

IN THE FEDERAL HIGH COURT OF NIGERIA  
IN THE KADUNA JUDICIAL DIVISION  
HOLDEN AT KADUNA  
ON MONDAY THE 11<sup>TH</sup> DAY OF SEPTEMBER 2017  
BEFORE THE HONOURABLE JUSTICE EMEKA NWITE  
JUDGE  
CHARGE NO: FHC/KD/30C/2015

BETWEEN

FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT

AND

1. UMAM WILLIAMS  
2. LEADGATE FX LIMITED } ACCUSED PERSONS

JUDGMENT/RULING

In a two count charge, the accused persons Umah Williams and Leadgate FX Limited were charged with the under mention charge to wit:-

*COUNT 1*

That you, Umah Williams, Josephine Odeh (at large) Peter Agada (at large) and Leadgate Fx Limited, on or about the 15<sup>th</sup> of October 2009 at Kaduna within the jurisdiction of this

Certified True Copy  
(Office of the Registrar)  
Federal High Court, Kad  
Immedial A Sfe  
18/9/2018

Honourable Court did conspire to do an illegal act to wit obtained the sum of One Million, Two Hundred Thousand Naira (₦1,200,000.00) from one Ikem Michael Uche, under the pretence of investing in Leadgate Dot Com Limited (Alias Leadgate Fx Limited) a purported licensed Forex trading outfit which representation you knew was false and hereby committed an offence contrary to Section 8 (a) of the Advance fee fraud and other Fraud Related Offences Act 2006 and punishable under Section 1 (3) of the same Act.

*Count 2*

That you, Umah Williams, Josephine Odeh (at large) Peter Agada (at large) and Leadgate Fx Limited, on or about the 15<sup>th</sup> of October 2009 at Kaduna within the jurisdiction of this Honourable Court with the intention to defraud, induced one Ikem Micheal Uche to invest the sum of One Million, Two Hundred Thousand Naira only (₦1,200,000.00) into Leadgate DOT COM LTD (Alias Leadgate Fx Limited) under the false



pretence of paying him fifteen percent (15%) of the principal sum as compound interest/dividend on his investment monthly for a tenor of Eight (8) months which you knew was false and thereby committed an offence contrary to Section 1(1)(b) of the Advance free fraud and other Fraud Related Offences Act 2006 and punishable under Section 1 (3) of the same Act.

On 2<sup>nd</sup> day of February 2016 the Accused person pleaded not guilty to the two (2) count charge. The matter was adjourned to 22<sup>nd</sup> day of February 2016 for trial but on 22<sup>nd</sup> day of February 2016, the Defendants' counsel informed the Court that there is a pending motion on Notice which they are ready to move. The Court ordered them to move the motion. After moving the motion the Court reserved ruling till the Judgment. As a matter of fact, we will be taking the ruling first before delving into the Judgment.

## RULING

This is a Ruling on Motion o Notice brought pursuant to Section 297(4) of the Administration of Criminal Justice act 2015 and under the inherent power of this Honourable Court praying for the following reliefs:-

*1. An Order of the Honourable Court quashing the two count as contained in the charge made against the Accused/Applicants as the same did not constitute an offence at law and specifically did not indict the Accused/Applicants in view of the settlement reached by the nominal complaint with the Accused/Applicants which copy is herewith attached as Exhibit "A".*

*2. An Order of the Honourable Court declining jurisdiction on the Accused/Applicants in the two (2) counts charge brought against them by the Respondent in view of Exhibit A which shows there is nothing to be tried against the Accused/Applicant.*



3. And for Such further Order or other Orders as the Honourable Court may deem fit to make in the circumstances.

**THE GROUND UPON WHICH THE APPLICATION IS BROUGHT IS AS FOLLOWS:-**

1. The nominal Complainant had compromised the instant case by virtue of the settlement reached in Exhibit "A" attached herein.
2. The proof of evidence does not disclose a prima facie case against the Accused/Applicants requiring them to stand trial either before this Honourable Court of law on any of the two (2) counts thereof.
3. The two (2) counts as contained in the charge and the proof of evidence are prejudicial to Accused/Applicants' right of personal liberty and fair hearing.

The Motion on Notice is supported by a Ten (10) paragraphs affidavit. Attached to the affidavit is one annexure marked as Exhibit "A". There is also a written address.

In opposition to the application the complainant filed Ten (10) paragraphs counter affidavit. Attached to the counter affidavit is one annexure marked as EFCC I. There is also a written address.

The matter came up for hearing on the 22<sup>nd</sup> day of February 2016 before this Honourable Court both counsel to the parties adopted their process with adumbration.

### ***LEGAL ARGUMENT***

The Defendant/Applicants' Counsel formulates a sole issue for determination in this Suit to wit:-

*Whether the instant application can be granted in view of the settlement conveyed in Exhibit "A" which has comprised the case against the Accused/Applicants before the Court.*



On their own part the Complainant/Respondent's Counsel formulated two issues for determination in this Suit to wit:-

1. *Whether no prima case in respect of the alleged offences has been disclosed having regards to entire proof of evidence before this Honourable Court.*
2. *Whether the purported settlement between the nominal Complainant and the Defendants can bar the prosecution from proceeding with Criminal proceedings against the Defendant.*

Having gone through the two (2) separate issues, I will like to adopt the two issues as formulated by the Complainant/Respondent's Counsel. It should be noted that the Complainant/Respondent argued the two issues together.

