

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/3/EFCC/2015

BETWEEN:

FEDERAL REPUBLIC OF NIGERIAAPPLICANT/COMPLAINANT

AND

1. SA'ADU MUSA
2. HUSSAINI ISAH }**RESPONDENTS/ACCUSED PERSONS**

03 - 04 - 2017

Both accused in court, both speak Hausa.

Samuel Chime for prosecution.

Ibrahim Ahmed for both accused.

Nana Ibrahim (ACR) Affirmed to interpret from English to Hausa and vice versa.

COURT - **J U D G M E N T**

The two defendants/accused persons are farmers. They are also friends. The 1st accused/defendant had been in possession of a farmland belonging to one Dr. Aminu Ismail Ibrahim which he keeps in his custody for many years. The farmland is located at Afaka. The prosecution alleged that the farmland was kept in the custody of the 1st defendant based on trust and he breached that trust when he sold the farmland without the owner's consent. Further that the 1st defendant also committed the offence of obtaining property by false pretence in respect of the sum of money paid for the



Zulfair K. Chare.

farmland by one Musa Mohammed Zira. The prosecution also alleged that the 2nd accused committed the offence of cheating when he represented that he is the brother of the owner of the farmland and deceived Musa Mohammed Zira who parted with his money believing that 2nd accused had authority to sell the farmland.

The prosecution filed a 5 count amended charge against the accused/defendants. The charge reads:-

COUNT 1

That you, Sa'adu Musa, on or about 31st May, 2013 at Kadunabeing entrusted with a piece of land at Sabon Afaka, Igabi Local Government Area of Kaduna State belonging to Dr. Aminu Ismail for caretaking sold the land to Musa Zira for the sum of ₦6,000,000.00 without the consent and authority of the land owner, and dishonestly converted the proceeds of sale to yourself in violation of the trust, thereby committing criminal breach of trust contrary to section 311 of the penal code law and pushable under section 312 of the said law.

COUNT 2

That you, Sa'adu Musa on or about the 31st May, 2013 at Kaduna with intend to defraud obtained the sum of ₦3,5000,000.00 from Musa Ziira by falsely pretending that you have the consent and authority of Dr. Aminu Ismail to sell a piece of land belonging to him and situated at Sabon Afaka Igabi Local Government Area of Kaduna State with

Certificate of occupancy No. GBLG/A/0564 which representation you knew to be false, thereby committing an offence contrary to section 1 (1) (a) of the Advance Free Fraud and other Fraud Related Offences Act, 2006 and punishable under section 1 (3) of the same Act.

COUNT 3

That you, Sa'adu Musa on or about the 20th January, 2014 at Kaduna..... with intent to defraud, obtained the sum of ₦2,500,000.00 from Musa Zira by falsely pretending that you have the consent and authority of Dr. Aminu Ismail Ismail to sell a piece of land belonging to him and situated at Sabon Afaka Igabi Local Government Area of Kaduna State with Certificate of occupancy No. GBLG/A/0564 which representation you knew to be false, thereby committing an offence contrary to section 1 (1) (a) of the Advance Free Fraud and other fraud related offences Act, 2006 and punishable under section 1 (3) of the same Act.

COUNT 4

That you Hussaini Isah on or about the 31st May 2013 at Kaduna ... with intend to defraud, obtained the sum of ₦3,5000,000.00 from Musa Zira by falsely pretending that you have the consent and authority of Dr. Aminu Ismaila Ismail to sell a piece of land belonging to him and situated at Sabon Afaka Igabi Local Government Area of Kaduna State

with Certificate of occupancy No. GBLG/A/0564 which representation you knew to be false, thereby committing an offence contrary to section 320 (a) of the penal code law and punishable under section 322 of the same law.

COUNT 5

That you Hussaini Isah on or about the 20th January, 2014 at Kaduna ... with intend to defraud, obtained the sum of ₦2,5000,000.00 from Musa Zira by falsely pretending that you have the consent and authority of Dr. Aminu Ismaila Ismail to sell a piece of land belonging to him and situated at Sabon Afaka Igabi Local Government Area of Kaduna State with Certificate of occupancy No. GBLG/A/0564 which representation you knew to be false, thereby committing an offence contrary to section 320 (a) of the penal code law and punishable under section 322 of the same law."

The 1st defendant pleaded not guilty to counts 1, 2 and 3 of the charge. The 2nd accused pleaded not guilty to counts 4 and 5 which relate to him.

