

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU
ON WEDNESDAY THE 22ND DAY OF JANUARY, 2014
BEFORE THE HONOURABLE JUSTICE M. L. SHUAIBU**

CHARGE NO: FHC/EN/CR/14/2012

BETWEEN:

**FEDERAL REPUBLIC OF NIGERIA
AND
CHIKA VINTUS OKORO**

**- COMPLAINANT
- ACCUSED PERSON**

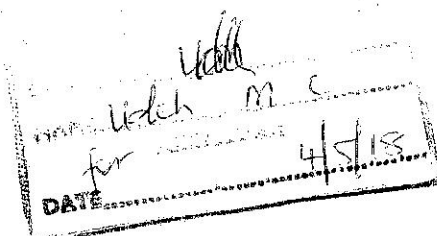
Emmanuel Ugwu for the prosecution

A. Onyekwuluje (with C. Okafor) for the Accused

JUDGMENT

The above named Accused person is arraigned and tried before this Court on a three counts charge of conspiracy and obtaining money by false pretence contrary to and punishable under section 1 (3) and 3 of the Advance Fee Fraud and Other Fraud Related Act, 2006.

The prosecution has in the course of the trial called the Investigating Police Officer through whom they tendered the petition written by the Norminal Complainant and the Accused's extra judicial statement and same



Handwritten signature and date stamp
4/5/18

2802-2255-6591

were respectively marked as Exhibits A and B. The Accused also testified in his defence mainly refuting the content of his extra-judicial statement.

In his written address, the Learned defence counsel identified a lone issue for determination thus:-

Whether confessional statement contained in Exhibit B is of such quality that a court of law can rely upon to convict the Accused person of the offences charged.

Learned defence counsel Mr. Onyekwuluje has submitted that the Accused's extra-judicial statement in this case is unsafe for failure to take the Accused before a superior officer and that apart from Exhibit B, there is no other corroborative evidence upon which the court can rely on to convict the Accused of the offence as charged.

It was further contended on behalf of the Accused that the only evidence the prosecution relied on is exhibit B and even then, the Accused merely admitted that the only Nominal Complainant paid to them was N350,000.00 not N25,000,000.00 as alleged on the charge sheet. And that it is doubtful if the Accused actually made same voluntarily. Reliance was placed on **LASISI**

FEDERAL JUDICIAL COURT
Certified True Copy
SIGNATURE: *Uch*
NAME: *Uch M. C.*
for REGISTRAR
DATE: *4/5/18*

–V- STATE (2013) 9 NWLR (part 1358) 74 and OLADIPUPO –V- STATE (2013) 1 NWLR (part 1334) 68 on the guidelines to be followed by court in determining whether a confessional statement is true.

The failure of the prosecution to call the Norminal complainant and/or tender her extra – judicial statement according Mr. Onyekwuluje is fetal to their case and that the later amount to withholding evidence relying on section 167 (d) of the Evidence Act and the case of **UZOHO –V- TASIL FORCE, HOSPITAL MANAGEMENT (2004) 5 NWLR (part 867) 627**. The court was finally urged to discharge and acquit the Accused person.

On the part of the prosecution, a lone issue was also identified in considering the case that is;

Whether the prosecution has not proved their case beyond reasonable doubt to establish the guilt of the Accused person in the light of the evidence led by the prosecution.

Learned counsel Mr Ugwu contended that by the evidence of the prosecution the Accused was unmistakably identified by the Norminal Complainant which culminated into the immediate arrest of the Accused.

for	Ugwu
DATE	4/5/18

Thus, there was no evidence of mistaken identity. That in Exhibit B, the Accused has confirmed meeting the Norminal Complainant at the Accused country home Umuchigbo Iji, Nike Enugu when they defrauded her.

It was also argued that the Accused's extra – judicial statement, Exhibit B being a judicial testimony and a cardinal part of the proceedings, its subsequent retraction is an ortiose after thought. Reliance was placed on **YAHAYA –V- STATE (2005) 1 NCC 120 – 133 – 134 and IKEMSON –V- STATE (1989) 3 NWLR (part 110) 455 at 467 – 476. Further reliance was placed on STATE –V- OLATUNJI (2005)1 NCC 478 at 495** to the effect that no particular number of witnesses are required in proving the case by the prosecution.

The issue for consideration as aptly identified by the respective counsel is: -

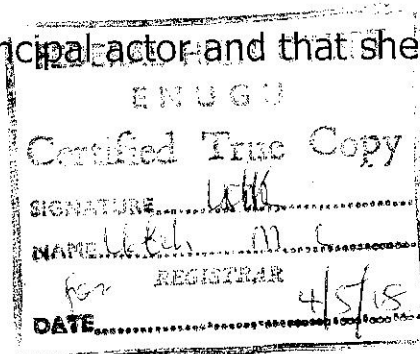
Whether or not the prosecution has established the guilt of the Accused person in the charge before the court beyond reasonable doubt.

