

IN THE FEDERAL HIGH COURT OF NIGERIA
HOLDEN AT ENUGU
ON THURSDAY THE 2ND DAY OF FEBRUARY, 2017
BEFORE THE HON. JUSTICE D.V. AGISHI
JUDGE

CHARGE NO: FHC/EN/CR/25/2011

BETWEEN:

THE FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

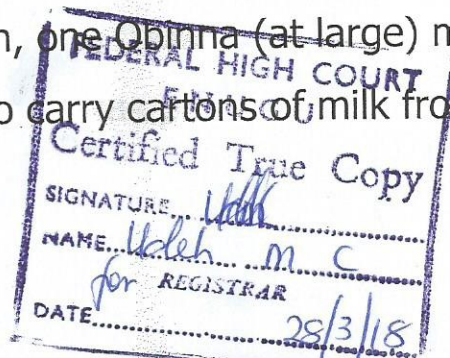
1. ANTHONY OKEKE - ACCUSED PERSONS
2. ORJI CHINEDU

JUDGMENT

The accused persons are standing trial before this Honourable Court on 14 count charge ranging from conspiracy to intent to defraud and obtaining money under false pretences contrary to and punishable under the Advance Fee Fraud and other Fraud Related Offences Act, 2006.

To prove its case, prosecution called three (3) witnesses and tendered some exhibits. The accused persons also testified and tendered certain exhibits but did not call witnesses.

This case arose sometimes in 2010, 25th October to be precise. On the said date at a Mobil Filling Station, one ~~Obinna~~ (at large) met the 1st prosecution witness and asked him to carry cartons of milk from Enugu



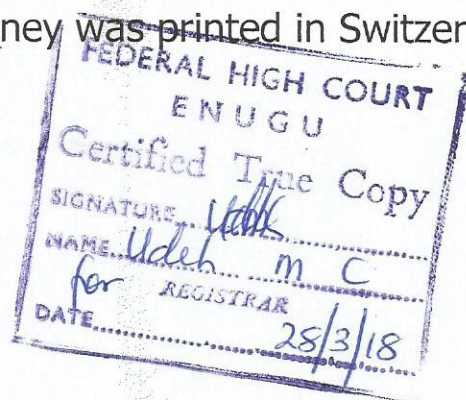
1502-1591-1294

to Abakaliki for him. Pw1 and Obinna settled on N15,000 wage bill. PW1, Mr. Ituma was to carry the goods at the residence of one Elder (1st accused). This Elder was also the person to settle and or pay the sum of N15,000 cost for carrying the goods.

Obinna took Pw1 to the house of the elder (1st accused). In the house of the 1st accused and before he could show PW1 those goods he was to carry, the 2nd accused came in. Argument ensued between the 1st and 2nd accused over the goods the 1st accused was keeping for the 2nd accused. The 1st accused claimed that the goods were almost seized by custom and that he paid the sum of N25,000 to collect those goods for the 2nd accused person. That the said sum must be paid by the 2nd accused for him to collect his goods from the hands of the 1st accused person.

The 1st accused then went inside and brought a box which weighed 50kg, and the duo continued their argument. PW1 then suggested to them to open the box so that the 2nd accused can sell some of the goods and offset the debt owed the 1st accused, so that he the 2nd accused could carry his box away. This was actually done.

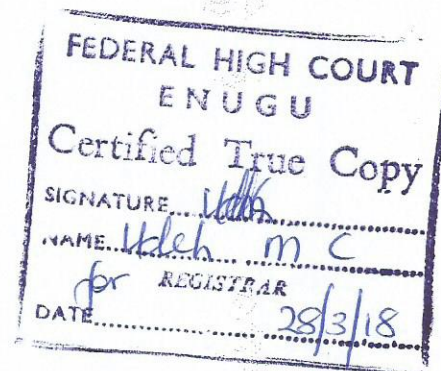
When this box was opened by the 2nd accused who was having the key, it turned out that the box was filled with money in dollar denomination N1000 and N500 notes. This box was opened in the presence of 1st, 2nd accused persons, Obinna (now at large) and PW1. The 2nd accused told them that the money was printed in Switzerland



and that he was working for Atiku Abubakar. The money inside the box according to the 2nd accused was the sum of Two Hundred and Eighty Two Million Naira (282,000,000).

