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**IN THE COURT OF APPEAL**  
**ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**

**BELLO D. ABDULLAH ESQ.**  
**REGISTRAR**  
**COURT OF APPEAL**

**ON FRIDAY THE 13<sup>TH</sup> DAY OF JULY, 2018.**  
**BEFORE THEIR LORDSHIPS:**

**MOJEED ADEKUNLE OWOADE.....JUSTICE, COURT OF APPEAL**  
**CHIDI NWAOMA UWA .....JUSTICE, COURT OF APPEAL**  
**HAMMA AKAWU BARKA.....JUSTICE, COURT OF APPEAL**

**CA/A/52<sup>C</sup>/18.**

**BETWEEN:**

**MOHAMMED DOGONYARO AUDU .....APPELLANT**  
**AND**

**FEDERAL REPUBLIC OF NIGERIA ..... RESPONDENT**

**JUDGMENT**  
**(DELIVERED BY CHIDI NWAOMA UWA, JCA.)**

The High Court of the Federal Capital Territory, Abuja on the 13<sup>th</sup> day of November, 2017 presided over by Y. Halilu, J, in its judgment, convicted the Appellant of the twelve (12) counts of the offences for which he was charged under the Independent and Corrupt Practices and other Related Offences Commission Act, 2000. The Appellant who was unhappy with the decision appealed to this court.

The background facts are that the Appellant was charged and tried as the 1<sup>st</sup> Defendant with one Yahaya Ayodeji. The case of the

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prosecution was that he was the owner of the Companies known as AY Quest Worldwide Limited and Q – Bridgers Worldwide Ltd which were contractors in respect of a World Bank Project called "Economic Reform and Governance Project (ERGP)" operating from the Accountant General's Office. Further, that the appellant and his co-accused were then employed in the Accountant General's Office, and used his employment to secure various contracts for the benefit of the mentioned companies where he had interest. The Corporate Affairs Commission (CAC) forms in respect of the companies showed the shareholding and directorship structure. The prosecution relied on bank account statements to show payments commensurate with various contract amounts under the ERGP. The prosecution made out that the mandates at the banks showed that they were held in the name of "Abdullahi Dogonyaro Muhammed." A handwriting report was said to have been used to tie the appellant to the bank accounts. The report was based on the comparison of a known specimen handwriting with those on the bank mandates. A photograph was provided along with the bank mandate form of Q – Bridgers Synergy Limited, but, there were no photographs provided in relation to the forms of the Corporate Affairs Commission.

In defence, it was made out that there was no physical confirmation or identification that the appellant was the same person known as "Abdullahi Dogonyaro Muhammed" and that no one identified the Appellant as the person who signed the bank mandates and or CAC forms.



At the trial, the EFCC called three (3) witnesses, PW1, PW2 and PW3 who were all EFCC employees/agents and tendered Exhibits 'A – H and I'. At the trial, there were objections to the voluntariness of the extra – judicial statements of the Appellant and his co-accused. The learned trial judge admitted the statements as Exhibits 'F' and 'G'. It was alleged that these Exhibits were heavily relied upon by the trial court in arriving at its decision. The appellant testified as DW1 in his defence. The confessional statement of the second accused person was said to have been relied upon by the trial court in convicting the Appellant.

The appellant distilled three (3) issues for the determination of the appeal thus:

- 1. "Whether the learned trial court was vested with the requisite jurisdiction to determine the 10 counts charge preferred against the Appellant. (Distilled from Grounds 2,4 and 5).**
- 2. Whether from the totality of the evidence on record, the learned trial court was right to have convicted and sentenced the Appellant for the offences charged. (Distilled from Grounds 1,6,7,8,9,10,11 and 12).**

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3. **Whether the learned trial court was right when it failed to consider and pronounce on issue three (3) submitted by the Appellant for its determination" (Distilled from Ground 3).**

The respondent also distilled three issues as follows:

1. **"Whether the trial court was in want of the requisite jurisdiction to hear and determine the charge against the Appellant.**
2. **Whether the conviction and sentence of the appellant is supported by the evidence on record.**
3. **Whether, having earlier ruled on the admissibility of exhibits "A – C" and "F – G" the trial court was not functus officio as regards the admissibility of these exhibits in evidence?"**

In arguing his first issue, the learned counsel to the Appellant Adekwu Emonye Esq. who settled the brief adopted his amended brief of argument filed on 20/2/18 but, deemed properly filed on 10/4/18 and his reply brief filed on 13/4/18. In arguing his first issue, it was



contended that the trial court lacked jurisdiction to have entertained the matter due to the incompetence of the EFCC to prosecute offences under the Corrupt Practices and other Related Offences Act, 2000 (CPOROA) as well as a fundamental incompetence of the charge despite the amendment. It was submitted that the EFCC is excluded from the law enforcement agencies who are able to investigate and or prosecute CPOROA offences, without express delegation of such power by the Attorney General of the Federation as provided by the provisions of Sections 3,9,10,30 and 53 of the CPOROA. It was argued that the express and singular mention of the Police by the provisions of CPOROA in Section 53 for instance, shows the intention to exclude all other law enforcement agencies, including EFCC from having power to prosecute CPOROA offences. It was argued that the above submission is not in conflict with the decisions of the Apex Court in **SUNDAY EHINDERO VS. FRN & ANOR (2017) LPELR – 43458 (SC)** and **A.G. ONDO STATE VS. A.G. FED. & ORS (2002) 6 SC (PT. 1).**

