

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA
ON THURSDAY THE 27TH DAY OF OCTOBER, 2016
BEFORE THE HON. JUSTICE EVELYN .N. ANYADIKE.

JUDGE

SUIT NO: FHC/KD/36C/2012

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

1. MOSES SAMANJA AUDU
2. MIRIAM MOSES VENTURES LIMITED } **ACCUSED PERSONS**

Both Accused persons present.

J.Saidi Esq. with J. Bwala Miss for the Prosecution.

Yusuf Ahmed Esq. for the Accused person.

JUDGMENT.

The charge against the two Accused persons reads as follows:

That you, Moses Samanja Audu and Miriam Moses Ventures Limited sometimes between 2010 and 2011 at Kaduna, within the jurisdiction of the Federal High Court transact banking business by receiving deposits from the public, without a valid License from the Central Bank of Nigeria and thereby committed an offence

Certified True Copy
(Office of the Registrar)
Federal High Court, Kad
J. Saidi
30/4/2018

punishable under Section 2(2) of the Bank and other Financial Institutions Act, Cap B3, Vol.2, law of the Federation of Nigeria, 2004.

The 1st Accused person pleaded not guilty and the Court entered a plea of not guilty for the 2nd Accused person.

The prosecution called seven (7) Witnesses in proof of its case.

A brief summary of the prosecutions case is as follows:

The 1st Accused person is the Chief Executive as well as one of the Directors and promoters of the 2nd Accused person. The 2nd Accused person's main business is that of accepting deposits from the general public and upon depositing money, the depositor is paid the principal amount and 100% interest on the principal amount within twenty-two (22) days. The general public was informed of the business through advertisement, fliers and the agents of the 2nd Accused person. By the time the 1st Accused person was arrested, he has collected deposit from over Eleven (11) thousand depositors totaling ₦1.96 billion with a promise to pay back ₦3.9 billion naira. Most of the depositors have not been paid both the principal sums and interest including the PW1, 2 and 3.

The prosecution tendered the following exhibits;

- A - A1 - Cash receipts
- B - B1 - Cash receipts.
- C1 - C19 - Petition dated 20th July, 2010 together with attachments.
- D1 -D92 - Cash receipts
- E - Long exercise book.
- F - Search warrant dated 28th July, 2010
- G1 - G6 - Cash receipts and deposit slips
- H - List of investors.
- J - Cash receipt booklet
- K1-K7 - Cheque booklets
- L1- L5 - Nokia & Ericson phones.
- M - Letter dated 12/8/10
- N1-N7 - Letters from GTB, Fin Bank, Intercontinental Bank, Sky Bank, Access Bank and FCMB.
- O - Letter from CBN dated 14th November, 2011
- P1- P2 - Statements of 1st Accused person.

After the close of case for the Prosecution the Accused persons made a no case submission. The no case submission was overruled and the Accused persons were ordered to enter for their defense.

- 1 - 4 - Files.
- 5 - Event brochure
- 6. - Statement of account
- 7 - Statement of account
- 8, 9(a) and (b) - Receipts.

After the close of case for the defense, case was adjourned to 28th day of June, 2016 for addresses. On that day, the Learned Counsel for the Accused persons wrote a letter for adjournment on grounds that he was bereaved. The Learned Prosecuting Counsel applied that the defense be foreclosed and asked for ten (10) days to file their own address. The Court ruled and assigned specific dates for counsel on both sides to file and serve their address and adjourned for judgment.

The Learned Prosecuting counsel filed his address on 15th day of August, 2016. The Learned Counsel for the defense did not file his address until 20th day of October, 2016. Both addresses are hereby deemed adopted.

The issues formulated by counsel on both sides are as follows;

- 1 *Whether this Court is competent to entertain the instant charge against the Accused persons without the*

written consent of the Attorney General of the Federation as provided under section 65 (3) of the Bank and Other Financial Institutions Act.

2 *Whether the prosecution has proved the necessary ingredients of the offence charged against the Accused persons to warrant the court to convict them.*

I have carefully gone through the submissions of Learned Counsel on both sides and do not intend to repeat same except as make reference from time to time.

