

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA

ON FRIDAY THE 6TH DAY OF MARCH, 2026
BEFORE THEIR LORDSHIPS

JOHN INYANG OKORO

JUSTICE, SUPREME COURT

ADAMU JAURO

JUSTICE, SUPREME COURT

JUMMAI HANNATU SANKEY

JUSTICE, SUPREME COURT

OBANDE FESTUS OGBUINYA

JUSTICE, SUPREME COURT

STEPHEN JONAH ADAH

JUSTICE, SUPREME COURT

SC/CR/286/2025

BETWEEN:

MAHMOUD ALIYU - - - - - APPELLANT

v.

FEDERAL REPUBLIC OF NIGERIA - - RESPONDENT

JUDGEMENT

(DELIVERED BY OBANDE FESTUS OGBUINYA, JSC)

This appeal probes into the rightness of the decision of the Court of Appeal, Abuja Division (hereinafter labelled as “the lower court”), *coram judice*: Peter C. Obiorah, Eberechi S. Nyesom-Wike and Oyejoju O. Oyewumi, JJCA, in Appeal No. CA/ABJ/CR/1097/2020, delivered on the 14th February, 2025. In its judgment, the lower court affirmed the decision of the Federal High Court, Abuja Division (the

trial court), in Charge No. FHC/ABJ/CS/41/2019, delivered on the 8th October, 2020, wherein Ijeoma L. Ojukwu, J. convicted and sentenced the appellant to 12 months imprisonment or a fine of ₦1M for the offence preferred against him.

The synopsis of the material facts of the case, which transformed into this appeal, are disobedient to verbosity and complexity. Sometime in 2002, the appellant was a staff of the Federal Housing Authority (FHA). Whilst in the employ of the FHA, acting as an agent of one Major Sanusi N. Muazu, who he claimed was an allottee, he sold a 3 – bedroom apartment situate at and known as No. 3 (IH) 2 Road, Lugbe Housing Estate, Abuja to one Mrs. Hafsat Hamza Al-Mustapha. The buyer, Mrs. Hafsat Hamza Al-Mustapha, paid to the appellant the sum of \$10,000.00 (Ten Thousand U.S. Dollars) and ₦600,000, both in cash, in consideration of the purchase of the property. The payment was made to the appellant by the buyer's agent, one Ezekiel Best. The buyer was let into possession and occupation of the property. Subsequently, about three years later, the buyer was ejected from the property by the FHA on the ground that the alleged vendor/allottee, Major Sanusi N. Muazu, was not the owner thereof. Sequel to that, the buy filed a petition to the Independent Corrupt Practices and other Related Offences Commission (ICPC) against the appellant over the sale of the property. After due investigation, the appellant was arraigned before

the trial court on a one – count charge for the offence of receiving cash for sale of property contrary to the provision of section 22 (1) (a) and punishable under the provision of section 30 (2) (1) (a) of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act, Cap F34, Laws of the Federation of Nigeria (LFN), 2004. The appellant pleaded not guilty to the charge.

Following that plea of not guilty, the trial court conducted a full dress determination of the case. In proof of the charge, the respondent fielded two witnesses, PW1 and PW2. In defence of the charge, the appellant testified in person and called one witness as DW1 and DW2 respectively. Four exhibits were tendered by the parties. At the conclusion of the respondent's case, the appellant made a no-case submission which was dismissed by the trial court. Thereafter, the appellant entered his defence. At the closure of evidence, the parties, through their respective counsel, addressed the trial court in a manner allowed by law. In a considered judgment, delivered on the 8th October, 2020, documented between pages 177 – 202, the lower court found the appellant guilty of the offence, convicted and sentenced him to 12 months imprisonment or ₦1M fine.

The appellant was dissatisfied with the judgment. Hence, on the 10th December, 2020, the appellant launched a 2 – ground notice of appeal, lying between pages 203 – 205 of the record, before the lower court. The lower court heard the appeal. In a considered unanimous

judgment, delivered on the 14th February, 2025, reflected at pages 267 – 298, the lower court dismissed the appeal.

