IN THE CHIEF MAGISTRATE'S COURT OF ONDO STATE
IN THE AKURE MAGISTERIAL DISTRICT
HOLDEN AT AKURE
BEFORE HIS WORSHIP: YAKUBU O. R. MAGISTRATE GRADE II
THIS MONDAY THE 30TH DAY OF DECEMBER, 2019
CHARGE NO. MAK/NC/427C/2018

COMMISSIONER OF POLICE
VS.
OMOLE IBUKUNOLUWA

JUDGMENT

The Defendant was tried on a two count charge bordering on conspiracy to fraudulently obtain under false pretences contrary to and punishable under Section 422 of the Criminal Code CAP 37 Vol 1, Laws of Ondo State of Nigeria 2006.

Six witnesses testified for the prosecution as follows;

1. Adara Austin Ayodeji as PW1
2. FayehunOluwasanmi Sunday as PW2
3. Ajibola Edward Fagboyegun as PW3
4. AdejoroKehinde as PW4
5. Sgt. Karimu Michael as PW5
6. OgidiagbaOghenetega as PW6

The PW1 testified that sometime in August 2018, his boss, Mr. Fayehun sent him to meet the Defendant and one Ibrahim Rasheed at Gbamugbamu in Ogun State in a store to check 20 tons of cocoa that was to be purchased by their company, Peypey Nigeria Limited. That he met the said Ibrahim Rasheed who put a call through to the Defendant and informed him of his presence. That he inspected the store, found the cocoa that was to be purchased and he returned to Akure to inform Mr. Fayehun of his findings. That he returned to Gbamugbamu on 15/8/2018 where he met the said Mr. Ibrahim who again called the Defendant. That he also came back and reported to Mr. Fayehun and warned that if the Defendant did not make himself available, they could not trade with them. That the Defendant sent a text to the said Mr. Fayehun and requested for a meeting on 28/8/2018 at Gbamugbamu. That present at the meeting on the said day were the Defendant and Mr. Rasheed Ibrahim and the Defendant assured him that they could transact business with them. That he returned the next day to the store and the Defendant who was again not there was called by Mr. Rasheed Ibrahim. That upon his request for the account number of the said Rasheed Ibrahim for payment, he was told that his account was dormant and was given a GTB account number belonging to one Yemi Odumosu. That he called the Defendant and he confirmed to him that the said account was good for onward payment. That the Chairman of the company, one Mr. JibolaFagboyegun transferred the sum of ₦2, 000,000.00 to the said account and the Defendant was informed by Mr. Rasheed Ibrahim of the payment. That another sum of ₦2, 000,000.00 was sent to his account and Mr. Ibrahim Rasheed insisted that the balance

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of ₦1,900,000.00 must be paid before any goods could be released. That the Defendant told him that it was okay to pay to the said Rasheed Ibrahim and he went to the bank, withdrew the said ₦1,900,000.00 and gave it to the said Ibrahim Rasheed. That he went to the town to get a truck and before he returned to the store, the said Rasheed Ibrahim had run away and he quickly called Mr. Fayehun and told him that they had been duped. That after three days, Mr. Jibola Fagboyegun informed him that he had called the Defendant to threaten him with a petition to the EFCC and that the Defendant had refunded ₦250,000.00. That after a while, the Defendant stopped answering his calls and he consequently filed a petition to the Commissioner of Police where he was directed to the State Anti-Kidnapping Squad, Alagbaka and the Defendant was tracked and arrested.

During cross examination, the PW1 stated that the name of the store is Kadet Agro Nigeria Limited. The PW1 stated that he was given access to the cocoa beans in the store. That the ₦1,900,000.00 was withdrawn in Zenith Bank, Ibadan. That there was no instruction from Mr. Ajibola that payment be made only after the goods were loaded. That when the said Ibrahim Rasheed absconded, other co-workers did not abscond. That the said cocoa beans that he inspected were still there. That he has no document to show that he gave money to the said Rasheed Ibrahim. That it was the same day that he travelled to Ibadan to withdraw money that he went to look for a truck and also discovered that Mr. Rasheed Ibrahim had disappeared.

PW2, Mr. Fayehun gave evidence to the effect that at about July/August 2018, the Chairman of Pepey Nigeria Limited, Rev. Jibola Fagboyegun informed him that one Omole Ibukun said he had cocoa for sale in Ogun State. That after the said Omole had agreed to bring the cocoa to Akure from Gbamugbamu before payment, he called back and said the owner would not approve. That the Defendant assured them that there was no problem so he sent the PW1, who is his field officer to verify the cocoa. The PW2 practically repeated the evidence of the PW1 regarding his journeys to and fro Gbamugbamu and the payment of monies to Ibrahim Rasheed. His statement to the police dated 3/10/18 was admitted in evidence and marked Exhibit A.

During cross examination, the PW2 stated that he is not aware of the prior transaction between the Chairman and the Defendant. That not all transactions are done through Local Purchase Order. He maintained that the Defendant was aware of the payment and it was he (Defendant) who told him to pay to Ibrahim Rasheed.

PW3, Ajibola Edward Fagboyegun stated on oath that his first contact with the Defendant was a transaction which he had with him regarding supply of maize. That afterwards, the Defendant informed him that he had cocoa to sell and because he is not conversant with the operation, he introduced the PW2, his General Manager to continue with the discussions with the Defendant. That the field officer of the company, PW1 was eventually sent to Gbamubamu to see the Defendant because the pressure from the Defendant was so much. That there were series of meetings which culminated into the account number of one Yemi Odumosu being forwarded to him by the PW2 for payment. That he paid the sum of ₦2, 000,000.00 into the account from the company's Sterling Bank account and forwarded another ₦2, 000,000.00 to the PW2 out of which ₦1,

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900,000.00was to be paid after the goods were loaded and ₦100,000.00 representing the cost of transportation. That he was only informed the day after that the Defendant and one Mr. Ibrahim Rasheed had defrauded the company of ₦3, 900,000.00. That he succeeded in putting a call through to the Defendant and told him that he would involve the EFCC to ensure he recovers his money. That the Defendant pleaded and started to refund the money with a payment of ₦250, 000.00. That he suddenly stopped paying and said his lawyer advised he stopped the payment. That he took it up with the PW1 to produce those who collected the money and one day he was called that the Defendant had been arrested. The statement of the PW3 dated 3/10/18 was admitted in evidence and marked Exhibit B. Statement of account of Peypey Nigeria Limited between 23/8/18 and 3/9/18 was admitted in evidence and marked Exhibit C. Local Purchase Order from Yeshua Business Solution for Peypey Nigeria Limited was admitted in evidence and marked Exhibit D.

During cross examination, the PW3 stated that every transaction has its own operation and not all require LPO. That there is no written instruction by the Defendant to credit the account of one Yemi Odumosu and there is nothing to show that ₦1, 900,000.00 was paid to Rasheed Ibrahim because cocoa business is not done that way. That he never coerced the Defendant into paying the said ₦250, 000.00 and he is not aware of any case at the High Court. That apart from the company's part in the transaction, the transaction took place in Gbamugbamu.