The 2nd accused offered to share with PW1, 1st accused person and Mr. Obinna on one condition, that is, the money was to undergo processing and registration with the Central Bank of Nigeria. The fee for the processing and registration of the money was about N2.5m. That to process and register this money, it needed somebody that works in a big Hotel. The 1st accused then offered to contact somebody in Nike Lake Hotel that would process and register the money. The 1st accused also asked PW1 how much he would contribute for the above process and also suggested that they all will enter into a vow not to tell any custom or police about the goods. PW1 was then told to go home and bring his contribution.

PW1 went home, came back the following day with N20,000 and handed over to the 1st accused person in the presence of the 2nd accused person and Mr. Obinna. PW1 was told that the money was not enough and that he should go and look for more money. This was how PW1 kept bringing money to the trio of 1st, 2nd accused and Mr Obinna. PW1 was later introduced to the chairman who was to register and process this money in person of one Igwe also known as Nduka. The total money given by PW1 was about N1.265m apart from the recharge cards.



To prove its case, the complaint submitted a sole issue for determination as follows:

whether the prosecution has proved beyond reasonable doubt the essential elements of conspiracy to obtain money by false pretence and obtaining money by false pretence against the accused persons to warrant their conviction.

Submitting on the above stated issue, Marshall Umukoro Onome urged on the court to hold that the prosecution has discharged its duty in proving its case against the accused persons as required by law. The prosecution here acknowledges the fact that it is under duty to prove certain elements in the offence of obtaining money by false pretences to warrant a conviction. Here the prosecution relied on the case of FRN V Helen Banks Laoye (2007 – 2011) ECLR VOL. 269, where it was held:

"in order to establish that the offence of obtaining money by false pretences, the prosecution must prove that there is a pretence that the pretence emanated from the accused person, that is false, that the accused knew of its falsity or did not believe in its truth, that there was an intention to defraud, that the thing is capable of being stolen".

In establishing the above elements the prosecuting counsel placed reliance on the evidence of all the prosecution witnesses.

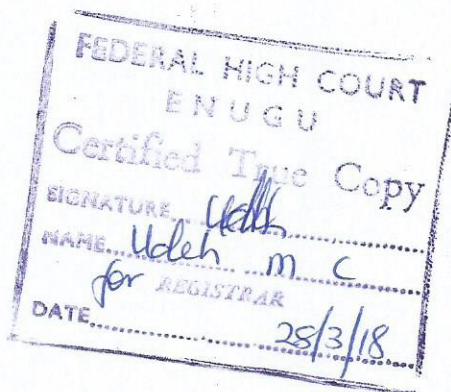
ENUGU
Certified True Copy
SIGNATURE... *Udeh*
NAME... *Udeh M C*
for REGISTRAR
DATE... *28/3/18*

It is the submission of the prosecution that 1st and 2nd accused persons together with some others at large convinced and made PW1 to part with huge sums of money to them. That they made PW1 to believe the representation to him that once that sum of N282M allegedly found in that 50kg box owed by the 2nd accused was processed and registered by the Central Bank, he will have his own share.

Furthermore, it is submitted that the accused persons used false names to hide their true identity from the PW1. That the persons he met during the whole transaction were the accused persons whom he paid those sums of money to. The hiding of the accused persons identity, it is submitted is in furtherance to their plan to defraud PW1 and to further strengthen the false pretence of registering and processing the said money.