The appellant was further peeved by the judgment. Consequently, on the 11th March, 2025, he lodged a 2 – ground notice of appeal before this court, copied at pages 299 – 302 of the record, wherein he prayed this court for:

An order allowing this Appeal and setting aside the Judgment of the Lower Court, Abuja Division, delivered by the Honourable Justice Peter Chudi Obiorah, Honourable Justice Eberechi S. Nyesom-Wike and Honourable Justice Oyejoju Oyebiola Oyewumi in APPEAL NO. CA/ABJ/CR/1097/2020 on the 14th day of February, 2025 and its place discharging and acquitting the Appellant.

Thereafter, the parties, through their counsel, filed and exchange their respective briefs of argument in line with the procedure regulating the hearing of criminal appeals in this court. The appeal was entertained on the 10th December, 2025.

During its hearing, learned counsel for the appellant, S. I. Imokhe, Esq., adopted the appellant's brief of argument, filed on the 2nd May, 2025, as representing his arguments for the appeal. He

urged the court to allow it. Similarly, learned counsel for the respondent, Dr. O. E. Akponimisingha, adopt the respondent's brief, filed on the 14th May, 2025, as constituting his submissions against the appeal. He urged the court to dismiss it.

In the appellant's brief of argument, learned counsel distilled a single issue for determination, to wit:

Whether the Court below was right to have affirmed the conviction of the Appellant by the trial Court in the face of the glaring failure by the Prosecution to prove all the essential ingredients of the offence charged?

In the respondent's brief of argument, learned counsel crafted one issue for determination, namely:

Whether from the entirety of the evidence presented at the trial, the Respondent established the offence of accepting cash payment for the acquisition of landed property against the Appellant in line with the well-established principle of prove beyond reasonable doubt.

A comparative scrutiny of the two issues shows that they are, save for semantics, identical in substance. In fact, the respondent's issue can be comfortably subsumed under the appellant's. Given this

sameness, I will treat the appeal on the issue nominated by the appellant: the rightful owner of the appeal.

Arguments on the issue:

Appellant's submissions:

Learned appellant's counsel submitted that the lower court failed to properly evaluate evidence or defence of the appellant. He narrated the attributes and ingredients of the burden and standard of proof in criminal trials. He relied on section 138(1) of the Evidence Act, 2011; **Okoro v. State** (2014) 8 NWLR (Pt. 1410) 502; **Afoladu v. State** (2010) 16 NWLR (Pt. 1220) 584; **Akinyemi v. State** (2001) 2 ACLR 32; **Obiako v. State** (2002) 10 SCM 117; **Ijifa v. State** (2019) 16 NWLR (Pt. 1697) 46; **Agbo v. State** (2006) 6 NWLR (Pt. 977) 545. He enumerated the ingredients of the offence levelled against the appellant. He stated that the respondent failed woefully to prove all the essential ingredients of the offence. He noted that an accused person is presumed innocent until he is proved guilty. He cited **Salabi v. State** (1993) 7 NWLR (Pt. 307) 511; **Ikaria v. State** (2014) 1 NWLR (Pt. 1389) 639. He reasoned that the lower court failed to evaluate exhibit 4 properly, which was the base of the appellant's case, and thereby came to a wrong decision that the respondent proved the fourth ingredient of the offence. He asserted that exhibit 4 showed, in its testatum clause, that it was Major Sanusi N. Muazu, who he acted as his agent, that acknowledged receipt of the consideration. He

added that evidence showed that Sanusi N. Muazu, whose name appeared in the allocation paper as exhibit 4, was the owner of the property. He insisted that the appellant was an agent of a disclosed principal and he incurred no liability. He referred to ***Amadiume v. Ibok*** (2005) 6 CLRN 24; ***Faith Enterprises Ltd. v. Basi Nig. Ltd.*** (2001) 8 NWLR (Pt. 714) 242; ***Essang v. Aureol Plash Ltd.*** (2002) 17 NWLR (Pt. 795) 155.

