

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE KADUNA JUDICIAL DIVISION
HOLDEN AT KADUNA
ON THURSDAY THE 29TH DAY OF JUNE 2017
BEFORE THE HON. JUSTICE EVELYN .N. ANYADIKE.

JUDGE

CHARGE NO: FHC/KD/66C/2014

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT

AND

- 1. DANIEL SOLOMON**
- 2. ADAMU ADAMS PAUL**

ACCUSED

Accused persons present

M. M. Gambo Esq. for the Prosecution with Nasiru Salele Esq. and Musa Isah Esq.

A. Josuah Esq. holding the brief of R. J. Dakun Esq. for 1st Accused person.

Z. L. Dashe Esq. holding the brief of Timothy Anyira Esq. for the 2nd Accused person

JUDGMENT.

The two Accused persons are jointly charged in a six counts charge as follows:-

Certified True Copy
(Office of the Registrar)
Federal High Court, Kad.

Timothy Anyira Esq.

18/5/2018

Count One

That you Daniel Solomon, Adamu Adams Paul (A. K. A. Paul Waje) and Sani (now at large) on or about the 1st January 2010 in Kaduna within the jurisdiction of the Federal High Court did conspired between yourselves to committed an unlawful act to wit: obtaining the sum of N2.5 M under false pretence and you thereby committed an offence contrary to Section 8 (a) of the Advance Fee Fraud and other fraud Related offences Act, 2006 and punishable under Section 8 of the same Act.

Count Two

That you Daniel Solomon, Adamu Adams Paul (A. K. A. Paul Waje) and Sani (now at large) on or about the 1st January 2010 in Kaduna within the jurisdiction of the Federal High Court with intent to defraud obtained the sum of ₦1,200,000.00 (One Million Two Hundred thousand Naira) from on Boniface Chukwu by false representation to him that you have a piece of land to sell to him which pretence you knew to be false and you thereby committed an offence contrary to Section 1 (1) and punishable under Section 1 (3)

of the Advance Fee Fraud and other Fraud Related Offences Act, 2006.

Count Three

That you Daniel Solomon, Adamu Adams Paul (A.K.A Paul Waje) and Sani (now at large) on or about the 1st January 2010 in Kaduna within the jurisdiction of the Federal High Court with intent to defraud represent yourselves to Boniface Chukwu as possessing the power or as capable of doubling or otherwise increasing money of ₦500,000,000.00 (Five Hundred Million Naira) to him and in process obtained the sum of N12.5M (Twelve Million, Five hundred thousand Naira) from him and you thereby committed an offence contrary to Section 2 (b) of the Advance Fee Fraud and other Fraud Related Offences Act, 2006 ad punishable under Section 2 (c) of the same Act.

Count Four

That you Adamu Adams Paul (A.K.A Paul Waje) on or about the 3rd September 2012 in Kaduna within the jurisdiction of the Federal High Court committed felony to wit: had in your possession without

lawful authority one thousand Naira note with serial No. 839139 knowing same to be counterfeit and thereby committed an offence contrary to Section 5 (1) (b) and punishable under Section 5 (2) of the counterfeit currency (special provision) Act Laws of the Federation of Nigeria 2007.

Count Five

That you Adamu Adams Paul (A.K.A Paul Waje) on or about the 3rd September 2012 in Kaduna within the jurisdiction of the Federal High Court committed felony to wit: had in your possession without lawful authority one thousand Naira note with serial No. 839139 knowing same to be counterfeit and thereby committed an offence contrary to Section 5 (1) (b) and punishable under Section 5 (2) of the counterfeit currency (special provision) Act Laws of the Federation of Nigeria 2007.

Count Six

That you Adamu Adams Paul (A.K.A Paul Waje) on or about the 3rd September 2012 in Kaduna within the jurisdiction of the Federal High Court committed felony to wit: had in your possession without

lawful authority one thousand Naira note with serial No. 839139 knowing same to be counterfeit and thereby committed an offence contrary to Section 5 (1) (b) and punishable under Section 5 (2) of the counterfeit currency (special provision) Act Laws of the Federation of Nigeria 2007.