The PW4, Adejoro Kehinde stated on oath that pursuant to the order of court made on 14/1/18, the call logs of the PW3 and the Defendant were released to her. That the conversation between the PW2 and the Defendant and the statement of account of the Defendant was also released to her pursuant to a court order. Copies of rulings of the court dated 6/12/2018 were admitted in evidence and marked Exhibits E and F respectively. Covering letter dated 5/3/2019 from MTN Nigeria Communications was admitted in evidence and marked Exhibit G. The said copy of the call logs was admitted in evidence and marked Exhibit N1-N11. Covering letter and statement of account dated 13/12/18 were admitted in evidence and marked Exhibits P and Q respectively.

Under cross examination, the PW4 admitted that she is not aware of anything in the matter and she is not the maker of Exhibit O.

PW5, Sgt. Karimu Michael testified that there was a petition written against the Defendant by one Mr. Ilemobade, a legal practitioner on behalf of the PW1. That in line with the contents of the petition as stated by the PW1, the Defendant was tracked down and arrested on 1/10/18. That the Defendant denied the allegation and denied that Mr. Ibrahim Rasheed is his business partner but admitted that he sent ₦250, 000.00 to the PW3. That after immense pressure to produce Mr. Ibrahim Rasheed, the Defendant denied knowing any Rasheed Ibrahim. That he visited the scene of crime on 4/10/18 and he met the owner of the store who identified the Defendant and stated that he can identify Rasheed Ibrahim if seen. That the owner also stated that the Defendant and Mr. Rasheed Ibrahim were seen together in his store. That his investigations revealed that the Defendant was aware that the PW3 transferred ₦3, 900,000.00 to the said Mr. Ibrahim

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and he also discovered during investigation that the Defendant paid ₦250,000.00 to the PW3. That his investigations revealed that the Defendant and Mr. Rasheed Ibrahim conspired to defraud Peypey company. That he recorded the statements of the PW1, one Oghenetega, Mr. Oparinu Babatunde (the store owner) and the Defendant and they were all tendered in evidence, admitted and marked Exhibits I, J, K and L and L2 respectively. Letter addressed to the Commissioner of Police, Ondo State dated 13/9/2018 was admitted in evidence and marked Exhibit H through the PW5. Statements of PW1 dated 3/10/18, Ogidiagba Oghenetega dated 4/10/18, Oparinu Babatunde dated 5/10/18 and the Defendant were admitted in evidence and marked Exhibits I, J, K, L1 and L2 respectively through the PW5.

During cross examination, the PW5 stated that his investigations revealed that ₦2,000,000.00 was sent to the account of Odumosu Yemi by the PW3 and the sum of ₦1,900,000.00 was paid into the account of the PW1. That he had no benefit of inspecting Exhibit C. That Yemi Odumosu was not seen by him in the course of investigations. That he did not visit Zenith Bank, Sagamu where the PW1 withdrew the said ₦1, 900,000.00. PW5 admitted that he never saw the statement of account of the PW1 in the course of his investigation and he does not know if the ₦2, 000,000.00 is still in the account. That he does not know the distance between Gbamugbamu and Ibadan. That he does not know the specifics regarding what time the monies were transferred and when the PW1 went to get a truck. He insisted that he carried out a comprehensive investigation in the matter.

PW6, Mr. Ogidiagba Oghenetega stated on oath that he was the store keeper at Kadet Agro Allied Investments Ltd. That the Defendant was at the store around August 2018 and stated that he wanted to buy cocoa. That his offer was below the selling price and he left after exchanging phone numbers with him. That also during that August, one Mr. Rasheed Ibrahim came to the store and had a discussion with his boss. That he could not hear what they were saying until he left and his boss told him that he was offering ₦700 for a kilogram of cocoa. That he subsequently received a call from the Defendant and offered to buy above what he had offered earlier. That after three days, he got a call from his boss that the said Mr. Ibrahim was in the store and was waiting to buy cocoa and on getting there, he saw Mr. Ibrahim and about five persons who offered to buy thirty tons of cocoa when they had only twenty tons. That they also asked for jute bags which was not available. That he thereafter saw the PW1 with some other persons coming from another store (Iya cocoa's store) to his own store and he had no idea of what they were discussing. That after some time, Mr. Ibrahim and the others left and he called his boss who warned him not to release any goods to anybody until he received credit alert. That after about an hour, the PW1 cried out that he had been duped. That after a few weeks, he was arrested by the Police along with his colleagues and he made statement which he identified as Exhibit J. That his number was found saved on the Defendant's phone at the Police station. That he identified the Defendant as the one who came to the store to offer to buy cocoa.

During cross examination, he stated that he is now a student. That Messrs. Oparinu Babatunde Caleb and Adeleke Isaac own the store. That several other persons work at the

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store including Rukayat, Wasiu, Stephen, Ogaga and the driver, Mr. Rahmon. That the loaders are community men and they are many. That strangers could walk around the store without being followed by any of the workers. That the transaction between the PW1 and Mr. Ibrahim took place in the store. That his boss, Mr. Oparinu Babtunde who lives in Ibadan knows Mr. Ibrahim. That he is not aware that the PW1 said the said Mr. Ibrahim collected money from him for the cocoa in the store. That it was after the said Mr. Ibrahim left that the PW1 shouted around 2:00pm that he had been duped. That the PW1 was around the premises prior to this time. That Mr. Ibrahim and two other persons were together in Iya cocoa store and came to his store. That the PW1 was also there with them and he did not know what they were discussing. That the PW1 later came alone and that was the only time he saw them together that day. That the Defendant came to make enquiries around the first or second week in August 2018. That he was indisposed on 28/8/18 and he could not go to the warehouse that day. That he only resumed work after about three days and Rukayat held fort for him during his absence. That his phone number is 08148815562 and his email addresses ogidiagbaotega@yahoo.com, kaylinepace@gmail.com. That he is not aware of any payment by the PW1 for cocoa in his store.

The Prosecution closed its case at this point. Learned defence Counsel's no case submission was overruled and the Defendant was ordered to enter his defence to the charge. The Defendant testified on his own behalf in defence to the charge.

The Defendant stated on oath that he works as a data analyst with MTN Nigeria. That he never sent a text to the PW3 asking for a meeting on 28/8/18 and he never attended such meeting with the PW1 and any Mr. Ibrahim Rasheed. That it is not true that the PW1 called him informing him that Rasheed Ibrahim said his account was dormant. That he never spoke with PW1 on 28/8/18. That it is not true that the PW3 called him three days after they had been duped threatening him with a petition to the EFCC. That on 31/8/18, he received a call from an unknown person who had called and introduced himself as Adara, an agent of Peypey Limited (PW1) and claimed he had been duped and that one Ibrahim Rasheed had asked him to sit down somewhere for three (3) days and he ran away. That he called the PW2 to ask who Adara was and who sent money to who and when he could not understand what he was saying, he conferenced the PW3 to find out what exactly was going on. That he is a promoter of business and he registered Yeshua Business Solution and he is the representative of the company online. That his contact details are all online and available to all. That he had a prior business deal with the PW3 whom he had never met physically.