Learned counsel contended that an appellate court will interfere with a lower court's findings that are perverse or where it evaluates evidence improperly. He relied on ***FHA v. Olayemi*** (2017) LPELR – 43376; ***Edjekpo v. Osia*** (2007) 8 NWLR (Pt. 1037) 635; ***Are v. Ipaye*** (1990) LPELR – 541; ***Woluchem v. Gudu*** (1981) 5 SC 291; ***Shalla v. State*** (2007) LPELR – 3034 (SC); ***Akpan v. Bob*** (2010) LPELR – 376 (SC); ***Narumal & Sons Ltd. v. Niger Benue Transport Cp. Ltd.*** (1989) 2 NWLR (Pt. 106) 730; ***Abasi v. Ekweator*** (1993) LPELR – 44; ***Atolagbe v. Shorun*** (1985) 1 NWLR (Pt. 2) 360. He maintained that exhibit 4, which the lower courts ignored, speaks for itself and it showed that Major Sanusi N. Muazu was liable for the offence, not the appellant. He cited ***Okoya. Santilli*** (1994) 4 NWLR (Pt. 338) 256; ***SSGMBH v. T. D. Ind. Ltd.*** (2021) (sic) 11 NWLR (Pt. 1206) 589.

Respondent's contentions:

Learned counsel for the respondent conceded that it was the duty of the respondent to prove the charge against the appellant beyond reasonable doubt. He relied on section 135 (1) and (2) of the Evidence Act, 2011; **Mba v. State** (2021) 1 NWLR (Pt. 1757) 353; **Abdullahi v. State** (2008) 3 NWLR (Pt. 1115) 203. He listed the three methods of proof of crime. He cited **Habibu v. State** (2024) 6 NWLR (Pt. 1935) 483. He submitted that exhibit 1 showed that the appellant received the sum of \$10,000 (Ten Thousand U.S. Dollars) for the sale of the property. He added that exhibit 1 does not show that he received it for Major Sanusi N. Muazu. He stated that the appellant admitted, in his evidence, receiving the cash and handed it over to a faceless Major Sanusi N. Muazu. He posited that Major Sanusi N. Muazu was a vital witness for the appellant, but he failed to call him. He cited **Maneke v. Maneke** (2020) 13 NWLR (Pt. 1741) 311. He persisted that the respondent's unchallenged evidence showed that the appellant received cash payment for the sale of non-existent property as Major Sanusi N. Muazu's name was not on the list of allottees with the FHA. He urged the court to act on the unchallenged evidence. He referred to **Victor v. State** (2009) LPELR – 8151 (CA).

Learned counsel argued that the agency relationship, which the appellant claimed, was a matter within his knowledge and he had the burden to prove it. He relied on section 140 of the Evidence Act, 2011; **Yakubu v. State** (2014) LPELR – 22401 (SC); **Daudu v. FRN** (2018)

10 NWLR (Pt. 1626) 169. He noted that exhibits 1 and 4 did not disclose any agency relationship. He opined, in the alternative, that crime committed when acting as an agent does not amount to a defence for criminal liability, because there is no transfer of criminal responsibility. He cited **ACB v. Okonkwo** (1997) 1 NWLR (Pt. 480) 195; **Yusuf v. FRN** (2016) LPELR – 41822 (CA). He described the appellant’s argument on the point (agency) as speculative and academic and should be discountenanced. He referred to **FRN v. Yahaya** (2019) 7 NWLR (Pt. 1670) 85; **State v. Aibangbee** (2008) 8 NWLR. (Pt. 1037) 517.

Resolution of the issue:

A clinical examination of the issue, on the footing of the diametrically opposed contentions of the feuding parties, discloses its marrow as one circumscribed within a narrow compass. It chastises the propriety *vel non* of the lower court’s confirmatory decision, which midwived this appeal, that endorsed in toto the trial court’s decision which found the appellant guilty, convicted and sentenced him for the offence of receiving cash for the sale of landed property. It specifically castigates the lower court’s affirmation of the trial court’s evaluation of the evidence which occasioned the conviction of the appellant for that offence. In other words, the plinth of the appellant’s agitation orbits around the universe of evaluation of evidence. Since the ultimate mission of the thorny issue is to emasculate the evaluation of

evidence by the lower court, it is important to comb out its significance and salient characteristics from the vineyard of the case law.

