million, Four Hundred and Fifty Six Thousand, Nine Hundred and Six United State Dollars) only from Malabu Oil and Gas Ltd account with Keystone Bank No. 100555208.

Under **Count 8**, the 3rd Defendant while being Company Secretary and Legal Adviser of 4th Defendant between 29th September, 2013 did abet **Munamuna Seidougha** and **Chief Dauzia Loya Etete** to dishonestly convert to their use the sum of $74, 271, 750. 00 (Seven Four Million, Two Hundred and Seventy One Thousand, Seven Hundred and Fifty United State Dollars) only from 4th Defendant's account with Keystone Bank No. 1005552028.

Finally under **Count 9**, the 3rd Defendant again as Company Secretary and Legal Adviser of 4th Defendant is said to have between 29th August, 2011 and 2nd September, 2011 in Abuja did abet **Munamuna Seidogha** and **Chief Dauzia Loya Etete** to dishonestly convert to their use the sum of $401, 000, 000 (Four Hundred and One Million United States Dollars) from the 4th Defendant's account with First Bank Nigeria Limited No. 2018288005.

I have carefully situated the evidence on record and on these Counts, the evidence of **PW5, PW6, PW7** and **PW10** provides clear perspective and insight with respect to whether, a prima facie case of abetment, has been made out.

PW5 gave a background of the case particularly the trajectory of the facts surrounding the **OPL 245** transaction. Without going into any details, his evidence situates or projects that because of the various issues surrounding the OPL245, involving different parties; different legal challenges including arbitration; different court proceedings and decisions etc, the Federal Government through the **President** directed the Attorney General to explore ways of resolving the lingering dispute which culminated in a **Resolution Agreement** tendered as **Exhibit P3** dated 29th April, 2011. PW5 stated that in these meetings to resolve the dispute, the **3rd defendant** and one **Chief Dan Etete** represented **4th defendant, Malabu Oil and Gas.**

The PW5 said that the A.G's office got the **presidential approval** for the execution and implementation of the agreement. This background is necessary in my opinion, to properly situate whether a prima facie case was made with respect to these related counts.

Now flowing from this settlement, payments were made to 4th Defendant as stated by PW10 with respect to their interest in OPL 245 and that the monies paid according to PW10 were "**misappropriated.**" The key question here is beyond the representation that the monies paid to 4th Defendant a private company arising out of the settlement were misappropriated, where is the prima

facie evidence to situate the allegation that 3rd Defendant as Company Secretary abetted the dishonest conversion of moneys paid by the Federal Government to 4th Defendant arising out of the settlement?

Now with respect to the specific allegations under **Counts 7, 8 and 9**, **PW7** and **PW8** appeared for the prosecution from **Keystone Bank** and **First Bank Nigeria Limited**. Their evidence is basically that accounts were opened in the name of 4th defendant in their respective branches. They stated that the accounts were properly opened in compliance with banking regulations without any anomaly with one Dozie Etete as the sole signatory. They also agreed that payments in and out was made out of the accounts but there was no complaint of any kind flowing from the transactions carried on the accounts and the transactions were not suspicious.

It is relevant to underscore the point that both **PW7** and **PW8** from Keystone and First Bank do not know 3rd defendant and they stated that whenever a corporate body as in the case of 4th defendant wants to open an account and gives or provides all necessary documents, the banks have what they call a check list which they cross-check with the documents provided to ensure that the documents are correct and that they confirmed from CAC that the directors presented for the opening of the account are the directors of 4th defendant. They also stated that the banking laws requires them to report all suspicious transactions but they did not find any of the transactions suspicious on the account of 4th defendant. It is equally to be noted that as stated by PW5, in the meetings initiated by the Federal Government towards a final resolution of the OPL 245 dispute, the 4th Defendant were represented by **3rd Defendant and Chief Dan Etete A.K.A Dozie Loya Etete**.

It is really difficult on the basis of the evidence to situate **prima facie** how the valid opening of the accounts which received payments by the **Federal Government of Nigeria** located within the frame work of a settlement and the subsequent payments made out of it constitutes an **infraction** or abetment as charged.

It is herculean to locate evidence that the 3rd defendant abetted any infractions related to these counts. The prosecution did not disclose or show what role, if any, the 3rd defendant played in the disbursements of the funds in these accounts. There is equally nothing to situate that he played a clear specific role in the appointment of Chief Dozie Etete as the sole signatory of the account or

that as Company Secretary he had any powers or say in the running of 4th Defendant or that he advised, encouraged or counseled Douzia Etete to carry out the transactions in the accounts in question.

As stated earlier, both **PW7** and **PW8** stated clearly they don't even know 3rd defendant. There is equally nothing on the evidence situating that as a **Company Secretary** of 4th Defendant with defined duties that he has any specific powers or say on how funds of 4th Defendant is to be used or disbursed particularly when it is a common ground in this case that he is not a shareholder or director of the 4th defendant or put another way, it has not been shown on the evidence that he is a member of the Board of Directors of 4th Defendant who are the governing body. The Court was not referred to the **Memorandum and Articles of Association** of 4th Defendant to determine if the 3rd Defendant had the powers sought to be attributed to him and the Court will not speculate.

I am not sure that the prosecution is on firm ground to argue that the fact that the 3rd Defendant was **company secretary** of 4thDefendant and fleetingly dealt with some of the prosecution witnesses like PW1, PW3 and PW4 without more suffices to show that a prima facie case of **abetment** was made out on the **three (3) Counts.**

Sadly in this case, there is nothing to prima facie situate encouragement, incitement, setting on, instigation, promotion or procurement of the offences by 3rdDefendant under **Counts 7, 8 and 9.**As stated earlier, these acts or elements of the offence which are in the **alternative** and not **cumulative** must be positive and unequivocal, specially addressed to the commission of the offence and not a matter for speculation or address of counsel. There must be some firm, even if minimal basis, to allow for the call to enter a defence to be made. This does not exist here.

The bottom line is that on these counts, it is really difficult to prima facie situate the necessary elements of the offence of abetment earlier highlighted. Mere suspicion cannot be a substitute for the elements.

My conclusion on **Counts 7, 8 and 9** is that the prosecution has failed to prima facie show that the 3rd defendant abetted **Munamuna Seidougha** and **Chief Dozia Loya Etete** to dishonestly convert the sums under **Counts 7, 8 and 9** or put another way, the prosecution has failed to establish a prima facie case

against 3rd defendant on Counts 7, 8 and 9 and I hold that he has no case to answer on these counts and he is accordingly discharged.