The first count deals with conspiracy to obtain money by false pretence. Conspiracy simply means, the meeting of two or more minds to carry out an

Stamp and signature block at the bottom of the page.

SIGNATURE: *[Signature]*
NAME: *Udele M.S.*
DATE: *for 2011 15/11/11*

unlawful purpose or to carry out a lawful purpose in an unlawful way. In effect, the purpose of the meeting of two or more minds is to commit an offence. The law does not require the physical meeting of the minds in a predetermined or known place, as the offence of conspiracy could be committed even through written communication. All what the prosecution need to establish is that the criminal minds really met somewhere to hatch a crime. Refer to **GBADAMOSI –V- STATE (1991) 6 NWLR (part 196) 182.** Also in **SHODIYA –V- STATE (2013) 14 NWLR (part 1373) 147 at 165** the Supreme court had recently held that proof of the offence of conspiracy is a matter of inference to be made from the acts or inactions of the parties concerned. In Exhibit A the Norminal complainant alleged that sometimes in April, 2011, she was waiting for a vehicle to convey her to the market when a Golf car pulled up and two men were inside the car, one of whom she appeared to know. They offered to drop her at the market and on their way they discussed about import of all sorts of items and thus struck a deal whereby the Norminal Complainant was duped to a total of N25,000,000.00. It was emphatic from the said complaint Exhibit A that the one who gave his name as frank was the principal actor and that she was also introduced to



another person called Emma. Also in Exhibit B, the Accused has stated that sometimes in April, 2011, one John Onwe alias Pumpin, Emeka Emene and Frank Ifeanacho popularly known as Acho brought the victim to the uncompleted building at country home Umuchigbo Nike Enugu. Thus, there was no doubt in this case that the criminal minds really met from the Golf car to the uncompleted building where a crime was hatched.

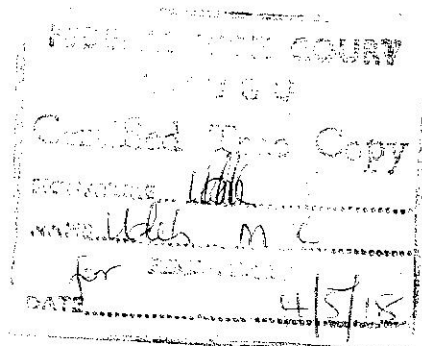
The allegation in count two deals with obtaining the sum of N25,000,000.00 from the Norminal Complainant, Mrs. Ebube Chukwu Gift by falsely pretending that she will be supplied with babies wears knowing same to be false. In **ONWUDIWE –V- FRN (2006) 10 NWLR (part 988)382** it was held that the ingredients of establishing the offence of obtaining by false pretence are:-

1. That there is a pretence,
2. That the pretence emanated from the Accused person
3. That it is false
4. That the Accused knew it was false or did not believe in its truth.

5. That there is an intention to defraud.
6. That the thing is capable of being stolen
7. That the Accused person induced the owner to transfer his interest.

It is settled that the burden of proof in criminal cases is squarely on the prosecution and that the standard of prove is proof beyond reasonable doubt. The requirement that the prosecution is expected to prove any criminal offence beyond reasonable doubt is not and does not require absolute proof beyond reasonable doubt or proof beyond all shadows of doubt. See **BANJO –V- STATE (2013) 16 NWLR (part 1381) 455 at 468 – 469**. The prosecution in the instant case places much reliance on the Accused's extra – judicial statement which the defence contends that it is unsafe and should not be the only basis for convicting the Accused.

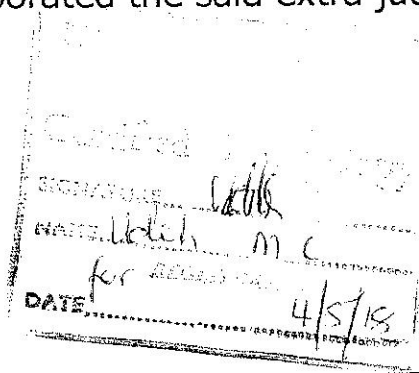
In **OLATUNBOSUN –V- STATE (2013) 17 NWLR (part 1382) 167 at 193** it was held that a confession becomes relevant when it establishes one or all the elements of the Crime charged and identifies the person who committed the offence. In Exhibit B, the Accused stated thus:



... "Infact within that period we collected a total sum of three hundred and fifty thousand naira from the woman before Frank Acho who brought the job/woman took her to another place and continued obtaining money from her with other syndicates. She paid money twice, the first day N50,000 and the second day N300,000 and she brought the money cash ..."

It was also held in plethora of judicial decisions including the famous case of IKEMSON –V- STATE (supra) that a confession is an admission made at any time by a person charged with a crime stating or suggesting that he committed the crime. Therefore, an Accused person can be convicted solely on his confessional statement. And a denial of a confessional statement by itself is no reason for rejecting it. Also in EGBOGBONOME –V- STATE (1993) 7 NWLR (part 306) 383 at 428 it was held that a confession is not a defence. It only strengthens the case of the prosecution and, in a proper case, reduces the problem of establishing the guilt of an Accused person.