That as at the time the deal was being concluded, one Ibrahim Rasheed contacted him that he had cocoa to sell. That because the PW3 had hinted that he was into cocoa buying, he connected him to the said Ibrahim Rasheed and he warned the PW3 to conduct his due diligence before transacting any business with the acclaimed seller and the PW3 vowed to conduct his verification. That the PW3 tried to arrange a meeting with the said Ibrahim in attendance but it could not hold due to a festival at the time. That he embarked on a personal proper verification on 29/8/18 and invited the PW2, PW3 and the said Ibrahim Rasheed to the store but he did not get any feedback from the PW2 and PW3. That the

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said Ibrahim Rasheed continued to give excuses and did not show up at the venue. That he went to the store and realized there were many stores in the area so he went round, exchanged phone numbers for future references. That he called the PW3 who told him that one of his agents was on his way and that he would forward the person's phone number to him. That he waited for a while and left when nobody came and no number was forwarded to him. That he went back to Lagos and the said Ibrahim kept giving him excuses why he could not make it. That it was about three (3) days after, on 31/8/18 that the said Adara called, telling him that he had been duped. That he thereafter called the PW3 to find out what they had done and he began to threaten him. That for his integrity and the company for which he had worked for about thirteen years, he agreed to refund the money. That he paid ₦250, 000.00 to the PW3 and on 1/9/18, the PW3 called to tell him that the total amount was ₦3,900,000.00 as another ₦1,900,000.00 had been given to somebody. That this made him snap and realise that he was a victim of a total conspiracy. That he refused to pay any further and he was subsequently arrested by the Police who had disguised as a potential buyer. That he never called the PW3 to tell him that he had cocoa to sell. That he never directed the PW2 to make part payment. That he never told them to send money to any account. That he does not know any person called Yemi Odumosu.

During cross examination, the Defendant maintained that the prior transaction regarding maize was initiated via a Local Purchase Order. That the only relationship he had with the PW3 was on phone. That he was never at Gbamugbamu with the PW1 and Rasheed. That his phone number with which he contacted the PW3, Rasheed and PW2is 08032008904. That Samson Odumosu is another produce seller that he had known earlier and he was arrested but freed when it was discovered he knew nothing about the incident. That he does not even know if the individual called Rasheed exists as he has never met the individual. That he is not aware if the said Rasheed Ibrahim gave the PW3 the account number of Yemi Odumosu.

During re-examination, the Defendant stated that Yemi Odumosu and Samson Odumosu are not the same. A certified copy of an application and a counter affidavit dated 8/10/18 and 26/3/19 were admitted in evidence and marked Exhibits R and S through the learned defence Counsel who tendered from the bar. The defence closed its case at this point.

The Defendant's Counsel, Biodun Fasakin Esq filed a written address dated 25/11/2019. Learned Counsel submitted that this court lacks the territorial jurisdiction to adjudicate over this matter because the said cocoa was to be purchased outside Ondo State. Counsel referred to ***DARIYE V. STATE (2015) 61 (Pt. 3) NSCQR 1457 at 1495.***Counsel argued that a proceeding conducted without jurisdiction is a nullity. Counsel cited ***ZAKARI V. NIGERIAN ARMY (2015) 62 (Pt. 1) NSCQR 214, MADUKOLU v. NKEMDILIM (1962) 1 All NLR 587.***

Counsel submitted that no jurisdiction is vested on this court to entertain this charge as the alleged criminal acts were committed outside Ondo State. Counsel urged the court to dismiss the criminal charge against the Defendant.

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On the substantive matter, learned defence Counsel formulated one issue for determination as follows:

Whether the Prosecution has proved its case beyond reasonable doubt against the Defendant as to sustain conviction

Learned Counsel submitted that the statement of account of the PW1 was not tendered to substantiate the claim that the sum of ₦2,000,000.00 was sent to his account and to show how much was withdrawn or not. That the PW1 claimed he withdrew in Ibadan while the PW5 claimed the money was withdrawn in Sagamu. That the PW5 did not visit the bank to investigate and he failed to conduct proper investigation. That the PW5 made no effort to apprehend the said Yemi Odumosu and Ibrahim Rasheed the same way the Defendant was arrested through tracking.

Counsel submitted that from the evidence on record, the court cannot come to a conclusion that PW1 indeed negotiated any cocoa with anybody named Ibrahim Rasheed, let alone send any money to him. Learned Counsel submitted that Exhibits N1-N11, P and Q were dumped on the court and were not spoken to by the witness, hence have no evidential value.

Counsel noted that from the evidence of PW1 that cocoa is sold at Sixty Two Naira (₦62) per kilogram, twenty tons would amount to ₦12, 666,000.00 and not ₦3, 900,000.00 as alleged. He submitted further that inconsistencies in the evidence of the Prosecution must be resolved in favour of the Defendant.

Counsel argued that the evidence of the Defendant that he never met the said Ibrahim Rasheed was not disproved under cross examination. That the mere introduction of the said Ibrahim Rasheed to the PW3 by the Defendant does not constitute evidence of conspiracy as there was no evidence of communication between the Defendant and the said Ibrahim Rasheed. Counsel argued that the principle of vicarious liability is unknown to criminal law. Counsel cited ***IBE V. STATE (1993) 7 NWLR (Pt. 304) Pg. 187.***

Relying on ***MICHAEL ALAKE v. THE STATE (1991) 7 NWLR (Pt. 205) 567 at 591,*** learned defenceCounselsubmitted that the elements of the offence of obtaining by false pretences were not proved. Counsel also cited ***KENNETH CLARK v. THE STATE (1986) 4 NWLR (Pt. 35) 381 at 395 and ONOCHIE v. REPUBLIC (1966) All NLR 82.***

Counsel argued that no money was shown to have been paid to Ibrahim Rasheed either in cash or through a proxy. Counsel insisted that the Defendant only gave the PW3 the contact of the said Ibrahim Rasheed and he warned him to ensure due diligence before any transaction. Counsel submitted that as at the time the PW1 shouted that he had been duped, the said Ibrahim Rasheed was still within the premises and he was not shown to be the swindler. Counsel finally submitted that the ingredients of the offence have not been proved against the Defendant beyond reasonable doubt and urged the court to discharge and acquit the Defendant. Ayarashided 30/12/15

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The Prosecution in its address titled '*reply to Defendant's final written address*' did not formulate any issue for determination. On the objection to jurisdiction, the Prosecution submitted that by virtue of section 86(1)(e) of the Administration of Criminal Justice Law, 2015, the court is clothed with the jurisdiction to try the offences charged. In response to the 2nd issue formulated by the learned defence Counsel, the Prosecution stated the facts of the case as understood by the Prosecution and stated that to ground conviction for the offence of conspiracy, there must be;

a. An agreement between the Defendant s to do or cause to be done some illegal acts or some acts which is illegal by illegal means
b. Some acts beside the agreement was done by one or more of the Defendant s in furtherance of the agreement
c. That each of the Defendant s individually participated in the conspiracy

In all, the Prosecution submitted that it has proved its case beyond reasonable doubt in establishing the facts before this court and urged the court to convict the Defendant accordingly.

Before going ahead to formulate the point for determination, there is a need to resolve the objection on jurisdiction raised by the learned defence Counsel. The issue of jurisdiction is fundamental to any proceedings. It is the life wire of any adjudication and where a court has no jurisdiction to entertain and determine a case, the proceedings and the judgment leading therefrom, no matter how well conducted and brilliantly determined, remain a nullity. It is trite that jurisdiction is a matter of substantive law as no court, litigant or Counsel can by agreement or concession, confer jurisdiction on a court where a statute provides otherwise.

