IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU
ON THURSDAY THE 27TH DAY OF OCTOBER, 2016
BEFORE HIS LORDSHIP
HONOURABLE JUSTICE D. V. AGISHI
JUDGE

SUIT NO: FHC/EN/CR/58/2009

BETWEEN:

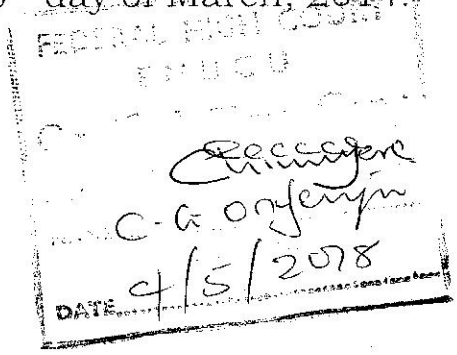
FEDERAL REPUBLIC OF NIGERIA.....COMPLAINANT

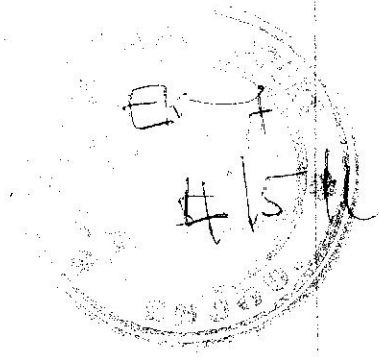
AND

CHIKA AMSY CHARLES .....ACCUSED PERSON

J U D G M E N T

The Accused Person is standing trial on a Thirty Count amended charge bordering on conspiracy to commit a felony to wit obtain money by false pretence contrary to SECTION 8 (A) OF THE Advance Fee Fraud and Other Fraud Related Offences Act No. 14 of 2006 and punishable under SECTION 1 (3), and obtaining money by False Pretence Contrary to SECTION 1 (1) (b) of the Advance Fee Fraud and other Fraud Related Offences Act No. 14 of 2006 and punishable under SECTION 1 (3) OF THE SAME Act. Dated and filed 28th day of March, 2014.





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To prove its case, the prosecution called a total number of Fourteen (14) witnesses and tendered a total of 32 Exhibits. The Accused testified by herself as DW1 and closed her defence.

Accused sometime on 28th October 2009 was arraigned before this Honourable Court on a 31 Count charge. The said Charge was later amended as noted above.

This case arose as a result of monies fraudulently collected by the Accused person from prosecution witnesses to help their wards to secure admission into Enugu State University of Science and Technology (ESUT).

The Accused person is a founder of an NGO known as Bold and Dynamic Family Gender Initiative. It is in evidence that sometime ago the Chief Executive Officer of this NGO, the Accused person held a seminar at Polo Club Enugu and made a false representation that she has the capacity to help people gain admission into Enugu State University of Science and Technology (ESUT). The Accused totally convinced her victims especially when she told them that she has the consent of the Governor of Enugu State whom she alleged instructed the Vice Chancellor (VC) of ESUT her Personal Friend to give assistance to her by giving her

admission slots which she intends to give to the less privilege. The Accused therefore prevailed on the willing minds to avail her with their list of prospective candidates. The accused further told her audience that the admission was not for free and that each of them had to make payment which was again dependent on the choice of course. The price range started from N30,000.00 for other courses. As for Law and Medicine, the payment rte was N100,000:00 and N90,000:00 respectively.

Because of the beautiful representation made by the Accused person to her audience, she was believed by them, they believed she was very close to the Vice Chancellor of ESUT. To further convince them, she would call the said Vice Chancellor in their presence. Within a short time her victims paid a total sum of N5,624,000:00 (Five Million, Six Hundred and Twenty Four Thousand Naira), to the Accused person who promised paying same to the Vice Chancellor.

The victims waited in vain inspite of the payment. All the list of admissions were out i.e 1st, 2nd and 3rd lists and yet their wards were not admitted as promised. This led to the forwarding of a

petition to EFCC for investigation and possible prosecution of this matter which is the reason for this action.

The defence in their final address did analyse the testimonies of the prosecution witnesses and pointed out possible areas where the prosecution failed to prove his case beyond reasonable doubt warranting the conviction of the Accused person.

The defence then raised two issues for determination as follows:

(a) Whether the prosecution proved their case beyond all reasonable doubt.

(b) Whether the "mens rea" component of the charge was proved.

The 1st issue – whether the prosecution gas proved its case beyond all reasonable doubt – In tackling this issue the defence raised several sub-issues.

These question are:

(a) Whether the prosecution proved beyond reasonable doubt that the accused actually collected the amount of money.

(b) And whether she collected from all the parties mentioned

(c) Whether she collected any money at all.

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(d) If she did, how did she apply it?

(e) Whether there is any evidence to bear out the fact that she actually used the money collected for what it is meant for. All the questions raised have of course been answered in the negative.