In the legal hemisphere, evaluation of evidence, an already overworked expression in adjudication, connotes the appraisal/assessment of evidence, both *viva voce* and documentary before a court, and ascription of probative value to them which results in findings of fact. This primary evidentiary duty falls squarely within the exclusive preserve of a trial court. It enjoys this evidential evaluation monopoly in that it has the singular advantage, which cannot be recaptured by an appellate court, to watch the witnesses, form an impression on their demeanour and value the credibility or otherwise of their evidence, see **Okpa v. State** (2017) 15 NWLR (Pt. 1587) 1; **Kekong v. State** (2017) 18 NWLR (Pt. 1596) 108; **Ezeani v. FRN** (2019) 12 NWLR (Pt. 1686) 221; **Igwe v. The People of Lagos State** (2021) 7 NWLR (Pt. 1776) 425. An appellate court is disrobed of the *vires* to interfere with a finding of a trial court anchored on demeanour and credibility of witnesses, see **Adegbite v. State** (2018) 5 NWLR (Pt. 1612) 183, **Adebanjo v. State** (2019) 12 NWLR (Pt. 1688) 121; **Tope v. State** (2019) 15 NWLR (Pt. 1695) 289. Where a trial court has performed this primary duty creditably, an appellate court does not form the habit of imposing and/or substituting its views for its own save in exceptional circumstances: where the findings are against the drift of evidence, perverse and smells of a miscarriage of justice, see **Idoko v. State** (2018) 6 NWLR (Pt. 1614) 117; **Ikpa v.**

State (2018) 4 NWLR (Pt. 1609) 175; **Enukora v. FRN** (2018) 6 NWLR (Pt. 1615) 355; **Sunday v. State** (2018) 1 NWLR (Pt. 1600) 251; **Ewugba v. State** (2018) 7 NWLR (Pt. 1618) 262; **Kamila v. State** (2018) 8 NWLR (Pt. 1621) 252; **Abbas v. The People of Lagos State** (2019) 16 NWLR (Pt. 1698) 213; **Bako v. IGP** (2025) NWLR (Pt. 2012). I will be guided by these evidential parameters as the judicial thermometer to meter the propriety or otherwise of the lower court's evaluation of evidence.

It is apropos, perforce, to place on record that the appellant was charged with accepting cash payment for the sale of landed property contrary to the provision of section 22 (1) (a) of the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act. It is germane to pluck it out, *verbatim ac litteratim*, whence it is domiciled quietly in the statute book. It states:

22. Payments for certain goods

(1) Notwithstanding anything to the contrary contained in any enactment or law and except as provided in subsection (2) of this section, no person shall, in Nigeria, make or accept cash payment, whether denominated in foreign currency or not, for the purchase of acquisition of the following:

(a) landed properties;

- (b) securities, including stocks, shares, debentures and all forms of negotiable instruments; and**
- (c) motor cars, including other vehicles of any description whatsoever.**

(2) Payments for the items specified in subsection (1) of this section shall, as from the commencement of this Act, be made by means of bank transfers or cheques drawn on banks in Nigeria only.

The elements of the offence preferred against the appellant can be harvested from the provision catalogued supra. Thus, the ingredients of the offence, which the respondent has the bounden duty to establish beyond reasonable doubt, are, *videlicet*: (a) The defendant must be a person, whether juristic or natural person. (b) There must be a landed property. (c) The landed property must have been sold for valuable consideration i.e money. (d) The defendant received/accepted cash payment for the sale of the landed property. The main plank of the appellant's foremost *coup de main* against the decision of the lower court is that the respondent did not prove the fourth ingredient of the offence displayed above. In essence, the *casus belli inter partes* in this appeal is the proof and non-proof of the fourth ingredient, *id est*, that the appellant received/accepted cash payment for the sale of the landed property.

In hunting for the judicial solution to the legal impasse on the nagging ingredient, I have, in due fidelity to the expectation of the law, consulted the record – the bedrock of the appeal. My port of visitation is at the premises of the lower court’s decision that is in the cross-fire of extermination and expunction from the legal district. It colonises pages 267 – 298 of the record. It warehouses the reasoning of the lower court between pages 289 – 293 thereof. It is imperative to cull the relevant portion of the reasoning, *ipsissima verba* of Peter C. Obiorah, JCA, thusly:

Spurred by the above clear authorities of the Apex Court, I have carefully and holistically reviewed the entire evidence led by the prosecution and defence in order to be in a position to make an assessment of the inferences and conclusion drawn by the lower court. From every angle I have looked at the evidence placed before the lower court, I cannot agree less with the inferences and conclusion reached by the lower court. I find the inferences and conclusion to be logical, sound and unassailable in law. There is no doubt that the Appellant had the burden to produce his principal, Major Sanusi Muazu, if it is true that he acted on his behalf as

agent or even lead evidence that such a person truly exists.

