

IN THE HIGH COURT OF JUSTICE OF KADUNA STATE OF NIGERIA  
IN THE KADUNA JUDICIAL DIVISION  
HOLDEN AT KADUNA  
BEFORE: THE HON. JUSTICE M.T.M. ALIYU - JUDGE  
SUIT NO:KDH/KAD/13/EFCC/2015

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA .....COMPLAINANT  
AND

1. JIBRIN MUSA (A.K.A SMART)  
2. STEPHEN OLAIKA (A.K.A. YAKUBU YAHAYA } ACCUSED PERSONS  
3. FRANCIS CHUKWU (A.K.A YELLOW SKIN }

30 - 10 - 2017

2<sup>nd</sup> defendant in Court. (Speaks English)

Musa Isa for prosecution.

Abdullahi Haruna for 3<sup>rd</sup> defendant.

JUDGMENT

The two defendants were arraigned on an Eleven Count Charge of Criminal Conspiracy and obtaining property by false pretence. Both offences are punishable under Section 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006. The defendants were charged along with one Jibrin Musa a.k.a Smart who has been absent throughout the trial and was never arraigned.

The two defendants (2<sup>nd</sup> and 3<sup>rd</sup> defendants) pleaded not guilty to all the counts.

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In the effort to prove the allegation against them in the charge, the prosecution called two witnesses and tendered 5 documents marked as Exhibits 1, 2<sup>A</sup>, 2<sup>B</sup>, 3<sup>A</sup> and 3<sup>B</sup>. While Count one of the charge alleged criminal conspiracy by the 2 defendants and the one at large to commit the unlawful act of obtaining money by false pretence from the nominal complainant (PW1), Counts 2 – 11 alleged against all of them the principal offence of obtaining various sums of money at different times from the PW1 by falsely representing that the money was meant for the purchase of solar Halogen Indicator.

The facts of the case are as stated in the evidence of the alleged victim of the crime Alhaji Mohammed Ndaminin. He testified that in November, 2012, he one day received a phone call from one man who called himself Engineer Yusuf Bello. Bello informed him that he was an old school mate at ABU Zaria and wanted to assist him after retirement. He introduced him to an instrument/material called "*Solar Halogen Indicator*" available in Minna which is used by an Electrical Company in Bayelsa State where he (Engineer Bello) works. Engineer Bello asked him (PW1) to be supplying the material and his company will be paying money into his account for the purchase of the material. After confirming the availability of the material to Engineer Bello, Engineer Bello promised to send money into the PW1's



account. The PW1 received a credit alert of ₦62 Million the following day. The alert was allegedly from Central Bank of Nigeria. It was meant to purchase 100 pieces of the material at ₦54 Million. The balance being the profit was to be share equally by Engineer Bello and PW1.

In the Central Bank of Nigeria alert phone message was also an instruction to contact one Dr. Joe through a supplied phone number. When PW1 contacted Dr. Joe the latter informed him that before the money is remitted into his (PW1) account, there are charges to be paid. That the charges are to be paid by PW1 from his own account. Dr. Joe gave him the G.T. Bank Account No. of one Jibrin Musa who he said is Central Bank of Nigeria's employee. In this account PW1 deposited ₦1 Million, ₦1,000,020.00, ₦1 Million and ₦400,000.00. at Dr. Joe's request for different charges at different times. The ₦62 Million in the Central Bank of Nigeria's Account was never remitted into his account.

Engineer Bello introduced him to another Central Bank of Nigeria employee called Yakubu Yahaya to assist him. Yakubu Yahaya also made demands for various sums of money and the PW1 transferred the sum of ₦750,000.00, ₦100,000.00, ₦100,000.00, ₦250,000.00, ₦75,000.00 and ₦200,000.00 into Yakubu Yahaya's First Bank Account. Like Dr. Joe, Yakubu Yahaya also refused to meet with him even after collecting all

these sums of money from him. From there both phones of Yahaya and Engineer Bello were switched off and PW1 realised that he has been duped. He could not identify the 2 defendants at the EFCC office because he never met them. He also never met Engineer Bello and Dr. Joe. The alert for N62 Million he allegedly received was not in respect of his own bank account.