The 1st Accused person pleaded not guilty in counts 1, 2, and 3 respectively.

The 2nd Accused person pleaded not guilty in counts 1, 2, 3, 4, 5, and 6 respectively.

The prosecution in proof of their case called Four (4) witnesses.

A summary of the prosecution's case is as follows:-

The PW2 knew the 1st Accused person through a friend of his called Ezema Maduabuchi who was then owing the PW2 Fifty-five Thousand Naira only (₦55,000.00.) When Maduabuchi could not pay the PW2, Maduabuchi's friend, the 1st Accused person, offered him a plot of land and told him to look for a buyer in order to pay the PW2 and use the balance for himself. The PW2 then opted to buy the Land and after he paid for it at Two Hundred Thousand

Naira only (N200,000.00), the 1st Accused person paid him the debt and kept the remaining for himself. The PW2 due to this misunderstanding opted out of the land deal. Then the 1st Accused person in order to gain the trust of the PW2 showed him pictures where the 1st Accused person was flogging some naked men and women and told the PW2 that he was casting out witches from them. The 1st Accused person gained the PW2's trust and they became friends. The 1st Accused person on finding out that the PW2 wanted to travel abroad promised to introduce him to business associates and asked the PW2 to register with Seventy thousand Naira only (N70,000.00) and the PW2 did so. Later on the 2nd Accused person came into the picture and told the PW2 that the money was not enough and demanded for another One Hundred and Fifty thousand Naira only (N150,000.00) for the said registration which the PW2 paid through the 1st Accused person. later on the 2nd Accused person who had earlier performed some money doubling magic in the presence of the PW2 now at the direction of the 1st Accused person took the PW2 to some bush where one experiment led to the other and the PW2 was shown a bag full of money and was told it was Five Hundred Million Naira only

(₦500,000,000.00) and that he should bring Five Million Naira only (₦5,000,000.00) in order to use the Five Hundred Million Naira only (₦500,000,000.00). The PW2 said he did not have the money but after much persuasion the PW2 brought Two Million, Five Hundred Thousand Naira only (₦2,500,000.00) while the 1st Accused person brought the other half on his behalf. The PW2 was told that he was late and was told to buy a black Tortoise with Two Million, Five Hundred Thousand Naira only (₦2,500,000.00) for sacrifice. The PW2 could not see a black Tortoise and the 1st Accused person opted to help him buy it and demanded that the PW2 give him the money instead which the PW2 gave to him. When the PW2 came back both Accused persons quarreled among themselves that the 2nd Accused person bought the wrong Tortoise. The PW2 upon enquiring what to do was told by the 2nd Accused person that the only option was to buy the real Tortoise. The PW2 gave the 1st Accused person another Two Million, five Hundred Naira only (₦2,500,000.00). The PW2 was told to go home and lock up himself and that the spirit will bring the money to his house. After sometime the 1st Accused person called him and said that the spirits were there to deliver the money but could not as the PW2

was scared and that they left and said that they will pay the money into his account instead. The PW2 upon instruction opened a Diamond bank account. He later received a text message on his phone that the Five Hundred Million Naira only (₦500,000,000.00) has been paid into his account. He was later told to register with the CBN with the sum of One Million, Five Hundred Thousand Naira only (₦1,500,000.00) before he could cash the money which he sourced for and paid to the 1st Accused person. After that he was told to pay Two Million, five Hundred Thousand Naira only (₦2,500,000.00) in order to settle Economic and Financial Crimes Commission (EFCC) and Independent Corrupt Practice Commission (ICPC) because their eyes were on the money which the PW2 arranged and paid to the 1st Accused person. Later the PW2 upon demand paid another One Million, Five Hundred Thousand Naira only (₦1,500,000.00) to the 1st Accused person since according to them one Hajia that works with the Central Bank of Nigeria said the Two Million, Five Hundred Thousand Naira only (₦2,500,000.00) was small. This time the PW2 sold his land to pay the money. The PW2 was now told that he was to pay Twelve Million, Five hundred Thousand Naira only (₦12,500,000.00) VAT finally but the amount