ISSUE NO 1.

I recall that this issue formed one of the issues raised in the no case submission by the Accused persons and which was extensively dealt with by the Court and ruling delivered on 5th day of May, 2015. My view is that the Accused persons are barred from raising the issue the second time in this proceeding as the only alternative open to them is to appeal against same.

ISSUE NO 2.

The Accused persons were charged under Section 2 (2) of the bank and other Financial Institutions Act 2004 (hereinafter referred to as the "Act").

The relevant sections of the Act to consider in determining this case are sections 5 (1) (a), 2 (1) and (2), 44(5) and 66.

Section 2 (1) of the Act provides that no person shall carry on any banking business in Nigeria except if it is a company duly incorporated in Nigeria and holds a valid banking license issued under the Act.

Section 2 (2) of same Act provides that any person who transacts banking business without a valid license under the Act is guilty of an offence.

To succeed under Section 2 (2) of the Act, the prosecution shall prove that;

- 1 The Accused persons transacted banking business
- 2 The Accused persons transacted the banking business without a valid license under the Act.

Section 66 of the Act gives an insight on what a banking business means.

It defines a "banking business" as the business of receiving deposit on current account, savings account or other similar account, paying or collecting cheques drawn

by or paid in by customers; provision of finance or such other business as the Governor may, by other published in the Federal Gazette, designate as banking business.

The same Section 66 of the Act defines "deposit" to mean *money lodged with any person whether or not for the purpose of any interest or dividend and whether or not such money is repayable upon demand upon a given period of notice or upon a fixed date.*

Section 1 (5) (a) of same Act provides that for the purposes of the Act, any person shall be deemed to be receiving money as deposits if the person accepts deposits from the general public as a feature of its business or if it issues an advertisement or solicits for such deposit.

Section 44 (5) of same Act provides that "advertisement" "includes any form of advertising whether in publication or by the display of notice or by means of circular or other document or by any exhibition of photographs or cinematograph or by way of sound broadcasting or television or loudspeakers or other public address system"

The evidence of the PW1 and 2 are to the effect that the main business of the 2nd Accused person is the business of accepting cash deposits from members of the public and paying back the principal sum plus 100 % interest after 22 days. The PW1 deposited ₦30,000.00 and ₦60,000.00 respectively vide exhibits A and A1. The PW2 also deposited ₦500,000.00 twice and ₦200,000.00 respectively vide exhibits B and B1. Both PW1 and 2 deposited the monies with full assurance of receiving the principal sums plus 100 % interest after twenty-two (22) days. Both were not paid any money at all. The PW4 deposited money and was paid and later made to be an agent of 2nd Accused person. As an agent of 2nd Accused person, she collected ₦9,245,000.00 from the public vide exhibits D1- D92 and deposited the monies into the account of 2nd Accused person at GTB domiciled in Kaduna. These depositors are yet to be paid. The PW4 also tendered exhibit 'E' being the register of members that deposited through her. She said she was given fliers with which she advertised the business of 2nd Accused person at Gombe State. The PW5 stated that the 2nd Accused person at the time of arrest of 1st Accused person and eventual close down of the business of 2nd Accused person had collected deposits from over

11,000 people totaling ₦1.9 billion. He described the business of the 2nd Accused person as presenting all the features of a bank and said that the 2nd Accused person was not licensed to operate as such. The PW6 stated that upon a visit to the office of the 2nd Accused person, tellers, forms and cheque books used by the public to deposit money were seen. He said that the office was designed like a banking hall with cubicles where people were seen collecting money from intending members of the public. He tendered exhibits N1-7 which represents high volume of cash deposits and withdrawals by depositors. He stated that the 1st Accused person is the chief executive officer of the 2nd Accused person and a signatory to the account of 2nd Accused person.

I note that all the above pieces of evidence by the prosecution witnesses were not contradicted nor discredited by the defense.

Rather the DW1 corroborated the prosecution's case when he stated that he invested ₦20,000.00 into the business and was paid ₦40,000.00 at the end of the month.

I therefore am empowered to accept all these pieces of evidence as the truth and to rely and act upon it.