A court is said to have jurisdiction and competence to determine a suit when:

1) It is properly constituted as regards members and qualification of the members of the bench and no member is disqualified for one reason or the other;

2) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction;

3) The case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. See ***ABBAS v. TERA (2013) 2 NWLR (Pt. 1338) Pg. 284, MADUKOLU v. NKEMDILIM (1962) 2 SCNLR 341.***

It is Counsel's submission that this court lacks the territorial jurisdiction to adjudicate over this matter because the said cocoa was to be purchased outside Ondo State. This objection falls under the second condition as stated above, whether the subject matter is within the court's jurisdiction and whether there is any feature which prevents the court from exercising its jurisdiction. The jurisdiction of this court is determined by its creating statute as well as other enactments. Section 21 of the Magistrates' Courts Law of Ondo State vests jurisdiction and powers on Magistrates to entertain and determine criminal

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cases subject to any restrictions or conditions prescribed by the Constitution or any other enactment.

Section 12A(2)(a)(b) of the Criminal Code provides as follows:

> ***(2) With regard to any such offence which is of a nature that it comprises several elements, if any acts or omissions or events actually occur, which, if they all occurred in Ondo State, would constitute an offence, and any of such acts or omissions or events occur in the Ondo State, although all or some of the other acts or omissions or events, which, if they occurred in Ondo State, would be elements of the offence occur elsewhere than in Ondo State, then:-***
>
> ***a) if the act or omission, which in the case of an offence committed wholly in Ondo State would be the initial element of the offence, occurs in Ondo State, the person who does that act or makes the omission is guilty of an offence of the same kind and is liable to the same punishment as if all the subsequent elements of the offence had occurred in Ondo State;***
>
> ***b) if that act or omission occurs elsewhere that in Ondo State, and the person who does that act or makes that omission afterwards comes into the State, he is by such coming into the State guilty of an offence of the same kind and is liable to the same punishment, as if that act or omission had occurred in the Ondo State and he had been in Ondo State when it occurred.***

The evidence on record is that the PW3's company, Peypey Nigeria Limited is in Akure, Ondo State. The said company negotiated a deal from its location here in Ondo State and the offence for which the Defendant stands trial is known to the Criminal Law of Ondo State. The fact that the store where the alleged cocoa was kept is not in Ondo State does not rob the court of requisite powers to adjudicate over the matter. What is more? The Defendant's entry into the state has made him triable under the Criminal Code Law of Ondo State, the offence in respect of which he stands trial, being one which the court has requisite powers to entertain and determine.

In *NJOVENS v STATE (1973) 5 SC 17,* it came up for determination whether a Defendant could be tried for an offence allegedly committed outside the State and whether the arrest and involuntary/forced entry of a Defendant into the state qualifies under section 4(2)(b) of the Penal Code which is *impari materia* with section 12A(2)(b) of the Criminal Code. The Supreme Court in interpreting the said section held as follows:

> ***"Looking back at section 4 (2) (b) of the Penal Code Law, we are of the view that the entry postulated by the subsection is not necessarily a voluntary entry and, whether the offender be apprehended in the State or be in custody in the State, his entry is complete within the purpose and intent custody in the state, his entry us complete within the purpose and intent of the subsection and he is triable in the State under the Penal Code."***

The apex court also held as follows:

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"We are satisfied ourselves that to construe the word 'enter' in the subsection as meaning only a voluntary entry would be completely ridiculous since in that circumstance no criminal will ever enter the State when he knows or realizes that such entry may make him triable by the laws of the State."

Thus, the Defendant having by his arrest been deemed to have entered into the state after the alleged commission of the offence, there is no feature in the case which precludes the court from assuming jurisdiction over the matter. The objection of Counsel is misconceived and it is hereby overruled.

Before I proceed, it is important to consider the charge before the court. The Defendant is charged in both counts under the provision of Section 422 of the Criminal Code Law. It provides as follows:

422. Any person who conspires with another by deceit or any fraudulent means to affect the market price of anything publicly sold, or to defraud the public, or any person, whether a particular person, or to extort any property from any person, is guilty of a felony, and is liable to imprisonment for seven years.

I have considered the evidence on record and the case as put up by the Prosecution, which is that the Defendant conspired with others to fraudulently obtain the sum of ₦3, 900,000.00 from Peypey Nigeria Limited or caused the said sum to be transferred to some other persons. This in my view was brought under the wrong section of the Criminal Code. Sections 419 and 516 of the Criminal Code appear to be more apt considering the nature of the charge and the evidence led by the Prosecution. Failure to state accurately the statute contravened by an accused person is not fundamental provided the accused person knows the offence for which he was charged and the fact that the offence is known to law. See *OGBOMOR v. STATE (1985) 2 SC 289, CONFIDO CONSULT SERVICES LTD v. FRN (2018) LPELR-43676(CA)* and *DANIEL PETER V THE STATE (2013) LPELR - 20302 (CA)*. This is not in doubt in this case. I am compelled to invoke the provision of Section 195 of the Administration of Criminal Justice Law, 2015 which provides that no error in stating the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the Defendant was in fact misled by the error or omission. The Defendant herein cannot be said to have been misled by the said error in the charge because in taking his plea, he not only affirmed that he understood the charge against him, he pleaded not guilty and gave extensive evidence in defence. I am thus going to consider and determine this case based on sections 419 and 516 of the Criminal Code.

Having considered the evidence on record and the submission of Counsel, the sole issue for determination as formulated by learned defence Counsel is hereby adopted by the court. It is reproduced as follows:

Whether the Prosecution has proved its case beyond reasonable doubt against the Defendant as to sustain conviction

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As applicable in every jurisdiction where the criminal justice system is modeled in the adversarial manner, the Prosecution in every criminal trial in Nigeria has a heavy burden to establish the guilt of a Defendant by credible evidence beyond reasonable doubt and this the Prosecution can do through any or a combination of direct evidence of eye witness, voluntary confessional statement of the Accused person and cogent and compelling circumstantial evidence. See ***Section 135 of the Evidence Act 2011, DODO v. STATE (2019) LPELR – 46355 (CA), NWABUEZE v. THE PEOPLE OF LAGOS STATE (2018) LPELR – 44113 (SC)*** and ***MUSA v. STATE (2019) LPELR – 46350 (SC)***

Before going further, there is a need to determine the probative value that will be ascribed to exhibits N1 to N11, P and Q. Learned defence Counsel in his address submitted that exhibits N1 – N11, P and Q tendered by the PW4 are of no evidential value as PW4 was not the maker, hence the prosecution dumped same on the court without speaking to them. Counsel stated that it is trite that it is not the duty of the court to investigate documents placed before it.

In response to this argument, the Prosecution submitted that the argument holds no water in the sense that the PW3 informed the court that he made application for the call logs and the bank statement of Ibrahim Rasheed. The Prosecution argued further that the law permits the Defendant to recall the PW3 in order to cross examine him on the exhibits since he laid foundation of how he applied for the exhibits. The Prosecution further stated that the documents were not tendered for fun but for the purpose of assisting the court in determining the relevance of the exhibits to the case. He stated that once a document forms part of the record of the court, it must be examined, scrutinized and assessed for a just determination of the case. He relied on ***AYINDE v. SALAWU (1989) 3 NWLR (PT 109) 297 at 314 particularly at 314-315***

Having carefully considered the arguments above, it cannot be overemphasized that a party must relate each document to specific areas of his case, without such link no court would act on such dumped documents. See ***LADOJA v. AJIMOBI (2016) LPELR – 40658 (SC)***. It is the duty of the party relying on a document to demonstrate in open court the use he proposes to put it to. It is not for the court to go on a voyage of discovery or speculation as investigation is not the work of the court. It is not the duty of the court to embark on cloistered justice in making enquiry into the case outside the open court not even by examination of the document which were in evidence but not examined in the open court. See ***DANLADI v. EL RUFAI (2015) LPELR – 40767 (CA)***

Contrary to the submission of the Prosecution, a Court has a duty to examine all documents tendered and admitted as exhibit by the Court provided the party tendering same links the said documents to his case and points out how it is useful to its case. It is never for the court to go on a fact finding mission.