was negotiated down to Seven Million, Five Hundred Thousand Naira (₦7,500,000.00). When the PW2 couldn't afford it, the 1st Accused person promised to pay (₦7,000,000.00) and told the PW2 to bring Five Hundred Thousand Naira only (₦500,000.00). When the PW2 couldn't still get the five Hundred thousand Naira (₦500,000.00), the 1st Accused person gave him fake land documents to sell and raise the money. The PW2 found a buyer and in the Process the owners of the Land appeared and on presenting the papers to them they saw the name of the 1st Accused person and told the PW2 that the 1st Accused person was a dupe. The PW2 realized himself at this point and petitioned the Economic and Financial Crimes Commission (EFCC). The Economic and Financial Crimes Commission (EFCC) set a trap for the 1st Accused who was then arrested after the PW2 gave him a loaf of bread concealed inside a leather bag and meant to appear like the Five hundred Thousand Naira (₦500,000.00) in his house. The 1st Accused person led the Operatives to the house of the 2nd Accused person where the 2nd Accused person was arrested and his house searched and three fake Naira notes recovered amongst other things in his house.

The prosecution tendered the following exhibits:-

- A Petition dated 13/7/12
- B Search warrant
- C Statement of 2nd Accused person dated 3/9/12
- D statement of 2nd Accused person dated 3/9/12
- E statement of 2nd Accused person dated 6/9/12
- F statement of 2nd Accused person dated 12/9/12
- G statement of 2nd Accused person dated 12/9/12.
- H 1-3 fake N1000 naira notes
- J forensic report
- K statement of 1st Accused person
- L statement of 1st Accused person
- M statement of 1st Accused person.

After the close of case for the prosecution, each of the Accused persons gave evidence on his behalf. The defence called no other witness.

Their defence is as follows:-

The 1st Accused person denied selling land to the PW2 and said he merely introduced the 2nd Accused person to the PW2 who wanted to be linked up with someone in the business of buying and selling of land and houses. He said that he did not know what transpired between the PW2 and the 2nd Accused person except once that the PW2 gave him Five Hundred Thousand Naira only (₦500,000.00) naira to give to the 2nd Accused person and which he did.

The 2nd Accused person said it was the 1st Accused person that introduced the PW2 to him when the PW2 wanted to buy land but the business did not eventually hold. He denied receiving Five Hundred Thousand Naira only (₦500,000.00) from the 1st Accused person and denied that the three fake naira notes were recovered from his house.

After the close of case for the defence, case was adjourned for adoption of written addresses. On that day the learned counsel for the 1st Accused person was absent though learned counsel for the 2nd Accused person held his brief. The learned prosecutor filed his address on 24th day of April 2017 and adopted same. The learned

counsel for the 2nd Defendant filed his own on 27th day of April 2017 and adopted same. The learned counsel for the 1st Accused person did not file any address. He was given up to the end of May 2017 to file his address and matter was adjourned to today for judgment. I was availed a copy of his address on 25th day of June 2017 via electronic media. The address is hereby, however deemed adopted.

In his address the learned counsel for the 1st Accused person formulated a lone issue as follows:-

Whether based on the evidence before this Honourable Court, the prosecution has proved the offences alleged against the 1st Accused person beyond reasonable doubt.

He submitted that the burden is on the prosecution to prove all the ingredients of the offences as charged beyond reasonable doubt and that this burden does not shift to the Accused person except in exceptional circumstances.

He referred to ***IBEH VS STATE (1999) 1 NWLR (PT 484) 632***

MARTINS VS STATE (1999) 1 NWLR (PT 481) 355

IBRAHIM VS THE STATE (2015) 11 NWLR (PT 1469) 164.

He submitted that oral evidence cannot be given to contradict exhibits A, K, L & M being documentary evidence.