The next set of offences to be considered are those covered by **Counts 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 24, 25 and 26** containing allegations that 3rd Defendant made false documents or forgery contrary to the provision of **Section 363 of the Penal Code** and punishable under **Section 364 of the Penal Code.**

A convenient starting point or a proper take off point is to situate the definition of forgery and forged document as provided under **Section 363 of the Penal Code.** I had done so earlier in this Ruling and stated the ingredients of forgery. I again need not repeat same.

It may only be relevant to define what amounts to **"making a false document in writing."** In **Oduah V FRN (2012) 11 NWLR (pt.1310)** 76, the Court of Appeal stated that the phrase **"making a false document in writing"** includes altering a genuine document or writing in any material part, either by erasure, obliteration, removal or otherwise, and making any material addition to the body of a genuine document or writing; and adding to a genuine document or writing any false date, attestation, seal or other matter.

Again here, to provide basis to call on the 3rd Defendant to enter a defence, the elements of forgery or making a false document should be **situated** on the evidence led.

Now **Count 11**, states that 3rd defendant while being the Company Secretary and Legal Adviser of 4th defendant with others now at large on or about **2nd June, 1998 made a false Malabu Oil and Gas Ltd Board Resolution** appointing Alhaji Muhammed Sani Ahmed, Mr. Kweku Amafagha, Alhaji Hassan Hindu-wabi and Alhaji Aliyu Jabi Mohammed as Directors with intent to commit fraud contrary to **Section 363 of the Penal Code** but I have carefully gone through the evidence led, and no where was the existence of this allegedly **forged Board Resolution document identified and tendered by any of the prosecution witnesses** and then situating the elements of forgery. If the **resolution said to have been forged** which primarily denotes the forged document in writing is not produced and evidence elicited on it, then it is difficult to situate how the other elements of forgery can prima facie be established. None of the witnesses PW1- PW9 spoke specifically to the existence of this forged document and the other elements of forgery. The PW10

who alluded to it did not produce it to situate the elements of forgery. In the face of the conspicuous absence of the alleged false board resolution and dearth of evidence to prima facie situate the falsity of any document, Count 11 appears compromised, *ab initio*. My conclusion is that the prosecution has not disclosed a **prima facie** case on **Count 11** against 3rd Defendant requiring him to enter his defence.

Count 12 like Count 11 situates that the 3rd defendant with others now at large on or about 2nd **June, 1998** made a **False Resignation Letter** purporting that **Alhaji Hassan Hindu** had resigned from the Board of Malabu with intent to commit fraud contrary to Section 363 of the Penal Code.

Again this **resignation letter** to situate the **elements of forgery** was not tendered in evidence and none of the prosecution witness made any allusions to this document. Now it is correct that PW2, Alhaji Hassan Adamu gave evidence to the effect that when Malabu Oil was about to be incorporated, he was invited to be a **share holder** by Chief Dan Etete and he then gave him a Pseudo name, **Hassan Hindu** but later that he decided it was not advisable for him to be a shareholder of a private company and that the name be dropped. He stated that he never participated in the affairs of the company and that he did not authorize anyone to sign a document for **Hindu.** For purposes of situating prima facie, the elements of forgery, as stated earlier, there must be a document of resignation by Alhaji Hassan Hindu made on or about 2nd **June, 1998** as a starting point and then a case on the evidence will then made on its falsity and then the link made with the 3rd Defendant and the situating of the other elements. No such evidence was tendered or presented and one then is curious as to how forgery in relation to that particular specific document can be proved or a prima facie case raised in such unclear situation?

The only letter of resignation on the record is the one dated 9th **June, 2010** and not 2nd **June, 1998** as stated in **Count 12** and it is by one **Mr. Hassan Hindu Wabi**; tendered as **Exhibit P18 (5).** There is no evidence on the record situating whether **Mr. Hassan Hindu Wabi** is the same person with **Alhaji Hassan Hindu** and that **Exhibit P18(5)** was made by 3rd defendant or that it was found in his possession or indeed that he had anything to do with it.

Indeed PW10 under cross-examination stated that **Hassan Hindu Wabi** does not exist. It is also to be **noted** that PW10 stated that **Exhibit P18** (5) forms part of the documents CAC expunged from their records. It is equally to be

noted that PW10 agreed that these documents cancelled including **ExhibitP18** (5) were filed by one **Barrister Ayo Ademola** who PW10 interacted with but who is not part of the defendants and who was not called to give evidence in this case even though his name feautures in the list of **witnesses** the prosecution was to call to give evidence in the case.

On the evidence too, no nexus was shown between the said **Barrister Ademola** who filed these Malabo Oil documents including **Exhibit P18 (5)** and 3rdDefendant or the other co-defendants subject of this Count. Indeed nothing was placed before the Court showing that the said Barrister Ayo had the instructions of 3rd Defendant and the other Defendants to file **Exhibit P18 (5). Count 12** under the circumstances does not **situate a prima facie** case of forgery against **3rd defendant.** I so hold.

Count 13 on the other hand states that the 3rd defendant with others now at large on or about 2nd June, 1998, made a **False Resignation Letter** purporting that Alhaji M. Sanni had resigned from the Board of Malabo Oil and Gas Ltd with intent to commit fraud contrary to **Section 363 of the Penal Code.**

In situating whether a prima facie case has been made here, an important starting point will be to refer to the evidence of **PW1**, who identified himself as **Muhammed Sani Abacha** and that he is also known as **Muhammed Sani**. There is no real clarity on the evidence whether the said **Alhaji M. Sanni** whose resignation was said to have been forged is the same person as **Muhammed Sani Abacha** and **Muhammed Sani** and the Court cannot speculate.

It is relevant to note that **PW1** was not given in evidence any **resignation** letter he may have written for him to at least situate the elements of forgery. In evidence, PW1 stated that he is a member and shareholder of Malabo Oil and Gas but that he did not pay for the shares as no one did.PW1 also alluded to having copies of the **original incorporation documents** which he said he handed over to EFCC but these were not **tendered in evidence**. He said that sometimes in 1998 when he was in detention, he heard of several alterations and changes in 4th Defendant which he was not privy to or gave his consent to. He added that there was never a board meeting at Malabo.

Now with respect to this **specific allegation in Count 13**, as stated earlier, nothing was shown or presented in evidence to situate the falsity of the

resignation letter dated 2nd June, 1998. The only documents situating any resignation is to be found via the evidence of **PW9**, the **forensic expert** who analysed the documents tendered vide **Exhibits P14 (1-33)**. Relevant here is **Exhibit P14(27)** marked as **X8** by the forensic expert which is a resignation letter of one **Alhaji M. Sanni** from the Board of Directors of Malabu Oil and Gas dated 2nd June, 1998. The **conclusion** of the expert is apt here in relation to who made this false resignation letter of 2nd June, 1998 of Alhaji M. Sanni. He stated thus:

"There is 'no conclusion' whether the author of the known request specimen signature A-A4 wrote the disputed signatures marked x3, x4, x5, x6, x8 and x9."