On the alleged fundamental defect of the amended charge, it was contended that the ten (10) count charge against the Appellant was not initiated by due process of law having not been sealed and stamped as required by Rule 10 (1),(2) and (3) of the Rules of Professional Conduct for Legal Practitioners, 2007. It was submitted that court processes must be sealed and stamped by legal practitioners who must also sign same. Reliance was placed on the cases of **YAKI VS. BAGUDU (2015) 18 NWLR (PT. 1491) 288 PAGES 315 –**

**316.** It was submitted that the trial court failed to realize that the signature on the amended charge was different from the name on the seal affixed. Reliance was placed on the case of **GTB VS. INNOSON (2017) LPELR – 42368 (SC)**, also page 409 of the printed records of appeal.

It was argued that the charge is an originating process where if not properly signed deprived the court of jurisdiction. See, **AMIWERO VS. A.G. FEDERATION (2015) NWLR (PT. 1482) 353 PAGE 387, PARAS B – D** and **IZI VS. STATE (2014) LPELR – 22475 (CA)**. It was concluded that no regularization could have cured the charged sheet, pages 2 – 5 of the printed records without affixing the seal and stamp of the NBA belonging to the person who signed the amended charge. The court's order of regularization was said to be irregular and void.

The appellant's second issue challenged the appellant's conviction and sentence. It was the contention of the learned counsel to the appellant that the learned trial judge ought not to have relied on the confessional statement of the co-accused Exhibit 'G' in convicting the appellant in that a confessional statement is evidence against its maker and failure to conduct a trial within trial, reliance was placed on the cases of **STATE VS. GWANGWAN (2015) 24837 (SC)**, **OZAKI VS. STATE (1990) LPELR – 2888 (SC) (1990) 1 NWLR (PT. 124) 92** and **EVBUOMWAN VS. COP (1961) WNLR 257**. It was submitted that the appellant did not adopt Exhibit 'G' as his statement which made its utilization for his conviction unlawful. On the objection



against the admission of Exhibits 'F' (the Appellant's extra judicial statement) and 'G', reference was made to the proceedings at pages 265 – 266 of the printed records. It was argued that the trial court ought not to have summarily dismissed the objection, reliance was placed on the case of **AKPA VS. STATE (2008) 14 NWLR (PT. 1106) 72** at **98**, **UJANG VS. STATE (2017) 18 NWLR 281** at **306** **PARA F** and **BUSARI VS. STATE (2015) 5 NWLR (PT. 1452) 343** at **377, PARAS B – C.**

It was also contended by the learned counsel to the appellant that the evidence of the PW3 the handwriting expert was inadequate to establish the appellant's identity. It was argued that the fact that the PW3 did not collect the "known specimens" in respect of the signatures which he worked and based his expert opinion, ought to have created doubt in the mind of the PW3 and the trial court in relation to the identity of the maker of the "known specimen signatures" and particularly in identifying the Appellant as the maker of the "known specimens." Further, that the alleged "known specimens" were insufficient to identify the Appellant as the Abdullahi Dogonyaro Muhammed in view of the difference in the names and the Appellant's denial of the name "Abdullahi Dogonyaro Muhammed", page 289 of the records. It was submitted that no evidence was led to contradict or rebut the Appellant's denial for instance by calling anyone who knew the Appellant as Abdullahi Dogonyaro Muhammed. It was further argued that the evidence of the PW3 did not satisfy the conditions provided in Section 94 (1) of the Evidence Act, 2011. It

was contended that it was at best evidence that the signatures compared by the PW3 were similar but, did not link the Appellant with any of the signatures in question and it did not identify the Appellant as Abdullahi Dogongayaro Muhammed. It was argued that there existed the danger of mistaking the identify of one person for another where the identity of the admitted writing (the "known writing" in the present case) is uncertain and could lead to a wrong conviction. It was stressed that the evidence of the PW3 was not corroborated.

It was also made out by the learned counsel to the Appellant that the trial court relied on evidence that is at variance with the settled law. It was reargued that the Respondent failed to properly identify the Appellant as Abdullahi Dogonyaro Muhammed who operated the two companies. Further, that failure to identify the Appellant and link him with the earlier mentioned companies rendered the evidence of the PW1, PW2 and all the Exhibits (A – I) tendered irrelevant against the Appellant. The evidence of the PW1, PW2 and PW3 was reviewed. It was concluded on this issue that there existed substantial doubt in the prosecution's case which ought to have secured the appellant's freedom.