It is the belief of the defence that if the Accused is discharged from Counts 2 – 29 which relates to the actual offence, then Count 1 which bothers on conspiracy will naturally frizzle out on its own.

To establish the defence argument that the guilt of the Accused has not been proved by the prosecution beyond reasonable doubt, it is averred that for the Accused to be convicted for the charge, there must be evidence led on both the "actus reus" and the "mens rea" element.

Referring to Count 2 particularly, defence Counsel submitted that there must be evidence led to the effect that the student clients of Mr. Okudoh Obinna were actually not given admission by ESUT contrary to the promise of the Accused person to do so. According to the Learned defence Counsel, the following have to be established to determine this i.e:

- the identity of the student clients must be revealed.

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- the student clients course must also be revealed.
- the academic year in question must be stated.
- the list of students, who were given admission by the University within that academic year must be tendered in evidence so as to show that the student clients names where not there.
- the individual students involved must enter their testimony to attest to the fact that they were indeed denied admission within the academic year in question.

Submitting further this Court is urged to view the conduct of the prosecution in failing to produce the student clients to Court to testify that they were denied admission after the payment for their admission and courses as a very serious and unpardonable error.

Submitting further this Court is urged to note the fact that it was only one student who testified. But that there is serious discrediting of his testimony under cross examination. Furthermore that the evidence of PW7 the leader of the team of investigation even stated under cross examination that out of the 123 candidates in issue, none made statement to them.

To further discredit the prosecution's evidence, it is argued that the claim by PW1 that he paid or gave the Accused person money 27 differe times is questionable. The reason being that there are no receipts, bank teller or acknowledgement to evidence such payment. According to defence, it is doubtful whether PW1 actually gave N5.1 Million or any money at all to the Accused to secure admission for some students as being alleged. This court is urged to resolve this doubt in favour of the Accused person. Reliance is here placed on the cases of **IFEJIRIKA VS STATE (1993)3 NWLR (Pt.539)59. OKAFOR VS. STATE (2006)4 NWLR (Pt. 969)1.**

Impeaching seriously the testimony of PW12 under cross examination, the defence asserted that from the evidence of the witnes her name appeared on the list of admission of the students who were offered admission. It is therefore argued that since her name appeared the list but was for whatever reason not admitted, the Accused person cannot be blamed for it.

It is therefore the submission of the defence that the prosecution has not proved its case beyond all reasonable doubt as required in Law Reliance is here placed on **ANAZODO VS. AUDU**

(1999)4 NWLR (Pt. 600)530. The defence pointed out certain areas where there are lapses and detailed ingredients left out which includes: That the prosecution did not tender the admission list in evidence in Court for fear that it will go against them. That the academic year in question for the admission was not stated in the charge. Also that it is not known when the monies allegedly collected took place, whether it was before or after the exams were written.

This Court is urged here to invoke the provision of ***SECTION 167(1) EVIDENCE ACT*** to the effect that if those students came to the Court to testify, they would have stated that their names had appeared in the admission list.

Again that the prosecution failed to produce the names of the 123 affected students if they existed.

Issue (B) whether the "mens rea" component of the charge was proved.

It is the submission of the defence that the Accused collected money from some people in order to help them gain admission into ESUT. The defence however denied collecting the sum of N5.1

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Million from Mr. Okudoh Obinna for the admission of 123 "Students Clients."

According to the defence Counsel, at the time the Accused got involved in the admission issue, she was doing so bona-fide and in good faith as she innocently believed that she was dealing with the real Vice Chancellor of ESUT as introduced to her by one Mrs. Nkechi Orji, a staff of ESUT.

It is the submission of the defence that actually the Accused collected some money from Okudoh Obinna (PW1) for the purpose of using her NGO to help deserving people to gain admission into ESUT. According to defence Counsel this aligns fully with the aims and objectives of her NGO. The defence admitted collecting money from PW1 but vehemently denied collecting N5.1 Million.

This Court is furthermore urged to note the fact that PW1 and PW5 had always known that 50 admission slots were promised and that their claim of making payment for 123 students should be disbelieved. Relying heavily on the case of **MICHEAL ALAKE & ANOR VS. THE STATE (1991)7 NWLR (Pt. 205) page 567 at 591** this Court is urged to accept the fact that the mens rea component

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of the offence has not been proved by the prosecution to grant a conviction on the charge of obtaining with intent to defraud.

The Accused exonerated self by stating that the money collected by her was promptly paid into the account of the Vice Chancellor as introduced to her by Nkechi Orji. Accused stated the total sum she paid in to be N1,625,000:00 (One Million, Six Hundred and Twenty Five Thousand Naira. Furthermore the defence alleged that all the people she paid for got admission.

It is further argued on behalf of the Accused person that all the monies she paid into the personal account of the Vice Chancellor was paid innocently. Heavy reliance has been placed on the evidence of PW5 to that effect. It is argued that if the Accused was not convinced of the genuineness of the purported Vice Chancellor account, she would have tried to withhold some money to herself. This Court is therefore urged to believe the fact that even the Accused was a victim of the scam set up by Mrs. Nkechi Orji and her cohorts who played on her desire to empower the youths.