X8 it must be underscored is the **resignation letter of Alhaji M. Sanni** subject of **Count 13** and the **forensic expert** was not clear or had conclusive evidence to show it was forged. In such palpably unclear situation, it is difficult to situate a **prima facie** case in the context of **Count 13** to provide a valid basis to call on 3rd defendant to enter a defence. I hold that a prima facie case has not been made on **Count 13**.

Count 14 again is to the effect that 3rd defendant while being the Company Secretary/Legal Adviser of 4th defendant with others at large on or about 2nd June, 1998 made a **false Form CAC 2.3 particulars of directors** purporting to replace Alhaji Mohammed Sanni with the name of Alhaji Sani Mohammed Ahmed as a Director of 4th defendant with intent to commit fraud contrary to Section 363 of the Penal Code.

Now the question here is **where is the Form CAC 2.3 situating this change of directors** said to have been made on or about 2nd June, 1998 and where again is the evidence, even if prima facie, to situate the elements of forgery?

It may be relevant to state that the only official brought from CAC, PW6 never gave evidence of any **filed alterations of any Form CAC 2.3 of Malabu Oil made on or about 2nd June, 1998.** The only applications he referred to were made in 2010 making changes in the forms **CAC 2 (particulars of Shareholders) and CAC 7 (particulars of Directors)** of Malabo and the person who filed these process was not the **3rd defendant.**

I have gone through all the documents from the Corporate Affairs Commission vide **Exhibits P18 (1-18)** and this particular document subject of **Count 14** does not form part of the documents. The only document on the record of appointment of first Directors is that forming part of the documents tendered by the forensic witness, PW9 vide **Exhibit P14 (28)** and there is no replacement of Directors therein.

There is clearly no document placed before court in writing which is forged by 3rd defendant and others and it is difficult to see how forgery and its other elements can be established in the circumstances. I have no difficulty in holding that no prima facie case clearly has been disclosed against 3rd Defendant under **Count 14** to warrant him to be called to enter his defence. I so hold.

Count 16 like Count 14 states that 3rd defendant along with three others at large on or about 27th November, 1998 **made false Form CAC 2.3 particulars of Directors** purporting to have allocated 14, 000, 000 shares to Alhaji Jabi Muhammed and 6, 000, 000 shares to Seidougha Munamuna with intent to commit fraud but like most of the other Counts, this **false Form CAC 2.3 of particulars of Directors alluding to allocation of shares to Alhaji Jabi. Mohammed and Seidougha Munamuna was not identified and evidence led on its alleged falsity.**

I have looked again at the entire documents tendered from the Corporate Affairs Commission (CAC) vide **Exhibits P18 (1-18)** and even the documents tendered by the forensic witness vide **Exhibit P14 (1-33)** and there is no where to situate the document subject of **Count 16** and again no witness spoke to the constituent elements to situate forgery.

Again, if the document alleged to be **subject of forgery in Count 16** is not presented and the link with the person accused of the forgery shown and situating the elements of forgery, then it is again difficult to see how a prima facie case can be established in such a situation. What the **prosecution has done here,** as in most of these counts where the document subject of the forgery and the evidence to situate forgery were not defined, is to engage essentially in speculations in the address to build a case outside of the body of evidence they presented. Adopting such a course of action does not aid its cause in any manner. With respect to **Count 16**, I hold that a prima facie case has equally

not been disclosed against 3rd defendant to warrant him to be called to enter his defence.

For the same reasons as in Count 16, **Counts 17, 18** and 19 equally does not disclose a prima facie case against 3rd defendant. The **false CAC Form 2.5 allotment of shares** of 14, 000, 000 ordinary shares to Alhaji Jabi Muhammed and 6, 000, 000 ordinary shares to Seidougha Munamuna made with intent to commit fraud subject of **Count 17**,and the false Malabu Oil and Gas Ltd Board Resolution purporting to have retained Alhaji Aliyu Muhammed as Managing Director and Seidougha Munamuna as Director made with intent to commit fraud subject of **Count 18** and the false Malabo Oil and Gas Ltd Board Resolution with new shareholding structure to wit Alhaji Aliyu Jabi Muhammed with 14, 000, 000 ordinary shares and Seidougha Munamuna with 6, 000, 000 ordinary shares made with intent to commit fraud subject of **Count 19** were all not **tendered or produced** in evidence and then evidence led by the prosecution witnesses situating the ingredients or elements of **forgery**.

Put another way, these **documents** associated with these Counts were not tendered and evidence given related to their contents and the elements of forgery. Without the proven existence of these documents and its falsity and link made with 3rd defendant, I am afraid, a **prima facie** case of forgery cannot factually and legally be countenanced, particularly the other elements to situate forgery. As a logical corollary, I hold that a prima facie case was thus not disclosed on **Counts 17, 18 and 19** against 3rd Defendant.

Counts 20, 21 and 22 again charges 3rd Defendant while being Company Secretary and Legal Adviser of 4th defendant with others at large that on or about 27th November, 1998 made **false resignation letters** that **Kweku Amafagha**, **Alhaji Muhammed S. Ahmed** and **Alhaji Hassan H. Warbi** had resigned from the Board of Malabo Oil and Gas with intent to commit fraud contrary to **Section 363 of the Penal Code**.

Again at the risk of prolixity, and because of the manner this case was presented, it may be apt to reiterate the principle that by virtue of **Section 363 of the Penal Code**, forgery is when a person makes any false document or part of a document with intent to support any claim or cause damage to the public or person. See **Brown V State (2012) 3 NWLR (pt.1287) 207**.

Now these false **resignation letters** purporting to show that **Kweku Amafagha**, and **Alhaji Hassan H. Wabi** resigned from Malabo Oil said to have been made on or about 27th **November, 1998** in Abuja subject of **Counts 20** and **22**were again not specifically tendered and nothing was then proffered in evidence by any of the prosecution witnesses to situate the falsity of the documents or the elements of forgery and the nexus if any with 3rd Defendant.

The only documents related to the resignation of **Kweku Amafagha** and **Alhaji Hassan H. Wabi** from Malabo Oil is dated **9th July, 2010** which appears **different** from that subject of these Counts which were all said to have been made on or about **27th November, 1998.** Indeed these particular documents of resignation all dated 9th July, 2010 forms part of documents tendered by the CAC vide **Exhibit P18 (1-18)** particularly **Exhibits P18 (4) and P18 (5)** which the CAC subsequently all cancelled and expunged from their records because they were not properly approved following due procedure. In these CAC documents, there is no letter of resignation of **Alhaji Muhammed S. Ahmed** subject of Count 21.

