**ADELODUN**

**V.**

**FEDERAL REPUBLIC OF NIGERIA**

COURT OF APPEAL, (ILORIN DIVISION)

CA/IL/C.23/2016

24TH DAY OF MARCH 2017

**LEX (2017) - CA/IL/C.23/2016**

OTHER CITATIONS

2PLR/2017/24 (CA)

**BEFORE THEIR LORDSHIPS**:

MOJEED ADEKUNLE OWOADE JCA (Presided)

HAMMA AKAWU BARKA JCA (Read the Lead Judgment)

CHIDI NWAOMA UWA JCA

**BETWEEN**

ADELODUN

AND

FEDERAL REPUBLIC OF NIGERIA

**ORIGINATING COURT**

HIGH COURT OF JUSTICE, KWARA STATE (Judgment of M. Abdul Gafar J., Presiding)

**REPRESENTATION/LAWYERS**

Wahab Ismail [with him, Ganiat B. and Jimoh Cook] - For the Appellant.

Rotimi Oyedepo (SDS) (EFCC) ­ - For the Respondent.

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE - CONSPIRACY - Offence of – What entails - How proved - Section 97, Penal Code considered.

CRIMINAL LAW AND PROCEDURE – CONSPIRACY:- Acts of a conspirator done in furtherance thereof - Culpability of all conspirators in respect thereto.

CRIMINAL LAW AND PROCEDURE – CRIME:- Commission of – Onus of proof - Standard of proof required – Duty of prosecution thereto

CRIMINAL LAW AND PROCEDURE - GUILT OF ACCUSED:– Methods of proving - Essential ingredients of the offence alleged - Failure of prosecution to prove - Effect of

CRIMINAL LAW AND PROCEDURE - OFFENCE OF OBTAINING BY FALSE PRETENCE:- Ingredients of – Duty of prosecution thereto

CRIMINAL LAW AND PROCEDURE - TRIAL-WITHIN-TRIAL - Question of voluntariness of confessional statement - When arises.

**PRACTICE AND PROCEDURE ISSUES**

APPEAL - EVALUATION OF EVIDENCE AND ASCRIPTION OF PROBATIVE VALUE THERETO:- Primary duty of the trial court in respect thereof – Appeal alleging improper evaluation of - When appellate court may interfere therewith.

EVIDENCE – CRIME:- Commission of - Onus on prosecution thereto - Standard of proof required.

EVIDENCE - GUILT OF ACCUSED:- Methods of proving – Essential ingredients of offence alleged - Failure of prosecution to prove - Effect of

EVIDENCE - TRIAL-WITHIN-TRIAL:- Question of voluntariness of confessional statement - When arises.

JUDGMENT AND ORDER:- Reversal of - Contradictions that sustain reversal – What constitutes

INTERPRETATION OF STATUTE - PENAL CODE, SECTION 97 – Interpretation of

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The appellant was charged at the high court with the offences of conspiracy to obtain money under false pretence, obtaining money under false pretence and conspiracy to forge a document dated 14 September 2011. The appellant and two others were arraigned on an amended charge with eight counts.

The trial court entered judgment which was delivered on 18 December 2015. The appellant was found guilty, and was convicted and sentenced in the following terms:­ “I find the 2nd accused guilty of count 1, conspiracy to obtain N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira only) by false pretence contrary to section 8(a) and 1(3) of Advance Fee Fraud Act and I convict him accordingly.

I also find the 2nd accused guilty of count 2, obtaining N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira only) by false pretence contrary to section 1(3) of the Advance fee fraud and I convict him accordingly.

I further find the 2nd accused guilty of count 4, conspiracy to commit forgery of letter dated 14 September 2011 contrary to section 97 of the Penal Code Law and I convict him accordingly”.

The appellant felt dissatisfied with his conviction and sentence and thereby filed this appeal at the Court of Appeal.

DECISION(S) APPEALED AGAINST

The trial Court entered judgment, convicting the appellant of the offences of conspiracy to obtain money under false pretence, obtaining money under false pretence and conspiracy to forge a document dated 14 September 2011, hence the appeal by the Appellant.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1. Whether having regards to the fact and circumstances of this case especially the endorsements on exhibit 10 as well as the admission of PW3, PW5 and PW6, the learned trial judge was right in holding that the bank was induced to transfer the sum of N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira only) to the account of Bamestic Multi­venture on the basis of exhibit 11 when there was no inducement and when the money in question was transferred based on exhibit 10. (Grounds 2, 3, 4).

2. Whether the learned trial judge was right in holding that the prosecution proved the offences charge against the appellant and thereby convicted him when the prosecution failed to proof the offences as required by law, and when the testimonies of the prosecution’s witness were weak feeble evidence unreliable. (Grounds 1, 6,14 and 15)

3. Whether the court below was right in accrediting and relying on the conflicting and incredible evidence of the prosecution witnesses and in failing to properly evaluate and utilize the defence of the appellant including credible testimony of DW2 thereby erroneously convicted the appellant. (Grounds 5, 6, 7 and 15).

4. Whether the learned trial judge was right in admitting exhibits 33 to 36 and utilized the content of Exhibits as incriminating against the appellant when the issue of involuntariness of the said exhibit was never resolved as the learned trial judge suo moto admitted the documents on the basis that the extra­judicial statements were not confessional. (Grounds 12 and 13).

5. Whether having wrongly admitted exhibits 12 and 13, the trial court was right in preventing the appellant from challenging the admissibility of the said document thereby replying on inadmissible evidence in convicting the appellant (Grounds 9, 10 and 11).”

*BY RESPONDENTS*

“1. Whether having regard to the evidence adduced by the respondent before the learned trial judge, it can be said that the respondent did not prove its case against the appellant beyond reasonable doubt.

2. Whether having regard to the fact and circumstances of this case, it can be said that the learned trial judge erred in law in admitting exhibits 12, 13, 33 to 36,

3. Whether having regard to the facts and circumstances of this case, it can be said that the case of the respondent was riddled with material contradictions to render the conviction of the appellant erroneously.”

*AS ADOPTED BY COURT*

[The Court adopted the Issues presented by the Respondent].

DECISION OF COURT OF APPEAL

1. All the three issues canvassed are resolved against the appellant with the result that this appeal is adjudged as lacking in merit, and it is hereby dismissed.

2. The decision of the lower court in appeal No. KWS/40C/2012, between Segun Adelodun v Federal Republic of Nigeria, delivered on 18 December 2015 convicting the appellant of the offences of conspiracy to obtain money under false pretence, and conspiracy to forge a document is hereby affirmed. I also endorse the sentences imposed as well as the order for compensation made by the lower court.

**MAIN JUDGEMENT**

**BARKA JCA** (DELIVERING THE LEAD JUDGMENT):

This appeal is against the judgment of M. AbdulGafar J, in case No. KWS/40C/2012, between Segun Adelodun v. Federal Republic of Nigeria delivered on 18 December 2015, convicting the appellant of the offences of conspiracy to obtain money under false pretence, obtaining money under false pretence and conspiracy to forge a document dated 14 September 2011.

The history of the instant appeal commenced upon the arraignment of the appellant and two others on an amended charge with eight counts which reads as follows:­

Count 1

That you, Sirajudeen Abdullahi, Segun Adelodun, John Afolabi, Oloruntoba Akinyele (now at large), Badmus Kabir Omojasola (now at large) and John Balogun (now at large) on or about 14 September 2011 at Ilorin within the jurisdiction of this honorable court with intent to defraud, conspired to obtain the sum of N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira only) from the Unilorin personnel cost account in possession of the United Bank for Africa Plc by false pretence contrary to section 8(a) and 1(3) of the Advance Fee Fraud and Other Fraud Related Offences Act No. 14 of 2006.