The big wonder is that Major Sanusi Muazu, who is the acclaimed principal of the Appellant is only known to the Appellant. He did not participate in any of the transaction of sale of the property. The only thing is that his name is on the allocation paper and the Deed of Assignment (Exhibit 4). In the circumstances of the case the Appellant was subjected to by reason of this trial, it becomes his burden to show that this Major Sanusi Muazu exists.

It is not enough for the Appellant to flaunt the Deed of Assignment and claim that the document shows Major Sanusi Muazu as the receiver of the money. Exhibit 4 is a secondary document because the primary document is Exhibit 1 personally made by the Appellant where he acknowledged the receipt of \$10,000.00.

Like I remarked earlier, it was the Appellant who personally received the money from PW1 and wrote the receipt. If he paid over the money to his acclaimed principal, he should

establish it. The appellant had a burden to prove that major Sanusi Muazu, beyond the appearance of his name on the allocation letter and deed of assignment, exists as a human being.

I am at a loss on why the Appellant, who proudly claimed that he acted as agent of a known principal, could not call the said principal to testify on his behalf or give information about the principal during investigation stage so that the investigators can go after the principal as the person who eventually received the \$10,000.00.

May I repeat that the fact of the existence of Major Sanusi Muazu and that he appointed the Appellant as his agent for the transaction is a matter specially within the knowledge of the Appellant and the evidential burden is on the Appellant to show that such a principal exists by virtue of Section 140 of the Evidence Act, 2011, which provides that when a fact is especially within the knowledge of any person, the burden of providing that fact is upon him.... The Appellant failed woefully to prove that he acted as agent of anyone in the transaction that

gave rise to the criminal charge against him. Apart from his unsubstantiated *viva voce* evidence, he failed to show that the money received for the sale of the property was passed to his alleged principal.

It admits of no argument, *a priori* the appellant's dazzling contention, that the nucleus of his grouch centres on the improper evaluation of evidence, especially the documentary evidence, exhibits 1 and 4, upon which the lower court staked its decision upon. In the first place, the law, in order to banish injustice from its underserved throne in the temple of justice, donates concurrent jurisdiction to this court and the lower courts on evaluation of documentary evidence, see ***Ezeuko v. State*** (2016) 6 NWLR (Pt. 15-09) 529; ***FRN V. Sanni*** (2014) 16 NWLR (Pt. 1433) 299; ***Atoyebi v. FRN*** (2018) 5 NWLR (Pt. 1612) 350; ***Bako v. IGP*** (2025) 16 NWLR (Pt. 2012) 591. I am, therefore, showered with the right to patronise and reap from the sanctuary of this co-extensive jurisdiction, bequeathed to this court by law, *vis-à-vis* the interpretation of the documentary evidence, exhibits 1 and 4, without any tincture of insult to the law.

Having been armed strong in law by the concurrent jurisdiction supra, I have, in an abiding loyalty to the desire of the law, given a microscopic examination to exhibits 1 and 4 with the finery of a toothcomb. Exultantly, they are disobedient to woolliness and

ambiguity. Exhibit 1, wrapped in page 19 of the record, is a receipt. A receipt is a document which formally acknowledges the giving and receipt of an item, see **Bello v. State** (2020) 3 NWLR (Pt. 1710) 72. It is discernible from the tenor of exhibit 1, which the appellant did not greet its admission with any atom of protestation, that the appellant signed it as an acknowledgement of receipt and acceptance of \$10,000 = (N2M) as a consideration for the sale of the property. In other words, the appellant, on the footing of exhibit 1, made an undiluted admission that he received in cash the consideration for the disposition of the property. Admission is one of the trinity ways to prove commission of a crime in our criminal jurisprudence. It is the most potent evidence in the pyramid of evidence. Indeed, it qualifies as a smoking gun in proof of crimes. Besides, in the furnace of cross-examination, located at page 146 of the record, the appellant conceded that “When I received the \$10,000 and N600,000. I signed an acknowledgment”. In the legal sphere, any piece of evidence elicited from the crucible of cross-examination is the evidential property of the cross-examiner. Thus, the unfiltered concession of receiving the consideration transfigured into the evidential armoury of the respondent which was available at its disposal to inculcate the appellant over the commission of the crime. It deserves to be stressed that the contentious fourth ingredient of the offence levelled against the appellant, based on the phraseology of the provision, is complete upon a concrete evidence of acceptance of cash payment, whether in

