MOHAMMED SALAMI
V
COMMISSIONER OF POLICE
COURT OF APPEAL
(ILORIN DIVISION)

SOTONYE DENTON-WEST JCA (Presided)
JUMMAIHANATU S ANKEY JCA
CHIMA CENTUS NWEZE JCA (Read the Lead Judgment)
CA/D7C27/2007
WEDNESDAY, 16 JULY 2008
APPEAL - Findings of lower courts - Where concurrent - Attitude of' appellate court to
APPEAL - Magistrates' Court - Appeals therefrom - Impossibility of lying directly to the Court of Appeal
COURT - Magistrates' Court - Appeals therefrom - Impossibility of lying directly to the Court of Appeal
CRIMINAL LAW AND PROCEDURE - Conspiracy - Meaning of
CRIMINAL LAW AND PROCEDURE - Conspiracy - What prosecution must prove to establish - Penal code, section 96 considered
CRIMINAL LAW AND PROCEDURE - Innocence of accused person -Rebuttable presumption of - Criminal trials - Burden of proof therein - On whom lies - 1999 Constitution, section 36(5), Evidence Act, sections 138 (3), 141 and 143 considered
EVIDENCE - Circumstantial evidence as sufficient evidence - When court may convict on
STATUTE - Constitution 1999 , section 36(5), Evidence Act, sections 138 (3), 141 and 143 - Innocence of accused person - Rebuttable presumption of- Criminal trials - Burden of proof therein - On whom lies
STATUTE - Penal Code, section 96 thereof- Conspiracy - What prosecution must prove to establish
WORDS AND PHRASES - Combination - Meaning of- Union - How formed
WORDS AND PHRASES - Conspiracy - Meaning of

Issues:

1. Whether the High Court was right to have upheld the appellant's conviction by the trial court for the offences of conspiracy, abetment and using as genuine a forged document.
2. Whether the High Court was not in error in affirming the trial court's treatment of exhibits Dl and D4 and in its approach to the evidence adduced at the trial.

Facts:

The 3rd accused person was a staff of Central Bank of Nigeria and was engaged in private studies at Kwara State Polytechnic. During a certificate verification exercise, the bank found out that the certificate presented to it by the 3rd accused person was forged, having been denied by the school. The accused person was truly admitted by the institution for Higher Diploma in Public Administration and he graduated with a pass, but the certificate presented by him reflected an upper credit in Higher National Diploma in Public Administration. He was therefore arraigned in the Magistrates' Court, Ilorin, and Kwara State for the offences of conspiracy and forgery under section 97(1) and 304 of the Penal Code respectively. The accused person claimed that he had delegated the 2nd accused person to collect the certificate and he had been given what he presented to the bank. The trial court found him guilty and sentenced him.

Aggrieved, he appealed to the appellate session of the High Court of Justice Kwara State where the decision of the trial court was affirmed. Yet aggrieved, he appealed to the Court of Appeal.

In determining of the appeal, the Court of Appeal considered section

36(5) of the 1999 Constitution provides that:

> Every person who is charged with a criminal offence shall be presumed to be 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.

Held: (Dismissing the appeal)

1. Meaning of conspiracy -

> Conspiracy is a combination or confederacy between two or more persons formed for the purpose of committing by their joint efforts, some unlawful or criminal act or some act which is lawful in itself in but becomes unlawful when done by the concerted action of the conspirators or for the purpose of using criminal means for the commissions of an act not in itself unlawful. [P. 745, paras. D - E]
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> Per DENTON-WEST JCA: [Pp. 755 - 756, paras. D - A]
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> "Conspiracy has variously been defined by both learned and lay writers. The writers of the Oxford: Advanced Learner's Dictionary, 6111 edition, declines conspiracy as:
>
> > 'A secret plan by a group of people to do something harmful or illegal.'
>
> Conspiracy has also been given various, but substantially the same definitions judicially. In the case of Oduneye v. State 12(01) 13 WRN 88, it was defined by the apex court, thus:
>
> 'Conspiracy consists not merely in the intention of two or more persons but rather in the agreement of two or more persons to do an unlawful act, or to do a lawful act, by unlawful means.'

Also, in the case of State v. Haruna (1972) 8 - 9 SC 174, the Supreme Court had defined conspiracy thus:

> 'At common law, conspiracy means an agreement of two or more persons to do an act, which constitutes an offence, to agree to do.'

The difficulty which the courts face in, securing a conviction on a charge of conspiracy through direct evidence is not of recent origin and it is not peculiar to the instant appeal. It has been like this for some time now, the courts, under the guidance of the apex court. The Supreme Court, have found a way round it. Thus, in the case of Oduneye v. State the Supreme Court held, inter alia:

> 'The offence of conspiracy is not defined in the Criminal or Penal Code. Therefore, direct positive evidence of the plot between the co-conspirators is hardly capable of proof. The courts tackle the offence of conspiracy as a matter of inference to be deduced from certain criminal acts or in actions of the parties concerned.'

It will be sufficient if common intention to commit the main offence is established. This will suffice in the case of State v. Oladimeji (2003) 7 SCNJ 67, the Supreme Court held to the effect that common intention may be inferred from circumstances, that it will not be necessary to prove express agreement in order to enable a court to convict of conspiracy and participation in the main offence: Idrisu Ahmed v. State (1998) 7 SCNJ (60)."

2. Meaning of combination and how a union is formed -Combination is the union or

association of two or more persons for the attainment of some common end. A union or association can only be formed through the agreement of members. The Criminal Law and procedure of the southern states of Nigeria by T. A Aguda (London: Sweet and Maxwell, 1982) paragraph 2122; Notes on the Penal Code Law by S.S Richardson, (Zaria: ABU Press, 1987) 66 Criminal Law in Nigeria by Okonkwo and Naish 2nd Edition Ibadan: Spectrum Books, 1980; Archbold Pleading, Evidence and Practice in Criminal Cases T. R. F. Butler and M. Garsma, (London: Sweet and Maxwell, 1959) 405 referred to] [P. 745, paras. E - G]

3. What prosecution must prove to establish conspiracy section 96, Penal Code considered - By the provisions of section 96 of the Penal Code, to secure a conviction of an offence of conspiracy, it must be proved beyond reasonable doubt that;

1. The agreement to commit an offence or illegal act is between two or more persons.
2. The said act apart from the agreement itself must be expressed in furtherance of the agreement.

In the instant case, it can be inferred from the facts before the court that there was conspiracy between the accused persons to commit forgery; therefore the trial court rightly convicted them. [Kaza v. State (2008) 25 SCNJ 373 referred to] [Pp. 745 - 746, paras. H- B] Per NWEZE JCA: [Pp. 746 - 747, paras. C - C]

"The appellant knew that he was admitted to pursue a course in Higher Diploma in Public Administration, exhibit D3. He submitted himself for final clearance for the examination leading to the award of the said Higher Diploma, exhibit D4. He sat for the examination for the said Higher Diploma. He emerged with a 'Pass' grade in exhibit P1. In effect, it was obvious to the appellant that he got what he opted for, namely, a Higher Diploma. Indeed, his proxy, DW1, returned with this exhibit (exhibit D1) and actually handed it over to him. Curiously, instead of submitting this exhibit P1 to his employer, he tendered exhibit P4. Now, wait a minute! In this exhibit P4, he had metamorphosed from the dull academic student who scored a lowly grade (Pass) into a brilliant graduate with a shining laurel (Upper Credit). That is not all, he was admitted (and presumably he matriculated and took his matriculation oath] in respect of a particular genre of academic certificate referred to as Higher Diploma. He suddenly found himself (contrary to his matriculation oath and all) as a graduate of another category of academic accomplishment [Higher National Diploma]. He was not aghast! Rather, he had the effrontery and temerity to seek a short cut to advancement in his career by submitting a higher national diploma certificate to his employer!