Count 2

That you, Sirajudeen Abdullahi, Segun Adelodun, John Afolabi, Oloruntoba Akinyele (now at large), Badmus Kabir Omojasola (now at large) and John Balogun (now at large) on 16 September 2011 at Ilorin within the jurisdiction of this honourable court with intent to defraud, obtained the sum of N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira only) from the Unilorin personnel cost account in possession of the United Bank for Africa Plc by falsely pretending that the University of Ilorin instructed the said bank vide a letter dated 14 September 2011 with reference number UIL/BUR/681/VOL.1/37 to transfer the sum of N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira only) from the Unilorin personnel cost account to the account of Bamestic Ventures (Bureau de Change) which representation you knew to be false contrary to section Act No. 14 of 2016.

Count 3

That you, Sirajudeen Abdullahi, Segun Adelodun, John Afolabi, Oloruntoba Akinyele (now at large), Badmus Kabir Omojasola (now at large) and John Balogun (now at large) on 16 September 2011 at Ilorin within the jurisdiction of this honourable court, agreed amongst yourselves to carry out an illegal act, to wit; theft of the sum of N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira only) from the Unilorin personnel cost account in possession of the United Bank for Africa Plc contrary to the provisions of Section 97 of the Penal Code.

Count 4

That you, Sirajudeen Abdullahi, Segun Adelodun, John Afolabi, Oloruntoba Akinyele (now at large), Badmus Kabir Omojasola (now at large) and John Balogun (now at large) on 14 September 2011 at Ilorin within the jurisdiction of this honourable court, agreed amongst yourselves to carry an illegal act, to wit; forgery of a document titled “Purchase of US dollars for the ETF Domiciliary Account” reference No. UIL/BUR/681/VOL.1/37 dated 14 September 2011 which you purported to have been issued by the University of Ilorin contrary to the provisions of Section 97 of the Penal Code.

Count 5

That you, Sirajudeen Abdullahi, Segun Adelodun, John Afolabi, Oloruntoba Akinyele (now at large), Badmus Kabir Omojasola (now at large) and John Balogun (now at large) on 14 September 2011 at Ilorin within the jurisdiction of this honourable court, dishonestly and fraudulently forged a document titled “Purchase of US dollars for the ETF Domiciliary Account” reference No. UIL/BUR/681/VOL.1/37 dated 14 September 2011 which you purported to have been issued by the University of Ilorin contrary to the provisions of section 364 of the Penal Code.

Count 6

That you Sirajudeen Abdullahi, Segun Adelodun, John Afolabi, Oloruntoba Akinyele (now at large), Badmus Kabir Omojasola (now at large) and John Balogun (now at large) on 16 September 2011 at Ilorin within the jurisdiction of this honourable court, committed theft of the sum of N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira only) from the Unilorin personnel cost account in possession of the United Bank for Africa Plc and thereby committed an offence punishable under section 287 of the Penal Code.

Count 7

Sir ajudeen Abdullahi, whilst the business Manager of United Bank for Africa Plc, University of Ilorin branch on 16 September 2011 at Ilorin within the jurisdiction of this honourable committed theft of the sum of N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira only) from the Unilorin personnel cost account in possession of the United Bank for Africa Plc and thereby committed an offence punishable under section 288 of the Penal Code.

Count 8

That Sirajudeen Abdullahi, on 16 September 2011 at Ilorin within the jurisdiction of this honourable court, whilst the business Manager of United Bank for Africa Plc, University of Ilorin branch and in such capacity entrusted with the sum of N59,006,250.00 (Fifty nine million, six thousand, two hundred and fifty naira only), being part of the sum in the Unilorin personnel cost account committed criminal breach of trust in respect of the said sum and thereby committed an offence punishable under section 314 of the Penal Code.

The appellant who was the 2nd accused person, and thereby stood charged of six out of the eight counts of the charge read, pleaded not guilty to the counts of the charge as read to him.

The case proceeded to a protracted trial commencing on 29 October 2012, with the prosecution calling 11 witnesses, tendered 41 exhibits, and closed its case. The appellant on the other hand, called one witness; namely, Adeyemo T aofik, recorded as DW2 and closed its case. Upon the 3rd accused person closing his defense on 23 July 2015, the case was adjourned to 4 November 2016 for adoption of addresses. The vexed judgment was delivered on 18 December 2015, wherefore appellant was found guilty, and was convicted and sentenced in the following terms:­

I find the 2nd accused guilty of count 1, conspiracy to obtain N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira only) by false pretence contrary to section 8(a) and 1(3) of Advance Fee Fraud Act and I convict him accordingly.

I also find the 2nd accused guilty of count 2, obtaining N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira only) by false pretence contrary to section 1(3) of the Advance fee fraud and I convict him accordingly.

I further find the 2nd accused guilty of count 4, conspiracy to commit forgery of letter dated 14 September 2011 contrary to section 97 of the Penal Code Law and I convict him accordingly”.

The appellant felt dissatisfied with his conviction and sentence and thereby filed a notice of appeal to this court on the 26 January 2016. The records having been transmitted on 23 March 2016, parties proceeded to file and to exchange their briefs of argument. The appellants amended brief of argument dated 29 September 2016, was filed on 5 October 2016 and deemed filed on 26 October 2016. Appellants still filed a reply brief, on 9 November 2016.

On his part, the respondent filed a respondent’s brief on 18 October 2016. The same brief pursuant to an order of this court was refilled on 28 October 2016, and on 16 January 2017 being the scheduled hearing date; both parties identified and adopted their respective briefs of argument. At the hearing of the appeals, Mr. Ismail, the learned counsel for the appellant, drew the courts attention to the list of additional authorities filed by him. In the appellant’s brief settled by Wahab Ismail of Wahab Ismail and Co, five issues were formulated for the determination of this appeal. The five issues which can be seen at pages 2­3 of his brief reads as follows:­

Issue one

Whether having regards to the fact and circumstances of this case especially the endorsements on exhibit 10 as well as the admission of PW3, PW5 and PW6, the learned trial judge was right in holding that the bank was induced to transfer the sum of N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira only) to the account of Bamestic Multi­venture on the basis of exhibit 11 when there was no inducement and when the money in question was transferred based on exhibit 10. (Grounds 2, 3, 4).

Issue two

Whether the learned trial judge was right in holding that the prosecution proved the offences charge against the appellant and thereby convicted him when the prosecution failed to proof the offences as required by law, and when the testimonies of the prosecution’s witness were weak feeble evidence unreliable. (Grounds 1, 6,14 and 15)

Issue three

Whether the court below was right in accrediting and relying on the conflicting and incredible evidence of the prosecution witnesses and in failing to properly evaluate and utilize the defence of the appellant including credible testimony of DW2 thereby erroneously convicted the appellant. (Grounds 5, 6, 7 and 15).

Issue four

Whether the learned trial judge was right in admitting exhibits 33 to 36 and utilized the content of Exhibits as incriminating against the appellant when the issue of involuntariness of the said exhibit was never resolved as the learned trial judge suo moto admitted the documents on the basis that the extra­judicial statements were not confessional. (Grounds 12 and 13).

Issue five

Whether having wrongly admitted exhibits 12 and 13, the trial court was right in preventing the appellant from challenging the admissibility of the said document thereby replying on inadmissible evidence in convicting the appellant (Grounds 9, 10 and 11)

The respondent, the Federal Republic of Nigeria, in the brief settled by Rotimi Oyedepo Iseoluwa of the Economic and Financial Crimes Commission, responded in opposing the appeal by distilling three issues for resolution. This can be found at page 3 of the brief and they are as follows:­

1. Whether having regard to the evidence adduced by the respondent before the learned trial judge, it can be said that the respondent did not prove its case against the appellant beyond reasonable doubt.

