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**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU
ON THURSDAY THE 28TH DAY OF NOVEMBER, 2013
BEFORE THE HONOURABLE JUSTICE M. L. SHUAIBU**

CHARGE NO: FHC/EN/CR/40/2012

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

ONYIE IFEANYI - ACCUSED

Accused in court.

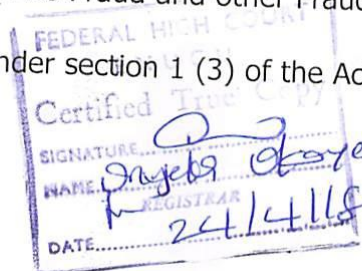
Marshal – Umukoro – Onome for the prosecution

Philip Nnamani (with E. S. Nwatu) for the Accused



JUDGMENT

By the Amended charge dated the 9th day of July, 2012 the above named Accused was arraigned on an eleven (11) counts charge of obtaining various sum of money from unsuspecting victims and possession of numerous. Scam documents in his email address "Shewuga @ yahoo. Com" with intent to defraud contrary to section 6 of the Advance Fee Fraud and other Fraud Related Offences Act 2006 and Punishable under section 1 (3) of the Act.



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At the trial, the prosecution called two witnesses and tendered some documentary exhibits. The Accused testified in his own defence but called no further evidence. The respective counsel filed and adopted their final address. In his final address, Learned defence counsel Chief Tagbo Ike formulated a lone issue that is:

Whether the prosecution has proved beyond reasonable doubt the offences preferred against the Accused?

It was contended on behalf of the defence that in discharging the onerous burden of proof beyond reasonable doubt, the prosecution is duty bound to establish the essential ingredients of the offences charged. Learned defence counsel broke down the allegations in the eleven counts charge into two categories namely counts one, two and three which relates to obtaining \$45,000.00 twice and \$60,000.00 from one Pakawan Samneang with intent to defraud and counts four to eleven dealing with allegations of possession of scam documents in the Accused's email, Shewuga @ yahoo. Com.

The constituent elements of possession of document containing false pretence according to the defence includes:

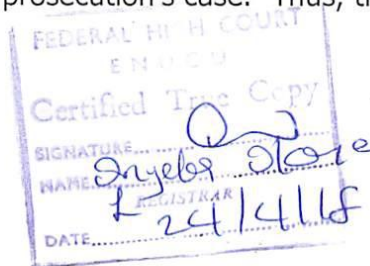
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- (a) Possession of document,
- (b) Knowledge that the document contains false pretence (mens rea)
- (c) That the document contains false pretence, and
- (d) That the document was received by the person to whom the false pretence was directed.

Also to constitute the offence of obtaining property by false pretence under section 1(1) (b) of the Act, two ingredients must co-exist namely:

- (a) false pretence with intent to defraud and
- (b) obtaining from another person in Nigeria or elsewhere.

It was further contended that no scam document was recovered from the Accused's house and that the documents tendered does not bear the name of the alleged recipient ie Pakawan Samneang. Also there was no proof that the documents were received by Pakawan Samneang. That the failure to call Pakawan Samneang as a witness to show that he received the documents is detrimental to the prosecution's case. Thus, there was no proof of intent to defraud.



Respecting the allegations of possession of documents containing false pretence, the learned defence counsel argued that having admitted by pw1 and pw2 that the documents were not found with the Accused and that nobody can restrict information that goes to an email, the prosecution can not be said to have found the scam documents in possession of the Accused person. Likewise, having not established that the documents were received by persons to whom they were directed, the allegations were not proved beyond reasonable doubt. Also the phrase scam document(s) can not be used interchangeably with document containing false pretence relying on **ASUQUE –V- STATE (1967) 1 ALL NLR 123 and OFUANI –V- NIGERIAN NAVY (2007) 6 NWLR (part 1037) 470**. In all the defence has submitted that the prosecution have woefully failed to proof the allegations against the Accused person beyond reasonable doubt and that all the eleven counts of charge offends section 36 (12) of the 1999 Constitution.

On the part of the prosecution, a lone issue was also identified for the determination of this case thus:

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- Whether the prosecution has proved the essential elements of the offences as charged.