The prosecuting counsel in his further submission referred me to the evidence of the 2nd prosecution witness, an EFCC operative. He urged the Honourable Court to uphold the witness evidence that he was able to confirm PW1's allegations that the accused persons demanded money from PW1 after he listened to phone conversation between PW1 and the accused persons.

Furthermore that 2nd accused person admitted in his statement collecting the sums of N98,000 and N11,000 from PW1 in the presence of the 1st accused person.



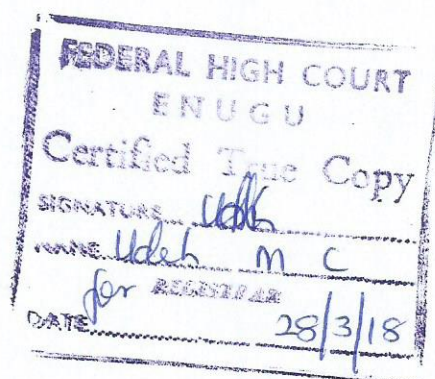
On 2nd accused claim that he collected those monies to convert people to Judaism on account of PW1, the prosecution countered it stating that accused persons were vouched Catholics who swore never to leave their faith. Also that the duo of 1st and 2nd accused persons has no understanding of the doctrine of Judaism and could possibly not thought of getting converts there.

As to 2nd accused person's claim that his statement was obtained under duress, torture and coercion. It is submitted by the prosecution that there is no truth in such claim. Reliance is here placed on the Owerri High Court Ruling wherein the court did not believe the same testimony of 2nd accused being tortured in giving his statement.

It is therefore submitted further that the accused persons are part of a syndicate who defraud people through such means as employed by the accused persons.

In replying to the 2nd accused (DW1) claim that PW1 gave him a skull cap and gown (Exhibit DFCC 1 and 2) to convert him to Judaism, this has been vehemently countered. According to Mr. Onome, the 2nd accused person (DW1) never stated this fact during the investigation of the case when he was confronted with allegations levelled against him by PW1.

This court is therefore urged not to consider the 2nd accused person's line of defence which is calculated to retract his statement



which was admitted in evidence without any objection from the accused person.

Reliance is here placed on *Idowu Okanlawon V The State* (2015) LPELR 24838(SC).

Adekunle Oluwafemi Alo V The State (2015) LPELR 24404(SC).

The prosecution has urged the court to convict the accused persons based on their confessional statement placing reliance on *Idowu Okanlawon V State supra* as well as *Egboghonome V The State* (1993)7 NWLR (Pt 306) 383.

On the offence of conspiracy it is submitted that the accused persons never denied knowing each other or PW1. That their defence of knowing Pw1 for purposes other than the one alleged for him not with standing, the accused persons were both together all the times Pw1 took money to them. 2ndly that they both took PW1 to the person who was to register and process the money together.

This court is to therefore hold that from the evidence of PW1 and PW2, the accused persons were both in agreement to defraud PW1. On the count of conspiracy too the court is urged to convict the accused persons.

The accused persons through their counsel Mr. Awforkansi in their address raised the following issues for determination:

1. Was any offence know to law committed by the accused persons either against the state or against the complainant?

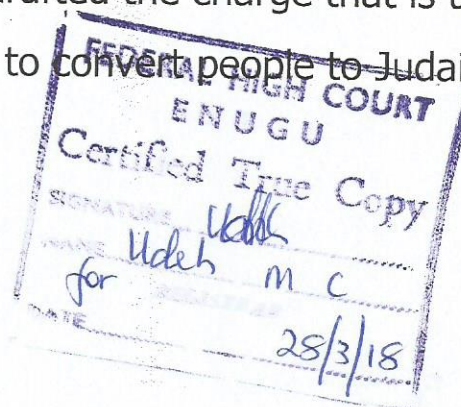


2. Has the prosecution proved any case against the accused persons as required by our criminal justice system.
3. What will a court faced with this kind of porous prosecution do?