In arguing the issues, the learned counsel for the Defendant/Applicants submitted that going by the settled case law in the case of *MOHAMMED SANI ABACHA & 3 ORS VS THE STATE (2002) 7 SCNJ 1 at 20 – 21*. It is not in doubt that

the instant application can be entertained by this Honourable Court. More so that the provision of Section 277 (4) of the Administration of Criminal Justice Act 2015 under which the instant application has been brought. The Applicants has challenged the charge issued against them and the two (2) Counts does not raise any *prima facie* case against them that will warrant their trial by the Honourable Court. He referred the Court to the case of *IKOKI & ORS VS THE STATE (1986) NSCC VOL. 17, 730.*

He submitted that a look at the content of Exhibit "A" before the Court, one can deduced that the relationship between the nominal complainant and Accused/Applicants is purely a matter of contract and it is settled law that breakdown of contractual relationship cannot turn into criminal allegation. He referred the Court to the case of *ONAGORUWA VS STATE (1998) 1 ALL CLR 435 AT 446 paragraph 35.*

*CORPORATE IDEAL INS LTD VS STATE (1999) 5 SCNJ 47.*



That it is settled law that suspicion however well placed does not amount to *prima facie* evidence. He relied on the following cases:-

*MOHAMMED SANI ABACHA & 3 ORS VS THE STATE (Supra)*

*OSARADON OKORO VS THE STATE (1988) 12 SC (Part 11) 83 at 105.*

*GABRIEL EZEZE & ANOR VS THE STATE (2004) 14 NWLR (Part 894) 49 at 502 – 503.*

He submitted that the Applicant has made out a good case justifying the grant of this application and your lordship is humbly urged to grant the same.

In response to the above submission, the learned counsel for the Complainant/Respondent stated that the Defendants/Applicants had deposed that having regard to the proof of evidence place before the Court, that no *prima facie* case has been disclosed against them in the instant charge to warrant their prosecution.

That the depositions of the Defendants in paragraph 6 and 7 of

their affidavit in support on this issue is particularly surprising as it calls upon the Court at this stage to consider the guilt or otherwise of the Defendants as if trial has been concluded.

He submitted that in consideration of whether or not a *prima Facie* case is disclosed against an Accused person, the trial Judge is not required to evaluate the facts and evidence available in the proof of evidence as if trial has been concluded. That all the Prosecution is required to show at this stage is evidence in the proof of evidence linking the Accused persons with the offences alleged against them and urged the Court to so hold.

He submitted that the term *prima facie* case only means that there is ground for proceeding. A *prima facie* case is not the same as proof which comes later when the Court has to find out Whether the Defendants are guilty of the offences charged or not.

He referred the Court to the case of *AJIDAGBA VS IGP (1958)*

***SCNLR 60.***



That it is sufficient once it is shown that there are facts which clearly reveal a crime and show that the Accused persons is linked with same. He referred the Court to the case of *ABACHA VS STATE (2002) 11 NWLR (Part 779) 437 at 495.*

He stated that in deciding whether a *prima facie* case exist for the Defendants to answer, the Court usually considers the entire proof of evidence. That the Prosecution places reliance on the entire proof of evidence and submit that there exist a case to warrant the Defendants/Applicants to face their trial. That having regard to all the materials in the proof evidence supplied to the Court by the Prosecution even with the statement of the 1<sup>st</sup> Defendant alone, it cannot be sincerely argued that there is no *prima facie* sufficient enough to call upon the Defendants to take their plea and entire their trial.

With regard to the 2<sup>nd</sup> issue, he draw the Court's attention to the fact that the instant charge was filed on the 28<sup>th</sup> day of April 2015 and was already served on the Defendants intimating them

of this trial before the 1<sup>st</sup> Defendant took steps towards scuttling his trial by approaching the nominal Complainant with a memorandum of understanding (Exhibit EFCC I) and the purported letter of withdrawal (the Defendants Exhibit A).

He submitted that these facts were done in bad faith and urged the Court to so hold taking into cognizance that the Defendants are even yet to fulfill their allegations as created by Exhibit EFCC I.

He stated that Economic and Financial Crimes Commission (EFCC) was created by an Act of parliament i.e. the Economic and Financial Crimes Commission (Establishment Act 2004). That Section 7 of the Establishment Act makes Act makes provision for special powers of the Commission.

He contended that it follows from the above provisions that the Economic and Financial Crimes Commission is saddled with the Responsibility of not only enforcing offence specified in Section 7 (2) (a) – (e) which are obvious Economic and Financial Crimes



but also offences in the penal statutes of both codes operating in the North and South viz criminal and penal code. That the Economic and Financial Crimes Commission (EFCC) has indeed been carrying out Prosecutions of offences contained in Counts 1 and 2 as in the instant charge and it does not need the express consent of the Mr. Micheal Ikem Uche the nominal Complainant or any other individual for that matter as suggested by the learned defence counsel.