2. Whether having regard to the fact and circumstances of this case, it can be said that the learned trial judge erred in law in admitting exhibits 12, 13, 33 to 36,

3. Whether having regard to the facts and circumstances of this case, it can be said that the case of the respondent was riddled with material contradictions to render the conviction of the appellant erroneously.

The appeal would therefore be determined based on the appellants amended brief of argument, the appellants reply brief as earlier identified, and the respondent’s brief refilled on 28 October 2016. Having given the two set of issues formulated by learned counsel a sober but dispassionate consideration, my humble observation is that the appellant’s issues one and two, can conveniently be taken under issue one formulated by the respondent. The appellant’s issues four and five can equally be resolved under issue two crafted by the respondent, while the respondent’s issue 3 and appellant’s third issue are alike in purpose. I find therefore the issues identified by the respondent preferable in view of its clarity. This appeal would therefore be determined upon the issues identified by the respondent, slightly amended.

Issue one

Whether having regards to the evidence adduced by the respondent and the entire circumstance of the case, before the learned trial judge, it can be said that the respondent did not prove its case against the appellant beyond reasonable doubt. I have earlier on alluded to the fact that the arguments proffered by the appellant under issues 1 and 2 formulated by him are congenial to the respondent’s first issue. Moving his appeal, the learned counsel for the appellant submitted that the issue in contention is the examination of the correctness of the lower courts holding, having held that there was inducement caused by exhibit 11 on the UBA Plc in transferring the sum of N59,006,250.00 (fifty­nine million, six thousand, two hundred and fifty naira only) from the account of the University of Ilorin to the account of Bamestic Multi ventures, which holding formed the basis of the appellants conviction for offences of forgery, conspiracy to, and obtaining money by false pretence, and the question, whether the transfer of the money was on the basis of exhibit 10 or exhibit 11. It is the further submission of counsel that the lower court was wrong in holding that UBA Plc was induced to transfer the sum of over N59,000,000.00 (fifty­nine million naira) from the account of the University of Ilorin, to the account of Bamestic Multi Ventures by exhibit 11, the University of Ilorin admitted writing exhibit 10 as an instruction to the UBA Plc to convert the said sum of N59,006,250.00 (fifty­nine million, six thousand, two hundred and fifty naira only) to dollars and to credit the domiciliary account of the university with the dollar equivalent, the same university having denied writing exhibit 11, and as such the letter supposedly forged. He made reference to the confessional statement of the 1st accused person admitted as exhibit 42, where he denied forging or having anything to do with exhibit 11 in the transfer of the money in question, while insisting that the money was transferred based on exhibit 10, written by the university, and to which he directed the PW3 and PW6 to transfer the said sums of money as stated in exhibit 10 to the account of Bamestric Multi ventures for the purchase of dollars. Drawing the court’s attention to the various testimonies of the witnesses for the prosecution, counsel argued that the failure of the lower court to resolve the issue of the transfer of the money in issue in favour of the appellant, in the face of the compelling evidence and admissions in favour of exhibit 10 is unjust and wrongful, and the conviction of the appellant based on the said erroneous finding to the effect that the transfer of the money was induced by exhibit 11 occasioned a grievous miscarriage of justice.

Further on the issue, counsel submitted that by exhibits 20 and 21, it is shown that the bank was not induced at all in the transfer of the money in question, and further that since the bank was not induced in respect of a transaction governed by exhibit 21, which is of doubtful nature, then the bank was in the habit of transferring funds on documents with the same doubtful nature as exhibit 11. This is more so since the UBA Plc had admitted transferring the sums of N9,000,000.00, (nine million naira) on account of exhibit 20, alleged to have been forged, just as the same exhibit 11.

He goes on to contend that since there was no inducement in the transfer based on exhibits 20 or 21, the subsequent transfer based on exhibit 11 cannot be said to have been induced. He posits that there is no shred of evidence against the appellant, showing that he was involved in either the inducement or the transfer of the money in question as confirmed by the PW3. He views the conviction of the appellant on the basis of the unproven inducement on the bank as wrongful, and urged the court to discharge and to acquit the appellant. On the second leg of his argument, counsel argued that the trial court cannot be right in holding that prosecution proved the offences charged against the appellant, when the prosecution failed to prove the offences as required by law. He stated that the resolution of the issue on whether the appellant proved the alleged offences against the appellant, calls for the examination of the propriety or otherwise of the decision of the lower court which held that prosecution proved the offences charged and proceeded to convict the appellant.

Learned counsel adopted his arguments earlier made in respect of his argument on this issue, and relying on the cases of Williams v. The State (1992) NWLR (Pt. 261) 515; Bakare v. The State (1987) 2 NWLR (Pt. 52) 579, (1987) 3SC 1; Afolalu v. State (2010) All FWLR (Pt. 538) 812 at 829; submitted that in a criminal trial, the burden of proof lies on the prosecution who must prove the allegation beyond reasonable doubt. It is contended by the learned counsel that prosecution woefully failed to prove the ingredients of the offences of conspiracy, obtaining money under false pretence and conspiracy to forge the document dated 14 September 2011, and therefore urged the court to resolve the issue in favour of the appellant.

Mr. Rotimi O. Iseoluwa for the respondent, in opposing the appeal argued that the respondent successfully discharged the burden placed on it by proving the essential ingredients of the offences alleged against the appellant, leading to his conviction. Learned counsel enumerated the contents of count 1, count 2, and count 3 of the charge read to the appellant, and alluded to the definition of conspiracy as contained in section 8(a) of the Advanced Fee Fraud and other Fraud Related Offences Act, as well as section 96 of the Penal Code, contending that it is not usually easy to prove by direct evidence a case of conspiracy, but that such can be inferred from the various overt acts of the co-conspirators in showing the meeting of the mind or the criminal purpose in common between them.

The cases of Gbadamosi v State (1992) 6 NWLR (Pt. 196) 182 and Abacha v. State (2002) FWLR (Pt. 118) 1224, (2002) 11 NWLR (Pt. 779) 437 were cited. He submits that the evidence led by the respondent irresistibly points to the fact that appellant conspired to obtain the sums of N59,006,250.00 (fifty­nine million, six thousand, two hundred and fifty naira) by false pretence and to forge the letter dated 14 September 2011 (exhibit 11).

He continued to argue that by the evidence of PW1 and PW2 as well as the documentary evidence tendered before the court, it cannot be argued that the prosecution did not prove the meeting of the minds between the appellant and his co­conspirators to commit an illegal act, having registered a business name called Bamestic Multi Ventures using PW2 as a front. He states that it is on record that the 1st accused person approached the appellant to open an account with the UBA in the name of the same Bamestic Multi­Ventures, which the appellant operated, and to which the entire sums of N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira) fraudulently removed from the account of the University of Ilorin was credited. He referred to the evidence of PW3 and PW4 as well as exhibit 17 to the effect that there is no contractual relationship between the said Bamestic Multi­Venturesand Unilorin, and the appellant instead of complaining about the sums wrongly credited to his account, proceeded to issue cheques in the name of the 3rd accused person as shown by exhibit 1­9. He submitted that by exhibit 11, which nominated the appellants account as the receiver, and in line with the decisions in R v. Ligali and Anor (1959) 4 FSC 7; Shodiya v. The State (1992) 3 NWLR (Pt. 230) 447 at 457 and Njovens & Ors. v. The State (1973) 5 SC 17, (1973) NSCC 230 per Coker JSC, even where there is no proof of any agreement expressed or impliedly, a person may still be convicted for conspiracy.