The trial court made all these findings! The lower court confirmed the findings. In consequence, they are now concurrent fandom's of courts! It has not been shown that these findings were based on materials aliunde. That is, material, were there. They were there in Abundance! The court made use of them in making its findings. These were confirmed by the lower court. They are not perverse. Yet, the appellant wants an order of this court to set aside these conclusions.

If i may ask, why should I lend the weight and authority of this court to the appellant's ignoble act? I think the time has come in this country when all institutions must hearken to the clarion call to stem the unwarranted assault on the cherished values of all civilized societies.

An academic certificate is an invaluable treasure. The route to its attainment must

be characterised by transparency; perseverance discipline and hard work. These factors make it achievement a mark of distinction a thing of pride! Nothing therefore, must be done to taint its purity, it appeals! Let us not do anything to scandalize our academic certificates in the eyes of the discerning international community. I find no Justification for disturbing the unassailable 'concurrent findings of the two courts below. I resolve this issue against the appellant.

4. Circumstantial evince as sufficient evidence and when necessary court may convict on- Where direct evidence is not available, the judge is permitted to infer from the facts proved, other facts necessary to complete the element of guilt or to establish the innocence of the accused person. Circumstantial evidence is the best evidence, particularly where it is overwhelming and leads to no other conclusion than the guilt of the accused person. However, circumstantial evidence to ground a conviction must be strong and unequivocal. A court is only permitted to draw the inference that is irresistibly warranted. It must be cogent and compelling. In the instant case, the lower courts rightly relied on circumstantial evidence that was cogent and compelling to convict the accused person of the offences of conspiracy and forgery. [Eze v. State (1976) 1 SC 125; Nasini v. State (1999) 1 KLR (Pt. 76) 197 referred to] [Pp. 748 - 749, paras. G - B] Per DENTON-WEST JCA: [P. 754, paras. F - B]

"The law is trite, that circumstantial evidence is the best evidence, once it meets the requirement of the law to qualify as such, namely:

1. it must be positive;
2. it must be direct;
3. it must be unequivocal; and
4. it must irresistibly and conclusively link the accused here, the appellant with the commission of the offence: Uluebeka v. State (2000) 7 (Pt. 665) 404; Akinmoju v. State (2000) 6 NWLR (Pt. 662) 608 and Aigbadion v. State (2000) 7 NWLR (Pt. 666) 705.

Justification for this has been found on the ground that sinces offences or crimes are not things which are usually carried out in the open and since it will be practically abdicating its duty for a court to always wait for direct evidence or the confession of an accused before it can convict on a charge, reliance must be placed on evidence of circumstances as can be inferred from the facts of a case. This becomes even more imperative in the case of the offence of conspiracy which has secrecy as one its main ingredients."

5. Rebuttable presumption of innocence of accused person and on whom burden of proof in criminal trials lies, 1999 Constitution, section 36(5), Evidence Act, sections 138(3), 139, 141 and 143 considered -By the provisions of section 36(5), 1999 Constitution, Evidence Act, sections 138(3), 139, 141 and 143, the right to the presumption of innocence is guaranteed. A duty is not imposed on the accused person to purge him of guilt. Rather, an obligation is imposed on the prosecution to prove the guilt of the accused person beyond reasonable doubt. Where the prosecution succeeds in drenching the accused person with unassailable evidence dripping with probative value, then an accused person has evidential burden to discharge. [Obiakor v. State (2002) 10 NWLR (Pt. 116) 612; Bella v. State (2007) 10 NWLR (Pt. 1043) 564; (2007) All FWLR (Pt. 396) 702; Olodele v. Nigerian Army (2004) 6 NWLR (Pt. 868) 166; Uso v. CO./3 (1972) ANLR 825; Nasiru v. State (1999) 1 KLR (Pt. 76) 197 referred to] [P. 748, paras. A - C]

6. Impossibility of appeals lying directly from Magistrates' Court to Court of Appeal - Appeals cannot lie directly from a Magistrates' Court to the Court of Appeal. In the instant case, the Court of Appeal declined to determine an issue from the trial Magistrates' Court which was not raised in the High Court. [P. 753, Para. H]
7. Attitude of appellate court to concurrent findings of lower courts - An appellate court has a limited function in the determination of a dispute between the parties. It does not try a case; it does not see and hear witnesses testify; as a result, it does not experience the subtle and often influencing nuances of seeing and hearing witnesses give account of facts upon which findings are based by a trial court. An appellate court upon complaints made to it, is concerned with seeing whether a trial court has or has not made some substantive or procedural errors, or has or has not failed to make any proper findings which the evidence available deserves, and accordingly to take such decisions in the interest of justice by way of correction or confirmation of the decision of the trial court. Hence, it is said that a trial court has the primary function of assessing the quality of the evidence received by it, by giving credence to or expressing doubt about witnesses whom it had the advantage of seeing and hearing testify, weighing the evidence of one witness against that of another where appropriate, making findings of fact and finally deciding in a civil case, which side of the case presented to prefer. The court will not interfere with the concurrent findings of lower courts on issues of fact except there is established a miscarriage of justice, a perverse decision or a violation of some principle of law or procedure. [Adekunle v. State (2006) 6 SCNJ 275; All FWLR (Pt. 332) 1452; Ukpabi v. State (2004) 6 SCNJ 12; Ubani v. State (2003) 18 NWLR (Pt. 851) 224 ;(2004) FWLR (Pt. 191) 1533; Usman v. Garke (2003) 7 SCNJ 38; (2003) FWLR (Pt. 177) 815; Princent v. State (2002) 12 SCNJ 280; Layinka v. Makinde (2002) 5 SCNJ 77; Onu v. Idu (2006) 6 SCNJ 23; Otogbolu v. Okeoluwa (1981) 6-7 SC 99; Onifade v. Olayiwola (1990) 7 NWLR (Pt. 161) 130 referred to] {Pp. 757 -758, paras. H - E]

Nigerian Cases Referred to in the Judgment:

Abacha v. State (2003) 3 ACLR 333
Adekunle v. State (2006) 6 SCNJ 275, (2006) All FWLR (Pt. 332) 1452
Ahmed' v. State (1998) 7 SCNJ
Aigbadion v. State (2000) 7 NWLR (Pt. 666) 705
Akimnoju v. State (2000) 6 NWLR (Pt. 662) 608
Akinycmi v. State (2001) 2 ACLR 36
Alade v. Olukade (1976) 2 SC 183
Alakev. State (1992) 11/12 SCNJ
Amusav. State(2WS) 1 SCNJ518, (2003) 3 ACLR 132, (2003) All FWLR (Pt. 148)1296
Asimiyu v. State (2001) 5 NSCQLR 451, (2001) FWLR (Pt. 41) 1872
Baridam v. State (1994) 1 NWLR (Pt. 320) 250
Bella v. State (2007) 10 NWLR (Pt. 1043) 564, (2007) All FWLR (Pt. 396) 702
Eze v. State (1976)1 SC 125
Gabriel v. State (1989) 5 NWLR (Pt. 122)457
Gbafe v. Gbafc (1996) 6 NWLR (Pt. 455) 416
Ibalor v Barakuro (2007) 9 NWLR (Pt. 1040) 475
Ikemson v. State (1998) 1 ACLR 80
Kale v. Coker (1982) 12 SC 252