In evidence, these cancelled letters of resignations vide **Exhibits P18 (4) and P18 (5)** of Kweku Amafagha and Alhaji Hassan H. Wabi was filed according to PW10 by one **Barrister Ayo Ademola.** PW10 said he interacted with this person but the said **Barrister** was not charged or called to give evidence to perhaps situate if 3rd defendant had any link with the cancelled resignation letters.

Now it is true that in the documents tendered by the Forensic Analyst, PW9 vide **Exhibit P14 (1-33)** particularly **Exhibit P14 (18)** marked as **X** situates the resignation letter of one **Alhaji Muhammed S. Ahmed.** It is however clear from the evidence of PW9 that **Exhibit P14 (18)** was used by his team to determine the genuineness of the signatures of **PW1** on certain documents. It was thus not used to project or support the case made under **Count 21.**

The bottom line is that in the light of the evidence above, the complaint of forgery, even at this stage, will not fly. In the absence of the documents containing the forgery, it is difficult to discern how the other elements of forgery can really be made. On the other hand, if the documents **Counts 20-22** are dealing with are **Exhibits P18 (4), P18 (5)** and **P14 (18),** then it is clear no evidence was led situating the elements of forgery and establishing a nexus with 3rd defendant to situate a prima facie case of forgery to warrant him being called

to defend the case on these Counts. I again hold that on **Counts 20, 21 and 22**, that a prima facie case was not disclosed against **3rd Defendant**. I so hold.

Count 24 states that 3rd defendant while being Company Secretary with others at large on or about 18th December, 2006 made a false Malabu Oil and Gas board resolution re-allotting 10, 000, 000 ordinary shares purchased by Pecos Energy to Joseph Amaran with intent to commit fraud contrary to **Section 363 of the Penal Code**.

Again like most of the Counts on forgery, this false board resolution was not identified and tendered by any of the prosecution witnesses with the necessary evidence to found the critical elements of forgery. The critical witness from CAC, PW6, did not mention or allude to the filing of any such resolution at the CAC. Indeed in the entire documents tendered by PW10 obtained from CAC vide **Exhibits P18 (1-18)**, no where did this resolution subject of Count 24 feauture or evidence of any kind situating elements of forgery elicited and a link made with 3rd defendant.

Again if this false or forged resolution is not identified and evidence of forgery given at trial and clear nexus established between the document and 3rd defendant, it is really difficult to see how a prima facie case of forgery can really be raised and meaningfully made out.

In the face of complete dearth of evidence, I hold that a case of forgery or making a false document was not in the list made out on Count 24. I accordingly hold that no prima facie case was made against 3rd defendant on this **Count 24** requiring him to enter a defence. I so hold.

Count 25 states that 3rd defendant while being the Company Secretary and Legal Adviser of 4th defendant with others at large on or about 12th August, 2011 made a **false** Malabo Oil and Gas Board Resolution authorizing opening of domiciliary accounts with First Bank and Keystone Nig. Ltd with intent to commit fraud contrary to **Section 363 of the Penal Code**.

Now on the record, it is PW7 that gave evidence in relation to the opening of the domiciliary account subject of this Count. He tendered in evidence the **relevant account** opening documents vide **Exhibits P6 (1-38)**.

Again I have carefully looked at the account opening documents and it is difficult to situate a clear **Board Resolution** authorizing the opening of the domiciliary accounts with **Keystone and First Bank respectively**.

The only resolution that has any semblance or link with **Count 25** are the documents. **Exhibit P6 (34)** and what appears to be the **concluding part** of **Exhibit P6 (34)** at the back of **P6 (17)**. Again on the evidence no effort was made by the prosecution witnesses to delineate and identify the **resolution** in question clearly. It is really not the job of the court to in chambers be speculating as to which document a particular Count in the charge relates to or deals with.

For whatever it is worth, what however that can be discerned from this **document P6 (34) and P6 (17)** is a resolution passed at an **extra-ordinary general meeting of the company** as distinct from a **resolution of the Board of Directors**. There is nothing on the evidence to explain the source of this resolution and the court will again not speculate.

Now on the evidence nothing was placed before court to show that no such meeting held on 12th August, 2011 and that no such resolution was passed and the court cannot leave such an important issue to one of guess work.

On the evidence as at 2011, when this resolution was made, PW1, Muhammed Sani Abacha clearly was in no position to give evidence on what was happening in Malabu Oil because on the evidence he had by then filed a challenge at the Federal High Court in Suit No. **FHC/ABJ/CS/2010** to assert ownership of 50% in Malabo Oil.PW2 Ambassador Hassan Adamu on his part never participated in the activities of Malabo Oil and Gas. PW3, Alhaji Aliyu Jabi on his part left Malabo Oil and Gas in **2001** when he sold his shares. The evidence of PW4, Chief Fasawe did not also say anything about the resolution or indeed anything to do with forgery.

Now **PW7** who tendered these documents including the resolution when examined in Chief did not make any representation of forgery at all with respect to the account opening documents and the **resolution** itself or that they had any concerns about any of the documents. Indeed under cross-examination, he stated that whenever a corporate body wants to open an account and gives them all documents, they have a check list, which they use to cross check documents submitted to ensure that the documents are in order. That in this case, the bank,

Keystone ensured due compliance with all that was required of 4th Defendant before the account was opened. He also said that all the transactions related to the account were not suspicious at all as the bank is required by law to report all suspicious transactions to the relevant authorities. **PW8** from **First Bank** gave evidence corroborating in all material particulars the evidence of PW6 with respect to the opening of Malabo Oil Account with **First Bank**. Again on the evidence led, it is difficult to situate prima facie the elements of forgery to put the count in a firm position to call on 3rd defendant to enter a defence on **Count 25**.

The same position holds true for **Count 26** relating to the allegation that 3rd defendant and others at large on or about 15th August, 2011 made a false Malabo Oil and Gas Board Resolution authorizing the opening of current account at Keystone Bank with intent to commit fraud. Here too, what is on record vide **Exhibit P6 (7) and (9)** is a resolution at an **extra-ordinary General meeting** of 4th Defendant as distinct from a resolution passed by the **Board**. Again there is nothing on the evidence of prosecution witnesses to situate the falsity of this resolution.

On the evidence as already demonstrated under **Count 25** and the more details reasons advanced therein, which I adopt, I hold that the prosecution has not prima facie situated grounds on forgery requiring the continuation of the inquiry under **Count 26**.