On the appellant's third issue, it was submitted that the trial court failed to pronounce on the third issue submitted by the Appellant for determination at the lower court which was argued to have violated the Appellant's right to fair hearing, reliance was placed on the cases of **BRAWAL SHIPPING VS. ONWUDIKOKO (2000) 6 SCNJ 508** at **522** and **EKASA** and **ORS VS. ALSCON (2014) LPELR – 22658**



**(CA).** It was submitted that arguments on the inadmissibility of all the documentary evidence tendered before the trial court was not pronounced upon and determined one way or the other before arriving at its conclusion. It was argued that a miscarriage of justice was occasioned and stands the risk of being reversed by this court. See, **TANKO VS. UBA PLC (2010) 17 NWLR (PT. 1221) PAGE 80** at **93 – 94, PARAS. H – A** and **ANAMBRA STATE GOVT. VS. ASHA (2013) 3 NWLR (PT. 1314) 236** at **PARA. A.** We were urged to allow the Appeal, quash the appellant's conviction, discharge and acquit him.

There was no appearance on behalf of the Respondent despite being served with the hearing notice when the appeal was argued. The brief of argument settled by C. O. Ugwu Esq. of the Legal and Prosecution Department of the EFCC, filed on 9/4/18 but, deemed properly filed on 10/4/18 was deemed argued pursuant to the court of Appeal Practice Directions, 2014 and Order 19 Rule 9 (4) of the Court of Appeal Rules, 2016. In arguing the respondent's issue one, it was submitted that by the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) any other authority can institute and prosecute any crime but, subject to the powers of the Attorney General to take over such matters as provided under Sections 174 and 211 of the Constitution and that the EFCC falls under "any other authority" as used in the sections above. It was submitted that the law cited and relied upon by the learned counsel to the Appellant is the Independent Corrupt Practices and other Related Offences Act;

2003 which is not the extant law, it does not exist but, rather the law in existence is the Independent Corrupt Practices and other Related Offences Act, 2000. The extant Law was submitted to be the ICPC Act, 2000 which does not oust the jurisdiction of the EFCC to investigate and prosecute cases of corruption and abuse of office under the ICPC Act. It was submitted that Section 67 of the ICPC Act, 2000 and Section 46 of the EFCC Act, 2004 when read together show that the EFCC is empowered to charge and prosecute offences under the ICPC Act.

In alternative argument, it was submitted that assuming the power to prosecute the offences in the present appeal is that of the Attorney General of the Federation (AGF), the AGF is the only one that could rightly challenge the exercise of his power by another body, reliance was placed on the cases of **AMADI VS. FEDERAL REPUBLIC OF NIGERIA (2008) 12 SC (PT. III) 55** and **FRN VS. ADEWUNMI (2007) 10 NWLR (PT. 1042) 399.**

In respect of the argument that the Amended charge did not have the seal and stamp of the lawyer that signed the charge, it was submitted that Rule 10 of the Rules of Professional Conduct for Legal Practitioners does not require the fixing of a seal and stamp of counsel on the charge. It was argued that under Rule 10 (2) the legal documents requiring the seal and stamp of the originating lawyer for the document to be valid are enumerated and excluded a charge or information. It was submitted that the charge was framed by the EFCC an agency of the Federal Government under the supervision of



the Attorney General of the Federation and that lawyers employed by the EFCC and therefore Law Officers. The charge was said to have been signed by a law officer and did not need a stamp and seal of counsel to be valid, reliance was placed on the case of **TANIMU VS. RABIU (2018) 4 NWLR (PT. 1610) PAGE 505** at **523** to the effect that the essence of the requirement of the seal and stamp is for the legal practitioner to provide evidence of his qualification to practice law in Nigeria in addition to his name being on the roll. A Law Officer, it was argued is deemed to be a Barrister, Advocate and Solicitor of the Supreme Court of Nigeria, Section 3 of the Law Officers Act (LOA) was referred to. It was argued that there is no doubt as to who signed the original and the amended charges. It was concluded on this issue that there is no feature on the charge that robbed the trial court of the jurisdiction to hear and determine the case against the appellant.

On the Respondent's second issue, as argued in the brief of argument, "confession" was defined as an admission made by a person. It was submitted that the Appellant and his co-accused never confessed to the charge but, both vehemently denied the allegation against them, reliance was placed on the case of **AKPA VS. STATE (2008) 14 NWLR (PT. 1106) 72**. It was argued that, in Exhibit 'F', the appellant's statement, he denied being Abdullahi Dogonyaro Mohammed and having anything to do with the two companies. While his co-accused on his part, agreed to having an interest in AY – Quest Worldwide Ltd but, denied using the company for any contract while he was a project officer from June, 2012 to date. On definition of

what a confession is, see also the cases of **GABRIEL VS. STATE (2010) 6 NWLR (PT. 1190) 280** at **290**, **ADELODUN VS. FRN (2017) ALL FWLR (PT. 9120) 726** at **770**, **ILIYASU VS. STATE (2015) 11 NCC (NIGERIAN CRIMINAL CASES) PAGE 300** at **373**. It was submitted that the contents of Exhibit 'G' are general statements which only amounted to implication of crime made by the Appellant's co-convict as against a confession to the crime. It was contended that Exhibits 'F' and 'G' not being confessional statements, their admission into evidence without conducting a trial within trial was in order. It was also argued that Exhibit 'G' alone was not used to prove the prosecution's case in that with or without Exhibit 'G' the prosecution proved the joint ownership of AY – Quest Worldwide Ltd beyond reasonable doubt.