On the alleged offence of forgery, learned counsel made reference to the case of Imam v. Sheriff (2005) 4 NWLR (Pt. 914) 80 ­163 to the effect that the crime of forgery involves the making, altering or completing of an instrument by someone other than the ostensible maker, drawer or agent of the ostensible maker or drawer. He points out that from evidence put before the court, it was apparent that the document was not made by the maker.

Relying on the case of Amu v. The State (1980) 2 NCR 297 at 302­303 and Smart v. State (1974) 9 NSCC 575 at 581, counsel posits that the lower court based on the evidence adduced, was right to have held that the document, exhibit 11 was forged, and it does not matter whether it was the appellant who forged the document or not as held in the cases of Ukpe v. The State (2001) WRN 84 at 113, (2002) FWLR (Pt. 103) 416 per Edozie JCA; Agwuna v. Attorney-General of the Federation (1995) 5 NWLR (Pt. 396) 418 at 438, Solomon Ogunshowobo & 2 Ors. v. I.G.P. (1958) WNLR 23 at 24 and George A. Scott v. The King (1950) 13 WACA 28.

He further submitted that exhibit 11 made by the appellant and his co­conspirators, to make a false representation to the bank that Unilorin instructed the transfer of the sums of N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira) showed their ultimate objective, since the alleged signatories stated on oath that the documents were not signed by them, it can be safely inferred, that appellant or 1st accused person forged the document or procured someone to commit the forgery, the case of Nigeria Air Force v. Kamaldeen (2007) All FWLR (Pt. 361) 1676, (2007) 7 NWLR (Pt. 1032) 164 at 191 was cited and relied upon. Counsel states that in reality, Unilorin did not instruct the bank to transfer money from their account to Bamestic Multi­Ventures as shown on exhibit 11, thus, the document having been pushed through and thus succeeded in the fraud, no further proof of forgery is required against the appellant; and the case of Osondu v. F.R.N. (2000) 12 NWLR (Pt. 682) 483 at 504­505 was cited with approval. Still relying on the case of Ukpe v. The State, counsel is of the view that from the totality of the evidence adduced by the respondent, it is clear that the appellant or his co-conspirators forged the document or aided, counselled or procured someone to forge the document, and are all deemed guilty of the offence. He urged this court not to interfere with the trial courts findings, having not been perverse or unsupported by evidence.

On the offence of obtaining money by false pretence, learned counsel enumerated the following ingredients of the offence which must be established to ground the conviction.

i. That there was a pretence

ii. That the pretence emanated from the accused person.

iii. That it was false.

iv. That the accused person knew of its falsity or did not believe in its truth.

v. That there was an intention to defraud.

vi. That the thing was capable of being stolen.

vii. That the accused person induced the owner to transfer the property. See Amadi v. F.R.N. (2008) 18 NWLR (Pt. 1119) 259 at 281­282, (2009) All FWLR (Pt. 462) 1103; Onwudiwe v. F.R.N. (2006) All FWLR (Pt. 319) 774, (2006) 10 NWLR (Pt. 988) 382 at 431­ 432; Alake v. The State (1991) 7 NWLR (Pt. 205) 567 and Oshin v. I.G.P. (1961) 1 SCNLR 49.

It was the contention of learned counsel, that all the enumerated ingredients of the count of obtaining money by false pretence were established by the prosecution, and thereby urged the court to resolve the issue in favour of the state. Responding on points of law, the learned counsel for the appellant submits that the opening or operation of the account of Bamestic MultiVentures does not translate into proof of any ingredients of the offence of conspiracy to obtain under false pretence, the 1st accused person having admitted receiving the dollar equivalent of the sums involved.

He contended that the appellant as stated by PW10, converted the money into dollars as instructed, and having delivered the dollar equivalent to the UBA Plc. through the 1st accused person, the argument of the respondent that offences of conspiracy to commit the offence of false pretence cannot be said to have been established against the appellant. On the forgery of exhibit 11, counsel states that the 1st accused person denied having anything to do with exhibit 11, but rather stated that the transfer of the money involved was on the basis of exhibit 10, and argued that in any case, the appellant was not linked or involved with exhibit 11, as there is ample evidence from PW10 and DW2 that appellant sourced for the dollar equivalent of the sums involved and delivered the same to the bank through the 1st accused person. It is his contention therefore that the cases of Emu v. The State and Agwuna v. Attorney-General, Federation are irrelevant and does not support the position of the respondent. He further contended that no offence was committed at all, since appellant had sourced for the dollar equivalent and delivered same in full. He insists that there was no evidence of any intention to defraud against the appellant, since the opening of the account of Bamestic Multi Ventures could not in itself, convert a legitimate dollar sourcing transaction to a fraudulent one. He therefore urged the court to resolve the issue in favour of the appellant. I have given due consideration to the arguments of the learned counsel on both sides. The starting point is the provisions of section 135(1) and (2) of the Evidence Act, 2011, which provides: 135 (1) if the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.

(2) The burden of proving that any person has been guilty of a crime or wrongful act, is subject to section 139 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action.

(3) If the prosecution proves the commission of a crime beyond reasonable doubt, the burden of proving reasonable doubt is shifted on to the defendant. The position of the law therefore since established, is that the burden of proving any crime or crime related matters in most cases is placed upon the prosecution, who must in view of the presumption of innocence in favour of the accused, prove the charge alleged beyond reasonable doubt. See Okashetu v. The State (2016) All FWLR (Pt. 861) 1262, (2016) 15 NWLR (Pt. 1534) 126 at 147; Abiodun v. The State (2013) All FWLR (Pt. 664) 110, (2013) 9 NWLR (Pt. 1358) 138 at 150; Obidiozo v. State (1987) 4 NWLR (Pt. 67) 748, (1987) 12 SC 74 and R v. Kassi (1939) 5 WACA 154; Afolalu v. The State (2010) All FWLR (Pt. 538) 812 at 829; Williams v. State (1992) NWLR (Pt. 261) 515.

Proof beyond reasonable doubt has been given meaning in a host of cases, to mean no more than the prosecution by credible evidence proving the ingredients of the offence for which the accused person is facing trial. In the words of Tobi JSC of blessed memory, in Alake v. The State (1991) 7 NWLR (Pt. 205) 515 at 591:

“It is generally believed that once there is the slightest doubt in the mind of the court, then the accused must as a matter of law, be discharged and acquitted. I think that is rather a wide statement of the legal position. That was the position I took in Sanni Adisa v. The State (1991) 1 NWLR (Pt. 168) 490. I have since realized that I went too far. I think the adjective “reasonable” qualifying the noun “doubt” should not give rise to that very wide statement. I think the position should be this, once the ingredients of the particular offence the accused person is charged with are proved, that constitutes proof beyond reasonable doubt, otherwise not”.

This legal reasoning agrees with the earlier dictum of lord Denning in the case of Miller v. Minister of Pensions (1947) 2 All ER 371 at 373. The three methods of evidential proof could either be:

a. Direct evidence of witnesses;

b. Circumstantial evidence; and

c. Confessional evidence of an accused person voluntarily made. See the cases of Emeka v. The State (2001) FWLR (Pt. 66) 682, (2001) 32 WRN 37 at 49; Okudo v. The State (2011) 3 NWLR (Pt. 1234) 209; Okashetu v. The State (supra); Adeyemo v. The State (2015) All FWLR (Pt. 794) 118, (2015) 16 NWLR (Pt. 1485) 311; and Bille v. The State (2016) 15 NWLR (Pt. 1536) 363 at 381.