More so, the charge was instituted in the name of Federal Republic of Nigeria and not in the name of Mr. Michael Ikem Uche as nominal complainant.

He submitted that there is no way a criminal prosecution instituted by the Federal Republic of Nigeria against a Citizen could be compromised by a purported withdrawal of petition notice after a criminal charge has been filed.

That a criminal prosecution for conspiracy and obtaining money under false pretence cannot be the same with steps or action for recovery of money had and received.

He submitted that learned counsel for the defence misconstrued and misinterpreted the provision of Section 277 (4) of the Administration of Criminal Justice Act 2015 by relying on same as the ground for raising their Preliminary Objection as there is no provision of law which currently confers immunity on the Defendants from being prosecuted on the instant charge.

He stated that in as much as they are mindful of the right of the Defendants to raise a Preliminary Objection, he contended that the proper time for doing so is after the Defendants have taken their plea and not before pleas is taken. He referred the Court to Section 392 (2) of the Administration of Criminal Justice Act 2015.

In conclusion, he contended that the Defendants' Preliminary Objection seeking for an Order quashing the instant charge



against them lacks merit and should be dismissed without much ado.

### ***RESOLUTION OF THE ARGUMENT OF THE PARTIES***

In determining whether a *prima facie* case has been disclosed is not of declaring guilt or innocence. It is a mere declaration that ground exists for further inquiry. See *ADEBAYO ADEYEMI VS THE STATE (1991) 6 NWLR (Part 195) 1.*

*FE ODIDO VS THE STATE (1995) 1 NWLR (Part 369) 88.*

*OLU ONAGORUWA VS THE STATE (1993) 7 NWLR (Part 303) 49.*

In the case of *AJIDAGBA VS INSPECTOR GENERAL OF POLICE (1958) SCNLR 60*, the Supreme Court quoted with approval the definition proffered in the Indian case of *SHER SINGH VS JI JEND DRANTHEN (1931) 1 LR 59 CACL 275*, WHERE THE Court stated as follows:-

*The terms, so far as we find has not been defined either in the English or in the Nigerian Courts. In an Indian case however we find the following dicta.*

*What us meant by prima facie case? It only means that there is grounds for proceeding but a prima facie case is not the same as proof which comes later when the Court has to find whether the Accused is guilty or not guilty..... and evidence discloses a prima facie case when it is such that if uncontroverted and if believed it will be sufficient to prove the case against the Accused.*

In ***ABACHA VS THE STATE (2002) 11 NWLR (Part 797) 437 at 495***, the Supreme Court quoted with approval the dictum of ***D. O. COKER JSC***. In ***IKOMI VS STATE*** where it was held as follows.

*At this stage of deciding whether to prefer a charge, the prosecutor is not obliged to decide as a trial Judge should, whether the available evidence is cogent enough to justify a conviction.*



Also at page 497 of the same report, *BELGORE JSC* (as he then was stated as follows:-

*What the information must disclose is certainly not the guilt of the Accused but a prima facie case for the Accused to answer.*

After a painstaking review of the proof of evidence on the whole, a careful perusal of the statement made by the witnesses and Defendants, the documents contained in the proof of evidence reveals that the offences charged are disclosed by the statement and other documents contained in the proof of evidence. In this application, the Court can decide whether the offences are disclosed only on the strength of the statements contained in the proof of evidence. The Court cannot look beyond the statements to take into consideration any evidence which may be for the coming. See *EGBE VS THE STATE (1980) 1 NCLR 341*.

With regards to exhibit "A", I entirely agree with the submission of the learned prosecuting counsel that there is no way a criminal

prosecution instituted by the Federal Republic of Nigeria against a Citizen could be compromised by a purported withdrawal of petition notice after a criminal charge has been filed.

In view of the forgoing, I resolve the two issues in favour of the Complainant/Respondent against the Defendants/Applicant. In the end the Preliminary Objection fails and is hereby dismissed.

.....  
**HONOURABLE JUSTICE EMEKA NWITE**  
11/09/2017



## JUDGMENT

On 2<sup>nd</sup> day of February 2016 the Defendants pleaded not guilty to the two (2) counts charge. This Court went into full fledged trial of the case, during the trial the Prosecution fielded two (2) witnesses. The defence did not call any witness infact they abandoned the case.

As can be gathered from the charge and information, the concise facts of this case are that the nominal complainant invested the sum of One Million, Two Hundred Thousand Naira only (N1,200,000.00) to the Defendants on 29<sup>th</sup> day of October 2009 with a compound interest investment for over one (1) year at the rate of 15% per month for one (1) year. At the liquidation of the investment on 29<sup>th</sup> day of October 2010, every attempt made to retrieve the money above proved abortive hence this action.

With this background information, I now proceed to marshal out the testimonies of the witnesses.