In the effort to prove the offences in the charge against the accused/defendants, the prosecution called Musa Zira; Dr. Aminu Ismail and the IPO who investigated the alleged crimes. The prosecution also tendered thirteen documents marked as exhibits 1 – 13. These documents include the petition of Musa Zira dated 28th August 2014 (exhibit 1), sale agreement in respect of the farmland between Musa Zira and the 2nd

accused (exhibit 1), and the extra judicial statements of the accused persons exhibits 10, 11, 12 and 13. I shall refer to these documents and the others not mentioned wherever necessary in this judgment.

The parties herein have filed and adopted their final written addresses in this case.

In the accused persons' final written addresses, the issue whether the 2nd prosecution invite Dr. Aminu Ismail Ibrahim who owns the farmland in issue gave the accused permission to sell the land or not was raised. After reviewing the evidence of the prosecution witnesses it was argued that PW1 having retrieved the second payment of ₦2.5 million from the accused and since the accused had paid ₦1 million to the PW2 it should be deduced that the PW2 gave permission to the accused to sell his farmland. Further that even before PW1 lodged his complaint before the EFCC the accused had agreed to pay back his money and it is the incapacity of the accused to repay the money that resulted in their being arraigned in this court. It was concluded that the prosecution has failed to discharge the onus on it to prove the guilt of the accused persons and I was urged to discharged them

The prosecution in its final written address also raised one issue for determination i.e:-

"Whether it has proved each count of the charge against the accused persons beyond reasonable proceeded on its address to consider and analyze each and every ingredients of the 3 offences charged in counts 1 - 5. The prosecution reached a conclusion that all the 5 counts have been established beyond

reasonable doubt and argued one to convict the 2 accused persons as charged."

In deciding whether the charge has been established against the accused persons beyond reasonable doubt. I shall be guided by the ingredients of each of the 3 offences alleged in the charge. I shall first consider the offence of criminal breach of trust in count 1 then I shall consider the offences of obtaining property by false pretence in counts 2 and 3 before finally I shall consider the offences of cheating against the 2nd accused in counts 4 and 5 of the charge.

COUNT 1

The ingredients of criminal breach of trust which have been correctly identified in the prosecutions written address are as follows:-

- a) That the accused person was entrusted with property or with dominion over it.
- b) That he:- (i) misappropriated the property; (ii) converted it to his sum use or (iii) disposed of it.
- c) That he did so in violation of any legal contract opposed or implied which he has made concerning the trust.
- d) That he acted dishonestly as in (b) above. See ***ONUOHA VS***

THE STATE (1988)3 NWLR (pt. 83) 460.

The facts in this case are not in dispute that the 1st accused person was entrusted with the farmland belonging to PW2 by the PW2. The PW2 in his evidence described his relationship with the 1st accused in respect of the farmland the subject matter in count 1 in the following words:-

"I know both accused persons. The 1st accused is the custodian of my farmland. The 2nd accused is his friend. I bought the land from my in-law and he advised me to leave the land in custody of the 1st accused and I did. The 1st accused for over 5 years cultivated the land, cut the trees and used it. I once informed 1st accused that I might sell the land if I have a buyer. He said he can help me look for a buyer and I agreed. For a long time he didn't say anything.

One day one man called Abdulsalam Marshall came to me but did not meet me. He called later and we agreed to meet. He came to my house and told me that my land has been sold by 1st accused. I called 1st accused to confirm and he told me that my land has not been sold. After 3 days Marshall called again to insist that the land was sold. I summoned 1st accused and he came with 2nd accused to my office. Both accused vehemently denied when I told them that my land was sold a year ago. They said there is a person interested in buying the land but that he has travelled out of Kaduna. After two days they came with a young man to my house who is interested in

buying my land..... I sold to him at ₦5.5 million. I gave the young man my bank account number.

..... I called Marshall and asked him to connect me with the person he alleged who bought my land. Before we could meet, one Nasiru who I do not know lodged ₦1 million in my account. After 2 weeks marshall's boss who allegedly bought my land returned from his trip and we met. His name is Musa Zira. Musa Zira told me that he bought the land from the accused persons. I called the 2nd accused who told me that the person who bought the land has only paid ₦1 million and .. will complete the payment. I confirmed then that the accused persons did sold my land to Musa Zira."