Kaza v. State (2008) 25 SCNJ 373
Kim v. State (1991)2 NWLR (Pt. 175) 622
Kojo v. Bonsie (1953) 14 WACA242
Layinka v. Makinde (2002) 5 SCNJ 77
Lori v. State (1980) 1 ACLR 267
Nasiru v. State (1999) 1 KLR (Pt. 76) 197
Njovens v. State (1973) 1 ACLR 224
Nnorodim v. Ezeani (1995) 2 NWLR (Pt. 378) 448
Obiakor v. Stale (2002) 10 NWLR (Pt. 776) 612
Ogunlana v. State (2003) 3 ACLR 445
Olodelc v. Nigerian Army (2004) 6 NWLR (Pt. 868) 166
Omosumofia v. State (1999) 13 NWLR (Pt. 633) 42
Onifade v. Olayiwola (1990) 7 NWLR (Pt. 161)130
Onochiev. The Republic (1966) NMLR 307
Onu v. Idu (2006) 6 SCNJ 23
Otogbolu v. Okeluwa (1981) 6-7 SC 99
Princent v. State (2002) 12 SCNJ 280
State v. Oladimeji (2003) 7 SCNJ 67
Ubani v.State (2003) 18 NWLR (Pt. 851) 224, (2004) FWLR (Pt.191)1533
Ugo v. Obeikwe (1989) 1 NWLR (Pt. 99) 566.
Ukpabi v. State (2004) 6 SCNJ 12
Uluebeka v. State (2000) 7 (Pt.665) 404
Usman v. Garke (2003) 7 SCNJ 38; (2003) FWLR (Pt. 177) 815
Uso v. C.O.P. (1972)ANLR 825
Usufu v. State (2007) 16 NWLR (Pt. 1060) NWLR 378
Wambai & Samba v. Kana N. A. (1905) NMLR 15

Foreign Cases Referred to in the Judgment:
Laila Jhinai v. R (195 7) 1 All ER 3 8 5
R. v. Aspinall (1876) 2 QB 48
Nigerian Statutes Referred to in the Judgment:
Constitution of the Federal Republic of Nigeria, 1999, section 36 (5) Evidence Act, Laws of the Federation of Nigeria, 1990, sections 97; 109, 111, 138(1), 138(3), 139, Hland 143 Penal Code, sections 83,97(1), 304
Books Referred to in the Judgment:
T. A Aguda, The Criminal Law and Procedure of the Southern States of Nigeria (London: Sweet and Maxwell, 19 82) paragraph 2122 S. S. Richardson, Notes on the Penal Code Law by S .S. Richardson, (Zaria: Abu Press, 1987) 66
C.O. Okonkwo, Okonkwo and Naish: Criminal Law in Nigeria (Second Edition) (Ibadan: Spectrum Books, 1980)
T. R. F. Butler and M. Garshia, (Eds) Archbold Pleading, Evidence and Practice in Criminal Cases (London: Sweet and Maxwell, 1959) 405
Oxford: Advanced Learner's Dictionary, 6111 Edition
Counsel:
K. K. Eleja -for the Appellant.
M. A. Oniye -for the Respondent.

NWEZE JCA (Delivering the Lead Judgment): The appellant was a work-study candidate, a staff of the Central Bank of Nigeria engaged in private studies at the Kwara State Polytechnic. He found himself in conflict with the law. This cost him his name. It also cost him the source of his sustenance, namely, his job.

At the Magistrates' Court, Ilorin, he was arraigned on a First Information Report (hereinafter called "FIR"). The FIR alleged conspiracy and forgery against him under sections 97(1) and 304 of the Penal Code. A summary of the facts will shed more light on the sequence of events leading to his present predicament.

The appellant with two others were alleged to have forged a statement of result (exhibit 4). It was purportedly issued by the Kwara State Polytechnic. He was alleged to have presented the forged result to his employer, the Central Bank of Nigeria, for the enhancement of his status in the bank.

The problem started when the bank wanted a confirmation of the said result from the Polytechnic. The institution disclaimed the exhibit (P4), deriding it as a forged document.

The prosecution led evidence at the trial to show that the appellant was admitted into the polytechnic to pursue a course in Higher Diploma in Public Administration (HD). It also led evidence to show that, upon graduation, the appellant was issued with a result (exhibit P1). This exhibit corresponded with his choice of course of study. As opposed to this result, he presented a different result (the Higher National diploma - HND) to his employer.

The prosecution led evidence to demonstrate the falsity of the claim in the exhibit (exhibit P4). The evidence led showed that the course the appellant actually studied was forged. Even the genuine grade he obtained (a "Pass") metamorphosed into an "Upper Credit". In effect, whilst exhibit P1 [issued by the institution] bore the grade "Pass", the other exhibit, namely, exhibit P4, awarded the appellant an "Upper Credit". What is more, the prosecution was able to prove the forgery of the signature of PW2 on exhibit P4. There was the amazing revelation that, at the material tune, the appellant claimed to have obtained his "Upper Credit" in exhibit P4, fee Polytechnic had not graduated any student in the Higher National Diploma (HND) category in Public Administration!

Exhibits D3 and D4 show that he was offered admission and he had his final screening clearance for the examination leading to the award of Higher Diploma.

There is one other intriguing feature of this appeal: the conflict in the claims of the second accused person and the appellant. The appellant was the third accused person. For instance, the appellant's story was that he delegated the; second accused person to collect his statement of result for him. According to him, the second accused person handed over to him exhibit 14. However, the said second accused person insisted that what he gave the appellant was a copy of exhibit P1 and not exhibit P4.

On 3 May 2005, the learned trial Ag. Chief Magistrate found the appellant guilty as charged. He sentenced him accordingly.

Aggrieved, he appealed to the appellate session of the High Court Holden at Ilorin. In its judgment of 16 January 2007, the High Court (hereinafter referred to as the lower court) affirmed the appellant's conviction. The lower court dismissed his appeal for lacking in merit. This further appeal is against the judgement of the lower court. He filed a notice of appeal containing a whopping seven grounds. He identified two issues from those grounds. The issues are:

1. Whether the High Court was right to have upheld the appellant's conviction by the trial

court for the offences of conspiracy, abetment and using as genuine a forged document.

2. Whether the High Court was not in error in affirming the trial court's treatment of exhibits D1 and D4 and in its approach to the evidence adduced at the trial.

The respondent adopted the above issues formulated by the appellant's counsel. So, these are the issues for determination in this further appeal argument on the issues. Issue

On 4 June 2008, the appellant's counsel adopted the brief of argument dated 12 June 2007, but filed on 19 June 2007. In the said brief, counsel dealt with issue 1 under three sub-headings, namely, conspiracy, wrongful affirmation of conviction on the offence of presenting a forged statement of result and affirmation of conviction for abetment.

On conspiracy, it was pointed out that the lower court predicated its affirmation of the conviction this offence on three reasons.

The first reason was that the appellant did not give any reason(s) why he did not and could not collect his statement of result personally. The lower court's second reason was that it was the appellant (as the 3rd accused) and the 2nd accused who started the conspiracy. The first accused person later joined them.

Thirdly, the lower court took the view that the trial court gave careful consideration to the pieces of evidence before it and came to the right conclusions thereon by convicting the appellant for conspiracy, pages 113-118 of the record, particularly at pages 116-117.

Learned counsel faulted these reasons. He made copious references to the record in response to the first reason he referred to the testimony of the PW1 (page 3 of the record).

On the second reason (the sequence of the initiation of the conspiracy), counsel listed the ingredients of the offence of conspiracy under section 96 of the Penal Code citing: Alarape Asimiyu v. State (2001) 5 NSCQLR 451,471-472, (2001) FWLR (Pt. 41) 1872.

On the third reason, namely, the evidence before the trial court, it was submitted that, a conviction for conspiracy cannot stand in the absence of evidence to that effect. What is more, the court cannot infer conspiracy in the absence of credible evidence. He submitted that, in the instant case, there was no iota of evidence that the appellant conspired or had the common intention to either forge the certificate in issue or to abet the commission of the offence of forgery.

Counsel drew attention to page 83 (lines 23-32) and page K4 (lines 1-25). He maintained that the reasons which the trial court adduced in those pages for the conviction of the appellant could not ground a conviction for conspiracy.

It was, therefore submitted that the prosecution failed to prove the offence of conspiracy against the appellant beyond reasonable doubt. As such the conviction and its affirmation by the trial court and the lower court, respectively were most erroneous, citing Omosumofia v. State (1999) 13 NWLR(Pt.633)42,56;Gbafe v. Gbafe (1996)6NWLR(Pt.455)416,436. Wrongful affirmation of conviction for presenting forged statement of result knowing same to have been forged.

