

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE JOS JUDICIAL DIVISION  
HOLDEN AT ENUGU  
ON WEDNESDAY THE 1<sup>ST</sup> DAY OF NOVEMBER 2017  
BEFORE HIS LORDSHIP  
HONOURABLE JUSTICE D. V. AGISHI  
J U D G E

SUIT NO. FHC/EN/CR/51/2010

BETWEEN:

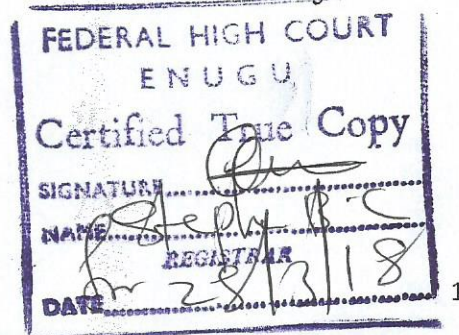
THE FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

AND

1. UBI UKPA UKET  
2. HON. IGWE UDENSI EKE } .....ACCUSED PERSONS

## JUDGMENT

The Accused persons are standing trial on a 22 Count Charge. The 1<sup>st</sup> and 2<sup>nd</sup> Accused persons are jointly charged on Counts 1 to 21 for offences of conspiracy to obtain, obtaining money by false pretense and attempting to obtain money by false pretense. Count 22 which is for falsely representing himself as a staff of the Economic and Financial Crimes Commission involves only the 1<sup>st</sup> Accused person.



1502-1591-9294

When the charge was read to the Accused persons, they all pleaded not guilty to it.

In other to prove its case, the prosecution called 5 witnesses and tendered various Exhibits. The 2<sup>nd</sup> Accused person testified in his defence as DW1 and called two other witnesses. The 1<sup>st</sup> Accused on the contrary stopped appearing in the matter even before the prosecution closed its case.

Counsel to the 2<sup>nd</sup> Accused person in his final written address raised the following two(2) issues for determination:

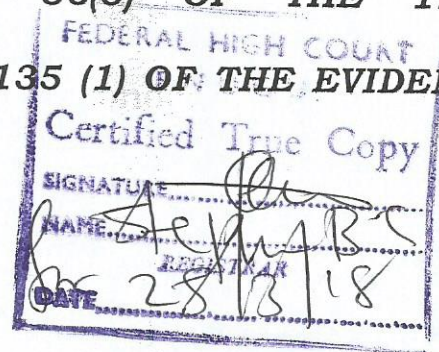
(a) Whether the prosecution proved the ingredients of the offences as charged.

(b) Whether the prosecution proved the offences as charged beyond reasonable doubt.

The above two issues are very similar and can be argued together and that is exactly what is going to happen here.

The defence submission on the above two issues is actually in the negative.

In his submission, Mr. C.N.N. Nwagbara made the Court to understand that under **SECTION 36(5) OF THE 1999 CONSTITUTION** just as in **SECTION 135 (1) OF THE EVIDENCE**



**ACT 2011**, Accused is presumed in the eye of the law to be innocent until proved otherwise, and that such proof has to be beyond all reasonable doubts.

As per the charge against the Accused person before this Honourable Court defence submits that what the prosecution is required to prove are the following ingredients:

- (a) That 1<sup>st</sup> and 2<sup>nd</sup> Accused conspired to commit offences as charged in Count 1.
- (b) That two Accused persons with intent to obtain, obtained the sum of N2,500 from 17 named persons by false pretenses when they represented themselves as capable of offering the 17 named persons employment at classic Multi-purpose Society Ltd, which they knew to be false contrary to **SECTION 1(i) (b)** of the Advance fee fraud and other related offences Act, punishable under **SECTION 1(3)** of the same Act.
- (c) Intent to defraud and attempt to commit same offence which are contained in **SECTION 19 – 21** and then,
- (d) Where the 1<sup>st</sup> Accused alone is charged in Count 22 for falsely representing himself as an economic and financial

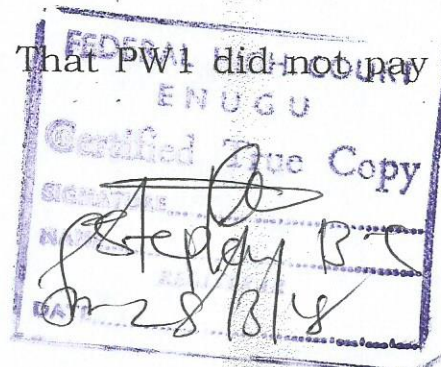
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DATE: 28/3/18

Crimes Commission Staff. All the above offences are said to be contrary to **SECTION 8(a) 1(i) (b)** and **SECTION 1(3)** of Advance Fee Fraud and other fraud related offence Act and **SECTION 108(2)** of the Criminal Code Act, LFN 2004.