He referred to ***RILWAN AND PARTNERS VS SKYE BANK PLC (2015) 1 NWLR (PT 144) 437***

He outlined the ingredients of the offence as charged in count 1 and submitted that the prosecution failed to prove all the ingredients of the offence.

He referred to ***ALAKE VS STATE (1991) 7 NWLR (PT 205) 5.***

He submitted that exhibits K, L, and M being statements of the 1st Accused person though admitted in evidence do not have any probative value and in fact raises doubt in the case of the prosecution.

He concluded that the prosecution's evidence raises more questions than answers as such this Honourable Court cannot safely convict the 1st Accused person as all what the prosecution has done is merely dump pieces of oral and documentary evidence before the court and inviting the court to delve into the arena and fill in the blank spaces which the court is not enjoined to do.

In his address the learned counsel for the 2nd Accused person formulated five issues as follows:-

1. *Whether money can be obtained by false pretences from a faceless or unnamed individuals(s) as contained in Count One on the charge sheet.*
2. *Whether the offences allegedly committed on or about 1st January, 2010 in count 1 and 2 on the Charge sheet dated 27th March 2014 is not at variance with the facts in Exhibits A and the testimony of PW2 at the trial as to when the offence(s) was/were committed does not nullify both charges.*
3. *Whether from the totality of the evidence of the prosecution witnesses not supported with any material particular, it can be lawfully proved that PW2 gave out money to the 2nd Accused person viz a vice the allegation contained in Count 3 on the charge sheet.*
4. *Whether the admitted receipt of the sum of (₦500,000.00)Five Hundred Thousand naira from PW2 by the 1st Defendant is binding on the 2nd Accused?*

5. *Whether the discrepancy on the dates of 1st September 2012 on Exhibit B (search Warrant) and 3rd September 2012 in Count 4, 5 and 6 on the charge sheet as the date of the currency offence was committed and non compliance with execution of search of premises procedure not nullify the search?*

He submitted that the charge should be nullified for failure to state the name of the person from whom it is alleged that the 1st Accused person obtained the sum of Two Million Naira only (₦2,500,000.00) and for alleging that the offence was committed in 2010 when the 2nd Accused person had not known the PW2 (complainant).

He referred to section 494 of the Administration of Criminal Justice Act 2015

He said that the periods between 1st day of January 2010 to 19th day of December 2011 are the imaginations of the prosecution who are not supposed to give evidence but only to act as investigators.

He submitted that there is no evidence in support of count 3 which must fail for lack of proof beyond reasonable doubt.

He referred to **AYINDE VS STATE (2014) ALL FWLR (PT 743) 1884.**

He submitted that the admission by the 1st Accused person that he received Five Hundred thousand Naira only (₦500,000.00) from the PW2 which he gave to the 2nd Accused person is only binding on the 1st Accused person as the 2nd Accused person instantly denied same.

He concluded that the search was not conducted in compliance with the provisions of the Criminal Procedure Code and Administration of Criminal Justice Act when the witness column was not endorsed and when it was executed on 1st day of September 2012 whereas the charge stated 3rd day of September 2012.

The learned prosecutor formulated the lone issue:-

Whether considering the evidence (documentary and otherwise) adduced, the prosecution has proved the offences with which the Accused persons were charged beyond reasonable doubt.

He recounted the testimony of the prosecution witnesses and submitted that their evidence was neither challenged nor

controverted in form or substance by any of the Accused persons even during defence and urged the court to accept the unchallenged evidence and act upon it.

He referred to **BOSHALI VS ALLIED COMMERCIAL EXPRESS LTD (1961) 2 SCNLR 322.**

LEADWAY ASSURANCE CO. LTD. VS ZECO NIG LTD (2004) 4 SCNJ 1.

ALAKE VS STATE (1991)7 NWLR (PT 205) 567.

He submitted that the court can safely convict an Accused person on the basis of his confession which he made freely and voluntarily and which is direct and positive.

He relied on **ARGUNDARE VS THE STATE (2009) 6 NWLR (Part 1136) 165**

MOHAMMED VS THE STATE (2007) 4 SC (Part 1) 181.