Counsel submitted that for the sustenance of a conviction for the said offence the three ingredients outlined in section 366 of the Penal Code must co-exist. They are:

1. The accused must have, fraudulently or dishonestly, used the document in issue as genuine;
2. He must have known such a document to have been forged; or
3. He must have reasons to believe it to be forged.

Counsel drew attention to the reasons which the trial court adduced for the conviction of the appellant for this offence on pages 84 (lines 26-30) and 85 (lines 1-18). The trial court proffered four reasons:

(1) Since the appellant was admitted and screened for Higher Diploma in Public Administration, it was commonsensical that the certificate he would be awarded would be for the Higher Diploma and not a Higher National Diploma, citing exhibit P4.

(2) If an HND Certificate had been issued to the appellant, he should have seen same as a problem and should have corrected the error. He failed to do this.
(3) The appellant sent emissaries who pleaded with the Polytechnic to withdraw the letter written to the Central Bank of Nigeria. This confirmed the falsification of exhibit P4.
(4) The appellant, in his evidence said it was the second accused who connived with the first accused to forge exhibit P4 while he himself took same as what he expected because HND in
Public Administration has been accredited.

Counsel pointed to pages (120 lines 15-32) and 121 (lines 1 - 4) of the record. The record shows that the lower court, in agreeing with the trial court's position, quoted the above reasons adduced by the trial court. In addition, the lower court adopted them as its reasons for dismissing the appeal on the conviction for the offence of using forged certificate. He advanced four reasons to show that the lower court was wrong in upholding the conviction of die appellant:

1. It imposed strict liability on the appellant contrary to the settled position of the law. This law presumes the innocence of the appellant.
2. The trial court's position that the appellant should have gone to the Polytechnic to rectify the error is faulty. It flies in the face of the evidence adduced by the appellant. The appellant's story was that before the conclusion of his programme, students who were pursuing Higher Diploma were given the liberty to offer HND subjects. To prove this, he tendered exhibit Dl. The Polytechnic issued this exhibit (students' identity card) in recognition of his status as an HND student.
3. One of the reasons offered by the trial court was the appellant's entreaty to the Kwara Polytechnic However, the appellant's testimony was that he went to the said Polytechnic to protest one letter it wrote to the Central Bank alleging the forgery of exhibit P4.
4 Exhibits P3, D5, D6, D7, D8, D9 and the identity card confirmed the innocence of the appellant.

Counsel contended that a juxtaposition of these exhibits' will reveal that the appellant had genuine cause to believe that he was entitled to an HND Public Administration Statement of Result from Kwara State' Polytechnic. He submitted that, the trial court and the lower court were in manifest error in ignoring relevant pieces of evidence while reaching their conclusion on this count of the charge. Their decisions were, therefore, -perverse, wrongful and liable to be set aside: Baridam v. State (1994) 1 NWLR (Pt. 320) 230,260; Nnomdim v. Ezeani (1995) 2 NWLR (Pt. 375) 448,467.

He prayed the court to set aside the affirmation of the conviction of the appellant for the offence of using as genuine forged documents. Affirmation of conviction for abetment

Counsel submitted that, the lower court was wrong to have affirmed the

appellant's conviction for the offence of abetment. Under section 83 of the Penal Code, the ingredients which must be present for the proof of abetment are: an accused must have instigated other persons to commit a crime or to conspire. In the alternative, he must have aided and facilitated others to commit a crime. He then referred to the reasons tor sustaining the charge against the appellant at the trial court (page 8 5 lines 15-33andpage 86 lines 1-3). In the first place, he pointed out that the trial court relied heavily on the alleged confessional statement of the second accused person In deciding to convict the appellant for the offence of abetment.

According to him, the lower court also lost sight of the evidence before it. The appellant had maintained that prior to the issuance of the said statement of result he did not know the first accused person who was convicted for forging the statement of result.

Counsel turned to pages 118 and 119 of the record. There, the lower court offered its reasons for affirming the conviction of the appellant. He faulted the lower court. Nothing on those pages suggests that the appellant was guilty of abetment. Worse still, the lower court wrongly interpreted the excerpts on those pages.

There was nothing from the appellant showing that he abetted the commission of any crime. There was also no positive act or omission of his that had been identified to justify the affirmation of his conviction by the lower court. In relying on the reasons given for the conviction of the appellant by the trial court, the lower court was unwittingly falling back on circumstantial evidence which, did not point irresistibly to the guilt of the appellant, Lori v. State (1980) 1ACLR267,272 - 273. In all, he prayed the g court to set aside the conviction of the appellant for the offence: of the abetment. There was no positive evidence that he did, by omission or commission, facilitate the commission of the offence of forgery he urged the court to resolve the issue in favour of the appellant.

On his part, counsel for the respondent adopted their brief filed on 17 September 2007, but deemed properly died on 30 November 2007. He urged the court to answer this issue in the affirmative.

On the offence of criminal conspiracy, it was submitted that there was abundant evidence before the trial court upon which the lower court could affirm the appellants conviction thereon. Counsel submitted that under section 96 of the Penal Code, conspiracy is an agreement by two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means, Njovens v. State (1973) 1 ACLR 224; Ikemson & Ors. v. State (1998)1 ACLR 80,102.

He explained that, at the trial court, the prosecution was able to show how the three accused persons agreed to produce exhibit P4. The intention was to advance the post of the appellant in his place of work.

Both the trial court and the lower court were in agreement in their findings that, all the conspirators need not be seen together. They equally did not need to have known each other prior to the commission of the alleged crime, Mohammed Sanni Abacha v. State (2003) 3 ACLR 333, 389.

He turned to the evidence before the trial court. He contended that, the appellant contacted the second accused person, who in turn linked the first accused person. Both the first and second accused persons admitted collecting exhibit P1 from the Polytechnic. The second accused person said exhibit P1 was the result he handed to the appellant. It was the latter who G approached the second accused person to get exhibit P4 which he

would present to his employer.

He explained that the appellant, in turn, passed the bulk to the first and second accused persons, alleging that they connived to forge exhibit P4, citing pages 28-29 (line 33).

The appellant also testified that there was a typist at the Emir's road, Ilorin who typed on a plain letter-headed paper of the Polytechnic. The first accused person, who was a staff of the Polytechnic, supplied the paper. Counsel submitted that, the gist of the offence of conspiracy is the meeting of minds of the conspirators like in the instant case. The court below was, therefore, right to have affirmed the appellant's conviction, having found him and the second accused person as actually starting the conspiracy which was later joined by the first accused. He argued that the logical inference that could be drawn from it was that the appellant wanted to advance his course at his working place, hence he conspired with others to' forge exhibit P4.

He noted that the observation by the court below on the inability of the appellant to collect his result personally was not a live issue. It was, therefore, a passing comment. There was no contention as to whether results could be collected by proxy at the Polytechnic. He urged the court not to disturb the affirmation of the appellant's conviction for conspiracy.

On the offence of abetment, he maintained that the facts and circumstances of this case pointed irresistibly to the appellant as the initiator of the whole arrangement.

Apart from circumstantial evidence, there was, also, the confessional statement of the second accused person which he also maintained in his oral testimony in court. This led credence to the abetment of the offence by the appellant. He contended that the court will act on a confession by a co-accused which was confirmed by oral evidence led in the course of the trial, like in the present case, *Nwankwoala v. State* (2000) All FWLR (Pt. 339)107, 814; *Oyakhirev. State* (2007) All FWLR (Pt. 344) 1.

He urged the court to hold that the lower court was justified to have affirmed the offence of abetment against the appellant. It was the first and second accused persons who actually did the forgery. However, the appellant instigated the forgery.