On proof that the Appellant was in public service, it was proved not only from Exhibit 'G' but, also Exhibit 'F' and the Appellant's oral evidence in court, also that the Appellant admitted signing Exhibit 'D' series on behalf of the Accountant General of the Federation.

It was submitted further that the account opening packages and bank statements showed that the Appellant and Ayodeji Yusuf Yahaya (the co-accused) were signatories to the account of the two companies; the signature card was shown also, to have the Appellant's photograph on it. Exhibits B,C,D,E,F and G were reviewed as well as the evidence of the PW1, PW2 and PW3. It was contended that even though the Appellant denied being Adbullahi Dogonyaro Audu and that he did not have interest in the two companies in question he admitted



working in the office of the Accountant General of the Federation as a Deputy Director and being the procurement officer of the Economic Reform and Governance Project. It was submitted that all the ingredients of the offences for which the Appellant stood trial and was convicted were proved; reliance was placed on **AYUBA-KHAN VS. STATE (1991) 2 NWLR (PT. 172) 127** and **GEORGE VS. FRN (2011) 10 NWLR (PT. 1254) 78** and **UDO VS. STATE (2016) 12 NWLR (PT. 1525) 43**. It was stressed that the Appellant was shown- to be Abdullahi Dogonyaro Mohammed, reference was once again made to the signature cards of the two companies, Exhibits F, D3, H and 1. It was reargued that the prosecution proved that the Appellant is the same person as Abdullahi Dogonyaro Mohammed. The elements of the offences were argued not to have been disputed by the Appellant, his only defence being that he is not one and the same person as Abdullahi Dogonyaro Mohammed. The evidence of the PW2 was reviewed to the effect that from the Corporate Affairs Commission (CAC) the ownership structure of the two companies showed the name of the Appellant on the incorporation documents of the companies as Adullahi Dogonyaro Mohammed.

It was also reargued that the PW3 did not have to know the Appellant in person to validate his work. It was submitted that in the light of Exhibit 'D3' (specimen samples of the Appellant's writing and signature) which corroborated the evidence of the PW3 the learned trial judge was right to have relied on the expert evidence and acted upon it, reliance was placed on the case of **AUGUSTINE OBIRECHE**

**VS. HUMPHRY AKUSOBI (2010) 12 NWLR (PT. 1208) 383** at **393** and Section 93 of the Evidence act, 2011.

The third issue is on the alleged failure of the trial court to pronounce on the admissibility of Exhibits 'A' – 'I', raised by the defence in his final address. It was submitted that Exhibits 'A' and 'B' tendered through the PW1 (Ebagbe Chidi) were objected to and in a considered Ruling, the trial court admitted the documents in evidence, pages 251 – 254 of the records. Similarly, Exhibit 'C' tendered through the PW2 (Detective Chris Odofin) was also objected to and in a considered Ruling the trial court admitted the document in evidence, pages 258 – 262 of the records Exhibits 'D' and 'E' were also tendered through the PW2 to which there was no objection to their admissibility by the defence, page 264 of the records. Exhibits 'F' and 'G' were also tendered through the PW2 which were objected to and the trial court ruled in favour of their admission in evidence, pages 265 and 266 of the records. Exhibits 'H' and 'I' tendered through the PW3 were not objected to in respect of their admissibility. It was submitted that the defence that did not object to the admissibility of Exhibits 'G', 'E', 'H' and 'I', are foreclosed from doing so now, reliance was placed on the cases of **SAMUEL ONU AGA VS. ABBA ODIN (2011) 5 NWLR (PT. 1241) 509** at **516** and **IPINLAYE II VS. OLUKOTUN (1996) 6 NWLR (PT. 453) 148**. It was concluded on this issue that the trial court having overruled the objections to the admissibility of Exhibits 'A', 'B', 'C', 'F' and 'G' cannot sit on appeal over its rulings admitting these documents, reliance was placed on the case of **NIGERIA ARMY**



**E.**

In the reply brief, it was submitted that the Respondent in paragraphs 4.12 – 4.21 of its brief of argument, in the Amended charge, failed to comply with the provisions of Rules 1 – 3 of the Rules of Professional Conduct for Legal Practitioners, 2017. Further, that the Respondent was wrong to have relied upon Section 3 of the Law Officers Act (LOA) as authority that it can be presumed that the charge was signed by a lawyer on the basis that the prosecution was by employees of the EFCC.

It was also argued that the Respondent admitted that the PW3 (the handwriting analyst) did not collect the Appellant's handwriting samples and was unable to link the samples he worked on with the appellant, the consequence being that doubt was created in the prosecution's case which should be resolved in favour of the Appellant. It was concluded that by virtue of Section 6(a) of the ICPC Act 2000, ICPC is to prosecute their offences not the EFCC (the Respondent)

I would determine the appeal based on the issues formulated by the Appellant, which are similar to those of the Respondent but, differently worded. In the appellant's issue one, it was contended that the trial court lacked the jurisdiction to have entertained the matter alleging that the EFCC is not competent to prosecute offences under the Corrupt Practices and other Related Offences Act 2000 (CPOROA). The charge was also said to be incompetent even as amended. At this juncture, it is necessary to examine the Constitutional provision in

respect of who is authorized to institute and prosecute crimes, whether exclusively or subject to any other authority.