The defence after submitting on each of the above ingredients of the offence charged, argued that the charge has no basis. This is especially when the ingredients of the offence charged are put side by side with the evidence of the PW1 – PW5 and that of DW1 – DW2.

It is further argued that the prosecution did not attempt to give evidence on the element of conspiracy, obtaining money by false pretence or that the cooperative is not capable of employing the Applicants after training or that the Accused did not have the right to collect the sum of N2,500.

This Court is urged to hold that the evidence of PW1 who reported the Accused person to EFCC was based purely on malice, suspicion and vendetta. And this is because PW1 felt he was not given the position of office assistance which he applied for in the Defendant's Multi-purpose Company but was rather told to accept another position as a marketer. That PW1 did not pay N2,500 for



training and handout and ID Card and therefore had no basis to suspect the Accused persons except for malice. Reference here is made to the statement of the Accused person under cross examination which he said:

**“Yes I was not happy because the position I was given in the letter is not the position I applied for.”**

It is strongly submitted that PW1 called EFCC because of his suspicion probably based on the fact that PW1 was a victim of Excel logistics which is not a registered cooperative as Multi Classic Purpose Cooperative Society.

Referring to the evidence of PW2 and PW4 this Court is urged to see that their evidence rather supports the case of the defence, for the following reasons:

One, that PW2 told the Court under cross that Multi Classic Cooperative Society was capable of employing the Applicants who were issued employment letters.

- PW2 had already started work.
- PW4 would have started later but for the interference of EFCC.



- PW2 and PW4 were forced with threats to make statement to EFCC.

In other words it has been submitted that the evidence of PW2 and PW4 did not attempt to prove any of the ingredients of the offences charged and neither did their evidence support the case of the prosecution.

It is not only the evidence of PW2 and PW4 which have been attacked by the defence. But also that of PW3 and PW5 who are trained investigators.

The submission of the defence here is that the prosecution decided to charge the Accused persons without investigating beyond the mere report made by PW1 to EFCC.

It is contended that the Accused fully complied with the Act by registering the cooperative, making bye-laws, following the bye-laws and having capacity ready to employ the Applicants but for the interference by EFCC. According to the defence Counsel, the accused has been charged under the wrong law with EFCC also merely meddling in this transaction.

Furthermore the defence has relied on the trite position of law that suspicion cannot ground a conviction. This Court is accordingly

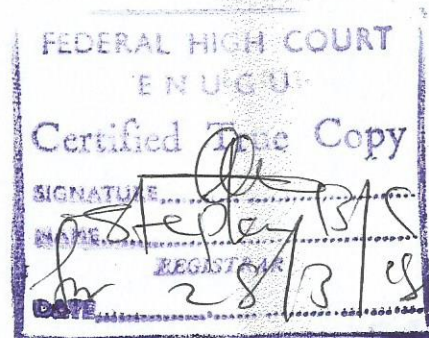


urged to discharge the Accused person, the prosecution having failed to profer direct evidence in proof of the essential elements of the offence.

The prosecution on the contrary submitted that it has proved its case beyond all reasonable doubt by virtue of the witnesses called and the exhibits tendered.

The attention of this Honourable Court has been drawn to section 1(1) (b) of the Advance Fee fraud & other Fraud Related offences Act, 2006 as well as section 20 of the same Act.

The prosecution admitted that by virtue of the above cited law as well as the cases of ALAKE VS. THE STATE (1991) 7 MWLR (Pt 2015) 567, NWANKWO VS. FRN (2003) 4 NWLR (Pt 809) 1 and FRN VS. HELEN BANKE LAOYE (2007-2011) E.C.L.R & REV. VICTOR MUKORO VS. FRN (2015) LPELR 244 39 (CA), there are certain elements of the offence which the prosecution must prove to warrant the conviction of the Accused person but that it has fully discharged that duty very well to warrant the conviction of the said Accused persons.

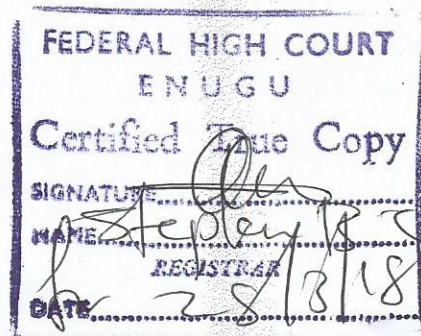


Relying on the evidence of PW1 it submitted that the 1<sup>st</sup> prosecution witness suspected the accused persons because some persons under the name Excel Logistics International came and conducted their interview, collected people's money and disappeared and no one knows their where about.