Next, on the offence of using forged document, he submitted that the lower court was right in upholding the appellant's conviction for this offence. The appellant was aware or had reason to know mat exhibit P4 was forged. The evidence of PW1, P W2, PW3 and PW4 confirmed the forgery in exhibit PW.

D W1 was also unequivocal mat exhibit P1 was the genuine result of the appellant. He collected it on the appellant's behalf and handed it over to him. He pointed to the factors that led credence to the appellant's knowledge of the forgery of exhibit P4: die appellant was admitted into Higher Diploma; he sat for and wrote his final examination in Higher Diploma, he was issued with final clearance as Higher Diploma student. Finally, as at the material time, the Polytechnic had not started graduating Higher National Diploma students.

Counsel further argued that the second accused person admitted that he handed over the genuine result (exhibit P1) to the appellant. However, the appellant alleged that it was the first and second accused persons who connived to forge exhibit P4. This suggested the inference that the appellant knew or had reason to know about the forgery.

He argued that for this reason, the finding of the trial court, as affirmed by the court below, cannot be faulted. He urged the court not to disturb the o appellant's conviction and to resolve issue 1 against him. *Consideration of the Arguments*

As noted above, there are only two issues for determination. We shall take them *seriatim.*

Issue 1

Decided cases have elaborated on the definition of the offence of conspiracy. They are fairly consistent on the essential ingredients of the offence. The striking unanimity of these judicial opinions is truly note worthy. These decisions: from such early English cases like *R. v. Aspinall* (1876) 2 *QBD48; Lailahinaiv* #(1957) 1 All ER385, through such old Nigerian cases like: *Wambi and Samba v Kana N. A.* (1905) NMLR *15; Onochie* D & D *v. The Republic* (1966) NMLR 307 etc. to the recent decisions on the subject like: *Usufu v. State* (2007) 16 NWLR (Pt.1060) NWLR 378 and the most recent: *Kaza v. State* (2008) 2 SCNJ 373 have one single thread running through them. What crystalizes from them is this: conspiracy is a combination or confederacy between two or more persons formed for the purpose of committing by their joint efforts, some unlawful or criminal act, or some act which is lawful in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal means to the commission of an act not in itself unlawful.

From these decisions, it is settled that the word combination is the union or association of two or more persons for the attainment of some common end. Above all, they also emphasize the point that a union or association cart only be formed through the agreement to members. Text writers are also unanimous on these points, T A. Aguda, *The Criminal Law and Procedure, of the Southern States of Nigeria* (London: Sweet and Maxwell, 1982) paragraph 2122; S.S. Richardson, *Notes on the Penal* G *Code Law* (Zaria: Abu Press, 1 (1981) 66; *C. O. Okonkwo, Okonkwo and Naish: Criminal Law in Nigeria* (Second Edition) (Ibadan: Spectrum Books, 1980); *T.R.F. Butler and M. Garshia, (eds) Archbold Pleading, Evidence and Practice in Criminal Cases* (London: Sweet and Maxwell, 1959)405.

More appositely, *inKaza v. State* (2008) 2 SCNJ 373, Chukwuma-Eneh JSC at page 386 observed that:

Section 96 of the Penal Code...conceptualizes the import of criminal conspiracy... The import of the provisions of section 96 has been considered in a long line or cases. These cases in summary establish that to secure the conviction of an offence of conspiracy, it must be proved beyond reasonable doubt that

(1) The agreement to commit an offence or Illegal act is between two or more persons.
(2) That the said act apart from the agreement itself must be expressed in furtherance of the agreement.

Instructively, His Lordship noted that"... authorities abound to the effect that agreements under section 96 of the Penal Code can be inferred from circumstantial evidence" page 387.

In this particular case, were there circumstances to warrant such an inference?

Learned counsel for the respondent made a valid submission, and I agree with him, that there are peculiar circumstances in this case to warrant such an inference.

Now, the appellant knew that he was admitted to pursue a course in Higher Diploma in Public Administration, exhibit D3. He submitted himself for final clearance for the examination leading to the award of the said Higher Diploma, exhibit D4. He sat for the examination for the said Higher Diploma. He emerged with a "Pass" grade in exhibit P1. In effect, it was obvious to the appellant that he got what he opted for, namely, a Higher Diploma. Indeed, his proxy, DW1 returned with this exhibit (exhibit D1) and actually handed it over to him. Curiously, instead of submitting this exhibit PI to his employer, he tendered exhibit P4. Now, wait a minute! In this exhibit P4, he had metamorphosed from the dull academic student who scored a lowly grade (Pass) into a brilliant graduate with a shining laurel (Upper Credit).

That is not all, he was admitted [and presumably he matriculated and took his matriculation oath] in respect of a particular genre of academic certificate referred to as Higher Diploma. He

suddenly found himself (contrary to his matriculation oath and all) as a graduate of another category of academic accomplishment (Higher National Diploma). He was not aghast! Rather, he had the effrontery and temerity to seek a short cut to advancement in his career by submitting a Higher National Diploma Certificate to his employer!

The trial court made all these findings! The lower court confirmed the findings. In consequence, they are now concurrent findings of two lower courts.

It has not been shown that these findings were based on materials *aliunde.* That is, materials not before the trial court. Those materials were there. They were there in abundance! The court made use of them in making its findings. These were confirmed by the lower court. They are not perverse. Yet, the appellant wants an order of this court to set aside these conclusions.

If I may ask, why should I lend the weight and authority of this court to the appellant's ignoble act? I think the time has come in this country when all institutions must hearken to the clarion call to stem the unwarranted g assault on the cherished values of all civilized societies.

An academic certificate is an invaluable treasure. The route to its attainment must be characterised by transparency; perseverance; discipline and hard work. These factors make its achievement a mark of distinction; a thing of pride! Nothing, therefore, must be done to taint its purity, its appeal! Let us not do any thing to scandalise our academic certificates in the eyes of the discerning international community.

I find no justification for disturbing the unassailable concurrent findings of the two courts below I resolve this issue against the appellant.

On the second limb of this issue, namely, the use of a forged document, counsel for the respondent argued, as already shown above, that the lower court was right in upholding the appellant's conviction for this offence. The appellant was aware or had reason to know that exhibit P4 was forged. The testimonies of PW1, PW2, PW3 and PW4 confirmed the forgery in exhibit PW.

DW1 was also unequivocal that exhibit P1 was the genuine result of £ the appellant. He collected it on the appellant's behalf and handed it over to him.

Against the background of my findings above in respect of the limb of this issue on conspiracy, I take the view that these submissions are unimpeachable. As such, I take liberty to adopt all the views already expressed above as my views on this limb of this issue. I find no merit in the hair-splitting arguments of counsel for the appellant in this regard. Before I leave this point, I want to comment on the submission of counsel that the findings of the two courts below violate the presumption of innocence in favour of the appellant.

I have had the occasion to address the import of the constitutional principle of presumption of innocence. That was in my judgment in appeal No. CA/IL/51/2006: *Folorunsho Kazeem v. State.* It was delivered on 4 July 2008. For their bearing on this point, I shall reproduce my views in the said judgment. I equally adopt them as my views in this appeal.

In our system of criminal justice, proof is not analogous to the requirement of proof in the science of numbers, otherwise known as Mathematics. Unlike mathematics where proof is attained through inflexible *formulae* and answers are arrived at with inviolable certitude, proof in criminal trials is attained against the background of the burden codified in section 138(1) of the Evidence Act.

This section does not impose a duty on the accused person to purge himself of guilt. Rather, it imposes an obligation on the prosecution to prove the guilt of the accused person beyond reasonable doubt.