Exhibits N1 – N11, P and Q were tendered by the PW4 who is the Registrar of this court. The Registrar is only a medium through which the documents were received. She is not

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the maker of the documents and certainly not a party to this case. She also is in no position to answer any question that goes to the substance of the document. As a matter of fact, PW4 stated under cross examination that she knows nothing about the documents.

Neither the PW1 nor the PW2 stated anything that has to do with the exhibits under consideration. The PW3 who the Prosecution argued laid a foundation for the document only mentioned the documents in passing under cross examination. The evidence in this regard is reproduced below;

> ***Mr. Fasakin – The Defendant is a staff of MTN Nigeria***
> ***PW3 – I now know. I knew he was staff of MTN when I was given the permission to obtain his call log***

Going through the length and breadth of the Prosecution's evidence, there was no other mention of the documents or any reference to same. The documents, especially exhibit N1 - N11 contains series of columns which ought to be explained to the court. Throughout the evidence of the PW1-PW3, none of them gave particulars of phone numbers that were used to exchange correspondence between all the parties that played a role in the transaction that led to this charge. The document was simply dumped by the Prosecution on the court without linking it to its case.

I do not agree with the Prosecution that the Defendant ought to apply that the PW3 be recalled. Agreeing with this submission will mean that the Defendant be called to prove his innocence. It is first the duty of the Prosecution to show how these documents will be relevant to its case before the Defendant can be called to disprove same. The Prosecution failed to link the documents to its case and it cannot expect the Defendant to do this job for it.

In all, the object of tendering exhibitsN1 – N11 is at large. The document did not come from the moon. The document at best was dumped on the court. It was tendered without adequate and proper explanation of its content and it was not given any life.

It can be validly argued that the courts are long departing from technical justice, but it remains constant that it is not the duty of the Court to make inquiries into a document that was not spoken to. Going forward to examine the exhibits by itself would amount to the court doing a party's case which might occasion injustice to the other party. The court as an arbiter must not get into the arena and engage itself in doing a case for one party to the disadvantage of the other party. See ***LADOJA v. AJIMOBI*** (supra). In view of the foregoing, this court attaches no probative value to exhibitsN1 – N11.

Resolving the issue formulated in the instant case, the summary of the case of the Prosecution which it seeks to establish in evidence is that the Defendant conspired with one Ibrahim Rasheed and Yemi Odumosu to fraudulently obtain the sum of ₦3,900,000.00 from the PW3 and/or his company, Peypey Nigeria Limited. Due to the

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intertwined and interconnected nature of both counts, the two counts before the court will be monolithically considered.

In *ADELODUN v FRN (2017) LPELR - 42356 (CA) and AGUBA V. FRN (2014) LPELR - 23211(CA) 40 - 4*1, paras D – B, the offence of obtaining under false pretence is defined thus:

> ***"It has been defined as knowingly obtaining title to another person's property by misrepresenting the fast with the intent to defraud that person."***

The Court has held that false pretence means a representation, whether deliberate or reckless, made by word, in writing or by conduct, of a matter of fact or law either past or present which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true.

The essential ingredients of the offence of obtaining by false pretence created by section 419 of the Criminal Code Law which the Prosecution is required to establish in order to secure a conviction are:

a. That a pretence was made by the Defendant which he knew to be false and did not believe to be true
b. That the Defendant had an intention to defraud
c. Some property capable of being stolen was obtained as a result of the pretence.
d. The pretence operated on the mind of the person from whom the property was obtained. See ***IKPA v THE STATE [2017] LPELR - 42509 (SC); SMART v STATE (1974) LPELR - 3070 (SC); OSHIN v IGP (1991) 7NWLR (PT 205) 567; AMADI V FRN (2008) 10 NWLR (PT 1119) 259 at 281 - 282.***

In ***ADEROUNMU v. FRN (2019) LPELR-46923(CA)***, on what the Prosecution must prove to succeed in a case of obtaining by false pretences, the Court opined thus;

> ***"...Both Counsel have ably brought out the ingredients of the offence in their various briefs which they adopted. For completeness, I will make reference to a few cases on this point. In Omorede Darlinton vs. FRN ELC (2018) 2415 page 1, the Supreme Court per Eko, JSC in bringing out the ingredients of the offence held: "The offence of obtaining by false pretence created by Section 1(1) (a) of the Advance Fee Fraud and other Related Offences Act, 2006 is constituted or committed upon the existence of the following facts I. A pretense is made by way of representation. II. From the accused person. III. To the person defrauded. IV. The representation is pretence. V. The accused knows or has reason to know that the representation is false or does not believe in truth of the representation. VI. The accused makes the false representation with intent to defraud the victim to whom the false representation was made. VII. Consequence of the false representation the accused induced the victim to deliver or transfer some property or interest in the accused or some other person. VIII. The property transferred is capable of being stolen i.e. is as portable.... The apex Court in Onwudiwe vs. FRN (2006) 4 SC (Pt. II) 70 defining the offence under the Criminal Code held: "Let***

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me deal with the offence as provided for in Section 419 of the Criminal Code Law. In order to succeed, the Prosecution must prove (1), that there is a pretense; (2) that the pretense emanated from the accused person; (3) and that it was false; (4) that the accused person knew of its falsity or did not believe in its truth; (5) that there was an intention to defraud; (6) that the thing is capable of being stolen; (7) that the accused person induced the owner to transfer his whole interest in the property. The offence could be committed either by oral communication or in writing or even by conduct of the accused person. An honest belief in the truth of the statement on the part of the accused which later turns out to be false, cannot found a conviction on false pretense." The ingredients must be proved conjunctively and not disjunctively. In other words, the ingredients are mutually inclusive and not mutually exclusive. See; Bello vs. FRN (2018) LPELR- 43688..."

Against this background, the pertinent question to ask is whether the Prosecution proved the case of obtaining by false pretence against the Defendant? The evidence before the Court from the PW1 and PW2 is that the Defendant authorized dealings with Ibrahim Rasheed and payments of the sum of ₦3, 900, 000.00 to both Yemi Odumosu and Ibrahim Rasheed.

There is uncontroverted evidence on record that the sum of ₦2, 000, 000.00 was paid to the account of Yemi Odumosu by the PW3 and another transfer of the sum of ₦2, 000, 000.00 to the account of the PW1 by the PW3.

It is also uncontroverted that the Defendant was introduced to the PW2 by the PW3 and the Defendant in turn introduced Rasheed Ibrahim to the PW2 who linked the PW1 to the said Rasheed Ibrahim. However, does the introduction done by the Defendant without more establish an offence on the part of the Defendant?

For the Defendant to be liable for the offence, it must be proved that he made a representation to the PW1 to deal with the said Rasheed Ibrahim as put forward by the Prosecution witnesses. There is evidence that the money was paid. The main issue here is whether there was communication between the Defendant, the PW1 and the said Rasheed Ibrahim. The Prosecution put it forward that the action, conduct and assurances of the Defendant was the flimflam by which the said Rasheed Ibrahim hornswoggled and fleeced the PW3's company of the total sum of ₦3, 900, 000.00, the money being a thing capable of being stolen.