Similarly the prosecution relied on the evidence of Pw2 affirming that the latter was even employed by the accused persons and started collecting money from the prospective employees who attended the interview.

Submitting on the evidence of Pw4 the investigating Police officer, the prosecution admitted that even though from investigation it was found out that classic multi-purpose cooperative society is registered but that area of operation is limited to the FCT Abuja. That since the cooperative has overstepped its boundary of operation, it has breached the Law.

It is trite law that in all criminal trials the burden is on the prosecution to prove beyond reasonable doubt the guilt of an accused person, where the prosecution fails to prove the guilt of the accused person beyond all reasonable doubt, such doubt will lead





(e) That there was an intention to defraud

(f) That the property or thing is capable of being stolen

(g) That the accused person induced the owner to transfer his whole interest in their property.

Looking at the above can it be said that the prosecution has proved the ingredients enumerated here?

I am not in doubt that the prosecution heavily relied on the evidence of PW1 in prosecuting this case. It was pw1 who lodged a report against the accused person to EFCC. His report was based on the fact that he attended an interview organized by the accused persons (Classic Multipurpose Cooperative Society) for employment. Pw1 allegedly passed the said interview and because the sum of N2500 was to be paid by all the successful candidates for training and handouts, PW1 became suspicious about the whole exercise which led to his report to EFCC.

Another reason for pw1's suspicion stemmed from the experience some people had in the past including himself. An organization called excel logistics came like the accused persons did to GT college Enugu and charged participants the sum of N500 each and went away with their money unaccounted for.



to his discharge. See the cases of **NWANGWA VS. STATE (1997) 8 NWLR (Pt. 517) 463.**

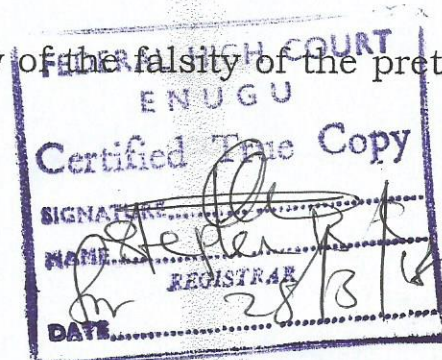
**KALU VS. STATE (1998) 4 NWLR (Pt 90) 503.**

On the standard of proof in criminal cases it was also held in the case of **SHEHU VS. STATE (2010)8 NWLR (Pt 1195) 117** that it is when all essential ingredients of an offence charged have been satisfactorily proved by the prosecution that same can be said to have been proved beyond reasonable doubt .

The accused persons have been charged under section 1(1)(b) of the Advance Fee Fraud And Other Fraud Related Offences Acts No.14 of 2006 and punishable under Section 1(3) of the same act, for intent to defraud and for obtaining money under false pretences.

The prosecution in its address earlier enumerated all the ingredients/elements that are required to be proved to ground conviction of the accused persons. These ingredients are:

- (a) That there was pretence
- (b) the pretence emanated from the accused person
- (c) The pretence was false
- (d) That the accused person knew of the falsity of the pretence or did not believe in its truth



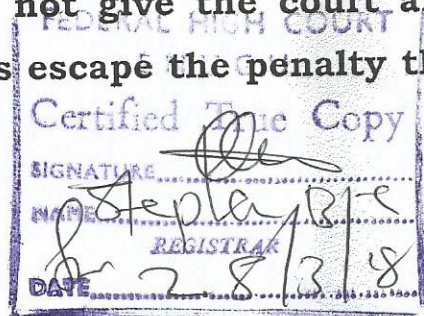
It is in evidence that after all the investigation, the prosecution discovered that classic multipurpose society limited was registered. All the information sought by the prosecution concerning this Multi-purpose Society Cooperative was made available to them from appropriate quarters. Having found out that the Multi-purpose Cooperative Society was genuine one would have expected the prosecution to stop at that but unfortunately they continued the prosecution of this case.

The case of the prosecution is basically built on suspicion which was introduced by their star witness, Pw1. But the Law is trite that suspicion no matter how strong cannot ground a conviction. In the case of SHEHU VS. STATE (2010)8 NWLR (PT1195)112.