Submitting on **issue No 1**: It is the argument of the defence counsel that from the totality of the evidence adduced by PW1 in Court, the petition by the complainant (PW1) and the defence proffered by the accused persons, there is no known offence known to law committed.

That the defence counsel completely exonerated the accused persons of the alleged crimes and simply stated that PW1 was paid N15,000 to convey certain goods to Abakaliki. That in the process of carrying the said goods he stumbled on certain persons who had some quantity of money to wash and get registered. He however did not mention who those certain persons were and how they started contribution to wash the said money.

It is therefore the argument of the defence that PW1 merely recruited the accused persons to scout for adherent into his new religion of Judaism. Learned counsel anchored his submission on the fact that in PW1's petition to EFCC, he demanded for the return of his Jewish cloths, caps and religious book. This argument also stem from the fact that according to Mr. Awforkansi, PW1 religion is Judaism. This court is urged to believe the fact that the prosecution witnesses deliberately left out the issue of religion when they drafted the charge that is the claim by the defence that they were hired to convert people to Judaism for



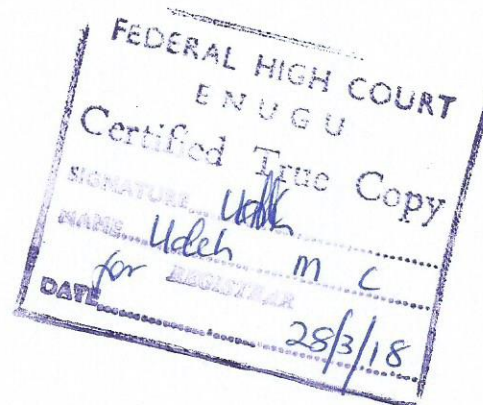
PW1. The question rhetorically posed by defence counsel is what offence could the act of a man who was recruited to scout for converts for a religions sect but did not succeed be?

The poser is finally answered by the defence counsel. According to him EFCC decided to charge the accused persons to court (even though they did not find him liable of any offence) because they wanted to do the bidding of the complainant's brother who works with state security services (SSS).

It is contended that EFCC in a bid to attain conviction of the accused persons at all cost decided to darken all aspect relating to the facts that led to the disagreement between PW1 and the accused persons. That the bone of contention is the accused persons inability to deliver in the contract of securing converts to Judaism. That this is a contractual breach which should not be construed as fraud.

Issue No 2 - *whether the prosecution has proved any case against the accused persons as required by our criminal justice system.*

It is the submission of the defence that the prosecution has totally failed to prove the case of conspiracy and obtaining money by false pretence proffered against the accused persons since nothing was placed before the court in this regard.



On the conspiracy count, it is submitted that prosecution has failed to prove that any of the persons mentioned by PW1 did conspire with each other.

Defence counsel in his submission wondered the overt act the conspiracy was set to achieve. That the prosecution failed to prove common intention on the part of the accused persons to warrant a conviction for conspiracy.

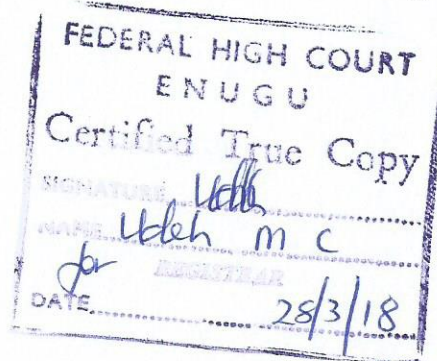
On the charge of intention to defraud the complainant various sums of money as shown in the 13 count charge the defence here submitted in the negative.

To ascertain whether the prosecution has proved its case beyond reasonable doubt this court is urged to look at the following:

- Complainant's petition and his evidence in court
- Evidence of the IPO Mr. Effa Okon
- Evidence of DW1 and DW2

As earlier submitted by the defence, Mr. Awforkansi of counsel still insist that the transaction between the complaint and the accused persons was civil in nature but that PW2 who is a friend to complainant's brother in the SSS decided to take advantage and that was why the accused persons were arraigned in this court.