This is an offshoot of the impregnable canon ordained in section 36(5) of the Constitution of

the Federal Republic of Nigeria, 1999. This section guarantees the right to the presumption of innocence, a fundamental principle of most just penal laws, often couched in the ancient maxim *in dubiopro reo.* This maxim dictated the constitutional principle in the said section 36(5) of the 1999 Constitution. It provides that:

> "Every person who is charged with a criminal offence shall be presumed to be 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 courts have interpreted the section as imposing the burden of proving the guilt of an accused person on their prosecution, *Obiakor v. State* (2002) 10 NWLR (Pt. *116)* 612. The duty thus imposed on the prosecution, is to prove the case beyond reasonable doubt. This is axiomatic, It is, indeed, well settled under Nigerian criminal jurisprudence: *Bella v. State (2007)* 10 NWLR (Pt. 1043) 564,585; (2007) All FWLR(Pt 396) 702; *Olodele v. Nigerian Army* (2004) 6 NWLR (Pt. 868) 166.

This is so because our criminal justice is accusatorial in nature, In our system, trials are initiated and sustained by accusation rather than by inquisition: *Usov. C.O.P.* (1972)A11NLR825.

Now, in response to the submission of the counsel for the present appellant that the findings of the lower courts violate this sacred constitutional principle, I wish to add that the said the principle of presumption of innocence is not immutable.

Whereas, in this case, the prosecution succeeds in drenching the appellant with unassailable evidence dripping with probative value, surely, an accused person has an evidential burden to discharge. Even the Evidence Act acknowledges this fluctuation of the evidential burden to the accused person: sections 138(3), 139,141 and 143 of the Evidence Act; *Nasiruv. State (1999)* 1 KLR (Pt. 76) 197,215.

Indeed, where direct evidence is not available, the Judge is permitted to infer from the facts proved, other facts necessary to complete the element of guilt or to establish the innocence of the accused person. As already shown, Chukwuma-Eneh JSC insightfully observed *inKaza v. State* (2008) 2 SCNJ 373, 387 that "authorities abound to the effect that agreement under section 96 of the Penal Code can be inferred from circumstantial evidence."

What is more, circumstantial evidence has been held to be the best evidence, particularly, where it is overwhelming and leads to no other conclusion than the guilt of the accused person: *Nasiru v. State.* However, it must be conceded that for circumstantial evidence to ground a conviction, such evidence must be strong and unequivocal. In addition, it must be noted that a court is only permitted to draw the inference that is irresistibly warranted. Put simply, such circumstantial evidence must be cogent and compelling: *Eze* v. *State* (1976) 1 SC 125; *Kim v. State* (1991) 2 NWLR (Pt. 175)622.

In this case, the two lower courts found the evidence of the circumstances of the presentation of the forged certificate so cogent and compelling. They were, therefore, right in relying on such circumstantial evidence in the conviction and affirmation of the conviction of the appellant respectively. I am at a loss as to how the appellant can wriggle out of the tangle which his inordinate craving for an unearned title has landed him in. D & D I shall no longer temporise on this issue. 1 resolve it against the appellant. *Finally, there is also the issue of the confirmation of the conviction of abatement.*

As can be seen, the main complaint of counsel for the appellant, is that the lower court was unwittingly falling back on circumstantial evidence which did not point irresistibly to the guilt of the appellant.

If I may ask again, how did the appellant expect the trial court to believe his story in the

face of all the evidence: his admission to read for Higher Diploma; his clearance to seat for the examination that would lead to the award of the said Certificate; the grade in the said Certificate; the sudden and inexplicable mutation of the Higher Diploma Certificate to a Higher National Diploma Certificate which, in any event, the institution was yet to award to anybody etc, the sudden leap from a weak grade (Pass) to an excellent grade (Upper Credit).

How did he expect the court to react to these pieces of evidence? I repeat that, in the face of these pieces of evidence, I have no justification for disturbing the concurrent findings of the lower courts: *Ibator v Barakuro* (2007) 9 NWLR (Pt.1040) 475. *Issue No. 2*

Counsel for the appellant noted that the focus of this issue was twofold, namely.

1. The approach of the trial court to the evidence tendered before the trial court and;
2. The way and manner the trial court discountenanced exhibits DlandD4.

He submitted that, exhibits Dl and D4 were regularly and appropriately tendered in the cause of the trial. The trial court, therefore, had a duty to give these documents their deserved weight. Rather than do this, the trial court went out of its way to discountenance the said exhibits even though there was no address to the court to so treat the documents.

He further submitted that, the lower court abdicated its responsibility $_R$ by failing to remedy the error of the trial court when it was so invited to do. The views of the two lower courts pertaining to this document are, therefore, perverse and liable to be upturned: *Baridam v. State (*1994) 1NWLR (Pt. 320) 250,260 and *Nnorodim v. Ezeani* (1995) 2 NWLR (Pt. 378) 448,467. He prayed the court to give these documents their due weight.

Counsel submitted further that the trial court did not properly accredit exhibit D8. That was the timetable for the examination tendered by the appellant during recall and after objection by the prosecution at page 59 lines 5-6: had been overruled.

At page 81 (lines 21 -32) and page 82 (line 1), the trial court expunged this exhibit on the ground that it was not certified.

He submitted that, the position of the trial court which was confirmed by the High court is faulty. He explained that having regard to the nature of exhibit D8 and normal usage, certification was unnecessary for its admissibility.

The wrongful expunging of the said exhibit by the trial court and its affirmation by the High Court has led to a great miscarriage of justice against the appellant because it would have tilted the scale of justice in the appellant's favour: *Gbafe v. Gbafe* (1996)6NWLR(Pt. 455)417,428.

Counsel submitted that the trial court and the lower court, were wrong in the way and manner they discredited the appellant's students' identity card, which was to show that even from the endorsement thereon the appellant was pursing a Higher National Diploma in Public Administration.

There were yet other exhibits which the trial court failed to consider. First, there was exhibit D9 which was the appellant's written project submitted to the Department of Local Government and Public Administration. Then, the trial court also glossed over exhibits D6 and D7 (that is, pages 1 and 6 of Kwara Polytechnic News). They were tendered in proof of the fact that as at 1996, the Polytechnic had commenced its programme on Higher National Diploma.

The lower court also failed to consider these crucial documents before dismissing the claim.

The point was then emphasized that a court of law has a duty to consider the totality of materials before it in a criminal trial and to apply whatever is favourable to the accused person. This position is so stringent that a court is even enjoined to consider possible defences which, though not canvassed, might be available to an accused person in a criminal trial: *Gabriel* v. *State* (1989) 5 NWLR (Pt. 122) 457 at 464. The two courts were, therefore, wrong to have refused the said documents.

He further submitted that, the refusal of the prosecution to produce the master list which the PW1 said (page 5 lines 5-7) was in its custody should have led to the discharge of the accused person. Indeed, the PW4 (page 47 lines 8-9) also stated that the master list (from which exhibit P1 was produced) was in the custody of the Kwara Polytechnic.

This notwithstanding, the lower courts went ahead to convict and affirm the appellant's conviction, respectively. He submitted that this is very wrong having regard to the offence alleged.

He submitted finally, on this point, that the way and manner the lower courts approached the evidence adduced by the appellant unfairly prejudiced him. This occasioned a grave miscarriage of justice. He therefore, prayed that this issue be resolved in the appellant's favour.

In summary, counsel prayed the court to allow this appeal, reverse the judgments of the trial court and the lower court and substitute them with a verdict of discharge and acquittal of the appellant. This is because;

1. The guilt of the appellant was not proved as required by law.
2. The trial court and the lower court wrongly rejected and upheld the rejection of evidence favourable to the appellant, respectively.
3. The respondent was guilty of withholding of crucial evidence.
4. It is in the interest of justice to allow the appeal.

For the respondents, the following arguments were made in respect of issue 2, that is, whether the lower court was not in error hi affirming the trial court's treatment of exhibits D1 and D4.

In the first place, it was submitted that, in the course of the trial, the defence tendered, among others, a purported Students' Identity Card (exhibit Dl), the final screening clearance (exhibit D4) and an alleged examination timetable (exhibit D8).