It follows therefore, that where the prosecution using one or all of the above enumerated methods of proof, fails to establish the essential ingredient(s) of the offence alleged against an accused person charged beyond reasonable doubt, its case collapses, and the accused entitled to a discharge. See Osuagwu v. State (2016) 16 NWLR (Pt. 1537) 31 at 62.

In the instant case, the appellant was convicted upon three counts out of the six counts of the charge alleged against him. He was convicted upon count one of the charges, conspiracy to obtain N59,006,250 (fifty­nine million, six thousand, two hundred and fifty naira) by false pretence contrary to section 8(a) and 1(3) of the Advance Fee Fraud Act, count two, obtaining N59,006,250.00 (fifty­nine million, six thousand, two hundred and fifty naira) by false pretence contrary to section 1(3) of the Advanced Fee Fraud, and count four, conspiracy to commit forgery of a letter dated 14 September 2011, contrary to section 97 of the Penal Code law.

It is the submission of the learned counsel for the appellant, that the prosecution woefully failed to prove and or establish the offences of conspiracy, obtaining money under false pretence and conspiracy to forge the document dated 14 September 2011, and that the trial court was wrong in convicting the appellant of the said offences. The respondents on the other hand are of the conviction that the prosecution successfully discharged the burden placed on it by proving the essential ingredients of the offences listed against the appellant, leading to his deserved conviction. With regards to the offence of conspiracy, Coker JSC, in Njovens v. The State (1973) 5 SC 17 (1973) NSCC 257 opined thus:

“The gist of the offence of conspiracy is the meeting of the minds of the conspirators. This is hardly capable of direct proof for the offence of conspiracy is complete by the agreement to do the act or make the omission complained about. Hence, conspiracy is a matter of inference from certain criminal acts of the parties done in pursuance of an apparent criminal purpose common between them and in proof of conspiracy the act or omission of any of the conspirators in furtherance of the common design may be and very often are given in evidence against others of the conspirators”.

It has equally been accepted that conspiracy entails that agreement for the purpose of attaining an unlawful objective or a lawful objective through an unlawful means. See section 97 of the Penal Code and the cases of Daboh v. The State (1977) 5 SC 197, (1977) NSCC (vol 2) 309 at 335; Nwosu v. The State (2004) All FWLR (Pt. 218) 916, (2004) 15 NWLR (Pt. 897) 466 at 486.

In examining whether the lower court was right in holding that appellant conspired in obtaining the sums of N59,006,250.00 (fifty-nine million, six thousand, two hundred and fifty naira), by false pretence and also having also conspired to forge the letter dated 14 September 2011, designated as exhibit 11, calls for the examination of the evidence, oral and documentary placed before the lower court on the issues. I shall refer to this issue in due course.

First on the issue of obtaining by false pretence, the following ingredients must be established by the prosecution.

a. That there was a pretence.

b. That the pretence emanated from the accused person.

c. That it was false

d. That there was the intention to defraud

e. That the accused person knew of its falsity

f. That the thing is capable of being stolen

g. That the accused person induced the owner to transfer his whole interest in the property. See Alake v. The State (1991) 7 NWLR (Pt. 205) 567; F.R.N. v. Amah (2016) All FWLR (Pt. 818) 889 at 909.

It is apparent that the trial court examined whether the prosecution established the offence of obtaining the sums of N59,006,250.00 (fifty­nine million, six thousand, two hundred and fifty naira) by false pretence, when it stated at pages 357 ­ 358 thus:

“There is evidence that the 1st accused person approached the 2nd accused to open an account with UBA for the purpose of the transaction, and the 2nd accused took the advice by opening an account with false documents. The 1st accused in spite of being aware of the fraudulent particulars, approved the account in exhibit 12. The evidence of the PW2 proves the fraudulent nature of the account of Bamestic Multi­ventures.”

The 1st accused directed PW3 and PW6 to transfer funds to the account of Bamestic Ventures on the basis of exhibit 10, but when they declined, he returned to them in a few days with exhibit 11 which resolved the objection they had taken to exhibit 10.

The 1st accused directed PW3 to place a lien on the account of Bamestic Multi ventures, the safety valve to protect the fund, only to call PW3 from another branch of the bank to lift the lien and allow 2nd accused access the funds.

The 2nd accused issued exhibits 1, 2, 3, 4, 5 to the 3rd accused on 19 September 2011, totalling N30,000,000 (thirty million naira), and exhibits 6,7,8,9 on 23 September 2011 totalling N29,000,000.00 (twenty nine million naira), to the 3rd accused person meaning that the entire sum was withdrawn from the account on which a lien had ostensibly been placed. It is clear from exhibit 13, and the evidence of DW3 that the second accused had received N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira) from University of Ilorin with whom he had no relationship, and he promptly withdrew the case (sic) within a few days. There are also exhibits 33 ­ 36 in which the 2nd accused claims that the 1st accused told him that he had access to funds to procure dollars through an uncle who is an AIG in the police in charge of training, whereas the position of the 1st accused in Exhibit 41 is that the 1st accused knew that the fund was from the account of University of Ilorin, and he did not tell the 1st accused, (maybe 2nd accused) that he had an uncle who is an AIG in the police. Whichever of them is telling the truth, the inference to draw is that both the 1st and 2nd accused persons knew that the 1st accused has access to some funds and they now put in place a scheme or contrivance to obtain the fund by false pretence”.

The court continued to state thereafter that the conclusion drawn, therefore is that the 1st and the 2nd accused persons conspired to obtain the sum of N59,006,250.00 (fifty­nine million, six thousand, two hundred and fifty naira) by false pretence from Unilorin cost account, in the possession of UBA Plc, contrary to section 8(a) and 1(3) of the Advance Fee Fraud and Other Related Offences Act, No. 14 of 2006.

As rightly held by the trial judge, the pretence stated in the count of the charge read to the 2nd appellant on 7 September 2012, to which he pleaded not guilty, represented that the University of Ilorin by exhibit 11, directed the UBA to transfer the sums of N59,006,250.00 (fifty­nine million, six thousand, two hundred and fifty naira) to the account of Bamestic Multiventures. Looking at the entire scenario, the false pretence here is the holding out of exhibit 11 as having emanated from the University of Ilorin from the evidence adduced by the PW3 and PW6, it was the stated exhibit 11 which galvanized them to transfer the sums of N59,006,250.00 (fifty­nine million, six thousand, two hundred and fifty naira) to the appellants, Bamestic Multi Ventures. There is evidence on record by the PW7, 8, 9 and 11 that the document, exhibit 11, did not emanate from the alleged signatories, upon which PW3 and PW6 acted upon. I also agree with the respondent’s counsel that the pretence emanated from the appellant and the 1st accused person, owing to their conduct.

Indeed, the 1st accused person and the appellant knew of the falsity of the pretence, more so that the appellant and the 1st accused person are all conversant with the elementary workings of the banking institution. Going by the evidence of the PW3, appellant being a marketing staff of the Zenith Bank Plc, and where his account is being operated, ought to have maintained the account in all his financial dealings. There is ample evidence which the lower court believed that sums involved were fraudulently transferred from the account of the university using an account fraudulently incorporated by the appellant and maintained by him.