The learned Senior Counsel had argued that the EFCC could only prosecute offences under the ICPC Act only if such power is expressly delegated to her by the Attorney General of the Federation. As rightly argued by the learned counsel to the respondent in his brief of argument, by Section 174 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended), the Attorney General can "institute and undertake Criminal Proceedings against any person before any court of law in Nigeria", "to take over and continue any such criminal proceedings" instituted by any other authority amongst other powers. The power of the Attorney General to institute criminal proceedings or to take over and continue any such criminal proceedings is not exclusive power of all prosecutions except if such power is donated to any other authority as argued but, rather sub Section (1) (b) is clearly inclusive of the powers of the Attorney General to take over and continue any such criminal proceedings that may have been instituted by any other authority or person. Section 211 is similar but, in respect of the Attorney General of a State. There is nothing in Section 174 that could be read to mean that without delegating the power of prosecution to another authority, no other authority could prosecute. I am of the humble view that, "any other authority" in sub-section (1)(b) includes authorities like the EFCC, having the power to prosecute.

The appellant was charged under the Independent and Corrupt Practices and other Related Offences Commission Act, 2000. The ICPC



Act did not oust the jurisdiction of the EFCC to investigate and prosecute cases of corruption and abuse of office but, rather Section 67 of the ICPC Act provides for the prosecution of offences under the Act by other agencies empowered with the authority to investigate and prosecute. Section 67 of the ICPC Act applies to prescribed offences regardless of whether the prosecution or any other proceedings in such proceedings are instituted by any other officer having powers to investigate, prosecute or take any proceedings in respect of such offence. It is clear then that Section 67 of the ICPC Act, made provision for the prosecution of offences under the ICPC Act, by other agencies with the power to investigate and prosecute (such as the EFCC) any form of corrupt practices. The Appellant agreed that the EFCC can prosecute offences created under the ICPC Act; the only complaint is that this could only be undertaken by the EFCC with the express delegation of such powers by the Attorney General of the Federation.

On the other hand, as rightly argued by the learned counsel to the Respondent in his brief of argument, the Attorney General of the Federation should be the one to complain about the alleged exercise of his power without his consent or donating same and not the appellant. I hold that the EFCC can rightly investigate and or prosecute the offences under the CPOROA without express delegation of the power donated by the Attorney General of the Federation.

On the second arm of the first issue, the rationale behind the requirement of affixing a seal and stamp to legal documents prepared

by a lawyer is to ensure that the person signing such document is one who has been called to the Nigerian Bar, to ensure that non-lawyers do not sign legal documents as required by the Rules. The amended charge has the seal and stamp of learned counsel, the appellant's grouse is that none of the two names by the seal and stamp was ticked to indicate who signed the original charge and the amended charge out of the two legal officers (Sylvanus Tahir and C.O. Ugwu) from the office of the EFCC. By virtue of Section 3 of the Law Officers' Act, Laws of the Federation of Nigeria 2014, the legal officers are deemed to be barristers, solicitors and advocate of the Supreme Court of Nigeria. It follows that the absence (which is not the case here) of the seal and stamp of the counsel that signed the charge, assuming it was signed by the counsel whose seal and stamp are not reflected will not vitiate the validity of the charge.

On the other hand, assuming the original charge or the amended charge did not have the seal and stamp of the Nigerian Bar Association of the counsel or legal officer that signed the charge, the effect is the same. The effect of non-compliance with the provisions of Rule 10 (1), (2) and (3) of the Rules of Professional Conduct 2007, which became operational in 2015, requiring legal practitioners to place their stamp and seal approved and issued by the Nigerian Bar Association on all legal documents prepared by them, the Supreme Court has made the point clear that non-compliance is a mere irregularity that can be redeemed by a party and does not render the court process incompetent. So, where there is no seal at all, the process filed with



no seal or stamp is not rendered incompetent. See, **YAKI VS. BAGUDU (2015) ALL FWLR (PT. 810) 1026**, the above decision was expatiated upon and the reasoning/purport of the decision in the case of **NYESOM VS. PETERSIDE (2016) LPELR – 40036 (SC)**, **MEGA PROGRESSIVE PEOPLES PARTY VS. INDEPENDENT NATIONAL ELECTORAL COMMISSION (NO. 1) (2015) 18 NWLR (PT. 1491) 207, THE DIRECTOR GENERAL, DEFENCE INDUSTRIES CORPORATION OF NIGERIA & ANOR VS. DINWABOR & ORS (2016) LPELR – 41316 (CA)** and **GARBA VS. STATE (2017) LPELR – 43348 (CA)**. I hold that the charge at the trial court was competent and the trial court had the jurisdiction to have determined it. Issue one is resolved against the appellant.