This Court is also urged to discharge and acquit the Accused person in respect to the 1st Count of the charge which is conspiracy. That there is no offence of obtaining money by false pretenses

established and that there could therefore not be any case of conspiracy to commit an offence that doses not exist. Also that no shred of evidence was led in any form of conspiracy between the Accused person and any other person of their agreement to do that which is lawful through unlawful means or that which is unlawful by any other means. That the EFCC throughout their investigation could not link the Accused to conspiring with any other person.

On the counts of forgery and uttering. Here the defence alleged that the prosecution did not lay out the authentic or real identity cards alongside the ones allegedly forged. That forgery cannot be proved when the document purportedly forged was not tendered in evidence before the court. That there is no evidence that the SSG of Enugu State to which PW7 in his evidence said he wrote for clarification disowned the Accused or her I.D Card as forgery.

Again that there is no evidences of any hand writing expert that he had compared the real document with the forged one and that the Accused person had actually forged the identity cards. Defence Counsel here referred to the case of **ABANDOM VS STATE (1997)1 NWLR (Pt. 479)1** where the Court of Appeal held:

"One of the ways of proving forgery is through

scientific means, which is by employing a hand writing expert witness."

Going by the above submission it is the contention of the defence that the prosecution having failed to prove that the I. D. Card is forged, it cannot be a crime for the Accused to use a genuine I. D. Card issued to her as a means of identifying herself.

This Court is therefore urged to discharge and acquit the Accused on all the charges brought against her by the prosecution.

In its reply on points of Law, the defence formulated two issues for determination as follows:-

A. Whether having not called Mrs. Nkechi Orji as a witness, the prosecution succeeded in proving its case beyond every iota of doubt to warrant this Honourable Court to convict the Defendant on offence of obtaining money by false pretense with intent to defraud and conspiracy?

B. Whether this Honourable Court will dimple its body by aiding illegality in its entirety.

Submitting on the 1st issue raised above which is issue (A) Learned defence Counsel stated that the prosecution is duty bound to prove by conclusive evidence the ingredients of the charges of conspiracy

and obtaining money by false pretense with intent to defraud. That the prosecution failed to do so. That the evidence of its witnesses were insufficient to prove the charges.

The contention of the Defence here is that the Prosecution failed to call a vital witness, one Mrs. Nkechi Orji whom the accused alleged supplied the phone no of the Vice Chancellor of ESUT to her. That the accused made allegation of false information with intent to defraud in respect of the phone number of the Vice Chancellor ESUT. This Court is therefore urged to presume section 167 (d) of the evidence Act 2011 in favour of the Defence.

Referring to the evidence of the accused person, the Defence Counsel stated that the prosecution was duty bound to have produced Mrs. Nkechi Orji in Court to give evidence to contradict the Defence of the Accused as to whether the phone number of the Vice Chancellor ESUT was given to the accused person by Nkechi Orji or not and also confirm the Vice Chancellor ESUT in person to the accused person or not.

Also, the Defence has queried the fact that Mrs. Nkechi Orji who was from the beginning arrested and detained together with the accused person and who was later released as a witness to the

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prosecution neither testified for the Prosecution nor was arraigned as an accused person in this case despite the fact that all hands are pointed at her.

This court is accordingly urged to apply section 167 (D) Evidence Ac to the effect that had Nkechi Orji testified in Court, it would definitely be against the interest of the prosecution.

Secondly, this Court is also called upon to uphold the submission that Nkechi Orji is a vital witness and that failure of the prosecution to ca her to testify is detrimental to their case.

B. Whether this Honourable Court dimple its body by aiding illegality in its entirety.

Submitting on the above issue it is stated that illegality in whatever form is not to be tolerated in the administration of Justice in order for the streams of Justice to flow in purity. Reliance here is placed on the case o NNADOZIE VS. MBAGWU (2008) ALL FWLR (Pt. 405) 1615.

It is the argument of the Defence that illegal act cannot constitute a legal act inference being made to illegality in the evidence of the prosecution witnesses. The Defence earlier made reference to the provision of ESUT Constitution and handbook

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which according to them make admission into that university to be on merit. The case of Defence is that some of the witnesses of the prosecution who testified including pw1 purportedly bribed the Vice Chancellor of ESUT to give their clients admission which admission they are not qualified for. But that they all knew that bribe is not even allowed in this Country and as such, an illegal act. Reference is here made in section 9 (1), (2) of the corrupt practices and other related offences Act, which frowns seriously at bribery and corruption.

It is finally submitted that the prosecution has failed to prove the ingredients of the offence of obtaining money by false pretence with intent to defraud and offence of conspiracy and obtaining money by false pretences.