I therefore agree with the conclusion of the trial court, that the 1st and 2nd accused persons (appellant) perfected a grand and fraudulent scheme by which the UBA was induced to part with the sums of fifty nine million naira belonging to the University of Ilorin. On whether the respondents proved the offence of forgery against the appellant, I must accept the fact that there is no evidence from the records indicating the involvement of the appellant personally, in the forgery of exhibit 11. It seems clear to me, however from the evidence of the PW11, PW7, 8 and 9, and more specifically the testimony of PW3, that the 1st accused was clearly indicted as the author of the document used to perpetuate the fraud. Further still, there is evidence on record that the 1st accused elaborately tried to cover up his tracks, when he generated exhibit 25, and exhibit D7, intending to show that the instructions by the university in their exhibit 10 was carried out to the latter. It goes without saying that the offence of forgery by the 1st accused person, as found by the lower court, cannot be faulted. Where then is the involvement of the appellant in the alleged forgery of exhibit 11? In answering this vital question, the lower court found the West African Court of Appeal decision in George Abet Scott v. The King (1950) 13 WACA 25, apposite to the case at hand, when it observed that:

“Where a document was shown to be used as an intermediate step in the scheme of fraud in which an accused person was involved, then if it was shown that such document was false and was presented or uttered by an accused person in order to gain advantage, an irresistible inference exists that either the accused forged the document with his own hand or procured someone to commit the forgery”.

Now, the appellant based on the evidence of the 1st accused person, maintain that the transaction in question was predicated on the instructions by the university to UBA through exhibit 10, and more over that appellant had nothing to do with exhibit 11, having sourced for the dollar equivalent of the money involved, and delivered same to the 1st accused person. This submission by the learned counsel cannot fly in view of the concrete evidence before the court that the transaction was based on exhibit 11, allegedly forged by the 1st accused person, which finding cannot be impeached. On the other leg of argument, whether appellant sourced for and gave the appellant the equivalent of the money transferred into the account of Bamestic Multi Ventures, the 1st accused under cross­examination at page 290 of the records, stated:

“Although I had stated that the 2nd accused (appellant) after giving me the dollars came back to collect it, I have not said that in this court. I lied in my statement when I stated that the 2nd accused had given me the entire dollars and came back to collect it. I also lied in exhibit D8, when I said the 2nd accused came back to collect the money he had given me. I did not state to the SSS that the 2nd accused came back to collect the money he had paid to me. I agreed I stated that I reported this matter to the SSS in Ilorin. When I reported the transaction to the SSS, they told me it is a civil case. The money is at this point still with the 2nd accused. The money still with the 2nd accused is above N40,000,000.00 (forty million naira) of the N59,000,000 (fifty nine million) transferred to the 2nd accused via Bamestic Ventures”.

This piece of evidence clearly negates the assertion by the appellants that having drawn the sums of N59,006,250.00 (fiftynine million, six thousand, two hundred and fifty naira), the value thereof was given to the 1st accused person, and therefore not culpable as a participis criminis. The popular saying that the end justifies the means holds true to the instant situation, where as posited, the grand design to commit the fraud was hatched with great ingenuity and brilliantly executed. It is only where the totality, of the entire scheme is considered will one see the workings of the entire design.

Reasoning in line with the decision of Akinbisade v. The State (2006) 17 NWLR (Pt. 1007) 184 at 203, (2007) All FWLR (Pt. 344) 17 per Tobi JSC, one is tempted to ask, how the appellant, a seasoned staff of the Zenith Bank, was induced to open an account with the UBA upon the advice of the 1st accused, using fictitious names in registering the name of Bamestic Multi ventures, and also in opening the account. If the sums of N59,006,250.00 (fifty­nine million, six thousand, two hundred and fifty naira) was drawn from the account of the UBA, to Bamestic Multi Ventures, which he now assessed, was converted to dollars as asserted, why did the appellant choose to hand over the dollar equivalent to the 1st accused person as stated by him, more so, that appellant knows the rudiments of banking.

The trial court on the issue considered the entire circumstance of the transaction; how the 1st accused advised appellant to open an account with the UBA, how appellant withdrew the sums of N59,006,250.00 (fifty nine million, six thousand, two hundred and fifty naira) from the account within four days upon the instructions of the 1st accused using the 3rd accused, and relied upon the decision in the case of Daboh v. The State (supra), to infer and arrive at the conclusion that the 1st and 2nd accused persons agreed, schemed and contrived to induce the UBA, through the use of exhibit 11, forged by the 1st accused person to transfer the sums of N59,006, 250.00 (fifty­nine million, six thousand, two hundred and fifty naira) to the account of Bamestic multi ventures operated by the appellant. It having been established that exhibit 11 was forged, the appellant is caught by the legal position expressed in Njovens v. The State (supra), to the effect that the act of a co­conspirator done in furtherance of a criminal scheme is the act of the other co­conspirators, in other words, it having been established that 1st accused person conspired with the appellant to forge, and did forge exhibit 11, the simple deduction is that appellant is similarly taken as having forged the said document.

The general principle of law established, is that a charge of conspiracy is proved by either leading direct evidence in proof of the common design or it can be proved by inference derived from the commission of the substantive offence. See The State v. Salawu (2011) LPELR­ 8252 SC, (2012) All FWLR (Pt. 614) 1; Lawson v. The State (1975) 4 SC 115 at 123 and Amachree v. Nigerian Army (2003) 3 NWLR (Pt. 802) 256 at 281. Examining the entire scenario as a whole, leading to the perpetuation of the crime, the inexorable conclusion is that appellant conspired with the 1st accused to induce the UBA falsely, and thus succeeded in obtaining by false pretence, having forged exhibit 11. I find in agreement with the lower court that the offence of conspiracy was established against the appellant, and I see no reason to disturb the reasoning and conclusion reached on the issue by the trial court. This issue is determined in favour of the respondent and against the appellant.

Issue 2

Whether having regards to the facts and circumstances of this case, it can be said that the learned trial judge erred in law in admitting exhibits 12, 13, 33 and 36. The submissions of the learned counsel for the appellant on this issue can be seen under issues 4 and 5 distilled by the appellant, and argued from pages 23­29 of the appellants brief. The grouse of the appellant therein relates to the ruling of the trial court on 27 February 2015 on the trial­within­trial. Counsel submits that the trial court relied on the documents wrongly admitted during the trial­within­trial in convicting the appellant. It is his submission that though appellant appealed the ruling on the trial­within­trial; the said decision has not been forwarded to him inspite of demands for its production. He contends that the issue seeks to examine the correctness or otherwise of the courts reliance on the extra judicial statement of the appellant admitted as exhibits 33­36 in convicting the appellant of the offence’s alleged against him, when the issue of the involuntariness of the statements was not resolved. Counsel drew the court’s attention to page 225 of the records, and the proceedings in the trial­within­trial at pages 226­260, submitting that the trial court in its ruling failed to determine the voluntariness of exhibits 33­36, but proceeded to admit the statements in evidence; on the ground that the contents of exhibits 33­36 were not confessional or incriminating, while surprisingly admitting the statements, without pronouncing on its voluntariness. He submits further that the learned trial judge in his judgment, treated the said exhibits 33­36 as though they are confessional and incriminating, contrary to its earlier position.

