

Circumstantial evidence based on Speculation -Whether Sufficient to Ground a Conviction

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 13th Day of June, 2025

Before Their Lordships
Mohammed Lawal
Adamu Jauro
Jummai Hannatu Sankey
Moore Aseimo Abraham Adumein
Obande Festus Ogbuinya
Justices, Supreme Court

SC/CR/222/2021

Between

OBI ANTHONY

APPELLANT

AND

1. **INSPECTOR GENERAL OF POLICE** ...
2. **HAO AIJUN** **RESPONDENTS**
3. **LIU YANGXI**

(Lead judgement delivered by Honourable Adamu Jauro, JSC)

Facts

This appeal arose from a judgement of the Court of Appeal, wherein the acquittal of the Appellant and the 2nd and 3rd Respondents was set aside, and the matter remitted for retrial before a different Judge.

The 2nd and 3rd Respondents and the nominal complainant (PW 1) are Chinese nationals, directors and shareholders of BN Ceramics Industry Nigeria Limited, while the Appellant was the Company Secretary. Following a special resolution reached at an extra-ordinary general meeting of the company, its share capital was increased from ten

million (10,000,000) to twenty million (20,000,000). Further, by a letter titled *Relinquishment of Shares*, allegedly signed by PW 1, he purportedly relinquished 3,760,000 ordinary shares to the company for proper re-allotment. Another special resolution was reached at the company's extra-ordinary general meeting, where the shareholding of the company was re-allotted, with PW 1 left with only 1,880,000 shares. PW 1, who denied being informed about the meetings and signing the letter of relinquishment of shares, instructed his solicitor to write a petition to the Police.

The police carried out its investigation, leading to the filing of a 13-count charge against the Appellant and the 2nd and 3rd Respondents at the Federal High Court, Abuja. The charge was amended to 15-counts bordering on offences of conspiracy, forgery, uttering false documents, and money laundering. The accused persons pleaded not guilty. At trial, the prosecution called five witnesses, including a forensic document examiner and hand writing expert, and tendered several exhibits. The case of the 1st Respondent was that the Appellant, 2nd and 3rd Respondents conspired to make use of forged documents to cheat PW 1 out of the company, gained access to the company's accounts and made several questionable transfers to offshore accounts. Under cross-examination, PW 1 stated that he was not sure who forged his signature but suggested that it might have been one of the Defendants, while PW5 testified that the disputed signature did not belong to PW1 or any of the Defendants. Upon the close of the prosecution's case, the Defendants entered a no-case submission. The trial court dismissed counts 6–15 on this basis, but retained counts 1–5, which related to conspiracy, forgery, and uttering false documents. In their defence, the Defendants denied any involvement in the alleged forgery. The Appellant explained that as the Company Secretary, he merely processed and filed documents with the Corporate Affairs Commission (CAC) upon instruction of the 3rd Respondent who was the Managing Director. He testified that he used a contact named Ugolo Johnson to obtain and submit the forms at CAC, and sent the forms to a person called Roy (an administrative office of the company) to take to the directors for their signature. The Defendants also maintained that PW 1 had been notified of the meetings *via* telephone and e-mail but chose not to attend the meetings.

In its judgement, the trial court held that although the relinquishment letter was forged, the prosecution failed to link the forgery to any of the Defendants. The court held further that no proof of conspiracy or uttering of false documents and noted that the failure to call key witnesses, such as Roy and Ugolo Johnson, the CAC filing agent, was fatal to the prosecution's case. The Defendants were accordingly acquitted and discharged.

Dissatisfied, the prosecution appealed to the Court of Appeal. The appellate court held that the documents were indeed forged and reasoned that those who benefited from the forged documents could be inferred to be the masterminds. It concluded that the trial court inadequately evaluated the evidence, allowed the appeal, set aside the acquittal, and remitted the matter for retrial before a different Judge. Displeased with the judgement of the Court of Appeal, the Appellant appealed to the Supreme Court.