From the entire evidence of the Prosecution witnesses as highlighted above, the following points suggest the involvement of the Defendant in the offence with which he is charged:

1. That the Defendant contacted the PW3 about cocoa that was to be sold in Gbamugbamu and the PW3 connected the PW2 who is his manager to the Defendant to continue with the negotiations;

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2. That the PW2 sent the PW1 to Gbamugbamu to inspect the cocoa that was to be sold and on getting here, the PW1 met one Ibrahim Rasheed who according to him called the Defendant on phone to inform him of his presence;

3. That the Defendant showed up at the store on the PW1'sthird visit where a meeting was held between the PW1, the Defendant and Ibrahim Rasheed and the Defendant assured them that they could do business;

4. That the said Ibrahim gave the PW1 the account number of one Yemi Odumosu and Defendant confirmed to the PW1 that it was safe to pay to the said account and also to Ibrahim Rasheed;

5. That a cash sum of ₦1, 900, 000.00 was paid to Ibrahim Rasheed who ran away with the money.

In defence, the Defendant claimed that he only introduced the said Ibrahim Rasheed to the PW3 because they had both expressed their intentions to buy and sell cocoa to him. That he never met the PW3 or any of his agents and he advised the PW3 to conduct due diligence and not pay to anyone unless and until his goods were loaded. That he had no idea the PW3 paid to anyone because his consent was not sought and he was not informed.

From the evidence on record, there is credible evidence that there was a payment to the account of the said Yemi Odumosu. The evidence on record no doubt establishes that the sum of ₦2, 000,000.00 was paid into the account. Exhibit C also put paid to the claim of another payment of ₦2, 000,000.00 into the account of the PW1. The evidence as to whether the sum of ₦1, 900,000.00 was paid to the said Ibrahim Rasheed will be considered in the course of the judgment. As such, there is no doubt that money exchanged hands in the course of events that led to this charge and there was no concomitant supply of cocoa as agreed. It is thus established in evidence that there was a pretence which operated on the mind of the PW1, PW2 and PW3 which made them part with money, which is thing capable of being stolen.

We are thus left with two ingredients of the offence; whether there was pretence by the Defendant and whether he had an intention to defraud.

Let us consider the evidence on record to determine whether the said pretence which operated on the mind of the PW1, PW2 and PW3 was from the Defendant and whether he had an intention to defraud. In doing so, I am of the view that the following points must be resolved in arriving at a just determination of the case and to ascertain whether the Prosecution has proved its case beyond reasonable doubt against the Defendant as to sustain conviction in respect of conspiracy and obtaining under false pretence.

1. Was there a physical meeting between the PW1, the Defendant and the said Ibrahim Rasheed in Gbamugbamu?

2. Whether the Defendant was aware of or contacted on 30/8/2018 to confirm the account number of Yemi Odumosu as proper for the transaction?

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The questions above are the points upon which this case turns. In respect of the first point whether or not the Defendant met with the PW1 and Ibrahim Rasheed at the store as asserted by the Prosecution, the following are the pieces of evidence adduced by the Prosecution:

The PW1stated as follows:

> ***On 28th of August, 2018, I went to Gbamugbamu and I saw Mr. Omole and Mr. Ibrahim Rasheed. The Defendant said we should transact business with them that there was no problem. On the second day, I did not meet the Defendant there again but the said Mr. Rasheed Ibrahim called the Defendant to inform him that I was there. When I wanted to pay to Mr. Rasheed Ibrahim, he told me that his account had become dormant and he will give me Yemi Odumosu, a GTB account.***

In his extra judicial statement admitted as Exhibit I, the PW1 stated inter alia as follows:

> ***...I later left for Gbamugbamu camp to confirm the third time Mr. Ibrahim Rasheed took me to Cadet Agro Nig Ltd where I reconfirmed cocoa beans for the third time where I met Mr. Omole and Ibrahim Rasheed who asked me to make payment. Omole later left me and Mr. Ibrahim Rasheed, (the chairman). After he have (sic) informed me to pay into Mr. Ibrahim Rasheed account, write (sic) there in the present (sic) of Omole, Mr. Ibrahim Rasheed gave the account of Mr. Yemi Odumosu at GTB with account number 0017054615 and I sent it to Chairman and Chairman sent 2 million naira to the account I send (sic) to him. And Ibrahim Rasheed called Yemi Odumosu who confirm(sic) same and Chairman send (sic) 2 million naira to my zenith account in which I was instructed to pay him one million nine hundred naira and the order(sic) one hundred thousand for transportation...***

The Defendant in his own defence claims he did not meet the PW1 or Ibrahim Rasheed at the store. That he contacted the PW2, PW3 and Ibrahim Rasheed on 29/8/18 that he was on his way to the store to verify things by himself but none of them showed up. While the PW1 claimed he met the Defendant in Gbamugbamu, the Defendant claims he never met the PW1.The evidence of the PW6 would naturally come into play because he used to work in the said store where the meeting between the PW1 and the Defendant was said to have held. Here is what he had to say regarding the presence of the Defendant at the store:

> ***The Defendant came to our store last year around August that he wants to buy cocoa. I asked how much he was willing to pay. The Defendant said he was going to buy for about ₦560,000 (Five hundred and sixty thousand) and ₦580,000 (Five hundred and eighty thousand naira) between that range. I told him we could not sell for that price since we buy locally above the price he was offering. He thereafter agreed to buy. The Defendant asked us to exchange contacts. I initially disagreed but eventually we exchanged phone numbers...***

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About 3 days after, I was at home and my boss called me and said Mr. Ibrahim said he wants to come and buy the cocoa. I went to the store, they were already in front of our store. The 'they' are about 5 to 6. They were aged people and Mr. Ibrahim was one of them…

His extra judicial statement admitted and marked Exhibit J is as follows:

Sometime ago, this year 2018, a man called Mr. Omole came to my store and said he wants to buy cocoa and asked him for the price he wants to buy from us, he said he will buy ₦550 per kilo then I told him we are buying more than what he wants to buy from our company. He later requested for my boss number which I refused to give him by telling him I am the one my boss put here so anything he wants to say he should talk about and I'll inform my boss. So he collected my number and then called me the next day which I was coming from a village to see one of our customers so I neglected his call…After Mr. Omole came, some other men came when I came to the store they met myself and my co-workers and said have my boss called me and I said yes that they are the one that want to buy cocoa so I opened the door for them. They were five to six in number…

If the evidence of the PW6 as a whole is anything to go by, the PW6 put the Defendant, the PW1 and the Rasheed Ibrahim at the scene of the crime at different times. He failed to establish that the Defendant and the PW1 were at the place at the same time. He however placed the PW1 and the said Rasheed Ibrahim at the scene along with five to six aged people at the scene on the day the PW1 was allegedly duped.

The entire evidence of the Prosecution is bedeviled with inaccuracy of dates the events occurred. From the dates the PW1 put forward as the day he visited the scene which does not match up with other evidence on record, to the evidence of the PW6, there is an overwhelming lack of uniformity. The date in which the PW6 saw the Defendant is also unknown as he was not specific in that regard. During cross examination, the PW6 even admitted that he was not in the store on 28/8/18 and he was absent for a further three days. He stated as follows under cross examination:

Mr. Fasakin: On 28/8/18, you were ill/indisposed
PW6: Yes I was, it was probably fatigue
Mr. Fasakin: By reason of this indisposition, you could not go to your warehouse that day
PW6: Yes
Mr. Fasakin: How many days thereafter did you resume back to work at Kadet Agro Allied
PW6: More than 3 days.