My conclusion on both **Count 25** and **Count 26** is that the prosecution have not raised a prima facie case to allow the call to be made to the 3rd defendant to enter his defence on these counts. I so hold.

The last phase of the charge covers **Counts 27-40** which are all offences contrary to the provision of **Section 366 of the Penal Code** and punishable under **Section 364 of the Penal Code**.

These set of offences are equally related to **forgery** as indeed the punishment section of the offence under **Section 364** specifically states that whoever commits forgery shall be punished with imprisonment for a term which may extend to fourteen years or with fine or with both.

Let us however take our bearing from the provision of **Section 366 of the Penal Code** which provides as follows:

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

The words "**fraudulently**" or "**dishonestly**" appears in the above provision. In that sence, it may be relevant to define what fraudulently and dishonestly mean under the Penal Code as follows:

"16.A person is said to do a thing "**dishonestly**" who does that thing with the intention of causing a wrongful gain to himself or another or of causing loss to any other person.

17.A person is said to do a thing "**fraudulently**" or "**with intent to defraud**" who does that thing with intent to deceive and by means of such deceit to obtain some advantage for himself or another or to cause loss to any other person."

Now on the authorities, the **three requirements** to be established for the offence of using a forged document as genuine under **Section 366 of the Penal Code** are:

1. **That the accused used as genuine a forged document.**
2. **That the accused knew or had reason to believe that the document was** forged and
3. **That the accused did so fraudulently or dishonestly. See Mustapha V FRN (2018) LPELR – 46565 (CA); FRC V Ibrahim (2015) 4 NWLR (pt.1450) 411 at 430 – 431 H-A.**

Again, the **remit of my duty** is to see if from the evidence, a prima facie case has been established on these Counts to allow a fair call to be made to 3rd Defendant to enter his defence.

Now **Count 27** states that the 3rd defendant while being the Company Secretary and Legal Adviser of 4th defendant with others at large on or about 2nd June, 1998 fraudulently used as genuine a false Malabu Oil Board Resolution which he has reason to believe is forged contrary to the provision of Section 366.

I have deliberately stated the substance of this Count as prepared and it is difficult to situate the import of this Count, particularly the offence denoted or its clear particulars. The Count appears to me deliberately vague as it does not

situate a clear particular **Board Resolution** used by 3rd Defendant and to what particular end or purpose. There was equally no evidence of any kind from the prosecuting witnesses denoting the false resolution that was used as genuine by any of the defendants to provide basis to situate whether a prima facie case has been made here.

A proper or competent Count within the purview of **Section 366** must situate clear elements of dishonesty or fraud situating that a particular act was done with the intention to deceive or of causing a wrongful gain to himself or another or causing loss to any other person and importantly in evidence, the elements to situate the offence. See **Sections 16 and 17 of the Penal Code (supra).**

On the basis of the vagueness of the Count and the concomitant lack of clear evidence to situate the ingredients of the offence as charged, a prima facie case has not been made out with respect to **Count 27.** I so hold.

Count 28 alleges that 3rd Defendant along with others on or about 2nd June 1998 fraudulently used as genuine a false resignation letter purporting that **Alhaji H. Hindu** had resigned from the Board of Malabu which he has reason to believe was forged. Unlike **Count 27**, this Count at least situates the particulars of the offence with no confusion as to the complaint.

Now as stated earlier when dealing with **Count 22**, this resignation letter of **Alhaji H. Hindu** made on or about **2nd June, 1998** was not tendered by the Prosecution. There is therefore nothing on the evidence to situate that the 3rd defendant used as genuine a forged document and had reason to believe it was forged doing so dishonestly or fraudulently. Again as already alluded to, the only document that can be said to have any link with **Count 28** is the letter of resignation of one **Mr. Hassan Hindu Wabi** tendered by PW10 vide **Exhibits P18 (1-18)**, specifically **Exhibit P18 (5)** which as stated earlier were all subsequently cancelled by the Corporate Affairs Commission (CAC). Again, as stated earlier, there was no clarity whether the **Mr. Hassan Hindu Wabi** is the same **Alhaji H. Hindu**, the subject of **Count 28.**

Now **Exhibit P18 (5)** is dated **9th June, 2010** and not **2nd June, 1998** as contained in Count 28 and by the evidence of PW6 and PW10, these cancelled documents were presented by one **Barrister Ayo** and nothing was presented in evidence showing that he had any relationship with 3rd defendant or that he acted based on his instructions. Again, as stated earlier, the said Barrister Ayo

was not presented in Court to give evidence relating to the filing of this and other documents at the C.A.C. It is clear that the ingredients of the offence under **Count 28** was not **prima facie** situated by the prosecution. There is therefore no factual or legal basis to call on 3rd defendant to enter his defence on this **Count 28.** I so hold.

On **Count 29**, the charge is that 3rd defendant on or about 2nd June, 1998 along with others at large used as genuine a false resignation letter purporting that **Alhaji M. Sanni** had resigned from the Board which he had reason to believe was forged. Again on the evidence, there is no clarity as to whether **Alhaji M. Sanni** is one and the same person with **Mohammed Sani Abacha and Mohammed Sani.**

Again in the course of treating **Count 13**, I had dealt with the fact that the only resignation letter of **2nd June, 1998** said to have been made by **Alhaji M. Sanni** is to be found in the documents tendered by the forensic analyst from EFCC who testified as **PW9** and tendered **Exhibits P14 (1-33)** in evidence. The resignation letter in the bundle of documents is **Exhibit P14 (27)** with the mark X8 on it.

I had referred to the **findings** reached by the forensic analyst particularly in respect of this resignation of Alhaji M. Sanni dated 2nd June, 1998. At the risk of sounding prolix, his findings are to be effect that there is a "**no-conclusion**" finding with respect to whether the author of the known request specimen signature A-A4 wrote the disputed signatures marked **X2-X6, X8** and **X9.**

X8 it must be reiterated is the **resignation letter** in question. Let me perhaps here quote what PW9 said in his report with respect to the "**no-conclusion**" finding vide **Exhibit P14 (6).** The following is relevant:

"An "inconclusive" opinion is expressed when a meaningful conclusion regarding authorship cannot be given based upon the samples provided. In other words, the evidence is insufficient to support any other opinion."

The forensic expert also added on what **inconclusive** connotes as follows:

"This opinion reflects significant uncertainty relative to the identification or elimination of the writer of a questioned document. There are a number of reasons that can lead to this kind of opinion, such as insufficient or

incompatible specimen materials, poor reproduction quality of originals (as in the case of photocopy or fax material etc.)"