Issue for Determination

“Whether the evidence on record supports the judgement reached by the lower court with regard to the Appellant?”

Argument

The Appellant argued that the prosecution failed to prove the offence of forgery against the Appellant beyond reasonable doubt, as required under Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 135 of the Evidence Act, 2011 (as amended). Relying on the case of **IGBIKIS v STATE (2017) 11 NWLR (PT. 1575) 126**, counsel contended that there was no evidence that the company resolutions were forged, particularly as the meetings in question were undisputed. He maintained that no evidence linked him to the alleged forgery of the Letter of Relinquishment of Shares, emphasizing that he merely acted on board instructions and was absent from the meeting. He submitted further that benefiting from a forged document is not an element of forgery, and, in any event, the Appellant did not derive benefit since the restructuring only reflected additional investment by the 3rd Respondent. He distinguished the present case from the authority of **ODIAWA v F.R.N (2008) ALL FWLR (PT. 439) 436** relied on by the Court of Appeal, noting that the decision involved strong circumstantial evidence directly linking the accused to the crime, unlike the present case. Importantly, he submitted that the prosecution failed to call four vital witnesses who are Roy, Ugolo Johnson, and two other directors present at the meeting, thereby creating doubt that ought to be resolved in favour of the Appellant, relying on **SALE v STATE (2016) 3 NWLR (PT. 1499) 392**; as well as Section 167(d) of the Evidence Act. He argued that the failure to call these witnesses amounted to withholding evidence, which should be presumed unfavourable to the prosecution. Finally, he contended that the trial court properly evaluated the evidence and rightly acquitted the Defendants, and that no circumstances warranted a retrial, relying on **OKOMALU v AKINBODE (2006) 9 NWLR (PT. 985) 338**.

The 1st Respondent, on the other hand, argued that it was undisputed that the documents in question were forged. Relying on **ODIAWA v F.R.N. (supra)**, counsel submitted that the offence is complete once forged documents are found in the actual or constructive possession of a person, even if that person did not author them. He contended that a

proper evaluation of the evidence would show that the masterminds were those who benefited from the forged documents. He maintained that the lower court was right to order a retrial in the interest of justice and urged the court to affirm its decision.

The Supreme Court noted that the brief of arguments filed by the 2nd Respondent aligns with the position of the Appellant. The court thereby, struck out the brief in line with its decision in **OBASANJO & ANOR v WURO BOGGA (NIG) LTD & ORS (2022) LPELR-58486 (SC)**

Court's Judgement and Rationale

In deciding the appeal, the Supreme Court re-iterated that the burden of proving the guilt of an accused person rests squarely and exclusively on the prosecution, flowing from the constitutional presumption of innocence under Section 36(5) of the 1999 Constitution (as amended) and Section 135 of the Evidence Act, 2011 (as amended). The prosecution must prove every essential element of the offence charged beyond reasonable doubt, and failure to discharge this burden is fatal to its case - **HASSAN v STATE (2024) LPELR-80028 (SC)**. Proof beyond reasonable doubt does not mean proof beyond all doubt or beyond any shadow of doubt. In proving its case beyond reasonable doubt, the prosecution may rely on a confessional statement, eyewitness evidence, or circumstantial evidence, as held in **SAMAILA v STATE (2023) LPELR-61132 (SC)**.

In this case, the prosecution relied on circumstantial evidence and re-emphasised the long-standing principle that circumstantial evidence is not inferior to direct evidence and may, in some cases, be the best available evidence. Relying on judicial authorities such as **IJIOFFOR v STATE (2001) LPELR-1465 (SC)**; **NASIRU v STATE (2021) LPELR-55637 (SC)**, the Court explained that *circumstantial evidence is admissible in criminal cases and may ground a conviction where it forms a complete and unbroken chain leading irresistibly to the guilt of the accused*. However, *for circumstantial evidence to ground a conviction, it must be cogent, complete, compelling, unequivocal, and incompatible with the innocence of the accused person. It must overwhelmingly lead to only one irresistible conclusion: that the accused, and no one else, committed the offence* - **EFFIOM V. STATE (2024) LPELR-61790 (SC)**; **ONWUTA v STATE OF LAGOS (2022) LPELR-57962 (SC)**. Applying these principles to the instant case, the Supreme Court observed that