The 1st accused confirmed the evidence of the pw2 when he admitted in his evidence in chief the following:-

".....I was in custody of Aminu's farmland. Dr. Aminu entrusted the land to me and told me to look for a buyer for him. I got a buyer, musa Zira and we agreed on the price of ₦6 million, Zira told me that he will buy both farmlands mine and Dr. Aminu's. I then called Hussaini (2nd accused) who is my friend. The transaction was conducted in his presence. I have no bank account. We decided to use the account of Hussaini. Musa also showed interest in my land and said he will buy mine after paying for Dr. Aminu's land. He paid

₦3.5 million first and the transaction was written down and I signed. I kept the money with me and because Zira had indicated interest in my farmland and I had a problem that time I tampered with the money. I did this because Zira had answered me that he will buy my farmland.....

The balance of ₦2.5 million was paid into the account of the 2nd defendant but no document was written to show the payment. The amount was refunded to Musa Zira. I did not collect the money from Zira to cheat him. When I got the buyer I did not take him to Dr. Aminu. I did not do that because of my own farmland which I want Musa Zira to buy."

The 1st accused made more remaining admission in exhibit 10 his extra judicial statement. He admitted in exhibit 10 that out of the sum of ₦3.5 million paid by pw1 for the pw2's farm not a kobo was given to the pw2. Out of this amount he collected ₦2,300,000.00 and the balance of ₦1 million was retained by the 2nd accused. With his own share he bought a piece of land at Afaka, Married a new wife, rehabilitated his house and took his aging mother to hospital.

The above evidence not only establish that pw2 entrusted his farmland to the 1st accused person but also that the 1st accused, in violation of the oral agreement between them that he should find a buyer for the land sold the land to pw2 without the consent and authority of the pw2. By selling the farmland to the pw1, the 1st accused

disposed of the property and I satisfied that ingredients (a), (b) and (c) of the offence of criminal breach of trust have been established beyond reasonable doubt.

The last ingredient to establish is the *avers rea* of the offence. Was the action of the 1st accused dishonest when he disposed of the farmland?

The word dishonestly was defined in section 16 of the Penal Code as follows:-

"A person is said to do a thing dishonestly who does that thing with the intention of causing a wrongful gain to himself or another or causing a wrongful loss to any other person."

The above definition is clear and unambiguous. Dishonestly is the doing of a thing with the intention of causing wrongful gain to oneself or another person or to cause a wrongful loss to any other person. The 1st accused person in this case sold the farm of the pw2 without consent and shared the money with his friend without informing the owner of the farm. Even when pw2 confronted the 1st accused he consistently lied that the farm has not been sold. Clearly, the sole intention of the 1st accused by selling the property of the pw2 without authority is to cause wrongful gain to himself. The excuse that he spent the money paid for the pw2's farm because pw1 had indicated interest in buying his own personal farm is an afterthought. This excuse was never mentioned in exhibits 10 and 11, the extra judicial statements of the 1st accused. Having regard to the pieces of evidence refers to above, I am satisfied that the prosecution has proved beyond reasonable doubt that by selling the farmland of the pw2 without his authority

and spending the money paid for the farmland the 1st accused committed criminal breach of trust and I so hold.

COUNTS 2 AND 3

The 2 offences against the 1st accused in these counts are that on two occasions he obtained the sum of ₦3.5 million and ₦2.5 million from Musa Zira (PW1) by false pretence and with intent to defraud pw1. The offence is punishable under section 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act 2006. The ingredients of the offence which is established by section 1 (1), (a) and Section 20 of the Act are:-

- a) That there was pretence.
- b) That the pretence emanated from the accused.
- c) That the pretence was false.
- d) That the accused knew of its falsity or did not believe in its truth.
- e) That there was an intention to defraud.
- f) That the accused induced the owner to transfer his interest in the property.

The evidence of pw1 which was never discredited under cross examination is as follows:-

" I know both accused person. I was introduced to 1st accused by one Abdullahi. I wanted to buy a farmland and he took me to a land at old Afaka belonging to 1st accused.

After this I asked him if they have a bigger land and 1st accused showed me a land about 13.4 hectares at Afaka. He took me round the land and I told him I am interested. He introduced me to 2nd accused who he said is junior brother of the land owner. He told me that the 2nd accused represents the owner. The plot was sold to me at N6 million. On the 31/05/2013 we entered into an agreement and I paid N3.5 million advance and promised to pay the balance. The agreement was entered with 2nd accused in the presence of 1st accused. We signed the agreement and I went to the bank, Zenith Bank and transferred the N3.5 million to 2nd accused. After that, some few months later I made the balance payment of N2.5 million to the account of 2nd accused. I then demanded the land papers from 2nd accused. He did not give me the documents and was making stories. ----- I approached the village head.