I must again emphasize that there has been an overall lack of uniformity of dates in the entire evidence of the Prosecution witnesses in this case but the evidence of the PW6 is to the effect that he met with the Defendant one day that he came to make enquiries and they exchanged phone numbers. This is consistent with the evidence of the Defendant

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that he was in Gbamugbamu on 29/8/18 for fact finding. Even if the PW6 is assumed to be at the store on 29/8/18, the evidence of the PW6 does not place the Defendant and the PW1 in the store at the same time. Throughout his evidence on record, he never mentioned seeing the Defendant and the PW1 together. All the PW6 stated was that the Defendant came to him for enquiries and he was not said to be seen in the company of any other person. He was clear however as to how he saw the PW1 and the said Rasheed Ibrahim together. I believe the evidence of the Defendant that he went to Gbamugbamu to make findings and exchange contacts with different sellers around there when he did not see the PW2, PW3 or the said Ibrahim Rasheed. There is doubt as to whether the Defendant and the PW1 actually met and where there is any reasonable doubt; it must be resolved in favour of the Defendant. I so hold.

To the second question as stated above, whether the Defendant was aware of or contacted on 30/8/2018 to confirm the account number of Yemi Odumosu as proper for the transaction.

In his evidence on oath, the PW1 stated that he put a call through to the Defendant to confirm the account number and that the Defendant authorized the payment. Exhibits C and Q1-Q7 are documents evidencing the said payment. At page 3 of Exhibit C is a transaction of ₦2, 000,000.00 transferred to the said Odumosu Yemi Olakunle which is shown to be a '*deposit on cocoa purchase*'. The transaction is shown to have been effected on 30/8/2018 so any call or confirmation from the Defendant must have been made on 30/8/2018.

Is there proof that the Defendant was called on 30/8/2018? But for the dumping of exhibits N1 – N11 on the court, the question above whose answers the survival of this charge is dependent on would have been easily answered. The exhibits would have been useful in establishing the conversations between the Defendant and other persons, since they are call records of the Defendant s.

Assuming the named exhibits were not dumped, let us even see if it would have been adequate to establish the complicity of the Defendant. At page 3 thereof is the supposed call record of the PW2 with the Defendant. It is worthy of note that the PW2 before the court is Fayehun Oluwasanmi and the name on the said document is Fayehun Oluwaseun. There was no evidence led to the effect that these two persons are the same. Even if the court were to assume that the PW2 is the same person as the said Fayehun Oluwaseun, there is no record on the said document of any call or conversation between the said Fayehun Oluwaseun and the Defendant on 30/8/2018. The PW2 even stated in evidence that he got a text message from the Defendant on 18/8/18, the said Exhibit N1-N11 contains no such record. Despite gaining access to the call records of the Defendant by the Prosecution, there is also no record before the court to show that the PW1 called the Defendant as claimed on the said date. The phone numbers of any of the witness except the PW6 (which is not useful in the circumstance) was not even made available to the court. The case of the Prosecution would have been helped if they had obtained the audio recording of the Defendant's communications available with network providers on the day the incident allegedly took place the same way the call log was obtained. Narrowing

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the conversation down to the relevant ones, tendering it before the court appropriately and linking it to the case would have been superb. It is considered material by the Court. The above however is a passing remark of this court.

What is more? In his extra judicial statement admitted in evidence as exhibit I reproduced earlier in this judgment, the PW1's evidence is that the Defendant was present on his third visit and right there in the presence of the Defendant, the said Ibrahim Rasheed gave him the GTB account number of Yemi Odumosu which he sent to the PW2. Not forgetting that exhibit I was made when the events was still relatively fresh, the account therein contradicts the oral testimony of the PW1 on oath that the Defendant was not physically present when the account number was given to him and that the authority and assurances given by the Defendant was made via telephone conversation. This is a material contradiction.

It is the law that where there is a contradiction in the evidence as to material fact that goes to the root of the case of the Prosecution, it must be resolved in favour of the Defendant. The law is also trite that a trial court is not allowed to pick and choose which evidence to believe when there is a contradiction in the extra-judicial statement of a witness and his evidence on oath, both must be disbelieved and no probative value placed on either. They are both unreliable and worthy of no probative value. See ***OLADEJO v STATE (1987) 7 SCNJ 218, ODOGWU v. STATE (2009) LPELR-8506(CA).*** I do not believe the evidence of the PW1 to the effect that he sought the consent of the Defendant before the said account belonging to Yemi Odumosu was credited with the sum of ₦2, 000,000.00.

The evidence of the PW2 and PW3 in this regard are mere hearsays; what the PW1 informed them. In exhibit A which the PW2 was confronted with under cross examination, he wrote as follows;

> ***When he got there he now called the chairman to send the money ₦2m through Mr Ibrahim Rasheed to one Yemi Odumosu A/C. we were later informed by Mr. Adara that he has been duped when Mr Omole was called he said why was he not informed before the money was sent but we ask him was he not the person that introduced Ibrahim Rasheed to us...***

In exhibit H, the petition that led to the arrest of the Defendant, it was stated thus;

> ***It is our further brief that, upon arrangement and negotiation, our client was taken to a store called Cadet Agro Nigeria Limited, Gbamugbamu Village via Ogbere, Ogun State, where over 30 tones of Cocoa beans were shown to our client. Our client paid the sumof N2, 000,000 on behalf of his company into an Account maintained with the GTB, with Account Number 0017054615, Account Name: Yemi Odumosu. The said account number was provided by the said Mr. Ibrahim, the said account he claimed belongs to his business partner.***

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am of the view that the PW1 ought to have exercised more caution before making such payments to the said Ibrahim Rasheed. Worthy of note in that light is the following statement credited to the PW2:

> *"There and then, Mr. Adara was ask (sic) to go with the strict instruction that the cocoa must be loaded before payment."*

In spite of these instructions, why the PW1 paid the said sum of money into the account and even went ahead to pay the said Ibrahim Rasheed additional ₦1,900,000.00 when he had not even got a truck yet is left for conjectures and imaginations. That the PW1 even went to make any withdrawal at Ibadan or paid additional ₦1, 900, 000.00 in cash to the said Rasheed Ibrahim is in doubt. The Prosecution did not think it necessary to tender his statement of account considering the evidence of the PW6 which put him at the scene all through the day. The evidence is reproduced for ease of reference.