This court is further urged to note the fact that the prosecution did not do the needful to prove its case, like not tendering the call log which



PW2 said he listened to (under cross examination) in a telephone conversation between the complainant and accused persons.

2ndly, that PW2 did not also tender their investigation report to show that all their activities were recorded.

The defence is very vehement that the prosecution failed in their bid to prove a case of conspiracy to defraud and indeed the act of defrauding the complainant by the accused persons.

In criminal proceedings generally the burden is on the prosecution to, prove beyond reasonable doubt the guilt of the accused person. Where the prosecution fails to proved the guilt of the accused beyond reasonable doubt, such doubt will lead to his discharge. See the case of Nwangwa V State (1997) 8 NWLR (Pt 517) 463 paragraphs F – G. Shehu V State (2010) 8 NWLR (Pt 1195) 112.

In Njoku V State (2013) 2 NWLR (Pt 1339) 548 at 566 paragraphs B- D.

Here the apex court held

"--- for the court to come to the conclusion that the prosecution has discharged the burden placed on it by law, it must be satisfied that the proof is beyond reasonable doubt. Any doubt existing in such a case must be resolved in favour of the accused person. In other words the standard of proof in criminal trials is that of proof beyond reasonable doubt".

The accused persons have been arraigned before this Honourable Court on a fourteen (14) counts charge ranging from conspiracy to

ENUGU
Certified True Copy
SIGNATURE *Udeh*
NAME *Udeh m.c*
DATE *for 28/3/18*

commit a felony to wit: Obtaining money under false pretence contrary to section 8(a) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006 and punishable under section 1(3) of the same Act. Section 8(a) of the Act provides:

8. A person who (a) conspires with, aids, assists or counsel any other person to commit an offence.

The issue of conspiracy here forms the subject of count 1 of the charge. The prosecution laid evidence to prove that the 1st accused person conspired with the 2nd accused person along with one Desmond N. Ogadinma (now at large) and one Obinna (also at large) to obtain money by false pretences contrary to section 8(a) of the Act.

Conspiracy has been defined severally by statute books as well as law books and case laws. In the unreported case of Ogagorie V State unreported Appeal No CA/B/11C/2013 delivered on 9th July, 2014 cited on page 117 and 118 of criminal law in Nigeria, a practitioners Guide Authored by Anayo N. Edeh, Ogakwu J. C. A expounded on the meaning and purport of conspiracy:

"Now conspiracy is an offence in the agreement by two (not being husband and wife) or more persons to do or cause to be done an illegal act or a legal act by illegal means --- the actual agreement alone constitute the offence of conspiracy and it is not



necessary to prove that the act had in fact been committed. The offence of conspiracy is seldom or rarely proved by direct evidence but by circumstantial evidence and inference from certain proved facts see also the case of State v Osogba (2004) 21 WRN113.

The learned jurist continued; *by its very nature, the offence of conspiracy consists in the meeting of minds for criminal purpose whereby the minds proceed from a secret intention to overt act of mutual consultation and agreement, the offence can be proved through inference drawn from the surrounding circumstance ---".*

To establish the offence of conspiracy the prosecution need to prove the following ingredients:

- (a) That there was an agreement between two or more persons.
- (b) That the agreement was to do or cause to do an illegal act
- (c) Or to do a legal act by illegal means.