Before I saw the village head however, I met with the brother of the 2nd accused, the owner of the land, one Dr. Aminu I told him of my transaction and he told me that accused person brought in another person who they said is interested in the land. Dr. aminu informed me that he was not paid the N6 million I paid to the accused persons. That

he was paid N1million advance payment by a different person. Dr. Aminu told me to go and get my money back from the 2 accused persons. From there I went to the village head. The accused persons agreed to pay the money. They refused to do that and I reported at the EFCC."

The above evidence was never challenged by the defendants. In **OKOSI & ANOR V STATE (1989) 1 NWLR (pt. 100) 642 at 657 Belgore JSC** (as he then was) stated:-

"In all criminal trials the defence must challenge all the evidence it wishes to dispute by cross examination. This is the only way to attack any evidence lawfully admitted at trial....."

In **GAJI V. PAYE (2005) 5 S C 53** the Supreme Court stated that the failure to cross examine a witness on a particular matter is a tacit acceptance of the truth of the evidence of the witness. The above evidence has been amply corroborated by the evidence of pw2 reproduced in this judgment who stated that the 1st accused sold his land without his permission and spent the money. Further that when pw1 approached him on the issue, he informed pw1 that the farmland belonged to him and and he was not aware of the transaction.

In his evidence in chief also reproduced above in this judgment the 1st accused admitted that the farmland he sold to pw1 belonged to pw2 and that he never had nor

sought the consent and authority of the pw2 to sell the land to pw1. The 1st accused also admitted spending the money paid for the farmland. In his additional statement (exhibit 11) the 1st accused made the following admissions:-

"Further to my earlier statement dated yesterday 22/10/2014. It was in my presence that Hussaini Isah told Musa Zira that he is a junior brother to the owner of the farm Dr. Aminu, we did whatever we did together with Hussaini"

It is important to note also that exhibit 1 the land written receipt issued in respect of the first payment of ₦3,500,000.000 paid by pw1 for the farmland was given not by the 1st accused but by the 2nd accused. This supports the evidence of pw1 that the 1st accused represented to him that the 2nd accused is the junior brother of the owner of the farmland and represents the owner in the transaction.

Clearly therefore, the 1st accused pretended that his friend the 2nd accused as brother of the owner of the farmland who also represents the owner has authority to sell the farmland in dispute. The 1st accused knew that his representation to pw1 was false because he knew that the 2nd accused is not the brother of pw2 and therefore also knows that the pretence was false.

Pw1 agreed to pay the purchase price because the 1st accused informed him that the farm belongs to the brother of the 2nd accused and that 2nd accused represents the owner. Furthermore the 1st accused gave the pw1 photocopy of the certificate of

occupancy belonging to the pw2 and he confirmed after search that the document is genuine. The reason why the 1st accused went to this length to succeed in the transaction is so that as to convince the pw1 to part with his money. The pw1 did parted with his money which the two accused persons share without the knowledge of the owner of the farmland.

The word fraud has been defined in **AFEGBAI V. A.G. EDO STATE LPELR – S C 111/1996** pp. 52 – 53 in the following terms:-

"Turing more to the meaning of fraud in connection with representations, it is firmly settled that whenever a man makes a false statement which he does not actually and honestly believe to be true, that statement is ---- fraudulent as if he had stated that which he did not know to be true, or know or believed to be false."

The 1st accused knows when he represented to pw1 that 2nd accused is the brother of the owner of the farmland and represents the owner, that the statement is false. The pw1 believed him and parted with his money in the sums of ₦3.5 million and ₦2.5 million which he gave the 2nd accused persons through the account of the 2nd accused. The intention of the 1st accused inducing the pw2 to transfer his interest in the sum of money is to defraud the pw1 because the 2nd accused had no authority to represent the pw2 and is not the brother of pw2. I am also satisfied that the prosecution has

established beyond reasonable doubt that the 1st accused committed the offence contrary to section 1 (1), (a) of the Act and I so hold.

COUNTS 4 AND 5

These two counts alleged that the 2nd accused with intention to defraud, obtained from the pw1 the sums of N3.5 million and N2.5 million on 31st may 2013 and 20th January, 2014 by falsely pretending that he had the consent and authority of the owner of the farmland to sell same. This offence was charged under section 320 (a) of the Penal Code Law.

The ingredients of the offence are as follows:-

- a) That the person deceived, delivered to someone or consented that some person shall retain certain property.
- b) That the person deceived was induced by the accused to part with the property.
- c) That the person acted upon the inducement of the accused.
- d) That the accused had acted fraudulently or dishonestly when inducing that person.