In his evidence in chief, he stated;

> *"After I saw Mr. Adara and some of the people that came in one of the store's there, Iya Coco's store. They later walked up to our store. They were discussing but I do not know what their discussion was about. After about 3o minutes to 1 hour, Mr. Ibrahim and the others left....we waited for about another 1 hour, then Mr. Adara cried out that he has been duped."*

Under cross examination, the following was elicited;

> *"Mr. Fasakin- you are aware that Adara said Ibrahim collected some money from him for the cocoa in your store*
> *PW6- No. I am not aware. It was after Mr. Ibrahim left that Mr. Adara started shouting that he has been duped*
> *Mr. Fasakin – at what time of the day did he do that*
> *PW6 – it was around 2:00pm*
> *Mr. Fasakin- where was Mr. Adara before 2:00pm*
> *PW6 – He was outside our warehouse but around our premises*
> *Mr. Fasakin- at about that time, before 2:00pm, where was Ibrahim*
> *PW6- Mr. Ibrahim and others were in our store. Mr. Adara and some others too were outside*
> *Mr. Fasakin- And it was only about 2:00pm on the said day that you saw Adara and Ibrahim together*
> *PW6- No. they were in Iya Cocoa's store before they walked up to our store. Iya Cocoa store is a close distance to our store. Mr. Ibrahim and 2 other persons moved to our store from Iya Cocoa's store. Mr. Adara was with them. They were all together. Mr. Adara later came alone. They were outside the store discussing. I do not know what they were discussing about. Mr. Ibrahim left. I walked the village to search for them.*
> *Mr. Fasakin- so that was the only moment you saw them together*
> *PW6 – Yes"*

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I must say that it is not impossible that the Defendant acted in cohort with the said Ibrahim Rasheed who is at large but there are too many doubts regarding the involvement of the Defendant in the act. This was an organized fraud perpetrated by the said Ibrahim Rasheed and the PW1 was too careless, incautious and naïve to fall victim. It is the law that any reasonable doubt whatsoever must be resolved in favour of the Defendant. The Prosecution failed to establish by credible evidence that the Defendant had an intention to defraud the PW2 and the PW3 and that there was pretence on his part which operated on the mind of the PW1, PW2 and PW3.

Learned defence Counsel argued in his address that the PW5 failed to investigate the matter comprehensively because there was no proof of payment of ₦1, 900,000.00 to the said Ibrahim Rasheed by the PW1. I cannot but agree with the defence Counsel to the extent that this matter was not properly investigated. However, Counsel's focus on the ₦1, 900,000.00 as against the sum of ₦2, 000,000.00 paid into the account of Yemi Odumosu is diversionary. There is credible evidence that a sum of ₦2, 000,000.00 was paid into the account of Yemi Odumosu and the evidence on record is that the said Ibrahim Rasheed caused the payment to be made. As I said, this was a well-orchestrated plan by the said Ibrahim Rasheed and some other persons to perpetrate this fraud and he found a willing victim in the PW1.

In sum, the evidence on record established the fact that the Defendant introduced the PW3 and PW2 to one Ibrahim Rasheed. Evidence also established that money was paid in to the account of Yemi Odumosu on the instruction of Ibrahim Rasheed. Evidence also showed that Ibrahim Rasheed ran away with the money, having defrauded the PW1, PW2 and PW3.

There is however no credible evidence to establish that the Defendant was aware of or sanctioned the payment to the said Ibrahim Rasheed. The Prosecution failed to establish how the Defendant was contacted and how he sanctioned the payment to Ibrahim Rasheed especially in view of his evidence that he forewarned against payment before the goods are loaded. This was reiterated by the PW2 who also warned the PW1 against such payment before loading. The PW1 acted otherwise and here we are. The evidence on record is unsatisfactory in my view; there is reasonable doubt as to the involvement of the Defendant in the organized fraud.

On the offence of conspiracy, it is complete when two or more persons agree to do an unlawful act or a lawful act by an unlawful means. It is immaterial that the persons had not met each other and concluded agreements can be inferred by what each person does or does not do in furtherance of the offence of conspiracy. Can the Defendant be found guilty of the offence of conspiracy in the circumstance of this case? To sustain a charge of conspiracy which is most often proved by circumstantial evidence, the evidence presented that there was an agreement between two or more persons to do an illegal act by an unlawful means or a legal act by an unlawful means must not only be cogent it must be compelling.

Ogunshido 30/12/19

27/1/2020

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To secure a conviction, the Prosecution must prove:

(a) an agreement between two or more persons to do or cause to be done some illegal act or some act which is not illegal by illegal means;

(b) where the agreement is other than an agreement to commit an offence, that some act besides the agreement was done by one or more of the parties in furtherance of the agreement; and

(c) that each of the Defendant s individually participated in the conspiracy. See ***OMOTOLA &ORS. v. THE STATE [2009] 3 SCM P. 127 @159-160, ADELEKE v. STATE (2013) LPELR-20971 (SC) Pp. 38-39, paras. G-A; OFORDIKE v. STATE (2019) LPELR-46411(SC) et al.***

It is settled law that in a charge of conspiracy, the agreement constitutes the offence and the evidence relied upon must be of such quality that it irresistibly compels the court to make an inference as to the guilt of the Defendant. See ***ILODIGIWE v. STATE [2013] 4 W.R.N P. 1 @ 36-37 lines 40 – 5***

From the evidence on record as highlighted and considered earlier in this judgment, the Prosecution failed to establish any direct or indirect agreement between the Defendant and the said Ibrahim Rasheed and the said Yemi Odumosu to perpetrate this fraud. The evidence on record does not in my view make an inference as to the guilt of the Defendant. The fact that the Defendant introduced the PW2 and PW3 to the said Ibrahim Rasheed does not, without more, amount to a conspiracy on the part of the Defendant.

That been said, let me be clear, the phrase 'proper parties' cannot but be used by me in this case even though it is not a civil matter. In a bid to prevent crimes in our society, the police must ensure that they go the length in doing all that is required of them. It will only breed injustice where the Police are seen to have the mentality of holding on to the proverbial bird in hand which is said to be worth more than ten in the bush. This mindset completely renders them ineffective in their very important and crucial duties to the society. So many questions yet to be answered in the circumstances of this case and it is unfortunate that none of those in court at the moment has answers to the questions. Where is Yemi Odumosu? Why was he not tracked down and apprehended? What happened to Ibrahim Rasheed? With technological advancements, the police are equipped with the ability to track down anyone suspected of committing any offence in Nigeria and one begins to wonder why Ibrahim Rasheed and Yemi Odumosu are not standing trial before the court, after all, the Defendant before the court was tracked down, arrested and brought down all the way from Lagos. The Police and other law enforcement agencies saddled with the investigation of crimes must do more.

The evidence led by the Prosecution leaves so many doubts in the mind of the court as regards the complicity of the Defendant in the commission of the offences alleged as the evidence adduced is not cogent and compelling enough. B.Rasheed 30/12/19

22/12/22

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Before I conclude, the Prosecution put it forward that the payment of ₦250, 000.00 as part refund of the sum of ₦2, 000, 000.00 by the Defendant is an admission of liability on his part. To my mind and considering the evidence of the PW3 that when the Defendant saw the seriousness of his intention to involve the EFCC, the Defendant pleaded with him that he will refund the money. I believe that the explanation offered by the Defendant, that he paid to protect his integrity and his job in view of the threat of the PW3 that he will involve the EFCC and other law enforcement agencies, is reasonable and believable. I do not think therefore that this is enough to establish his guilt.

In all, the Prosecution has failed to prove the offences of conspiracy and obtaining by false pretences against the Defendant. The Defendant is hereby found not guilty in counts I and II and he is accordingly discharged and acquitted.

YAKUBU O. R.
MAGISTRATE GRADE II
30/12/19

Appearances
Prosecutor: Sergeant Augustine Omhenimhen
Defence Counsel: Biodun Fasakin Esq. with Mayokun Ola-Jegede Esq. appeared throughout trial
Counsel watching brief: E. O. Ajegbemiga

CHIEF MAGISTRATE COURT
COMPLEX
27 JAN 2020
AKURE, ONDO STATE

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