The investigating officer is the other witness in this case (PW2). He and his colleagues were investigating another case of fraud when they stumbled upon several payments made by the PW1 to one Jibrin Musa (the defendant at large) in his G.T. Bank account. When contacted the PW1 informed them that he was defrauded and that was why he made the payments. PW1 then made a petition and also alleged that he made similar payments of the sum of N1, 475,000.00 into the First Bank account of the 2<sup>nd</sup> defendant. He tendered the Statement of Account and account opening documents of the 2<sup>nd</sup> defendant to prove the lodgments and the ownership of the account by the 2<sup>nd</sup> defendant (Exhibit 1).

The Extra Judicial Statement of the 2<sup>nd</sup> defendant and his Additional Statement (Exhibits 2<sup>A</sup> and 2<sup>B</sup>) dated 5<sup>th</sup> June and 14<sup>th</sup> June 2014 were admitted in Evidence.



The 3<sup>rd</sup> defendant was arrested in relation to another allegation of fraud and was brought to Kano the same time the 2<sup>nd</sup> defendant was arrested. The 2<sup>nd</sup> defendant accused the 3<sup>rd</sup> defendant of receiving 10% of the sums of money deposited in the 2<sup>nd</sup> defendant said First Bank account by the PW1. The 3<sup>rd</sup> defendant volunteered two statements (Exhibits 3<sup>A</sup> and 3<sup>B</sup>) wherein he denied receiving any money from the 2<sup>nd</sup> defendant.

It is clear from the facts of his case that the evidence adduced by the prosecution to convict the defendant is the testimony of PW1 and the 4 extra judicial statements of the 2 defendants.

The defendants rested their case on that of the prosecution. They called no evidence.

In the prosecutor's Final Written Address, one issue for determination was raised. It reads:-

*"Whether upon the evidence adduced by the prosecution through its witnesses and the documents tendered and admitted in evidence, the prosecution has proved its case beyond reasonable doubt the essential elements or ingredients of the offence alleged against the defendants."*

Three issues for determination were raised in the 2<sup>nd</sup> defendant's Final Written Address. They are:-

1. Whether a single case of conspiracy exists in this case.
2. Depending on the answer to the above, whether 2<sup>nd</sup> defendant was part of any conspiracy at all.
3. Whether the 2<sup>nd</sup> defendant is liable to a charge of obtaining by false pretence and if so whether it is to no more than the sum of N1, 475,000.00 received by him.

Like the Prosecution, a lone similar issue for determination was raised in the 3<sup>rd</sup> defendant's Final Written Address. It reads; ***"Whether the prosecution, upon the evidence before the court, has proved its case against the 3<sup>rd</sup> defendant beyond reasonable doubt"***. I agree with the lone issue identified and raised by the prosecution and the 3<sup>rd</sup> defendant. It will sufficiently dispose of all the contentions in dispute and the guilt or otherwise of the 2 defendants as Charged. I perfectly appreciate the importance of the questions raised in the 2<sup>nd</sup> defendant's Written Address which are germane to the determination of the guilt or otherwise of the 2 defendants. I believe they can be taken care of in the lone issue. I do not intend to summarise the argument of Counsel in the Final Written

Addresses of the parties. I shall however consider those arguments relevant to a just decision in this case.

The issue before us is whether the prosecution has prove the case against the 2<sup>nd</sup> defendant beyond reasonable doubt.

On count 1 of the charge which alleged criminal conspiracy against the 2 defendants and the other defendant still at large, the prosecutor and Counsel to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have agreed that it is an essential element of the offence that there must exist a common criminal design or agreement by two or more persons to do or to omit to do an act criminally. See *ODUNEYE V THE STATE (2001) 2 SCM 81, AKWUOBI V STATE (2017) 2 NWLR (pt. 1550) 421*. The proof of criminal conspiracy is rarely capable of direct proof and it is invariably an offence that is proved by making inferences from the acts of the parties in the realisation of their common criminal purpose. See *ODUNEYE V THE STATE (supra), AKWUOBI V STATE (supra)*.