The prosecution also filed its final written address and formulated the following issue for determination;

> **"whether having regard to the charge against the accused person and the evidence led, the prosecution proved its case against the accused person beyond reasonable doubt to secure conviction".**

The prosecution took time to submit on the key elements according to them which constitute the offence for which the accused person is charged.

Firstly, is the ingredient of conspiracy to commit a felony to wit obtaining money by false pretence the subject of Count I of the charge. Here the prosecution alleged that the accused person conspired with one Simon Chidubem and Friday Ali now at large to obtain money by false pretences contrary to section 8 (a) of Advance Fee Fraud and other Fraud Related offences Act No. 14 of 2006 and punishable under section 1 (3) of the same Act.

According to the prosecution, the accused person though not arraigned with her accomplices but that the prosecution has been able to establish the fact of her collaboration with others at large and successfully induced PW1, PW2, PW3, PW4 and PW5 to pay into the accounts of the accused the total sum of N5, 624,000.00 (Five Million Six Hundred and Twenty Four Thousand Naira) under false pretences of procuring admission into ESUT for their wards.

It is further submitted that the duo of Chidubem Simon and Friday Ali both at large received part of the said monies from the accused person which fact the accused person allegedly attested to

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both in her examination in chief and her extra Judicial Statement (Exhibit CC10).

Furthermore this Court is urged to take cognizance of the fact that the accused person both in her examination in chief and cross examination admitted paying monies into the account of Simon Chidubem. That it is also in evidence that the account of Friday Ali was used in the perpetration of the crime. The evidence of proof is brought to bear here where PW7 stated the role he played as an investigator in writing to the Banks and the Bank's response that both the account of Chidubem and Friday Ali were operated without proper KYC as it is the practice with the Banks.

In their further submission, this Court is referred to the evidence of the accused both in chief and under cross examination where she told the Court of her payment of monies given to her by the victims into UBA Plc and GTB belonging to Simon Chidubem and Friday Ali respectively and that she also paid physical cash to the Vice Chancellor.

Submitting, it is averred that without connivance of the fraudsters like Simon Chidubem whose surname is similar, to that of the Vice Chancellor (Joseph Chidubem) payment of the money by the victims

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would not be possible. This Court has been urged by the prosecution to note the fact that the accused person did not controvert or discredit the above piece of evidence. That the accused person has instead corroborated the evidence when she agreed under cross examination that PW5, PW1 and Nkechi Orji gave her money for admission and she paid some into the bank accounts of the duo of Chidubem Simon & Friday Ali.

This Court is called upon by the prosecution to accept the fact that the prosecution led credible and unchallenged evidence to show that the accused person defrauded the victims with the help of Simon Chidubem and Friday Ali.

It is submitted by the prosecution again that the accused and her co-conspirators now at large furnished the Banks in which they operated their accounts with false information. That through their Bank accounts the victims' money was deposited with the accused eating the lion share. According to the prosecution, the Actus Reus inferable in criminal conspiracy between conspirators has been adequately proved. Reliance is here placed on the case of **NJOVENS & ORS VS THE STATE (1973) BSCC 257 at 280**

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ODUNEYE VS STATE (2001) 2 NWLR (Pt 697) page 311 at 332-333.

This Court is strongly urged to uphold the submission that the prosecution has well established its charge of conspiracy against the accused and her accomplice the duo of Simon Chidubem and Friday Ali.

Secondly, on the issue of obtaining money by false pretences (Court 2-28 of the charge).

Here it is the submission of the prosecution that enough evidence has been led to establish that the accused person made a representation to prosecution witnesses of her being very close and a friend to the Vice Chancellor of ESUT and therefore in a position to procure admission into ESUT for their wards. Part of their representation according to the prosecution is that accused told her victims that the Governor of Enugu State, Sullivan Chime instructed the Vice Chancellor to avail the accused person admission slots for her non-Governmental organization. That by this representation, she was able to dupe PW1, PW2, PW3, PW4 and PW5 of various sums of money.

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It is in evidence that the above representations were made by the accused both in her seminar which PW3 and PW5 attended. That she made same representation to PW1, PW2 and PW4 about her influence ar connection and capability of getting admission for PW1-PW5 wards with the payment of various sums of money as earlier mentioned. That this pretence the accused person know same to be false.

It is submitted further that the accused person did not even recognize the Vice Chancellor (PW14) she claimed was her close friend. Here the prosecution placed its reliance on the accused voluntary statement to EFCC (Exhibit CC27 & CC28), her testimony in Court and th evidence of PW7.

Also the prosecution referred this Honourable Court to the evidence of PW5 where the witness allegedly paid the sum of N60,000 to the accuse person and dthe duo went to UBA Branch Okpara Avenue and accused paid into Chidubem Simon's account just half of the sum which was N30,000 in very suspicions manner and which made PW5 to become suspicious of the whole transaction.

It is further submitted that the defence failed to refute or contradict the evidence of Pw5, but rather admitted that pw5 gave monies for admission which she paid into the account of Chidubem Simon. It is vehemently submitted by the prosecution that the accused person fraudulently obtained these monies.