It is in evidence that the accused persons know each other as well as PW1. Their defence however is that they knew him (PW1) for purposes other than that alleged by pw1. That PW1 kind of recruited them to get for him converts to his religion which is Judaism. These facts have however not been proved by the defence. The evidence of the prosecution has shown that the accused persons together with one

FEDERAL HIGH COURT

Certified True Copy

SIGNATURE *Udeh*

NAME *Udeh m c*

for REGISTRAR

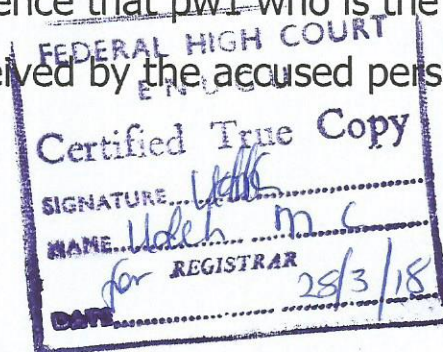
DATE *28/3/18*

Obinna (now at large) were always together all the times pw1 brought monies to them. From the evidence of pw1 in this case, he brought various sums of money to the trio of Obinna, 1st and 2nd accused persons. That finally he made two payments to Ogadinma Igwe (now at large). This Ogadinma Igwe was the person who was responsible for the processing and registration of the money. The most interesting thing about all the transactions was that pw1 made all the payments in the presence of all the accused persons.

Ogadinma Igwe
It is evident from the evidence of the prosecution witnesses that the accused persons were in agreement to defraud pw1. The argument of the defence counsel that the prosecution failed to prove common intention on the part of the accused persons to warrant a conviction for conspiracy cannot hold water here. It is my opinion here that the accused persons had an intention to defraud pw1 and they actually carried out such intention. The offence of conspiracy is therefore established against them.

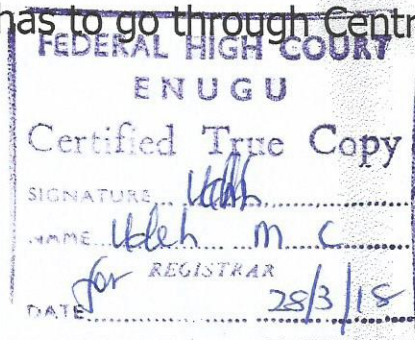
The 2nd issue under consideration is that of obtaining money by false pretences. This Court is duly bound here to find out whether the prosecution has laid evidence enough to establish that the accused persons actually obtained monies from this prosecution witness as being alleged.

It is in evidence that pw1 who is the star witness in this case was fraudulently deceived by the accused persons and made to part with



money to the tune of N1,265,000 (instalmentally) to the 1st accused person in the presence of the 2nd accused person. It all started when pw1 met with one Obinna at a Mobil filling station in Enugu here. The said Obinna approached pw1 and asked him to carry some goods to Ebonyi State for him. They agreed to the price of N15,000 and the said Obinna took pw1 to the residence of one Elder (1st accused person) to collect the goods. The Elder (1st accused) was to pay pw1 for carrying the goods.

It is also in evidence that before pw1 could be shown the said goods, one Samuel (2nd accused person) came in. The 1st accused claimed to be keeping goods for Mr. Samuel the 2nd accused and the 2nd accused was to settle the 1st accused persons bill of N25, 000 before those goods could be released to him. The two accused persons therefore engaged in a long endless argument until pw1 then suggested that the box containing those goods should be opened and some goods sold to offset the N25,000 bill owed to the 1st accused person. It is very interesting to note here that the 2nd accused person possessed the key to the box and quickly opened the same. When the box was opened, they all saw that it contained N1000 notes, N500 notes and dollar notes. The 2nd accused told them the money was printed in Switzerland. 2nd accused also claimed to be working for Atiku Abubakar and that the amount of money contained in the box was N282,000,000. The 2nd accused person then offered to share the money with Obinna, 1st accused and pw1 on one condition, that the money has to go through Central Bank of Nigeria for



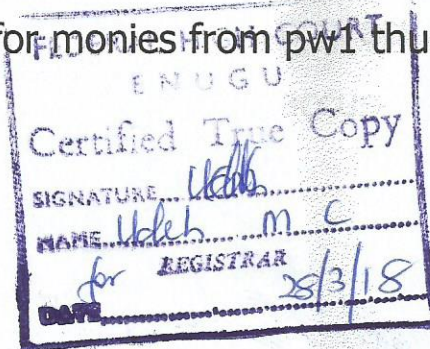
registration and processing. That the above mentioned people were to jointly contribute the sum of N2.5m for the said processing & registration of the money.