From the divergent positions of counsel on all sides, the issues can be encapsulated into the lone issue:

“Whether from the evidence before this court, the prosecution has proved the charge against the Accused persons beyond reasonable doubt”.

From the nature of the charge, I shall handle count 1 last.

In count 2 the charge against both Accused persons is that they with intent to defraud obtained the sum of One Million, Two Hundred Thousand Naira (₦1,200,000.00) from PW2 by falsely representing to him that they have a piece of land to sell to him and which they knew was false contrary to section 1 (1) (b) of the Advanced Fee Fraud and other Related Offences Act 2006.

To succeed the prosecution shall establish that:-

- 1 There was a pretence
- 2 The pretence emanated from the Accused persons
- 3 The pretence was false
- 4 The Accused persons knew that it was false.
- 5 There was an intention to defraud
- 6 The thing obtained is capable of being stolen.

See ***ALAKE VS STATE (supra)***

The evidence by the PW2 himself is that it was the 1st Accused person and his friend Maduabuchi that offered the sale of the land belonging to the 1st Accused person to him and which he paid for at Two Hundred Thousand Naira only (₦200,000.00). He said he opted out and collected back his money due to the fact that the 1st Accused person pocketed the price money instead of given it to his friend as promised. The evidence is that it was his friend Maduabuchi that told him about the promise by the 1st Accused person. There is therefore no evidence as to false pretence by the 1st Accused person to sell the land to him.

Secondly, the evidence as to the amount of money obtained from the PW2 which the PW2 later collected back is at variance with the charge.

Thirdly the 2nd Accused person was not involved in the land deal between the PW2, his friend and the 1st Accused person.

Again there is evidence by the PW2 that the 1st Accused person gave him fake land documents to use it to raise money. That he actually got a buyer who gave him Five Hundred thousand Naira (₦500,000.00) for the land but on reaching the site they met the

real owners who on sighting the land documents told him that the 1st Accused person is a dupe. He failed to tender the land documents in proof of his claim that it is fake and that it does not belong to the 1st Accused person. The PW2 admitted under cross exam that he did not conduct any search to find out if the documents were fake. There is no evidence that the 1st Accused person collected any amount for the land this time from the PW2. Again the 2nd Accused person is not part of the transaction

My findings in count 2 is that the prosecution has failed to prove the ingredients of the offence as charged and based on which I find the 1st and 2nd Accused persons, each not guilty in count 2.

In count 3 the charge against both Accused persons is that they with intent to defraud represented themselves to PW2 as possessing the power or as being capable of doubling or otherwise increasing money sum of Five Hundred Million Naira (₦500,000,000.00) to him and in the process obtained the sum of Twelve Million, Five Hundred Thousand Naira only (₦12,500,000.00) from him contrary to section 2 (b) of the Advanced Fee Fraud And Other Related Offences Act 2006.

Section 2 (b) of the Act provides “ *any person who-(b) with intent to defraud, represents himself as possessing the power or as capable of doubling or otherwise increasing any sum of money through scientific or any other medium of invocation of any juju or other invisible entity or of anything whatsoever..... is guilty of an offence*”.

To succeed the prosecution shall establish that:-

A. *The Accused persons represented themselves as possessing the power or as being capable of doubling or otherwise increasing any sum through;*

1. *Scientific,*

Or

2. *any other medium of invocation of any juju or other invisible entity,*

or

3. *anything whatsoever;*

B. The presentation was with intent to defraud.

In proof of this count the PW2 testified that after he backed out from the land deal with the 1st Accused person, that the 1st Accused person in order to regain his trust showed him pictures he snapped while he was flogging naked men and women and claimed that he was casting out witches from them. The PW2 said he got convinced when he saw those pictures and even arranged with the 1st Accused person to go to his own village to cast out witches . The PW2 said he met the 2nd Accused person through the 1st Accused person. On his first meeting with the 2nd Accused person, the 2nd Accused showed him a book he claimed was the seven books of Moses and asked the PW2 to give him a leaf. The 2nd Accused person opened the book, placed the leaf inside it and closed it and when he opened the book again, the leaf turned into ten Naira (₦10.00). The 2nd Accused person gave the PW2 the (₦10.00) and asked him to include it in his money whenever he is paying money into his account. The PW2 said that the 2nd Accused person repeated the process and after he opened the book, he started to mention the names of the PW2's brothers. Their 2nd meeting was at the 1st Accused person's house where the 1st Accused person told the 2nd Accused person to take the PW2 to the place. The PW2 and the 2nd Accused person then