These clear findings and opinion of the **expert forensic analyst** alone in my opinion undermines a key ingredient of the offence under **Section 366**, that the accused used a forged document as genuine. In the absence of clear evidence to situate that the said document or resignation letter was forged and used as genuine by 3rd defendant and the others at large, it would be difficult, if not impossible to prove the other elements of the offence under **Section 366 of the Penal Code.**

In the circumstances, I incline to the view that a **prima facie** case has not been disclosed with respect to **Count 29.** I so hold.

I will take **Counts 30, 31 and 32** together.

With respect to **Count 30**, it states that the 3rd Defendant while being the Company Secretary/Legal Adviser of 4th defendant with others at large on or about 2nd June, 1998 fraudulently used as genuine, a **false Form CAC 2.3** particulars of Directors purporting to replace Alhaji Mohammed Sani with the name Ahmed Muhammed Sani as a Director in Malabu Oil which he has reason to believe was forged. **Count 31** states that the 3rd defendant with others at large on or about 27th November, 1998 fraudulently used as genuine a **Form CAC 2.3 particulars of Directors** of Malabu Oil and Gas purporting to allocate 14, 000, 000 Million ordinary shares to Alhaji Aliyu Jabi Muhammed and 6, 000, 000 ordinary shares to Seidougha Munamuna which he has reason to believe was forged. **Count 32** stated that the 3rd defendant with others at large on or about 27th November, 1998 used as genuine a **false Form CAC 2.5**, allotment of shares of Malabu Oil purporting to allocate 14, 000, 000 ordinary shares to Alhaji Aliyu Jabi Muhammed and 6, 000, 000 ordinary shares to Seidougha Munamuna which he has reason to believe was forged.

On these three (3) **Counts**, a common thread running through these counts is that **none** of these **precisely identified documents** were tendered backed up with evidence by any of the prosecution witnesses to situate that the defendants presented any of those allegedly false or forged documents as genuine with reason to believe that they are forged and that they did so dishonestly or fraudulently.

Again, I have carefully gone through the documentary evidence tendered, and one cannot situate these documents. In the entire documents produced from the Corporate Affairs Commission (CAC) by PW10, vide **Exhibits P18 (1-18)**, none of these CAC Forms covered by these Counts was produced or evidence related to these specific documents and the evidence of their falsity given.

Indeed even the witness produced from the CAC, **PW6** only spoke to **two documents** filed by a certain **Barrister Ayo** which do not form part of these Counts. It is difficult to see how the elements of this offence can be determined in a vacuum! I really wonder.

Now I had earlier stated while dealing with **Count 14** that in the documents tendered by the Forensic Analyst PW9 vide **Exhibit P14 (28)** marked as X7, a **Form CAC 2.3 of particulars of Directors** situating the appointment of Ahmed Muhammed Sani and Amafagha Kweku was attached but this document did not show any body was replaced as Director and in law additions or interpolations cannot be made to it. See **Section 128 of the Evidence Act.**

Again on these **three Counts**, there is nothing before the court, **prima facie**, denoting that the 3rd defendant used any **CAC** documents that is forged as genuine and knowing them to be forged and again the court cannot speculate. On **Counts 30, 31 and 32**, the conclusion I also reach is that no **prima facie** case has been made out providing firm basis to call 3rd defendant to enter a defence.

Count 33 states that the 3rd defendant with others at large on or about 27th November, 1998 fraudulently used as genuine a false Malabu Oil and Gas Limited Board Resolution purporting to retain Alhaji Aliyu Muhammed as Managing Director and Seidougha Munamuna as a Director which he has reason to believe was forged.

Again in the evidence, this **document or resolution** delineating these facts under **Count 33** was not tendered and none of the witnesses of the prosecution gave any iota of evidence that the 3rd defendant used this particular document as genuine and knowing it to be forged. PW6 from CAC never alluded in his evidence to the presentation of this document at CAC or present the records of same if used as alleged. If no particular document subject of this count was identified and evidence situating the forgery defined and then evidence is led to

show it was used as genuine, it will be difficult to situate the other elements of the offence and that a prima facie case was made out ab initio.

The same fate befalls **Count 34** which accuses 3rd defendant and others of fraudulently using as genuine a false Malabu Oil and Gas Board Resolution purporting to show new share holding structure of the company which he has reason to believe was forged.

Again this document purportedly showing **these new shareholding structure** of the company said to have been made on or about **27th November, 1998** was not tendered or evidence given of same by any of the witnesses of the prosecution. Nothing was really advanced on the evidence to situate that the 3rd defendant with others at large used any such document which is forged as genuine and that he has reason to believe it was forged and did so dishonestly or fraudulently. If the basic questions of (1) identifying or locating a particular document and (2) falsity, cannot be situated on the basis of the evidence so far led, it is clear that the other elements of the offence will be difficult to present and this in turn compromises the Count.

I hold that on both **Counts 33 and 34,** the prosecution has equally not situated a **prima facie case** against 3rd Defendant requiring him to enter a defence.

Counts 35, 36 and 37 states that the 3rd Defendant and others now at large on or about 27th November, 1998 used as genuine false resignation letters purportedly signed by **(1) Kweku Amafagha (2) Alhaji Muhammed S. Ahmed and (3) Alhaji Hassan H. Wabi** which he has reason to believe was forged.

Again, the point must be made that **none of these resignation letters** said to have been made on or about **27th November, 1998** was tendered in evidence by the prosecution and none of the prosecution witnesses spoke or gave evidence in relation to these documents relating to the elements of falsity of the documents.

By **Exhibits P18 (1-18),** PW10 tendered documents obtained from CAC. As stated elsewhere in this Ruling, most of these documents were cancelled by the Commission for been issued without following due procedure.

Now by **Exhibit P18(4),** a cancelled letter of resignation by **Kweku Amafagha** dated **9th July, 2010** was tendered. There is nothing in evidence before me situating that this letter of resignation is the one referred to in **Count 35** which was said to have been made on or about **27th November, 1998.**

Now by the evidence of PW10, this document was presented at CAC **by one Barrister Ayo** who PW10 interacted with. Yes, the document may have been cancelled by CAC but not on the basis that it was a **forgery** as earlier indicated. Most importantly as stated earlier, the said Ayo was not called to give evidence and no link of any kind was on the evidence established with 3rd Defendant or the other defendants on this Count.

The above position or analysis above similarly applies to the resignation letter of **Alhaji Hassan Hindu Wabi** covered by **Count 37**. This resignation is Exhibit P18 (5) and is dated **9th June, 2010** and also cancelled. It was also presented by the said **Barrister Ayo**. Here too nothing was presented to situate that the document is forged and that it was found in possession of 3rd Defendant or that the 3rdDefendant at any time presented this document found to be false as genuine which clearly undermines the Count with respect to making out a prima facie case.