PW1 is Ikem Michael Uche. His evidence is as follows:-

My name is Ikem Michael Uche, I live at No. 35 F, Pipeline Golden Gate, Kubwa, Abuja, Federal Capital Territory. By training I am an Electrical Electronic Engineer and moved into Mobile Telecom. Currently I am working for II PELP as project manager security. I know the Defendants. Sometimes in October 2009, I was still a serving corper then, I moved into Kaduna after my job offshore expired. I looked around to look for company to invest the money I had. A winner Church member by name Mr. Peter Agada recommended me to Leadgate Fx, Kaduna. Mr. Peter Agada is the branch manager of the Leadgate Fx, Kaduna. I invested the sum of One Million, Two Hundred thousand Naira only (N1,200,000.00) on compound interest of 15% over a period of Eight (8) months initially and in this investment, prove of investment was receipted. The teller used in paying the money into the Account. An Oceanic Bank company account was given to me to make payment into. And I made payment into the account with evidence of the teller. On issuing the teller to the



company a receipt of payment was given to me likewise a sealed and signed agreement and certificate of investment. The original copy of the teller was given to the Leadgate fx and I retained a colour copy. I invested the money in 2009 and when the investment went sad, I was moving from Kaduna to Abuja to lay complain to Independent Corrupt practice Commission (ICPC) and Economic and Financial Crime Commission (EFCC) and the original receipt got lost on transit. The original investment certificate got missing when I was relocating from Kaduna to Markudi. The copy of deposit slip has Oceanic bank logo on it, it is pink in colour. He identified the deposit slip and was admitted as Exhibit "A". Other documents admitted through PW 1 include:-

2. Agreement made between Leadgate Fx and Ikem Michael dated 15th day of October 2009 admitted as Exhibit B.

3. The cash receipt of One Million, Two Hundred Thousand Naira only (₦1,200,000.00) received from Ikem Michael Uche by Leadgate Fx dated 15<sup>th</sup> day of October 2009 admitted as Exhibit C.

4. The investor's Certificate date 15<sup>th</sup> day of October 2009 given to Ikem Michael Uche by Leadgate Fx admitted as Exhibit D.

After investment, it was business as usual in their office. There was traffic of investors in their office because I kept close monitoring for the simple interest of the monthly payment, payment was made as at when due at a performance of 65% until May-June 2010 when the problem started coming. Payment could not come in anymore. That was my first time of speaking with 1<sup>st</sup> Defendant. Because of the problem on ground, I told them that they can extend the investment to one (1) year so as to allow the company sought out the minor problem they claim to have.



October 2010, my late dad called me because he is due for operation and if I am not willing to use the money to travel out for my masters that I should give him the money to use for his liver operation. I called Mr. Williams severally but same response i.e. we are walking on it ad that I am not the only one who invested in it. That he got so many calls. In one of the calls to the 1<sup>st</sup> Defendant, he was counting money on the phone to my hearing. January 2011 eventually my father died of stroke as a result of complication of the liver issue. All the effort to retrieve the money proved abortive and I decided to report the case to Independent Corrupt Practices Commission (ICPC) and Economic and Financial Crimes Commission (EFCC). That in ICT we called a particular information dissemination 'routing by rumor' and the fact that Mr. Peter Agada who was the branch manager and admin manager were all church members at Winner Chapel, they told me the company is registered and have

their license from Central Bank of Nigeria to practice. That is much of the investigation I made.

My account officer who is Josephine Udeh said that they are into forex currency pair. What I did not ask for is life traded account where profits are generated. By the end of the eight (8) months the Leadgate Fx were having challenges paying the investors as agreed. As in the case of *PONZR SCHEME*, I had to extend my investment to one year. At the end of one (1) year, I was unable to recover my investment both capital and agreed interest. I have not been able to recover my money since 2009 till date.

Under cross examination he answered as follows:- I paid the money into the Leadgate Fx Oceanic Bank Account. I did not pay into William Umah's account. I invested in two (2) accounts on the same day, one is simple interest and the other is compound interest.



The simple interest is Six Hundred Thousand Naira only (N600,000.00) and the compound interest is One Million, Two Hundred Thousand Naira only. (N1,200,000.00). I was paid on the simple interest. I got to know Leadgate Fx through Mr. Peter Agada my Church member. When I wrote petition to Economic and Financial Crimes Commission (EFCC) I mentioned the Six Hundred Thousand Naira only (N600,000.00) simple interest. I thought that the Leadgate Fx was into forex trading before I invest my money. What I know about forex trading like I do watch them in Bloomberg is trading of financial forex pairs in the money market based on prevalent price action. As a professional risk analyst, we have a calculated risk and uncalculated risk. If as an investor, I got a company who claim to trade forex, the company had hired a professional trader to trade for them, moreover, I have the gut to collect public funds to invest into forex, I believe that they would have done a proper risk analysis to protect their investment profit and to protect the investor who

came to invest their money in their company. Yes forex is high risk business that is why medo care gives their money to professional investment company to trade for them based on the agreed terms. I am not a forex trader. I am not a trader. I am a professional project manager. The client invested his money to the United world capital, he said that he need traders and I introduced a trader to him. Both scenario are different scenario. The trader in this case he is talking about did not receive money from anybody. He was just called to trade the account, make profit from the trade, his percentage of profit will be send to the trader by the owner of the account after every month. My being detained was because I was the one who refer the trader to the accounts owner not because I was a trader or deceitfully collected any money from anybody's trade. It is true from my explanation that anybody can lose money if he is medo care but no if you are a professional. As I was in a meeting, I was told that Leadgate Fx lost money at that period due to loss from their broker abroad.