This Court is urged to take note of the fact that admission into the University is on merit and that no candidate seeking for admission is expected to pay for it. Therefore that it is an illegal act to induce Pw1-Pw5 to part with their hard earned monies for admission.

This Court is urged to uphold the fact that by both documentary and the oral evidence adduced, the prosecution has established conclusively the element of the offence of obtaining by false pretence against the accused thereby proving beyond reasonable doubt the guilt and culpability of the accused person. That the Accused should be convicted as charged.

In all Criminal trials the burden is on the Prosecution to prove beyond reasonable doubt the guilt of the accused person, where the prosecution fails to prove the guilt of the accused beyond reasonable doubt, such doubt will lead to his discharge see the case

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J NWANGWA VS STATE (1997) 8 NWLR (Pt 517) 463 paragraphs F-G.

See also SHEHU VS STATE (2010) 8 NWLR (Pt 1195) 112.

The accused person has been arraigned before this Honourable Court on amended charge of 30 counts ranging from conspiracy to commit a felony to wit obtain money by false pretence contrary to section 8 (a) of the Advance Fee Fraud & other fraud Related Offences Act No 14 of 2006 And purchasable under Section 1 (3) of same Act.

Section 8 (a) of the Act provides:

8. A person who

(a) conspires with, aids, assets, or counsels 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 accused person conspired with Simon Chidubem and one Friday Ali all at large to obtain money by false pretences contrary to section 8 (a) of the Act.

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Conspiracy has been defined from several circles coming from both the statute books, law books as well as case law. In the unreported case of **OGAGOVIE VS STATE** (unreported) Appeal NO CA/B/11C/2013 delivered on 9th July, 2014 cited on page 117 & 118 of Criminal law in Nigeria, a Practitioners Guide Authored by **ANAYO N. EDEH, OGAKWU JCA** 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 acts. See also **STATE VS OSOBA (2004) 21 WRN 113.**
>
> 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

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be proved through inference drawn from the surrounding circumstance..."

The following 3 ingredients needed proof I order to establish the offence of conspiracy. These are:

(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

© Or to do a legal act by illegal means

It is in evidence that the accused person, Simon Chidubem and Friday Ali, now at large conspired among themselves and fraudulently obtained the sum of N5,624,000.00 (Five Million Six Hundred and Twenty Four Thousand Naira) from PW1, PW2, PW3, PW4 & PW5 by false pretences.

The evidence of all the prosecution witnesses especially that of PW1, PW5 and PW7 (the investigator) clearly corroborated this fact that monies were paid into the account of the above named suspect i.e. the accused, Chidubem Simon and one Mr. Friday Ali now at large. This Friday Ali's name first featured in this case from the extra Judicial statement of the accused person (Exhibit CC10) when she stated that Chidubem Simon while texting his Account number to her also texted that of Friday Ali. It

is in evidence that both Chidubem Simon and Friday Ali all at large receiv part of the said money from the accused person into their account. As a matter of fact the accused person herself attested to this fact in her evidence in chief.

Also both Pw1, Pw5 & Pw7 corroborated the fact that whenever the victims of the accused person expressed doubt about the existence of the VC the accused would call the said VC and put the phone on speaker as she gets the assurance that the admission would be given. Accused herself attested to this fact when she testified in her examination in chief that she put the phone on speaker when she had a meeting with Pw1, Pw5, her late husband and Mrs Nkechi Orji.

Both the Accused person, Chidubem Simon and Friday Ali have through the evidence of prosecution witnesses been linked to the offence of conspiracy. There is abundant evidence from which conspiracy could be inferred. This ranges from the account opening of Chidubem Simon and Friday Ali which was even challenged by the prosecution as not meeting KYC conditions. It is also in evidence that part of the money collected

by the Accused person from her victims was deposited into those accounts. Thirdly, the Accused person herself admitted having knowledge of those accounts. From this ample evidence adduced by the prosecution, I am in total agreement with them that the offence of criminal conspiracy against the Accused person has fully been established.

Beside the accused both in her evidence in chief and under cross examination admitted that she paid monies into the account of Chidubem Simon (Exhibit CC31), the monies given to her for procurement of admission by Pw1 & Pw5.

As earlier stated, there is indeed no doubting the fact that from the evidence of all the Prosecution witnesses especially PW1, Pw2, Pw3, Pw4, Pw5 & Pw7 there was very serious connivance between the accused person, Chidubem Simon and Friday Ali. The accused person made her bait so real and attractive and very irresistible such that none of the Prosecution witnesses (her victims) could doubt the genuineness of her intention. They were unavoidably caught in the web of deceit from the Accused person and co.

The argument of the Defence is that there is no shred of evidence led by the Prosecution on any form of conspiracy between the accused

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and any other person (That is evidence of agreement to do that which is lawful through unlawful means) That the EFCC after all their investigations could not link the accused to conspiracy with any other person.