The appellant's second issue challenged the evaluation of the evidence before the court leading to the conviction and sentence of the appellant. The learned Senior Counsel argued that the extra judicial statements of the Appellant and his co-accused, Exhibits 'F' and 'G' respectively ought not to have been utilized by the trial court because a trial within trial ought to have been conducted to establish the voluntariness of the statements. The learned counsel to the Respondent in his brief of argument, defined the word "confession" as simply as an admission made by a person, the Black's Law Dictionary, 7<sup>th</sup> Edition, at page 48 defined confession as: "A voluntary acknowledgment of the existence of facts relevant to an adversary's case", to admit. In the present case, the appellant did not confess or admit having committed the offences charged. On the other hand, the

appellant in Exhibit 'F' denied his involvement in the alleged offences. He denied being the author of the disputed signature and having anything to do with any of the two companies, AY Quest Worldwide Limited and Q – Bridgers Worldwide Synergy Limited.

Similarly, the appellant's co-accused, agreed having an interest in AY – Quest Worldwide Ltd. but, denied using the company for any contract while he was a project officer from June, 2012. The crux of the offences was not having interest in AY – Quest Worldwide Limited, but, having interest and using it to obtain and execute contracts while a project officer in public service together with the Appellant who at the time was a civil servant, an Assistant Director. A confessional statement must be direct, positive and an inference that the maker committed the offence charged. Exhibits 'F' and 'G' do not therefore qualify as confessional statements that would require a trial within trial to determine the voluntariness. In the present case, the appellant has not shown in any way that his extra judicial statement was not made at will. See, **SAIDU VS. STATE (1982) 4 SC 41**, and **OJEGELE VS. STATE (1988) 1 NWLR (PT. 71) 414** on definition of confession as provided in the Evidence Act. Also, **IKEMSON VS. STATE (1989) 3 NWLR (PT. 110) 455**; **SHAZALI VS. STATE (1988) 5 NWLR (PT. 93) 164**; **UDO AKPAN VS. STATE (1986) 3 NWLR (PT. 27) 258** and **NWOSU VS. STATE (1998) 8 NWLR (PT. 562) 433**.

See, **ASUQUO VS. STATE (2016) LPELR – 40597 (SC)** and more recently a decision of this court where my learned brother, Barka, JCA in **SEGUN ADELODUN VS. FEDERAL REPUBLIC OF**



**NIGERIA (2017) ALL FWLR (PT. 912) 726; (2007) LPELR – 42356 (CA)**, explained when a trial within trial would not be conducted, where the statement is not confessional. Also, **IGAGO VS. STATE (1999) LPELR – 1442 (SC)**.

I agree with the submission of the learned counsel to the respondent that the appellant and his co-accused had joint interest in AY – Quest Worldwide Ltd was not only shown by Exhibit 'G' but, other pieces of evidence before the trial court. Therefore with or without Exhibit 'G' the prosecution established that, Exhibit 'A' the account opening package of the company showed the signatures of the Appellant and his co-accused as the signatories to the account of the company through the evidence of the PW1, page 73 of the records. The letter from Corporate Affairs Commission (CAC), Exhibit 'E' showed clearly the ownership structure of the company, Exhibits 'H' and 'I' the request for signature analysis and the report/result showing that the Appellant was the signatory to the known signature as well as the disputed signatures. Similarly, the account opening package of Q – Bridgers Worldwide Synergy Ltd also clearly showed that the Appellant's name as appears on record (Mohammed Dogonyaro Audu) as the signatory to the account. The signature card also has the Appellant's picture on it, page 100 of the printed records. Further, Exhibits 'B' and 'C' were tendered before the trial court, the objection to their admissibility were overruled at the point they were tendered and there was no appeal against the Rulings of 3/2/16 (page 254 of the records) and on 6/4/16 (page 262 of the printed records)

respectively. Exhibits 'B' and 'C' are statements of account showing payments into the accounts of the two companies from the office of the Accountant General of the Federation for contracts executed.

The PW2 (Detective Chris Odofin, an investigator with EFCC gave details of his investigation and findings confirming that the Appellant was a civil servant, an Assistant Director in the office of the Accountant General of the Federation. The appellant as DW1 in his evidence at pages 287 – 288 of the printed records gave evidence to this effect. The investigation activities was tendered as Exhibit 'D', also Exhibit 'E' the report from CAC and Exhibit 'F' the appellant's statement. The PW2 confirmed that the appellant used the name Abdullahi Dogonyaro Audu to run the two companies. The same name the learned Senior Counsel had faulted the report of the PW3 (Benedict Agweye, a forensic document examiner with the EFCC) in that the witness did not obtain the sample signature for analysis by himself and could not therefore link the samples of signatures to the identity of the Appellant. I am not aware of any law or practice that says that the expert to conduct an analysis of disputed hand writing must collect the samples or be present when the samples are collected. The PW3 gave account of how he received the signatures from the Head of the Economic Governance Unit of the EFCC. The duty of the PW3 is to determine similarities or dissimilarities between the disputed signatures and the known ones before arriving at any conclusion, which he did in testifying that both in this case, were authored by the same person. The PW3's duty is to analyze the signatures not to determine whether



they belong to the Appellant or anybody else. The Appellant did not deny making the known signature which was found to be made by the same person that made the disputed signatures. With the analysis of the PW3 and no contrary evidence, the identity of the owner of the signatures was put to rest. Further, Exhibit 'D3' is the specimen samples of the Appellant's writing, with his name and signature written five times, which was tendered without objection, page 1299 of the printed records, corroborated the evidence of the PW3.