although forensic evidence established that the Letter of Relinquishment of Shares was forged, there was no evidence linking the Appellant to the forgery. Witnesses, including the nominal complainant, the forensic document examiner and the handwriting expert, testified that the forged document was not signed by the Appellant or by the 2nd and 3rd Respondents. Their Lordships noted further that the Appellant's evidence, corroborated by the 2nd and 3rd Respondents and unchallenged by the prosecution, was not rebutted. On the settled principle that uncontradicted and credible evidence must be accepted, the Court accepted the Appellant's evidence, relying on **MILITARY GOV. OF LAGOS STATE v ADEYIGA (2012) LPELR-7836 (SC)**.

Furthermore, the Supreme Court held that the prosecution's case against the Appellant was based on speculation and suspicion rather than legitimate inference. The court reiterated that suspicion, no matter how strong, cannot ground a conviction. In this regard, the court expounded on the concepts of "inference" and "speculation" in the context of circumstantial evidence thus - *In cases where the prosecution relies on circumstantial evidence to establish its case against an accused person, it will inevitably rely on inferences drawn from certain established facts. To succeed, the prosecution must show that these inferences, taken together, prove the guilt of the accused with mathematical accuracy. An inference is, however, completely different from speculation, conjecture, or guesswork, and one should not be confused with the other. An inference refers to a conclusion drawn from established facts and empirical evidence, arrived at through logical reasoning. Speculation, on the other hand, refers to an opinion or conclusion formed on the basis of incomplete information and supported by little or no evidence. It is a form of imaginative guesswork and has no place in deciding cases or resolving disputes. While the former is permissible, the latter is forbidden territory for any court of law. Any decision based on speculation or conjecture cannot be sustained - IVIENAGBOR v BAZUAYE & ANOR (1999) LPELR-1562 (SC); ISONGUYO v STATE (2022) LPELR-60912 (SC)*.

On the offence of uttering under Section 468 of the Criminal Code, the Court found no evidence that the Appellant knowingly or fraudulently uttered a false document. The required *mens rea* - knowledge of falsity and fraudulent intent - was not established. On the offence of conspiracy, the Court reiterated that

conspiracy is complete upon proof of an agreement between two or more persons to commit an unlawful act or to do a lawful act by unlawful means. Although conspiracy is often proved by inference from surrounding circumstances, there must be evidence of a meeting of minds. The court held that no such evidence existed against the Appellant.

On the order of retrial of the Appellant made by the Court of Appeal, the Supreme Court, relying on its decision in **ESEU v PEOPLE OF LAGOS STATE (2024) LPELR-62005 (SC)** held that *ordering a retrial where the prosecution's evidence is manifestly insufficient would amount to giving it a second opportunity to repair its defective case.*

Finally, the Supreme Court found that the judgement of the Court of Appeal was perverse because it was against the weight of evidence - **ANI v STATE (2024) LPELR-62746 (SC)**. Flowing from the above, the Supreme Court resolved the issue in favour of the Appellant and allowed the appeal by setting aside the order for re-trial as it relates to the Appellant. The judgement of the trial court acquitting and discharging the Appellant was accordingly restored.

Appeal allowed.

Representation

Eloka J. Okoye, Esq. for the Appellant.

Clement Chinaka, Esq. with Emma Ibediro, Esq. for the 1st Respondent.

A.J. Osayande, Esq. for the 2nd Respondent.

Mr. A.T. Kehinde, SAN with Ifeoma C. Nnamdi-Okonkwo, Esq., and Ifunanya C. Anigbogu, Esq. for the 3rd Respondent.

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