I humbly disagree with defence submission. The prosecution from all the circumstantial evidence available has been able to prove conspiracy between the accused and two others at large, namely Chidubem Simon and Friday Ali. As earlier stated in the unreported case of OGAGOVIE VS STATE (supra). The appellate Court held:

> "... The offence of the conspiracy is seldom or rarely proved by direct evidence but inference from certain proved acts. The cases of OBIAKOR VS STATE (2002) NSCCR page 27 at 38 paragraphs A-B and OYAKHIRE VS STATE (2006) ALL FWLR Pt 30500 page 703 at 718 paragraphs F-G cited by the Prosecution are very apposite. Here also in the case of IKWUNNE VS STATE (2000) 5 NWLR (Pt 550 at 561 paragraphs A ..... TOBI JCA (as he then was) cited by the Prosecution is equally

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relevant. The learned jurist held; the conspirators need not be seen together planning an offence. A Court of law infer conspiracy from acts of the parties, including evidence of complicity".

It is also to be noted that the Prosecution has been able to establish an agreement between the accused and the duo if Simon Chidubem and Friday Ali as clearly seen from the evidence of the Prosecution witnesses which has earlier been pointed out in this judgment. Interestingly too, the Defence has not come out to deny or controvert this evidence of the Prosecution on this agreement to do an unlawful act.

Based on all the submissions above, I do find as earlier stated that the offence of conspiracy to obtain money by false pretence against the Accused person has fully been established.

The Second issue under consideration is that of obtaining money by false pretences.

Here the task before this Honourable Court is to find out whether the Prosecution has laid evidence to establish that the accused person actually obtained monies from the Prosecution witnesses as has been alleged.

It is in evidence that the accused misrepresented to Pw1, Pw2, Pw3, Pw4, Pw5 & even Pw7 the investigator in this case that she is very close to the Vice Chancellor of ESUT and by virtue of which she is in a position to procure admission into ESUT for their candidates.

Also the accused represented herself as a friend to the Vice Chancellor and that the Governor of Enugu State, Mr. Sullivan Chime instructed the Vice Chancellor to avail her admission slots for her. Non-Governmental Organization in which capacity she was able to dupe her victims i.e. Pw1, Pw2, Pw3, Pw4, Pw5 of various sums of money.

Pw1 in his evidence in chief stated as follow:

"When I came to the office of the accused person, the latter told me about her non-governmental Organization. That one of the objectives is to help the less privileged people secure admission into ESUT. That the Vice Chancellor of the University Professor Joseph Chidubem is her personal friend and also a patron to the non-governmental organization ... after telling me this story, she showed me a letter headed paper bearing the name of the Non-

Governmental Organization as above called and the name of the Vice Chancellor as mentioned before as the patron. She even told me that the P.A to the Vice Chancellor just left the office not too long before I came in--- As we were talking her phone rang and she said it's the Vice Chancellor that is calling her. After answering the phone call she told me she will be going to Nike lake Resort to meet the Vice Chancellor.

Pw2 also stated in her evidence as follows; In 2007 my friend Mrs. Orji called and informed me to come to polo park ---I went to polo park on the particular day and they opened it and so many people came that day. As we were there the accused person stood up and introduced herself and said she is the owner of the bold and Dynamic Family Gender Initiative. The accused addressed us and told us a lot of things. She told us that the Governor has instructed the Vice Chancellor to assist her in giving admission. That anybody who had a child for admission should write the name of the candidate. The accused brought out a blank paper where we wrote the names of our wards who want admission. Pw4 in his evidence stated thus; When we entered the accused persons house I told her my problem that I was unable to secure admission for any of my relation --- she volunteered

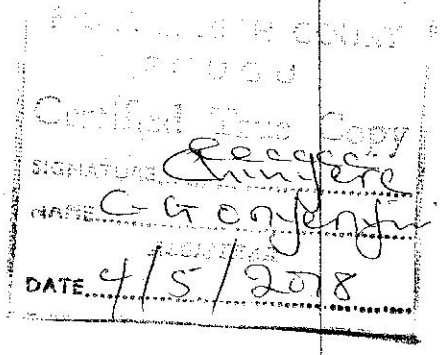
to influence the Vice Chancellor. She later told me and Nkechi Orji that the Vice Chancellor has agreed to admit the candidates at the cost of N40:000 per person so I explained this to my cousin.

Pw5 also stated thus:

> **"... she (accused) said that after her press conference, the Vice Chancellor was so encouraged that he said he would give her 50 people from her NGO the admission.**
>
> **...From there I Picked interest and gave her names of 3 of my nieces and 3 other people".**

Why I have taken time to put down abstracts of the Prosecution witness evidence here? This is definitely to show corroboration in the testimony of witnesses that the accused misrepresented to the victims that she was every close to the people that matter in giving admission ie V.C & the Governor and in a position to procure admission into ESUT for their wards.

The accused made this representation to Pw5 in several foras including polo park where she held her seminar and in her office.