While the trial court admitted and attached probative value to exhibit D4, it admitted exhibit Dl but discountenanced same in its judgment. The trial court, also, erroneously admitted exhibit D8, but in the course of its judgment, discountenanced and expunged it.

Counsel observed that the appellant had no grouse about the treatment of exhibits D4, D6, D7 and D9 in his appeal before the court below. However, in this further appeal, he is now complaining about how those exhibits were treated by the trial court.

He submitted that an appeal in respect of the trial court's finding on those exhibits cannot lie in this court but before the court below. Having not brought them up before the court below, the finding of the trial court on them still subsists.

Moreover, exhibit D6 was admitted and the trial court dispassionately considered it together with all other evidence. In exhibit D4, the appellant was issued final clearance of the Polytechnic as a Higher Diploma student.

On the treatment of exhibit D1, he submitted that, the two lower courts found as a fact that the exhibit cannot be treated in isolation. Viewed in the context of the evidence led at the trial (especially that of PW1, PW2 and PW3) and both exhibits D3 and D4, it will be discovered that no weight should be attached to exhibit D 1 .

Counsel submitted that, it is logical that a student will be issued with an identity card which corresponds with his status, page 1 23 of the record.

He argued that exhibit D8, being inadmissible evidence, cannot be admitted even by consent of the parties. Thus, where such inadmissible evidence was admitted inadvertently, like in this case, it must be expunged and, or discountenanced: Alade v. Olukade (1976)2SC 183, 188; Kale v. Coker (1982)12SC.252.

He offered a reason for his invitation to the court to expunge the document, the said exhibit D8 is a public document under sections 97 and 109 of the Evidence Act. Since it was not certified as

required by law, it is inadmissible. It is therefore, liable to be expunged if wrongly admitted. He urged the court not to disturb this finding.

On the prosecution's failure to tender the master list of the result, he submitted that the prosecution was only required to call evidence sufficient enough to prove the elements of the offences against an accused person. It need not call all available evidence: Akinyemi v. Slate (2001) 2 ACLR 36 ,47.

He submitted further that, me crux of the present case is the forgery of exhibit P4. The authorship of this exhibit has now been called to question. Thus, to prove its case, the prosecution called in evidence the authentic officer charged with the responsibility of signing results (P W2) and the officer who actually issued the genuine result (PW1).

The two officers are persons well-acquainted with the said master list. They produced the genuine result (exhibit PI) from the said master list and actually had the opportunity to have compared exhibit P 1 with the master list before releasing it. They also confirmed that exhibit P4 was forged. Indeed, it has been held that, what is essential in a charge of forgery is to call evidence of a person whose signature was alleged to have been forged: Alake v. State (1992) 11/12 SCNJ. PW2 was the officer whose signature was forged in exhibit P4.

Counsel prayed the court not to upturn the findings of the trial court which was affirmed by the lower court on the non-fatality of the prosecution's failure to tender the result master list, since the essential elements of the offence to forgery have been proved.

Finally, counsel observed that the conviction of the appellant has now become the concurrent decisions of both the trial court and die lower court. An appellate court will not, as a matter of routine, interfere with such concurrent decisions unless they are shown to be perverse: Amusa v. State (2003) 3 ACLR 132; (2003) All FWLR (Pt. 148) 1296; Ogunlana v. State (2003) 3 ACLR 445.

He urged the court not to interfere with the findings of the trial court which have been confirmed by the lower court. He, therefore, urged the court to dismiss this appeal. His reasons are:

1. The prosecution was able to prove the offences of criminal conspiracy, abetment and using forged document as genuine against the appellant beyond reasonable doubt. The lower court was justified in affirming the appellant's guilt.
2. The learned trial Magistrate carefully considered all the evidence and exhibits before her, particularly exhibits D 1 , D4 and D8. The lower court rightly affirmed them after a dispassionate review.
3. The appellant's conviction has become concurrent decisions of the two lower courts, which this court will be reluctant to disturb.

The conviction should be affirmed and the appeal dismissed. I find no merit in the complaint relating to the approach of the two courts below to exhibit D1. They were right to have contextualized its probative value within the ambience of the other evidence led at the trial, in this case, the testimonies of PW1, PW2, PW3 and exhibits D3 and D4. They found that its weight was weightless!

Counsel for the respondent made another brilliant and unanswerable submission. He contended that the appellant did not challenge the findings relating to exhibits D4, D6, D7 and D9 in his appeal before the court below. By raising them now in this further appeal, he is inviting this court to sit in judgment over a decision of the trial court.

He submitted that an appeal in respect of the trial court's finding on those exhibits cannot lie in this court but before the court below and having not brought them up before the court below, the finding of the trial court on them still subsists. I am in agreement with him on this submission. Appeals cannot lie directly from a Magistrate Court to this court.

Counsel for the appellant, also, made heavy weather of the approach *of the trial court with regard to exhibit D8-the examination timetable.*

At A page 59 of the record, objection was taken to the admissibility of this exhibit. At page 59, the court overruled this objection. However, at page 81 (lines 21-32) and page 82 (line 1), the court expunged it. The court reasoned that
"exhibit D8 being not certified as required by law cannot be considered and is expunged". The lower court affirmed this conclusion.

Counsel for the appellant contended that the lower court was wrong in doing so. This submission is unsupportable. It is not in doubt that exhibit D8, the examination timetable issued by the polytechnic, is a public document within the meaning of section 109 of the Evidence Act. As such, only the original or a copy of it, certified under section 111 of the Act, is admissible

In all, I find that there is no merit in this appeal. I further endorse the concurrent decisions of the lower courts. The appeal is hereby dismissed.

DENTON-WEST JCA: I have the privilege of reading in advance the judgment just delivered by my learned brother, Chima Centus Nweze JCA, by which he gave sufficient and adequate consideration to all the issues submitted for determination by the parties. I am in complete agreement with it, the conclusion and the reasons on which they are founded. It is an outstanding decision of this honourable court. I will only lend weight to it by way of emphasis as to a point of contention raised in the appellant's brief of argument attempting to impeach the affirmation by the lower court of the finding via inference which the learned trial Magistrate made in convicting the appellant of the offence of conspiracy.

It was the contention of the appellant's counsel that the lower court was wrong to have affirmed the conviction of the appellant on the charge of conspiracy by the learned trial Magistrate, who relied on evidence of circumstances to draw inference of participation in the conspiracy to forge exhibit P4.1 disagree with the contention of the learned counsel for the appellant on this point. I am in agreement with the court below in its affirmation of the finding of the learned trial Magistrate in that regard. The law is trite, that circumstantial evidence is the best evidence, once it meets the requirement of the law to qualify as such, namely;

1. it must be positive;
2. it must be direct;
3. it must be unequivocal; and

It must irresistibly and conclusively link the accused (here the appellant) with the commission of the offence: Uluebeka v. State (2000) 7 (Pt.665) 404; Akinmoju v. State (2000) 6 NWLR (Pt. 662) 608 and Aigbadion v. State (2000) 7 NWLR (Pt. 666)705.

Justification for this has been found on the ground that, since offences or crimes are not things which are usually carried out in the open and since it will be practically abdicating its duty for a court to always wait for direct evidence or the confession of an accused before it can convict on a charge, g reliance must be placed on evidence of circumstances as can be inferred from the facts of a case. This becomes even more imperative in the case of the offence of conspiracy which has secrecy as one its main ingredients.

This takes me to a consideration of what conspiracy means. Conspiracy has variously been defined by both learned and lay writers. The writers of the Oxford Advanced Learner s Dictionary, 6111 Edition, defines conspiracy as:

> "a secret plan by a group of people to do something harmful or illegal."

Conspiracy has also been given various, but substantially the same definitions judicially. In the case of Oduneye v. State (2001) 13 WRN 88, it was defined by the apex court, thus:

"conspiracy consists not merely in the intention of two or more persons but rather in the agreement of two or more persons to do an unlawful act, or to do a lawful act, by unlawful means."
Also, in the case of State v. Haruna (l972) 8-9 SC 174, the Supreme Court had defined conspiracy thus:

> "At common law, conspiracy means an agreement of two or more persons to do an act, which constitutes an offence, to agree to do."