It has been argued in the defendants' final Written Addresses that no evidence has been led by the prosecution to establish agreement to commit any offence by the defendants. That there was no link at all established between the 2 defendants and no suggestion that there was a



meeting of their minds or contact between them. In the 2<sup>nd</sup> Defendant's Final Written Address, it was contended that there are at least two conspiracies in this case and both were humped up in the 1<sup>st</sup> count.

The prosecution on the other hand relied on the extra judicial statement of the 2<sup>nd</sup> defendant to establish conspiracy between the 2<sup>nd</sup> defendant. Now count 1 of the charge alleges criminal conspiracy between the 2 defendants herein and the other defendant who was never arraigned. The conspiracy was to obtain money by false pretence which is an offence contrary to Section 8 (a) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006. I have carefully gone through the evidence in this case and I do not agree that there are two conspiracies in this case. From the testimony of PW1 the victim of the alleged offences, Engineer Bello, Dr. Joe, Jibrin Musa and the 2<sup>nd</sup> defendant deceived him into parting with the sums of money in Counts 2 – 11 of the charge. The 2<sup>nd</sup> defendant's part in the conspiracy is the demand for payment of ₦750, 000.00, ₦100, 000.00, twice, ₦250, 000.00, ₦75, 000.00 and ₦200, 000.00 as in Counts 6 – 11 of the Charge from the PW1 which sums were paid by the witness.

The 2<sup>nd</sup> defendant in Exhibit 2<sup>B</sup> admitted that all the alleged sums of money in Counts 6 – 11 of the Charge were indeed on various dates paid into his account by PW1 who he did not know and he handed over the sums of



money to the 3<sup>rd</sup> defendant who, as agreed, paid him 10% of each deposit. Clearly therefore there was established Criminal Conspiracy to commit the crimes in counts 6 – 11 perpetrated by Engineer Bello, Dr. Joe and the 2<sup>nd</sup> defendant. The PW1 said he spoke with Yakubu Yahaya on the phone who made demands for the payments of the sums in Counts 6 – 11 of the charge. The 2<sup>nd</sup> defendant admitted in Exhibits 2<sup>A</sup> and 2<sup>B</sup> that the sums of money in Counts 6 – 11 were paid into his First Bank account. He refused to lead evidence to counter the evidence of PW1. Indeed, the evidence of the PW1 that the 2<sup>nd</sup> defendant demanded the sums of money in Counts 6 – 11 of the charge was never controverted during cross examination. It seems to me therefore an established fact that the 2<sup>nd</sup> defendant did agreed with others to obtain the various sums of money in Counts 6 – 11 of the charge by false pretence from the PW1. It is ridiculous to contend that money meant for another person legitimately earned would be paid into your account as a conduit and just for that 10% of the deposit would be paid to you. I am satisfied that criminal conspiracy to commit the crimes in Counts 6 – 11 of the charge has been established against the 2<sup>nd</sup> defendant.

I agree with the submission that the prosecution has failed to establish a link between the 2<sup>nd</sup> defendant and the 3<sup>rd</sup> defendant. By the provision of