rode in PW2's car to a bush where the 2nd Accused person did some incantations- salamiliku...salamiliku and fire exploded from a tree and four (4) people dressed in white appeared. The 2nd Accused person told the PW2 that the four (4) people were spirits. The spirits spoke in English accent, Pidgin and Hausa. The spirit showed the PW2 and the 2nd Accused person a bag filled with Dollars by the side and told the PW2 that the bag contained five Hundred Million Naira only (₦500,000,000.00). The PW2 actually saw the Dollars. Then the journey of taking money from the PW2 so that he could be able to use the Five Hundred Million Naira only (₦500,000,000.00) started. In all Twelve Million, Five Hundred Thousand Naira only (₦12,500,000.00) was obtained from the PW2. All the monies were given to the 1st Accused person.

I noted that all these pieces of evidence by the PW2 was not debunked nor discredited under cross-examination by both defence counsel. I therefore accept the evidence as the truth and shall rely on same in my findings. In all the dates of commission and the date on the charge are immaterial.

An extract from exhibit M being the statement of the 1st Accused person reads as follows:-

“I wish to add that the actual money I collected from Boniface Chukwu is N5 Million and not N12.5 Million as claimed by Boniface, the money is meant for money ritual so that he Boniface will have the opportunity to be travelling abroad for business and also build an hotel.I collected the N5 million from Boniface not because I have the means to do the ritual but to defraud Boniface, hence I teamed up with Adamu Adam Paul and one Sani. Me, Adamu and Boniface had a meeting in my house where I introduced Adamu to Boniface as the herbalist that specialize in money ritual while Sani is the one who print the fake dollars and naira that we used in luring our victims”.

The learned counsel for the 1st Accused person contended that the 1st Accused person signed on the column meant for the interpreter whereas the person that recorded the statement for the 1st Accused person signed where the maker of the statement is meant to sign. He said that an unsigned document has no evidential value. He also contended that the 1st Accused person who supposedly made the

statement on 3rd day of September 2012 was taken before the superior officer on the 6th day of September 2012.

I have looked at the statement and have seen that the signature of the 1st accused person was appended after the cautionary word, after the authority to record statement and on top of the column where it is written- "Signature/mark of witness/Accused". It is therefore appended at the right position.

I recall that when the PW4 sought to tender the said statement, the 1st Accused person admitted that he signed same but said he did so under duress and torture and trial within trial was duly conducted and a considered ruling delivered before the statement was admitted in evidence. He cannot therefore turn around to say that he did not sign the statement.

Lastly the contention as to the date the superior officer endorsed the statement being 3 days after it was made is immaterial.

An extract from exhibit "C", the statement of the 2nd Accused person reads as follows:-

"I receive instruction what to tell Boniface through Oga Daniel Solomon any time the will go to the bush, Daniel Solomon give me the sum of one Million Eight for the hold total of morning he use to received from Boniface for work we doing for him. The hold total of mornie Daniel Solomon told me his ₦5,000,000 = (five million Naira only) Boniface have givin him, then he told me he has giving others the sum of One million Naira only (₦1,000,000.00) to others for their on share. Total amount I collected through Daniel Solomon and Boniface is (₦2,000,000.00) Naira only . Daniel Solomon is our Oga because he is the traditional doctor that introduce us to its, also Sani Actim as BABA in the Business that normally communicated with Boniface, he his the one that normally bring in dollars for burning sacrifice, in which the sacrifice normally took place in Dani's House".