**“It was held by the supreme court that suspicion however strong will not found or lead to conviction. In other words, it cannot take the place of proof.”**

Also, in the case of SAIDU VS. THE STATE (1982)4 SC 41 AT 69 OBASEKI JSC stated inter-alia as follows;

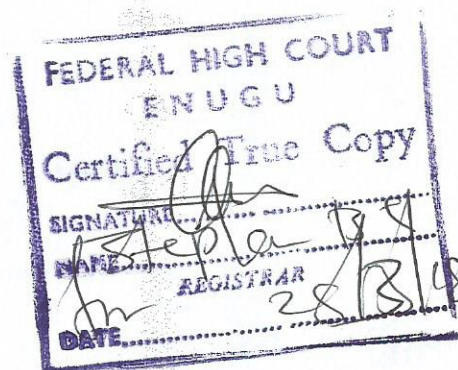
**“It does not give the court any joy to see the offenders escape the penalty they richly deserve**



**but until they are proved guilty under the appropriate law in our law court, they are entitled to walk about in the street and tread the Nigerian soil and breathe the Nigerian air as free and innocent men and women.”**

It is also my humble view that the prosecution has not made attempt to prove any of the ingredients of the offences charged. In this regard I do agree with the defence that the evidence of PW2 and pw4 even support the defence of the accused persons. This is especially where they both stated under cross examination that if not for interference by the EFCC officials stopping the training, they would have been employed after the training and would be working.

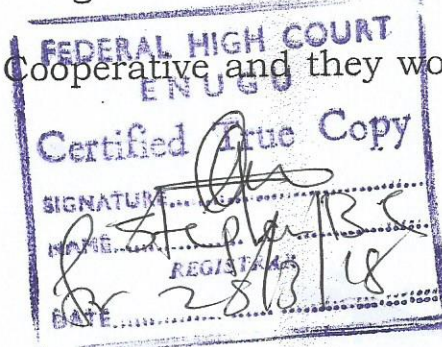
Again, the prosecution has failed to prove the element of conspiracy. In this case that the accused agreed to carry out illegal purpose or that collection of N2500 was unlawful or that running of Multipurpose classic was unlawful or not registered and or does not exist or is being run contrary to the bye-law of cooperative or against the provisions of Nigerian Cooperative Acts revised law of LFN (2004).



The argument of the prosecution is that the accused multipurpose corporative by its certificate of registration is strictly within the federal capital territory. As rightly submitted by **Mr Nwagbara**. The accused persons have not been charged for operating the Cooperative outside Abuja and cannot therefore be an issue for discussion here.

As earlier stated, the prosecution has failed to prove all the ingredients which constitute the offences alleged. They have not proved that there was an intention to defraud by the accused persons and all that.

I have observed that because the prosecution was in a haste to prosecute the accused persons, it did not carry out proper investigation into this matter. Here again I agree with Nwagbara that the investigator in this case ought to have given more time to this matter either by getting closer to monitor the activities of this Multi-purpose Cooperative from employment, training of the staff employed and watching to see whether the employers were paid, or whether the operation of the Cooperative ceased after the training. If this was done, it would have given them a clearer picture as to the genuiness or not of the Cooperative and they would have been



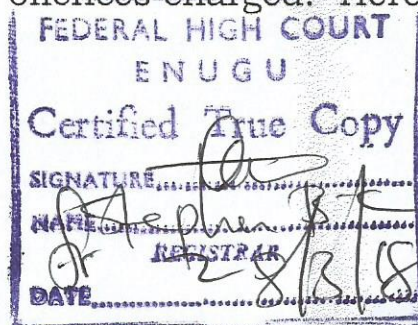
speaking with facts and not with suspicion or speculation as seen presently. They would have also known whether the Accused persons collected N2,500 with intention to defraud and were incapable of employing the people they interviewed.

It is my humble view and opinion that no proper investigation was carried out in this case by the prosecution and that no prima facie case was made out against the Accused persons to warrant charging them before this Honourable Court.

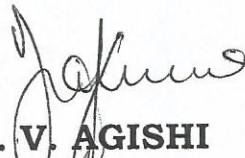
As to the contention that the 1<sup>st</sup> Accused person falsely represented himself as one of EFCC staff, which pretence HE KNEW TO BE FALSE IS ALSO OF NO MOMENT. This is because there is no proof to that fact.

Secondly, the prosecution has also not proved that the 1<sup>st</sup> Accused assumed to do any act of such impersonated employment as officer of EFCC.

On the whole, the prosecution has failed to prove the charge before this Court against the accused persons beyond reasonable doubt to warrant conviction, they have not proved any essential material ingredients of the offences charged. Here the doubt goes to



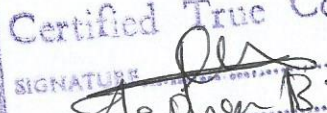
The Accused persons. Accused persons are hereby discharged and acquitted and prosecution's case dismissed.

  
**D. V. AGISHI**  
**JUDGE**  
**1/11/17**

**Appearance:**

I. I. Mbachie holding brief for Marshall Umukoro Onome for the prosecution.

C. N. N. Nwagbara Esq. with H. I. Omeje Esq. for the 2<sup>nd</sup> Defendant

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