Section 29 (4) of the Evidence Act 2011 a confession made by one accused person shall not be considered by the court against other accused persons charged with him unless they adopt the statement by words or conduct. Such a statement is only evidence against the maker and not against the co-accused also implicated by it. See *SUBERU V THE STATE* (2010) ALL FWLR (pt. 520) 1263 at 1275 – 1276 and *MOHAMMED V THE STATE* (2005) ALLFWLR (pt. 266) 1346 at 1353. Apart from the extra judicial statement of the 2<sup>nd</sup> defendant no other evidence was adduced to link the 3<sup>rd</sup> defendant to the conspiracy alleged in this case. The PW1 in his evidence in chief mentioned Yusuf Bello, Dr. Joe, Mr. Joshua, Jibrin Musa and Yakubu Yahaya as the persons he dealt with involved in the conspiracy to defraud him of his money. He did not mention the name of the 3<sup>rd</sup> defendant. He did not say that he recognize the voice of the 3<sup>rd</sup> defendant. He also stated categorically that he never met any of the persons who defrauded him. He stated under cross examination that he did not know the physical identities of the persons he was dealing with during the transaction. The 2<sup>nd</sup> defendant was pointed out to him after he (2<sup>nd</sup> defendant) was arrested. The investigating officer's evidence in relation to the 3<sup>rd</sup> defendant is in respect of the extra judicial statements of the 3<sup>rd</sup> defendant and the alleged 10% the 2<sup>nd</sup> defendant told them that it was



given to him, in respect of each deposit by the 3<sup>rd</sup> defendant. The evidence of the PW2 in this respect reads;-

*“In respect of the 3<sup>rd</sup> accused I travelled to Kaduna with my other colleagues to make an arrest, we went to the 3<sup>rd</sup> accused person who was involved in an alleged case of obtaining money by false pretence by another team. When he was brought to Kano the 2<sup>nd</sup> accused told us that 10% of the money paid into his (2<sup>nd</sup> defendant) First Bank Account was given to the 3<sup>rd</sup> accused. The 3<sup>rd</sup> accused was brought out from the cell and his statement was taken under caution and voluntarily. On the allegation made by the 2<sup>nd</sup> accused, the 3<sup>rd</sup> accused claimed that he did not receive any money from the 2<sup>nd</sup> accused. The 3<sup>rd</sup> accused gave two statements.....”*

It has not been shown that any investigation was conducted to confirm the story of the 2<sup>nd</sup> defendant with regards to the involvement of the 3<sup>rd</sup> defendant in the alleged offence and the specific roles he played. As I stated, the position of extra judicial statement made not under oath is different from the position of statements made in court under oath. In **SUBERU V THE STATE** (supra) the Supreme Court stated inter alia:-

*"It is therefore clear to me that exhibit 1, the statement of the 4<sup>th</sup> accused, cannot therefore be taken into account against the appellant when his no case submission was considered. It is imperative to state it that the court below wrongly treated exhibit 1 as if it were evidence given by a co-accused at the trial. There is a gulf of difference between an extra judicial statement made by a co-accused which is governed by section 27 (3) of the Evidence Act and evidence given by a co-accused on oath which is governed by section 178 (2) of the Evidence Act. As extra judicial statement by a co-accused remains a statement and not his evidence. It is binding and not his evidence. It is binding on the maker only. Ogiri & Anor. V State at page 5. Chukwuike V The State at page 616 both cited by learned counsel for the appellant."*

Clearly therefore, the damaging evidence in exhibits 2<sup>A</sup> and 2<sup>B</sup>, the extra judicial statements of the 2<sup>nd</sup> defendant cannot be used against the 3<sup>rd</sup> defendant, a co-defendant in absence of evidence that the exhibits were made in the presence of the 3<sup>rd</sup> defendant and that he adopted the statements therein by words or conduct.



It is important to note that in his own extra judicial statement exhibit 3<sup>A</sup> and 3<sup>B</sup> which statements were made on 12<sup>th</sup> and 14<sup>th</sup> June, 2014 the 3<sup>rd</sup> defendant admitted knowing the 2<sup>nd</sup> defendant and in fact that in the year 2012 when the crimes alleged in this case took place, the 2<sup>nd</sup> defendant visited him and gave him N60, 000.00 to keep the money for him. There really is nothing in these exhibits to hold the 3<sup>rd</sup> defendant liable for agreeing with the 2<sup>nd</sup> defendant and/or other confederates to perpetrate the offences alleged in counts 1 – 11 of the charge. I so hold. I also hold, having regard to any findings earlier in this judgment, that the 2<sup>nd</sup> defendant by his own admission in his extra judicial statements exhibits 2<sup>A</sup> and 2<sup>B</sup> conspired with others to commit the offences in counts 6 – 11 of the charge.