From the available evidence before this Court, my findings in count 3 are:-

1. I find the 1st and 2nd Accused person acted in concert in the entire dealings they had with the PW2. There is unchallenged

evidence that the PW2 and the 2nd Accused person left together to the bush from the house of the 1st Accused person and at his instruction. There is unchallenged evidence that the 2nd Accused person blamed the 1st Accused person for buying the wrong Tortoise for sacrifice which led to a quarrel between both of them. There is credible evidence from both the oral evidence in court and the statements of the Accused persons that money obtained from the PW2 exchanged hands between the Accused persons.

2. I find from available credible evidence that the Accused persons represented themselves as possessing the powers and as capable of increasing sum of money through the medium of invocation of invisible entities/spirits and magical powers. There is unchallenged evidence that the 2nd Accused person caused money to appear from leaf by magical means and invoked 4 spirits and bag full of money to appear in a most bizzar manner.
3. I find from evidence that all this presentations were done with the sole intent to defraud the PW2 by fraudulently obtaining sums of money from him. The 1st Accused person

confessed in his statement, exhibit M that he did not have the means to do rituals but collected the money from PW2 to defraud him.

From the above findings, I find the 1st and 2nd Accused person, each guilty as charged in count 3.

In count 4, the 2nd Accused person is charged with unlawful possession of ₦1000 naira counterfeit contrary to section 5 (1) (b) of the Counterfeit Currency (special provision) Act 2007.

The section provides: -

“any person who has in his possession any counterfeit bank note or current coin, knowing it to be counterfeit ; ... is guilty of an offence....”

There is evidence that when the house of the 2nd Accused person was searched in his presence and the presence of his wife, that three ₦1000 notes were found in his room. Exhibit B is the search warrant. It was issued on 31st day of August 2012 and endorsed on 1st day of September 2012 by the 2nd Accused person and one officer. The notes were subjected to forensic examination and each

of them proved to be counterfeit. Exhibit J is the Forensic Laboratory Report and it speaks for itself.

An extract from the statement of the 2nd Accused person, exhibit "D" reads as follows:-

"I wish to state as follows that the fact one thousand Naira note of three thousand Naira only that was found in my wallet, was given to me by SANI for belong to him, we used to burn it for spiritual and success in money. SANI he is the one that produce both Naira and dollars for spiritual success. I have never in my life spent it or buy any things or giving to any body or rather we used to burn it. The three thousand naira that found presently we want to burn it for ritual and success".

I hold that the exhibit "D" is a direct and positive confession by the 2nd Accused person that the counterfeit Notes were found in his possession and that he knew that they were counterfeit.

It is trite that the 2nd Accused person can solely be convicted on his confessional statement which is direct, positive and unequivocal.

I also find corroboration in the search warrant exhibit B and the forensic Result exhibit J.

Accordingly in count 4, I find the 2nd Accused person guilty as charged.

In counts 5 and 6 the 2nd Accused person is charged with unlawful possession of three ₦1000 counterfeit notes.

I hold that the counts 5 and 6 are duplicates of count 4 and as such bad for duplicity.

Accordingly counts 5 and 6 of the charge are hereby struck out.

In count 1 both Accused persons are charged with conspiracy to obtain the sum of Two Million, Five Hundred Naira (₦2,500,000.00) naira by false pretence contrary to section 8 (a) of the Advanced Fee Fraud and other Related Offences Act 2006.

The charge did not specify the name of the person from whom the Accused persons are alleged to obtain the sum of the Two Million, Five Hundred Thousand Naira only (₦2,500,000.00).

This is a fatal flaw on the part of the prosecution and it for this singular reason that the count fails as the court will not go on a

shopping spray just to find evidence to convict the Accused persons.

With respect to count 1 find the 1st and 2nd Accused persons, each not guilty.

On the whole:-

In count 1, the 1st and 2nd Accused person each is discharged and acquitted.

In count 2, the 1st and 2nd Accused persons each is discharged and acquitted

In count 3, the 1st Accused person is guilty as charged and the 2nd Accused person is also guilty as charged

In count 4 the 2nd Accused person is guilty as charged.