The difficulty which the courts face in securing a conviction on a charge of conspiracy through direct evidence is not of recent origin and it is not peculiar to the instant appeal. It has been like this for some time now, The courts, under the guidance of the apex court, the Supreme Court, have found a way round it. Thus, in the case of Oduneye v. State, the Supreme Court held, inter alia:

> "The offence of conspiracy is not defined in the Criminal or Penal Code. Therefore, direct positive evidence of the plot between the co-conspirators is hardly capable of proof. The courts tackle the offence of conspiracy as a matter of inference to be deduced from certain criminal acts or in actions of the parties concerned."

It will be sufficient if common intention to commit the main offence is established. This will suffice in the case of State v. Oladimeji (2003) 7 SCNJ 67, the Supreme Court held to the effect that common intention may be inferred from circumstances, that it will not be necessary to prove express agreement in order to enable a court to convict of conspiracy and participation A in the main offence: Idrisu Ahmed v. 5tore(1998) 7 SCNJ60.

It is not an answer to the charge merely for the appellant to lay the blame for the falsification of exhibit P1 at the doorstep of the 1st and 2nd accused persons. He cannot thereby avoid liability for the offences, being the ultimate beneficiary of the whole crime. It will only amount to passing g the bulk; by the appellant. Even, if it is assumed that it was the 1st accused who carried out the actual facilitation, the appellant will still have a lot of explaining to do as to his complacence in accepting die falsified statement of result and presenting same to his employers to enhance his status. On this, the decision of the Supreme Court in tin* case of Idrisu Ahmed v. Stale is instructive, wherein it was held by the apex court thus:

> "There is sufficient evidence from which an inaccessible inference may be drawn that botii the appellant and the first convict had a common intention to eliminate the deceased at all material times. That being so, it does not matter that it was not the appellant who, with his own fingers pulled the trigger of the short gun that terminated the life of the deceased."

The necessary ingredients of the offence of conspiracy were again restated by the Supreme Court in the recent case Kaza v. State (2008) 25 SCNJ 373 at 407 as:

(a) an agreement of two or more persons, the meeting of two or more minds;
(b) the persons must plan to carry out an unlawful act, which is an offence; and
(c) bare agreement to commit an offence is sufficient.

From the foregoing and what is available on record, what are the inferences to be reasonably drawn from the following posers in respect of the conduct of the appellant in regard to exhibit P4?

1. What would have motivated the 1st and 2nd accused on their own and without being instructed so to do by the appellant, to carry out the falsification of exhibit P4? What did die stand to gain thereby?
2. What explanation has the appellant for the change in nomenclature of the certification he deserved at the end of his study at the Kwara State Polytechnic from Higher Diploma to Higher National Diploma?

3. What further explanation has he for the upgrading from a mere "Pass" to an "Upper Credit"?

The failure of the appellant to adduce sufficient evidence at his trial in explanation of these posers is very fatal to the success of this appeal. Or what does he want one to infer from his silence over the above questions? The only and right inference to be drawn is that the forgery of exhibit P4 was at the instance of and for the benefit of the appellant.

Finding that the appeal does not have merit on the basis of the foregoing, and for the fuller reasons given by my learned brother in the lead judgment, I also dismiss the appeal and affirm the decision of the court below, which affirmed the decision of .the learned trial Magistrate convicting the appellant.

SANKEY JCA: I had the privilege to read before now the judgment just delivered by my learned brother, Nweze JCA. He has fully, in my respectful view, dealt with all the issues arising therein and I agree with the conclusions arrived thereat.

Learned counsel for the appellant has, in his brief of argument, stated the correct position of the law in respect of the attitude of an appellate court to the concurrent findings of fact of two courts below. The effect of the concurrent findings of fact which the appellant has to face in convincing the court to set aside his conviction and sentence is very well settled. It is that the court will not interfere with the concurrent findings of a lower courts on issues of fact except, there is established a miscarriage of justice, a perverse decision or a violation of some principle of law or procedure: Solomon Adekunle v. State (2006) 6 SCNJ 275; (2006) All FWLR (Pt. 332) 1452; Ukpabi v. State (2004) 6 SCNJ 12; Amusa v. State (2003) 1 SCNJ 518; (2003) All FWLR (Pt. 148) 1296; Usman v. Garke (2003) 7 SCNJ 38; (2003) FWLR (Pt. 177) 815; Ubani v.State (2003) 18 NWLR (Pt. 851) 224; (2004) FWLR (Pt. 191) 1533;Pri7icen/v. Statc(2QQ2) 12 SCNJ 280. When the findings of fact of a trial court are followed by the affirmatory findings at the High Court in its appellate jurisdiction, counsel carries a huge burden in persuading the Court of Appeal to upset such concurrent findings of facts. The basis of the principles on which an appellate court can interfere is that the trial court has the advantage which the Court of Appeal does not have, limited as it is to the printed evidence. The presumption is that the findings of fact of the trial court are right and the duty to displace such a presumption falls on the party challenging them.

Uwaifo JSC, described the attitude of appellate courts to concurrent findings of fact of lower courts very appositely in the c ase: Layinka v. Makinde (2002) 5 SCNJ 77 at 89-90 in the following very picturesque words:

> 'An appellate court has a limited function in the determination of a dispute between the parties. It does not try a case; it does not see and hear witnesses testify; as a result it does not experience the subtle and often influencing nuances of seeing and hearing witnesses give account of facts upon which findings are based by a trial court. An appellate court upon complaints made to it is concerned with seeing whether a trial court has or has not made some substantive or procedural errors, or has or has not failed to make any proper findings which the evidence available deserves, and accordingly, to take such decisions in the interest of justice by way of correction or confirmation of the decision of the trial court... Hence, it is said that a trial court has the primary function of assessing the quality of the evidence received by it, by giving credence to or expressing doubt about witnesses whom it had the advantage off seeing and hearing testify, weighing the evidence of one witness against that of another where appropriate, making findings of fact and finally deciding, in a civil case, which side of the case presented to prefer.'
>
> Accordingly, it is not the function of an appellate court to retry a case on the notes of evidence

in the printed record of proceedings and to set aside the verdict, if it does not correspond with the conclusions at which the court of trial would have arrived at based on those notes: hah Onu v. Ibrahim Idu (2006) 6 SCNJ 23; Kojo v. Bonsie (1953) 14 WACA 242; Otogbolu v. Okeluwa (1981) 6-7 SC 99. What is important is that, if there was evidence before the trial court from which its findings can reasonably be supported, its decision ought not to be disturbed: Onifade v. Olayiwola (1990) 7 NWLR(Pt. 161) 130; Ugov. Obeikwe (1989) 1 NWLR(Pt. 99) 566.

This appeal presents the question of concurrent findings of fact. I agree with the lead judgment that the appellant has not succeeded in showing in what way the findings of fact are not supported by the evidence. The facts as found by the Magistrate Court and the High Court are quite clear and the law, to my mind, was properly applied thereto. It has not been shown in this court that those findings of fact are perverse, nor that the law was not properly applied. With the o overwhelming evidence on record against the appellant from the four witnesses who testified for the prosecution, there is completely no reason to interfere with the findings of the courts below. The prosecution was able to prove the offences of criminal conspiracy, abetment and using a forged document as genuine against the appellant beyond reasonable doubt and the court below was right in affirming the appellant's guilt. Thus, there being nothing of substance that was shown by learned counsel to bring the concurrent findings of the guilt of the appellant within the ambit of the exceptions, the appeal must fail.

It is for this and for the detailed reasons advanced the lead judgment that too agree with the conclusion that the appeal is without any merit. I also dismiss this appeal and affirm the conviction of the appellant and the sentence imposed on him.

Appeal dismissed