I now turn to counts 2 – 11 of the charge. I waste no time in making the finding that no evidence whatsoever was led by the prosecution to establish the crimes alleged in counts 2 – 5 of the charge. No evidence has been led to show that the two defendants were involved in the acts of obtaining the various sums of money alleged by PW1 by false pretence. The facts in this case show that Jibrin Musa a.k.a smart who was charged along with the two defendants has not been arraigned. No evidence has also been adduced to prove the identity of Engineer Bello, Dr. Joe as well as Mr.

Joshua. This count cannot speculate on these issues. They are very relevant facts that must be established by good evidence. Unfortunately, that evidence has not been produced such that the relationship of the two defendants herein can be ascertained vis-à-vis the 5 counts in contention. I hold that the prosecution has failed to prove counts 2 – 5 of the charge.

I now turn to Counts 6 – 11 of the charge. These counts alleged that on various dates in December 2012 and January 2013 the two defendants and Jibrin Musa obtained the various sums of money by false pretence from the PW1. The representation was that the money was needed to purchase Solar Halogen Indicator which is needed by an electrical company in Bayelsa. I agree that the representation in the said counts of the charge is not the same with the representation alleged by the PW1 in his evidence. In his evidence the PW1 maintained that the sums of money demanded for by 2<sup>nd</sup> defendant are to facilitate the payment of the sum of N62 million by the Central Bank of Nigerian which payment was meant for the purchase of the material called Solar Halogen Indicator. I do not however, think that Counts 6 – 11 of the charge are bad or viated by this mistake. Section 229 of the ACJA 2015 provides:-

*“Where a defendant is charged with an offence relating to property and the evidence establishes the commission by*



*him with respect to the same property of another offence, he may be convicted of that other offence although he was not charged with it."*

The offences alleged by the PW1 in his evidence relate to the same properties in Counts 6 – 11 of the charge. Indeed the 2<sup>nd</sup> defendant in exhibit 2<sup>B</sup> stated that the sums of money in Counts 6 – 11 of the Charge were paid into his First Bank Account by the PW1 on the specific dates stated in the counts of charge. It would seem to me safe to convict the 2<sup>nd</sup> defendant, having regard to the provision of Section 229 of the ACJA, if the prosecution has established the charge against him beyond reasonable doubt.

The ingredients of the offences of obtaining property by false pretence have been ably stated in *EDE V FRN* (2001) 1 NWLR (pt.695) 502 at 512 as follows:-

- 1. The representation made by the accused is false.*
- 2. The representation operated in the mind of the person from whom the money was obtained.*

3. *The pretence or representation was false to the knowledge of the accused or that the accused did not know the representation as true.*

4. *The representation was made with intent to defraud.*

I read the decision in *FARO V I G P* (1964)1 ANLR 6 at 7 cited by learned counsel for the 2<sup>nd</sup> defendant. It is an authority on the position that where there is established a difference in substance between the pretence alleged in the charge and the pretence by means of which the property was obtained, an accused person is entitled to be acquitted and in deciding whether such a difference exists, what the court have to do is to compare the substance of the pretence alleged with that of the operative pretence. I have compared the pretence in counts 6 – 11 of the charge with the pretence alleged by the PW1. Whereas the sums of money in the charge were obtained from the PW1 to purchase the materials Solar Halogen Indicator, the pretence explained by PW1 in his evidence is that the sums of money paid by the PW1 were to facilitate the payment of N62 Million by the Central Bank of Nigeria which sum of money was paid to afford PW1 execute the contract of purchase of the material Solar Halogen Indicator. The pretence in both the charge and evidence of PW1 relate to the contract to purchase the material Solar Halogen Indicator. The difference in the



substance of the pretence as stated by PW1 is not so much from the charge. I so hold.