Whether it is true or not, I don't know. To my knowledge I don't know whether Leadgate had paid any claim or recover its fund from anybody. I and the Defendant went together to meet my landlord because he has issued a set of cheque which I have presented to the landlord to make payment of the rent which I was owing which the Defendant cancel the cheque a day to the maturity of the cheque. In the present of my landlord who is Mrs. Iwujamo the Defendant made a promise to pay off the rent in two (2) weeks time from that day. I returned the dud cheque to the Defendant and agreed to withdraw the case from Economic and Financial Crime Commission (EFCC) and even assured him that if he pays the Three Hundred Thousand Naira only (₦300,000.00). I will write off the remaining Nine Hundred Thousand Naira only (₦900,000.00). I and the Defendant went to withdraw the case from Economic and Financial Crimes Commission (EFCC). One thereafter I could not reach the Defendant on phone. The Inspector called me asking whether the

Defendant had made payment to me which I told him No. so we have to bring the case back to Court because five (5) months after signing the agreement he has not paid a dime. At that time I was under financial pressure and God knows that if you had paid the money at that time we will not be in Court today. Note this matter is not civil matter but criminal matter.

Under Re-examination, he answered as follows:-

No I did not recover any payment from I. E. I. and Fin Insurance. He did not take me to anybody and I did not meet anybody with regard to the Insurance payment.

PW 2 is Inspector Abduruham Hamar Girei. His testimony runs thus:-

My name is Inspector Abduruham Hamar Girei. I am a serving police officer seconded to Economic and Financial Crimes Commission (EFCC) attached to bank fraud section Garki, 2 Abuja. My schedule of duties is investigation and giving evidence



in the Court, protection of life and property. I know the Defendant. I know the Defendant through a transferred case from Independent Corrupt Practices Commission (ICPC) dated 15<sup>th</sup> day of August 2011 captioned application for recovery of investment and petition of cheating and defraud by Williams Uannah Leadgate Fx Nigeria, Josephine Udeh and Peter Agada written and signed by Ikem Michael Uche referred to Josuah of Chairman Taskforce General Investigation (CTGI). I am handling his other matters. The Chairman Taskforce General Investigation (CTGI) forwarded the matter for me to harmonize with the one I was handling before. He has been reporting to my office in the other matter at interval of every two (2) weeks. He went through the petition, he confirmed to me that he know the complainant. He went ahead to inform me that he has made some refund to him. I now asked him can you put it in writing, he answered yes. I bring out Economic and Financial Crimes Commission (EFCC) statement sheet and I cautioned him in

English language. He went through that it is not his first time of writing statement. He went ahead and recorded his statement in his own handwriting. After he finished I counter signed as witness, I allowed him to go and enjoy his bail as usual. I wrote a letter of investigation activities to Eco Bank Plc requesting for Leadgate fx account and the statement. The response show clearly how Mr. Ike Michael Uche paid money into Leadgate Fx Nigeria account. I wrote another letter to the Corporate Affairs Commission (CAC) requesting for Leadgate Fx Nigeria Limited was duly registered with the Corporate Affairs Commission (CAC). The response stated that Leadgate Fx was duly registered with them formerly known as Leadgate Com. Nigeria. I also wrote another investigating activities to Central Bank of Nigeria (CBN) requesting whether Leadgate Fx Nigeria has a license to operate as forex trading. The response also stated that he once applied for the license but was not given approval to operate. He went ahead on his own. He identifies the petition written to



Independent Corrupt Practices Commission (ICPC) and same was admitted as Exhibit 'E'. He also identifies the statement of the Defendant made to the Economic and Financial Crimes Commission (EFCC) dated 28<sup>th</sup> day of September 2012 which was admitted as Exhibit 'F'.

He identified a letter written by Economic and Financial Crimes Commission (EFCC) to the Registrar Corporate Affairs Commission date 2<sup>nd</sup> day of October 2012 admitted as Exhibit G.

Also identified was a reply letter from Corporate Affairs Commission (CAC) to Economic and Financial Crimes Commission (EFCC) dated 19<sup>th</sup> day of October 2012 admitted as exhibit H. a letter of response from Central Bank of Nigeria (CBN) to Economic and Financial Crimes Commission dated 19<sup>th</sup> day of September 2011 identified by the witness and admitted as Exhibit I. Also identify is a letter of response ad attachment therein from Eco Bank to the Head Bank Fraud Unit of Economic and Financial Crimes Commission (EFCC) dated 10<sup>th</sup> day of

November 2014 admitted as exhibit 'J'. That the owners of Leadgate Fx are Ummah Williams with shareholding of Eight Hundred Thousand Naira (₦800,000.00) out of a Million Naira while Agbo Ruth is with Two Hundred Thousand Naira (₦200,000.00) to make it One Million Naira (₦1,000,000.00).