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The accused made her victims believe that she knew the Vice Chancellor personally as well as the Governor of Enugu State and was dealing with them. This gingered every of her victims into action.

The accused person was of course rated by her victims to be a very influential person in the society thus making her victims to fall in her trap. I am not surprised that her victims believed her easily because in Nigeria today where many students are denied admission yearly in higher institutions of learning for various reasons ranging from failure in JAMB Exams, insufficient cut off points, failure of attitude test etc people become very desperate and can take advantage of any slightest opportunity to realize their dream of going to the University if seen. I completely agree with the Prosecution that it was because of the above stated representation that the accused took advantage and duped her victims i.e Pw1 – Pw5, of various sums of money.

Also to be noted is the fact that the accused person did not even recognize the real Vice Chancellor of ESUT, Pw13 who she claimed to b her close friend. She admitted both in her extra judicial statement to the EFCC and her testimony in the Court. The Defendant's Defence is that

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he had not known the Vice Chancellor f ESUT before. That one Mrs. Nkechi Orji gave the accused person the telephone number of the alleged Vice Chancellor and that she was dealing with this Chidubem Simon believing that she was dealing with the real Vice Chancellor of ESUT.

I have considered this line of defence but I believe it is of no moment here the reasons are numerous.

Firstly, since the accused person collected large sums of money from the Prosecution witnesses to help them secure admission for their wards using her NGO as a cover, she was also duty bound to go personally to the Vice Chancellor's office in ESUT, to discusss more with him and to interact also with him to enable her know him very well. How can anybody be involved in the business of admission of students and will not know the V.C's office and also claim not to have independent knowledge about the VC of ESUT? This is simply not possible I believe.

Secondly, the accused cannot claim she was misled to deal with a wrong person. This is because Pw1 in his evidence in chief stated that

"When the accused gave account number as Simon Chidubem, I told her that I know the Vice Chancellor

to be Professor Joseph Chidubem but she told me that was the name the Vice Chancellor gave her".

This piece of evidence was not contradicted nor rebutted and is presumed to be true and I so hold.

Thirdly, Pw1 in his evidence in chief stated as follows:

"--- That the Vice chancellor of the University Professor Joseph Chidubem is her personal friend and also a patron to the Non-Governmental organization. After telling me this story she showed me a letter headed paper bearing the name of the Non- Governmental organization as above called and the name of the Vice Chancellor as mentioned before as the patron. She even told me that the P.A to the Vice Chancellor just left her office not long before I came in".

Again this vital piece of evidence was not contradicted by the Defence meaning that it is true.

It is therefore my opinion that the accused person knew exactly what she was doing and cannot claim to be misled by one Mrs. Nkechi Orji as she wants this Court to believe. Her actions were deliberate. Taking this view into consideration, the submission of the Defence that mrs. Nkechi Orji ought to have been called by the Prosecution as a vital witness is of no moment. The argument of

The Defence is that Mrs. Nkechi Orji gave a false phone number of the Vice Chancellor ESUT and also confirmed the said Vice Chancellor of ESUT to the accused person. Well as I have said earlier, this Defence is immaterial given the three reasons stated above by this Honourable Court.

It has been held in ALAKE VS STATE Supra that the prosecution has no duty of calling every available witness in proof of its case.

I therefore disagree with the Defence that failure by the prosecution to call mrs. Nkechi Orji as their witness has affected the proof of their case beyond any reasonable doubt.

Again the Prosecution led evidence to prove that sums of money were given to the accused person by the Prosecution witnesses on different occasion and different locations which she put into the Bank account of Chidubem Simon and Friday Ali. The Defence failed to rebut these allegations. The accused person admitted that her victims gave her money for admission though the Defence Counsel argued that the Prosecution has not tendered any documents supporting any Banking transaction.

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Also, that the amount collected by the accused from her victims is not up to what is contained in the charge sheet. I think this line of argument is not strong enough to convince the Court otherwise. This is because since the accused admitted collecting various sums of money from her victims, that suffices whether there is documentary evidence to back it or not, of course documentary evidence cannot take the place of oral evidence.

Secondly, the Prosecution has proved sufficiently through its witnesses that the total sum of N5,624,000.00 was given to the accused and her conspirators for admission of students/wards of the victims and I believe the evidence of the Prosecution on this point.

The Defence of the accused that the alleged admission seekers were not called to testify and that the ESUT admission list for the year in question was also not tendered by the prosecution to show whether the admission seekers were admitted or not are all of no moment here. The burden here is shifted on the Accused to show that truly the admission seekers were admitted. This she has failed to do.

This is moreso that the Accused herself admitted before PW7 collecting various sums of monies from the prosecution witnesses

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for admission of their wards. This is clear admission of facts, and facts expressly admitted need no further proof. The Accused can even be convicted on her own admission of facts or confessional statement. See the cases of **IGBINOVIA VS. STATE (1981)2 SC 5 at 17.**

In further proof of fraud the prosecution led evidence where the Accused person claimed to be dealing personally with the Vice Chancellor ESUT. However when this said Vice Chancellor met with the Accused person in the complainant's office she could not even recognize him. Even though she had earlier claimed she had been dealing with the Vice Chancellor and that she can recongnise him anytime, anywhere.