It is also in evidence that the 1st accused person quickly suggested to all the above mentioned persons that they should take an oath of secrecy not to disclose the business to the police or custom and the oath was of course taken.

The business was so enticing and irresistibly tempting that pw1 started bringing his contribution left and right, also buying recharge cards for the accused persons. As I stated before in this judgment, pw1 alone contributed the sum of N1.265,000. In the mind of the prosecution witness I am sure he thought he had hit a jack pot and he was actually excited with the idea.

It was after pw1 made his contribution and followed all the instructions given by the accused persons but failed to see the dividend that his eyes cleared and it dawned on him that fraudsters had played a fast one on him. This led to his report to EFCC & SSS.

It is also in evidence (pw2's evidence) that after pw1 petitioned the accused persons for fraud, they carried out investigation. That part of the investigation is that they listened to telephone conversation between pw1 and the accused persons. That in the conversations between the duo, the accused persons demanded for monies from pw1 thus confirming pw1's



allegations that they were demanding money from him. It was on the basis of this that a surveillance was conducted and the accused persons arrested.

The prosecution also stated clearly that the 2nd accused person admitted in his statement collecting the sum of N98,000 and 11,000

Here the defence contended that the disagreement between the complainant and accused persons is not criminal. That the complainant recruited accused persons to make converts for him in Judaism and, that whatever he may have given to them was for procuring religions converts. I am not carried along with this line of defence. There is no proof anywhere to show or establish that pw1 entered into a deal with the accused persons to procure converts to Judaism as being alleged. It is my opinion that the defence merely used Judaism as a cloth to cover up the evidence of pw1 and to rubbish the allegation made against them.

It is in evidence that the accused persons used false names to hide their true identity from pw1. It is submitted that the persons pw1 met during the whole transaction were the accused persons whom he paid those sums of money to.

This fact has not been denied by the defence. Of course it is trite law that facts not expressly denied are deemed admitted I there believe this piece of evidence that the accused persons concealed their identity purposely in furtherance of their plan to defraud pw1. It was actually the investigation of pw2 that revealed the true identity of the accused persons. The names



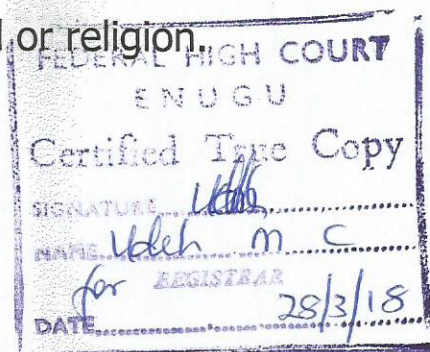
used like 'Elder' and 'Samuel' were calculated to hide the identity of the accused persons and I fully believe this piece of evidence by the prosecution to be true and I so hold.

The 2nd accused in his evidence claimed that his statement was obtained under duress and torture, that is the statement in which he admitted collecting the sums of N98,000 and 11,000 from pw1. Interestingly however, the defence did not object to its admissibility when it was tendered. I here also agree with the prosecution that raising it for the 1st time in his evidence in chief is an after thought. Of course retracting the said statement does not make it inadmissible. See the case of *Junaidu v State* (2016) A FWLR (pt 850) 1045 see also *Idowu Okalawon vs State* (2015) LPELR 24838(Sc).

The defence is vehement here that the prosecution did not tender any exhibit by way of receipts or so to show that money was given to the accused persons.

Secondly, that he did not report to the police at the earliest opportunity.