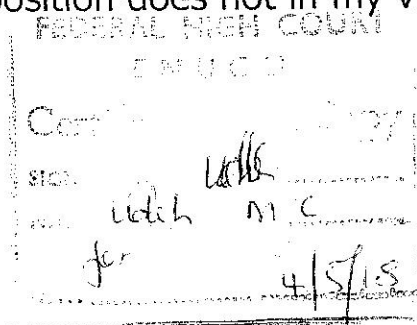
In the instant case, apart from the confessional statement the content of Exhibit A, the petition has corroborated the said extra judicial statement which



indeed show that it is true and the Accused had the opportunity of committing the offence. The confession is consistent with the circumstances surrounding his identification and ultimate arrest at the Police Station when he was there for a different offence. In effect, the Accused's extra-judicial statement is direct, positive and unequivocal as to the entire ingredients of the offence in count two of the charge.

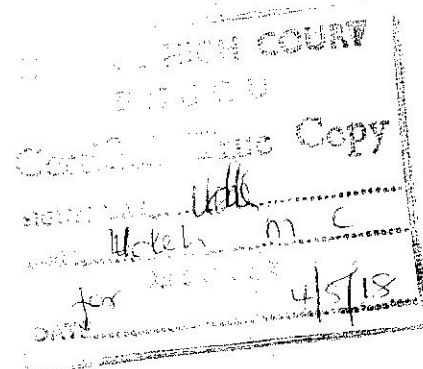
The defence has made an allusion on the failure of the prosecution to either call the Nominal Complainant or tender her statement to the police insisting that the prosecution could not do either because doing so may be unfavourable to them.

By virtue of the provision of section 167 (d) of the Evidence Act 2011, the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relationship to the facts of the particular case; and in particular the court may presume that evidence which could be and is not produced would if produced, be unfavourable to the person who withholds it. The above preposition does not in my view apply to the



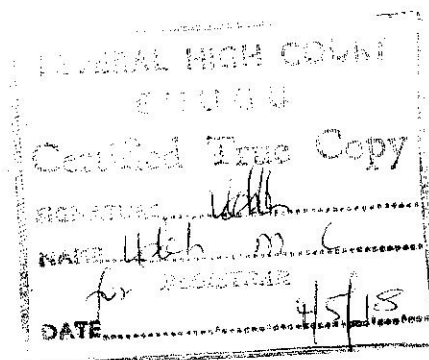
instant case in the sense that there is no hard and past rule as regards the number of witnesses or Exhibit the prosecution need to put in evidence before it could be said to have proved the guilt of the Accused. That even circumstantial evidence could suffice. At any rate, The defence has not demonstrate to the court how the inability to bring the Norminal Complainant to testify or tender her statement to the Police if any could have been detrimental to its case.

As regards the procedure of taking the Accused with his statement before a superior officer is never a rule of law but a practice that was part of the Judges' Rules and I therefore agree with the prosecution that the failure does not affect the credibility of the said confessional statement which I earlier found to be positive and unequivocally point to the guilt of the Accused person. That once the court is satisfied beyond reasonable doubt that on the evidence offered by the prosecution, the Accused and no one else committed the offence charged, the court is entitled to enter a finding of guilt against the Accused person. See **EHOT –V- STATE (1993) 4 NWLR (part 290) 644 at 663.**



In the instant case, the Accused has not only admitted obtaining money from the Nominal Complainant but that they conducted such nefarious activities from an uncompleted building owned by one Sylvester Ani popularly known as Ogbu. The relevant section 3 of the Advance Fee Fraud provides that a person who, being the occupier or is concerned in the management of any premises causes or knowingly permits the premises to be used for any purpose which constitute an offence under this Act commits an offence and is liable on conviction for a term of not less than 15 years and not less than five years without the option of a fine. Although, the Accused is not the owner of the premises where the Nominal Complainant was defrauded but the Accused was occupying the uncompleted building in question as an office where he carried out the substantive offence. The Accused is therefore guilty as an occupier.

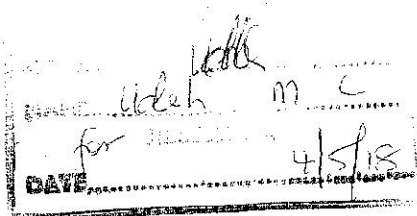
In the light of the above, the prosecution has established the guilt of the Accused beyond reasonable doubt and the Accused is hereby found guilty as charged.



Sentence: The convict being a first offender and has been remorseful through out the trial is hereby sentenced to 7 years imprisonment on the first and second counts while he is sentenced to 5 years on the third count of charge. The sentence shall run concurrently from the date of his incarceration that is 27/3/12.

M. L. Shuaibu

M. L. SHUAIBU
JUDGE
22/1/14



En f

4/5/18