The appellant as Mohammed Dogonyaro Audu acknowledged his signature on some of the documents but, denied signing the disputed ones on the account opening packages of the companies and the incorporation documents of the companies at CAC amongst other documents. The appellant also denied being Abdullahi Dogonyaro Audu and denied having any interest in the two companies. But, he admitted being a civil servant that worked as an Assistant Director in the Office of the Accountant General of the Federation. In absence of any contrary evidence in respect of the report, the evidence of the PW3 and the prosecution concerning the disputed and the known signatures, the finding remains unchallenged or uncontroverted evidence, the evidence of the PW3 as an expert is acceptable. The trial court was right to have accepted and acted on it. See, **NWABUOKU VS. OTTEH (1961) 1 ANLR 487 at 490, NIGERIAN MARITIME SERVICES LTD VS. ALHAJI BELLO AFOLABI (1978) 2 SC 79 at 81, OMOREGBE VS. DANIEL LAWANI (1980) 3 - 4 SC 108 at 117, OLOHUNDE & ANOR VS. PROF. ADEYOJU**

**(2000) 6 SCNJ 470** at **475** and **ESENE VS. STATE (2017) LPELR – 41912 (SC)** Evidence that is not debunked remains good, credible and should be relied upon by a trial court who would ascribe probative value thereon, which the learned trial judge did, I cannot fault it. See, also Section 93 of the Evidence Act, 2011.

The appellant denied having interest in the companies using the name Abdullahi Dogonyaro but, with the documents of incorporation of the companies at CAC, irrespective of the names used, he has been shown to be a shareholder, confirmed by the expert opinion of the handwriting expert to the effect that the appellant is one and the same author of the known signatures and the disputed signatures, operating the companies with the name Abdullahi Dogonyaro Mohammed.

The evidence before the trial court established the elements of the offences for which the appellant stood trial and was convicted. The prosecution in my humble view discharged the burden of proof on its part beyond reasonable doubt. In **AJAYI VS. STATE (2013) LPELR – 19941 (SC) PP. 3- - 31, PARAS. D – A**, his lordship Fabiyi, JSC clearly gave the meaning of proof beyond reasonable doubt thus:

“What then is proof beyond reasonable doubt? It simply means the establishment of all the ingredients of the offence charged in tandem with the dictates of Section 138 of the Evidence Act and Section 36 (5) of the 1999 Constitution (as amended). See, **ALABI VS. THE STATE (1993)**



**7 NWLR (PT. 307) 511.** Proof beyond reasonable doubt is not proof beyond all iota of doubt or proof to the hilt. See, **NASIRU VS. THE STATE (1999) 2 NWLR (PT. 589) 87 AT 98;** **AKALEZI VS. THE STATE (1993) 2 NWLR (PT. 273) 1** at **PAGE 13.** Proof beyond reasonable doubt, as propounded by Lord Sankey, L.C. in **WOOLMINGTON VS. D.P.P. (1935) AC 462** must be kept within its proper compartment. Otherwise, it may cleave."

See, also **OWOLABI KE LADE VS. THE STATE (2017) LPELR – 42362 (SC); OSUAGWU VS. STATE (2013) 5 NWLR (PT. 1347) P. 360** and **STATE VS. ONYEUKWU (2004) LPELR – 3116 (SC).**

I hold that the learned trial judge evaluated the evidence before him before arriving at the decision convicting the Appellant, I cannot fault it. Issue two is resolved against the Appellant.

The third issue alleged that the trial court failed to consider and pronounce on the appellant's issue three at the trial. The appellant's issue three at the trial court was:

"Whether Exhibits 'A' – 'H' & 'I' which were tendered by the complainant and admitted by the court are legally admissible evidence in law."

The third issue was raised in the final address of the defence, at page 186 of the records. From the records of appeal, at the point

Exhibits 'A', 'B', 'C', 'F' and 'G' were tendered, issues were joined, when objections were raised and the learned trial judge ruled on same (as earlier held in resolution of issue two above) there was no appeal against the Rulings admitting the Exhibits in evidence. In the learned counsel's address, the issue of admissibility of the same Exhibits was raised again, which is an invitation for the trial court to review its earlier decision admitting these Exhibits, or sitting on appeal over its decision on the admissibility of the said Exhibits. It was wrong for the learned counsel to have raised the issue of admissibility of these Exhibits again in his final address. The option for the appellant was to have appeal against the Rulings at the time the Exhibits were admitted in evidence. The issue of admissibility had closed and could not be revisited by the learned trial judge in his final judgment. I agree with the submissions of the learned counsel to the Respondent that the court cannot sit on appeal over its decision. In **SANUSI VS. AYOOLA & ORS (1992) LPELR – 3009 (SC) P. 19, PARAS D – F**, his lordship, Karibi – Whyte, JSC explained the circumstance under which a court becomes *functus officio* and its effect thus:

"There is the well settled elementary and fundamental principle of law that a court on disposing of a cause before it renders itself *functus officio*. It ceases to have jurisdiction in respect of such case. See, **EKENELE VS. EKE (1925) 6 NLR, 118, AKINYEDE VS. THE APPRAISEN (1971) 1 ALL NLR, 162**. It cannot assume the



status of an appellate court over its own decision, except there is statutory power to do so. – See, **FRITZ VS. HOBSON (1880) 14 CH. D. 542**. The power of the court to do so can only be statutory and in this case, it is provided in Order 32 Rule (supra)."