foreign or local currency, by an accused person for the purchase or acquisition of a landed property. I dare say, the exhibit 1 and the evidence garnered from the oven of cross-examination are pieces of telling evidence that established the fourth ingredient of the offence against the appellant. Indubitably, the exhibit 4, which the appellant placed high premium on, as a shield to insulate and exculpate himself from the crime, is of no legal assistance to him. The comprehension-friendly document is destitute of any ounce of evidence demonstrating that the Major Sanusi N. Muazu, the pseudo – *dramatis personae* in the *dolus malus* saga, received the consideration from the purchaser of the landed property. As it will unfold anon, even if he did, it would still not have absolved the appellant of the crime given the position of the law in the firmament of criminology. Thus, the lower court's confirmatory finding that the fourth ingredient of the offence was proved beyond reasonable doubt is not offensive to the tenets of our criminal jurisprudence as to magnet any morsel of reprobation from this court.

There is another grudge which the appellant launched against the lower court's decision that mothered this appeal. It is pegged on the lower court's failure to evaluate his defence of agency, weaved by him, to perforate and douse the efficacy of the charge against him. Indisputably, the law commands the courts, sitting on every rung of the judicial pyramid, to consider any defence, whether stupid, weak,

flimsy, friable or weak-need, mounted by an accused person, or revealed by record, in a criminal trial, see **Kalu v. State** (2017) 14 NWLR (Pt. 1586) 522; **State v. Isah** (2019) 1 NWLR (Pt. 1052) 139; **Bako v. IGP** (supra). It is an inviolable right of an accused person standing trial and he is clothed with the right to demand compliance therewith. A court must, therefore, respect this legal commandment in order not to defile the law.

It cannot be gainsaid that the appellant hinged his defence on agency, *id est*, that he acted as an agent of Major Sanusi N. Muazu in receiving the consideration for the alienation of the property in cash on his behalf. To begin with, an agency is a fiduciary relationship in which one party (the agent) may act on behalf of another party (the principal) and the lawful acts of the former bind the latter in relation to a third party, provided the act was done within the scope of authority of the agent and ratified by the principal. In other words, an agent is a duly authorised representative of another. In legal parlance, agency is constituted by these modes, *videlicet*,: express appointment, doctrine of *estoppel*, subsequent ratification by a principal, implication of law on basis of necessity and cohabitation, see **Pascutto v. Adecentro (Nig.) Ltd.** (1997) 12 SCNJ 1, (1997) 11 NWLR (Pt. 529) 467; **Okwejiminor v. Gbakeji** (supra); **Cotecna Int'l Ltd. v. Churchgate (Nig.) Ltd.** (2010) 18 NWLR (Pt. 1225) 346; **Osigwe v. PSPLS Mgt. Consortium Ltd.** (2009) 3 NWLR (Pt. 1128) 378.

The settled position of the law, which dates from antiquity, is that the prosecution is heaped with the bounden and herculean duty to prove any allegation of crime beyond reasonable doubt against an accused person in a criminal trial. This traces its paternity to the provision of section 36 (5) of the Constitution, as amended, the *supremo* of all laws, which decrees that: “Every person who is charged with a criminal offence shall be presumed innocent until he is proved guilty: Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts”. The provision of section 140 of the Evidence Act, 2011, as amended, supplements this proviso. It ladens an accused person with the burden of proof of particular facts. Incontestably, the appellant’s defence of agency is a classic exemplification of a fact peculiar to him, *id est*, fact warehoused within his personal knowledge. It, therefore, falls within the slim perimeter of the proviso of section 36 (5) of the Constitution, as amended. In the legal sphere, the object of a proviso, an exception to the main rule which speaks the last intention of a legislator, is to prune, modify, qualify, trim, relax or limit the powers conferred by the main section of a statute or document or exclude some possible ground of misinterpretation of its extent/scope. It restrains the absoluteness or generality of a section of a law or document. It discloses the proper meaning of a section of law that is submissive to more than one meaning, see ***Eme v. State*** (1964) 1 All NLR 416; ***Anya v. State***

(1965) NWLR 62; **Abasi v. State** (1992) 8 NWLR (Pt. 260) 383; **NDIC v. Okem Ent. Ltd** (2004) 10 NWLR (Pt. 880) 107; **FRN v. Nwosu** (2016) 17 NWLR (Pt. 1541) 226; **Emenuwe v. State** (2024) 14 NWLR (Pt. 1959) 385; **NDIC v. Okem Ent. Ltd.** (2004) 10 NWLR (Pt. 880) 107. The proviso in section 36 (5) supra casts the *onus probandi* of particular fact on an accused person, the appellant herein, see **Dauda v. FRN** (2015) 1 NWLR (Pt. 1626) 169; **Akibu v. State** (2019) 11 NWLR (Pt. 1684) 433; **Paul v. State** (2019) 11 NWLR (Pt. 1685) 54.