Further referring to page 361 of the record, counsel submits that the lower court wrongly admitted exhibits 33­36 by not resolving the voluntariness of the said statements, and the court was wrong treating the statements as confessional. He contends that the finding of the court that exhibits 33­36, were not confessional, binds the court and forbids the court from using Exhibits 33­36 against the appellant. He urged the court based on the arguments advanced, to expunge the exhibits from the record and to set aside the judgment convicting the appellant. On exhibits 12 and 13, which counsel alleged were wrongly admitted, counsel is of the view that exhibits 12 and 13 being the account opening package of Bamestic Multi Venture with the UBA Plc, and exhibit 13, the computer generated account particulars of the Bamestic Multi Ventures, admitted through the PW4, were admitted in gross violation of sections 89(h) and 90(e) of the Evidence Act, 2011. He contends that the condition stipulated by section 90 (e) i, ii, iii, iv, of the Evidence Act were not complied with. This counsel pointed out is as if exhibits 12 and 13 were wrongly admitted in the eye of the law, and the trial court having relied heavily on exhibit 12 in its judgment, this court is urged to expunge the said exhibits as inadmissible evidence. In answer to the submissions of the learned counsel for the appellant, Mr. Rotimi Iseoluwa for the respondent and specifically on the admission of exhibits 12 and 13 argued that exhibits 12 and 13 tendered by PW4 were not admitted in error, contending that the admission in evidence of exhibit 14, the certificate of identification in compliance with section 84(4) of the Evidence Act was not contested. He referred to the ruling of the lower court at page 182 on the issue, stating that the ruling of the learned trial judge was correct in law. On the argument that failure of the respondent to comply with sections 89 and 90 of the Evidence Act rendered inadmissible exhibits 12 and 13, counsel submits that in laying the foundation for the admissibility of exhibits 12 and 13, the PW4 substantially complied with the provisions of Sections 89 and 90 of the Evidence Act. On the contention that the trial judge prevented him from raising objection to the admissibility of exhibits 12 and 13, particularly during the final addresses, counsel posits that the party having raised the issue before, and was ruled upon, the trial court had become functus officio, and the same issue can only be taken on appeal. He referred to page 301 of the records; stating that allowing counsel to raise the issue again would have over­reached the respondents right to fair hearing.

Further submitting on the admissibility of exhibits 33­36, counsel states that by section 28 of the Evidence Act, a trial within­trial is only desirable where the statement was confessional. On the refusal of the court to avail the appellant, the records of the proceedings in the trial­within­trial, counsel referred to the two communications relied upon by the appellants counsel, stating that no formal report was made to either the trial judge, or the state Chief Judge. He further referred to page 368 of the records, where the trial judge alluded to the said exhibits, contending that the lower court never considered exhibits 33­36 as confessional.

I have also given the submissions on the issue due consideration. The appellant’s complaint herein relates to the admission in evidence of exhibits 33­36, being the statement of the appellant in evidence, after the conduct of a trial­within­trial.

First to be resolved is, whether exhibits 12 and 13 admitted in evidence by the lower court, was received in error. The learned trial judge at page 182 of the records with respect to the objection by counsel for the 1st, 2nd, and 3rd accused persons, ruled:

“with regards to the objection to the admissibility of the statement of account, I hold that the evidence of the witness that be produced and certified the statement from the bank computer, taken along with the certificate signed by the witness is sufficient compliance with the provision of section 84 of the Evidence Act.”

I fail to see the area of the appellant’s discontentment or dissatisfaction. By the provision of section 286 of the Evidence Act, 2011, a document includes any devise by means of which information is recorded, stored or retrievable, including computer output. Section 84(i­iv) prescribes the means and method by which computer generated documents are to be produced and submitted in evidence, and the weight to be ascribed to such evidence is as stipulated by section 34(i)(b) of the Evidence Act 2011. See also sections 51 and 52 of the Evidence Act and the cases of Kubor v. Dickson (2013) All FWLR (Pt. 676) 392, (2013) 4 NWLR (Pt. 1345) 534 and Omisore v. Aregbesola (2015) All FWLR (Pt. 813) 1673, (2015) 15 NWLR (Pt. 1482) 205. It is my humble but firm view that the trial court was on a sound footing going by the combined provisions of sections 51, 52 and section 84 (1­4) of the Evidence Act, to have admitted exhibits 12 and 13 in evidence. The issue of its admissibility having been resolved by the ruling of the trial court, an objection to the admissibility of same as counsel had wanted to do, cannot legally be granted, as the court on the issue was functus officio; the decision can only be questioned on appeal.

There is the other leg of the argument by the appellant’s counsel, relating to exhibits 33 ­ 36 being the alleged statements of the appellant.

In the instant case, it is evidently clear that the trial court on being accosted with the complaint that the statements exhibits 33 ­ 36 were not voluntarily made, ordered for a trial­within­trial, which was conducted from pages 226 ­ 253. Addresses were evidently taken, and ruling adjourned to the 27 February 2014. On the said 27 February 2014, the trial court as stated did not address the issue as to whether the statements were voluntarily made or not, but opined that the statements were indeed not confessional, and same admitted in evidence. The grouse of the appellant is that the trial judge in convicting the appellant utilized the statements as though they were confessional and incriminating.

Sections 28 to 32 of the Evidence Act deals generally with confessions. I find sections 29(2) and (3) of the Evidence Act relevant to the case at hand, and for clarity, the subsections read as follows:­

29 (2) if, in any proceeding where the prosecution proposes to give in evidence a confession made by a defendant, if is represented to the court that the confession was or may have been obtained:­

(a) By oppression of the person who made it; or

(b) In consequence of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in such consequence, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (not withstanding that it may be true) was not obtained in a manner contrary to the provisions of this section 29(3) in any proceedings in which the prosecution proposes to give in evidence a confession made by a defendant, the court may of its own motion, require the prosecution, as a condition of allowing it to so do, to prove that the confession was not obtained as mentioned in either subsection 2 (a) or (b) of this section.

It seems to me that where as in this case it becomes apparent that the statement being agitated upon is not confessional, the need for a trial­within­trial becomes unnecessary. To me, the complaint of the learned counsel for the 2nd respondent would have been a challenge as to whether he sees the statement as being confessional in nature, thus necessitating the need of resolving the question if same was obtained in breach of section 28 of the Evidence Act. Having come to the conclusion that the statements being agitated upon are not confessional, the trial court was right not concerning itself whether it was voluntarily made or not. In the circumstance the piece or pieces of evidence adduced are on the same footing with any evidence laid, and the trial court right to rely on same in arriving at its findings. I equally see no merit on the submissions made, and accordingly resolve this issue against the appellant.

Issue three

Whether having regards to the facts and circumstances of this case, it can be said that the case of the respondent was meddled with material contradictions to render the conviction of the appellant erroneous.

The appellant with regards to this issue complains about the evaluation of the evidence proffered before the trial court. The learned counsel for the appellant is of the view that the trial court failed to properly assess and evaluate the testimonies of the prosecution witnesses and thereby wrongly accredited and believed isolated portions of the testimony of the witnesses. Counsel states that while the court relied on the weak, inconsistence and unreliable testimonies of the prosecution witnesses, the evidence of DW2 was not considered. Counsel copiously alluded to the testimonies of the witness in particular the evidence of the 1st accused person, which if properly considered would have sustained the defence. He urged the court to consider and to utilize the pieces of evidence rendered especially the admission of the PW3, PW5, PW6 and DW2 in setting aside the judgment of the trial court convicting the appellant.

In his submission on the issue, the learned counsel for the respondent is of the view that the respondent’s case before the trial court was clear and unambiguous. He states that the appellant and the 1st accused person were alleged to have conspired to obtain, and did obtain by false pretence the sum of N59,006,250 (fifty­nine million, six thousand, two hundred and fifty naira). From the University of Ilorin; and that appellant and the 1st accused person conspired to forge exhibit 11 used in the scheme of the fraud leading to this case. Adopting his previous submissions to this issue, counsel states that the case against the appellant was proved beyond doubt.

On material contradiction alleged on exhibits 20 and 21 and the evidence of PW7, counsel submits that there are no contradictions, on the transaction leading to the present case has no connection with the said exhibits 20 and 21. He referred to page 196 of the records where PW3 under cross­examination stated that they acted on exhibit 11 in transferring the funds. He further submitted that the evidence of PW6 was supported by the pieces of evidence adduced by the PW3, PW7, PW8, PW9, PW10 and PW11. It is his conclusion that there are no material contradictions upon which this court would set aside the decision of the trial court.