That the directors are Ummah William and Agbo Williams. The complainant invested for a long period before the Defendant apply for license to backed up the business. On the response from Central Bank of Nigeria (CBN) they attached all letter the Leadgate Fx wrote the Central Bank of Nigeria (CBN) requesting for the license or approval to operate but was not granted the approval and letter of advice the Central Bank of Nigeria wrote to the Leadgate com advising him where to address such request. He did not refund any penny or anything through me.

After the evidence in chief, the defence counsel applied for adjournment but the prosecution counsel oppose the application on the grounds that his witness came all the way from Yola.



Despite the opposition from the prosecuting counsel the Court was minded to grant adjournment for the interest of justice to 12<sup>th</sup> day December 2016 for continuation of trial.

On 12<sup>th</sup> day of December 2016, the Court did not sit because that day was declared a public holiday by the Federal Government hence the matter was adjourned to 1<sup>st</sup> day of February 2017 off record. On 1<sup>st</sup> day of February 2017 none of the parties and their counsel was present in Court and the matter was adjourned to 15<sup>th</sup> day of February 2017 for continuation of trial. On 15<sup>th</sup> day of February 2017, there was no representation for the Defendants.

Owing to the fact that the bailiff of this Honourable Court did not perfect the hearing notices on them as ordered by the Court. The matter was adjourned to 8<sup>th</sup> day of March 2017. On 8<sup>th</sup> day of March 2017, there was no representation for the Defendant despite the fact that there was proof of service on them of the hearing notices as ordered by the Court. On this note the prosecution counsel applied that the bail of the 1<sup>st</sup> Defendant be

revoked and bench warrant be issued for his arrest. The application was granted. The case was adjourned to 5<sup>th</sup> day of April 2017 for continuation of trial. On the 5<sup>th</sup> day of April 2017, there was no representation for the Defendant. The prosecuting counsel asked for a date to enable his witness who was testifying before this to come and conclude his testimony. His reason was that the witness absence was as a result of his engagement in police payroll verification in Adamawa State. The prosecuting counsel also apply that the surety who took the Defendant on bail to appear before this Court to show cause why he should not forfeit the recognizance he entered into. The Application was granted as prayed and the matter was adjourned to 4<sup>th</sup> day of May 2017 for continuation of trial. On the 4<sup>th</sup> day of May 2017 there was no representation for the Defendant. The prosecuting counsel applies that the Court makes and order for forfeiture of recognizable against the surety. The application was granted. The prosecution also applied that the Court continues with the



trial in absence of the Defendant and their counsel. His application is grounded under Section 353 (4) of the Administration of Criminal Justice Act 2015. The application was granted as prayed and the case adjourned to 24<sup>th</sup> day of May 2017 for defence to open having foreclosed the Defendant's to cross examine PW 2.

On 24<sup>th</sup> day of May 2017, the Defendant and his counsel were not in Court hence the prosecuting counsel applies that the defence be foreclosed. The application was granted hence the matter was adjourned to 12<sup>th</sup> day of June 2017 for adoption of written address. On 12<sup>th</sup> day of June 2017, the Defendants and their counsel were not in Court. The prosecuting counsel adopted his final written address dated 5<sup>th</sup> day of June 2017 and filed on 12<sup>th</sup> day of June 2017 as proof of their case and urged the Court to convict the Defendants as charged. Case was adjourned to 11<sup>th</sup> day of September 2017 for Judgment.

During the address the learned counsel for prosecution Samuel Okeleke Esq. made the following submissions that following sole issue call for determination in this case to wit:-

*Whether the prosecution has proved its case against the accused persons beyond reasonable doubt to warrant them being found guilty and consequently convicted?*

In arguing the issue the learned counsel for the prosecution stated that to the prove the offence of obtaining by false pretence, the prosecution is required to prove that:-

- i. There is a false pretence*
- ii. There is a false pretence emanated from the accused person.*
- iii. The false pretence operated in the mind of the person from whom the money was obtained.*
- iv. The pretence was false to the knowledge of the Accused person.*



v. *Money was obtained as a result of the false pretence.*

vi. *The Accused person did same with interest to defraud.*

He referred the Court to the case of *ALAKE VS STATE (1991) 7 NWLR (Part 205) 567 at 591.*

He submitted that Exhibit H and I which are the Corporate Affairs Commission documents pertaining to the corporate status and structure of the 2<sup>nd</sup> Defendant and the Central Bank of Nigeria (CBN) response to the Economic and Financial Crimes Commission's (EFCC) letter of investigation activities on the Defendant and the documents annexed thereto respectively were acknowledged by the 1<sup>st</sup> Defendant in his statement albeit unwillingly and that the 1<sup>st</sup> Defendant clearly knew and acknowledged that he did not have a license to conduct forex trading in Nigeria yet, the Defendants induced the nominal complainant to invest in their scheme on the false pretence that it was a licensed forex trading broker.