Thirdly, that the EFCC in a quest to convict the accused persons by all means decided to darken all aspect relating to the facts that led to the disagreement between pw1 and the accused persons. The defence is here emphatic about the exhibit which it tendered in evidence ie skull cap and jewish long dress, all in a bid to prove that the disagreement between the parties was on the issue of Judaism and or religion.



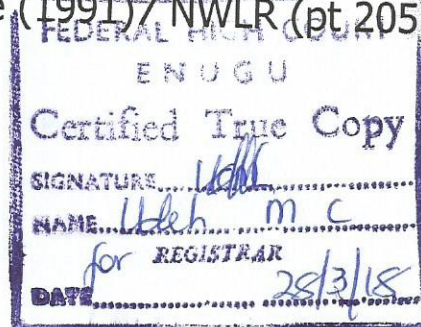
I have looked at the above submission but it is not really difficult to ascertain the truth which has rightly been drawn out by the prosecution from its submission.

The prosecution witnesses stated in their evidence that PW1 and the accused persons entered into an oath of secrecy not to disclose the business to any one. I believe that informed the reason why PW1 could not report the accused persons early enough to the police.

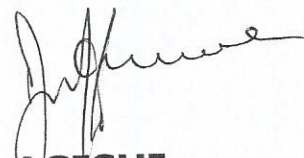
Again the circumstances under which PW1 was made to part with money were such that he could not demand for receipts from the accused persons. Of course this informed the reason why they have been arraigned under Advance Fee Fraud and other Fraud Related Offences Act.

As to the argument that EFCC ignored the aspect of religion and the exhibit tendered, here again the prosecution submitted that this was not stated by DW1 during the investigation of the case when he was confronted with the allegations leveled against him by pw1. This too was not countered and its deemed to be true.

On the whole, it is my opinion that the prosecution has established conclusively the elements of the offence of obtaining by false pretence against the accused persons beyond any reasonable doubt as set out in the case of *Alake v State* (1991) 7 NWLR (pt 205) 567 at 592.



Accused persons are found guilty of the offences of conspiracy to commit a felony and obtaining money by false pretence and are convicted as charged.

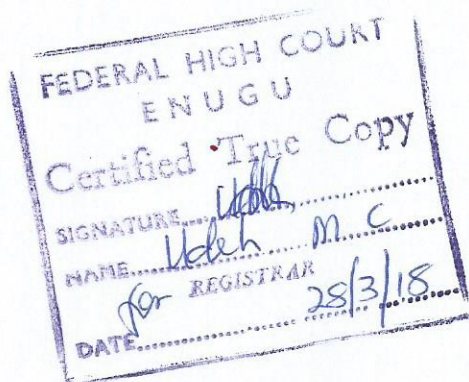


D. V. AGISHI
JUDGE
1/01/17

Previous conviction: Nil

Agishi ALLOCUTUS; We apply that the court temper justice with mercy.

Accused person are 1st offenders by virtue of this charge. From the commencement of this trial in 2011, the accused persons religiously attended this court. The 1st accused person is also an aged person. The 2nd Accused is also hypertensive. We urge the court to caution and discharge the accused persons.



SENTENCE: In sentencing the accused persons, I have taken their plea into consideration and the fact that there is no known knowledge of previous conviction against them. Be that as it may, it is regrettable to note that the Advance Fee Fraud Crime is almost becoming the order of the day in Nigeria and therefore giving this nation a very bad name home and abroad. I believe it is the duty of all of us to rise up and condemn this trend of things for our good and the good of the nation. As I said before, I have taken the plea of defence counsel, Mr. Awforkansi into consideration and will therefore be lenient in sentencing the accused persons.

On count I which is conspiracy the accused persons are sentenced to a fine of N50,000 each or imprisonment for 2 years each in lieu of fine.

On the remaining 13 counts, the accused persons are sentenced to N20,000 on each count. Failure to pay the fine of N20,000 each will also take them to prison for 1 year for each count.



D.V. AGISHI
JUDGE
2/2/17