The evidence of pw1, the person deceived, that 1st accused introduced the 2nd accused to him as the junior brother and representative of the owner of the farmland was never challenged or discredited by the defence. Responding to questions during cross examination, the 2nd accused denied representing to pw1 that he was the brother of

pw2 and also represents pw2. Exhibit 13 which the 2nd accused admitted writing himself contains the following statements:-

"In addition to my earlier statement dated 20/10/2014 before Musa Zira pays the money into my account he ask me among the brother of land owner Dr. Aminu and I told him). Musa Zira (I am) that I am the brother of the land owner Dr. Aminu I told him because we want him to buy the land....."

When confronted with the above statement, the 2nd accused claimed that the investigators made him to state that he told the pw1 that he is a brother of the land owner. This claim is an afterthought. It was never raised at the time when the statement was tendered in evidence by the prosecution. The defence did not also adduce evidence to prove that the 2nd accused was made to write the damaging statement in his additional statement exhibit 13. The implication of this piece of evidence which supports the evidence of pw1 coupled with the clear admission of the 2nd accused in his evidence in chief that the pw1 paid N3.5 million and N2.5 million through his personal account is proof that the pw1 was deceived and induced by the 2nd accused to deliver the said sums of money to him. It is clear from the evidence of pw1 that he agreed to pay the purchase price when the 2nd accused informed him that he is brother to the owner of the farmland and a person with authority to sell the land.

It is also the evidence of the 2nd accused himself that the 1st accused requested for money at various times from the N3.5 million paid. The 2nd accused obliged the 1st accused and also took a portion for himself. He specifically stated that he spent the sum of N1.2 million from these sums of money. The 2nd accused gave a detailed account how the sums of money paid by pw1 were spent by the 1st accused and himself in his extra judicial statement exhibit 12. The piece of evidence proves that the 2nd accused deceived the pw1 by telling him that he is brother of pw2 with sole intention of causing the pw1 part with money which the 2nd accused and the 1st accused fraudulently shared between themselves. I am also satisfied that the prosecution has proved beyond reasonable doubt counts 4 and 5 of the charge against the 2nd accused person.

The submissions in the accused persons written address to the effect that because the pw2 received N1 million payment and pw1 was refunded N2.5 million the pw2 who is the owner of the farmland has given permission to sell the same. As I have tried in this judgment to explain no permission was given by the pw2 to the accused persons to sell his farmland. The permission he gave the 1st accused as the custodian of the farmland is to find a buyer for him which is not the same as permission to sale the land. The evidence of the pw2 which was not challenged by the defence is that somebody called Nasiru a person he never knew, deposited the N1 million into his account. This is no evidence that he received payment from the accused persons such that it could b e said that he satisfied the transaction. I do not think that the issues formulated in the defence address actually cross in this case. The defence failed to address the ingredients of the 3 offences charged. The prosecution, as I stated and found in this

judgment, has established by credible evidence all the ingredients of the offences charged in counts 1 – 5 of the charge beyond reasonable doubt. For all the reasons given in this judgment, I hereby convict the 2 accused persons as charged in the amended charge dated 2nd August 2016.

Signed Hon. Justice M.T.M. Aliyu

JUDGE

03/04/2017

AHMED - We would like to apply for leniency. I urge the court to temper justice with mercy. The convicts are 1st offenders. They are responsible citizens with aged parents and children. Most of the children are students. We urge the court to grant the option of fine.

CHIME - We urge the court to sentence the convicts as provided by the law. Bearing in mind the prevalence of the offence of breach of trust and cheating in the society. They are 1st offenders. I apply under section 78 of the penal code for compensation is being owned N2.3 million by the pw1 Musa Zira. I apply that he be made to refund this money.

AHMED - I oppose this application. I withdraw my objection and leave the issue at the court's discretion.

COURT - I note that the 2 convicts are first offenders with many dependant families of which they are bread winners. I also note that the offences for which they are convicted are prevalent in our society and punishments must be



awarded to halt the trait. Having considered these facts and also the fact that the convicts seem remorseful I award the following sentences:-

- 1) I sentences the 1st accused on count 1 to a prison term of 6 months and to pay compensation to Musa Zira in the sum of N2,300,000= (Two Million and Three Hundred Thousand Naira) only.
- 2) I also sentence the 1st accused to prison term of 7 years each in respect of counts 2 and 3 of the charge.
- 3) The 2nd accused is hereby sentenced to a prison term of 4 months each for the offences in counts 4 and 5 of the charge. All the sentences shall run concurrently.

Signed Hon. Justice M.T.M. Aliyu

JUDGE

03/04/2017



Zulfair K. Chafe.