He stated that the statement of a Defendant is the strongest evidence of guilt on the part of a Defendant, that it is stronger than the evidence of an eye witness because the evidence comes out of the horses mouth who is the Defendant, there is no better evidence and there is no need for further proof since what is admitted needs no further proof as was held in the case of *AKPAN VS STATE (2008) 11 NWLR (Part 1106) 72 at 103 Ratio 2, 3 & 4.*

*Section 20 of the Evidence Act 2011.*

He submitted that a free and voluntary confession of guilt once it is direct and properly established is sufficient proof of guilt and is enough to sustain a conviction so long as the Court is satisfied with the right of such confession.

He submitted that to test the truth or otherwise of a confessional statement, the Court will consider the following:-



- a. *Whether there is anything outside the confession to show that it is true.*
- b. *Whether the statement is corroborated.*
- c. *Whether the Defendant had the opportunity of committing the offence charge and whether the confession was possible.*
- d. *Whether the confession was consistent with other facts which have been ascertained and proved at trial.*

He referred the Court to the case of *KAREEM VS FRN (2002) 8 NWLR (Part 770) 664 at 683.*

*BATURE VS STATE (1994) 1 NWLR (Part 320) 267 at 283 – 284.*

He submitted that where a confessional statement has admitted all the essential elements of an offence and shows unequivocal, direct and positive involvement of a Defendant in the Crime alleged, the Court can rely on it alone to convict the Defendant and urge the Court to so hold. He referred the

Court to the case of *MAJOR AMACHERE VS NIGERIAN ARMY (2003) NWLR (Part 807) 256 Ratio 1 -7*. That it is an established principle of law that a man intends the natural consequence of his act. He rely on the case of *NYAMBUS KPANTA VS STATE (1977) 1 FCA 259*.

He submitted that the prosecution is not bound to call or tender numerous evidence but is sufficient to call material evidence in proof of their case. He urged the Court to hold that the evidence called by the prosecution is material and sufficient to ground conviction against the Accused person. He referred the Court to the case of *ODUNEYE VS STATE (2001) 2 NWLR (Part 697) 311 at 328 – 329*.

He urged the Court not to attach much weight to the incredulous and superfluous supposition of the 1<sup>st</sup> Defendant in his extra-judicial statement (Exhibit F) to the effect that online forex trading is not within the regulatory purview of the Central Bank of Nigeria (CBN) as the response of the Central



Bank of Nigeria (CBN) to the Economic and Financial Crimes Commission (EFCC) in Exhibit 'T' firmly refutes suppositions. That this testimony is in total contrast to the act carried out by the 1<sup>st</sup> Defendant with relation to his letters to the Central Bank of Nigeria (CBN) and the response which he received from Central Bank of Nigeria (CBN) which forms part of Exhibit 'T' before the Court.

He contended that the testimonies of PW 1 and PW 2 with the documentary evidence before this Honourable Court therefore establishes that there is a false pretence which emanated from the Defendants, the false pretence operated in the mind of the PW 1 the nominal complainant from whom the money was obtained, the pretence was false to the knowledge of the Accused persons, money was obtained as a result of the false pretence and the Accused person did same with intent to defraud.

He contended that from the uncontroverted evidence of the nine (9) prosecution witnesses with Exhibits tendered, he urged the Court to hold that the prosecution has established a case of obtaining money by false pretence against the Defendant necessitating the Court to convict them on the both counts as contained on the charge sheet.

He referred the Court to Section 11 (1) (a) of the Advance Fee Fraud and other Fraud Related Offences Act 2011 and urged the Court to order the Defendants to restitute Pw 1, the victim who is in on the charge before the Court for loss sustained by him as result of the false pretence.

***RESOLUTION OF THE ARGUMENT.***

I will first and foremost address the issue as it concerns count I of the charge. Conspiracy is the agreement by two (2) or more persons to do or cause to be done an illegal act or legal act by illegal means. The actual agreement alone constitutes the



offences and it is not necessary to prove that the act has in fact been committed. Conspiracy is rarely proved by direct evidence but by circumstantial evidence and inference from certain proved acts. To get a conviction on a count of conspiracy the prosecution must establish the element of agreement to do something which is unlawful or to do something which is lawful by unlawful means.

In proof of its case PW 1 Mr. Ikem Michael Uche, he testified that sometimes in October 2009, he was introduced to Leadgate Fx Company by one Mr. Peter Agada (the manger of the 2<sup>nd</sup> Defendant's Kaduna branch office) who posited to him that the company was a registered and licensed forex trading company and portfolio managers. That based on the representation by the officials of the Company, he invested the sum of One Million, Two Hundred Thousand Naira only (₦1,200,000.00) on a a compound interest of 15% for a tenure of Eight (8) months initially and a proof of investment was

given to him. PW 1 was emphatic in his testimony in chief and also during his cross examination where he reaffirmed that staff of the Defendants namely Mr. Peter Agada and his account officer who were procured by the Defendants and were acting under their authority represented to him albeit falsely that the 2<sup>nd</sup> Defendant was duly licensed by the relevant regulatory governmental bodies such as the Central Bank of Nigeria as forex trader.