It is to be noted that the Accused person's action in collecting monies fraudulently from the prosecution witnesses on account of using her NGO to help provide admission for their wards was deliberate. The Accused person cannot therefore lay claim to the fact that Mrs. Nkechi Orji misled her. My reason is that the Accused person was rated as very influential person in the society having an NGO, etcetera and yet she did not deem it fit to visit the

Vice Chancellor ESUT in his office anytime even though she was pursuing the issue of admission for several students. Evidence abound of course that the Accused know her representation was false and calculated to defraud her victims. The Accused knew that her intention was basically to make her victims to part with their money.

It is therefore my opinion and view that the Accused was not misled in anyway by anybody but as a drawing person, she is looking for reasons to support her dubious and fraudulent act.

And as I earlier stated in my Judgment Pw1 told the Accused that the name of the Vice Chancellor ESUT was Joseph Chidubem and not Chidubem Simon but Accused insisted that that was the name given to her by the Vice Chancellor. Here too I completely agree with the prosecution that the dealings of the accused with Chidubem Simon as V.C ESUT were not mistake but calculative and deliberate.

Again the I. D. Card used by the Accused to open her Account was also questionable. It is a photocopy of I. D. Card allegedly issued by Enugu State Government House to the Accused person as a protocol officer (EXCC) refers. This the State Government through the office of SSG came out to deny this fact.

The prosecution is also able to prove that when they went through the Account opening package from UBA with the Account No the Accused provided the name was Chidubem Simon and that the Accused is nee Simon. The Accused has not come out to deny any of these facts and I accordingly believe the facts to be true. The Accused in my opinion is an egocentric manipulative liar and nothing more. I again agree with the prosecution that the prosecution has established conclusively the elements of the offence of obtaining by false pretence against the Accused person beyond any reasonable doubt.

The essential elements of obtaining money by false pretences have succinctly been set out in the case of **ALAKE VS. STATE (1991)7 NWLR (Pt. 205)567 at 592.** These are:

1. That there must have been a false pretence.
2. That the pretence emanated from the Accused person.
3. That the said pretence was false.
4. That the Accused knew of the falsity or did not believe in its truth.
5. That there was intention to defraud.

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6. That the thing is capable of being stolen.

7. That the Accused induced the owner to transfer his whole interest in the property.

See also the case of ONWUDIWE VS FRN (2006) 10 NWLR (Pt. 988) 382.

Looking at the above elements, it is not in doubt that the prosecution has successfully proved the offence of obtaining money by false pretences against the Accused person as required by law.

It is not in doubt that the mens rea component of the offence which is that the Accused did what she did with intent to defraud and knowing the pretence to be false has fully been established.

On the whole the prosecution has proved its case beyond reasonable doubt. The accused is found guilty of the offences of conspiracy to commit a felony to wit; obtaining money by false pretence; and obtaining money by false pretences and is convicted as charged.

As for the offence of forgery and uttering as argued by the defence the prosecution did not lead any evidence to establish that against the accused person as such this court cannot make any pronouncement on same.

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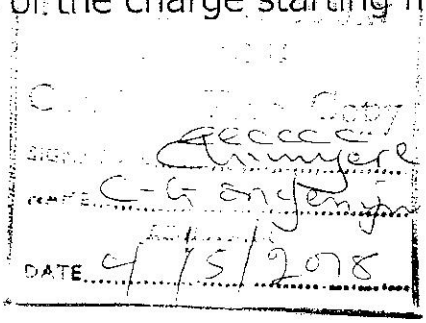
NAME C-5 Registrar
DATE 4/5/2018

Previous conviction: Nil

Allocutus: The defendant is a nursing month. She has a little baby in her hand. She stayed for sometime in prison ie up to 7 months. We urge the court to temper justice with mercy. Also her son is critically ill in the hospital.

F.A.I Esemebo: I apply for a restitutional order of N5,624,000 in favour of the complaint and directing them to transfer same to the original victims in line with in accordance with S.321 of Administration of Criminal Justice Act 2015.

SENTENCE: I have taken the plea of the accused into consideration and the fact that there is no known record of previous conviction against her. Be that as it may, we are all aware of the fact that the above named offences are eating deep into the fabrics of our society and unless we deal with same now, else our society will soon be completely destroyed and nothing will be left for the future generation. For that reason, the convict deserves a serious punishment in order to deter others with criminal minds like her in convicting same offences against this dear country of us. Convict is hereby sentenced to 3 years imprisonment on each of the 30 counts of the charge starting from today. Sentences to run concurrently.



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Aside, the restitutional order of N5,624,000 requested by the prosecution is also granted as prayed.

D.W. AGISHI
JUDGE
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