The essential elements to be proved to sustain a charge of obtaining money under false pretence according to the Learned Prosecuting counsel Mr. Marshal – Umukoro are as follows:

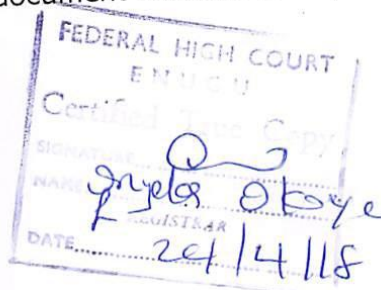
- (a) There must be a false pretence.
- (b) There must be the act of obtaining.
- (c) It must be a thing capable of being stolen
- (d) There must be intent to defraud on the part of the Accused person.
- (e) There must be an inducement on the part of the Accused person to the victim to deliver the thing capable of being stolen.
- (f) The pretence on the part of the Accused person must induced the delivery of the thing.
- (g) The pretence must be to a past or present fact.

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It was the contention of the prosecution that by the evidence of PW1 that as a result of the arrest of the Accused person, his laptop was recovered and same having been analysed the documents containing false pretence were printed out. And that in Exhibit A, the Accused has admitted receiving \$150,000 from a woman in Thailand through his friends in Malaysia whom he had communicated with through email. Thus, the evidence adduced by the prosecution established the ingredients of obtaining money under false pretence. Reliance was placed on **NWACHUKWU –V- STATE (2007) 17 NWLR (part 1062) 37** to the effect that a confessional statement alone is sufficient to ground a conviction. Further reliance was placed on **FATILEWA –V- STATE (2008) 12 NWLR (part 1101) 11.**

Respecting the allegations of possession of scam documents as contained in counts four to eleven of the charge; the necessary ingredients according to the prosecuting counsel are:-

- (a) That there is a document
- (b) That the said document contains false pretence.



- That the Accused person know or ought to know that the document contains false pretence.
- (d) That the document was found in possession of the Accused person.

Learned prosecuting counsel contended that by the evidence of Pw2 and the content of Exhibit B, the Accused is the owner of the email Shewuga @ Yahoo. Com with "Sunshine" as his password. That the documents Exhibit C which were printed from the Accused sent messages folder contains false pretences. That in the said documents the Accused sent mails to prospective victims soliciting for funds or promises of gift from the Accused. Thus, it was submitted that from the evidence adduced by PW2, these scam documents Exhibit C series as well as the replies both from the prospective victims and Western Union, Exhibit D and F, the prosecution has been able to proved the essential ingredients in counts four to eleven of the charge. The prosecution also urge the court to convict the Accused based on the extra-judicial statement Exhibit B which was argued to be confessional in nature.

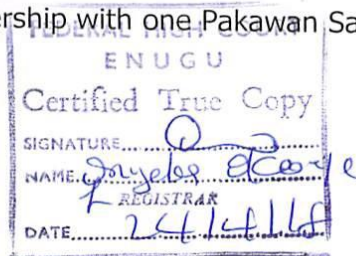
On the competence of the charge, the court was urged not to revisit the issue, same having been ruled upon by this court.

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The issue for determination as rightly identified by both counsel is –
Whether the prosecution has proved the allegations in the eleven counts charge against the Accused beyond reasonable doubt.

The standard of proof required of the prosecution to discharge is to proof the allegations beyond reasonable doubt. However, proof beyond reasonable doubt does not mean proof beyond shadow of doubt. Thus, if the evidence is so strong against an Accused as to leave only a remote possibility in his favour which can be dismissed with the sentence “of course, it is possible not in the least probable” the case is proved beyond reasonable doubt but nothing short of that will suffice. See **AJE –V- STATE (2006) 8 NWLR (part 982) 345 at 361. Also in ALAKE –V- STATE (1991) 1 NWLR (part 205) 567 at 592**, it was held that once the ingredients of a particular offence with which the Accused is charged are proved that constitutes proof beyond reasonable doubt.