Similarly, the Supreme Court in **IHEDIOHA & ANOR VS. OKOROCHA & ORS (2015) LPELR – 40837 (SC)**, his lordship, Okoro, JSC at **P. 12, PARAS. C – E** held that:

"It is trite that once an issue or issues have been raised and determined by the court between the litigating parties, the court becomes *functus officio* to either direct or allow the parties to re-open the same issue before it for litigation. See, **JOHN ANDY SONS & CO. LTD VS. NATIONAL CEREALS RESEARCH INSTITUTE (1997) 3 NWLR (PT. 491) 1, NNAJIOFOR VS. UKONU (1985) 1 NWLR (PT. 9) 686** at **688, CHIEF OZO NWANKWO ALOR & ANOR VS. CHRISTOPHER NGENE & ORS (2007) 17 NWLR (PT. 1062) 163.**"

The above decisions have said it all. I need not say more on Exhibits 'A', 'B', 'C', 'F' and 'G'.

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On Exhibits 'D', 'E', 'H' and 'I', Exhibits 'H' and 'I' were tendered through the PW3, the handwriting expert, there was no objection as to their admissibility, pages 280 – 281 of the printed records. Similarly, Exhibits 'D' and 'E' were admitted in evidence at the trial without objection to the admissibility of the Exhibits. The appellant cannot now object to or challenge the admissibility of these Exhibits now on appeal, same should have been done at the point the Exhibits were sought to be tendered. Further, on failure to raise an objection to the admissibility of a document tendered during trial, the Supreme Court in

**NASIR VS. CIVIL SERVICE COMMISSION KANO STATE & ORS**  
**(2010) LPELR – 1943 (SC)** his lordship, Mukhtar, JSC (as he then was) at **P. 11, PARAS. B – E** (also reported in **(2010) 3 FWLR (PT. 535) P. 6085** and **(2010) 6 NWLR (PT. 1190) P. 253** held that:

"It is the law that where a party fails to raise an objection during trial, he is deemed to have waived his right to do so on appeal on the particular point or procedure. In the present case since the appellant did not object against the procedure under which the respondents motion on notice was brought at the trial court, he is thereby estopped under the principle of waiver to raise the point at this stage – See, **TSOKWA OIL CO. LTD VS. BANK OF THE NORTH LTD (2002) 5 SCNJ 176** at **192; KOSSEN (NIG) LTD VS. SAVANA BANK**

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**LTD (1995) 12 SCNJ 29; OJOMO VS. IJE**  
**(1987) 4 NWLR (PT. 64) 216 at 244 – 245,**  
**KADUNA TEXTILES LTD VS. UMAR (1994) 1**  
**NWLR (PT. 319) 142."**

On the strength of all of the above decisions, I hold that the learned trial judge was right not to have revisited the admissibility of the mentioned exhibits under the appellant's issue three in the final address at the trial court as to determine whether Exhibits 'A' – 'H' and 'I' were admissible or not. Issue three is resolved against the appellant.

Having resolved all the issues against the appellant, I hold that the appeal is without merit; I dismiss it in its entirety and affirm the judgment of the learned trial judge in respect of the conviction and sentence of the Appellant.



  
**CHIDI NWAOMA UWA**  
**JUSTICE, COURT OF APPEAL**

**COUNSEL:**

Ade – Okeaya – Inneh (SAN) with Emonye Adekwu, Oladapo O. Agboola and Damilola Odesola for the Appellant.

Respondent's counsel was served but absent.

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**APPEAL NO: CA/A/51<sup>C</sup>/2018**  
**MOJEED ADEKUNLE OWOADE, JCA.**

I had the privilege of reading in draft the judgment delivered by my learned brother, **Chidi Uwa, JCA.**

I agree with the reasoning and conclusion. I also dismiss the appeal and affirm the conviction and sentence on the Appellant by the court below.

*A. Owoade*  
MOJEED ADEKUNLE OWOADE  
JUSTICE, COURT OF APPEAL



**APPEAL NO: CA/A/52<sup>C</sup>/2018**

**HAMMA AKAWU BARKA**

I read in draft the illuminating judgment of my learned brother **CHIDI NWAOMA UWA JCA**. I entirely agree with the reasoning therein and the conclusion that the appeal lacks substance and ought to be dismissed.

I also affirm the conviction and sentence imposed by the trial court.



**HAMMA AKAWU BARKA  
JUSTICE, COURT OF APPEAL**

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**HELLO D. ABDULLANI ESQ  
REGISTRAR  
COURT OF APPEAL**

*11/7/18*