Now from the testimony of PW1 there was no contract whatsoever for the supply of Solar Halogen Indicator. The representation that such a contract exist was just a play to make him part with his money. He was made to speak to so many people to convince him that the contract is real. At the end of the day he realised too late that there was no contract and he has been deceived into parting with his money. I find it very difficult as greedy as the PW1 obviously was, that he will part with the sums in counts 6 – 11 of the charge if he did not believe the representation made by Yusuf Bello and the fact that the 2<sup>nd</sup> defendant was a staff of the Central Bank of Nigeria who can facilitate the payment of the sum of N62 Million to purchase the material to execute the contract.

It seems to me very clear that the intention of the 2<sup>nd</sup> defendant and his fellow conspirators is to defraud the PW1 of the amount he paid into the account of the 2<sup>nd</sup> defendant. It is important to recall that the 2<sup>nd</sup> defendant admitted that the various sums of money in the charge were paid into his First Bank account by the PW1. The evidence of PW1 that he spoke with 2<sup>nd</sup> defendant who demanded the payment of the sums of money he (PW1) paid into the account of 2<sup>nd</sup> defendant was never disputed. The PW1 was

never cross examined on the issue. Soon after defrauding the PW1 of his N1,475,000.00, the telephone lines of 2<sup>nd</sup> defendant and his conspirators went dead and he could not reach them in the so many lines they used to call him. Why would the 2<sup>nd</sup> defendant allow his bank account to be used as conduit for transaction he knows nothing about? Why would the person using his account as conduit pay 10% of each deposit to him without doing any work. These issues in my opinion establish the intention to defraud the PW1. I so hold. I find that the intention to defraud can safely be inferred from the facts of this case and the conducts and action of the 2<sup>nd</sup> defendant. I so hold.

As I stated earlier there is no evidence to link the 3<sup>rd</sup> defendant to the allegations in the Counts 6 – 11. Neither PW1 nor PW2 gave evidence to link him with any or all of the crimes. The prosecution failed to investigate the allegations of the 2<sup>nd</sup> defendant in Exhibit 2<sup>A</sup> and 2<sup>B</sup>. They failed to investigate the identity of Engineer Bello, Dr. Joe and Mr. Joshua. They also failed to investigate whether as claimed by the 3<sup>rd</sup> defendant, the N60,000.00 2<sup>nd</sup> defendant gave him was not in connection with the criminal offences in this case. I find that no case has been proved against the 3<sup>rd</sup> defendant and I hereby discharge and acquit him.



For all the reasons which I stated in this judgment, I find that prosecution has proved beyond reasonable doubt the charge against the 2<sup>nd</sup> defendant in counts 1, 6 – 11. I convict him for each of the said offences.

Signed

Hon. Justice M.T.M Aliyu\_Judge

30/10/2017

### SENTENCE

I have listened to the passionate plea for mercy on behalf of the convict by his counsel. I note that the convict has no record of previous conviction. I also note that the prosecution of this case has taken some time since the convict was arraigned on 4<sup>th</sup> December, 2014.

However, the two offences for which the convict was convicted for are punishable with at least 7 years imprisonment each without option of fine

I therefore sentence the convict to 7 years each in prison custody on both counts of the charge. The sentences are to run concurrently and the time spent by the convict in prison shall be deducted from his sentences.

On the issue of restitution, Section 11 (1) of the Advance Fee Fraud and Other Fraud Related Offences Act mandates this court, in addition to other

penalty, to order a convict to make restitution to the victim of false pretence or fraud by directing him to pay the victim an amount equivalent to the loss sustained by the victim. The facts of this case as found in the Judgment of the court are that the convict, using false pretence, dishonestly made the victim to part with various sums of money totaling the sum of ₦1,475,000.00. This money belongs to the victim Mohammed Ndaminin. I hereby order the convict to pay the equivalent of the amount he took from the victim Ndaminin Mohammed.

Signed

Hon. Justice M.T.M Aliyu\_Judge

30/10/2017



Zulfaw K. Chafe