Curiously, the appellant, for reasons best known to him, starved the lower court of any scintilla of pungent evidence of the existence of agency relationship between him and Major Sanusi N. Muazu. Even the exhibit 4, which he placed mountainous reliance on, is deficit in evidence in that regard. Indeed, the exhibit 4 is a *pessimi exempli* of a fabricated agency. The appellant's evidence that Major Sanusi N. Muazu collected the cash from him, an attempt to prove the agency, was a mere *ipse dixit*. Unarguably, it is only a classic evidence that will constitute a valid passport that will fetch the plea of agency in favour of the appellant. In effect, the lower court was *firma terra* in law in its finding that the appellant failed woefully to establish the existence of agency relationship between him and his alleged phoney principal – Major Sanusi N. Muazu.

There is a stronger knock on the defence of agency invented by the appellant to castrate the charge against him. No doubt, the

doctrine of agency is propagated firmly in our *corpus juris*. However, while the doctrine thrives and flourishes in the expansive hemisphere of civil law in deserving circumstances, it is deprived of any atom of shelter in the large landscape of criminal jurisprudence. In the territory of criminal law, criminal liability, which germinates from a combination of proved *actus reus* and *mens rea*, is personal to a *particeps criminis*. There is no transfer or alienation of criminal responsibility even in the presence of a proved agency relationship as an agent or a principal is compelled by law to bear his cross in the pitfall of criminality. Indeed, concept of vicarious liability a stranger to the wide province of criminology, see **APC v. PDP** (2015) 4 SCM 48; **PML (Nig.) Ltd. v. FRN** (2017) LPELR – 43480 (SC). Indubitably, the defence of agency, which the appellant manufactured, paraded and brandished to perforate and demolish the proof of the charge against him, flies in the face of the law and galore of evidence on record as dissected supra. It is a moonshine defence that cannot fly!

It stems from the foregoing legal digestion of the fourth ingredient of the offence preferred against the appellant and the defence of agency erected by him, conducted within the lens of the law, that the lower court's confirmatory decision is in total alignment with the criminal law. It has not, in the least, fractured the hallowed principles of criminal law as to fetch any intervention from this court. It will tantamount to worshipping judicial sacrilege to tinker with a

decision that has not disclosed any tincture of hostility to the letters and spirit of the law. The lower court acted *ex debito justitiae* when it affirmed *in solidum* the trial court's decision. I am, therefore, not propelled by law to honour the appellant's salivating invitation to crucify the immaculate decision on the undeserved altar of improper/perfunctory evaluation of evidence hurled against it. *Per contra*, I accord *ore temus* rule in favour of the concurrent findings of the lower courts *vis-à-vis* the conviction of the appellant for the offence pressed against him. In the end, I have no choice than to resolve the solitary issue against the appellant and in favour of the respondent.

On the whole, having resolved the lone issue against the appellant, the destiny of the appeal is obvious. It is bereft of any shred of merit and deserves the reserved penalty of dismissal. Consequently, I dismiss the appeal. Accordingly, the lower court's judgment, in Appeal NO. CA/ABJ/CR/1097/2020, delivered on the 14th February, 2025, which affirmed the decision of the trial court, in Charge No. FHC/ABJ/CS/41/2019, delivered on the 8th October, 2020, is, hereby, affirmed in its entirety.



OBANDE FESTUS OGBUINYA,
JUSTICE, SUPREME COURT.

COUNSEL:

S. I. Imokhe, Esq. (with him, Ezenna Okafor, Esq.) for the appellant.

Dr. Osuabeni Ekoi Akponimisingha, Head, HPPD, ICPC (with him, E. K. Agbili, Esq., CLO, ICPC) for the respondent.