The allegations in counts one, two and three of the charge are that the Accused represented himself as a British businessman wanting to have business partnership with one Pakawan Samneang and as a result of that



presentation, he obtained the sum of \$45,000.00 twice from the said Pakawan Samneang and also the sum of \$60,000.00 knowing same representation to be false.

The provision of section 20 of the relevant Advance Fee Fraud and other Fraud Related Act 2006 defines "false pretence to means a representation whether deliberate or reckless made by words, in writing or by conduct of a matter of fact or law either past or present which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true. In **FEGBAL – V – AG EDO STATE (2001) 14 NWLR (part 733) 425**, it was held that a representation is deemed to have been false if it was at the material date false in substance and in fact.

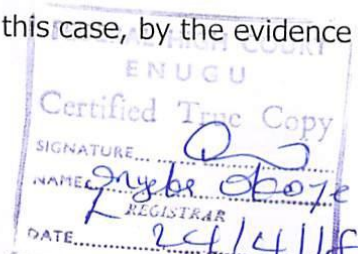
In the instant case, the evidence supporting the allegations of obtaining \$45,000 twice and \$60,000 totalling to \$150,000 is found in the Accused's extra judicial statement Exhibit A series. It is imperative to note that a trial within trial was conducted prior to the admissibility of exhibit A series. In **OGUNO –V- STATE (2013) 15 NWLR (part 1376) 1 at 30** the Supreme Court held that the guilt of the Accused person may be proved by:

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- (a) Confessional statement,
- (b) Circumstantial evidence and/or
- (c) direct evidence from eye witness to the commission of the offence.

Aside from the confessional statement, there are other corroborative facts showing the fraudulent activities of the Accused with his collaborators at Malaysia as evident in the printed out scam documents Exhibits C and D series which were duly acknowledged and endorsed by the Accused person. Thus, the confessional statement of the Accused is direct and positive and same are sufficiently corroborated by facts which fortified the statements.

The defence has made an allusion that the failure to call as a witness the recipient of the scam documents is fatal to the prosecution's case. It was held in **NWANKWO –V- FRN (2003) 4 NWLR (part 809)1 at 34** that it is not mandatory to call as a witness the recipient of the scam or fraudulent letter in order to prove the offence of attempt to obtain property by false pretence. What is required is for the prosecution to prove that the letter or other document was received by the person to whom the false pretence was directed. In this case, by the evidence of PW2, the letter of investigation



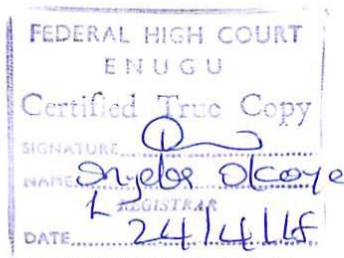
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activities and the reply thereto conclusively showed that the fraudulent letters were in deed received and even acted upon.

In both his evidence and his extra judicial statements, the Accused has maintained that he is a Nigerian not a Britian as claimed in the documents sent to prospective victims. Thus, the representations were false both in substance and in form.

As regards to the allegations of possession of scam or fraudulent documents, the Accused has admitted orally and in his statements, that he gave out his email and passwords through which Exhibits C and D series were printed out and a careful examination of these documents clearly shows that the contents are fraudulent and were sent to unsuspecting victims with intent to defraud.

Also Exhibit F confirmed that Caroline Kapambwe Sianga was actually defrauded. In **SHANDE –V- STATE (2005) ALL FWLR (part 279) 1342 at 1357 – 1358**, it was held that for evidence to warrant conviction, it must surely exclude beyond reasonable doubt all other considerable hypothesis than the Accused's guilt.



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In the light of the above, and considering the totality of the evidence presented by the prosecution, it is my view that the guilt of the Accused was proved beyond reasonable doubt. The Accused is accordingly found guilty as charged.

SENTENCE: The convict is sentenced to seven years imprisonment on each of the eleven counts with effect from 20th April, 2012. The sentence shall however run concurrently.

M. L. Shuaibu

**M. L. SHUAIBU
JUDGE
28/11/13**

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SIGNATURE.....
NAME: *Angela Oboke*
REGISTRAR
DATE: *28/11/13*

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CASHIER
Date: *28/11/13*