With respect to **Count 36**, and as stated while dealing with **Count 22**, none of the prosecution witnesses specifically gave evidence relating to the falsity of the alleged letter of resignation of **Alhaji Muhammed S. Ahmed** or that 3rd Defendant used or presented it as genuine to gain an advantage or cause loss to anybody. Indeed this letter was not even tendered to prove the allegation covered by **Count 36**.

In my consideration of **Count 22**, I alluded to the fact that the resignation letter of Alhaji Muhammed S. Ahmed appeared in the documents tendered by the Forensic Analyst vide **Exhibit P14 (1-33)**. The resignation letter is **Exhibit P14 (18)** and **marked X** but from the evidence of PW9, **Exhibit P14 (18)** or **X** was only used in determining the genuineness of the signature of PW1. No more. The remit of the assignment of PW9 did not include determining whether the document was forged and used as genuine by 3rd Defendant. PW9 never said so in his evidence and he infact made no such allusions at all to anybody using such a document for any purpose whatsoever.

In that clear context, it is clear that even on this Count, the prosecution has not **situated clear elements of the offence** to warrant the call to be made to 3rd Defendant to enter a defence.

On the whole as demonstrated above, on the basis of the elements to sustain these Counts, a prima facie case has not been made out to warrant the 3rd defendant to enter a defence on **Counts 35, 36 and 37**. I so hold.

Count 38 states that the 3rdDefendant on or about 18th December, 2006 in Abuja with others at large used as genuine a false Malabu Oil and Gas Board Resolution re-allocating Pecos ordinary shares to Joseph Amaran which he has reason to believe was forged.

Here too as in most of the **Counts** of this charge, this particular **Board Resolution re-allocating Pecos Energy shares to Joseph Amaran** was similarly not on the evidence tendered to situate the falsity and the necessary link to 3rd defendant to establish, at least prima facie, the ingredients of the offence under **Section 366**. PW4, Chief Fasawe of Pecos Energy did not give any relevant evidence relating to this resolution. Again a Court of law cannot hold that a prima facie case has been established in such very unclear circumstances compromised by a dearth of evidence of any kind, even if minimal. I hold that a prima facie case has not been made out on **Count 38**.

Count 39 states that the 3rd defendant and others at large on or about 12th August, 2011 used as a genuine a Malabu Oil and Gas Board resolution authorising the opening of domiciliary accounts with First Bank and Keystone Bank Nig. Ltd which he has reason to believe was forged. **Count 40** on the other hand states that the same defendants used as genuine a Malabu Oil Board Resolution authorizing the opening of a current account with Keystone Bank to which Chief Dozie Loya Etete would be sole signatory which he has reason to believe was forged.

Now, I had earlier made the point that no specific **Board resolutions** covered by these Counts were really specifically tendered in evidence. I had however situated from the documents tendered by officials of the Keystone and First Bank, **PW7** and **PW8** resolutions product of a **General meeting** of 4th Defendant and not the Board. Again as stated earlier, none of these witnesses in their evidence impugned in any form or shape the integrity of these documents used in opening the accounts.

Again as stated when treating **Counts 25** and **26**, nothing was presented by the prosecution showing even if prima facie that these resolutions were false or forged and that they were presented as genuine to cause injury, loss or benefit.

In the evidence of PW7 and PW8 the officials from Keystone and First Bank, we had seen that they made the point that all the documents tendered to open the Malabu Oil Accounts were in order and the transactions conducted on the Accounts were not suspicious. I had equally referred to the evidence of PW5, who stated that at the meetings and negotiations which led to the settlement of the dispute around **OPL 245**, the 3rd Defendant and Chief Dan Etete represented the interest of 4th Defendant. This settlement resolution obviously led to the payments made and the opening of the accounts subject of these two (2) Counts.

As stated earlier, as at the time the accounts were opened in 2011 the key prosecution witnesses PW1-PW4 were really not part of 4th Defendant. They were thus not in any position to say or talk on what transpired at the Board or even the General meeting of 4th Defendant which they were not a part of.

Again beyond bare speculations, nothing was really put forward providing basis to hold that a prima facie case was raised showing that the resolutions were forged and presented as genuine by 3rd Defendant.

Mere allegations, no matter how weighty, do not translate to or are tantamount to facts and evidence that will at least raise a **prima facie** case, even if weak, to necessitate a response from the 3rd Defendant. My findings here too is that a prima facie case was not disclosed on **Counts 39 and 40**.

As I round up and because of the rather unfortunate narrative relating to the length of time of nearly four (4) years for the prosecution to produce all their witnesses in proof of this case, it appears to me imperative to call on learned prosecuting counsel to show more circumspection in filing charges of this nature, if the evidence on record is all they have. Filing of criminal charges in court which involves the liberty of individual(s) is a delicate exercise that must be carried out with a huge sence of responsibility dictated solely by the quality of the facts and or evidence and the ultimate cause of truth and justice.

A charge must therefore not be filed for the simple sake of doing so or to soothe the ego of any person or institution. A prosecuting counsel must in the exercise of his or her duties bear this principle in mind. He or she must be firm and courageous and not give room to unhealthy influences that betrays the cause of justice. Without being overtly presumptuous, a prosecuting counsel must as is said in popular parlance 'own' and drive the process. The quality of the available evidence must dictate solely the judgment call to file a charge and to

prosecute. Where the evidence is weak, tenous or unreliable, then a prosecutor must have the conviction to act on it, and the courage to stand by it, notwithstanding the inconvenience that may likely arise in taking such a stand.

A futile trial predicated on frivolous charges does a lot of incalculable damage to the criminal justice system in terms of time and resources spent which could have been better utilised in more productive causes. **While the action of prosecuting counsel in conceding that they have not made a case against 1st, 2nd, 4th, 5th, 6th and 7th Defendants is to be commended**, it cannot be right or fair that it took the prosecution nearly 4 years to realize that it had no case against 1st, 2nd 4th 5th, 6th and 7th Defendants. I incline to the view that the way this case was presented here by the prosecution against the Defendants both in terms of the **formulation of a large and unwieldy 40 Counts charge** and the **dearth in the quality of evidence presented appears to seek to turn upside down the cherished constitutional presumption of innocence** in favour of the defendants by tending to suppose that it is for the defendants to prove their innocence rather than for the prosecution to present at this stage a **prima facie case** requiring the defendants to put up a response.