The position of the law as to who has the duty of evaluating evidence has long been settled to the affect that the trial court is duly bound to evaluate and to ascribe probative value to admitted evidence, be it oral or documentary. In doing so, the trial court breaks contested facts with some rationality, gives them probative value that they may deserve, make useful and definite findings and drew proper and acceptable inferences from relevant facts of evidence. The reaching of conclusions by drawing necessary inferences is a product of a legal mind as against indulging in speculation. See Igbeke v. Emordi (2010) 11 NWLR (Pt. 1204) 1 at 7; Mbonu v. Nwoti (1991) 7 NWLR (Pt. 206) 737 at 745; Wilson v. Oshin (1988) 4 NWLR (Pt. 88) 324, (1988) 2 SCNQR 1215 at 1240 and Mogaji v. Odofin (1978) 4 SC 91 at 93.

In dealing with a complaint of improper evaluation as in the instant case, this court is obligated to consider the following:­

(a) What was the evidence before the trial court

(b) Whether it accepted or rejected any evidence upon the correct perception.

(c) Whether it correctly approached the assessment of the evidence placed before it and placed the correct probative value.

See Aregbesola v. Omisore (2011) All FWLR (Pt. 570) 1292, (2011) 9 NWLR (Pt. 1253) 458 at 480; Osolu v. Osolu (2003) FWLR (Pt. 172) 1777, (2003) 11 NWLR (Pt. 832) 608 and Daramola v. Attorney-General, Ondo State (2000) FWLR (Pt. 6) 997, (2000) 7 NWLR (Pt. 665) 440.

In an effort at proving its case, the prosecution called 11 witnesses and tendered a host of documents while the appellant called one witness DW2. In the judgment of the trial court, which can be seen from pages 305­370 of the records, the trial judge, in resolving whether the prosecution proved the case against the accused persons beyond reasonable doubt, particularly from page 356 of the records, evaluated the evidence adduced in line with the submissions of learned counsel to the conclusion that the prosecution did in fact establish the counts of the charge upon which appellant was convicted on.

At page 360 of the records, the trial court was convinced that UBA acted through PW3 and PW6 to transfer the sum of N59,006,250.00 (fifty­nine million, six thousand, two hundred and fifty naira only) to Bamestic Multi Ventures believing that exhibit 11 emanated from the University of Ilorin. Mr. Ismail forcefully argued that the money was transferred based on exhibit 10, as exposed by the PW3 on page 179 and PW6 at pages 193­ 194 of the records under cross­examination. I have carefully and painstakingly studied the evidence laid by the PW3 and PW6 before the lower court, and my ardent view is that the position taken by Mr. Ismail to the effect that the transfer of the funds was based on exhibit 10 has no evidential support. Rather, it is the evidence which the lower court believed that exhibit 10 could not be acted upon as presented by the 1st accused person, the said exhibit 10 having failed to state the course account or beneficiary account, and the fact that the three signatories, who must mandatorily sign in order to move out funds from the University account did not sign. It is consequent upon that, that 1st accused now produced exhibit 11 which the PW6 dealt with bearing all the three signatures and confirmed by the 1st accused person. It can be clearly seen here that the appellant’s complaint rests on the evaluation of the issue, whether it was exhibit 10 or 11 that was used in the transfer of the funds. The fundamental principle of the law is that the court of trial, having had the singular advantage of seeing, hearing and watching the demeanor of the witnesses, is in the best position to evaluate, and to ascribe probative value to admissible evidence be it oral or documentary, and the appellate court will not ordinarily interfere with the evaluation or appraisal carried out by the lower court, except where it is shown that it is perverse. See Igbeke v. Emordi (2010) 11 NWLR (Pt. 1204) 1 at 7; Mbonu v. Nwoti (1991) 7 NWLR (Pt. 206) 737 at 745. Having also studied the evidence placed before the lower court, I am satisfied that the finding by the lower court is supported by credible and believable evidence, for which the trial courts conclusion on the issue cannot be faulted, and I so hold. Appellant further posits that the evidence of the PW7 at pages 201­202 of the records, contradicted the claims by PW3 and PW6 as to whether it was Exhibit 10 or 11 that were acted upon. Rhodes­Vivour JSC, in Bassey v. The State (2012) All FWLR (Pt. 633) 1816, (2012) 12 NWLR (Pt. 1314) 209 at 232, and 239 defined contradiction as indicating when there is lack of agreement between facts related by two persons. It is that evidence that contradict evidence when it states the opposite of what the other evidence has stated, and not when there is just a minor discrepancy. See also Gabriel v. The State (1989) 5 NWLR (Pt. 122) 457. Having carefully studied the entirety of the submissions of learned counsel on the issue, as to whether it was exhibit 10 or 11 that was used in the transaction which generated the instant case, I am resolute in my view that there were no material contradictions in the evidence proffered by the prosecution on the issue, and the finding of the trial court supportable from the evidence before it. I see no reason whatsoever to interfere with the trial courts finding on the issue.

I strongly agree with the learned counsel for the respondent that, the account of the PW6 that he acted on exhibit 11 and not exhibit 10 has support from the testimonies of the PW3, PW7, PW8, PW9, PW10 and PW11, and that it is upon the basis of exhibit 11 that the sums of N59,006,250 (fifty­nine million, six thousand, two hundred and fifty naira only) was transferred from the University of Ilorin to Bamestic Multi Ventures belonging to the appellant. This issue is resolve against the appellant.

From all the deductions made therefore, and all the three issues canvassed having been resolved against the appellant, the inevitable result is that this appeal is adjudged as lacking in merit, and it is hereby dismissed. The decision of the lower court in appeal No. KWS/40C/2012, between Segun Adelodun v Federal Republic of Nigeria, delivered on 18 December 2015 convicting the appellant of the offences of conspiracy to obtain money under false pretence, and conspiracy to forge a document is hereby affirmed. I also endorse the sentences imposed as well as the order for compensation made by the lower court.

Appeal dismissed.

**OWOADE JCA**:

I have had the privilege of reading in draft, the lead judgment just delivered by my learned brother, Hamma Akawu Barka JCA.

My learned brother has carefully and painstakingly resolved the three issues nominated for this appeal. I agree with the reasoning and conclusion reached. And, I also dismiss the appeal. It is important to add in relation to issue two that the question of trial­within­trial on the voluntariness of a confessional statement arises only when a statement is tendered only as a confessional statement.

In many criminal cases, there could be extra­judicial admissions or snippets of admissions which do not necessarily amount to or constitute confessional statements. In such instances as happened in this appeal, the test of whether such a non-confessional statement is voluntary via a trial­within­trial is unnecessary.

Similarly, it is the law that only material contradictions and not just minor discrepancies could tilt the scale of conviction. It is only material contradictions that can lead to reversal of judgment on appeal. Akindipe v. State (2012) All FWLR (Pt. 638) 805, (2012) 16 NWLR (Pt. 1325) 94; Adekoya v. State (2012) 9 NWLR (Pt. 1306) 539, (2013) All FWLR (Pt. 662) 1632; Musa v. State (2012) 3 NWLR (Pt. 1286) 59, (2013) All FWLR (Pt. 692) 1688.

For these and the fuller reasons given in the lead judgment,

I also dismiss the appeal.

**UWA JCA**:

I read in advance, the judgment of my learned brother, Hamma Akawu Barka JCA. I am at one with the resolution of all the issues against the appellant and the decision arrived at dismissing the appeal for lacking in merit. I also dismiss the appeal and affirm the judgment of the trial court.

Appeal dismissed.