Allocutus:-

1st Convict pleads for leniency. Begs for forgiveness and says he has a wife and children in school and promised not to do that again. Continues – my wife had accident, my mother is in critical condition in the hospital.

2nd Convict – I seek the Court to pass Judgment with mercy. My wife has two children for me and has been down for over four months. I want the Court to forgive me and pass judgment with mercy.

1st Defendant counsel:- Plead for mercy. The 1st Accused is a first time offender. Pleads for option of fine. He is the bread winner of the family.

2nd Convicts counsel:- Prays for the Court to temper justice with mercy. The 2nd Convict is a first time offender. Prays for an option of fine and to consider that they spent two (2) years in prison custody.

Prosecutor;- Urges the Court to enforce Section 11 of the Advance Fee Fraud and other Fraud Related Offences Act 2006 and Order for restitution to the victim of the offence to the tune of the amount in count 3. Prays that the Court shall consider the properties of the Convicts attached by the commission in the order for restitution. Submits that Option of fine is not applicable as the Sections of the law under which the Accused persons were charge do not provide for option of fine. The Convicts are 1st offenders to the best of my knowledge.

1st Defendant's counsel:- My lord we have no problem with restitution. We seek that the property will be attached pending when the Convict will pay back the money.

2nd Defendant's counsel - There is no evidence that the money was used to purchase the properties. The Order for restitution is proper but we oppose Order of final forfeiture. We also seek the Court to take cognizance of the years spent in custody.

Prosecutor:- My lord, the 1st Convict mentioned in his statement that he bought his car from the money he got from PW2. I can't say if they bought the house from the proceeds of crime and do not know when the properties were bought.

1st Convict - I bought my land in 2009 and the Nissan Altima in 2012.

2nd Convict - I bought my land in 2004.

SENTENCE

The Section 2 (c) of the Act wherein the Convicts were charged and convicted provides for not less than five (5) years imprisonment.

Section 5 (b) of the Act under which the 1st Convict was convicted

do not apply in the instant case since the counterfeit bank notes are less than fifty (50). Rather the 2nd Convict shall be punished under the punishment part of Section 1. It provides for imprisonment for a term not exceeding twenty-one (21) years.

Therefore in Section (1) of the Act, this Court is empowered to exercise my discretion in sentencing the said Convict but not in the former.

Sentence – In Count 3, both 1st and 2nd Convict are sentenced to five (5) years imprisonment each. It shall be without an option of fine.

In count 4, the 2nd Convict is sentenced to five (5) years imprisonment without an option of fine.

Both sentences shall run concurrently and shall run to exclude the time the Convicts were in custody from May 2014 to May 2016.

ORDER AS TO RESTITUTION AND FORFEITURE

There is evidence in the statement of the 1st Convict that he bought the Nisan Altima with Chasis No. N4AL11D32C139646 from the

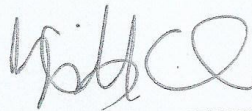
proceeds of these illegal dealings. The Nissan Altima is hereby forfeited to the Federal Government of Nigeria.

The 1st and 2nd Convict shall pay back the sum of Twelve Million, Five Hundred Thousand Naira only (₦12,500,000.00) to the PW2, Mr. Boniface Chukwu by way of Restitution.

The forfeited Nissan Altima shall be disposed by public auction and the money realized shall be used to cushion the Order of restitution.

There is no evidence that the land belonging to the Convicts were bought from the commission of this crime or any other crime. I hereby order that the land situate at Sarki Street, off Kachia road, Maraban Rido, Kaduna belonging to 1st Convict and the land situate at Covenant Street, Rido Road, Maraban Rido, Kaduna belonging to the 2nd Convict be returned to them respectively.

The Order of attachment placed on the above properties by Economic and financial Crimes Commission (EFCC) is hereby vacated forthwith.



HON. JUSTICE EVELYN .N. ANYADIKE
29/06/2017

Certified True Copy
(Office of the Registrar)
National High Court, Kad.