Again both the DW1, 3 and the 1st Accused person who testified as the DW5 admitted under cross examination that the major business of the 2nd Accused person was accepting deposits from people and paying back with 100% interest after 22 days. The 1st Accused person also admitted not being licensed by the Central Bank of Nigeria to do such business.

My findings therefore are that the uncontradicted evidence of the prosecution witnesses coupled with exhibits A and A1, B and B1, D1-92, H, and P1-2 which is corroborated by the evidence of the DW1, 3 and 5 prove that the main business of the 2nd Accused person is accepting deposit from the members of the public and paying principal sum plus 100% interest after twenty-two (22) days.

I find as a fact that the 2nd Accused person advertised this business through distribution of fliers and also through human agents who solicited for such deposits from the public.

I find that the 1st Accused is the chief executive of the 2nd Accused person and does not possess a valid license to operate a banking business.

I find that the business of the 2nd Accused person present features similar to a "banking business" as defined under the Act and it does

not matter whether the deposits accepted by the 2nd Accused person are tagged "current or Savings" accounts as the operative word under section 66 of the Act is "or other similar account". Exhibits A1-2, B1-2, D1-92, E and H present all the features of deposit slips and other books of accounts kept by banks.

I agree with the Learned Prosecuting counsel that the features of a banking business as itemized under Section 66 of the Act are to be interpreted disjunctively and not conjunctively. This is because a look at the Act as a whole show that there are different kind of banks and not all operate in the same way.

For example, is section 22 of the Act which places a restriction on a "merchant bank" to accept deposit withdrawable by cheque.

It is also irrelevant whether the Accused persons invested the money deposited with them into any other business or not or even ran a charitable organization with the deposits as what the section 2 (2) of the Act punishes is transacting banking business without a valid license and not failing to invest the money realized from such illegal business.

It did not matter that the Accused persons could have been able to refund all the monies deposited with them to the depositors as what

is paramount is that they are prohibited from operating at all in the first place without a valid license.

By section 49 of the Act, both the 1st and 2nd Accused persons are liable under the Act.

Accordingly, I find the 1st and 2nd Accused persons each guilty as charged.

Allocutus.

1st convict: - I want the Court to temper justice with mercy. I have a family and my wife just gave birth to a child.

Defence Counsel: - The 1st Accused person has turned a new leaf. He is a first time offender and was in custody a long time.

Prosecutor: - No evidence of previous conviction. We apply that the Court be guided by the sentencing and practice direction of 2015 and the code of conduct. Many people become victims of this act. The convict has not shown any remorse. Appeals that 2nd Accused be wound up and registration Certificate be withdrawn and the 1st Accused person be made to pay back the money to the victims in addition to any other punishment. The monies were in bank accounts but frozen.

Sentence. The level of culpability is high because the 1st Accused is significantly involved in the planning, committed the offence continuously over a period of time and was motivated by an expectation of substantial financial gains. The harm caused by the commission of the offence is significant as it has detrimental effect on the depositors who have not been paid and also a long term environmental impact.

The 1st Accused is sentenced to imprisonment for five (5) calendar years. This term shall be calculated to include the period the 1st Accused person stayed in prison custody without bail between 7th of May, 2012 when he was arraigned to 4th day of February, 2013 when he was granted bail by this Court.

* The Registrar of this Court is ordered to forward a copy of this judgment to the Corporate Affairs Commission for purposes of disqualification or winding up of the 2nd convict under Companies and Allied Matters Act 2004 and the Money Laundering (Prohibition) Act 2011.

All the accounts standing to the credit of the 1st and 2nd convicts at GTB PLC, UNION BANK PLC, FINBANK PLC, FCMB PLC, ACCESS BANK PLC and SKY BANK PLC are hereby confiscated and forfeited

to the Federal Government of Nigeria for restoration to the depositors who are yet to be paid their initial deposits.

Justice

HON. JUSTICE EVELYN .N. ANYADIKE
27/10/2016.

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(Office of the Registrar)
Federal High Court, Kad
Justice A. Sefu
30/4/2018