The narrative above did supply circumstantial evidence of all important element of agreement to do something illegal or a legal act by unlawful means. The evidence of the witnesses did link the Defendants in such a way to draw an inference of a conspiracy. It is safe from the circumstantial evidence adduced to infer or presume the conspiracy. See *DABOH VS THE STATE (1977) ALL NLR 146, (1977) 5 SC 197*. There was overact from which to infer the conspiracy. See the case of *OMOTOLA & ORS VS THE STAE (2009) 2 -3 SC, 7 NWLR*



(Part 1139) 148. Where Oguntade JSC referred to the observation of the learned authors of Archibald-Criminal pleading evidence and practice 38 Edition paragraph 4076 at page 1540. "It must be proved that the alleged conspirators were acting in pursuance of a criminal purpose held in common between them and that each conspirator knew that there was in existence or coming into existence a scheme which went beyond the illegal act which he agreed to do. The circumstantial evidence is enough for an inference of a conspiracy to be drawn. The evidence of the witnesses did disclosed conspiracy. I am of the view and I so hold that the essential element of the 1<sup>st</sup> count of conspiracy has been proved. Consequently the Defendants is hereby convicted as charged in count I.

Count 2 deals with obtaining money by false pretence contrary to 1 (1) (b) of the Advance Fee Fraud and Other fraud Related

Offences Act 2006 and punishable under Section 1 (3) of the same Act.

The Section provides:-

*1. Notwithstanding anything contained in any other enactment or law, any person who by any false pretence and with intent to defraud.*

*a. Obtains from any other person, in Nigeria or in any other country for himself or any other person.*

*b. Induces any other person in Nigeria or in any other country, to deliver to any persons*

*or*

*c. Obtains any property, whether or not the property is obtained or its delivery is induced through the medium of a contract induced by the false pretence is guilty of an offence under the Act.*



In the case of *ALAKE VS THE STATE (1991) 7 NWLR (Part 205) 567 at 591 paragraphs G – H* the Supreme Court set out the ingredient to be established by the prosecution in an allegation of obtaining by false pretence thus:-

1. *That there is pretence.*
2. *That the pretence emanated from the Accused person.*
3. *That it was false.*
4. *That the Accused person knew of its falsity.*
5. *That there was an intention to defraud.*
6. *That the thing is capable of being stolen.*
7. *That the Accused person induced the owner to transfer his whole interest in the property.*

From the above principles of law enunciated in the above case, in addition to the testimonies of PW 1 and PW 2 with the documentary evidence before me, I am of the view and I so hold that the prosecution has established that there is a false pretence which emanated from the Defendants, the false pretence

operated in the mind of the PW 1, the nominal complainant from whom the money was obtained, the pretence was obtained as a result of the false pretence and the Defendant did same with intent to defraud.

The false pretence on the part of the Defendants is that, at the time the Defendant set out to collect monies from the nominal complainant and other members of the public, the Defendants knew that they did not possess the requisite license to deal in forex in Nigeria from the Central Bank of Nigeria (CBN) which the prosecution has been able to prove to the Court is the competent body charged with issuing regulations and granting license to forex traders in Nigeria and because the Defendants had the intention to defraud they kept from the nominal complainant (PW 1) and the other investors, the knowledge of the fact that they were unlicensed but rather kept on reassuring them that their business was licensed and insured. The false pretence was acted upon by investors particularly PW 1, when he



parted with the sum of One Million, Two Hundred thousand Naira only (₦1,200,000.00) to the Defendants believing that the Defendants was a licensed forex trading broker who could yield returns on their investments which the Accused persons failed to do.

I entirely agree with the prosecution counsel that by the 1<sup>st</sup> Defendant's action and conduct and in fact his admission as contained in Exhibit F, he had an intentional perversion of truth for the purpose of inducing the investors particularly PW 1 to part with their monies to him knowing that he did not have the licensed and capacity to carry on forex trading in Nigeria.

Fair enough, this evidence was not discredited under cross-examination. See *OFORLETE VS STATE (2000) 12 NWLR (Part 681) 415*. Worse still the Defendant did not put up any evidence to challenge the case of the prosecution.

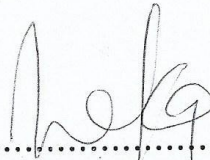
In the end I resolve the sole issue in favour of the prosecution and hold that the prosecution has proved the ingredients of the offence as contained in the charge against the Defendant beyond reasonable doubt as required by Section 135 of the Evidence Act 2011 as amended. Consequently, the Defendants are convicted as charged.

The first Accused is therefore hereby sentenced to Seven (7) years imprisonment in each of the two counts. The sentences to run concurrently.

The Second Accused is sentenced on each count to Two Hundred Thousand Naira (N200,000.00)



In addition to the above sentences, I hereby make an order that the Accused persons shall pay the nominal complainant the sum of One Million Two Hundred Thousand Naira (₦1,200,000.00) as restitution to the complainant.



.....  
HONOURABLE JUSTICE EMEKA NWITE

11/09/2017

*Parties – Absent.*

*Appearance*

*Samuel Okeleke for the Complainant.*

*No representation for the Plaintiff.*

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(Office of the Registrar)  
Federal High Court, Kaduna  
Justice A. S. J.  
18/5/2018