As already demonstrated, the making of a **prima facie** case by the prosecution in this case appears here to have been made more in the **final address** of the prosecution predicated on speculations rather than on the basis of the evidence elicited at trial. An address of counsel cannot however take the place of the evidence required to make up a prima facie case. No amount of **brilliance** in a final address can make up for the lack of evidence required to situate a prima facie case in law sufficient to call on the defendants to enter their defence.

A trial judge cannot decide issues on speculations no matter how close what it relies on may seem to the facts. On the authorities of our superior courts, speculation is not an aspect of inference that may be drawn from facts that are laid before the court. Inference is a reasonable deduction from facts whereas speculation is a mere variant of imaginative guess which, even when it appears plausible, **should never be allowed by a court of law to fill any hiatus in the evidence before it.** See **Overseas Construction Co. Ltd V Creek Enterprises Ltd (1983) 16 NSCC.**

A Court cannot therefore speculate or draw inference in a vacuum but only in relation to facts which justify such inference.

The point to underscore, is that even at the stage of situating a prima facie case, it is not expected of the defendants to purge themselves of guilt since the fundamental law of the country, the constitution avails them of the presumption of innocence all through the trial process as earlier stated. The point cannot therefore be overemphasized that the prosecution must accordingly only proceed on the clear basis that there is sufficient evidence or probable cause to proceed at each stage of the prosecutorial process.

Though it may be argued that people can be arrested circumstantially; But every trial, moreso a criminal trial is a different ball game, which must be undertaken with utmost care and attention to the quality of the evidence and availability of witnesses.

It cannot be right or fair that in this case, for example, with about **30 Counts** in the charge sheet involving forgery, the documents subject of these counts were not presented in evidence and no material evidence was led to situate the elements of forgery. If as stated by the lead investigator, **PW10** that they demanded for about 37 documents from CAC but only a few were made available, this then begs the question, why a charge would be filed involving these documents when the prosecution does not have access to these critical documents subject of the allegation of forgery?

I must therefore make the point that the whole trial process, whatever its inherent imperfection, is entirely evidence driven; evidence with required quality and probative value. That is so, whether it is at this stage of situating a prima facie case, as in the present situation, or at the final stage or point of determining guilt or otherwise of the defendants. Without evidence, in either of the two situations, it is stating the self evident, that such a case stands compromised *ab initio*. I leave it at that.

On the whole, the prosecution has failed to prove the essential elements of the offences for which the **Defendants were charged** and accordingly, the no case to answer submission has considerable merit and must be sustained.

To allow this proceedings to continue, having regard to the totality of the evidence laid bare on the record by the prosecution, is to inflict undue hardship and injustice on the defendants. They ought not to have stood this trial in the first place, if the evidence on record was all the prosecution had to offer. I say no more.

The legal consequence of a successful submission of no case to answer is that such a discharge is equivalent to an acquittal and a dismissal of the charge on the merits. See **Ibeziako V. State (1989) 1 CLRN 123; Nwali V. IGP (1956) 1 ERMLR; Mohammed V. The State 29 NSCQR 634 at 640.**

In the final analysis, and for the avoidance of doubt, my firm decision, on the basis of the provision of **Section 302 of ACJA 2015** is that the evidence adduced by the prosecution on record is not sufficient to justify the continuation of this trial. In other words, the prosecution has failed to make out a prima facie case against the **defendants**, in that they have failed to tender required minimum evidence to establish the essential elements of all the **Counts 1 - 40** of the offences that they have been charged with respectively. For this reason I hereby preclude them from entering upon their defence and accordingly, I hereby discharge the defendants of the entirety of the charge preferred against them.

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Hon. Justice A.I Kutigi

Appearances:

1. *Sylvester Tahir, SAN, for the Prosecution with Offem I. Uket, Chidike Obasi-Oko, S.N. Robert, J.N. Dogonyaro, T.A. Aromolaran and Firdausi A. Argungu.*

2. *Chief KanuAgabi, SAN, Paul Erokoro, SAN, Solomon Umoh, SAN, Okon Efut, SAN, Aliyu Saiki, SAN, Oshomoghie Chris, SAN, for the 1st Defendant with Benson Igbanoi, Rotimi Samuel Olujide, Godwin Iyinghor, T.S. Shankyla, Ahmed Bage, Ojochenemi Fatima Audu, Oladimeji O. Adebayo, Oluchie Vivian Uche, Abdulmuiz A. Saiki, Gift Obeten, Eunice Agbor, Sabina Zubairu, I.D. Bob-Manuel, Uchechi Onyenwe, Timileyin Kehinde, O. A. Ewuenu, Ifeanyi Ndummnego, Abasiodong Irehovbude, Immanuella Inde, Emmanuel Agabi, Vincent Ifeachor, Aniebiet Abasi-Akpam, Maryam Agafi Lawan, Olamide O. Adebayo and Ruth U. Nwabuisi.*

3. *Chief Wole Olaniepkun, SAN, Chief I.A. Adedipe, SAN, Dr. J.Y. Musa, SAN, Olalekan Ojo, SAN, for the 2nd Defendant with E.C. Ikeji, Abubakar Sani, M.O. Oyinlokwu Ahmed F. Yusuf, E.A. Oguntuase, Ope Muritala, Rita Nmarkwe, Cynthia Nnabugwu, Mercy Udoh, C. Ademulagun, F.C. Amalu, E.O. Nfween and C.C. Nwokoye.*

4. *Adeyemi Shekoni-Lawal, Aliyu O. Hassan, Hussaini Mabera and Rilwan Bamigboye for the 3rd Defendant.*

5. *R.O. Atabo, SAN, for the 4th Defendant with R.A. Ugbame (Mrs.), A.G. Haruna, Emmanuel Okwoli, J.O. Anyata, P.A. Achuru, D.A. Onyiocha and E.C. Nwolisa.*

6. *Chief Joe-Kyari Gadzama, SAN, Chukwuka Ikwazom, SAN, for the 5th Defendant with Olujoke Aliyu, D.D. Killi, Rashidat Banke Obamajure, Chidera Uchechi Mgbe, Darlington Onyekwere, Inyene Robert, Madu Joe-Kyari Gadzama, Okiemute Ohwawha, Linda Shaljaba, Lamar Joe-Kyari Gadzama, Sara Jeta Atumga, Onyekachi Eluwa, Khadija Muhammed Abubakar, Hajara M.S. Sarondoki, Victor Oni, Jafiada Madu, Mark Asu-Obi, Racheal Ayonnde and Asiya Saddique.*

7. *Oluseye Opasanya, SAN, for the 6th and 7th Defendants with A.V.M. Ibrahim Shafi'i (Rtd.), Babatunde Ige, Hilary Ojeke, Daniel Peter and Oluwatoyin Ihinmikalu.*